Study to gather evidence on the working conditions of platform workers

VT/2018/032

Final Report

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CEPS, EFTHEIA, and HIVA-KU Leuven

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ABSTRACT

Platform work is a type of work using an online platform to intermediate between platform workers, who provide services, and paying clients. Platform work seems to be growing in size and importance. This study explores platform work in the EU28, Norway and Iceland, with a focus on the challenges it presents to working conditions and social protection, and how countries have responded through top-down (e.g. legislation and case law) and bottom-up actions (e.g. collective agreements, actions by platform workers or platforms). This national mapping is accompanied by a comparative assessment of selected EU legal instruments, mostly in the social area. Each instrument is assessed for personal and material scope to determine how it might impact such challenges. Four broad legal domains with relevance to platform work challenges are examined in stand-alone reflection papers. Together, the national mapping and legal analysis support a gap analysis, which aims to indicate where further action on platform work would be useful, and what form such action might take.

ABBREVIATIONS

AMT	Amazon Mechanical Turk
AT	Austria
BE	Belgium
BG	Bulgaria
CJEU	Court of Justice of the European Union
CY	Cyprus
CZ	Czechia
DE	Germany
DK	Denmark
e.g.	for example
EC	European Commission
EE	Estonia
EL	Greece
EP	European Parliament
EPSR	European Pillar of Social Rights
ES	Spain
ESIP	European Social Insurance Platform
ETUI	European Trade Union Institute
EU	European Union
EU-OSHA	European Union Occupational Safety and Health Association
FAU	Freie Arbeiterinnen- und Arbeiter-Union [Free Workers Union]
FI	Finland
FNV	Federatie Nederlandse Vakbeweging [Federation of Dutch Trade Unions]
FR	France
GDPR	General Data Protection Regulation: Regulation of the European Parliament and of the Council n. 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC
HR	Croatia
HU	Hungary
i.e.	in other words
ICT	Information and communications technology
IE	Ireland
IG BAU	Industrielle Gewerkschaft Bauen-Agrar-Umwelt [Trade Union of Construction, Agriculture and Environment]
IG Metall	Industriegewerkschaft Metall [German Metalworkers' Union]
IGAS	Inspection générale des affaires sociales [General Inspectorate of Social Affairs]
ILO	International Labour Organization
IRES	Institute of Economic and Social Research

IT	Italy
JRC	Joint Research Centre of the European Commission
LT	Lithuania
LU	Luxembourg
LV	Latvia
MS	Member State (of the European Union)
MT	Malta
NGG	Gewerkschaft Nahrung-Genuss-Gaststätten [Food, Beverages and Catering Union]
NL	Netherlands
OECD	Organisation for Economic Co-operation and Development
op.cit	the work cited
OSH	Occupational safety and health
P2B	Platform to Business Regulation: Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L186/57 11.07.2019)
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SEK	Swedish krona
SI	Slovenia
SK	Slovakia
STEM	Science, technology, engineering and mathematics
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UNECE	United Nations Economic Commission for Europe
WES	Work, Employment and Social Relations model

GLOSSARY

Term	Definition
atypical contracts	Contracts that do not conform to those in standard work. Examples include part-time, fixed-term, temporary, casual and seasonal work contracts
atypical employment/work	See non-standard employment/work
bogus self-employment	Business activities that do not include any managerial or proprietary tasks and which possess the attributes of an employment relationship but without entitlement to the corresponding labour law protections[1]
clickworkers	Platform workers who engage in small-scale and repetitive online work, such as tagging images
collaborative economy	A term sometimes used instead of platform economy, sometimes with normative or non-economic connotations
crowdwork(ing)	A type of platform work where clients place an open call for services to a large, global body of potential crowdworkers
employee	A worker that is in a contractual employment relationship with another person (an employer) in return for remuneration
employer	A natural or legal person that is bound by one or more natural persons (employees) via an employment contract
employment contract	The contract that formalises the employment relationship between an employee and employer: characterised by the subordination of an employee to an employer
employment relationship	The relationship characterised by an employment contract or service contract between the employer and employee
food delivery riders	A type of platform worker providing services intermediated by a food delivery platform such as Deliveroo, Foodora, or UberEats
genuine self-employment	When the contractual status and factual characteristics of a natural person's work are both self-employment: distinguished from bogus self-employment
homeworker	One who performs work from home or other premises of their choosing, creating a product or service specified by an employer
independent contractors	A person contracted to provide services to another entity as a non-employee
intermediary	A person, business, or function that serves to connect one or more entities to facilitate exchange of information, goods or services
job quality	A multi-disciplinary, multidimensional concept that is generally understood as 'the extent to which a job has work and employment-related factors that foster beneficial outcomes for the employee, particularly psychological well-being, physical well-being and positive attitudes such as job satisfaction'[2]
non-standard employment/work	Work that diverges in one or more aspects from standard work
online labour platform	A term sometimes used to distinguish a platform (as in platform work) from other sorts of platforms. For example, Facebook and Uber are

[1] See Eurofound (2008)

[2] Holman (2013)

	both online platforms, but only the latter is an online labour platform
online platform	An online service that facilitates communication between one or more parties, especially to exchange services for payment
platform	An online platform on which services are exchanged for payment (unless otherwise specified)
platform economy	Economic and social activity facilitated through online platforms
platform work	All labour provided through, on, or mediated by online platforms in a wide range of sectors, where work can be of varied forms, and is provided in exchange of payment
platform worker	A natural person providing platform work
self-employment	A broad set of labour practices wherein a natural person earns income without an employment relationship with an employer; both bogus self-employment and genuine self-employment are types of self-employment.
sharing economy	A term sometimes used instead of platform economy, sometimes with normative or non-economic connotations, and sometimes referring specifically to 'sharing' goods or services through an online platform
standard employment/work	Employment relationships between a natural person (employee) and a natural or legal person (employer) that are indefinite (open-ended) and full-time
traditional employment/work	Employment relationships between a natural person (employee) and a natural or legal person (employer) that are indefinite (open-ended) and full-time, especially prior to the platform economy
worker	Anyone who performs work for pay, regardless of employment status, and without legal connotations (unless otherwise specified, especially in discussions of EU law)

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EXECUTIVE SUMMARY

Introduction

Platform work is a small but diverse and seemingly growing form of labour. Platform work differs from many traditional patterns of work, and while it may increase labour market access and lead to innovation and entrepreneurship, and in so doing help achieve EU policy objectives, it also challenges existing labour and social law frameworks. European policymakers and stakeholders have highlighted the need for better understanding of platform work so its potential can be maximised and its harms minimised.

Against this background, this study combines fieldwork and desk research, and both legal and socioeconomic perspectives, for each of the 28 EU Member States, plus Norway and Iceland, as well as for the EU level. The primary goal is to **assess, in view of the particular challenges faced by platform workers, whether EU action is required to improve their working conditions and social protection, and if so, what form such action could take**.

Conceptualisations

Platform work is understood as **all labour provided through, on, or mediated by online platforms in a wide range of sectors, where work can be of varied forms, and is provided in exchange for payment**. It features a triangular relationship between platform, platform worker and client, using online intermediation. The intermediation largely uses technology and algorithms, is often intransparent, and may significantly affect working conditions, for example, by its impact on the allocation and organisation of work, and the evaluation of platform workers. **This 'black box of intermediation' is a distinguishing feature of platform work**.

Platform work refers to very heterogeneous forms of work. We can distinguish between platform work types based on three primary factors:

- **Location**: whether a task is performed online (from anywhere with an internet connection) or on-location;
- **Complexity**: higher- or lower-skill requirements;
- **Allocation of work**: primarily determined by platform, platform worker, or client.

Platform work can be grouped with other types of non-standard work or self-employment. **Non-standard work** refers to arrangements that diverge from a full-time, open-ended employment contract with one employer. Platform workers rarely have an employment contract with the platform and are mainly considered self-employed in practice. This self-employment can be bogus or genuine, but it is often difficult to distinguish between them, and there may also be differences across countries, types of platform work, and even individuals using the same platform in the same city.

The size or prevalence of platform work is much debated and estimates vary widely. According to the COLLEEM II survey data[3] for 16 EU countries, an average of 11% of the adult population has performed platform work at least once. Those who rely on platform work for their main income are far fewer, averaging 1.4% of adults. The most common platform work tasks include online clerical and data entry. Men are much more likely to perform transportation and delivery services, while women perform more translation and certain on-location services (e.g. housekeeping or beauty services). The survey also

[3] JRC's COLLEEM II survey

finds that **those performing platform work as a primary or secondary occupation** (relying on it for a large proportion of their income) **are less likely to be employees** than those performing platform work sporadically. Platform workers' employment status is often unclear even to the platform workers themselves, which means that self-reporting of status can affect the reliability of aggregate data.

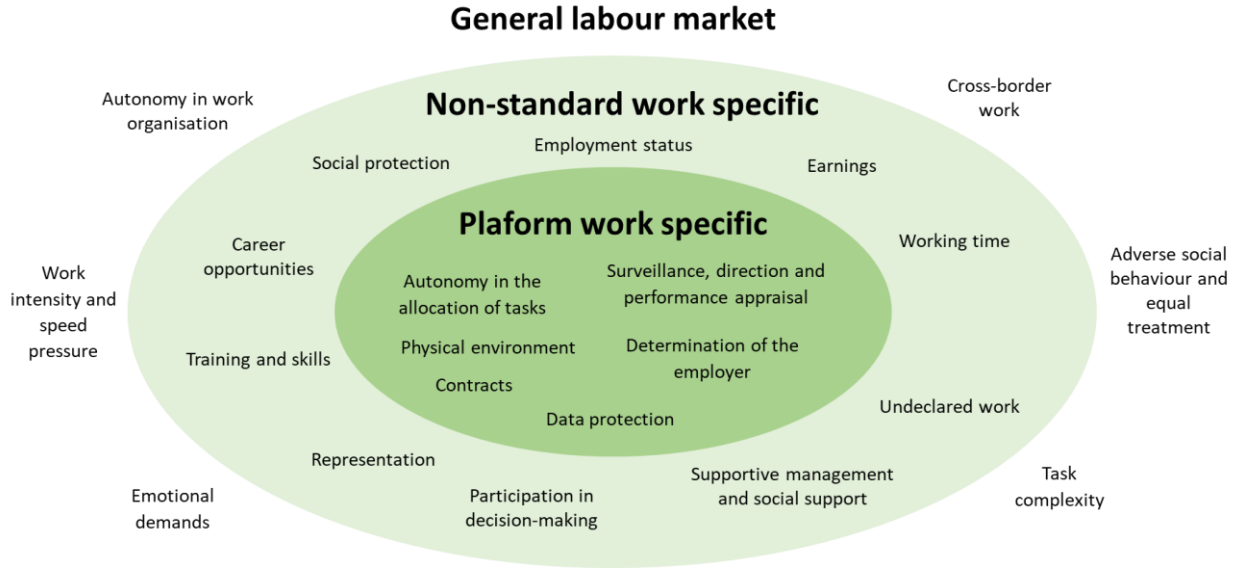
The future trajectory of platform work is also much debated. Available data and expert opinion suggests the total number of platform workers is growing and likely to continue to do so, with demand for certain services (e.g. training AI, care for the elderly or childcare) likely to grow more than for others (e.g. tasks more prone to automation, and food delivery or personal transport services). Moreover, certain characteristics of platform work are becoming more common in the overall labour market (e.g. algorithmic management).

Challenges for platform workers

The challenges related to the working conditions and social protection of platform workers are mapped in accordance with a job-quality framework based on the Work, Employment and Social Relations (WES) model.[4] This model consists of three dimensions: **work**, **employment**, and **social relations**. We also consider **'other'** challenges relevant to platform work.

Potential challenges facing platform workers were assessed and summarised by their **significance** (high, medium, low, or none), **what types of platform work seem most affected**, and their **specificity** (specific to platform work, common for non-standard work, or present in the general labour market). Figure 1 shows how many of these challenges are not specific to platform work.

Figure 1: Challenges summary



Challenges were found to vary a great deal across different types of platform work. For example, the physical environment differs for online and on-location forms of platform work, and autonomy in work organisation changes depending on whether the client, platform, or platform worker determines which tasks are performed, when and how. The

[4] Lamberts, M. et al. (2016), Jobkwaliteit in België in 2015. Analyse aan de hand van de European Working Conditions Survey EWCS 2015 (Eurofound), HIVA Onderzoeksinstituut voor Arbeid en Samenleving; Leuven

importance given to particular challenges also varies across countries, depending on their policy and legal frameworks. For example, social protection may be a greater challenge in countries where the self-employed have significantly less statutory coverage than employees. A summary of the WES dimensions and *significant* platform work challenges (of high or medium importance) follows.

The work dimension primarily concerns job content, working conditions and work organisation, which impact physical and psychological risks for the platform worker. The use of technology, apps and algorithms particularly affects this dimension, which therefore contains certain challenges *more specific to platform work*.

Of highest concern for platform workers are the challenges of autonomy in the allocation of tasks; of surveillance, direction, and performance appraisal; and of physical environment. Autonomy in work organisation is assessed to be of medium concern.

The employment dimension relates to the formal context in which a platform worker performs tasks, such as their employment status, the nature and content of their contract with the platform, the level of social protection, and the composition of their earnings. It also entails issues that directly affect a platform worker's personal life, such as working time, training and career opportunities. This dimension contains some of the most discussed challenges of platform work, including employment status, social protection and earnings, which are *also significant issues in non-standard work*.

The challenges of highest concern are employment status, determination of employer, and contracts (including type, termination, and provision of contractual information). The medium concern challenges are social protection, earnings (including wages, fees and price setting), and working time.

The **social relations dimension** concerns social relations and interactions, social dialogue and representation at work, both formally and informally. Social support is an important resource for the well-being of platform workers that can help achieve work-related goals, encourage personal growth and compensate for job demands. These challenges are *mostly common to non-standard work*.

Two challenges in this category are assessed as significant for platform workers: representation (high concern), and adverse behaviour and social treatment (medium concern). Notably, the latter is also a concern in the general labour market.

The '**other' dimension** covers challenges that do not fit within the previous categories but are nevertheless important for platform workers: undeclared work, cross-border issues, and data protection. Each is assessed as a medium challenge, but these are some of the least understood issues in platform work.

National tools and responses to platform work challenges

Mapping national responses to platform work helped us understand which strategies exist and how effective they are. Responses were listed by category, with legislation, case law and administrator/inspectorate action constituting **top-down responses**, and collective agreements, platform actions, and platform worker actions considered **bottom-up responses**. Descriptive data for each response was also provided, such as who initiated the response, the degree of implementation, and so on.

There were **177 responses from the 30 countries, including** regional and local levels. The number of responses **varied widely from country to country**, from zero to nineteen. This variation may reflect how some countries consider platform work to be less of a challenge, or have adopted a 'wait and see' approach, or that some gave fewer but more wide-reaching responses. In some countries (e.g. Iceland, Malta, and Bulgaria), platform work has hardly registered as a topic of concern, whereas in others (e.g. Spain, Germany, Italy, and France) numerous stakeholders have taken concerted action. Most responses concerned employment status (54), representation (46),

earnings (32), and social protection (31), indicating that policymakers and social partners are likely to be especially aware of challenges in these areas.

Top-down responses

National legislation specific to platform work is very rare in the EU28, Iceland and Norway. Working conditions and social protection of platform workers do not generally constitute the direct material scope of national statutory legislation. France is the only country that has enacted national legislation with a view to improving the labour and social rights of platform workers.[5]

Other recent national legislation has indirectly tried to regulate working conditions and social protection of platform workers, either through defining the employment status of the platform workers, by regulating the working conditions and social protection for persons in non-standard employment, or by strengthening rights and protection of the self-employed. Such legislation mostly concerns specific business sectors, such as personal transportation services (provided by platforms such as Uber) and food delivery services (from platforms such as Deliveroo).

Rather than focusing on working conditions or social protection**, national legislation has, especially initially, primarily aimed to ensure fair competition and effective market functioning** in specific market segments such as personal transportation. Two main approaches entail deregulating the traditional business sectors, and explicitly applying existing standards and requirements to the new (platform) entrants. **National legislation may also focus on proper registration of platforms and taxation** for platform work alongside other sources of income.

Case law on platform work was reported in 16 of the 30 surveyed countries. Many cases are ongoing, and many rulings are being appealed, so it is difficult to draw clear and firm conclusions. Initially, **numerous cases in national courts concerned competition law issues and the personal transport sector**. Most court cases considered whether the services provided by Uber or similar platforms amount to taxi/transport services, or those with different standards and requirements, for example limousine or information society services.

National labour courts play a key role in defining the employment status of platform workers, with many cases ruling on this, especially those providing personal transport and food delivery services. However, courts have reached different conclusions from similar evidence. These contradictory rulings reflect the different facts and arguments raised in court, and the discretionary power of labour judges, who assess facts on a case-by-case basis. Overall, national case law has thus far only modestly improved clarity on employment status of platform workers.

Inspectorates and administrators have targeted undeclared work, social protection contributions and coverage, safe working conditions and even employment status, with authorities in Belgium, Denmark, France, Sweden and the UK particularly active. However, inspectorates often struggle to address platform work, which typically occurs in private spaces (homes) or dispersed public spaces (city streets), rather than a 'normal' static workplace.

Bottom-up responses

Bottom-up responses focus more on the challenges of representation, earnings, physical environment and working time, and especially involve food delivery.

Eight formal collective agreements between platforms and platform workers were identified, with more pending. In several cases trade unions (e.g. Germany's

[5] Given the timeframe of the study, some of the most recent developments at national level (e.g. in some sectors late 2019 in Italy) could not be included and analysed – demonstrating the fast-changing nature of the policy and regulatory framework of platform work.

NGG and IG BAU, and the Norwegian Transport Union) assisted platform workers in organisation and negotiations, while in other cases platform workers organised independently. These agreements cover a single platform, groups of similar platforms in a country, or even national sectoral level (e.g. logistics).

Platform workers have organised strikes and demonstrations to improve working conditions. Some have also created or joined cooperatives and collectives (e.g. the *Koeriers Kollektief* [Courier's Collective] in Belgium and cooperative SMart in multiple countries). These aim to improve the collective voice and social protections, among other goals.

Some platforms have taken action to address working condition challenges faced by platform workers, or manage criticism of their practices. Several platforms have modified their terms and conditions or specific practices to avoid legal challenges such as lawsuits on employment status. Others have registered with national authorities or trade associations, either voluntarily or through legal necessity, thereby formalising their participation in labour markets.

Other forms of self-regulation have emerged, such as platforms creating partnerships to provide platform workers with insurance and training. Some platforms have signed on to charters or codes of conduct, agreeing to abide by certain principles and decent work standards. Some of these initiatives appear to be innovative and promising in addressing working conditions and social protection. The Frankfurt Declaration,[6] Crowdsourcing Code of Conduct,[7] and *Carta dei diritti fondamentali del lavoro digitale nel contesto urbano*[8] [Charter of fundamental rights of digital work in the urban context] are examples covering various forms of platform work.

In a few cases, platforms have taken punitive or 'union-busting' actions against platform worker organisation. But others have encouraged platform workers to organise and engage in social dialogue.

Instruments and actions at EU level

European institutions have released communications and initiated research specific to platform work. Recent EU labour legislation explicitly refers to platform work as a type of non-standard work and introduces material provisions with specific relevance for platform workers who have an employment relationship.

This study assesses the relevance of EU law to platform work challenges. Twenty-one EU instruments were selected for in-depth analysis, based on their probability of impacting the working conditions and social protection of platform workers, and grouped as follows:

- **Non-standard work**: Part-time Work Directive, Fixed-term Work Directive and Temporary Agency Work Directive;[9]
- **Health and safety**: Health and safety for fixed-term work Directive and Pregnant Workers Directive;[10]

[6] Fair Crowd Work (2016), "Frankfurter Erklärung zu plattformbasierter Arbeit | Vorschläge für Plattformbetreiber, Kunden, politische Entscheidungsträger, Beschäftigte und Arbeitnehmerorganisationen", Declaration, Frankfurt, December

[7] IG Metall (2019), "Report of the activities of the Ombuds Office of the Code of Conduct for Paid Crowdsourcing, 2017-2018", IG Metall, January

[8] Comune di Bologna (2018), "Carta dei diritti fondamentali del lavoro digitale nel contesto urbano", May

[9] Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work (OJ L 14, 20.1.1998); Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work (OJ L 175, 10.7.1999); Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9–14)

- **Individual labour rights**: Written Statement Directive, Transparent and predictable working conditions Directive (TPWC) and Working Time Directive;[11]
- **Collective labour rights**: Information and consultation Directive, Insolvency Directive, Collective Redundancies Directive and European Works Council Directive;[12]
- **Work-life balance**: Parental Leave Directive and Work-life Balance Directive;[13]
- **Social protection**: Recommendation on access to social protection;[14]
- **Various aspects of non-discrimination**: Employment Directive, Race Directive, Gender equality in employment Directive, Gender equality in access to goods and services Directive, Gender equality of self-employed Directive and Gender equality in social security Directive.[15]

We further consider the General Data Protection Regulation[16] (GDPR) and Regulation 2019/1150 on promoting fairness and transparency for business users of online intermediation services[17] (P2B). Competition law and collective bargaining as well as data protection are handled separately in two reflection papers annexed to the study.

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[10] Council Directive 91/383/EEC of 25.06.1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (OJ L 206/19 of 29.07.1991), Council Directive 92/85/EEC of 19.10.1992 (OJ L 348/1 of 28.11.1992) on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding

[11] Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, Directive EU 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L186/105 11.07.2019), Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9–19)

[12] Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 080, 23/03/2002 p. 29 – 34), Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (Codified version) (OJ L 283, 28.10.2008, p. 36–42), Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ L 225, 12.8.1998 p.16-21), Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees

[13] Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (OJ L 68, 18.3.2010, p. 13–20), Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 188, 12.7.2019, p. 79–93)

[14] Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (OJ C 387, 15.11.2019, p. 1–8)

[15] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16–22), Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22–26); Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ L 204, 26.7.2006, p. 23–36), Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37–43), Directive 2010/41/EU on gender equality of self-employed (OJ L 180, 15.7.2010, p. 1–6), Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ L 6, 10.1.1979, p. 24–25)

[16] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

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

Scope of EU action

The EU has the ability, where justified, and in accordance with the principles of subsidiarity and proportionality, to set minimum requirements in the area of social policy. However, and especially regarding working conditions, social legislation and policy for platform workers remains mostly under Member States' competences. In this context, the EU has gradually taken legislative action, mostly in the areas of employment and working conditions.

In terms of personal scope, the assessed EU legislation that regulates working conditions under Article 153 TFEU applies to '**workers'**, referring to people with an employment relationship or contract. The personal scope of the assessed EU directives hinges on national legislation defining the concepts of 'worker', 'employee', 'employment contract', or 'employment relationship'. Through its extensive case law, however, the Court of Justice of the European Union (CJEU) has gradually developed an EU-wide concept of 'worker' determined by the criteria of 'subordination' or 'direction'. This helps ensure the effectiveness of some directives that rely on national definitions of 'worker'. CJEU case law also ruled that bogus self-employed platform workers are to be reclassified as workers (under the EU meaning of the concept) irrespective of the status agreed upon by the contractual parties or defined in national legislation.

In this context, the following considerations are central:

- Platform workers who are classified as workers (including bogus self-employed platform workers) fall within the remit of EU labour legislation.
- Platform workers who are self-employed fall outside the scope of EU labour legislation.

Still, **platform work profoundly challenges the binary divide of 'workers' and self-employed** that has been the cornerstone of labour legislation at national and international level for decades. Evidence suggests varying approaches and interpretations between EU Member States, and even within the same Member State for labour and social law. Overall, the determination of self-employed versus 'worker' has a crucial impact on applicable legislation and hence on the working conditions and protection against social risks of individual platform workers.

In assessing the material scope of the legislation, **two instruments were found to be particularly relevant and adequate** for one or more significant challenges in the area of working and employment conditions for platform workers: the Transparent and predictable working conditions Directive (TPWC) and GDPR. Neither instrument, however, addresses all (significant) challenges of platform workers and may require further adjustments to content and/or complementary action regarding enforcement, especially in the case of GDPR. The TPWC Directive's legal base in Article 153 TFEU means it is limited in personal scope to workers and hence does not apply to the genuine self-employed. The TPWC Directive, however, is relevant to challenges including protection against abusive practices, obligatory information provision, the right to parallel employment, protection against 'dismissal' (suspension, termination and other restrictions), the right to effective legal redress and several rights relating to working time. GDPR applies to all natural persons, and is relevant for establishing the right to access personal data, including data concerning work allocation, work performance and evaluation, and the right to data portability. As both are fairly new, our assessment is preliminary.

Platform work generally qualifies as **non-standard employment**, and several of its challenges are common to all types of non-standard work. EU legislation has tackled these challenges, particularly through the non-standard work directives, and the new TPWC Directive and Work-life Balance Directive. The Council Recommendation on access to social protection is also of particular interest to the protection of rights of persons in

non-standard forms of employment, the genuinely self-employed, and persons transitioning between labour market statuses. Enforcement of the relevant EU legislation, and the issue of the minimum qualifying periods applicable to social protection and parental leave schemes, are of particular relevance for platform workers who work digitally with limited human supervision, at varying locations and often on fragmented and small-scale tasks.

All other assessed EU legislation (collective labour rights, health and safety, and working time) has varying relevance for platform workers, but only applies when there is an employment relationship. Furthermore, these instruments **are not adapted to the specific working environment of the platform workers**, and/or use concepts that are not entirely fit for the purpose of regulating platform workers' working conditions.

While somewhat broader in scope than platform work, P2B is an important step: an EU legislative action addressing challenges specific to platform practices. **P2B has great relevance for platform workers,** particularly regarding fair and transparent intermediation when they are classed as 'business users' of information society intermediation services. P2B is to some extent comparable with the TPWC, covering as it does issues such as obligatory information provision, the right to notice in case of contract revision, and restrictions on dismissal or equivalent measures. In personal scope P2B applies to 'business users' – self-employed natural persons who exchange services or goods with clients (legal persons) via an online intermediary service – which includes a portion of self-employed platform workers. However, it is unclear at present how many platform workers will be affected. Further limitations to personal scope are also evident. P2B, for example, defines online intermediation services as 'information society services', which does not include all types of platforms through which 'work' is allocated and organised.

Assessment of the EU instruments finds that:

- Since the adoption of the TPWC Directive, platform workers who have an employment relationship, and bogus self-employed platform workers that have been reclassified as such by national judiciaries, have access to a wider scope of protected labour rights, specifically in relation to working conditions. However, there still needs to be better enforcement of their collective labour rights as enshrined in current EU legislation.
- **Self-employed platform workers who are economically dependent on a single platform, and who work solo and in precarious situations, appear to be the most vulnerable and least protected** by individual and collective labour rights, or by social protection legislation at both national and EU level. For the small amount of self-employed who qualify as business users of information society intermediation services, P2B should soon ensure access to similar (and in some respects better than) protections of working conditions to those provided for by EU labour legislation.
- The TPWC Directive and P2B have only very recently been adopted and it is necessary to ensure their effective implementation.

Gap analysis

We analysed the extent to which national responses and selected EU instruments address the most significant challenges of working and employment conditions facing platform workers. The national and EU-level responses were rated by the extent to which they addressed the individual challenges. For national responses we considered the percentage of countries with one or more relevant responses, whereas for EU legislation, we considered its personal scope, relevance, and adequacy.

Table 1: Summary of gap analysis

Not addressed	Partially addressed	Largely addresed	Fully addressed	Indeterminate

Specificity of challenges	Significant challenges	Countries w/responses (all national, regional, local)			EU-level (selected tools)			Remaining gap?
		total	on-location	online	Personal scope	Relevance	Adequacy	
Platform work	Autonomy in the allocation of tasks	0%	0%	0%	W			YES
	Physical environment	33%	33%	0%	W			YES
	Surveillance, direction & performance appraisal	20%	17%	3%				Indeterminate
	Contracts	23%	13%	3%				Indeterminate
	Determination of employer	37%	37%	0%	W, SE*			YES
	Data protection	7%	7%	0%	NP			NO
Non-standard work	Employment status	37%	37%	0%	W, SE*			YES
	Representation	50%	50%	3%	W			YES
	Social protection	43%	30%	3%	W, SE			YES
	Earnings	40%	40%	3%	W			YES
	Working time	27%	23%	3%	W			YES
	Undeclared work	20%	7%	0%				Indeterminate
General labour market	Autonomy in work organisation	0%	0%	0%	N/A	N/A	N/A	Indeterminate
	Adverse social behaviour	10%	10%	0%	W, SE			YES
	Cross-border work	10%	10%	0%				Indeterminate

Note: In 'countries w/responses', the 'total' column refers to the percentage of countries with any relevant response, not the sum of on-location and online. P2B and GDPR could significantly influence these assessments, especially those deemed indeterminate. **N/A**: Assessed tools are not applicable to the challenge, **NP**: natural persons, **W**: workers, **SE**: self-employed. ***Workers and self-employed are both in the personal scope of legislation, but certain additional limitations may effectively limit which platform workers are covered (See 7 of the study for a full key).

While very few responses target working conditions and social protection for all platform workers, over half of all national responses specifically concerned personal transportation and (food) delivery platforms. This may reflect a lack of awareness of online platform workers, or the difficulty of addressing challenges associated with online platform work at national level.

Overall the gap analysis suggests the following:

- Virtually no significant challenges are entirely resolved by national or EU responses and instruments. The sole exception is data protection, but even for this challenge, proper enforcement must be ensured.
- National responses at least partly address the most significant challenges for on-location platform workers, but do very little for online platform workers.
- Platform workers meeting the criteria for worker status are generally better protected, yet even here EU tools are not always fit for purpose because of the differences between traditional and platform work.
- In spite of recent legislative initiatives, the impact of assessed EU instruments is still limited in addressing the working conditions and social protection challenges of platform workers, in particular when they are self-employed.

Conclusions and policy pointers

All platform workers, irrespective of their employment status, could benefit from measures that aim for better (or more suited to platform work) protections in terms of:

(i) obligatory and timely provision of information about the terms and conditions of collaboration, including on work allocation, organisation and evaluation, as well as on a series of other dimensions specifically related to platform work businesses;

(ii) advance notification, and for the right to an explanation in cases of refusal to open an account, and of both temporary and more permanent termination of the collaboration;

(iii) access to effective and timely out-of-court dispute-resolution mechanisms;

(iv) appropriate and transparent data protection when collecting and processing personal and behavioural data;

(v) 'collective' rights, including rights to be represented, informed and consulted, and the right to conclude agreements; and

(vi) effective application of the non-discrimination principle.

The most vulnerable forms of self-employment, non-standard work and indeed all forms of work share many significant challenges with platform work. Policymakers should be aware of these commonalities and consider broader approaches rather than specific measures.

Employment status remains a core issue when addressing working conditions and social protection challenges for platform workers at national and EU levels. Most platform workers are self-employed, which excludes them from the personal scope of much labour and social legislation at national and EU levels. In the types of platform work that are more prone to bogus self-employment, determining specific platform workers' employment status is frequently challenging; case law moves very slowly on this issue and has not offered much clarity. Policymakers may therefore consider actions that make it easier to identify and reclassify bogus self-employed platform workers, and clarify which platform practices are incompatible with self-employment.

Challenges related to intermediation, including algorithmic management, are largely unaddressed, especially at national level. Intermediation in platform work can entail surveillance, performance appraisal, and intransparent contracts. These features seem to be growing beyond platform work as well. GDPR, P2B, and the TPWC Directive are extremely important for increasing transparency and addressing such issues. However, P2B only impacts a portion of self-employed platform workers, and the TPWC Directive can only help platform workers with an employment contract. While the actual impact of these tools on platform work is not yet fully clear, EU institutions may consider further modifications or clarifications to ensure more platform workers fall within their personal scope, and enforcement is effective.

Online platform workers are less visible and receive little attention, despite them being probably the most numerous, and doing a form of work that is often inherently cross-border. This implies that national authorities will find it difficult to address the challenges of this type of work, while it is a more natural fit for EU action.

Besides regulatory options, the EU and Member States could consider promoting voluntary codes of conduct or charters for platforms to commit to upholding fair working conditions, for example to ensure dispute resolution mechanisms are available to all platform workers, in a similar way to P2B requirements.

Finally, lack of data and the very recent adoption of relevant responses and instruments limit our understanding of platform work. Coordinated action by policymakers would ensure that high-quality data contribute to evidence-based actions, social security coordination, and prevention of abuses and undeclared work. Moreover, new national and EU legislation discussed in this study should be closely monitored to assess whether it is sufficient, or if amendments or entirely new instruments are required.

Europe stands on the brink of a new industrial revolution, driven by new-generation information technologies […].

European Parliament (2019)

1. INTRODUCTION

Digitalisation, or the transformation of processes through new digital technologies, continues to drive social and economic change. With this backdrop, the platform economy has rapidly expanded in size and relevance. Online platforms such as Uber and Deliveroo have quickly grown, spawned imitators, and disrupted economies and labour markets around the world. Other types of online platforms such as Amazon Mechanical Turk (AMT) and Jovoto have facilitated new types of outsourcing and innovation.

Platform work is all labour provided through, on, or mediated by online platforms in a wide range of sectors, where work can be of varied forms, and is provided in exchange for payment.

Platform worker refers to a natural person providing platform work.

One function of such digital platforms is to leverage technology to intermediate supply and demand for services, typically using internet-connected computers and smartphones. When services are exchanged for payment, this phenomenon is known as platform work.[18]

Researchers, policymakers, social partners and others have engaged in dialogue and debate about platform work as it has grown in relevance across Europe. But a conflicted narrative has emerged. Most of the literature recognises that platform work brings the potential for both opportunities and challenges. Benefits include greater labour market participation, economic growth, and social and technical innovation. However, platform work also creates challenges for regulatory regimes, competing industries, and the well-being of platform workers (Eurofound, 2018).

The focus of this study is the latter: **understanding the working conditions and social protection challenges of platform workers**.

1.1 Previous key research and main findings

Policymakers have benefited from the existing research on platform work (Aloisi, 2015; Eurofound, 2018; De Stefano, 2016; Lenaerts et al., 2017; Risak and Lutz, 2017), and more recent publications, including from **EU-OSHA** (2017), **Eurofound** (Eurofound, 2018), the **ILO** (Berg et al., 2018), and the **Joint Research Centre (JRC) of the European Commission** (Brancati et al., 2019; De Stefano and Aloisi, 2018; Pesole et al., 2018), and other studies, have enabled preliminary conclusions to be drawn on the working conditions and social protection of platform workers in the EU.

First, **'platform work' refers to many different sorts of work arrangements**. This heterogeneity can make it more difficult to consistently determine liability and assign responsibility when things go wrong, such as work accidents or disputes between platform workers and clients, and therefore properly apply labour and social regulations.

[18] The definition and conceptualisation are developed in Section 3.

Second, **platform work presents difficulties for existing regulatory frameworks**. This is partially because the parties[19] involved in platform work, and their legal relationships, differ from those in standard work (Eurofound, 2018). Rather than traditional management structures, platform work tends to rely on algorithmic management. Moreover, platform work is considered a more 'flexible' form of work,[20] whereas labour and social law frameworks remain better suited for more traditional forms of work (ETUC, 2017).

Third, **the employment status of platform workers is often unclear**. For example, employment status can be different even for platform workers using the same platform in the same country (De Groen et al., 2018a). Most national legal frameworks would not hold that platforms act as employers,[21] though this assumption has been challenged by legal scholars (Prassl and Risak, 2016). Arguments have also been made both for (Drahokoupil and Fabo, 2016) and against (Aloisi, 2015) applying an intermediate employment status, between employee and self-employed, to certain platform workers.

Fourth, **platform workers face substantial practical and legal difficulties in organisation and collective bargaining**. To help mitigate power disparity and prevent abusive situations, employees generally have the right to collective representation, with the employer as counter party. However, factors such as their dispersed working locations, lack of recognition that platform work qualifies as 'work', frequent turnover, unclear employment status, and competition and cartel laws (Kilhoffer et al., 2017), make this extremely difficult. Depending on the type of tasks performed and particular platform used, platform workers can be cooperating or competing, and this further challenges the suitability and practicality of more traditional collective bargaining arrangements (Eurofound, 2018). Although new forms of organisation and representation have been explored, the evidence indicates that most platform workers have little bargaining power.

As a result, **platform work can create challenges for decent working conditions**. These include a lack of career advancement opportunities, income insecurity, psychosocial stress, and unsafe working environments.[22] **Platform workers are also at risk of reduced access to social protection**; they often forego social protections, pay for more expensive options, or rely on social protection from a main occupation where they have an employment contract (ESIP, 2019; Eurofound, 2018).[23]

1.2 Knowledge gaps and research objectives

Previous research has found that platform workers can face significant challenges in their working conditions and social protection. If existing regulatory frameworks insufficiently address these challenges, additional action may be appropriate at EU or national level. However, significant gaps in our understanding of both challenges and regulatory frameworks remain.

First, **no existing research covers the entirety of the EU, Norway and Iceland**, even as the challenges of platform work and corresponding policy or regulatory responses vary a great deal between countries (Lenaerts et al., 2017). We lack a

[19] Platform, platform worker, and client – see Section 3.

[20] See discussion of Challenges for platform workers in Section 4.

[21] This assumption is being challenged, especially by case law and legislation. See **National tools and responses to platform work challenges**.

[22] See **Challenges for platform workers**.

[23] This is because social protections like pension, paid sick days, and accident insurance are often interlaced with employment contracts (and funded at least in part by employers). Note, however, that the statutory and effective access to social protections varies a great deal across Member States. See especially Eurofound (2018a) and EU-OSHA (2017).

complete picture of relevant policy and regulatory developments that accounts for both EU and national initiatives.

Second, **available information focuses on a variety of issues, platforms, and countries**, all assuming slightly different understandings of what constitutes platform work. This creates a patchwork body of evidence that makes it difficult to comprehensively assess working conditions and social protection for platform workers in Europe.

Third, **much of the research lacks a multidisciplinary approach**. Understanding platform work in all its complexity requires an approach combining policy, social, and legal perspectives.

This study, therefore, seeks to contribute to a greater understanding of platform work and the challenges facing platform workers with a comprehensive mapping of the challenges and responses relating to their working conditions and social protection in the EU28, Norway and Iceland. Up-to-date[24] information on the regulatory environments and relevant developments affecting all types of platform work has been analysed by:

1) identifying the relevance, diffusion and nature of these challenges for working and social conditions;

2) mapping national developments;

3) examining select EU legislation that may affect working conditions and social protections;

4) assessing the extent to which national and EU measures address the challenges.

The study thereby provides evidence on whether additional national or EU action, and provides pointers as to what form such action might take.

1.3 A need for EU action?

While the European Commission (2016a) has shown awareness of the challenges associated with platform work and is considering further action, the debate continues as to whether and to what extent the EU could and should also act. In the meantime, the European Parliament[25] and EU-level social partners[26] have advanced EU-level proposals to address social challenges facing workers in the platform economy (EU-OSHA, 2017).

First, **because platform work impacts the EU principle of proportionality, a clear understanding of its size and prevalence is needed, which impacts the EU principle of proportionality**.[27] Its dynamic and fast-changing nature keeps the evidence scattered and quickly outdated (De Stefano and Aloisi, 2018), and some argue that data collection and other action at EU level could lead to a better understanding of platform work (Eurofound, 2018).

Second, **any EU action must respect the principle of competency**.[28] While the EU has the ability[29] to set minimum requirements in the area of social policy, notably with

[24] See **Methodology** and **Limitations and constraints** on timeframe.

[25] See Report on a European Agenda for the collaborative economy, available at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2017-0195+0+DOC+XML+V0//EN

[26] See "ETUC resolution on digitalisation: 'towards fair digital work'", available at https://www.etuc.org/en/document/etuc-resolution-digitalisation-towards-fair-digital-work#.WeYb77jg18E

[27] Treaty on European Union, Article 5, states 'the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties'. The size and prevalence of platform work are further discussed in **Size, prevalence, and expected evolution of platform work in the EU**.

[28] The EU has exclusive competences in certain areas, shared competences with Member States, and supporting competences. See Title 1 of Part 1 on the Treaty on the Functioning of the European Union.

regard to working conditions, social and labour law remains mostly under Member States' competence. Several studies have pointed out that **the transnational character of the platform economy would justify an EU regulatory framework**, where the principle of subsidiarity in the field of social and labour law could be applied (Eurofound, 2018; EU-OSHA, 2017). Such a framework may be appropriate in the context of the EU's interest in maintaining a well-functioning Digital Single Market[30] and ensuring proper competition (Dittrich, 2018). At present, regulatory and policy responses vary greatly across Member States, creating a mosaic of markets and leading to calls for a common policy response at European level.

Third, policymakers are cognisant of the potential **trade-off between innovation and new regulation** (Ranchordás, 2015). Even if granted that additional regulation could be useful, new regulatory constraints may hinder innovation and the economic potential of platforms. A frequent discussion point concerns whether existing national and EU regulations may suffice, if properly applied and enforced, and the extent to which new legislation or other actions may be required (De Groen et al., 2018a).

Thus, the debate continues over the possible regulatory framework for platform work at EU and national level. Recent developments, such as the European Pillar of Social Rights (EPSR),[31] could suggest a timely opportunity to better monitor new forms of employment at a supranational level, and coordinate Member State initiatives (Pesole et al., 2018).

1.4 Structure of the study

The remainder of the study is as follows:

Section 2 Methodology explains how the research was carried out.

Section 3 Conceptualisation of platform work forms the conceptual basis for platform work, particularly in what distinguishes platform workers from other types of workers. It also briefly covers the types of platform work, the size of platform work in the EU, and the expected evolution of the platform economy.

Section 4 Challenges for platform workers gives a framework for assessing job quality and then applies it to information collected from an extensive literature review and several types of fieldwork. This Section seeks to identify the kinds of working conditions and social protection challenges platform workers face, for which types of platform work, and in which countries.

Section 5 National tools and responses to platform work challenges gives a framework for classifying and comparing tools and responses and then applies it to a mapping of tools and responses at national level for the EU28, Norway and Iceland.

Section 6 Instruments and actions at EU level horizontally assesses selected EU legislation for its impact on the working conditions and social protection of platform workers. It further considers non-legislative EU actions.

Section 7 Gap analysis: which challenges remain to be addressed? builds on the previous content to assess the extent to which challenges have been addressed by national and EU tools and responses.

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[29] Where justified, and according to the principles of subsidiarity and proportionality.

[30] The Digital Single Market strategy discusses platform work and the platform economy more broadly, though most attention is paid to technological innovation as a means for economic growth and competitiveness, and reducing intra-European barriers to doing business. Less focus is paid to the social dimension and the challenges that platform workers face (European Commission, 2017). However, the European Parliament Resolution reacting to the Digital Single Market Act calls on Member States to ensure employment and social policies are fit for digital innovation, entrepreneurship, and the growth of the platform economy and its potential for more flexible forms of employment. See European Parliament resolution of 19 January 2016 on Towards a Digital Single Market Act (2015/2147(INI)).

[31] See discussion in 6.2.3.

Section 8 Conclusions and policy pointers brings together all findings and offers pointers for future policy consideration and research.

After the body of the study, we include additional inputs to the research.

2. METHODOLOGY

The study relied on a mixed-methods approach with desk research and several types of fieldwork. The scope of the research was the EU28, Norway and Iceland from 2013 to 30 June 2019.[32] The study covers all types of platform work meeting the definition in Figure 3.

The overarching objective of this study is to provide an evidence-based analysis of the challenges faced by platform workers with regard to their working conditions and social protection. It reviews policy and legal responses to those challenges at national and EU level, and based on this analysis, examines the potential need for further EU action.

The research team undertook this research in four main steps. Step 1 conceptualised platform work (see Section 3) and mapped the challenges it presents to working conditions and social protection (see Section 4). Step 2 gathered data on tools and responses to these challenges (see Section 5). Step 3 analysed a selection of EU instruments for their relevance to challenges platform workers face (see Section 6). Step 4 synthesised all this evidence with a gap analysis (see Section 7), and conclusions and policy pointers (see Section 8).

This Section outlines the research questions used in the study, methods of data collection and analysis, quality control, and limitations and constraints.

Throughout, the research was carried out in full compliance with the European Commission's Better Regulation Guidelines. Special attention has been paid to vulnerable groups and issues related to discrimination and inequality.

2.1 Research questions and data collection

The research questions were designed to allow the research team to meet the overarching goal of the study: to assess whether further EU action on platform work is merited. Table 2 lists the research questions, which step or steps of the research process addressed them, and which research methods were utilised.

[32] In a few exceptional cases, tools and responses were updated in early December 2019.

Table 2: Addressing research questions

	Research questions	Step(s) addressing research question				Method(s) addressing research question				
		1	2	3	4	desk research	Semi-structured interviews	questionnaires	national focus groups	validation workshop
Challenges										
conceptualisation	How do we conceptualise platform work and its challenges?	X				X	X			
mapping	Which challenges are present, and where?	X	X			X	X	X		
	How prevalent are the challenges?	X	X			X	X	X	X	
analysis	How significant are the challenges?	X	X		X	X	X	X	X	X
	How are the challenges likely to develop in the future?	X	X		X	X	X	X	X	X
Responses										
mapping	What are the national responses to the challenges?	X	X			X	X	X	X	
	What are the EU responses to the challenges?	X		X		X	X			
analysis	Are existing national responses adequate now, and in the foreseeable future?		X		X	X	X	X	X	X
	Are existing EU responses adequate now, and in the foreseeable future?			X	X	X	X	X		X
Overarching objective										
analysis	Is further EU action needed?				X	X	X	X		X
	What particular EU action/s is/are suggested?				X	X	X	X		X

Note: Step 4 covers each research question insofar as it summarises all results.

Two main phases of **desk research** were conducted. An initial phase established the current knowledge base to avoid duplicating existing research. A second round of more targeted desk research was conducted at the beginning of each step, and throughout as needed.

This initial desk research was broad in scope and supported all tasks. It was based on keyword searches and a review of relevant academic and other providers of analysis. It covered academic and grey literature on platform work in general and in relation to working conditions and social protection, developments at national and EU level with regard to policy, legislation, regulation, and collective agreements, media and public debates on platform work, existing data and efforts to quantify the platform economy, and similar topics. Legal documents, publications of policymakers and social partners, existing databases, articles published on traditional and social media channels, opinion pieces, and communication from platforms were also considered. Literature from different scientific disciplines, such as law, economics, and sociology, was consulted to form a complete perspective on platform work.

A second round of desk research was carried out at the start of each step to ensure that any knowledge or data gaps were addressed. This stage focused on the specific topic and objectives of each step. For Step 1, the initial desk research was complemented with literature on (the working conditions and social protection of) other employment types that have characteristics in common with platform work, for example temporary agency work. For Step 2, additional efforts were made to gather literature in the national language of each country of the EU28, Norway and Iceland, with particular attention paid to the six Member States for which a focus group was organised. For Steps 2, 3 and 4, further desk research was performed to collect relevant policy and legal documents that support policy and legal analyses. Finally, the second round of desk research also helped ensure that the latest literature and evidence were absorbed.

The research team also undertook extensive fieldwork to gather new data and complement the desk research. Stakeholders, including policymakers, academic and legal experts, platform representatives and social partners representing employers and workers, national administrators, labour inspectorates and occupational safety and health (OSH) authorities more broadly, and business sector associations were all consulted.

The research team was responsible for preparing the list of stakeholders (including back-up options), which was refined with input from the European Commission. Each stakeholder was sent an invitation to participate, a letter on behalf of the commission addressed to potential participants, a data protection notice and a privacy statement.

Semi-structured interviews were held with stakeholders and different interview templates were developed for each interview partner for the respective step of the research. The results of the interviews were used throughout the analysis to gain conceptual clarity, provide the background to the research and verify the results of the analysis.

Country expert surveys were carried out with one socio-economic and one legal expert for each country, making a total of 60 survey responses. The experts were identified through the existing expert network, the research team and informal networks. The surveys included both unique and shared sections to ensure comparability and triangulate information, while making use of the expert knowledge of respondents.

The experts received detailed instructions on how to complete the surveys, which asked them to catalogue policy responses according to the prescribed typology and address all stages of implementation, including initiated but abandoned, pending or under discussion, or partially or fully implemented. While the focus was on responses, experts were also invited to catalogue particularly relevant tools. They were asked to describe responses in detail, including aspects such as the initiator of the development (e.g. government, social partners or other stakeholders), the scope of the development (e.g.

the types of platform work or platform workers covered), the focus of the development (e.g. direct or indirect impact on platform work), the degree of implementation, the timing of the development (e.g. proactive or reactive, response to specific incident), the originality of the development (e.g. new law or modification of existing) and other key characteristics. In addition to their mapping of national developments, experts were asked to include relevant literature to obtain further information and cross-validate it with the desk research. Country expert surveys were thus used to provide an assessment of the severity of individual country challenges, a mapping of the most relevant national responses and tools, and a review of the most pertinent literature.

Focus groups were held for six countries,[33] to learn more about especially interesting policy developments and trends with potential relevance at EU level. Countries were selected on whether particularly original policy developments or experimental approaches to platform work had occurred there. Each focus group had between six and twelve participants consisting of at least one policymaker, academic or legal expert, social partner, platform representative, and platform worker.[34]

Finally, a validation workshop was held in Brussels where stakeholders, including policymakers, academic and legal experts, social partners, platform representatives and platform workers, were consulted on the findings. This workshop focused on confirming findings of the gap analysis, addressing any potential shortcomings of the conclusions, and discussing the merits of policy pointers.

2.1 Data analysis

Turning to the analysis, the research team explored both legislative and non-legislative aspects of challenges arising from platform work, and potential national and EU-level responses. This allowed for a **broad, multi-disciplinary analysis of platform work across the EU28, Norway and Iceland**. The question about the potential need for EU action in the field of platform work was addressed in a structured way, relying on the information gathered throughout all project steps and delivering the final conclusions and policy implications of the study.

In Step 2, special attention was paid to **any national developments that referred to existing EU framework, both legislative and non-legislative.** Examples of these are the EPSR, or the European Commission recommendations and directives, especially those on non-standard work, on individual rights, for anti-discrimination measures and relating to work-life balance, as well as law relating to areas such as competition law and labour mobility.

These are analysed in Step 3, and findings were also used to draw conclusions about what kind of EU action would be particularly appropriate, based on a detailed and systematic analysis of the most relevant selected areas of EU social law and related case law. Limits with respect to their relevance and application to platform workers will be identified and solutions to address these limits are proposed.

Step 4 first condensed and systematised the information gathered through the country experts survey and national focus groups. The aim was to perform a comparative analysis and in particular look for patterns of national developments across different countries (i.e. similar developments, either in content or form, which emerge in countries that share the same characteristics). Step 4 establishes whether challenges are recurring in several countries and examines whether challenges appear to have the same roots or consequences within the socio-economic system. In addition, special attention is paid to challenges that emerge across the EU and appear to show a

[33] Denmark, Estonia, Spain, France, the Netherlands and Slovenia.

[34] In one country, however, the platform worker declined to participate at the last minute.

transnational character or are a result of the transnational nature of specific types of platform work, meaning EU action could play a significant role.

The analysis also assesses **the extent to which existing national developments or existing EU legislation potentially relating to national legislation address the challenges**, to understand what - if any - role the EU may have in complementing such national developments. The purpose of this part of the analysis is to show what role EU initiatives are already playing in addressing the challenges of platform work through national developments, which will in turn inform their appropriateness and possible scope in the future.

In sum, the combined analysis of findings seeks to establish whether challenges relevant at EU level are addressed by existing EU initiatives and national developments, highlighting possible gaps. In addition, it assesses whether and how, based on existing linkage, national developments and EU initiatives can complement each other.

2.2 Quality control

Several methods were employed to ensure quality control was maintained throughout the research.

First, a team of quality control managers provided input at critical junctures in the research. This multidisciplinary team comprised leading European authorities on platform work, who brought expertise from the legal, socio-economic, and academic spheres.

Second, findings were confirmed through triangulation.[35] Findings derived from different sources or research methods were thus validated against one another, and their robustness across different national contexts, types of platform work, types of platforms or workers, both within and across tasks, could also be verified. Information that could not be validated through triangulation has either not been included in the final study or a note included stating that the information in question was derived from just a single source. Preference has been given in this study to information derived from academic (peer-reviewed) publications, legal texts, policy documents and other validated sources. Information primarily derived from stakeholder consultations, or anecdotal evidence more generally, has been clearly indicated as such.

Third, this research has benefited from frequent consultations with the European Commission. This has helped to ensure that the most suitable experts were identified, the most important upcoming events and legislation were accounted for, and that the methodology and content of the research were subject to rigorous review.

2.3 Limitations and constraints

A few constraints on the study should be noted. First, the quality of existing data on the size and prevalence of platform work in the EU is suboptimal, and predicting future developments is very difficult.[36] Moreover, many relevant responses (e.g. court cases and legislation) are new or pending. This makes assessing the gaps in working conditions and social protection a more difficult task. For practical reasons, a cut-off date of 30 June 2019 was implemented, with changes in legislation or other significant developments after this date not considered, except for a few exceptional circumstances.[37]

[35] Findings derived from a single source were either not included in the final report, or noted (e.g. with a footnote or brief statement in text) as less certain.

[36] Data limitations are discussed in more detail in Section 3.3.2.

[37] For example, the Recommendation on Access to social protection for workers and the self-employed, a key initiative as part of the rollout of the European Pillar of Social Rights, was only adopted 7 November 2019. A few pieces of particularly relevant national legislation have also been updated past the cut-off date.

Second, while the analysis aims to establish a comprehensive mapping of responses at the national level, time and logistical constraints meant that only a selection of EU law could be analysed. The specific legislation[38] was agreed upon between the research team and the European Commission based on its likelihood of impacting working conditions and social protection for platform workers. However, this is a non-comprehensive analysis of EU law. Furthermore, the P2B Regulation[39] was not originally a part of the legal analysis but added partway through the research. Therefore, it is not assessed to the same depth as other EU instruments.

[38] Covered in Section 6.

[39] Regulation (EU) 2019/1150 of the European Parliament and the Council on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57–79).

3. CONCEPTUALISATION OF PLATFORM WORK

The conceptualisation and definition of platform work has been a topic of much scholarly discussion. Similar and overlapping terms include crowdwork, gig work, and a plethora of others, as explored by a number of high-quality research papers (Coyle, 2016; Codagnone et al., 2016; Drahokoupil and Fabo, 2016; Martin, 2016; Maselli et al., 2016; Frenken and Schor, 2017).

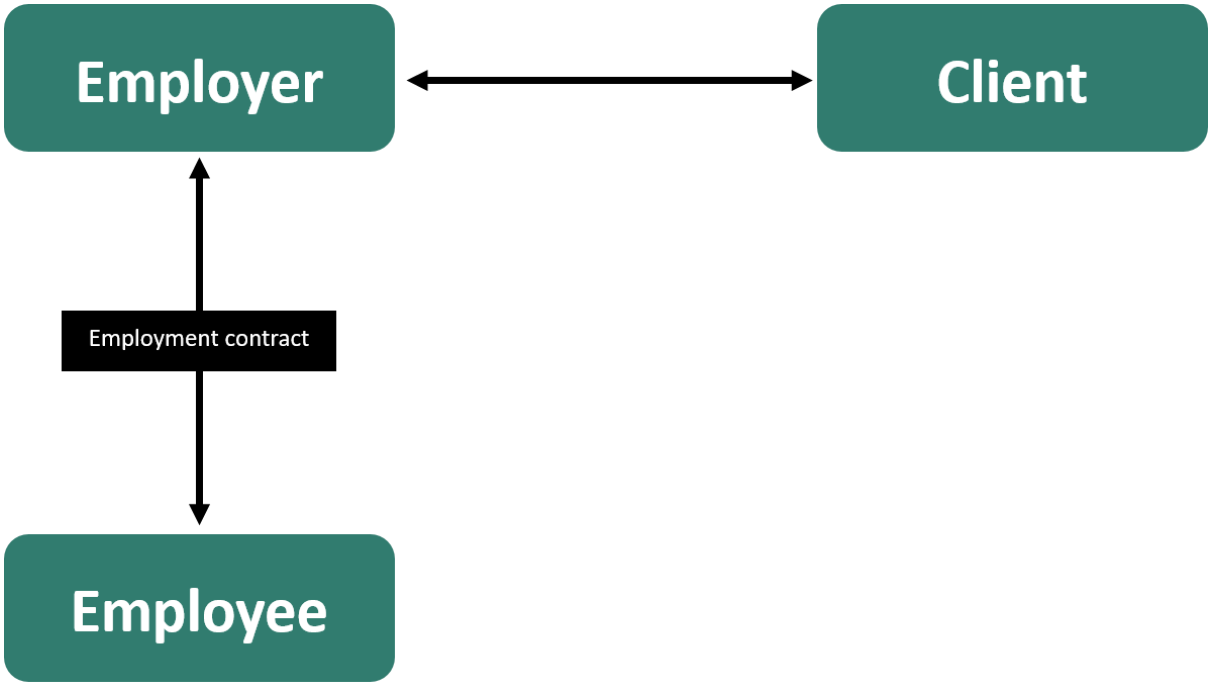
The European Parliament's Directorate-General for Internal Policies expressed its preference for the more neutral terms 'platform economy' and 'platform work', which avoid potentially misleading connotations (Forde et al., 2017). For this reason, 'platform work' is the preferred term for this study.

The remainder of this section further explains the notion of 'platform work', 'worker', and other key conceptualisations.

3.1 Standard and non-standard employment

Before addressing platform work, it is useful to think of the traditional or 'standard' employment relationship as a reference point. This is illustrated in Figure 2.

Figure 2: Conceptualisation of standard employment



Source: adapted from Hasle (2007).

Standard employment or 'standard work' refers to a full-time, open-ended employment contract with one employer. As shown, employers and employees are traditionally bound by an employment contract or employment relationship. The employment contract typically stipulates the rights and obligations of both parties, such as the scope of the services and tasks to be performed by the employee, working hours, the remuneration they will receive, and so on. Employees perform their services under the 'direction' or 'subordination' of the employer. However, employees would have no direct contractual relationship with a client. At most, employees render a service on behalf of their employer (ILO, 2016).

Non-standard employment or 'non-standard work' refers to all forms of paid labour that deviate from the standard reference or 'standard work' such as part-time work, fixed-term work, temporary agency work, casual work, student jobs, zero-hour

contracts, and on-call work. This typology (Eurofound, 2017a) also includes self-employment, although unlike the other non-standard forms, it does not correspond to an employment relationship in any legal sense.

Non-standard employment does not necessarily entail precarious working conditions. It can also refer simultaneously to situations with an employment relationship, as is the case for temporary agency workers in the EU,[40] and part-time or fixed-term contract employees. However, many of the safeguards built into standard employment do not always apply to non-standard employment (e.g. dismissal protection or paid sick leave), and thus non-standard employment can create challenges for working conditions (Eurofound, 2017b).[41]

Platform work, when performed without an employment relationship, is an example of non-standard employment. Platform work challenges the fundamentals of the standard reference; for example, (but with exceptions) platform work usually has no employer giving the platform worker instructions in the traditional sense, remuneration is typically paid per task rather than as a wage or salary, and work can take place on more than one platform.

Although this study investigates job quality challenges in platform work, there are other forms of non-standard work that could have similar challenges. As a starting point for this analysis, casual work, interim work and portfolio work is briefly discussed to illustrate the overlap and differences.

Casual work is irregular, on-call or intermittent work characterised by instability and discontinuity, facilitated by the use of ICT, and without the prospect of permanent work (European Parliament, 2000; Eurofound, 2018a). Like platform workers, casual workers experience a high degree of flexibility, but also face irregular employment relationships, which lead to unclear legal coverage and a lack of social protection and representation. Lower wages (due to very low guaranteed hours and only completed work being paid), insecurity, changing workplaces and limited guidance cause higher precariousness and occupational risks (De Stefano and Aloisi, 2018; Vereycken and Lamberts, 2018; Eurofound, 2018a; ILO, 2019a). Platform workers seem to have higher levels of autonomy in choosing their working hours than casual workers in general, and on-call workers in particular.

Interim or temporary agency workers enter a company to answer a periodic or suddenly increased need for certain skills (ILO, 2019b). Similarly to platform work, temporary agency workers have various skills and education levels, and operate in diverse sectors (Vereycken and Lamberts, 2018; Eurofound, 2018b). Although both types of employment are set within triangular relationships, the role of temporary work agencies is more extensive than the role of platforms. Additionally, while there is some diversity in the legal arrangements governing temporary agency work, the basic functions and legal relationships of the temporary work agency, worker and user firm are more or less identical across Europe.[42] This is in stark contrast to the diverse arrangements in platform work (WEC-Europe and UNI Europa, 2018). Whereas temporary agencies are *de jure*, wherein the employer and temporary agency workers are classified as employees, platforms typically claim they provide only a matching service between labour supply and demand,[43] and platform workers are usually considered self-employed (ibid).

[40] Under Directive 2008/104/EC, all temporary agency workers must have an employment contract.

[41] See also Lamberts et al. (2016) for discussion of the European Working Conditions Survey's findings on non-standard working conditions.

[42] Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 defines each party in temporary agency work and regulates their legal relationships.

[43] For example, in C-434/15 (Asociación Profesional Elite Taxi v Uber Systems Spain, SL), Uber has argued that it provides information services, not transportation services. For discussion on the role of platforms as

Portfolio work refers to 'small-scale contracting by freelancers, self-employed or micro enterprises, conducting work for a large number of clients' (Eurofound, 2018b: p. 14). Portfolio work is common in the creative sector, where it could support the career development of professionals (Vereycken & Lamberts, 2018). As with some types of platform work, portfolio work in principle puts the worker in charge of the choice of tasks, working hours and workplace (Vereycken and Lamberts, 2018; Eurofound, 2018b). Portfolio workers risk health problems similar to those encountered by platform workers, as both are prone to working during illness, disturbed work-life balance and limited social interactions (Eurofound, 2018b).

In spite of the heterogeneity in platform work and non-standard forms of work, there are shared characteristics such as short-term contracts, unstable and unpredictable work schedules, and non-conventional workplaces. But **in stark contrast with platform work**, and despite some differences across Europe, **standard employment, and even some forms of non-standard employment,**[44] **has rather consistent and clear legal relationships.** (WEC-Europe and UNI Europa, 2018).

Therefore, some of the challenges platform workers face in the area of working conditions and social protection are linked to **factors also found in other (non-standard) forms of work**. Some challenges, such as discrimination, may also arise in the broader labour market, but potentially have a bigger impact on platform workers given that some are particularly vulnerable, for example those who are younger, less experienced in the labour market, or recent migrants (Eurofound, 2018).

Other challenges are specific to platform work. For example, many platforms use intransparent and disadvantageous terms and conditions, and may alter these without notifying platform workers (Graham et al., 2019). Clickworkers[45] risk unique forms of psychosocial stress and non-payment, and this type of work only became possible with the advent of online platforms. This study will attempt to clearly distinguish between challenges particular to (a given type of) platform work, and non-standard work arrangements.

A final but particularly important type of non-standard employment is **self-employment**, which refers to many different types of work. Eurofound finds that roughly half of self-employed people have high levels of job quality, whereas a quarter are characterised by economic dependence, low levels of autonomy, and financial vulnerability (2017c).

In this study, the term 'self-employed' is used to refer to anyone who works and earns remuneration outside the context of an employment relationship and is thus contractually self-employed.

An important distinction to make is between false or 'bogus' self-employment and 'genuine' self-employment. Bogus self-employment refers to individuals who are factually employees (subordinate to an employer), but for reasons connected to the evasion of regulatory legislation, are contractually self-employed (Eurofound, 2017c). The opposite status is sometimes called genuine self-employed, which refers to individuals whose factual circumstances and contractual status are both aligned with self-employment.

intermediaries versus simple online marketplaces, and how this can impact platform workers, see De Groen et al. (2018).

[44] For example, under Directive 2008/104/EC, temporary agency work is defined and many contractual obligations established for all parties. Most relevant, all temporary agency workers in the EU must have an employment contract.

[45] Platform workers using platforms such as Amazon Mechanical Turk, CrowdFlower, or Clickworker.

3.2 Conceptualisation of 'worker'

The term 'worker' (NL: *werknemer*, FR: *travailleur*, DE: *Arbeitnehmer*, ES: *trabajador*) may have different meanings when used in different EU languages and/or in different contexts. It may even have different legal interpretations.

In English, 'worker' commonly refers to all who work (*travailleur*, *trabajador*, and so on), irrespective of their legal employment status or classification in most national labour law frameworks. By this understanding worker would include *travailleurs salariés* and *travailleurs non-salariés*, *werknemers* and *zelfstandigen*, employees and the self-employed.

The terms 'worker' and 'employee' have both been used in EU labour legislation, the latter word most often being used in older directives and specifically those that concern collective labour rights. Most recent EU labour legislation, however, uses the concept of 'worker'. Both terms have the same legal connotation in EU labour legislation and refer to an employment relationship.

Settled case law of the Court of Justice of the European Union (CJEU) has given an EU-autonomous interpretation to the concept of 'worker'. In the Lawrie Blum case,[46] decided under the free movement of workers framework, the CJEU defined a 'worker' as 'a natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration'. This definition of 'worker' has also been applied by the Court to the concept of 'employee' in older EU directives. However, there is no single definition of worker in EU law; it varies according to the area in which the definition is to be applied.[47]

One should remain very careful and not lose the nuances, as the terms 'worker' and 'employee' may still have a slightly different meaning across the different directives, depending on whether they refer to the national legislative definition of each Member State, or to the autonomous EU meaning of 'worker' as interpreted by the CJEU. Member States' national legislation differs with regard to the concept of worker or employee, and differences may even exist between labour and social protection legislation of a particular country.

Under EU law, the key criterion for establishing the existence of an employment contract, and hence classification of 'employee' or 'worker', is that of subordination. The CJEU has given a broad interpretation of this criterion, which may go much further than that determined by national legislation. In other words, the concept of subordination under EU law may be broader than the one provided under national law with the consequence that a person may be considered as self-employed under national law and as 'worker' or 'employee' under EU law. In such cases, the person should be covered by the protection of the relevant EU directives. There are, however, countries where the subordination requirement has been interpreted more broadly by national legislation or national courts than the current interpretation of the CJEU and/or where the subordination requirement has been complemented by other and newer criteria in order to determine the status of a worker.[48]

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[46] Judgment of the Court of 3 July 1986. - *Deborah Lawrie-Blum* v *Land Baden-Württemberg*. - Reference for a preliminary ruling: Bundesverwaltungsgericht - Germany. - Worder - Trainee teacher. - Case 66/85.

[47] cf. Judgment of the Court of Justice of 1 March 2012, O'Brien, C-393/10, ECLI:EU:C:2012:110, paragraph 30.

[48] In Austria, economic dependency is taken into account for determining the status of an employee in social security law apart from the personal dependency criterion which is similar to the 'subordination requirement' and the key determinant under labour law. In several countries there is no statutory definition of 'employee' and reference is made to the existence of an employment contract (examples are – non-exhaustive - AT, BG, BE, DK, FR, IE, IS, LU). In these countries but also in countries which have a statutory definition, the concept of employee is mainly developed through case law. Whereas the 'subordination' dimension is always one of the key criteria to determine the existence of an employment relationship, other aspects are also considered. In the UK, the judiciary has over the years developed a number of tests for helping to define those who are

In addition to the boundary given by the degree of subordination, which differentiates between a worker/employee and a self-employed person, another boundary is relevant to platform work: that of the marginality of the economic activity. Under a certain threshold, an activity can be considered (by national or EU law) as too marginal or ancillary to be an economic activity (be it performed by a worker or self-employed person). The CJEU has, however, interpreted the criterion of 'genuine and effective activity' very broadly, also identifying as workers those doing a limited number of hours per week (e.g. five and a half), working students, au pairs,[49] or students working for four days during the holiday period. In some cases, national legislation seems to set stricter thresholds.[50]

In this study, **we use the term 'worker', as in 'platform worker', without any legal connotation, unless specifically noted as otherwise**. In these exceptional cases, we state that we mean 'worker' as defined by national law, specific EU legislation, or by the autonomous EU meaning of the word.

3.3 Conceptualisation of platform work(er)

The conceptualisation of platform work consists of two parts: identifying what platform work is compared with other types of work; and distinguishing between different types of platform work.

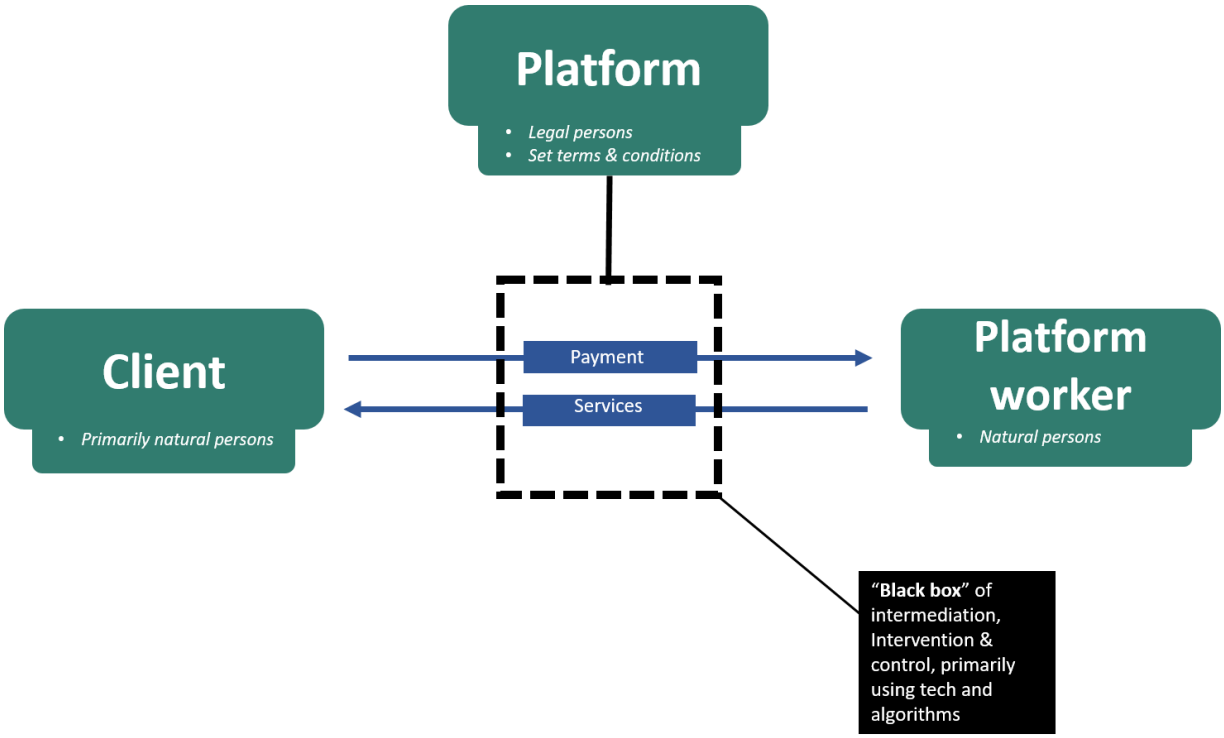
In this study, platform work is understood as **all labour provided through, on or mediated by online platforms in a wide range of sectors, where work can be of varied forms and is provided in exchange for payment**. This definition is derived from Eurofound (2018) and visualised in Figure 3.

employees (which corresponds to the EU concept of 'worker' as the UK concept of 'worker' refers to a third category who is neither an employee nor a self-employed) and those who are not. The tests have included: 1) the control test – i.e. the level of control exercised by the employer; 2) the integration test – i.e. the extent to which a person is integrated into an organisation; 3) the economic reality test – i.e. looking at the contract as a whole and deciding whether the individual was in business on their own account; 4) the multiple factor test – i.e. that there are a variety factors that could apply depending upon the circumstances; and 5) mutuality of obligation – i.e. whether there is an obligation upon the employer to provide work and whether there is an obligation upon the employee to carry it out. In Ireland, courts assess the mutuality of obligations, right to use substitutes, the degree of integration in the workplace, the economic realities as criteria next to the right to control and the degree of control exercised by employers. In Poland, the statutory labour law definition of worker includes the criterion of economic, social and personal risk sharing by the employer apart from the subordination and supervision dimension, the personal provision of the services and the remuneration requirement.

[49] The term 'au pair' refers to a young person who is temporarily hosted by a family, and provided room and board in return for light everyday family tasks.

[50] See Section 5.

Figure 3: Conceptualisation of platform work



Source: authors' own elaboration.

The core features of platform work are a **triangular relationship between platform, platform worker and client**, and **online intermediation**.[51] Technology plays an important role in work organisation, by using algorithms to pair clients and platform workers, for example. **Many forms of platform work involve smaller tasks**, which are part of a larger process (i.e. fragmentation and micro-tasks). Services are provided **on demand** and the **work is usually provided on a temporary or piecemeal basis**. Typically, platform workers do not have a long-term or stable relationship with the client they are providing the services for, but there are some exceptions where platforms allow their platform workers to have repeat clients or build up their own clientele. Platform workers typically have no long-term relationship with the platform either.

However, it is important to note that **the model in Figure 3 is very basic**: a simplification to help understand the labour element of platform work. In practice, many variants and exceptions are possible, and more actors and intermediaries may be involved. Furthermore - and critical for working conditions, social protection, and the notion of subordination - the **platform's intermediation can entail from minimal to very significant control over platform workers**.

A few examples help illustrate the limits of this conceptualisation, when considering the broader value chain of platform work. With personal transportation platforms, there are frequently other actors (in addition to the basic three). For example, platform workers may rent a car from a person or business. In Portugal, a platform worker cannot work directly for Uber; rather, a transport company must have an employment contract with a driver, and the company in turn has a commercial contract with Uber. In food delivery platforms, the platform typically has two separate clients per transaction – the natural person receiving the delivery, and the restaurant preparing it. A number of food delivery platforms, such as Foodora in Austria, also formally employ some of their platform

[51] In some exceptional cases, intermediation can take place through other means, such as through phone calls or in person.

workers, making the legal relationship between two parties much more clear-cut. Some platforms (e.g. cleaning platform Helpling) allow clients to select individual platform workers. In the case of Uber and food delivery platforms, the idea is to make platform workers as fungible (replaceable) as possible, homogenising provided services (Schmidt, 2019).

These and other exceptions demonstrate that the wide heterogeneity of platform work (e.g. type of services, party setting price, and level of platform worker autonomy) makes it very difficult to settle on a universally accurate model, and to disentangle platform work from other types of non-standard work (Fabo et al., 2017; Eurofound, 2018; Riso, 2019a). Nevertheless, **the essence of platform work remains the exchange of services and payments, with terms and conditions, and intermediation provided by the platform**.

The legal relationship between platform and platform worker, and between platform worker and client, are exceptionally difficult to pin down. In fact, platform workers in the same city working through the same platform may have different employment statuses (Eurofound, 2018). **Compared with other forms of work, platform work's most distinguishing feature is the 'black box' of intermediation**.

3.3.1 *Typology – distinguishing types of platform work*

Platform work is very heterogeneous, and it is important not to overgeneralise when considering all its forms (Eurofound, 2018). Different types of platform work have specific and shared working condition challenges.[52] Moreover, policy or legislative actions often apply to a single platform or platform type, rather than all platforms meeting the definition provided above.[53]

To help group similar platforms, the research team drew from existing typology of platform work to identify characteristics especially important for working conditions. These are as follows and as shown in Figure 4.

Skill requirement for tasks: higher- or lower-skilled (De Groen et al., 2016)

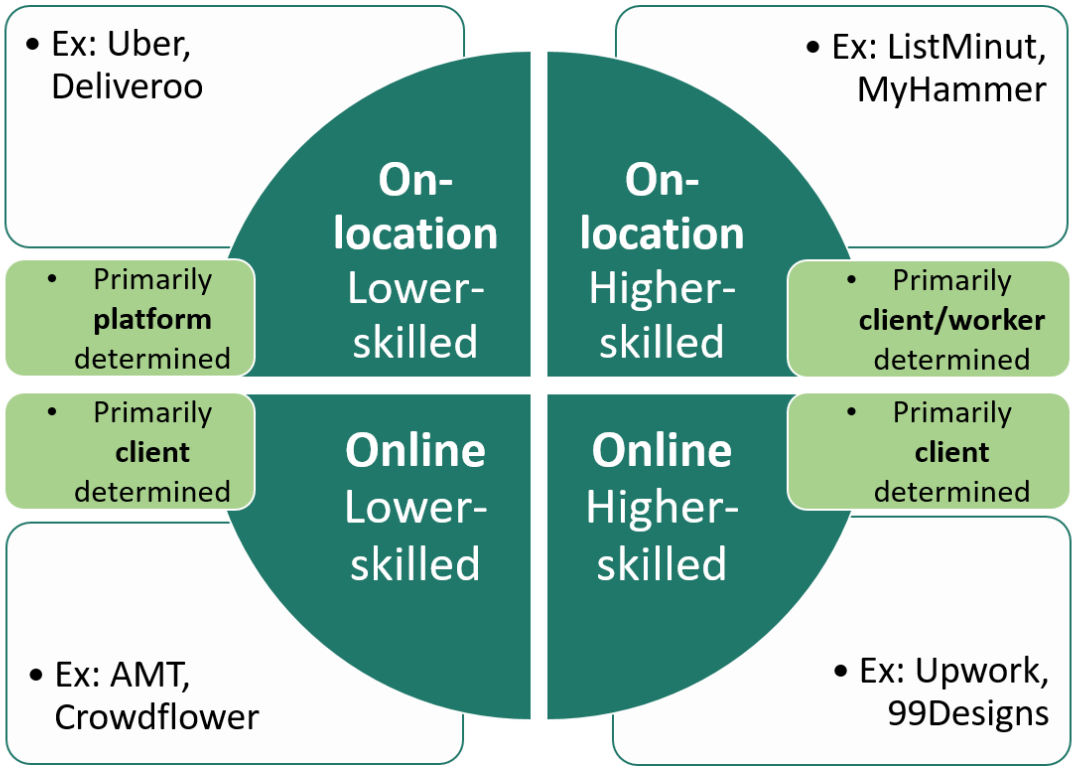
Location of tasks: online or on-location (De Groen et al., 2016)

Selection process: decision made by platform, platform worker, or client (Eurofound, 2018)

[52] See discussion in Section 4.

[53] For example, work performed on-location has been the focus of more collective action (Kilhoffer et al., 2017).

Figure 4: Typology of platform work



Source: authors' own elaboration adapted from De Groen et al (2016); AMT refers to Amazon Mechanical Turk; on-location can refer to at the client's premises, or performed elsewhere (such as a public space, e.g. city streets).

Note: though platforms usually tend towards one of the four quadrants, the figure is a spectrum rather than a typology. This figure is a simplification of very diverse forms of work and intermediation structures.

Online platform work refers to tasks that platform workers perform from any suitable location on their electronic devices. In the literature, it may also be referred to as 'crowdwork', 'location-independent', 'web-based', or 'online freelancing' (e.g. Schmidt, 2017). In most cases, platform workers perform this type of work in their own workplace (e.g. home) using a computer.

On-location platform work must take place in a specific physical location. However, the matching still takes place online as in the case of online platform work. What differs is the final step: whether the execution of the task takes place online or requires physical proximity. In the literature, on-location may instead be referred to as 'work on demand via app', 'location-specific', 'location-based', or 'physical' (Schmidt, 2017). This type of work is often at the client's premises but may be performed elsewhere. For example, retail intelligence tasks take place in a private store, home renovation tasks might necessitate fabricating wood or metal pieces in a private workshop, and personal transportation and delivery take place in public spaces such as city streets.

On-location platform work seems to be better known and more discussed and debated than online platform work. The former is certainly more visible; these platform workers are easier to identify and organise, which has contributed to greater social partner involvement (Kilhoffer et al., 2017).

The distinction between lower- and higher-skilled tasks refers to the service for which payment is exchanged, and not the skill level of the platform worker, or the overall skill level required. For example, clickwork (via AMT or similar) may include image recognition and data entry – small-scale, simple tasks that generally require no specialised training. However, the organisation of such work may entail highly complex strategies to find the best-paid tasks, such as writing and leveraging algorithms, as well

as subcontracting tasks to a larger network.[54] Food delivery (via Deliveroo or similar), usually requires little or no training. Still, some platform workers doing these tasks use management and interpersonal skills to oversee others and organise and conduct negotiations between workers and management.[55] Thus, lower- and higher-skilled are simplifications of the complexity, scale, and specialisation required for tasks, and should not be interpreted as absolute or normative judgements.

When helpful, the research team also considers other elements that differentiate various sorts of platform work, such as task allocation and autonomy levels for platform workers.

Note also that a great variety of online platforms, including social networks such as Facebook, e-commerce websites such as Amazon and Etsy, and sharing services such as CouchSurfing, are discussed under the umbrella of the platform economy (Fabo et al., 2017). By this study's understanding, these **are** a part of the platform economy in the broadest sense but **are not** examples of platform work.[56]

3.3.2 *Size, prevalence, and expected evolution of platform work in the EU*

To address the main question of this study, some discussion of the size and expected evolution of platform work is required. The more people take part in platform work, and the more it is expected to grow, the more significant its associated challenges and the stronger the case for intervention.[57] This section provides a brief overview of the topic.

How prevalent is platform work?

Measuring platform work is fraught with conceptual and technical challenges, such as considering the number of platform workers, the amount and frequency of work performed, and the revenue generated. As of autumn 2019, the most complete overview of data on platform work seems to be Riso (2019b), which discusses and attempts to mitigate these challenges in great detail. Conceptual challenges include **definitional complexity and a lack of standardised terminology**, as briefly discussed above. As an example of technical challenges, **data on platform work is not or cannot be gathered in most of the ways that data on other forms of work can be,** for example national labour surveys and administrative reporting.[58]

Because of these challenges, estimates on the size and prevalence of platform work have used a variety of conceptualisations of platform work and methodological strategies, for example, online, offline, or mixed surveys, administrative data, and big data. As a result, **estimates on the size and prevalence of platform work are often vastly different**, and little consensus exists (Fabo et al., 2017; Kilhoffer et al., 2017; Riso, 2019b).

Two recent studies on platform work illustrate these differences in estimations. Huws et al. (2019), using survey data, found that 17% of the working-age population in Spain earn money from platform work at least weekly, and 10.5% less than weekly. Meanwhile, 20.4% in Spain were found to be seeking, but not undertaking, platform work. This would imply that 48.1% of adults in Spain are active or one-time platform workers or trying to become one. Brancati et al. (2019), using COLLEEM II data (also from surveys), finds that 18% of Spanish *internet users* between the ages of 16 and 74 years have at some point performed platform work, 4.7% at least monthly, and 4.1% sporadically. Clearly the latter estimate is much more modest than the former, and this

[54] See Annex I: Synopsis Report of consultations.

[55] See Annex I: Synopsis Report of consultations.

[56] For further discussion, see Annex II: A note on what is not platform work.

[57] With respect to the proportionality principle of EU action.

[58] The UK has attempted to address this with specific questions in labour force surveys.

reflects conceptual and technical differences in the research methodologies. Conceptually, for example, survey respondents may not fully understand what is meant by platform worker.[59] And one clear technical difficulty is that individuals responding to online surveys (especially for a payment) are more likely to be platform workers than the general population (De Groen et al., 2017a).

To better understand the size and prevalence of platform work in Europe, the research team considered available data (Eurobarometer, Eurostat, COLLEEM, etc.) covering the size of platform work in (all or many) EU Member States. The research team assembled these datasets and performed a simple correlation test to understand how similar or dissimilar these estimations are. Strikingly, existing estimates of the size of platform work in Europe are almost completely uncorrelated. **This provides strong evidence that current measurements of platform work in the EU cannot be compared and are of questionable reliability.**

Nevertheless, some sense of the size of platform work in the EU is necessary given the range of available estimates, even if we cannot be completely certain. Overall, the research team is best persuaded by the more modest estimates for the prevalence of platform work. One high-quality study from the Organization for Economic Co-operation and Development (OECD) (2019) notes that the most reliable estimates suggest employment from platform work[60] ranges from 1% to 3% of total employment.

In particular, the research team considers the most recent and reliable data on platform work in Europe to be that of the COLLEEM II project (Brancati et al., 2019). This study looked at 16 European countries, and found that 1.4% of the population aged between 16 and 74 years are platform workers as a main job. The percentage of the population who had ever performed platform work ranged from under 6% in Czechia, to 18% in Spain, and averaged 11% for all surveyed countries.

As the study points out, however, this measure is far too broad. Those who simply tried out platform work, or do so very rarely, are less relevant from a policy perspective. Thus, excluding those who do platform work less than once a month, 9% of the adult population are platform workers. COLLEEM II data sub-divides this group into 'sporadic', 'marginal', 'secondary', and 'main' based on a combination of how many hours worked weekly (less than 10 hours, 10 to 19 hours, or more than 20 hours) and contribution to income (less than 25%, 25 to 50%, over 50%). Those performing platform work as a main job ranges from 0.6% in Finland to 2.7% in the Netherlands and the average for all countries is 1.4%.

Table 3: Platform worker prevalence estimate as percentage of population 16-74 years

Country	Sporadic (%)	Marginal (%)	Secondary (%)	Main (%)
Netherlands	2.8	3.4	5.1	2.7
Spain	4.1	4.7	6.7	2.6
Ireland	2.6	3.2	5.2	2.0
UK	2.0	3.5	5.7	1.6
Portugal	4.2	3.7	3.9	1.5

[59] This should be unsurprising given the definitional complexity of platform work, and the need for surveys to stay brief. Huws et al. (2019) also used a rather broad definition of platform work, including other means of gaining income through 'online labour' (such as selling goods rather than services).

[60] The OECD (2019) used the term 'gig economy platform', but its definition of this is essentially identical to that of this study. It also covered countries beyond the EU, but regardless, the same range applied to EU and other OECD countries.

Germany	3.2	3.4	4.2	1.5
Romania	2.2	3.4	3.5	1.4
Hungary	1.7	1.4	2.2	1.4
Lithuania	3.8	3.6	2.7	1.2
Croatia	3.3	2.8	3.5	1.1
Sweden	3.0	2.6	3.7	0.9
Italy	1.5	2.5	3.9	0.9
France	1.5	2.6	2.8	0.9
Slovakia	1.2	2.2	1.8	0.9
Czechia	1.5	1.6	1.9	0.9
Finland	3.1	1.4	1.8	0.6
Total	**2.4**	**3.1**	**4.1**	**1.4**

Source: COLLEEM II survey data (Brancati et al., 2019)

Note: the total is for the available 16 countries. While no comparable estimates are available for the remaining Member States, Norway and Iceland, the data on available countries is assumed to be fairly representative for the EU, as a variety of regions, industrial relations systems, and government traditions are covered.

The employment status of platform workers is a highly relevant additional consideration for policymakers, and COLLEEM survey data gives some indication of this. The COLLEEM survey identified 10 types of tasks commonly associated with platform work, and respondents were asked to indicate which they perform, as well as to select one of four options for employment status: employee, self-employed, side gig as self-employed, or not employed. However, the employment status was not specifically asked about in relation to platform work, but generally. Previous research has found that many platform workers are employees in standard employment, but self-employed when conducting platform work, so this distinction is relevant (Eurofound, 2018).

Overall, 75.7% of platform workers claim to be employees while 7.6% claim to be self-employed, but this includes very occasional platform workers. The self-reporting of employment status is generally to be taken with great caution because survey definitions and the manner of posing questions can differ. Table 4 shows self-described employment status only for those performing platform work as a main or secondary occupation (not sporadic), showing the type of task by COLLEEM's 10 possibilities (far left column). Looking at these results, those doing online micro-tasks (e.g. clickwork) and on-location services (e.g. home repair or cleaning) were most likely to identify as self-employed. Those providing online professional services (e.g. accounting, legal, or project management) and transportation and delivery services, were most likely to identify as employees. On-location services are most strongly associated with having a side gig as self-employed, while platform workers providing online clerical and data-entry tasks, and transportation and delivery services, are most likely to claim being not employed.

Table 4: Self-reported employment status by platform work type

Type of platform work tasks	Employees (%)	Self-employed (%)	Side gig as self-employed (%)	Not employed (%)	Observ-ations (#)
Online clerical and data-entry tasks	37.5	13.5	37.2	11.8	862
Online creative and multimedia work	38.7	13.6	40.5	7.3	640
Online professional services	42.3	9.9	42.2	5.7	571

Online sales and marketing support work	38.4	10.2	41.6	9.8	559
Online writing and translation work	37.8	10.9	40.9	10.4	546
Online micro tasks	38	15.5	36	10.5	465
Online software development and technology work	39.5	11.8	41.4	7.9	385
Interactive services	40.2	12	40.1	7.7	327
Transportation and delivery services	39.7	9.6	39.5	11.2	319
On-location services	31.6	14.5	45.6	8.3	271

Source: COLLEEM (Pesole et al., 2018)

Note: this Table only shows self-described employment status of platform workers, excluding 'very occasional' platform workers.

Furthermore, COLLEEM finds that most platform workers do multiple forms of platform work and use more than one platform. The most common tasks platform workers perform are online clerical and data-entry tasks, while the largest proportion of platform workers (including sporadic activity) provide online professional services. This contrasts with some earlier findings. For example, De Groen and Maseli (2016) estimated that in 2015, two-thirds of EU platform workers were Uber drivers. Possible explanations are that the methodologies are not comparable, and that online forms of platform work have grown in relative prevalence.

Online software development and technology work, and transportation and delivery services, are much more likely to be performed by men, while translation and on-location services are more likely to be performed by women. The prevalence of most services does not vary significantly between countries, though some differentiation is notable. Slovakia and Croatia are associated with platform work requiring a low or medium level of education, while the Netherlands is associated with tasks requiring specialised training (e.g. software development or interactive services such as teaching or consultation).

Overall, COLLEEM II data suggests the following about the prevalence of platform work in Europe:

1. 11% of adults have gained income from platform work at some time;
2. 3.1% of adults do platform work at least 10 to 19 hours/week or receive between 25% and 50% of their income from platform work;
3. 1.4% of adults do platform work at least 20 hours/week or receive at least 50% of their income from platform work;
4. for individual Member States, this figure ranges from 0.9% to 2.7%;
5. the most common forms of platform work are online;
6. the prevalence of different types of platform work across different countries is mostly the same;
7. those performing platform work as a primary or secondary occupation are less likely to be employees than those performing platform work sporadically;
8. employment status of platform workers remains very ambivalent from existing data, and/or to the platform workers themselves.

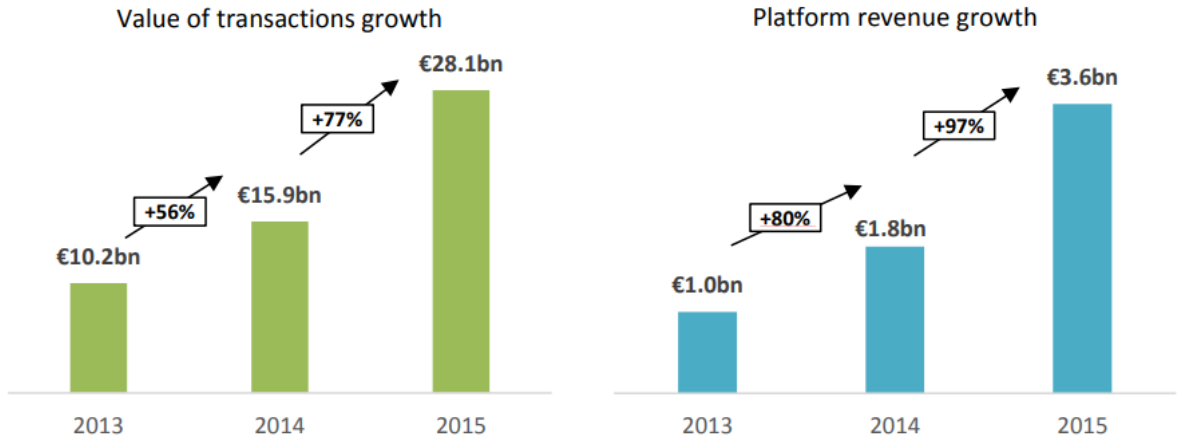
What is the trajectory of platform work?

Even less data exist on the outlook for platform work, namely whether it will grow or contract. Aloisi notes, '[…] many online platforms are still in their business "infancy", and

experts genuinely do not know how they will develop.' (2018). Overall it remains to be seen whether certain forms of platform work will continue to grow, stagnate, or disappear as technology advances.

However, some quantitative research points to continued growth. Huws et al. (2019) found that between **2016 and 2019, platform work effectively doubled in the UK**, based on proportion of adults carrying out platform work at least weekly.[61] For the five largest English language online labour platforms, representing at least 70% of the market by traffic, the Online Labour Index shows roughly a 30% increase in tasks posted between July 2016 and July 2019 (Kässi and Lehdonvirta, 2018). Based on a PwC analysis of collaborative economy[62] platforms, even starker growth (by revenue) is visible from 2013 to 2016, as shown in Figure 5.

Figure 5: Revenues and transaction values facilitated by collaborative economy platforms in Europe



Source: Vaughan and Daverio (2016: p. 14).

Most experts consulted over the course of this study agree that platform work is here to stay in one form or another, and will probably grow.[63] One trend with more clear growth potential is algorithmic management, contained in the 'black box of intermediation', which platforms have continued to develop and refine. Algorithmic management seems to be spreading beyond the platform economy, which means that even if platform work (as it currently exists) does not continue to grow, the lessons learned may continue to be relevant.

Most experts consulted also indicated that online forms of platform work have much more room for growth. For example, demand for micro-tasks boomed when companies started using human input to train artificial intelligence (AI) (Schmidt, 2019). Car companies are increasingly relying on online platform work to train their software and creatively solve problems. This trend may not continue indefinitely, however. The need for humans performing simple and repetitive micro-tasks may become increasingly obsolete as AI, and machine learning in particular, continues to improve.

Some experts perceive that personal transportation and food delivery services are beginning to plateau. Many cities seem to have an oversupply of these platform workers

[61] The UK is the only country for which trend data are available. Note that Huws et al. (2016) would also include individuals selling products on their own websites and selling self-made products. Selling goods is outside the scope of this study's understanding of platform work.

[62] The term 'collaborative economy' is still sometimes used in place of platform economy, even by EU institutions. However, the terms 'collaborative' and 'sharing' have generally fallen out of favour in this context due to their normative connotations. See the European Parliament Opinion 2017/2003(INI), p. 4 at http://www.europarl.europa.eu/doceo/document/EMPL-AD-592420_EN.pdf?redirect.

[63] For more detail, see Annex I: Synopsis Report of consultations.

relative to demand, as illustrated by protests over lack of work and reduced pay per task. However, other forms of on-location work probably have more room to grow. For example, caretaking and cleaning may grow in prominence, especially as the population ages.

Another question concerns the economic sustainability of certain types of platform work. After Uber's highly-anticipated initial public offering in May 2019, many publications question whether it will ever become profitable (Horan, 2017; The Economist, 2019). One day in the indeterminate future, autonomous vehicles may well displace (platform) work in the personal transport sector. Individual platform companies will certainly rise, fall, merge and change, but charting the future course of platform work remains mostly speculation.

Overall, available data and expert opinion suggest the following outlook for platform work in Europe:

- platform workers are growing in number and will continue to do so for the foreseeable future;
    - demand for many services offered via platform work (e.g. training AI and certain on-location services) is growing;
    - certain services offered via platform work may not have as much growth potential or may be more vulnerable to technological changes (e.g. automation);
- certain characteristics of platform work are becoming more common in the economy at large (e.g. non-standard employment, algorithmic management, rating systems for people).

4. CHALLENGES FOR PLATFORM WORKERS

This section maps the **challenges related to the working and employment conditions** of platform work. It builds on an extensive review of the academic and grey literature and on the fieldwork conducted for the study (stakeholder interviews, focus groups and a survey completed by national experts). National experts were asked to indicate what challenges emerge in their country, specifying how prevalent these challenges are, how they are expected to develop over time, and what types of platform work are affected. Caution is needed when interpreting the responses of the national experts on the expected evolution of the challenges because, in the absence of other sources, these are mainly based on their personal views. National experts also accounted for national developments, which are dealt with in section 5. Other stakeholders were consulted to provide insights from an EU-level perspective or to represent the views of an interest group. The inputs provided by the experts and stakeholders are confronted with the literature, which serves as the baseline for this Section. Relevant results from the fieldwork are highlighted where appropriate.

4.1 Framework

To perform this mapping of challenges in a structured yet comprehensive way, we use a **job quality framework** based on the **Work, Employment and Social Relations** (WES) model put forward by Lamberts et al. (2016). This gathers a wide range of indicators capturing working and employment conditions and helps structure the discussion on the working and employment conditions facing platform workers.

Job quality is a multidisciplinary, multidimensional concept that is generally understood as '*the extent to which a job has work and employment-related factors that foster beneficial outcomes for the employee, particularly psychological well-being, physical well-being and positive attitudes such as job satisfaction'* (Holman, 2013). Because of the broadness of the concept, there is no single definition of job quality. Instead, multiple indicators have been identified that contribute to its measurement. The job quality concept used by Eurofound considers seven indices derived from the European Working Conditions Survey: physical environment, social environment, work intensity, working time quality, skills and discretion, prospects, and earnings (Eurofound, 2017b). The OECD's framework considers the worker's situation as well as the labour market. It includes three dimensions: earnings quality, working environment quality, and labour market security (e.g. risk of job loss, benefits generosity and coverage) (Cazes et al., 2015). The International Labour Organization (ILO), the United Nations Economic Commission for Europe (UNECE) and Eurostat jointly developed a quality of employment framework with seven dimensions: safety and ethics, income and benefits, working time and work-life balance, security and social protection, social dialogue, skills development and training, motivation and employment-related relationships. Finally, the European Trade Union Institute (ETUI) created the widely used ETUI Job Quality Index using six job features to compile one job quality score: wages, non-standard forms of work, working time, working conditions and job security, skill and career development, and collective interest representation (Leschke and Finn, 2016; Leschke et al., 2012).

The WES model organises the multitude of possible indicators describing the job quality of platform work. Twenty-one indicators from the selection suggested by Eurofound (2017b) are categorised into three broad dimensions that encompass all relevant, objective job features needed to measure job quality at the worker level (Lamberts et al., 2016). These three dimensions capture the bulk of the job quality literature: work, employment, and social relations (Lamberts et al., 2016). The **work dimension** reflects the organisation of specific tasks and the environment where a worker performs labour. The **employment dimension** relates to those job characteristics that are mostly fixed within formal employment agreements and interfere directly with workers' private lives, for example, wages, working time or training. The **social relations dimension** links social relations and interactions, social dialogue and representation at work through

formal and informal channels. The WES model allows us to consider tasks as well as jobs.

Table 5 shows the WES model and its main indicators and demonstrates how the conceptualisation of different definitions overlap with those in other commonly used frameworks.

Table 5: Comparison of the WES model with other job quality frameworks and their definitions and indicators

WES model (Lamberts et al., 2016)	**Work organisation** Task autonomy Autonomous teamwork Task complexity Speed pressure Emotional demands Repetitive tasks Risks (ambient, bio-chemical, musculoskeletal)	**Employment conditions** Permanent contract Full-time work Wage, additional fees Atypical working hours Working time flexibility Planning autonomy Career opportunities Training	**Social relations** Participation Representation Supportive management Social support Adverse social behaviour
Eurofound (2017b)	Physical environment Work intensity Skills and discretion	Working time quality Prospects Earnings	Social environment
Holman (2013)	Work organisation	Wages and payment systems Security and flexibility Skills and development	Engagement
Green (2006)	Intrinsic job quality	Earnings Prospects Working time quality	-
ETUI Job Quality Index	Working conditions Job security	Wages Non-standard forms of work Working time Skill and career development	Collective interest representation
OECD Job Quality Framework	Working environment quality (level of job strain)	Earnings quality (level and distribution across workforce)	-
ILO, UNECE and Eurostat Quality of Employment Framework	-	Safety and ethics Income and benefits Working time and work-life balance Skills development and training	Security of employment and social protection Social dialogue Employment-related relationships and work motivation

Source: authors' own elaboration.

Box 1: The Fairwork Framework: a job quality framework tailored to platform work

Graham et al. (2019) have developed a job quality framework specific to platform work called the Fairwork Framework. This framework helps to assess decent work standards in platform work by means of a scoring system with basis and advanced points, leading to a total score on ten per platform. Academics, policymakers and trade unions jointly defined five principles for fair platform work:

- *Fair pay*: the platform pays the local minimum wage (basis); pay is high enough to also cover costs (advanced)
- *Fair conditions*: task-specific risks are mitigated (basis); the platform is actively improving working conditions and workers' health and safety (advanced)
- *Fair contracts*: the platform's terms and conditions are transparent, concise and available for workers (basis); and preferably also genuinely reflect the nature of the employment relationship(advanced)
- *Fair management*: the platform has a documented process for decisions affecting its workers through which workers can be heard, consulted and informed (basis); the platform additionally provides evidence of equity and/or informed consent for data collection (advanced)
- *Fair representation*: freedom of association and worker voice mechanisms (basis); which is completed with a recognised collective body that can undertake collective representation and bargaining (advanced)

The five principles of the Fairwork Framework are covered by the WES model: fair conditions are included in the work dimension; fair pay and fair contracts are part of the employment dimension; fair management and fair representation are taken up in the social relations dimension.

Besides these broad frameworks, academic studies have put forward job quality models that focus on a subset of indicators and define the relationships and interactions between them. The job demands – job control model developed by Karasek (1979) distinguishes two types of job quality determinants, and focuses on the interaction between the 'demands' a worker faces and the available mechanisms to cope with them, or 'controls'. An example of a 'job demand' is working with tight deadlines; an example of a 'job control' is having a high level of autonomy. The Karasek (1979) model only accounts for the 'work' dimension. The extended job demands-control-support model and the validated job demands-resources model were later introduced to account for a wider range of indicators. These revised models also include indicators for employment conditions and social relations. Other models that have been developed in the discipline of psychology include the effort-reward imbalance model and the high-performance works systems. Sociologists have introduced the 'socio-technique' that focuses on the organisational level and suggests self-organising teams as a way to foster job quality. In the medical literature, the focus is on occupational safety and health. Other theories, such as the dual labour market theory, consider larger converging or diverging tendencies of groups of workers, or take a perspective of management (human relations) or consider it from a collective bargaining perspective (industrial democracy).

Table 6: Overview of job quality models developed in different fields

	Work	Employment	Social relations
Job demands-control (JD-C)	X		
Job demands-control-support (JD-C-S)	X		X
Job demands-resources (JD-R)	X	X	X
Effort-reward imbalance	X	(X)	
High Performance Works Systems (HPWS)	X	X	(X)

Socio-technique	X		(X)
Occupational safety and health (OSH)	(X)		
Dual labour market		X	
Human relations	X		X
Industrial democracy	(X)	(X)	X

Source: authors' own elaboration.

Because the WES model captures most of the aspects put forward in traditional job quality models, as well as in frameworks developed with specific focus on platform work, this model seems the best fit to provide a complete overview of all the relevant aspects of work in the platform economy. It offers an elaborated overview of objective indicators composing job quality, without predefining the relations between indicators. This allows us to address indicators individually, while combining and adding other aspects specific to platform work. Table 7 shows the adjusted WES model that guides our research. The use of technology and algorithms is covered under each dimension.

Table 7: Adjusted WES model

Work dimension	Employment dimension	Social relations dimension	Other indicators
Autonomy in the allocation of tasks	Employment status	Representation	Undeclared work
Autonomy in work organisation	Determination of the employer	Participation in decision-making	Cross-border work
Surveillance, direction and performance appraisal	Contracts	Supportive management and social support	Data protection
Task complexity	Social protection	Adverse behaviour and equal treatment	
Work intensity and speed pressure	Earnings		
Emotional demands	Working time		
Physical environment	Career opportunities		
	Training and skills		

Source: authors' own elaboration, based on Lamberts et al. (2016).

Where possible, the study highlights whether a challenge is specific to platform work, or to the use of algorithms, or whether it is part of a larger issue. In the WES model, challenges specific to platform work are likely to be found under the work dimension and to a lesser extent the social relations dimension, while challenges identified under the employment dimension are typically broader and go beyond platform work. However, it appears that the employment dimension has received most attention in the debate and literature, precisely because it captures those aspects that interfere directly with workers' private lives. Given that platform work is mainly performed as a secondary activity that comes on top of another job or activity (see Pesole et al., 2018), it likely has a significant impact on work-life balance. This issue is also a major point of discussion with other non-standard forms of work (Eurofound, 2017a). In addition, because platform workers generally use their own equipment to perform the tasks at hand (for example, riders use their own bicycle and smartphone), platform work is almost automatically set in the private sphere.

Note, however, that any examination of the challenges related to platform work is complicated by the high level of heterogeneity in the types of platform work, platforms, and platform workers. In addition, because the WES model considers a wide variety of job quality indicators across these types of platform work, it is very difficult to formulate clear-cut conclusions for some of the challenges described. For that reason, the analysis below is highly nuanced (although these nuances are necessarily abstracted in the summary tables at the end of each part). Three points are considered in these summary tables: **the importance of the challenge** (high, medium, low, or none), **the specificity of the challenge** (challenge specific to platform work, common for non-standard work, or found in the wider labour market), and the **affected types of platform work** *(*all, on-location versus online, low- versus high-skilled, client-, platform- or worker-determined). The section for each indicator gives examples of which platform work types are affected. Similarly, comparisons between platform work and other forms of non-standard work are drawn in the text.

How the importance of the challenge is categorised is much more complicated: it accounts for the literature and fieldwork (notably the expert questionnaires and interviews), the legal and socio-economic interpretation[64] of a challenge, the extent to which an issue is discussed and by which actors, the extent to which a challenge is specific to platform work or not, the extent to which a challenge affects all or some types of platform work, and so on. While such details and nuances are described in the analysis, the summary tables combine all this information into a single 'score'. To label a challenge 'high', we considered whether it was identified in the literature and the fieldwork as a 'major' challenge that moreover is specific to platform work and affects all or most platform work types. The only exceptions are employment status and representation, which, while highly relevant, are not specific to platform work. Challenges that emerge from the literature and fieldwork as 'major' but that are not specific to platform work, or only affect a few platform work types, are labelled 'medium'. Classified as 'low' are those 'minor' challenges that arise among other non-standard forms of work or in the labour market more generally, and that have been raised in the literature or by the experts consulted for this study. These challenges are typically especially relevant for one or a few types of platform work. In addition, some of these challenges do arise in real life but are not seen as problematic by platform workers, social partners, policymakers or other actors, atypical working times, for example. Challenges with the label 'none' refer to those issue that may arise, though only in a very few, specific cases affecting some individuals. For example, having to deal with difficult clients is more likely to be a challenge with on-location work, but it does not mean all platform workers engaged in this type of work experience emotional demands. For some individuals, however, this may be the case. This issue has not been raised by the consulted experts and there is little evidence beyond anecdotal reports available in the literature. Although the available evidence is discussed, it is deemed insufficient to justify a different categorisation.

The following sections describe the work, employment and social relations dimensions of platform work and their related challenges. These analyses are primarily based on a literature review and completed with data gathered through fieldwork. The identified challenges have also been validated in an expert workshop.

4.2 The work dimension

The work dimension of the WES model combines the elements that are usually distinguished by other job quality models: **job content, working conditions and work organisation.** Combining these aspects into a single dimension is useful because these

[64] This is an important point: when comparing the questionnaires for each country, for example, there were several instance where socio-economic experts flagged as issue as 'major' whereas the legal experts did not consider it a challenge at all. This is taken into account in the analysis. This level of detail, however, is difficult to provide in the summary tables.

characteristics are often interrelated. The physical and psychological risks (traditionally seen as working conditions) a worker encounters are not independent of the performed task (job content) and the work organisation.

This section presents the platform work state of affairs on task allocation, autonomy in work organisation, surveillance, direction and performance appraisal, task complexity, work intensity, speed pressure, emotional demands and physical environment. The use of technology, apps and algorithms has an impact on all elements of the work dimension. Within the WES model, the work dimension is the most affected dimension in this regard.

4.2.1 *Autonomy in the allocation of tasks*

The **allocation of tasks,** or the **division of work,** among workers, is one of the most discussed issues related to working conditions. Along with the idea of 'being your own boss', having the autonomy and flexibility to determine when to work, what tasks to do and how to execute them has been identified as a key factor that motivates workers to engage in platform work (Ivanova et al., 2018; Pesole et al., 2018). Freedom in the selection and execution of tasks is very important to platform workers (Berg, 2016; De Groen and Maselli, 2016). Having autonomy in the allocation of tasks is shown to be beneficial for job quality (Karasek, 1979).

Compared to other forms of work, platform workers have a **rather high level of autonomy** in the allocation of tasks (Eurofound, 2018; Pesole et al., 2018). However, the allocation strategy used to divide tasks among the platform workers depends on the type of work and the organisation of the platform (ibid.). Three task allocation strategies can be distinguished, depending on who makes the selection (Eurofound, 2018): (i) **tasks are allocated by the platform** (i.e. the platform matches client and worker - 'platform-determined' work;), (ii) **tasks are allocated by the client** (i.e. the client selects a worker - 'client-determined' work), and (iii) **tasks are allocated by the workers** (i.e. the worker chooses their tasks - 'worker-determined' work). The allocation of tasks is linked to the matching process, which is usually based on an offer or a contest, though the latter is much less prevalent (Eurofound, 2018). In addition, platforms can move between allocation strategies over the course of their development. The change can be to the advantage or detriment of worker autonomy. Cleaning platform Helpling, for example, allowed its workers to have a fixed group of clients; hence these platform workers have more control over task allocation.

In principle, all three allocation strategies can be found across all types of platform work. In practice, however, **platform-determined work** seems to be more prevalent in low-skilled on-location or online work, such as food delivery and click-work. Food delivery riders and 'taxi' drivers typically receive task offers allocated by an algorithm, which they can accept or decline. Although the option to decline tasks suggests relatively high worker autonomy, it is important to take the precise platform mechanics into account. For example, platforms differ as to which information is made available about the actual task, and when. On most transportation platforms, riders only receive information about the location of the client after accepting a task, limiting the capacity of the worker to make an informed decision about the task acceptance (information asymmetry) (Lee et al., 2015; Rosenblat and Stark, 2015; Rosenblat and Stark, 2016). In addition, the platform worker's autonomy in task allocation is harmed by systems imposing penalties for declining tasks or stipulating a minimum number of obliged acceptances. Platforms such as Uber and Lyft suspend drivers from the system if they cancel (possibly unprofitable) trips too often (Rosenblat and Stark, 2016). The algorithm, ratings and rewards systems thus undermine the formal autonomy of the platform worker regarding the decision to work or not.

In **client-determined work**, the client selects a platform worker to do the task. This can be based on a contest or competition between the workers, or a review of the offers or profiles of the platform workers. In the latter case, platform workers are strongly

dependent on the ratings or reviews received by previous clients. Platform workers without any ratings typically find it difficult to get work. Platforms are aware of this issue and some have developed strategies to assist their workers. Examples include background checks, a rating based on the completeness of their profile, a verification that the worker is a real person who has had an intake interview with the platform, and links to the worker's profile on social media. These methods are used to create trust (Schreieck et al., 2018). There are also differences between platforms as to whether they impose penalties on platform workers who deny a task. Platforms such as ListMinut or Hilfr allow workers a lot of autonomy to decide what tasks they accept. They encourage platform workers to accept the allocated task, but do not penalise them for declining (interviews with platform representatives). In other cases, platform workers may feel pressured to accept a task to avoid a penalty or bad review. Finally, even in client-determined platform work, platforms have significant power to control market entry and to guide their clients' choices.

Worker-determined platform work is associated with the highest allocation autonomy. Here, clients post a task on the platform and the workers can select the ones they prefer. In such cases, however, the platform workers' profile and online reputation, as well as the availability of tasks, also determine which tasks a worker can actually access (Martin et al., 2016). Factors such as income insecurity may also lead platform workers to accept any task posted, thereby restricting their autonomy in practice. Although allocation autonomy in platform work can be higher than in regular jobs, there are several explanations as to why it could be more limited in practice.

4.2.2 *Autonomy in work organisation*

Work organisation is defined as the organisation of the work to be performed with regard to the order, method and tempo of the tasks (Szekér et al., 2017).[65] This definition largely coincides with the concept of discretion or 'decision latitude' put forward by Eurofound (2017d). The concept of autonomy in work organisation correlates strongly with the legal subordination 'test', which is crucial in determining the employment status of a platform worker. A higher level of autonomy at the task level is associated with higher levels of job quality because this can compensate for a high workload (job demands) (Karasek, 1979). According to the job demands – job control model, the amount of control and discretion a worker has moderates the effect of job demands on psychological pressure. As a result, the psychosocial well-being of employees can be improved by offering them a higher level of control and discretion without changing job demands (Clays et al., 2007; Karasek Jr, 1979).

Autonomy regarding the work organisation, next to the flexibility to choose specific tasks and when to work, are among the **main motivations for workers to engage in the platform economy** (Yordanova, 2015; Berg, 2016; De Groen and Maselli, 2016; Temper, 2017). While employees in regular companies usually receive tasks, instructions and feedback from a supervisor, and may not have any contact with the company's clients, platform workers receive tasks via the platform, but instructions and feedback stem directly from the client. This may cause confusion and reduce workers' autonomy.

Once a task is allocated, platform workers' autonomy regarding the work organisation varies according to the **type of work**, and the **design and organisation of the platform**. In relation to the type of work, the highest autonomy in work organisation comes with online platform work based on differentiated skill use, similar to employees in such jobs, examples of which include graphic designers and IT specialists. (Leimeister et al., 2016; Pesole et al., 2018). Leimeister et al. (2016) describe how **tasks requiring specialised skills performed online** feature more intensive interactions between the platform worker and client. Whether an IT specialist works as an employee in a company or uses a platform, the process leading from the task description to the final delivery is

[65] Autonomy regarding working hours is discussed in a separate section under the employment dimension.

similar in both cases. To be able to perform the task, the worker needs to be entrusted with a reasonable degree of task autonomy. A similar logic applies to **on-location tasks using differentiated skills**, which tend to be complex and require the worker to have some degree of autonomy in determining how to approach the task. The opposite applies to **low-skilled online and on-location work**. Platform workers engaged in online micro-tasks, such as household services working at the client's location, and transportation services involving passenger transportation or food delivery, have a lower degree of autonomy in the work organisation (Eurofound, 2018; Pesole et al., 2018). Sundararajan (2016) explains that organisational autonomy is lower in these cases because the structure of the working relationships is more hierarchical. This implies that instructions do not allow for changes in the completion, and that workers are closely supervised.

Note, however, that there can be large differences between platforms intermediating the same type of work, depending on how platforms are organised. For example, are tasks fully predefined by the platform or can clients make their own proposition? Nothwithstanding this, it does particularly appear that those platforms intermediating work based on undifferentiated skills, regardless of whether they are online or on-location, tend towards largely predefined tasks. This also reduces the platform worker's autonomy in determining the method, order and speed.

4.2.3 *Surveillance, direction and performance appraisal*

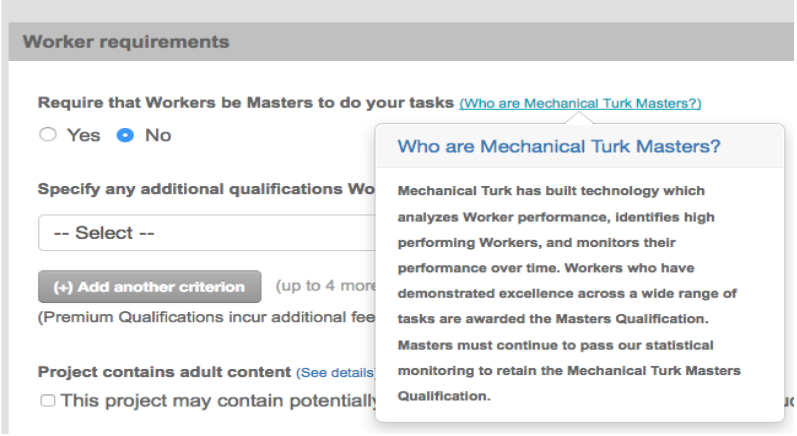
During the execution of the work, the platform and/or client monitors the platform worker. The **level of control** the platform or client can impose has a strong impact on a worker's autonomy and well-being. In platform work, **surveillance, direction and performance appraisal techniques** greatly rely on the use of technology, apps and algorithms. Surveillance implies the monitoring of platform workers, allowing the platform to interfere in the work process by providing direction and guidelines. Performance appraisal is understood as an evaluation of the provided work, feedback and ratings. The use of technology in such processes is a **particular feature of platform work**, though in ICT-based mobile work, technology-based monitoring instruments may be used to compensate for the employer's loss of control (Eurofound, 2018b). Given that very little is known about how algorithms work (the 'black box' in the conceptualisation), these processes are poorly understood, but nevertheless have a huge impact on platform workers. For that reason, this challenge is deemed of high importance.

The surveillance, direction and performance appraisal that take place in regular employment relationships between an employer and employee are more scattered in platform work. The triangular relationship between platform worker, platform and client, which in some cases can include additional parties, implies that others may exercise surveillance and direction vis-à-vis the worker. Platform workers might be monitored, receive direction, evaluations or even penalties from the platform (or its algorithm), the client or both (Eurofound, 2018; Rosenblat and Stark, 2015).

The literature flags up a number of challenges from identifying at least **five managerial control systems** (Waters and Woodcock, 2017): surveillance; automatic evaluations; automated decisions; automated messaging systems; and digital choice architecture. These mechanisms are often related. *Surveillance* of the labour process, for example by tracking, is often done by platforms intermediating transport services. It provides platforms with detailed information on the location of the driver, their speed and general work pace. Rosenblat and Stark (2016), for example, explain how Uber monitors the trips of its workers based on GPS data (a geotracking system). Ivanova et al. (2018) find similar cases for Deliveroo and Foodora. Tracking is used by platforms intermediating online work as well. AMT allows clients to specify that platform workers must be 'Mechanical Turk Masters', which implies that platform workers allow online monitoring of their work (see Figure 6). Some platform workers are in favour of this type of tracking, as it provides them with proof in case of conflicts (Wood et al., 2019). The

existence and nature of such tracking mechanisms is indicative of the amount of control a platform can exercise over its platform workers. It has, in fact, been used in court cases to assess whether there is a link of subordination between a platform worker and a platform (see *infra)*.

Figure 6: Example of AMT 'Mechanical Turk Masters'



Source: screenshot provided by German expert consulted during fieldwork.

Surveillance creates large amounts of data that platforms can use for *automatic evaluations* of platform workers (Mohlmann and Zalmanson, 2017). If drivers or riders fail to complete a delivery during their shift, they typically face penalties, such as the strike system implemented by Uber. These evaluations might be at the basis of *automated decisions,* such as task allocation systems, and data-driven *automated messaging systems* influencing workers' behaviour through reminders and pop-ups (Gillespie, 2018; Van Doorn, 2017). Choices and behaviour of workers and clients are led by the general design of the platform, creating a *digital choice architecture* of which, for example, unwanted alternatives are filtered out (Sunstein, 2015). Ivanova et al. (2018) present examples of direction mechanisms used by Foodora and Deliveroo in Germany.

First, these platforms **exercise control via automated messages** based on what is estimated normal behaviour for a rider (Mohlmann and Zalmanson, 2017). Using GPS data and data received through the app when the rider indicates what step of the delivery they are on (i.e. accept task, arrived at restaurant, collected meal, arrived at client), the platform generates personalised estimates as to how long it will take to complete a task. Riders receive an automated message such as 'contact the dispatcher' or 'log in again' whenever irregularities are observed. Although riders are closely monitored, these platform workers 'perceive the automated notifications as less controlling than a human supervisor' (Ivanova et al., 2018: p. 13).

Second, food delivery riders are **incentivised through financial rewards** to guarantee that there are sufficient riders during busy shifts or to encourage them to complete orders more quickly.

Third, deriving data from their personal statistics, the platforms **adapt the selection of possible shifts riders are able to access** when choosing their working times. There is high internal competition for popular shifts, so underperforming platform workers have fewer chances to book shifts on their preferred hours. The financial rewards and the way platforms shape workers' weekly schedules are ways to nudge workers towards behaviour that is considered desirable. Such mechanisms undermine the autonomy and flexibility platforms claim to offer, especially for platform workers who depend on the income gained through platform work (Ivanova et al., 2018; Lehdonvirta, 2018). Whether a platform worker can refuse shifts or disregard previously agreed to shifts

without facing penalties is an indication of the degree of subordination and managerial control.

Fourth, the platforms' control systems create information asymmetries between the platform worker, client and platform, limiting the actual decision latitude of these workers (see *supra*). The lack of transparency regarding the algorithms used for allocation and monitoring raises questions about the fairness of these mechanisms (Ivanova et al., 2018; Lee et al., 2015).

Traditionally**, performance appraisal** forms part of the human resources management activities organised by the employer in regular employment relationships. Performance appraisal serves to justify workers' rewards, as well as different levels of rewards within and between companies, and to define required developments for a worker to perform in the future (Dransfield, 2000). An appraisal usually starts with a clarification on the evaluation criteria considered to accurately measure past performances. In the context of platform work, however, **rating systems** are typically used to evaluate workers' performance. Platform workers receive feedback from clients, who can either rate the entire transaction or part(s) of it (Van Doorn, 2017). Ratings can take different formats, depending on the platform (e.g. an option to provide text or only a score). These ratings or evaluations feed into a platform worker's online profile and determine their reputation. Rating systems are often one-sided: clients can rate platform workers but not vice versa. In the case of Uber, however, drivers and riders can rate each other (two-sided reviews).

Rating, review or reputation systems are poorly understood and often intransparent. But they have a major impact on platform workers because they affect their **future work opportunities** on the platform (Aloisi, 2015; Lee et al., 2015; Rosenblat and Stark, 2015; De Groen et al., 2018a; Wood et al., 2019). And they are common in platform work. Wood et al. (2019) describe rating systems as the most effective tool for algorithmic control. On some platforms only the profiles of platform workers with the highest scores are presented, making it difficult for those with low or no ratings to find work. On others, for example Fiverr, all profiles are shown. Many platforms, including Hilfr and Helpling, allow clients to search for platform workers based on ratings. Other platforms, such as Uber, prohibit workers with a rating below a certain threshold to work. These dynamics put significant pressure on platform workers to get good ratings (Lee et al., 2015; Rosenblat and Stark, 2015; De Stefano, 2017; Wood et al., 2019), which causes stress and raises the emotional demands of the work (Aloisi, 2015). Platform workers have indicated that ratings are sometimes arbitrary, unfair or biased, yet there are few options for recourse (ibid.).

Ratings are linked to a specific platform and workers cannot usually take their online reputation with them when transferring between platforms. However, research on **transferable online reputation systems** is growing, and arguments both for and against the transferability of ratings have been put forward. Arguments against transferability include those that platform workers should have the right to be forgotten or that they may struggle to get rid of ratings they consider unfair or incorrect, and that some types of platform work have little compatibility – for instance, what value does an excellent profile as an Uber driver signify for a platform worker who wants to work as a cleaner? (Lenaerts, 2018). On the other hand, the transferability of ratings may help overcome the monopoly power of platforms, make it easier to work with multiple platforms, and gives workers more control (ibid.). To this end, some new initiatives support ratings transferability. Deemly, for example, is a platform that allows platform workers to create an online profile combining reviews from different platforms that can be shared via a digital link. Such initiatives could be further explored.

4.2.4 *Task complexity*

Task complexity is defined as the degree to which a worker is required to meet high quality standards, solve problems independently, and learn new things in order to fulfil a

task. In the job demands – job control model of Karasek (1979), task complexity is understood as a job demand. How task complexity contributes to job quality depends on the interactions with other job characteristics, such as autonomy. More job demands lead to more stressful situations and negative job outcomes, but high levels of job demands combined with an increase in job controls, such as autonomy, can lift these jobs into active jobs with more positive outcomes (Karasek, 1979).

In the context of platform work, task complexity varies according to the **nature of the work**: is a task a **routine task**, a **complex task**, or a **creative task** (Rouse, 2010)? Note that all three of these types are found online and offline. Routine tasks can be found in transportation and household services, for example food delivery, and in low-skilled online work, for example clickwork where a worker tags images. Routine tasks require limited prior knowledge (Alkhatib et al., 2017). Pesole et al. (2018) report that platform workers engaged in routine tasks are the least likely to learn new things (Pesole et al., 2018). However, online micro-task workers report learning new things more often than workers using an undifferentiated skill set in on-location platform work (Pesole et al., 2018). The complexity of routine tasks is low.

Complex tasks, for example online content creation, reviewing and testing products or applications, and participating in user surveys, require more effort. Creative tasks are considered to have the highest complexity level, as the work is profession-based and implies that workers have differentiated skills or are specialised in the area, and that such tasks require workers to learn new things regularly (Pesole et al., 2018). Both types of tasks include professional online or on-location work (e.g. IT specialists). These platform workers find themselves significantly more often in stressful situations related to their tasks (Pesole et al., 2018).

As the complexity of the task itself does not appear to be much affected by the use of technology or algorithms, task complexity is not discussed as a challenge in the literature on platform work, nor has it been identified as such by any of the experts and stakeholders consulted for this study.

4.2.5 *Work intensity and speed pressure*

Work intensity is an indicator combining the amount of work and the work pace. This indicator refers to 'the effort and strain associated with carrying out the work' (Eurofound, 2018). High levels of work intensity are associated with negative job quality outcomes, such as burnout, stress and sleeping problems (Boekhorst et al., 2017; Cottini and Lucifora, 2010; Maslach et al., 2009). Platform workers engaged in on-location and online work based on undifferentiated skills report higher levels of work intensity due to the competition between workers and their replaceability. Examples include food delivery and passenger transportation, which are low-skilled tasks. A platform worker participating in the French focus group emphasised how he felt that he could easily be replaced.

Speed pressure is a related concept that gives an indication of the degree to which a worker has to cope with tight deadlines, automatic speed, direct control or quantitative production norms, whether they are dependent on external factors or colleagues to be able to finish a task, and whether sufficient time is foreseen to complete a task (Szekér et al., 2017). Speed pressure, as well as repetitive work, increases the probability of suffering from mental health issues, such as stress, anxiety and sleeping problems, and from physical health issues such as trembling hands (Cottini and Lucifora, 2010; EU-OSHA, 2017). In platform work, speed pressure is determined by two factors: deadlines posed by the client or platform, and having to combine multiple tasks and working on different platforms at the same time and sometimes in combination with regular employment (EU-OSHA, 2017; Pesole et al., 2018). The highly competitive environment of platform work and its income insecurity have major consequences: platform workers are likely to take on as many tasks as possible and work with tight deadlines, which leads to an increased work pace or skipping breaks which in turn augments the risk of

injuries (Drahokoupil and Piasna, 2017). This is particularly the case with micro-tasks, which are known for their repetitive nature and low remuneration (EU-OSHA, 2017). Platform workers in food delivery have mentioned that they are entitled to only very short breaks and that some of them do not manage to take breaks at all while working (Eurofound, 2018).

The threat of replaceability causes stress among platform workers engaged in low-skilled on-location or online work. Huws et al. (Huws et al., 2017) document how the threat of replaceability leads to an increased work intensity among Uber drivers, with drivers working at a rapid pace without taking breaks. This is also explained by the on-demand nature of platform work, which requires platform workers to compete in a large pool of others locally or globally, while the availability of work is uncertain and often limited. When tasks do appear, they dictate short deadlines, which can be stressful (EU-OSHA, 2017; Huws et al., 2016; Maselli et al., 2016). Speed pressure can also be problematic for platform workers in transportation services. This depends on the organisation of the platform, however, and in particular on its payment and evaluation system. For example, platform workers earning a high hourly wage will be less likely to accept a disproportional number of tasks in a limited period, compared with workers who are paid per task (Lehdonvirta, 2018). This may also apply to household services, even though Pesole et al. (2018) find that these workers are the least likely to face tight deadlines.

Professional online workers, who do mostly creative, profession-based tasks that are rarely repetitive, are also often required to meet regular tight deadlines and may have to win tasks through online competition (Pesole et al., 2018). The need to constantly compete to have sufficient work causes stress. Nevertheless, these platform workers tend to have a different perception of this situation. Those engaging in online contests are aware of the insecurity that this type of work entails, and tend to approach it as a way to build up a portfolio and only participate in contests when they have sufficient time to do so (Eurofound, 2018).

Both work intensity and speed pressure can be high for platform workers, and is likely to be aggravated by further increases in the competition between workers for tasks and between platforms for clients. Tasks requesting undifferentiated skills, high work intensity and speed pressure may provide reasons for workers to stop doing platform work, and some workers state that they only accept these conditions because the work is temporary (Eurofound, 2018; Lenaerts, 2018). There are substantial negative effects on job quality (Lamberts et al., 2016), especially when the work itself is repetitive, not set in a well-structured organisation, and without the necessary support, such as obligatory rest periods or specialised materials. This holds for platform work and other types of irregular employment, for example casual work, homeworking and temporary agency work (Vereycken and Lamberts, 2018).

4.2.6 *Emotional demands*

Emotional demands are an indicator of the emotional pressure workers feel during the execution of tasks, including dealing with direct demands from clients, or having to hide your feelings (Eurofound, 2017b). Personal contacts have been proven to influence the psychological well-being of workers (Boekhorst et al., 2017; Huang et al., 2011). Emotionally demanding jobs have a lower overall job quality, bringing, for example, higher risk of sleep problems, low general and physical heath, and low mental well-being (Szekér et al., 2017). Jobs that involve dealing with and supporting people have been found to be especially emotionally demanding, for example those in in commerce and hospitality, healthcare, and the education sector (Eurofound, 2017b).

In platform work, **emotional pressure can be two-sided**. Platform workers are hired for individual tasks that are not usually emotionally demanding. Not all platform workers have direct contact with clients, for example those in contest-based online work. However, because of the fierce competition between workers, constant monitoring of the work and online evaluations that are available to all users of the platform, platform

workers are required to be flexible, friendly, and customer-oriented regardless of the type of work they do. The application of **rating systems** requires platform workers to have a service mentality, making these jobs far more emotionally demanding than their counterparts outside the platform economy (Lee et al., 2015; Raval and Dourish, 2016). Lee et al. (2015) also emphasise that, in the context of ride-sharing, clients tend to underestimate the importance and impact of their ratings on the worker. In this way, a 'platform job' is broader than the tasks paid for, as it also involves **constant customer care and public relations**. The same accounts for household service and professional workers facing an imbalanced power relationship, in which they have to meet and please the client directly and sometimes work under their direct supervision. This is not necessarily specific to platform work, but rather depends on other circumstances, such as the type of contract or the task at hand. A parallel can be seen with casual workers, for example, those who have no guarantees to have a job the next day or week, and aim to keep their employer satisfied in the hope of receiving a stable contract (Vereycken and Lamberts, 2018). Similar tendencies are found among temporary agency workers (ibid.).

Platform workers' dependence on the client for payment and good ratings causes stress. While this applies to any type of platform work, it is especially the case for online and on-location workers with differentiated skills who are trying to sell their expertise and portfolio to potential clients. Although some platforms allow workers to negotiate with clients on the specificities of the task, and to have a final say in whether they accept a task or not, in many cases the client plays a large role in the allocation of the work. Schmidt (2017) finds that creative online workers especially are in a vulnerable position, as their work is more loosely defined and often vaguely described. This requires social skills to maintain the relationship with the client, notably when payment depends on the approval and acceptance of work by the client, and where evaluation by the client is a crucial factor for future work (ibid.). Similar issues arise for portfolio work, where freelancers simultaneously work for a variety of clients and depend on good customer relations for future work (Vereycken and Lamberts, 2018). In the context of platform work, the lack of support from direct colleagues increases the risks related to high emotional demands compared to regular employees (EU-OSHA, 2017; Pesole et al., 2018). That being said, not all platform workers report this as an issue (Eurofound, 2018).

As a final point, being in emotionally disturbing situations is often discussed along with emotional demands (Eurofound, 2017b). In this regard, the moderation of harmful or violent online content – which occurs in some forms of online platform work – warrants attention. Exposure to emotionally damaging images is known to have a considerable impact on workers' well-being and mental health (Lamberts et al., 2016). When this type of content is encountered in official instances, the workers involved usually receive extensive psychological counselling. Platform workers, however, may perform this type of work without appropriate psychological and social support and in a solitary situation, which increases its negative impact (Solon, 2017; Taylor et al., 2017).

4.2.7 *Physical environment*

The physical environment in which work is set refers to the **exposure to ergonomic, ambient and biochemical risks**, the **material required and acquired**, and other physical occupational health and safety risks (Eurofound, 2015). These indicators have a direct impact on job quality outcomes such as the physical or psychological health of workers. OSH is a priority for EU policymakers, and the improvement of working conditions to protect workers' health and safety is enshrined in Article 153 of the TFEU.

The physical environment and health and safety of platform work have been **discussed extensively**, both in the literature and in public and policy debates. National experts consulted for this study also identified health and safety as an **important challenge for platform work** in the survey, and most of the focus group discussions also emphasised it. Note, however, that the focus has largely been on mental and physical health and

accidents at work, and there is no evidence on occupational diseases in relation to platform work. Most attention regarding health and safety issues is paid to **on-location platform work** carried out at the client's premises or in public spaces (e.g. transportation, household or professional services). Far less attention has been devoted to the health and safety risks of online work.

For most tasks carried out by platform workers, the related risks are comparable to those for regular employees doing similar tasks. On-location workers such as drivers will face traffic and ergonomic risks, bikers have the increased risk of deadly traffic accidents, cleaners are exposed to chemical substances and experience ergonomically straining situations. Online workers face risks related to long working hours on computers, such as visual fatigue and musculoskeletal problems. In the case of platform work, however, protective occupational health and safety regulations are not necessarily guaranteed and are hard to regulate (Tran and Sokas, 2017). Platform workers are responsible for their own health and safety, which includes the provision of **protective equipment** and the **materials and tools needed to perform the task** (Huws, 2016; Eurofound, 2018).

However, several studies find that platform workers are **not always able to assess the health and safety risks** related to a task or are **unaware of and uninformed about potential risks**, and **receive limited or no training** on health and safety (Huws, 2016; Pesole et al., 2018; Eurofound, 2018). This is problematic, considering that platform workers are, on average, younger and identified as being subject to a higher risk of occupational accidents and injuries (Huws, 2016; Tran and Sokas, 2017). Another issue is that platform workers do not necessarily do this type of work regularly, and thus may be less experienced with the task, and frequently switch between activities. In this sense, there are similarities with temporary agency workers, who also face higher risks than employees in similar jobs (Benavides et al., 2006; Howard, 2017; Tran and Sokas, 2017; Wilde, 2016). In addition, competition between platform workers may encourage them to accept tasks for which they do not have the right equipment or have no experience or, or continue to take on when sick (EU-OSHA, 2017; Pesole et al., 2018). A related issue that was raised in the focus groups is that platform workers are generally paid by task and not by hour. This may lead workers to work long hours and to work as fast as they can, which forces them to take risks such as crossing the street on a red light. Working long hours and combining multiple jobs can also cause stress and fatigue (Cottini and Lucifora, 2010).

Previous research and the fieldwork conducted for the study confirm that many platform workers are unaware of or unconcerned by health and safety risks. Exceptions include on-location platform workers such as **food delivery riders and worker-initiated and client-determined moderately skilled platform workers** (EU-OSHA, 2017; Pesole et al., 2018; De Groen and Kilhoffer, 2019). Food delivery riders indicate concerns about traffic accidents and having insurance (EU-OSHA, 2017; Pesole et al., 2018). One food delivery rider participating in a focus group for France, for example, highlighted the importance of accident insurance, noting that this was necessary because delivery riders feel pressured to take risks, and indeed knew colleagues that had had grave accidents as a result of doing so. This platform worker argued that the eligibility criteria of the insurance should be fit for purpose; preconditions such as having paid social security contributions for at least one year exclude workers with no or limited labour market experience.

Some platforms offer protective gear or equipment to their workers, either for rent or free of charge. Some food delivery platforms, for example, offer bikes, helmets, backpacks and jackets.[66] **Other platforms leave this up to the worker**. Deliveroo

[66] Interestingly, several food delivery platforms initially obliged their workers to wear specific gear, but later came back on this decision as it called into question whether the workers involved were in fact self-employed or rather fell under the supervision and direction of the platform – taking on the role of employer.

riders, for example, use their own bikes and are responsible for their maintenance, whereas riders working for Takeaway can use a bike provided by the platform. Some of the experts and stakeholders consulted argued that the materials or equipment provided by platforms might not suffice to fully protect workers. On the other hand, when platform workers have to provide their own equipment, there is the risk that they might try to save costs and, therefore, do not foresee the cost of high-quality tools or the exact materials required for a specific task. Platform workers who can set their own price can account for the costs of the equipment and materials needed to perform the task (Eurofound, 2018). Platform workers who cannot do so indicate that this makes it difficult to make a living out of platform work and are forced to (temporarily) quit when their equipment or material breaks down, finding, for example, that they are unable to pay for bike repairs (ibid.).

Experts at focus groups in Estonia and France mentioned that the responsibility for health and safety measures usually falls on the employer. With platforms refusing to take on this role, or registering the workers as self-employed, this responsibility falls on the platform workers. Experts emphasised that platforms do not always provide the necessary incentive to their workers to prevent accidents, and that in general preventive measures are being overlooked. In the Estonian focus group, the issue of insurance was discussed at length. Estonia is a small country without large international insurance companies, and providing specific insurance for platform workers is too expensive for local insurance companies. A further complication is that insurance firms only allow employers to insure workers, but platforms are not necessarily employers, and neither do insurance products typically cover temporary, short-term assignments.

4.2.8 *In short: challenges related to the work dimension*

Of the three dimensions distinguished in the WES model, the work dimension is most strongly affected by technology or algorithms. These may radically reshape how work is allocated, organised, monitored and performed. In this regard, however, it is important to distinguish between completely new tasks that have been made possible through platforms, such as online micro-tasks, and those that existed before. In the latter case, the working conditions may not differ much from those in more traditional work environments, depending on the platform. The related physical and psychological risks are not necessarily very different, but rather are aggravated in the context of platform work. This can be attributed to the non-conventional work environment, the absence of an organisational structure, and the use of algorithmic management. Responsibility for health and safety often falls upon the platform workers themselves, who in addition use their own materials and equipment.

In this area, the allocation and organisation of work as well as surveillance, direction and performance appraisal, and the physical environment, emerge as the main challenges. Platform workers performing low-skilled on-location tasks face higher physical risks, while high-skilled work is associated with higher levels of autonomy and complexity and, for online work, with risks linked to excessive screen time. Whereas typically the employer is responsible for health and safety provision and providing the necessary equipment and materials, this is left to the platform worker, who executes tasks outside a conventional workplace. For these reasons, this challenge is labelled high and specific to platform work. Depending on the platform, platforms, clients or workers may allocate tasks and can determine the method, order and speed in which work should be done. Many platform workers are not 'their own boss', but instead fully depend on the tasks allocated to them, which they execute as instructed by the platform or client. This is problematic, especially with regard to the allocation of tasks, and is moreover an issue specific to platform work. For these reasons, this challenge is categorised as high. Autonomy in work organisation is a medium challenge, as it is linked to the complexity of the task at hand. Those performing more complex tasks will (necessarily) have more autonomy. The use of technology, apps and algorithms in surveillance, direction and performance appraisals is unique to platform work. This may, however, present major

challenges as platform workers are monitored continuously and receive online ratings or reviews that they often cannot counter. Such ratings nevertheless have a substantial impact on platform workers' future work opportunities. This challenge is also specific to platform work and categorised as high, notably as very little is known about the underlying algorithms platforms use (the 'black box'), which complicates any intervention by policymakers and other actors, such as inspectorates. Task complexity and emotional demands are not considered challenges. Although some platform workers do need to manage relationships with clients, challenges related to emotional demands appear to arise in individual cases rather than on a wider scale. Work intensity and speed pressure are minor issues that pertain in particular to some types of platform work.

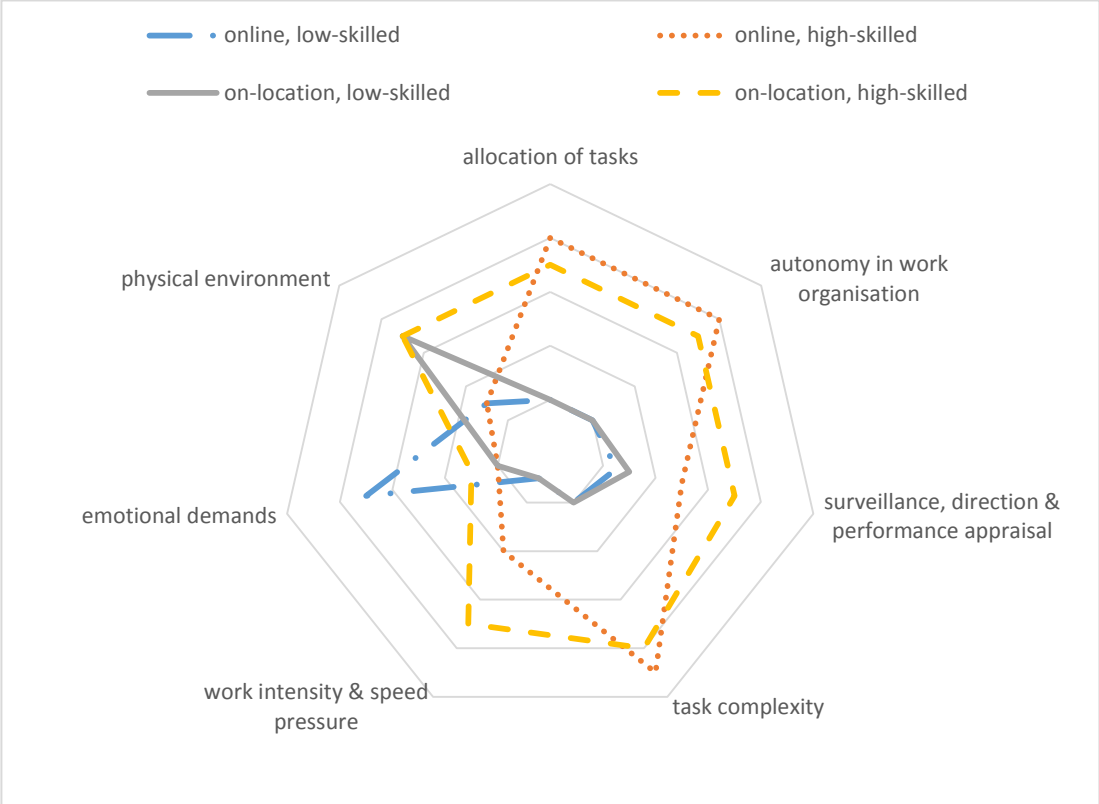
The expected evolution of these challenges is generally unclear because this depends on the types of platform work and which platforms will grow and the extent to which competition between platform workers will become more intense. This, however, also depends on the national and EU-level responses introduced. These are handled in subsequent sections.

Table 8: Summary table of challenges related to the work dimension

Indicator	Importance of challenge (high, medium, low, none)	Specificity of challenge (specific to platform work, common for non-standard work, general labour market)	(Most) Affected types of platform work (all types, online vs. on-location work, low- vs. high-skilled, client-, platform- or worker-determined)
Autonomy in the allocation of tasks	High	Specific to platform work	All types, though most problematic for: - platform- or client-determined work - low-skilled work
Autonomy in work organisation	Medium	General labour market	All types, though most problematic for: - low-skilled platform work
Surveillance, direction and performance appraisal	High	Specific to platform work	All types, however: - algorithmic surveillance and direction most prevalent with low-skilled platform work - rating systems are universal
Task complexity	None	General labour market	Low-skilled platform work
Work intensity and speed pressure	Low	General labour market	All types, but especially problematic for: - low-skilled platform work
Emotional demands	None	General labour market	On-location platform work where there is direct (face-to-face) contact with clients
Physical environment	High	Specific to platform work	All types, but especially problematic for: - on-location platform work

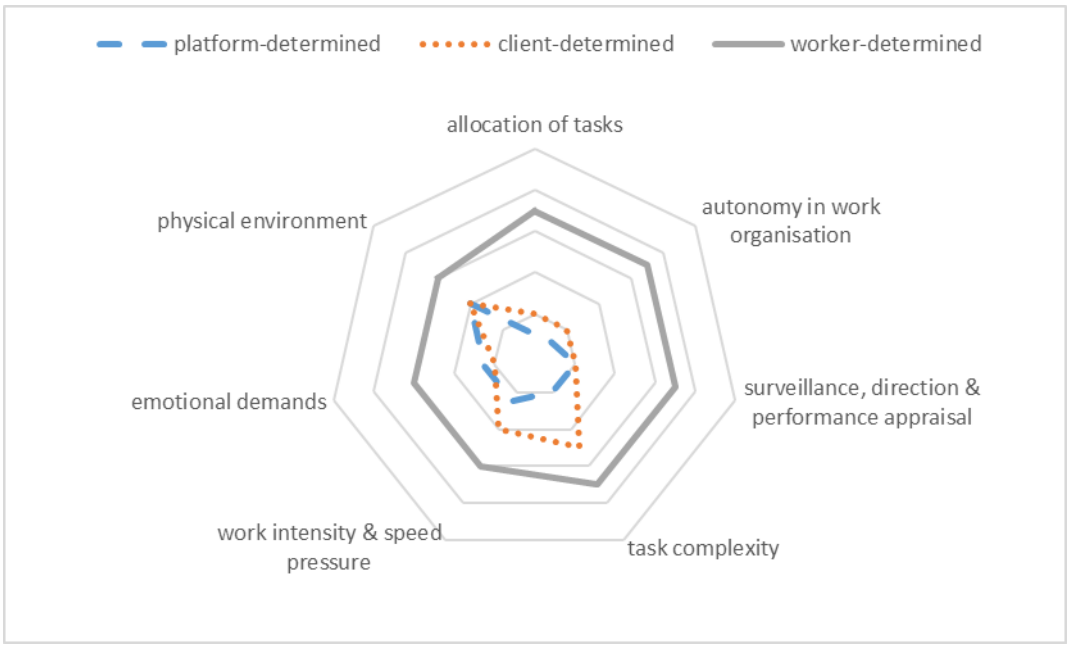
Source: authors' own elaboration, based on the literature consulted and the fieldwork performed in this study.

Figure 7: Stylised representation of work challenges for different types of platform work



Note: a higher score (= more on the outside of the spider chart) indicates a better situation regarding job quality. However, keep in mind that a final job quality score would be defined by the combination of and balance between multiple job characteristics.
Source: authors' own elaboration.

Figure 8: Stylised representation of work challenges for different types of platform work



Note: a higher score (= more on the outside of the spider chart) indicates a better situation regarding job quality. However, keep in mind that a final job quality score would be defined by the combination of and balance between multiple job characteristics.
Source: authors' own elaboration.

4.3 The employment dimension

The employment dimension encompasses **aspects relating to the formal context in which a platform worker performs tasks**. This includes the legal employment status, contract, social protection, and the composition of a worker's earnings, among other topics. Next to these legal aspects, the employment dimension also discusses work-related issues that directly affect a platform worker's personal life, such as working time, training or career opportunities. In relation to platform work, the determination of the employer and the termination of the relationship with the platform also have to be considered. The use of technology, apps or algorithms has implications for the employment dimension, though to a lesser extent than in the work dimension. Ratings and rankings, for example, may severely affect the earnings potential of platform workers. This is discussed in more detail below.

4.3.1 *Employment status*

The employment status or labour market status indicates the status of a person as either working in the framework of an employment relationship (employee) or working on their own behalf and for their own account (self-employed).[67] It refers non-exhaustively to the contractual aspect of employment in terms of the autonomy and the authority that workers have in their jobs, the duration and number of working hours, incorporating economic risk (European Commission, 2019). The distinction between the categories of self-employed and employee is generally based on subordination, whereas the concept of economic dependency is often used as a criterion for intermediate categories, such as dependent self-employed.

The employment status of platform workers is one of the most discussed topics in the public and policy debates on the platform economy in Europe, both at the Member State and EU levels. This interest is mirrored in both the academic and grey literature, with a large number of articles discussing the issue. There is a consensus in the literature and among the surveyed experts and stakeholders that the uncertainty on the employment status of platform workers is a **pressing issue** that is **expected to remain stable or increase, as platform work gains in importance**. In fact, based on available literature and expert inputs, the employment status of platform workers appears to be the **most important challenge** that needs to be addressed (Garben, 2019). This focus on the employment status follows from the notion that it determines, to a large extent, what **rights and obligations workers have**, for example concerning labour protection, social protection or taxation.[68] This applies to both **individual and collective rights**.

In the EU, platform workers typically do not have a separate status and, therefore, have to be classified under one of the employment statuses recognised in the country. This has proven difficult for a number of reasons. First, platform work is characterised by **complex employment relationships that involve multiple parties** (i.e. platform, client and potential additional actors, such as restaurants for food delivery riders) (Eurofound, 2018; Lenaerts et al., 2018). Platforms typically argue that they play the role of intermediary, matching supply and demand for specific services. Although such clauses are generally legally not enforceable, platforms often indicate explicitly in their **terms and conditions** that they are not the employers of the workers using the platform, often without specifying the employment status of the platform worker or by classifying them as self-employed. There are exceptions, for example platforms offering employee contracts or other types of contracts. But these are limited.

Another important complication as regards the employment status of platform workers is that it is **difficult to apply the principles laid down in labour law or case law** to

[67] Council of the European Union, Proposal for a Council Recommendation on access to social protection for workers and the self-employed, Article 9 (b), 15394/18, LIFE.1.C (10.12.2018).

[68] Taxation of platform work income was in fact indicated as the main challenge in the Danish focus group.

distinguish employees from the self-employed in the context of platform work. Platform work is blurring the boundaries between 'employee' and 'self-employed', which complicates the classification of workers into statuses and can lead to **misclassifications**.[69] In general, the self-employed do not have the same labour rights as employees. As explained in detail below, in some countries labour rights that are typically attributed to employees are extended to individuals who find themselves in the grey area between being self-employed or an employee, for example the French El Khomri Law, which grants the right to vocational training to self-employed platform workers. Some experts consulted for this study have indicated that it should be examined as to whether classification issues in platform work are part of a larger trend that is also found in other cases, and whether the uncertainty about the legal status is deliberately used to decrease labour costs or push responsibilities from one party to the other.

A related issue is that under certain circumstances, platform work may not be considered an **economic activity,** for example because of the low number of hours worked or the low income generated.[70] In such cases, platform workers do not necessarily have access to social protection through their platform work activities. However, this is mitigated by the fact that most platform workers have a main activity besides platform work through which workers have access to social protection (EU-OSHA, 2017; ILO, 2016; Eurofound, 2018a; Pesole et al., 2018). Nevertheless, this does mean that those who depend the most on platform work – i.e. those who do not have a main activity – are covered the least (see *infra*).

Against this background, platform workers are generally considered self-employed or independent contractors. Whereas this may certainly reflect the real employment relationship for some platform workers, for example on-location or online workers with differentiated skills providing expert services, others may find themselves in a grey zone (Eurofound, 2018). Platform workers doing low-skilled on-location tasks (e.g. transportation or household services) or who are active on platforms that exercise considerable control over the work allocation and work organisation, set the transaction price and have extensive surveillance and control mechanisms, are most likely to be misclassified. Furthermore, platforms such as Foodora who are active in several countries seem to adapt to the national legal and regulatory framework by, for example, only working with self-employed workers in one country while offering multiple options elsewhere. For these reasons, bogus self-employment is a much-discussed challenge for platform work. It was one of the main topics covered in the Slovenian focus group, for example.

Although, as indicated above, challenges related to workers' employment status are among the most salient issues, they are **not**, **however, specific to platform work**. In contrast, the increased flexibility and workers' autonomy, but also the facilitated forms of (extensive) control, made possible through digitalisation and technological change, have blurred the boundaries between different employment statuses more generally (De Groen et al., 2017a). Also, different types of employment relationships are found in other non-standard forms of work, and determining workers' employment status is not always straightforward (Vereycken and Lamberts, 2018). Given the current challenges, some platforms are believed to veer towards deliberate misclassification of platform workers. Indeed, this was suggested by one of the consulted experts in an interview. In many ways, platform work is seen as a test case, highlighting how changes in the world

[69] In France, for example, subordination is key to determining the employment status. Workers should be classified as employees when platforms have the power to direct, control and sanction. To be classified as self-employed, platform workers should be free to accept or refuse tasks, the platform should not be able to give directions or instructions, and the worker should receive no sanction even in case of misconduct. In the UK, the concept of economic dependency came into play in recent court cases (see following sections).

[70] This is the case in Belgium, when platform workers earn less than a specific cut-off level through an officially licensed platform.

of work put pressure on the existing regulatory and legal frameworks. For that reason, many have called for an update of national labour law (ibid). As will become clear, some countries have either attempted to regulate the conditions of the platform work indirectly by defining the status of platform work or by expanding the personal scope of national legislation. Portugal is one example.

4.3.2 *Determination of the employer in platform work*

Alongside the discussion on the employment status of platform workers, the **role of the platform** has been subject to debate. Platforms generally claim to be **intermediaries**, connecting workers to clients, or even **tech start-ups**, and often **explicitly refute the role of employer** in their terms and conditions (Kilhoffer et al., 2017). In several countries, for example Belgium, Bulgaria, Denmark, Finland, the Netherlands, Slovakia, Sweden and the UK, it has been debated whether Uber should be categorised as a taxi service or as another type of organisation. If classed as service providers themselves (as opposed to mere information society intermediary), the risk for platforms of being classified as 'employer' increases (while not being certain, and depending on the exact nature of their relationship with the platform workers). The unclear status of platforms has been identified as a **major challenge** by the experts and stakeholders consulted for this study as well as the literature. This issue is likely to become more severe as the platform economy continues its development. In most of the countries, platform businesses are not recognised as a separate business sector and/or represented in a separate employers' representative body. This issue is hardly discussed for other types of work; it is specific to platform work and hence categorised as a challenge of 'high' importance in this study.

The determination of the employer in platform work relationships is **difficult for a number of reasons**. The lack of available data on platform work and the high level of heterogeneity in the types of platform work and in the relationships between platforms, platform workers and clients all complicate the analysis of whether platform workers are employees with platforms as their employers. As for the employment status of platform workers, it is difficult to generalise conclusions about the role of the platform because of this heterogeneity, and a case-by-case assessment is needed. Related to this issue, the status of platforms is not legally defined, nor is the concept of employer in most EU Member States.

Where there is a legal definition, it tends to be linked to the concept of an employee or to the employment relationship (as explained by several of the experts consulted). In Slovakia, for example, an employer is a legal or natural person who employs at least one natural person in a labour-law relationship, and, if so stipulated by a special regulation, also in similar labour relations. **The determination of whether a platform is an employer is thus intertwined with the question of whether a platform worker is an employee**. In Germany, the concept of employer is primarily derived from that of employee. According to German case law, an employer is someone who employs at least one employee. Despite the link between the determination of the employer in platform work and the employment status of platform workers, the latter has received significantly more attention than the former, probably because of the strong connection to working conditions and social protection. Or, in other words, for platform workers it may be more important to understand whether they are employees or not than to identify their employer.

The determination of the employer in platform work relationships can present a challenge in any type of platform work, similar to the difficulties in determining the status of workers. However, the issue is mostly discussed for on-location platform work, notably transportation services, where there is **doubt over the status of platform workers and on which the debate on bogus self-employment has centred**. This topic has been somewhat less discussed for other types of on-location platform work, for example household or professional services, but could also be pertinent there. It has received even less attention for online workers. Nevertheless, the lack of clarity on the

employer in platform work is problematic because it creates confusion as to who workers can receive orders from, or contact when faced with an issue, and in general leaves platform workers in the dark about their own status and contracts.

To overcome these issues, Prassl and Risak (2016) suggest a functional concept of employer could be adopted, and identify five main functions that employers have: (i) inception and termination of the employment relationship, (ii) receiving labour and its fruits, (iii) providing work and pay, (iv) managing the enterprise-internal market, and (v) managing the enterprise-external market. Prassl and Risak (2016) explain that the contractual identification of an employer could be replaced by a functional conceptualisation that assesses whether the platform exercises the five functions. Taking Uber as an example, the authors find that although the platform's terms and conditions explicitly refute the role of employer, Uber does carry out the five functions mentioned above.

4.3.3 *Contracts: type of employment contract, contractual information provision and termination of the employment contract*

Along with the challenges to determine the employment status of platform workers and the employer, contracts have been much discussed in platform work. The **employment contract** lays out the employment relationship between an employer and an employee, making explicit the subordination of the employee to the employer's command or control (Eurofound, 2018). Contracts stipulate the duration of the relationship (e.g. permanent or temporary), working time (e.g. full-time or part-time) and other aspects. Traditionally, employment contracts were open-ended and full-time. **Non-standard contracts** do not conform to this traditional form, but rather include part-time, fixed-term, temporary, casual and seasonal work (Broughton et al., 2010). Non-standard contracts are common for non-standard forms of employment. Examples are zero-hour contracts, non-written contracts and voucher-based work.

Except for those platform workers who are genuinely self-employed, platform workers are often confronted with non-standard contracts. Most of them do not receive a formal contract but are instead referred to the terms and conditions stipulated by the platform, which workers have to accept. These terms and conditions, however, are often ambiguous. They may, for example, identify platform workers as self-employed and simultaneously have elements that are at odds with self-employment. AMT's terms and conditions, for example, state that there is no legal relationship between the platform worker and the platform, but that platform workers are not allowed to sub-contract tasks. Prassl (Prassl, 2013) refers to this as *'the contractual denial of employee or worker status'* and explains that platform workers are often expected to sign documentation that sets their status as self-employed. In addition, it has been noted that platforms change their terms and conditions without notice to the platform workers, or even with retroactive impact.[71] The terms and conditions may also have clauses that are not legally enforceable. This all runs against the principle of fair contracts, which have to be transparent, concise and available to workers, and reflect the genuine nature of the employment relationship (Graham et al., 2019). This issue applies in particular for platforms who exercise a lot of control over their workers.

Furthermore, platform workers typically have **no protection against the termination of their relationship** with the platform (Berg, 2016). Platforms can end relationships with platform workers by deactivating their account, often without giving workers prior notice or information as to why this decision was made. On some platforms, including Uber, dismissal is linked to performance; workers whose ratings are too low are no longer allowed to work through the platform. Platform workers are not protected when a platform ceases its activities, for example in case of insolvency (i.e. collective dismissal

[71] Examples can be found on faircrowdwork.com

of platform workers). This issue has been flagged in the literature and by the experts consulted in the study. On this note, it has to be recalled that platform workers usually bring their own equipment, which they have bought, and that some of them need specific licences in order to work. Uber drivers, for example, need a taxi licence in Ireland. Some platform workers thus run up significant costs to be able to perform platform work activities, but are not protected against termination of their relationship with the platform, that is, the equivalent of 'dismissal' in an employment relationship.

Another issue that requires attention is that according to the Transparent and predictable working conditions (TPWC) Directive, **workers have the right to be informed about their working conditions**, which should occur in a timely manner and in written format to which workers have easy access. In practice, platform workers may not receive much information when starting work. They are usually referred to a webpage, which may not be detailed or clear (note that the TPWC Directive does allow the provision of information by electronic means). Conditions such as the start or end date of the relationship or working times may not be explicit or very detailed. Platform workers typically acknowledge receipt of this information by ticking a box on the platform's website that states they accept the platform's terms and conditions.

4.3.4 *Social protection*

Social protection is understood as the coverage of risks and needs associated with unemployment, sickness and healthcare, old age, invalidity, parental responsibilities, loss of a spouse or parent, housing, and social exclusion. The social protection coverage of platform workers has received quite a lot of attention in the literature and debate, along with the challenges related to the workers' status. This social protection challenge has received significant attention from policymakers, social partners and other actors as well, not only in relation to platform work but also in the context of non-standard work more generally.

The literature and the experts consulted in this project have suggested that **platform workers tend to have less access to social protection** (De Stefano, 2016; ILO, 2016; Berg et al., 2018; OECD, 2018). This is attributed to the classification of platform workers as self-employed, their short work contracts, or even the fact that some platform work is not considered an economic activity ('not work') (ibid.).

Workers' access to social protection is partially linked to their employment status in the labour market (Forde et al., 2017). Social protection systems, however, were designed at a time when the traditional employment relationship with one employer and one employee was the norm and are hence tailored towards the model of a single, stable, full-time employment relationship (OECD, 2018). Other forms of work, in particular non-standard forms of work and self-employment, may not fit into these schemes so easily. As a result, these individuals are generally less protected and often responsible for their own insurance. Several experts consulted for this study have, therefore, pointed out that the challenge is not necessarily to improve the social protection of platform workers but rather to **improve social protection of the self-employed and non-standard workers in general**. This challenge is, therefore, clearly not specific to platform work and is associated with the challenge of the unclear employment status and work relationships in platform work.

Platform workers, being classified as self-employed, are typically less protected than employees in the EU (both statutory and effective access), though they may have access to non-contributory and some contributory social benefits. In terms of effective access, the self-employed face issues with eligibility conditions, for example under-insurance due to low minimum required incomes, short duration of benefits, waiting periods or possibilities for opt-out exemptions. In some countries, the self-employed are covered by the same social security scheme as employees, though not necessarily for all branches (e.g. Austria, Hungary, Italy, Slovakia, Slovenia and Sweden) (ESIP, 2019). Other countries have separate schemes for the self-employed (mandatory or voluntary),

granting access to some or all branches. One expert, however, rightfully pointed out that platform workers often do not register as self-employed, which implies that in practice they are not covered at all through their platform work.

Most platform workers have a main activity besides platform work, through which they have access to social protection (EU-OSHA, 2017; ILO, 2016; Eurofound, 2018a; Pesole et al., 2018). ILO (2016) argues that this indicates an inverse relationship between a platform worker's dependence on platform work and their social protection coverage: **those who depend the most on platform work are covered the least**. Those platform workers without labour market activities besides platform work face higher occupational risks, as this lack of social protection may encourage workers to continue working when sick (EU-OSHA, 2017b). In addition, there is the constant psychological burden for workers of 'not falling sick' because they do not have access to societal protection (EU-OSHA, 2017b). This is especially problematic as this group of platform workers is the most vulnerable. This group is likely to have lower labour market participation overall or combine platform work with other forms of non-standard work. These platform workers may not fully realise the consequences of not having access to social security, nor be aware of their rights and obligations. With platform work becoming more popular, experts believe that the number of platform workers whose only source of income is platform work will grow, thus aggravating this challenge.

In this context, access to social protection and who pays social security contributions are concerns that have been raised by platform workers, social partners, policymakers and academic experts, though these challenges are part of a broader issue affecting the self-employed and those in non-standard forms of work. Platforms seem less concerned about this issue, arguing that platform workers as self-employed should take on their responsibilities. On top of the issues described above, policymakers and social partners have noted that platform work may contribute to the underfunding of social security schemes or to shifting the burden of funding social protections from the employer and worker to only the worker (consulted experts and stakeholders). In the French focus group, there was a debate about whether or not platforms could or should contribute to social protection. While a representative of a smaller platform argued that platforms' business model is not suited to this and that they do not make enough revenue to contribute, especially in the case of smaller platforms, other participants referred to platforms' responsibilities in this area. Some platform workers indicate that they are worried about social security (accident insurance in particular), while others are less worried because they can fall back on an outside activity (Eurofound, 2018). The focus group discussion in the Netherlands, for example, showed that platform workers are most concerned about their earnings and would rather opt for higher remuneration and less social protection than vice versa.

4.3.5 *Earnings: price-setting, wages and additional fees*

The (additional) income that can be earned is one of the main reasons why platform workers engage in this type of activity. The **potential earnings** and **payment conditions** are, therefore, key elements that platform workers consider when deciding which platforms to offer their services upon (Eurofound, 2018). Earnings, moreover, are part of almost every job quality index (Eurofound, 2017b). Paid work provides people with the means for material needs and decent living conditions, as well as the possibility for personal development and a place in society. The level of remuneration influences the impact of work on the living standards of the worker and is formed by a core wage that can be increased by additional fees.[72]

In addition to the level of pay, other features concerning platform work warrant further review: the speed and periodicity of payments, wage setting and negotiations, fees

[72] Examples are extra pay for overtime, Sunday work, dangerous working conditions, performance-related pay (e.g. based on individual performance, company shares, profit-sharing schemes, etc.).

withheld by the platform, tips received from clients, costs related to platform tasks, unpaid time, surge pricing and similar issues have been discussed in the literature and were raised by experts, stakeholders and platform workers consulted in the study. Issues related to earnings in platform work have been identified as a challenge that affects all types of platform work, but particularly those workers who cannot set their own prices (mostly those engaged in low-skilled online or on-location work). These issues are expected to remain stable or grow in the future, as flagged by the surveyed national experts. Concerns about earnings and payment conditions in platform work have been voiced by trade unions and platform workers in particular (Daugareilh et al., 2019; Huws et al., 2019). Other actors seem less concerned about earnings, typically arguing that platform work is merely a secondary source of income.

To gain further insight into the challenges related to earnings in platform work, the **level of remuneration** is examined first. A recent survey by Pesole et al. (2018) finds that for 40% of platform workers the share of income obtained through platform work is less than 25% of their total income; and for 30% the share of income gained from platform work falls between 25% and 50% of the total income.[73] This means that for 30% of platform workers the income obtained through platform work makes up more than 50% of their total income. A significant group of platform workers thus strongly depends on the income gained through platform work.[74] Platform workers typically do not have access to additional fees (such as additional pay for night work).

These results corroborate previous surveys and studies, though reliance on platform income appeared to differ significantly across countries (Berg, 2016; Huws et al., 2016; Ilsøe and Madsen, 2018). A study by Smith (2016) concludes that lower income earners are more likely to do platform work and that 56% of platform workers state that the income from platform work is essential to them. The experts and stakeholders consulted for this project have emphasised that special attention needs to be paid to the **group of platform workers who depend on this income**. Several experts have indicated that this group is likely to grow as the platform economy proliferates. In general, however, there is only scarce evidence about what platform workers earn. This was pointed out by several of the consulted experts (Bulgaria, Greece, and Estonia). In France, however, platforms have to report what they pay to workers.

Most platform workers do not earn sufficient income through their platform work activities to make a living (Eurofound, 2018). **Low pay** is an initial factor that may cause this issue, and for several reasons: platform workers are **paid by task rather than by hour**; work is broken down into **small tasks** (piecework); there is **high competition among platform workers** with not always enough tasks offered; platform work may not fall under **minimum wage** settings;[75] and platform workers may lack **bargaining power** (Eurofound, 2018; ETUI, 2018). That platform workers are paid by task rather than by hour was flagged as a major challenge in the French focus group. It was noted that this may lead platform workers to take unnecessary risks in an attempt to maximise the number of tasks performed per hour. Remuneration for online micro-work in particular is reported to be extremely low, sometimes just a few cents per task done

[73] Since this is measured as a percentage of the total personal income, a risk for overestimation of the importance of platform work as a source of overall income exists. The reason for a potential overestimation is that many student workers without any other income and depending on their parents, use platform work to earn extra pocket money (Pesole et al., 2018). These workers are included in the calculations.

[74] Similarly, Hall and Krueger (2016) report that for 24% of the Uber drivers in the US, earnings gained through Uber are the only source of income.

[75] National minimum wages may only apply to employees. In countries without a national minimum wage (e.g. Austria), minimum wages are usually set in collective agreements. However, the personal scope of collective agreements is typically limited to employees (though there are exceptions, e.g. collective agreements extend to all workers in the Norwegian cleaning sector, including platform workers). The enforcement of the minimum wage is difficult due to difficulties in the classification of platform workers into employee or self-employed and as supervisory authorities may have too little staff to follow up.

(Berg et al., 2018). Larger-scale tasks, performed online or on-location, generally have high remuneration because they often require specific skills at market prices (Eurofound, 2018). As a result, platform workers could be earning well below the national or sectoral minimum wage (mentioned by experts from Estonia, Germany, Latvia, Poland, Slovenia and Spain). Some platform workers depend on the tips they receive.

Sometimes platform workers have to **pay a fee to the platform**.[76] Some platforms charge a fee upon registration, but it seems more common for a fee to be charged on each transaction (a certain share or a fixed amount) (Leimeister et al., 2016). This is remarkable, given the ILO standards on charging fees to workers for intermediation. ILO Conventions 96 and 181 pertain to employment agencies. Both explicitly contain articles stating that such agencies or intermediaries cannot charge any fees or costs to workers (Lenaerts et al., 2017). When asked about these fees, which can be 10% per transaction, some workers indicate that they find them too high in comparison with the services that the platform offers (De Groen et al., 2018a; Lenaerts, 2018), especially when the income gained per transaction is relatively low.

Platform workers are typically expected to cover **costs associated with platform work**, such as gas, insurance and other costs, and to bring their own materials and equipment. These costs have to be covered by the income earned through platform activities. Workers who are able to set their own prices take these costs into account when determining the price (Lenaerts, 2018). This issue was pointed out in the literature. It was also brought up in interviews with trade unions, workers and other stakeholders, discussed during focus groups and suggested by a few national experts in their questionnaires, for example in Belgium and Italy.

Box 2: Price setting in platform work

With regard to earnings in the platform economy, an issue that warrants further attention is **price setting**: are platform workers able to set their own price, or does this fall on the platform or client? On those platforms where the platform or client allocates the work, have significant control over the organisation of work, and exercise surveillance and direction upon the worker, platform workers in general cannot set their own prices. On the platforms where the platform worker can decide on the work allocation and work organisation, and there is less surveillance and direction, workers typically can determine their own prices.

Importantly, the **first type of platform** is common among low-skilled on-location and online platform work (notably performing transportation services), and particularly the group of workers engaged in low-skilled on-location work receives significant attention in (Western) Europe. It is this group for which there is most doubt about the nature of the employment relationship with the platform (are these workers self-employed or in fact working in subordination to the platform?). The notion that these platform workers cannot set their own prices could be interpreted as another sign that these platform workers may not be self-employed, as the self-employed typically can set their own prices. It also raises the question as to what extent these workers can bargain for the price.

The **second group of platforms** allow workers to set their own price more frequently, for example platforms intermediating on-location work based on (moderately) differentiated skills such as household or professional services or intermediating online work requesting differentiated skills. Remuneration per task is significantly higher for these workers, as they can account for their skills and time, but also for fees paid to the platform and costs incurred with regard to materials and equipment needed to do the work.

When platforms set prices, this can take many forms, such as a fixed amount per task (with potential top-ups for working during specific times or performance incentives), standard or

[76] There has been some discussion on this especially in relation to temporary agency work, as temporary work agencies are not allowed to charge such fees to their workers but rather ask clients to pay (Lenaerts et al., 2018). According to Article 7 of the ILO Convention 181 which applies to private employment agencies, private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers. ILO Convention 96, on fee-charging employment agencies – abolishes "fee-charging employment agencies conducted with a view to profit".

minimum prices for a specific task (e.g. graphic design or in contest-based work) (Eurofound, 2018). Workers on such platforms additionally face changes in earnings due to changes in the prices set by the platforms, the ratings received, next to other factors such as fluctuations in the hours worked, and over which platform workers often have no control. Many platforms use dynamic pricing schemes (De Groen and Maselli, 2016; Eurofound, 2018). Uber and Lyft, for example, have a system of 'surge pricing' that encourages workers to be available during peak hours; Deliveroo and Foodora have similar schemes to stimulate bikers to work during busy lunch and dinner shifts. There has been some discussion on dynamic pricing and workers have been trying to game the system.

Regarding workers' sense of being fairly paid, professional online workers agree that they receive fair pay for their work more so than non-professional online workers and on-location workers in transportation and household services (Pesole et al. 2018). This can potentially be attributed to the question of whether there is competition between platform workers on prices or on the quality of the tasks delivered. An interesting example here is the Danish cleaning platform Hilfr, whose workers can be covered by a collective agreement that sets a minimum wage per task. Workers can decide for themselves whether they take part in this collective agreement, but the platform encourages this to guarantee fair wages (interview with platform representative).

In addition to low remuneration, **the lack of income security** is a significant stressor for platform workers. The financial security of workers is strongly related to their dependence on platform work. Workers with a stable job outside the platform economy have higher income security than those who rely on their platform earnings. Some workers face insecurity as regards the number of hours they can work through the platform, which may result in low earnings and limited income security (pointed out by a Romanian expert and discussed in the section on working time). The frequent changes in the prices set by the platforms and in the platforms' business models contribute to this income uncertainty.

Along with the level of remuneration, platform workers also face issues related to **non-payment** and **unpaid time**. Platform workers are often eager to receive their payment soon after completing the task. Typically, the payment runs from the client to the platform worker through the platform. Platforms can withhold (part of) the payment in case of a complaint or poor rating by the client. Platform workers may have few opportunities for recourse in such cases. Platform workers additionally spend time on the platform for which they are not paid, for example, waiting time and time spent looking for new tasks (Berg, 2016; Eurofound, 2018). Similar issues have been noted for other types of non-standard work as well. Casual work, for example, is characterised by limited and occasional working hours, resulting in income insecurity and low wages (Eurofound, 2018a).

4.3.6 *Working time*

One of the features that makes platform work attractive for workers is the **flexibility** platform work offers. Workers have the flexibility **to decide whether they want to work or not** and to **work at the times that best suit them**, allowing workers to ensure that the work fits into their schedule. This flexibility provides workers with autonomy that they may not have in other jobs and is therefore one of the main reasons to engage in platform work (Berg, 2016; Pesole et al., 2018). Most platform workers **combine platform work with another job or care tasks** and may find it difficult to work during regular hours or at fixed times. Many workers need this flexibility to ensure that platform work fits into their schedule. Other workers choose platform work because they **prefer to work from home or** because they consider it **paid leisure time** (Berg, 2016). Some workers even do platform tasks during their main paid job (Berg, 2016). What the different motivations to engage in platform work have in common is that workers want to work when it suits them (Pesole et al., 2018).

Research on platform workers' working times suggests that most do not work regularly on platforms and do it as a part-time activity (Balaram et al., 2017; Brawley and Pury,

2016; Daugareilh et al., 2019). According to Pesole et al. (2018), platform workers have low labour market participation degrees. Over 40% of the workers surveyed work less than 10 hours per week through platforms. 75% of them works less than 30 hours per week through platforms (ibid.). Other studies have attained similar findings. Combining the hours of platform and regular work, around 30% of platform workers work less than 10 hours per week in total, and over 50% of the workers work less than 30 hours per week (Pesole et al., 2018). This suggests that platform work may very well be a second job, but one that is potentially **combined with other forms of precarious work**, leaving workers in a difficult position.[77] Next to this group, there is a small but significant group of platform workers (>5%) that report working over 60 hours per week on platforms (Pesole et al., 2018). These workers are fully dependent on platform work.

The **challenges with regard to working times** in platform work are manifold. In practice, the flexibility in being able to determine whether, when and how long to work may be much more limited than expected, and platform workers are confronted with unstable working hours as these are largely dictated by demand. Working time challenges could pertain to all forms of platform work but seem particularly relevant for on-location workers and for those active on platforms determined by the client or the platforms themselves. Workers involved in worker-initiated platform work report experiencing less problems with working time flexibility demanded by the platform and higher levels of planning autonomy (i.e. being able to control working times, work schedule and when to take breaks or leave).

Depending on the type of work, various **elements push platform workers to longer working hours**. For online workers, for example, the large competition pushes down wages, creating the need for longer working hours to earn a certain amount (ILO, 2016). The same accounts for platform workers in transportation, where earnings fluctuate depending on the supply and demand of drivers (Chen et al., 2015; De Groen and Maselli, 2016; Horton and Zeckhauser, 2010; Wilde, 2016). Jiang et al. (2015) further describe how platform workers are sometimes unable to stop working, even though they have achieved their preferred number of working hours, because of an unpredictable overload of work and the pressure to remain available. On the other hand, some platforms, for example Uber, allow workers to announce the last task of their 'shift', to match them up with a client whose location is close to or on the worker's way home. The long and unpredictable working hours in platform work raise platform workers' probability of suffering from mental health problems (Cottini and Lucifora, 2010).

While a small group of platform workers works a (very) high number of hours, **many workers indicate they would like to work more** (Berg et al., 2018; Eurofound, 2018). Platform workers on food delivery platforms who have to register for 'shifts' have especially claimed that the algorithm distributes shifts rather unequally among the workers, with some workers getting a lot of hours and others very few, without any explanation as to why this is the case (Eurofound, 2018; Lenaerts, 2018). To receive sufficient paid tasks, many platform workers indicate having to be on standby and reachable at all times (Berg et al., 2018; Eurofound, 2018). On the same note, what platform workers in food delivery spend to travel to the meet-up points where they wait for tasks to come in is typically not remunerated (ibid). This implies that many workers report long working hours and that **not all time spent on the platform is paid time**. This issue was mentioned explicitly in the focus group held in Slovenia. The interconnectedness of low pay and long working hours was seen as a challenge by the

[77] This discussion raises the question as to whether platform work results in more labour market inclusion. Pesole et al. (2018) find that platform workers are more likely to have a lower degree of inclusion in the traditional labour market. Platforms are thus not facilitating labour market inclusion in the traditional economy, but rather create a growing division in the labour market between a core group of workers with decent working and employment conditions and a newly arising, growing proportion of workers with questionable contractual agreements.

Slovenian focus group participants: low pay forces platform workers to work very long hours to obtain a sustainable income.

From a legal point of view, it remains an open question as to whether the time online waiting for a task is also considered working time, as is the case for other forms of work, for example hospital staff available on call. Related to this, being classified as self-employed, platform workers run the risk of not being covered by national legislation and regulation on working time if this is only applicable to employees (e.g. paid public holidays, minimum resting time). The need to be constantly available affects workers' work-life balance, hampering workers' ability to schedule or enjoy their leisure time (European Commission, 2015; Huws, 2016; Martin et al., 2016; Smith and Leberstein, 2015). Schörpf et al. (2017) finds that platform workers worry that temporary unavailability will cause job loss and damage their online reputation, affecting future opportunities.

Platform workers' autonomy over **choosing when to work** could be limited by several characteristics of the platform. Most importantly, platforms need to **guarantee the availability of workers for clients**, especially in the case of on-location work or for those types of work where the platform or client selects a worker (platform- or client-determined work) (Eurofound, 2018). Some platforms, therefore, impose a **minimum number of hours for workers** to be active on the platform, which sometimes have to be fulfilled **during specific time slots**. Workers who are less active are requested by the platform to explain why or even removed from the platform if this inactivity persists. Other platforms steer workers towards the most convenient working hours through **bonus systems** such as surge pricing on passenger transportation platforms or increased prices per ride on food delivery platforms, or because a **lack of demand** means that there is little or no money to earn at other times (Smith and Leberstein, 2015). Lehdonvirta (2018) reports that a lack of available work is not necessarily only due to a lack of demand, but also depends on how platforms allocate work (e.g. maximum earnings and competition).

On-location workers in particular indicate less autonomy over whether, when and how much to work, compared to online workers (Pesole et al., 2018). There are plenty of examples of food delivery riders who prefer other working hours but are motivated to be available for work and to work evenings and weekends because there are fewer tasks at other times (Eurofound, 2018). For these platform workers, the **flexibility of working time loses its meaning**, and this issue is aggravated for workers who **depend on the income gained through platform work** (Berg, 2016; Lehdonvirta, 2018; Standing, 2015). Non-professional online workers, such as clickworkers, are perceived to have the highest degree of autonomy (Pesole et al., 2018). This is confirmed by Lehdonvirta (2018), based on interviews with platform representatives and workers of three platforms intermediating online tasks. Lehdonvirta (2018) finds that workers are formally free to set their own working times and generally could determine when and how much they work and how to divide their time across tasks. Structural constraints such as the availability of work and workers' dependency on the income gained, however, do matter. Workers who depend on their platform work income reported being on call continuously.

Since the business model of platforms is to fulfil ad hoc requests of clients, platform work is typically associated with **atypical working hours** (e.g. working at night, during weekends and on holidays), **unstable and unpredictable work schedules** (e.g. working during different hours every day or week), and **a high demand of availability and flexibility towards the platform** (Forde et al., 2017). All these features can be problematic from a job quality perspective (Széker et al., 2017). As regards the atypical working times, however, platform workers usually do not find this problematic and most workers are satisfied with their work-life balance (Eurofound, 2018). These observations from the literature were confirmed in the fieldwork conducted for this study, for example in expert interviews and the focus group in the Netherlands. It could be explored to see

what the added value of the TPWC Directive would bring as regards the predictability of work schedules (see *infra*).

Regarding working times, there are **parallels between platform work and other non-standard forms of work**. Workers in casual jobs, for example, report combining multiple jobs at the same time, which leads to long working hours and has a negative impact on their work-life balance (Eurofound, 2017a). Workers in portfolio work and in ICT-based mobile work are also faced with excessively long working hours, irregular and atypical working hours and the blurring of boundaries between work and private life (ibid.). The self-employed may face similar issues because of competition and income security.

4.3.7 *Career opportunities*

Career opportunities refer to workers' perceptions of whether they can **make a career of their work or use it to advance other career paths** (Eurofound, 2017b). Career opportunities are generally not considered a challenge in the context of platform work. Most platform workers consider platform work as a secondary job, a means to supplement their main income rather than a long-term commitment or a viable or desirable career path (Eurofound, 2018). Neither does platform work generally offer many opportunities for career progression. Other new forms of work, such as interim management, casual work, voucher-based work and portfolio work have also been associated with limited career opportunities. Platform workers, however, do not always see this lack of career opportunities **as a downside or reason not to engage in platform work**, as they might for other forms of work. Career opportunities are not identified as an issue in the literature, nor by the experts consulted in the study. This may change in the future if platform work continues to grow and attract more workers who are willing to do it as a main job.

However, there are differences depending on the **type of platform work**. Workers performing low-skilled repetitive tasks assigned to them by the platform or client, regardless of whether these are set online or on-location, seem in particular to have no or limited opportunities for career progression. In contrast, platform workers able to select their tasks and set their own prices have more opportunities to use platform work as a means to build up a portfolio or clientele. This holds for professional work based on differentiated skills carried out on-location and online work.

For platform workers engaged in particular in activities using undifferentiated skills, platform work does not appear to offer interesting or viable career prospects. Because of the nature of their tasks, these workers generally cannot develop their skills or learn new things. For this reason, the simple fact of working on the platform, for example during a period of unemployment or while studying, is seen as the only added value in the search for other work (Eurofound, 2018). In a series of interviews, some of these platform workers indicated that they kept secret the fact that they do this type of work, and do not consider mentioning it on their CV or to potential employers (ibid.). This point was raised in the literature and underscored by Latvian and Norwegian experts consulted for this study, for example.

Workers engaged in high-skilled platform work activities, on-location or online, can use platform work to try out an activity, learn new skills or improve existing skills, build a portfolio, or develop their clientele (Eurofound, 2018). For workers who particularly want to start a business, some types of platform work may serve as a stepping stone. An interesting case to mention in this regard is the Belgian legal framework, which allows platform workers to earn up to a certain amount (EUR 6 130 per year in 2019) through officially registered platforms, without the obligation to register as self-employed and without having to pay taxes or social security contributions (Lenaerts, 2018). When platform workers earn more than this amount, they are obliged to register as self-employed. One of the motivations behind this framework is to encourage **entrepreneurship** by allowing workers to try out an activity or launch their own

business without having to go through all the administrative or formal steps involved beforehand. Lenaerts (2018) finds that some workers do use platform work as a springboard to starting their own business. Next to these cases, platform work could also be a stepping stone for the unemployed, who can enter into the labour market through platform work, or for example for newcomers in the country without employment, as mentioned in the Danish focus group.

When platform workers are unable to select the tasks they would like to do and are instead assigned a task by the platform or client, they cannot pick those tasks that would be most beneficial for them in terms of skills development or career opportunities (Eurofound, 2018). This is different for those active on platforms where the work is worker-initiated. These workers are more likely to see platform work as a facilitator for a career change or to develop new skills they can benefit from in future jobs (ibid.). Online specialist workers, such as graphic designers, find that the contest work on platforms enriches their portfolio, and hopefully helps them find a more stable job (Eurofound, 2018).

4.3.8 *Training and skills*

Platform work is sometimes described as a way to **effectively match skills with tasks**, with platforms taking up the roles of intermediaries (Eurofound, 2018). Most platform workers, however, are over-qualified for the type of work they perform through online platforms and indicate that there are few opportunities to learn or develop skills (Kässi and Lehdonvirta, 2018; Larke et al., 2019).[78] Workers engaged in **low-skilled platform work**, online or on-location in particular report a mismatch between the skills workers need and the skills they have, which may lead to lower commitment and job satisfaction (Okay-Somerville and Scholarios, 2013). In contrast, those involved in **activities requiring differentiated skills**, on-location or online, generally use a wider set of skills and have more opportunities for skill development (Eurofound, 2018). For platform workers engaged in activities with undifferentiated skill needs, platform work instead appears to mainly serve as a second source of income, which is not necessarily related to their main activity and does not present learning opportunities (ibid.). These observations were confirmed in the fieldwork for this study.

The skills that workers apply during platform work activities **depend** fully **on the specific task the worker does**. Kässi and Lehdonvirta (2018) identify six skills groups that are common in platform work: software development and technology; creative and multimedia; clerical and data entry; writing and translation; sales and marketing support; and professional services. Besides the skills required for performing the actual tasks, platform workers also develop skills related to the use of the platform, such as navigating on the platform and language skills, and knowledge related to participating in the labour market as a self-employed worker, including building a reputation, client retention, and completing tax returns (Larke et al., 2019).

With regard to skills, it is important to point out that not all platforms verify the qualifications or skills workers have. On many platforms, anyone could register and claim to be able to execute the work. This is potentially problematic for on-location work, when the task can lead to dangerous situations if not performed well (e.g. electricity work). Platform workers themselves have put forward this issue (Lenaerts, 2018). Other platforms have basic or more advanced application procedures, which involve interviews or requiring workers to provide a CV or certificates showing they can execute a task. Mechanisms to identify and select candidate platform workers again provide an

[78] Platform workers participating in the focus group discussion held in Denmark stated that platform work in their country is concentrated in those sectors that require unskilled work, rather than in sectors such as manufacturing where there necessarily has to be a stronger link between worker and employer and where more skilled workers are needed with longer training. This is an interesting observation, which appears to hold for several countries.

indication of the extent to which a platform exercises control over a platform worker. Overall, however, the recruitment and qualification processes and procedures used by platforms are not really considered a challenge in the literature or by the experts and stakeholders consulted.

Training opportunities appear to be very limited in the platform economy. Workers are seen as 'self-investing units of human capital' that bear the responsibility to arrange training and ensure their skills remain relevant (Larke et al., 2019). This holds especially for the self-employed. Although the experts consulted in this study emphasised that from a legal point of view there are no impediments to platform workers accessing training, in practice there are several issues that may hamper their participation.

As platform workers are constantly competing against each other, the individual investment in training is **costly**. In an interview, a union representative described this issue, saying: '*We cannot expect an Uber driver to take two weeks with no income to go on a training course. So how can we ensure that there is a universal access to and affordability of re- and upskilling?*' As re- and upskilling of workers is imperative to their employability, the trade union representative underlined the need for universal access to and affordability of training (interview with trade union representative). The issue that training may be too costly for individual workers was also put forward by several national experts, including in Ireland and Italy.

Platforms, however, are generally not eager to provide training for their platform workers, arguing that this may complicate their role as intermediaries and lead to a re-classification of their employment relationship into an employer-employee relationship.[79] **Training organised or paid for by the platform is rare**. The training that is provided often focuses on two topics: (i) the use of the platform; and (ii) basic safety provisions (De Groen et al., 2018a; EU-OSHA, 2017). This information is usually made available on the platform's website. Cleaning platform Hilfr, for example, offers no professional training but does offer several guides for workers on how to clean. In an interview, the platform explains that *'we try to find an alignment of expectations between the ones buying the cleaning and the ones doing it. But when people book via our page, they know that they don't get a professional cleaner'* (interview with platform representative). Other platforms, especially those intermediating on-location work, follow similar approaches. There are exceptions, though. The platforms Heetch and Frizbiz, for example, collaborate with external organisations and training centres to provide training for their workers (Eurofound, 2018).

The provision of training - or lack thereof - is an **indication of a company's investment in its workers**, offering opportunities to grow in their position or expand their career options (Lamberts et al., 2016). A lack of training opportunities has been noted for types of **non-standard forms of work**, such as voucher-based work, portfolio work and casual work (Eurofound, 2017a). Temporary agency workers legally have similar access to training as employees but may find it difficult to get access any. To overcome this issue, social partners have put in place several bipartite training funds. Such efforts are currently not present in the context of platform work.

Although there is a mismatch between the skills acquired by platform workers and those required to execute the tasks, and access to training for platform workers is very limited, this topic has received little attention from most stakeholders, with the exception of trade unions. As a result, it seems unlikely that there will be major changes in this area in the near future. Several experts have noted that the lack of access to training is part of a larger issue in their country, as few training opportunities are available in the labour market in general.

[79] That being said, a national expert consulted as part of this study noted that in Norway, even within those platforms that hire workers as employees, provision of training is very low.

4.3.9 *In short: challenges related to the employment dimension*

As the employment dimension of the WES model focuses on aspects related to the formal context in which a worker performs tasks, several of the issues discussed above are not specific to platform work but are common for non-standard forms of work or for those who are self-employed. Nevertheless, a number of these challenges are intensified in the context of platform work. This can be attributed to the use of algorithms, the flexible nature of the work in terms of time and space, and the complex relationships between the multiple parties involved. This is shown in Table 9, Figure 9 and Figure 10.

The key challenge that needs to be addressed in this area is the employment status of platform workers, and it is this issue that appears to dominate the current debate on platform work. For that reason, this challenge is labelled 'high' in this study. Social protection has been identified as a linked challenge too, though related issues emerge for other non-standard forms of work and the self-employed more generally. This is a 'medium' challenge, as the statutory and effective access to social protection are not fully linked to employment status and the former does not necessarily pose major issues from a legal point of view. Concerns have been raised over other challenges, such as the determination of the employer and contractual issues, but these are somewhat less discussed in the literature. Nevertheless, both issues arise for platform work specifically and were flagged by consulted experts and stakeholders as major challenges. Both are therefore classified as challenges of high importance in this study.

More specifically, platform workers typically do not have a separate employment status and are commonly classified as self-employed, as per the platform's terms and conditions, which tend to be ambiguous. This may lead to misclassifications and cause confusion about workers' access to social protection and uncertainty about their obligations and rights. Platform workers do not always receive a formal contract and may not be protected from unfair (individual or collective) 'dismissal' without prior notice. Although the legal discussion on the employment status has focused on the dichotomy between employee and self-employed, many platform workers find themselves in other groups in practice (e.g. occasional work). These issues are relevant for all types of platform work but are most pronounced in cases where the platform exercises significant control over the allocation and organisation of work and uses extensive surveillance mechanisms. The literature and consulted experts confirm that especially low-skilled on-location and online work is characterised by such platforms.

Career opportunities are not generally considered a challenge to platform work. Platform work does not emerge as a viable career path, nor does it offer many opportunities for career development outside of platform work. Platform workers appear to have little or no access to training opportunities, which is seen as an issue notably by trade unions. Many platform workers are overqualified or wrongly qualified for their tasks. For both career opportunities and training and skills, however, there are considerable differences between platform workers using differentiated or undifferentiated skills in their work. For the first group, there are a lot more opportunities to apply or develop their skills and to use platform work as a springboard. Similarly, workers, especially those workers who are able to choose their own tasks and set their own prices, can benefit from these opportunities (typically workers with differentiated skills can use platform work to build up a portfolio and establish their own clientele).

The platform workers themselves are concerned about earnings and working-time issues, much more so than about training or career development opportunities. With regard to working times, platform workers indicate that they struggle to get enough hours of work to earn sufficient income; or that may be pushed to work long hours or be available for typically unpaid (standby) work. Having to work atypical hours is not seen as a concern. Platform workers are usually satisfied with their work-life balance. As for earnings, the main complication is that platform workers are paid by task rather than by hour, and that those who depend on the income obtained through platform work are especially at risk.

As was the case for the work dimension, it is very difficult to indicate the expected evolution of the challenges, as this has not been discussed much in the literature, and experts' views do not necessarily align. The evolution, moreover, hinges on the types of platform work and platforms that will develop most strongly. It also depends on the responses introduced. Some challenges are connected. For example, there is a link between employment status and social protection. The expected development of a certain challenge thus depends on what is happening in other areas.

Table 9: Summary table of challenges related to the employment dimension

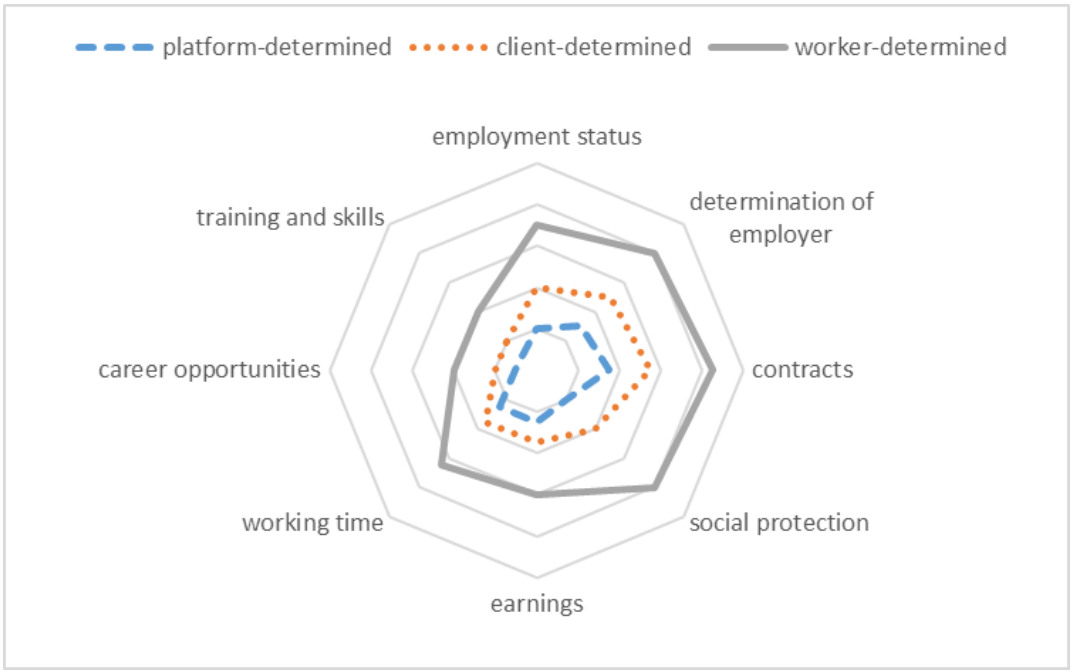
Indicator	Importance of challenge (high, medium, low, none)	Specificity of the challenge (specific to platform work, common for non-standard work, general labour market)	(Most) Affected types of platform work (all types, online vs. on-location work, low- vs. high-skilled, client-, platform- or worker-determined)
Employment status	High	Common for non-standard work	All types, though most problematic for: - platform workers with little autonomy who are under strong surveillance and direction by the platform and depend on platform work (typically low-skilled on-location platform work)
Determination of employer	High	Specific to platform work	All types, though most problematic for: - platform workers with little autonomy who are under strong surveillance and direction by the platform and depend on platform work (typically those in low-skilled platform work)
Contracts	High	Specific to platform work	All types, though dependent on the specific practices of the platform
Social protection	Medium	Common for non-standard work	All types, though dependent on the platform worker's employment status
Earnings	Medium	Common for non-standard work	All types, but especially problematic for: - platform workers who cannot set their own prices
Working time	Medium	Common for non-standard work	All types, but especially problematic for: - platform workers active on platforms where the platform or client set times (mostly on-location work, e.g. delivery riders with 'shifts', cleaners need to be available when the client is home)
Career opportunities	None	Common for non-standard work	Low-skilled platform work
Training and skills	Low	Common for non-standard work	For training: all types For skills: low-skilled platform work

Source: authors' own elaboration, based on the literature consulted and the fieldwork performed in this study.

Figure 9: Stylised representation of employment challenges for different types of platform work

Note: a higher score (= more on the outside of the spider chart) indicates a better situation regarding job quality. However, keep in mind that a final job quality score would be defined by the combination of and balance between multiple job characteristics.
Source: authors' own elaboration.

Figure 10: Stylised representation of employment challenges for different types of platform work



Note: a higher score (= more on the outside of the spider chart) indicates a better situation regarding job quality. However, keep in mind that a final job quality score would be defined by the combination of and balance between multiple job characteristics.
Source: authors' own elaboration.

4.4 The social relations dimension

Social relations, the third dimension of the adjusted WES model, includes social interactions and social dialogue, both through **formal institutions**, such as a works council, a union delegation or a prevention committee, and through **informal channels**, such as staff meetings and contacts with the management (Lamberts et al., 2016). Over the past years, this dimension has received increasing attention, as academic work has underlined the importance of social relations for the **well-being of workers** (Bakker and Demerouti, 2017). Social support has been acknowledged as an important 'job resource' that can help achieve work-related goals, encourage personal growth and compensate for 'job demands' (ibid.). Yet social interactions can be demanding for workers, for example when having to deal with difficult clients. This section reviews social relations in platform work, with a focus on representation, participation in decision-making, interactions with management, colleagues or clients, and the occurrence of adverse behaviour and unequal treatment. The use of technology, apps and algorithms is changing several aspects of the social relations dimension. Algorithms and rating systems take over some of the functions traditionally performed by (direct) supervisors, which further complicates the ambiguous relationships between platform, client and platform worker. The solitary nature of platform work and the high anonymity and turnover further imply that platform workers generally have little or no contact with colleagues or the platform, which leaves platform workers with little support. This issue and related topics are covered below.

4.4.1 *Representation*

Representation refers to whether workers **collectively can have a say on aspects of the organisation** (formally or informally) (Lamberts et al., 2016). For the purpose of this study, we focus on representation by a trade union, works council, health and safety delegate or similar institutes, at the level of the platform or as platform workers. Alternative forms of organisation are discussed in the following section.

Representation and unionisation in particular are key to strengthening workers' labour situation and ensuring fair working and employment conditions (Lamberts et al., 2016; ETUC, 2017). Yet unionisation rates are declining globally and the representation of non-standard workers is very weak (Johnston and Land-Kazlauskas, 2018). This may stem from the increased flexibility and fragmentation of work and the workforce, which makes it hard to identify, organise and represent workers in non-standard forms of work such as casual work, platform work and employee sharing (Lenaerts et al., 2018).

Of the four topics discussed under the social relations dimension, representation of platform workers is the one that has received by far the most attention in the literature and in public and policy debates across Europe. This topic has been identified as a **major challenge** for platform workers, not only in the literature but also by the experts and stakeholders consulted in this study (notably social partners and policymakers) and the issue was discussed at length in several focus groups (Denmark, Estonia, France, and Spain). Research shows that **most platform workers are not organised or represented, nor are they covered by collective agreements** (Kilhoffer et al., 2017; ETUC, 2017; Eurofound, 2018; Vandaele, 2017; Lenaerts et al., 2018).

Several reasons may explain these observations. First, only a few platform workers are formally recognised as employees by the platform and have an employment contract. Instead, most platform workers are considered independent contractors or self-employed. In some countries, there are legal barriers such as anti-cartel laws targeting anti-competitive behaviour (e.g. organising to agree prices or negotiate conditions; Prassl, 2018). Johnston and Land-Kazlauskas (2018) and Prassl (2018), however, explain that organised activity by platform workers who are independent contractors with a view to collectively bargain over wages or employment and working conditions could also be considered anticompetitive behaviour. Some countries have legislation to prevent the self-employed joining unions, irrespective of anticompetitive behaviour and

despite ILO Convention 87 (e.g. Bulgaria, Poland); while in other countries, the self-employed do not have the specific right to join trade unions (e.g. Hungary, Romania).[80] Johnston and Land-Kazlauskas (2018) further report that platform workers who are independent contractors generally cannot exercise the right to freedom of association and collective bargaining. Those platform workers who are formally recognised as employees may **not be aware of their collective rights as workers**. They may underestimate these rights because they see platform work as a side occupation, possibly temporary. This includes the right to association and the right to industrial action. Some platform workers may think of themselves as self-employed and have no interest in being represented by a trade union or worker-led initiative (Lenaerts et al., 2018).

Box 3: Platform work, collective bargaining and EU competition law

Under EU competition law, any agreement between undertakings or decisions by associations of undertakings are considered as an illicit cartel when they prevent, restrict or distort free trade and fair competition. This applies when such agreements aim at, for instance, price fixing or market sharing which is considered to be to the detriment of consumers. As they are entities conducting economic activities, the self-employed are undertakings, and hence fall within the remit of EU competition rules.

EU competition law does not, however, prohibit workers or even the self-employed from forming associations as such, a right which is also enshrined in international labour legislation. The key question is to what extent representative bodies of workers and those of the self-employed can conclude ('collective') agreements concerning their working conditions (including pay) and social protection and whether such agreements are compatible with EU competition legislation.

In its landmark case C-67/96, Albany, the Court of Justice of the European Union (CJEU) made an important exception to the application of competition law, thereby establishing that when such principle comes into contradiction with social policy and labour law objectives aimed at protecting workers and the working conditions, such prohibition does not apply, thus recognising that collective agreements for employees fall outside the scope of competition law. The conditions are twofold: the agreement must be concluded between management and labour and aimed at improving the working conditions of the workers.

In another case, C-413/13, FNV Kunsten Informatie, the CJEU addressed the compatibility with competition law of a collective agreement negotiated by a labour union but on behalf of both employees and self-employed. The CJEU ruled in that particular case the self-employed were in fact 'false self-employed' even if in practice they may be classified as self-employed by the contractual parties or even by national legislation. The ruling has particular relevance for platform work, allowing to treat bogus self-employed platform workers as if they were workers. They can form associations to represent themselves and conclude collective agreements with the employing platforms to improve their working conditions and social protection.

However, the collective bargaining capacity of associations of self-employed platform workers may still be affected by the EU antitrust legislation. Since self-employed are considered as undertakings, agreements they or their representative bodies are concluding with other undertakings such as the platforms, covering for instance their minimum fee rates or supplementary pension schemes, may be considered as limiting free trade and competition and a breach of competition legislation. Collective agreements that are not interfering with the competition *acquis*, such as on matters dealing with obligatory information provision, data protection and rating systems seem, however, perfectly possible.

An in-depth assessment as it relates to EU competition law and collective bargaining in relation to platform workers is provided under Reflection Paper 1.

These issues can be attributed to the following barriers, which to a large extent follow from the **nature of platform work** (Kilhoffer et al., 2017; Johnston and Land-

[80] See https://www.etuc.org/sites/default/files/publication/file/2018-10/CES-Brochure%20Report%20on%20self%20employment-UK.pdf

Kazlauskas, 2018; Vandaele, 2018). Platform work is solitary by nature, characterised by high turnover rates, has a strong online component, and is executed by workers who are anonymous, geographically spread, in constant competition with each other and are active on multiple platforms (ETUC, 2017). Some platform workers are fully online. In addition, platforms often refute the role of employer and are not represented in business organisations, leaving the workers, workers' organisations and policymakers with no counterparty to negotiate with (Vandaele, 2018). The **legal classification of platform workers** as self-employed or independent workers may prevent them from organising, as a joined discussion on terms and conditions by self-employed workers would be considered as 'price setting' and is against competition law (Johnston and Land-Kazlauskas, 2018). This point is corroborated by multiple national experts in Austria, Croatia, Czechia, Denmark, Finland, Germany, Ireland, Italy, Latvia, the Netherlands, and Poland.

Although trade unions have taken up the issue, the relatively small importance of platform work in the economy and the active resistance to collective bargaining by some platforms (e.g. Uber) have hampered their efforts (Johnston and Land-Kazlauskas, 2018). Industry-wide collective agreements seem well-suited for platform work, given the geographical dispersion of workers, the high turnover and workers' tendency to be simultaneously active on multiple platforms, as well as the rapidly changing market with many start-ups and constantly changing business models (Johnston and Land-Kazlauskas, 2018).

Although the representation challenge **affects all platform workers regardless of the type of platform work**, on-location work in particular has received attention in this area, as these platform workers are easiest to identify and organise as a group. Furthermore, this type of platform work, especially where it relies on undifferentiated skills or on-location work such as transportation services, appears to be linked to the highest levels of uncertainty about the workers' status, and has the lowest scores on a number of job quality indicators related to working conditions, such as autonomy. While platform workers engaged in low-skilled online work face similar challenges and their institutional bargaining power is the lowest, this type has received less attention (Daugareilh et al., 2019). The expected evolution of the challenges related to representation is difficult to assess; platform work continues to develop and several related issues, such as platform workers' employment status, are yet to be settled. On the other hand, as is discussed below, there are a number of top-down and bottom-up initiatives in this area through which progress towards organisation or representation of platform workers is made, for example via trade union initiatives, establishment of a works council, and conclusion of collective agreement with specific platforms.

4.4.2 *Participation in decision-making*

Participation in decision-making refers to the degree to which workers are involved in decision-making related to their work and tasks (Lamberts et al., 2016). This includes being **consulted before objectives are set for the work to be done**, having the **ability to influence decisions** that are important for one's work, and being **involved in the improvement of the work organisation or the work processes** of the organisation. This conceptualisation coincides with the indicator for 'organisational participation' put forward by Eurofound (Eurofound, 2017b). Decision-making with regard to the acceptance, method, speed and order of executing tasks are excluded here; these are covered in the sections on autonomy in the allocation of task and the work organisation under the work dimension.

There is only scarce evidence about the extent to which platform workers can participate in decision-making. This evidence, moreover, is generally based on interviews with platform workers and platform owners (Eurofound, 2018). The available evidence, however, suggests that platform workers have **limited or no opportunities to participate in decision-making** and are **not informed or consulted on business performance and decisions** (ibid.). This applies in particular to workers' ability to

influence decisions and their involvement in the improvement of work organisation or processes. This can likely be explained by the **lack of an organisational structure** and of **(in)formal bodies or channels** through which workers are consulted or represented. There are plenty of examples of platforms changing their business model or terms and conditions without informing or consulting workers beforehand, yet with profound implications for the workers involved. On several occasions, platforms have faced a backlash from their workers. Platform workers on Deliveroo, for example, have protested against the change from being paid per hour to being paid per delivery in a number of EU Member States, albeit to limited effect (Lenaerts, 2018).

The extent to which platform workers are consulted before the objectives of the task to be performed are set depends on the specific platform. Workers performing low-skilled tasks, both on-location and online, are more likely to have no say in determining the objectives of the task, which are set by the platform or client. Platform workers performing mid- to high-skilled tasks (online and on-location), however, can often discuss the task with the client and set the objectives together, for example a handyman determining the feasibility of a specific task or approach. Contest-based online work may, however, limit workers' ability to negotiate the objectives. Having limited or no participation in decision-making is problematic because it weakens workers' position and their engagement. Ensuring participation in decision-making is important for platform workers as well as platforms.

Worker-owned platform cooperatives, where platform workers themselves own and manage the platform, are an interesting example of what participation in decision-making could look like. Sutton (2016) defines platform cooperatives as '*digital platforms that are designed to provide a service or sell a product and that are collectively owned and governed by those who depend on and participate in it'*. Cooperatives enable workers to gain control and be involved in the platform's decision-making structure (Johnston and Land-Kazlauskas, 2018). Both the literature and the experts consulted in this study have suggested cooperatives as an alternative to the platform economy model, which is characterised by large companies with significant market power. Scholz (2016), a prime advocate of such cooperatives, has argued that platforms owned and managed by workers can more easily ensure fair working conditions, including decent pay and income security, access to social protection, and protection against arbitrary behaviour (e.g. disciplining or firing) or excessive surveillance (e.g. tracking).

Box 4: Platform cooperatives: comparing TaskRabbit with Loconomics

TaskRabbit and Loconomics, a platform cooperative, are both platforms that intermediate low-skilled on-location tasks, use comparable technology, have existed for quite some years and with headquarters located in the same area. Sander et al. (2018) report that workers using TaskRabbit are not formally involved in decision-making and present multiple examples to support their claim: unilateral changes to the rate of commission and to the allocation system were introduced by TaskRabbit without consulting workers. One example was suggesting three workers to clients based on their availability and pay rate rather than having an open auction in which all workers could compete. In all these cases, TaskRabbit faced a significant backlash from workers (ibid.). Turning to Loconomics, Sander et al. (2018) explain that platform workers vote on the platform's policies and can run and vote for the board of directors. All platform workers have one vote. Only workers who have completed 25 tasks are eligible to run to join the board if they have not already served for more than two terms. The platform is found to be more transparent and has established stronger interpersonal relationships than TaskRabbit. Sander et al. (2018) indicate that these features contribute to worker satisfaction.

While several examples of worker-owned platform cooperatives exist in the US,[81] the **phenomenon is still in its early stages in the EU**. Nevertheless, interest in platform

[81] Borkin (2019) points to the example of Up & Go, a platform launched by four worker-cooperatives active in the cleaning sector, with the aim of guaranteeing fair wages, among a number of other examples. Another

cooperatives is clearly growing. In the focus group debate held in the Netherlands, cooperatives, or similar types of organisational forms, were suggested as a way of overcoming unfair competition and market dominance. The feasibility of this idea was questioned, given that platforms require very high investments in technology before becoming profitable. While making profit is not necessarily a target for cooperatives, sufficient funding has to be raised to make the platform sustainable (Scholz, 2016). The focus group held in Spain exposed a very real problem in competition between platforms and cooperatives: the venture capital behind big platforms means they can and usually do operate at a loss, making it hard for cooperatives to compete.

4.4.3 *Supportive management and social support*

Social support in the workplace is understood as the support provided by management and colleagues (Lamberts et al. 2016). This includes receiving help and support in the execution of tasks and receiving feedback from the supervisor and colleagues when needed and being well guided and respected by the supervisor (Eurofound, 2017b). Social support at work is key. According to the Karasek (1979) job demands-resources model, social support is an important resource that enables workers to cope with the demands of the work and serves as a buffer for negative work outcomes such as stress and burnout (Demerouti et al., 2001).

In the context of platform work, social support is very low. **For a number of reasons, platform workers generally do not know or meet their colleagues and/or supervisors, including**: tasks that are allocated by an algorithm and executed by an individual worker in isolation; the use of rating systems to manage performance and provide feedback;[82] the unclear roles of the client, platform, and platform worker that make it difficult to determine who is the supervisor (if there is one); and a flexible workforce characterised by high turnover rates. The issues are aggravated for online platform workers, who are typically anonymous and geographically spread. Platform workers in low-skilled on-location or online platform work face additional challenges in that they are often dependent on the platform, have generally less autonomy and participate less in decision-making.

Although a lack of social support may lead to professional isolation and a higher prevalence of stress or burnout (EU-OSHA, 2017), there is **hardly any evidence** on this issue in the context of platform work. Also, in this case, available evidence is mostly derived from interviews. Whereas some workers indicate the lack of help and support by the management and colleagues as a downside of platform work, others regard it as a confirmation of their independence and autonomous work. However, when platform workers are faced with difficulties or conflicts, the lack of contact with the platform is mentioned by workers as a concern (Eurofound, 2018). This is especially problematic when a platform worker runs into an issue with the platform itself. Perhaps as a compensation for this, workers join on social media to exchange tips and advice (EU-OSHA, 2017), or reach out to unions or launch bottom-up initiatives (see *infra*).

4.4.4 *Adverse social behaviour and equal treatment*

A final topic to be discussed in the social relations dimension is adverse social behaviour and the equal treatment of platform workers. **Adverse behaviour** refers to asocial behaviour of colleagues, supervisors or others that workers come into contact with during their work. It includes verbal abuse, physical violence, unwanted sexual attention, harassment, bullying, threats or humiliation (Eurofound, 2015). **Equal treatment**, as

well-known example is Green Taxi Co-op, which is a ride-hailing cooperative that was launched in 2015 in Denver, US.

[82] However, rating systems are known to be a possible source of stress and rather than empowering workers are found to confine their capacity to work autonomously. In this regard, workers report difficulties with client relations as well as disinterest of the platform regarding these issues as main concerns (Berg, 2016).

defined by the European Commission (European Parliament, 2017), implies that *'all people, and in the context of the workplace all workers, have the right to receive the same treatment, and will not be discriminated against on the basis of criteria such as gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation'*. Even though European and national legislation have indicated several grounds on which discrimination is prohibited, notably in the employment area, identifying discrimination in practice is difficult.[83]

Both adverse social behaviour and discrimination at work have been linked to **various negative impacts** on the worker, for example impaired mental and physical health, absence from work, increased intentions to leave a job, and a higher turnover (Cottini and Lucifora, 2010). In platform work, the ambiguous employment relationship between the worker and platform, and the question of liability in the case of possible discrimination, thwart the identification process. This makes it hard to assess the prevalence of discrimination in platform work. The same observation applies to adverse behaviour.

Yet there is some literature and anecdotal evidence on discrimination and adverse social behaviour in platform work. Both have been identified as **potential challenges facing workers.**[84] Compared to other forms of work, adverse behaviour and discrimination may be more prevalent in platform work, as these workers are younger and many are from minority backgrounds, and moreover may be less aware of how to address these issues. The **use of algorithms, reputation systems and online profiles** to select a platform worker matter in this context, as they may lead to an uneven distribution of tasks among workers (Leimester et al., 2016; Graham et al., 2017). This point was raised in the focus group discussion in Denmark, in which a stakeholder described rating systems as subjective and in need of standardisation. The stakeholder also indicated that any biases existing in the 'real world' could be aggravated if platforms allow selection on these features (e.g. based on looks by making pictures available). **Socioeconomic, gender and racial discrimination are thus noted on various platforms**, depending on the type of service and users, and the platform design (Edelman et al., 2017; Kas et al., 2019; Schor and Attwood-Charles, 2017).

Thebault-Spieker et al. (2017), for example, demonstrate how the socioeconomic status affects task selection on Uber and TaskRabbit. Renan Barzilay and Ben-David (2016) document that women's average hourly rates on platform work are about one third lower than men's, after controlling for feedback score, experience, hours of work, occupational category, and educational attainment. Platform workers who depend on rating systems are more vulnerable to discrimination than those whose work is allocated through an impersonal mechanism, where the client cannot choose a worker based on their profile or previous work. On platforms providing additional features on workers' gender or place of residence, earning differences are noted (Berg et al., 2018). A platform representative indicated that they act robustly against discrimination when it is noticed, but that it is difficult to objectify in a situation where a client chooses a worker (interview with representative). Other platform representatives have made similar statements (Eurofound, 2018; Lenaerts, 2018). At the same time, platform work can help reduce discrimination by offering opportunities to those who may face discrimination in the traditional labour market, for example young workers, long-term unemployed, or individuals with certain disabilities or health conditions; see Berg, 2016; Pesole et al., 2018).

Platform workers have also indicated **adverse social behaviour of clients as a concern** (Eurofound, 2018). This includes cases such as refusal to pay for a task performed and leaving (dishonest) negative reviews that affect a worker's online

[83] Non-discrimination law is discussed at EU level in Section 6.

[84] Note that there are also papers describing discrimination faced by clients using a platform to order a service, e.g. potential clients being refused by Airbnb hosts. These papers, however, are not considered here.

reputation (information gathered from literature, including De Stefano, 2016; Eurofound, 2018, confirmed by fieldwork). Adverse behaviour by clients has been reported by platform workers in particular on **platforms where the client or platform selects a worker** (client- or platform-determined allocation). Clients choosing a platform worker can rely on online reputation data, ratings or profiles, but most of the workers do not receive any information about the client and cannot assess their reliability, respectfulness or communication habits. Adverse behaviour by clients was also flagged in the French focus group, where platform workers were victimised because of issues between the client and the worker over conditions that the latter cannot control or choose, for example blaming the delivery rider for a wrong order prepared by the restaurant. In this regard, it is also important to point out that some workers face adverse behaviour by others involved in the platform work relationship. Food delivery riders, for example, may also face adverse behaviour from restaurant owners, which is very difficult for them to address (Eurofound, 2018). Workers performing **on-location tasks** are particularly vulnerable to adverse behaviour, especially when performing **low-skilled tasks where platform or client have a lot of influence over the allocation and execution of the work.**

Platform workers anonymously performing tasks with little or no interaction with the client are less vulnerable to adverse social behaviour and discrimination (De Stefano, 2016). Workers carrying out online platform work, where there is less interaction and more anonymity, are expected to have a lower risk of being confronted with adverse behaviour or discrimination (ibid.). Anonymity could help eliminate negative social experiences, though the impersonal character of platform work relies on personal information to build trust between worker and client (Ert et al., 2016). Irani (2015) further states that anonymity may lower accountability between platform workers and clients.

Nevertheless, adverse social behaviour and discrimination in platform work are not necessarily related to its specific context. The most common grounds of discrimination in platform work, such as gender, age, and ethnicity, are similar to those in the traditional labour market.

4.4.5 *In short: challenges related to social relations*

Although social relations at work are imperative to the well-being of workers, social interactions and dialogue take a different form in platform work, often to the detriment of the workers involved. The use of technology or algorithms, as well as the nature and the organisation of the work, complicate social relations in platform work. Platform workers have few opportunities to get in contact with the platform, client or other platform workers. Platform workers are typically not represented, have no opportunities to participate in decision-making, and lack supportive management and social support. Some are faced with discrimination and adverse behaviour by clients. Especially in those cases, or when faced with difficulties or conflicts, platform workers lack a decent organisational structure and social contacts to fall back on. Most of these challenges are not specific to platform work but are also found for other forms of non-standard work or faced by the self-employed. Yet, as explained above, some issues are aggravated in the context of platform work because of the unclear employment status of the workers, the use of technology or the virtual nature of interactions.

Representation has received the most attention of the social relations challenges, and has been identified in the literature and the fieldwork as the major challenge. To some extent at least, this can be attributed to the initiatives and efforts of unions and workers in this area (see *infra*). Participation in decision-making has not been raised as a challenge in the literature but is limited overall. The lack of social support and supportive management, similarly, have been discussed but are not really seen as problematic. Despite the mostly anecdotal evidence, discrimination and adverse social behaviour are identified as important challenges that need to be addressed ('medium' because of their incidence in specific cases).

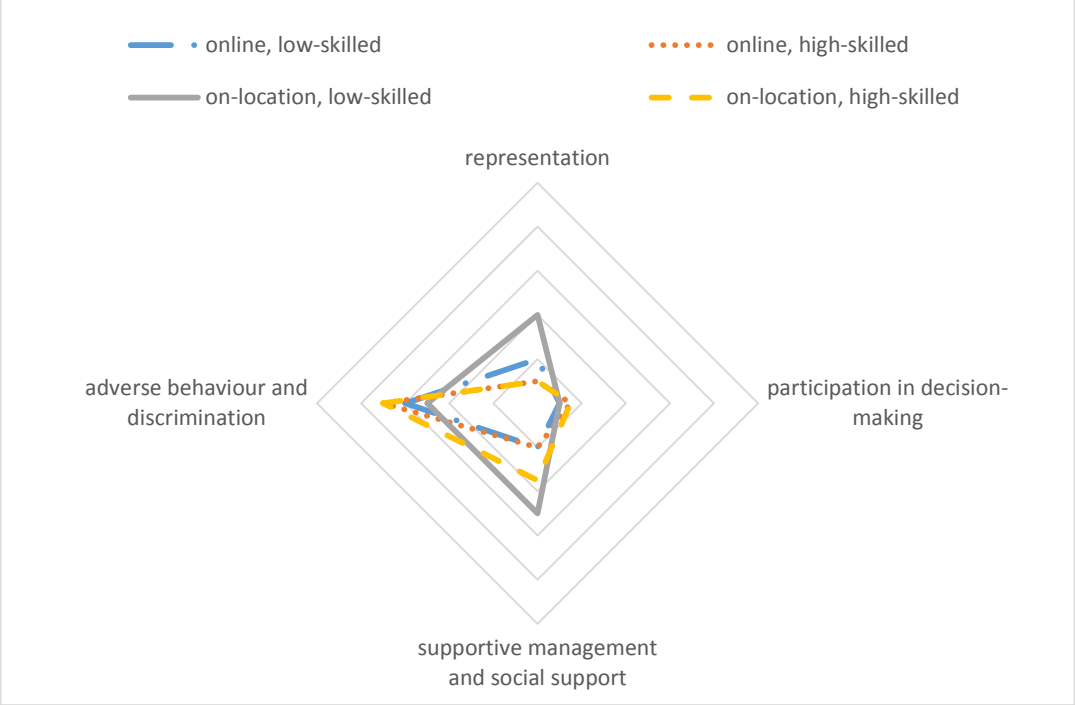
These issues may occur for any type of platform work, but appear most problematic for the most vulnerable platform workers, in other words those engaged in low-skilled on-location or online work, those using platforms where the allocation and organisation of work are determined by the platform or client, and those with little work experience or weaker socio-economic or labour market positions. While some of the challenges have been discussed to a much larger extent for on-location than for online platform work, this does not imply that these issues are more relevant or more significant for the former. Some challenges are simply more visible for on-location workers, for example representation. In other cases, the challenge affects a particular group of workers more. This is highlighted in each section, as well as in the summary table and figures below. Returning to the expected evolution, there is little evidence from the literature and fieldwork that provides conclusive answers to this question. In addition, data about the national and European responses and tools available are key to determining a challenge's expected development.

Table 10: Summary table of challenges related to the social relations dimension

Indicator	Importance of challenge (high, medium, low, none)	Specificity of the challenge (specific to platform work, common for non-standard work, general labour market)	(Most) Affected types of platform work (all types, online vs. on-location work, low- vs. high-skilled, client-, platform- or worker-determined)
Representation	High	Common for non-standard work	All types, though most problematic for: - platform workers with higher risks of being misclassified as regards their employment status (mostly low-skilled, on-location, platform-determined work) and those who cannot set their own price
Participation in decision-making	Low	Common for non-standard work	All types, though most problematic for: - platform workers with little autonomy, who depend on platform and are most strongly affected by unilateral changes
Supportive management and social support	Low	Common for non-standard work	All types, though most problematic for: - platform workers engaged in online work
Adverse social behaviour and equal treatment	Medium	General labour market	All types, though most problematic for: - platform workers in on-location work

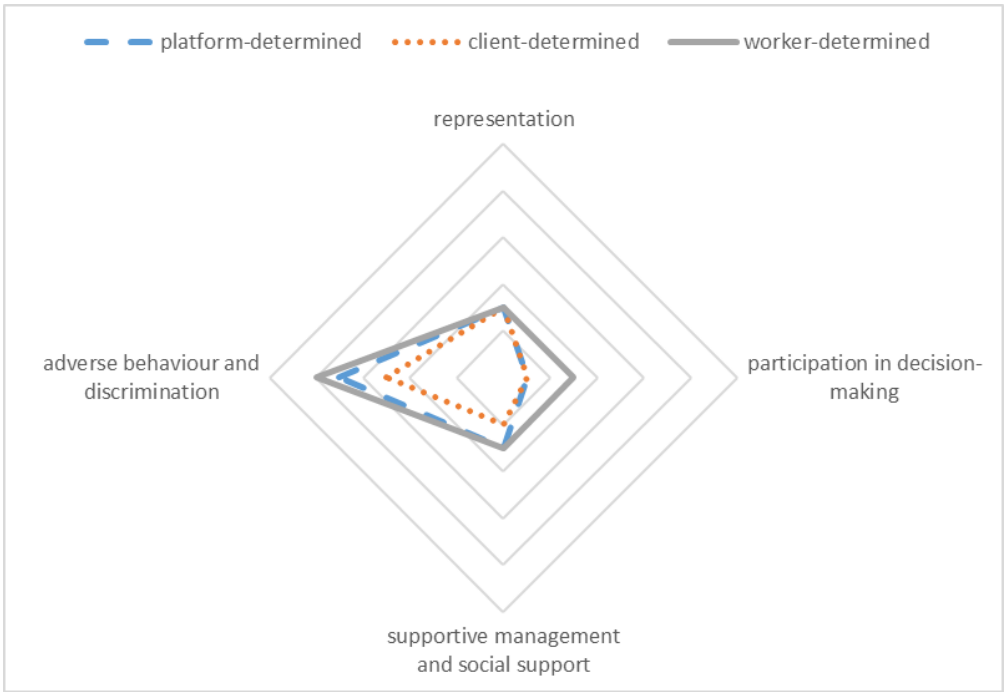
Source: authors' own elaboration, based on the literature consulted and the fieldwork performed in this study.

Figure 11: Stylised representation of social relations challenges for different types of platform work



Note: a higher score (= more on the outside of the spider chart) indicates a better situation regarding job quality. However, keep in mind that a final job quality score would be defined by the combination of and balance between multiple job characteristics.
Source: authors' own elaboration.

Figure 12: Stylised representation of social relations challenges for different types of platform work



Note: a higher score (= more on the outside of the spider chart) indicates a better situation regarding job quality. However, keep in mind that a final job quality score would be defined by the combination of and balance between multiple job characteristics.
Source: authors' own elaboration.

4.5 Other challenges

4.5.1 *Undeclared work*

Undeclared work is commonly understood as *'any paid activities that are lawful as regards their nature, but not declared to public authorities, taking into account the differences in the regulatory systems of the EU Member States'* (European Commission, 2014). This can take many forms, such as fully or partially undeclared work (overtime paid cash in hand, or under-declared work), undeclared 'self-employed' or 'own account' work, or bogus self-employment. Undeclared work implies non-compliance with labour, social security or taxation legislation or regulations in the country, and it distorts fair competition. In the past years, the fight against undeclared work has received much attention from policymakers, as evidenced by the launch of the European Platform to enhance cooperation in tackling undeclared work,[85] which activities will be transferred to the new European Labour Authority (ELA) as of 1 August 2021.[86]

Non-standard forms of work, including platform work, have been discussed in relation to undeclared and under-declared work as a means to legalising undeclared work. Casual work (e.g. intermittent or on-call), can help regulate informal and flexible employment relationships and diminish undeclared work (Eurofound, 2018b). Another well-known example is voucher-based work. It has been suggested that platform work has a similar effect: by making it possible to engage in platform work activities and turn small jobs into a profession, platform work can bring some of these activities into the regular economy (Lenaerts et al., 2018). Experts from Bulgaria and Spain consulted in the study corroborated this point. Others, however, have warned that platform work may have the opposite effect. Platform work may simply become part of this phenomenon, especially in countries that have a large informal economy typified by undeclared work (as noted by experts from Cyprus, Estonia, Greece, Hungary, Latvia, Malta, Portugal and Slovenia). Indeed, many of the sectors in which undeclared work is prevalent, such as cleaning, repair work or babysitting, coincide with those where platform work is concentrated (European Commission, 2014). Similarly, there is overlap in the social strata that is overrepresented in platform work and undeclared work. Finally, the flexibility in the contractual relationships, the fragmentation of work into very small tasks, the isolated nature of the work and the global nature of platforms, which are all characterising platform work, are features common in undeclared work. Whereas undeclared workers used to advertise their services by posting notes in a local supermarket, workers can use platforms as a digitalised means to find clients for undeclared work. It is likely that platform workers do not declare the additional income, especially when the burden of reporting is fully on them. As a result, it could very well be the case that platform work exacerbates undeclared work in the EU.

Against this background, **undeclared platform work has been identified as an issue** in the literature, policy and public debates, and by national experts consulted for this study.[87] Most experts, however, have pointed to the **lack of data and strong empirical evidence on the prevalence of (undeclared) platform work**. This issue was discussed at length in the focus group discussion held in Estonia. With the exception of estimates mostly based on surveys, currently only limited data are available on the actual coverage and extent of platform work. This is due to the absence of a common definition, the high level of heterogeneity, and the lack of systematic reporting on

[85] Decision (EU) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work (OJ L 65, 11.3.2016, p. 12)

[86] Art. 48 and 44 of Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing the European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344

[87] Some experts indicated that undeclared work in the platform economy is not regarded nor discussed as an issue in their country (e.g. Austria, Luxembourg, the Netherlands and the UK).

platforms, platform workers, and platform work in official national market statistics (indicated in interviews with Eurofound and EU-OSHA representatives). The lack of data is pressing, especially in the case of online work, and undeclared work may be particularly prevalent.

In this regard, the **role that platforms could play in reducing undeclared work** has been noted in the literature and fieldwork. Platforms already collect data on transactions, clients and workers, and are consequently ideally placed to formalise work by sharing data with the government. Platforms' management structures can be set up to facilitate this (interview with EU-OSHA representative). In some Member States, platforms are already obliged to report on their payments to platform workers (see Section 5 for further details). For these reasons, undeclared work is labelled a 'medium' challenge in Table 12 below.

4.5.2 *Cross-border work*

The digital nature of platform work increases the opportunities for workers to get in contact with platforms and clients on a global scale and hence facilitates cross-border work. The free movement of workers is among the key principles laid down in the *acquis* of the European Union. It is one of the four economic freedoms of the European Single Market. The free movement of workers implies that individuals can move freely for work reasons from one EU Member State to another, without being subject to discrimination with regard to their working and employment conditions on grounds of their nationality. The freedom to establish and provide services is another key dimension to consider in the context of platform work. It guarantees the mobility of businesses and professionals within the EU.

Cross-border platform work can take on a **range of different forms**, which are all considered in this study: a platform worker performing work in their home country but where the client, platform or both are located in another EU or third country,[88] a platform worker moving to another country to do platform work,[89] or a platform worker carrying out platform work activities simultaneously in different countries and/or for different platforms or end users who are located in different countries. In each of these situations, the cross-border aspect further raises the complexity in already complicated work relationships that involve multiple parties and rely on the use of digital technologies and algorithms. Furthermore, there are only limited data available on the prevalence of cross-border platform work. This adds to the complexity, and a lack of efficient information-sharing between countries could further contribute to the incidence of fraud, abuses, deprivation of rights, or undeclared work. It has, additionally, been established that many platform workers are active on multiple platforms (consecutively or simultaneously) and that platforms tend to be active in multiple countries at the same time (Pesole et al., 2018). Pesole et al. (2018) argue that the global nature of platform work may lead to national task specialisation based on the available work force and the national labour market linked, for example, to differences in the educational system, national languages or legislation.

Cross-border work poses **challenges regarding the application of EU law on freedom of movement** - with uncertainty as to which EU rules (movement of workers or of services) are at stake, which is a corollary to the employment status issue (see 4.3.1). Cross-border work may also **present challenges concerning the choice of jurisdiction** and determination of applicable law, as well as social security coordination.

[88] This includes cases in which the platform worker, client and platform are in different countries, as well as cases in which the platform worker and client are in the same country but the platform is not. Especially online platform work lends itself to these types of cross-border activities.

[89] Also in this case, the platform may or may not be located in the same country as the platform worker and client.

This relates both to the application and enforcement of the rules and to dispute resolution.

Cross-border work performed by platform workers with the status of 'workers', as defined in EU law, falls under the EU legislation concerned with the 'free movement of workers'. Platform workers who are employed by the platform or by the end user are undoubtedly covered by legislation on the latter. For those workers who are engaged in platform work in their home country for a platform and/or client located in another (EU or third) country under an employment contract, both parties will in principle agree what national (labour) law is applicable to their employment contract while having to respect the mandatory rules from Rome I Regulation. In practice, however, platform workers have a very weak negotiation position and often work without a contract, as has been reported by national experts under the study. Specific EU legislation[90] determines the law that is applicable to contractual obligations, such as the law applicable to a cross-border employment contract. The legislation contains certain limitations to the freedom of the contracting parties when the worker is working from or in an EU country.[91] For self-employed platform workers different rules apply in cross-border situations as they fall under the scope of the EU legislation regarding the free movement of services.

EU legislation on social security coordination may apply to platform workers who are engaged by the platform and carrying out cross-border work or multiple (consecutive or simultaneous) tasks in different countries. In this regard, the 'place where the work is executed' determines in principle what national social security legislation applies. The same logic applies to cases when a platform worker moves to another Member State to perform platform work. The situation of a platform worker simultaneously working in different Member States is more complex, because it depends on the status of this platform worker in each of the countries and on what share of these activities is performed where. This can be very difficult to determine, again leaving platform workers in a grey area.

On a final note, the relationship between cross-border work and undeclared work in the context of the platform economy should also be looked at. The obstacles to tackling undeclared work in cross-border situations, which have been duly identified by the European Platform to enhance cooperation in tackling undeclared work,[92] are equally relevant in the context of platform work. Risks of non-compliance may even be higher in the case of cross-border activity that is facilitated by platforms, especially when it concerns on-line platform work.

[90] 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. 6–16)

[91] According to Art. 8 of Rome I Regulation the governing principle to employment contracts is the freedom of choice, subject to two sets of limitations: 1) non-derogable provisions of law of the Member State that would be applicable in the absence of choice, and 2) overriding mandatory rules of public interest. In the absence of choice, subsidiary criteria are to be applied in the following hierarchical order: 1) habitual place of work, 2) place of hiring, and exceptionally 3) another law with a closer connection (the so-called 'escape clause'). Hence, the parties' choice of law cannot lead to the (platform) worker being deprived of the protection that they would have had in the event of the absence of choice. Therefore, it is most likely that (relatively) mandatory provisions of the Member States where the platform worker habitually performs work would be applicable at the very least.

[92] Barriers to or lack of data sharing, legal issues, inadequate resources (staff, funding, time, knowledge), language issues and difficulties in detecting undeclared work (see European Platform Undeclared Work, obstacles to tackling undeclared work at the cross-border and national levels, bilateral and national agreements, and complaint reporting tools, work survey report, 2018).

4.5.3 *Data protection*

Data protection is a relatively new topic in relation to the future of work that started to attract attention when the General Data Protection Regulation (GDPR)[93] became applicable in May 2018. The GDPR relates to the protection of natural persons with regard to the processing of personal data and on the free movement of such data. It lays down fundamental rights and freedoms of natural persons concerning data protection. In this study and in line with the GDPR, personal data is understood as any information relating to an identified or identifiable natural person, which is a natural person who can be (directly or indirectly) identified in particular by reference to an identifier such as their name, location data, or other physical, psychological, economic or social factors.

Data protection is particularly relevant in the context of platform work and the related challenges are obvious. Platforms rely heavily on the processing of personal data, including behavioural data of their clients and workers, to enable (semi-)automated decision-making, known as algorithmic management (De Stefano, 2018; Mateescu and Nguyen, 2019). Algorithmic management is a diverse set of technological tools and techniques to remotely manage workforces (De Stefano, 2018). It is a system where algorithms rather than humans decide how business operations should be performed, with the app as the main management tool (Ivanova et al., 2018). Many actors in the platform economy are among the most prominent developers and users of algorithmic management. To this end, platforms not only ask clients and platform workers to provide personal data such as their name, age, gender, skills, bank account details, telephone number, email address, and home address, but also collect a vast amount of data themselves.

First, platforms exert continuous monitoring through massive data collection of client and platform workers' behaviour, which may be fed into automated performance reports and work allocation decisions. For example, food delivery riders' and drivers' movements are tracked using GPS data. Platform workers' actual working time (duration of time logged on), break habits, speed of performance and aggregated income are tracked through digital apps. However, few platform workers are fully aware of which data platforms actually collect these data, or how they can access these data. Platforms may also be unwilling to share this information. In the UK, for example, Uber drivers have sought legal action, claiming that the platform refused to give them access to the personal data it holds on them. In practice, it often remains unclear whether platform workers can take their data with them, for example their ratings or profile, when moving from one platform to the next.

Rating and review systems are another component of algorithmic management that result in a ranking of individual platform workers (as discussed above). Such systems are incredibly important, because the assignment of the next task by the algorithm is often directly linked to the ratings and reviews they receive (platform-determined platform work). In addition, low scores or a performance below the algorithm's standards can lead to a lower ranking in the pick-order for new assignments and in some cases even to the temporary or permanent exclusion ('deactivation' or delisting) of the platform worker from the platform. Still, there is very little knowledge about how these rating and review schemes actually work, how they feed into the algorithms that decide on the allocation of work or are linked to the pay per task.

Last, algorithmic management is characterised by a growing use of 'nudges' and penalties to incentivise worker behaviour. For example, an Uber driver may receive notifications to travel to an area with a higher passenger demand without the certainty of an effective assignment. Similarly, the Uber app shows at all times how much money

[93] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

the driver has made, accompanied by a graphic of an engine gauge with a needle that comes tantalisingly close to, but is still short of, the euro sign (Scheiber, 2017).

All of these processes, however, rely on data collection, processing and analysis. Data gathering by platforms is done through complex computational processes, which are intransparent (part of the 'black box' in the platform work conceptualisation). The subsequent enormous data flow and constant digital monitoring allows for a deep intrusiveness in the lives of platform workers which is in no way comparable with traditional working relationships. The decisions made on the basis of these data flows are mostly implemented in (semi-)automated processes, with minimal or even no human involvement. In a way, it dehumanises decisions that affect workers negatively and allows the platform to hide behind the argument that it did not make any decisions: the algorithm did. Platform workers may have little or no opportunity for recourse against this. The far-reaching intrusiveness in terms of access to personal data, digital monitoring and the resulting power and control that platforms can exercise over their platform workers also has implications for the employment status classification: does extensive data collection, digital monitoring and automated evaluations of performance management signal some sort of subordination or direction, as the latter is a key criterion to determining the status of workers in accordance with the prevailing EU legislation and CJEU case law (Ingrao, 2018)?

The national experts consulted in this study are generally aware of the challenge, though many of them point out that data protection has not received much attention in their country as other challenges have been deemed more pressing. Likewise, the literature on data protection in platform work is still emerging. Nevertheless, for almost all countries studied, **experts flag data protection as a challenge for future consideration**. One of the experts even described it as a 'new frontier in the area of digital platforms'. Data protection in platform work is a rising concern among policymakers, social partners, platform workers and clients, and therefore seen as a 'medium' challenge that affects all types of platform work.

4.5.4 *In short: challenges related to the other indicators*

Table 11: Summary table of challenges related to undeclared work, cross-border platform work and data protection

Indicator	Importance of challenge (high, medium, low, none)	Specificity of the challenge (specific to platform work, common for non-standard work, general labour market)	(Most) Affected types of platform work (all types, online vs. on-location work, low- vs. high-skilled, client-, platform- or worker-determined)
Undeclared work	Medium	Common for non-standard work	All types
Cross-border work	Medium	General labour market	All types, though probability of platform work being cross-border work is likely higher for online than for on-location work
Data protection	Medium	Specific to platform work	All types

Source: authors' own elaboration, based on the literature consulted and the fieldwork performed in this study.

4.6 Summary of the challenges for platform work

The final section of the challenges analysis concludes with a summary table and figure that feed into the gap analysis. Details of how these conclusions were obtained can be found in the preceding sections. Table 12 shows how important the challenges identified using the adjusted WES model are, displaying challenges of *high importance* in red,

medium importance in orange, *low importance* in yellow and *no importance* in green. Figure 13 does not indicate how important specific challenges are, but rather how specific they are to platform work: *specific to platform work*, *common among non-standard forms of work*, or *existing in the general labour market*.

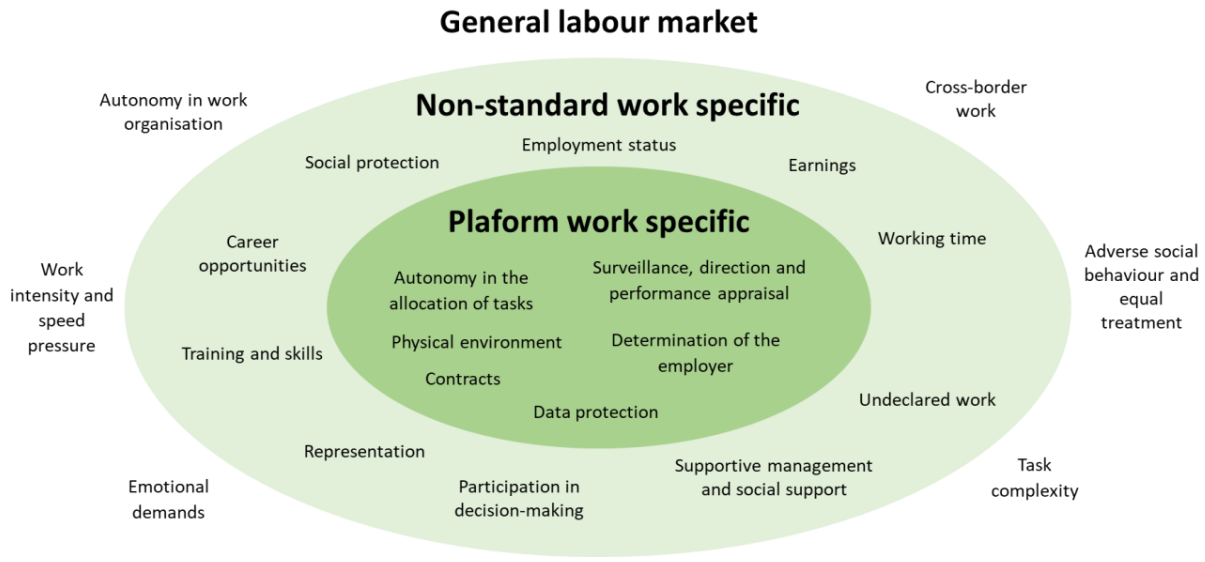
As is clear from Table 12, especially in the work and the employment dimensions, multiple challenges of medium to high importance have been identified. In the work dimension, those challenges identified as highly important are specific to platform work: allocation of tasks; surveillance, direction and performance appraisal; and physical environment. In addition, these challenges are strongly driven by the use of technology and algorithms. The challenges linked to autonomy in work organisation are rather related to the specific platform, whereas the task complexity, emotional demands, and the work intensity and speed pressure are linked to the specific task. Hence, these are only seen as minor challenges or no challenges at all. Turning to the work dimension, several of the challenges listed are related to the unclear employment status of platform workers (directly or indirectly). This also means that most of the challenges under the employment dimension are not specific to platform work but arise in non-standard forms of work more generally. The use of technology and algorithms in platform work has a much smaller impact on this dimension. With regard to the social relations dimension, there is quite an overlap in the challenges facing platform work and other forms of non-standard work or self-employment. The other indicators are not part of the original WES model and also appear to be strongly driven by the use of technology and algorithms. Some of these challenges are specific to platform work, while others are not (see Figure 13).

Table 12: Summary table of the challenges facing platform work (by level of importance)

Adjusted WES model: Challenges for platform work			
Work dimension	Employment dimension	Social relations dimension	Other indicators
Autonomy in the allocation of tasks	Employment status	Representation	Undeclared work
Autonomy in work organisation	Determination of the employer	Participation in decision-making	Cross-border work
Surveillance, direction and performance appraisal	Contracts (incl. type, termination, contractual information provision)	Supportive management and social support	Data protection
Task complexity	Social protection	Adverse behaviour and equal treatment	
Work intensity and speed pressure	Earnings (incl. wages, fees, price setting)		
Emotional demands	Working time		
Physical environment	Career opportunities		
	Training and skills		

Note: Lowest concern challenges are green, followed by yellow, orange, and the highest concern in red.
Source: Authors' own elaboration, based on the literature consulted and the fieldwork performed in this study.

Figure 13: Summary chart of the challenges facing platform work (by level of specificity)



Source: authors' own elaboration, based on the literature consulted and the fieldwork performed in this study.

5. NATIONAL TOOLS AND RESPONSES TO PLATFORM WORK CHALLENGES

This section explores national tools and responses to platform work challenges based on questionnaires distributed to socio-economic and legal experts in the EU28, Norway and Iceland, as well as fieldwork (expert interviews and focus groups) and literature review.[94]

Some existing literature examines national responses to the challenges of platform work. Lenaerts et al. (2017) overviewed eight European countries, finding that different countries had either explicit, implicit, or no strategies/responses on platform work. At that time, the surveyed countries of Denmark, France and Germany had the most comprehensive responses to platform work, including the angles of taxation, social security, labour status, and competition. In many cases, legislators were found to take a rather passive waiting approach to platform work. De Groen et al. (2017) found that government responses to platform work tended to be narrow in scope, reactive, and concentrated on minimising 'side effects' of platform work, often based on concerns raised by incumbents (e.g. taxi industries).

As platform work has grown since its inception relative to the total workforce, so too have a variety of national responses and attitudes. **National governments have a range of priorities in regard to platform work**. The different types and intensities of responses can be partially explained by a number of factors, such as different traditions of government and industrial relations, and differing frequencies and varieties of platform work.

5.1 Conceptual/theoretical framework

National socio-economic and legal experts catalogued tools and responses to platform work relevant to working conditions and social protection.

'**Responses' refer to targeted measures that emerged after platform work, specifically to cope with associated challenges**. Examples of responses include court cases on the employment status of platform workers, dedicated legislation for platform workers, and the formation of works councils for platform workers.

[94] See Section 2 Methodology

However, existing measures can also be important to consider. Put another way, in the absence of dedicated policy frameworks for platform work, existing or default legal frameworks play a large role. Thus, we also discuss tools.

'Tools' are existing or new measures that can be used to address challenges associated with platform work but were not designed specifically to do so. Examples of tools at national level include legislation or case law concerning bogus self-employment, or sectoral collective agreements that apply to platform workers. Because national tools could conceivably incorporate so much (such as general labour law across 30 countries), this section focuses on responses. We only discuss national level tools when identified by socio-economic and legal experts as especially important.

To allow ordered classification and description of collected data, and contribute to analysis and cross-country comparison, responses were organised by categories (1) legislation, (2) case law), (3) actions of public administrators or inspectorates, (4) collective agreements (5) platform worker actions, (6) platform actions, and (7) other.

Legislation: Legislation is understood as laws formalising policies by setting out standards, procedures, and principles. These may include royal decrees, bills, orders, amendments, and so on. Generally, EU Member States are competent to legislate issues of working conditions and social protection, while the EU provides broad policy framework. A law is the result of a legislative process; it is binding, and a breach of law can lead to penalisation or prosecution.

Case law: Case law is defined as law as established by judicial decisions in cases. Thematic areas of relevance to platform work may include employment status and corresponding rights, competition law, licensing requirements, taxation, or data protection. At national level, relevant cases might include labour courts, or other courts at the national or sub-national levels.

Actions of public administrators or inspectorates: Administrators and inspectorates may be actively involved in enforcing relevant law on platforms and platform workers. These might include public employment services, social security bodies and inspection services producing instructions, awareness raising, or issuing declarations.

Collective agreements and social partner initiatives: Collective agreements are bi- or tripartite agreements that are negotiated between the social partners (and, in the latter case, the government). Collective bargaining is the dialogue process by which collective agreements can be reached.

Actions by platforms: These include any type of initiative, plan, goal, guideline or target set out by platforms. Examples might include publishing green or white papers, making statements on sectoral or company practices, or opening up structured dialogue with platform workers. Other relevant responses include self-regulation, such as offering expanded insurance coverage without being legally required to do so.

Actions by platform workers: Platform workers have directly responded to their challenges, even independently of social partners. Because of the differences between platform workers and traditional employees, it is also important to consider 'new forms of organisation' and 'union-like' groups (Kilhoffer et al., 2017; Lenaerts et al., 2017). Relevant responses may include strikes or other collective actions, forming collectives, or innovative efforts to organise and collectively bargain.

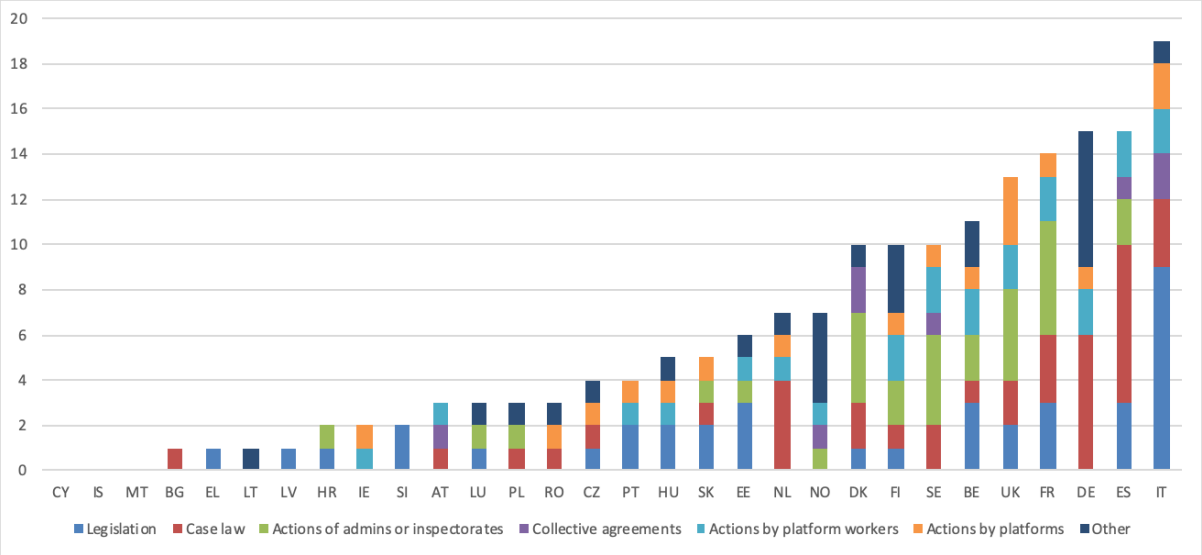
Other: This category captures any other developments that do not fit into the previous categories. Examples may include government policies, government-initiated information gathering or consultations, or media debates. 'Policies' may be considered a form of 'soft law' without the potential to be enforced (as opposed to legislation, which is 'hard law'). Policies are understood as any type of action, plans, goals, guidelines or targets set out by a governing body. At the national level, policies might be discussed in ad hoc committees and issued in green or white papers.

For readability, and because many responses involve multiple actors and similar themes (e.g. dialogue between platform workers, platforms, and social partners), national tools and responses are discussed in three parts: top-down; bottom-up; and other.

5.2 Mapping of national tools and responses

In total, national experts catalogued 177 responses across the EU28, Norway and Iceland, excluding tools considered very general, for example general labour law (see Figure 14). 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.

Figure 14: National responses summary



Source: own elaboration from data gathered in national surveys

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.

5.3 Top-down responses and tools

Top-down responses and tools cover legislation, case law, and administrator and inspectorate actions. These can be considered the 'hardest' or most binding measures.

5.3.1 *Legislation*

Working conditions and social protection of platform workers do not generally constitute the *direct* material scope of national statutory legislation.

France is the sole country that has enacted national legislation with a view to improving the labour and social rights of platform workers. The law specifically targets self-employed platform workers.[95]

In Italy, regional legislation in Piedmont and Lazio directly addresses the working conditions and social protection of platform workers (Iudicone and Faioli, 2019). The Lazio legislation[96] is particularly interesting as it aims to improve the labour and social

[95] 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 [El Khomri Law]

[96] Regione Lazio, Legge Regionale 12 aprile 2019, n. 4 "Disposizioni per la tutela e la sicurezza dei lavoratori digitali"

rights of all platform workers irrespective of their employment status (IRES, 2019). 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 almost all countries where platform work has emerged, recent national legislation has *indirectly* tried to regulate working conditions and social protection of platform workers: either through defining the employment status of the platform workers, such as in Portugal (albeit only for one specific business sector),[97] by extending the personal scope of application of national labour and social protection law traditionally applicable to employees,[98] by regulating the working conditions and social protection for persons in

[97] Lei n.º 45/2018 Regime jurídico da atividade de transporte individual e remunerado de passageiros em veículos descaracterizados a partir de plataforma eletrónica [Legal regime of individual transport activity and paid passengers in unregistered vehicles from electronic platforms] (Diário da República, 1.ª série — N.º 154 10.08.2018, p. 3972-3980)

[98] E.g. Estonia (Perehüvitiste seadus [Family Benefits Act] § 33, 1.01.2017) and Denmark (Lov om ændring af lov om arbejdsløshedsforsikring m.v. [Act amending the Unemployment Insurance Act, etc.] 1670, 26.12.2017).

non-standard employment,[99] or by strengthening the rights and protection of the self-employed.[100]

Several countries have taken legislative action in dimensions related to platform work, but often for very different considerations than the working conditions or social protection of platform workers. For example, Denmark, Czechia, Hungary, and others enacted legislation to regulate a specific business market (especially those in which platforms are directly competing with incumbents) with a view to ensuring fair competition. Belgium, France, Italy, Slovakia and others passed, amended, or considered legislation on revenues or income generated by platforms or by platform workers.

Overall, few instances of dedicated legislative responses on platform work were found. This reflects that most countries have preferred to adapt platform work to the existing legislative framework rather than introduce new dedicated legislation.

Box 5: Licensing requirements for drivers

Estonia was apparently the first country to amend its Public Transport Act. In 2011 it created a common licensing and quality vetting for ride-sharing platform business and traditional taxi companies.

In 2015 **Spain** introduced a cap on the number of vehicles allowed to operate in the transportation of passengers without technically being taxis.

In 2018 **Greece** adopted legislation aiming to prevent the presence of 'Uber-like ride-sharing apps' and obliging platforms that operate mobile apps 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.

Slovakia adopted new legislation, in force as of 1 April 2019, introducing a wider definition for 'dispatching services'. These traditionally constitute an essential characteristic of the personal transportation business by bringing digital communication into its ambit. Platforms are not considered taxi companies but dispatchers. The new legislation abolished several requirements 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.

In **Croatia** the licensing procedure was simplified in 2018, and mandatory tests for drivers for the area where they are operating were abolished.

Lithuania created a new framework for 'ride-sharing type services'. This was accomplished through amendments to the Road Transport Code, which came into force in January 2017.

Uber versus national legislators

For national legislation concerning platform work, countries frequently adopted recent legislation with a view to regulating the **passenger or personal transport services sectors**.[101] It is interesting to note that in almost all countries where Uber is currently active,[102] the national legislator has changed the legislation concerned with the personal transport services in recent years, and most that have not yet done so are in the course of adopting new legislation. This reveals the impact that the occurrence and gradual expansion of digital platform business have had on the personal transport services sector across the EU.

[99] E.g. Germany (Das Sechste Buch Sozialgesetzbuch – Gesetzliche Rentenversicherung " [The Sixth Book of Social Security - Statutory Pension Insurance] BGBl. I S. 2387, 11.12.2018. – see especially Section 2 Sentence 1 No. 9), Spain (Ley 20/2007, de 11 de julio, del Estatuto del trabajo autónomo [Law 20/2007, of July 11, on the Statute of autonomous work], BOE-A-2007-13409, 11.07.2018)

[100] E.g. Lithuania (Lietuvos Respublikos valstybinio socialinio draudimo įstatymas [Law of the Republic of Lithuania on State Social Insurance] I-1336, 12.02.2019).

[101] Experts from DK, EE, EL, ES, FI, FR, HR, HU, LV, PT, and SK report to have recent (amendments to the) 'personal transport services' legislation already enforced whereas in CZ, PL, RO, SI proposals for legislation are being discussed in parliament. In PL, new legislation is currently being prepared and expected to be adopted in autumn 2019. In RO, a draft law was proposed in 2018 but ultimately rejected by the parliament.

[102] According to UBER.com, in June 2019 UBER is active in cities of the following 21 countries: AT, BE, CZ, DE, DK, EE, EL, ES, FI, FR, HR, IR, IT, LT, NL, NO, PT, PL, SE, SK, and RO.

Box 6: The Lazio region's platform work law

Under the legislation passed in Lazio, platforms would be required to:

- Provide insurance for work accidents and professional diseases, and damages to third parties, to be paid by the company
- Apply the standard minimum daily pay using the national collective bargaining agreements signed by the most representative unions as reference; piece rate work is forbidden
- Inform the workers on the place of work, tasks, pay rate, risks concerning work execution, access to protective equipment, functioning of the rating system, and its effect on the employment relationship
- Ensure health and safety at work, provide training and the obligation to provide health and safety equipment, and cover the maintenance costs for this equipment
- Ensure a transparent and non-discriminatory intermediation and rating algorithm, the portability thereof, and to ensure an impartial verification procedure of the system upon request of the worker.

Moreover, a regional website for the registry of the workforce and the employers compliant with the abovementioned provisions has been created, along with a regional committee in charge of drafting a Charter of Rights for digital workers.

The legislation concerned primarily aims to ensure **fair competition** between the (traditional) taxi business sector and the personal transport services organised by digital platforms. The legislation is most often initiated by the national parliament or equivalent, although legislation adopted by lower authorities such as city councils has also been reported.[103]

National legislators have used two approaches to try to create a level playing field. The first approach is **enforcing existing standards and requirements to platforms and**

their drivers, which were already applicable to the traditional taxi businesses. In some instances this made it more challenging for the platforms to maintain their business models, and led to a reduction or a complete withdrawal of their businesses.[104] The

second approach is to **loosen industry standards and requirements** that existed prior to digital platforms. While the strategies are very different, both can be utilised simultaneously in a piecemeal fashion.

Most countries seem to have aimed to enforce a **licensing obligation** on behalf of the drivers/individual 'service providers' (platform workers).[105] These are enacted with a view to applying similar (professional and/or other) requirements applicable throughout the personal transport services sector. They particularly aim to create a level playing field between the traditional taxi businesses and the new entrants using platforms to provide their services. For example, taxi licences or permits may represent a significant annual expense, and taxi companies and drivers have fiercely protested against unlicensed competition.

In some countries (e.g. Hungary and Slovakia) the licensing requirement is complemented by a **registration obligation** for the (companies that own) platforms or

[103] In some countries (e.g. Czechia, Hungary) Uber services are rather limited to one or a limited number of urban areas. Regional and local authorities of urban areas and larger cities are consequently the first levels of administration who are confronted with the occurrence and gradual expansion of the ride-sharing apps and digital platforms.

[104] In Sweden about 80 court rulings of the general criminal courts of first and second instance concerned UberPop, which was found in breach of competition and transportation legislation and as a consequence banned from operating. In Denmark the parliament adopted a new Taxi Act in 2017 which also led to a withdrawal of Uber.

[105] Apart from the countries mentioned FR (2018), FI (2018), LV (2107) also reported on recent legislation. The draft proposal for law in SI, which envisages to supplement the Road Transport Act aims to deregulate the taxi services sector and hence licensing obligation, implying that, if adopted, a new type of work(er) could emerge without having a formal status as employee or self-employed. PL also reports on upcoming legislation in the area of personal transport services to be adopted in 2019. In RO, proposals for new legislation were debated in parliament at the end of 2018 but not yet adopted.

digital apps, or by a requirement to have a 'permanent establishment' (Meszmann, 2018).

The legislation on personal transportation services adopted by Member States does not generally aim at regulating the employment status of the individual platform workers, nor is it aimed at working conditions or social protection. One exception is found in Portugal, where Law 45/2018[106] entered into force in the course of 2019. The law, which only applies to the transport sector, obliges platforms to use 'operators' as intermediaries between the platform and the drivers. These operators[107] are 'legal persons' or companies, which facilitate the transport services to the customers booking their journeys on the platform. According to the law, individual drivers cannot conclude a contract directly with the platforms and must instead be contracted by these intermediate operators. The law furthermore introduces the presumption that there is an employment contract between the driver and the operator, and explicitly states that the presumption prevails even in cases when the specific contract is named differently.[108] The law introduces additional material provisions on working conditions, such as limited working hours. Furthermore, Uber drivers, as employees, are covered by general labour and social protection legislation.

Dedicated legislation on working conditions and social protection for platform workers

Very few national legislators have directly tackled the area of working conditions and social protection that exclusively address platform workers by means of statutory law. However, in addition to Portugal's 2018 law on drivers in the personal transport sector, a few other responses are noteworthy.

In Italy several proposals of law were discussed in Parliament in 2018 and more recently in spring 2019, which all aimed at better protection of (platform) workers mainly in the food delivery sector. The now-adopted legislation[109] aims to establish the employment status of food delivery riders who work through digital platforms. The law affords riders better protection by ensuring a guaranteed minimum wage and the right to paid holidays and sick leave, which are all labour rights that are applied to employees in general.[110]

The Portuguese and Italian national legislation referred to above concern the specific business sectors of personal transport services and food delivery services. They remain limited to the working conditions and social protection of workers in these specific sectors and are not oriented to all types of platform work and platform workers. More comprehensive legislation is in force in France and Italy.

The French parliament adopted the *Loi El Khomri* [El Khomri Law] in 2016[111] to target certain self-employed platform workers. Platform workers affected by this law are

[106] Lei n.º 45/2018 Regime jurídico da atividade de transporte individual e remunerado de passageiros em veículos descaracterizados a partir de plataforma eletrónica [Legal regime of individual transport activity and paid passengers in unregistered vehicles from electronic platforms] (Diário da República, 1.ª série — N.º 154 10.08.2018, p. 3972-3980).

[107] Defined as 'TVDE' – transporte em veiculo descaracterizado a partirde uma plataform electronica [transport in vehicle characterised by an electronic platform].

[108] One relevant question is whether a driver who establishes a one-person undertaking and through the latter is concluding a contract with the platform could be considered as an employee of the platform. This creative circumvention of the legislation may beget further discussions.

[109] L. 2 novembre 2019, n. 128, Conversione in legge, con modificazioni, del decreto-legge 3 settembre 2019, n. 101, recante disposizioni urgenti per la tutela del lavoro e per la risoluzione di crisi aziendali

[110] The original draft legislation also prohibited pay 'per task' or 'per delivery', but this was not included in the passed legislation.

[111] Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels [Law on work, modernising social dialogue and securing career paths] (2016-1088, 8.08.2016)

defined as independent workers[112] in an economically[113] and technically dependent[114] relationship with an online platform.[115] The law highlights the 'social responsibility' of such platforms to provide platform workers with access to insurance for work accidents and professional diseases, training and continued education. It also establishes the right to start or join trade unions, and the right to take collective action for these self-employed platform workers. In addition, the law contains provisions concerned with taxation of income received by self-employed platform workers.

By introducing the El Khomri Law, the French legislature has directly tackled the hybrid employment status of certain platform workers[116] across all business sectors, explicitly clarifying what labour and social rights self-employed platform workers are entitled to. In so doing, the legislator has found a unique mechanism ensuring some labour and social rights for particularly vulnerable self-employed platform workers who are not employees, and consequently are not protected by much labour legislation on working conditions and social protection (Daugareilh et al., 2019).

The Italian region of Lazio adopted regional legislation on 20 March 2019.[117] This aims to regulate remuneration, health and safety, and social protection of all types of platform work regardless of the employment status of the workers (IRES, 2019). It is the **most comprehensive legislation on platform work in force** in the 30 countries covered by the present study. The law covers many working conditions and social protection challenges that platform workers face. In spite of its novel approach in covering the working conditions and social protection rights of all platform workers throughout all market sectors, the Lazio regional legislation is exceedingly broad, and according to the Italian legal expert consulted, likely to be challenged on the grounds of its constitutionality.

Employment status: the critical issue in a majority of countries

As discussed in Section 4, one of the most (if not *the* most) critical challenges concerns the employment status of platform workers. Platform work has profoundly challenged the traditional dichotomy between employee and self-employed in practice, and also before national courts. In general, platforms engage their workers as self-employed for economic reasons. When platforms enter markets with prevailing practices based on employment relationships, they circumvent national legislation on working conditions, social protection and other requirements and standards, thereby reducing their costs and creating a competitive advantage.

EU Member States differ widely in their national definitions of employees and self-employed. Often concepts such as 'employee' or 'self-employed' are not explicitly defined in national labour and social protection legislation. From our survey among the country experts, none of the countries, with the exception of Portugal, has adopted

[112] The term used throughout the legislation is *travailleur indépendant* – literally independent worker, but generally meaning self-employed person or independent contractor.

[113] See Art. L. 7342-1 through 7342-6. "[Contributions] shall be borne by the platform when the self-employed person has completed the platform, during of the calendar year under which the contribution and contribution were paid, a turnover equal to or greater than 13% of the annual ceiling for social security" (2016-1088, 8.08.2016)

[114] Art. L. 7342-1: "When the platform determines the characteristics of the service provided or the good sold and fixes its price, it has, with respect to the workers concerned, a social responsibility that is exercised under the conditions provided for in this Chapter" (2016-1088, 8.08.2016)

[115] See Code général des impôts [General tax code], which defines "The company, regardless of its place of establishment, which as platform operator remotely connects, electronically, people for the sale of a property, the provision of a service or the exchange or sharing of a good or service […]" (Article 242 bis, modified by LOI n°2018-898 du 23 octobre 2018 - art. 10 (V))

[116] See above qualifications for technical and economic dependency. For example, platform workers benefiting from these portions of the El Khomri Law cannot set their own prices.

[117] Giunta Regionale: deliberazione N.308 NORME PER LA TUTELA E LA SICUREZZA DEI LAVORATORI DIGITALI [Rules for the safety and protection of digital workers] (2018 n.40, 20.03.2019)

specific legislation determining the employment status of platform workers. Portugal did so for platform workers in the personal transport services sector, and in this case, there is a legal presumption that select platform workers are employees based in legislation.[118] In all countries, the labour and social protection legislation leaves the **discretionary power to interpret specific cases on employment status to the judiciary,** and national courts base their rulings on the facts and concrete relationship between the employer/commissioning company, and the particular platform worker.

In many countries, the notion of 'subordination' is critical to determine an employment relationship. For example, in its recent draft legislation covering the digital economy,[119] the Italian region of Piedmont aimed to codify the criteria that the Italian courts applied in their case law when determining the employment status of platform workers (IRES, 2019). The notion is specifically relevant for platform work and has been further detailed in the legislation itself. Platform work is performed in subordination when: 1) the work is requested by a third party; 2) the platform worker uses their own means and tools; and 3) **the platform established or influences the conditions and remuneration through a digital platform**. This is not dissimilar to the previously discussed criteria of the El Khomri Law, which requires certain platform workers to receive additional protections. At the same time, the legislation clarifies some criteria that are/were often viewed as indicative or decisive of self-employment in court. The legislation specifies that the mere fact that the working time of a platform worker has not been defined in advance, or that a worker is free to accept (or decline) a single task, does not in itself constitute self-employment. The legislation also determines that algorithms are subjected to an experimental phase and to a consultation right for the trade unions about the implementation of the algorithm, whereas rating mechanisms based on the performance of the platform workers shall be banned.[120]

Some countries have taken different legislative action to clarify the employment status of platform workers and/or to address the consequences of doubtful or wrong classifications. In a number of countries, **a third category of 'workers'** exists in national legislation besides the categories of employed and self-employed. In Bulgaria, a third category of workers exists under the concept of 'contractors' who have recently become part of the personal scope of general social insurance legislation, in addition to employees and self-employed. In Spain the concept of 'economically dependent autonomous work' serves as the intermediate category between employee and self-employed. Germany has 'employee-like' workers, 'mini-jobbers', and so on. These third categories often have mixed protection levels in terms of their working conditions and social protection, which usually implies greater protection than self-employed, but less protection than employees. In the countries concerned, platform workers can be classified as an in-between category of workers.

Clearly Member States show a great deal of diversity in handling criteria to distinguish employees, self-employed, and any intermediate statuses. However, certain factors are applicable in most EU jurisdictions to help determine if a platform worker is an employee or self-employed.

[118] The rebuttable presumption is a concept that most often originates from case law and is less prevalent in legislation. Note that EU-OSHA (2017) found that the rebuttable presumption of self-employment does not necessarily produce concrete benefits for platform workers or remove legal uncertainties.

[119] Regione Piemonte, Proposta di Legge Regionale 27 giugno 2018, n. 306 "Disposizioni in materia di lavoro mediante piattaforme digitali"

[120] The regional legislation also abolishes the concept of 'quasi-subordinate work', which was introduced by the Jobs Act.

Table 13: Overview of factors indicating whether a platform worker is employee or self-employed

Factor	Elements indicating employee status	Elements indicating self-employed status
Agreement	• Fixed remuneration • Guaranteed remuneration in case of illness, holiday, etc. • Expenses refunded • Non-competition or exclusivity clause • Training clause	• Payment after invoice • Payment per performance • No guaranteed remuneration (i.e. when no services performed) • Costs/expenses borne by the service provider • Commitment to attain a certain result regarding agreed work
Work organisation	• Precise and detailed description of tasks and the way they are to be performed • Working materials and equipment provided by the platform • Exclusivity • Presenting oneself as a part of the platform towards third parties	• Work organised freely • Workplace freely chosen • Own working materials and equipment • Possibility of recruiting own staff to perform agreed services • Possibility of having a replacement perform the work • Possibility of working for several companies/platforms • Extensive liability
Working time organisation	• Working hours imposed by the platform (check-in and -out obligations; daily timesheets) • Holiday period (number and timing) imposed • Obligation to justify absences	• Working hours chosen by the service provider • Holiday period (number and timing) freely chosen by the service provider
Possibility of exercising hierarchical supervision	• Possibility of precise and detailed instructions by the platform • Possibility of supervision of the performance of the work and of compliance; reporting duties during performance or afterwards • Internal disciplinary sanctions and control by hierarchical superior	• Only general directives of an economic nature are given by the platform/client • Reporting only afterwards on the results • Responsibility and decision-making power with respect to financial means • Personal and considerable investment in the company and participation in the profits and losses of the company

Source: adapted from EU-OSHA's (2017) presentation of overview from Nerinckx (2016).

The designation of employment status has a number of practical consequences. Of particular interest is national legislation on **social protection of the self-employed**. The scope and protection levels of the self-employed are generally lower than employees, though protection legislation of the self-employed varies to a large extent in the Member States. Meanwhile, most platform workers are classified as self-employed in practice (Eurofound, 2018). Changes to national legislation on the social protection of the self-employed can therefore have direct consequences for platform workers.[121]

[121] See also discussion of a relevant EU instrument: Council Recommendation on access to social protection for workers and the self-employed, political agreement; 15394/18 of 10.12.2018.

In Denmark, a revision of the Unemployment Insurance Act of 2018 determined that all sorts of income from labour, and hence also self-employed income, is to be considered income that is taken into account for the determination and calculation of unemployment benefits. The income that self-employed platform workers earn will hence be taken into account for the purposes of their unemployment benefit.

Box 7: Belgium's special tax categories

Belgium introduced a **special taxation regime** '*Programmawet*' [Program Law] on 1 July 2016. It applies to income natural persons receive when providing services through an electronic platform, on the condition that the customer is a natural person not acting in a professional capacity, and the payment is made by a registered digital platform. When the gross income received is below a predefined ceiling, a special (lower) tax rate applies. Platforms are required to register and to report annually on the amount that they have paid to the individual service providers to the tax administration.

In 2018 a new taxation regime '***Loi De Croo***' was launched for income from occasional services provided between 'citizens' outside any professional relationship. Natural persons can receive payments for services outside of any professional relationship such as small-scale maintenance works at home, household help, small-scale IT support services, etc. Occasional services can also be provided through the mediation of registered digital platforms.

The income from occasional work is treated under a special taxation regime and free from taxes and social security contributions up to a maximum ceiling of €6,000 per year or €500 per month. When the income exceeds the annual ceiling, the provider is obliged to register as self-employed and the income will be treated as professional income. Lenaerts (2018) finds that whereas most workers simply stop working when they reach the maximum amount, others use it as a springboard to launch their own business.

Several countries report recent legislative changes and amendments to **national labour or social protection legislation**, which were already in force, with a view to **expanding the personal scope** of their application to (new) non-standard forms of employment. Recent legislation in Estonia[122] has been adopted to extend the personal scope of the Health Insurance Act to persons working under these civil law contracts, which are usually contracts of very short volume or duration. In several cases this extension is formulated by including employee-like persons into the personal coverage scope, as was the case in Austria regarding legislation on equal treatment of temporary agency workers.[123,124] Similar occurred in Germany for 'homeworkers',[125,126] and Denmark[127] and Lithuania[128] for income gained through self-employed activities. These legislative actions were often not necessarily introduced for platform workers exclusively, but to cover broader groups of workers in non-standard employment.

Apart from broadening the personal scope of legislation to incorporate non-standard forms of work and/or platform work, other mechanisms are being introduced in national

[122] RT I, 30.06.2015, 1 amending the Estonian Health Insurance Fund Act

[123] BGBl. Nr. 196/1988, Arbeitskräfteüberlassungsgesetz [Act on Temporary Agency Work] § 2

[124] The introduction of 'employee like persons' in addition to the employees themselves (irrespective of the latter's specific term that is being used under national legislation) in the ambit of the personal scope of legislation seems primarily used under the national non-discrimination legislation in matters of employment, which in itself has already a broader scope deriving from European Legislation. The latter also encompasses access to self-employment.

[125] See Glossary.

[126] Heimarbeitsgesetz in der im Bundesgesetzblatt Teil III, Gliederungsnummer 804-1, veröffentlichten bereinigten Fassung, das zuletzt durch Artikel 4g des Gesetzes vom 18. Dezember 2018 (BGBl. I S. 2651) geändert worden ist.

[127] Ammendment Act no 1670 26/12/2017, Lov om ændring af lov om arbejdsløshedsforsikring m.v. [Act on Unemployment Insurance Benefits]

[128] Lietuvos Respublikos valstybinio socialinio draudimo įstatymas [Law of the Republic of Lithuania on State Social Insurance Law No I-1336 of the Republic of Lithuania on State Social Insurance

legislation which aim to correctly establish the employment status of platform workers. These mechanisms are often aimed at **avoiding possible abuse and bogus self-employment**. In addition to the Portuguese example of the legal presumption of employee status for selected platform workers, others can be observed. One such example is in Malta, where secondary legislation was introduced enabling a reclassification of persons who have concluded a self-employed contract.[129]

As an additional consequence of their self-employment, few platform workers are covered by collective agreements.[130] A 2017 Act in Ireland altered this. The Competition (Amendment) Act,[131] which defines and uses the concepts of 'false self-employed worker' and 'fully dependent self-employed worker', allows such individuals to join trade unions and take part in collective bargaining and agreements. The law does not address platform workers in particular but establishes the right to association and collective bargaining to certain self-employed individuals, including some self-employed platform workers. Such collective rights were also introduced by the French El Khomri Law of 2016 for platform workers who are in an economically and technically dependent relationship with a digital platform.

Reporting and taxation for platforms and platform workers

Some country experts have reported recently adopted legislation which aims to better control platform operations, and/or income generated by platform work. These generally intend to address several challenges at once, including reducing administrative burden for workers, preventing tax evasion, and fighting undeclared work. These pieces of legislation do not necessarily apply just to platform workers.

In France, a new law adopted in late 2018, and effective from 1 January 2020, obliges platforms to report the remuneration they have paid to each platform worker to the tax administration.[132] Estonia adopted the Simplified Business Income Taxation Act, which entered into force at the beginning of 2018, and applies to the persons who deliver services or offer goods to other natural persons. The income received is subject to a more favourable taxation rate. The service providers making use of the simplified business account do not have to register as self-employed ('entrepreneurs').[133] At the same time, a new register had already been initiated by the tax authorities in 2014, where all different categories of workers need to register: employees, workers under civil law contracts, service providers using the simplified business account, and the self-employed (entrepreneurs). At the beginning of 2018, Slovakia adopted new tax legislation obliging platforms providing personal transport services and accommodation services to report earned income.[134] In Romania, legislative proposals were debated in late 2018 in Parliament that obliged ride-sharing platforms to report on the number of rides to the fiscal authorities.[135]

[129] S.L.452.108, see http://www.justiceservices.gov.mt/downloaddocument.aspx?app=lom&itemid=11844&l=1

[130] Further discussed under the heading Collective agreements.

[131] Competition (Amendment) Act 2017 (Act 12 of 2017) Part 2B

[132] Platforms previously did not have to verify the identity of the platform workers. See LOI n° 2018-898 du 23 octobre 2018 relative à la lutte contre la fraude (1), available at https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000037518803&categorieLien=id.

[133] Ettevõtlustulu lihtsustatud maksustamise seadus [Simplified Business Income Taxation Act], available at https://www.riigiteataja.ee/en/eli/522122017001/consolide

[134] The Amendment to the Act No. 595/2003 (Income Tax Act), available at https://www.mfsr.sk/en/taxes-customs-accounting/direct-taxes/income-tax/legislation-force/income-tax-act/

[135] From expert and stakeholder interviews, see Annex I: Synopsis Report of consultations.

Non-discrimination, equal treatment, and platform work

Many country experts report recent amendments to their national non-discrimination legislation in the field of employment,[136] ensuring equal treatment and protection from the six grounds of discrimination established in the assessed EU equal treatment legislation.[137] None of the legislative initiatives were aimed at platform workers particularly, but through extension of the personal scope of the legislation concerned, such as the inclusion of intermediate employment statuses (e.g. employee-like in Germany and Austria), platform workers may have come within their ambit. In cases such as Germany, non-discrimination labour laws are rather unique, insofar as they equally impact workers (including platform workers) regardless of employment status (De Groen et al., 2018a).

Intermediate conclusions on national legislation

In recent years, **national legislators have been increasingly active** in the area of platform work. The business sectors concerned are those in which digital platforms first entered national markets about a decade ago and have been most powerful and persistent in gaining parts of the local market shares, often to the detriment of the incumbents. Most national legislation has been adopted in the sector of the personal transport services and to a lesser extent in the sector of the delivery services.

National legislation has primarily aimed to ensure fair competition in these specific market segments. In this regard, two main approaches seem to be deregulating the traditional business sectors, or explicitly applying existing standards and requirements to the new (platform) entrants. Both could theoretically lead to a level playing field, and thus have consequences on working conditions and social protection of platform workers, but results have varied.[138] Where countries such as Sweden, Belgium, Slovakia, and Denmark have essentially banned or driven out platforms in particular sectors, in most others platform businesses are growing steadily, often to the detriment of their more traditional competitors.

Existing research found that national legislators have been reactive where platform work is concerned (Lenaerts et al., 2017), but **we observe a tendency towards more proactive approaches**. For example, several countries display creative approaches to the issue of tax reporting and collection, which is a significant priority of central governments.

National legislation specific to platform work remains very rare. Nevertheless, while several new or revised pieces of legislation do not target platform workers, they still impact them. These legal tools may **reduce the disparity between self-employed and employees in social protection coverage or labour law protections**. In this respect, these tools broadly address 'new' forms of non-standard employment, including platform work.

5.3.2 *Case law*

Experts for sixteen of the thirty surveyed countries report national case law concerning platforms. Furthermore, it appears that there is a significant rise in court cases in recent

[136] AT, BG, CZ, DK, EL, IE, LT, NL, NO, and PL.

[137] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16–22); Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22–26); Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ L 204, 26.7.2006, p. 23–36)

[138] As mentioned above, platforms have entered markets with prevailing practices based on employment relationships. By relying on labour from self-employed individuals, they circumvent national legislation on working conditions, social protection and other requirements and standards, thereby reducing their costs and creating a competitive advantage.

years, and that many decisions on crucial cases are pending and/or are under appeal as of summer 2019.

Court cases have primarily been reported in the two business sectors that are most relevant for the platform economy in terms of their initial occurrence and volume of business in the Member States: personal transport services[139] and food delivery services.[140] Some national court cases also concern accommodation services and other business sectors such as plumbing.[141]

Most often national courts were called upon to decide in matters related to **competition law in specific business sectors**. However, as could be expected given the binary divide between employees and self-employed in many national legislations, national judges have regularly ruled in cases that concern the **determination of the employment status** of a particular (group of) platform worker(s), sometimes with **contradictory outcomes** in and between countries.

Uber in national courts

National judges have assessed whether digital platform businesses are to be classified as a 'taxi' service, implying thereby that the requirements and standards applied to the sector have to be adhered to by the platforms. Belgian, Bulgarian, Danish, Finnish, Dutch, Slovak, Swedish and UK competent courts ruled in such cases, and most often classified the platform as a taxi service. In Sweden alone, more than 80 cases have been ruled since 2015, and the criminal courts of first and second instance in Stockholm and Gothenburg unanimously ruled that UberPop provides personal transport services, and hence that their drivers require a professional licence to operate. In Sweden and elsewhere, such rulings correspond with Uber's decision to suspend its UberPop services in most European countries.

Local courts in Brussels, Belgium[142] took a similar position until very recently, which (would have) led to a ban of ride-sharing services provided by UberPop, and potentially UberX, unless local personal transport sector legislation[143] was observed. In the Brussels region, different legislation exists between taxi services and services to 'car rental with driver', such as limousine services.[144] Taxi drivers must have a taxi licence, which is quite expensive. They must further have specific insurance and ensure regular technical examinations of the cars. Regulations on 'car rental with driver' services are much less stringent. Court decisions in 2015 and in 2016 ruled that the services provided by UberPop and UberX were illegal, which implied in practice that the ride-sharing drivers had to respect the local requirement for taxi drivers and/or for renting a car with driver services. As a consequence, UberPop terminated its services because these drivers lack professional licences, but maintained its UberX services, as the latter requires drivers to possess the special driver's licence required by the local transport regulation for rental of

[139] Court cases concerned with Uber were reported for AT, BE, BG, CZ, DE, DK, FI, FR, NL, PL, SE, SK, and the UK – 13/30 surveyed countries.

[140] Court cases concerning Deliveroo or other food delivery services were reported for BE, DE, ES, FR, IT, NL, and the UK.

[141] M*r G Smith* v *Pimlico Plumbers and Mr C Mullins*: 2374916/2011. In this case, a person working for a plumbing company claimed he was to be considered as an employee ('worker' in the UK definition) and entitled to unpaid holiday pay all employees are entitled to, and that he was not a self-employed as he was classified by the plumbing firm. Courts of first and second instance, as well as Supreme Court, applied the established tests of employment status, confirming he was an employee (or 'worker' in the UK definition).

[142] Uber is mainly active in the Brussels region, in some cities in Wallonia and in the city of Leuven in Flanders, but not yet in other urban areas such as in Antwerp and Ghent.

[143] The regulation of personal transportation services is a regional competence in Belgium. The Brussels region legislates by means of ordinances.

[144] This includes personal transport services that provide a car and a driver, and concern rides that last longer than three hours, and exceed certain distances. Similar distinctions are present elsewhere in Europe, such as Austria.

a car with driver services.[145] These judgments were confirmed by a new court case at the beginning of January 2019. However, a recent ruling of the same Brussels court decided differently in the second half of January 2019.[146] The case concerned only UberX services, and the court ruled that Uber is not infringing the local transport legislation and can continue its services without their drivers having to obtain a taxi driver's licence. By this ruling, **UberX was not considered to be a transport service, but an intermediary in the transport sector**,[147] whereas the drivers themselves were considered as providers of the services concerned. It remains to be seen what the court of appeal will rule, as the case is likely to be further pursued by the local taxi industry.

The courts of first (May 2018) and second (December 2018) instance of Bratislava, Slovakia, also effectively banned Uber on similar grounds to the Swedish and Belgian judges, determining that Uber drivers need to have a professional licence. However, a recent piece of legislation entered into force in April 2019 that classified digital platforms as dispatching services rather than taxi services (Reuters, 2019). In effect, this removed most of the requirements for drivers that previously were applied, and it is likely that Uber will restart its operations soon.

A few indicative **national court rulings deal with employment status of the platform drivers** in the personal transport sector. UK judges have thus far consistently[148] qualified Uber drivers as workers[149] (in the UK meaning of the term) in spite of the platform classifying them as self-employed. In France, the Court of Appeal in Paris[150] also ruled in January 2019 that even if Uber's platform worker was registered as self-employed, it appears from the facts that there is a link of subordination with the platform. The Court considered that the platform worker is not free to choose his clients and to organise his activity, which is under the full control of the platform, and also that the platform has the power to impose penalties and to terminate the contract.

Whereas UK and French judges often consider platform drivers not to be self-employed, Belgian judges seem to hold a different opinion. In the recent case concerning the classification of UberX as a taxi service or as a 'car rental with driver' in late January 2019, the Brussels court was also asked about the employment status of the ride-sharing drivers.[151] The court concluded that there was no relationship of subordination between UberX and the drivers, as the latter can chose freely where and when they work, how long they work and which rides they accept or refuse. The judge furthermore argued that the drivers always have their own car (even if leased) and that the drivers are free to work elsewhere whenever they prefer. Thus, this latest Belgian judgment considers UberX drivers to be self-employed.

[145] The LVC licence or licence for the rental of a car with driver.

[146] Orb., 16 januari 2019, AR A/18/02920, see https://www.socialweb.be/Socialweb/NL/publichome/html/free/articles/3063152

[147] Interesting in this regard: one of the arguments put forward to become considered as the special type of personal transport services with a driver and for longer than three hours' rides was the fact that the platform works with accounts and not with individual drivers. In the app, subsequent rides are all added up on the account until the minimum three hours and/or the minimum distance has been reached.

[148] The ruling of the Employment Tribunal in June 2016 on a particular case where two drivers took their case against Uber to court was confirmed by the Employment Appeals Tribunal in November 2017 and Court of Appeal in December 2018. It is likely that the case will now be brought before the Supreme Court.

[149] A third category of employment status between employee and self-employed, with intermediate protection levels.

[150] Court of Appeal Paris, Pole 6, chambre 2, 10 January 2019, case RG 18/08357, see https://www.doctrine.fr/d/CA/Paris/2017/C27AD99FFA3292FB31B1D

[151] A/18/02920, Tribunal de l'enterprise francophone de Bruxelles

The discretionary power of national judges in determining employment status

As pointed out, national labour and social protection legislation usually applies the mutually exclusive concepts of employees and self-employed, sometimes complemented by a third or intermediate category. The employment status determines different protection levels concerning working conditions and social protection. National legislation in Member States defines the status of employee or employment contract in varying ways and uses criteria such as the subordination dimension. National courts are ultimately called upon to determine whether there is subordination or not for particular cases, which may lead to a reclassification when a platform worker has been wrongly classified as self-employed.

Beyond Uber and similar platforms, the determination of the employment status of food delivery platform workers has also been subject to plenty of court cases in a number of countries. In late 2018, the *Cour de Cassation* of France (the highest judicial power in the country) confirmed that even if a worker of Take Eat Easy, a platform organising food delivery services and riders, is classified as self-employed by the platform, they are still an employee due to factual evidence of subordination.[152] The Court considered in this specific case that the link of subordination is established by two factual elements: the right for the platform to impose penalties and the existence of a geotracking system.

In Italy there have been similar court cases concerned with the employment status of food delivery riders in recent years. In May 2018, the Employment Tribunal of Turin rejected a claim from six riders of the platform Foodora to be reclassified as employees.[153] The six riders were hired by the Italian branch of Foodora under a 'coordinated and continuous collaboration' contract (which in Italy is a subcategory of self-employment). The contract expired at the end of November 2016 and was not renewed by the platform. The group of workers filed an employment claim demanding: (i) wage differentials according to either the national collective agreement for logistics or that of the service sector; (ii) job reinstatement after unlawful termination; (iii) compensation for the harm suffered as a result of the infringement of privacy; and (iv) actions for damages for breach of safety and health regulations. They also alleged they were dismissed as a form of retaliation against their decision to lead or take part in a collective demonstration against the shift in the payment system from an hourly based to per-delivery model, which had been announced in October 2016.

The Tribunal stated that the workers concerned were free to decide when to work by accepting or refusing a particular call, and even to disregard previously agreed shifts. In the judge's opinion, this constitutes 'in itself, a decisive factor when it comes to excluding the workers' subjection to the managerial and organisational power of the employer, as it is evident that, if [the platform] cannot request work, then it cannot exercise its commanding power'. The examination performed by the judge was limited to a merely formalistic analysis: 'there was no obligation on the side of the workers to offer their services and no obligation for the company to provide further work'. The judge considered the existence of managerial and disciplinary prerogatives, 'once workers are in a shift, after communicating their availability', but concluded they were not to be reclassified as employees, in spite of the allocation of shifts, the specification of locations, the repeated follow-up phone calls, the remote monitoring, and the internal ranking of the best performers.[154]

In its recent judgement in February 2019, the Appeal Tribunal in Turin[155] did not uphold the earlier judgment. The court stated that the workers' personal performance was organised by the platform in accordance with the prevailing labour legislation extending

[152] Cour de cassation 28 Nov. 2018, case 17-20.079. See also the explanatory note related to this judgment.

[153] Tribunal of Turin no. 778/2018 of 7 May 2018

[154] Ibid.

[155] Employment Appeal Tribunal of Turin, 4 February 2019

labour protection to collaborators who are not genuinely autonomous.[156] The workers were further subject to organisation by the platform, even if only in terms of working time and place. On this basis, the court ruled that the former Foodora riders had to be paid in accordance with the national collective bargaining agreement for the logistics and freight transport sector, but that they could not rely on the provisions related to unfair dismissal. In short, workers of the digital platform are technically considered as a subcategory of self-employed, but because of the extension of the personal scope of labour legislation, they can still rely on some labour law protection, provided that they are a subject to coordination and organisation by the platform.

The Milan Tribunal ruled in September 2018[157] in a similar way to the Turin Tribunal, stating that the claimant was not obliged to observe a fixed work schedule imposed by the platform, so he was not permanently included in the business organisation. In addition, the claimant used his own vehicle for deliveries and did not receive a fixed and predetermined monthly payment, but a variable amount, depending on the quantity and type of deliveries made month by month and therefore based not on the time worked, but on the results achieved. Considering these elements of fact, the judge considered that no symptomatic signs of sufficient and unambiguous subordination were found.

Contradictory rulings have also occurred regarding the employment status of food delivery couriers in the Netherlands and Spain. Whereas the Court of Amsterdam ruled mid 2018[158] that a delivery rider of Deliveroo was not an employee, the same Court concluded differently in a 2019 case.[159] The latter case was brought forward by trade unions and considered the relationship between the food delivery riders and Deliveroo as an employment relationship. Thus, the collective bargaining agreement for professional goods transport by road had to be applied retroactively.

In 2018 and 2019, seven cases were brought before Spanish courts concerning the determination of the employment status of food delivery riders using the platforms Deliveroo, Take Eat Easy and Glovo. In four instances[160] the court classified the riders of Glovo, Deliveroo, and Take Eat Easy as employees, whereas in three others,[161] the courts concluded that there was no employment relationship for the Glovo riders, and that they had to be considered self-employed.

The reasoning varied despite similar factual circumstances. Each of the four cases that determined the rider is an employee found that a subordinate relationship existed between the platform worker and platform. This was based on control through the application used, location systems, possibility of dismissals, concept of 'workdays' and planning annual leave, and using equipment given by the company. The Madrid court decided in January 2019[162] that a Glovo rider is not an employee but an economically dependent self-employed person.[163] The judge reached this assessment because the rider is not obliged to perform a minimum number of hours work per week, is free to accept the service, has full control over the way they want to provide the service,

[156] Art. 2 of legislative decree 81/2015 (Jobs Act)

[157] Tribunal of Milan no. 1853/2018 of 10 September

[158] ECLI:NL:RBAMS:2018:5183 Rechtbank Amsterdam, 23-07-2018, 6622665 CV EXPL 18-2673

[159] ECLI:NL:RBAMS:2019:210 Rechtbank Amsterdam, 15-01-2019, 7044576 CV EXPL 18-14762

[160] Judgment of Labour Court number 1 Gijón (Juzgado de lo Social) (20.02.2019), Judgment of Labour Court number 33 Madrid (Juzgado de lo Social núm. 33 de Madrid) (11.02.2019), Judgment of Labour Court number 6 Valencia (Juzgado de lo Social núm. 6 de Valencia) (1.06.2018), Judgment of Labour Court number 11 Barcelona (Juzgado de lo Social núm.11 de Barcelona) (29.05.2018)

[161] Judgment of Labour Court number 4 Oviedo (Juzgado de lo Social núm. 4 de Oviedo) (24.02.2019), Judgment of Labour Court number 17 Madrid (Juzgado de lo Social núm. 17 de Madrid) (11.01.2019), Judgment of Labour Court number 39 Madrid (Juzgado de lo Social núm. 39 de Madrid) (3.09.2018)

[162] Judgment of Labour Court number 17 Madrid (Juzgado de lo Social núm. 17 de Madrid) (11.01.2019)

[163] Trabajadores autonomos economicamente dependientes

assumes the risk, and is the owner of the vehicle. Another case tried before the Oviedo court in February 2019[164] also considered a Glovo rider as economically dependent self-employed, stating, among other arguments, that the rider was completely free to collaborate with other platforms.

A number of cases concerning platform workers' employment status remain pending. In the UK, for example, cases related to the collective bargaining rights of food delivery riders at Deliveroo went to the Central Arbitration Committee in November 2017, and subsequently to the High Court in December 2018. Both confirmed the riders were self-employed and therefore did not qualify for collective bargaining rights. The riders' union has appealed the decision to the Court of Appeal (Webber, 2018). In Sweden, a recent 2019 case pending before the Administrative Court of Appeal concerns the local umbrella organisations of platform workers and the extent to which they, as employers, are liable for administrative sanctions in instances of breach of health and safety legislation when working at the premises of customers.

Intermediate conclusions on national case law

In countries where large platforms have emerged and operated, numerous court cases and rulings have occurred in recent years. Many court cases concern competition law issues[165] in the personal transport sector, which is also subject to the highest volume of legislative initiatives. Most court cases concerned with the personal transport services considered whether the service provided by Uber amounts to taxi services, or something else with lower standards and requirements.

Many cases have also ruled on the employment status of platform workers, particularly for food delivery couriers. On employment status, **many courts examined similar evidence and reached different conclusions**. This demonstrates that the employment status of platform workers differs significantly across business sectors in the countries concerned, but also between similar business sectors across the EU. Platform workers active in similar business sectors are employees in some countries and self-employed in others, even if they provide identical services for the same platform. Because of the contradictory rulings and the fact that some platforms offer different 'types of contracts', platform workers can even be classified in different ways when working in the same country on the same platform. To some extent contradictory rulings reflect **differing arguments raised in court**, but also the **discretionary power of labour judges, who have different judicial philosophies and differently assess facts on a case-by-case basis**. Still, in most instances court rulings are still subject to further appeal before the highest courts, which may reverse the rulings concerned.

Consequently, the **final determination of the employment status of a platform worker remains uncertain at present**. This is mainly because national courts rely on the facts of particular cases as the basis for their interpretation and consider and differently emphasise multiple criteria, for example the autonomy of the platform worker, who bears costs associated with work, or economic or technical dependence.

5.3.3 *Administrators and inspectorates*

Administrators and inspectorates are essential to the enforcement of social and labour legislation. The European Parliament has urged Member States to fully implement and enforce relevant legislation on platform work, including by investing in labour inspections (EU-OSHA, 2017).

However, there are notable legal and practical difficulties with this approach. For example, some platform work can take place online in any location. This would require competent authorities to perform OSH inspections in the platform worker's home, which

[164] Judgment of Labour Court number 4 Oviedo (Juzgado de lo Social núm. 4 de Oviedo) (24.02.2019)

[165] These were not necessarily covered as this study is focused on working conditions and social protection, rather than competition between platforms and other industries.

is frequently the place of work. In a number of countries, labour inspectorates do not inspect workers' homes, even if the worker is an employee. For example, the Swedish labour inspectorate does not inspect employees' homes in cases of teleworking, though the employer has the same responsibilities as if the work were conducted at a 'normal' workplace. The Danish Working Environment Authority and Finnish labour inspection authority can inspect teleworking activities in homes, but do so very rarely (EU-OSHA, 2017).

Nevertheless, there have been targeted responses to platform worker challenges from government administrators and inspectorates. Most inspections have been limited to on-location platform work taking place in public spaces, notably food delivery services and taxi-like services. Belgium, Denmark, France, the UK and Sweden have been particularly active in this regard.

In some cases, inspectorates and administrators have assessed platforms for potential labour law violations and decided whether platform work can contribute to social benefits. Interestingly, administrative and inspectorate bodies can sometimes stand in to make decisions on whether platform workers are employees, whereas in most countries, employment status is determined through case law. This occurred in Denmark with a decision of the *Skatterådet* [Danish Tax Council], which held that craftsmen offering their services through a 'craftsmen platform' are to be regarded as self-employed, not employees of the platform (Skatterådet, 2018). Also in Denmark, the *Center for Klager om Arbejdsløshedsforsikring* [Centre for Complaints on Unemployment Insurance] offered guidance that drivers offering illegal transportation services through Uber cannot use these working hours to access unemployment benefits (Center for Klager om Arbejdsløshedsforsikring i Styrelsen for Arbejdsmarked og Rekruttering, 2016). Lastly, the Danish Tax Council created a pilot project testing automatic reporting to Danish tax authorities (SKAT) from five platforms. A respective announcement notes concern that platforms are not obliged to report user revenues to SKAT, and therefore it is crucial that such data become available (Skatteforvaltningen, 2018).

In Spain, labour inspectorates challenged the legality of a 'temporary work agency' (Factoo) and 'cooperative' for self-employed workers (EsLife) (Gutiérrez, 2017; Moreira, 2015). Factoo offered certain billing services to many types of self-employed, including platform workers. However, it was found to be helping members avoid social security contribution obligations, and thus forced to close. EsLife promoted itself as a cooperative, but essentially functioned as a platform intermediating cleaning tasks (similarly to platforms like Helpling). EsLife was also forced to close after labour inspectors could not verify that cleaners using the platform were paying social security contributions.

Box 8: Denmark's collective agreements for platform work

In 2018, the Danish platform **Hilfr**, which intermediates cleaning services, concluded a collective agreement with the trade union 3f. It is often considered the first collective agreement for platform workers.

The collective agreement is very broad, covering minimum wage, pension contribution, holiday and sick pay, and a 'welfare supplement' (*velfærdstillæg*).

Hilfr considered the collective agreement important in an effort to be socially responsible, as well as to distinguish themselves from other platforms.

Later in the year, the interpretation platform **Voocali** concluded a collective agreement with its freelancers, who can work on-location or remotely via videoconferencing software.

The agreement was concluded between The Union of Commercial and Clerical Employees, HK Privat and Voocali. It particularly covers fees, account suspension, pension, payment, ratings, and transparency of platform decision-making.

A few instances demonstrate administrative decisions on the safe working conditions of delivery riders. For example, the *Arbetsmiljöverket* [Swedish Work Environment Authority] determined that delivery riders were entitled to winter tyres as a safety measure. Initially Foodora refused, arguing that the couriers were acting in a private capacity and using their own

bicycles. At first, Foodora agreed to cover an amount of SEK 450 (approximately EUR 41.68), which would cover around half the cost of winter tyres. The Swedish Work Environment Authority was dissatisfied with this response and threatened Foodora with a fine, after which Foodora agreed that platform workers active a certain number of hours per week would have winter tyres fitted at no expense to the rider (Transport Arbetaren, 2019).

In France, inspectorates and audit services for social ministries have been especially active on multiple issues concerning platform workers, and their responses were not limited to platform work delivered on-location. For example, in May 2016 the *Inspection générale des affaires sociales* (IGAS) [General inspectorate of social affairs] released 36 recommendations on collaborative platforms, labour and social protection. These are divided into seven sections: 1) regulation and organisation of new forms of activity; 2) knowledge and information; 3) legal security of platforms, contributors and new practices; 4) developing platform wage and securing [career] paths; 5) rebalance the bargaining power of collaborative workers and limit economic dependence; 6) smooth and modernise the paths to social protection; and 7) improve and intensify [inspectorate] control (Amar and Viossat, 2016). These IGAS recommendations are broad and ambitious, and may be considered precursors to other French responses, such as dedicated platform law.

5.4 Bottom-up tools and responses

This section discusses responses from platforms, platform workers, and social partners. In many instances, two or three of these groups were active in a single response. Bottom-up tools and responses may be considered 'softer' than top-down, though collective agreements can be thoroughly embedded in formal national regulatory frameworks.

5.4.1 *Collective agreements*

Existing literature finds very few collective agreements in the platform economy (Kilhoffer et al., 2017). In part, this is because the personal scope of collective agreements is typically limited to employees. From a competition law perspective, self-employed are considered 'undertakings'. In principle, anti-cartel provisions prohibit undertakings from collective action and price setting, as this would violate EU anti-cartel regulation, prohibitions on price setting, and distort free competition.[166]

In practice, however, many self-employed platform workers work in economic dependency and/or under some sort of authority exercised by the platform. For this reason, collective agreements may be an appropriate measure to ensure adequate working conditions, social protection, and so on. (De Stefano and Aloisi, 2018).

Kilhoffer et al. (2017) found that when collective bargaining occurs in the platform economy, it usually takes place at firm level. Newer research highlights that in some situations, sector-level agreements can apply to platforms and platform workers (Lenaerts et al., 2018), who may not have taken part in the bargaining process. Even so, sectoral agreements can be considered well-suited for the platform economy, given characteristics such as the geographical dispersion of workers, the high turnover among workers and the tendency of workers to be simultaneously active on multiple platforms, as well as the rapidly changing market with many start-ups and continuously changing business models (Johnston and Land-Kazlauskas, 2018).

Both sectoral and platform-specific collective agreements were found in literature and the national surveys for the study.

[166] See TFEU Article 101, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E101:EN:HTML

A few countries have taken measures to ensure that certain self-employed can participate in collective agreements. As noted, Irish[167] and French[168] legislation allows collective bargaining for some self-employed workers, including certain platform workers. Other countries seem to be moving in the same direction. For example, in 2017, the Norwegian sharing-economy committee stated that 'service providers in the sharing economy who do not set selling prices directly and have to comply with prices set by the platform that is used, should have the opportunity to negotiate collective agreements with platform operators even if these cannot be deemed to be employers' (Johnston and Land-Kazlauskas, 2018). The Norwegian expert consulted for this study suggests that this could be a way to address the power asymmetry between platforms and their workers.

Additionally, eight formal collective agreements for platform workers were identified from the national surveys. They have been conducted directly between platform workers and platforms, and also with the intervention or assistance of trade unions, or facilitation of national governments (e.g. Denmark). However, more seem to be pending or under discussion (e.g. Austria and Norway[169]).

Overall, collective agreements were mostly found for on-location platform workers, and specifically for food delivery couriers. Five of the eight collective agreements highlighted by national experts' surveys concern food delivery or couriers, either applying to a sector or specific platform. These findings confirm theory found in the literature: on-location platform workers are more organised because they have fewer barriers to organisation, and may have clearer shared grievances compelling them to collective action (Kilhoffer et al., 2017). As previously discussed, on-location lower-skilled platform work also has unique OSH challenges, which can spur workers and trade unions into action.

Sectoral collective agreements apply to all workers active in a given sector (e.g. logistics, transportation). Sectoral collective agreements can apply to platform workers, depending on factors including whether only employees are subject to collective bargaining. At times these agreements have been struck with platform workers in mind or represented. For Italy, it seems clear that platform workers were taken into account for the negotiations of the collective agreement,[170] as the relevant national collective bargaining agreement lifted the ban on 'on-call work' within the sector, including workers delivering goods with bikes or motorbikes.

In other cases, sectoral agreements apply to platform workers, though they were concluded with little or no explicit attention paid to platform workers. For example, cleaning platforms such as BOOK A TIGER and Helpling, and their platform workers, are subject to sectoral agreements in Germany negotiated by IG BAU (De Groen et al., 2018a). While platforms offering cleaning services must abide by the agreements, no evidence suggests the platforms take part in negotiations. In other instances, courts have ruled that existing collective agreements apply to platform workers. In 2019, the Dutch trade union FNV sued Deliveroo, arguing the platform falls within the scope of the collective bargaining agreement for professional goods transport by road.[171] The court confirmed that Deliveroo is obliged to respect the collective bargaining agreement, although Deliveroo riders in the Netherlands are self-employed.

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[167] Competition (Amendment) Act 2017 (Act 12 of 2017) Part 2B

[168] Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels [Law on work, modernising social dialogue and securing career paths] (2016-1088, 8.08.2016)

[169] In Norway, Foodora riders organised by the Norwegian Transport Union are currently negotiating a collective agreement demanding, among others, hourly rate, equipment reimbursement and increased working time. This information comes from interviews conducted by a Norwegian expert during fieldwork.

[170] See Confederazione Generale Italiana dei Trasporti e della Logistica (2017)

[171] ECLI:NL:RBAMS:2019:210, https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2019:210

Platform-specific collective agreements apply to workers in a given platform. Two platform-specific collective agreements took place in Denmark. One agreement covers Hilfr, which intermediates cleaning services (UNI Europa, 2018). The second covers an interpretation platform called Voocali, where intermediation can take place on-location or via digital means (e.g. teleconference) (Fagbevægelsens Hovedorganisation, 2018; Voocalicom and HK Privat, 2018). In Sweden, one collective agreement applies to the umbrella companies' sector. Another collective agreement was struck between the Bzzt platform (offering personal transport) and the Swedish Transport Workers Union. By this agreement, platform workers on Bzzt are subject to the transportation sector's collective agreement and thus work under the same terms and conditions as other taxi drivers covered by this contract (Jesnes et al., 2019).

However, collective agreements for platform workers are not exclusive to the Nordic countries. In Spain, the non-profit association Asoriders, supported by the trade union UGT, concluded a collective agreement with Deliveroo setting minimum rates of pay, daily/weekly rest periods, holiday and annual leave, and so on. (Asoriders, 2018). In 2018 in Italy the municipality of Bologna promoted a Charter of Fundamental Rights for Platform Work, which was signed by trade unions, delivery riders' autonomous representatives and some platforms operating in the city of Bologna. This forms a binding statement of principles on platform work that signatories must abide by (Comune di Bologna, 2018).

5.4.2 *Platform worker organisation*

Limited bargaining power in platform workers' organisation is a frequent point that appears in the literature and came up in several focus groups. In many national contexts, if self-employed platform workers were to agree to a minimum wage, this may be in violation of competition law forbidding cartels. Because platform workers may not be able to organise and bargain in the same manner as employees, they form smaller or less formal collective structures more often.

Platform worker organisations have sprung up, usually through a **mixture of self-organisation and organisational assistance from social partners or platforms**. Platform workers have developed forms of peer learning via off-platform channels, for example by congregating on social networking sites or mailing lists to exchange advice (Lehdonvirta et al., forthcoming). Additionally, self-organisational efforts result in spontaneous actions. Strikes, protests, flash mobs or sit-ins have occurred in over a dozen surveyed countries. Among the more common grievances are remuneration and lack of voice. In some cases, platform workers sought to change many facets of their work at once (e.g. working conditions, employment status, organisational rights), while still other actions protested other specific issues, such as rating or evaluation systems perceived as unfair. Platform workers delivering food via bicycle or motorbike often demonstrated against unsafe working conditions and demanded that platforms provide additional safety equipment or weather-appropriate gear, for example. One series of protests in Dublin, Ireland highlighted widespread harassment and violent attacks by street gangs, perceived to be targeting platform workers of Brazilian origin (Hilliard, 2019).

In some cases, platform workers have organised into **cooperatives or collectives** (Vandaele, 2017). In other cases, cooperatives themselves act as platforms, aiming to offer similar benefits as for-profit platforms (effective intermediation of supply and demand for services) while being democratically run by the platform workers themselves. In other cases, collectives or cooperatives bring together platform workers for advocacy. For example, the *Koeriers Kollektief* [Courier's Collective] in Belgium was founded when Deliveroo purchased another food delivery platform, Take Eat Easy, in

July 2016. The cooperative's Facebook page organises and disseminates information on courier demonstrations around Europe.[172]

Another interesting example often discussed in the literature is the cooperative SMart. Originally providing services for French artists, SMart expanded to Belgium[173] and entered into negotiations with Deliveroo. By May 2016, Deliveroo platform workers could opt for self-employment, or sign an employment contract with SMart. SMart employees, working via the Deliveroo app, paid SMart 6.5% of their income and received safety training, accident insurance, liability insurance, reimbursement for biking gear and cellular usage, a minimum shift duration, and additional benefits (Lenaerts and Kilhoffer, 2017). However, this arrangement ultimately ceased when Deliveroo changed its remuneration system and work allocation algorithms. The transition began in October 2017 and concluded in January 2018, affecting nearly 4 000 Deliveroo couriers registered with SMart. Deliveroo claimed they would explore options to provide workers with access to insurance, and the changes would increase workers' pay and flexibility. SMart has criticised Deliveroo for cutting costs at the expense of workers' well-being, and blamed the Belgian government for succumbing to lobbying from platforms (De Standaard, 2017).

In Austria, platform workers for Foodora have formed a works council with the support of the trade union Vida, which was formed from the merger of three transport and service unions in 2006 (De Groen et al., 2018b). Under Austrian law, only employees can take part in a works council. For this reason, only the minority of Austrian Foodora riders with an employment contract can formally take part in the works council. The works council negotiates with Foodora over certain benefits such as bike repair, as well as wages.

To illustrate trade union involvement, German trade unions including the NGG and FAU have helped Deliveroo couriers establish works councils, and pushed forward dialogue between platform workers and platforms (FAU, 2016; Knieps, 2018).

Platforms are also involved in organising workers, as in the UK, where Uber set up driver panels under the UberENGAGE scheme (Onita, 2018; Uber, 2019). This is overseen by an independent review board of senior figures from outside Uber. However, few additional details are available as of summer 2019. In the Netherlands, Deliveroo set up a rider forum: a body formed of platform workers that participates in decision-making (Deliveroo, 2019).

While most platform worker organisation concerns on-location platforms, a **particularly innovative development addressing online platform work comes from IG Metall,** the largest industrial trade union in Europe, which launched a project in early 2016 to organise online platform workers. This helped lead to Fair Crowd Work, which is a type of watchdog organisation run in collaboration with Austrian and Swedish trade unions. Fair Crowd Work collects information about platforms and produces a rating system based on the platforms' terms and conditions and worker reviews. Additionally, Fair Crowd Work informs platform workers about their legal rights in accessible language, and lists trade unions they can join. In December 2016, IG Metall joined other trade unions from the US and Europe to assist Munich-based platform Testbirds in drafting the Frankfurt Declaration (Fair Crowd Work, 2016). The Frankfurt Declaration states a number of prerequisites for fair platform work, such as minimum income, the ability to achieve self-sufficiency with 35-40 hours of work per week, an affordable means to healthcare, and rights to organise and take part in collective agreements. (Fair Crowd Work, 2017).

[172] See https://www.facebook.com/collectif.coursiers

[173] According to interviewees, SMart is also planning to expand services to other EU countries such as Hungary.

5.4.3 *Platform actions*

The identified actions mostly consist of efforts of on-location lower-skilled platforms (such as Uber, Deliveroo, and Foodora), apparently to address criticisms of their practices and challenges faced by platform workers.

In several cases, **platforms have joined employers' unions or banded together** with other platforms for information sharing, mutual representation or lobbying. Such establishments have occurred in Czechia with the *Česká asociace sdílené ekonomiky* [Czech Sharing Economy Association] (ČASE), Ireland with 'Sharing Economy Ireland', Italy with *Gig-Imprese* [Gig-Companies], and others. In Austria and Slovakia, Uber has joined the national employers association (De Groen et al., 2018b; Akguc et al., 2018) as required by national law. This represents a more formal induction of platforms into traditional industrial relations structures. However, it should be noted that Uber's role as employer is for technological and administrative positions in these countries – not as employer of the platform workers who drive the cars.

A number of responses may be considered **self-regulation efforts**. One common theme is addressing the lack of social protection that platform workers experience. In the UK, for example, both Uber and Deliveroo took action to set up **insurance schemes for platform workers**. Uber partners with AXA to cover platform workers' maternity leave, sick leave, and other benefits.[174] However, in practice, the rights and entitlements of Uber workers vary greatly between countries. Deliveroo's initiative aimed to provide platform workers with accident insurance, which seems to address the frequent criticisms of platform worker safety.

In some interesting examples, on-location **platforms have changed how they operate in response to potential legal challenges** on the employment status of its platform workers. For example, one cleaning platform in the Netherlands initially fixed its workers' hourly cleaning prices. After the platform became aware of a potential legal challenge, it changed its model to allow platform workers to set their own hourly prices.[175] Similarly, several food delivery platforms initially distributed branded shirts and jackets for workers to wear on the job. Upon learning that wearing a uniform would be viewed as evidence of an employment relationship in court, most platforms adapted to requiring platform workers to wear their own clothing.[176] These changes highlight the tension between platforms' desire to offer a consistent service and maintain a brand image, without the tools of a traditional employer.

Other **platforms have changed how they intermediate services in response to feedback from platform workers and clients**. For example, a popular 'handyman' or home improvement platform in Germany significantly changed its structure over time. Initially the platform developed a bad reputation and was known as a 'junk platform', where few qualified workers were active, clients posted their suggested (and unrealistic) prices, and workers competed on price in a race to the bottom. The platform changed its intermediation so that clients posted tasks and platform workers bid at their own chosen price. These changes have brought more qualified workers back to the platform, but the platform still suffers somewhat from a poor reputation among German professionals (De Groen and Kilhoffer, 2019).

Two 'handyman' or home improvement platforms in France, Frizbiz and Heetch, offer ongoing **training for platform workers**. These platforms cooperate with a large home improvement and gardening retailer, Leroy Merlin. In doing so, the platforms are able to provide training opportunities online and on-location to their platform workers (WEC-

[174] See https://www.uber.com/be/en/drive/insurance/, though it is not immediately clear which parties are responsible for paying for the insurance.

[175] From focus group discussion.

[176] From expert interviews.

Europe and UNI Europa, 2018). This represents a very rare case where platforms offer training for career development, rather than no or simply on-the-job safety training. Uber has begun to cover tuition for online higher education programmes for drivers who have completed 3 000 trips and achieved other milestones.[177]

Eight platforms in Germany, Sweden and Austria, with the assistance of social partners, have started a particularly interesting self-regulation effort collectively known as the German Crowdsourcing Association. This **voluntarily abides by the Crowdsourcing Code of Conduct**. If platform workers feel their platforms have violated their pledge, they can bring their dispute to an ombudsman office, which is composed of platform representatives, platform worker representatives, and a labour judge serving as neutral arbiter. In many cases, the Ombuds Office has handled disputes related to non-payment for services rendered. The Ombuds Office has solved most of its disputes by consensus (IG Metall, 2019).

In several focus groups, platform representatives suggested they would be interested in providing more benefits to platform workers, for example insurance or training options. Platforms consider good work benefits important to attract and retain platform workers, particularly in sectors where several platforms compete. However, **providing benefits to platform workers often entails legal risk**. In a number of countries, providing social protection and other services to platform workers could be held as indicative of an employment relationship in court cases assessing bogus self-employment claims. For this reason, platforms' representatives have argued that they should provide fewer benefits to platform workers for fear of reclassification as employers.

In a few cases, **platforms have responded to worker demands and organisation with deference, or perhaps even punitive action**. In Austria, the formation of a works council seemed to coincide with one food delivery platform removing certain workers' privileges, such as a meeting place to relax and repair bikes (De Groen et al., 2018b). The platform disputes this characterisation, saying it stopped renting a space for workers as part of general cost-saving measures.

Lastly, **platforms have responded to court challenges and legislation by simply leaving a market**. This is best exemplified by Uber ceasing its operations entirely in given countries or localities (e.g. Catalonia). Uber has also stopped offering UberPop services in most of Europe. Unlike UberBlack and UberX, UberPop allows people without professional licences to work. While popular in the United States, UberPop has faced many more legal challenges in Europe. By selectively offering its services, Uber has been able to stay active in more countries in spite of restrictions.

5.5 Other tools and responses

By and large, the 'other' tools and responses amount to information gathering and sharing by various stakeholders. For example, several countries established committees or panels on platform work. Governments (Norway, Czechia, Germany, etc.) and social partners commissioned research or organised conferences on the platform economy as well.[178]

Governments have also taken action to address broader concerns, but in some cases explicitly included platform work. For example, Luxembourg's Third Industrial Revolution Strategy deals broadly with changes in the 'world of work' in the digital age, which includes the possibility of new platform work regulation (Ministère de l'Économie et al., 2016). Similarly, Denmark set up the Disruption Council, which addressed the future of work, including platform work, especially in relation to **undeclared work** (Danish Ministry of Employment, 2019). The Estonian Parliament established the Foresight

[177] See https://www.uber.com/us/en/drive/uber-pro/education/

[178] These findings largely derive from the national expert surveys, which themselves come from a variety of sources including informal interviews with stakeholders.

Centre to analyse trends in the future of work, including platform work (Estonian Parliament, 2019). Similarly, the German government has published the *Weißbuch* [White book] and other policy papers on the future of work, which includes substantial discussion on the platform economy (Bundesministerium für Arbeit und Soziales, 2016).

In some cases, tools may address challenges for platform workers in a roundabout way. For example, in Austria employees are entitled to a *Dienstzettel* [written statement] in lieu of an employment contract, which may help address ambiguous or intransparent terms and conditions.[179] The written notice must contain the most important contents of the contact and may not contain any substantial disadvantage to the worker. However, the written notice is merely informative and not legally binding, and only applies to employees (and thus a small minority of Austrian platform workers) (De Groen et al., 2018b).

Most platform workers are largely responsible for their own health and safety on the job, but in some cases existing tools can apply. In Germany, many platform workers on 'handyman' platforms are self-employed. Both professionals (members of a trade association) and amateurs offer services such as painting, metalwork, and roofing. However, the professionals must abide by OSH regulations mandated by their respective trade association (De Groen and Kilhoffer, 2019).

Lastly, a few experts noted that their countries (e.g. Austria and Belgium) have had **ongoing media debates about platform work**. These do not necessarily correspond to specific responses or challenges but reflect media and public attention paid to platform work developments. Media debates on platform work tend to flare up when significant court cases are decided, or public demonstrations occur.

[179] This is a transposition of the Written Statement Directive: Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.

6. INSTRUMENTS AND ACTIONS AT EU LEVEL

The analysis presented in previous sections is based on extensive literature review, responses to questionnaires distributed to national experts taking part in the study, and feedback received from the focus groups and validation workshop.

Sections 4 and 5 deal with the **national** socio-economic contexts and legal frameworks. Section 4 maps **the challenges** platform work and platform workers are confronted with across the EU, Norway and Iceland, with a focus on working conditions and social protection, and Section 5 focuses on **the responses** that have been or are being formulated in the Member States to tackle the specific challenges related to platform work.

This section concerns the **EU level** and in particular existing **EU legislation and CJEU case law** which is affecting the working conditions and social protection of platform workers.

In consultation with the European Commission, a list of EU legal instruments was selected for the analysis. The main aim was to verify whether these instruments provide adequate responses at EU level for the challenges resulting from the platform work practices as presented in Section 4. The legislation concerned was most often adopted at times when platform work did not yet pose a challenge and when it was not specifically incorporated into its ambit.[180] The analysis examines whether this EU legislation nevertheless has direct relevance for the working conditions and social protection of platform workers, and whether the protection provided is sufficient and/or adequate.

Working conditions and social protection are policy fields that are part of the shared competences between the EU and the Member States. EU action and hence EU legislative action is bound by the existence of a clear legal basis in the Treaties and governed by the principles of subsidiarity and proportionality. In many aspects of employment and social protection the EU has used its legislative competence by means of directives. For the purposes of this study, these directives could be seen as **responses at EU level** in areas of employment and social protection that are complementary to the responses provided by Member States as presented in Section 5.

Some preliminary remarks are to be highlighted in this regard. A list of EU labour and social protection legislation containing 21 individual legal instruments was established as the basis of the analysis, **thereby excluding some other EU legal instruments in the labour and social policy field**.[181,182] The analysis does **not elaborate on other EU legislation** that may have relevance for platform work.[183] However, due to their importance and relevance for the matters analysed for this study, the new P2B

[180] Two of the selected pieces of legislation have recently been adopted and entered into force on 1 August 2019: Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L186/105 11.07.2019); Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU. The Directive on Transparent and Predictable working conditions explicitly refers to platform work in its introductory part.

[181] This is particularly the case as regards the Occupational Health and Safety *acquis*, which has only been analysed in this study to a limited extent. Examples are: Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers (OJ L 183, 29.6.1989, p. 1–8); Directive 2009/104/EC concerning the minimum safety and health requirements for the use of work equipment by workers at work (OJ L 260, 3.10.2009, p. 5–19).

[182] Not covered, for instance, are the autonomous framework agreements concluded by the EU Social partners such as the Framework Agreement on work-related stress of 08.10.2004 and the Framework Agreement on harassment and violence at work of 27.04.2007.

[183] EU legislation and CJEU case law on free movement of workers, social security coordination or free movement of services has relevance for the study insofar as it concerns cross-border platform work but does not form part of this Section.

Regulation of 20 June 2019[184] and the GDPR[185] have also been looked at here, albeit at a more general level.

Table 14 lists the legal instruments agreed with the Commission to form the basis of the legal analysis presented in this section.

Table 14: List of relevant EU legislation in the area of working conditions and social protection

EU legislative instruments on working conditions, social protection and equal treatment		
EU legislation - non-standard work:		**Reference title used**
1	Directive 97/81/EC on part-time work (Framework Agreement) (OJ L 14, 20.1.1998, p. 9–14)	1 Part-time Work Directive
2	Directive 99/70/EC on fixed-term work (Framework Agreement) (OJ L 175, 10.7.1999, p. 43–48)	2 Fixed-term Work Directive
3	Directive 2008/104/EC on temporary agency work (OJ L 327, 5.12.2008, p. 9–14)	3 Temporary Agency Work Directive
EU legislation - health and safety		
4	Directive 91/383/EEC on health and safety of workers with fixed-duration employment relationship or a fixed-term relationship (OJ L 206/19 of 29.07.1991)	4 Health and safety for fixed-term work Directive
5	Directive 92/85/EEC on safety and health at work for pregnant workers (OJ L 348/1 of 28.11.1992)	5 Pregnant Workers Directive
EU legislation - individual labour rights:		
6	Directive 91/533/EEC 'Written statement' (OJ L 288, 18.10.1991, p. 32) (*repealed but still legal effect until 01.08.2022)*	6 Written Statement Directive
7	Directive (EU) 2019/ 1152 on transparent and predictable working conditions in the European Union (OJ L186/105 11.07.2019)	7 Transparent and predictable working conditions Directive
8	Directive 2003/88/EC on working time (OJ L 299, 18.11.2003, p. 9–19)	8 Working time Directive
EU legislation - collective labour rights:		
9	Directive 2002/14/EC establishing the general framework for informing and consulting employees in the European Community (OJ L 080 , 23.03.2002, p. 29)	9 Information and consultation Directive
10	Directive 2008/94/EC on the protection of employees in the event of insolvency of the employer (OJ L 283, 28.10.2008, p. 36–42)	10 Insolvency Directive
11	Directive 98/59/EC on collective redundancies (OJ L 225, 12.8.1998 p.16-21)	11 Collective Redundancies Directive
12	Directive 2009/38/EC on the establishment of a European Works Council (OJ L 122, 16.5.2009, p. 28–44)	12 European Works Council Directive
EU legislation - work-life balance:		
13	Directive 2010/18/EU on parental leave (Framework Agreement) (OJ L 68, 18.3.2010, p. 13–20) *(repealed but still legal effect until 01.08.2022)*	13 Parental Leave Directive
14	Directive (EU) 2019/1158 on work-life balance for parents and carers repealing DIR 2010/18/EU (OJ L 188, 12.7.2019, p. 79–93)	14 Work-life Balance Directive
EU legislation - social protection		
15	Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (OJ C 387, 15.11.2019, p. 1–8)	15 Recommendation on access to social protection
EU legislation - various aspects of anti-discrimination:		
16	Directive 2000/78/EC on equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16–22)	16 Employment Directive
17	Directive 2000/43/EC on equal treatment on grounds of race and ethnicity (OJ L 180, 19.7.2000, p. 22–26)	17 Race Directive
18	Directive 2006/54/EC on gender equality in employment (OJ L 204, 26.7.2006, p. 23–36)	18 Gender equality in employment Directive
19	Directive 2004/113/EC on gender equality in goods and services (OJ L 373, 21.12.2004, p. 37–43)	19 Gender equality in access to goods and services Directive
20	Directive 2010/41/EU on gender equality of self-employed (OJ L 180, 15.7.2010, p. 1–6)	20 Gender equality of self-employed Directive
21	Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ L 6, 10.1.1979, p. 24–25)	21 Gender equality in social security Directive

The selected EU legal instruments can be thematically grouped as follows:

(1) directives concerning non-standard forms of work
(2) directives concerning health and safety at work
(3) directives concerning individual labour rights
(4) directives concerning collective labour rights
(5) directives concerning work-life balance
(6) recommendation concerning social protection
(7) directives on equal treatment.

Section 6.1 provides the main analysis of the selected EU legal instruments, while in Section 6.2 some of the other EU-level are considered to a lesser extent.

6.1 Analysis of relevant EU legislation

6.1.1 *EU labour and social protection legislation*

Apart from exceptions such as the provisions concerning 'equal pay for equal work between men and women', which are part of the EU Treaties,[186] EU legislative action in employment and social protection has only gradually been adopted over the years, mainly for reasons relating to the lack of a legal basis. One of the first areas in which legislative action was taken by the EU was the coordination of social security for mobile workers. This was logical because the aim to remove barriers to the free movement of workers is one of the cornerstones of the EU internal market. Other pieces of EU legislation related to the free movement of workers quickly followed, but EU legislative

[184] Regulation (EU) 2019/1150 of the European Parliament and the Council on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57–79)

[185] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p.1)

[186] The provisions concerning equal treatment between men and women in terms of 'pay' have been part of the original texts of the first Treaties establishing the European Communities in 1957 and have since remained in the texts of the subsequent Treaties until today.

action in the field of employment and social protection remained rather limited or concerned with certain cross-cutting issues, such as equal treatment between men and women in these policy domains. With the adoption of the Single European Act in 1986, and later the Maastricht Treaty of 1992 and especially the 1997 Amsterdam Treaty, the competences of the EU in the policy fields concerned were gradually expanded and legislative procedures simplified.[187] This allowed for more legislative action by the EU, although even today these are still conditioned by the subsidiarity and proportionality principles, which are characteristic of the functioning of the EU.

All but one of the EU legal instruments under analysis are **directives,** which implies that they are binding for the Member States in achieving the goals that have been set in the directives concerned and this within a timeframe that is established therein. **Member States have some discretion in deciding how they are transposing the provisions of the directives** in their national legislative and administrative frameworks, provided that the objectives are achieved. They usually enter into force on the date when Member States are being notified or on the 20th day after their publication in the *Official Journal of the European Union* as specified in the directives concerned. Directives are consequently not directly applicable in the Member States in the sense that they attribute rights to individual citizens as regulations do. The latter are binding in all their elements, and provisions contained in regulations are directly applicable.

The listed EU directives **concern the employment area more than social protection**. This may reflect the fact that the EU has more room for manoeuvre to initiate actions where employment matters are concerned than it does in the field of social protection.[188] The scope and objectives of the directives, however, are very different.

The EU directives concerned with **non-standard forms of work aim to ensure equal treatment between workers under atypical forms of employment with those who are engaged under permanent or open-ended full-time employment contracts** when working conditions are concerned. Some of the directives regulate **specific material aspects of the working conditions and initiate minimum requirements** that employers must respect. Examples include the new TPWC Directive (repealing the Written Statement Directive), the Working Time Directive and the different directives concerned with health and safety. The EU directives concerning **collective labour rights** oblige employers not only to inform their personnel about the economic situation and employment forecasts in the company and in cases of insolvency or collective redundancies, they also initiate structured consultation with the employees. The European Works Council Directive targets companies with activities in more than one Member State and equally requires companies to inform and organise structured consultation with the workforce, particularly on transnational issues. Finally, a set of **EU non-discrimination directives** is ensuring **equal treatment on different grounds of discrimination** in the employment area, but also in areas such as social security and access to goods and services.

The **few selected directives** that concern **social protection** mainly ensure equal treatment of persons on different grounds of discrimination in the social security field. The Pregnant Workers Directive and the new Work-life Balance Directive (repealing the Parental Leave Directive) are the only ones that focus on specific social protection schemes (both are closely linked with the employment situation). Different non-standard

[187] For EU employment and social policy legislative actions still special legislative procedures apply as opposed to the standard, more simplified ordinary legislative procedure and qualified majority voting.

[188] In terms of the coordination of employment and social policies of Member States, the TFEU also makes a difference when it states that the EU shall coordinate employment policies and define guidelines thereto, whereas for social policies, the EU may take initiatives to coordinate.

work directives also cover social protection.[189] Most relevant in this regard, however, is the Council Recommendation on access to social protection, which aims to ensure effective access to six branches of social security for both workers (employees) and self-employed.

Personal scope of the directives

Terms and concepts used in the directives

When determining their personal scope of application, **the listed EU directives use very different terms and concepts**, for example: 'workers', 'employees', 'self-employed persons', 'working population' or 'self-employed workers' (see Section 3).

The EU directives on collective labour rights typically use the term *'employee'* or refer to the employer when defining their personal scope of application.[190]

The non-discrimination directives, which concern employment, access to self-employment and social security matters, often define their personal scope more widely and refer to **'all persons'** or to the **'working population'**. They sometimes explicitly mention self-employed persons as being part of the personal scope.[191] They nevertheless have a specific objective in that they aim to ensure that individuals are treated equally and are not being discriminated against on some specific discrimination grounds referred to in Article 19 TFEU.[192]

Most of the EU labour law directives, however, use the term **'worker'**. They explicitly state that they concern workers (or in the eventual case 'employees') who have **'an employment contract' or 'employment relationship'** (e.g. the TPWC Directive, the Work-life Balance Directive, the Part-time Work Directive, the Fixed-term Work Directive, the Written Statement Directive) or refer to a **'worker under national employment law'** (e.g. the Temporary Work Agency Directive, the Parental Leave Directive). By doing so these directives refer **to workers (employees) who have an employment relationship or contract.** Most recent directives, such as the TPWC Directive and the Work-life Balance Directive, explicitly refer to the CJEU case law that needs to be considered or taken into account while determining the personal scope of application of the directives concerned (see *infra*).

The EU directives typically do not define the concepts of 'worker' or 'employee' they are using. Most **explicitly refer to national legislation, collective agreements and practices** when establishing the personal scope of application. By doing so, the EU legislator leaves the power of interpretation of the concepts of 'employees' and 'workers' to the Member States' legislative power, social partners' agreements and practices. The personal scope of the EU directives is consequently filled in by national definitions of these concepts.

There are, however, some exceptions which do not explicitly refer to **national legislation or practices**, including the Working Time Directive, the Health and safety for fixed-term work Directive, the Pregnant Workers Directive, the Collective Redundancies Directive and the European Works Council Directive. The concepts of 'employees' or 'workers' seem in these instances to have their own EU-wide meaning.

[189] The Directives on Fixed-term Work and Part-Time Work have a broad understanding of 'employment conditions', which also covers some social protection aspects.

[190] The Written Statement Directive, which in fact does not contain a definition of its personal scope of application, equally refers to 'employees'.

[191] Article 3 of Council Directive 2000/78/EC; Article 3 of Council Directive 2000/43/EC; Article 6 of Directive 2006/54/EC; Article 2 of Directive 2010/41/EU; Article 2 of Directive 79/7/EEC

[192] Article 19 TFEU installs the legal basis for EU action in view of combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation and requires unanimity in the Council.

Table 15: Personal Scope as defined in EU legislation

	EU legislative instruments	Personal scope (as defined in the legal instrument)	Reference to national legislation?	Personal Scope: classification
EU labour law and social protection law				
EU legislation - non-standard work:				
1	Part-time Work Directive	Part-time **worker** who has employment contract or in employment relationship *as defined by national law, collective agreement or practice*	YES	employees
2	Fixed-term Work Directive	Fixed-term **worker** who has employment contract or in employment relationship *as defined by national law, collective agreement or practice*	YES	employees
3	Temporary Agency Work Directive	**Worker** under national employment law	YES	employees
EU legislation - Health and safety				
4	Health and safety for fixed-term work Directive	**Employment relationships** governed by a fixed-duration of contract concluded by an **employe**r and a **worker** AND **temporary employment relationships** between a temporary employment business which is the employer and the worker, where the latter is assigned to work for and under the control of an undertaking or establishment making use of his services	NO	employees
5	Pregnant Workers Directive	Pregant **workers** and workers who have recently given birth or who are breastfeading	NO	employees / women
EU legislation - individual labour rights:				
6	Written Statement Directive	**Paid employee** having a contract or an employment relationship *defined by the law in force of the Member State and/or governed by the law in force in the Member State*	YES	employees
7	Transparent and predictable working conditions Directive	Every **worker** in the EU who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State with consideration to the case law of he CJEU	YES	employees
8	Working Time Directive	No definition of personal scope; implicit reference to '**worker**'	NO	employees
EU legislation - collective labour rights:				
9	Information and consultation Directive	**Employee** who is protected as an employee under national employment law; also reference to employer	YES	employees
10	Insolvency Directive	**Employee - employer**	YES	employees
11	Collective Redundancies Directive	**Workers** who have been dismissed by an employer	NO	employees
12	European Works Council Directive	**Employees**	NO	employees
EU legislation - work-life balance:				
13	Parental Leave Directive	All **workers,** men and women, who have an employment contract or employment relationship as defined by the law, collective agreements and/or practice in force in each Member State	YES	employees / women and men
14	Work-life Balance Directive	All **workers,** men and women**,** who have an employment contract or employment relationship as defined by the law, collective agreements and/or practice in force in each Member State, taking into account the case law of the CJEU	YES	employees / women and men
EU legislation - social protection				
15	Social protection Recommendation	All **workers** and **self-employed** in Member States; includes a **definition of worker**: a natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration	NO	employees and self-employed
EU legislation - various aspects of anti-discrimination:				
16	Employment Directive	All **persons**, as regards both the public and private sectors, including public bodies'	NO	employees and self-employed
17	Race Directive	All **persons**, as regards both the public and private sectors, including public bodies'	NO	employees and self-employed
18	Gender equality in employment Directive	**Various concepts and definitions**: pay : **workers**; occupational social security schemes : '**member of the working population, including self-employed person**s; access to employment and self-employement : **employees and self-employed**; employment and working conditions: **employees**	YES	employees and self-employed
19	Gender equality in access to goods and services Directive	All **persons** who provide goods and services, which are available to the public, ...	NO	women and men who are not
20	Gender equality for self-employment Directive	**Self-employed workers**, namely all persons pursuing a gainful activity for their own account, under the condition ladi down by national law	YES	self-employed (and spouses)
21	Gender equality in social security Directive	**Working population** - including self-employed persons, workers and self-employed persons whose activity is interrupted by illness, accident or involuntray unemployment and persons seeking employment - and to retired or invalid workers and self-employed persons	NO	employees and self-employed

The CJEU has over the years developed the concept of 'worker' in both instances, for example with directives that refer to national legislation for the interpretation of the concept of 'worker' and those that do not. The CJEU has given **an EU-wide interpretation to the concept of 'worker'**, thereby limiting the discretionary power of Member States in those cases where EU legislation is referring to national interpretation by Member States.[193]

The most recent EU legislation, such as the TPWC Directive and the Work-life Balance Directive, **explicitly refer to the CJEU case law when defining their personal scope**. The former, at least in the proposal made by the European Commission, even contained **a definition of 'worker'** as **a natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration.** The same definition was used in the Commission's proposal for a Council Recommendation on access to social protection for workers and self-employed but not withheld in the final text that was adopted on 8 November 2019.[194]

It seems that criteria developed by CJEU case law to determine the status of a 'worker' in the meaning of EU legislation are gradually becoming incorporated in the legislative proposals and new EU legislation. Recital 8 of the TPWC Directive is in itself not legally binding, but clarifies that the concept of worker includes domestic workers, temporary agency workers, on-demand workers, intermittent workers, voucher-based workers and platform workers, provided that those workers fulfil the criteria as set out by the CJEU to qualify as a 'worker' for the purpose of EU law. The new Recommendation on access to social protection equally refers in its Recital 11 to new types of employment, such as on demand work, voucher-based work and platform work.

Concept of worker versus self-employed

Leaving (some) discretionary power to Member States implies that the concepts established at EU level may have different interpretations across the EU because Member States use different national concepts and definitions. However, as pointed out, the CJEU has through its extensive case law taken a clear position in many instances and ensured a **common EU-wide interpretation of the concepts** laid down in some of the EU directives. By doing so the CJEU has counterbalanced the discretionary power of the Member States which was vested in the EU legislation.

The national concepts of 'worker' or 'employee' differ between the Member States.[195,196] Many countries do not have a legal concept of 'worker' or 'employee' defined in national civil, labour or social security law. They may instead often contain a definition of an employment relationship or contract. Different definitions may even exist under national labour and social security legislation.[197] National courts have extensively contributed to

[193] E.g. CJEU, 17 November 2016, case C-216/15, Betriebsrat der Ruhrlandklinik, para. 32; See also N. Kountouris, "The concept of 'Worker' in European Labour Law: fragmentation, autonomy and scope", ILJ 2018, 192-225.

[194] Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (OJ C 387, 15.11.2019, p. 1–8)

[195] B. Waas and G. Van Voss, Restatement of labour law in Europe (Vol 1): the concept of employee" Hart Publishing 2017, 880 p.

[196] In the UK the concept of 'worker' is different from the concept of 'employee'. 'Worker' is referring to persons who perform services personally (although they may subcontract) for another party in return for a reward and there is no client or customer relation with that other party. In general, 'employees' enjoy wider protection than 'workers' in terms of coverage of labour law and protection.

[197] In Austria social security legislation defines the concept of employee as a person who is performing work in personal and economic dependence in return for remuneration but labour legislation does not contain the concept of an employee and is instead referring to the concept of an employment contract. The payment of remuneration is as such not a necessary criterion for the determination of an employment contract under local labour legislation.

defining the national concept of worker (employee)[198] in many of the countries under examination.

Whereas remuneration is not always considered to be an essential criterion determining the existence of an employment contract in Member States, the **authority** or **control** exercised by the employer consistently is. This **subordination** or **direction,** which is also considered by the CJEU, has led to numerous interpretations by national courts. This subordination dimension is sometimes also perceived from the employee's perspective by using the criterion of **personal and economic** dependency or by defining that the services must be performed as 'dependent work'.[199]

The concept of 'self-employed' is not defined in the legislation of many of the Member States. It is often treated as a residual category comprising all those who do not qualify as employees under national labour legislation. Some Member States have a legal definition of self-employed or use similar concepts such as 'entrepreneurs', 'autonomous' or 'independent' workers.[200]

The in-between or third categories used by Member States include 'employee-like persons',[201] 'workers',[202] 'economically dependent self-employed persons',[203] 'employer-coordinated collaborators',[204] 'freelancers',[205] 'dependent contractors'[206] or 'contractors under a civil contract'.[207] In the Member States concerned, these workers have a sort of hybrid status and enjoy some of the same labour or social security protection that 'standard' workers or employees are entitled to. Some Member States have established other mechanisms - very often under tax legislation - that allow natural persons to perform services outside their usual professional businesses, such as the 'special business account' in Estonia or the 'free receivers' in Denmark.[208]

As pointed out above, the personal scope of the relevant EU directives in force mostly hinges on national legislation, practice or collective agreements defining the concept of 'worker', 'employee', 'employment contract' or 'employment relationship'. The CJEU has,

[198] In Austria the concept of personal dependence is a legal term pointing to the fact that a worker is not self-determined but 'externally determined'. The Supreme Court considers different criteria for establishing an external determination: pre-setting of time, pre-setting of workplace, inclusion into the operational employer's organisation, subject to personal and material directives, subject to control and supervision, use of the employer's equipment and obligation to report. In Denmark, case law determined five main characteristics of an employment relationship, of which assessment has to be based on the facts such as the subordination, the risk sharing, the obligatory personal performance of the work, the social perception of the relationship and the degree of connectedness between the two sides. In the UK, common law established five tests to determine an employment contract: control test, integration test, economic reality test, multiple factors test and mutuality of obligation.

[199] Based on national expert responses to surveys, Czechia and Germany are examples where courts consider these criteria in determining cases on employment status classification.

[200] Based on national expert responses to surveys, applicable countries include CZ, EE, EL, ES, IT, LT, LU, MT, NL, and NO.

[201] AT: employee like persons are economically dependent but not personally dependent. The Supreme Court considered the following factors as contributing to the economic dependency: performing services for a single client or marginal number of clients, agreements of non-competition, necessity to use the business structure due to the fact that the employee like person does not have appropriate own resources; DE: employee like persons and homeworkers are not personally dependent but economically dependent.

[202] UK: see above concerning the difference in the UK between employee and worker.

[203] Terms used in Spain and Slovenia.

[204] Term used in Italy.

[205] Term used in Norway.

[206] Term used in Sweden

[207] Terms used in Bulgaria, Estonia and Poland.

[208] Estonia: small-scale activities performed by natural persons are subject to a special tax regime under the Simplified Business Income Taxation Act.

however, cautiously steered these scoping provisions to push towards EU-wide convergence in the interpretation of the concept of 'worker' as used in the directives. The CJEU has not introduced an autonomous EU definition of the concept of worker in these instances, but in cases where Member States are applying rules that are likely to jeopardise the objectives of a directive, and hence deprive it of its effectiveness, it[209] has decided **in favour of such an autonomous EU worker concept, thereby overruling the national interpretation and provisions**.

For those directives that are not referring to national law for the interpretation of the worker concept established therein, the **CJEU went further and progressively developed and consolidated a European concept of 'worker' through its case law**. This was first initiated when interpreting Article 45 TFEU on the free movement of workers. In its rulings the CJEU confirmed explicitly that the term 'worker' in Article 45 TFEU may not be interpreted differently according to the law of each Member State, but that the term 'worker' has an autonomous EU meaning.[210]

The EU **worker concept and employment relationship under article 45 TFEU** is characterised by the following features: a person performs services of some **economic value, for and under the direction or supervision** of another person and in return for a **remuneration**, while the activities performed must be effective and genuine.[211] The nature of the legal relationship is immaterial to the application of the EU concept of worker, which also includes workers in public administration[212] and persons who work only a few hours or who are paid very low remuneration,[213] provided that the activities are effective and genuine. The CJEU, however, excluded activities that are performed on a very small scale, and which are to be regarded as marginal or ancillary.[214] Interesting to note in this regard is that the CJEU did not include the (economic or other) dependency criterion in its definition of the concept of worker as it did in its **case law concerned with the collective rights of workers in the context of EU competition legislation**.[215] The CJEU ruled that a service provider (or self-employed person) cannot be considered as an undertaking 'if he **does not determine independently his own conduct on the market**, but is entirely dependent on his principal, because he does not bear any of the **financial or commercial risks arising out of the latter's activity and operates as an auxiliary within the principal's undertaking'**.[216] This consideration focuses on the *dependence* of a worker on his principal, rather than on the test of control and subordination.[217] The CJEU considered such service providers as false self-employed who are in a similar position as workers and should be treated equally

[209] CJEU, 17 November 2016, case C-216/15, Betriebsrat der Ruhrlandklinik, para. 36-37

[210] Judgments of the CJEU, Case C-66/85 Deborah Lawrie Blum v Land Baden-Württemberg (03.07.1986): at the time of the case, Article 45 TFEU was still Article 48 of the EEC Treaty and the term 'Community meaning' was used instead of the current 'EU meaning'; Case 75/63 Hoekstra (née Unger) v. Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten (19.03.1964); Case C-428/09 Union Syndicale Solidaires Isère v Premier ministre and Others (14.10.2010); Case C-229/14 Ender Balkaya v Kiesel Abbruch- und Recycling Technik GmbH (09.07.2015); Case C-413/13 FNV Kunsten Informatie en Media v Staat der Nederlanden (04.12.2014); Case C-216/15 Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH, (17.11.2016).

[211] Judgment of the CJEU, Case C-66/85 Deborah Lawrie Blum, op. cit.; Case 53/81 Levin v Staatssecretaris van Justitie (1982) ECR 1035 , op. cit.

[212] Ms Deborah Lawrie Blum was a trainee teacher in Germany who technically had the status of a civil servant

[213] Mrs Levin worked part-time and her remuneration was below the minimum guaranteed remuneration in the sector.

[214] Judgment of the CJEU, Case 53/81 Levin, op. cit.

[215] Judgment of the CJEU, Case C-413/13 FNV Kunsten Informatie en Media v Staat der Nederlanden [2015] 4 CMLR 1

[216] C-413/13, op. cit., para 33

[217] Countouris, N., De Stefano, V. (2019). New trade union strategies for new forms of employment. ETUC.Brussels. P.49

when accessing collective rights aimed at the protection of working conditions of workers.

The more recent 2019 directives, such as the TPWC Directive and the Work-life Balance Directive, which apply to 'workers' and which refer to national legislation for the interpretation of the concept, are now also explicitly referring to the relevant case law of the CJEU. The interpretation that was given by the CJEU to the concept of 'worker' has now become fully incorporated into EU legislation.

The EU concept of worker under Article 45 TFEU reveals the traditional binary divide between **subordinated employment** on the one hand and **autonomous or independent employment** on the other. This strict mutually exclusive approach of only two categories is prevalent in international and European labour and social protection law, but also in the labour and social protection legislation of many Member States. However, as elaborated above, in several countries, a third category of 'workers' exists besides the categories of employees and self-employed.[218] These third categories often enjoy some of the same labour and social protection that 'standard workers' or employees are entitled to in the Member States.

Most of the EU labour law directives **do not apply to the self-employed**. As already mentioned, the non-discrimination directives and the Council Recommendation on access to social protection, however, concern both traditional categories or labour market statuses:[219] workers (or employees) and self-employed.[220]

Two directives under examination allow Member States to exclude *casual work* from their scope of application. The Part-time Work Directive allows Member States or social partners from Member States to exclude casual work entirely or partly from the scope of application. Part-time workers who work on a casual basis can hence be treated differently than other part-time workers and full-time workers when working conditions are concerned. The Written Statement Directive, which is to be repealed following the adoption of the new TPWC Directive, equally allowed Member States to exclude from their scope of application employees who work less than one month and/or with a working week not exceeding eight hours as well as casual work and/or work of a specific nature. As a consequence, growing numbers of workers in non-standard work situations were explicitly excluded by Member States.

The new TPWC Directive has, however, drastically limited the possibility for Member States to exclude workers in more precarious work situations. Member States can decide not to apply the Directive to 'workers who have an employment relationship with predetermined and actual time worked equal to or less than three hours per week on average in a reference period of four consecutive weeks' (Article 1(3)). The new Directive does not refer to 'casual' work any longer, nor does it refer to employment of very short duration. Moreover, in its Recital 11, the Directive specifies that when calculating the average of three hours per week of predetermined and actual work, all work actually worked has to be counted, including overtime and work that was not known or predetermined beforehand or mentioned in the contract.[221] From the moment a worker crosses the threshold of three hours, the provisions of the Directive apply, regardless of the number of working hours that the worker works subsequently or the number of working hours provided for in the employment contract. Article 1(4) determines further that Article 1(3) will not apply to an employment relationship where

[218] E.g. BG, DE, ES, UK

[219] Definition used in the Recommendation on access to social protection.

[220] Access to vocational training or participation in trade unions only apply to employees under Directive 2000/78/EC (Employment Directive); self-employed should have access to at least voluntary unemployment benefit and other social protection schemes whereas employees to mandatory unemployment benefit and other social protection schemes under the proposal for Recommendation on access to social protection.

[221] See also art. 1.4. in this regard

no guaranteed amount of paid work is predetermined before the employment starts. This means that workers who have no guaranteed working time or hours, such as zero-hour contracts and some on-demand contracts, are still covered by the provisions of the Directive regardless of the number of hours they actually work.[222]

Relevance for platform work and platform workers

The traditional binary divide between workers (employees) and self-employed that is prevalent in international, European and national labour and social protection legislation touches on the core issue of the **employment status** or **labour market status** of the platform workers: subordinated employment versus independent employment or contract work. **Different levels of protection apply when working conditions and social protection of these two categories** are concerned.

The EU non-discrimination legislation and the Recommendation on access to social protection apply to both workers and self-employed, but the classification remains important as the material provisions are different for these two categories. The major bulk of the provisions in the EU non-discrimination legislation are still only applicable to workers. For instance, the provisions related to equal treatment on the basis of race or gender, regarding access to vocational training or representation at company level, do not apply to self-employed (platform workers). In terms of the Recommendation on access to social protection, Member States are encouraged to establish voluntary unemployment benefit schemes for self-employed (including platform workers), but not necessarily mandatory schemes as are envisaged for platform workers who have an employment contract.

The **EU legislation on working conditions and social protection generally applies only to workers** (in the meaning of the EU legislation concerned) or employees. Platform workers who are classified as workers fall within their scope of application, while self-employed platform workers do not. Directives most often refer to national Member States for the interpretation of the concept of 'employee' or 'worker' in accordance with national law or practices. The CJEU has, however, developed an EU-wide concept of 'worker', pointing to the *three crite*ria which determine the status of worker (in the meaning of the EU directives).[223] It has ruled in several cases that Member States cannot unlimitedly interpret the concept of worker enshrined in the EU legislation when the latter refers to national definitions, as this may jeopardise a coherent and consistent application of EU legislation throughout the EU. CJEU case law thus allows for a **reclassification** in cases of a wrong classification by Member States or by the contracting parties concerned, based on this European definition of 'worker'. In some Member States national case law of the highest courts equally introduces the possibility of a reclassification of the employment status based on a national interpretation of own national legislation.[224] National courts, when considering particular cases, **will assess the facts of the actual employment relationship** and consequently often have recourse to a double layer of reclassification grounds: a reclassification on the basis of national grounds, or on the basis of CJEU case law (and since recently, on the basis of EU directives).

This is **highly relevant for platform workers**. Section 4 revealed that the employment classification of platform workers in Member States is posing one of the biggest challenges throughout the EU. Section 5 demonstrated that Member States have varying approaches that result in different classifications of identical platform workers across the EU. But neither is the classification of platform workers always coherent within Member States, as can be deducted from the some of their extensive recent national case law.

[222] See Recital 12 in this regard

[223] The economic nature of the service performed (and its genuine character), paid remuneration in return for the service provided and existence of subordination or direction.

[224] Namely France.

Court rulings have resulted in different outcomes of almost identical factual circumstances and 'relationships' between the platform and the platform worker.

When assessing the employment status of a platform worker, **national judges should consider the facts and concrete relationship** between the platform worker and the platform (or other entity), which could in its turn be classified as the 'employer'. Performing services of an economic and genuine nature in return for a payment and under the 'direction' of the platform are typically the main criteria against which a specific case is assessed to become classified as a worker (employee) or not. The subordination 'test' is usually a case of weighing different factors, such as the obligation to provide work and to perform an assignment, the determination of the working time and of the workplace, the inclusion of the platform worker into the operational organisation of the platform business, the subjection to personal or material (including indirect) directives, supervision and control, the obligation to report, the use of the company equipment, and so on. They all represent 'indexes' or 'criteria' that in the platform work practice are often challenged. Platform workers in reality often have greater flexibility and freedom to choose than in more traditional employment relationships, as they may often decide whether or not to accept a particular task and when they actually work, whereas platforms often shift certain responsibilities towards the platform worker, such as the use of own equipment or vehicles. However, especially for platform workers of performing lower-skilled tasks, once a task is accepted, there is no longer much flexibility. Determining exactly how the task is to be fulfilled, for example the route an Uber driver must take, and the corresponding control and monitoring, is so dense that it may not be outweighed by the flexibility on when and where to work, and consequently may also impact the assessment of the employment status.

The **'subordination' or 'direction' dimension** has been subject to many national court cases, sometimes with very inventive arguments put forward by the platforms, which attempt to demonstrate the alleged independence of the platform workers, and often change their business practices in a seemingly continuous effort to avoid the potential (re)classification of platform workers as employees by national authorities and judges. Platforms often try to present themselves as pure online information services, intermediating between the platform worker and the ultimate customer, whereas in reality the provided services often go much further than mere online matchmaking between the platform worker and the customer. Of particular interest in this regard is the use of the digital work allocation and tracking mechanisms. A platform's apps are often the core mechanism of the work organisation throughout the entire job cycle and determine job announcements and applications; identification and selection of candidate platform workers; allocation of work to a selected platform worker and rejection of other candidate platform workers; monitoring of the work while being performed; and evaluation of the work performance, sometimes with direct feedback of ultimate clients.

Assessing the existence of an employment relationship through the subordination test becomes even more complicated in cases when platform work is ultimately delivered to a company or when this end user could also be considered as having an employment relationship with the platform worker. The platform or digital app intermediates or facilitates between the firm that has requested a particular job and the platform worker while the work or tasks are being performed under the direction or supervision of this requesting company. Crowdwork is a type of platform work characterised by the outsourcing of usually small or repetitive tasks by companies to often large groups of workers through the use of digital platforms.[225] The requesting company defines the scope of the work, timeline for delivery and price, and often exercises some sort of supervision during the work performance or upon completion - all indices that may point

[225] The Amazon Mechanical Turk (AMT) is an example of such a crowdsourcing platform. See also V. De Stefano, 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 No71, ILO, Genève, 2016, 2.

to the existence of an employment relationship. The subordination test for these specific types of platform work is even more complex, as both the platform and the end user firm may jointly exercise or share the prerogatives that employers have in an employment relationship. Platform workers deliver their services for and under the direction of some sort of co-employing entity that is based on a contractual or de facto arrangement between the platform and the end user or requesting firm. The employer's traditional attributes in determining the scope of the work, performance, timeline and price in combination with the direction and supervision throughout all stages of the task allocation and delivery are jointly exercised by the platform and the end user. In this regard platform work practices are challenging the single employer concept that is characteristic of the traditional labour law approach.

In many countries, criteria other than the subordination dimension have been and are increasingly being considered by national legislation and courts with a view to determine the existence of an employment contract. The **economic dependency of the platform worker** is often regarded an important additional indicator. Platforms often operate in highly competitive and rapidly changing markets, which in practice seem to result in dominant market positions of very few players, and hence limited work opportunities for platform workers. The unilateral determination of work allocation, working methods and payments by the platform, the absence or very limited alternatives for work opportunities, and the unequal economic and bargaining power seem to become more and more relevant when considering the labour market status of a platform worker. New criteria have also occurred, such as the commercial or financial risk sharing, the price setting and the social perception. Platform workers, when personally providing their services, often do so without any commercial or business risk, which is characteristic of any undertaking and of genuine self-employment. They execute tasks that have been sold commercially to customers without any involvement in the determination of the selling prices, or in the establishment of their own remuneration. Prices for the services rendered are often predetermined by the platform or by fixed parameters established by the online web application.

While a national interpretation of the concept of worker acknowledges the prime responsibility of Member States in labour legislation, it also leads to different coverage across Member States. An identical platform worker may be considered as a worker in country X but not in country Y. EU labour legislation may thus be differently applied to identical factual relationships between platforms and platform workers across the EU. The inclusion of the dependency dimension into an EU-wide concept of worker applicable to the working conditions may be a step forward, similar to the approach taken in the anticartel *acquis* in matters of collective bargaining. It could reduce differences in implementation by Member States while increasing the protection of many platform workers who may not necessarily work 'in subordination' but who are dependent (economically and/or technically) on the platforms and do not share any commercial or financial risk.

In reality, and in spite of some attempts in Member States to classify (some) platform workers as employees, even by legislative means (e.g. Portugal[226]), it occurs that platform workers are often being classified as self-employed in Member States, and/or that national courts are ruling that these platform workers are self-employed, based on the factual relationship between the platform and the platform worker. The immediate consequence of this is that these platform workers fall outside the scope of the EU labour legislation. Neither the provisions of the non-standard work directives, nor the other EU legal instruments, such as the Working Time Directive or the Health and safety for fixed-term work Directive, the new TPWC Directive, and the Work-life Balance Directive, apply in such instances. Self-employed platform workers who may be highly dependent on the platforms, and/or may work in precarious situations and/or with low payment rates,

[226] See Lei n.0 45/2018 de 10 de agosto, available at https://dre.pt/application/conteudo/115991688

appear to be affected the most and lack even minimum protection in terms of their working conditions and social protection.

Material scope of the directives

EU labour legislation has over the past years regulated only limited aspects of employment and working conditions, leaving Member States (and in some instances social partners) mainly responsible for legislating national labour provisions. For that reason, EU directives have primarily addressed dimensions of employment that have an EU-wide relevance, scale or impact. The European Works Council Directive applicable to large community-scale 'undertakings' and the other collective labour law directives are clear examples of this approach. Material provisions concerning employment relationships and working conditions, regarding which EU directives have been issued, were relatively limited. The obligatory written information provision on the essential aspects of the employment contract, minimum requirements related to working time and rest periods, information on health and safety aspects of an employment contract and the protection of pregnant workers, are some examples where the EU directives have directly intervened with the practices at the workplace. EU non-standard work directives[227] do not regulate working conditions themselves, but they do aim to ensure equal treatment in the application of nationally applied working conditions between employees who have non-standard forms of employment contracts and their colleagues who have a standard open-ended employment contract on a permanent or full-time basis.

However, 2019 seemed to mark a significant step forward in the protection of the working conditions of workers in an increasingly diversified labour market characterised by the rise of various types of employment relationships that deviate from the standard form(s) of work in full-time employment on a permanent basis. The TPWC Directive and the Work-life Balance Directive, both adopted just before summer 2019, improve some working conditions for workers that were already subject to EU legislation. More importantly, they are both instrumental in clarifying the personal scope of EU labour legislation and at the same time introduce some new minimum rights and requirements to be adhered to in the workplace. Member States have until 1 August 2022 to transpose these directives in their national legislation and administrative practices.

In what follows we have tried to group the selected EU legislation into five main categories: (1) equal treatment between non-standard work and standard work; (2) working conditions; (3) collective labour rights; (4) social protection; and (5) non-discrimination legislation. Under the working conditions category, we deal consecutively with (a) obligatory information provision, (b) working time and rest periods, (c) health and safety for fixed-term contracts, (d) health and safety for pregnant workers, and (e) protection against dismissal.

Equal treatment between non-standard forms of work and standard work

Material scope

The three EU Directives concerned with non-standard work concern part-time work,[228] fixed-term work[229] and temporary agency work,[230] all three atypical forms of work that

[227] Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work (OJ L 14, 20.1.1998); Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work (OJ L 175, 10.7.1999); Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9–14)

[228] Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC - Annex: Framework agreement on part-time work (OJ L 14, 20.1.1998, p. 9–14)

[229] Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999, p. 43–48)

occurred in increasingly diversifying national labour markets in the 1980s and 1990s. They all envisage **equal treatment in the area of working conditions between workers (employees) employed under an atypical employment contract and comparable workers** (employees) engaged under a 'standard' employment contract (either full-time,[231] permanent,[232] or directly employed by the user undertaking,[233] depending on the directive at stake). Non-standard workers should not be treated less favourably than comparable full-time workers in permanent contracts solely because they have a non-standard employment contract, unless such a different treatment is justified on objective grounds. Platform workers who are part-time workers and/or workers under a fixed-term employment contract should be treated equally as full-time workers or those who have a permanent contract. Likewise, platform workers working for a temporary work agency at a user undertaking should be treated equally as workers who are directly hired and employed by that user undertaking.

Part-time worker is defined by the Part-time Work Directive as a worker[234] whose normal hours of work, calculated on a weekly basis or on average over a period of employment of up to one year, are less than the normal hours of work of a comparable full-time worker. The Directive at the same time allows Member States, after consulting with the social partners, to exclude for objective reasons casual work from the scope of application. The refusal by employees to transfer from a full-time to a part-time employment or vice versa cannot be a reason for termination of the employment contract, and employers are encouraged to give due consideration when their employees request a change from part-time to full-time or vice versa. Employers are also being encouraged to promptly inform their staff on the availability of part-time and full-time positions, and to facilitate career mobility for part-time workers within the enterprise as well as to make vocational training accessible for part-time workers.

To a great extent, **fixed-term** employment contracts resemble the relationships platform workers have with the platform. A fixed-term work contract is defined by the Fixed-term Work Directive as an employment contract or relationship, the end of which is determined by an objective condition such as reaching a specific date, completing a specific task or the occurrence of a specific event. The Directive aims to ensure equal treatment between fixed-term workers and comparable permanent workers in the company where working conditions are concerned. Member states are called upon to ensure that there is no abuse arising from the use of successive fixed-term work contracts. Fixed-term workers have the right to be informed about vacancies in the company. Employers are also encouraged to facilitate access to appropriate training opportunities, career development and occupational mobility. Member States are also required to take measures to prevent successive assignments which are designed to circumvent the provisions of the Directive.

A **temporary agency** worker is defined by the Temporary Agency Work Directive as a worker with a contract of employment or an employment relationship with a temporary-

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

[231] Art 3(2) of the Framework Agreement established by Directive 97/91/EC defines a comparable full-time worker as a full-time worker in the same establishment having the same type of employment contract or relationship, who is engaged in the same or a similar work/occupation, due regard being given to other considerations which may include seniority and qualifications/skills.

[232] Art 3(2) of the Framework Agreement established by Directive 1999/70/EC defines a comparable permanent worker as a worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or a similar work/occupation, due regard being given to qualifications/skills.

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

[234] The Directive uses the term 'employee' in the definition of a part-time worker in its Article 3 (1).

work agency with a view to being assigned to a user undertaking to work temporarily under the latter's supervision and direction. The triangular relationship of this arrangement resembles to a great extent platform work practices (platform - platform worker – end user). The Temporary Agency Work Directive ensures equal treatment regarding the basic employment conditions between a temporary agency worker and the workers who are directly hired and employed by the user undertaking where the temporary agency worker is placed. The Directive defines the basic working and employment conditions as those related to the duration of working time, overtime, breaks, rest periods, night work, holidays and public holidays as well as pay. Rules on the protection of pregnant women and young mothers and on protection of children and young people that are in force at the user undertaking, as well as provisions combating discrimination on grounds of sex, ethnic origin, religion, disabilities, age or sexual orientation, have to be equally applied to temporary agency workers. The Directive, however, allows Member States and social partners to derogate from the equal treatment provisions generally (Article 5(3)) and in particular circumstances (Article 5(2) and Article 5(4)).

Furthermore, temporary agency workers shall be informed of any vacant posts in the user undertaking to give them the same opportunity to find permanent employment as other workers in that undertaking. At the same time, these workers must be given access to the collective facilities, for example, childcare facilities or transport services, in the user undertaking under the same conditions as workers employed directly by the undertaking. The Directive also envisages the promotion of dialogue between the social partners with a view to promote access to training for the temporary agency workers at both the temporary work agency and at the user undertaking. The Directive contains provisions which aim to facilitate the employment of the temporary agency worker by the user undertaking, such as the prohibition of agreements that may prevent the conclusion of an employment contract upon completion of the assignment between the user undertaking and the worker concerned, and prohibiting the temporary agencies from charging the worker fees for their services, and also when the worker is employed by the user undertaking upon completion of the assignment.

Member States are obliged to take measures to prevent abuse and in particular to prevent successive assignments that are designed to circumvent the provisions of the Directive.

Relevance for platform work(ers)

As has been highlighted, self-employed platform workers fall outside the scope of the non-standard work directives that apply only to 'workers' in the meaning of the EU directives. National classifications of platform workers as self-employed, in legislation or in practice, may be subject to a reclassification based on EU and/or national case law in situations where the platform worker is providing genuine services of an economic character to another person, for and under the direction of the latter and in return for a remuneration. The assessment is based on the facts and characteristics of the effective relationship between the platform and the platform worker.

Part-time vs Full-time

Platform workers often work few, atypical or irregular hours during a given reference period. Their work schedules may vary over time, with busy periods and periods during which almost no work is performed. Platform workers typically prefer to determine their own working time and number of hours, when and for how long they will actually work. In practice, platform work is often expressed, not in working time or hours, but in terms of specific tasks such as 'food parcel drops' or 'taxi journeys', and the related remuneration paid on the basis of the tasks performed irrespective of the time spent by the platform worker. Platform workers are often also engaged in open-ended zero-hour contracts, with no firm commitment on the side of the platform that there will be work, but equally no commitment on the side of the platform worker that work offered has to be performed. When assessing the large variety of possibilities, platform work can be

shaped in practice, and there may be situations in which a platform worker may in reality work more hours than a comparable full-time worker in comparable business situations.

This reveals that **the more traditional distinction between *full-time and part-time work* is a poor fit for platform work**. Platform workers often work in businesses or business sectors where no comparable full-time work exists, making a comparison between a part-time platform worker and a full-time comparator difficult. It is exactly this comparison with a full-time worker employed in the same company, with the same type of employment contract and with the same type of work, that is determining the concept of part-time work. In the absence of a full-time comparator, it will be hard to maintain that a platform worker is effectively a part-time worker.

The Directive foresees this situation and provides for an indirect solution in case there is no full-time comparator in the same establishment with the same or a similar job. Clause 3(2) states that in the absence of a full-time comparator in the same establishment, the comparison shall be made by reference to the applicable collective agreement, or where there is no applicable collective agreement, in accordance with national law, collective agreements or practice. However, this fallback option allowing for a wider reference frame may also be of limited use in practice as the type of job the platform worker is doing may not exist in the traditional economy, or may not have been the subject of any collective agreement or legislation.

Moreover, the possibility for Member States to exclude casual work wholly or partly from the scope of application of the Part-time Work Directive may disproportionately affect platform work, as many platform activities or services could in practice be considered as casual activities, and hence be qualified as ancillary or marginal. Also, when justified by objective reasons, Member States can make access to particular employment conditions subject to periods of services, time worked or earnings qualification. These measures, however, need to be reviewed regularly to ensure that the principle of non-discrimination of part-time workers is upheld. This possibility also appears to disadvantage platform work, especially when it comes to very fragmented tasks, small-scale activities or low-volume work delivered over longer reference periods.

The additional protection provided by the Part-time Work Directive, for example the protection against unfair dismissal solely on grounds of 'part-time work', is in theory very relevant for platform workers, because they often have little protection in practice when a platform suspends their account. It would be useful for platform workers if employers, and therefore platforms, were encouraged to consider their requests to work 'more' or 'less', in a similar way that requests for changes between full-time and part-time and vice versa are contained in the Directive. However, the employers (or platforms) are not obliged to agree with the requests for a change in the organisation of working time, and in practice most platform workers decide for themselves the number of hours that they want to work.

In short, provided a platform worker is not genuinely self-employed, they may become qualified as a part-time worker in instances where the platform or employer employs full-time workers for the same job and hence has employment contracts based on a full-time organisation of work as defined under national legislation. In reality, however, many platform workers will find they have no recourse to the Directive because their employment relationship does not fit the concepts of 'worker' or 'part-time work'. This may also be because they have been (wholly or partly) excluded from the scope of application by national authorities who consider platform work as casual work or have taken measures to make accessible particular employment conditions subject to periods of service, time worked or earnings qualifications. Even if the platform work is considered part-time work, unequal treatment is still possible on objective grounds and in some cases the platform work activities are substantially different from what is considered under national law as employment performed by a worker.

Fixed-term

A fixed-term employment contract presupposes an 'ending date' by determining a reference point in time. It does so either explicitly (by stipulating a termination date or the date of an event) or implicitly (by referring to the date of the completion of a specific task). In practice, platform workers are often engaged in open-ended type contracts with no specific end date, without a guaranteed workload or any pre-established organisation of working time. As a consequence, platform work also challenges the definition of fixed-term work as provided by the Fixed-term Work Directive, such as an employment contract or relationship where the end is established by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.

Platform work is often task oriented and less governed by working hours. Platform workers are often not obliged to work a certain number of tasks (or hours) and decide on their own organisation of work. The tasks are often very fragmented and small scale and platform workers can sometimes work simultaneously for different platforms. In some instances the individual tasks could be considered the subject of one particular fixed-term contract. Platform workers have in practice a sort of open-ended 'framework' contract without any firm commitment from either the platform to assign tasks or from the worker to accept the job, and each of the tasks or assignments would then be the subject of one specific fixed-term contract. The assignment and performance of subsequent tasks could in such cases be considered as consecutive fixed-term contracts. This would, however, imply that the individual tasks would at least have a certain volume in terms of workload or time spent. One of the challenges identified in the study is exactly the continuous fragmentation of work into very small pieces. The unit of reference or measurement, which in the traditional labour law context is often based on the 'working hour' or on piecework of a certain size, has been further challenged by platform work through its fundamental reorientation to 'tasks' and piecework of a very fragmented nature, such as in cases of online clickwork or crowdsourcing.

Fixed-term workers cannot be treated less favourably than comparable permanent workers. A platform worker engaged on a temporary basis may be qualified as a fixed-term worker enjoying equal treatment in terms of the employment conditions with the permanent workers. But, as is the case for part-time work, the comparable permanent workers may not exist in the company and/or for the same type of job. In practice, the platform may only have open-ended type of contracts with all platform workers (such as zero-hour contracts), which more closely resemble the concept of permanent contracts. In such instances, the platform worker may not have any recourse to the provisions of the Directive, as contracts for indefinite periods do not fall within its scope. When there is no comparable permanent worker in the same company, the Directive mentions that the comparison shall be made by reference to the applicable collective agreement or, where there is none, in accordance with national law, collective agreement or practice.

Unlike under the Part-time Work Directive, Member States cannot exclude casual work from the scope of application of the Fixed-term Work Directive, nor can they exclude fixed-term work contracts with a maximum duration of six months.[235]

Some of the provisions contained in the Fixed-term Work Directive have particular relevance for platform work, such as the measures Member States must take to prevent abuse arising from the use of successive fixed-term employment contracts or relationships (Clause 5). Where Member States have not taken legal measures to prevent abuse, they have to introduce at least one of the measures listed in the Directive, such as determining the maximum total duration of successive fixed-term contracts, the maximum number of renewals, or the objective reasons justifying the renewals of successive contracts. The Member States must also determine under what conditions fixed-term contracts will be regarded as 'successive' and will be deemed to be 'contracts of indefinite duration'. Platform work contracts that are based on the

[235] Judgment of the CJEU, Case C-486/08, Zentralbetriebsrat der Landeskrankenh.user Tirols, (22.04.2010), para. 47

performance of particular tasks may hence benefit from such provisions conducive to the equal treatment between fixed-term platform workers and permanent workers, when employment conditions are concerned, provided of course there are permanent workers employed.

The Directive encourages employers to facilitate training, career development and occupational mobility for the fixed-term workers, as well as the right of fixed-term workers to be informed about the vacancies in the company to ensure that they have the same opportunities as other workers to secure permanent positions.

Temporary Agency Work
Platform work and temporary agency work are both characterised by a similar triangular relationship. In platform work the three actors concern the platform (using a digital application), the platform worker and the client (end user, consumer, and customer). In temporary agency work, a worker is placed by a temporary work agency at a user undertaking. The worker is employed by the temporary work agency but assigned to the user undertaking where they work under the latter's supervision.

In platform work the end user is **very often not an undertaking employing workers,** but a private client or consumer. The Temporary Agency Work Directive does not apply to situations where the end user is a private customer or natural person who is not engaged in economic activities (and under whose supervision and direction the temporary agency worker is actually working while formally being employed by the Temporary Agency). The Temporary Agency Work Directive applies in the specific context of two potential employers (the temporary work agency and the user undertaking) and ensures equal treatment of the temporary agency worker with the workers employed by the undertaking to which (the platform) worker is temporarily assigned. Platform work is often ultimately (through the platform or directly) delivered to consumers and/or clients without any connection or prospect of establishing an employment relationship with the platform worker. In such instances the Temporary Agency Work Directive **has little relevance** in view of protecting platform workers.

However, there are some specific types of platform work where **the end user is a company and/or could be considered as a possible employer** of the platform worker. When end users define the assignment, determine the price, exercise supervision and evaluate the performance during and upon completion of the assignment, there may be an employment relationship between the end user and the platform worker. Depending on the scope of services provided by the platform business, the employer's function may also be 'divided' or 'shared' between the platform and the end user. The platform business and customer jointly define the assignment, determine the price and control work progress and performance of the platform worker, and can both be considered as employers. In such instances a comparison with temporary agency work becomes relevant.[236] Crowdwork (or crowdsourcing) is such a type of platform work, because requesting firms use digital apps to allocate piecework to large groups of platform workers who provide their often very small-scale jobs online directly to the end-user firm. The work is allocated, directed, supervised, paid and evaluated by the end-user firm through the digital platform, which acts as a mere online intermediary or as a facilitating entity that is also entrusted with task allocation, work supervision, evaluation and/or payment of the services. Various modalities exist in practice when it comes to the sharing or division of these employers' prerogatives between the platform business and the end-user firm, but both ultimately depend on the inputs and work of the platform workers from which their respective businesses generate profit. For this specific type of platform work, it has been argued by academics and research institutions that platform businesses could be considered as temporary work agencies, platform

[236] For an in-depth analysis on the applicability of the Directive 2008/104/EC to crowdwork, reference is made to Ratti, L. (2017). Online platforms and crowdwork in Europe: two-step approach to expanding agency work provisions. Comparative Labour Law Policy Journal, 38(3), 477-512.

workers as temporary agency workers and the end user/company as user undertakings[237] in the meaning of the Temporary Agency Work Directive.[238] However, also in these cases, the subordination test will have to be applied to the factual circumstances and relationships between the platform and the worker on the one hand and between the latter and the user firm on the other, in order to conclude that there is an employment relationship.[239]

Be this as it may, the Directive ensures equal treatment between the temporary agency worker and the own workers at the user undertaking, but only in what regards the **basic working and employment conditions**. The Directive defines the basic conditions as those that relate to the duration of the working time, overtime, breaks, rest periods, night work, (public) holidays and pay, and is consequently not covering all working conditions throughout. The basic working conditions covered are relevant for all non-standard forms of employment and not in particular for platform work. The equal treatment provisions contained in the Directive apply only during the period of the assignment and not in between different assignments. This may cause interpretation difficulties when platform work is very fragmented, irregular or spread over time. The Directive furthermore leaves the possibility open to derogate from the equality principle by Member States and does not require that temporary work agencies (or the 'platforms') have to be registered.

On the other hand, the Directive contains some provisions that are of interest when platform work is considered. These include the potential for application to platform work performed for and under the direction of the platform and the end-user firm as discussed above, the recognition of temporary work agencies (and hence possibly the platforms) as employers, and the more flexible concept of the comparable worker,[240] with a view to applying the equal treatment provisions, the explicit non-discrimination provisions on all grounds contained in Article 19 TFEU, and the obligation of Member States to take measures that prevent successive assignments designed to circumvent the Directive. Workers have furthermore the right to be informed about job vacancies at the user undertakings, while access to training at both the temporary work agency and the user undertakings are to be promoted.

Interim conclusions – non-standard work directives

In theory, the non-standard work directives have **some relevance** for platform work. In practice, however, this is **very limited**, and applies only when platform workers are classified as (subordinate) workers and not as self-employed. Even where platform workers are classified as workers, the application of the directives may not be possible. Comparable full-time or permanent workers as defined in the respective directives may be absent in real platform practices, and the wider comparison with existing collective agreements, national law or practices may be of limited practical relevance because these may not exist and/or are difficult to serve as a reference for the comparison. Concepts such as part-time versus full-time and fixed-term work do not appear to entirely cover platform work practices, which often resemble open-ended (framework) contracts with no explicitly agreed permanent character and no obligation to allocate/accept work. They are also often task oriented and not concerned with the

[237] Article 3(d) defines a user undertaking as 'any natural or legal person for whom and under the supervision and direction of whom a temporary agency worker works temporarily'.

[238] See Rati L. (2017) op.cit.

[239] According to Rati L, the equal treatment principle enshrined in Article 5(1) of the Directive is to be interpreted broadly and covers not only real comparable workers at the user undertaking but also potential or hypothetical comparable workers occupying the same job at the user undertaking.

[240] Article 5(1) defines the basis working and employment conditions as at least those that would apply if the temporary agency worker had been recruited directly by the user undertaking, implying that the point of reference are not necessarily actual workers doing the same job but also 'hypothetical' workers even in cases where a job did not pre-exist at the user undertaking.

organisation of hours of work. Moreover, Member States can under certain conditions exclude casual work from the Part-time Work Directive, which is of particular relevance for small-scale platform work. There are also many possibilities for Member States to derogate and apply different arrangements under the Temporary Agency Work Directive.

However, some of the provisions of the directives, should they be applicable to platform work, appear to be very meaningful in guaranteeing minimum levels of protection for platform workers. The prohibition of unfair dismissals on the sole basis of the platform work activity's scale or working time, the possibility to increase and decrease working hours without the risk of being dismissed, the prevention of abusive practices of successive fixed-term contracts, access to training opportunities and career mobility, and the right to be informed when vacancies occur, are all covered.

The Temporary Agency Work Directive can potentially be applied to specific types of platform practices, for example in cases where platforms and end users are undertakings, and/or can be qualified as employers, such as in crowdwork. However, this interpretation has only limited practical relevance and does not cover situations in which the end user is a private natural person or consumer.

6.1.2 *Working conditions*

Obligatory information provision on the essential aspects of the employment relationship

Material scope

The new Transparent and predictable working conditions (TPWC) Directive of 20 June 2019 entered into force at the end of July 2019.[241] The Directive is repealing the Written Statement Directive, which will still have legal effect until the transposition period of the new Directive (three years) has been completed.[242]

First, the Directive limits the possibility for Member States to exclude from its scope of application small-scale or casual work, defined as referring to situations where the predetermined and actual working time is equal or less than an average of three hours per week in a reference period of four consecutive weeks (Article 1(3)). It also ensures that this derogation cannot apply to employment relationships where no guaranteed amount of paid work is determined before the employment starts (Article 3(2)).

The Directive also lays down the **minimum rights of workers** in terms of **the information employers are obliged to provide to the individual workers in writing**, be it on paper or in electronic form, but with proof of transmission and/or receipt (Article 3).[243] The information concerns the **essential aspects of the employment relationship** and should for the most part be provided by the employer **between the first day of work and the seventh calendar day (Article 5(1))**: the place of work (or the principle that a worker is employed at various places or is free to determine their place of work) and registered place of business; description of the work or nature of the work or function; the commencement date; the end date when applicable, as in fixed-term contracts; the duration and conditions of probationary period; and the remuneration, frequency and method of payment. In cases of **entirely or mostly predictable** work patterns, the employer has to inform the worker about the

[241] Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L186/105 11.07.2019)

[242] Article 24 of EU Directive 2019/1152 provides that the Written Statement Directive shall be repealed with effect as of 1 August 2022.

[243] Compared to the Written Statement Directive, the Directive 2019/1152 extends the list of essential aspects of the employment relationship (e.g. duration and conditions of probationary periods, training opportunities, specific conditions when the work pattern is unpredictable, etc.) and shortens the periods by which the employers have to inform their workers in writing (which was 'standard' determined on two months under the Written Statement Directive).

length of a standard working day or week, arrangements for overtime and related remuneration, and any arrangements for shift changes. When the work pattern is **entirely or mostly unpredictable**, the employer must inform the worker of (1) the principle that the work schedule is variable, the number of guaranteed paid hours and the remuneration for the work performed in addition to those guaranteed hours, (2) the reference hours and days within which the worker may be required to work, and (3) the minimum notice period to which the worker is entitled before the start of the assignment and, where applicable, the deadline for the cancellation that the employer has to respect when cancelling an assignment (Articles 4 and 5). Member States that allow employers to cancel an assignment without compensation have to ensure that in case of a late cancellation (after a specified reasonable deadline), the worker is entitled to a compensation (Article 10(3)).

For some other types of information on the essential aspects of the employment relationship, the employer **has one month to inform the worker** (counted as from the first working day), such as the information on the identity of the user undertaking in case of temporary work, the available training opportunities, the applicable notice periods and procedures, the right to paid leave, the existing collective agreements or identity of the responsible bodies, and the identity of the social security institutions which receive the social contributions that are connected with the employment relationship, and any other social security protection provided by the employer (Articles 4 and 5).

The Directive also determines that in the case of any **modification or change** related to the essential aspects of the employment relationship, the employer is obliged to inform the worker in writing at the earliest opportunity, and at the latest on the day it takes effect.[244] This requirement also applies when a worker is sent to another Member State or third country (Article 6).

When workers are required by their employers **to work in another Member State or third country** (i.e. a country other than the one where they habitually work) for longer than four consecutive weeks, employers must provide in writing some additional information for them prior to their departure: the country or countries where the work is to be performed as well as the duration of the work assignment; the currency in which the remuneration will be paid; the benefits in cash and in kind the worker will be entitled to during the work assignment; and the conditions of repatriation when this is provided for. Posted workers shall furthermore also be informed about the remuneration they are entitled to in accordance with the applicable legislation of the hosting state, the allowances specific to the posting and the arrangements for reimbursing expenditures on travel, boarding and lodging, and the relevant references to the single national website of the hosting state.[245]

The Directive furthermore lays down some **minimum requirements that directly affect the working conditions** of workers:[246] maximum duration of any probationary period; the right to parallel employment; provisions related to a minimum predictability of work; complementary provisions related to on-demand work; provisions concerned with the transition to other forms of employment; and rules on mandatory training. The Directive determines that collective agreements concluded in accordance with national legislation can apply different working conditions than those that are contained in the Directive. In this regard Directive 2019/1152 goes a step further than the Written Statement Directive, which did not cover working conditions and whose scope was limited to the obligatory written information provision.

[244] Under the Written Statement Directive employers had to inform the worker in writing at the earliest opportunity and not later than one month after the date of entry into effect of the change.

[245] Consistent with the obligations set out in Directive 96/71/EC and Directive 2014/67/EU

[246] Chapter III: Minimum requirements relating to working conditions; Articles 8 to 14

Directive 2019/1152 determines that when **probationary periods** are envisaged under national legislation or practice, the probationary period shall not exceed six months (Article 8(1)). Member States may in exceptional cases apply longer probationary periods when justified by the nature of the employment or in the interest of the worker (Article 8(3)). In situations of fixed-term employment, the probationary periods must be proportionate to the expected duration of the contract and nature of work, but in the case of a renewal of a fixed-term contract, no new probationary period can be applied (Article 8(2)).

Employers cannot prohibit their workers **from taking up other employment**, outside the work schedule with that employer, and they cannot subject a worker to adverse treatment when doing so (Article 9(1)).[247]

Workers who have worked for at least six months with the same employer may **request** from their employer a form of employment with **more predictable and secure working conditions** where available, and are entitled to receive a reasoned written reply (Article 12(1)).[248] Employers are obliged to give a reasoned written reply within one month of the request (Article 12(2)).[249]

In cases when an employer is required by law to provide **training to a worker** in view of carrying out the work for which they are employed, the training has to be provided to the worker free of any cost, and the training time shall be counted as working time, and, where possible, take place during the working hours (Article 13).

Of particular interest are the provisions of the Directive concerning situations **where the work pattern of a worker is entirely or mostly unpredictable**. In such a situation, the worker shall not be required to work unless two conditions are fulfilled: (1) the work takes place within predetermined reference hours and days, and (2) the worker is informed by their employer of a work assignment within a reasonable notice period established in accordance with national law, collective agreements or practice (Article 10(1)). A worker has the right to refuse a work assignment when one of the conditions is not fulfilled, without adverse consequences (Article 10(2)). When Member States allow an employer to cancel a work assignment without compensation for the worker, they are obliged to take measures to ensure that compensation is paid when the employer cancels a work assignment that was previously agreed between the employer and the worker after a reasonable deadline (Article 10(3)).

The Directive also aims to **prevent abusive practices** concerning on-demand or similar employment contracts, such as zero-hour contracts, when the employer has the flexibility to call a worker to work as and when needed, as they are particularly unpredictable for the worker.[250] Member States which allow the use of such contracts are required to take one or more measures such as (a) limitations on the use and duration of on-demand or similar contracts, (b) a rebuttable presumption of the existence of an employment contract with a minimum amount of paid hours based on the average hours worked during a given period and (c) other equivalent measures that ensure effective prevention of abusive practices (Article 11).[251] Member States are consequently allowed to choose from the measures proposed but can also opt to implement all mentioned types of measures.

[247] Member States may lay down conditions for the use of incompatibility restrictions by employers, on the basis of objective grounds, such as health and safety, the protection of business confidentiality, the integrity of the public service or the avoidance of conflicts of interests (Article 9 (2)).

[248] Member States can limit the frequency of the requests.

[249] Member States can extend the deadline to three months for SMEs and employers who are natural persons and allow for an oral reply in cases of subsequent similar requests when the situation of the worker has remained unchanged (Article 12 (2)).

[250] Recital 35, Directive 2019/1152

[251] Member States are required to inform the Commission of the measures taken.

Relevance for platform work

The TPWC Directive 2019/1152 is undoubtedly a **major improvement** for the employment protection of workers in both standard and non-standard forms of employment, including for platforms workers who have an employment relationship. It also contains provisions that are of specific relevance for platform workers.

First, as has been set out above, the Directive **clarifies the EU concept of 'worker' to which it applies** by explicitly referring to CJEU case law, by mentioning that platform workers are workers when the criteria set by the CJEU rulings are met,[252] by restricting the possibility for Member States to exclude workers in various precarious non-standard forms of employment to those workers who actually work on average less than three hours a week[253] and by expressly including workers who have no guaranteed working time, such as those working on zero-hour contracts and some on-demand workers.[254] When Member States allow on-demand or similar contracts, the Directive equally requires them to implement measures in order to prevent abusive practices. Only the (genuinely) self-employed fall outside the remit of the Directive.

Second, the Directive's material provisions have direct relevance for the employment relationship between employers and workers. Employers are obliged **to inform their workers in writing about an enlarged list of essential aspects of the employment relationship in relatively short but reasonable timelines**, which is generally limited to the first week of employment. The Directive also directly regulates some **other working conditions** relevant for workers who are increasingly employed by flexible and atypical forms of employment, and which have not yet been subject to previous EU legislation. Some of these provisions are highly relevant for platform work.

The information obligation vested with employers covers an expansive list of aspects that are relevant for all workers, but some that are particularly relevant for workers in non-standard work situations and also for platform workers.

While a **documented and timely information provision** on the core aspects of an employment relationship is relevant for all types of workers, it is particularly meaningful for platform work as contracts are often not concluded and/or the information that is provided to platform workers is often partial or incomplete: description of the work, remuneration, place of work, periods of notice, probationary periods, paid leave, and social protection. Enforcing the Directive on platform employers will definitely contribute to clearer and more secure employment relationships in the platform economy.

Of particular relevance is the obligation vested with the employers when *work* **is entirely or mainly unpredictable**. In such cases the platform has to **inform the platform worker that the work schedule is variable**, but also about the **number of guaranteed paid hours** and the **remuneration for the work that is performed in addition to these guaranteed hours**, the reference hours and days within which the worker may be required to work, the **minimum notice period** the worker is entitled to before the start of an assignment and, where applicable, the deadline for cancellation the employer has to respect. The worker has the **right to refuse** an assignment when the assignment takes place outside the agreed predetermined reference hours or days, or when the platform did not respect the reasonable notice period for informing the platform worker about the work assignment as established in national law and practices (Article 10(1)). The platform worker has the **right to compensation** when the platform cancels a previously agreed assignment after a specified reasonable deadline set by the Member States in accordance with national legislation and practice (Article 10(3)).

[252] Recital 8, Directive 2019/1152

[253] Article 1 (3) and Recital 11, Directive 2019/1152

[254] Recital 12, Directive 2019/1152

Working for two or more platforms simultaneously is common practice for some types of platform workers. The Directive requires Member States to ensure that employers cannot prohibit **parallel employment** and that they regulate the conditions under which employers can restrict parallel employment for objective grounds, such as incompatibility with the work for their own platform.

The provisions relating to the **prevention of abusive practices** concerning on-demand or similar employment contracts are also of high importance for platform workers. In practice, platforms often organise their businesses in such a way that the platforms have the highest flexibility and can call platform workers to work for a particular work assignment as and when they (or the algorithm) deem fit. Platform work practices operate often as on-demand contracts. Work is hence in practice very unpredictable. The Directive obliges Member States to take measures but leaves room for Member State-specific approaches. The limitation of the use and duration (or use of successive on-demand contracts similar to that which governs fixed-term contracts) is a possible national legislative action. The introduction of the rebuttable presumption of the existence of an employment contract will undoubtedly have clear consequences as more platform workers would be included within the remit of the Directive, leaving the burden of proof of the opposite on the platforms. Article 18 ensures protection to platform workers from dismissal or its equivalent, on the grounds that they have exercised the rights provided for in this Directive. In particular the wording 'its equivalent' could indeed benefit those platform workers whose accounts have been deactivated or suspended, or it could potentially cover those situations where the platform does not provide assignments any more to the platform worker, on the grounds that they have exercised the rights provided for in this Directive. For example, a platform worker could in theory refuse a task by the platform on the grounds that it did not respect the agreed predetermined reference hours or days (Article 10(1)(a)). If this results in the platform deactivating or suspending the account of the platform worker (or simply stopping providing assignments), the platform worker is protected by Article 18.[255] Platform workers may request the platform to provide duly substantiated grounds for the dismissal or the equivalent measures, and the platform is obliged to do so in writing (Article 18(2)). The Directive, however, does not specify the time by which the employer has to provide that information. Of significant importance is provision which determines that the burden of proof in court cases related to dismissals is vested with the employer (the platform), who has to prove that the termination was based on other grounds than those relating to the rights of the workers as protected under the Directive (Article 18(3)).

However, the Directive does not cover all dimensions or aspects characterising the working conditions or employment protection of platform work, nor the information obligation on the side of employers.

Some working conditions or dimensions which are particularly relevant for platform work have not been included in the list of essential aspects of the employment relationship the employer is bound to provide in writing, including information on: the existence of potentially harmful tasks or environment; the use of equipment, vehicles and tools that are necessary to conduct work assignments; the protection in case of work accidents and occupational diseases; the collection and processing of personal data and data concerning the work performance; the use of electronic surveillance mechanisms; on the evaluation and rating mechanisms; possibilities to challenge automated company decisions that affect the work of the platform worker; conditions governing the termination or suspension of the contract; (internal and/or external) mechanisms for complaint handling, mediation or dispute resolution; procedures for advance notification in cases of suspension or termination; procedures other than those related to formal dismissals and the corresponding notice periods (mentioned under Article 4.2(j)) when

[255] See also Recital 43

the employer is in breach of the contract, such as in cases of non-payments of particular tasks; on representation rights; rights to conclude collective agreements; and the clients and customers. Most of these enumerated aspects are of key concern to platform workers and a timely information obligation on these matters could be considered in the future.

Whereas the Directive introduces minimum requirements that affect some working conditions of workers, including platform workers who will qualify as workers, some of the material provisions may not be entirely fit for platform work while some other dimensions or aspects that are particularly relevant for platform work are not included.

The procedure concerning the termination of the employment relationship, as well as the related notice periods, are mentioned as being part of the essential aspects of the employment relationship. The employer is obliged to provide written information about these procedures to the individual worker within a month after the start of the employment contract. Article 4.2(j) refers to procedures in situations where the employment is terminated and may hence be restrictedly interpreted as referring to situations where the employment relationship is formally ended by either of the parties or in agreement. No reference is made to 'equivalents' as is the case in Article 18, which concerns the protection in case of dismissals. The information obligation on procedures for situations where work is being (temporarily) suspended or where the work allocation is reduced or put on hold - all characteristic of platform work - appears not be covered. The obligation to include in the procedure a list of grounds on which basis the employment contract can be terminated is also not covered.

Whereas Article 18 provides protection in case of a dismissal or its equivalent, it may not entirely cover all sorts of situations in which a platform worker is prevented from working while technically not being 'dismissed'. Is a reduction or a temporary suspension of work or task allocation, while keeping the account operational, considered as the equivalent of a dismissal? Article 18 does not mention a deadline by which the employer has to inform the worker on the grounds for dismissal, unlike the case for the obligation to provide information in writing on the essential aspects of the employment relationship (one week or one month from the first day of work), in cases of any change to these essential aspects (at the latest on the day that the change is taking effect) and in cases where the worker with more than six months' service has requested a form of employment with more predictable and secure working conditions (one month as from the date of request).

The Directive requires Member States to ensure access to effective and impartial dispute-resolution mechanisms and the right to redress in case of infringements of the workers' rights but does not include this into the list of essential aspects under the information obligation. Overall, the emphasis is put more on formal dispute settlement arrangements and litigation, and less so on more preventive but less costly mechanisms to resolve potential conflict, such as the obligation to have internal complaint-handling mechanisms and mediation. This may be of particular relevance for platform work because some of the reported reasons for disputes are not that complex (such as a non-payment of a particular assignment or task, or refusal to activate an account), or they may be the consequence of automated decisions.

Working time and rest periods

Material scope

As pointed out, the Working Time Directive[256] does not contain a definition of 'worker', but the CJEU has repeatedly confirmed that the term 'worker' as it is used in the

[256] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9–19)

Directive has an autonomous meaning specific to EU law.[257] The Directive does not apply to the self-employed.[258]

The Working Time Directive lays down some minimum requirements for the organisation of working time and defines concepts such as 'working time' and 'rest periods': **working time** is any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with the national laws and/or practice (Article 2(1)); a **rest period** is any period which is not working time (Article 2(2)).

The Directive contains several material provisions determining the rights of workers in relation to the organisation of the working time:

- a minimum daily rest period of 11 consecutive hours per 24-hour period (Article 3)
- a minimum of uninterrupted rest period of 24 hours per each seven-day period on top of the 11 hours' daily rest per 24-hour period (Article 5)
- a rest break in cases of working days that are longer than six hours, the duration and terms on which it is granted being established by collective agreements or in national legislation (Article 4)
- a maximum of weekly working time as established by national collective agreements, administrative provision or legislation, where the average working time for each seven-day period, including overtime, may not exceed 48 hours (Article 6)
- the right to paid annual leave of at least four weeks in accordance with national legislation and the prohibition to replace the paid annual leave by another allowance unless when the employment relationship is terminated (Article 7)
- limitation of normal hours of night work to an average of eight hours in any 24-hour period (Article 8).

Collective agreements and national legislation of Member States can further determine the exact entitlement conditions related to the different rights of the workers, the specific duration of maximum weekly working time, rest periods, rest breaks and paid annual leave. Member States' labour legislation concerned with the working-time organisation differs to a large extent in their national approaches.

The Pregnant Workers Directive[259] requires Member States to take necessary measures to ensure that workers who are pregnant or who have recently given birth are not obliged to perform night work.

Relevance for platform work

The organisation of working time is specifically relevant for platform workers who can often choose when they work and how much time they want to spend working. The effective working time platform workers perform can in some instances be very limited and/or fragmented and neither does it always follow logical patterns. But platform workers can equally in practice prefer to stay logged on or work for more hours than set as a maximum under the Working Time Directive.

Working time registration is essential in this regard. Not all countries[260] oblige employers to have a time-registration system at the workplace. In a recent judgment,[261] the CJEU

[257] Judgment of the CJEU, Case C-428/09, Union syndicale Solidaires Isère, (14.10.2010), para. 27

[258] Judgment of the CJEU, Case C-255/04, Commission v. France, (15.06.2006), para. 50

[259] Council Directive 92/85/EEC of 19.10.1992 (OJ L 348/1 of 28.11.1992) on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding

[260] Belgium and Spain are examples of countries where employers are not obliged to have time registration systems.

held that not having such a time-registration system is contrary to EU law. The absence of a time-registration system leads to the impossibility of recording, in an objective and trustworthy way, how many hours and when exactly the employee has worked, and it makes it impossible to determine how much overtime the worker has effectively worked. The consequence of the judgment is that all employers should implement an objective, trustworthy and accessible time-registration system facilitating the registration of the daily working hours. The type of system may depend on the sector or the specificities of the company, and it can, for example, be a badging system or an app. For platform workers, the digital app they are using to connect (and stay connected) with the platform is potentially an adequate instrument to register working time.

However, other questions arise where platform work is concerned. Is the time spent online at all times working time? Is the time that a platform worker is spending, when regularly logging in or when staying continuously connected to screen job offers, working time? How is it best to apply maximum (weekly) working time, on call or on duty time, rest breaks and rest periods for platform workers?

In other words, the notion of working time is being challenged by platform work practices. The CJEU has consistently held that the determining factor for the classification of 'working time', within the meaning of the Working Time Directive, is the requirement that the worker is physically present at the place determined by the employer and that they are available to the employer to be able to provide the appropriate services immediately in case of need.[262] In addition, the CJEU considers that the physical presence and availability of the worker at the place of work during the standby period, with a view to providing their professional services, must be regarded as carrying out his duties, even if the activity actually performed varies according to the circumstances.[263] It is hard to predict how the CJEU would apply these principles to platform work. It may lead to cases where the platform workers' working time would be much longer than the Directive's thresholds.

Another point of doubt relates to the application of the time limits which are set by the Directive and whether they apply per employment contract or per worker. One may assume that they apply per worker, as the main objective of the Directive under Article 1 is to lay down minimum health and safety requirements for the organisation of working time, implicitly referring to the health and safety of a particular worker. Indeed, in its Interpretative Communication,[264] the European Commission has indeed stated that the time limits apply per worker. This clarification is essential given the fact that platform workers may in practice work for different employers or platforms simultaneously or **combine their platform work with their main occupation.**

Platform workers often remain connected to the platform while waiting and/or monitoring new incoming job calls or 'offers'. This raises the question as to what extent this can be considered as standby time and, in the affirmative, as working time or not. The CJEU held that standby time, where the worker is required to be physically present at the place specified by the employer, must be regarded entirely as working time, irrespective of the fact that, during the periods of standby time, the person is not continuously carrying out any professional activity.[265] However, if the standby time is characterised by the fact that workers are not obliged to remain waiting in a place designated by the employer (it is enough for them to be reachable at any time so that

[261] Judgment of the CJEU, Case C-55/18, Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE, (14.05.2019)

[262] Judgment of the CJEU, Case C-518/15, Ville de Nivelles v Rudy Matzak (21.02.2018), para. 59

[263] Ibidem, para. 57

[264] European Commission, Interpretative Communication on Directive 2003/88 of the European Parliament and of the Council of 24 May 2017, concerning certain aspects of the organisation of working time.

[265] Judgment of the CJEU, Case C-151/02, Landeshauptstadt Kiel v Norbert Jaeger, (09.09.2003)

they may be called upon at short notice to perform their professional tasks), it is not considered as working time. In that situation the workers are at the disposal of their employer, in that it must be possible to contact them, but they can manage their time with fewer constraints and pursue their own interests.[266]

Platform workers' standby time is usually spent at a location the platform worker chooses and is hence not specified as such by the platform, in spite of the fact that one could argue that the location is somehow determined as being in the vicinity of the place where the work is expected to be performed. Also, the question can be raised as to the obligation of the platform worker to respond to the assignments, and whether they really are on **duty** or **not**. The fact that platform workers are often in a position to decline an assignment may point to the contrary. If, however, platform workers are sanctioned when they have refused a particular assignment, they find themselves as if on duty.

In a recent judgment, the CJEU held that in a case of firefighters who were on duty at their home but who had to respond to calls from the employer within eight minutes, the on-call time had to be considered as working time, as the eight minutes' requirement significantly reduced the opportunities for the workers to perform other activities. The judgment is deviating from previous positions, which considered only standby time spent at the workplace as working time, and not the standby time at home, even when there was an obligation to respond to a call of duty within a short timeframe. The previous may also have repercussions in the light of the Working Time Directive's provisions related to working time and rest periods, as the strict demarcation is becoming blurred where platform work is concerned. Platform workers who are on standby at home cannot be in such a situation for more than 48 hours a week, or more than 13 hours in a 24-hour period, when the provisions of the Working Time Directive have to be respected (provided that the nuances brought by the recent judgment of the CJEU are present). If there is, however, no obligation to respond to a call, it will be much more difficult to maintain that the standby time at home is to be considered as working time (which is where the difficulty lies for platform work).

The CJEU also ruled in cases where the worker did not have a fixed or habitual place of work. In such instances, the time spent by workers travelling each day between their homes and the premises of the first and the last customers designated by the employer constitutes working time.[267] This ruling is of specific relevance for the platform riders and drivers, always, of course, on the condition that they are not genuine self-employed.

Member States can derogate[268] from some of the provisions of the Working Time Directive, because of the specific characteristics of the activity concerned, when the duration of working time is not measured and/or predetermined, or when the working time can be determined by the workers themselves. This is the case for most platform work practices. However, as affirmed by the European Commission in its Interpretative Communication, '*there is no case-law yet on how the "autonomous worker" derogation could apply to workers in new forms of employment such as the digital platform economy […]'*.[269] Subsequently, it is still uncertain whether Member States can (and will) make use of this possibility to exclude platform work from the application of the Working Time Directive.

[266] Judgment of the CJEU, Case C-151/02, Jaeger, op.cit and Judgment of the CJEU, Case C-518/15, Matzak, op.cit

[267] Judgment of CJEU, Case C-266/14, Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.) v Tyco Integrated Security SL and Tyco Integrated Fire & Security Corporation Servicios SA (10.09.2015)

[268] Article 17 (1)

[269] European Commission, Interpretative Communication on Directive 2003/88 of the European Parliament and of the Council of 24 May 2017, concerning certain aspects of the organisation of working time, p 45

Health and safety for fixed-term employment contracts

The Health and safety for fixed-term work Directive[270] applies to temporary employment relationships directly concluded between the employer and the worker, or between a temporary work agency and the worker, when the latter is assigned to work for and under the direct control of a user undertaking. It aims to ensure equal treatment and the same levels of protection in matters of health and safety between the workers concerned and the other workers at the company or the user undertaking.

Material scope

Workers have the *right to be informed,* before they start working, about the job-specific risks they are facing and whether any specific occupational qualifications, skills or medical surveillance are required (Article 3). Workers have the right **to receive sufficient training** appropriate to the particular characteristics of the job, taking into account their qualifications and experience (Article 4). Member States can prohibit workers under fixed-term contracts being used for certain types of work that would be particularly dangerous to their safety or health and in particular for certain work that requires medical surveillance. Where Member States do not use this possibility, they have to ensure that the workers under fixed-term contracts are provided with appropriate special medical surveillance (Article 5).

The Directive furthermore contains specific provisions that govern the triangular relationship between the worker, the temporary work agency and the user undertaking. These determine that the user undertaking has to inform the temporary work agency about the occupational qualifications required and the specific features of the job to be filled before the workers are assigned (Article 7), and that the user undertakings remain responsible for the health, hygiene and safety conditions governing performance of the work (Article 8).

Relevance for platform work

At first sight, the right to be informed about health and safety risks appears not to be more important for platform workers when compared to any other worker. The same applies to the right to receive sufficient training, which is specific to the job features under question. Platform workers, however, appear to be working in practice in less 'controlled' environments and often work on their own with little or even no personal contact with colleagues and/or employer or person representing the latter. Platform workers are often working outside the traditional company environment and without access to information, training, or procedures on health and safety.

The provisions of the Directive apply to workers under fixed-term contracts and to workers who are employed by temporary work agencies and seconded at user undertakings, revealing a triangular relationship which is characteristic of platform work as well. However, customers of platform work are usually natural persons or companies that receive and/or pay for the services rendered by the platform worker and cannot be considered as a user undertaking in the meaning of the Directive. The provisions are consequently of little relevance for platform workers.[271]

[270] Council Directive 91/383/EEC of 25.06.1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (OJ L 206/19 of 29.07.1991)

[271] See *supra* 4.1.1.3.1 for a similar analysis on the non-standard directives.

Health and safety of pregnant workers

Material scope

The Pregnant Workers Directive[272] contains in its Annex I a non-exhaustive list of agents, processes or working conditions which may be harmful for workers exposed to them during their job activities if they are pregnant, have recently given birth or are breastfeeding. Employers are obliged to assess the nature, degree and duration of the exposure of the workers concerned, either directly or by means of protective and preventive services with a view to assessing the risks to their safety and health, and the possible effects on their pregnancy or breastfeeding (Article 4). Based on the risk assessment, the employer has to take appropriate measures and adjust the working conditions or working hours of the worker, move her to another job or grant her leave for the whole period necessary to protect her safety and health (Article 5).

The Directive furthermore lists, in Annex II Section A and Section B respectively, the agents and working conditions that pregnant workers and breastfeeding workers must under no circumstances be exposed to. Employers who conduct a risk assessment which reveals a risk of exposure cannot oblige workers to perform the work concerned.

The Directive also contains provisions relating to the prohibition of night work, the right to maternity leave for at least 14 weeks and the protection against dismissal for pregnant workers until the end of their maternity leave. These provisions are dealt with in other sections of this study.

Relevance for platform work

While the Directive certainly has relevance for platform workers who are pregnant or who have recently given birth, it is designed to apply in more traditional types of working environments and does not provide for solutions that fit platform work practices. Many challenges could arise, such as the application of a risk assessment when there is often no physical contact between the platform and the worker, of the temporary adjustment of the working conditions and/or working hours of the platform worker concerned, and of moving the worker to another job when there is a risk for her safety or health. Other enforcement challenges exist, such as the application of the lists of hazardous agents and working conditions pregnant workers or workers who have recently given birth may under no circumstances be exposed to, as well as the prohibition of night work to pregnant platform workers and the protection against dismissal of platform workers who are pregnant or have recently given birth.

Protection against dismissal

Material scope

The protection against dismissal of workers in particular situations is ensured under different directives and applies in certain situations or when the worker is exercising rights that are protected under the respective directives.

The Pregnant Workers Directive requires Member States to prohibit the dismissal of workers during the period from the beginning of the pregnancy to the end of the maternity leave, save in exceptional cases not connected with their condition, which are permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent (Article 10). The new Work-life Balance Directive equally requires from Member States that they prohibit dismissals of workers who have applied or have taken up their right to paternity leave, paternal leave or carer's leave or who have asked for flexible working arrangements for caring purposes

[272] Council Directive 92/85/EEC of 19.10.1992 (OJ L 348/1 of 28.11.1992) on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding

(Article 12). The Directive ensures that the burden of proof remains with the employer[273] (Article 12(3)). The recent TPWC Directive requires Member States to take necessary measures to prohibit the dismissal or its equivalent on grounds that workers have exercised their rights provided for under the Directive and allocates the burden of proof of the opposite to the employers (Article 18). By establishing a general framework for informing and consulting employees, the Directive requires Member States to ensure adequate protection for the representatives of the workers (Article 7).

Relevance for platform work

The protection against any form of a temporary or permanent termination or closure of the account or 'contract' is of particular relevance to platform workers, irrespective of their employment status. Even at the pre-contracting stage, challenges occur in cases when applications to register or open an account at a platform may be declined or refused by the platform without adequate explanation or reasons. From a strict employment perspective this pre-contracting stage can be considered as the recruitment phase. This is currently not covered under the existing EU labour legislation, which is traditionally concerned with the employment period itself. During recruitment processes, employers have to respect the EU anti-discrimination legislation that ensures equal treatment on grounds of gender, disability and other protected grounds as referred to in Article 19 TFEU. The EU labour law directives, unlike the *acquis* on equal treatment, however, have no material provisions for job seekers and workers who are in search of new employment. But after registration or the start of the contract (of employment or of the provision of services, depending on the status of the platform worker), **timely and adequate information provision on the grounds of the decision appears to be necessary for the variety of different modalities of contract 'interruption' or 'termination'** platform workers are confronted with: (temporary) suspension; reduction of work assignments; other restrictions imposed by the platform which affect their job prospects; account deletion; and termination of the contractual relationship. The non-payment of a particular assignment or task may not necessarily imply a suspension or termination of the contract for a platform worker, but in practice such a refusal seems to give rise to many concerns for platform workers. The reasons for a decision not to pay for a particular service or job are often based on automated decisions without human involvement and/or may be related to the evaluation of the clients, but irrespective of this, decisions on non-payment could be treated in the same way as decisions related to the contract termination, that is, the provision of an advance notification and statement of the reasons for the payment refusal.

The **possibility of challenging** the decisions related to the contract interruption (or non-payment) is of equal importance for platform workers, especially when these decisions are unilaterally applied in contexts where the relationships are exclusively virtual and based on automated decisions. This latter point highlights the need for proper and effective **internal complaint-handling systems** and **alternative forms of out-of-court dispute-resolution mechanisms** such as external mediation services or mechanisms in which the social partners at company or sector level may take up a more prominent role in the resolving of particular disputes. Most of the current EU labour legislation addressing the protection of the rights of workers appears to emphasise the more formal judicial redress before courts as the way to resolve disputes, with only very limited attention paid to alternative ways. Platform workers are in practice less organised than standard workers. They work mostly in isolation and for powerful platforms. Gaining access to affordable, fast and effective dispute resolution systems for individual platform workers, irrespective of their labour market status, is a priority. The P2B Regulation seems to meet some of these aspirations. Providers of online intermediation services have the obligation to establish a free of charge internal complaint-handling system and to identify two or more impartial and independent mediators who can be

[273] Recital 4 of Directive 2019/1158

engaged for dispute settlement in case the matter is not resolved following the internal complaint-handling system (Article 11 to 14) (see *infra*).[274]

6.1.3 *Collective labour rights*

Information and consultation of collective labour force

Material scope

Directive 2002/14/EC[275] sets minimum requirements for the **right to information and consultation of workers**[276] in companies with more than 50 staff[277] on matters which concern the entire business and its personnel, such as the recent and probable developments regarding **the economic situation** of the company, the **employment situation** (especially when there is a threat to the employment) and on decisions that may lead to substantial **changes in the work organisation or contractual relations** (Article 4(2)).

The practical arrangements for the information and consultation processes, such as its timing, periodicity, level of interaction between the workers' representatives and management, and exact scope and content, are to be defined by national legislation and industrial relations' practices in the Member States. Information has to be provided at a time and in a way that is appropriate to enable workers' representatives to conduct a study and to prepare for consultation, whereas consultation needs to be organised with the appropriate level of management and with the purpose of reaching an agreement in cases where managerial decisions may trigger substantial changes in the work organisation and/or contractual relations. The Directive furthermore determines that Member States have to ensure that the employees' representatives are entitled to adequate protection and guarantees that they are able to properly perform their duties (Article 7). Member States have to ensure appropriate measures in the event of non-compliance by the employers or workers' representatives, such as administrative and judicial procedures to enable the enforcement of the obligations deriving from the Directive and shall provide for adequate and effective sanctions in case of infringements (Article 8).

Directive 2009/38/EC[278] regulates the **procedures for informing and consulting** employees[279] and for the setting up of a **European Works Council** in undertakings or groups of undertakings that have EU-scale businesses. It is applicable to large companies with at least 1 000 employees in the Member States and at least 150 employees in each of at least two Member States (Article 2.1(a)).[280] The scope of the

[274] See Section 6 for a comprehensive analysis of the P2B Regulation.

[275] Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 080, 23/03/2002 p. 29 – 34)

[276] The Directive uses the term 'employee' instead of worker as detailed in previous sections.

[277] Member States can choose whether they apply the Directive to undertakings with more than 50 workers or to establishments with more than 20 staff (Article 3(1)). Article 2 defines 'undertaking' as a public or private undertaking carrying out an economic activity, whether or not operating for gain, which is located within the territory of the Member States and 'establishment' as a unit of business defined in accordance with national law and practice, and located within the territory of a Member State, where an economic activity is carried out on an ongoing basis with human and material resources.

[278] Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast) (OJ L 122, 16.5.2009, p. 28–44)

[279] The Directive uses the term 'employee' instead of worker as detailed in previous sections.

[280] 'EU-scale group of undertakings refers to a group of undertakings that has at least 1.000 employees, at least two group undertakings in different Member States and at least two group undertakings which each has at least 150 employees in different Member States.

information and consultation procedures concern specifically **transnational issues** (Article 1(3)) and these specific information and consultation procedures have to be implemented on top of the information and consultation procedures at the level of the individual undertaking(s) or establishment(s). The central management of the EU-scale undertaking or group of undertakings must conclude a written agreement with a special negotiating body on the details relating to the functioning, composition and resources of the European Works Council. Should no agreement be reached, subsidiary measures apply, which are determined in the Annex to the Directive. The measures define the scope of the content of the information and consultation procedures, including the economic and financial situation of the undertakings, employment forecasts, substantial changes concerning the organisation, introduction of new working methods or production processes and establishing the right of the European Works Council to meet at least once a year with the central management.

Directive 98/59/EC[281] determines that an employer considering **collective redundancies** has to inform the competent national authorities in writing (Article 3) and start consultations with the workers' representatives with a view to reaching an agreement (Article 2(1)). Collective redundancies are defined in the Directive as dismissals effected by the employer for reasons that are not related to the individuals concerned. With a view to establishing a minimum number of dismissals in order to be considered as a collective redundancy, Member States can define the number of redundancies and choose between different minimum quotas, depending on a reference period during which the redundancies are taking effect: at least 10 dismissals (for companies with between 20 and 100 workers), at least 10% (for companies with between 100 and 300 workers) and at least 30 (in companies with more than 300 workers), when the reference period is 30 days. When the reference period is 90 days the minimum is established at 20 dismissals, irrespective of the number of workers who are employed by the company (Article 1(a)). The Directive establishes the procedure for the consultation which shall, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining workers made redundant (Article 2(2)). Employers need to provide the workers' representatives in due course with the information about the reasons for the redundancies, the number of workers affected and the period during which the redundancies will come into effect, as well as on the method for calculating the redundancy payments. Workers' representatives are entitled to make constructive proposals during the consultation, and only after the end of the consultation procedure can employers proceed with the collective redundancies.[282]

Relevance for platform work

The three directives on collective rights, which establish information and consultation obligations to be adhered to by employers, apply to company environments and employment relationships between employers and workers (employees). The self-employed providing services to these companies are not part of their scope of application.

The right to be informed and consulted on the **business performance of the platforms,** the **employment forecasts including possible employment reduction** and decisions that may affect **the work organisation** is, however, very relevant for all platform workers, including those with a self-employed status. Platform workers have also reported their concern at the lack of any information made available to them on the platforms' business performance. They also pointed out that changes in the work organisation - often related to the algorithmic management through the use of digital

[281] Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ L 225, 12.8.1998 p.16-21)

[282] Judgment of the CJEU case C-188/03 Irmtraud Junk v Wolfgang Kühnel of 27.01.2005

apps - happen regularly but without prior notification to, or any consultation with, the workers. Platform businesses seem to continuously adjust the work organisation in an attempt to improve efficiency, by minimising and often externalising the operational costs. Since contractual relationships in platform businesses are often very precarious, the provision of information and consultation appears to be even more important for platform workers than for those in more standard working environments.

The typical 'depersonalised' employment relationship characterising platform work and often absent direct (personal) contact between the platform (its human management) and the platform worker appear to make systemic information and consultation processes harder to implement in practice. Platform workers often operate with little or no direct contact with their colleagues, which may hinder information exchange, collective action, selection of workers' representatives and/or the establishment of workers' organisations. Platform businesses have, however, functional digital applications which aim to ensure that the platform workers are - and remain - connected with the platform, and which serve as a means for exchanging information between the platform and the platform worker primarily for operational and management purposes. Expanding the functions of these digital applications to provide information to all workers collectively, and even to promote information exchange between the platform workers and facilitate consultation, should not be too complicated. The analysis of the challenges in Section 4, however, shows that some platforms are using their task allocation apps to increase internal competition between individual platform workers. The apps appear to be designed in a way that discourages or even prevents workers to take any collective initiative or action.

Directive 2002/14/EC definitely has high relevance for platform workers who are employed by the platforms, but its provisions appear insufficiently, or not at all, adapted to the platform work's digital business environment, making it relatively easy to circumvent these obligations. The Directive does not apply to self-employed (dependent) platform workers – although information on the economic situation, employment forecasts and changes in work organisation is equally important to them.

Several platforms operate on an **EU-wide scale**, with undertaking(s) or establishments in more than one Member State. Their central management structures often differ from the management structures in the country where the platform worker is active, and even in the latter instances it is not always clear who is effectively in charge because of the more virtual relationship between the platform and the platform worker. In such instances, the European Works Council has relevance for the platform workers who are workers. Self-employed platform workers fall outside the scope of protection provided by Directive 2009/38/EC on the European Works Council, but they are also concerned by the matter.

The existing Directive insufficiently protects the rights of platform workers where platform businesses are operating in different Member States in parallel and in highly competitive markets, and even globally. Platform workers should be kept informed through structured consultation on **transnational issues** which affect financial and employment forecasts, as well as on more work-related matters such as substantial changes in work organisation or introduction of new working methods. But this does not often happen, and the lack of representation of platform workers at company or sector level in platform businesses is critical here, as previously discussed.

Platform businesses sometimes withdraw from markets as fast as they entered them, having operated locally for relatively short periods. Mergers and acquisitions of platform businesses, however, seem to occur more often.[283] These constantly changing business

[283] Examples are Take Eat Easy which was set up in Belgium in 2013 and left the market in 2017, Deliveroo who decided to withdraw from the German market mid-2019 after four years of operation, the acquisition by the Dutch Takeaway.com of Deliveroo Hero's business in Germany in 2018, then in 2019 announced the merger between Takeaway.com and Just Eat in the UK.

structures have far-reaching repercussions for the daily operations affecting platform workers. Adequate and timely information provision and proper consultation with platform workers' representatives would certainly contribute to better protection of their rights.

The right to be informed and consulted when platforms are considering collective dismissals is applicable when platform workers are effectively workers and not engaged as self-employed by the platform business. The Collective Redundancies Directive does not, however, apply to contracts which are concluded for limited periods or for specific tasks unless they take place prior to the date of expiry or of completion of the tasks (Article 1(2)). In practice, most platforms' employment relationships appear to have many similarities with such fixed-term contracts, which may imply that the Directive does not apply in these instances and/or that there are ways to argue that the Directive is not applicable as the task and/or time period concerned have already been completed or will be completed with due payment for the services rendered. However, as elaborated in the section concerned with the Fixed-term Directive, platform workers' contracts are often open-ended types of contracts (zero-hour contracts) that resemble more closely the concept of permanent contracts. This could bring them into the scope of the Collective Redundancies Directive. In practice, platform workers' contracts are not always straightforward in relation to their terms of duration, as became clear from the research on the challenges in Section 4.

Protection against collective redundancies is nevertheless of importance to platform work.[284] The provisions of the Directive, however, do not appear to be entirely fit for the specificities characterising platform work practices: platform workers do not usually share a common physical workplace with the platform management and other platform worker colleagues. The contact with the platform and information provision is often limited to web-based applications with individual accounts and little or no commonly shared information between the workers. Platform workers within the same company or undertaking usually have limited mechanisms or tools for collective information gathering or sharing and are often prevented by the platforms or by the design of the digital apps from being structurally involved in possible consultation processes and from taking collective action. The representation of platform workers in platform businesses has been reported as one of the main challenges in Section 4. The absence of representatives of the platform workers inside the companies makes the application of the procedures for consultation, when collective redundancies are considered, not practicably possible. Enforcing the right to set up representative bodies for workers in platform business may help overcome this challenge. Digital web-based applications are currently most often used for the exclusive purpose of the work organisation and task allocation to individual platform workers, which is only in the interest of the platform business. One idea to promote information exchange and facilitate dialogue and consultation between the platform workers would be to extend the digital applications to have a two-way information exchange between the workers and the platforms.

Protection against collective redundancies is of particular relevance in situations where platform businesses withdraw from business markets and cease their activities, decisions that are often taken drastically and unilaterally[285] and which would by definition presuppose advanced notification of and consultation with their own workers.[286] Such withdrawals and cessation of business activities often have far-reaching consequences

[284] See *infra* 'Insolvency of the employer', which goes into depth on the highly competitive landscape of the platform economy.

[285] In August 2019 Deliveroo announced it would pull out of the market in Germany after four years of operation. The decision was announced by an email message sent to its users.

[286] The Belgian start-up Take Eat Easy was set up in 2013 but announced in summer 2017 it would stop its activities.

not only for their own workers but also for the self-employed who were engaged in the platform business activities.

Insolvency of the employer

Material scope

Directive 2008/94/EC[287] ensures that when employers are in a state of insolvency, *claims of the employees that arise from their employment contracts* or relationships against their employers, as well as their severance pay on the termination of the employment, are granted protection in accordance with national law. Member States are obliged to take measures to ensure that institutions will guarantee the payment of the outstanding claims. The Directive explicitly states that Member States cannot exclude part-time workers, fixed-term workers or temporary agency workers (Article 2(2)). Member States can extend the employee protection to other situations of insolvency, for instance in situations where the payments have de facto been stopped on a permanent basis (Article 2(4)).

Relevance for platform work

The Directive applies only to employees or workers (and not to the self-employed) but explicitly states that part-time, fixed-term and temporary agency workers are included in its remit, which makes the Directive particularly relevant for platform workers in non-standard forms of employment.

The Directive primarily aims to regulate the functioning of the guarantee institutions while ensuring the rights of employees for their claims arising from their employment contract to ultimately be paid. It applies in situations where the business has been subject to collective proceedings based on the insolvency of the employer, or when the business has already been closed down, at the very final stage of liquidation. Such a situation presupposes that the payments to the workers were terminated at some point when the business deteriorated. Without prejudice to the relevance and importance of the Directive for workers, including platform workers, protection against payment claims in general, but also in the preceding stages of business deterioration, appear to be of greater relevance. This seems to be specifically the case for platform workers whose contracts and payment conditions are often more variable than in standard forms of employment and who are often insufficiently or not at all organised or represented at the company level to tackle the payment claims. Section 4 indicates that platform workers are often confronted with situations where their services have not been paid for, and payment claims appear to be one of the main subjects of contestation in platform businesses in some countries.[288]

Platforms are often operating in highly competitive business markets in which few players are active. There is a constant objective to optimise the operational costs by increasing productivity and efficiency with the ultimate aim of reducing the selling prices for the services that are provided and paid for by the (often private) consumers. The initial investment cost for entering the local markets and implementing the web-based technologies has to be recovered from usually low profit margins on the individual services that are provided. Scaling and volume appear to be the way to make the business profitable. The heavy competition implies relatively short life cycles for some platform businesses that terminate their activities after being in business for only a short while. Deteriorating business can lead to the insolvency of the employers which in turn

[287] Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (Codified version) (OJ L 283, 28.10.2008, p. 36–42)

[288] M. Silberman, Rights for platform workers, IG Metall Crowdsourcing Project, Discussion paper, (July 2018), unpublished

can affect the income security of platform workers. Some cases have been reported in our research on the national challenges.[289]

Several uncertainties, and more importantly, some enforcement challenges, remain. How is the Directive to be made applicable in practice for platform work, as the platform workers are often working in isolation and without the support of a representative organisation that can take their claims to heart? Are the claims sufficiently recorded and submitted to the institution that is entrusted with guaranteeing the payment according to national legislation? How about the duration that is needed to pay out the guaranteed claims to the affected platform workers?

The recently adopted Insolvency Directive (EU) 2019/1023[290] complements Directive 2008/94/EC in several ways. It requires Member States to ensure that companies in difficulty or in all likelihood facing insolvency have access to early warning tools that can detect circumstances that may lead to insolvency and which require urgent action. The Directive focuses on the early stages when companies are accumulating debt which may lead to a possible insolvency and to subsequent collective proceedings or liquidation as covered by Directive 2008/94/EC. Companies, as well as their workforce, should have access to relevant and up-to-date information on the availability of the early warning tools. Applying preventive restructuring frameworks may not affect the individual and collective rights of the workers. The Directive reconfirms the right to information of the workers' representatives on information regarding the company's activities and economic situation and regarding any preventive restructuring procedure which may affect the employment in the company, including the ability of workers to recover their wages and any future payments. The Directive also establishes the right to information and consultation of the workers' representatives on the restructuring plans before they are adopted (Article 13).

6.1.4 *Social protection*

Access to social protection

Material scope

The Council Recommendation on access to social protection for workers and the self-employed[291] clearly targets 'both persons who are working in the framework of an employment relationship (workers) and persons working on their own behalf (self-employed)' (Article 7(b) on the definition of the labour market status), but also to people transitioning between either status or having both statuses as well as to persons whose work is interrupted by the occurrence of one of the risks covered by social protection (Article 3.1). Member States are recommended to provide access to *adequate social protection* to all workers and the self-employed and to establish **minimum standards concerning the formal coverage, effective coverage, adequacy and transparency** of some branches of social protection: (1) unemployment benefit schemes, (2) sickness and health care benefits, (3) maternity and paternity benefits, (4) invalidity benefits, (5) old age benefits and survivor's benefits, and (6) benefits in respect of accidents at work and occupational diseases, 'insofar they are provided in the Member State'. The latter qualification is interesting as it may imply that Member States

[289] Take Eat Easy was in a state of insolvency in France when the case was brought before the national courts leading ultimately to a ruling of the French highest court (Cour de Cassation) which reclassified a service contract into an employment contract on 28 November 2018.

[290] Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency) (OJ L 172/18 26.06.2019)

[291] Council Recommendation of 8 November 2018 on access to social protection for workers and the self-employed (2019/C 387/01 of 15.11.2019)

which do not have all mentioned social security schemes for workers and/or for the self-employed should not necessarily introduce the schemes that are not yet in place as this is particularly relevant in the case of the self-employed. Social assistance and minimum income protection schemes are explicitly excluded from the scope. Workers and the self-employed have a right to participate in listed social protection schemes and to adequate social protection but the Recommendation acknowledges that different rules may apply for workers and for the self-employed (Article 5). Member States are recommended to ensure access to adequate social protection regarding all enumerated social risks for 'all workers on a mandatory basis, regardless of the type of employment relationship and to the self-employed at least on a voluntary basis and where appropriate on a mandatory basis' (Article 8 on formal coverage).

The Recommendation also contains provisions that aim to make the protection more effective, especially for the self-employed and workers in non-standard forms of employment. Specifically, the rules governing contributions and entitlements should not hinder the possibility of accruing and accessing benefits due to the type of employment relationship or of labour market status; and the differences in the rules governing the schemes between labour market statuses or types of employment relationships should be proportionate and reflect the specific situation of the beneficiaries (Article 9).

Member States are furthermore recommended to ensure that the entitlements are preserved, accumulated and/or transferable across all types of employment and self-employment statuses and across economic sectors, throughout the person's career or during a certain reference period and between the different schemes within a given social protection branch (Article 10). Benefits that are paid upon the occurrence of a risk are to be provided in a manner that is timely, adequate, upholding a decent standard of living, and providing appropriate income replacement while preventing the beneficiaries from falling into poverty (Article 11). When determining the level of contributions, Member States are recommended to ensure that they are proportionate to the contribution capacity of the workers and the self-employed (Article 12).

Relevance for platform work

Recital 11 of the Recommendation considers the growing variety of employment relationships and refers to on-demand work, voucher-based work and platform work as examples of this diversity. The Recommendation notes that the national rules on contributions and entitlements to social protection schemes are still largely based on full-time, open-ended employment contracts between a worker and single employer, while some non-standard forms of employment and some self-employed have insufficient access to social protection branches that are more closely related to the participation in the labour market (Recital 13).

The Recommendation has some relevance for platform workers, though it is indirect and limited. Unlike the case for EU labour legislation, self-employed platform workers are included in the remit, as are platform workers who are working in the framework of non-standard forms of employment. In spite of it being a Recommendation and of introducing only minimum standards, **some provisions are of particular relevance for platform work**. Member States are recommended to ensure that the self-employed have access to the listed social protection branches at least on a voluntary basis, and where appropriate on a mandatory basis. Addressing social protection of the self-employed is a key response in the overall context of platform work, which in practice is for a large part performed by those self-employed who fall outside of the scope of EU labour legislation. Provisions aiming at the preservation and transferability of the rights, and at reducing the importance of the minimum entitlement and qualifying conditions for social benefit entitlement, are often dependent on national social protection systems. This is because they have a significant impact on the effective access to social protection of self-employed platform workers, and workers who have an employment relationship of a very short duration, or for a very specific and small task and/or who work for various platforms simultaneously. Adequate levels of benefits, which aim to ensure a decent

standard of living and to prevent poverty, as well as assessing the contributory capacity of the workers or self-employed when establishing the contribution levels, are principles that take into account the day-to-day precariousness many of the platform workers are confronted with in reality.

The Recommendation has importance for platform work as one of the types of non-standard employment as it calls on Member States to open up formal and effective access to social security branches for workers with atypical work assignments or schedules and professional careers. For self-employed platform workers, the Recommendation has a rather limited importance, as it concerns only statutory social security schemes and mandatory coverage has not been required. The Recommendation remains a softer instrument and does not have the same impact as the labour directives, leaving it up to the Member States to decide on possible actions in the field of social protection of the platform workers.

Maternity leave, paternity leave, parental leave and carers' leave

Material scope

The Work-life Balance Directive 2019/1158,[292] which entered into force on 1 August 2019, lays down the minimum requirements related to parental leave, paternity leave and carers' leave and to flexible work arrangements for workers who are parents or carers. Its main purpose is 'to achieve equality between men and women with regard to labour market opportunities and treatment at work by facilitating the reconciliation of work and family life for workers who are parents or carers'. The new Directive replaces the older Parental Leave Directive[293] which is repealed with effect from 2 August 2022. Member States have three years to transpose the provisions into their own national legislative and administrative frameworks. The new Directive strengthens the right to (paid) parental leave but also introduces new rights such as the (paid) paternal leave, the carer's leave and the right to flexible working arrangements for caring purposes. The Directive applies to all workers and refers to CJEU case law when determining its personal scope (Article 2) while it also explicitly mentions that part-time work, fixed-term work and temporary agency work are covered within its scope.[294] Minimum requirements relating to maternity leave are governed by the (older) Pregnant Workers Directive 92/85/EEC[295] but also by Directive 2006/54/EC on gender equality in employment and Directive 2010/41/EU on gender equality of the self-employed.

Fathers, or equivalent second parents, have the **right to paternity leave** of ten working days on the occasion of the birth of their child. Member States can decide whether these days can be partly taken before or only after the birth or determine other more flexible take-up arrangements (Article 4(1)). During paternity leave workers are entitled to receive an allowance which equals at least the amount of the sickness allowance of the Member State concerned (Article 8(2)).[296] Workers have furthermore the *individual right to parental leave* of four months, which has to be taken before the child reaches eight years[297] and out of which two months are not transferable (Article

[292] Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 188, 12.7.2019, p. 79–93)

[293] Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (OJ L 68, 18.3.2010, p. 13–20)

[294] Recital 17 of the Directive refers to part-time work, fixed-term work and temporary agency work

[295] Directive 92/85/EEC on safety and health at work for pregnant workers (OJ L 348/1 of 28.11.1992)

[296] Member States may make the payment of the allowance subject to previous periods of employment, which may not exceed six months prior to the expected date of birth of the child (Article 8 (2)).

[297] Member States are required to establish the specific age of the child.

5).[298,299] For the two non-transferable months workers are entitled to receive a payment or allowance that Member States have to establish[300] (Article 8(3)). Member States are required to regulate the circumstances under which employers are allowed to postpone the granting of parental leave for a reasonable period of time on the grounds that the taking of parental leave at the time requested would seriously disrupt the good functioning of the employer (Article 5(5)).[301] The Pregnant Workers Directive establishes the right of workers to a continuous period of **maternity leave** of 14 weeks allocated before and/or after confinement in accordance with national legislation and/or practice (Article 8). A similar provision is stipulated by Directive 2010/41/EU on gender equality of the self-employed, which states that Member States shall take the necessary measures to ensure that female self-employed 'workers', as well as female spouses and life partners of the self-employed, are granted a sufficient maternity allowance enabling interruptions in their occupational activity owing to pregnancy or motherhood for at least 14 weeks (Article 8(1)).[302]

Workers are furthermore granted **the right to carer's leave** of at least five working days per year and per worker (Article 6), while Member States have to ensure that workers can take time off from work on grounds of force majeure for urgent family reasons in cases where illness or accident makes the immediate presence of the worker indispensable (Article 7). Workers have furthermore the right to request flexible working arrangements for caring purposes (Article 9), defined as 'the possibility to adjust their working patterns, including through the use of remote working arrangements, flexible working schedules or reduced working hours' (Article 3).

When workers return to their job after a period of leave, they are entitled to receive equivalent posts on terms and conditions that are no less favourable to them and to benefit from any improvement in the working conditions to which they would have been entitled had they not taken the leave (Article 10(2)). Member States have to ensure that workers who have applied or exercised their right to paternity, parental or carer's leave, or to more flexible working arrangements for caring purposes, won't be less favourably treated on the basis of these grounds (Article 11). Workers cannot be dismissed on the sole grounds of their having applied or exercised their rights under the Work-life Balance Directive (Article 12).

Relevance for platform work

Equal treatment between men and women in labour market opportunities, working conditions through the reconciliation of work and family life for working parents, and the social protection of pregnant workers and workers who have recently given birth, are all key objectives for modern labour market policies. The aim is to ensure gender equality and higher labour market participation of women, who in practice are most often the carers of sick children or relatives. The right to paid paternity leave and paid paternal leave, as well as the right to flexible working arrangements for caring purposes and the right to carer's leave, are new and the related provisions need to be transposed by Member States in the coming three years. The provisions for time off from work for caring purposes address the growing need in European societies to organise informal

[298] Whereas paternity leave cannot be subject to any qualification related to a period of work or length of service (Article 4 (1)a), Member States can decide to make the parental leave subject to a period of work or length of service qualification of maximum one year (Article 5(4)).

[299] Under the Parental Leave Directive 2010/18/EU the non-transferable period was limited to one month.

[300] The Parental Leave Directive 2010/18/EU did not contain a requirement relating to the obligatory payment of an allowance during the period of parental leave.

[301] The employer must do so in writing.

[302] Member States may decide whether the maternity allowance is granted on a mandatory or voluntary basis (Article 8 (2)).

care. The Directive applies to platform workers, provided they are classified as workers and are not self-employed as set out before.

Platform workers often have non-standard employment relationships with one or more platforms. As the right to parental leave (contrary to paternity leave) can still be made subject by Member States to a minimum qualifying period of maximum one year, issues may arise as to the application of the Directive to platform work when it is delivered in a fragmented way or on a very small scale. Other enforcement questions may occur, such as how to apply the possibility for platforms to postpone the granting of the parental leave for a reasonable period of time in cases where it would seriously disrupt the functioning of the business. Many other provisions contained in the Directive are difficult to apply in the context of platform work environments, for example the prohibition of dismissal when the platform worker has applied or exercised their rights, no less favourable treatment when the platform worker returns to their job, the right to more flexible working arrangements for caring purposes, the right to more flexible forms of parental leave, or the maintenance of rights that were acquired the moment the leave is exercised.

Non-discrimination on grounds of gender, racial or ethnic origin, disability, age, religion or belief and sexual orientation

Equal treatment on grounds of nationality of EU Member States is enshrined in the principles of the free movement of workers and the free movement of services, two of the cornerstones of the EU internal market. The EU non-discrimination legislation on other grounds than nationality is enshrined in the Treaties and in secondary legislation by means of directives. Article 157 TFEU requires Member States to ensure the principle of equal pay between male and female workers for equal work and work of equal value and provides the legal basis for the EU to adopt measures to ensure the application of equal opportunities and equal treatment between men and women in matters of employment. Article 19 TFEU provides the legal basis for the EU to take appropriate action to combat discrimination on the basis of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Both articles of the TFEU have been used as the basis for extensive EU legislation combating discrimination, which has been complemented over the years by considerable CJEU case law, often concerned with the personal scope of application of the respective directives.

Six EU directives have been included in current legal analysis. Three of these directives aim to ensure equal treatment (on the grounds of racial or ethnic origin, religion or belief, disability, age, sexual orientation and gender) in **the employment field**: access to employment, working conditions including remuneration and dismissals, vocational training and participation to workers' representative organisations.[303] They are nevertheless also relevant for the self-employed albeit in a more restrictive way, and often limited to ensure equal treatment regarding the access to self-employment. The three directives are hence predominantly concerned with employment relationships and situations in which workers can be subject to discriminatory approaches by the employers for reasons of their gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation throughout the employment cycle, that is, from the recruitment until the contract termination. The directives aim at prohibiting direct and indirect discrimination and establish important legal concepts such as the concept of

[303] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16–22); Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22–26); Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ L 204, 26.7.2006, p. 23–36)

harassment[304] and reasonable accommodation for people with disabilities. The directives apply in the context of platform work, as recruitment, working conditions, payment and dismissals of platform workers should be non-discriminatory and platforms with whom they have an employment relationship are liable in the case of the opposite. Access to self-employment is equally covered by the directives and no discrimination can occur in that regard.

Two other directives concerning equal treatment between men and women are relevant to platform workers, when self-employed[305] and in matters of social security arrangements for both workers and self-employed.[306] EU legislation on equal opportunities and equal treatment has advanced most on the gender dimension and to some extent on the race dimension. Of the four other main grounds for discrimination, it has focused on the employment area.

The remaining Directive equally concerns gender equality but in a very different context: access to goods and services that are publicly available.[307] The Directive specifically concerns the relationship between a provider of goods or services on the one hand and a consumer on the other. Such a relationship bears similarities to the triangular relationship characterising platform work. Discrimination can work both ways: on the side of the provider when providing services to consumers, but also vice versa as consumers can also use discriminatory approaches when selecting particular products or services. In the case of the former, the question arises as to whether it is the platform worker or the platform who is to be specifically considered as the provider and consequently who may be liable. Where liability has to be determined, there are repercussions for the employment or labour market status of the platform worker.

Material scope

Equal treatment *in the employment area* implies that there shall be no direct or indirect discrimination in: (a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy including promotion; (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; (c) employment and working conditions, including dismissals and pay; (d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.[308] Equal treatment in the employment field is ensured by separate directives for the six different grounds of discrimination: gender,[309] racial and ethnic origin,[310] religion or belief, age, disability and sexual orientation.[311] Whereas the conditions governing access to employment (a) apply to both workers and the self-

[304] Harassment is defined as "unwanted conduct with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment", Article 2 (3) of Directive 2000/78/EC. The concept of harassment is also found in Directive 2006/54/EC under its Article 2(1)c and in Directive 2000/43/EC under its Article 2(3).

[305] Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (OJ L 180, 15.7.2010, p. 1–6)

[306] Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ L 6, 10.1.1979, p. 24–25)

[307] Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37–43)

[308] Article 3 (1) of Directive 2000/78/EC

[309] Article 4 and 14 of Directive 2006/54/EC

[310] Article 3 (1) of Directive 2000/43/EC

[311] Article 3 (1) of Directive 2000/78/EC

employed, the provisions concerning vocational training (b), working conditions (c) and membership of workers' organisations (d) apply generally only to workers. As has been mentioned before, the CJEU stated that it would follow its case law on the free movement of workers when interpreting the concept of worker.[312]

The Race Directive and directives concerned with equal treatment on grounds of gender cover a wider material scope than the employment area. The Race Directive also covers **social protection**, including social security and **healthcare, social advantages, education and access to and supply of goods and services which are available to the public**,[313] whereas the Gender equality in employment Directive also includes **occupational social security** schemes and the Gender equality in social security Directive is concerned with *statutory social security schemes*[314] for specific social risks: sickness, invalidity, old age, accidents at work and occupational diseases and unemployment.[315]

Equal treatment when accessing goods and services is provided for under the Race Directive on grounds of racial or ethnic origin and it forms the subject of a separate directive on gender equality, which applies to all persons providing goods and services, which are available to the public in both the private and public sectors, and which are offered outside the area of private and family life.

The Gender equality of self-employed Directive applies to the self-employed, or persons pursuing a gainful activity on their own account, under the conditions laid down by national law as well as their spouses or life partners when they habitually participate in the activities of the self-employed and perform the same or ancillary tasks.[316] It is the Member States' legislation that will define the status of self-employed and hence the scope of application of the Directive. The latter contains a rather broad definition of the principle of equal treatment by stipulating that it concerns 'for instance' the establishment of a self-employed activity (Article 4(1)). The Directive furthermore stipulates a right to sufficient maternity benefits for at least 14 weeks for self-employed females and female spouses or life partners of the self-employed.

The equal treatment directives systematically cover both direct and indirect discrimination. Direct discrimination occurs when a person is treated less favourably than another, or has been or would be treated in a comparable situation, on any of the discrimination grounds. Indirect discrimination on the other hand occurs where an apparently neutral provision, criterion or practice would put persons having a particular gender, racial or ethnic origin, religion or belief, disability, age, or sexual orientation at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Relevance for platform work

There is currently only limited research being conducted on the subject of equal treatment in the context of platform work. Only the gender dimension has received any attention, predominantly by networks or bodies which are actively involved in gender research.[317] The reports point to the likelihood of the existing horizontal and vertical

[312] Judgment of the CJEU, Case C-432/14, O v BioPhilippe Auguste SARL, (01.10.2015), para. 22

[313] Article 3 (1), e), f), g) and h)

[314] And social assistance schemes insofar as they are intended to supplement or replace statutory social security schemes (Article 3 (1) b).

[315] Not covered are family benefits and survivors' benefit schemes.

[316] Article 2

[317] Opinion on new challenges for gender equality in the changing world of work, Advisory Committee on equal opportunities for women and men; Report on gender equality and the collaborative economy, European Network of legal experts in gender equality and non-discrimination, March 2018

segregation of women in the labour market worsening and a greater polarisation between high- and low-skilled jobs occurring if no appropriate measures are taken, such as the active promotion of women in STEM/ICT-related education and jobs and a more equal take-up between women and men of caring responsibilities for relatives. Moreover, under present research, discrimination has not been reported by the national experts as a critical challenge. The fact that it is not considered an issue of primary concern may be because discrimination is not always visible or traceable in platform businesses, or because of a structured under-reporting of discriminatory cases, as suggested by the Report on gender equality and the collaborative economy for the European network of legal experts in gender equality and non-discrimination.[318] Platform workers often perform their services individually, at home or in atypical environments and not in standard work situations, without any form of social control by peers or representative bodies and with only online contact with the platform and/or with the customer, and these appear to be factors that may create environments in which discrimination may more easily remain unnoticed and hence under-reported. The economic dependency of the platform worker on the platform or on the income gained through the platforms may furthermore discourage reporting by victims who are often already in a precarious work situation. The typical triangular relationship characterising platform work and the often unclear relationships between the three actors may also blur liability and accountability lines where discrimination is concerned. Platform apps that allow direct evaluation by clients of the platform worker's performance may also trigger discriminatory approaches with sometimes direct consequences for the platform worker's job prospects in case they are being rated lower on discriminatory grounds. Discrimination may take other forms than those known about in more traditional business sectors and that occur digitally and only online. Cyber-harassment and violence target significantly more women than men.

The flexibility of the work organisation - the freedom to choose whether to accept a job and decide when to perform it - is often used to argue that platform businesses are offering exactly those work opportunities for groups of persons who otherwise would not participate in the labour market. The reality may, however, be much more nuanced when one considers the often very low payment rates combined with the low job security and the high competition between platform workers who are working for the same platform. Women may be particularly affected, and out-of-real-life platform practices may imply that they have fewer opportunities to access work because of requirements, for example, to be reachable at all times or to work at inconvenient hours. This may further hamper the work-life balance of women who are still for the most part the main caregivers. But other categories of workers may also be subject to unequal treatment, especially when considering the very low pay and protection of platform jobs. Focus groups that were held under the present research pointed to the very fast-changing composition of the platform workers of a food delivery company, which at first mainly contracted students, but which is now being staffed primarily by foreign low-skilled workers.

The equal treatment provisions concerned with the employment context apply to workers in general and hence also to platform workers who are classified as 'workers'. Platforms which are employing platform workers have to ensure that there is no favourable treatment of certain categories of workers compared with others in a comparable situation on grounds of their gender, age, disability, racial or ethnic origin, religion or belief or sexual orientation. These equal treatment provisions apply to the recruitment procedures but also to the working conditions and the remuneration of the platform workers, their access to vocational training and membership of representative organisations. Self-employed platform workers are covered by these equal treatment

[318] Report on gender equality and the collaborative economy, European Network of legal experts in gender equality and non-discrimination, March 2018

provisions only with regard to conditions for access to self-employment and to occupation, and membership of an involvement in an organisation of employers.[319]

What about in cases where platforms' apps or its subscription or recruitment procedures treated certain platform workers more favourably than others by setting age conditions or requiring general ICT skills? Would the former be challenged under the Employment Directive as a direct discrimination on grounds of age and the latter under the Gender equality in employment Directive as an indirect discrimination of women, since women are significantly underrepresented in ICT-related education and jobs? What about the situation of self-employed platform workers? Directive 2010/41/EU ensures equal treatment on the basis of gender for the self-employed but it remains rather vague as to its material coverage by referring only to 'for instance the setting up of a self-employed activity' without referring to the actual execution of that self-employed activity.

The directives which aim to ensure equal treatment in the employment area use various concepts that are based on more traditional employment contexts. Platform work and practices challenge these concepts because of specific features that characterise the different stages of the platform 'employment cycle', for example the initial 'recruitment', work allocation and work organisation, performance evaluation and contract termination. The question emerges as to how to apply non-discrimination legislation to platform work practices. Platform work 'recruitment' is often limited to purely online account registration with no human intervention. Discriminatory approaches may sneak in if account registration denials disfavour particular groups of persons on grounds of, for instance, age or disability. Such a denial could be considered as being covered under the directives and be prohibited, provided that there is an employment contract or relationship. A self-employed platform worker in such a situation does not have recourse to the directives concerned. Work allocation practices in platform work are atypical (on-demand contracts, zero-hour contracts) and based on (semi)automated decision-making that often reflects the outcome of clients' evaluations. Platform workers who have an employment relationship with the platforms can rely on the directives, but their concrete relevance can be questioned in such cases - an employer can hardly be forced to ensure that there is actual work for the platform worker concerned. Discriminatory approaches can, however, sneak in when performance evaluations are based on clients' subjective opinions and are processed in these automated work allocation mechanisms. That the directives ensure equal treatment when pay and dismissals are concerned heightens both issues for platform workers. The concept of dismissal in traditional labour law implies full termination of an employment relationship on the initiative of the employer. In platform work practices, very different modalities of termination exist which may or may not be considered as equivalent measures of 'dismissals', such as access denial, temporary or more permanent suspension, reduced allocation of tasks or volume of work, or account closure.

Both Directive 2000/43/EC and Directive 2004/113/EC ensure equal treatment in access to goods and services which are publicly available. In a situation where a platform is only providing information society services to connect the platform worker and the customer, this digital service appears to be part of the material coverage of both directives and equal treatment on grounds of gender and race or ethnic origin needs to be ensured. The provisions would in such cases cover the relationship between the platform digital service provider and the platform worker as the former is providing services that are publicly accessible. The provisions also cover the relationship with the clients or consumers who buy goods or services through the digital application. In cases of discriminatory approaches when offering these goods and services, the question is raised as to whether it is the platform, the platform worker or both who are liable and accountable.

[319] Note that Directive 2000/43 and 2004/113 have a broader scope, also covering access to and supply of goods and services available to the public.

Of particular interest is the triangular relationship characterising platform work and the use of performance rating systems which function on the basis of clients' evaluations. When customers assess the provider's performance, discrimination may occur, with sometimes far-reaching consequences for the platform worker's new job prospects. This may happen in cases of on-location platform work where there is personal contact between the platform worker and the client, but also in online platform practices. Evaluations and rankings may be kept internal but still result in lower chances for new work for the individual platform worker, or if such evaluations are shared publicly they may lead to more systemised discrimination by other or potential new customers.

6.1.5 *The P2B Regulation*

Introduction

On 20 June 2019 the Platform to Business or P2B Regulation on promoting fairness and transparency for business users of online intermediation services was adopted.[320] This new EU Regulation was not included in the original scope of this study because it does not concern working conditions or social protection as such and is not part of the EU labour and social *acquis*.

The material provisions of the Regulation, however, bear some clear similarities with the subject of our analysis. It aims equally at **regulating a triangular relationship in which digital applications or platforms 'intermediate'** between a professional (which possibly could be a platform worker) and the end consumer or client. As the title of the P2B Regulation suggests, its material provisions mainly focus on the relationship between the platform and the 'business user' and on the conditions applicable to this relationship. As set out below, the business user is not a worker or employee of the platform, but an independent professional or legal person. In accordance with the definitions used in the study, **self-employed platform workers can be considered as business users** in the meaning of the Regulation, which would imply that the material provisions are applicable to the contractual relationship between the platform and the self-employed platform worker.

For these reasons a comparison between the provisions that apply to an employment relationship/contract between a platform and a platform worker (with the status of worker) and those that govern a contractual relationship between the same platform and self-employed platform workers can be fruitfully explored, and we present a preliminary analysis.

Personal and material scope of the P2B Regulation

The purpose of the P2B Regulation is to contribute to the proper functioning of the internal market by introducing rules that ensure that business users of online intermediation services are granted appropriate **transparency, fairness and effective redress possibilities**.[321] The P2B Regulation applies from 12 July 2020 and is directly applicable in all Member States.

The Regulation therefore applies to a very **particular type of platform work as defined for the purposes of the present study**, that is, platform work which is facilitated by **online intermediation services**. Not all online intermediation services fall within the scope of the Regulation nor are all online intermediation services covered under the Regulation necessarily involving platform work as defined under the present study.[322,323] The Regulation concerns only **online information society services** which facilitate the initiating of direct transactions between **business users** and **consumers**

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

[321] The Regulation equally applies to online search engines which 'corporate website users' are dependent on for the promotion of their goods and/or services among the ultimate consumers.

[322] Examples of online intermediation services include online e-commerce market places, online applications services, such as application stores, and online social media services, irrespective of the technology used to provide such services.

[323] Moreover, not all types of platform work or businesses which are facilitated by online applications are information society services. In its judgment 'Asociación Profesional Elite Taxi v Uber Systems Spain SL', case C-434/15 (20.12.2017), the CJEU held that the service that was offered by Uber and which is connecting individuals with non-professional drivers are services in the field of transport and not information society services. Consequently, these services are to be excluded from the scope of the freedom to provide services, the Directive on services in the internal market and the Directive on electronic commerce. It is the Member States that can regulate the conditions under which such services can be provided.

(irrespective of whether the transaction has effectively been concluded and regardless of the form of the transaction, which does not need to be based on a contract between the business user and the consumer) and which are provided on the basis of a contractual relationship between the provider of the intermediation services and the business users which offer goods or services to the consumers.[324] As a consequence not all online platform businesses and hence platform 'work' are covered under the scope of the Regulation. Critical in this respect is the assessment of whether the platform's service is an information society service or not. Such an assessment seems to be closely connected with the questions as to (1) whether the platform is operating in a particular business sector or only providing information society services in support of other (individual) service providers with a view to connect the latter with their clients or customers, and (2) whether the platform is an employer of that individual service provider or not, in which case there is only a business relationship between the platform and the independent service provider. The very question of whether the digital applications and platform businesses are pure information society services, or are part of other business sectors such as transport or cleaning, has been the subject of much contestation and court rulings across the EU.[325]

Business users are 'any private individual acting in a commercial or professional capacity or any legal person who/which, through online intermediation services, offers goods or services to consumers for the purposes relating to its trade, business, craft or profession (Article 2(1)). The notion of consumer refers only to natural persons, where they are acting for purposes which are outside of their trade, business, craft or profession (Article 2(4)). Pure peer-to-peer intermediation services, without the presence of business users, and business-to-business intermediation services for goods and services which are not offered to consumers, are not covered under the Regulation.[326]

A self-employed platform worker who offers their services through the online intermediation of an app to a private person not acting in a professional capacity appears to be included within the scope of the Regulation: this may be a self-employed person who provides services on location, for example plumbing services or childminding, or from a distance and purely online, for example graphic design or advisory services. Less clear is the situation of self-employed platform workers who offers their services to both private consumers and to companies and 'individuals who act for the purposes of their trade, business, craft or profession', for example cleaning or accounting.

The Regulation applies to all providers of the online intermediation services regardless of whether they are established in or outside the EU on two cumulative conditions: the business users have to be established in the EU, whereas the ultimate consumers, who are targeted by the business users when selling their goods or services, have to be located in the EU irrespective of their place of residence or nationality.

Whereas the new Regulation is not directly concerned with working conditions and social protection of platform workers *stricto sensu*, its provisions have a direct impact and hence relevance for the 'contractual relationship' between a business user who is a self-employed platform worker and the platform offering online intermediation services, provided they are covered by the scope of the Regulation. The main purpose of the Regulation is to ensure that business users, who in practice are the persons who are depending on the platform's intermediation services to be connected with consumers with the aim of concluding a transaction and hence delivering goods or providing

[324] Recital 10: such a contractual relationship should be deemed to exist when both parties have expressed their intention to be bound in an unequivocal manner on a durable medium without an express written agreement being required

[325] Judgment of the CJEU, case C-434/15 (20.12.2017), op.cit.

[326] Recital 11

services to these consumers, are treated **in a transparent and fair way** and that they have access to **effective redress** in case of disputes.

Platforms or the providers of online intermediation services have to have **'terms and conditions'** that are clear and available to the business users during all stages of their commercial relationship and hence also before they enter into an effective contractual relationship. The terms and conditions must **state the grounds for decisions to suspend, terminate or impose any other kind of restriction** upon the provision of the online services to the business user. The providers shall also **notify the changes** to the terms and conditions on a durable medium and a notification period of minimum 15 days needs to be respected while allowing the business user to terminate the contract before the expiry of this notification period.

Furthermore, providers of online intermediation services are obliged to establish a **free of charge internal complaint-handling system** and identify **two or more impartial and independent mediators** who can be engaged for dispute settlement in case the matter is not resolved following the internal complaint-handling system. The internal complaint procedure is especially relevant for platform workers challenging customer ratings. The Regulation finally reserves the right of representative organisations or associations of business users, as well as public bodies that are set up in the Member States, to take providers of online intermediation services to court in case of non-compliance with the requirements it sets out. Such organisations or associations shall be set up in accordance with national legislation, be not-for-profit, and pursue objectives that are in the collective interest of the business users. Member States can also designate existing organisations. Lists of the designated organisations and associations have to be communicated to the Commission.

Comparison between the Directive on Transparent and predictable working conditions and the P2B Regulation

The TPWC Directive and the P2B Regulation (the P2B) were both adopted in summer 2019 but for varying policy concerns. Both legal instruments contain nonetheless very similar approaches and material provisions when it comes to **the conditions that have to be respected by platform businesses in their contractual relationship with professional individuals who are making use of the digital apps when delivering their services**. However, the core legal difference between them, being their legal nature, must be acknowledged. On the one hand, directives are binding as to the result to be achieved by each Member State to which it is addressed, but leave the choice of form and methods to the national authorities.[327] Regulations, on the other hand, have general application, are binding in their entirety and are directly applicable in all Member States.[328]

The TPWC Directive aims at improving transparency and predictability in the working conditions for all workers, while it also introduces new material provisions and labour rights. Platform workers are included in the personal scope of the Directive as long as they have an employment relationship with a platform/employer (which is determined by national law, practice or collective agreement and with consideration of the CJEU case law). It does not apply to the self-employed (including platform workers). The P2B equally aims to increase the transparency and fairness in the contractual relationships between a platform and professionals (business users, be they individuals or legal persons), but the latter are not in an employment relationship with the platform. Insofar as they provide services, individual business users could have the status of self-employed platform workers as defined for the purposes of this study.

[327] Article 288 TFEU

[328] Article 288 TFEU

In a study concerned with the working conditions and protection of platform workers irrespective of their labour market status, a comparison between the two EU instruments, while acknowledging their different objectives and scope of application, seems therefore appropriate. In what follows, an attempt is made at such a comparison with a view to drawing some relevant conclusions, even if preliminary and not all-embracing.

Platform 'work' as defined in the study typically concerns triangular relationships between a platform (the possible 'employer' or possible 'provider of online intermediation services'), the platform worker (the possible 'worker'/'self-employed' or the possible 'business user') and the client (the possible 'consumer').

Table 16: Comparison between the Directive on transparent and predictable working conditions and the P2B Regulation

	Directive on transparent and predictable working conditions	**P2B Regulation**
Personal scope	Workers who have an employment relationship or contract (including platform workers who are 'workers' but excluding self-employed platform workers)	Business users (including self-employed platform workers who are 'business users'), who have a contract with providers of online intermediation information society services (platforms)
Obligation and provision of information	Art. 3-4 Essential aspects of the employment relationship to be provided	Art. 3 & Art. 8 Terms and conditions
Timing and means info	Art. 5 In written (paper or electronic form) within one week or one month after start employment	Art. 3 Must be available at all stages of the contractual relationship on a durable medium (including in pre-contractual stage)
Modification contract	Art. 6 Written document provided at the earliest opportunity and at the latest on the day it takes effect	Art. 3 (2) & Art. 8 (a) Notification period of at least 15 days
Parallel 'work'	Art. 9 Employers cannot prohibit work for another employer (only on objective grounds)	Art. 10 Restrictions have to be mentioned in the terms and conditions
Restriction/ suspension/ termination/ dismissal/ equivalent measure	Art. 18 'dismissals or equivalent'; Written reply with duly substantiated grounds for the dismissal or equivalent measures upon request from platform workers; change of burden of proof to platforms	Art. 3 (1) (c) & Art. 4 & Art. 8 Grounds for restriction/suspension/termination must be mentioned in terms and conditions; written statement; prior notification in case of suspension and at the latest on the day it takes effect; 30 days notification in case of termination; conditions under which platform workers can terminate the contractual relationship must be mentioned in the terms and conditions

Redress	Art. 16-17 Right of platform workers to bring complaint before court or competent authority; right to redress	Art. 11-14 Internal complaint-handling system, mediation, special mediators, judicial proceedings by representative organisations or associations and by public bodies

Both instruments contain provisions that govern the contractual relationship between the platform and the platform worker and install an **obligation on the side of the platform to provide information concerning the contractual relationship in writing** and to make that information available to the platform worker at **certain times.** The P2B uses the concept of the 'terms and conditions', while the TPWC Directive lists the type of information that has to be ***at least*** provided in writing to the platform worker by enumerating the essential aspects of the employment relationship.

The terms and conditions have to be **easily** available at **all stages of the commercial relationship** and hence also in the pre-contractual stage, that is, before they make use of the services provided for by the platform. The terms and conditions have to be written in a **plain and intelligible language**. The TPWC Directive on the other hand requires that the information is provided either **within one week or within a month** after the start of the employment, and does not specify that this information must be presented in an accessible way, as is the case under the P2B. Under the Directive platform workers may already have started their employment before they are informed about the essential aspects and no reference is made to the obligation to have a contract and hence agreement on the essential aspects prior to the start of the employment.

The P2B requires that the terms and conditions include information on **the grounds for decisions to suspend, terminate or impose any other kind of restrictions** upon, in whole or in part, the provision of their online intermediation services to the platform workers. This is a matter of particular relevance for platform workers who are confronted with various forms of account termination such as access denials prior to the start of the co-operation, (temporary) suspension or closures of accounts, reduced access to work assignments, and indefinite termination of the accounts. Under the Directive, a similar obligation is absent from the list of essential aspects of the employment relationship the employing platform is bound to provide information about. The Directive does, however, contain other information requirements that are specifically relevant for an employment relationship, such as the working time, payment and place of performance.

Changes and modifications to the contractual terms between the platform and the platform worker are differently addressed under the Directive and the Regulation. With regard to the modifications of contractual provisions, the P2B specifies a notification period of 15 days and excludes the possibility for any retroactive change. Changes can only be applied once the notification period has expired and terms and conditions (or the specific provisions thereof) which do not comply with these requirements are considered null and void. The notification period can even be longer when this is necessary, to allow the platform workers to make technical or commercial adaptations to comply with the changes. The self-employed platform worker has the right to terminate the contract without consequences during the notification period. The TPWC Directive on the other hand states that in case of any change to the essential aspects of the employment relationship a document must be provided at the earliest opportunity but at the latest on the day that the change takes effect. In other words, the P2B ensures that changes to the contractual relationship are being notified to the platform worker in advance, hence allowing the platform worker to react. This appears not to be the case under the Directive, which provides that the written document introducing the changes can be supplied on the day it takes effect.

Under the Directive, Member States have to ensure that employing platforms cannot prohibit workers from **taking up employment with other employers** outside the work schedule established with that employer. Member States may regulate conditions for the

use of incompatibility restrictions by employers on objective grounds such as health and safety, protection of business confidentiality, the integrity of public service or the avoidance of conflicts of interests. When platforms operating under the P2B are restricting the ability of platform workers to offer the same services to consumers by other means than through their online services, they are obliged to mention the grounds for such restrictions in the terms and conditions, and the grounds shall include the main economic, commercial or legal considerations for those restrictions. The obligation shall not, however, affect prohibitions or limitations on the imposition of these restrictions that result from the application of other acts of EU or national legislation to which the platforms are subject. Both instruments seem to allow platforms to impose certain restrictions on the possibility of platform workers offering their services through/to other platforms or business under certain conditions.

In what regards the **suspension or termination** of the contractual relationship, the Directive provides protection to the platform worker from **dismissal** on the grounds that they have relied on one of the rights in the Directive. Platform workers who consider that they have been dismissed or been subject *to* **equivalent measures** on grounds that they have exercised their rights provided for in the Directive have the right to request duly substantiated grounds for the dismissal or equivalent measures, which the platform has to provide in writing. The platform has the burden of proof when the case is submitted to the court or competent authority. The P2B, on the other hand, demands a statement of reasons from the platform prior to or at the time of the suspension or restriction to be provided on a durable medium. If the platform decides to terminate the provision of its online services to a platform worker, the platform is obliged to provide a statement of reasons at least 30 days prior to the termination on a durable medium. Moreover, as already mentioned, the potential grounds for suspension/termination must be included in the terms and conditions. The P2B appears to be more specifically oriented to the different modalities of a possible account interruption platform workers are confronted with in practice, while the TPWC Directive's focus is predominantly on the termination of the contractual (employment) relationship (in spite of the inclusion of the concept of equivalent measures). The P2B requires platforms to have an internal complaint-handling system, which has to be used in cases of suspension or termination when the platform worker desires. The Directive remains silent on the obligation of the platform to notify the platform worker in advance when a termination or suspension is considered, but requires that the platform provides a written justification ex post and upon request of the platform worker (without, however, specifying the timeline for doing so).

In terms of **administrative and judicial redress** in cases of disputes between the platform worker and the platform, the Directive requires Member States to ensure that (platform) workers have access to effective and impartial dispute resolutions and a right to redress in case of infringements of their rights arising from the Directive. Member States have to take measures necessary to protect workers, including those who are workers' representatives, from any adverse treatment by the employer (platform) and from any adverse consequences resulting from a complaint lodged with the employer or resulting from any proceedings initiated with the aim of enforcing compliance with the rights provided for in the TPWC Directive. The P2B, however, appears to consider judicial dispute settlement before courts as a means of last resort. It requires platforms to have an internal system for handling complaints from the platform workers, the access to and the functioning of which has to be described in the terms and conditions. Platforms are furthermore obliged to identify two or more mediators in the terms and conditions, whom they are willing to engage with a view to reaching an agreement in case of disputes with the platform workers. Platforms are furthermore encouraged to set up specialised organisations aimed at providing mediation services for the specific purpose of facilitating out-of-court dispute settlement. Finally, the P2B envisages a role for organisations and associations representing the interests of platform workers as well as for public bodies to take action before national courts in case of non-compliance by platforms.

Further differences between the TPWC Directive and the P2B Regulation which have relevance for the working conditions of platform workers can be discerned. The P2B contains a provision on **ranking systems** in its Article 5. Platforms are obliged to set out in the terms and conditions the main parameters determining the ranking of platform workers as well as the reasons for the relative importance of these main parameters in comparison with others. However, platforms are not required to disclose the algorithms. The P2B also has a data protection provision under its Article 9, which states that the terms and conditions must contain a description of the contractual and technical access that platform workers have to personal and other data provided by platform workers and consumers when using the online services. The description in the terms and conditions has to contain information on whether the platforms have access to personal and other data that are provided by the platform workers and the consumers and whether any data are provided to third parties. The P2B encourages the drawing up of codes of conduct by the platforms in cooperation with (representative organisations of) the business users/self-employed platform workers.

6.1.6 *Platform work and the General Data Protection Regulation*

As established in Section 4,[329] data protection is an **important issue in the context of platform work** and has been identified as such in the literature and by many of the experts and stakeholders consulted in the fieldwork. Platforms rely heavily on the processing of personal data, including behavioural data, from platform workers to enable automated or semi-automated decision-making.[330] The gathering of (personal) data is done through complex computational processes. The subsequent enormous data flow and constant digital monitoring allows for a deep intrusiveness into the lives of platform workers which is in no way comparable to traditional working relationships. Moreover, the decisions which are based on this data collection and processing are mostly implemented by automated or semi-automated processes with minimal human involvement. Another challenge related to data protection are the rating and review systems, which result in a ranking of the individual platform workers. The assignment of the next task by the app's algorithms is for several platform workers directly linked to the ratings and reviews they receive from the customers through the platforms' digital applications. What's more, bad scores or a performance below the algorithm's standards can lead to a lower ranking in the pick-order for new assignments and in some cases to the temporary or permanent exclusion ('deactivation' or delisting) of the platform worker from the platform.

The GDPR[331] lays down rules relating to the protection of natural persons with regard to the processing of personal data (Article 1(1)). It provides platform workers with a range of rights concerning their personal data. These rights are inter alia **the right to be informed** if, how, why and by whom your data are being processed; **the right to access** and get a copy of your data; the right to have your data corrected or supplemented if it is inaccurate or incomplete; the right to have your data deleted or erased; the right to limit or restrict how your data are used; **the right to data portability**; the right to object to processing of your data; and **the right not to be subject to automated decisions without human involvement, where it would produce legal effects concerning him or her or similarly significantly affects him or her**.

[329] See 4.5.3: Challenges related to data protection

[330] A. MATEESCU and A. NGUYEN, "Algorithmic management in the workplace", Data & Society 2019, https://datasociety.net/wp-content/uploads/2019/02/DS_Algorithmic_Management_Explainer.pdf

[331] Regulation of the European Parliament and of the Council n. 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

In a landmark test case of the right to access to personal data under the GDPR, four current and former Uber drivers are currently taking legal actions against the ride-hailing app in the UK.[332] The drivers claim that Uber has breached their rights by declining access to their personal data Uber holds (Article 15 GDPR). Part of their claim is the right to access their performance data including personal data concerning their suspensions from the platform, which would enable them to understand how their performance was monitored and managed over time. The case illustrates how important a considerable right to access of personal data is for platform workers and for the protection of their working conditions.

Article 15 GDPR clearly provides a right to access of personal data. However, what exactly constitutes 'personal data'? The GDPR defines personal data as *'any information relating to an identified or identifiable natural person ("data subject") […]'.*[333] Since the definition includes *'any information',* one must assume that the term personal data should be as broadly interpreted as possible. This broad scope is also affirmed in CJEU case law[334] and in Opinion 4/2007 of the Article 29 Data Protection Working Party.[335,336,337] It is also in line with the general aim of the GDPR, which intends to give more power to data subjects as regards their personal data. This in turn restores to a certain extent the power balance between the platform and the platform worker, which can only influence working conditions in a positive way.

However, this does not imply that issues of enforcement and uniformity of interpretation won't arise in the future. Platforms are logically very reluctant to interpret 'personal data' as broadly as they should despite CJEU case law and Opinion 4/2007 of the Article 29 Data Protection Working Party. Moreover, it may very well be that divergent interpretations of 'personal data' among different Member States' data protection acts (DPAs) will lead to divergent enforcement levels, again despite the broad and uniform interpretation provided by CJEU case law, Article 29 Working Party and the GDPR.

The GDPR also contains the right for people not to be subject to a decision based on automated processing which produces legal effects concerning them or similarly significantly affects them (Article 22(1)). Many decisions affecting platform workers are in fact based on automated processing, for example the deactivation or suspension from their accounts. However, the right not to be subject to a decision based on automated processing does not apply if it is necessary for entering into, or performance of, a contract between the data subject and a data controller (Article 22(2)(a)). This exception seems to apply to the platform economy. Platforms deal with an enormous quantity of data that is being processed, which makes routine human involvement impractical or even impossible.

[332] See also the Judgment of the Court of Appeal London, Case (2018) EWCA civ 2748, Uber BV vs Yaseen Aslam, James Farrar and others, (29.12.2018). Uber is currently challenging the decision of the Court of Appeal before the Supreme Court but the four drivers filed a new lawsuit against Uber for withholding data which in their opinion is contravening Article 15 of the GDPR; See also https://www.citylab.com/transportation/2019/08/uber-drivers-lawsuit-personal-data-ride-hailing-gig-economy/594232/

[333] Article 4 (1) of the GDPR Regulation

[334] Judgment of the CJEU, Case C-434/16, Nowak v Data Protection Commissioner, (09.02.2018), http://curia.europa.eu/juris/document/document.jsf?text=&docid=198059&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=6035599, par. 33-35

[335] Opinion 4/2007 of the Article 29 Data Protection Working Party on the concept of personal data, https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2007/wp136_en.pdf

[336] In its informal Opinion 4/2007 on the concept of personal data, the Article 29 Data Protection Working Party has (more or less) clarified what it entails. In general terms, information can be considered to 'relate' to an individual when it is about that individual. Concretely, the data 'relates' to an individual when there is a 'content' element or a 'purpose' element or a 'result' element present. These three elements must be considered as alternative conditions, and not as cumulative ones.

[337] As of 25 May 2018 the Article 29 Working Party ceased to exist and has been replaced by the European Data Protection Board (EDPB).

However, even if automated decision-making is allowed, the platforms are still obliged to provide meaningful information to platform workers on the existence of automated decision-making. As it stands, opacity seems to be at the core of these algorithms.[338] If you are a recipient of the output of the algorithms, rarely do you have any concrete sense of how or why a specific decision has been reached from the inputs.[339] One example is the fact that platform workers are routinely unable to see how their pay rates are calculated. Similarly, ride-hail drivers are often left clueless as to how the algorithm assigns their rides.[340]

Articles 13, 14 and 15 GDPR, which contain information rights for the data subjects, all state that in '*the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases,* ***meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject'.***

According to Article 29 Working Party[341] '*meaningful information about the logic involved'* means that the platform must find *simple* ways to tell the data subject about the rationale behind, or the criteria relied on in reaching the decision. The information provided should be sufficiently comprehensive for the data subject to understand the reasons for the decision.[342,343] The terms *'significance'* and *'envisaged consequences'* suggest that information must be provided about intended or future processing, and how the automated decision might affect the data subject.[344] According to Article 29 Working Party it means that the controller should provide the data subject with information about '*the envisaged consequences'* of the processing, rather than an explanation of a *particular* decision.[345] Real tangible examples of the type of possible effects should be given to make this information meaningful and understandable.[346]

In addition, Article 29 Working Party states that the controller should provide data subjects with general information (…) **which is also useful** for them to challenge the decision. In fact, Article 22(3) obliges the data controller to implement suitable measures to safeguard data subjects' rights and freedoms and legitimate interest, **at least** the right to obtain human intervention on the part of the controller, to express their point of view and to contest the decision. The minimal safeguards laid down in Article 22(3) necessarily involve an exchange of views - a dialogue - between the data subject and the controller.

[338] J. BURRELL, "How the machine 'thinks': understanding opacity in machine learning algorithms", Big Data & Society 2016, 1-12

[339] J. BURRELL, "How the machine 'thinks': understanding opacity in machine learning algorithms", Big Data & Society 2016, 1-12

[340] A. MATEESCU and A. NGUYEN, "Algorithmic management in the workplace", Data & Society 2019, https://datasociety.net/wp-content/uploads/2019/02/DS_Algorithmic_Management_Explainer.pdf

[341] A29 Data Protection Working Party, "Guidelines on Automated individual decision-making and profiling for the purposes of Regulation 2016/679, 3 October 2017 (as last revised and adopted on 6 February 2018)

[342] M. VEALE and L. EDWARDS, "Clarity, surprises, and further questions in the Article 29 Working Party draft guidance on automated decision-making and profiling", Computer Law and Security Review 2018, 398-404

[343] Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services equally determines that the terms and conditions should contain the main parameters determining ranking and the reasons for the relative importance of those main parameters as opposed to other parameters (article 5). The Regulation furthermore obliges providers of online intermediation services to establish internal compliant handling systems and to appoint at least 2 mediators (article 11 and article 12).

[344] Council of Europe. Draft Explanatory Report on the modernised version of CoE Convention 108, par. 75

[345] A29 Data Protection Working Party, "Guidelines on Automated individual decision-making and profiling for the purposes of Regulation 2016/679, 3 October 2017 (as last revised and adopted on 6 February 2018), 26

[346] A29 Data Protection Working Party, "Guidelines on Automated individual decision-making and profiling for the purposes of Regulation 2016/679, 3 October 2017 (as last revised and adopted on 6 February 2018)

The GDPR, therefore, as interpreted by Article 29 Working Party, does support an extensive right to an explanation for data subjects. The platforms will need to provide the platform workers with general information which is useful for them to challenge the decision. Platform workers will only be able to challenge these decisions or express their views if they fully understand how they have been made and on what basis.[347] Whether this amounts to a fully-fledged right to an explanation of a **particular** decision is debatable, but in any case the information provided to the platform worker must be sufficient and useful to effectively challenge any decision that affects them (e.g. deactivating their account). However, it remains to be seen how the platforms will apply these rules in practice. Issues of enforcement may arise in the future.

Next, the GDPR provides a right to data portability (Article 20 GDPR), which favours the sharing and transfer of the data between different platforms. If platform workers are allowed to transfer their personal data to another platform, it could in theory open up competition in the platform economy. First, it could prevent platform workers being locked in and bound by one single platform. Effective transfers of data between alternative platforms would furthermore boost the transparency and fair competition as it would allow platform workers greater power to choose the platform with the best working conditions. In other words, it would give platform workers more control over their personal data, which is one of the cornerstones of the GDPR. The same considerations are echoed in the Preliminary Opinion on ***'Privacy and Competitiveness in the age of big data'*** of the European Data Protection Supervisor, where it is said that the right to data portability 'would potentially empower individuals while also promoting competitive market structures'.[348]

Article 20 GDPR provides this right to data portability in a twofold structure. First, platform workers can obtain a copy of their data '*in a structured, commonly used and, machine-readable format*' (Article 20(1)). Second, it provides the right *'to have the personal data transmitted directly from one controller to another, **where technically feasible**'.* Thus, the GDPR clearly provides a right to data portability which would in theory soften the lock-in effect experienced by platform workers today. However, as elaborated below, there are still some important barriers to a fully fledged right to data portability in the current GDPR framework.

First, Article 20(2) GDPR clearly states that the right to have the personal data transmitted directly from one platform to another is only obligatory **where it is technically feasible**.[349] This is affirmed in Recital 68 stating that there is no obligation for the controllers to adopt or maintain processing systems which are technically compatible. It further states that data controllers **should be encouraged** to develop interoperable formats that enable data portability. This is worrying given the fact that the dominating platforms do not have a real incentive to enable platform workers to switch to other platforms, as this would jeopardise their own position.

Second, the portability right applies to **provided** data and to **observed** data. It does not apply, as Article 29 Working Group refers to, to the **inferred** or **derived** data. Provided data includes personal data that the platform worker has actively provided to the platform, for example, the information on the profile that the platform workers have provided, such as their photos. Observed data are the data provided by the platform worker by virtue of the use of the app. By this we mean the behavioural data which have been gathered by observing the platform workers' behaviour such as activity logs, traffic

[347] A29 Data Protection Working Party, "Guidelines on Automated individual decision-making and profiling for the purposes of Regulation 2016/679, 3 October 2017 (as last revised and adopted on 6 February 2018), 27

[348] European Data Protection Supervisor, Preliminary Opinion on Privacy and competitiveness in the age of big data: The interplay between data protection, competition law and consumer protection in the Digital Economy, 2017, https://edps.europa.eu/sites/edp/files/publication/14-03-26_competitition_law_big_data_en.pdf, p 32

[349] It is to be feared that without common fixed standards between the platforms, the right to data portability will have issues in its practical implementation stemming from technical interoperability.

data, and so on. Finally, inferred data are the data then developed by the platform from the first two categories. Inferred data are the result from the analysis of the provided and observed data. In other words, these data are produced by the platform itself (e.g. through data mining) and on the basis of its own software applications.

The interpretation as to whether the data are provided, observed or inferred is therefore crucial in opening a right to data portability. Yet it is easy to imagine that the boundaries between these different kinds of data will be very hard to establish in practice. Let's take, for example, the case of reputational data (through ratings and customer reviews), which is very relevant in the platform economy.

Portability of reputational data (through customer reviews/scores) can be crucial for platform workers, as the reputation is among the main criteria potential customers will consider when choosing between different offers on a platform. If a platform worker needs to start building their reputation from scratch on the new platform, it will only amplify the lock-in effect on the current platform.

We could easily imagine that the individual customer reviews/scores are part of the observed data. However, one could at the same time argue that the agglomerated score is created by the platform itself and forms part of the so-called inferred data which are not portable to another platform.[350]

Nonetheless, it is very likely that the distinction between **provided**, **observed** and **inferred** data will only prove to be a false dilemma the platform worker faces. As elaborated above, the scope of the right to access (Article 15 GDPR) is very broad and includes all types of data concerning the platform worker. Thus, under the right to access, the worker can obtain all data (e.g. reputational data) concerning them. This includes **inferred** data. The platform worker can make an access request and then share it with another platform (provided it does not adversely affect the rights and freedoms of others). That way, the platform worker bypasses the distinction between **provided**, **observed** and **inferred** data under the right to data portability.

Finally, the right to data portability '*shall not adversely affect the rights and freedoms of others'* (Article 20(4)). In the case of the potential portability of reputational data, this could be the consumers of the app who expressed their evaluation on the service.[351] In theory, this would permit the platform to refuse a portability request as soon as personal data of these consumers are involved.[352] However, it must be noted that Article 29 Working Group has also tried to extend the application to the data which involve more than one data subject. Concretely, they have stated that when a data controller processes '*information that contains the personal data of several data subjects',* one '*should not take an overly restrictive interpretation of the sentence "personal data concerning the data subject"'.*

6.1.7 *Preliminary conclusions*

In what follows an attempt is made to summarise the analysis of the existing EU legislation concerned with working conditions and social protection on their relevance for platform work and platform workers. We have tried not to structure the summary on the basis of the individual legal instruments but have instead taken **the labour rights and working conditions as the main starting point**. Before presenting the material provisions covered by the EU labour and social protection legislation, we first consider

[350] L. DRECHSLER, "Practical challenges to the right to data portability in the collaborative economy", Collaborative Economy: Challenges and opportunities, 216-235

[351] A. INGRAO, "Assessment of feedback in the On-demand era" in Working in digital and smart organizations, Springer International, Switzerland, 2018, 93-111

[352] L. DRECHSLER, "Practical challenges to the right to data portability in the collaborative economy", Collaborative Economy: Challenges and opportunities, 216-235

the main issues related to the personal scope of application of the legislation - the key challenge typical for platform work.

Personal scope of EU labour legislation and labour market status of platform workers

EU legislation regulating working conditions and social protection primarily concerns **workers who have an employment relationship or contract**. The self-employed are not covered by the personal scope of application. The classification into the binary divide between workers and self-employed, for decades the cornerstone of traditional labour legislation at domestic and international level, is challenged by the growth of platform work and businesses. The latter is characterised by a triangular relationship between the platform, the platform workers and the customer, and the prominent role of digital and automated applications in the work allocation, organisation and appraisal.

EU legislation does not contain a definition of the concept of worker and often refers to national Member States' legislation, collective agreements and practices. Through its extensive case law the CJEU has, however, steered this process, which has resulted in a gradual development of **an EU-wide concept of worker** characterised by the 'subordination' dimension as one of its main criteria. While most recent EU labour legislation is now explicitly referring to CJEU case law when it concerns the concept of worker, it also has clarified that various non-standard forms of employment including platform work are within its remit. This is the case with the TPWC Directive, which includes workers who have no guaranteed working time such as those on zero-hour contracts or some on-demand workers in its scope. However, legal definitions of the concept of worker still vary between Member States, some of which apply wider concepts than the EU definition, while others have introduced a third category distinct from 'workers' and self-employed.

The **classification** of a platform worker as worker or self-employed is **ultimately done by national courts**, which will judge on the factual circumstances in which platform workers are delivering their services and on the concrete operational relationship they have with the platform and/or with the customer. Subject to an individual case-by-case assessment of the circumstances of their relationship to the platform and/or to the end user, self-employed platform workers should be, if found 'bogus' or 'false' self-employed, reclassified into workers (in the EU meaning of the concept) on the basis of CJEU case law, national legislation or court rulings irrespective of the status agreed to by the contractual parties or by national legislation. Evidence from this study suggests varying approaches and interpretations between Member States but also within Member States between different national courts in terms of the labour market classification of platform workers.

The assessment of the factual circumstances in which individual platform workers are delivering their services is likely to remain subject to interpretation and hence considerable national case law, due to the continuous changing business operations in platform work and modes of cooperation and contracting between the platforms, platform workers and customers. This especially holds true in situations when the end user could be classified as an employer as well as the platform, and/or when the prerogatives of employers are shared between the platform and the end user (firm) as is the case in crowdwork.

The classification of a platform worker into a worker or self-employed has considerable consequences in terms of the protection of their working conditions and social risks. EU labour legislation concerned with individual working conditions and collective rights do not apply to self-employed platform workers. Social protection arrangements, a prime responsibility of Member States, have very different access and protection levels for both categories.

- ⇨ Platform workers who are classified as workers (including bogus self-employed platform workers) fall within the remit of EU labour legislation.

- ⇨ Platform workers who are self-employed fall outside of the scope of EU labour legislation. Individual self-employed platform workers who are economically depending on a single platform and who have low income from platform work appear to be the most vulnerable and least protected category of platform workers when it concerns individual labour rights and social protection.

Platform work and non-standard forms of employment

Workers in non-standard forms of employment, such as part-time, fixed-term and temporary agency work have over the years been covered by EU legislation that aims to **remove discrimination between these non-standard workers and workers in full-time employment contracts** for indefinite periods of time. The different EU directives concerning non-standard forms of employment have hence potential relevance for platform work, being a specific type of non-standard work provided the employment contract of the platform worker falls within the scope of the directives concerned.

'Part-time work', 'fixed-term work', and 'temporary agency work' are all **established legal concepts** enshrined in EU labour legislation, but they have *lost most of their relevance* where platform work is concerned because of its wide-ranging application modes, the often very fragmented breakdown of work in small-scale tasks, and the more open-ended, on-demand contractual relationships platform workers are in practice engaged in. The non-standard work directives have therefore a theoretical relevance for platform workers in an employment relationship, but may need further adjustment to cater for their actual needs and ensure equal treatment between platform workers in precarious situations and full-time peers in permanent positions where working conditions are concerned. The legally required **comparison with full-time or permanent workers** in the same job and undertakings, and its fallback option with a wider comparison in the sector or nationally, often seem to **have little practical relevance** because of the absence of a comparable reference point, especially when the platform business is operating in new business markets.

The Temporary Agency Work Directive regulates a triangular relationship similar to the one characterising platform work, but it **presupposes the existence of a user undertaking** under which direction and supervision the temporary agency worker is assigned, whereas in platform work the end users are often customers acting in a private capacity, making the Directive less relevant for those types of platform work. In cases where the end user is a firm and/or could be classified as an employer (such as in crowdwork), the Directive can serve as a potentially interesting framework for application, provided the platform can be classified as the temporary work agency and the end user as the user undertaking in the meaning of the Directive. However, the Directive applies only to basic working and employment conditions and Member States have considerable room to derogate from the equal treatment provisions.

The Part-time Work Directive allows for an **exclusion of casual work** (but only on objective grounds and after consultation with social partners), a characteristic feature of the platform work of many platform workers who consider it a secondary activity, a side business or as a means to earn income to supplement a main source of income. The importance of this possibility for Member States to exclude 'casual platform work' from the remit of the equal treatment provisions appears, however, to be somehow counterbalanced in another related context by restricting this possibility under the TPWC Directive to very small-scale platform work.

Some of the provisions of the non-standard work directives, should they be applicable to platform work, appear to be **very relevant** in order to guarantee minimum levels of protection for the platform workers, for example the **prohibition of unfair dismissals** on the sole basis of the platform work activity's scale or working time, the **possibility to increase and decrease working hours without the risk of dismissal**, the **prevention of abusive practices of successive fixed-term contracts**, and **access**

to training opportunities, vacancies and career mobility. Member States are also allowed to implement more favourable provisions.

Individual working conditions

Obligatory information provision on individual working conditions

The new 2019 TPWC Directive is key in advancing the minimum requirements that employers have to respect in relation to their workers when it concerns their information obligation. It also introduces some new rights for all workers not previously regulated at EU level. The Directive covers platform workers as long as they have an employment relationship and is **particularly relevant** for them as it contains an information obligation when work is mainly unpredictable and specific conditions that are applicable to on-demand contracts.

Employing platforms are **obliged to inform** their platform workers in writing on the essential aspects of the employment relationship, and at the latest one week or one month after the platform worker has started work.

The enumeration of the essential aspects has been extended in comparison with the Written Statement Directive and has in several ways significant relevance for platform workers (such as the inclusion of the principle that a worker can freely decide their place of work as an option, the length of standard working day or week and arrangements for overtime in case of work patterns that are entirely or mostly predictable, and conditions that apply in case the work pattern is entirely or mostly unpredictable).

However, there are **some aspects characteristic (and considered essential) of platform work which have not been included into the list of essential aspects of the employment relationship**: information on the existence of potentially harmful tasks or environment; on the use of equipment, vehicles and tools that are necessary to conduct work assignments; on the protection in case of work accidents and occupational diseases; on the collection and processing of personal and behavioural data and data concerning the work performance; on the use of electronic surveillance mechanisms; on the evaluation, rating and ranking mechanisms; on possibilities to challenge automated company decisions that affect the work of the platform worker; on conditions governing the termination or suspension of the contract; on (internal and/or external) mechanisms for complaint handling, mediation or dispute resolution; on procedures for advance notification in cases of suspension or termination, on procedures other than those related to formal dismissals and the corresponding notice periods (mentioned under Article 4.2(j)) when the employer is in breach of the contract, such as in cases of non-payments of particular tasks; on representation rights; on rights to conclude collective agreements; on the clients and customers, and so on. Most of these enumerated aspects are of key concern to platform workers and an information obligation on these matters could be considered timely in the future.

The deadline by which the employing platform has to inform the platform worker on the essential aspects of the employment relationship is still maintained for a date after the platform worker has started work. There is currently **no obligation** for platforms to inform platform workers on the essential aspects of the employment relation **before they start working**.

Any **change to the essential conditions** has to be notified in writing at the earliest opportunity and at the latest on the day it is taking effect. Ideally this information obligation should be set on a date prior to the date it is taking effect.

Of specific relevance for platform work are those provisions that apply in case of **mainly or entirely unpredictable work** which specify the conditions the platform has to respect when initiating an assignment and that grants the right to the platform worker to refuse the assignment when not all conditions are met. A notice period has to be respected by the platform and in cases of a late assignment, the platform worker has the right to a compensation.

The 2019 P2B Regulation installs a similar information obligation for platforms that provide online intermediation (information society) services facilitating business users (including self-employed platform workers) to conclude transactions with private consumers. Terms and conditions and modifications thereof have to be communicated in advance and made available to the self-employed platform workers. The modalities of this information obligation appear to exceed what employing platforms have to adhere to in relation to their platform workers.

Self-employed platform workers who are not relying on platforms that are purely providing digital intermediation information society services to consumers, and who are not subject to a reclassification into workers, appear to be the least protected category of platform workers in terms of the information obligation vested with the platforms, when compared to platform workers who have an employment relationship under the TPWC Directive and to self-employed platform workers under the P2B Regulation.

Protection against 'dismissal'

Protection against dismissal for workers is ensured under various directives including the Part-time Work Directive, the Fixed-term Work Directive, the Pregnant Workers Directive, the Information and consultation Directive and the Work-life Balance Directive. The provisions under these directives apply to dismissals in the more traditional meaning of the word, implying a **full termination of the employment relationship.** Platform workers who have an employment relationship fall within their scope of application and are protected under the respective provisions of these directives. When exercising their rights under the respective directives they enjoy protection against dismissals by the employers, including while being pregnant or on maternity leave, when breastfeeding upon return from maternity leave, during or as a consequence of requesting parental leave, paternity leave or carer's leave and flexible working arrangements for caring purposes, and by taking up a representative function in the worker's organisation. Platform workers who fall within the scope of the Part-time Work Directive or the Fixed-term Work Directive cannot be dismissed for the sole reason of having requested different work schedules. Platform workers are, however, subject to various other types of measures that have similar consequences for their allocated work volume or work schedules, such as a temporary suspension or a reduction in work allocation. The protection of platform workers in such situations does not seem to be adequately ensured under the directives concerned.

The TPWC Directive has widened the scope of dismissals and also includes **measures of an equivalent nature**, which is highly relevant for platform workers with an employment relationship as it provides protection when they exercise their rights under the Directive. The Directive does not explicitly require platforms to notify the platform workers in advance when dismissals or equivalent measures are considered, but as it concerns a change of the listed essential aspects of the employment relationship, it needs to be ultimately communicated on the day it is taking effect or the day of dismissal. Nevertheless, platform workers have the right to ask for a statement of reasons ex post. The Directive obliges platform employers to reply with duly substantiated grounds for *t***he dismissal or equivalent** upon a request from the dismissed platform worker. However, no timeframe has been specified which the platform has to respect when being requested. The Directive ensures that the burden of proof is on the platform when the dismissal is being challenged before the courts or competent authorities.

The Directive also explicitly mentions that representatives of workers should be protected.

Unlike in the case of the P2B Regulation, **grounds for decisions to dismiss** (in all its varieties) are not part of the mandatory information provision, and reasons for dismissals or equivalent measures **have not to be communicated within a certain notice period prior to the dismissal**. The P2B Regulation appears therefore to have more advanced and more customised provisions protecting self-employed platform

workers relying on the specific types of platforms against the various forms of contract termination and suspension than that which is currently regulated under the new TPWC Directive. For **self-employed platform workers** who fall outside of the scope of the P2B Regulation and of the Directive, **no similar protection against dismissals or equivalent measures** seem to be ensured under current EU legislation.

Working time and rest periods

The organisation of working time is **specifically relevant** for platform workers, who can often choose when they work and how much time they want to spend working. The effective working time platform workers perform can in some instances be very limited and/or fragmented and it does not always follow logical patterns. But platform workers can, in practice, equally prefer to stay logged on or work for more hours than those set as a maximum under the Working Time Directive.

The concept of 'working time' as enshrined in the Working Time Directive and interpreted by the CJEU is profoundly challenged by platform work practices. The same applies to the concepts of 'rest breaks', 'rest periods', 'night work', and 'standby time'.

Member States can derogate from most of the provisions of the Working Time Directive when the duration of working time is not measured and/or predetermined, or when the working time can be determined by the workers themselves. This is the case for most platform work practices. It is for the moment unclear if Member States will make use of the possibility to exclude platform work from the application of the Working Time Directive.

The TPWC Directive introduces specific requirements employers have to include in the mandatory written information provision in both instances, when the working pattern (and hence the working time) is mainly or entirely predictable, or mainly or entirely unpredictable and establishes specific minimum conditions the employers have to respect when work patterns are unpredictable, such as determining the reference hours during which assignments can be requested.

Under the Pregnant Workers Directive, platforms cannot oblige their female workers who are pregnant or have recently given birth to perform night work.

Right to paid annual leave

The Working Time Directive applies to platform workers who have an employment relationship with the platforms or the customers. They are entitled to at least four weeks paid annual leave a year.

Health and safety measures

Health and safety protection is perhaps the most important dimension of any working relationship, and even more so for platform workers who are providing their services outside of traditional workplaces and often without proper human supervision. The health and safety directives apply to workers only, and their provisions relating to the information provision, training and surveillance are equally relevant for platform workers in a self-employed capacity, especially in a context where the platforms appear to deliberately shift risks and the costs for health and safety protection onto the individual platform workers.

The Pregnant Workers Directive is highly relevant for platform workers who are pregnant or have recently given birth as it provides for obligatory risk assessments and decisions about changes to working conditions, hours or even tasks when risks have been identified. Pertinent questions remain as to how to enforce its provisions in platform business practices with virtual relationships and little human supervision.

Right to training

The TPWC Directive states that when an employer is required by law to provide training to a worker to enable them to carry out the work for which they are employed, the **training has to be provided to the worker free of any cost**, that the training time

shall be counted as working time and, where possible, take place during the working hours. While platform workers who are employed by platforms are entitled to training when required by national legislation, the same provisions do not apply to self-employed platform workers.

Right to parallel employment

The TPWC Directive installs the right of (platform) workers to work for a second employer (outside the work schedule of the employment relationship with the first employer) and obliges Member States to regulate the conditions for the use of incompatibility restrictions by the employers. Conflicts of interest or protection of business confidentiality are mentioned as possible objective grounds by which Member States can allow platforms to restrict the right to parallel employment.

Limitation of probation period

The TPWC Directive determines that when probationary periods are envisaged under national law, the **probationary period shall not exceed six months**, and that in situations of fixed-term employment, the probationary periods must be proportionate to the expected duration of the contract and nature of work, but in the case of a renewal of a fixed-term contract, no new probationary period can be applied.

Right to advance notification and right to refusal when work is unpredictable

Of particular relevance for platform work are the provisions of the TPWC Directive concerning situations where the work pattern of a worker is entirely or mostly unpredictable. In such a situation, the worker **shall not be required to work unless two conditions are fulfilled**: (1) the work takes place within predetermined reference hours and days, and (2) the worker is informed by their employer of a work assignment within a reasonable notice period established in accordance with national law, collective agreements or practice. When one of the conditions is not fulfilled, a platform worker has **the right to refuse** a work assignment without adverse consequences. The worker even has the right to a compensation when the employer cancels a work assignment that was previously agreed between the employer and the worker after a reasonable deadline.

Right to ask for a more predictable work schedule

Under the provisions of the TPWC Directive, workers who have worked for at least six months with the same employer may request from their employer a form of employment with more predictable and secure working conditions where available, and are entitled to receive a reasoned written reply. Employers are obliged to give **a reasoned written reply** within one month of the request.

This provision allows platform workers with unpredictable or irregular work schedules who are employed by the platforms to request a more regular and predictable organisation of their work.

Right to administrative and legal redress

The TPWC Directive requires Member States to ensure that (platform) workers have **access to effective and impartial dispute resolution**, a right to bring a complaint before a court or a competent authority and a right to redress in case of infringements of their rights arising from the Directive.

The Directive furthermore establishes that when a worker has not received the mandatory written information on essential aspects of the employment relationship or on the modifications thereof, within the time limits that have been set by the Directive, Member States may either regulate that the workers shall benefit from favourable presumptions defined by the Member State which employers can rebut and/or ensure that workers can file a complaint to a competent authority and receive adequate redress in a timely and effective matter.

Alternative mechanisms for out-of-court and less costly dispute resolution have as such not been mentioned in the Directive. The P2B, however, obliges platforms to have an internal system for the handling of complaints, the appointment of at least two mediators, and the setting up specialised organisations aimed at providing mediation services for the specific purpose of facilitating out-of-court dispute settlement. It also initiates the possibility of establishing not-for-profit associations of business users (including self-employed platform workers) which can take legal action against the platforms in case of a breach of their obligations as specified under the Regulation.

Prevention of abusive practices in case of on-demand employment contracts

The TPWC Directive aims to prevent abusive practices concerning on-demand employment contracts, where the employer has the flexibility to call a worker to work as and when needed. Member States which allow the use of such contracts are required to take one or more measures including (a) *limitations of the use and duration of on-demand or similar contracts*, (b) a *rebuttable presumption of the existence of an employment contract* with a minimum amount of paid hours based on the average hours worked during a given period, and (c) *other equivalent measures that ensure effective prevention of abusive practices*.

It's abundantly clear that this provision is of high relevance and importance for platform workers who have an employment relationship.

Right to compensation in cases of a late cancellation

The TPWC Directive installs **the right to compensation** for platform workers in cases of a late cancellation by the platform when work patterns are mainly or entirely unpredictable.

Collective labour rights

Information obligation and consultation

The three collective labour rights directives contain material provisions that are of **high relevance for platform workers** in increasingly competitive and globalised markets, but they also apply to workers only, and are insufficiently adjusted to the peculiarities platform work is often characterised by, such as the spatial distribution of workers and workplaces and the virtual relationship between workers and the platform or between peers.

The right to be informed and consulted on the **business performance of the platforms**, the **employment forecasts***,* including possible employment reduction, and **decisions that may affect the work organisation** are all very relevant for all platform workers including those with a self-employed status.

The same applies in cases where platforms consider **collective redundancies** or decide **to cease activities in a particular market or country.** The Information and consultation Directive and Collective Redundancies Directive definitely have high relevance for platform workers who are employed by the platforms, but their provisions appear insufficiently or not at all adapted to the platform work's digital business environment, making it relatively easy to circumvent these obligations.

Platform workers should be entrusted with rights regarding informing and organising structured consultation with other platform workers in platform businesses that are operating in different Member States or even globally **on transnational issues**, but they seem to be insufficiently protected by means of the existing European Works Council Directive.

Representation and collective bargaining[353]

[353] A reflection paper on the collective rights of platform workers and its relation with EU antitrust legislation is annexed to the main study.

Platform workers who are workers or self-employed have a right to set up associations to represent themselves in accordance with international labour law. Collective agreements concluded by representative bodies of workers with employers in view of improving their working conditions are not considered a breach of EU competition rules. This follows rulings by the CJEU, which has also extended this approach to the 'false' self-employed in its case law, thereby using the 'dependency' criterion instead of the traditional 'subordination' criterion, which is key for determining the EU concept of a worker in EU labour legislation.

However, the collective bargaining capacity of associations of self-employed platform workers may be affected by the EU antitrust legislation, which prohibits agreements between undertakings or decisions of associations of undertakings that prevent, restrict or distort free competition in the internal market. Since the self-employed are considered as undertakings, agreements they or their representative bodies are concluding with other undertakings, such as the platforms covering, for instance, their fee minimum rates or supplementary pension schemes, may be considered as limiting free trade and competition and a breach of EU antitrust legislation. 'Collective' agreements that are not interfering with the competition *acquis*, such as those that govern the terms and conditions applicable to the contractual relationship between the parties on matters dealing with the obligatory information provision, data protection or rating systems seem possible, however.

Protection in case of insolvency of the employer

The Insolvency Directive aims to regulate the functioning of the guarantee institutions while ensuring the rights of employees that their claims arising from their employment contract will ultimately be paid in cases of insolvency of the platform and at the final stage of liquidation. The Directive applies explicitly to non-standard forms of employment, such as part-time, fixed-term and temporary agency work. Platform workers who have an employment relationship with the platforms are covered in case of insolvency of the latter, whereas the self-employed are not.

Social Protection

Access to social protection

The Recommendation on access to social protection covers both workers and self-employed and is particularly **relevant for persons transitioning between a different labour market status** and/or between various forms of non-standard work. Member States are recommended to provide access to adequate social protection and to adopt minimum standards for the formal and effective coverage, the adequacy and transparency regarding six **statutory branches of social security** (when they are provided by the Member States) for all workers (regardless of the type of employment relationship) on a mandatory basis, and for the self-employed at least on a voluntary basis and where appropriate on a mandatory basis.

The Recommendation has some limited or indirect relevance for platform workers. As one of the types of non-standard work, platform work performed under an employment relationship will benefit from the minimum standards and provisions which aim to reduce differences in treatment between full-time permanent workers and workers in non-standard forms of employment (or with atypical careers) when accessing social security benefits during and after their professional careers. For self-employed platform workers the Recommendation has some relevance, but its impact may be low, owing to the fact that the Recommendation is (1) a soft instrument, (2) applies only to some statutory social security schemes, that (3) are provided in Member States (and hence not to schemes that do not exist, such as an unemployment protection scheme for self-employed in many Member States), and (4) their mandatory coverage is not required. The Recommendation does not apply to social assistance or minimum income protection schemes.

Maternity leave, paternity leave, parental leave, carer's leave, right to flexible working arrangements for caring purposes

The Work-life Balance Directive, which is repealing the older Parental Leave Directive, strengthens the right to (paid) parental leave but also introduces new rights such as (paid) paternal leave, carer's leave and the right to flexible working arrangements for caring purposes. Minimum requirements relating to maternity leave are governed by the (older) Pregnant Workers Directive, and the directives on gender equality in employment and gender equality of the self-employed. All directives apply to workers, but not to the self-employed.

As the right to maternity leave and parental leave (contrary to paternity leave), the right to an allowance during paternity leave and the right to flexible working arrangements for caring purposes can be made subject by Member States **to minimum qualification periods** (one year, one year, six months and six months respectively), issues may arise as to the application of the Directive for platform workers with very fragmented or irregular work schedules.

The main concern relates, however, to **the enforcement** of the directives in the platform business context, with regard to: the possibility for platforms to postpone the granting of the parental leave for a reasonable period of time in cases where it would seriously disrupt the functioning of the business; the prohibition of dismissal when the platform worker has applied or exercised their rights; no less favourable treatment when the platform worker returns to their job; the right to more flexible working arrangements for caring purposes; the right to more flexible forms of parental leave; the maintenance of rights that were acquired on the moment the leave is exercised; transfer of the parental leave between the parent platform worker and the other parent; granting of leave on grounds of force majeure for urgent and unexpected family reasons; introduction by social partners of voluntary certification systems assessing work-life balance; the right to antenatal examinations without a loss of pay, and so on.

Non-discrimination of platform workers on grounds of sex, racial or ethnic origin, religion or belief, age, disability and sexual orientation

EU non-discrimination legislation applies to workers and/or to the self-employed, depending on the personal scope of the instrument concerned and hence also to platform workers. Equal treatment on the six main grounds of discrimination (gender, racial or ethnic origin, religion or belief, age, disability and sexual orientation) should be ensured in the employment field and provide protection of platform workers during all stages of the employment in terms of access to employment (including self-employment), working conditions, vocational training and participation in representative bodies on the basis of three different EU directives. Platforms cannot directly or indirectly discriminate against platform workers on the mentioned grounds during the recruitment, and neither during the assignment nor when considering dismissals. This has particular relevance for platform work which is often, depending on the type of platform business, characterised by specific recruitment, work organisation and contract termination features: online application for registration and opening of accounts, the specific task allocation and acceptance procedures of piecework, possibilities for temporary suspension and account deletion. Non-discrimination regarding the remuneration that is paid to platform workers deserves specific attention given the reportedly low payment rates in some specific types of platform businesses which may disproportionally be relying on specific categories of workers, such as women or persons with a different ethnic origin. As the notion of 'pay' has been given a wide interpretation by the CJEU and is not only confined to the basis salary as such, this may be of particular relevance for some types of platform work with more complex payment modalities. The concept of 'dismissal' is furthermore challenged by platform work practices in cases of access denials, temporary suspensions, reduced work allocation and account closures, which are often based on (semi)automated decisions that are in turn based on clients' subjective

evaluations. Discriminatory approaches can sneak into such digital work allocation mechanisms.

Platform workers often perform their services individually, at home or in atypical environments rather than standard work situations, without any form of social control by peers or representative bodies and with only online contact with the platform and/or with the customer. This may create environments in which discrimination may more easily go unnoticed (and hence under-reported). The economic dependency of the platform worker on the platform or on the income gained through the platforms may furthermore discourage reporting by victims who are often already in a precarious work situation. The typical triangular relationship characterising platform work and the often diffused relationships between the three actors may furthermore blur the lines of liability and accountability where discrimination is concerned.

The directives concerned with equal treatment on the basis of gender in self-employment and in social security do not seem to pose specific challenges for platform workers.

Gender and race discrimination regarding access to goods and services that are publicly available is also prohibited. The prevailing provisions seem to be relevant for platform business in two dimensions: access to the platform service itself (from the perspective of the platform worker and/or from the end user) as well as access to the services provided by the platform workers through the platforms. The widespread practices of client evaluations in platform work and its consequences for subsequent work allocation deserves special attention, as discriminatory approaches based on subjective opinions of end users may sneak in. In cases where platform work is delivered to end users through the digital platforms, questions arise as to whether the platform and/or the platform worker are liable and accountable when discrimination would occur.

Equal treatment of platform workers irrespective of their gender, religion or belief, racial or ethnic origin, disability, age or sexual orientation has not yet been the subject of extensive studies, and more dedicated research is needed. Whereas platform work may create job opportunities for those who are constrained to enter or participate into the traditional labour market, and is conducive to a more flexible organisation of one's work, our findings point to the risk of low pay rates, job insecurity and low protection levels of some types of (both on-location and online) platform work, especially those that require low skills for the execution of small-scale and/or repetitive tasks. This may disfavour particular categories of workers.

The situation of women is of particular interest given that STEM and ICT education and jobs are still male dominated, care responsibilities are primarily taken on by women and cyber-harassment disproportionally affects women.

Other issues relevant for platform workers

Platforms rely heavily on extensive data collection of platform workers to enable automated or semi-automated decision-making. This enormous data flow allows for a deep intrusiveness into the lives of platform workers, which is in no way comparable to traditional working relationships. The GDPR provides the platform worker with a range of rights concerning their personal data such as **a right to access of personal data**. The GDPR defines personal data as '*any information relating to an identified or identifiable natural person ("data subject") […]'.* The term 'personal data' should be as broadly interpreted as possible. This broad scope is also affirmed in CJEU case law and in an Opinion of the Article 29 Working Party.

Second, in line with GDPR provisions, in particular the transparency principle, the platforms will need to **provide the platform workers with information which is concise, transparent, intelligible and in easily accessible form, using clear and plain language**. In other words, the information provided to the platform worker must be sufficient and useful in case they would want to effectively challenge the decision affecting them (e.g. deactivation of the account). Again, the lack of relevant case law

leaves it uncertain as to how these information requirements will practicably be played out for platform workers. Issues of enforcement may arise in the future.

Finally, the GDPR installs a **right to data portability**, which allows platform workers to transfer their (**provided** and/or **observed but not the inferred**) personal data or work history to another platform. It must be noted that this distinction between **provided**, **observed** and **inferred** data will be hard to establish in practice. For instance, the individual customer reviews/scores may be considered part of the **observed** data, but it could also be argued that the agglomerated score is created by the platform itself and forms part of the **inferred** data, which are not portable to another platform.

Nonetheless, it is very likely that the distinction between **provided**, **observed** and **inferred** will prove only a false dilemma for the platform worker. Under the right to access (Article 15 GDPR), the worker can obtain all data concerning them (e.g. reputational data). This includes the **inferred** data. The platform worker can make an access request and then share it with another platform (provided it does not adversely affect the rights and freedoms of others). That way, the platform worker bypasses the distinction between **provided**, **observed** and **inferred** data under the right to data portability.

The algorithmic management, automated decision-making in work allocation and client-induced rating systems are generally of high concern for platform workers, regardless of their labour market status, and appear to be key challenges that are not yet sufficiently or systematically tackled. The right to fair and transparent evaluation and rating systems is in this regard a priority for individual platform workers, irrespective of their employment status.

The recent P2B Regulation (which is applicable to a very specific type of platform and used by, among others, self-employed platform workers) has tackled part of these challenges to some degree. It establishes that the terms and conditions should contain the main parameters determining ranking and the reasons for the relative importance of those main parameters as opposed to other parameters. Platforms are nevertheless not required to disclose the algorithms. The P2B also has a data protection provision, which states that the terms and conditions must contain (1) a description of the contractual and technical access that platform workers have to personal and other data which are provided by platform workers and consumers when using the online services, and (2) information on whether the platforms have access to personal and other data that are provided by the platform workers and the consumers, and whether any data are provided to third parties. The P2B encourages the drawing up of codes of conduct by the platforms in cooperation with (representative organisations of) the business users/self-employed platform workers. While these provisions are certainly a step forward, they appear not entirely sufficient in ensuring adequate protection of individual platform workers. Moreover, as they apply to information society services only and to a specific category of self-employed platform workers, it appears this specific category of self-employed platform workers is, in some crucial domains, better protected than platform workers who are employed by platform businesses and other self-employed platform workers who provide services to platforms that are not purely providing online intermediation services as defined by the P2B.

Table 17: Overview of working conditions and social protection of platform workers as protected by EU legislation

	List of key challenges covered by EU legal instruments	Applicable EU legislation	Personal scope	Relevance	Adequacy	Issues (+) and (-)
1	**Equal treatment non-standard work and standard work**					
	Part-time work Fixed-term work Temporary agency work	Part-time Work Directive Fixed-term Work Directive Temporary Agency Work Directive	Workers	Partially	Moderate	(+) prohibition of unfair dismissals on sole basis of the scale of work or working time (Fixed-term Work and Part-time Work Directive) (+) protection against dismissal when increasing or decreasing working time (Fixed-term Work Directive and Part-time Work Directive) (+) prevention of abusive practices of successive fixed-term contracts (Fixed-term Work Directive and Temporary Agency Work Directive) (+) access to vacancies, training opportunities and career mobility (Fixed-term Work Directive, Part-time Work Directive and Temporary Agency Work Directive) (+) recognition of the temporary work agency as an employer (Temporary Agency Work Directive) (+) more flexible comparator to ensure equal treatment provisions (Temporary Agency Work Directive) (+) review of existing obstacles by MS (+) MS may introduce more favourable provisions (Fixed-term Work Directive, Part-time Work Directive and Temporary Agency Work Directive) (-) concepts (part-time, fixed-term, temporary agency work, pro-rata temporis principle) (-) concept of the user undertaking (Temporary Agency Work Directive) (-) comparison with full-time employment in permanent contracts in the same establishment with fallback option to compare more generally (Part-time Work Direcitve and Fixed-term Work Directive) (-) possibility to exclude casual work (Part-time Work Directive) (-) limited to basic working conditions (Temporary Agency Work Directive) (-) derogations by Member States (Temporary Agency Work Directive) (-) possibility to make access to particular employment conditions dependent on length of service (Part-time Work Directive)
	Possibility for Member States to exclude casual work	Part-time Work Directive Transparent and predictable working conditions Directive	Workers Workers	Partially High	Low High	(-) possibility to exclude casual work (Part-time Work directive) (+) limitation of 'casual work' derogation to employment contracts with predetermined working time (guaranteed paid work) of on average maximum 3 hours per week and exclusion of employment contracts where no guaranteed amount of paid work is predetermined prior to start of employment

	Protection against abusive practices	Fixed-term Work Directive / Temporary Agency Work Directive Transparent and predictable working conditions Directive	Workers Workers	Partially High	Moderate High	(+) prevention of abusive practices of successive fixed-term contracts (Fixed-term Work Directive and Temporary Agency Work Directive) (+) protection in case of on-demand or similar employment contracts requiring MS to adopt measures to prevent abusive practices such as measures limiting use and duration of on demand contract, measures to install rebuttable presumption of the existence of an employment contract with a minimum amount of paid hours or other equivalent measures aimed at the effective prevention of abusive practices
2	**Working conditions**					
	Obligatory information provision on essential aspects of employment relationship	Transparent and predictable working conditions Directive	Workers	High	High	(+) obligatory documented and timely information provision within one week or one month after start of employment (+) specific information obligation in case of mainly or entirely unpredictable work (confirmation of variable work, reference hours, minimum paid guaranteed hours, notice period, right to compensation) (-) information obligation can be exercised after start of employment (-) information obligation does not cover all aspects of the employment relationship that are important for platform workers: information on the existence of potentially harmful tasks or environment; on the use of equipment, vehicles and tools that are necessary to conduct work assignments; on the protection in case of work accidents and occupational diseases; on the collection and processing of personal and behavioural data and data concerning the work performance; on the use of electronic surveillance mechanisms; on the evaluation, rating and ranking mechanisms; on possibilities to challenge automated company decisions that affect the work of the platform worker; on conditions governing the termination or suspension of the contract; on (internal and/or external) mechanisms for complaint handling, mediation or dispute resolution; on procedures for advance notification in cases of suspension or termination, on procedures other than those related to formal dismissals and the corresponding notice periods (mentioned under Article 4.2(j)) when the employer is in breach of the contract such as in cases of non-payments of particular tasks; on representation rights; on rights to conclude collective agreements; on the clients and customers
	Right to be informed about changes to the employment relationship	Transparent and predictable working conditions Directive				(+) obligatory information provision in case of changes to the essential employment conditions at the latest on the date it is taking effect (-) no obligation for advance notification as is the case under the P2B Regulation
	Right to parallel employment	Transparent and predictable working conditions Directive	Workers	High	High	(+) employers cannot prohibit parallel employment (-) incompatibility restrictions on objective grounds are possible such as conflicts of interest and confidentiality considerations
	Protection against 'dismissal' (suspension, termination, other restrictions) Part-time work	Part-time Work Directive	Workers	High	Moderate	(+) protection against dismissal when increasing or decreasing working time (-) traditional concept of dismissal

Fixed-term work	Fixed-term Work Directive	Workers	High	Moderate	(+) protection against dismissal when increasing or decreasing working time (-) traditional concept of dismissal
Pregnant workers	Pregnant Workers Directive	Workers	High	Low	(+) protection against dismissal in case of pregnancy, maternity, when breastfeeding (-) traditional concept of dismissal
Work-life balance	Work-life Balance Directive	Workers	High	Low	(+) protection against dismissal in case of paternity leave, carer's leave, flexible working arrangements (-) traditional concept of dismissal
Information and consultation of workers	Information and consultation Directive	Workers	High	Low	(+) protection against dismissal for worker's representatives (-) traditional concept of dismissal
Transparent and predictable working conditions	Transparent and predictable working conditions Directive	Workers	High	High	(+) protection against dismissal when exercising rights under TPWC Directive (+) protection against dismissal and measures with equivalent effect (+) right to receive a statement of reasons on the grounds of dismissal or equivalent (-) no timeframe specified by which statement of reasons has to be provided (-) grounds for decision to dismissal or equivalent is not part of mandatory information provision on essential aspects of the employment relationship (-) a dismissal or equivalent constitutes a modification to the essential aspects of the employment relationship and needs to be communicated at the latest of the date it is taking effect and thus on the date of dismissal; no advance notification as is the case in the P2B Regulation (-) burden of proof is on the employer when decision is challenged before court or competent authority (+) protection in case of on-demand or similar employment contracts requiring MS to adopt measures to prevent abusive practices such as measures limiting use and duration of on-demand contract, measures to install rebuttable presumption of the existence of an employment contract with a minimum amount of paid hours or other equivalent measures aimed at the effective prevention of abusive practices
Working time and rest periods					
	Working Time Directive	Workers	High	Moderate	(-) concepts of working time, rest period, rest breaks, night work, standby time (-) application per contract or per worker? (-) derogations by MS are possible when duration of working time is not measured or predetermined or when working time can be determined by workers
	Transparent and predictable working conditions Directive	Workers	High	High	(+) the mandatory written information provision contains specific minimum conditions related to 'working time' in both cases when work patterns are predictable ('working hours', 'overtime') or unpredictable (determining the reference hours during which assignments can be requested).
Right to paid annual leave	Working Time Directive	Workers	Moderate	Moderate	(+) right to paid annual leave for at least 4 weeks also applicable to platform workers

	Limitation probation period	Transparent and predictable working conditions Directive	Workers	High	Moderate	(+) maximum limit to 6 months and provisions for fixed-term contracts
	Right to notification and refusal when work pattern is unpredictable	Transparent and predictable working conditions Directive	Workers	High	High	(+) conditions applicable when work patterns are unpredictable are part of the mandatory information provision including notice period and right to refusal
	Right to compensation in case of late cancellation by employer when work pattern is unpredictable	Transparent and predictable working conditions Directive	Workers	High	High	(+) right to compensation in case of late cancellation
	Right to ask for a better work schedule	Transparent and predictable working conditions Directive	Workers	High	High	(+) right to request more secure and predictable working conditions after 6 months of service (+) right to receive written reasoned reply within 1 month after request
	Right to training	Transparent and predictable working conditions Directive	Workers	Medium	Moderate	(+) training provided by law to be made available free of cost also to platform workers while training time is considered as working time
	Health and safety measures	Health and safety for fixed-term work Directive Pregnant Workers Directive	Workers Workers	High High	Moderate Low	(-) concepts (fixed-term work) (-) specific situation of pregnancy (-) enforcement of protective measures under the directives on platform work
	Right to legal redress	Transparent and predictable working conditions Directive	Workers	High	Moderate	(+) access to effective and impartial dispute resolution and right to redress (+) Member States can apply more favourable rebuttable presumptions in cases when employers fail to submit the written information on the essential aspects of the employment relationship at the beginning of the employment and in case of modifications and/or can determine that workers can file a complaint before competent authorities and receive adequate and timely redress (+) change of burden of proof in case of dismissals or equivalent measures (-) absence of specific reference to alternative out-of-court dispute-resolution mechanisms as is the case under the P2B Regulation (internal complaint-handling systems and mediation) (-) not part of the mandatory information obligation on essential aspects of the employment relationship (-) no reference to possibility of workers' organisations to be involved in dispute-resolution mechanisms
3	**Collective labour rights**					
	Information obligation and consultation Business performance, employment forecasts, work organisation:	Information and consultation Directive	Workers	High	Moderate	(+) right to have information and consultation on business performance, employment forecasts, work organisation (-) not adapted to virtual relationships, isolation (-) lack of representation due to isolation

	Collective redundancies:	Collective Redundancies Directive	Workers	High	Moderate	(+) right to have information and consultation on collective redundancies (-) not adapted to virtual relationships, isolation (-) lack of representation due to isolation (-) protection in case of withdrawals or cessation of activities
	Transnational issues:	European Works Council Directive	Workers	High	Moderate	(+) right to have information and consultation on transnational issues (-) not adapted to virtual relationships, isolation
	Representation and collective bargaining	Several directives and CJEU case law – EU competition law	Workers	High	High	(-) lack of representation due to isolation (+) Platform workers who are employed can conclude collective agreements aiming to improve their working conditions and the latter are not considered a breach of EU competition rules (+) CJEU established that 'false' self-employed have the same rights as workers (+) Platform workers who are self-employed are considered undertakings under EU competition law (?) possibility for self-employed platform workers to conclude agreements on the terms and conditions of their contractual relationship with the platforms when it is not preventing or distorting free trade and competition
	Protection in case of Insolvency employer	Insolvency Directive	Workers	Moderate	Moderate	(+) includes part-time, fixed-term and temporary agency work (+) establishment of guarantee institutions protecting claims of employees arising out of their employment contract (-) enforcement in platform work practices (-) lack of representation due to isolation
4	**Social protection**					
	Access to social protection	Recommendation on access to social protection	Workers and self-employed	High	Low	(+) applicable to non-standard forms of employment and when persons are transitioning between different labour market statuses (-) soft law instrument (-) only 6 traditional social security schemes 'when they are provided' by Member States, no obligation to ensure all schemes mentioned (-) voluntary schemes for self-employed (-) not applicable to social assistance and minimum income protection schemes
	Maternity leave, paternity leave, paternal leave, carer's leave	Work-life Balance Directive	Workers	High	Moderate	(-) minimum qualifying period of maximum 1 year for parental leave and for maternity leave (6 months payment paternity allowance and 6 months' right to flexible working arrangements for caring periods …) (-) cases of parallel employment (-) enforcement of postponement of granting parental leave by platforms (-) enforcement of prohibition of dismissal (-) enforcement of less favourable treatment upon return

						(-) enforcement of more flexible working arrangement for caring purposes (-) enforcement of maintenance of rights acquired on the start of the leave (-) enforcement of voluntary certification system assessing work-life balance (-) enforcement of transfer of transferable parental leave periods between parents (-) enforcement of prenatal examinations without loss of pay
5	**Non-discrimination**					
	Non-discrimination on grounds of gender, racial or ethnic origin, disability, age, religion or belief and sexual orientation	Various non-discrimination directives	Workers and self-employed	High	Moderate	(+) applicable to access to employment and self-employment, working conditions including pay, vocational training and membership in representative bodies
6	**Other relevant rights for platform workers**					(-) very limited research on discrimination in platform economy
	Right to have access to personal data	GDPR P2B Regulation	Natural persons Self-employed platform workers			(+) GDPR establishes right to access personal data (+) obligation of platform to ensure access to personal data (+) Terms and conditions need to contain description of access by platform workers to personal data of platform workers and consumers (+) Terms and conditions need to contain description of access by platforms to personal data of platform workers and consumers and provision of these data to third parties
	Right to have access to data concerning work allocation	GDPR	Natural persons	High	High	(+) GDPR establishes right to access personal data (+) obligation of platform to ensure access to personal data (?) application to platform work especially when it concerns data based on algorithmic management and automated decision-making concerned with the work allocation, organisation and evaluation; concepts of provided, observed, inferred data
	Right to have access to data concerning work performance and evaluation	GDPR P2B Regulation	Natural persons Self-employed platform workers	High Moderate	High High	(?) application to platform work especially when it concerns data based on algorithmic management and automated decision-making concerned with the work allocation, organisation and evaluation; concepts of provided, observed, inferred data (+) Terms and conditions have to contain main parameters of ranking and reasons of relative importance of these parameters compared to others
	Right to have access to information about the clients	GDPR P2B Regulation	Natural persons Self-employed platform workers	Moderate	Moderate	(+) Terms and conditions need to contain description of access by platforms to personal data of platform workers and consumers and provision of these data to third parties
	Right to data portability - transfer of work history	GDPR	Natural persons	High	High	(?) application to platform work especially when it concerns data based on algorithmic management and automated decision-making concerned with the work allocation, organisation and evaluation; concepts of provided, observed, inferred data

Note: MS refers to Member State.

6.2 Other EU actions

6.2.1 *Communications*

The European institutions began developing a framework for platform work in 2015 (Aloisi, 2018). This seems to have originated with the Single Market Strategy (October 2015), after which the European Commission began consultations with stakeholders, including platform representatives, policymakers, scholars, entrepreneurs, and platform workers. Specific information-gathering efforts included two Eurobarometer surveys. Two communications on online platforms and the collaborative economy[354] were released in early summer 2016.

These communications form an important part of European institutions' official position on platform work. The Communication on a European agenda for the collaborative economy undertook an initial assessment[355] of platforms in May 2016 (European Commission, 2016b). One month afterwards in June 2016, the European agenda for the collaborative economy was adopted.[356] This is non-binding guidance responding to the Single Market Strategy, adopted in October 2015, announcing that the Commission 'will develop a European agenda for the collaborative economy, including guidance on how existing EU law applies to collaborative economy business models'.

The European agenda for the collaborative economy aims to provide clarity on applicable EU rules and policy recommendations 'to help citizens, businesses and EU countries fully benefit from the new business models and promote the balanced development of the collaborative economy' (Cauffman and Smits, 2016; Aloisi, 2018). The Agenda focuses on five main issues: 1) market access requirements and underlying services, 2) liability regimes, 3) protection of users, 4) labour law and worker classification, and 5) taxation. Furthermore, the document announces that the European Commission would continuously review developments in the European collaborative economy. It concludes by advocating Member State interventions, 'assessing the adequacy of national employment legislation' in relation to 'the different needs of workers and self-employed individuals in the digital world as the innovative nature of collaborative business model' and to 'provide guidance on the applicability of their national employment rules in light of labour patterns in the collaborative economy' (page 13, English version).

Other communications may also be seen to complement the goal of addressing challenges associated with platform work, though their scope may be broader. For example, a communication adopted in June 2016[357] put forth a 'new skills agenda for Europe'. While this communication is broader in scope, it explicitly highlights platform work, saying 'The collaborative economy is changing business models, opening up opportunities and new routes into work, demanding different skill sets, and bringing challenges such as accessing upskilling opportunities'. (page 7).

6.2.2 *Information gathering and dissemination*

The lack of reliable evidence is a frequently discussed barrier to designing policy response to the challenges associated with platform work. To this end, the European institutions have funded a great deal of research. Among these initiatives include Eurobarometer surveys, the COLLEEM survey from the Joint Research Centre (JRC), and reports from EU-OSHA and Eurofound.

[354] The term 'collaborative economy' is still sometimes used in place of platform economy, even by EU institutions. However, the terms 'collaborative' and 'sharing' have generally fallen out of favour in this context due to their normative connotations. See the European Parliament Opinion 2017/2003(INI), p. 4.

[355] See http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0288&from=EN

[356] See http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A356%3AFIN

[357] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0381&from=EN

The Eurobarometer surveys on the collaborative economy have provided particularly helpful data. Flash Eurobarometer 438: The use of collaborative platforms (European Commission, 2016a) was conducted in March 2016 and released in July 2016. It looked at awareness of platforms, usage as clients of service providers, and their perceived advantages and drawbacks. Flash Eurobarometer 467: The use of the collaborative economy was carried out in April 2018 and published in October 2018 (European Commission, 2018a). It covered awareness and frequency of use of collaborative platforms, their perceived advantages and disadvantages, and their impact on purchasing behaviour. It also looked at the platform worker side, including frequency of offering services on platforms, reasons for doing so, and reasons why some do not.

A useful initiative for information is Eurofound's platform economy repository.[358] The repository is an online resource for data and literature on platform work, mostly but not exclusively with a European focus. Eurofound has been very active in producing research and increasing awareness of platform work in Europe, and the repository partly realises this goal.

European institutions have also held numerous conferences and discussion forums. For example, the high-level conference Collaborative economy: Opportunities, challenges, policies was held on 11 October 2018 (European Commission, 2018b). This conference presented employment issues and research on platform work, such as COLLEEM research, Eurofound's study Employment and working conditions of selected types of platform work, and so forth.

Platform work is on other agendas besides specific events and committees. For example, the high-level expert group on the Impact of the Digital Transformation on EU Labour Markets has a broader mandate than platform work, but it makes frequent reference to 'online labour platforms', 'platform-mediated work', and related concepts in the 'gig economy' (European Commission, 2019). The high-level expert group finds that at the level of workers and human resources policies, challenges of the digital transformation (2019: p.9):

> *…mainly related to workers' skills to keep people employable in the future. At the level of businesses and labour relations, the challenge is to provide decent work by creating high-quality jobs and safeguarding worker well-being and a healthy work-life balance. Finally, at the most aggregate level of markets and their institutions, the challenge is to build a more inclusive society by preventing economic and social polarisation in labour markets.*

Two particularly relevant recommendations of the high-level expert group concern the employment status of platform workers (2019: p. 39):

> *(4.2.2) Equalise the (administrative) treatment of standard and non-standard work arrangements e.g. by providing equal access to government services, credit lines and limited mobility of benefits regardless of employment status.*
>
> *(4.3.1) Ensure neutral social protection against unemployment, sickness and other life circumstances independent of employment status. The increasing number of Europeans with non-standard employment should have access to social protection e.g. through portable benefits attached to the worker rather than the job or the establishment of an 'underemployment insurance' to smooth out fluctuating incomes in the 'gig economy'.*

Related to funding social protection, the high-level expert group further notes the need for 'a Digital Single Window for reporting employment contributions and taxes'. This would reduce the total cost of compliance as 'Instead of workers having to file manual reports, the data should come automatically from platforms in a standardized digital format.' (ibid., p. 43).

[358] See https://www.eurofound.europa.eu/data/platform-economy

Finally, European-level social partners have taken up the topic of platform work to different degrees. UNI Europa, for example, was involved with the platform research of Huws et al. (2019; 2016), as well as joint research initiatives with the World Employment Confederation – an employers' union for the temporary work agency sector.

6.2.3 *European Pillar of Social Rights*

The European Pillar of Social Rights (EPSR) is a joint institutional effort of the European Parliament, European Council and European Commission interinstitutionally proclaimed on 17 November 2017. It is a soft law instrument without legally binding force, though numerous authors discuss its importance in the platform economy.

The EPSR intends to achieve 'upward convergence' in three parts: 1) equal opportunities and access to the labour market, 2) fair working conditions, and 3) social protection and inclusion. According to EU-OSHA (2017), the EPSR aims, in part, to 'provide new and tangible minimum protection and security for workers in atypical employment and for the (dependent) self-employed'. Furthermore, the initiative could entail expanding the personal scope and increase the level of (social) protection for groups of people on the margins of the labour market (Rasnača, 2017). These aims are consistent with the challenges associated with platform workers, who often find themselves in situations of atypical employment or dependent self-employment.

It is likely that the EPSR will result in indirect impacts, notably the revision of existing legal *acquis*, rather than producing direct legal consequences from the documents that constitute it (Hendrickx, 2017). Additionally, the EPSR has resulted in accompanying initiatives, namely the proposal for a new Directive on transparent and predictable working conditions (December 2017) and proposal for a Council Recommendation on access to social protection for workers and the self-employed (March 2018).[359]

6.2.4 *European Labour Authority*

The recently established European Labour Authority (ELA)[360] is part of the rollout of the EPSR. Its objectives are to contribute to ensuring fair labour mobility across the EU and assist Member States and the European Commission in the coordination of social security systems within the EU (Article 2). To achieve these objectives, the ELA shall carry out different tasks ranging from facilitating access to information (Article 5 Regulation), coordinating and supporting concerted and joint inspections (Articles 8 and 9), carrying out analyses and risk assessments on issues of cross-border labour mobility (Article 10), supporting Member States with capacity building regarding the effective application and enforcement of relevant EU law (Article 11), supporting Member States in tackling undeclared work (Article 12), and playing a mediating role in disputes between Member States on the application of relevant EU law[361] (Article 13).

Section 4 noted how most experts consulted have pointed to the lack of data and strong empirical evidence on the prevalence of (undeclared) platform work, notably in the case of online work. Likewise, there are only limited data available on the prevalence of cross-border platform work. Besides limited intelligence on those two key aspects in relation to platform work, in practice, the lack of efficient information sharing between Member

[359] Both of these are discussed in depth earlier in this study.

[360] Regulation 1149/2019 of the European Parliament and of the Council establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344

[361] The scope of the activities of the ELA shall cover the following Union acts: Directive 96/71/EC, Directive 2014/67/EU, Regulation 883/2004 (and Regulation 987/2009), Regulation 1408/71, Regulation 574/72, Regulation 1231/2010, Regulation 859/2003, Regulation 492/2011, Directive 2014/54/EU, Regulation 2016/589, Regulation 561/2006, Directive 2006/22/EC, Regulation 1071/2009.

States could further contribute to the incidence of fraud, abuses or deprivation of rights in the operation of cross-border work, including when it is platform-based.

ELA could play a role here as it will take over permanently the activities of the European Platform tackling undeclared work.[362] This Platform shall continue its work within the comprehensive remit of the ELA to further enhance cooperation[363] between Member States' relevant authorities and other actors involved to tackle more efficiently and effectively undeclared work (Article 12(a)). It shall also improve the capacity of Member States' different relevant authorities and actors to tackle undeclared work with regard to its cross-border aspects (Article 12(b)). Additionally, the Platform itself shall seek to improve the knowledge of undeclared work by means of shared definitions and concepts, evidence-based measurement tools and promotion of comparative analysis and develop mutual understanding of the different systems and practices to tackle undeclared work and analysing the effectiveness of policy measures (Article 1 Annex). It shall establish tools, for instance a knowledge bank, for efficient sharing of information and experiences, and develop guidelines for enforcement to tackle undeclared work (Article 3 Annex). Thus, the Platform shows great potential to alleviate the current lack of data available on undeclared platform work in the Member States and increase opportunities for Member States to mutually learn on their approaches on this particular subject.

Likewise, in relation to cross-border (platform) work, the ELA shall facilitate the cooperation and acceleration of exchange of information between Member States and support their effective compliance with cooperation obligations (Article 7(1)). Furthermore, the ELA itself has been given the competence to carry out analyses regarding labour mobility and social security coordination across the EU. The ELA may also carry out focused in-depth analyses and studies to investigate specific issues (Article 10(1)). Through peer review among Member States, it will prove possible to examine any questions, difficulties and specific issues which might arise concerning the implementation and practical application of EU law within the ELA's competence (Article 10(2)(a)), or improve the knowledge and mutual understanding of different systems and practices (Article 10(2)(c)). Again, all these provisions could support a greater understanding of cross-border platform work in terms of data-building in the European Union.

Last but not least, one of the objectives of the ELA is to ensure a fair, simple and effective application and enforcement of EU law. It has the competence to facilitate and enhance cooperation between Member States in the enforcement of the relevant EU law (Article 2(a)), while also supporting a timely exchange of information between the Member States. One aspect of the effective application and enforcement is the coordination and support of concerted or joint inspections (Article 8 and 9), which should help national authorities in ensuring protection of persons exercising their right to free movement and in tackling irregularities with a cross-border dimension.[364] Moreover, the ELA may facilitate a solution in the case of a dispute between two or more Member States regarding individual cases of application of relevant EU law (Article 13). Thus, the ELA could play a role in ensuring a more effective application and enforcement of relevant EU law in the field of cross-border platform work.

[362] The European Platform tackling undeclared work, created in 2016, enhances cooperation between EU countries. It brings together relevant authorities and actors involved in fighting undeclared work, to tackle this issue more effectively and efficiently, while fully respecting national competences and procedures.

[363] The Platform shall encourage cooperation between Member States through (Article 12 (2)):

a) Exchanging best practice and information
b) Developing expertise and analysis, while avoiding any duplication
c) Encouraging and facilitating innovative approaches to effective and efficient cross-border cooperation and evaluating experiences.

[364] Concerted and joint inspections are subject to the agreement of the Member States concerned. They should not replace or undermine national competences.

6.2.5 *Case law*

The CJEU has concluded one court case directly concerning platforms. In December 2017, it ruled whether Uber services had to be regarded as transport services, information society services, or a combination of both.[365] The Court determined that intermediation services such as those provided by Uber (UberPop in this specific case) must be classified as 'a service in the field of transport' within the meaning of EU law (Court of Justice of the European Union, 2017).[366]

In its reasoning the Court found that the Uber-application was central in the intermediation service provided by Uber without which 'those drivers would not be led to provide transport services' and 'persons who wish to make an urban journey would not use the services provided by those drivers'.[367] Moreover, the judgment finds that Uber provides more than just an intermediation service, noting that 'Uber exercises decisive influence over the conditions under which the drivers provide their service (ibid., p. 2).[368] This led the Court to conclude that intermediation services like those provided by Uber must be classified as 'a service in the field of transport' within the meaning of EU law (Court of Justice of the European Union, 2017).[369]

Still, this court case is primarily concerned with whether or not Uber services fall under the scope of Article 56 TFEU (freedom of services), Directive 2006/23 and Directive 2000/31, rather than the working conditions and social protection of Uber drivers. No other EU-level court cases concerning platform work, and in particular the labour dimension, could be identified as of summer 2019.

6.2.6 *Preliminary conclusions*

Taken together, findings indicate that European institutions are very aware of platform work, though it is often considered alongside more general labour market issues. European institutions have released communications and initiated research specific to platform work.

Furthermore, the European Parliament and the Council of the European Union adopted Regulation 2019/1150 on promoting fairness and transparency for business users of online intermediation services.[370] While slightly broader than platform work, this Regulation very clearly addresses many of its associated challenges. The Regulation will be regularly evaluated and monitored, and a large part of this role falls on the group of experts for the Observatory on the Online Platform Economy.[371] Thus, while European institutions generally prefer to handle platform work's associated challenges alongside broader labour market issues, they have also taken specific action.

[365] CJEU, 20th December 2017, Case C-434/15, Asociación Profesional Élite Taxi v Uber Systems Spain SL

[366] CJEU, 20th December 2017, Case C-434/15, Asociación Profesional Élite Taxi v Uber Systems Spain SL, par. 48

[367] CJEU, 20th December 2017, Case C-434/15, Asociación Profesional Élite Taxi v Uber Systems Spain SL, par. 39

[368] CJEU, 20th December 2017, Case C-434/15, Asociación Profesional Élite Taxi v Uber Systems Spain SL, par. 39

[369] CJEU, 20th December 2017, Case C-434/15, Asociación Profesional Élite Taxi v Uber Systems Spain SL, par. 48

[370] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019R1150&from=EN

[371] https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=51795

7. GAP ANALYSIS: WHICH CHALLENGES REMAIN TO BE ADDRESSED?

Gap analysis is an analytical tool for assessing the difference (or gap) between the desired and actual state of affairs.

The **actual state of affairs** is defined in the previous sections, which conceptualised platform work, then mapped corresponding challenges, and tools and responses at national and EU level.

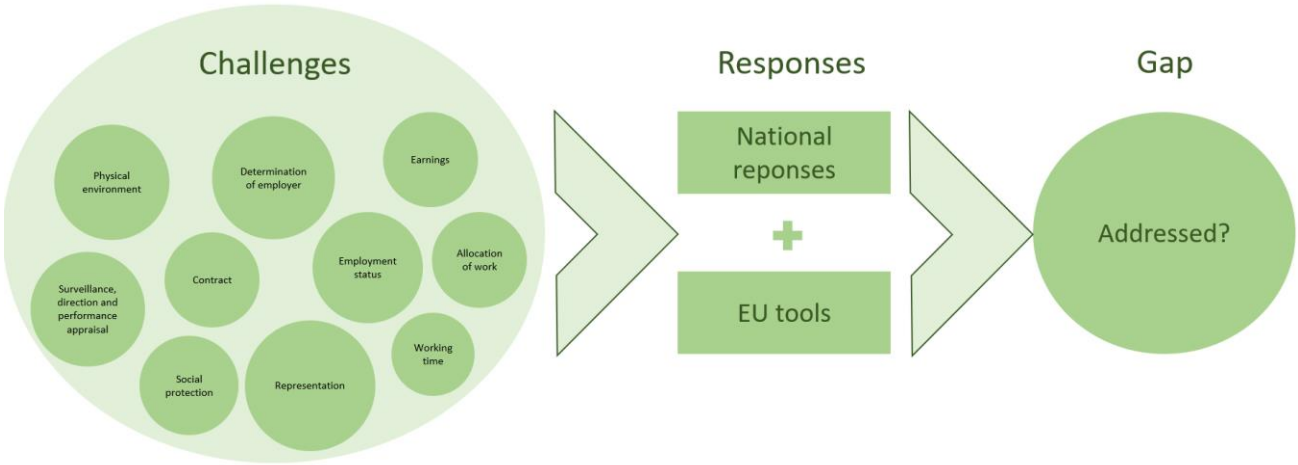
The desired state of affairs is that all the important challenges for platform workers concerning the working conditions and social protection are addressed, either through national or EU tools and responses.

The gap analysis considers the developments up to autumn 2019, based on the available evidence.

7.1 Conceptual framework

The gap analysis consists of three main elements: i) identification of the main challenges, ii) identification and assessment of the national and EU responses, and iii) assessment of the extent to which the challenges are addressed and whether there is room for the EU to act.

Figure 15: Graphic expression of conceptual framework gap analysis



Source: authors' own elaboration.

First, gaps in addressing the most important challenges are assessed. These **are rated 'high'** or **'medium'**, in accordance with the summary tables for work, employment, social relations dimensions and other challenges.

Table 18: Most important challenges for platform workers

Dimension (WES model)	Challenge name	Priority	Specific to platform work?
Work	Autonomy in the allocation of tasks	High	Specific to platform work
Work	Autonomy in work organisation	Medium	General labour market
Work	Physical environment	High	Specific to platform work
Work	Surveillance, direction and	High	Specific to platform work

	performance appraisal		
Employment	Employment status	High	Common for non-standard work
Employment	Contracts	High	Specific to platform work
Employment	Determination of employer	High	Specific to platform work
Employment	Social protection	Medium	Common for non-standard work
Employment	Earnings	Medium	Common for non-standard work
Employment	Working time	Medium	Common for non-standard work
Social relations	Representation	High	Common for non-standard work
Social relations	Adverse social behaviour	Medium	General labour market
Other	Undeclared work	Medium	Common for non-standard work
Other	Cross-border work	Medium	General labour market
Other	Data protection	Medium	Specific to platform work

Source: authors' elaboration based on Section 4.

Note: Each challenge depends on factors such as the type of platform work considered and the amount of control exercised by platforms versus the platform worker's autonomy. Moreover, over half of these challenges are not particular to platform work but common to non-standard work or the general labour market.

Second, for each of the main challenges, the **national responses** are assessed through expert surveys for all 30 countries (EU28, Norway and Iceland). Experts identified the top-down and bottom-up responses at national and regional level that target the challenges relevant to platform work. For each of the national responses it is determined which challenges were intended to be addressed and the extent to which the response has been implemented.

Table 19: Frequency of national responses to most important challenges

Dimension (WES model)	Challenge name	Response count*				Countries with responses
		Top-down	Bottom-up	Other	Total	
Social relations	Representation	8	32	2	42	15
Employment	Social protection	12	14	0	26	13
Employment	Earnings	4	22	1	27	12
Employment	Employment status	36	9	1	46	11
Employment	Determination of employer	36	9	1	46	11
Work	Physical environment	8	17	1	26	10
Employment	Contracts	2	4	2	8	7
Employment	Working time	4	13	1	18	7
Other	Undeclared work	11	0	0	11	6
Work	Surveillance, direction & performance appraisal	5	8	1	14	6
Other	Cross-border work	3	0	0	3	3
Social relations	Adverse social behaviour	0	3	0	3	3
Other	Data protection	3	3	0	6	2
Work	Autonomy in the allocation of tasks	0	0	0	0	0
Work	Autonomy in work organisation	0	0	0	0	0

Source: authors' elaboration.

***** Excluding 'purely informational' responses, e.g. conferences or research publications that are unlikely to directly address the challenges.

Note: Maximum of 30 countries (EU28, Norway and Iceland). A single response can address multiple challenges. Counts for 'determination of employer' and 'employment status' are identical because in practice, responses handle them in tandem.

It is important to note that in some cases it is difficult to attribute the responses to the most important challenges. For example, the national responses contain dozens of instances where platform workers protest or negotiate for 'better working conditions', without specifying which particular working conditions (e.g. allocation of work, autonomy in work organisation, physical environment, or some combination of these). In the identification of the national responses, only those responses relevant to the challenges, according the national experts, are considered.

The national responses consist of top-down (legislation, case law, administrator and inspectorate actions), bottom-up (actions from platforms, platform workers, and collective agreements), and 'other' responses (any other relevant response). Top-down responses tend to be 'harder' and more intrusive, whereas bottom-up agreements rely on the agreement of involved parties.[372] Responses addressing 'representation', 'working time', 'earnings' and 'physical environment' are usually bottom-up. This is because platform workers (and social partners aiding them) tend to focus on their immediate concerns. Conversely, responses addressing 'employment status' and 'undeclared work' are mostly top-down.

The count of the responses in combination with a qualitative assessment is used as a measure to assess the extent to which the national responses have addressed the challenges. This is necessary, as the mere count of responses does not necessarily tell us about their scope. For example, a single court case might resolve the employment status challenge for all platform workers in a country, whereas a dozen court cases might provide limited additional clarity.

Moreover, platform work remains a relatively new phenomenon, for which the responses are only quite recently taken. This means that it is currently impossible to assess the full extent to which all the national responses addressed the most important challenges in practice. Indeed, the analysis is limited to whether or not one or more relevant responses exist in a given country, and which type of platform workers is addressed (e.g. all, online and/or on-location).

Similarly, for each of the challenges it is determined whether they are addressed by any of the potentially relevant **EU tools.** For each of the EU tools it is determined which platform workers may be impacted and under which circumstances (i.e. personal scope), the relevance of the legislation (i.e. material scope) and the extent to which it addresses the challenge (i.e. adequacy).

Note that the assessments at national and EU level are somewhat different in nature. The objective of the national responses analysis is to create a complete mapping of **all responses**, whereas the objective of the EU analysis is to assess only a **selection of tools**.

Third, based on the challenges and responses at national and EU level, the extent to which the challenges have been addressed by existing tools and responses is assessed. Indeed, there is a **gap** when the challenges are not fully addressed at national and EU level.

[372] But note that collective agreements can be legally binding on parties, and in some national contexts (e.g. Germany, Sweden, Austria) are the preferred course of action to avoid the need for legislation action.

Based on the assessment, each of the challenges receives a rating for the extent the national responses and EU tools and responses addresses it. There are five different ratings (fully addressed, largely addressed, partially addressed, not addressed, and indeterminate). For the national responses, the rating is based on the share of countries that have taken measures to address the challenge For the EU tools, the assessment is based fully on a qualitative assessment of the extent to which the selection of EU tools are applicable to each of the challenges. See Table 20 for detailed definitions of the ratings.

Table 20: Gap analysis assessment key

Rating	Definition	
	National responses	**EU tools**
Fully addressed	Responses exist in >80% to ≤100% of surveyed countries	Surveyed tools are highly applicable to the challenge
Largely addressed	Responses exist in >50% to ≤80% of surveyed countries	Surveyed tools are moderately applicable to the challenge for most platform workers
Partially addressed	Responses exist in >20% to ≤50% of surveyed countries	Surveyed tools are partially applicable to the challenge
Not addressed	Responses exist in 0 to ≤20% of surveyed countries	Surveyed tools have low applicability to the challenge
Indeterminate	Available information cannot allow a determination	Available information cannot allow a determination

The remainder of this Section assesses the gaps for the most important challenges.

7.2 Responses to platform-specific challenges

Platform-specific challenges include those in the 'work' and 'employment' dimensions. Physical environment and determination of employer are most relevant for on-location platform workers, and here they have received a significant amount of attention at national level. Data protection is very relevant at EU level, and it is the only challenge deemed to be fully addressed.

7.2.1 *Autonomy in the allocation of tasks*

Autonomy in the allocation of tasks is primarily about the flexibility (or lack of) to determine which tasks to do. It is a key motivating factor for platform workers. While relevant for all platform workers, the challenge is most problematic for platform- or client-determined work, as well as lower-skilled work.

At national level, no responses specifically address this challenge per se. However, this challenge was probably a part of broader responses aiming to improve 'working conditions', representation, surveillance, direction and performance appraisal, or employment status. Therefore, **the challenge is not addressed at national level**.

At EU level, the Working Time Directive[373] and the TPWC Directive[374] are most relevant. In personal scope, both cover workers but not the self-employed. Therefore, they only impact a **low number of platform workers**.

[373] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9–19)

[374] Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L186/105 11.07.2019)

However, both directives are deemed to be **highly relevant** to the challenge. The main issue with the Working Time Directive is that notions such as working time, rest periods, rest breaks, night work, and standby time are profoundly challenged by platform work. Therefore, it is only moderately adequate. The TPWC Directive is assessed to be highly adequate. For example, the mandatory written information provision contains minimum conditions[375] for 'working time' whether work patterns are predictable or not. Overall, assessed EU tools have **moderately high adequacy**.

7.2.2 *Physical environment*

Physical environment mostly entails health and safety risks and required materials or equipment for an occupation. While relevant for all platform workers, it has been especially noted as a challenge for lower-skilled on-location platform work.

The responses of 10 countries[376] were directly relevant to this challenge. The scope of responses reflects the importance for on-location platform workers; roughly 80% of the 30 responses impacting physical environment target only on-location platform work. Additionally, most physical environment responses address platform workers providing food delivery services.

A total of eight top-down responses are spread across five countries.[377] These actions were from inspectorates or administrative bodies, national or regional legislation, or case law. These aim to better control the working environment for specific platform workers (mostly Uber drivers or food couriers), or non-standard workers more generally (including platform workers).

Seventeen bottom-up responses appear across nine countries.[378] These largely consist of actions by trade unions on the health and safety of platform workers, and collective agreements which have either concluded or continue to be negotiated. These cover the physical environment for specific platforms (either providing food delivery, cleaning or interpretation services), or the food delivery sector. Additionally, platform workers have either staged demonstrations, joined trade unions, or negotiated with platforms for improved working conditions.[379]

A number of these responses have created improvements in the physical environment for couriers. We observe further progress as some inspectorates, such as Spain and Denmark, are better empowered (through funding, legal authority, or new pilot projects) to verify safety for some platform workers. However, few national responses address fundamental difficulties related to the physical environment, such as clarifying when platforms must provide accident insurance, or specifying if and how labour inspectors can ensure safe working conditions (e.g. for cleaners in a client's home).

At national level overall, we determined that **physical environment challenges are partially addressed for on-location platform workers**, and **not addressed for online platform workers**.

[375] Maximum duration of any probationary period, the right to parallel employment, provisions related to a minimum predictability of work, **complementary provisions related to on-demand work**, provisions concerned with the transition to other forms of employment and rules on mandatory training. See Directive on Transparent and predictable working conditions Chapter III: Minimum requirements relating to working conditions; Articles 8 to 14

[376] BE, DE, DK, ES, FR, IE, IT, NO, SE, and the UK

[377] BE, ES, FR, IT, and SE

[378] BE, DE, DK, ES, FR, IE, IT, NO, and the UK

[379] One 'other' response relevant to this challenge was a parliamentary question raised in Italy.

At EU level, the most relevant surveyed tools[380] for physical environment are those concerning health and safety: the Health and safety for fixed-term work Directive,[381] and the Pregnant Workers Directive.[382] While other relevant tools exist they were not covered, and this research focuses on labour law rather than OSH per se.

As discussed, both of these directives only concern workers and exclude the self-employed from their personal scope. Because most on-location platform workers, and virtually all online platform workers, are self-employed, they are not included in the personal scope of assessed EU legislation. The Health and safety for fixed-term work Directive has a further problem in application to platform workers, insofar as it establishes equal OSH conditions for fixed-term employees, in comparison to permanent employees for the same job and in the same company, or in comparison with reference to collective agreements, legislation, or practices that may exist. No evidence of such arrangements was found in the national surveys. Thus, assessed EU tools only cover a **low** number of platform workers.

Nevertheless, these directives are assessed as **highly relevant** to the challenge, though ultimately deemed to be of **low adequacy**.

7.2.3 *Surveillance, direction and performance appraisal*

This challenge refers to the extent to which the platform and/or client monitors the platform worker, which plays a powerful role in determining the organisation of work. It can also impact direction, evaluations, and even penalties for the platform worker. This challenge is relevant for all platform workers, but especially for lower-skilled platform work.

Six countries[383] have responses relevant to this challenge. Most responses (11 out of 14) also concern representation of platform workers, or the intention to give platform workers a say in the appraisal process. Most responses target only on-location platform workers.

The most interesting and wide-reaching top-down responses come from Italy, both in regional and national legislation (Iudicone and Faioli, 2019).

Eight bottom-up responses address this challenge across four countries. Most of these are in Italy, where collective agreements and platform worker protests have addressed surveillance and rating mechanisms, among other issues. In France, Estonia, and Sweden, platform workers have also protested or negotiated on the issue.[384]

These responses mostly address suspension of a platform worker's account, requirements for reputational or ratings systems (fairness, transparency, portability, forbidding ratings from impacting working time, etc.), and the right to disconnect.[385]

[380] To some extent the Directive on transparent and predictable working conditions could play a role, for example, by requiring platforms to provide some platform workers with clear information about their working conditions. We discuss this Directive under the challenge 'contracts'.

[381] Council Directive 91/383/EEC of 25.06.1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (OJ L 206/19 of 29.07.1991)

[382] Council Directive 92/85/EEC of 19.10.1992 (OJ L 348/1 of 28.11.1992) on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding

[383] DE, EE, ES, FR, IT, and SE

[384] One 'other' response relevant to this challenge is in Germany, where the trade union IG Metall began the website faircrowd.work (Fair Crowd Work, 2017; IG Metall, 2019).

[385] Data protection may also be relevant in the same sense. For example, a platform's surveillance typically generates data, which then creates questions on data protection. However, data protection is handled in Section 7.2.6.

Overall, at national level, **surveillance, direction and performance appraisal is not addressed**.

At EU level, two pieces of assessed legislation are particularly relevant to this challenge: the GDPR,[386] and the P2B Regulation.[387] The challenge is furthermore closely linked with the employment status and the criteria that are being used when assessing employment status such as the 'subordination' criterion.

The GDPR may provide the platform worker with a range of rights concerning their personal data. These could prevent many abuses associated with algorithmic management and performance appraisal and ensure the rights of platform workers to have access to their personal data and receive information from the platforms on automated decisions that are affecting them. The P2B ensures business users (certain self-employed platform workers) are treated in a fair and transparent way and have effective redress in case of disputes with the online intermediation service (certain platforms) or consumers.

However, some uncertainties remain for the applicability of these tools, such as which data may be withheld by the (platform) data controller in exceptional cases, and which platform workers are covered by P2B. Further important questions concern the enforcement of the EU's (recent) legislation concerning platforms. Therefore, we find **it indeterminate how assessed EU tools address the challenge at this time**.

7.2.4 *Contracts*

Challenges pertaining to contracts entail the existence of a written contract, the type of contract used, information provision, and the terms under which a platform worker's contract can be terminated or suspended. Contractual challenges are relevant for all platform workers.

Seven countries[388] have responses directly relevant to contracts. Most of these responses (six out of eight) are only relevant for on-location platform workers.

Only two top-down responses, both legislation, directly address contracts. These are found in Portuguese[389] and UK law (BEIS, 2018).

Four relevant responses are bottom-up. In Italy, Spain, and Sweden, collective agreements include clauses addressing the challenge. In Estonia, platform workers protested against a new pay structure connected to an allegedly intransparent and unfair rating system (Ärileht, 2018).[390]

In general these responses are very narrow in scope and have done little to effect systemic change. Contracts (or platforms' terms and conditions) were rarely addressed per se, though responses to employment status, collective agreements, and others may have considerable impact on what is permissible in platform contracts. Thus, at national level, **challenges related to contracts are not addressed**.

[386] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

[387] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services

[388] DE, EE, ES, IT, PT, SE, and the UK

[389] Lei n.º 45/2018 Regime jurídico da atividade de transporte individual e remunerado de passageiros em veículos descaracterizados a partir de plataforma eletrónica [Legal regime of individual transport activity and paid passengers in unregistered vehicles from electronic platforms] (Diário da República, 1.ª série — N.º 154 10.08.2018, p. 3972-3980)

[390] The two 'other' responses are in Germany, where the trade unions IG Metall and Ver.di took action to inform online platform workers about their rights, particularly as they derive from the terms and conditions of platforms (Fair Crowd Work, 2017; Ver.di, 2019).

Two EU-level tools require close consideration for contractual challenges: the P2B,[391] and the TPWC Directive.[392]

In personal scope, the P2B may very well apply to a substantial portion of self-employed platform workers, but how many remains to be seen. For those platform workers to whom P2B does apply, many contractual challenges would be addressed.

In personal scope, the TPWC Directive clarifies the EU concept of 'worker' by explicitly referring to CJEU case law. This mentions that platform workers are workers when the criteria set by the CJEU rulings are met,[393] and restricts the possibility for Member States to exclude workers in various precarious non-standard forms of employment.[394] However, while platform workers are explicitly mentioned in the preamble recitals of the Directive, the genuine self-employed fall outside its remit. In practice, it is therefore likely to **cover a low number of platform workers**.

Materially, the TPWC Directive contains substantial improvements for the employment protection of workers, including rights that address contractual challenges. However, it has just been adopted, and its provisions must now be transposed by Member States, and it is therefore difficult to assess its adequacy in addressing contractual challenges. The P2B, if deemed applicable to (some) platform workers, would directly address many important contractual challenges, such as transparency of terms and conditions and dispute resolution procedure. Platforms' terms and conditions must be clear and available to platform workers during all stages of their commercial relationship.

For workers (covered by the TPWC Directive) and 'business users' (covered by the P2B Regulation), the challenge is more thoroughly addressed. However, given the uncertainties of the P2B, we find **contractual challenges are indeterminate at EU level**.

7.2.5 *Determination of employer*

Determination of employer is related to employment status. The key distinction between the challenge 'employment status' and 'determination of employer' is that the latter is primarily concerned with whether the client or platform can be categorised as an employer. This challenge is relevant for all types of platform work, but especially for platform workers with little autonomy, under strong surveillance direction by the platform or by the end user, and who depend on platform work for income. These tend to be lower-skilled on-location platform work.

In practice, national responses and EU tools address this challenge alongside 'employment status' – not as a distinct challenge. **Therefore, the assessment is taken exactly from the employment status below**.

At national level, **determination of employer is partially addressed for on-location platform workers**, and **not addressed for online platform workers**.

In personal scope, assessed legislation is **relevant for workers and bogus self-employed**, who are subject to reclassification on the basis of CJEU case law. Overall, we find the assessed EU tools to have only **moderately low relevance** to the challenge of employment status of platform workers, and of **moderately low adequacy**.

[391] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services

[392] Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union.

[393] Recital 8, Directive 2019/1152

[394] Recital 12, Directive 2019/1152

7.2.6 *Data protection*

The challenge of data protection refers to how platforms collect, process and use personal data, and how platform workers' rights with respect to these data are upheld or infringed. This issue is relevant for all platform workers.

At national level, six responses seem to directly target data protection for platform workers: five from Italy and one from Estonia.

One top-down response is relevant: in Italy, legislation[395] obliges platforms to use a transparent algorithm and ensure portability for worker data.

Five bottom-up responses include collective agreements signed by food delivery platforms (Covelli, 2018),[396] and a platform worker strike against a new pay deal, loss of transparency of algorithms, and a new rating system (Ärileht, 2018).

These national initiatives have mostly highlighted the importance of data protection for a limited subset of platform workers, whereas the challenge is very relevant for all. Overall, **the challenge of data protection is not addressed by national responses**.

At EU level, the GDPR[397] is the tool assessed for data protection. In personal scope, the GDPR **applies to all natural persons**.

We assessed two aspects highly relevant to platform workers' data protection: 1) the right to access personal data, and 2) the right to data portability.[398]

Specifically, the data of platform workers fall under the broad notion of 'personal data'. At present, a landmark court case is pending in the UK[399] which will help determine platforms' responsibilities to allow platform workers' access to their personal data.

Concerning data portability, in the first instance, platform workers can obtain a copy of their data '*in a structured, commonly used and, machine-readable format*' (Article 20(1)). Second, it provides the right *'to have the personal data transmitted directly from one controller to another, **where technically feasible**'.* However, at least three legal barriers[400] exist to effective data portability for platform workers.

The GDPR is an ambitious and wide-reaching tool. Moreover, pursuant to its Article 88 (processing in the context of employment), 'Member States may, by law or by collective agreements, provide for more specific rules to ensure the protection of the rights and

[395] "Disposizioni concernenti le prestazioni di lavoro con modalità di esecuzione organizzate o coordinate dal committente" (4283) ['Provisions concerning work services with execution methods organized or coordinated by the client'], see https://www.camera.it/leg17/126?tab=3&leg=17&idDocumento=4283&sede=&tipo=

[396] Contratto Collettivo Logistica, Trasporti Merci e Spedizioni, see http://www.fedit.it/fedit/index.php?option=com_content&view=article&id=136:testo-unico-ccnl-logistica-trasporto-merci-e-spedizione-&catid=59:in-evidenza

[397] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

[398] The right not to be subject to a decision based solely on automated processing, and the prevention of discriminatory biases underlying the algorithm, are discussed in the challenge 'surveillance, direction and performance appraisal'.

[399] See also the Judgment of the Court of Appeal London, Case (2018) EWCA civ 2748, Uber BV vs Yaseen Aslam, James Farrar and others, (29.12.2018). Uber is currently challenging the decision of the Court of Appeal before the Supreme Court but the four drivers filed a new lawsuit against Uber for withholding data which in their opinion is contravening Article 15 of the GDPR; See also https://www.citylab.com/transportation/2019/08/uber-drivers-lawsuit-personal-data-ride-hailing-gig-economy/594232/.

[400] First, the technical feasibility significantly limits obligations of data controllers (in this context, platforms). Second, the portability right only applies to provided data and observed data. This excludes all data produced by the platform's operation. Third, the right to data portability 'shall not adversely affect the rights and freedoms of others' (article 20 (4)). Some data of concern to the platform worker, such as client ratings, involves data of others, and thus request and transfer of such data creates an additional legal uncertainty.

freedoms in respect of the processing of employees' personal data in the employment context'. It may therefore lead to further protections at national level, where they are currently quite lacking.

While some legal questions remain to be clarified and effective enforcement has to be ensured, the GDPR represents a significant step to assuring data protection for platform workers. Therefore, the GDPR is **highly relevant** and **highly adequate** for the challenge of data protection for platform workers.

7.3 Responses to challenges common in other forms of non-standard work

Challenges common in other forms of non-standard work are mostly in the 'employment' dimension. Three such challenges – employment status, representation, and social protection – are some of the most salient and debated topics in platform work.

Because these challenges are common in other forms of non-standard work, we might expect responses to have broader impact than just platforms. However, this is not usually the case. Most responses only narrowly target specific (types of) platforms, rarely focusing on online forms of platform work. For example, only a single country (Germany) has taken any relevant response concerning earnings and working time for online platform workers.

7.3.1 *Employment status*

The challenge of employment status means a lack of clarity on platform workers' employment status and the issues this causes. Employment status largely determines rights and obligations for workers, for example concerning labour protection, social protection, taxation, and collective rights. While employment status is relevant for all platform workers, it is most problematic for platform workers with little autonomy, under significant direction from the platform, and high economic dependence on platform work. Most commonly this is lower-skilled platform work performed on-location.

In total, eleven countries have responses directly relevant to employment status.[401] Most of these (31 out of 45) are particular to on-location lower-skilled platform work.

Most responses to employment status (36 out of 45) are top-down. Case law, legislation, and administrator/inspectorate actions have occurred. National courts have in many instances tried to fine-tune the concept of worker as defined under national law, and in some countries this has led to a more elaborated set of criteria that needs to be considered when establishing the status of worker. Still, most evidence suggests that substantial legal uncertainties on platform workers' employment status remain within Member States and across the EU. When legal uncertainties remain, or some platforms continue to use self-employment contracts in spite of an apparent, factual employment relationship, national courts have become involved. Administrators and inspectorates have also challenged the legality of certain platform workers' employment status and issued decisions on employment status as it concerns labour or social law.

Fewer bottom-up responses (nine out of 45) directly confronted the employment status of platform workers. Platform workers in several countries[402] organised demonstrations and engaged in negotiations seeking, among other changes, to be recognised as employees. In Germany, Finland, and Denmark, a few platforms began formally employing some or all of their platform workers.

We observe that national responses address employment status with mixed success. National legislation has helped clarify employment status in a few countries, but mostly

[401] BE, DE, DK, EL, ES, FI, FR, IT, NL, PT, and the UK

[402] E.g. Austria, Germany, Norway, Belgium, etc.

for particular on-location platform workers.[403] In most instances, case law has not removed the legal uncertainty of employment status for platform workers, or resulted in reclassification of many platform workers with an improper employment status. At national level overall, **the challenge of employment status is partially addressed for on-location platform workers**, and **not addressed for online platform workers**.

The EU instruments covered in the study are not primarily aimed at defining employment status, or otherwise addressing the challenge as it is here discussed.[404]

Most recent EU directives do refer to a consolidated European 'worker' concept progressively developed through CJEU case law, which was firstly initiated when interpreting Article 45 TFEU on the free movement of workers. In its rulings, the CJEU confirmed explicitly that the term 'worker' in Article 45 TFEU may not be interpreted differently according to the law of each Member State, but that the term 'worker' has an EU meaning.[405,406,407]

The EU definition of the concept of worker is, however, primarily construed on the subordination requirement, and it is exactly this dimension which is profoundly challenged by platform work practices. Platform workers typically have a greater degree of freedom to decide whether to accept a task or not and when and where the service will be delivered when compared with more traditional work environments. Enforcement of CJEU case law remains a primary consideration for this challenge.

In personal scope, assessed legislation is **relevant for workers and bogus self-employed**, who are subject to reclassification on the basis of CJEU case law.

Overall, we find the assessed EU tools to have only **moderately low relevance** to the challenge of employment status of platform workers, and of **moderately low adequacy**.

7.3.2 *Representation*

The challenge of representation refers to whether workers have a say on aspects of work organisation, formally or informally, at the level of the platform or as platform workers. Representation is relevant for all platform workers, but particularly for those with higher risk of being misclassified as regards their employment status, such as lower-skilled on-location platform workers who cannot set their own prices, determine how they do the work, or choose their clients.

Representation is one of the most frequently addressed challenges. A total of 42 national responses are relevant across 15 countries.[408]

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[403] Notably Portugal via the Lei n.º 45/2018. Legislation in France (Loi n° 2016-1088 du 8 août 2016 - El Khomri Law) and Italy (L. 2 novembre 2019, n. 128) are more widely applicable.

[404] Though as discussed in National tools and responses to platform work challenges, national classifications of platform workers as self-employed may be subject to reclassification based on EU case law in certain circumstances.

[405] Judgment of the CJEU, Case C-66/85 Deborah Lawrie Blum v Land Baden-Württemberg (03.07.1986): at the time of the case, Article 45 TFEU was still Article 48 of the EEC Treaty and the term 'Community meaning' was used instead of the current 'EU meaning'.

[406] Judgment of the CJEU, Case 75/63 Hoekstra (née Unger) v. Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten (19.03.1964)

[407] Judgments of the CJEU, Case C-66/85 Deborah Lawrie Blum, op. cit; Case C-428/09 Union Syndicale Solidaires Isère v Premier ministre and Others (14.10.2010); Case C-229/14 Ender Balkaya v Kiesel Abbruch- und Recycling Technik GmbH (09.07.2015); Case C-413/13 FNV Kunsten Informatie en Media v Staat der Nederlanden (04.12.2014); Case C-216/15 Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH, (17.11.2016)

[408] AT, BE, DE, DK, EE, ES, FI, FR, IE, IT, NL, NO, PT, SE, and the UK

At top-down level, case law, legislation, and administrator or inspectorate actions are relevant. Mostly these address food delivery couriers, though legislation in France[409] and Italy[410] impact broader categories, including all platform workers. Court cases in Germany, the Netherlands, and the UK have ruled on aspects of representation.

The majority of responses (32 out of 42) to the challenge are bottom-up. In many examples, platform workers have established works councils for their platform, become trade union members, spontaneously engaged in demonstrations, or formed cooperatives or collectives. Platforms themselves have variously resisted or welcomed such efforts. In a few instances, platforms initiated platform representation by creating 'forums' to voice concerns. Collective agreements have also formalised representation for certain platform workers.[411] Overall, representation efforts have created a substantial impact, but this is mostly limited to food delivery couriers.

Therefore, **representation is largely addressed for on-location platform workers. For online platform work, representation is not addressed.**

At EU level, four assessed directives concern collective labour rights, mostly information and consultation, and thus indirectly relate to representation. These are the Information and consultation Directive,[412] the Insolvency Directive,[413] the Collective Redundancies Directive,[414] and the European Works Council Directive.[415] Furthermore, the P2B Regulation[416] includes provisions on the rights for business users to form representative organisations or associations in Member States, in accordance with national legislation.[417] However, the P2B Regulation is not yet in force, and its applicability to platform workers is still unclear.

The personal scope of these tools (except for the P2B) is limited to workers and is therefore **only applicable to a low number of platform workers**. As an additional note, EU competition law provisions may interfere with and restrict the right of self-employed platform workers to collectively take action and bargain on their conditions, including on price when it prevents or restricts fair competition. The self-employed are generally considered as undertakings under EU competition law. However, when it concerns matters that do not distort competition, self-employed platform workers can collectively negotiate and conclude agreements with the platforms.

[409] Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels [Law on work, modernising social dialogue and securing career paths] (2016-1088, 8.08.2016)

[410] L. 2 novembre 2019, n. 128, Conversione in legge, con modificazioni, del decreto-legge 3 settembre 2019, n. 101, recante disposizioni urgenti per la tutela del lavoro e per la risoluzione di crisi aziendali

[411] Three 'other' responses are applicable to representation. These are the platform faircrowd.work and Ombuds Office from IG Metall, and advisory services from Ver.di, all from Germany.

[412] Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 080, 23/03/2002 p. 29 – 34)

[413] Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (Codified version) (OJ L 283, 28.10.2008, p. 36–42)

[414] Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ L 225, 12.8.1998 p.16-21)

[415] Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees

[416] Ibid.

[417] Note also the distinction between freedom of association and freedom of collective bargaining, as discussed at https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/freedom-of-association.

Overall, we conclude that assessed EU tools are **highly relevant** to the challenge of representation, but of **moderately high adequacy**.

7.3.3 *Social protection*

This challenge largely means that platform workers tend to have less access to social protection. It is relevant for all platform workers, but crucially depends on the platform worker's employment status – both on the basis of platform work, and any other work performed.

Social protection is relevant for 31 responses across 13 countries.[418] It is therefore one of the most addressed challenges. Just over 50% of responses are limited in scope to lower-skilled on-location platform work.

At the top-down level, twelve responses are relevant. These include new or modified legislation expanding access to social protection to additional types of workers,[419] and administrative decisions impacting platform workers' access to social protection. The legislation frequently pairs social protection with assuring proper taxation of income earned from self-employed activities.

Fourteen bottom-up responses address this challenge. For example, trade unions have challenged administrative courts on unemployment benefits for workers between jobs under umbrella companies.[420] In Denmark and Italy, collective agreements have increased social protection access for certain platform workers. In Norway, Foodora riders have joined the nation's largest trade union, and a collective agreement expected to impact social protection is under negotiation (Mortensen, 2018). Similar agreements were concluded in Austria (De Groen et al., 2018b). Platform workers providing food delivery services in France and Belgium have created or joined cooperatives or collectives, in part to facilitate access to social protection (Akguc et al., 2018; Vandaele, 2017). In Belgium, Italy, Germany, Portugal, Romania and the UK, some platforms (especially those in food delivery and personal transport) have voluntarily (or under pressure from workers, trade unions, or the government) established schemes to provide social protection to platform workers. Mostly these concern accident and liability insurance.

Governments seem to be increasingly aware of the challenge social protection represents for platform workers (and other non-standard workers), as well as the risk of under- or unreported income. To some extent, platforms, platform workers, and social partners are filling in where statutory coverage is lacking. Most progress is evident for platform workers engaged in lower-skilled on-location tasks, and more progress has been made in accident and liability insurance than in other types, such as pension and unemployment insurance. A larger challenge seems to remain in social protection for online platform workers (and non-standard forms of work generally). Overall, at national level, social protection is **partially addressed for on-location platform workers**, and **not addressed for online platform workers**.

At EU level, several selected directives concern social protection. These are mainly the Pregnant Workers Directive,[421] and the Work-life Balance Directive[422] (repealing the Parental Leave Directive). A set of non-discrimination directives ensures equal treatment on different grounds and include social protection within their remit such as the Race Directive, the Gender equality in social security Directive, the Gender equality in

[418] BE, DE, DK, EE, ES, FR, IT, LV, NO, PT, RO, SE, and the UK

[419] E.g. economically dependent self-employed, or self-employed in sectors such as personal transportation.

[420] From Swedish platform work expert's informal interviews.

[421] Directive 92/85/EEC on safety and health at work for pregnant workers (OJ L 348/1 of 28.11.1992)

[422] Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 188, 12.7.2019, p. 79–93)

Employment Directive and the Gender equality of self-employed Directive.[423] Of these tools, few include the self-employed in their personal scope. Thus, they cover a low number of platform workers.

The Council Recommendation on access to social protection **for workers and the self-employed**[424] aims to ensure access to six branches of social security for both employees and the self-employed. In personal scope, it would therefore apply to all platform workers regardless of employment status. This is a form of soft law, intended to provide direction to Member States, but not legally enforceable. Even so, the Recommendation clearly indicates that Member States are to move to provide more social protection for the self-employed.

While assessed EU tools are of **high relevance** for social protection, they are overall deemed to be of **low adequacy**.

7.3.4 *Earnings*

The challenge of 'earnings' mostly relates to fair and liveable earnings for a given amount of work, and the ability to determine or negotiate how much one earns. Earnings are relevant for all platform workers, but the challenge is especially problematic for those who cannot set their own prices.

Earnings were addressed in 27 responses across 12 countries.[425] The majority of these (18 out of 27) concern only food delivery couriers, who are generally unable to set their own prices. Only three responses are relevant beyond lower-skilled on-location platform work.

Only four responses relevant to this challenge are top-down. Of these, three are legislation from Italy. In the Netherlands, a court case[426] determined that earnings for food couriers are subject to the minimums established by collective agreement.

Twenty-two out of twenty-seven responses are bottom-up. In most of these, platform workers or social partners negotiated with or pressured platforms on the price of services. Relevant responses include platform worker demonstrations, collective agreements, and the creation of cooperatives or collectives.[427]

These responses have certainly raised general awareness of low earnings from platform work but have less often resulted in systemic changes. For many on-location workers, negotiations between platform workers and platforms, often with trade union involvement, are unresolved and ongoing. In most cases, platforms still set the (external) price of services, and any concessions to platform workers is on a voluntary basis. Even less progress is evident for online platform workers.

Overall, **the challenge of earnings is partially addressed at national level for on-location platform workers, and not addressed for online platform workers**.

Assessed EU tools generally approach earnings from an equal treatment perspective in the context of an employment contract or relationship, namely that discriminatory

[423] Directive 2000/43/EC on equal treatment on grounds of race and ethnicity (OJ L 180, 19.7.2000, p. 22–26), Directive 2006/54/EC on gender equality in employment (OJ L 204, 26.7.2006, p. 23–36), Directive 2010/41/EU on gender equality of self-employed (OJ L 180, 15.7.2010, p. 1–6), Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ L 6, 10.1.1979, p. 24–25)

[424] Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019/C 387/01 of 15.11.2019)

[425] BE, DE, DK, EE, ES, FR, IT, NL, NO, PT, SE, and the UK

[426] See case law 15.01.2019 Court of Amsterdam, available at http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2019:210

[427] One 'other' response is relevant to the challenge, being the Ombuds Office run by IG Metall in Germany.

practices on the basis of gender, ethnicity, race, religion, age, disability and type of contract are forbidden. However, they tend to address different types of earnings challenges than those identified as most relevant for platform workers. For example, the tools assessed forbid unequal pay for equal work and work of equal value performed by men and women, but do not set a minimum or baseline level of pay, since the EU lacks the competence to do so.[428]

Assessed EU tools on non-standard work[429] forbid discrimination of remuneration based on an employee having a part-time, fixed-term or temporary agency work contract. However, these are unlikely to apply to platform workers because most platform workers are contractually self-employed, and because platform workers are unlikely to have a comparator (e.g. full-time contract equivalent, indefinite contract equivalent or other) with which a comparison can be made. Thus, the selected EU tools apply to a **low number of platform workers** as regards personal scope. Moreover, the selected EU tools are assessed to be of **low relevance** and **low adequacy** for the challenge of earnings.

7.3.5 *Working time*

The challenge of 'working time' is mostly about the flexibility to choose when and how much to work. This also concerns the availability of work and unpaid time while searching or waiting for tasks. While working time is relevant for all platform workers, it appears especially problematic for those who work on fixed times – especially lower-skilled on-location tasks such as food delivery.

A total of 19 national responses in seven countries[430] address working time specifically. Generally, responses address this challenge alongside employment status, representation, and earnings. More than half of responses to working time directly targeted food couriers.

Four top-down responses address working time. These include legislation and inquiries from labour and social affairs inspectorates, which consider working time in addition to working conditions more broadly.

A total of 13 national responses are bottom-up, either platform worker actions or collective agreements. Working time is clearly an issue that platform workers and trade unions are concerned about. In fact, all concluded or pending collective agreements on platform work directly address working time.[431]

Generally, responses pertaining to working time also concern remuneration and the ability to set one's own prices or negotiate for better earnings. A frequent point of contention, especially in platform worker protests, is earnings for hours worked rather than per tasks completed. The challenge has only been addressed narrowly, for platform workers of specific platforms (almost exclusively food couriers), in a handful of countries. General working-time issues or ambiguities such as how to monitor working time or what constitutes working time (e.g. waiting on a task), are largely unresolved. Overall, at national level, **working time challenges for on-location platform workers are partially addressed**, **and not addressed for online platform workers.**

[428] Article 153, paragraph 5 of the Treaty on the Functioning of the European Union

[429] Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC - Annex : Framework Agreement on part-time work (OJ L 14, 20.1.1998, p. 9–14); Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999, p. 43–48); Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9–14)

[430] BE, DK, ES, FR, IT, NO, and SE

[431] Two 'other' responses address working time as well. These are an Italian parliamentary question on Foodora riders raised in 2016, and IG Metall's Ombuds Office run from Germany.

At EU level, a number of selected tools have relevance to working time for platform workers: the Working Time Directive,[432] the Work-life Balance Directive,[433] the TPWC Directive,[434] the Part-time Work Directive,[435] and the Fixed-term Work Directive.[436] Each of these are limited in personal scope to workers, and thus only **apply to a low number of platform workers**.

However, these tools are assessed to be of **high relevance** to the challenge of working time, and **moderately high adequacy**.

7.3.6 *Undeclared work*

The challenge of undeclared work implies non-compliance with labour, social security or taxation legislation or regulations in the country and distorts fair competition. Undeclared work is relevant for all types of platform work.

Six countries[437] have taken measures to address the challenge. Unlike most other challenges discussed here, responses to undeclared work often apply to all platform work, as the measures mostly target broader groups of non-standard workers.

All 11 responses came from top-down actors, suggesting that undeclared work is primarily a domain concerning national authorities rather than platform workers, platforms, and social partners.

In these observed cases, legislative or administrative actions aim to combat undeclared work, ensure proper income tax declaration, ensure an effective tax declaration system for non-standard work arrangements, and support effective social protection. Overall, **the challenge of undeclared work is not addressed at national level.**

At EU level, the assessed legislation has little to do with the challenge of undeclared work as discussed here.

Moreover, we still lack a good empirical understanding of the challenge, which makes assessment problematic. The objectives of the EU platform tackling undeclared work, as well as the ELA, entail combating fraud and abuses. However, these tools are very new, and were largely beyond the study's scope of analysis.

Therefore, **the challenge of undeclared work is indeterminate at EU level at this time.**

7.4 Responses to challenges found in the general labour market

Challenges relevant in the general labour market include one in the 'work' dimension, one in 'social relations', and one 'other'. Because these are the widest in scope, we may expect more top-down responses, or more relevance for EU tools.

[432] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9–19)

[433] Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 188, 12.7.2019, p. 79–93)

[434] Directive EU 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L186/105 11.07.2019)

[435] Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC - Annex : Framework agreement on part-time work (OJ L 14, 20.1.1998, p. 9–14)

[436] Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999, p. 43–48)

[437] BE, DK, EE, FR, NO, and RO

These issues are some of the least addressed by national responses. However, adverse social behaviour and equal treatment, and cross-border work, are two of the most relevant challenges for the EU level.

7.4.1 *Autonomy in work organisation*

Autonomy in work organisation is the ability to determine the order, method, and tempo of tasks. It is strongly related to subordination and hence to employment status. The challenge is relevant for all platform work, but particularly lower-skilled types.

At national level, no responses specifically address this challenge per se. It may have been addressed through responses dealing with employment status; surveillance, direction and performance appraisal or others, but not definitively so. Therefore, **the challenge is not addressed at national level**.

At EU level, selected legislation is **not applicable** to autonomy in work organisation per se. However, we considered this issue above with employment status.

7.4.2 *Adverse social behaviour and equal treatment*

Adverse social behaviour concerns asocial behaviour of colleagues, supervisors, or others who come into contact with platform workers, as well as equal treatment. It is an issue for all platform workers, but particularly those interacting with on-location clients.

Only three national responses in three countries directly concern this challenge.[438] All of these responses are bottom-up initiatives addressing either Uber drivers or food delivery couriers.

Generally, these responses are about discrimination or harassment against certain platform workers based on their nationality or ethnicity. One response was a protest by Deliveroo riders in Ireland aiming to raise awareness of and prevent targeted attacks against foreign-born riders. A second response is a voluntary charter signed by several food delivery platforms in Italy, containing provisions against discrimination. The third response is the UK's GMB union recruiting Uber drivers. Part of their motivation in doing so was to prevent charges being levied on minority Uber drivers in an arbitrary or discriminatory manner.

Despite the low number of specific responses, adverse social behaviour is often covered together with representation and employment status. However, this is difficult to directly observe. Thus, at national level, **the challenge of adverse social behaviour is not addressed**.

At EU level, six assessed tools are directly relevant to adverse social behaviour (and particularly non-discrimination): the Employment Directive,[439] the Race Directive,[440] the Gender equality in employment Directive,[441] the Gender equality in access to goods and services Directive,[442] the Gender equality of self-employed Directive,[443] and the Gender equality in social security Directive.[444]

Each of these directives has a broader personal scope than workers. The Employment Directive, Race Directive, Gender equality in employment Directive, and Gender equality

[438] IE, IT, and the UK

[439] Directive 2000/78/EC

[440] Directive 2000/43/EC

[441] Directive 2006/54/EC

[442] Directive 2004/113/EC

[443] Directive 2010/41/EU

[444] Directive 79/7/EEC

in social security Directive apply to **employees and self-employed**. However, pursuant to the personal scope of application, the directives grant different material rights. The Gender equality of self-employed Directive applies to **self-employed and their spouses**. The Gender equality in access to goods and services Directive applies to **women and men who are not employed**. In principle, the inclusion of self-employed would imply that the majority of platform workers are in the personal scope of most of these directives.

Yet platform workers' protection from most of these directives is probably limited for other reasons. One practical difficulty is that they were drafted in consideration of discrimination in more traditional business sectors. In platform work, digital and online forms of harassment and discrimination are more prominent – especially for online platform workers. These may or not be blatant and traceable, and it is likely that discriminatory cases, especially concerning gender, are structurally under-reported.[445] Additionally, the possibility and extent of contact between platforms, platform workers, and clients differs a great deal even within the same platform type.[446] Overall, these tools apply to the challenge for a **moderately high** number of platform workers.

The practical application of these tools is complex when applied to the various forms of platform work, and significant uncertainties remain. While the assessed pieces of legislation are assessed to be **highly relevant** to the challenge of adverse social behaviour, they are only **moderately high adequacy**.

7.4.3 *Cross-border work*

The challenge of cross-border work is related to the choice of jurisdiction and applicable law, as well as social security coordination. Cross-border work can also increase risks for fraud, abuses, deprivation of rights and undeclared work. These challenges may affect any type of platform work, but especially tasks performed online.

At national level, this was found to be a very marginal issue, as only Hungary, Spain and Slovakia have relevant responses. These mostly aim to ensure fair competition, especially between Uber and the taxi industry. Thus, at national level, **the challenge of cross-border platform work is not addressed.**

At EU level, cross-border work may present particular challenges regarding the application of law related to freedom of movement (of workers and services), choice of jurisdiction and applicable law (Rome I[447] and Brussels I[448] Regulations), and social security coordination. These challenges potentially exist both in relation to the application of the rules and the resolution of disputes in cases of ill- or non-application.

The complexity usually created by cross-border situations and the lack of efficient information-sharing processes between countries increase the risks of fraud, abuses and deprivation of rights regarding social security law and labour law.

However, there is little evidence on the specific size of these issues in relation to platform work, and its exact policy and legal implications. More research and analysis of the regulatory implications are needed, while at the same time, with the creation of the

[445] See di Torella and McLellan (2018)

[446] For example, cleaners may or may not choose their clients, and often have prolonged and repeated contact with them. This is quite different from food couriers, who do not choose their clients, almost never have repeat clients, and usually meet them for only a few moments. The potential for discriminatory behaviour from clients is different for these types of platform work, and in end effect, the liability and accountability of the three parties may be unclear, and certainly differs a great deal between platforms.

[447] 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)

[448] 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

ELA, the EU is preparing for tighter enforcement of the rules. Therefore, **the challenge of cross-border platform work is indeterminate at EU level at this time.**

7.5 Summary: challenges that are not fully addressed at national/EU level

Overall, the most important challenges remain largely unaddressed. However, some countries and the EU have responded to some of the challenges that the emergence of platform work poses. This means that there are still important policy gaps that could be addressed at national or EU level.

The work-related challenges are largely or intermediately unaddressed. Indeed, there are no national and limited EU responses addressing the autonomy in the allocation of tasks and in work organisation, while a minority of the countries addressed the physical environment and surveillance, direction and performance appraisal.

The employment-related challenges are in general more addressed at national level than the work-related challenges. However, except for contracts that are somewhat addressed, they are largely unaddressed.

Similarly, the social relations-related challenges are also largely unaddressed, except for undeclared work that is somewhat addressed.

Finally, the most important 'other' challenges form the exception, as they are to some extent, or largely, addressed. Indeed, with the creation of the ELA, cross-border work is especially addressed and data protection is addressed overall with the introduction of the GDPR.

In addressing the remaining challenges at national or EU level, the specificity to platform work is also important. Indeed, the platform-specific challenges can be addressed solely for platform work, whereas, because of their nature, other challenges require a more general approach that also addresses other forms of non-standard work or general labour market policies.

In interpreting the findings, a few additional caveats are noteworthy.

First, the extent to which a challenge is addressed does not imply that either the countries or the EU are necessarily responsible or competent for addressing the challenge. Therefore, 'not addressed' does not necessarily imply that Member States or the EU should do more to address a given challenge. Moreover, the assessed EU tools are primarily applicable to those who are contractually 'workers', which excludes most platform workers outright.

Second, certain aspects, such as enforceability, are not considered in the gap analysis. This is an area where future research would be very valuable, especially as new legislative tools come into force, have time to make an impact,[449] and new enforcement mechanisms[450] become more active.

Third, the gap analysis is necessarily a simplification of several very complex topics. Platform work is still developing and changing rapidly. Moreover, most responses are relatively recently introduced, which makes it difficult to assess their effectiveness, as the measures have not been fully established.

Table 21: Summary of gap analysis

[449] For example, the Directive on transparent and predictable working conditions replacing the Written Statement Directive must be transposed by 1 August 2022.

[450] Particularly the European Labour Authority and European Platform tackling undeclared work.

Not addressed	Partially addressed	Largely addresed	Fully addressed	Indeterminate

Specificity of challenges	Significant challenges	Countries w/responses (all national, regional, local)			EU-level (selected tools)			Remaining gap?
		total	on-location	online	Personal scope	Relevance	Adequacy	
Platform work	Autonomy in the allocation of tasks	0%	0%	0%	W			YES
	Physical environment	33%	33%	0%	W			YES
	Surveillance, direction & performance appraisal	20%	17%	3%				Indeterminate
	Contracts	23%	13%	3%				Indeterminate
	Determination of employer	37%	37%	0%	W, SE*			YES
	Data protection	7%	7%	0%	NP			NO
Non-standard work	Employment status	37%	37%	0%	W, SE*			YES
	Representation	50%	50%	3%	W			YES
	Social protection	43%	30%	3%	W, SE			YES
	Earnings	40%	40%	3%	W			YES
	Working time	27%	23%	3%	W			YES
	Undeclared work	20%	7%	0%				Indeterminate
General labour market	Autonomy in work organisation	0%	0%	0%	N/A	N/A	N/A	Indeterminate
	Adverse social behaviour	10%	10%	0%	W, SE			YES
	Cross-border work	10%	10%	0%				Indeterminate

Source: authors' elaboration.

Note: The P2B and the GDPR could significantly influence these assessments, especially for those deemed indeterminate.

N/A: Assessed tools are not applicable to the challenge, **NP**: natural persons, **W**: workers, **SE**: self-employed.

***** Workers and self-employed are both in the personal scope of legislation, but certain additional limitations may effectively limit which platform workers are covered.

****** Determination of employer is assessed in tandem with employment status.

8. CONCLUSIONS AND POLICY POINTERS

The ongoing digital transformation is changing both the content and nature of jobs. The greater availability, acceptance and capacity of digital technologies, together with a large degree of automation, allows for differently organised work. Digitalisation can drive down transaction costs, which allows for smaller jobs (units of work) to be intermediated separately. When the intermediation of these paid jobs between the worker and the client is performed by an online platform, it is considered platform work.

This study provides an evidence-based analysis of the challenges faced by platform workers with regard to their working conditions and social protection, as well as proposed or implemented policy and legal responses to those challenges at national and EU level, and to inform policymakers at EU level about the need for legislative or non-legislative action.

We have assessed the extent to which platform work is a challenge to the working conditions and social protection of platform workers, as well as how stakeholders have responded at national level. Additionally, we have analysed the extent to which national and EU tools and responses address these challenges. The findings reveal significant diversity in types and prevalence of platform work, and the extent to which it remains a challenge, across the EU28, Norway and Iceland. However, a number of commonalities can be generalised.

8.1 Takeaways from the gap analysis

Challenges specific to personal transportation and (food) delivery platforms are widespread, as are national responses. 55% of all responses target one of these two platform types specifically, and even more target other forms of lower-skilled on-location platform work, for example domestic cleaners. Taken together, these responses tend to focus on employment status, collective bargaining rights, health and safety, and social protection.[451] The significance of personal transportation and food delivery platforms is remarkable, given the diversity of platform work in Europe, and data suggesting that these only represent a minority of platform workers.[452] One could conclude that, at present, personal transportation and delivery platforms are more problematic, or simply more visible and better known. At the very least, stakeholders are active on the issue.

Few responses target working conditions and social protection for platform work as a whole – this reflects the responses from surveyed experts, who remarked on the lack of awareness of online platform workers. Many responses that do target platform work more broadly are simply enquiries or information-gathering efforts. In many cases these target broader groups such as non-standard workers in general. The more concrete tools and responses relevant for all platform workers often relate to taxation and social protection provision for all or a portion of non-standard workers, or only to the minority of platform workers who are employees. Only one piece of national legislation currently in force[453] specifically addresses the working conditions and social protection of all platform workers.

Many responses are driven by grassroots organisations of platform workers or social partners, either explicitly so, or from behind the scenes. This might indicate that a gap is more likely in contexts where self-employed platform workers face more

[451] Many focus on competition law as well. However, these are not so much about the working conditions of platform workers. Instead, they are largely cases of the taxi lobbies ensuring that platforms do not have an unfair advantage.

[452] See discussion of COLLEEM data in Section 3.3.2

[453] Specifically, the French Loi El Khomri: Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels [Law on work, modernising social dialogue and securing career paths] (2016-1088, 8.08.2016)

barriers to organise and collectively bargain**.** Furthermore, the high number of responses targeting representation may indicate that national authorities prefer empowering platform workers to organise, rather than resorting to top-down measures such as new legislation. However, these bottom-up responses are not as concrete as top-down measures, as they often rely on the continued cooperation of platforms, platform workers, and social partners.

Most of the assessed EU-level tools only marginally impact most of the challenges for platform workers. In most cases this is a direct result of employment status. Most significant challenges identified in the study are, from a legal perspective, either directly connected with the determination of labour market status,[454] or they concern the scope and substance of the labour and social rights.[455] The latter category of challenges are in fact secondary challenges, as they largely derive from the classification of a platform worker as a 'worker' or as self-employed. Simply stated, most assessed EU tools afford much less protection to the self-employed than to employees.

An important exception is for self-employed platform workers who fall under the P2B Regulation. While the P2B is limited in scope to a specific type of platform, it regulates certain basic aspects of the relationship between the platform and the self-employed platform worker (business user), who delivers products or services to private clients. In this way, it may have important implications for a number of challenges, especially those specific to platform work and related to algorithmic management.

In short, the gap analysis suggests that:

1) **except for data protection, no significant challenges are entirely resolved by national or EU tools and responses;**
2) **most significant challenges for on-location platform workers are at least somewhat addressed by national responses;**
3) **national responses do very little to address the challenges of online platform workers;**
4) **in spite of recent positive steps, the assessed EU tools do little to address the working conditions and social protection challenges of (self-employed) platform workers at present.**

8.2 General conclusions and policy implications

Conclusion 1: Many significant challenges related to platform work are not new.

The most discussed and addressed challenges related to platform work include employment status, representation, and social protection. Each of these issues appear in other forms of non-standard work. Put another way, platform work has brought challenges corresponding to non-standard work to the fore, especially through highly visible platforms.

National responses for these platform workers' challenges often focus on a single platform or a single service provided by platforms. Responses usually have minimal systemic effect because they do not intend to address the roots of the challenge (e.g. little or no right to collective bargaining, and reduced access to social protection for the self-employed).

Traditional means of enforcing regulations in the area of working conditions, such as labour inspections, are less suitable for platform work. Among other reasons, this is

[454] Including determination of the employer, allocation of tasks, autonomy in work organisation, surveillance, direction and performance appraisal. These can even serve as criteria to determine factual employment status.

[455] Particularly contracts, earnings, working time, physical environment, social protection and collective rights.

because the work does not typically occur in the physical premises of an employer. While this is usually the case for platform work, it is a growing phenomenon in standard employment relationships as well, bearing in mind the increasing possibilities to telework from home or elsewhere.

Policy implications: Addressing certain challenges of working conditions and social protection for platform work is very difficult without consideration of broader frameworks.

Properly addressing challenges such as employment status, representation, and social protection likely requires broader changes to the labour and social protection frameworks of non-standard work. Specific examples include increasing the level of social protection afforded to the self-employed, as promoted by the Council Recommendation on access to social protection for workers and the self-employed.[456] An additional strategy would be to support stronger enforcement of rules for non-standard workers such as platform workers, for example clarifying and increasing labour inspectorates' authority to inspect platform work for legal compliance. The ELA could play a role in this regard, particularly given platform work's frequent cross-border nature and relevance to undeclared work. Furthermore, the European Commission could clarify cartel and competition law as it applies to platform workers. This would help ensure that platform workers can negotiate collective agreements with platforms, or collectively or individually bargain with clients, regardless of employment status. Lastly, increasing the labour protections applicable to the self-employed would benefit platform workers.

Conclusion 2: Employment status remains a core challenge at national and EU level.

The legal concepts of 'worker' or employee at EU and national level are not entirely clear and consistent. The assessment is based on the factual relationship between the platform and the platform worker, or the client and the platform worker. These assessments are subject to interpretation and rapid change.

Determining whether platform workers are genuine or bogus self-employed is frequently challenging. National judiciaries' interpretation of the employment is not unanimous and sometimes contradictory within and between Member States. At the same time CJEU case law is only gradually evolving and clarifying the concept of 'worker'. These legal developments are slow and seem to continuously lag behind the fast-changing business practices characterising platform work. Some platforms seem to operate at the margins between self-employed and employee, adjusting practices to maximise control over platform workers without unequivocally assuming the role of employers.

CJEU case law has defined the 'worker' concept with a central focus on the subordination requirement, the economic and genuine character of the service and its remuneration requirement. CJEU case law limited the scope of marginal and ancillary work activities which fall outside its remit, whereas the new TPWC Directive has greatly reduced the possibility to exclude small-scale work from its scope, especially when it concerns unpredictable work. However, platform work may still be slipping through these requirements, as do other forms of non-standard work performed in economic dependency, and the Directive only covers specific working conditions. Unless Member States widen the concept of employee or introduce a rebuttable presumption on the employment status of platform workers,[457] platforms are likely to continue or expand their reliance on labour from self-employed individuals. Reclassification of individual cases may happen on the basis of EU law or on national legislation, but it is unlikely that

[456] Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019/C 387/01 of 15.11.2019

[457] Through legislation or through case law.

this will drastically reverse the main trend. Actions aimed at protecting self-employed platform workers who are economically dependent on the platforms to ensure some minimum standards as to their 'working conditions' seem advisable.

Policy implications: The EU and Member States should consider clarifying which platform practices are incompatible with self-employment for platform workers.

This is of particular relevance for platform workers who are economically dependent on work assignments, while subject to surveillance, assessments and payments steered by the platform, and without control over the price of their services and work organisation. Such platform workers are more vulnerable and in a weaker position relative to the platform: a market failure that can be addressed by legislative measures or collective bargaining.

The goal of legislative measures could be to *ensure that contractually self-employed platform workers are also factually self-employed* (e.g. prevent bogus self-employment). This can be accomplished by reclassifying bogus self-employed platform workers, but also if certain platforms better align their practices with self-employment, for example refraining from non-compete clauses and allowing platform workers to set their own prices and determine time and manner of service provision for themselves.

Conclusion 3: Some challenges most specific to platform work are some of the least resolved.

The defining feature of platform work is the digital mode of intermediation between platform worker and client. Challenges related to intermediation (e.g. surveillance, performance appraisal, data protection, and intransparent contracts) appear to be more difficult to address or are at least less known, particularly at national level, where very few responses exist. One reason is the complexity in algorithmic management, which requires significant technical expertise to understand, and the difficulty in observing how algorithmic management works. The cross-border dimension also presents an enforcement challenge for individual countries, as platforms are likely to be based beyond national jurisdiction. Nevertheless, digital intermediation, transparency, and data usage are challenges that continue to grow in and beyond platform work.

Policy implications: EU authorities should consider further action on digital intermediation and algorithmic management, both within and without platform work.

These issues have begun to be addressed by new pieces of EU legislation, including the GDPR, the P2B Regulation,[458] and the TPWC Directive (EU) 2019/1152. These tools are found to address highly relevant challenges for platform workers.

While the actual impact of these tools on platform work is not yet fully clear, it appears many or most platform workers would only marginally benefit, with the exception of the GDPR. EU authorities may consider further modifications or clarifications to these tools, together with enhanced enforcement in the Member States, to ensure more platform workers benefit from them.

Conclusion 4: Online platform workers remain less known and protected, especially by national responses.

Online platform workers face a number of working conditions challenges, including non-payment, intransparent and disadvantageous terms and conditions, and a lack of dispute

[458] Regulation (EU) 2019/1150 of the European Parliament and the Council on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57–79)

resolution. Many of these are highly specific to platform work, rather than more broadly shared with non-standard forms of work.

Very few national responses address online platform workers, either with specific measures, or by addressing all forms of platform work holistically. This is not unexpected for several reasons. First, online platform work is more likely to take place in the worker's home and is thus more difficult to control. Second, online platform work is often inherently cross-border, as clients use these platforms to outsource work where labour is cheaper. In many cases, the platform, platform worker, and client are based in different countries, which makes it much more difficult to resolve disputes and enforce rights for platform workers.

Nevertheless, online forms of platform work deserve further attention. Online platform work is likely to be most prevalent in Europe,[459] and most experts interviewed for this research expect online forms of platform work to experience particular growth well into the future. Their cross-border nature makes these platforms a more natural fit for EU action.

Policy implications: More attention is required for online platform work at both national and EU level.

However, cross-border considerations make EU-level action particularly appropriate for online platform work. An especially important way to reduce vulnerabilities for online platform workers is to address algorithmic management and digital intermediation.

Conclusion 5: Our understanding of platform work remains limited because of insufficient data.

Despite many efforts to assess the size, prevalence, and expected evolution of platform work, a lack of reliable, comprehensive data on platform work has a negative effect on evidence-based policymaking and informed public discourse. No standard definition exists for platform work, which contributes to confusion and inaction.

Policy implications: Additional action to gather data on platform work would be helpful for informed policymaking.

This requires a standard definition of platform work, which could draw from the definition of 'business user' used in the P2B Regulation.[460] Drawing the definition from existing legislation also creates the benefit of additional coherence between EU policies.

One strategy is to incorporate further questions on platform work into labour surveys at national and EU level. This can build on the work of the COLLEEM surveys, which generated very useful data for a portion of Member States. An even stronger option would be to require platforms to provide certain data to an appropriate EU authority, which would help ensure coordinated and effective data collection in spite of the cross-border nature of platform work. National level authorities could require platforms to register with them, which may help ensure adequate data collection and avoid undeclared work.

Conclusion 6: Many national responses and EU tools are too new to adequately assess their impact on platform workers.

[459] See Section 3.3.2

[460] Three necessary changes would be: 1) specifying that a platform worker provides services, rather than services and goods, 2) broadening the scope of client to include natural persons, and 3) expanding the scope beyond 'pure' online intermediation services.

Many national and EU-level responses are very new, and therefore it is difficult to observe concrete impacts. At national and regional level, legislation in France,[461] Italy,[462] and Portugal[463] may have a significant impact on the well-being of platform workers. Ongoing court battles may result in some platform workers being declared employees, and thus receiving further protection under labour and social law.

At EU level, new regulations may also prove to apply to how platforms use the data of platform workers. The GDPR and the P2B could significantly impact the working conditions and social protection of platform workers. However, it remains for a pending court case[464] to clarify if platform workers' data is protected 'personal data'. It is not yet clear how many platform workers will benefit from the P2B.

Policy implications: New national and EU legislation identified by this study should be closely monitored to understand if they are sufficient, or if amendments or entirely new instruments are required.

At EU level, both the P2B and the GDPR provide new ways to observe the 'black box of intermediation' which is characteristic of platform work. This transparency could allow new insight into the internal workings of platforms and may prove key to improving working conditions for platform workers. Two existing groups may be well-positioned to monitor the evolution of these tools and advise the European Commission: the Expert group to the EU Observatory on the Online Platform Economy, and the high-level expert group on the impact of the digital transformation on EU labour markets.

Conclusion 7: Voluntary and non-legislative actions have produced positive effects for some platform workers.

Certain platforms have cooperated among themselves and with social partners to commit to decent working conditions. Examples in Germany[465] and Italy[466] demonstrate that such arrangements can be put into practice and improve conditions for online and on-location forms of platform work.

Policy implications: National and EU authorities may consider organising and promoting voluntary and non-legislative actions.

One possibility is to introduce a dispute-handling mechanism for platform workers. The P2B could provide the basis for such a tool for platforms, or an EU mechanism could be created. The EU and Member States could also consider promoting voluntary codes of conduct or charters for platforms to commit to ensuring fair working conditions.

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[461] Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels [Law on work, modernising social dialogue and securing career paths] (2016-1088, 8.08.2016)

[462] Decreto Legge 3 settembre 2019, n. 101, contenente "Misure urgenti per la tutela del lavoro e la risoluzione di crisi aziendali"

[463] Lei n.º 45/2018 Regime jurídico da atividade de transporte individual e remunerado de passageiros em veículos descaracterizados a partir de plataforma eletrónica [Legal regime of individual transport activity and paid passengers in unregistered vehicles from electronic platforms] (Diário da República, 1.ª série — N.º 154 10.08.2018, p. 3972-3980)

[464] See Judgment of the Court of Appeal London, Case (2018) EWCA civ 2748, Uber BV vs Yaseen Aslam, James Farrar and others, (29.12.2018). Uber is currently challenging the decision of the Court of Appeal before the Supreme Court but the 4 drivers filed a new lawsuit against Uber for withholding data which in their opinion is contravening Article 15 of the GDPR; See also https://www.citylab.com/transportation/2019/08/uber-drivers-lawsuit-personal-data-ride-hailing-gig-economy/594232/

[465] Deutsche Crowdsourcing Verband [German Crowdsourcing Association], see Section 5

[466] Carta dei diritti fondamentali del lavoro digitale nel contesto urbano [Charter of fundamental rights of digital work in the urban context], see Section 5

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Reflection Paper 1[467]

Platform workers, competition law and the question of antitrust limits to collective bargaining

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1. Introduction

Platform workers, defined as workers providing work through, on or intermediated by online platforms, are often classified by the platforms as self-employed.[468] Provided they are genuine self-employed, platform workers fall outside the protective scope of EU labour and social protection legislation applicable to workers. Indeed, labour law has always distinguished between workers (employees) and the self-employed to delimit its scope of application (the so-called 'binary system'). While workers (employees) benefit from the whole range of labour rights – including collective labour rights – the self-employed are excluded.

The hybrid nature characterising the labour market status of platform workers is posing challenges regarding the application of existing legal frameworks.[469] While some platform workers are genuine self-employed, working independently and for their own account, others may work under contractual relationships which share the very characteristics that are typical of employment relationships, such as being subjected to the directional power and/or an economic dependency of the employer (platform or end user), which often unilaterally determines the terms and conditions of work without any scope for negotiation.[470]

The legal uncertainty about the employment or labour market status of platform workers has raised questions regarding their right to freely associate, lawfully negotiate and conclude collective agreements under EU legislation.[471] Under EU competition law, any agreement between undertakings which affects the conditions under which these undertakings compete with one another may fall under the cartel prohibition as it may be detrimental to other businesses and consumers. When self-employed individuals directly carry out an economic activity on a market, they are considered as undertakings, and hence fall within the remit of EU competition rules.

The primary objective of EU competition law has always been to protect consumers from anti-competitive agreements and practices between undertakings, such as price fixing or market sharing. The Court of Justice of the European Union (CJEU), however, made an important exception to the application of EU competition law when the latter contradicts social policy and labour law objectives aimed at protecting workers and the working conditions through collective agreements. Collective agreements between organisations representing employers and workers fall outside the scope of competition law.[472] This exception may also apply if the individual service providers are in fact 'false self-employed'.[473,474]

[468] False self-employed or bogus self-employed who meet the criteria established by CJEU case law for defining the concept of worker, are, however, covered by the EU labour legislation as workers irrespective of their classification under national law or under the contract concluded between the platform and the platform worker.

[469] European Commission (2016), *A European Agenda for the Collaborative Economy*. COM (2016) 356, p. 2

[470] Studies reveal that platforms often determine the mode of operations and work organisation, set the selling prices, closely monitor the performance of platform workers by means of rates and reviews provided by the customers and are able to deactivate the workers' account if the satisfaction rate is not maintained or if they do not accept a certain number of requests, etc.

[471] Under the ECHR, the freedom of association is covered by its Article 11 and has been extended also to self-employed by the ECHR in Vörður Ólafsson v Iceland, Case No. 20161/06 (17/07/2010). The freedom of association includes the right to bargain collectively and to enter into collective agreements.

[472] Case C-67/96 *Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie* [1999] ECR I-5751

[473] Case C-413/13 *FNV Kunsten Informatie en Media v Staat der Nederlanden* [2015] 4 CMLR 1

Hence, the CJEU, while retaining the prohibition on collective bargaining for genuine self-employed when this is affecting free trade and fair competition, opened the possibility of granting such rights to the 'false' self-employed. However, as the legal labour market classification of platform workers is depending on a case-by-case basis, uncertainty remains as to whether platform workers can lawfully exercise collective rights and bargaining.

In this context of legal uncertainty, initiatives of various nature have been adopted at the national level to provide platform workers, or more generally, dependent self-employed workers, with collective rights and better working conditions. These initiatives include the adoption of legislation; negotiation and conclusion of collective agreements by trade unions; other trade union initiatives; initiatives from grass-root organisations; and action taken by the platforms.

This paper focuses on the right to collective bargaining for platform workers. It will proceed as follows: First, it looks at CJEU case law in relation to the right to collective bargaining for the workers and the self-employed, the limits posed by competition law and its relevance for platform workers. Second, it presents the various initiatives taken at the national level to provide platform workers, or more generally, dependent self-employed workers, with collective rights as was reported by the national experts under the main study during 2019. Finally, it draws preliminary conclusions on the relation between antitrust limits to collective bargaining and its application to platform workers with the aim to clarify whether platform workers can lawfully bargain collectively and conclude collective agreements.

2. EU competition law and the right to collective bargaining

2.1. The Albany case: The right to collective bargaining for employees as an 'exception-to-the-rule' approach

The key anti-cartel provisions relevant for this paper are enshrined in Article 101 of the Treaty on the Functioning of the European Union (TFEU) which prohibits under (1) 'all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market and in particular those which (a) directly or indirectly fix purchase or selling prices or any other trading conditions' […] and which declares under (2) 'all such agreements or decisions automatically void'. The main purpose of competition law is to protect consumers from agreements and practices which affect the competitive process to their detriment.

The CJEU had the opportunity to discuss the application of Article 101 (1) TFEU to collective agreements in the landmark case C-67/96, Albany.[475] In the case at issue the CJEU was asked whether the decision taken by employers' and employees' organisations, in the context of a collective agreement in the textile sector, to set up in that sector a single sectoral pension fund responsible for managing a supplementary pension scheme and to request the public authorities to make affiliation of that fund compulsory, was to be considered an agreement between undertakings and thus contrary to Article 101 (1) TFEU. The Court, after explaining the reason why the collective agreement could potentially infringe Article 101 TFEU, recalled that the Treaties do not only ensure that competition in the internal market is not distorted, but they also pursue social policy objectives. Thus, 'the activities of the Community are to include not only a "system

[474] Although the CJEU did not typify the false self-employed workers (FSE) as a category entitled to collective rights, it confirmed that all employees, including those bogusly classified under different labels, are entitled to collective bargaining rights.

[475] Judgment of the CJEU, Case C-67/96, *Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie* [21.09.1999] ECR I-5751

ensuring that competition in the internal market is not distorted" but also "a policy in the social sphere"'.[476]

The Court went on by stating that:

'It is beyond question that certain restrictions of competition are inherent in collective agreements between organisations representing employers and workers. However, the social policy objectives pursued by such agreements would be seriously undermined if management and labour were subject to Article [101 (1) TFEU] of the Treaty when seeking jointly to adopt measures to improve conditions of work and employment.

It therefore follows from an interpretation of the provisions of the Treaty as a whole which is both effective and consistent that agreements concluded in the context of collective negotiations between management and labour in pursuit of such objectives must, by virtue of their nature and purpose, be regarded as falling outside the scope of Article [101 (1) TFEU] of the Treaty.'[477]

Hence, by following an 'exception-to-the-rule' approach,[478] the CJEU held that an agreement can be excluded from the scope of application of Article 101 (1) TFEU and consequently not be contravening EU competition law, as long as it fulfils two cumulative conditions, namely: 1) being concluded by management (employer) and labour (workers' representative bodies); and 2) aiming at improving work and employment conditions. In the case at issue, the Court concluded that as the agreement was entered into by employers' and employees' organisations and sought to guarantee a certain level of pension to all workers in a given sector – thus contributing directly to improving their working conditions as it concerned the workers' remuneration – it did not fall within the scope of 101 (1) TFEU.[479]

Relevance for platform workers

The *Albany* case is relevant for platform workers as it implies that ***platform workers who are considered as 'workers' under EU law*** are excluded from the application of the antitrust provisions of EU competition law and, consequently, permitted to conclude collective agreements with the employing platforms (or end users) when the *Albany* conditions are met. The recourse to collective action and the possibility to conclude collective agreements is crucial for platform workers who often work under precarious working conditions. Bargaining collectively to obtain fundamental labour rights complementing those that are guaranteed by EU and national labour legislation, such as minimum wage, insurance against accidents at work, protection against unfair dismissal, working time and rest periods, is all the more relevant for platform workers. Collective bargaining allows them to adapt working conditions to their needs in a more flexible and pragmatic and fair manner, than that entailed by changing labour law.[480]

[476] Case 67/96 para. 54

[477] Case 67/96 paras. 59-60

[478] Countouris, N., De Stefano, V. (2019). *New trade union strategies for new forms of employment*, ETUC, Brussels. P.52; Aloisi, A., Gramano, E. (2018). *Non-standard work and collective rights. Legal challenges, practical difficulties, and successful responses*. Conference paper. P. 13

[479] Case 67/96 paras. 63-64

[480] OECD (2019), OECD Employment Outlook 2019: The Future of Work, OECD Publishing, Paris. P. 192

2.2. The FNV Kunsten Informatie case: the right to collective bargaining for 'false self-employed' persons

In another landmark case, C-413/13, FNV Kunsten Informatie,[481] the CJEU addressed the compatibility with competition law of a collective agreement applying to both employees and the self-employed. The Court had to decide whether a collective agreement negotiated by the Dutch trade union FNV setting minimum fees not only for substitute musicians hired under an employment contract but also for substitute musicians performing the same work as that of employees under a contract for services was compatible with Article 101 (1) TFEU.

Referring to the Albany case, the Court recalled that an agreement concluded by management and labour and improving work and employment conditions is excluded from the application of Article 101 (1) TFEU. However, it considered that an organisation acting on behalf of self-employed persons 'does not act as a trade union association and therefore as a social partner but as an association of undertakings.'[482] It follows that:

'A provision of a collective labour agreement, such as that at issue in the main proceedings, in so far as it was concluded by an employees' organisation in the name, and on behalf, of the self-employed services providers who are its members, does not constitute the result of a collective negotiation between employers and employees, and cannot be excluded, by reason of its nature, from the scope of Article 101 (1) TFEU'.[483] Therefore such an agreement has to respect EU competition rules.

However, the Court added that:

'That finding cannot prevent such a provision of a collective labour agreement from being regarded also as the result of dialogue between management and labour if the service providers, in the name and on behalf of whom the trade union negotiated, are in fact 'false self-employed', that is to say, service providers in a situation comparable to that of employees.'[484]

In order to understand whether a worker is in fact false self-employed, the Court made the following two considerations.

First, it stated that 'the term "employee" for the purpose of EU law must itself be defined according to objective criteria that characterize the employment relationship' and recalled that, according to settled case law, 'the essential feature of that relationship is that for a certain period of time one person performs services for and under the direction of another person in return for which he receives remuneration'.[485] It is important to point out that, although the reference to the criterion of 'direction' could be misread as limiting the right to collective bargaining to workers who would be classified as 'employees' under a strict test of control and subordination,[486] the CJEU interpreted such criterion broadly. In Danosa,[487] the Court stated that 'the fact that [a person] is a member of the Board of Directors of a capital company is not enough in itself to rule out the possibility that she was in a relationship of subordination to that company'.[488] The fact that Ms Danosa received a remuneration, reported on her management to the

[481] Case C-413/13 *FNV Kunsten Informatie en Media v Staat der Nederlanden* [2015] 4 CMLR 1

[482] C-413/13, para 28

[483] C-413/13, paras 28-30

[484] C-413/13, para 31

[485] C-413/13, para 34

[486] Countouris, N., De Stefano, V. (2019). *New trade union strategies for new forms of employment*. ETUC. Brussels. p. 48

[487] Case C-232/09 *Dita Danosa v LKB Līzings SIA* [2011] 2 CMLR 2

[488] *Ibidem*, para. 47

supervisory body which was able to dismiss her and, thus, took decisions contrary to her wishes, where all circumstances that pointed to the existence of an employment relation under EU law.[489]

Second, the Court clarified that a service provider can 'lose' its undertaking status 'if he does not determine independently his own conduct on the market, but is entirely dependent on his principal, because he does not bear any of the financial or commercial risks arising out of the latter's activity and operates as an auxiliary within the principal's undertaking'.[490] This consideration, rather than focusing on the traditional EU law test for a self-employed service provider to be considered as a worker, considers the situation where a service provider would not be regarded any longer as an undertaking in view of their dependence on another undertaking.[491] However, it is not clear whether these service providers would be regarded as workers for the purpose of EU labour law in such case. Interesting to note is that the criterion relating to the dependency of workers and reference to the financial and commercial risk sharing and auxiliary capacity has been used by the CJEU in the context of competition law and not in cases that concern EU labour legislation.[492]

The Court added 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'.[493]

Relevance for platform workers

The FNV case is relevant for platform workers because it extends the right to collective bargaining to false self-employed service providers, who are to be considered as workers under EU legislation even if in practice they may be classified as self-employed by the platforms and/or by national legislation. Collective agreements concluded by or on behalf of platform workers who are either clearly workers, or can prove that they should be considered as such since they are actually false self-employed service providers vis-à-vis the platform, do not fall under the application of Article 101 (1) TFEU if they meet the cumulative conditions as set out in the Albany case. In spite of the fact that the CJEU confirmed its opinion in the FNV case that self-employed are to be considered as undertakings and that the Treaties do not contain provisions encouraging self-employed service providers to open up a dialogue with the employers to which they provide services and hence to conclude collective agreements with a view to improving their terms of employment and working conditions,[494] it equally recognised that false self-employed service providers should be considered as workers. In doing so, the CJEU seems to have paved the way for recognising the freedom of association and collective bargaining of many platform workers who are in such a situation. The rapid development of platform work and businesses with an increasing variety of platform work implementation forms may imply that a growing number of platform workers would become classified as false self-employed or as workers and be entitled to collective labour rights.

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[489] *Ibidem*.

[490] C-413/13, para 33

[491] Countouris, N., De Stefano, V. (2019). *New trade union strategies for new forms of employment*. ETUC.Brussels. P.49

[492] Risak, M., Dullinger, The Concept of Worker, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3190912 ; Kountouris, The Concept of Worker in EU Labour Law, ILJ 2018, 192; Ioannis Lianos, Nicola Countouris, Valerio de Stefano, Re- thinking the competition law/labour law interaction: Promoting a fairer labour market, (2019) 10(3) European Labour Law Journal 291 https://www.ucl.ac.uk/cles/sites/cles/files/cles_3-2019.pdf

[493] C-413/13, para. 35

[494] C-413/13, para. 29

The FNV ruling, however, pointed to the need to consider and evaluate the factual circumstances of the individual cases when establishing whether a self-employed service provider is an undertaking or not, using thereby some criteria or indices: the fact that the self-employed person is (not) determining independently their own conduct on the market, is (not) sharing any financial or commercial risk, is working or not as an auxiliary within the business' operations and has (or not) a relation of subordination with the entity they provides their services to. The assessment and decision on the labour market status and a possible (re)classification into 'false self-employed' are as a consequence subject to an interpretation by national judges. As our main study has revealed, assessments and classifications of platform workers who were contracted as self-employed service providers by platforms have different outcomes in EU countries but also national courts and individual judges have different opinions on sometimes identical cases, demonstrating the complexity that is characteristic of platform businesses' operations.[495] Legal uncertainty may therefore still persist and increase the possibility for arbitrary decisions. A platform worker who is contracted as a self-employed service provider by the platform, does not have an own business structure nor have workers under employment contracts and is working under precarious working and/or payment conditions, may still be considered to be an independent self-employed person, in which case they are excluded from the collective bargaining rights under EU competition legislation, unlike what would be the case if they were to be reclassified as a false self-employed.

Furthermore, the CJEU's position on the right of the self-employed to collective bargaining as expressed and confirmed in the FNV case when referring to the absence of provisions in the Treaties and a legal basis, appears to be mainly motivated by the overall objective as enshrined in the Treaties, for example, to ensure free trade and fair competition in the internal market. Provided this overall goal is maintained, the question remains as to whether self-employed platform workers can set up associations and conclude agreements with the platforms on other aspects of their collaboration which are not affecting competition.

The main study revealed that several other conditions of the contractual relationships between the platforms and the platform workers are of high concern to the latter, such as the algorithmic management and automated decision-making based on digital applications that affect the work allocation, organisation and evaluation, the right to have access to the personal and behavioural data that are being collected and processed by the platforms, the right to receive an adequate and timely explanation in cases of a temporary suspension or (more) definite closure of the accounts, or the right to have access to clients' evaluations on the platform worker's performance and to the ratings or ranking of the latter. In those instances, collective agreements between self-employed platform workers and platforms may not be regarded from an EU competition law perspective as having a restrictive effect on the competitive process.

3. Collective rights for platform workers in Member States

The majority of the countries which were analysed under the main study (EU28 as well as Norway and Iceland) pointed to EU competition law as an obstacle for self-employed platform workers to organise and bargain collectively on matters related to their working conditions including pay rates. Such agreements, which are concluded between self-employed and/or between self-employed and the companies which are buying the

[495] The assessment of the labour market status of platform workers is dependent on the facts and concrete 'working' relationship that exists between the platform and the platform worker and is hence connected with the assessment of the type of services that the platforms are providing in relation to the platform worker: are these services pure online information society services facilitating the direct transactions between the self-employed platform workers and ultimate consumers (as is envisaged by the recent P2B Regulation) or not, and are these services operational tools facilitating work allocation and organisation within a wider business the platform is operating.

services rendered by the self-employed, face the risk of being considered an infringement of EU competition law.

However, whereas legal uncertainty exists about the employment status qualification of many platform workers – whether to be considered as self-employed, 'false self-employed', or employees – uncertainty also exists about the application of competition law and the prohibition of collective bargaining for platform workers. In this context, several initiatives have been taken in the national contexts with the aim to provide platform workers, or more generally, dependent self-employed workers, with collective rights and better working conditions. Such initiatives are particularly addressed to platform workers in the transport, food delivery and cleaning sectors, thus, work performed on-location and generally requiring lower skills.

Initiatives that have been reported on by the national experts include the adoption of statutory legislation extending collective rights to platform workers or, more generally, to economically dependent self-employed workers (see Section 3.1); the negotiation and conclusion of collective agreements by trade unions and/or other organisations (see Section 3.2); other trade union initiatives (see Section 3.3); grassroot organisations' initiatives (see Section 3.4); and action taken by the platforms themselves (see Section 3.5).[496]

3.1 Statutory law

In Germany, Spain, Italy, Ireland, France, and Sweden legislation exists or has been adopted to extend collective rights to platform workers or, more generally, to some categories of self-employed.

In Germany, the Collective Agreement Act ('Tarifvertragsgesetz'), which regulates the rights and obligations of collective bargaining parties and establishes rules on the content, conclusion and termination of employment relationships, extends the right to collective bargaining to employee-like persons ('arbeitnehmeraehnliche person'), namely economically dependent self-employed workers (Section 12a (1)).[497]

Similarly, in Spain, Law 20 of 11 July 2007 on the Self-Employed Workers' Statute, gives economically dependent self-employed workers ('trabajador autonomo economicamente dependiente' or 'TRADE') the right to collective bargaining. Article 19 entitled 'Basic collective rights' establishes that 'self-employed workers are entitled to: a) join a trade or business association of their choice, b) affiliate and find professional associations specific to self-employed workers without prior authorization, and c) exercise the collective action to defend their professional interests'.[498] Article 13 of the Self-Employed Workers' Statute sets out rules on the conclusion of collective agreements for economically dependent self-employed workers (see box below).

Article 13 of the Spanish Statute of Autonomous Work

Article 13 entitled 'Agreements of professional interest' of the Self-Employed Workers' Statute establishes as follows: 1) the agreements of professional interest set forth in Section 2 of Article 3 of this Law, concluded between the associations or unions representing the economically dependent self-employed workers and the companies for which they carry out their activity, may establish the conditions of the time and place of execution of said activity, as well as other general contracting conditions. In any case,

[496] One or more of the mentioned initiatives have been reported in 20 of the countries analysed, namely Austria, Belgium, the Czechia, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, and the UK.

[497] The German Collective Agreement Act as modified on 12 December 2018 is available at: https://www.gesetze-im-internet.de/tvg/

[498] The Spanish Law 20 of 11 July 2007 on the Self-Employed Workers' Statute is available at: https://www.boe.es/buscar/act.php?id=BOE-A-2007-13409

the agreements of professional interest will observe the limits and conditions established in the antitrust legislation; 2) agreements of professional interest must be concluded in writing; 3) the clauses of the agreements of professional interest contrary to legal provisions of necessary law will be considered null and void; and 4) the agreements of professional interest will be agreed under the provisions of the Civil Code. The personal efficacy of these agreements will be limited to the signatory parties and, where appropriate, to the members of self-employed associations or signatory unions that have expressly given their consent to do so.

In Ireland, the Competition Act was amended on 7 June 2017 to clarify the notions of 'false self-employed' and 'fully dependent self-employed' and exempt them from the prohibition of collective bargaining and collective agreements.[499]

France is the first country in the European context which adopted statutory legislation to provide social security and individual and collective rights specifically to self-employed platform workers. The El Khomri Act of 8 August 2016 on work, modernisation of social dialogue, and on securing career paths added Articles L. 7341-1 to L. 7342-6 to the Labour Code whereby providing self-employed platform workers who are in an economically and technically dependent relationship with an online platform with the right to (i) insurance for accidents at work, (ii) professional training and validation of their work experience, and (iii) constitute a trade union, be a member of a union, and take collective action (see box below).[500,501]

The French case: El Khomri law and the right to collective rights for dependent platform workers

Articles L. 7341-1 to L. 7342-6 of the El Khomri Act apply to 'self-employed persons using, for the exercise of their professional activity, one or more electronic contacting platforms […]' (Article L. 7341-1). Article L. 7341-1 must be read in combination with Article L. 7342-1 which further specifies that 'when the platform determines the characteristics of the service provided or the good sold and fixes its price, it has, with respect to the workers concerned, a social responsibility […].' Thus, although Article L. 7341-1 would make the reader think that the provisions apply to all platform workers who are (genuine) self-employed, Article L. 7342-1 specifies that the provisions only apply to those workers deprived of the distinctive prerogatives of an entrepreneur, i.e. that of setting prices and terms and conditions of service provision.[502] It has been argued that even though the French legislator has never established an intermediate category between employees and the self-employed, these provisions can be seen as an attempt to create a third status without actually naming it.

The El Khomri Act accords platform workers social security and labour rights. With regard to social security and individual labour rights, the legislator introduced a corporate social responsibility of the platform by establishing that (i) when the worker takes out insurance covering the risk of industrial accidents or adheres to the voluntary insurance for accidents at work, the platform bears its contribution, within the limit of a ceiling set by decree (Articles L. 7342-2); and (ii) the worker has the right of access to continuing vocational training the contribution of which is covered by the platform, and

[499] The Irish Competition Act as amended on 7 June 2017 is available at: https://data.oireachtas.ie/ie/oireachtas/act/2017/12/eng/enacted/a1217.pdf

[500] The El Khomri Act of 8 August 2016 on work, modernisation of social dialogue, and on securing career paths is available at: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032983213&categorieLien=id

[501] Garben, S. (2019). Tackling social disruption in the online platform economy. Shifting the narrative to the benefits of (EU) regulation. FEPS Policy Paper. P. 11

[502] Daugareilh, I. (2019). France. In Daugareilh,I.; Degryse, C.; & Pochet, P. (eds) *The platform economy and social law : Key issues in comparative perspective.* ETUI, Working Paper 2019.10, p. 51

the right to obtain, at his request, validation of the working experience with the platform (Article L. 7342-3).

With regard to collective labour rights, the legislator accords platform workers' very similar collective rights to those of employees. This has been considered as 'a first step toward a common labour law, as advocated by part of the French doctrine'.[503]

L. 7342-5 of the El Khomri Act accords the right to collective action to platform workers by establishing that 'Movements aimed at collectively refusing to provide their services organised by workers in defence of their occupational claims may neither incur their contractual liability – except in cases of their abusive use – nor constitute grounds for terminating their business relations with the platforms nor justify measures penalising them in the exercise of their work'. This provision seems to give platform workers the right to strike. It is important to stress that the right to strike in France is a constitutional right guaranteed to all workers regardless of their employment status which has been exercised by such self-employed workers as truck driver, lawyers, etc.[504] However, this is the first time that the French legislator recognised it as a particular category of self-employed workers.[505]

Article L. 7342-6 of the El Khomri Act additionally establishes that 'the workers mentioned in Article L. 7341-1 enjoy the right to form a trade union, to join it and to assert through it their collective interests'. Although the legislator has not expressly mentioned the right to collective bargaining, it is debatable whether the wording 'assert through it their collective interests' also encompasses the right to collective bargaining. It could be assumed that given the sensitiveness of the issue derived from the fact that competition law prohibits collective bargaining for the self-employed and the fact that platform workers find themselves in a grey area between employment and self-employment, the legislator decided to remain silent on this point,[506] thereby neither explicitly allowing collective bargaining for platform workers nor excluding it.

The French *Loi d'Orientation des Mobilités* (LOM),[507] currently being discussed in Parliament, confers to platform workers in the transport sector who are self-employed additional rights such as the right to disconnect from the app without retaliation and the right to refuse to take a ride. It also introduces information obligations on the platform such as information on the distance of each ride and the minimum price. Platforms are also encouraged to adopt (voluntary) charters dealing with working conditions, social protection, fees, and so on. It has been argued that France is moving towards a third employment status in between self-employment and employee in a similar way to the workers' status in the United Kingdom or the TRADE in Spain.

The Italian region of Lazio adopted regional legislation on 20 March 2019 which aims to regulate remuneration, health and safety, and social protection of all types of platform workers regardless of their employment status. It is unclear whether the law also covers collective rights. However, the Lazio regional legislation is worth mentioning as it purportedly has an exceedingly broad scope. It applies to all platform workers throughout all market sectors and covers many working conditions and social protection challenges that platform workers face. In spite of its novel approach in covering the

[503] *Ibidem*.

[504] *Ibidem*, p. 56

[505] *Ibidem*, p. 56

[506] Countouris, N., De Stefano, V. (2019). *New trade union strategies for new forms of employment*. ETUC. Brussels, p. 45

[507] The text of the LOM legislative proposal is available at: https://www.legifrance.gouv.fr/affichLoiPreparation.do?idDocument=JORFDOLE000037646678&type=general&typeLoi=proj&legislature=15. This was adopted in the first reading by the Senate on 2 April 2019, by the National Assembly on 28 June 2019 in its first reading and by a new reading of the National Assembly on 17 September 2019.

working conditions and social protection rights of all platform workers, the regional legislation is likely to be challenged on the grounds of its constitutionality given its broad scope.

Finally, the Swedish labour law contains the notion of a 'third or in-between category' of workers for the purpose of collective labour law.[508] Labour law extends to dependent contractors the right to collectively organise and conclude collective agreements. However, in light of the expanding concept of employee, this concept has lost its practical importance. Most workers that were meant to be covered by this concept at the time of legislation are now considered employees.

For reason of completeness, it is worth mentioning that Slovenia and the UK also have an intermediate category of workers, but workers defined as such do not benefit from collective rights.

3.2 Collective agreements

In Germany, Denmark, Italy, Spain, Norway and the UK collective agreements for platform workers have been negotiated by different bodies, such as traditional trade unions, local administrations, and non-profit organisations.

In Germany, the trade union NGG (German Food, Beverages, and Catering trade union) organised the Köln-based workers of Foodora, a food delivery platform, into a works council which then concluded a collective agreement with Foodora. The agreement applies to Foodora platform workers operating in the city of Köln, and provides for better working conditions and better remuneration.

In Denmark, trade unions concluded two remarkable collective agreements with two different platforms. In 2018, the 3F trade union entered into a company-level collective agreement with Hilfr.dk, a Danish platform providing cleaning services, which granted platform workers minimum wage, sick pay, holiday allowance, a contribution to their pension, and protection against dismissal.[509] The agreement applies to the platform's employed platform workers. It tries to bestow an employer role to the platform in a number of ways. Basically, the agreement leaves it up to the platform worker to choose whether to work for the platform as an employee, in which case the collective agreement applies, or as a self-employed person, in which case the agreement would not apply.[510] The agreement also sets out a sort of rebuttable presumption of 'employment' after the self-employed platform worker has performed 100 hours of work for the platform. In such a case the collective agreement applies unless the platform worker opts out. Platform workers who wish to transfer their status from self-employed to employee before having worked 100 hours must notify Hilfr. In this case, the collective agreement will cover new work assignments agreed after the time of notification. Platform workers who wish to remain self-employed after 100 hours' work facilitated by the platform must inform Hilfr of this decision well in advance of the expiry of the 100 hours. They will then not obtain employee status and will not be covered by the collective agreement. It has been stressed that although the worker is hired by Hilfr as 'employee', his employment

[508] Section 1 paragraph 2 of the 1976 Co-determination Act states that: 'the term "employee" as used in this Act shall also include any person who performs work for another and is not thereby employed by that other person but who occupies a position of essentially the same nature as that of an employee. In such circumstances, the person for whose benefit the work is performed shall be deemed to be an employer.' These are the so-called dependent contractors ('quasi-employees'). See e.g. M. Rönnmar, 'The personal scope of Labour law and the notion of employee in Sweden', https://www.jil.go.jp/english/events/documents/clls04_ronnmar2.pdf, p.162.

[509] The text of the collective agreement concluded between Hilfr and 3F entered into force on 1 August 2018 is available at: https://www.3f.dk/fagforening/fag/rengoeringsassistent-(privatansat)/overenskomsten-hilfr.

[510] The Danish expert completing the questionnaire for the '*Study to gather evidence on the working conditions of platform worker*' financed by the European Commission in the year 2018-2019 (*VT/2018/032*) reported that the collective agreement was met with some scepticism by legal scholars, in particular with regard to the choice left with the platform worker as to whether remain self-employed or to be covered by the agreement, as this is in contrast with the tradition of a collective agreement to be mandatory for the worker.

status could still be legally challenged. The agreement entered into force on 1 August 2018 and expired on 31 July 2019. The agreement was prolonged until the end of October and negotiations are currently ongoing in order to expand its scope to all digital platforms concerned with cleaning services for private households (see box below).

The Danish case: Collective agreement between 3F and Hilfr.dk

In a conversation with the political communication advisor of 3F held in Brussels in July 2019, the numerous challenges they encountered to reach such a collective agreement with Hilfr.dk were explained. First, as it was the government that encouraged the parties to enter into negotiations, there was a lack of mandate from platform workers. This raised problems in terms of legal representation as trade unions have always found their legitimacy to collectively bargain on the basis of the mandate received from their members. Second, before being able to negotiate, they faced the difficulty of understanding Hilfr's platform work model and detect the challenges it posed for the workers performing cleaning services. Third, they had to come up with new strategies to avoid the violation of competition law. Thus, as applying the collective agreement to self-employed platform workers would have infringed competition law, they decided to leave it up to the worker to decide whether to work for the platform as employee or self-employed. The collective agreement applies only in the case where they decide to work as an employee.

That same year, the Danish HK Privat trade union and Vocaali.com, a platform providing online interpretation services, entered into two collective agreements, one applying to the platform's employed workers and the other to the platform's self-employed workers. The former agreement extends to future workers employed by the platform under the Danish Salaried Employees Act for Trade, Knowledge and Service. At the same time, Voocali and HK Privat concluded a freelance agreement applying to freelance interpreters (self-employed) who find assignments through Voocali's platform.[511] The latter agreement covers all work that is either performed at Voocali's platform, or which Voocali provides for performance for a user business, and which is not covered by the salaried employees' collective agreement for trade, knowledge and service. The agreement addresses several aspects of the working conditions. Most notably, it introduces hourly minimum fees by establishing that services provided through Voocali may not underprice the general salary level for permanently employed interpreters on the Danish labour market. The Danish national expert involved under the main study indicated that the price setting of the agreement may infringe antitrust laws.

The Danish case: Collective agreement between HK and Voocali.com

A consultant of HK explained that they entered into a collective agreement with Voocali.com not knowing the status of the workers.[512] Indeed, HK and Voocali.com acknowledged that freelance interpreters working for Voocali.com are in a grey area between employment and self-employment, and that, regardless of their employment status they needed some protection.

In 2018 the municipality of Bologna in Italy promoted a Charter of Fundamental Rights for Platform Work which was signed by trade unions, delivery riders' autonomous representatives and some platforms operating in the city of Bologna. Acknowledging that platform work raises questions about the application of existing legal frameworks as it blurs the boundaries between employment and self-employment, the Charter establishes minimum protection standards that apply to all platform workers operating within the territory of the metropolitan city of Bologna, independent of their employment status. The Charter sets out a fixed hourly rate in line with the sectorial minimum wage,

[511] The freelancer collective agreement concluded by the Danish HK Privat trade union and Vocaali.com is available at: https://www.hk.dk/-/media/dokumenter/raad-og-stoette-v2/freelancer/agreementvoocalihkprivat.pdf?la=da&hash=6236D45EE264C88EC87062E5193A18EFC645D7E7

[512] The focus group was held in Copenhagen on 7 June 2019.

compensation for overtime, holiday, and conditions in case the work is performed under special weather, the right to organise and the right to industrial action.

Also in Italy, the 2018 national collective bargaining agreement in the logistics service sector applies to delivery riders who are classified as employees. The collective agreement sets out, among others, minimum hourly pay, working time, rest period, insurance for damage against third parties, and rules on the reputational system.

In Spain, the non-profit association ASO riders supported by the trade union UGT and Deliveroo, a food delivery platform, concluded a collective agreement setting minimum rates of pay, daily/weekly rest periods, holiday and annual leave, and so on.

In early 2019 the British courier company Hermes negotiated a new agreement in the UK with the GMB union, offering its drivers a guaranteed minimum wage and holiday pay.

Finally, in Norway, Foodora riders organised by the Norwegian Transport Union are currently negotiating a collective agreement demanding, among others, hourly rate, equipment reimbursement and increased working time.

3.3 Other trade union initiatives

Traditional trade unions have undertaken a number of actions and initiatives that aim to organise and represent platform workers. Most often, because of the limits imposed by competition law, these initiatives do not aim at collective bargaining but to provide information and awareness raising among platform workers. Such initiatives have been reported in Austria, Belgium, Denmark, Germany, Spain, Finland, France, Italy, Netherlands, Norway, Poland, Portugal, Sweden, Slovenia, and the UK. More information on selected initiatives is provided in the box below.

In Germany, IG Metall (the German Metalworkers' Union) created the Platform 'Fair Crowd Work' which collects information about crowdwork, app-based work, and other platform-based work from the perspective of workers and unions. It also offers ratings of working conditions on different online labour platforms based on surveys with workers. The platform was joined by the Austrian Chamber of Employees (Arbeiterkammer) and the Austrian Trade Union Federation (Österreichischer Gewerkschaftsbund) in 2016. Similarly, in Spain, in 2018 platform workers affiliated to the traditional union UGT (Unión General de Trabajadores) created – in collaboration with the union – a new and specific platform for information, vindication, organisation and denunciation for platform workers.[513]

A network of trade unions in Austria, Denmark, Germany, Sweden, the UK and the US issued a declaration on platform-based work in Frankfurt on 6 December 2016.[514] The declaration calls for transnational cooperation between workers, worker organisations, platform clients, platform operators, and regulators to ensure fair working conditions and worker participation in governance in the growing world of digital labour platforms.

3.4 Grassroot organisations' initiatives

Besides traditional trade unions initiatives, grassroot organisations' initiatives have emerged in several countries. These are bottom-up initiatives organised by the platform workers themselves with or without the support of trade unions. Grassroots organisations aim to make their demands heard in different ways, such as through strikes, boycotts, petitions, mass disconnection, flash-mobs, and reaching out to the media. Such initiatives have been taken in Belgium, Croatia, Estonia, Finland, France, Germany, Spain, Italy, Ireland, the Netherlands, Slovakia, and the UK.

[513] See: http://turespuestasindical.es/

[514] The Frankfurt Declaration signed in Frankfurt on 6 December 2016 is available at: https://www.igmetall.de/download/20161214_Frankfurt_Paper_on_Platform_Based_Work_EN_b939ef89f7e5f3a639cd6a1a930feffd8f55cecb.pdf

In Belgium, riders organised themselves into the 'Koeriers Kollektief', an autonomous organisation through which they have been advocating for their rights. In Estonia, around 100 Bolt (former Taxify) drivers went on strike in 2018 over a new pay deal. The drivers called the strike 'an evening coffee'. The same drivers went on another strike later that year which they called 'rush-hour coffee'. These bottom-up initiatives were organised by platform workers through social media. In Finland, the couriers of food delivery platforms Foodora and Wolt have created the website 'justice4couriers'[515] to share their work experiences, raise awareness and campaign to improve their working conditions. In France, Uber drivers created the VTC association to negotiate over wage and working conditions. At the same time, delivery workers have created the delivery workers cooperative (CLAP) aimed at raising awareness and negotiating with delivery platforms on working conditions and social protection. Drivers and couriers have also organised a number of strikes and demonstrations. In Spain, the 'Riders por Derechos' organisation and ASO riders, representing respectively Deliveroo riders and riders of different platforms, have been advocating for better working conditions. Platform workers in collaboration with the trade union UGT have also created an online platform for information and organisation purposes. In Italy, a number of boycotts, mass disconnection and flash mobs have taken place in Bologna, Milan, and Turin. Riders in the city of Bologna have set up a union, Rider Union Bologna, through which they organise and campaign for better working conditions. The sharing of information and work experience is facilitated by the Rider Union Bologna Facebook group page. In Ireland, Dublin-based Deliveroo riders have been protesting and campaigning for better working conditions, in particular for better health and safety at work. In the Netherlands, Deliveroo riders with the support of FNV created the Riders Union FNV which has been advocating for the rights of meal-deliverers. In Slovakia, Bolt drivers are organised through social networks such as Facebook and Whatsapp to give voice to their mutual problems and dissatisfactions. In the UK, Deliveroo riders with the involvement of GMB and IWGB trade unions campaign for better working conditions. Grassroot organisations were also reported in Germany and Croatia.

3.5 Action by platforms

A number of initiatives have also been taken by the platforms themselves. For example, in Germany, the crowdsourcing platform Verbant agreed to abide by certain principles as laid down by the Crowdsourcing Code of Conduct. In Belgium, since 2015 Uber has collaborated with insurance companies to provide its workers with insurance against accidents at work. Similarly, in Romania, Uber collaborated with AXA insurance company to cover workers against accidents at work as well as providing them with maternity and parental leave. Uber also launched an AXA insurance in Portugal for drivers and food delivery workers. In the United Kingdom, Uber and Deliveroo have set up a rider accident insurance scheme. In the Netherlands, Deliveroo created a rider forum to give all riders a formal voice within Deliveroo. Finally, in Czechia, companies operating in the platform economy have created the Czech Sharing Economy Association (Česká asociace sdílené ekonomiky (ČASE)) aimed at negotiating with the authorities on fair working conditions for business.

Some preliminary conclusions

This reflection paper examined the relation between antitrust limits to the freedom of association, collective action and collective bargaining rights and their application to platform workers with the aim of bringing more clarity as to whether platform workers are permitted to collectively organise themselves and conclude collective agreements with the platforms on their working conditions and social protection.

Under EU competition legislation self-employed persons are considered as undertakings, and organisations of self-employed as associations of undertakings. Agreements between undertakings which may affect the conditions of trade and competition, such as

[515] https://www.justice4couriers.fi/

(collective) agreements concluded between self-employed and undertakings, which rely on the services of these self-employed, may be considered as anticompetitive and thus restrictive of competition.

In its Albany judgment the CJEU ruled that collective agreements which are concluded between employers and workers' representatives are excluded from the application of the antitrust provisions of EU competition law when they are aimed at improving the working conditions. The CJEU argued that the social policy objectives which are enshrined in the Treaties would be seriously undermined if management and labour were subject to Article [101 (1) TFEU] of the Treaty when seeking jointly to adopt measures to improve conditions of work and employment. The Albany cumulative conditions require (1) an agreement between employers and the workers' representative bodies concluded through collective bargaining and (2) with the specific aim to improve the working conditions of the workers.

The CJEU ruled furthermore in the FNV judgment that collective agreements which are concluded by or on behalf of false self-employed do not fall under the application of Article 101 (1) TFEU and are not to be considered as a distortion of competition law provided both conditions of the Albany case are met. 'False self-employed' are service providers who, in spite of being contracted or considered by national law or by the contracting parties as self-employed, 'are in a situation comparable to that of employees' as they are not independently determining their own conduct on the market and are dependent on their principal. The subordination requirement which is the main determining factor for establishing an employment relationship under EU law may be seen, at least in the context of EU competition legislation, as being complemented by a criterion relating to economic dependency.[516]

In practice many individual platform workers are in a situation of subordination and/or dependency and act without any commercial risk sharing and/or as a mere auxiliary of the platform's operations. On the basis of the above-mentioned criteria and taking into account the factual circumstances, an assessment will be made by national courts to determine whether these platform workers can be considered as false or bogus self-employed and have recourse to the ruling of the CJEU and initiate collective action with a view to improve their working conditions.

The key question as to whether platform workers can collectively negotiate with the platforms on their working conditions is hence closely related to their labour market classification as either workers or self-employed. Platform workers who are employed by platforms and have the status of workers can conclude collective agreements with the platforms on their working conditions including on matters that concern their wages or supplementary pension schemes, whereas, because of competition rules, self-employed platform workers in principle cannot, unless they are considered to be false self-employed in accordance with the CJEU rulings.

The ultimate assessment is done by national courts and based on the factual circumstances leaving room for interpretation, which in turn is leading to varying outcomes between countries but also between courts within the same national jurisdiction. Legal uncertainty is likely to persist given the continuously developing new modes of operation in the platform business. The labour market classification of the platform worker is moreover intrinsically connected with the interpretation of the type of services the platforms are providing. Are the latter purely online information society services intermediating between the self-employed and their clients, and hence facilitating direct transactions between the self-employed and their clients (in the meaning of the recent P2B Regulation), or are they part of the entire business of the platform and merely an operational instrument serving the internal work allocation and organisation?

[516] Case C-413/13 *FNV Kunsten Informatie en Media v Staat der Nederlanden* [2015] 4 CMLR 1, par. 33.

The question remains as to whether (genuine) self-employed can set up associations, take collective action and negotiate with the platforms on their working conditions, a right that has been recognised by international labour law.[517]

The CJEU has thus far maintained its position that the self-employed are to be considered as undertakings and that the Treaties do not contain provisions encouraging self-employed service providers to open up a dialogue with the employers for which they provide services with a view to improving their terms of employment and working conditions. A self-employed platform worker even when working in a precarious situation falls within this remit. The Court's position was, however, embedded into a specific reasoning and in the context of EU free competition rules as one of the cornerstones of the internal market.

Agreements on matters that concern the terms and conditions laying down the rules for the organisation of work, depending on the circumstances of each case, may be considered as not restrictive of competition – as opposed to price fixing. Therefore, in certain situations, the self-employed or their associations could engage in collective negotiations with the platforms and conclude agreements to that end.

The results of the main study reveal that some of the high priority concerns of platform workers may not be related to competition issues but are often concerned with the way platforms are operating, such as the algorithmic management and on-line applications for the work allocation, organisation and evaluation.

It follows that self-employed platform workers may set up associations and conclude agreements with the platforms on issues that relate to the personal or behavioural data protection of the platform workers, on the right to receive an adequate explanation from platforms in cases of a suspension or termination of the account or on the way that their work is being evaluated by customers.

The issue of collective labour rights for platform workers has been at the centre of policy debate in a limited number of Member States. Some Member States have initiated legislation granting collective rights to (some categories of) dependent self-employed whereas in others collective agreements have been concluded between some platforms and the platform workers (including self-employed) often concerned with basic working conditions and rights such as the protection against accidents at work, minimum pay rates, working time and rest periods. Traditional trade unions in Member States are (still) cautiously but increasingly embracing the needs of platform workers, whereas the latter often take recourse to collective action in situations of conflict. Platform workers have created representative organisations in a few Member States. The mentioned actions taken by Member States vary to a large extent and there is no uniform approach when collective labour rights for platform workers are concerned.

In summary, platform workers, regardless of their labour market classification as workers or self-employed, may for certain purposes set up associations and conclude ('collective') agreements as long as these agreements do not prevent, restrict or distort competition. The lawfulness of collective agreements which may prevent or restrict

[517] According to the ILO Committee, the right to collective bargaining extends to self-employed workers, and ILO member States are expected 'to take the necessary measures to: (i) ensure that "self-employed" workers, such as heavy goods vehicle drivers, fully enjoy freedom of association rights, in particular the right to join the organizations of their own choosing; (ii) to hold consultations to this end with all the parties involved with the aim of finding a mutually acceptable solution so as to ensure that workers who are self-employed could fully enjoy trade union rights under Conventions Nos 87 and 98 for the purpose of furthering and defending their interest, including by the means of collective bargaining; and (iii) in consultation with the social partners concerned, to identify the particularities of self-employed workers that have a bearing on collective bargaining so as to develop specific collective bargaining mechanisms relevant to self-employed workers, if appropriate'. See ILO. 2018. Freedom of Association Compilation of decisions of the Committee on Freedom of Association. Sixth edition (2018), Geneva, ILO, para. 387; See also A. Perulli, 'Subordinate, Autonomous an Economically Dependent Work: A Comparative Analysis of Selected European Countries', in G. Casale (Ed.), The Employment Relationship. A Comparative Overview (Hart, ILO, 2011), p. 159.

competition, for example when they concern minimum payment rates or the setting up of supplementary social protection schemes, depends on whether they cover only workers or also include self-employed service providers. The CJEU considered collective agreements as perfectly legitimate and not in breach of the EU competition rules when they have been the result of social dialogue between employers and worker's representatives with the aim of improving the working conditions of the workers. The CJEU included in this reasoning also the 'false' self-employed – those who, on the basis of their actual working conditions are in a situation comparable to workers – as they cannot be considered as undertakings because of their dependency on another undertaking. As a consequence, many platform workers who are in such a situation are likely to be regarded as 'false self-employed' service providers.

However, since the assessment is done by national judges and based on an interpretation, legal uncertainty may yet persist. EU antitrust legislation and CJEU rulings still seem to restrict the possibilities for independent self-employed platform workers to conclude agreements on matters that may prevent or distort free competition even when they are single self-employed and perform their services in very precarious situations. In the context of platform business practices, which is characterised by the often extrapolated differences in power relations between the platform business and the individual platform worker, unilateral enforcement of conditions of pay and service provision by the platforms with no degree of contract negotiation, and cooperation based on (semi)automated decision-making with no human interventions, *access to the right to associate and right to conclude agreements that concern at least minimum payment conditions and labour and social protection levels for individual self-employed platform workers appear to be an essential social policy consideration that would deserve the necessary attention from policymakers*.

Reflection Paper 2

The GDPR[518] and its potential role for the (data) protection of platform workers[519]

[518] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

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1. Algorithmic management in the platform economy

1.1 General considerations

Algorithmic management is a diverse set of technological tools and techniques to remotely manage workforces.[520] It is a system where algorithms rather than humans decide how business operations should be performed. The app itself seems to be the main management tool.[521] It relies heavily on data collection of workers to enable automated or semi-automated decision-making.[522] Many actors in the platform economy are some of the most prominent developers of this novel algorithmic management.

Platforms exert continuous digital monitoring through massive data collection of platform workers' behaviour, which may be fed into automated performance reports and work allocation decisions. For instance, drivers' movements are tracked using GPS location. Moreover, the actual working time, break habits, speed of performance and aggregated income are tracked through the digital apps.

Another component of this algorithmic management are the rating and review systems, which result in a ranking of the individual platform workers. The assignment of the next task by the app's algorithms is for several platform workers directly linked to the ratings and reviews they receive from the customers through the platforms' digital applications. What's more, bad scores or a performance below the algorithm's standards can lead to a lower ranking in the pick-order for new assignments and in some cases to the temporary or permanent exclusion ('deactivation' or delisting) of the platform worker from the platform.

Algorithmic management is also characterised by the growing use of 'nudges' and penalties to indirectly incentivise worker behaviour. For example, an Uber driver may receive notifications to travel to certain surge areas where there is higher passenger demand without the certainty of an effective assignment. Similarly, the Uber app shows at all times how much money the driver has made, accompanied by a graphic of an engine gauge with a needle that comes tantalisingly close to, but is still short of, the euro sign.[523] All this aims to shape the platform workers' behaviour.

In a sense, these management techniques do not dramatically differ from the techniques used by traditional employers. Traditional employers also collect data from their employees and exert control through monitoring their job performance. However, the platform economy is posing some new challenges.

First, the gathering of (personal) data is done through complex computational processes. The subsequent enormous data flow and constant digital monitoring allows for a deep intrusiveness into the lives of platform workers which is in no way comparable to traditional working relationships.

Second, the decisions which are based on this data collection and processing are mostly implemented by automated or semi-automated processes with minimal human involvement. In a way, it dehumanises the decisions that affect employees negatively and makes it easier for managers to behave ruthlessly as they do not feel the direct effect of the decision. It allows them to hide behind the argument that they did not make the decision; the algorithm did.[524]

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[520] V. DE STEFANO, "Negotiating the algorithm: automation, artificial intelligence and labour protection", https://ssrn.com/abstract=3178233, 38 p

[521] M. IVANOVA, J. BRONOWICKA, E. KOCHER and A. DEGNER, "The app as a boss? Control and autonomy in Application-based management", Work in Progress interdisziplinärer Arbeitsforschung Nr. 2 2018, 28 p

[522] A. MATEESCU and A. NGUYEN, "Algorithmic management in the workplace", Data & Society 2019, https://datasociety.net/wp-content/uploads/2019/02/DS_Algorithmic_Management_Explainer.pdf

[523] N. SCHEIBER, "How Uber uses psychological tricks to push its drivers' buttons", *New York Times,* 10 p

[524] *See* also in this regard: T. Simonite, *When Your Boss Is an Uber Algorithm*, MIT Technology Review (2015), www.technologyreview.com/s/543946/when-your-boss-is-an-uber-algorithm

Third, platforms rely heavily on rating and review systems as a source for decisions about the deployment of platform workers for new assignments and for the suspension and termination of the cooperation. In other words, platforms analyse ratings and reviews to measure the professional reputation of each worker in order to exercise the typical employer's power of decision and control. This reliance on the customers to inform decisions which affect platform workers signifies an important departure from traditional structures which relied on middle management to direct workers.[525] It is basically a form of outsourcing the performance evaluation of platform workers to the customers.[526]

1.2 Impact on employment or labour market status classification

The far-reaching intrusiveness in terms of access to personal data, digital monitoring and subsequent power and control over platform workers has important implications on the employment status classification.

As we know, many platform workers are considered, certainly by the platforms themselves, to be self-employed. The situation of a genuine self-employed platform worker is characterised (but not exhaustively) by the lack of subordination towards their employer. The question stands as to whether this extensive digital monitoring and (semi)automated evaluations can be equated to some sort of subordination or direction[527] as the latter is one of the key criteria that determine the status of a worker in accordance with the prevailing EU legislation and CJEU case law.[528]

It is clear by now that the platforms face a conundrum. On the one hand, the platform economy deals with platform workers who perform their work out of the direct sight of their supervisors. Platforms have a dispersed workforce and no common physical workplace, and if they want to maintain maximal labour performance, they use extensive control through the app as elaborated above.[529] On the other hand, platforms consider the platform workers as self-employed, which does not fit the reality of the extensive control and supervision which is applied by the platforms.

Irrespective of the previous considerations, to make a solid assessment of the employment status, one needs to have adequate insight into the workings of the algorithm and more specifically which personal data from the platform worker it collects and what it in turn does with these data. This is exactly where the GDPR comes into play.

2. The GDPR and its implications for platform workers

The GDPR provides the platform worker with a range of rights concerning their personal data. These rights are inter alia **the right to be informed** if, how, why, and by whom your data are being processed; **the right to access** and get a copy of your data; the right to have your data corrected or supplemented if they are inaccurate or incomplete; the right to have your data deleted or erased; the right to limit or restrict how your data are used; **the right to data portability**; the right to object to the processing of your data; and **the right not to be subject to automated decisions, without human**

[525] A. MATEESCU and A. NGUYEN, "Algorithmic management in the workplace", Data & Society 2019, https://datasociety.net/wp-content/uploads/2019/02/DS_Algorithmic_Management_Explainer.pdf

[526] The direct evaluation by customers of the performance of platform workers is often used by platforms to support their thesis that their role is limited to mere online intermediation services and/or that platform workers are independent self-employed who directly deliver their services to the customers.

[527] A. INGRAO, "Assessment of feedback in the On-demand era" in Working in digital and smart organizations, Springer International, Switzerland, 2018, 93-111

[528] See Section 3 of the main study concerning the analysis of the EU labour and social protection legislation and their relevance for platform work.

[529] M. IVANOVA, J. BRONOWICKA, E. KOCHER and A. DEGNER, "The app as a boss? Control and autonomy in Application-based management", Work in Progress interdisziplinärer Arbeitsforschung Nr. 2 2018, 28 p

involvement, where it would produce legal effects concerning the platform worker or 'similarly significantly affecting' the platform worker.

As this is a reflection paper, and space is limited, we will focus on two issues which are especially relevant for platform workers. First, we will discuss the *right to access to personal data* for the platform worker, followed by an analysis of whether the GDPR provides a right to an explanation of a decision by the platform which (legally) affects them. Second, we will analyse whether the GDPR provides a comprehensive *right to data portability* for the platform worker.

To conclude, we will briefly explore the potentially discriminatory biases underlying the algorithms that are making decisions which affect platform workers.

2.1 The right to access personal data (Article 15 GDPR)

In a landmark test case of the right of access to personal data in relation to platform workers, four current and former Uber drivers are taking legal actions against the ride-hailing app in the UK.[530] The drivers claim that Uber has breached their right by declining access to their personal data Uber holds on them (Article 15 GDPR). This personal data includes:

1) duration of time logged on to the platform (this would enable calculation of potential pay owed to the drivers in holiday pay and minimum wage back pay claims);
2) GPS data (this would enable drivers to calculate total operating costs including revenue and non-revenue earning time and distance);
3) performance data including suspensions from the platform (this would enable drivers to understand how their performance was monitored and managed over time);
4) profiling information and details on how such data is processed, for example in automated dispatch decision-making (this would enable drivers to understand how they were profiled by the firm and the impact this may have had on the quality, quantity and value of work offered over time);
5) trip ratings (drivers are dismissed when their rating dips below a certain level, so the ability to legitimately appeal unfair ratings on a journey-by-journey basis can be crucial to maintaining employment).

This case shows how important a considerable right of access to personal data is for platform workers and for the protection of their working conditions. Article 15 GDPR clearly provides a right of access to personal data. However, what exactly constitutes 'personal data'? The GDPR defines personal data as *'any information relating to an identified or identifiable natural person ("data subject") […]'.*[531] The definition includes '*any information',* and thus the term personal data should be as broadly interpreted as possible. This is also suggested in CJEU case law. In *Nowak*[532] the Court has clarified that:

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[530] See also the Judgment of the Court of Appeal London, Case (2018) EWCA civ 2748, Uber BV vs Yaseen Aslam, James Farrar and others, (29.12.2018). Uber is currently challenging the decision of the Court of Appeal before the Supreme Court but the four drivers filed a new lawsuit against Uber for withholding data which in their opinion is contravening Article 15 of the GDPR; See also https://www.citylab.com/transportation/2019/08/uber-drivers-lawsuit-personal-data-ride-hailing-gig-economy/594232/

[531] Article 4 (1), Regulation of the European Parliament and of the Council n. 2016/679, 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

[532] Judgment of the CJEU, Case C-434/16, *Nowak v Data Protection Commissioner, (09.02.2018),* http://curia.europa.eu/juris/document/document.jsf?text=&docid=198059&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=6035599

33 As the Court has held previously, the scope of Directive 95/46 is very wide and the personal data covered by that directive is varied (judgment of 7 May 2009, Rijkeboer, C-553/07, EU:C:2009:293, paragraph 59 and the case-law cited).

*34 The use of the expression 'any information' in the definition of the concept of 'personal data', within Article 2(a) of Directive 95/46, reflects the aim of the EU legislature to assign **a wide scope to that concept**, which is not restricted to information that is sensitive or private, but potentially encompasses all kinds of information, not only objective but also subjective, in the form of opinions and assessments, provided that it 'relates' to the data subject.*

*35 As regards the latter condition, it is satisfied **where the information, by reason of its content, purpose or effect, is linked to a particular person**.*

The final sentence explaining when the data 'relates' to the data subject is especially crucial for the right to access for platform workers. In its Opinion 4/2007[533] on the concept of personal data, the Article 29 Data Protection Working Party[534] has (more or less) clarified what it entails. In general terms, information can be considered to 'relate' to an individual when it is *about* that individual. Concretely, the data 'relates' to an individual when there is a 'content' element **or** a 'purpose' element **or** a 'result' element present. These three elements must be considered as alternative conditions, and not as cumulative ones.

- The 'content' element is present in those cases where information is given about a particular person, irrespective of any purpose on the side of the data controller or the impact of that information on the data subject.
- The 'purpose' element can be considered to exist when the data are likely to be used, taking into account all the circumstances surrounding the precise case, with the purpose to evaluate, treat in a certain way or influence the status or behaviour of an individual.
- The 'result' element is present whenever the data can be considered to have an impact on a certain person's rights and interests, taking into account all the circumstances surrounding the precise case. It is sufficient if the individual may be treated differently from other persons as a result of the processing of such data.

We may conclude that the scope of personal data is very broad. In our opinion, this encompasses all the claims made by the four Uber drivers in the current UK landmark test case. It is also in line with the general aim of the GDPR, which intends to give more power to the data subject as regards personal data. Indeed, Article 4(1) GDPR defines 'personal data' as any information relating to an identified or identifiable natural person. An identifiable person is one who can be identified, **directly or indirectly,** in particular by reference to an identifier.[535] The broad definition of 'personal data can in turn restore to a certain extent the power balance between the platform and the platform worker, which can only influence their working conditions in a positive way.[536]

[533] Opinion 4/2007 of the Article 29 Data Protection Working Party on the concept of personal data, https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2007/wp136_en.pdf

[534] As of 25 May 2018 the Article 29 Working Party ceased to exist and has been replaced by the European Data Protection Board (EDPB).

[535] These identifiers are inter alia: a name, an identification number, location data, an online identifier, or to one or more factors specific to the specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

[536] In this context reference can be made to the new Regulation (EU) 2019/1150 which applies to online intermediation services business users can rely on with a view to conclude direct transactions with consumers and which requires that the providers of the online intermediation services have terms and conditions that specify in plain and intelligible language which personal and other data are collected and processed by the providers as well as the description of the contractual and technical access (article 9).

However, this does not imply that issues of enforcement won't arise in the future. Platforms are logically very reluctant to interpret 'personal data' as broad as they should despite case law of the CJEU and Opinion 4/2007 of the Article 29 Data Protection Working Party. Moreover, it may very well be that divergent interpretations of 'personal data' among different Member States' DPAs will lead to divergent enforcement levels, again despite the broad and uniform interpretation provided by CJEU case law, the Article 29 Working Party and Article 4(1) GDPR. Indeed, the GDPR experts consulted for this study pointed out that in practice these different interpretations across Member States' data protection acts DPAs) are a real issue. An update of the European Data Protection Board of the Guidelines on the concept of personal data could prove helpful in this regard.

The P2B Regulation

The new Regulation (EU) 2019/1150[537] may have some relevance in this context as it obliges providers of online intermediation services to include in their terms and conditions a description of the technical and contractual access, or absence thereof, of business users to any personal data or other data, or both, which business users or consumers provide for the use of the online intermediation services concerned or which are generated through the provision of those services (Article 9). The Regulation applies only to some very specific types of platform work, for example pure information society services aimed at the conclusion of a direct transaction between the business user (as for instance a self-employed platform worker providing services) and the consumer, and hence not to platform businesses where the online facilitation is merely auxiliary to the overall services that are offered to the customer or consumer, such as is the case in the personal transport services or food delivery sector.

2.2 The right not to be subject to a decision based solely on automated processing (Article 22 GDPR)

The second issue in our analysis explores the right not to be subject to a decision based on automated processing, including the need for the data controller to provide meaningful information on the existence of automated decision-making. As it stands, opacity seems to be at the core of these algorithms.[538] If one is a recipient of the output of the algorithms, rarely does one have any concrete sense of how or why a specific decision has been reached from the inputs.[539] One example is the fact that platform workers are routinely unable to see how their pay rates are calculated. Similarly, ride hail drivers are often left clueless as to how the algorithm assigns their rides.[540]

According to Article 22(1) GDPR *'the data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.'* It follows from this paragraph that the GDPR sets a prohibition on automated individual decision-making when the different conditions are met.[541]

[537] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services

[538] J. BURRELL, "How the machine 'thinks': understanding opacity in machine learning algorithms", Big Data & Society 2016, 1-12

[539] J. BURRELL, "How the machine 'thinks': understanding opacity in machine learning algorithms", Big Data & Society 2016, 1-12

[540] A. MATEESCU and A. NGUYEN, "Algorithmic management in the workplace", Data & Society 2019, https://datasociety.net/wp-content/uploads/2019/02/DS_Algorithmic_Management_Explainer.pdf

[541] These conditions are implicit in article 22 (1):

a) A "decision" must be made

b) "Solely": there must be no human involvement in the decision process

First, for the prohibition on automated processing to apply, the decision must produce legal effects (or similarly significantly affect the platform worker).[542] A legal effect may be something that affects a person's status or their rights under a contract. For example, the deactivation of the account of a platform worker would fall under this condition. Another example may be the refusal of the app to assign a new or higher-paid task to the platform worker.

Difficult in this regard is the term *'solely'* which is used. This means that there is no human involvement in the decision process. Nevertheless, Article 29 (A29) Data Protection Working Party has clarified that this human involvement must be meaningful, rather than just a token gesture.[543]

The prohibition on automated decision-making does not apply if the decision is '*necessary for entering into, or performance of a contract between the data subject and a data controller'* (Article 22(2)(a)) or *'is based on the data subject's explicit consent'* (Article 22(2)(c)).[544] Platform workers, if they are to be considered employees, can only fall under the first derogation, as the Article 29 Working Party has stated that '*employees are almost never in a position to freely give, refuse or revoke consent, given the dependency that results from the employer/employee relationship'.*[545] However, many platform workers are self-employed. A fully independent self-employed worker would in principle be in a position where to give consent freely. Whether this is the case for all self-employed platform workers is questionable. Imbalances of power are not limited to employers and consent can only be valid if the self-employed platform worker is able to exercise a real choice, and there is no risk of deception, intimidation, coercion or significant negative consequences if they do not consent.[546] In our opinion this imbalance of power is surely present for many self-employed platform workers in their relationship with the platform.

The other option the platforms have at their disposal to bypass the prohibition on automated decision-making is Article 22(2)(a). Indeed, the prohibition does not apply if the decision is '*necessary for entering into, or performance of a contract between the data subject and a data controller'.* Platforms may wish to use solely automated decision-making processes because they believe it is the most appropriate and efficient way to achieve their objective. Platforms deal with an enormous amount of data that is being processed, which makes routine human involvement impractical or maybe even impossible. However, even then the platforms must take into account whether a less privacy-intrusive method could be adopted.[547] The question remains if this assessment is properly made in the current platform economy. Likewise, the GDPR obliges platforms to establish appropriate safeguards when automated decision-making is implemented. One of these rights is the right to meaningful information about the logic, significance and

c) "Legal or similarly significant effects"

d) The decision is "based on automated processing, including profiling

[542] A29 Data Protection Working Party, "Guidelines on Automated individual decision-making and profiling for the purposes of Regulation 2016/679, 3 October 2017 (as last revised and adopted on 6 February 2018).

[543] A29 Data Protection Working Party, "Guidelines on Automated individual decision-making and profiling for the purposes of Regulation 2016/679, 3 October 2017 (as last revised and adopted on 6 February 2018)

[544] Nonetheless, even under those derogations article 22 (3) GDPR obliges data controllers to "*implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests,* ***at least*** *the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision.* Recital 71 adds as an additional safeguard in those cases "*the right to obtain an explanation of the decision reached after such assessment".*

[545] A29 Data Protection Working Party, "Opinion 2/2017 on data processing at work", 8 June 2017

[546] A29 Data Protection Working Party, "Guidelines on consent under Regulation 2016/679", 28 November 2017, 8

[547] G. BUTTARELLI, "Assessing the necessity of measures that limit the fundamental right to the protection of personal data" *European Data Protection Supervisor*, 11 April 2017, https://edps.europa.eu/sites/edp/files/publication/17-04-11_necessity_toolkit_en_0.pdf.

envisaged consequences. The next section will further explore this right in relation to the platform economy.

2.2.2 The right to meaningful information about the logic, significance and envisaged consequences.

Articles 13, 14 and 15 GDPR, which contain information rights for the data subjects, all state that in '*the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases,* ***meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject****.'*

According to Article 29 Working Party[548] '*meaningful information about the logic involved'* means that the platform must find *simple* ways to tell the data subject about the rationale behind, or the criteria relied on, in reaching the decision. The information provided should be sufficiently comprehensive for the data subject to understand the reasons for the decision.[549,550] The terms *'significance'* and *'envisaged consequences'* suggest that information must be provided about intended or future processing, and how the automated decision might affect the data subject.[551] According to Article 29 Working Party it means that the controller should provide the data subject with information about '*the envisaged consequences'* of the processing, rather than an explanation of a *particular* decision.[552] To make this information meaningful and understandable, real tangible examples of the type of possible effects should be given.[553]

In addition, Article 29 Working Party states that the controller should provide the data subject with general information (…) **which is also useful** for him or her to challenge the decision. In fact, Article 22(3) obliges the data controller to implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interest, **at least** the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision. The minimal safeguards laid down in Article 22(3) necessarily involve an exchange of views, a dialogue, between the data subject and the controller.

Therefore, the GDPR does support an extensive right to an explanation for the data subject. The platforms will need to provide the platform workers with (general) information which is useful for them to challenge the decision. Platform workers will only be able to challenge these decisions or express their views if they fully understand how they have been made and on what basis.[554] Whether this amounts to a fully fledged right to an explanation of a *particular* decision is debatable, but in any case the information provided to the platform worker must be sufficient and useful to effectively challenge any decision affecting them (e.g. deactivation of their account). It remains to be seen

[548] A29 Data Protection Working Party, "Guidelines on Automated individual decision-making and profiling for the purposes of Regulation 2016/679, 3 October 2017 (as last revised and adopted on 6 February 2018)

[549] M. VEALE and L. EDWARDS, "Clarity, surprises, and further questions in the Article 29 Working Party draft guidance on automated decision-making and profiling", Computer Law and Security Review 2018, 398-404

[550] Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services equally determines that the terms and conditions should contain the main parameters determining ranking and the reasons for the relative importance of those main parameters as opposed to other parameters (article 5). The Regulation furthermore obliges providers of online intermediation services to establish internal compliant handling systems and to appoint at least 2 mediators (article 11 and article 12).

[551] Council of Europe. Draft Explanatory Report on the modernised version of CoE Convention 108, par. 75

[552] A29 Data Protection Working Party, "Guidelines on Automated individual decision-making and profiling for the purposes of Regulation 2016/679, 3 October 2017 (as last revised and adopted on 6 February 2018), 26

[553] A29 Data Protection Working Party, "Guidelines on Automated individual decision-making and profiling for the purposes of Regulation 2016/679, 3 October 2017 (as last revised and adopted on 6 February 2018)

[554] A29 Data Protection Working Party, "Guidelines on Automated individual decision-making and profiling for the purposes of Regulation 2016/679, 3 October 2017 (as last revised and adopted on 6 February 2018), 27

how the platforms will apply these rules in practice. Issues of enforcement may arise in the future.

The P2B Regulation

Again, the new Regulation (EU) 2019/1150[555] may have some (albeit limited) relevance here as it obliges providers of online intermediation services to issue a statement of reasons when a decision is taken to suspend or terminate its services (Article 4). If the platform decides to terminate the provision of its online services to a platform worker, the platform is obliged to provide a statement of reasons at least 30 days prior to the termination on a durable medium. Moreover, the potential grounds for suspension/termination must be included in the terms and conditions.

Furthermore, as specified in the WP29 (now EDPB) Guidelines on automated processing and profiling,[556] 'controllers should consult the WP29 Guidelines on transparency (WP260) for general transparency requirements. In addition to the general requirements, when the controller is processing data as defined in Article 22, they must provide meaningful information about the logic involved. Instead of providing a complex mathematical explanation about how algorithms or machine-learning work, the controller should consider using clear and comprehensive ways to deliver the information to the data subject, for example: the categories of data that have been or will be used in the profiling or decision-making process; why these categories are considered pertinent; how any profile used in the automated decision-making process is built, including any statistics used in the analysis; why this profile is relevant to the automated decision-making process; and how it is used for a decision concerning the data subject.'

On a final note, concerns may also be raised at a fundamental level regarding the technical feasibility in the platform economy to obtain a sufficient (general or specific) explanation of a decision reached by the algorithms.[557] In its current state, it seems that there is a mismatch between high-dimensionality characteristic of machine-learning algorithms and the demand of human interpretability.[558] Machine-learning algorithms possess a degree of unavoidable complexity which does not lend itself easily to human semantic explanations.[559] Nonetheless, the rules laid down in the GDPR as explained above need to be complied with.

[555] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services

[556] Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679 (wp251rev.01), at page 31.

See also: on automated decision making, Council of Europe. "The protection of individuals with regard to automatic processing of personal data in the context of profiling.", Recommendation CM/Rec(2010)13 and explanatory memorandum. Council of Europe 23 November 2010

https://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec(2010)13E_Profiling.pdf

More broadly, Council of Europe, Recommendation CM/Rec(2015)5 on the processing of personal data in the context of employment.

[557] A SELBST and J. POWLES, "Meaningful information and the right to explanation", International Data Privacy Law 2017, 20 p

[558] B. GOODMAN and S. FLAXMAN, "European Union regulations on algorithmic decision-making and a "right to explanation", Workshop on Human Interpretability in Machine Learning (New York) 2016, https://arxiv.org/pdf/1606.08813.pdf

[559] J. BURRELL, "How the machine 'thinks': understanding opacity in machine learning algorithms", Big Data & Society 2016, 1-12

2.3 The right to data portability

As it stands, the platform economy landscape is generally dominated by a few players. One factor leading to this dominance are the substantial switching costs[560] that platform workers face when considering changing to another platform.

These switching costs are amplified by the network effects of the platforms. The more people (be it the platform worker or the client/customer) use a certain platform, the more valuable the platform itself becomes, which will make it harder to leave the platform. Add to this the fact that the dominating platforms have access to huge amounts of data of their users thanks to the advances in data mining and analytics and a massive increase in computing power and data storage capacity, which in turn helps them to optimise their services. As a result, many platform workers 'suffer' from a lock-in effect. In such a situation, the costs of changing to another service are so high that platform workers will remain with their current platform, to the detriment of competition in the platform economy.[561]

If platform workers were to be allowed to transfer their personal data to another platform, it could in theory open up competition in the platform economy. First, it could help prevent platform workers being locked in and bound by one single platform. Effective transfers of data between alternative platforms would furthermore boost the transparency and fair competition as it would allow platform workers greater power to choose the platform with the best working conditions. In other words, it would give platform workers more control over their personal data, which is one of the cornerstones of the GDPR.

This is exactly where **the right to data portability** comes into play, which favours the sharing and transfer of the data between different platforms. The same considerations are echoed in the Preliminary Opinion on "*Privacy and Competitiveness in the age of big data*" of the European Data Protection Supervisor (EDPS) where it is said that the right to data portability 'would potentially empower individuals while also promoting competitive market structures'.[562]

Article 20 GDPR provides this right to data portability in a twofold structure. First, platform workers can obtain a copy of their data '*in a structured, commonly used and, machine-readable format*' (Article 20(1)). Second, it provides the right '*to have the personal data transmitted directly from one controller to another, **where technically feasible**'.* Thus, the GDPR clearly provides a right to data portability which would in theory soften the lock-in effect experienced by platform workers today. However, as we will elaborate upon in the coming paragraphs, there are still some important legal barriers to a fully fledged right to data portability in the current GDPR framework.

First, it is to be feared that without common fixed standards between the platforms, the right to data portability will have issues in its practical implementation stemming from technical interoperability.[563] Article 20(2) GDPR clearly states that the right to have the personal data transmitted directly from one platform to another is only obligatory *where it is technically feasible.* This is affirmed in Recital 68 stating that there is no obligation for the controllers to adopt or maintain processing systems which are technically compatible. It further states that data controllers should be encouraged to develop interoperable formats that enable data portability. This is worrisome given the fact that

[560] 'Switching costs' are the barrier costs that users may face when seeking to switch to another platform.

[561] I. GRAEF, "Mandating portability and interoperability in online social networks: regulatory and competition law issues in the European Union", Telecommunications Policy 2015, 502-514

[562] European Data Protection Supervisor, Preliminary Opinion on Privacy and competitiveness in the age of big data: The interplay between data protection, competition law and consumer protection in the Digital Economy, 2017, https://edps.europa.eu/sites/edp/files/publication/14-03-26_competitition_law_big_data_en.pdf, p 32

[563] L. DRECHSLER, "Practical challenges to the right to data portability in the collaborative economy", Collaborative Economy: Challenges and opportunities, 216-235

the dominating platforms do not have a real incentive to enable platform workers to switch to other platforms, as this would jeopardise their own position. The response of the data protection officer from Deliveroo to our question asking to clarify their position toward the right to data portability is that they do not transmit personal data from their platform to another, as there is no obligation to do so.[564]

Second, per Article 20(1) GDPR the 'data subject shall have the right to receive the personal data concerning him or her, which he or she has *provided* to a controller'. Article 29 Working Party has interpreted the term 'provided' broadly, ultimately including *provided* and *observed data* and excluding *inferred* or *derived* data.[565] Provided data are personal data that the platform worker has actively provided to the platform. For example, the information on the profile that the platform workers have provided, their photos, and so on. Observed data are the data provided by the platform worker by virtue of the use of the app. By this we mean the behavioural data which have been gathered by observing the platform workers' behaviour such as activity logs and traffic data. Finally, inferred data are the data developed by the platform on the basis of the first two categories. Inferred data are the result from the analysis of the provided and observed data. In other words, these data are produced by the platform itself (e.g. through data mining) and on the basis of its own software applications.

The interpretation as to whether the data are provided, observed or inferred is therefore crucial in opening a right to data portability. Yet it is not hard to imagine that the boundaries between these different kinds of data will be very hard to establish in practice. Let's take, for example, the case of reputational data (through ratings and customer review), which is very relevant in the platform economy.

Portability of reputational data (through customer reviews/scores) can be crucial for platform workers, as the reputation is among the main criteria potential customers will consider when choosing between different offers on a platform. If the platform worker needs to start building their reputation from scratch on the new platform, it will only amplify the lock-in effect on the current platform. We could easily imagine that the individual customer reviews/scores are part of the observed data. However, one could at the same time argue that the agglomerated score is created by the platform itself and forms part of the so-called inferred data which are not portable to another platform.[566]

Nonetheless, it is very likely that the distinction between *provided, observed* and *inferred* data will only prove to be a false dilemma the platform worker faces. As elaborated above, the scope of the right to access (Article 15 GDPR) is very broad and includes all types of data concerning the platform worker. Thus, under the right to access, the worker can obtain all data (e.g. reputational data) that concerns them. This includes the so-called *inferred* data. The platform worker can make an access request and then share it with another platform (provided it does not adversely affect the rights and freedoms of others). That way, the platform worker bypasses the distinction between *provided, observed* and *inferred* data under the right to data portability.

Third, the right to data portability 'shall not adversely affect the rights and freedoms of others' (Article 20(4)). In the case of the potential portability of reputational data, this could be the consumers of the app who expressed their evaluation on the service.[567] In theory, this would permit the platform to refuse a portability request as soon as personal

[564] Interview conducted in the framework of the main study summer 2019.

[565] A29 Data Protection Working Party, "Guidelines on the right to data portability", 13 December 2016 (as last revised and adopted on 5 April 2017), 10

[566] A. INGRAO, "Assessment of feedback in the On-demand era" in Working in digital and smart organizations, Springer International, Switzerland, 2018, 93-111

[567] A. INGRAO, "Assessment of feedback in the On-demand era" in Working in digital and smart organizations, Springer International, Switzerland, 2018, 93-111

data of these consumers are involved.[568] However, it must be noted that Article 29 Working Group has also tried to extend the application to the data which involve more than one data subject. Concretely, they have stated that when a data controller processes 'information that contains the personal data of several data subjects', one 'should not take an overly restrictive interpretation of the sentence "personal data concerning the data subject"'.

A final general consideration concerning the right to data portability is the position of the receiving platforms. The whole discussion around data portability is currently centred on a possible obligation of the platform holding the original data. Not much attention is given to the fact whether the receiving platforms are indeed willing to take on the data of every platform worker. Are they generally willing to integrate the personal data from a platform worker into their own algorithm? Do they have an incentive to do so? For example, is it really that simple to assume that Lyft will integrate the agglomerated reputational score from an Uber driver in its own algorithm? In the current GDPR framework, the receiving platform has no obligation to do so.

2.4 Discriminatory biases underlying the algorithm

The idea that algorithmic management is purely objective and bias-free is problematic. The risk exists that the algorithms reflect the biases of the human programmers.[569] This risk becomes even greater when the algorithm is based on machine-learning artificial intelligence (AI), which depends upon data that have been collected from society. To the extent that the society contains inequality, traces of discrimination will taint the data.[570] If traces of discrimination are found in the pilot data set, then by design, the algorithm will reproduce those same traces of discrimination. Biased decisions will then be presented as objective algorithmic results.[571]

Moreover, what is even more pressing in the context of the platform economy is the omnipresent use of consumer-sourced ratings and review that fuel (semi)automated algorithmic decision-making.[572] As is logical, any evaluation responds to a personal perception or experience that, in turn, is evaluated from subjective parameters.[573] This is problematic if we follow the mainstream social science research which has established that racial and gender bias commonly creeps into ratings of all sorts.[574] Although as of now we cannot determine whether this is the same in the platform economy, the likelihood that it will be the case seems rather high. Offline platform work performed on location in particular, where there is a direct personal contact between the customer and the platform worker, will pose the greatest danger in that regard.

If a platform bases its decisions concerning its platform workers on such ratings, such as the decision to deactivate the account of the platform worker, these systems, while

[568] L. DRECHSLER, "Practical challenges to the right to data portability in the collaborative economy", Collaborative Economy: Challenges and opportunities, 216-235

[569] V. DE STEFANO, "Negotiating the algorithm: automation, artificial intelligence and labour protection", https://ssrn.com/abstract=3178233, 38 p

[570] B. GOODMAN and S. FLAXMAN, "European Union regulations on algorithmic decision-making and a "right to explanation", Workshop on Human Interpretability in Machine Learning (New York) 2016, https://arxiv.org/pdf/1606.08813.pdf

[571] M. KULLMANN, 'Platform Work, Algorithmic Decision-Making, and EU Gender Equality Law', (2018) 34 *International Journal of Comparative Labour Law and Industrial Relations*, 7-8

[572] M. KULLMANN, 'Platform Work, Algorithmic Decision-Making, and EU Gender Equality Law', (2018) 34 *International Journal of Comparative Labour Law and Industrial Relations*, 7-8

[573] A. TODOLI, "The court concluded that the right of freedom of communication outweighed the doctor's personality rights (right to 'informational self-determination') in the case in question.", RTSS.CEF 2018, 28 p

[574] A. ROSENBLAT and L. STARK, "Algorithmic labor and information asymmetries: a case study of Uber's drivers, International Journal Of Communication 2016, 3758-3784; A. ROSENBLAT, K. LEVY, S. BAROCAS, T. HWANG and P. DAVISON, "Discriminating tastes: customer ratings as vehicles for bias", Data & Society 2016, https://datasociety.net/pubs/ia/Discriminating_Tastes_Customer_Ratings_as_Vehicles_for_Bias.pdf

appearing neutral, can become vehicles through which consumer bias can adversely impact protected groups of platform workers. The fact that this bias is introduced by the consumer rather than the platforms themselves could create an environment where the platforms are able to deflect accountability.[575] The legal protection of anti-discrimination law may be difficult to apply when consumer-sourced ratings drive decisions affecting platform workers.[576]

The GDPR does answer these concerns, but in a limited way. Article 22(4) GDPR states that the automated individual decision-making '*shall not be based on special categories of personal data referred to in Article 9(1)*[577]*'.* Moreover, Recital 71 does mention that data controllers should use '*appropriate mathematical or statistical procedures for the profiling, implement technical and organisational measures appropriate to ensure, […] and prevent, inter alia, discriminatory effects on natural persons on the basis of racial or ethnic origin, political opinion, religion or beliefs, trade union membership, genetic or health status or sexual orientation […]'.*

The difficulty lies in the opacity of the current algorithms in the platform economy. The necessary premise to combat discriminatory practices in the algorithmic management is to make such an algorithm more understandable and transparent. As it stands, it will prove very difficult to assess whether the algorithm is tainted by discriminatory biases and subsequently to enforce non-discrimination law. As data sets of the platform become increasingly large, discriminatory correlations can become increasingly complex and difficult to detect.[578]

Next to a general call on more transparency and auditability[579] of the algorithms, one could imagine some ad hoc solutions to minimise discriminatory biases creeping into ratings. It is possible to design a rating system where the information about the platform available to the consumer raters is reduced to the absolute necessary. Or one could imagine increasing the reporting burden on consumers giving low ratings.[580] Another option could be to give the platform worker an opportunity to reply to every rating, which the platform must take into account. Another solution could be to oblige platforms to scan the ratings for potentially discriminatory differences and subsequently oblige them to develop ways to combat this. A more extreme solution could be to eliminate the link between ratings and decisions of platforms affecting platform workers altogether. In any regard, more research is needed to effectively combat discriminatory practices in the platform economy.

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[575] A. ROSENBLAT, K. LEVY, S. BAROCAS, T. HWANG and P. DAVISON, "Discriminating tastes: customer ratings as vehicles for bias", Data & Society 2016, https://datasociety.net/pubs/ia/Discriminating_Tastes_Customer_Ratings_as_Vehicles_for_Bias.pdf

[576] A. ROSENBLAT, S. BAROCAS, K. LEVY and T. HWANG, "Discriminating tastes: customer ratings as vehicles for bias", Data&Society 2016, 21 p

[577] These special categories of data include: racial or ethnic origin, political opinions, religion or beliefs, trade union membership, genetic or health status or sexual orientation.

[578] B. GOODMAN and S. FLAXMAN, "European Union regulations on algorithmic decision-making and a "right to explanation", Workshop on Human Interpretability in Machine Learning (New York) 2016, https://arxiv.org/pdf/1606.08813.pdf

[579] See Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679 (wp251rev.01), at page 32.

In this context, pointing out the interface of data protection (control of the individual on her or his personal data) with other rights and interests of the individual concerned, we remark that audits might be important also for health and safety reasons, to ensure that drivers and customers are not put at risk due to overwork and/or overdriving.

[580] A. ROSENBLAT, S. BAROCAS, K. LEVY and T. HWANG, "Discriminating tastes: customer ratings as vehicles for bias", Data&Society 2016, 21 p

ANNEX I: SYNOPSIS REPORT OF CONSULTATIONS

This synopsis report covers the results of the different consultation activities that took place. It provides a concise overview and conclusions of the consultation work carried out in accordance with the Better Regulations Guidelines.[581]

Overview of fieldwork activities

Fieldwork was conducted in each Step with a view to **consult relevant stakeholders** and incorporate their feedback into the study. The group of stakeholders comprised a range of EU-level and national-level stakeholders, including academics, experts, social partners, national administrations, labour inspectorates and occupational safety and health (OSH) authorities more broadly, businesses, sector associations, platforms, and platform workers.

Fieldwork comprised: 1) semi-structured expert interviews, 2) a country experts survey, 3) country-specific focus groups, and 4) a validation workshop. The consortium combined four kinds of fieldwork because these methodologies deliver different types of information. For example, replies to an interview generally only cover the stated questions, while a focus group discussion allows participants to reflect upon their perspective and refine their opinion after interaction with others. Moreover, some fieldwork methods are better suited for a wide coverage, while others allow deeper consideration of a specific issue.

For all fieldwork activities, the research team prepared a **list of stakeholders** to consult (including backups). The identification of participants for field research activities was done by the research team responsible for each task, with the support of all consortium partners. Each stakeholder was sent an invitation to participate, along with a letter on behalf of the European Commission addressed to the potential participants, and a data protection notice and privacy statement. The list of stakeholders, as well as other supporting materials for the field work, were shared with the steering group two to three weeks prior to the scheduled activities to receive feedback.

The treatment of **data protection and privacy were carefully considered**, particularly with regard to the fieldwork relying on interviews, and focus groups. This is especially necessary to ensure that participants[582] feel comfortable expressing themselves, and to ensure compliance with Regulation (EU) no 2018/1725. Information and data gathered throughout the study has been treated with utmost care and stored in a secured cloud location. Prior to each interview, all interviewees explicitly consented (via return email or signed letter of consent) allowing the consortium to record the interview, while ensuring their anonymity. The same treatment has been given to those taking part in focus groups. The data protection notice and privacy statement is provided in Annex 2.

Step 1 fieldwork consisted of semi-structured interviews with key stakeholders to contextualise platform work. Interviews also sought to lay the foundation of understanding the challenges related to working conditions and social protection facing platform workers. An initial list of interviewees was made by the consortium, then refined with input from the European Commission.

Step 2 fieldwork consisted of country surveys and national focus groups. The country surveys provided an overview of national level developments that have emerged to address existing challenges of platform work. Such national developments were

[581] See Tool #55, available at https://ec.europa.eu/info/sites/info/files/file_import/better-regulation-toolbox-55_en_0.pdf

[582] In a few cases, platform workers were still hesitant to participate in the focus groups for fear of backlash from their platform. Thus additional measures were taken to protect their identities, such that their names were not required to be included in the focus group reporting templates.

investigated for the EU28, Norway and Iceland, via surveys for socio-economic and legal experts in each country. This step of the fieldwork generated country-specific literature, as well as a great deal of raw data on the challenges and responses facing platform workers in each country.

Furthermore, six countries with particular relevance to platform work challenges and responses were investigated in depth via focus groups of platform work experts and stakeholders. These six countries were especially interesting for novel and experimental approaches to platform work, and for this reason were expected to offer lessons for the other countries and the EU generally. Each focus group consisted of stakeholders including platform workers, platform representatives, policymakers, social partners, and academics/legal experts. The focus group organisers were given extensive instructions to ensure that focus groups covered the most interesting and novel points in their respective country, while touching on common themes to allow comparability.

Step 3 fieldwork consisted of semi-structured interviews with key experts on particular EU legislation covered. This aimed to fill gaps, particularly where very little literature is available (e.g. the significance of the GDPR for platform work). An initial list of interviewees was made by the consortium, then refined with input from the European Commission.

Step 4 fieldwork consisted of semi-structured interviews with EU-level stakeholders. This aimed to gather final inputs into the analysis (including gap analysis), and to ensure that no significant issues were insufficiently covered. An initial list of interviewees was made by the consortium, then refined with input from the European Commission. Step 4 also consists of a validation workshop, which brought together stakeholders to discuss and validate the main findings of this research.

Summary of findings from fieldwork activities

Country-expert surveys

The research team developed two interrelated surveys: one focusing on legal aspects, and one on socio-economic aspects. Two country experts filled in the survey per country based on their respective expertise. The research team identified country experts through its existing network of experts and informal consultations.

The surveys were developed to have both unique and shared questions. This allowed the research team an additional level of certainty for findings, while also allowing respective experts to go more in depth where they are most competent.

Findings from the country expert surveys included a systematic assessment of the challenges related to platform work at national level. Experts also identified relevant literature, including both academic and grey literature, at the national level. Experts were asked to specify what sources information was derived from, for instance through desk research, participation in conferences or informal interviews with stakeholders. Experts were also asked to report relevant national responses and tools, based on the typology described in Section 5.

The most important outputs of this exercise were:

- a 'miniature literature review' for each country in the EU28, Norway and Iceland
- an assessment of the severity of individual challenges facing platform workers for each country
- a mapping of the most relevant responses and tools for each country.

These materials provided a crucial basis for the body of the study, which required a thorough mapping of challenges and responses in each country. These materials also verified important differences and commonalities in platform work throughout Europe, as also discussed in the body of the study.

Semi-structured interviews

Semi-structured interviews informed several research steps. The interviews for Step 1 were mainly used to provide conceptual clarity and to develop the definition of platform work, to set the stage for the subsequent mapping of challenges and responses and to understand which challenges would be most relevant to look out for.

Step 1 topics raised by interviewees included:

- the need for better data on platform work
- the shared and diverging conditions between platform work and other forms of non-standard work
- the need for a higher baseline of protection for 'all workers' regardless of the specific work or contract
- how platform work is a test case (and opportunity) for the EU's handling of the future of work
- how platform work challenges labour and social law throughout Europe
- the merits and limitations of collective bargaining for platform workers
- the importance of skills and career progression possibilities for platform workers.

Step 3 interviews focused on the consequences of the GDPR regulation for platform work and how the European Data Protection Board might proceed.[583] This discussion is developed in Reflection Paper 2.

Interviews in Step 4 were conducted for the purpose of verifying the results of the research and ensuring that there were no important aspects that had been previously overlooked, as well as getting feedback on identified policy pointers and the results of the gap analysis.

Step 4 topics raised by interviewees included:

- the need for better data and an EU definition on platform work
- the likelihood of online forms of platform work to grow more than on-location forms
- the sense that policymakers are overly focused on food delivery and personal transportation platforms, which are the most discussed but not the most prevalent forms of platform work
- the role that the EU should play in platform work versus Member States
- the idea that Member States should focus on action for on-location platform work while the EU should focus on action for online platform work
- the potential for the EU to take further action on intermediation aspects of platform work
- the potential for the EU to facilitate data gathering on platform work, and require platforms to be more transparent
- the need for more platform workers to be able to collectively bargain
- the advantages and disadvantages of a third employment status
- the potential for the P2B Regulation and the GDPR to improve working conditions for platform workers
- the limitations of the P2B in personal scope for platform workers
- the strengths and limitations of EU soft law approaches to addressing the challenges of platform work

[583] One possibility is to formally endorse Opinion 4/2007 of the Article 29 Working Party, available at https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2007/wp136_en.pdf.

- the merits of two strategies in addressing the challenge of employment status: 1) raising the baseline protection for self-employed, and 2) taking action to reassign more self-employed as employees
- the likely outcomes if the EU does not take further action on platform work
- the positive effects of voluntary agreements between platform workers and platforms.

Table 22: Participants in semi-structured interviews

Type of interviewee	Gender	Step
Academic expert	M	1
Academic expert	F	1
European agency representative	M	1
European agency representative	F	1
Platform representative	M	1
Social partner (employees)	F	1
Social partner (employers)	F	1
Social partner (employees)	M	3
Academic/expert	M	3
Academic/expert	F	4
Academic/expert	F	4
Academic/expert	M	4
EU policymaker	M	4
EU policymaker	M	4
EU policymaker	M	4
Platform representative	M	4
Platform representative	F	4
Social partner (employees)	F	4
Social partner (employer)	F	4
Social partner (employer)	M	4

Focus groups

The focus groups covered both common themes as well as country-specific topics. The main topics of conversation are listed for each country.

Denmark:

- Lack of certainty on how to conceptualise platform work and its prevalence
- Expectation of growth in sectors including cleaning and transportation
- Most platform workers are self-employed
- Uncertainty of tax obligations for many platform workers
- How algorithms and ratings challenge fair working conditions

- The increasing involvement of social partners in platform work
- The utility of collective agreements, which in Denmark are mostly pushed by companies rather than platform workers
- The prevalence of company-level bargaining rather than sector-level bargaining in platform work
- Pilot projects on tax registration and insurance schemes seem promising to several attendees.

Estonia

- The lack of certainty on how to conceptualise platform work and its prevalence
- The prevalence of on-location platform work in Estonia
- The positive effects of platform work, such as increasing labour market access for individuals, helping provide short-term access to labour for businesses, formalising labour that has always existed, and facilitating entrepreneurship
- The large disruptive effects of platform work in accommodation and housing, and household tasks and childcare
- The pros and cons of flexibility, particularly regarding wages, insurance and OSH
- The ambivalence of some Estonian stakeholders on the employment status challenge of platform work
- The benefits of Estonia's digital strategy to simplify tax declaration[584]
- The benefits of reducing administrative burdens for platform workers and platforms
- The largest risks seem to be low wages and a lack of insurance options for platform workers
- Estonians generally see platform work as a positive development.

Spain

- The growing relevance of platform work of all types
- Relevance of platform work in regions with high unemployment, and how platform work interacts with structural labour market issues
- Platform work has received mostly negative press in Spain
- Platforms' data collection and usage, the need for transparency, and the problems of algorithmic management over platform workers
- The expenses self-employed (including platform workers) face in registration
- The sense of policy paralysis; national authorities are lagging behind developments in the platform economy
- The inability of labour inspectors to address platform work, and the delays of courts
- The dissatisfaction of trade union representatives towards the TRADE status (economically dependent self-employed worker)
- The anti-union sentiments and actions of certain platforms, particularly in food delivery.

[584] 1 January 2018, the Simplified Business Income Taxation Act, see https://www.riigiteataja.ee/en/eli/522122017001/consolide

France

- The consequences of *Loi El Khomri*,[585] and how it did not implement a third employment status as originally envisioned
- The merits and problems of a third employment status
- The challenges of working conditions and social protection facing on-location platform workers, especially in food delivery
- The need to clarify who is responsible for contributions, ensuring sustainable funding for France's social protection system
- The potential merits of a new preferential tax system for platform workers, similar to that of Belgium's *Loi De Croo*[586]
- The sense that France is a leader regarding legislation on platform work and collective actions from platform workers.

The Netherlands

- The lack of national evidence of platform work
- The most known platform workers are in food delivery, personal transportation, and various on-location services
- The interest of temporary work agencies in the model of platform work
- The debate in the Netherlands has focused on food delivery platforms, driven by trade unions and the Ministry of Social Affairs and Employment
- The preference of many platform workers to pay less taxes and have less protection from side activities on platforms
- The potential need for reducing the difference between self-employed and employees, especially to make the current regulatory framework 'future-proof'
- The critical perception of trade unions on how labour inspectorates and the judiciary have approached platform work
- The potential for platform work to present unfair competition to existing industries
- The challenges of platform work in the Netherlands are largely based on the distinction between self-employed and employees.

Slovenia

- The growth of platform work, especially in sectors that require no special material and equipment
- The connection between platforms and outsourcing labour to self-employed platform workers
- The presence of some transportation platforms that exclusively use employees
- The presence of some food delivery platforms that use both self-employed and employed platform workers
- The lack of data on online forms of platform work, and the inability of tax authorities to view many cross-border transactions
- The sense that platform work is simply an expansion of existing concepts in the labour market, such as teleworking arrangements with independent contractors

[585] Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels [Law on work, modernising social dialogue and securing career paths] (2016-1088, 8.08.2016)

[586] See overview of the law at https://economie.fgov.be/fr/themes/entreprises/economie-durable/economie-collaborative/les-plateformes-actives-en

- The opposition of trade unions to platforms providing food delivery and personal transportation
- The importance of bogus self-employment and overwork (e.g. 70+ hours weekly) for some platform workers
- The disparity between a clear definition of employee in Slovenian law, versus a relatively weak ability to enforce the definition in practice, especially for platform work
- Some platform workers seem to be at risk of cyclical poverty and social marginalisation.

Table 23: Participants in country focus groups

Type of interviewee	Country	Gender
Academic/expert	France	F
Academic/expert	France	M
Platform representative	France	M
Platform workers/social partner (employees)	France	M
Platform worker	France	M
Private sector consultant	France	M
Policymaker	France	F
Social partner (employees)	France	F
Academic/expert	The Netherlands	M
Academic/expert	The Netherlands	M
Platform representative	The Netherlands	M
Platform worker	The Netherlands	M
Policymaker	The Netherlands	M
Social partner (employees)	The Netherlands	M
Social partner (employers)	The Netherlands	M
Academic/expert	Slovenia	M
Platform representative	Slovenia	M
Platform representative	Slovenia	M
Platform representative	Slovenia	F
Platform representative	Slovenia	M
Platform worker	Slovenia	M
Policymaker	Slovenia	M

Policymaker	Slovenia	F
Social partner (employees)	Slovenia	F
Social partner (employers)	Slovenia	M
Platform representative	Denmark	M
Platform worker	Denmark	M
Platform worker	Denmark	M
Policymaker	Denmark	F
Social partner (employees)	Denmark	F
Social partner (employers)	Denmark	M
Academic/expert	Estonia	M
Academic/expert	Estonia	M
Academic/expert	Estonia	M
Platform worker	Estonia	M
Policymaker	Estonia	F
Policymaker	Estonia	F
Policymaker	Estonia	F
Policymaker	Estonia	M
Social partner (employees)	Estonia	M
Academic/expert	Spain	F
Platform representative	Spain	F
Platform representative	Spain	M
Platform worker	Spain	M
Policymaker	Spain	M
Social partner (employees)	Spain	M
Social partner (employees)	Spain	M

Validation workshop

The validation workshop consisted of ten guests (listed below) as well as the entire research team and a selection of members of the European Commission.

To begin, the research team briefly presented the main findings of the research, recapping conceptualisations, methodology, and the gap analysis results. The research team asked participants for their thoughts – particularly whether the report accurately reflects their understanding of the main challenges concerning working conditions and social protection of platform workers. Conversation proceeded and covered topics including:

- The importance of algorithmic management and its spread beyond the platform economy
- The importance of fair and transparent intermediation and terms and conditions of platforms
- The importance of cross-border challenges, particularly in determining which court has jurisdiction (where to sue in case of disputes), intellectual property rights (which rely on diverging national frameworks)

- The relationship between employment status and job quality
- The need to not lose nuance in 'lower-skilled' and 'higher-skilled' forms of platform work, as this is too simple for how it actually takes place
- The difficulties in applying traditional means of oversight to platform work, e.g. platform work takes place in both physical and virtual spaces.

The research team then presented findings with a legal focus. This covered the difficulties in applying certain EU legislation based on personal and material scope, although many of the challenges facing platform workers are more broadly applicable for atypical workers. Overall, Member States have a variety of approaches towards platform work, but working conditions are rarely addressed directly. This contributes to legal uncertainty. Platform workers face particular problems in countries where the labour law and social protection coverage is significantly different between employees and self-employed. Discussion proceeded on topics including:

- Court cases in platform work have shifted; initially they focused on competition aspects, and more recently, they consider employment status.
- Courts are very slow in addressing the needs of platform workers, and platforms change very quickly
- In any action on platform work, one should always consider the heterogeneity of platforms to avoid unintended effects
- The P2B Regulation covers a broad swathe of challenges for platform workers (particularly relating to algorithmic management and transparency), but it is far from clear how many platform workers it applies to
- The GDPR requires certain clarifications to ensure that platform workers benefit from protection – it would be helpful if the EDPB issued guidance on what constitutes personal data and when it can be exceptionally withheld by data controllers
- Any future policies must be adaptable.

The research team then briefly presented then-current policy pointers and a discussion followed:

- Certain strategies, such as broad changes to employment status, are seen as potentially desirable but politically not feasible, especially at EU level
- Any potential recommendations need to consider both the political feasibility, as well as enforceability
- Workplace representation is different from collective bargaining, and individual bargaining with clients is different from collective bargaining with platforms; at least one option should be possible
- The right to bargaining is especially important for platform workers who cannot set their own prices
- The GDPR and the P2B are probably important to provide insight into how platforms intermediate and use algorithms, though this is speculative at present
- 'Softer' recommendations such as establishing voluntary charters and codes of conduct may have concrete benefits for platform workers, and are more easily achievable than systemic changes.

Table 24: Participants in the validation workshop

Type of interviewee	Gender
Academic/expert	M
Academic/expert	M
EU agency representative	F
Platform representative	M
Platform representative	F
Policymaker	M
Social partner (employees)	F
Social partner (employees)	M
Social partner (employers)	M
Social partner (employers)	F

Note: this excludes the research team and a number from DG EMPL.

ANNEX II: A NOTE ON WHAT IS NOT PLATFORM WORK

A great variety of online platforms, including social networks such as Facebook, e-commerce websites such as Amazon and Etsy, and sharing services such as CouchSurfing, are discussed under the umbrella of platform economy (Fabo et al., 2017). By this study's understanding, these **are** a part of the platform economy in the broadest sense but **are not** examples of platform work.

The distinction is as follows. Social networks can be used as posting boards and thus facilitate finding paid work, but the websites' role is more passive than that in platform work. The websites essentially act as digital bulletin boards.[587] By this study's understanding, platform work requires a platform with a more active role, as in the 'black box of intermediation' described in Figure 3. Many people use e-commerce websites to sell goods, and even make a living doing so (which requires some element of labour). However, e-commerce websites intermediate supply and demand for goods rather than services, and thus fall beyond the scope of this study's understanding of platform work. CouchSurfing and other platforms may intermediate and facilitate sharing,[588] but this is not a commercial activity where services are exchanged for payment.

A borderline case worth noting is Airbnb. Some influential literature on platform work includes Airbnb,[589] while other literature excludes it.[590] The logic for excluding Airbnb is that it is primarily for renting a space – providing access to accommodation – rather than paying a natural person for a service. On the other hand, preparing, cleaning, and renting out a room/flat requires labour throughout. Good arguments exist for both including and excluding Airbnb from consideration of platform work. However, this study does not consider Airbnb a clear example of platform work because clients are not paying for the labour *per se*, but rather the accommodation; a client does not use Airbnb to search for flat-cleaning services, but rather the flat itself. Nevertheless, the fieldwork clearly shows that regulatory authorities, consumers, and other stakeholders implicitly or explicitly group Airbnb alongside Uber and other platforms that do clearly qualify as platform work.[591] Therefore, some literature coverage and discussion of Airbnb is unavoidable when considering platform work at European level, though Airbnb is not a focus of this study.

[587] If this understanding were synonymous with platform work, then virtually any website could be an online labour platform. Thus, it is too broad, and moreover the challenges arising from the 'black box of intermediation' are largely absent.

[588] This example illustrates how the term 'sharing economy' can be misleading. Uber was often discussed as part of the sharing economy, though its business model has little to do with 'genuine sharing'. See Frenken et al. (2015) for discussion of the terminology of sharing vis-a-vis platforms that intermediate labour.

[589] E.g. "The Platformisation of Work in Europe: highlights from research in 13 European countries, from Huws et al. (2019).

[590] For example, see "Digital age - Employment and working conditions of selected types of platform work" from De Groen et al. (2018: p. 9)

[591] For example, Uber drivers, and landlords using AirBnB, organised initiatives to petition the city council of Budapest. See Meszmann (2018)

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