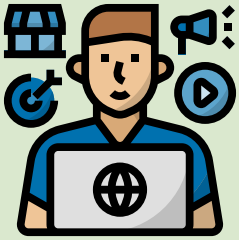
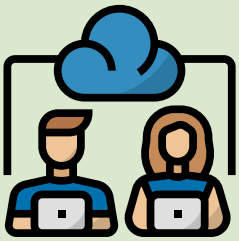
NO WELFARE

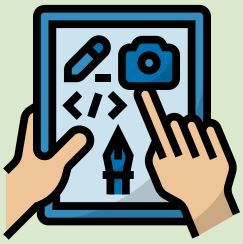


ONLINE PLATFORM WORKER

ONLINE STORE



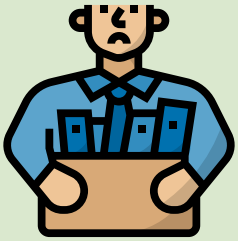
REMOTE WORK



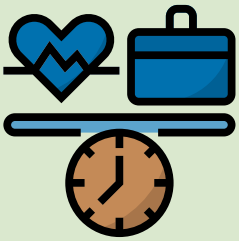
SELECTING JOBS

SELF-EMPLOYED

UNEARNED INCOME



UNEMPLOYED



WORK-LIFE BALANCE

The definition of worker in the platform economy: Exploring workers' risks and regulatory solutions

STUDY

European Economic and Social Committee

The definition of worker in the platform economy
Exploring workers' risks and regulatory solutions

Report

General information

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Glossary

App: application

Akava: Confederation of Unions for Professional and Managerial Staff in Finland (*Akateemisten Toimihenkilöiden Keskusjärjestö*)

AMT: Amazon Mechanical Turk

AWCS: American Working Conditions Survey

BMAS: Federal Ministry of Labour and Social Affairs of Germany (*Bundesministeriums für Arbeit und Soziales*)

CCOO: Trade Union Confederation of Workers' Commissions (*Comisiones Obreras*)

CEOE: Spanish Confederation of Employers Organisations (*Confederación Española de Organizaciones Empresariales*)

CEPYME: Spanish Confederation of Small and Medium-sized Enterprises (*Confederación Española de la Pequeña y Mediana Empresa*)

CFDT Cadres: French Democratic Confederation of Labour (*Confédération française démocratique du travail*)

CGIL: Italian General Confederation of Labour (C*onfederazione Generale Italiana del Lavoro*)

CJEU: Court of Justice of the European Union

Coc: Crowdsourcing Code of Conduct

CSIL: Centre for industrial studies (*Centro Studi Industria Leggera*)

CoC: Crowdsourcing Code of Conduct

DGB: German Trade Union Confederation (*Deutscher Gewerkschaftsbund*)

ECJ: European Court of Justice

ETUC: European Trade Union Confederation

EU: European Union

EWCS: European Working Conditions Survey

FAU: Free Workers' Union (*Freie ArbeiterInnen-Union*)

FH: Danish Trade Union Confederation (*Fagbevægelsens Hovedorganisation*)

ICT: Information and Communication Technologies

ILO: International Labour Organisation

LETA: Self-employed Workers' Statute (*Estatuto Español del Trabajador Autónomo*)

MEE: Ministry of Economic Affairs and Employment of Finland (*Työ- ja elinkeinoministeriö Arbets- och näringsministeriet*)

NGG: Food and Catering Union of Germany (*Gewerkschaft Nahrung-Genuss-Gaststätten*)

OLI: Online Labour Index

PAM: Service Union United (*Palvelualojen ammattiliitto*)

RETA: Special Scheme for Self-employed Workers (*Régimen Especial de Trabajadores Autónomos*)

RxR: Riders for Rights (*Riders por Derechos*)

SAK: Central Organisation of Finnish Trade Unions (*Suomen Ammattiliittojen Keskusjärjestö*)

SC: Supreme Court (*Tribunal Supremo*)

SPD: Social Democratic Party of Germany (*Sozialdemokratische Partei Deutschlands*)

STTK: Finnish Confederation of Salaried Employees (*Toimihenkilökeskusjärjestö*)

SZEF: Forum for the Co-operation of Trade Unions (*Szakszervezetek Együttműködési Fóruma*)

TPWC: Directive on Transparent and Predictable Working Conditions

UGL: General Labour Union (*Unione Generale del Lavoro*)

UGT: General Workers Confederation (*Unión General de Trabajadores*)

UIL: Italian Labour Union (*Unione Italiana del Lavoro*)

VTC: Car rental with driver (*Vehículo de transporte con conductor*)

WZB: Berlin Social Science Centre in Berlin (*Wissenschaftszentrum Berlin für Sozialforschung*)

3F: United Federation of Danish Workers (*Fagligt Faelles Forbund*)

Abstract

This research report has been produced in the context of a project entitled 'The definition of worker in the platform economy' (CES/FSA/09/2020), which was commissioned by the workers' group of the European Economic and Social Committee. The report aims to contribute to the debates on platform workers' risks and regulatory solutions. The report explores the defining features of platform work in terms of prevalence, socio-demographic characteristics, algorithmic management and working conditions; substantiated by a comparison of four national responses to the emergence of platform work (Finland, Germany, Hungary and Spain). The report concludes by proposing a legal response aiming to improve labour rights and social protections for platform workers and other non-standard workers, based on the development of an EU definition of worker.

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Acknowledgements

This report was produced in the context of a project entitled 'The definition of worker in the platform economy' (CES/FSA/09/2020), which was commissioned by the workers' group of the European Economic and Social Committee.

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Responsibility for the information and views set out in this report lies entirely with the authors.

Executive summary

Introduction

Digital labour platforms are increasingly impacting the world of work and workers' conditions. Their role in the labour market has become a central topic in research and policy discussions, even if platform work still only accounts for a small proportion of the labour force in the European Union (EU).

Scholars generally agree that platform work is internally heterogeneous in terms of tasks and digital content, workplace location and working conditions. However, the digital platform business model is increasingly seen as a key driving force contributing to the ongoing erosion of labour standards and social protections. This is because domestic legal systems and national courts are providing different legal solutions regarding this type of work, and because platform work has specific features that place the workers employed in this field in a particularly vulnerable position. The main legal challenges are related, first, to the misclassification of employment status. Most labour platforms classify external contributors as independent contractors rather than employees. However, platform worker autonomy frequently appears restricted in practice because labour platforms can indeed determine work organisation or unilaterality regulate working conditions. The second legal challenge is related to the labour platforms' usage of algorithmic systems which replace the organisational functions that managers traditionally performed. Algorithmic management can have detrimental effects on working conditions. Algorithmic management also brings risks of bias and discrimination related to the lack of transparency in these systems, which hinders workers' understanding of work organisation, and prevents the effective exercise of the right of trade unions and work councils to information and consultation.

In light of those challenges, this research report aims to contribute to the debate on platform workers' risks and regulatory solutions. It conceptually discusses the different varieties of platform work; explores the defining features of platform work in terms of prevalence, socio-demographic characteristics, algorithmic management and working conditions; compares national actions responding to this phenomenon in a number of selected countries (Finland, Germany, Hungary and Spain); and proposes a legal response aiming to improve labour rights and social protections for platform workers and other non-standard workers, based on the development of an EU definition of worker.

Policy context

The regulation of platform work has become a prominent topic in the EU policy agenda. The European Institutions have been engaged in the regulatory discussions on platform work for years through relevant initiatives which, although not directly or exclusively targeted at platform work, address issues that are important for ensuring good working conditions for platform workers. In particular, attention should be drawn to: the Transparent and Predictable Working Conditions Directive (Directive (EU) 2019/1152)[1] which established new rights for all workers, especially addressing insufficient protection for workers in more precarious jobs; the Council Recommendation (2019/C 387/01) which encourages EU countries to allow non-standard workers and the self-employed to join social security schemes; and the General Data Protection Regulation (GDPR)[2] (Regulation (EU) 2016/679), replacing Directive 95/46/EC, which regulates the collection, use and transfer of personal data, and also establishes provisions related to data-processing operations, including employee monitoring

In February 2021, the European Commission launched the **first-stage consultation of European social partners on how to improve the working conditions for people working through digital labour platforms.**[3] The purpose of this first-stage consultation of social partners, which ended on 7 April 2021, was to invite the views of European social partners on the need and direction of possible EU actions to improve the working conditions in platform work. At the time of writing of this report, the Commission

[1] 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 L 186, 11.7.2019).

[2] 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 (OJ L 119, 4.5.2016).

[3] First-stage consultation of European social partners on how to improve the working conditions for people working through digital labour platforms. C (2021) 1127.

is launching a **second-stage consultation of European social partners, in accordance with Article 154(3) TFEU**. The goal of the second-phase consultation is to discuss possible content and relevant EU instruments for the envisaged Commission proposal aiming to improve platform workers' working conditions. The consultation has also asked social partners whether they wish to enter into negotiations as provided for by Article 154(4) TFEU.

Key report findings

Platform work is not internally homogenous and is indeed becoming more diverse because of the constant evolution of labour platforms. The two main variants of platform work are: 'work on-demand via app' (also known as 'on-location platform work'), where platform work provided by a labour platform or 'app' is executed locally and primarily offline; and 'crowdwork', which entails the development of online or remote tasks through the online digital platform.

'Work on-demand via app' and 'crowdwork' are both internally heterogeneous. 'Work on-demand via app' covers different activities carried out either in public spaces (transport, food-delivery) or private spaces (cleaning, clerical services) and with different levels of specialisation and qualification. 'Crowdwork' is also diverse in terms of: the content of the tasks (micro-tasks vs larger projects) and the qualifications required; the selection and hiring process; and the form of matching work demand and supply through the platforms.

Despite being internally heterogeneous, platform work has key common features:

- Socio-demographic characteristics: platform workers are predominantly men, younger than traditional workers, more educated than the usual workforce and very often have migrant status.
- Algorithmic management: this is a key feature shaping the functioning of different types of labour platforms, allowing them to exercise control over the workforce. Digital labour platforms use algorithmic control to direct, evaluate and exercise disciplinary power over platform workers (Kellogg et al., 2020).
- Propensity to be misclassified as self-employed.
- Certain precarious working conditions: platform workers face a higher risk of precarity in terms of income; they are more exposed to the risk of overtime and tend to work under irregular and atypical working time schedules; they have higher exposure to psychosocial risks (social isolation, insecurity, work stress, work intensity and cyber-bullying) and certain physical risks (food-delivery and transport workers risk road accidents or harassment; crowdworkers risk physical harms such as postural disorders or eye strain).

Platform work also shares similarities in terms of employment and working conditions with other non-standard forms of employment, such as bogus self-employment, on-call work, temporary employment and temporary agency work.

The study has compared the main national responses to platform work in four countries. The countries selected were Germany, Finland, Hungary, and Spain, which represent different employment models and industrial relations traditions (Sanz de Miguel et al., 2020). These countries also differ in the prevalence of platform work: the proportion of the working age population who have performed a kind of platform work at some time it is higher in Spain (18%) and Germany (12.3%), and lower in Finland and Hungary (both around 7%) (Urzi Brancati et al., 2020).

The national analysis shows that there are no significant differences in the legal definition of dependent employment in Finland, Germany, Hungary and Spain. In the four countries, labour protection has developed around the traditional definition of employee, and the gap between these protections and those of the self-employed is substantial. In light of the framework constituted by this binary classification, which in Spain and Germany is blunted by the presence of a third category, it is not easy to understand where platform workers or non-standard forms of work fit in.

Research has found a trend towards increasing recognition for the status of platform workers as employees in Finland, Germany and Spain. Either through Court decisions (Germany and Spain), policy proposals or opinions (Finland and Germany) or specific legislation stimulated by case-law (Spain). In Finland, Germany and Spain, policy proposals, opinions or declarations of intent have been formulated

with different aims: improving access to social protection and working conditions for platform workers (Germany and Finland); and improving the transparency and reporting of labour platforms (Germany and Spain). In Spain, legislation has also addressed algorithmic management in platform work, which focuses on transparency of information and information rights. On the contrary, in Hungary, the phenomenon of platform work has not given rise to lawsuits nor caught the attention of legislators.

At industrial relations level, research has not identified any genuine collective agreement in force which has been explicitly concluded for platform workers in Finland, Germany, Hungary and Spain. However, in Germany, research has identified relevant bipartite action jointly developed by trade unions and labour platforms, which has developed codes of conduct and conflict resolution mechanisms for crowdworkers. Research has also showed that trade union unilateral actions to improve platform workers' working and living conditions differ in the four countries studied. A more comprehensive repertoire of trade union actions is identified in Germany, Spain and, to a lesser extent, Finland. In Germany, Spain and Finland, significant worker actions have been developed in the food-delivery and courier sector, where grassroots unions have played a key role in mobilising workers, often in coalition with mainstream trade unions. Worker actions have also been significant in the ride-hailing platform sector in Spain and Germany, where mainstream trade unions have supported taxi-driver associations or have litigated against labour platforms (particularly in Spain). Hungarian trade unions, which are comparatively weaker than those of the other MSs studied here, are still 'exploring' the platform work landscape. They are providing individual advice to platform workers and, in some cases, planning the development of specific campaigns.

Policy points

- On the basis of similarities in terms of employment and working conditions between platform work and other non-standard forms of employment, a unified policy proposal should be formulated to improve working conditions and social protections for all non-standard forms of employment.
- A unified concept of worker at EU level could guaranteeing adequate social protection as well as a nucleus of labour rights to those workers in more precarious jobs, such as platform workers and other non-standard workers.
- It is possible to formulate an EU definition of worker by combining the main elements of the concept of worker under EU law (as established along the years by the rulings of the CJEU) with key scholarly contributions highlighting the main problems underlying the classification of workers, with a special focus on new and non-standard forms of work.
- A definition of worker at EU level should reflect the Lawrie-Blum formula and include three further elements:
    - The main elements which have been added and integrated into the **Lawrie-Blum formula** along the years. In particular, **hetero-organisation** and the 'quality' of the work, which should correspond to activities that are **not purely 'marginal and ancillary'** (Menegatti, 2019).
    - **Algorithms and any other technology**, which includes not only the use of algorithms, but any new technological tools that could be employed to exercise managerial powers. Since they are new tools, characterising the new forms of work in particular, they should be taken into consideration in a legal definition, in order to avoid national Courts misunderstanding their effects on labour when applying EU law. The impact of automatic management modalities on labour relying on algorithms which replace traditional managerial practices is analysed in scholarly work (Cherry, 2016; Hensel et al, 2016) and is evident in new Spanish regulation.
    - The **personal work concept**. This notion is based on the work of Countouris and De Stefano (2019), and extends the concept of worker to include those who "provide personal labour, unless they are genuinely operating a business on her or his own account*"* (p.7).
- On this basis, a worker under EU law could be defined as '*A natural person who, for a certain period of time, performs services for and under the direction of another person and/or integrated in the organisation of another person in return for remuneration. The employer's*

direction and/or organisational power can also be carried out through algorithms and any other technology, which also has to comply with the recognized labour rights of the worker, including the right to information. Activities so small as to be purely marginal and ancillary are excluded from the definition. In any case, a worker under EU law' is a person that is engaged by another to provide personal labour, unless that person is genuinely operating a business on their own account. In case of legal action for the recognition of an employment relationship under EU law, all the circumstances have to be taken into consideration.'

- In order to effectively guarantee minimum standards of rights for all workers and the conditions for a fair and competitive internal market, it is also crucial to extend the rights recognised in all directives to workers falling under this proposed EU worker definition.
- At national level, regulation could improve the protection for platform workers by introducing a legal presumption that platform workers are employees. For platform workers to be classified as self-employed, the burden of proof should be placed on the platform.
- An effort should be made to reinforce monitoring and compliance with labour standards, considering that labour platform business models challenge the effectiveness of traditional labour inspectorates' and social partners' instruments to generate and enforce labour standards.
- National governments could also focus on improving access to social protection for platform workers. These measures should, in particular, ensure that platform workers have an adequate income level during non-work periods and adequate rights while carrying out the work. While permanent measures should be designed, some temporary income-related social protection measures could be developed to protect those workers affected by the COVID-19 pandemic crisis, considering that loss of pay has been a major risk for platform workers during the pandemic.
- National governments should also address the problem of providing minimum social standards for all self-employed workers, and recognise specific rights for those self-employed workers, who, although being genuinely self-employed and although not being in a comparable position to an employee, find themselves in a weak bargaining position.
- At industrial relations level, efforts should be made to give platform workers a collective voice, and to enable social dialogue and collective bargaining. As shown in some country studies, cooperation between mainstream trade unions and grassroots unions can contribute towards improving workers' representation and collective voice.

1. Introduction

Digital work platforms are increasingly impacting the world of work and workers' conditions. Their role in the labour market has become a central topic in research and policy discussions, even if platform work still only accounts for a small proportion of the labour force in the European Union (EU) (Urzi Brancati et al., 2019; Urzi Brancati et al., 2020).

Scholars generally agree that platform work is internally heterogeneous in terms of tasks and digital content, workplace location and working conditions (De Stefano, 2016; Huws et al., 2019). However, the digital platform business model is increasingly seen as a key driving force contributing to the on-going erosion of labour standards and social protection. This is because platform work has some specific features which are difficult to address within existing legal frameworks, thereby situating platform workers in a particularly vulnerable position.

First, platform work brings the risk of misclassifying employment status (COM/2021/4230).[4] Most labour platforms classify external contributors as independent contractors rather than employees (De Groen et al., 2021). As a result, platform workers tend to be excluded from the labour and social security rights to employee status. However, platform worker autonomy frequently appears restricted in practice, as labour platforms can determine work organisation or unilaterality regulate working conditions. As most EU Member States have not specified the employment status of platform workers and there is no EU definition of worker, the only alternative that platform workers have to clarify their status is to bring legal actions to courts (European Commission, 2021). In this context, the real labour status of platform workers is a question which is triggering increasing litigation in several EU countries and can create legal uncertainty (Hießl, 2021).

Second, digital labour platforms rely on algorithmic systems which replace the organisational functions that managers traditionally performed. The resulting 'algorithmic management' enables labour platforms to direct, evaluate and exercise disciplinary power over platform workers through computer-programmed procedures which automatize organisational function (Kellogg et al.,2020; Wood, 2021). Algorithmic management can have detrimental effects on working conditions. For instance, continuous and pervasive monitoring can result in overtime and/or an increase in work intensity (Wood, 2021). Moreover, algorithmic management brings risks of bias and discrimination related to the lack of transparency in these systems. It also hinders worker understanding of how work organisation decisions impacting working conditions are applied, and prevents the effective exercise of the rights of trade unions and work councils to information and consultation (De Stefano and Taes, 2021).

In light of those challenges, this research report aims to contribute to the debates on platform workers' risks and regulatory solutions. The report explores the defining features of platform work in terms of prevalence, socio-demographic characteristics, algorithmic management and working conditions; substantiated by a comparison of four national responses to the emergence of platform work. The report concludes by proposing a legal response aiming to improve labour rights and social protections for platform workers and other non-standard workers, based on the development of an EU definition of worker.

1.1 European Policy context

The regulation of platform work has become a prominent topic in the European Union policy agenda. The European Commission has become engaged in regulatory discussions on platform work for years through significant initiatives which, although not directly or exclusively targeted at platform work, address issues that are important for ensuring good working conditions for platform workers.

First, in December 2017, the Commission presented a proposal for a new Directive on transparent and predictable working conditions across the EU,[5] which would have extended new substantive rights to "workers in non-standard forms of employment, such as domestic workers, on-demand workers,

[4] Second-phase consultation of social partners under Article 154 TFEU on possible actions addressing the challenges related to working conditions in platform work (COM/2021/4230 final).

[5] Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union - COM/2017/0797 final - 2017/0355 (COD).

intermittent workers, voucher-based workers and platform workers" (COM/2017/0797, p.11) – as long as they fulfilled basic criteria, such as a minimum number of working hours. The Commission's proposal stemmed from the revision of Written Statement Directive[6], which has existed since 1991 and gives employees starting a new job the right to be notified in writing of the essential aspects of their employment relationship. The proposal was also aimed at responding to the demands raised in the consultation on the European Pillar of Social Rights (EPSR). Under this consultation process, the European Parliament resolution on the EPSR (2017) asked for a framework Directive on decent working conditions in all forms of employment to ensure significant existing minimum standards, in particular regarding internships and apprenticeships, work intermediated by digital platforms and on-demand work. Following this, the Transparent and Predictable Working Conditions Directive (Directive (EU) 2019/1152)[7] set up new rights for all workers, particularly addressing insufficient protection for workers in more precarious jobs. The original European Commission proposal also included an EU definition of worker based on CJEU case-law, which defined a worker as a "natural person who performs services for and under the direction of another person, in return of remuneration" (COM/2017/0797, p.8). However, the final directive adopted (Directive (EU) 2019/1152) did not provide an EU definition of worker. Instead, this question was left to Member States.

Second, in March 2018, the Commission presented a proposal for a Council Recommendation with the aim of providing access to adequate social protection for all workers including the self-employed, in all Member States. The Council Recommendation (2019/C 387/01) was formally adopted on 8 November 2019.[8] The recommendation aims to encourage EU countries to allow non-standard workers and the self-employed to join social security schemes (closing formal coverage gaps); take measures allowing them to build up and take up adequate social benefits as members of a scheme (effective and adequate coverage) and facilitating the transfer of social security benefits between schemes; and increase transparency regarding social security systems and rights. This recommendation could improve social protections for platform workers.

Third, the General Data Protection Regulation (GDPR)[9] (Regulation (EU) 2016/679), replacing Directive 95/46/EC, which regulates the collection, use and transfer of personal data, and also establishes provisions related to data-processing operations, including employee monitoring. According to Silberman and Johnston (2020), the GDPR can help platform workers in handling failures and problems in rating systems, and correct inaccurate or unfair ratings. This is because the GDPR provides data subjects (that is, platform workers), with the right to fair and transparent data-processing and the right to ensure that their personal data are accurate.

Although those initiatives can have a positive impact on platform workers' working conditions, the European Commission (DG EMPL) is currently considering implementing a specific policy action addressed to platform workers. With this aim, in February 2021 it launched **the first-stage consultation of European social partners on how to improve the working conditions for people working through digital labour platforms.[10]** The purpose of this first-stage consultation of social partners, which ended on 7 April 2021, was to invite the views of EU social partners on the need and direction of possible EU action to improve the working conditions in platform work.[11]

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[6] Council Directive of 14 October 1991 (91/533/EEC).

[7] 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 L 186, 11.7.2019).

[8] Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed 2019/C 387/01.

[9] 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 (OJ L 119, 4.5.2016).

[10] First-stage consultation of European social partners on how to improve the working conditions for people working through digital labour platforms. C (2021) 1127.

[11] It is worth noting that this consultation does not address the issue of the applicability of EU competition law to collective bargaining by the solo self-employed. The topic is being addressed separately, with an inception impact assessment that has been launched to exclusively focus on ensuring that competition rules do not stand in the way of collective bargaining by self-employed who need it.

On the employer side, the Business Europe response to this consultation process highlights that platform work is not a new legal form or legal category of work but a way of organising and distributing work, which may cover different contractual arrangements. Accordingly, the EU employer organisation rejects the introduction of a 'one-size-fits-all rule'. Instead, Business Europe is in favour of actions to be developed at the 'appropriate level', that is, in line with the different EU, national and social partner competences and the different national, social and industrial relations systems. Moreover, Business Europe explicitly rejects the adoption of EU definitions regarding who is a worker and who is self-employed. According to the employer organisation, this proposal would not be appropriate or effective as it would not be able to 'respect the different models in Member States and keep up with the dynamic developments on labour markets' (Business Europe Consultation Response. 2021-04-06).

On the trade union side, trade unions appear supportive of an EU initiative on platform work. They highlight that employment status should be at the core of such action and they are in favour of a binding EU instrument. In relation to this aspect, ETUC has proposed the introduction of a rebuttable presumption of employment status with a reversal of the burden of proof. Regarding personal scope, ETUC and Eurocadres would like to see the initiative extended to all non-standard forms of work. CEC European Managers note that the enjoyment of rights should not depend on the distinction between employment and self-employment. ETUC further notes that the level of rights for the self-employed needs to be decided nationally in cooperation with social partners (COM/2021/4230).[12]

At the time of writing this report he Commission is launching a **second-stage consultation of European social partners, in accordance with Article 154(3) TFEU**. The goal of the second-phase consultation is to discuss possible content and relevant EU instruments for the envisaged Commission proposal aiming to improve platform workers' working conditions. The consultation has also asked social partners whether they wish to enter into negotiations as provided for by Article 154(4) TFEU.

Finally, it is also worth highlighting that the European Economic and Social Committee (EESC) issued an opinion on platform work at the request of the German presidency of the Council, which was adopted on 18 November 2020.13 In this opinion, the EESC points out that digital platforms have a generally positive impact on the economy, contributing to job creation and innovation, flexibility and autonomy for workers, ensuring income for workers (often supplementary) and allowing vulnerable people to access employment. However, it also identifies specific risks for platform workers associated with the denial of basic rights, including: the weakening of rights to organisation and collective bargaining; precarity; low pay; the increasing intensity of work; the extreme fragmentation of work on a global scale; and the non-affiliation of workers to social security schemes. In line with these analyses, the EESC asked the Commission and Member States to 'clarify the concepts of employer, supply and demand intermediary, employee, self-employed worker and move towards uniformity of concepts in order to achieve decent work in the platform economy' (SOC/645. Fair work in the platform economy).

[12] Second-phase consultation of social partners under Article 154 TFEU on possible action addressing the challenges related to working conditions in platform work - COM/2021/4230 final.
[13] Fair work in the platform economy (SOC/645).

1.2 Aims, methods and structure of the report

This research report contributes to debates on platform work, and national and EU regulatory responses to improve labour rights and social protections for platform workers and other non-standard workers. The research report aims to answer six main research questions:

1. How can platform work be conceptually defined?
2. How many platform workers are there in Europe and what are their socio-demographic characteristics?
3. How do digital labour platforms manage their workforce?
4. What are platform workers' key employment and working conditions?
5. How are national legal frameworks and industrial relations' actors responding to the challenges brought by digital labour platforms in a number of selected countries?
6. How can an EU definition of worker be formulated and applied to non-standard forms of employment and platform workers, where that definition challenges the traditional conception of a worker as an employee?

In Section 2, the report considers research question 1 by contextualising the emergence of platform work within the broader ongoing erosion of the Standard Employment Relationship. Then, platform work is conceptually defined by discussing key typologies classifying the different types of platform work.

Section 3 addresses research questions 2, 3 and 4. Thus, it analyses the state of play for digital labour platforms in Europe in terms of the prevalence and socio-demographic characteristics of platform work, the managerial control methods used by digital labour platforms, and the employment and working conditions of platform workers. This analysis is based on a systematic literature review which has revised the most relevant publications. Priority was given to the most recent publications (in particular, since 2017) and peer-reviewed publications. The section concludes by discussing the extent to which platform work represents a new category of worker. In relation to this debate, the report finds that platform work shares similarities with non-standard forms of work in terms of employment and working conditions, and therefore calls for a unified political response in order to improve labour rights and social protections for all these forms of work.

Section 4 attempts to respond to research question 5. The section discusses the main challenges and alternatives to improving labour rights and social protections for platform workers at national level by comparing the regulatory and social partner responses in four countries. The countries selected are Germany, Finland, Hungary, and Spain, which represent different employment models and industrial relations traditions (Sanz de Miguel et al., 2020). Findings are mainly based on four standardised national reports written by national experts.

In Section 5, the report responds to research question 6 by formulating an ideal definition of worker that could be applied at the EU level, with the purpose of improving labour rights and social protections for platform workers and other non-standard workers. In order to draft this EU worker definition, two steps were followed. First, desk research on relevant Court of Justice of the European Union (CJEU) decisions (previously the European Court of Justice, ECJ), plus scholars' proposals and ideas addressing the problems behind classifying workers as employees, and their main theoretical and normative proposals around the conceptualization of worker. Second, expert interviews analysing the feasibility of this proposed EU definition of the worker.

Finally, the report ends with some conclusions and recommendations.

2. Non-standard employment relationships and platform work: change and continuity in the erosion of the Standard Employment Relationship model

2.1 The erosion of the Standard Employment Relationship

In most of the countries there is a Standard Employment Relationship (SER) model that receives the greatest labour and social security protection (Schoukens and Barrio, 2017). This model dates back to Fordism, when it was established as a regulatory model (Freedland, 2003) and a social norm (Castell, 1997; Prieto, 2014; Barbier, 2013) which normatively prescribed what (male) workers could expect from a 'normal' employment relationship (stability, predictable labour career, regular working time schedules, etc.). As a result, working under a non-standard form of employment was considered to be atypical and circumscribed to exceptional circumstances (Prieto, 2002).

Regardless of how the Standard Employment Relationship was institutionalised at national level (*contrato indefinido*, *unfixed term contract*, *unbefristeter Arbeitsvertrag*, etc.), it has been stressed that its key defining feature was its role in decommodifying labour (Supiot, 2001). Decommodification was favoured through the employment rights and social protection provisions jointly granted by employers and the state; these provisions institutionalised a substantive protection and brake against pure market relationships where labour is treated as a commodity (Polanyi, 1942/1992). Those protections provided workers with labour stability, access to training, career development and collective voice rights. Also, they ensured workers had an adequate income level during work and non-work periods, thereby limiting pressure on workers to sell their labour under unfair or disadvantageous market conditions, (Rubery et al., 2018).

The SER model became increasingly contested in the mid-1970s, when governments and companies sought greater employment flexibility as a perceived solution to the increased competition as a result of global economic changes (Pollert, 1991; Hyman, 1991; Aglietta, 1979; Boyer, 1986). Although it still represents the most common form of work in Europe, research has shown that it has been challenged both internally and externally. Internally, some of its defining features have been weakened because of the flexibilization of the labour market (Schoukens and Barrio, 2017) and developments in Information and Communication Technologies (ICT) (Huws et al., 2018): employment protection legislation has deceased; working time has become less predictable and more irregular; and spatial and temporal boundaries between work and non-work have been blurred (Schoukens and Barrio, 2017; Huws et al., 2018). In light of those changes, some authors have stressed the general precarisation of standard employment – precarious work has become the new norm (Rubery et al., 2018) – or have even questioned the current validity of the binary distinction between SER and non-standard or atypical forms, considering the complex interaction between different forms of employment contracts (open-ended contract, fixed term, etc.) and work arrangements (open-ended contracts with flexible working time patterns, etc.) (Huws et al., 2018).

It has also been challenged externally, because non-standard employment relationships have increased.[14] Most of the literature published since 2000 define the main employment arrangements which fall inside the category of non-standard employment as: temporary employment, part-time work, on-call work, temporary agency work and other multiparty employment relationships, as well as disguised employment and dependent self-employment (ILO, 2016; Rubery et al., 2018). These employment relationships do not provide the same extent of protection as standard contracts, and are associated with low pay, poor training and career opportunities, insufficient and variable working time, limited social protection and fewer access to collective rights (Jaehrling and Kalina, 2020; Smith and McBride, 2021). Accordingly, they bring the risk that labour will be re-commodified, as workers are forced to operate under exclusively marketised relationships lacking protection (Standing, 2011).

[14] However, it is worth noting that the forms and incidence of non-standard employment relationships vary across European countries. For instance, temporary employment ranges from around 1% of total employment in Romania Lithuania, Latvia and Estonia at the lower end of the scale, to more than 20% in Portugal, Spain, Croatia and Poland, at the top end of the scale. At the same time, several scholars call for adopting a multi-dimensional approach for assessing employment quality, in order to take into account the different variables which can coexist: insecurity, low pay, irregular working time, etc. This means that, for instance, a permanent job could be assessed as a precarious job if it provides insufficient pay and/or is subjected to irregular and unpredictable working time.

In addition, research has shown that non-standard employment relationships have become more diverse. For instance, Eurofound (2015) identified nine broad types of so-called new employment forms which, in some cases (for example, ICT-based mobile work), are highly determined by the evolution of new ICT (for instance, smartphones and similar devices connected to the internet). One of these non-standard/new forms of employment identified by Eurofound (2015) was crowd-employment, which is also referred to as crowdwork or platform work, and is defined as work where an online platform matches employers and workers, often with larger tasks split up and divided among a 'virtual cloud' of workers (Eurofound, 2015). This form of work, which is the main focus of this report, is conceptually defined in the next Section 2.2.

2.2 Platform work: definition, variations and main risks

The emergence of platform work, based on digital labour platforms which connect workers with consumers of work, is certainly one of the most discussed topics in recent labour debates. Although it still only accounts for a very small proportion of the labour force in most European countries (more detail on this in the following Section 3.1), scholars, policy makers and social partners are increasingly concerned about it, because it may entail worsening working and employment conditions, and lessening social protection for a growing number of people.

However, analysis of platform work is conceptually complex. In a context marked by the constant evolution and diversification of labour platforms, research has shown that platform work is becoming increasingly heterogeneous, resulting in differences in employment and working conditions across the platform-working population (Eurofound, 2018). In this sense, research has differentiated between several variants of platform work in recent years.

One of the first distinctions was elaborated by De Stefano (2016), who distinguished **crowdwork** from '**work on-demand via apps'**.[15] Crowdwork was defined as a work activity which entails the development of online or remote tasks through online digital platforms. With this definition, platforms connect a potentially indefinite number of workers and consumers on a global basis. In contrast, 'work on-demand via apps' is work provided by a labour platform or 'app' which is executed locally and generally covers traditional labour activities (transport, cleaning, food-delivery, etc.). In the case of 'work on-demand via apps', the matching occurs on a much more local basis, being also more affected by local regulation.

Research has shown that 'work on-demand via apps' and 'crowdwork' are internally heterogeneous (De Stefano, 2016; Codagnone et al., 2016; Eurofound, 2018; Huws et al., 2019). 'Work on-demand via apps' covers different activities carried out either in public spaces (transport, food-delivery) or private spaces (cleaning, clerical services) (Huws et al., 2019). The level of specialisation and qualification required by the tasks also vary. While most of these platforms tend to offer medium or low qualified jobs (food-delivery, cleaning, etc.), there are also instances of platforms offering medium or highly qualified 'offline work' such as legal services, consultancy and offline teaching (Codagnone et al., 2016). Also, the payment systems involved may vary, although compensation on a piece-rate basis is becoming the norm (Eurofound, 2018). In this sense, it is worth mentioning the case of several food-delivery platforms, such as Deliveroo in the United Kingdom (UK) or Foodora in Italy, which had traditionally paid their workers on an hourly-basis but changed the payment system to a piece-rate payment, leading to protests and disruption (Heiland, 2020).

Similarly, different forms of crowdwork have been conceptualised based on: the content of the tasks (micro-tasks vs larger projects) and the qualifications required; the selection and hiring process (bid, automatic matching or traditional worker application forms); the payment system;[16] and the form of matching work demand and supply through the platform (either on the basis of an offer to a specific worker, a contest[17] or competition process) (Codagnone et al. 2016; Schmidt, 2017; Eurofound, 2018;

[15] An 'app' is an application, normally a small and specialise program, which is downloaded into a mobile device.

[16] In some platforms such as Peopleperhour, Freelancer or Upwork, the workers can negotiate the payment method with the client (hourly basis or fixed price).

17 Under so-called contested based crowdwork, work is carried out simultaneously by group of individuals and, at the end, only one result is used and paid for it. In some cases, contest-based platforms, involve the client, the community, and sometimes even expert juries chosen by the client and/or the platform to evaluate a specific submission and select the winner(s) (Duggan

Duggan et al., 2019; Howcroft and Bergvall-Kåreborn, 2019). As will be discussed in the following sections, these differences may have important implications in terms of working conditions.

In addition, attention should be drawn to those forms of activities closer to the notion of the sharing economy, through which individuals use platforms to sell goods peer-to-peer or to lease assets (for instance, Airbnb or Wallapop). While some authors include these activities and on-demand app work within the same category (so-called 'assets-based services') (Howcroft and Bergvall-Kåreborn, 2019), the authors of this report think that they represent a non-labour activity or, as conceptualised by Duggan et al. (2019), a form of capital platform work. In this case, arrangements between so-called 'capital platform workers' and the platform is closer to an e-commerce relationship and workers have more similarities with small businesses than with employees (Duggan et al., 2019).

Table 1. Variants of platform work

	Work on-demand via apps	**Crowdwork**	**Capital platform work**
Definition	Work provided by a labour platform or 'app'; and that work is executed locally and primarily offline.	Work activity which entails the development of online or remote tasks through online digital platform.	Individuals use platforms to sell goods peer-to-peer or lease assets.
Content of the tasks and qualification	From low skill (food-delivery, cleaning, clerical work) to medium/high skill (legal services, consulting, teaching).	Any kind of tasks, from micro-tasking crowdwork (Duggan et al., 2019) to larger projects (macro-tasks). Accordingly, from very low to very high qualifications are found.	Content varies a lot. No qualification is required.
Payment system	On time (Foodora, Germany) vs on results (Deliveroo, UK).	On time (Peopleperhour) vs on results (Amazon Mechanical Turk).	On results (Airbnb).
Form of matching work demand and supply	Through offers or specifications (ride-hailing services such as Uber, or food-delivery platforms such as Deliveroo, Foodora, Glovo, UberEats, etc.); competition (TaskRabbit).	Through offers or specifications (CrowdFlower); competition (Freelancer); contest-based work (99designs).	Through offers or specifications (Airbnb).
Selection and hiring process	Client and the platform (TaskRabbit); the platform (ride-hailing services, Deliveroo, Foodora, Glovo, UberEats, etc.).	Client and the platform (Freelancer); the platform (Clickworker).	Client.

et al., 2019; Schmidt, 2017). There is potentially higher competition in online contests, thereby increasing the unpredictability of earnings already inherent in these occupations (Eurofound, 2018).

Nevertheless, the different forms of platform work described above also share some common denominators which call for a unified analysis (De Stefano, 2016; Howcroft and Bergvall-Kåreborn, 2019).

First, they are all generated by digital platforms, which represent a new form of coordinating economic activity, going beyond the Coasian dichotomy of 'hierarchy' (organisation) vs market. Platforms incorporate elements of hierarchy and market because they put together supply and demand of a certain good or service, and also directly manage the transaction. At the same time, they transcend the hierarchy-market dichotomy because they can provide more transparency and efficiency, and expand the range of economic activity (Urzi Bracanti et al., 2019). In addition, digital platforms for both 'crowdwork' and 'on-demand via apps' transcend the 'fissured workplace model' (Weil, 2014). According to Weil (2014), companies have increasingly relied on ICT since the 1980s in order to enforce quality standards in the absence of Standard Employment Relationships. This process has fissured employment relationships, enabling companies to coordinate peripheral activities through market mechanisms, and shift risks and liabilities to other entities, by means of outsourcing, franchising and temporary work agencies. In the view of Wood and Lehdonvirta (2021) and De Stefano (2016), digital labour platforms may entail a further form of fissured workplace. This is because digital labour platforms enable – on a greater scale – the outsourcing of personal activities to individuals instead of complex business structures. Moreover, algorithmic management relies on computer-programmed procedures which automatize organisational function (Kellogg et al., 2020; Wood, 2021), and allow digital platforms to retain an important amount of control over business processes and outputs in a more efficient way than traditional outsourcing practices (more detail on exercising control via ICTs in Section 3.2).

Second, both 'crowdwork' and 'on-demand via apps' bring the risk of an extreme re-commodification of work and worsening of working conditions. This is mainly because most labour platforms classify external contributors as 'independent contactors' rather than employees and, as a result, workers are hired and remunerated on a 'pay-as-you-go' basis (De Stefano, 2016; Howcroft and Bergvall-Kåreborn, 2019; De Stefano et al., 2021). Also, because algorithmic management mechanisms (rating, digital surveillance, etc.) can result in overtime, increase work intensity or higher exposure to psychosocial risks (more detail on working conditions in Section 3.3).

Once platform work has been conceptualised, the following Section 3 will carry out an in-depth analysis of this work form by discussing its prevalence, socio-demographic characteristics, labour platform management practices and platform workers' employment and working conditions.

3. Exploring platform work: prevalence, socio-demographic characteristics, management control mechanisms and working conditions

This section aims to respond research questions 2, 3 and 4 through a systematic literature review. It first analysis the prevalence and socio-demographic characteristics of platform work with a particular focus on European countries. Secondly, the managerial control methods used by digital labour platforms through algorithmic management are discussed. Thirdly, the section addresses employment and working conditions of platform workers. The section concludes by discussing the specificities of platform work and its similarities with other non-standard forms of employment

3.1 Platform workers: prevalence and main socio-demographic characteristics

The literature review has identified four main sources which offer comparative data on the prevalence and/or characteristics of platform work: first, the COLLEEM survey (Urzi Brancati et al. 2019; 2020); second, the Hertfordshire University survey (Huws et al., 2019); third, the Online Labour Index (OLI) (Kässi and Lehdonvirta, 2018); and fourth, the International Labour Organisation (ILO) surveys (ILO, 2021). These studies do not follow the same definitions nor the same methodological approach and, as a result, there are differences in the data they offer which seriously hinders the comparability of their results. As shown in Table 2 below, the COLLEEM, Hertfordshire University and ILO studies all use a similar definition of platform work which covers both 'crowdwork' and work 'on-demand via apps'; and they all rely on online surveys in order to gather the data from a sample of European countries (COLLEEM, Hertfordshire University) or on a worldwide basis (ILO). In contrast, the OLI's main aim is to estimate the traffic share of 'online platforms' for crowdworkers (platform workers doing online or remote tasks) through an economic indicator which measures the utilization of online platforms. Bearing this in mind, in the following paragraphs the report summarizes the main findings of each study.

Table 2. Comparative quantitative research on platform work

	COLLEEM Survey	**Hertfordshire University**	**Online Labour Index (OLI)**	**ILO surveys**
Definition of platform work.	'those who have ever gained income from providing services via online platforms, where the match between provider and client is made digitally, payment is conducted digitally via the platform, and work is performed either web-based (location-independent) or on-location.'	Paid work through digital platforms in: professional tasks (Upwork, Freelancer…); physical tasks (Handy, TaskRabbit…); and transport tasks (Uber, Blabacar).	Online labour platforms are understood as platforms through which buyers and sellers of labour or services transact fully digitally; the payment is conducted digitally via the platform, and the result of the work is delivered digitally; this is crowdwork.	Digital labour platforms are understood as platforms that mediate work digitally and can be classified in two categories: online web-based platforms; location-based platforms.
Method	Online survey. Colleem II: N = 38,878 responses	Online survey. N = 29,435 responses	Index that measures the utilization of online labour platforms over time and across countries and occupations by checking the list of vacancies available on 5 online platforms.	Numbers of survey respondents: Global surveys: 2,900. China and Ukraine survey: 1,107 + 761. Location-based platforms survey: 5,000. Traditional taxi and delivery survey: 2,200.
Country Coverage	HR, CZ, FI, FR, DE, HU, IE, IT, LT, NL, PT, ES, SE, SK, RO and the UK.	AT, DE, CH, IT, EE, FI, ES, SI, CZ, UK, SE, NL and FR.	Worldwide	Worldwide
Time Frame	COLLEEM I: June 2017. COLLEEM II: September–November, 2018.	January, 2016–May, 2019	The traffic share of online platforms calculation was conducted near the beginning of the data collection in July 2016, and then again in February 2017 and January 2018 yielding roughly 70% each time.	2017–2020

The **COLLEEM survey** has been developed by the European Joint Research Centre (Urzi Brancati et al., 2019; Urzi Brancati et al., 2020). It attempts to capture the prevalence of platform work in several countries in Europe. The first version, published in 2019, focused on 14 EU member States: Croatia, Finland, France, Germany, Hungary, Italy, Lithuania, the Netherlands, Portugal, Spain, Sweden, Slovakia, Romania and the United Kingdom. A second version published in 2020, included Ireland and Czechia. Both surveys are carried out online (Urzi Brancati et al., 2019; Urzi Brancati et al., 2020).

As shown in Table 2, the COLLEEM survey is based on a definition of platform worker that includes those who have ever gained income from providing services via online platforms, where the match between provider and client is made digitally, payment is conducted digitally via the platform, and work is performed either web-based or on-location (Urzi Brancati et al., 2020). Based on this definition, the authors estimate that around 11% (2020) of the working age population in Europe have performed a kind of platform work at some time. However, relevant cross-country differences are observed, which rank from 18% in Spain or 14% in the Netherlands to 6.1% in Slovakia or 5.9% in Czechia .

The survey also allows workers to be classified according to the time they spend working on platforms and the income generated from it, identifying four main groups: sporadic (less than once a month); marginal (less than 10h a week and amounting to less than 25% of their income); secondary workers (between 10 and 19h a week and amounting to between 25% and 50% of their income); and main platform workers (working at least 20h a week and amounting to at least 50% of their income). This analysis shows that platform work is sporadic or marginal for most of the platform workers surveyed in COLLEEM. Only 1.4% of the total working age population have platform work as their main job. Again, cross-country differences are identified. The proportion of main platform workers is larger in Netherlands (2.7%) and Spain (2.6%), and smaller in Finland (0.6%) (Urzi Brancati et al., 2020).

In terms of the socio-demographic profile of platform workers (those that perform platform work at least monthly), the study shows that platform workers are younger than offline workers (33.9 years was the estimated average age in 2018), predominantly men (64.3% for marginal workers, 64.7% for secondary workers and 64.8% for main platform workers) and more educated than the usual workforce[18] (58% of main platform workers have obtained the tertiary education ISCED 5). Also, a higher proportion of platform workers have migrant status, albeit with variation across countries: it is particularly high in Ireland (percentage of migrants in the different platform worker groups: marginal, 39.3%; secondary, 36.8%; main, 50.6%) and Finland (respectively: marginal, 25.4%; secondary, 37.8%; main, 36.7%); and lower in Lithuania (respectively: marginal, 0.7%; secondary, 4.6%; main, 0.7%) and Romania, where only 4% of marginal platform workers are migrants. Interestingly, the survey also shows that platform workers are more likely to live in households with dependent children than traditional workers (Urzi Brancati et al, 2019; 2020).

When comparing the first (2019) and second (2020) COLLEEM survey, an increase in the prevalence of platform work is observed (from 8 to 11%), the increase being particularly stark in Spain (from 12% to 18%) and Netherlands (from 10% to 14%). However, even though the overall number of platform workers increased, the number of main platform workers decreased (from 2.3% to 1.4%), with the UK and Italy being the countries where this drop has been most significant (from 3.6% to 1.6% in the UK; and from 2.2% to 0.9%, in Italy). Also, the longitudinal analysis of the data shows that, from the platform workers that had been interviewed in the first survey and were asked again in the second survey, 58.6% had dropped out. Regarding the evolution of the socio-demographic characteristics of workers, the most remarkable changes are: the mean age, which decreased from 34.7 to 33.9 years; and the share of women, which increased, especially among secondary and main platform workers (from 32.3% to 35.3% and from 26.4% to 35.2%, respectively) (Urzi Brancati et al., 2019; Urzi Brancati et al., 2020).

Hertfordshire University published a first preliminary study based on its survey[19] in 2016, which focused on five European countries: Austria, Germany, Netherlands, Sweden and UK (Huws et al, 2016). This study was complemented with a second study that included Czechia, Estonia, Finland, France, Italy, Slovenia, Spain and Switzerland (Huws et al., 2019). One online survey was conducted for each country from 2016 to 2019, with the exception of the UK, where two surveys were conducted in 2016 and 2019 respectively. Thus, the longitudinal analysis of the data is only available for this last country. Under this study, platform work is defined as paid work carried out through digital platforms (see Table 2 for more details). To estimate its prevalence, the researchers collected information about

[18] According to the authors of the COLEEM survey reports, the survey could also have a bias towards high-educated workers because is conducted online. This means that those potentially less qualified and working on-location may be less represented.

[19] The survey is funded by the European Foundation for Progressive Studies (FEPS) in collaboration with UNI Europa, with co-funding by several national level organizations.

the full range of online behaviour connected with income-generation or work-seeking that might encompass crowdwork, in order to isolate crowdworkers from broader categories of online behaviour (for example, selling own possessions on eBay). Using this approach, the study offers national data on the prevalence of platform work, which reflects significant cross-country differences. Czechia and Slovenia are the countries with the highest share of the working age population that has ever performed any kind of platform work (44.2% and 36.3%, respectively). On the contrary, the UK (2016) and the Netherlands are the countries where the share of the working age population that has ever performed any kind of platform work is smallest (9.3% and 9%, respectively).

This survey also attempts to classify platform workers based on the frequency of work (monthly or weekly) and the income-share earned. The study shows that there is a lower proportion of the population undertaking platform work at least monthly. However, cross-country differences are also observed: Czechia and Slovenia show the highest figures (33.9% and 23.6%) and the UK (2016) and Sweden the lowest (5.7% and 6.2%). The share of income derived from platform work also varies across countries, but the general pattern shows that in all the countries studied, platform work only amounts up to 10% of the total personal income for the majority of platform workers. The proportion of the working age population for which platform work amounts to at least 50% of their income is higher for Czechia (8.2%) and Slovenia (5.7%), and lower for the Netherlands (1.5%) and Austria (2.2%).

Regarding the socio-demographic characteristics of platform workers, only age and sex variables are considered. Results for the 13 countries show, in line with the COLLEEM survey, that although of platform work is present in all age groups, it is especially significant for those from the 18–24 and 25–34 age groups, with the highest youngest share of workers found in Estonia and Finland (both with 38.7% of weekly platform workers between 18 and 24 years) and the largest oldest share in Italy and Slovenia (which respectively count on 18.6% and 18.5% of weekly platform workers between 18 and 24 years). In terms of sex, the study shows that in most of the countries there are more men performing platform work than women. This is especially the case in Estonia and France, where respectively 72.1% and 66.4% of the weekly platform workers are men. In contrast, in the UK (2016) and Italy, there are more women than men carrying out platform work (respectively 52.7% and 52.8% of weekly platform workers are women).

The **International Labour Organisation** uses different methodologies to explore the number and characteristics of workers in labour platforms (ILO, 2021). Their first step was to attempt to access the number of workers on the platforms. However, ILO notes that this information is usually well hidden by the platforms, especially regarding self-employed workers. Due to these constraints, the ILO report only presents data on overall worker numbers from secondary sources, such as COLLEEM (ILO, 2021). The second step was to conduct a survey (2,900 respondents from 100 different countries) aimed at analysing the main socio-demographic characteristics of platform workers (not including work on-demand via app), with a focus on micro-task (2019), and freelance and competitive programming platforms (2019–2020). In addition, two country-specific surveys were carried out in China and Ukraine in 2019. Plus, surveys focused on location-based platforms (particularly the app-based taxi sector and the app-delivery sector) were carried out in 2019–2020, spanning the Arab States, Africa, Asia and the Pacific, Eastern Europe, Latin America and the Caribbean. To complement this, they also carried out a survey outside of the platform work sector, instead focusing on workers in the traditional taxi (nine countries) and delivery (four countries) sectors. Thus, allowing the ILO to make comparisons between non-platform-based and platform-based taxi and delivery sectors.

Based on these surveys, the ILO estimates the main socio-demographic characteristics of platform workers (age, sex, education and migrant background). It finds that the majority of workers engaged in online web-based platforms globally are men (63%), gender differences being more pronounced in developing countries, and the app-based taxi and delivery sectors.[20] In terms of age, platform workers are younger than traditional workers, although there are also some differences across regions (platform workers are younger in developing countries) and activities (computer programming workers are

[20] Only 37% of platform workers are women, with big differences across countries and regions. For example, in developing countries, only 24% of platform workers are women, while in developed countries it is 47%. This is more dramatic in the app-based taxi and delivery sectors where fewer than 10% of platform workers are women – although it is even worse in the traditional taxi sector (below 5% of workers are women).

younger). Platform workers are also generally highly educated, with 60% of respondents having attained a university degree.[21] The ILO also finds that migrant workers account for 17% of workers on freelance platforms globally, with great differences between developed countries (where 38% of platform workers are migrants) and developing countries (with only 7% of platform workers being migrants), and also between sectors (in the app-based delivery sector, 15% of platform workers are migrants, whereas in the app-based taxi sector only 1% of platform workers are migrants).

Finally, the **Online Labour Index (OLI)** is an index that measures the utilization of online labour platforms over time, and across countries and occupations. It has been elaborated by the University of Oxford and works by tracking all the projects/tasks posted on the five largest English language online labour platforms (Freelancer.com, Guru.com, Mturk.com, Peopleperhour.com, Upwork.com) which represent at least 70% of the market. To obtain the data, the OLI periodically crawls the list of vacancies available on each of the aforementioned platforms, and classifies them according to occupation and employer country. A vacancy is a job, project or task offered by a firm that wants to hire a worker. For the OLI, online labour platforms are understood as platforms through which buyers and sellers of labour or services complete their transactions fully digitally; that is, payments are conducted digitally via the platform and the result of the work is delivered digitally (Kässi and Lehdonvirta, 2018). The OLI estimates that the traffic of online labour has increased by 92% from May 2016 to April 2019 (Kässi & Lehdonvirta, 2018). The OLI also shows the countries/regions where the majority of orders are being made: the United States (which accounts for more than 50% of demand), the European Union, Asia and Oceania (not including India), the UK, Canada, Australia, India, Africa and lastly, the Americas (not including the US and Canada).

The same authors who have elaborated the OLI (Kässi et al., 2021) have tried to measure the number of workers by using online public data from Alexa Rank, siterankdata.com and Google Trends. They have estimated that there are 163 million worker profiles on online freelancing platforms. Among these, approximately 8.5 million workers have worked on the platforms at least once and, out of these, 2.3 million workers have been able to work on a full-time basis, understood in this study as workers that have earned more than $1,000 (€850 as at 23 July 2021) or completed more than 10 projects. Nevertheless, the margin of error in these estimates leads the authors to state that there could be as many as 205 million registered worker profiles, including 24 million workers that have worked through an online labour platform at least once and 6 million full-time workers.

Finally, the literature review has identified a few studies which have attempted to **measure changes in the prevalence of platform work in the context of the COVID-19 pandemic crisis.** Umar et al. (2020) combine the Online Labour Index with data on COVID-19 cases and deaths from the database Our World in Data, in order to test the relationship between the incidence of COVID-19 and the traffic in the 'sharing economy' (where the sharing economy includes both platform work and capital platform work; see Section 2.2 for more detail). Their findings show that COVID-19 has positively affected the platform economy. Although there was a calm period after news broke on the arrival of COVID-19 in March 2020, the months of April and May saw an increase in the traffic of tasks in the sharing economy, that subsequently became even larger by the month of June. Similarly, Batool et al. (2020) used data from Google Trends in an attempt to investigate the changes that occurred in online searches for sharing economy services. The authors used data from 1 January 2019 to 10 May 2019, which was then compared with data on the same dates in 2020. According to their results, travel restrictions and lockdown had a knock-on effect on ride-hailing services. In contrast, freelance platforms such as Upwork and Fiverr have been positively affected by the restrictions, especially Fiverr; and food-delivery services saw a huge increase during the first weeks of the lockdown, although then the trend came back to the 2019 position.

[21] This percentage is higher for those engaged on freelance platforms (83%), compared to those on micro-task (64%) and competitive programming platforms (50%). Furthermore, the share of highly educated workers is higher in developing countries (73%) compared to developed countries (61%).

3.2 Managerial control under digital labour platforms: algorithmic management

Digital labour platforms facilitate the interaction of workers with a multiplicity of clients or consumers of work. The platforms also provide the infrastructure and governance conditions for the delivery of work and facilitate the corresponding remuneration (ILO, 2018; Urzi Brancati et al. 2019). Formally, workers can choose the clients and jobs to take, and the way in which they develop their jobs. This is the reason why many digital labour platforms classify external contributors as 'independent contractors' rather than employees. However, platform workers' autonomy and discretion is seriously restricted because of the rules and design features of the platforms (Wood and Lehdonvirta, 2021). Data collection and algorithms appear to be the central elements that shape the functioning of the platform and allow them to exercise control over the workforce. They are also key factors which determine the negative working and living conditions of platform workers, because they entail more work intensity and longer working time (Wood, 2021), among other effects discussed in detail in Section 3.3.

Algorithms, broadly defined as a process to be followed in calculations or other problem-solving operations, have been used in business since at least the 19th century (Wood, 2021). However, their use has been deeply altered because of the recent evolution of computing and ICT technologies. In this context, 'algorithmic management' differs from more traditional 'management use of algorithms' as it focuses on algorithmic technologies (Wood, 2021). These algorithmic technologies are defined as "computer-programmed procedures that transform input data into desired outputs in ways that tend to be more encompassing, instantaneous, interactive, and opaque than previous technological systems" (Kellogg et al., 2020:366).

Previous research has stressed the benefits that algorithmic technologies bring to business value, based on improved efficiency in decision-making, coordination processes and organisational learning. According to Kellogg et al. (2020), research has paid less attention to the analysis of algorithmic systems as control instruments. However, in recent years, several research articles have been published focused on algorithmic management and control in digital labour platforms. Although there is not yet large-scale representative research on the topic (Wood, 2021), several studies have been conducted, usually following a qualitive approach (ethnographic studies, etc.) and focusing on specific platform case studies. Many of them have studied delivery and ride-hailing platforms providing on-demand app work. However, there are also several studies focused on high-skilled crowdwork platforms (e.g., Upwork).

In order to summarise the most significant recent research findings on algorithmic management in labour platforms, the report follows the conceptual framework developed by Kellogg et al. (2020), which was also used by Wood (2021) in his literature review on the topic. Kellogg et al. (2020) draw on Edwards' typology of manager control (Edwards, 1979) and distinguish three dimensions of algorithmic control – direction, evaluation and discipline – which will be outlined further under the following headings.

Algorithmic direction

Digital labour platforms use algorithmic control to direct workers and specify what needs to be performed, in what order and time, and with different degrees of accuracy. To this aim, digital platforms use so-called 'recommendations'[22] based on patterns found in the data which attempt to align worker decisions with the preferences of the platform (Kellogg et al., 2020).

Common examples of 'recommendations' have been identified in several ride-hailing platforms, which give detailed instructions to drivers on the route to be followed. In the case of Uber, Bloodworth (2018) finds that the Uber app directs the route taken to reach the customer's destination (Wood, 2021). For the food-delivery platforms, studies analysing Deliveroo and UberEATS in Australia (Veen et al., 2020), Deliveroo in the UK (Woodcock, 2020), and Foodora and Deliveroo in Berlin (Ivanova et al., 2018) show how these platforms break the workflow into small pieces (accepting the order, riding to the restaurant, taking the food, packing it, etc.). Moreover, they give workers only just enough information at each step and workers are required to confirm with a click to the app that the step has been completed. In some cases (for example, Deliveroo in UK) food-delivery platforms directly assign shifts to the riders which, furthermore, often start earlier and finish later than expected (Woodcock, 2020); or set up the

22 Recommendations in this context should not be understood as non-binding guidelines formulated by a client or intermediate agent, but as employer actions intended to control and determine what workers have to do.

strategic zones for riders to wait, based on the most strategic place to attend orders from, as was found for Deliveroo and UberEATS in Australia (Veen et al., 2020).

'Recommendations' very often come in the form of nudges that limit the workers' possibilities to ignore them (Kellogg et al., 2020). For instance, some food-delivery apps only give riders 10 seconds to accept or reject an order, which pushes riders not to think about it and just accept (Veen et al., 2020). Other platforms use tedious and time-consuming processes to reject orders. In the case of Instacard in the US, workers cannot reject any shift and can only 'reject' a delivery request by failing to respond to a request for four minutes. If the worker fails to respond four times in a row, the platform will log them out although the worker is allowed to log back in at will (Griesbach et al., 2019). Nudges also come in the form of individualised emails with work performance statistics, which tell workers if they are under or over the average (Woodcock, 2020); or, in the case of Uber, oblige workers to stop driving if three passengers in a row report feeling unsafe (Scheiber, 2017).

Labour platforms also use algorithmic 'restrictions' to direct the work. This means that only certain information is shown, with a view to fostering certain behaviours while disincentivising others (Kellogg et al., 2020). The most extensively researched restriction mechanisms are those regarding information asymmetries. Information asymmetries, where workers are only told some of the information available, play a role in directing workers' behaviour. According to Shapiro (2020), the asymmetrical application of price-setting allows on-demand service platforms to exert control over labour at the aggregate level, while maintaining the façade of autonomy for the individual worker. For example, Instacart pays the worker for each order based on the number of items. Since an item is the bundle of units of a same product (regardless of the number of units in a bundle; that is 15 bottles of water are one item), a worker will not know exactly how the delivery is going to be (Griesbach et al., 2019). There are further examples of platforms using information asymmetries to direct how work appears in the food-delivery sector. For example, generally, food-delivery platforms only give the delivery address once the rider has picked-up the food from the restaurant. This prevents workers rejecting or skipping deliveries with long or complex routes (Veen et al., 2020; Woodcock, 2020).

'Restrictions' also refer to the algorithmic control of communication channels. That is, practices and design features aimed at preventing workers from working for clients outside the platform. For example, in the case of Upwork, the platform does not allow the use of 'grey area topics', such as mentioning other communication channels (email address or phone) or alternative payment methods (Bucher et al., 2021).

Algorithmic evaluation

Algorithms are also used to evaluate workers' activities and assess performance in order to obtain the desired behaviour (Kellogg et al., 2020). Literature on labour platforms has highlighted the significance of different 'reputational and rating systems' (Wood, 2021).

Several food-delivery and driving-on-demand platforms use 'customer rating systems'. These allow customers to rate workers and have a significant impact on their work, as a bad rating might mean less orders or worse shifts and, accordingly, less income. For example, DoorDash allows customers to check workers' previous ratings (Griesbach et al., 2019). Also, Shipt, another delivery platform, uses rating systems as a way to match supply and demand, so workers who get a bad rating from a client will be unlikely to be matched with that same client again (Griesbach et al., 2019). On UberEATS and Deliveroo in Australia, preferential treatment is given to workers with higher ratings (Veen et al., 2020).

Customer rating systems are also common in crowdwork platforms. Wood et al. (2019) finds that in crowdwork platforms (so-called online labour platforms in the article), workers were rated by their clients following the completion of tasks. Workers with the best scores and the most experience tended to receive more work due to the platforms' algorithmic ranking of workers within search results (Wood et al., 2019). Gerber and Krzywdzinski (2019) compare rating systems in low-skilled micro-task and high-skilled macro-task labour platforms. They find that in high-skilled macro-task platforms, an individual's reputation is first and foremost the average of past ratings. However, differences are observed according to the type of selection process. On high-skilled marketplaces, where clients select crowdworkers directly and negotiate the payment bilaterally, usually only the client rates the work result. On contest platforms with a 'post hoc' selection of a winner, very often both the client and the crowd

community can rate and comment on submissions. On low-skilled micro-task platforms, rankings have a very functional purpose: they are used to quantify and compare performance, and to regulate which crowdworkers need to be checked and how often in the future. A certain ranking ('advanced'), percentage (minimum 85%) or star rating (four out of five stars) is typically required to access or view more demanding and higher paid tasks on the dashboard, such as writing longer or more complex texts. In addition, some platforms build into their infrastructures obligatory and automatic entrance or qualification tests as control barriers. The ranking thus has direct material effects: high reputation rewards workers by giving them more income-earning opportunities, while low reputation punishes them by limiting their access to income.

In addition to ratings, platforms also use algorithmic 'recording' aimed at monitoring, aggregating and reporting on a wide range of data, generally in real time (Kellogg et al., 2020). For instance, research by Veen et al. (2020) on UberEATS and Deliveroo in Australia, provides details on how both platforms monitor their own workers' performance. UberEATS uses three key performance criteria: acceptance ratings based on the proportion of orders accepted or rejected upon receiving a delivery request; cancellation ratings capturing the number of orders cancelled after acceptance; and a customer satisfaction rating. In the case of Deliveroo, it monitors riders' performance using 'service delivery standards assessment' criteria, which include: the time to accept orders, travel time to restaurants, travel time to customers, time at the customers, unassigned orders and cancellation of shifts.

Research has also reported how micro-task crowdwork platforms record and monitor several work parameters such as hours spent on the platform, hours the crowdworker is normally active and logged into the platform to do work, work speed and level of activity (Gerber and Krzywdzinski, 2019). Schörpf et al. (2017) show that some micro-tasks platforms control workers with computer programs to monitor and log the workers work progress, such as tracking tools for workers to record their progress through screenshot every ten minutes. In addition, the program might be given access to the worker's webcam or the worker's keystrokes and mouse events are counted and logged. Also, other platforms described by Wood et al., (2019) track frequencies of workers' keyboard presses and mouse movements, alongside with screenshots to monitor workers behaviour.

Finally, some publications show that specialized and freelance platforms give space to workers for self-presentation. In some cases, workers' profiles do not only include the voluntary information they give about themselves but also the data and parameters the platform collect about their performance and the customers' evaluation (Pongratz, 2018).

Algorithmic discipline

Algorithmic discipline entails the punishment and reward of workers to foster cooperation and enforce compliance. Based on this definition, Kellogg et al. (2020) identify two main mechanisms through which discipline is exercised: 'rewarding' and 'replacing'

'Algorithmic rewarding' covers those mechanisms which reward high-performing workers with more opportunities, higher pay, and promotions (Kellogg et al., 2020). In this regard, the literature review has identified several examples of material incentives. Incentives based on the payment system are reported in several articles. According to Ivanova et al. (2018), paying per delivery means that the company does not pay for waiting time between orders. This way of paying exerts control over speed, routes and shift choices. Delivery platforms also use systems of prices which vary according to the time and place of work, to ensure a regular and constant workforce available. In the study by Ivanova et al. (2018) about Foodora, it is shown how a bonus system is used to incentivise working at more unattractive hours, such as nights or weekends. Similar pay incentives are identified in courier platforms. Shapiro (2018) shows that platforms encourage couriers to log on and go to certain delivery zones by paying higher rates. This allows the company to ensure spatial and temporal coverage. Bonus payments have also been used to incentivise riders to work on strike days, as was found in the case of Glovo in Spain (Arasanz and Sanz de Miguel, 2021).

Other platforms use certain labels to incentivise workers to take orders on certain shifts. This is the case of Instacart in the US, which uses the so-called 'early-access status' to describe those workers that average at least 25 hours per weekend over the previous three weekends or who work at least 90 hours over the previous three weeks. Those workers with early-access status can sign up on Sunday at 09.00

for the following week's shifts, while other Instacart workers must wait until Wednesday, when there are often no shifts left to claim (Griesbach et al., 2019).

In other cases, rewards come in the form of greater and better visibility to clients. This is the case of macro-task platforms which make workers' reputation and rankings visible to clients and community, and often even to unregistered users; providing status titles ('pro', 'platinum' or 'top rated'), short personal stories and lists of top professionals (Gerber and Krzywdzinski, 2019). There are also platforms which use upgrade, badge or experience status/score systems, which can be obtained by completing a certain number of projects, earning a certain amount of money, receiving reviews and also completing 'strategic' achievements like bidding on a certain number of projects, quickly answering clients or logging in every day over a period of time (Schörpf et al., 2017). In Upwork, worker profiles contain a 'job success score'. This platform also provides workers with Rising Talent status and gives 'Response in 24 hours' status to workers who constantly respond in under 24 hours (Jarrahi et al., 2020).

Finally, 'algorithmic replacement' entails 'firing through the algorithm'. Several articles have shown that workers from ride-hailing platforms such as Uber and Lyft in the US are exposed to automatic deactivation in case their ratings drop below a certain level. These workers do not have a right to appeal the decision (Wood, 2021). This type of discipline is also exercised in several food-delivery platforms. In the case of DoorDash in the US, company policy states that it may 'deactivate' people whose last 100 ratings average less than 4.2 out of 5 stars (Griesbach et al., 2019). In the case of Foodora and Deliveroo, companies restrict low-rated workers' ability to access the best shifts (Ivanova et al., 2018).

In other crowdwork platforms, workers can be banned if they do not meet company demands. In Upwork, those workers who fail a certain number of proposals are banned. In this case, discipline through punishment is also reinforced because of information asymmetry, considering that workers do not know how many failed proposals lead to being banned (Bucher et al., 2021). In other platforms, not being constantly available might have negative consequences for the workers' status which, in turn, restricts workers' chances to get clients (for both micro-task and macro-task platforms, see Gerber and Krzywdzinski, 2019; for macro-task platforms alone, see Schörpf et al., 2017).

Interestingly, some publications highlight that discipline is based on the 'narrative around performance metrics' and, to a lesser extent, on the actual deactivation of underperforming workers (Veen et al., 2020). In the case of Uber Eats and Deliveroo in Australia, Veen et al. (2020) find that in practice low ratings did not necessarily result in deactivation, as platforms require a large number of workers to meet customer demand, and thresholds could be adjusted on a local basis. However, platforms informed workers that if their performance fell below the established criteria there would be adverse consequences. Because the performance systems were 'black boxes' to workers, many of them were working under the impression that they could be automatically deactivated if their performance fell below certain thresholds. Similarly, regarding Deliveroo, Woodcock (2020) has argued that the fact that workers do not have physical contact with any kind of boss/manager reinforces the disciplinary power of the algorithm.

The disciplinary effect related to the perception of the algorithm – the so-called 'fear the wizard' – is also highlighted by Bucher et al. (2021) in the case of Upwork. As algorithms are unknown by workers, there are myths about how it might affect them that have real consequences on their behaviour (the 'shadow manager'). This makes workers strengthen the power of the algorithm through their anticipatory compliance practices: "As the workers absorb the evaluative performance of algorithms and take it upon themselves to discipline their activities in anticipation, they are enforcing the directives of the platform unto themselves" (Bucher et al, 2021, p.18)

3.3 Platform workers' employment and working conditions

When analysing **employment conditions** of platform workers, the most important topic studied in the literature is their employment status. As noted in Section 3.2, most labour platforms classify external contributors as 'independent contractors' rather than employees. This has crucial implications in terms of working conditions, given that the self-employed are not entitled to individual and collective employment rights, or social security rights in most of the countries (De Stefano et al., 2021; see more details on section 4.1). Due to this, several studies have attempted to measure the prevalence of self-employed status among platform workers.

One of the main methodological problems for research trying to measure the employment status of platform workers is that it is based on the self-reported employment status of platform workers in surveys. Because many of these workers use platform work as a secondary source of income, their self-reported employment status could simply reflect the employment status of their main work, i.e. not the platform work. This problem applies to the COLLEEM survey and the Hertfordshire University survey which both tend to underestimate the prevalence of self-employment among platform workers. For instance, Urzi Brancati et al (2020) find, based on the data of the second wave COLLEEM survey, that more than 70% of platform workers self-report as employees, while only 10% self-report as self-employed. Similarly, Huws et al. (2019) show, based on the Hertfordshire University survey, that the majority of platform workers describe themselves as being in full-time employment, especially in Czechia and Slovenia.

Other publications offer quite a different picture. For instance, De Groen et al (2021) estimate that 92% of active digital labour platform in Europe classify workers as self-employed. This estimation is based on the information gathered in a database covering all identified digital labour platforms that are, or have been, active in the EU27 between 2015 and March 2021.

For crowdwork/online platform work, several studies relying on qualitative interviews (Eurofound, 2018) and mixed methods combining surveys and interviews (Krzywdzinski and Gerber, 2020) show that most of these workers are classified as self-employed (Serfling, 2018; Eurofound, 2018; Krzywdzinski and Gerber, 2020). The situation can be different for 'work on-demand via apps' (on-location/offline platform work) in some countries, because this type of platform work is more influenced by national or local regulation. In this sense, the study conducted by Eurofound (2018) shows how the employment status of food-delivery and transportation services platform workers varies between European countries. For example: in Sweden, they are employees; in Austria and Germany, depending on the exact modalities of the platform work, these workers may be self-employed or employees (particularly in food-delivery in Germany, as shown also in section 4.2 and 4.3); and in France, their status is that of micro-entrepreneurs. In addition, there is a Spanish case where food-delivery riders are now classified as employees following a Supreme Court decision and a Royal-decree law (see more details on Section 4.2).

In addition, some research (Heyes and Newsome, 2017; UGT, 2020) has shown the relationship between platform work and undeclared work, which is understood as paid activities that are lawful as a work activity, but are not declared to public authorities (Eurofound, 2016). In this regard, the Spanish trade union UGT (2020) carried out a qualitative research study based on interviews with food-delivery riders in Spain, and found that a significant number of food-delivery platform workers are also undeclared workers. Undeclared workers cannot access full trade union support and are not eligible for social security protections. Due to increased competition, some workers are taking advantage of newcomers to the platform by renting out their accounts to people on an irregular basis. Undeclared workers are mostly undocumented migrants and asylum seekers in need of any source of income. Critically, the study highlights that labour platforms are aware of these practices and take no action since it is in the platforms' strategic interests to increase the number of workers available in order to reduce order prices and hinder workers' collective actions.

Regarding the topic of **working conditions for platform workers** – broadly understood as all the factors related to the economic dimension of work, the nature of the work task and the organisational environment in which work is carried out (Gallie, 2007; Prieto et al., 2009; Eurofound, 2018) – the literature review shows that research is relatively scarce and rather imbalanced. Publications have

particularly focused on the economic dimension of platform work, the topic of working time and work autonomy (researched in many cases in connection with an analysis of algorithmic management control), and the issue of health and safety conditions. Other working condition dimensions such as skills and promotion have received much less attention. Furthermore, it is worth noting that research is seldom conclusive due to the internal diversity of platform work (different types of platform work display different working conditions) and because available data sources on working conditions have significant conceptual and methodological differences which hinder comparison (De Groen et al., 2021). Methodologically, research on working conditions of platform workers is either based on: large-scale representative comparative studies relying on surveys (for example, Urzi Brancati et al., 2020); non-representative cross-national surveys (for example, Apouey et al., 2020); or on single case (or cases) qualitative national or local studies which gather information through interviews with specific platform workers (food-delivery riders, etc.) (for example, Polkowska (2019).

With respect to the economic dimension of platform work, research has analysed income levels of platform workers, reflecting differences across types of platform work. Generally, research shows that micro-task crowdwork and 'on-demand via apps' work appear to be the types of platform work with the highest risk of precariousness in terms of income. However, results are seldom conclusive because, in some cases, studies offer contradictory results. For instance, Urzi Brancati et al. (2020), based on COLLEEM second survey data, show that the 'main platform workers' (those who provide labour services via platforms at least monthly, work more than 20h a week and get more than 50% of their income) are overrepresented in the top income percentiles (above 90th and 75th in particular). If the type of task is taken into account, those involved in online professional services have the highest share of workers on high income percentiles. According to the authors, the overrepresentation of main platform workers at the top of the income distribution it is likely to reflects an overrepresentation of the kind of professionals which are more likely to use professional platform service provision as a secondary source of income (Urzi Brancati et al., 2020). In contrast, Cantarella and Strozzi (2018) conducted a study focused on EU and US crowdworkers (that is, not including 'work on-demand via apps'); and the study showed that these crowdworkers earnt 70.6% less than traditional workers (controlling for socio-demographic characteristics and labour market indicators). In order to make this estimate, the authors relied on the ILO Surveys on crowdworkers (Berg, 2015; Berg et al., 2018), which are used to build the treatment groups, and then are paired with the European Working Conditions Survey (EWCS) and the American Working Conditions Survey (AWCS) data.

The results obtained by Cantarella & Strozzi (2018) are in line with several studies which show that crowdwork platforms (in particular micro-task platforms) tend to offer low and very low incomes. For instance, Hara et al. (2018) have estimated the hourly wages in Amazon Mechanical Turk by using the Crowdworkers Chrome plug-in to obtain information on the number, time and reward of tasks.[23] Based on this, it is estimated that mean income can vary between $3.13/h (€ 2.6 as at August 2021)and $3.48/h (€ 3 as at August 2021), while the while the median income lies between $1.77/h (€ 1.5 as at August 2021) and $2.11/h (€ 1.8 as August 2021), with only 4.2% of workers earning more than the federal minimum wage. Lehdonvirta (2018) compares income levels in different micro-task platforms, namely Amazon Mechanical Turk, MobileWorks and Cloud Factory; the study is based on interviews with workers (10 from each platform) and platform managers (only for Mobile Works and Cloud Factory), participant observation in the roles of a worker and an employer (in the case of MTurk) and observations on workers' public online forums. The study shows that the great majority of tasks on Amazon Mechanical Turk provide modest rewards ($1–2/h; € 0.8–1.7 as August 2021) with only a few providing as much as $10–20/h (€8.4–16.9 as August 2021). In MobileWorks, depending on the availability of work and the constancy of workers, workers earn between $60 (€50.6 as August 2021) and $100 (€ 84.3 as August 2021) a week. In Cloud Factory, the weekly earnings range from 1000 to 2000 rupees (about €8–17). Another study conducted by Joyce et al., (2020) analyses income levels in four leading micro-task platforms (Amazon Mechanical Turk, AMT; Clickworker; CrowdFlower; and Microworkers) through a non-representative survey conducted in the US, Canada and the EU. The study finds that the

[23] The Crowdworkers Chrome plug-in is used by workers on an opt-in basis. It was designed to identify the effective hourly wage rates of tasks for workers as it collects information on the tasks, the time that it takes from acceptance to submission, the rewards and other metadata about the tasks (Hara et al., 2018).

majority of respondents (71%) in their sample earned less than $9/hour (€ 7.6 as August 2021), with just over a third (35%) earning less than $5/hour (€ 4.2 as August 2021). In addition, it is worth mentioning the study conducted by Fairwork (2021), which has studied 'fair pay'[24] in 17 different types of digital online/crowdwork labour platforms (micro and macro-tasks), drawing on desk research, dialogue with platform managers and a survey of 792 workers in 75 countries. The study shows that across the 17 platforms of their study, only a few (Appen, Fiverr, Prolific, TranscribeMe, Upwork and Workana) were able to evidence that workers are always paid within an agreed timeframe and for all completed work. In addition, among these platforms, only two (Appen and Workana) were able to evidence that their workers earn at least the local minimum wage. Worst income conditions appear in platforms that employ a contest model for any work done in the platform, or platforms without protection against non-payment (for example, in cases where there are cancelations or rejections of work partially or fully completed).

Research has also shown that 'work on-demand via apps' features low-income levels. For this type of work, a Eurofound study (2018) found that earnings depend on several factors such as tips, the employment status of workers and the availability of bonuses. For example, in Austria, employees in the food-delivery sector earn €7.60 per hour and 60 cents per delivery, while self-employed workers earn 4€ per hour and 2€ per delivery. If tips are included, workers earn between 11€ and 14€ per hour. In Italy, hourly earnings are around 8€ on Foodora, and between 7€ and 8.5€ on Deliveroo. Similarly, earnings vary across countries in the labour platform-based cleaning sector. For example, in Germany, workers for a cleaning platform earn between 12€ and 14€, while in Italy and the Netherlands, they earn 11€ per hour. In addition, some publications highlight that in certain activities such as food-delivery, economic precarity is exacerbated due to the fact that workers are requested to provide and maintain their own equipment (Gregory, 2020).

Another aspect of the economic dimension which has barely been researched is the problem of income discrimination. As noted by Graham et al., (2017), platform work is able to prevent some of the traditional labour market discrimination to certain segments of population due to the opportunity of accessing geographically distant markets and the anonymity of online work; however, some forms of discrimination that limit the earning opportunities of workers still prevail, such as gender discrimination. In this sense, Adams (2020) has estimated that women crowdworkers earn on average 21.6% less than men crowdworkers, this difference being smaller (10%) when controlling for remuneration and total working time. This estimate is based on the same plug-in used by Hara et al. (2018): a third-party Amazon Mechanical Turk plug-in called 'the Crowdworkers Chrome plug-in', which collects information about the tasks, rewards and the time that it took, among other metadata.

Finally, recent studies (Apouey et al., 2020; Howson et al., 2021) have analysed the impact of the COVID-19 pandemic crisis on platform workers' incomes. According to Howson et al. (2021), loss of pay has been a major risk for platform workers during the pandemic, and is unsurprisingly the issue of most immediate concern for the majority of workers they approached during the study. The study also found that, out of the 191 platforms that were analysed, only 21 could evidence that they had provided workers with some form of direct compensation for income lost due to fewer work opportunities[25]. Apouey et al. (2020) examine the financial situation of platform workers in France through a non-representative survey (137 respondents) conducted in the months of March and April 2020. The study finds that platform work drivers experienced on average a 21–23 percentage point larger income drop compared with other workers. Survey respondents as a whole reported that their income decreased by 28%, the income decrease being even higher for offline platform workers. The study also found that the vast majority of respondents (73%) noted that they were neither receiving nor applying for compensation. Drivers were more likely to have received financial compensation (25%) or asked for it (30%), compared with other workers in the sample (bikers in particular). In contrast, the qualitative

[24] According to Fairwork (2021), fair pay entails that workers must have full confidence that they will be paid for the work they do, within the agreed-upon timeframe, and in a recognised national currency. In addition, workers must earn at least their local minimum wage.

[25] The authors based their analysis on desk research, and direct engagement with platforms and platform workers on 191 platforms from 43 countries.

study conducted by Polkowska (2020) on the impact of the COVID-19 pandemic on Glovo couriers in Poland, found that their work became more secure and profitable. The study shows that working for Glovo during the pandemic was a profitable activity and allowed workers to feel a double satisfaction while working, as they could remain in the labour market while many people had lost their jobs.

In terms of **working time**, several studies provide evidence on this dimension. Ideally, one of the most recognized advantages of platform work is the temporal flexibility of deciding when the work takes place, and this is one of the main motivations for platform workers (Eurofound, 2018; Lehdonvirta, 2018; Polkowska, 2019). However, the apparent autonomy that workers enjoy is constrained by the use of algorithmic evaluation and discipline, which ensures high work intensity and long working hours (Wood, 2021). In this sense, research has shown that platform workers tend to work longer, and under more irregular and atypical schedules, thus challenging optimistic narratives around working time quality and autonomy.

The COLLEEM survey data clearly shows that platform workers are more exposed to the risk of overtime than traditional workers. Urzi Brancati et al. (2020) estimate that the incidence of very long work schedules (more than 60 hours a week) is more than the double that of regular workers. Overtime and long working hours have been particularly reported within 'work on-demand via app' (i.e. on-location platform work). For instance, the qualitative study carried out by Polkowska (2019), which analyses working conditions of Uber drivers in Poland, shows how these workers are under market pressures to work as long as possible because their app-based work is their main source of income. Most of them do twelve-hour shifts (including weekends). They also try to maximize their time to the point of eating fast food and returning to the streets to work as soon as possible, without having appropriate working time breaks.

Empirical research also shows that irregular and atypical working time schedules are particularly prevalent among platform workers. According to Urzi Brancati et al. (2020), 68% of platform workers perform some of their work at night and 72% perform it on weekends. However, some studies show that irregular and atypical working time schedules differ among different types of platform work. The study conducted by Eurofound (2018) shows, based on interviews with platform workers conducted in six EU countries, that irregular and atypical schedules are highly determined by the system through which work is assigned by the platform. Irregular and atypical working time schedules are more prevalent within so-called on-location platform-determined work (for example, food-delivery) due to algorithmic control management practices which hinder workers' autonomy to reject certain demands or working shifts and schedules. However, workers within so-called on-location worker-initiated work (for example, collecting rubbish from people's homes and transporting it to recycling centres) report fewer concerns about work intensity and scheduling, largely because they only perform tasks of their choosing. These workers generally do not spend much time looking for work (Eurofound, 2018). For crowdwork micro-task platforms, some studies suggest that shifts patterns are unusual and workers tend to develop personal practices such as daily routines and quota setting to manage their time in the absence of conventional supporting structures (Lehdonvirta, 2018). Nevertheless, some platforms such as Cloud Factory provide workers with weekly minimum earnings targets that they are encouraged to meet, ensuring a standard pace. When there are enough jobs available, workers are able to schedule their own work freely; however, when there is a scarcity of jobs, the competition is enormous, so they are forced to stay constantly available to get any income they can (Lehdonvirta, 2018).

In relation to **health and safety**, research has critically highlighted that the majority of digital labour platforms have no health and safety policies, which is a dangerous scenario for workers. This problem is exacerbated by the fact that most of the workers are hired as self-employed, and therefore are forced to be responsible for their own insurance (Eurofound, 2018). The evolution of labour platform health and safety policies during the pandemic crisis has been studied by Howson et al. (2021). Health and Safety provisions are observed in the majority of platforms studied by Howson et al. (2021). At the beginning of the pandemic most platforms refrained from providing any form of health and safety protection to their workers, in order not to undermine independent contractor classifications. However, in the months following the outbreak, platforms have needed to demonstrate stringent safety procedures to customers and authorities to maintain their social license to operate. Nonetheless, the study also shows that many preventative policies have been mainly focused on the customers and, to a lesser extent, on

the workers. For instance, it is noted that while contact-free services have been introduced by the majority of delivery platforms, these have generally only included contact with the final customer, but not, for example, contact in restaurants or warehouses between workers. The study also analysed illness-related measures implemented by labour digital platforms during the pandemic, showing that just over 50% of platforms studied have provided some form of financial support in case workers fall ill with COVID-19. Although the amounts provided vary substantially between platforms and countries, they have generally been relatively low compared to platform workers' average earnings and have generally been provided as a flat-rate, with only eight platforms stepping in to guarantee previous levels of pay. Despite the establishment of a number of illness-related financial support schemes, accessibility has often proved problematic. There have been several cases of workers being unable to access such schemes when ill, including Deliveroo workers in the UK and Amazon workers in the US (Manthorpe, 2020; Slisco, 2020). In other cases, the proof required to access the scheme, such as a medical sick note, has been impossible to obtain for those self-isolating.

Beyond the question of health and safety provisions, the psychosocial risk factors that platform workers face has been extensively analysed by Bérastégui (2021) through a thorough literature review. The study highlights the problem of social isolation related to the fact that workers carry out the work individually and, very often, in competition. As shown in the telework literature (Eurofound, 2020), this factor results in a lack of workplace social support, blurring boundaries between work and family life, and creating difficulties in establishing a consistent professional identity. Furthermore, in the case of platform work, these problems are exacerbated by the feeling of job insecurity that characterises working with high levels of precarity, and are likely to impact workers' physical and mental health. In this sense, Ophir et al. (2020) show, after controlling for the pertinent variables, that 19.2% of crowdworkers suffer from major depression, a figure 1.6 to 3.6 times higher than the average estimated for the general population.

Research has also shown different effects in terms of health and safety for work on-demand via app (work performed on-location and primarily offline) and crowdwork (work performed online). For those performing platform work on-location, the risks are directly linked to the nature of the work. Here, food-delivery is the sector that has received most attention due to its relative visibility and high precarity. In this sector, health and safety risks cover all the dangers related to working on the streets, such as: road accidents, particularly in cities where the roads are poorly maintained or there is bad weather (Gregory, 2020); or harassment (Eurofound, 2018). Indeed, the alertness levels needed to prevent accidents are themselves a source of stress and anxiety for workers. Less directly, another potential risk for worker health is the fact that there is no solution from the platforms if workers have to use a toilet during a shift. Instead, they depend on the good will of the food-providers where they collect the food from (restaurants, cafes, etc.) (Gregory, 2020). Similar risks are perceived by drivers in the transportation sector. In some cases, as shown in the qualitative study of Uber drivers in Poland by Polkowska (2019), workers complain about the lack of insurance against work accidents. Other forms of on-location platform work report risks which are specific to the task they carry out, for example, workers in cleaning services have exposure to chemicals in the cleaning products (Eurofound, 2018).

For crowdworkers (online work), the main risks include psychological issues such as stress or cyber-bullying, and physical harms such as postural disorders or eye strain. Regarding the physical risks, it was found that workers try to mitigate harm by stretching their bodies and/or regularly resting the eyes (Eurofound, 2018). Regarding 'work on-demand via app' (on-location/offline platform workers), research highlighted the lack of health and safety social protection for these workers. For instance, the quantitative study on micro-task platforms carried out by Joyce et al. (2019) shows that many workers lack social protection, and among those who have any kind of social protection, a big share of it is provided by the State instead of the platforms. Some research has also shown cross-country differences. In this sense, the comparative study of the US and Germany carried out by Krzywdzinski and Gerber (2020) shows that US crowdworkers have a higher level of perceived insecurity and a higher degree of work stress than German crowdworkers. According to the authors, those differences are probably explained by lower US social welfare benefits in contrast to the more generous German welfare system.

In relation to the topic of **skills and promotion**, some studies have shown that most platform work performed on-location does not provide many opportunities for skills development as the required skills are usually low, for example, in delivery or cleaning services (Eurofound, 2018). Furthermore, this type

of platform work does not offer many prospects for the future. At the same time, research suggest that some forms of online platform work offer better opportunities to develop new skills. According to the work of Joyce et al. (2019), that draws on their prior survey of 1,200 micro-task workers from four leading platforms (Amazon Mechanical Turk, Clickworker, CrowdFlower and Microworkers), 56% of the sample report that their tasks offer opportunities to develop new skills, or provided them opportunities to use their existing skills (49%), although only 38% saw their work as commensurate with their level of qualifications.

3.4 Platform work: a new category of worker?

The previous sections have shown that although platform work is not internally homogenous, it has key common specificities in terms of:

- Socio-demographic characteristics: different comparative studies revised (Urzi Brancati et al., 2020; Huws et al., 2016, 2019; ILO, 2021) show that platform workers are predominantly men, younger than traditional workers and more educated than the usual workforce. Moreover, a higher proportion of platform workers have migrant status, particularly in developing countries (ILO, 2021).
- Algorithmic-management: this is a key feature that shape the functioning of the different types of labour platforms and allow them to exercise control over the workforce. Digital labour platforms use algorithmic control to direct, evaluate and exercise disciplinary power over platform workers (Kellogg et al., 2020). Those three dimensions of algorithmic control are observed in both crowdwork/online and on-location/offline labour platforms although the specific ICT used vary among the different platforms (for instance, GPS in food-delivery and ride-hailing platforms vs workers' monitoring software in micro-task crowdwork platforms).
- Propensity to be misclassified as self-employed: most digital labour platforms in Europe classify workers as self-employed (De Groen et al, 2021) although many platforms workers' share features of subordination due to the labour platforms capacity to exercise control over the work organisation through algorithmic management.
- Certain employment and working conditions: platform workers have a high risk of precariousness in terms of income, and this problem has been exacerbated during the COVID-19 pandemic crisis (Apouey et al., 2020; Howson et al., 2021). Moreover, they are more exposed to the risk of overtime and tend to work under irregular and atypical working time schedules (Urzi Brancati et al., 2020). Platform workers also have higher exposure to psychosocial risks (social isolation, insecurity, work stress, work intensity or cyber-bullying) and certain physical risks (road accidents or harassment for food-delivery and transport workers; physical harms such as postural disorders or eye strain, for crowdworkers) (Eurofound, 2018; Bérastégu, 2021).

Nevertheless, several scholars have argued that platform workers should not be conceived as a new category of worker (De Stefano, 2016; Duggan et al., 2019; Countouris and De Stefano, 2019). Rather, the evolution of platform work should be linked with the development of different forms of non-standard employment relationships; on the basis of similarities in terms of employment and working conditions.

Platform work has evident similarities with **bogus self-employment** (workers who are declared as self-employed simply to reduce tax liabilities and/or employers' responsibilities) and dependent or economically dependent self-employment (see more details on these categories under Section 4.1). These work relationships have increased since the 1990s as a result of the expansion of self-employment into new professions and new forms of work, plus the proliferation of subcontracting and outsourcing practices that blur the boundaries between self-employment and employment (Weil, 2014; Sanz de Miguel, 2019).

There are also similarities between platform work and **on-call work** forms, where the employer does not continuously provide work for the employee, rather the employer simply maintains the option of calling-in the employee only when the employer needs them. As is the case for some forms of platform work, on-call workers have a higher risk of precarity, and a particularly higher risk of being low-paid and/or working under flexible/irregular working-time schedules (Jaehrling and Kalina, 2020); alongside

negative health outcomes due to the need to be constantly available, such as sleep disorders, depression or anxiety (Lee et al., 2020; Vincent et al., 2021). Equally, workers in zero-hours contracts – similar to platform workers – have to face high levels of uncertainty and insecurity, as well as scheduling conflicts and excessive managerial control (Avram, 2020).

Temporary employment also shares some features with platform work, such as the lack of commitment to long-term relationships which, in turn, leads to fewer training opportunities and weaker career progression. This problem is even worse for temporary workers with no prospects of a permanent contract (compared with temporary workers with prospects for a permanent contract) as they face a high risk of becoming stuck in temporary jobs (Poulissen et al., 2021). Similar to platform workers, temporary workers have more limited or reduced access to social protection and social benefits, thereby increasing their perceived job insecurity (compared with permanent employees) (Balz, 2017; Rasmussen et al., 2019). Furthermore, research has shown how temporary employment has a negative effect on individual wellbeing (Karabchuk and Soboleva, 2020) and job satisfaction due to the poor working conditions (Aleksynska, 2018).

Finally, platform workers share many of the same problems as **temporary agency workers** and workers under multiparty employment relationships. Similar to platform workers, these workers may also have problems identifying their actual employer for the purpose of collective bargaining, social security or health and safety liabilities (Weil, 2014). In addition, they lack the training opportunities that traditional workers have in their organisations, as they appear like visitors in the workplace due to their constant movements between different organisations (Jansson et al., 2020).

In light of the similarities between platform work and different non-standard employment relationships, Section 5 of this report proposes a definition of the worker aimed at improving working conditions for all types of atypical and non-standard employment relationships. In order to contextualise this proposed definition of the worker, Section 4 will now discuss recent debates, as well as policy and legal responses to platform work in four European countries which represent a range of different employment and industrial relations models.

4. National responses to platform work in Finland, Germany, Hungary and Spain

The purpose of this section is to discuss the main challenges and solutions to improve labour rights and social protections for platform workers at national level, by comparing statutory and social partner responses in four countries (research question 5). The countries selected are Germany, Finland, Hungary, and Spain, which represent different employment models and industrial relations traditions (Eurofound, 2018; Sanz de Miguel et al., 2020). The comparison is based on country reports drafted by national experts and a supplementary literature review mainly focused on national legislation and legal literature.

Before entering into the details of the main legal debates and controversies around the definition of worker triggered by the extension of platform work, it is worth highlighting the differences in the prevalence of platform work in the different national contexts. Available data provides a limited basis for the analysis of the differences in the prevalence and composition of platform work across EU countries. The COLLEEM survey is the main data source allowing for cross-country comparison in the EU (see Section 4.1) (Urzi Bracanti et al., 2020) and, according to estimates from COLLEEM, the countries covered in terms of the prevalence of platform work. As can be seen in Table 3 below, Spain is the country with the highest prevalence of platform work (18%), followed by Germany (12.3%), both above the average for the 14 EU Member States covered in the survey (11% in 2020), while the share of platform work in Finland and Hungary fall below the average for the 14 EU Member States covered in the survey (around 7%). Overall, these figures suggest that platform work is mostly a secondary or marginal source of income for most of the workers concerned in the four countries, although there are some differences. While more than half of platform workers in Spain rely on this form of employment as their main or secondary source of income (2.6% and 6.7% respectively), in Finland and Germany, platform work is mostly identified with sporadic and marginal forms of employment.

Table 3. Intensity and prevalence of platform work in Finland, Germany, Hungary and Spain (% over total working population)

	Finland	Germany	Hungary	Spain
Sporadic	3.1	3.2	1.7	4.1
Marginal	1.4	3.4	1.4	4.7
Secondary	1.8	4.2	2.2	6.7
Main job	0.6	1.5	1.4	2.6
Total	6.9	12.3	6.7	18.1

Source: COLLEEM data (2018).

Note: The COLLEEM survey builds on a definition of platform worker that includes: those who have gained income from providing services via online platforms at least once; where the match between provider and client is made digitally; payment is conducted digitally via the platform; and work is performed either online or on-location. The COLLEEM survey classifies platform workers according to the time they spend working on platforms and the income generated from it, identifying four main groups: sporadic (less than once per month); marginal (less than 10h per week and constituting less than 25% of their income); secondary workers (between 10 and 19h per week and constituting between 25% and 50% of their income); and main platform workers (at least 20h per week and constituting at least 50% of their income).

Regarding the composition of platform work, COLLEEM survey data does not allow for the breakdown of individual and occupational characteristics at national level. As described in Section 4.1, the study based on COLLEEM survey underlines that platform workers are predominantly men with higher education levels than the average offline worker (Urzi Bracanti et al., 2020).

There are also alternative national sources measuring the prevalence and socio-demographic characteristics of platform work in the four countries; however, they are not comparable with each other due to differences in the definition of platform work they follow. For instance, in terms of prevalence and intensity of platform work, the study conducted by Serfling (2018) in Germany estimates that between 1–2% of German adults are active in the platform economy. Whilst relatively small in percentage terms, this still represents a significant number of people in absolute numbers: between 620,000 to 1,791,000. This is a much lower prevalence compared to the one estimated by COLLEEM

or Hertfordshire University (10–12% at least yearly). In Finland, Statistics Finland (2018)[26] estimated that during the prior 12 months, the percentage of the working-age population who had earned at least 25% of their income from either platform work or non-work-related platform activities (for example, Facebook, and websites for selling cars and homes) was 0.3%. Also, in Finland, Ali-Yrkkö et al (2020)[27] show that it can be stated that the digital economy is still growing fairly slowly, although its value-added share comprised 10.9% of GDP in 2017, which is equivalent to more than EUR 21 billion.

In terms of the main characteristics of platform workers, Serfling (2018) also shows for Germany that men and young people are more represented among platform workers. Similarly, Statistics Finland (2018) shows that the majority of platform workers were men under 35 years of age. In Hungary, there are few studies on the extension of platform work, however, there is some evidence that platform work is more prevalent among highly qualified professionals (Csákné et al., 2020). In Spain, a survey commissioned by the CCOO union confederation in Catalonia (CCOO, 2018) also found that the prevalence of platform work is found to be higher among the self-employed and highly qualified professionals, mostly as a means of supplementing their income from their main job. A more recent qualitative study conducted by the trade union UGT (UGT, 2020) highlights the prevalence of migrant workers within offline platform work activities (in particular, food-delivery) who often work as undeclared workers through sub-leased accounts.

Following this introduction and brief overview of the prevalence and characteristics of platform work in the four countries studied, Section 4.1 discusses national commonalities and differences in relation to the national definition of worker. Section 4.2 analyses main statutory proposals for regulation platform work and relevant jurisprudence addressing the employment classification of platform workers. Section 4.3 compares social partners responses to platform work through social dialogue, collective bargaining and individual trade union actions.

4.1 National definitions of worker

In most legal systems, there is a binary division between employees and self-employed. Where the employment status is the basis for labour law[28] (including individual and collective labour rights, for example, working time, wage, right to freedom to association and right to strike; and social security rights, for example, parental leave, sick leave, retirement benefits, unemployment benefits, etc.), self-employed workers are subject to commercial law. Accordingly, self-employed do not have access to labour rights and, depending on each specific Member State's system, they can only access a limited range of social security rights, which are often conditional on voluntary payments to the social security system. Those social security rights may include: pension rights; maternal and parental leave, with different conditions than those applying to employees; and rarely unemployment benefits.

The distinction between employment and self-employment is built into different legal traditions through the fundamental concept of **subordination**,[29] which presumes an imbalanced contractual relationship between the employee and the employer (or third party), which must be rebalanced through individual and collective labour law (Kahn-Freund et al., 1983). Within its technical-legal dimension, subordination is generally understood as referring to the fact that the employee works under the **dependence** and **direction** of the employer (or third party) against remuneration. However, the complex nature of those criteria (dependence and direction), has led national courts to develop different

[26] Statistic Finland (2018) used the 2017 Labour Force Survey to explore the incidence of platform work in Finland and defined digital platform as 'various online platforms through which a person can sell his or her work input or otherwise earn income'. Nevertheless, it must be kept in mind that this definition of platform work is fairly broad in the survey as the term refers to non-work activities done over diverse online marketplaces, including Facebook, and websites for selling cars and homes, amongst others.

[27] The researchers evaluated the size of the digital economy and its impact on taxation, utilizing a method particularly focused on partly digitalized goods and services. This approach bases its computation of the size of the digital economy in non-ICT industries on the relative importance of ICT workers (measured by the ICT workers' wages' share of total wages) and online sales in an industry (measured by e-commerce's share of total sales) (ibid 2020: 86).

[28] The report uses the term labour law both for individual and collective labour law. Therefore, in the sense it is used here, labour law includes what is sometimes understood as labour law and employment law.

[29] The concept of autonomy can traditionally be considered the opposite of subordination. Therefore, if the labour provider is not characterised by a state of subordination to the employer (or a third party), then they may be considered residually self-employed.

indicators, which normally have to be considered both in their overall and interconnected dimensions. In this sense, different interpretations of these concepts can be provided by each national legal system. There is a strong concern that an excessively extensive interpretation of these indicators – set out with the intention of strengthening the level of protection – would instead run the risk of emptying out the employment relationship concept (Weiss, 2011; Perulli, 2003), thereby threatening labour law with incorporation into commercial and civil law.

Moreover, in recent decades, a vivid debate has developed around the increasing complexity of classifying and interpreting employment relationships based on the concept of subordination. Scholars and policy makers are increasingly concerned with the expansion of work located in the 'grey area' between employment and self-employment (ILO, 2017). The expansion of this grey area is rooted in the proliferation of practices of subcontracting or outsourcing coupled with technological developments, which blur the boundaries between self-employment and employment (ILO, 2017). The emergence of platform work is certainly one of the most important recent phenomena challenging the classification of dependent employment relationships. As set out in Section 3, many platforms tend to classify workers as self-employed although, in practice, they exercise control over work organisation and the workers' working conditions through different mechanisms, particularly those relying on algorithmic management.

However, the status and extent of this 'grey area' has been a point of contention for decades in the EU (Supiot, 2001; European Commission, 2006). In a context marked by the increasing complexity of understanding the borders of the employment status, some EU countries adopted so-called third category between employment and self-employment, granting persons belonging to this third category some access to selected labour law and social security law (Perulli, 2011, UPTA, 2014; Célérier, 2020). The extent to which those regulatory solutions based on third categories are suitable for regulating platform work is, however, under discussion. Regulation through third categories was initially raised as a possible political solution for extending social protection and collective rights to platform workers (Donini et al, 2017). However, as will be shown in the Spanish case, this is an option that has been losing ground in the light of current debates and recent developments regarding platform workers.

Having addressed the above main debates on categorizing forms of work in the current context, the report will now compare how Finland, Germany, Hungary and Spain legally define employees, the self-employed and any third categories.

4.1.1 Employment status

In all four national cases, **dependence and direction are crucial elements of the legal definition of 'employee'. Remuneration** is also fundamental and necessary. As shown below, countries' legal definitions include different ways of expressing the same macro concepts, although then court interpretations can understand such concepts with different nuances.

Spain builds a legal presumption of employment tightly focused on factors of direction, dependence and remuneration; while the **Finnish** regulatory scheme offers more openness beyond the classical indicator of direction because it recognises employment status independently from the place of work and the ownership of tools used in providing work. **Hungary** takes a different approach, instead explicitly mentioning that the employee must be in a mental and physical 'condition fit for work' in order to perform their work obligation. Apart from the direction criteria, **German** law widens the understanding of the subject providing instructions, generally defining it as 'third party'.

In addition to the legal definition, the jurisprudence developed specific criteria and scales for identifying and measuring employment status. A common factor in determining the labour nature of the relationship, is the need to **consider all the circumstances** of the case irrespective of the definition of the relationship described in the contract, and thus also the above-mentioned indicators.

In **Finland**, the Employment Act[30], which lays down fundamental legal provisions concerning working life in the country, applies to employment contracts entered into by an employee, or jointly by several employees as a team, agreeing personally to perform work for an employer under the employer's

[30] Finland Employment Contracts Act N. 55/2001, Section 1.

direction and supervision, in return for pay or some other remuneration. The Employment Act applies regardless of the absence of any agreement on remuneration if the facts indicate that the work was not intended to be performed without remuneration. Application of the Act cannot be prevented only because the work is performed at the employee's home or in a place chosen by the employee, or if the work is performed using the employee's instruments or machinery.[31]

According to **German labour law**,[32] an employment contract obliges the employee to perform work for another person under conditions of personal dependence and subject to instructions from this other person [33]. The right to issue instructions may relate to the content, performance, time and place of the work. A person is bound by instructions if they are not essentially free to organise their work and determine their working hours. The degree of personal dependence also depends on the nature of the respective activity working 'under conditions of personal dependence and subject to instructions from a third party'. The employer shall also be obliged to pay the agreed remuneration. [34]

According to Section 34 of the **Hungarian** Act I on the Labour Code (2012), 'employee' means any natural person who works under an employment contract.[35] Under an employment contract, is understood according to these three elements: first, the employee is required to work as instructed by the employer; second, the employer is required to provide work for the employee and to pay wages;[36] and third, the employee is required to be 'at the employer's disposal in a condition fit for work during their working time for the purpose of performing work.'

Under **Spanish** law, an employee carries out a voluntary work and remunerated labour activity within the ambit of an organisation and under the direction of another person (physical or legal) that is known as 'the employer'.[37] An employment contract is presumed to exist between anyone who: first, provides a service on behalf of and within the scope of the organisation and direction of another person (physical or legal); and second, receives remuneration in return from the other party.[38]

In all four countries, **all the circumstances of the case should be taken into consideration to determine the employment nature of the contract** (employment or commercial contract); independent of the *nomen iuris* of the contract, i.e. independent of whether the contract self-identifies as an employment or commercial contract.

For instance, legislation in **Germany** establishes that in order to determine whether a contract of employment exists, an overall assessment of all the circumstances must be made. If the actual performance of the contractual relationship shows that it is an employment relationship, the designation in the contract is irrelevant.[39] Furthermore, all the indicators used by the German Courts to determine the employment nature of the relationship have to be assessed within the overall picture. Furthermore, all the indicators used by the German Courts to determine the employment nature of the relationship have to be assessed within the overall picture. That is, if on one hand, the 'subservience to instructions' criteria plays an important role in determining personal dependence; on the other hand, it is not sufficient on its own to determine personal dependence, rather the overall picture must also be taken into account (Waas, 2017).

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[31] Translation from Finnish Legally binding only in Finnish and Swedish Ministry of Economic Affairs and Employment, Finland Employment Contracts Act (55/2001; amendments up to 597/2018 included): https://www.finlex.fi/fi/laki/kaannokset/2001/en20010055.pdf

[32] Section 611a of the Civil Code (Bürgerliches Gesetzbuch – BGB).

[33] Section 611a of the Civil Code (Bürgerliches Gesetzbuch – BGB).

[34] Section 611a of the Civil Code (Bürgerliches Gesetzbuch – BGB).

[35] Act I of 2012 on the Labour Code, Section 34: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=89886&p_country=HUN&p_classification=01.02

[36] Act I of 2012 on the Labour Code, Section 42: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=89886&p_country=HUN&p_classification=01.02

[37] Royal-decree law 2/2015, of 23 of October, which approves the refunded text of the Workers' Statue Law, paragraph 1.1.

[38] Royal-decree law 2/2015, of 23 of October, which approves the refunded text of the Workers' Statue Law, paragraph 8.

[39] BAG from 23 April 1980, case 5 AZR 426/79, Arbeitsrechtliche Praxis, Munich, BGB § 611 Abhängigkeit no. 34. BAG from 21 May 2019, case 9 AZR 295/18, Neue Zeitschrift für Arbeitsrecht, Munich 2019, p. 1411, focuses much more on the instruction rights.

In **Spain**, the judge is similarly obliged to pay attention to the circumstances of each case, irrespective of the definitions attributed by the parties to the contract. That is, jurisprudence has set criteria which show that the legal nature of the contract derives from the practical application of the contract, regardless of the definitions formally used by the contracting parties. Therefore, the judge has to investigate whether it is possible to detect the presence of elements of remuneration, *ajenidad* (working for another) and *dependencia* (dependence) (see Box 1), which are the necessary elements for an employment relationship (Bazzani, 2021).

Apart from the legal definitions of employee under national laws, **the jurisprudence of each Member State interprets the specific national definitions** accordingly to the legal framework in which it is embedded. Therefore, in practice, national courts have progressively substantiated the concept of 'worker' through their own interpretations over the years (Waas and Van Voss, 2017). An example is provided in Box 1 below, based on how Spanish national courts have interpreted the legal definition of employee.

Box 1. National Courts interpretation: the Spanish case

Over the years, Spanish jurisprudence has elaborated a set of indicators to identify the element of 'direction', basically focused on two concepts: *ajenidad* (working for another) and *dependencia (*dependence*)*.

In particular, *ajenidad* consists in the advance transfer of the fruits or capital benefit of the employee's work from the employee to the employer, the latter of which in turn assumes the obligation to pay the salary regardless of whether the benefits are obtained. The concept of *ajenidad* includes, among other things: the delivery or making available to the employer, by the employee, the products or services rendered; and the adoption by the employer, not the employee, of decisions concerning market relations or relations with the public. It is therefore possible to speak of *ajenidad* in the fruits, when the employer makes the result of the employee's work their own; and *ajenidad* in the market, when it is the company that acts as an intermediary between the result of the work and the market itself (Bazzani, 2021).

Common signs – or indicators – of *ajenidad* (Supreme Court Decision of 20 July 2010, appeal n. 3344/2009) are: the fact that the products manufactured or services provided come into the possession of the employer; the adoption by the employer, not the employee, of decisions on market relations or relations with the public, such as the setting of prices or tariffs, the selection of customers and so on; the fixed or periodic nature of the work remuneration; the calculation of the remuneration or the main concepts thereof, according to criteria which maintain a certain proportion to the work performed, without the risk and specific profit which characterise the activity of an employer or the free exercise of the profession.

Dependencia is the subjection of the employee to the sphere of governance of the employer, and must be understood in a flexible and non-rigid way (Judgment of Labour Court of Madrid, n. 53 of 11 February 2019). The most common signs of *dependencia* (see for instance Supreme Court Decision of 20 July 2010, appeal n. 3344/2009) are: the presence of the worker at the employer's workplace, or at the workplace designated by the employer; the personal performance of the work, compatible in certain services with an exceptional substitution regime; the inclusion of the worker in the employer's organisation, which is responsible for planning and directing the worker's activity; and the absence of a worker's own organisation, such as a worker's own company.

The Spanish Court system has adapted such indicators while taking into consideration the impact of new technology on labour organization and law; in this way, it triggered legislators into adopting new regulation in this field (Todolí-Signes, 2021 b). These indicators are also used and tested by labour inspectorates to determine the existence of bogus self-employment (Sanz de Miguel, 2019). The aforementioned criteria are taken into consideration by the Spanish Courts in context; that is, the lack of one or more indicators is not determinant in deciding the employment nature of a relationship.

Once a person gets access to the **status of employee**, they are entitled to labour and social security rights, and enjoy the **broadest protection** in comparison with self-employed workers. In **Finland**, falling within the scope of the Employment Act is crucial in order to access individual and collective labour rights, as well as the social security rights applicable to employees (Working Hours Act, the Annual Holidays Act, the Workers Pension Act, etc.).[40] In **Germany**, the employee enjoys full labour and social security rights, such as protection in case of dismissal, minimum wage, sick pay, paid holiday, etc.[41] In **Hungary**, the employee enjoys the broadest labour and social security rights in comparison with other workers (right to information of working condition, working time rights, rights in case of cessation and termination of employment relationship, sick leave, maternity leave, leave of absence without pay, mandatory minimum wage, etc.). [42] According to **Spanish** law, an employee accesses full labour and social security legal rights, both individual and collective. [43]

Although the status of employee is crucial in order to access labour rights, it is worth noting that **in all four countries, the broadest access to rights corresponds to the traditional Standard Employment Relationship**. For example, for part-time work and fixed-term contracts, rights are proportional to the working time and the duration of the contract and are therefore inferior to the traditional model. This is significant because part-time work is prevalent in Germany (25% in 2019) and Finland (16% in 2019), albeit to a lesser extent in Spain (14%) and Hungary (data not available), and fixed-term contracts are widespread in Spain (22%) (Eurostat data, 2019. Last updated 2-06-2021). Non-standard forms of employment[44] pose further issues, such as the lack of security regarding minimum working time (for example, zero hours contracts, on-call work), which directly affect the access of the rights, not only within the employment relationship (labour rights), but also more broadly (for example, right to pension, right to unemployment benefit).

4.1.2 Self-employed definition and rights

Across the four countries, self-employed status can include various kinds of autonomous workers, and the borders of the self-employed definitions are not always clear. In **Germany**, self-employed status can cut across different autonomous workers' categories depending on the scope of application of a specific legal regulation. In **Finland**, the category of self-employed is embedded within the category of entrepreneur. Whereas in **Hungary**, the intervention of EU law, and the need to transpose the concept of self-employed into the Hungarian legal system, has made progress in clarifying the status of the self-employed. In Spain, an ad hoc piece of legislation (Law 20/2007, of 11 of July, of Self-Employed Workers' Statute provides a definition of self-employed focused on the independence from the authority or organisation of another party.

In **Germany**, self-employment comprises different sub-categories. For example, tradespeople (*Gewerbetreibende*) have to register their activity in order to start their own business: they are essentially free to organise their own activities and determine their own working hours (cf. § 84 of the Commercial Code [HGB]). vgl. § 84 *Handelsgesetzbuch* [HGB]). In addition, the self-employed person must issue invoices in their own name and bear the entrepreneurial risk. Unlike an employee, the self-employed person is not bound by instructions. However, this category should not be confused with freelancers and free-professionals **(***Freiberufler*). The German Partnership Act (PartGG) and the German Income Tax

[40] Such rights are based on the Employment Act (for example, equal treatment, transfer of undertakings, family leave, payment of wages, etc.), plus further regulation and separate statutes including: Labour Safety Act (1958), Annual Holidays Act (1973), Hours of Work Act (1996), Study Leave Act (1979), and Act on Equality between Men and Women (1986): National report; ILO: https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158896/lang--en/index.htm

[41] Civil Code (Bürgerliches Gesetzbuch – BGB). See also: Deinert & Freudenberg (2020).

[42] Act I of 2012 on the Labour Code: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=89886&p_country=HUN&p_classification=01.02

[43] The main regulation of labour and social rights under an employment relationship is: Royal-decree law 2/2015, of 23 of October, which approves the refunded text of the Workers' Statue Law, paragraph 1.1; Organic Law 11/1985, of 2 August, of Trade Union Freedom; Royal-decree law 8/2015, of 30 of October, which approves the refunded text of General Law of Social Security.

44 The concept of 'worker' under Article 45 TFEU and certain non-standard forms of employment (European Commission, Directorate-General for Employment, Social Affairs and Inclusion FreSsco) (Contract No VC/2014/1011 'Network of Experts on intra-EU mobility – social security coordination and free movement of workers / Lot 1: Legal expertise in the field of social security coordination and free movement of workers') (Comparative Report 2015).

Act (EStG) provide guidance regarding freelancers and free-professionals. According to § 1 para. 2 PartGG, there is a category of 'liberal professions' which generally involve: special professional qualifications or creative talent; a personal, autonomous and professionally independent provision of services of a superior nature in the interest of clients and the general public. Examples of liberal professions include: physicians, dentists, veterinarians, non-medical practitioners, patent attorneys, engineers, architects, as well as scientists, artists, writers, teachers and educators. Under § Section 18 (1) German Income Tax Act (EStG), self-employment includes scientific, artistic, literary, teaching or educational work carried out independently; the independent professional activity of doctors, dentists, veterinarians, lawyers, etc. In addition, there are craftspeople, who may need to obtain approval from a specific trade association for the field in which they work.

In **Finland**, the term 'self-employed' is used synonymously with entrepreneur (Kokkonen and Tönnes Lönnroos, 2015). For example, the term *yrittäjä* is translated both as entrepreneur and as self-employed. According to labour law, a self-employed person works independently, without any direction from an employer. Self-employed persons are also distinct from employees in terms of the entrepreneur pension insurance. Each entrepreneur or self-employed individual should have this pension insurance if they are between the ages of 18 and 68, live in Finland, and have been self-employed for at least four months (European Commission, 2016).

In **Hungarian** law, as in the EU and some other national laws, the concept of self-employment is not defined (Gyulavári, 2014a), leading to considerable uncertainty regarding the meaning of the concept. However, in transposing Directive 86/613/EC on equal treatment, the notion of self-employed was adopted as broadly as possible to ensure that the rules of the Directive were widely applied, including to specific entrepreneurs and sole proprietorships (Gyulavári, 2014a). In general, according to Hungarian law, self-employed workers should be considered part of the broader category of autonomous work, which includes further forms of work, such as sole proprietorships (Gyulavári, 2014a).

Under **Spanish law**, the self-employed category is legally defined under the Self-Employed Workers' Statute. This Statute (Article 1.1) applies to those workers not subject to the authority or organisation of another person, regardless of whether it involves hiring staff.[45]

In the four countries, the **self-employed are excluded from main individual and collective labour rights** (dismissal protection, working time regulation, collective bargaining coverage, etc.). Generally, the self-employed also have **a more limited range of social security rights**, in comparison with employees. However, regulation in this field differs in the four countries studied in terms of the level of coverage of rights; in particular, whether the most important social security schemes, such as pensions, are mandatory (Finland, Hungary, Spain) or voluntary (Germany) for self-employed. There are also differences in terms of there being specific social security systems for the self-employed (Spain), or inclusive social security systems covering both employees and self-employed (Finland and Hungary) (ILO, 2018; Eurofound, 2017b).

In **Germany**, no obligation exists for self-employed individuals to contribute to **social security schemes** with the exception of health insurance (Chesalina, 2018; OECD, 2019). Indeed, Germany is one of the few European countries that does not provide mandatory pension insurance for all self-employed workers as opposed to employees (OECD, 2019). Nevertheless, there are categories of self-employed workers who are obliged to contribute to social security schemes. These categories are: homeworkers or other persons working in the place of their choice for another person or institution, who are subject to all branches of social insurance on condition that they have only one 'client' (see Section 5.1.3); and self-employed artists and writers, who are also subject to all branches of social insurance (Chesalina, 2018).

In **Hungary**, legislation provides for mandatory coverage by most social security schemes for self-employed workers, and on terms similar to those enjoyed by employees (ILO, 2018). Contributions are calculated on self-declared income, which should be equivalent to at least the minimum wage (Eurofound, 2017b; Gyulavári, 2014b).

[45] Law 20/2007, of 11 of July, of Self-Employed Workers' Statute, Article 1.1.

Similarly, the self-employed in **Finland** and **Spain** have high formal social security coverage. However, in these two countries, self-employed workers are not mandatorily insured under some insurance-based schemes that are mandatory for employees (ILO, 2018).

In **Finland**, formally the social security system is the same for employees and the self-employed. However, self-employed workers can determine the composition and level of their social security contributions (Eurofound, 2017b). Most self-employed workers are mandatorily inscribed under the social security pensions scheme (where the entrepreneurial activity lasts more than four months). The self-employed workers pension is calculated according to the Entrepreneurs' Pension Act (*Yrittäjän eläkelaki*). The insurance contributions are based on the entrepreneurs' estimated annual income. For other schemes related to occupational health or the unemployment allowance, inscription is voluntary. Regarding the latter scheme, self-employed persons registered at an employment office are entitled to an Unemployment Allowance or Labour Market Subsidy. They are eligible for the allowance as long as they have worked in a self-employed capacity for at least 15 months out of the previous 48 before becoming unemployed[46]. However, it has been pointed out that the design of the unemployment insurance system is problematic for some self-employed. For example, a particular problem is that the work income history used for calculating the unemployment allowance only takes into account one source. Therefore, since freelancers tend to gather their income from various sources, sometimes as wage earners and sometimes as entrepreneurs, they tend to be 'under-insured' (Mattila, 2020).

In **Spain**, self-employed persons are mandatorily required to register with the Social Security system, where they are included in the Special Scheme for Self-employed Workers – the 'RETA scheme' (Article 24. Self-employed Workers' Statute). However, the RETA scheme does not oblige self-employed individuals to contribute to some specific insurance schemes which apply to employees. For example, the insurance for occupational contingencies (c*ontingencias profesionales*), which covers temporary incapacity due to accidents at work or occupational disease. Moreover, the self-employed are excluded from unemployment benefits and the Wage Insolvency Fund (*Fondo de Garantía Salarial, FOGASA*). Regarding unemployment benefits, the Law 32/2010 regulated a so-called 'insurance against cessation of business activity' (*Prestación de cese de actividad*), conceived as an 'unemployment benefit' that protects self-employed workers facing an urgent situation due to the involuntary stoppage of their economic activity. This is voluntary for all self-employed workers. However, trade unions and self-employed organisations criticize the very restrictive application of this benefit, since only around 35% of applications used to be accepted (Eurofound, 2017b).

In any case, despite the aforementioned differences in national social security regimes, it is worth noting that for all four countries studied, social security benefits for self-employed workers are often lower compared to those for employees. In the case of **Germany**, this can be explained by benefits being conditional on a voluntary inscription to the social security regime. As a result, there have been warnings that large parts of the self-employed in Germany will be dependent on other income, wealth or social assistance in retirement (OECD, 2019). In **Finland**, **Hungary** and **Spain**, differences between social security benefits for the self-employed and employees are partly related to the fact that, although self-employed are obliged to register within social security schemes (e.g. pensions), they can choose the contributions or level they want to pay, and they generally choose the minimum level. This limits the value of their future pension benefits (Sanz de Miguel, 2019; ILO, 2018; Eurofound, 2017b; AEGON, 2016).

[46] Finnish Centre for Pensions (Työeläke.fi). Available at: https://www.tyoelake.fi/en/pensions-for-the-self-employed/social-security-of-the-self-employed-based-on-confirmed-income/

4.1.3 Third category in Spain and Germany

According to Eurofound (2017b),[47] there are basically four types of approach to categorising the dependent self-employed in the EU: first, creating a third category, which represents a hybrid status of self-employed workers with specific rights; second, creating a status of economically dependent employment; third, using economic dependence criteria to combat bogus self-employment; fourth, using clear criteria to distinguish employment from self-employment.

From the four countries studied, **Spain** and **Germany** are the only countries which recognise intermediate or hybrid categories between employment and self-employment. In **Finland**, the issue of a possible third category was debated within a tri-partite working group chaired by the Ministry of Economic Affairs and Employment over the period 2011–2015. Nevertheless, all parties agreed that a third category would not bring more clarity within the legal framework. This position was reiterated in a report by the Ministry of Economic Affairs and Employment in 2019 (Mattila, 2020). In **Hungary**, the introduction of a third category was proposed during the re-codification of the Labour Code in 2011, however, the proposal did not become law (Gyulavári, 2014b).

While the **Spanish** approach has relied on the creation of a third status based on the concept of economic dependency, **Germany** has used criteria of economic dependence mainly as a means of combatting and identifying bogus self-employment (Eurofound, 2017b). In both cases, the key element is the interaction between autonomy as an identifying feature of self-employment, and economic dependence, which articulates how a worker may rely on one client for a considerable part of their income. In other words, both country systems articulate the self-employed worker through a third category where that worker is considered economically dependent because they receive their income primarily from one client. In Germany, economic dependency is defined as more than half of their self-employed income from one client. Whereas in Spain, economic dependency is when the person receives at least 75% of their income from the same client. It is interesting how German law allows for a broad understanding of 'one client'. Basically, one client can include more person combines in accompany group of belonging to a common organisation. The definition of client in Spain refers to any physical and legal person; where the understanding of legal person, when it comes to determining labour responsibilities, is broad and includes subcontracting companies under certain conditions (for example, Supreme Court, Social Section, Decision 184/2018 of 21 February; Group of companies reliable for labour obligations: Supreme Court, Social Section, Decision n. 659/2019 of 2 September, etc.).

Dependent self-employed workers in both countries access selected **labour law and social security rights**. However, in **Germany**, they lack protection against dismissal, whereas in **Spain**, the decision to terminate a contract has to be based on specific reasons set by the law and by the individual contract.

In **German**y, Section 12a of the German Collective Agreements Act[48] recognises 'employee-like persons' as economically dependent persons in need of social protection comparable to an employee. They include persons who provide artistic, literary or journalistic services; plus those persons who are directly involved in the provision of these aforementioned services, in particular the technical organisation thereof, noting that commercial agents and other forms of related self-employed work are not included.

Employee-like persons work on the basis of a service contract or a contract to produce work for other persons. The working process of employee-like persons has two distinctive features. First, they perform the services personally without significant collaboration from further persons. Second, they work predominantly for one person, or on average receive more than half of their remuneration from one person; where proportions of remuneration are not foreseeable for the purpose of this calculation, unless the collective agreement states otherwise, the last six months are decisive or if the period of work is

[47] This study listed: Austria and Italy as creating a third hybrid status; Portugal, Slovakia, Slovenia and Spain as creating a third status based on the concept of economically dependency; Germany, Latvia, Malta as using criteria of economic dependence to combat and identify bogus self-employed; Belgium, Ireland, Norway and Poland as examples of Member States using criteria to clearly distinguish employment from self-employment (Eurofound, 2017).

[48] Tarifvertragsgesetz, TVG, Collective Agreements Act in the version published on 25 August 1969 (Federal Law Gazette I, p. 1323), last amended by Article 8 of the Act of 20 May 2020 (Federal Law Gazette I, p. 1055). See also Weiss & Schmidt (2008).

shorter than six months, that shorter period is used. 'Working for one person' also covers scenarios where work is carried out for more than one person, where those persons are combined in a company group, or belong to a common organisational structure or working group that is not merely temporary (see Section 18 of the Stock Corporation Act – *Aktiengesetz*).

According to the Federal Labour Court, employee-like persons are self-employed. The element of personal dependence that characterises employment relationships is replaced by the element of economic dependence. Economic dependence usually exists when the employee's livelihood is dependent on the utilisation of their labour and the income they receive from the tasks they carry out for the contractual partner:

> *An employee-like person can work for several clients if they predominantly work for one of them and the ensuing remuneration represents a decisive part of their livelihood. The social status of an economically dependent person must moreover be equivalent to that of an employee in terms of the need for protection.*[49]

In **Germany**, minimum standards have been developed for any work provider – irrespective of their economic dependence. Those minimum standards cover several aspects of employment conditions, such as equal treatment, and health and safety. Here, companies' obligations to protect are contingent upon hazards or sources of risk 'rather than on individual contractual relationships' (Mückenberger, 2018). In terms of labour rights, employee-like persons in particular have access to only a limited number of labour law protections. For example, social insurance coverage applies only under certain conditions (cf. Section 2 SGB IV) (Mückenberger, 2018:31). Furthermore, employee-like persons lack important rights, such as protection against dismissal, representation and voting in elections for the works council (Mückenberger, 2018).

In **Spain**, the economically dependent self-employed (*trabajador autónomo económicamente dependiente*) are known as 'TRADE' and represent the Spanish third category. The most important criterion used to establish economic dependence is the percentage of income earned from a single client. In particular, the self-employed worker is considered to be economically dependent if at least 75% of their total income comes from a single client (Article 11.1, Self-Employed Workers' Statute). In addition, paragraph 2 of Article 11sets out other conditions that have to be simultaneously fulfilled for workers to qualify as TRADE:[50]

- It is prohibited to hire out or subcontract part or all of the activity to third parties. With this criterion, the law aims to clearly distinguish TRADE from normal self-employment that do not carry restrictions of this kind. However, a TRADE is allowed to hire a single worker if any of the following situations arise: health risks during pregnancy, or during breastfeeding if the child is less than nine months old; during periods of maternity or paternity leave; period of maternity or paternity leave in case of adoption or fostering, whether pre-adoptive or permanent; caring for a dependent child under 7 years of age; caring for a family member who is in a situation of formally verified dependency.
- The worker must execute the activity in a way that is different to employee. This criterion aims to distinguish TRADE from employees.
- The worker has to possess the means of production and material infrastructure for carrying out the activity, independent of the client's resources. This criterion also applies to the

[49] Federal Labour Court of 21.12.2010 – 10 AZB 14/10.

[50] As included in the supplementary provision No. 11 of LETA, in transport sector, only the conditions of 75% dependency and the prohibition to hire or subcontract part or all the activity to third parties are required for self-employed to be considered TRADE. The reason behind this less restrictive requirement level is that art.1.g of the Workers' Statute does not consider as employee workers in the transport sector subject to administrative authorizations.

distinction between normal self-employed and employees, and is one of the most significant factors in identifying bogus self-employment, where in reality the worker is in the employment of another person.

- The worker must implement the activity with their own organisational criterion. This is also a general indicator of genuine self-employment.
- The worker must receive economic compensation as a result of their activity, in accordance with a contract signed with the client.

The institutionalisation of TRADE status was justified in the preamble of the Self-employed Workers' Statute (LETA) as a result of the diversity of self-employed forms in Spain. However, bearing this diversity in mind, LETA stresses that in Spain most of self-employed do not have employees. According to the law, this self-employed group represented around 80% of total self-employed in 2006 and needed a higher level of social protection, closer to that offered to employees. The creation of TRADE status has been also described as a response to the legal uncertainty existing in some relations between self-employed workers and their clients, thereby covering a regulatory loophole. From this perspective, the main purpose was to qualify specific work relations that formerly had been solved on a case-by-case by court disputes and jurisprudence. However, the number of registered TRADE workers remains low. Barely 10,000 workers are officially registered as TRADE, a figure which accounts for less than 0.5% of all the self-employed in Spain (Sanz de Miguel, 2019).

The Self-Employed Workers' Statute conferred on the TRADE a higher level of protection, which was comparable to genuine self-employment. First, it established that TRADE relationships must always be formalised in a written contract. This contract establishes working rights related to working time, rest periods, extra-work and interruption of activity (similar to holiday rights). Moreover, contract extinction is also regulated and must be derived from a list of causes established in the Self-Employed Workers' Statute. In case the client decides to finish the contract without justified cause, the Self-Employed Workers' Statute outlines compensation to be paid to the TRADE. As opposed to severance payments regulated through labour law (Spanish Workers' Statute), the LETA does not establish an amount or level of compensation that employers must follow. Instead, compensation relies on the conditions agreed between the TRADE and the client in the written contract or in the 'professional interest agreements' (a type of collective agreement). The Self-Employed Workers' Statute only establishes some criteria to be taken into consideration when setting the compensation in case it is not specified in the contract with the client. They are related to the initial time foreseen for the contract, the seriousness of the contract breach by the client, and the investment and expenses incurred by the TRADE to develop the work. However, the Labour Court has even considered as legal those contracts that did not contain any compensation (Pérez Rey, 2016).

Second, the law recognised a specific form of collective agreement particularly and exclusively addressed to TRADE – the so-called 'professional interest agreements' – however, these are barely used. As opposed to collective agreements, professional interest agreements are not covered by the 'general efficiency principle'. Thus, they only cover self-employed affiliated to the TRADE organisations that concluded the agreement. Also, due to this, self-employed organisations signing the agreement do not have to meet and prove representativeness criteria, as it applies to social partners. Professional interest agreements can regulate all the working conditions of TRADE. The only limitation in this regard is that they must observe the law.

Third, the law regulated those conflicts affecting TRADE pertain to the Labour Court instead of the Civil Court (genuine Self-employment pertaining to the Civil Court). This regulation is generally positively assessed by trade union self-employed organisations, bearing in mind that the Labour Court is the most protective (Sanz de Miguel, 2019).

Regarding TRADE **social security rights**, they are almost identical to those of the normal self-employed. Some differences between self-employed and TRADE apply to the specific insurance schemes which TRADE are obliged to contribute to. For instance, TRADE must contribute to an insurance fund protecting against occupational risks (*contingencias profesionales*), including the risk of temporary incapacity due to an accident at work or occupational disease.

4.2 Government initiatives and jurisprudence for the challenges of platform work

Section 4.2 provides, first, an overview of the main debates and proposed solutions for the challenges of platform work identified in the four countries studied. Second, key court decisions on the classification of platform work relationships are analysed.

4.2.1 Government initiatives for the challenges of platform work

So far, **Spain** is the only of the four countries studied which has enacted specific regulation on platform work (Royal-decree law 9/2021, of 11th May). In **Germany** and **Finland**, government bodies, ministries or tripartite bodies have developed several policy proposals, opinions and declarations, which are now are under discussion. Meanwhile in **Hungary**, where platform workers are usually considered self-employed, there are no political initiatives currently being debated.

As summarised in Table 4 below, **regulation (Spain)** or **policy proposals, declarations and opinions** (**Finland** and **Germany**) on platform work have addressed four main areas. First, the **definition of employment status** has been clarified through a legal reform in **Spain**, which introduces the legal presumption that delivery platform riders are workers, placing the burden on the platform to show that they are not (Royal-decree law 9/2021, of 11th May). This question is also under discussion in **Germany** and **Finland.** In **Germany**, where the Federal Ministry of Labour and Social Affairs (BMAS, Bundesministeriums für Arbeit und Soziales) has proposed reversing the burden of proof to facilitate the enforcement of platform worker rights.[51] In **Finland**, a legally non-binding opinion of the tripartite Labour Council (2020) declared the relationship between platform and riders to be an employment relationship. Second, proposals and declarations focused on **improving access to social protection and working conditions** for platform workers (and self-employed more broadly) are under discussion: in **Germany**,[52] regarding pensions and accidents insurance, minimum working conditions and the possibility to organise collectively; and in **Finland**, regarding unemployment social protection (European Commission, 2021; Mattila, 2020). Third, a declaration of intention aiming to **improve transparency and reporting of labour platforms** has been formulated by the Federal Ministry of Labour and Social Affairs in **Germany**. Improving transparency and reporting through the development of a public register of labour digital platforms was also discussed in **Spain** following trade union proposals (UGT and CCOO),[53] but this aspect was not regulated in the law. Fourth, legislative measures regulating some aspects of **algorithmic management in platform work** (transparency of information and information rights) have been enacted in **Spain** (Royal-decree law 9/2021, of 11th May).

[51] German Federal Ministry of Labour and Social Affairs (BMAS, Bundesministeriums für Arbeit und Soziales), 'Fair Work in the Platform Economy' (November 2020). Available at: https://www.bmas.de/SharedDocs/Downloads/EN/Topics/Social-Europe-and-international-Affairs/key-issues-platform-economy.pdf;jsessionid=3C353D0BF86B4EE4DC7215B915082CD3.delivery1-replication?__blob=publicationFile&v=1

[52] German Federal Ministry of Labour and Social Affairs (BMAS- Bundesministeriums für Arbeit und Soziales) 'Fair Work in the Platform Economy' (November 2020). Available at: https://www.bmas.de/SharedDocs/Downloads/EN/Topics/Social-Europe-and-international-Affairs/key-issues-platform-economy.pdf;jsessionid=3C353D0BF86B4EE4DC7215B915082CD3.delivery1-replication?__blob=publicationFile&v=1

[53] The proposal was issued by UGT and CCOO on the 11th of November of 2020: https://www.ugt.es/ugt-y-ccoo-proponen-al-gobierno-un-registro-publico-de-plataformas-digitales

Table 4. Regulation and policy proposals addressing platform work challenges

	Employment status	**Social protection and working conditions**	**Transparency and reporting**	**Algorithmic management**
Germany (only regarding the BMAS declaration, November 2020)	Reversal of the burden of proof	Inclusion of self-employed people working through platforms in the statutory pension insurance scheme; improvement of their work accidents insurance; minimum working conditions and changes to collective organisation.	Transparency and reporting obligations regarding labour platforms at EU level and through national rules	-
Finland (Labour Council opinions and Finnish Government programme, 2019*)*	Employment nature of the relationship between platform and riders (1); clarification of the concept of an employment contract (2)	Improving unemployment social protection for self-employed (3).	-	-
Hungary	-	-	-	-
*Spain (*Royal-decree law 9/2021*)*	Presumption of employment in the field of digital delivery platforms.	-	Proposal to create a register of digital labour platforms (4). Noting: proposal issued by trade unions; not approved in legislation.	Worker representatives information rights on the parameters and rules of algorithmic management.

(1) Labour Council's opinions TN 1482-20; TN 1481-20.

(2) This proposal was included in the Finnish Government programme (2019: 137), as quoted in Mattila (2020).

(3) This proposal was included in the Finnish Government programme (2019), as quoted in Mattila (2020).

(4) UGT and CCOO proposal: https://www.ugt.es/ugt-y-ccoo-proponen-al-gobierno-un-registro-publico-de-plataformas-digitales

Sources: Germany – German Federal Ministry of Labour and Social Affairs (BMAS) 'Fair Work in the Platform Economy', November 2020; Finland – Labour Council's opinions TN 1482-20, TN 1481-20, Mattila (2020); Spain – Royal-decree law 9/2021, of 11th May, and UGT and CCOO proposal (https://www.ugt.es/ugt-y-ccoo-proponen-al-gobierno-un-registro-publico-de-plataformas-digitales).

Following this comparative introduction, the following paragraphs provide a brief overview of the main debates, proposals and legislation addressing platform work challenges in the four countries.

In **Finland**, no specific law addresses platform work. However, the Finnish Labour Council (a tripartite body comprising the Ministry of Economic Affairs and Employment and the social partners) has issued two opinions – Labour Council's opinions TN 1482-20 and TN 1481-20 – on the **legal status of food couriers working in the platform economy**, considering them to be employees. In Spring 2020, the Regional State Administrative Agency became concerned about the legal status of food couriers, and requested opinions from the Labour Council (Labour Council's opinions TN 1481-20). The Labour Council gave its support in defining food couriers as employees to be covered by the Working Hours Act after a unanimous vote (Labour Council's opinions TN 1481-20). This opinion is not legally

binding, however, it can influence the way such forms of work are considered. As Minister of Employment Tuula Haatainen pointed out in a statement: "Although the opinions of the Labour Council are not binding, they nevertheless offer important guidelines. The status of thousands of people who work in the platform economy in Finland will be affected by the Council's opinion. I assume that companies will now carry out this kind of opinion". However, the improvement of food couriers' legal status has already had some negative consequences in the form of terminated contracts for several thousand couriers.

In addition, the 2019 Finnish government programme included two types of proposals which can contribute to improving the situation of platform workers (Mattila, 2020). The first type of proposal aims to **improve social security coverage for the self-employment**. In particular, a reform of unemployment insurance is being discussed, based on the idea of 'combined unemployment insurance'. The notion deals with the differentiated unemployment systems in which both employees and self-employed are insured (noting that in Finland, self-employed are considered entrepreneurs). When a person applies to the unemployment system in Finland, the unemployment benefits calculation can only take into account either the prior working history as employee or as entrepreneur. However, a growing number of people in Finland combine income from self-employment and paid dependent employment. This applies in particular to platform work, considering that – as detailed in Section 3.1 and the introduction of this section for most of the workers in Finland (and in most of the countries), platform work is a secondary or marginal source of income which is generally combined with other income sources that take the form of dependent employment (Urzi Bracanti et al., 2020). Bearing this in mind, the combined unemployment insurance would improve platform workers' social protection when facing unemployment (Mattila, 2020). The second type of proposal aims to **clarify the concept of an employment contract** in the Employment Contracts Act in order to prevent bogus self-employment. More specifically, the Finnish government programme (2019:31) stated that: "To reduce the uncertainty of working life, the concept of an employment contract in the Employment Contracts Act will be clarified to prevent employment from arising under the guise of other contractual relationships" (Finnish Government 2019, p. 137) (Mattila, 2020).

In **Germany**, the German Federal Ministry of Labour and Social Affairs issued a paper in November 2020 on 'Fair Work in the Platform Economy'. [54] Among the different proposals, attention is drawn, first, to **enhancing social protection for platform workers** by involving labour platforms in the social security of self-employed workers. Specifically, it is proposed to include platform workers under the statutory pension insurance system and labour platforms should financially contribute to this system. It also proposes examining options for extending occupational accident insurance to platform workers. Second, it proposes facilitating the enforcement of workers' rights through an **inversion of the burden of proof in favour of the platform worker**. This could be implemented by providing some indications of the employment relationship, and then it will be the employer who has to prove a different nature of the relationship. Third, the German Federal Ministry of Labour and Social Affairs proposal focuses on securing **fair operating conditions, through minimum working conditions and possibilities for platform workers to organise collectively, as well as facilitating scrutiny of contract terms**, through a judicial review of clauses in terms and conditions if they are determined only by the platform. Furthermore, the German Federal Ministry of Labour and Social Affairs **proposes improving transparency** of labour platforms through the introduction of **reporting and statistical obligations** set at EU and national levels. In addition, the BMAS[55] has promoted initiatives aiming at achieving a better understanding of the platform workers' conditions in order to develop sustainable policy proposals.

In **Hungary**, there is currently no special legislation regulating platform workers and they usually perform their activities under a civil law contract.

[54] German Federal Ministry of Labour and Social Affairs (BMAS, Bundesministeriums für Arbeit und Soziales), 'Fair Work in the Platform Economy' (November 2020). Available at: https://www.bmas.de/SharedDocs/Downloads/EN/Topics/Social-Europe-and-international-Affairs/key-issues-platform-economy.pdf;jsessionid=3C353D0BF86B4EE4DC7215B915082CD3.delivery1-replication?__blob=publicationFile&v=1

[55] See also https://www.denkfabrik-bmas.de/, 19.05.2021.

Spain is the first EU Member State to adopt legislation that recognizes delivery riders as employees. The 'Rider Law'[56] is the result of a social partner agreement reached in May 2021 (see more details under Section 4.3.1)**,** which unified legal positions by recognising the rider's employment status as an employee (see Section 4.2.2). The 'Rider Law' (Royal-decree law 9/2021) includes two main provisions. **First, the 'presumption of employment' in the field of digital delivery platforms**; that is, the responsibility for demonstrating that platform riders meet the criteria for being classified as self-employed lies with the platform company. The regulation states that the requirement of legal dependence, which is key to understanding whether there is an employment relationship between the work provider and the company, will be met if the employer's rights of organisation, management and control are exercised by an algorithm. It also states that this exercise of managerial prerogatives may be 'direct, indirect or implicit'. Thus, whenever the algorithm determines service and working conditions, it shall be understood that the requirement of legal dependence is met. **The second provision** of the law is an amendment to Article 64 of the Workers Statute related to the right of workers' legal representatives to information. The amendment introduced a requirement for companies to **inform workers' representatives** about the **parameters and rules on which algorithmic management** is based, which in turn impact decision-making, working conditions and access to work.

By adopting a broad meaning of legal dependence, as explained above, legal scholars in the field have pointed out that this provision of the 'Rider Law' is of particular importance in light of recent labour platform practices in response to new regulation. Food-delivery platforms are subcontracting delivery services to intermediary companies which take the responsibility for hiring riders as employees. This system is already in use by ride-hailing platforms such as Uber and Cabify, as it allows employers to circumvent their responsibilities (Todolí-Signes, 2021b; 2021c). Indeed, these business models have been under increasing scrutiny by the Labour Inspectorate, and it is a practice which goes against the established case-law by the Supreme Court on subcontracting. In March 2021, the Cabify platform and two subcontracting companies were fined by the Catalan Labour Inspectorate agency for illegal assignment of workers. The drivers were working for subcontracting companies holding VTC (Vehículo de transporte con conductor) licenses[57] and providing ride-hailing services to Cabify whenever a client requested it through the application. The Labour Authority found that the platform was the effective employer, owning the digital infrastructure to manage the service (the algorithm was in the hands of the platform) and exercising its control through reputation systems (Todolí-Signes, 2021a).

4.2.2 Jurisprudence on employment status: Germany and Spain

From the four countries considered, court ruling on the classification of platform work relationships has only been identified in Germany and Spain. There are no specific Court decisions on the legal status of platform workers in Hungary (Rácz, 2020) or Finland (European Commission, 2021).

In Germany, two cases brought by platform workers have been dealt with by the courts, and with different outcomes. On the one hand, on February 2019, the Regional Labour Court of Hesse ruled that a bus driver hired via a crowdsourcing platform was classified as self-employed, as the driver was not subject to instructions to the degree that would constitute subordination (Hießl, 2021).

On the other hand, the Federal Labour Court (Bundesarbeitsgericht, BAG, docket number 9 AZR 102/20) ruled on 1 December 2020 that a user of a crowdsourcing platform should be reclassified as employee. This worker carried out the verification of the display of goods in supermarkets and oil stations. The crowdworker was formerly classified as self-employed by a lower Court (Regional Labour Court of Munich, December 2019) on the grounds of the absence of subordination; that is, the description of work assignments were drafted by the crowdsourcer and not the platform. In addition, the fact that the worker made a large part of their income from the platform (economic dependency) was

[56] Royal-decree 9/2021, of 11th May.

[57] In Spain, ride-hailing platforms (e.g. Uber or Cabify) can only operate with VTC licences. The regulation of VTC licenses dates back from the 1990 (Law on Road Transport) and set up certain restrictions. For instance, it is subject to the previous contracting of the service, whereas taxi rides can be also directly contracted in the streets or at taxi ranks. In addition, the total number of operating licenses is limited by law to a maximum 1/30 ratio, meaning that only one private VTC for every 30 taxis is allowed.

not deemed sufficient to be considered as an economically dependent self-employed. The Federal Court disagreed with the Munich Court decision in some crucial aspects. It is argued that the fact that the platform controlled the provision of the services was an indication that the worker was integrated into an organisational structure and subject to instructions by a third party – which fits the requirements of employee status (the lower instance Court saw no organisational integration). Furthermore, the Federal Court decisions stressed that although the task description was issued by the crowdsourcer and not the platform in itself, the latitude left for carrying out the tasks was rather limited, which fits with the subordination criteria; and although the worker was not obliged to accept orders, the rating system of the platform was geared to incentivize workers to take new work assignments (Hießl, 2021).

In Spain, particular attention should be drawn to the Supreme Court's decision of September 2020. The Supreme Court (SC) ruling establishes several key points. First, the dependence criteria does not necessarily imply absolute subordination but only insertion into the governing, organisational and disciplinary circle of the company. By this, the SC acknowledged the need to adapt the notions of *dependencia* and *ajenidad* to technological innovation and the introduction of algorithmic management and control. Second, delivery riders working under another brand is evidence of the existence of an employment relationship. Third, the essential means of production in this activity were not the riders' phones and motorcycles, but the digital platform belonging to the company, without which the rider could not provide services on his own. Fourth, digital rating is a form of direct control over service providers, as well as a form of work organisation decided by the company and determining the allocation of orders and time slots. Fifth, the platform shall not be considered just as an intermediary; a conclusion built on the CJEU ruling of 20 December 2017, Case C-434/15, also known as Elite Taxi.[58]

Other arguments also considered by SC rulings include whether: the company made all commercial decisions in the business, set service prices and the method of payment; riders did not receive the payment directly from customers but through the platform; riders were not involved in the commercial agreements between the platform company (Glovo) and the business whose products were distributed, nor in the relationship between the platform and final customers.

The SC assumes that an employment contract exists regardless of workers being free to choose their working schedule, or even in the absence of direct instructions from the person commissioning the service. It is even understood that the worker's right to refuse work commissioned by the principal does not necessarily exclude an employment contract. Likewise, ownership of tools or secondary means of production does not exclude classification as an employee. The fact that the service provider assumes part of the risk does not preclude the existence of an employment relation; neither does the fact that there is no exclusivity or economic dependency, and the service provider may have worked for other companies, prevent the contract from being classified as an employment contract.

4.3 Social partners responses to platform work

This section maps and compares the main social partners responses to platform work in the four countries considered. With this aim, the report distinguishes three main levels where social partners and particularly trade unions can act to influence the governance or regulation of employment and working conditions of platform workers: namely tripartite dialogue and joint government-social partners initiatives; bipartite negotiations and collective bargaining; and unilateral trade union actions.

[58] The 2017 ECJ ruling by which Uber activity was considered as an intermediation service in the field of transport (and not an information service) was an important milestone in the regulation of the platform economy in Spain. Indeed, this was a crucial issue for establishing whether an administrative authorisation might be required. In particular, the regulation of 'information services' falls within the scope of EU directives and therefore within the scope of the freedom to provide services in the internal market without prior authorisation. However, the ECJ found that the Uber intermediation service is an inherent part of a transport service (not an information service) and, accordingly, it is for the Member States to regulate the conditions under which such services are to be provided.
The 2017 ECJ decision was received as a great victory by the taxi sector. However, in practice it had no major consequences on the operation of Uber and Cabify in Spain, as these platforms were already subcontracting the transport services to different companies holding VTC licenses since 2016 (*Vehículo de transporte con conductor*, Car rental with driver).

4..3.1 Tripartite dialogue and joint government-social partners initiatives

Tripartite social dialogue includes all types of negotiation and consultation practices involving representatives of governments, trade unions and employer organisations. In most EU countries, tripartite social dialogue has been a key tool in employment governance aimed at favouring social justice and economic competitiveness (Sanz de Miguel et al., 2020). However, there is little evidence on the role played by tripartite social dialogue in addressing platform work. Moreover, recent research suggests that in the context of the COVID-19 pandemic crisis, the involvement of social partners in the design of these policy measures was reduced, as policies were frequently adopted in emergency situations (Eurofound, 2021).

From the four countries studied, only in **Spain** has tripartite dialogue resulted in binding agreements impacting legislation on platform work. In **Finland** and **Germany**, joint government-social partners actions have included tripartite non-legally binding statements (Finland), informal cooperation, organisation of conferences or workshops, and joint policy papers (involving either government and employer organisations such as in Finland, or government and trade unions such as in Germany). In **Hungary**, no tripartite initiatives or joint government-social partners actions were found.

In **Finland**, the Ministry of Economic Affairs and Employment (MEE, Työ- ja elinkeinoministeriö Arbets- och näringsministeriet) appointed a high-level working group, 'Work in the Age of Artificial Intelligence' (2017), headed by Nokia's former Managing Director Pekka Ala-Pietilä. The working group included a sub-group, 'Transformation of Society and Work', which had a tripartite composition. Later, MEE appointed another group, 'Alternative Solutions Regarding Sharing Economy-Related Issues' (2018), which included the social partners in the writing of the report (Ilsøe et al., 2020). Attention should also be drawn to the Finnish 'Roadmap for the Digital Platform Economy' (Viitanen et al., 2017), which was cowritten by Business Finland, the Finnish Government and the Ministry of Economic Affairs and Employment (Ilsøe et al., 2020). Beyond those joint actions, the main tripartite initiative identified in Finland was an opinion issued by the Labour Council, a tripartite body comprising the Ministry of Economic Affairs and Employment and the social partners (see Section 4.2.1).

In **Germany**, the Federal Ministry of Labour and Social Affairs (BMAS, Bundesministeriums für Arbeit und Soziales) has engaged employer organisations, trade unions and experts on discussions and scientific activities. Two 'hearings' on the opportunities and challenges presented by the platform economy were held with platform operators and platform trade unions in February 2019 and in May 2019. The last workshop was organised within the framework of the Fairwork project based at the Oxford Internet Institute and the WZB, Berlin Social Science Centre (Wissenschaftszentrum Berlin für Sozialforschung). Its purpose was to discuss fair work principles for platform work. Attendees represented a variety of key stakeholders, including Berlin's Senate Department for Labour and Social Affairs, the Federal Ministry of Labour and Social Affairs, and the German Trade Union Confederation (DGB, Deutscher Gewerkschaftsbund) (Fairwork, 2020). In addition, two 'labs', each with around 15 interdisciplinary experts, developed recommendations for policy-making in the platform economy. Over a four-day process, the labs developed a description of the challenges and jointly developed recommendations for action (Deinert and Freudenberg, 2020). As detailed by Deinert and Freudenberg (2020), the main recommendations were:

- Include the self-employed in pension insurance provisions (and provide support for social-security contributions in the low-income segment).
- Strengthen transparency and control of evaluation procedures on platforms.
- Strengthen the data sovereignty of the platform employees in order to reduce lock-in effects and dependency on the platforms.

It should also be noted that in early 2019, the Food and Catering Union of Germany (NGG, Gewerkschaft Nahrung-Genuss-Gaststätten) published a joint policy paper with the Ministry of Labour and Social Affairs (BMAS). It was published on the Second Riders Day in Hamburg. It deals with working conditions in the food-delivery sector and addresses challenges posed by the platform economy. Both NGG and the ministry claim that fair working conditions and appropriate social protection must also be applied to food-delivery and other gainfully employed persons whose work is organised via online platforms – regardless of whether the activity is performed as an employee or self-employed.

In **Spain**, a tripartite agreement was concluded on the 11th of March of 2021 on the regulation of the employment status of food-delivery riders. The agreement was signed at national level by the Ministry of Work and Social Economy, and the most representative trade unions (Trade Union Confederation of Workers' Commissions, CCOO, and General Worker Confederation, UGT) and employer organisations (Spanish Confederation of Employers Organisations, CEOE and Spanish Confederation of Small and Medium-sized enterprises, CEPYME). This agreement, which was later transformed into Royal-decree law 9/2021, of 11th May, recognised the presumption of the employment relationship in delivery platforms. It followed the Supreme Court's decision (September 2020) which established the recognition of riders' employment status as employees (see more details under section 4.2.1 and 4.2.2). In addition, the agreement set up a tripartite commission for studying digital labour platforms (*Comisión Tripartita para el Estudio de las Plataformas Digitales en el ámbito laboral*). According to the agreement, the tripartite commission will publish at least once a year a report analysing the main trends in digital labour platforms. Most importantly, the agreement introduced an innovative provision related to 'algorithmic transparency' which opened new possibilities for union intervention in platform work organisation practices. This has required a modification of Article 64 of the Workers Statute (the rights of worker representatives to information) (more details under Section 4.2.1).

4.3.2 Bipartite actions and collective bargaining

Trade unions are increasingly acknowledging the significance of collective bargaining in the platform economy. Collective agreements can mitigate the risks of surveillance and decision-making based on algorithms, or try to improve the transparency of these mechanisms and processes (De Stefano and Taes, 2021). However, a key problem for collective bargaining for platform workers is rooted in the fact that they are classified as self-employed, and the self-employed usually do not have the same access to collective bargaining as employees in most of the countries, as detailed in Section 4.1. In those cases where some platform workers are classified as employees, collective bargaining can be hindered because of low trade union affiliations rates among platform workers, particularly in those countries where legislation or trade unions' internal rules require certain affiliation thresholds. The lack of genuine employer organisations representing labour platforms is also an obstacle for sectoral collective bargaining. A further problem concerns the role played by non-representative unions or 'yellow trade unions' in bargaining agreements with labour platforms which are unfavourable for platform workers.[59]

In the four countries studied, trade unions face difficulties concluding collective bargaining in the platform economy. Indeed, research has not detected any genuine collective agreement in force explicitly concluded for platform workers. However, there are significant cross-country and sectoral differences regarding the difficulties and possibilities for collective bargaining regulation. For on-demand via app work activities, the most significant attempts and prospective chances for trade unions to conclude collective agreements are identified in **Germany** and **Spain**, where platform workers in several sectors have employee status. In contrast, the situation appears less favourable in **Finland** because of platform workers' employment status as self-employed and, in particular, in **Hungary**, also taking into account its industrial relations patterns (low trade union density, decentralisation of collective bargaining, etc.). For crowdwork activities, the four countries share a similar situation in the sense that workers are generally classified as self-employed and, accordingly, do not have access to collective bargaining. However, in **Germany**, trade unions have developed, in cooperation with online platforms, codes of conduct and conflict resolution mechanisms which can support improvements in working conditions. Having completed the introduction to this section, the following paragraphs provide a brief overview of the specific situation in each country in relation to collective bargaining.

[59] In Italy, a national agreement was signed by the General Labour Union (UGL, Unione Generale del Lavoro) on the 15th of September of 2020. According to trade unions Italian General Confederation of Labour (CGIL, Confederazione Generale Italiana del Lavoro), Centre for Industrial Studies (CSIL, Centro Studi Industria Leggera) and Italian Labour Union (UIL, Unione Italiana del Lavoro), the agreement was signed by a union 'of convenience' to the benefit of the companies. The agreement denied platform workers access to employment rights because they are exclusively classified as self-employed. See: https://www.eesc.europa.eu/en/news-media/news/press-release-national-agreement-italian-riders-cgil-cisl-and-uil

In **Finland**, the state of collective bargaining contrasts with the rest of the Nordic countries, where different collective agreements have been reached.[60]. Platform workers in Finland are classified in many cases as independent contractors, and are therefore not entitled to collective bargaining. This applies to different forms of platform work, including both online crowdwork (for example, technical translators) and work on-demand via app (for example, Uber drivers or food couriers in Wolt and Foodora) (Ilsøe et al., 2020). In the case of some significant platforms such as Uber, Finland has been assessed as the Nordic country where the entrance of the digital platform provoked the fastest and most radical deregulation, 'effectively creating a taxi market fully adjusted to Uber's model' (Ilsøe et al., 2020). Regarding couriers, the non-legal statement issued by the Labour Council recognising their employment status under the Working Hours Act could favour the conclusion of a collective agreement. In this context, trade unions stress the need to classify platform workers (and also other workers with non-standard legal status) as employees (for more details on trade unions actions in this area, see the next Section 4.3.3).

In **Germany**, different sectoral specificities regarding the challenges and possibilities for collective bargaining can be highlighted, particularly in the case of 'work on-demand via app'. In the food-delivery sector, most of the workers are classified as employees. Lieferando, which became the main platform in the sector following several acquisitions and the withdrawal of Deliveroo from the country in 2019, exclusively relies on employment relationships. In this framework, NGG trade unions have among their mid-term goals to conclude collective agreements to regulate rider working conditions. So far, the main obstacle for concluding a sectoral collective agreement is related to the fact that Lieferando does not belong to any employer organisation. Bargaining a company collective agreement could be possible but, according to the internal rules of the NGG, 50% of the work force has to be organized in the union in order to negotiate a collective agreement, and this is not the case yet (Nierling et al., 2021). In other platform activities offering on-location work (such as care work), the legal status of workers appears more problematic and, accordingly, the possibilities for collective bargaining are more limited. In the ride-hailing sector, the successful defence of the quite restrictive Passenger Transport Act (*Personenbeförderungsgesetz*), mainly led by taxi driver associations and supported by trade unions, has meant that platform work is virtually non-existent in this sector and, accordingly, there has not been a demand for collective bargaining.

In the case of crowdworkers, who are generally classified as self-employed, collective bargaining is legally restricted. Under those limitations, innovative joint actions to ensure decent working conditions have been developed by trade unions and individual platform companies. In this sense, attention should be drawn to the Crowdsourcing Code of Conduct (CoC), which was initially developed by a single platform in 2015, and then subsequently promoted and enhanced by the trade union IG Metall (Vandaele, 2018). Since then, several labour platforms have joined the initiative. Platforms signing the code of conduct commit themselves to, amongst other things, the fair payment of workers, clear, transparent and legal tasks and work processes, open communication and constructive feedback, and the protection of platform workers' privacy and personal data. Moreover, a so-called 'Ombuds Office' was established to mediate disputes between platforms that signed the CoC and their workers. The Ombuds Office is a bipartite institution made up of one crowdworker representative, one trade union representative, one representative of a platform, one representative of the German Crowdsourcing Association, and one neutral chair. Platforms and platform workers can submit complaints. The Ombuds Office discusses the disputes and issues recommendations. Platforms consistently ignoring recommendations can be excluded from the CoC. Disputes mediated by the Ombuds Office relate to platforms' refusal to pay for completed tasks, unclarity regarding task descriptions and work processes,

[60] In Denmark, the first company-level agreement in the platform economy was signed in 2018. The agreement was negotiated by the platform Hilfr, which facilitates cleaning services in private households, and the United Federation of Danish Workers (3F, Fagligt Faelles Forbund). Later, Voocali, which is a Danish translation platform, has signed an agreement with the union HK that includes a price floor and future negotiations on pension contributions. In the Norwegian context, the LO-affiliated Norwegian Transport Workers' Union and then, the United Federation of Trade Unions, signed an agreement with food-delivery platform Foodora. The agreement includes a wage increase, reimbursement for equipment, extra pay in wintertime and early retirement pension. In Sweden, platform workers on marginal part-time employment contracts can be covered by existing collective agreements (for example, the case of Bzzt). This also applies to workers developing services for platform companies that register as temporary employment agencies (such as at Instajobs or Gigstr) (Ilsøe et al., 2020).

and the closure of platform worker accounts. Since 2017, the Ombuds Office has resolved over 40 disputes, mostly by consensus (Nierling et al., 2019, 2021).

In **Hungary**, the main difficulty for collective bargaining is related to the fact that platform workers are classified as self-employed and are not entitled to this collective right. In this country, the situation is more challenging compared to Finland and Germany, due to the comparatively weaker position of trade unions and the high degree of decentralisation of collective bargaining (Sanz de Miguel et al., 2020).

In **Spain**, the main possibilities for collective agreements have appeared in the ride-hailing sector. In this sector, drivers are not independent contractors but employees who, nonetheless, are not directly hired by the labour platforms. Instead, they are hired through companies which hold licences for 'car rental with drivers' (VTC, Vehículo de transporte con conductor),[61] who in turn provide services to the main platforms (Uber and Cabify). Although occasionally the platform is also the owner of the company holding VTC licenses, the role of platforms is limited to the provision of the digital infrastructure through which the subcontracting companies operate on a commission basis. Thus, VTC companies bear the costs for contracting drivers and the management of the car fleets.[62] In this sector, collective bargaining has not been concluded due to economic reasons, but also as a result of the dynamics between and within the parties, which prevents agreement taking place in the two existing bargaining forums. On the one hand, the representativeness of the main sectoral employer association (UNAUTO) has been undermined by the withdrawal of Uber and Cabify, along with their largest partner companies holding thousands of VTC licenses. According to press sources, this decision was motivated by differences between large companies holding VTC licences working for the platforms, and small companies operating in the traditional VTC sector. Divisions among employers' interests may have been exacerbated by the current downturn due to the mobility restrictions adopted in the context of the COVID-19 pandemic crisis. The representativeness of the employers' association, which claimed to cover around 90% of the companies at national level, has been therefore seriously undermined. On the other hand, the divisions between 'independent' and mainstream trade union organisations bargaining goals and strategies have resulted in the breaking of negotiations at regional-sectoral level in the Madrid Region. This decision followed the annulment by regional labour authorities in February 2021 of the agreement concluded between employer organisations UNAUTO and the worker organisation Free Transport Union (SLT, Sindicato Libre de Transporte), because STL lacked the necessary union representativeness required to sign a binding agreement. Both UGT and CCOO sectoral representatives had strongly criticised the terms of the agreement, which was deemed illegal, as it failed to recognise the time spent logged-in the application as effective working time; therefore, it contravened national and EU case-law on the issue.

In other on-location platform activities and in most of the crowdwork activities and sectors, collective bargaining has been restricted because workers are classified as self-employed. However, following the recent recognition of riders' legal status, developments in the food-delivery sector can be expected. In this vein, regional social partners just reached an agreement for the inclusion of delivery riders into the scope of hospitality collective agreement in the Basque Country (Brave New Europe, 2021). Nevertheless, there are still some differences between unions on the corresponding sectoral agreement that should apply, as some judicial rulings on the employment status of riders established their

[61] In Spain, ride-hailing platforms can only operate with VTC licences. The regulation of VTC licenses dates back from the 1990 Law on Road Transport. Initially, VTC activities had a marginal presence in the discretionary transport of passengers' sector, restricted to corporate transport, custom tours for tourists or limo services. A distinct feature of VTC regulation is that it is subject to the previous contracting of the service, whereas taxi rides can be also directly contracted in the streets or at taxi ranks. The regulation of VTC licenses established additional restrictions on its ability to compete with the taxi sector as a public service. The most significant restriction concerns the total number of operating licenses, which is limited by law to a maximum 1/30 ratio, meaning that only one private VTC for every 30 taxis is allowed.

[62] However, some doubts have arisen regarding the legality of those practices. Indeed, Cabify and Uber platforms have been sued before the Labour Inspectorate for illegal assignment of workers, on the initiative of CCOO union branches and taxi professional associations. Their arguments focus on the fact that the activities performed by VTC companies are essential to the transport service provided by the platform. Work organisation is determined and conditioned by the platforms, it is not the company that assigns rides among their drivers, but the algorithm running the application based on the drivers' average ratings and proximity to the pick-up point. VTC companies also do not set the fees for their services; the platforms set the fees themselves.

recognition as employees under the terms and conditions of logistics and goods' transport, which fits better with the real activity of these platforms and provides better working conditions.

4.3.3 Unilateral trade union actions

Recent research has illustrated that trade unions' strategic choices and patterns of collective action greatly differ across countries, trade unions, sectoral activities and types of platform work. This has been explained due to the different 'power resources' that trade unions are able to mobilise for raising worker voices and attaining bargaining power in the different countries and activities where labour platforms operate (Vandaele, 2021, 2018).

Some of the most important worker actions reported in EU countries have taken place in on-demand digital platform activities which are locally executed. In particular, workers have developed significant actions regarding on-demand platform activities operating on public settings, such as food-delivery and ride-hailing. The spatial proximity and temporal synchronicity of their work, in combination with their strategic position in distribution networks, confers on these workers a considerable workplace bargaining power through direct action (Vandaele, 2021). In the courier and food-delivery sector, previous research has illustrated that the repertoire of worker actions in several EU countries has combined online campaigns with grassroots union protests in cities. In some cases, grassroots unions or movements representing rider have also built-up coalition power by entering into alliances with trade unions or other organisations (Vandaele, 2018, 2021). In ride-hailing, most of the workers were already self-employed before the entrance of labour platforms. In this case, trade union actions have focused on either supporting taxi drivers' associations in their protests and actions, or in opening up membership to self-employed workers, as has happened in France (Vandaele, 2021). Worker actions have faced more obstacles in other on-demand digital platform work developed in private settings (for example, cleaning or clearing), due to the geographical dispersion of workplaces. For both micro-task and macro-task crowdworkers, the literature suggests that trade unions have faced more difficulties in organising workers and developing disruption actions (Vandaele, 2021; Crowdwork project 2019–2021). In the case of micro-task crowdwork, the capacity that workers have to cause disruption through industrial action is rather weak due to the segregated and geographically disperse nature of their work. This also applies to highly qualified macro-task crowdworkers, although they also have more market bargaining power, for example, in some cases they can set prices through negotiations with the client (Vandaele, 2021; Crowdwork project 2019-2021).

The cases of **Finland**, **Germany**, **Hungary** and **Spain** show significant differences across the unilateral actions that trade unions have developed to improve platform workers' working and living conditions. Although in the four countries, trade unions share similar concerns regarding the risks that platform work brings, a more comprehensive repertoire of trade union actions is identified in **Germany**, **Spain** and, to a lesser extent, **Finland**. In these countries, significant worker actions have been developed in the food-delivery and courier sector. A distinctive feature of these trade union actions is related to the key role played by grassroots unions or social movements. Movements in the three countries have focused on awareness-raising digital campaigns and mobilisation. Moreover, in **Germany** and **Spain**, the grassroots unions and movements in question have progressively entered into alliances with mainstream trade unions, civil society organisations or political parties in order to get institutional and organisational support. Workers' actions have also been significant in the ride-hailing platform sector in **Spain** and **Germany**, where mainstream trade unions have supported taxi-driver associations or have litigated against labour platforms (particularly in Spain). In the case of **Germany**, trade unions have also developed actions aimed at organising self-employed crowdworkers. In contrast, **Hungarian** trade unions are still 'exploring' the platform work landscape (Makó et al., 2019). The general weakness of labour movements in Hungary and their very low presence among non-standard workers challenges labour movements' capacity to organise these workers. Nonetheless, trade unions are still advising individual platformer workers in Hungary.

The following paragraphs provide a brief overview of trade union unilateral actions developed in each of the four countries studied.

In **Finland**, there are three trade union confederations – the Confederation of Unions for Professional and Managerial Staff in Finland (Akava), the Finnish Confederation of Salaried Employees (STTK,

Toimihenkilökeskusjärjestö) and the Central Organisation of Finnish Trade Unions (SAK, Suomen Ammattiliittojen Keskusjärjestö) – and they are collaborating on securing better rights for the self-employed through the initiative 'Itset'. The Itset initiative aims to revise Finnish competition law in order for the self-employed to be able to negotiate terms and pay collectively (Ilsøe et al., 2020). At sectoral level, attention should be drawn to the food-delivery and courier sector, where the self-organised movement Justice for Couriers, was set up as an informal network of food couriers. Since 2018, it has raised consumers' awareness of the problems related to courier working conditions through different campaigns and internet posts. Its aim is to continue with the campaigns until the achievement of a collective agreement and the recognition of workers' legal status as employees in the platform economy. This movement has expressed the aim of including couriers within an existing labour union such as the Service Union United (PAM, Palvelualojen ammattiliitto); and has used social media with hashtags such as #justice4couriers.

In **Germany**, from the very beginning of platform work, the unions were very active in shaping the public debate on this new type of work (Nierling et al, 2019, 2021). Different actions and strategies are identified across sectors, union federations and grassroots unions. In the food-delivery sector, the grassroots union 'Liefern am Limit' started with the organisation of riders via WhatsApp chat groups in several German cities, particularly in Cologne. In early 2018, a social media campaign was launched with the aim of informing workers about working conditions at food-delivery platforms and calling for mobilisation. As Liefern am Limit was steadily growing, the movement looked for institutional backing from trade unions[63]. Initially, it made contacts with the Free Worker's Union (FAU, Freie ArbeiterInnen-Union), which is part of the left and anarchist movement. Later on, it established a permanent alliance with the NGG trade union which has proved to be successful in improving representation of platform workers. The main achievement with regards to worker rights was the establishment of a works councils at Foodora, which could be transferred to Lieferand after the merger of both platforms. In the field of crowdwork, the biggest Germany trade union, the IG Metall, has been very active from the very beginning. Beyond concluding agreements with platform companies on work resolution mechanisms (see Section 4.3.2), it has attempted to affiliate and organize new types of crowdworkers online. It also started cooperation on crowdwork with international unions.

In **Hungary**, trade unions have not organised specific campaigns or mobilisation actions focused on platform workers. However, trade union MASZSZ-KASZ has planned to organise a campaign for warehouse and logistics workers taking part in online trade. Research has also identified that some trade unions have received and attended to individual requests from individual platform workers (Makó et al., 2019; 2021). Generally, platform workers request trade union advice on legal issues related to social security, taxation, invoicing or non-payment issues (Makó et al., 2019; 2021). Compared to other EU countries, Hungarian trade unions face difficulties in organising platform workers. First, they have been in decline over the past 10 years as the Orban regime systematically weakened their position. In this sense, trade unions lack the necessary financial, human and organisational resources to recruit members among platform workers. Secondly, regulation hinders platform workers' representation as they are all treated as individual contractors who do not have collective rights (Makó et al., 2019; 2021).

In **Spain**, important mobilizations took place in the food-delivery sector. In this sector, the Riders for Rights movement (RxR, *Riders por Derechos*) have become the most visible expression of workers' collective voice in this sector. This riders association was responsible for the first round of collective mobilisations and call for strikes against Deliveroo in 2017, with similar protests in parallel in the UK at the same time (Pérez-Chirinos, 2017). While these protests received great press coverage and achieved their goal of raising public awareness on working conditions in the sector, none of the workers' demands were accepted by the platform and most of the RxR members were simply 'disconnected' from the Deliveroo application in retaliation for taking part in the protests. In fact, Deliveroo has just been convicted by the Supreme Court, and has been ordered to reinstate and compensate the riders concerned as there were clear violations of the right to freedom of association and the right to strike (Olías, 2021).

[63] The initiative is supported at the highest political level. For instance, the initiative was invited to the 'Work' committee at the German parliament and received strong support from 'Die Linke' and the SPD.

In the absence of recognition by the platforms themselves, RxR attained an 'institutional' recognition following its participation in the consultation process for the so-called Rider-law (Royal-decree law 9/2021. See details in Section 4.2.1) . Participating in this meeting was perceived as the most important victory of the riders movement in its three years of existence. The movement has also pursued a 'coalition building' strategy by seeking the involvement of relevant civil society actors and social movements through the publication of a manifesto supporting the riders association's position in the public consultation process. The manifesto 'Riding for a future without precarity and decent employment' (24th June 2020) was signed by more than fifty civil society organisations, including a range of union organisations and social movements. The RxR manifesto called for a draft bill which would further prevent worker misclassification through interpretations contrary to the spirit of the Labour Law. Trade union actions have also been significant in the ride-hailing platform sector, where they have supported or partly supported taxi driver associations' claims, and the trade union CCOO has litigated against ride-hailing platforms (Uber and Cabify) for illegal assignment of workers.

4.4 Summary of the outcomes

This section has shown that there are no significant differences in the legal definition of dependent employment in the four countries covered, although each system developed its own legal interpretation of the main elements of the definition. The section has also illustrated how labour protection has developed around the traditional definition of employee, and that there is a substantial gap between the protections for employees and the protections for the self-employed. Therefore, in the four countries studied, individual and collective labour rights, together with the right to conclude collective agreements, are not ensured outside the scope of the national definitions of employee, with limited intervention for the intermediary categories legislated in Spain and Germany. Similarly, social security benefits for self-employed workers are often lower compared to those of employees in all the four countries.

In light of the framework constituted by this binary classification, in some cases blunted by the presence of a third category (Germany and Spain), it is not easy to understand where platform workers fit in. Similarly, it is also unclear where further non-standard forms of work fit into this framework. From a jurisprudence point of view, it is necessary to assess each case individually and thus take into account all the circumstances regardless of the employment status given in the contract.

Nevertheless, research has found a trend towards increasing recognition for the status of platform workers as employees in Finland, Germany and Spain. Either through Court decisions (Germany and Spain), policy proposals or opinions (Finland and Germany) or specific legislation stimulated by case-law (Spain).

As far as case-law is concerned, this section has shown that in Germany and Spain, courts at the highest level have decided in favour of reclassifying platform workers. Interestingly, in both countries it seems that the existence of a third status between employment and self-employed activity has not had significant effects. At policy level, recent legislation has been approved in Spain, regulating for the 'presumption of employment' in the field of digital delivery platforms. In Germany and Finland, there have been proposals and opinions formulated in a similar direction. In Germany, the German Federal Ministry of Labour and Social Affairs has proposed an inversion of the burden of proof in favour of the platform worker. While in Finland, the Labour Council issued a non-binding opinion that recognised platform workers as employees, through an unanimous vote.

Moreover, in Germany, Finland and Spain, several policy proposals, opinions or declarations of intention have been formulated with different aims: improving access to social protection and working conditions for platform workers (Germany and Finland); and improving the transparency and reporting of labour platforms (Germany and Spain). It is also worth highlighting the Spanish regulation of algorithmic management in platform work, which focuses on transparency of information and information rights. In contrast, in Hungary, the phenomenon of platform work is still insignificant, and has not given rise to lawsuits nor caught the attention of legislators.

At industrial relations level, the report has documented several tripartite, bipartite and unilateral social partners actions addressing some of the challenges brought by platform work, developed in Finland, Germany, Spain and, to a much lesser extent, in Hungary.

Tripartite initiatives (including also joint government-trade unions actions and joint government employer organisations actions) in Finland and Germany have been oriented towards improving knowledge and understanding of platform work, or formulating policy proposals and opinions intending to clarify platform workers' employment status, and improve their social protection and working conditions. In the case of Spain, a tripartite social dialogue agreement impacting legislation on platform work has been highlighted.

At bipartite level, no genuine collective agreement in force and explicitly concluded for platform workers was identified in any of the four countries studied. However, significant cross-country and sectoral differences have been highlighted in terms of the difficulties and possibilities for collective bargaining regulation. Generally, trade unions' greatest chances to conclude collective agreements are identified in on-demand via app work activities in Germany and Spain, where platform workers in several sectors have employee status. For crowdwork activities, the four countries share a similar situation in that workers are generally classified as self-employed and, accordingly, do not have access to collective bargaining. However, in Germany, a significant bipartite action has been identified; the action has been jointly developed by trade unions and labour platforms, and includes dedicated codes of conduct and conflict resolution mechanisms for crowdworkers

Finally, research has shown that trade union unilateral actions developed to improve platform workers' working and living conditions differ in the four countries studied. A more comprehensive repertoire of trade union actions is identified in Germany, Spain and, to a lesser extent, Finland. In these countries, significant worker actions have been developed in the food-delivery and courier sector, where grassroots unions have played a key role in mobilising workers, often in coalition with mainstream trade unions. Worker actions have also been significant in the ride-hailing platform sector in Spain and Germany, where mainstream trade unions have supported taxi-driver associations or have litigated against labour platforms (particularly in Spain). In contrast, Hungarian trade unions, which are comparatively weaker, are still 'exploring' the platform work landscape (Makó et al., 2019).

5. An EU definition of worker: a proposal to improve labour rights and social protections for platform workers and non-standard workers

The world of work has drastically changed in the last three decades. Digitalization and globalization have played a crucial role in these changes, introducing new ways of managing companies, producing goods and providing services, and new market strategies. The EU and Member States (MSs) have addressed these new challenges by increasing work flexibilization, without a correlative increase in work 'security' (Singer and Bazzani, 2016), which has had negative impacts on the labour market, workers' rights and labour relations. Persons occupied in non-standard and new forms of work are particularly in need of adequate protections to ensure decent working conditions and a decent standard of living. They are not normally covered by the same labour and social security standards enjoyed by those employed in traditional forms of employment, under national definitions of 'employee'. Such workers have also been most affected by the pandemic, since they are often not eligible for public short-term work schemes which fund workers' incomes in case of market crisis. Eligibility for these state-funded schemes is usually linked to the status of employee. Within this context, a debate on the possibilities for providing adequate protections for non-standard and new forms of work (including platform work) has started to be addressed among scholars, and within EU and national institutions.

A definition of worker at EU level was recently suggested in the Proposal for a Directive on Transparent and Predictable Working Conditions in the EU; and potentially included new and non-standard forms of work, based on the criteria established by CJEU case-law. However, this proposal was not adopted in the final version of the directive (Directive 2019/1152); that directive being motivated by the Pillar of Social Rights, which aimed to improve conditions for all workers, including those in new and non-standard forms of employment. The directive only refers to a concept of worker 'with consideration to the case-law of the Court of Justice'.[64]

Therefore, in order to guarantee that all EU workers have adequate labour protections, independent of them being in standard or non-standard forms of work, a definition of worker at EU level is still lacking and should be introduced.

Section 5.1 will address the multifaceted characteristics of the worker definitions within EU primary and secondary law. Section 5.2 will highlight the connections between the EU concept of worker and the EU regulatory framework given the strengthened social dimension of the EU internal market (entering into force with the Lisbon Treaty). Then, in Section 5.3, the configuration of the worker concept at EU level is traced through decisive judgments of the Court of Justice (CJEU) over the years. Following on from that, Section 5.4 highlights scholars' proposals to address crucial issues in defining the worker concept at EU level: the creation of a third category; redefinition of the worker concept; and the impact of organisational transformation and technology on the worker definition. In light of the worker concept, as drawn out by the CJEU along the years, and in relation to scholarly ideas on providing adequate protection to new and non-standard forms of work, a definition of worker is proposed in Section 5.5. The proposed definition has been submitted to a pool of experts in labour and social security law in order to obtain feedback and suggestions, which are discussed in Section 5.5.2. To conclude, an ideal applied scope of the EU worker definition is suggested as an inspiration for the future evolution of EU labour rights (Section 5.5.3).

5.1 National definitions of worker and the EU dimension

At EU level, there are different definitions of worker, depending on the applicable field of EU law.[65] On the one hand, EU primary law (Treaties and the Charter) refers to an EU concept of worker framed by the freedom of movement. On the other hand, secondary law (e.g. directives) is characterized by heterogeneous concepts of worker. The coexistence of different worker definitions and concepts is particularly significant because a certain definition can broaden or narrow the personal scope of a

[64] 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 L 186, 11.7.2019, p. 105–121).

[65] For example, under the coordination of the social security systems regulation (Regulation EEC)No 1408/71, which applies to workers who move from one Member State to another to work, the worker is defined as the person who is insured for one of the risks listed in the regulation. The Consolidated version of the Regulation (1/5/2010) adapted such definition for both "employed person" and "self-employed person".

directive, including or excluding certain workers from its scope and, therefore, from the rights it recognizes. Within the labour law field in particular, parts of the directives refer to an EU concept of worker, and others to the national definitions of worker.

When the directives refer to an EU concept of worker,[66] this refers to the interpretation of the worker concept that has been developed along the years by the European Court of Justice (ECJ), now the Court of Justice of the EU (CJEU). Indeed, although a definition of worker does not exist in EU legislation, the Court has produced a certain number of decisions from which a concept of worker at EU level can be drawn out; which is key for national Courts when applying EU law[67] (for more detail, see Section 6.3).

When directives refer instead to a national concept of worker,[68] the scope of such directives depends on the definition that each MS adopts in its legal system, and is not linked to any EU specifications.

However, two aspects should be taken into consideration when directives refer to national systems. First, the CJEU tends to expand the interpretation of the directives towards an EU concept of worker to ensure the practical effectiveness of EU law. For example, in the case Betriebsrat der Ruhrlandklinik,[69] although the directive to be interpreted refers to the term worker as 'any person who, in the Member State concerned, is protected as a worker under national employment law', according to the Court, the provisions of the directive 'cannot be interpreted as a waiver on the part of the EU legislature of its power itself to determine the scope of that concept for the purposes, and accordingly the scope *rationae personae* of that directive.'[70]

Second, the characteristics of the national definitions adopted by the MSs, although all different to each other, tend to converge regarding fundamental concepts, such as '(personal) subordination, control, or the performance of work under the direction of an employer' (Countouris and De Stefano, 2019). The national definitions are also all characterised by the fact that 'the bulk of labour law protections remains confined to employees working under the direction and control of an employer' (Countouris and De Stefano, 2019).

An **EU concept of worker is** instead **more inclusive, broad and extensive than the national definitions** because it can include forms of employment not considered under national law. That is, there are no intermediate figures between subordination and autonomy (Countouris, 2015), and the CJEU has already interpreted non-standard forms of employment (intermittent work,[71] part-time,[72] internship training activities,[73] etc.) as falling under the concept of work when those forms of employment meet the criteria already identified in CJEU decisions.[74]

Furthermore, the **EU concept of worker** resulting from the CJEU's decisions **is not only different, but also independent of national definitions**, as acknowledged several times by the Court. Indeed, it is stated that 'the legal nature of a working relationship with regard to national law cannot have any

[66] Such as for example the Posted Workers Directive, 96/71/EC.

[67] The CJEU explicitly referred to 'the term ''employee'' for the purpose of EU law' in CJEU, C-413/13, FNV Kunsten Informatie en Media, para 34; CJEU, Case C-428/09, Union syndicale Solidaires Isère v Premier ministre and Others [2010] ECLI:EU:C:2010:612,, para 28; CJEU, C-216/15 Betriebsrat der Ruhrlandklinik, para. 32.

[68] As in the case of the three directives based on social partner agreements: Part-Time Work Directive, 97/81/EC; the Fixed-Term Work Directive, 1999/70/EC; the Parental Leave Directive, 2010/18/EU.

[69] CJEU, C-216-15, Judgment of the Court (Fifth Chamber) of 17 November 2016, Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH.

[70] CJEU, C-216/15 Betriebsrat, paragraph 32. Also in CJEU, C-256/0, Allonby v Accrington & Rossendale College, EU:C:2004, in interpretating Article 141 EC, the Court recognised that the term "worker cannot be defined by reference to the legislation of the Member States but has a Community meaning. Moreover, it cannot be interpreted restrictively" (Allonby, Paragraph 66).

[71] CJEU 21 June 1988, C-197/86, Brown, parr. 21- 22.

[72] CJEU 23 March 1982, C-53/81, Levin, par. 16; 3 June 1986, C-139/85, Kempf, par. 10.

[73] CJEU 17 March 2005, C-109/04, Kranemann, par. 13; 9 July 2015, C-229/14, Balkaya, par. 52.

[74] For the atypical characteristics of the employment relationship, see example of CJEU, Case C-316/13 Gérard Fenoll v Centre d'aide par le travail 'La Jouvene' and Association de parents et d'amis de personnes handicapées mentales (APEI) d'Avignon, ECLI:EU:C:2015:200.

consequence on a worker for the purposes of EU law.'[75] Thus, a person considered as self-employed under national law could be considered as a worker under EU law, and therefore be able to access specific rights set at EU level.

5.2 Applying the reinforced social dimension for a fair internal market through an EU definition of worker

The proposed definition of the worker furthers EU goals and is also feasible within the EU legal framework. Section 5.2 sets out how the worker definition furthers the EU goals, in particular the integrated socio-economic goal of a 'highly competitive social market economy' combining full employment, social progress and a high level of protection. The section then concludes with an explanation of how the proposed worker definition can be feasibly implemented in EU law.

The concept of worker established by the Court of Justice has been based on the **freedom of movement of the worker** within the EU – one of the pillars of the internal market.[76] However, as Giubboni (2018) highlights, this concept of worker, which refers to an individual with the right to freely move and work in the internal market, should be integrated into the reinforced **social dimension of the EU**, as amended by the Lisbon Treaty (entering into force in December 2009).

Under the **Lisbon Treaty**, when applying EU law, not only the CJEU, but all the European Institutions and the MSs are bound by the Charter of Fundamental Rights of the EU (Art. 51 CFEU), which has the same value as the Treaties (Art. 6 TEU). This means that the fundamental rights must be stringently respected: they must necessarily permeate the Court's decisions, as well as all the policies and legislation of European institutions. As such, **the right to work**, as well as all the other rights enshrined in the CFREU, are **fundamental** rights, and they should be recognised **for everyone**.

Furthermore, according to the so-called **'social clause'** (Art. 9 TFEU), in defining and implementing its policies and activities, the EU 'shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.' Promoting a high level of employment and, at the same time, guaranteeing adequate social protection, is the goal of a unified concept of 'worker' at EU level, with the aim of providing adequate labour rights to all the workers in the EU, **including those occupied in non-standard and new forms of work**.

The **social clause** (Art. 9 TFEU) is particularly important in light of the goals of the European Union. In particular, that the EU shall promote a 'highly competitive social market economy' with the aim of achieving **full employment and social progress**, and **a high level of protection** (Art. 3.3 TFEU). This seems consistent with the idea of an intervention in order to **guarantee a baseline of rights to all EU workers, both standard and non-standard**. This intervention is necessary to ensure a single market characterised by fair competition, avoiding any forms of social dumping,[77] and respecting the dignity of all workers and their right to decent conditions at work.

Within this framework, the introduction of an EU 'worker' definition, applied to all EU directives in the field of labour rights, would enable the EU to **combat social exclusion and discrimination**, and **promote social justice and protection** – both crucial goals enshrined in the Treaties (Art. 3.3 TFEU). This would also be consistent with the political commitment given by the Council of the EU, the European Parliament and the Commission when they declared and signed the **European Pillar of Social Rights** in 2017. The Pillar of Social Rights gave rise to a range of directives and regulation, including

[75] CJEU, February 21, 2018, C-518/15, Matzak, par. 29. In the same paragraph, the Court refers to 'judgment of 20 September 2007, Kiiski, C-116/06, EU:C:2007:536, paragraph 26 and the case-law cited.'

[76] Although 'the CJEU elaboration has initially been confined in the field of the free movement of workers; then, starting from the beginning of the twenties, it has dealt with the scope of the employment rights provided by EU primary and secondary law and the labour exception to antitrust law' (Menegatti, 2019:71).

[77] Social dumping has to be avoided in the internal market, in order to guarantee fair competition. The impact the worker definition can have on the internal market in this sense is confirmed by the decision CJEU, C-256/0, Allonby v Accrington & Rossendale College (2004). 'The concern addressed in Allonby was, more precisely, that of assuring conditions of undistorted competition by preventing social dumping. After having emphasized the importance of the principle of equal pay, forming "part of the fundamental principles protected by the Community legal order", the Court concluded that the term worker "cannot be defined by reference to the legislation of the Member States but has a Community meaning"' (Menegatti, 2019:71).

the Directive on Transparent and Predictable Working Conditions, which also covers **all new forms of work**.

The aforementioned EU goals are challenged by the economic models employed by platforms, which are precisely 'based on social dumping' and "provide unfair competition to the traditional undertakings in each sector" (ETUC, 2021, p.3). Also, these platforms bring the risk of creating new forms of precarity, due to the lack of adequate social protection, transparency and predictability in working conditions, as well as the unclear use of algorithmic management (see Section 4). These models and factors can negatively impact on the goal to create a fair internal market and can increase the vulnerabilities of platform workers, which became more visible during the pandemic. If, on the one hand, many platform workers continued to work during the pandemic, on the other hand, the lack of health and safety devices exposed them to a high risk of contagion. In addition, for those who could not work, often no unemployment benefits or other kinds of support were guaranteed – as was the case for other forms of non-standard work as well.

Therefore, in order to achieve the goal of creating a 'highly competitive social market economy' – where competition is fair and transparent, where legal clarity for platforms is guaranteed, and where platform workers, together with all the workers in new and non-standard forms of work, can access adequate social protection[78] – an intervention from the EU is necessary.

Moving from EU goals to the feasibility of implementation, Art. 151 TFEU on EU legal competences becomes relevant. This article establishes that the EU supports and complements the Member States' actions (also through directives), in fields such as working conditions, social protection and employment termination. In doing this, the EU should aim at achieving specific goals, common to the MSs, such as promoting employment, and improving living and working conditions, with a view to lasting high employment and combating exclusion (Art. 151 TFEU).

Thus, the EU's scope of competence would justify the adoption of a directive establishing an EU definition of worker that replaces all the worker definitions from prior directives and establishes labour rights for this newly defined worker. It is logical that this would fall within EU competence, because it impacts on directives that have already passed tests of proportionality and subsidiarity.

Furthermore, it is necessary to adopt a directive establishing an EU definition of worker, in order to secure minimum standards of rights for all workers and re-establish conditions for a fair and competitive internal market (Art. 3 TEU). In this sense, adopting a directive setting the definition of worker at EU level is coherent with the principle of proportionality as laid down in Article 5 of the TEU ('under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties'). Without impinging on the competence of individual MSs to classify a certain type of worker as self-employed, an employee or another non-standard form of worker, action at EU level is necessary to establish a minimum basis of rights for all workers. This can be achieved by the adoption of an EU definition of a worker. In this way, the result will be an extension of minimum labour rights to all European workers, without affecting the individual national definitions, which can always be characterised by differences decided by the MSs. In this way, the principle of subsidiarity will be also met in case of supporting competences (Art. 151 TFEU):

> *the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level (Article 5 of the TEU).*

[78] Council recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019/C 387/01).

This study is proving that the goals of ensuring a social market economy – promoting employment, improving living and working conditions, guaranteeing high employment and combating exclusion – cannot be guaranteed by the individual MSs due to the diversity of their national definitions and because MSs adopt different solutions for classifying new and non-standard forms of work. Therefore, EU intervention is needed.

5.3 The concept of worker under EU case-law

Along the years, the Court of Justice has developed a fairly clear concept of worker though its decisions. In this way, it has established a constellation of features with two main interconnecting dimensions:

- **Remuneration** for **work**[79] and **directional power**, where directional power primarily refers to the instructions for carrying out the work, strategical decisions, control and disciplinary power
- **Access to the market**, in the sense of being able to fix the price of the product or service provided to clients.

How the **employer (or third party) organises its structure** draws on both these two dimensions, thereby providing a framework through which it can be understood whether a certain service provider is an integral part of it, or not.

The legal starting point for identifying the characteristics of the EU concept of worker is the **case Lawrie-Blum v Land Baden-Württemberg** (1986).[80]

In Germany, Deborah Lawrie-Blum applied to a training programme that was compulsory for a state examination to become a teacher in German Gymnasiums. However, she was not admitted to this training due to a decision by the German region Land Baden-Württemberg, based on the fact that she was not a German citizen. Since she was a British citizen, she appealed against the decision on the basis of the freedom of movement for workers within the entire European Economic Community (the European institution which preceded the EU).[81] Land Baden-Württemberg replied that Ms. Lawrie-Blum could not be considered a worker, and therefore the freedom of movement for workers was not applicable.[82] The case was brought for a preliminary ruling to the ECJ (now CJEU), which provided an interpretation of the crucial features characterizing any employment relationship under EU law: first, that **one person performs services under the direction of and for another person**; second, **in return they receive remuneration**.[83] Under such conditions, a person engaged in the training programme in Land Baden-Württemberg was considered a worker by the ECJ (now CJEU), because they were paid for their teaching activities and subject to the teaching Institution's directives in providing such activities, according to the programme planned for the students. Therefore, denying a citizen of a MS to the training programme to become a teacher in German Gymnasiums is not possible because those carrying out such programme are considered 'workers' and therefore their freedom of movement has to be respected.

Within this framework, the worker's freedom to choose the time, place and content of their work is limited by the directional power of the other person (Risak and Dullinger, 2018). However, the Court went progressively beyond a mere concept of direction.

First, the **employer's commercial risk** was recognised as a feature of the employment relationship, basically focusing on who is the party having access to the final market. This feature was first based on an **ECJ decision**[84] **about** legal classification of those workers defined as share fishermen, i.e. getting their pay by sharing the profits or gross earnings from the fishing boat (The Queen v Ministry of Agriculture, Fisheries and Food, ex parte Agegate Ltd. – from now 'The Queen'). In particular, the ECJ established that it is necessary to take into account 'all the factors and circumstances characterizing the

[79] Remuneration widely interpreted and work not including marginal or ancillary activity.
[80] Lawrie-Blum v Land Baden-Württemberg, ECJ (Case 66/85).
[81] Article 48 of the Treaty of the European Economic Community.
[82] The Land Baden-Württemberg also maintained that Article 48 included an exception for workers employed in the public sector. However, the Court explained that the exception according to Article 48 could not apply in this case.
[83] Such elements have been further specified by the Court of Justice through its following decisions (Menegatti, 2019).
[84] Judgment of the ECJ of 14 December 1987, The Queen v Ministry of Agriculture, Fisheries and Food, ex parte Agegate Ltd., C-3/87, EU:C:1989:650, paragraph 36.

arrangements between the parties, such as, for example, the sharing of the commercial risks of the business, the freedom for a person to choose his own working hours and to engage his own assistants. The sole fact that a person is paid a 'share' and that his remuneration may be calculated on a collective basis is not of such a nature as to deprive that person of his status of worker'. [85]

Second, the **employment relationship was defined by an ECJ decision**[86] **on the status of a group of dockers ('Becu')**, **focusing on the fact that the worker**, for the duration of that relationship, **becomes integrated into the employer's undertaking, thereby forming an economic unit** with it (hetero-organisation). In this case, the Court had to understand the status of the dockers, who were appointed to take care of the receiving and shipping of goods only for short periods, under fixed-term contracts of employment and for clearly defined tasks. The Court recognised that:

> *They perform their work for and under the direction of each of those undertakings, as interpreted by the case-law of the Court (see the definition of 'worker' in the Merci judgment, paragraph 13). Since they are, for the duration of that relationship, incorporated into the undertakings concerned and thus form an economic unit with each of them, dockers do not therefore in themselves constitute 'undertakings' within the meaning of Community competition law* (CJEU February 21, 2018, C-518/15, Matzak, par. 29).

The insertion within a specific part of the company's business, identifies and qualifies the employment relationship as having a subordinate nature, which properly distinguishes it from services rendered in an autonomous or self-employed regime.

This element is further developed in the Allonby decision. At this regard, Menegatti (2020)highlights that "the Court emphasised the employer's '**hetero-organisation'**, as a criterium that goes over and above the traditional direction and it excluded that any relevance could be accorded to 'the fact that no obligation is imposed on [workers] to accept an assignment'" (p. 31).It is instead crucial to understand whether the independency of the independent providers – so defined at national level – is limited and in what extend, whether they are in a relationship of subordination with the person who receives the services.[87]

Therefore, independent of the national definition of the individual's status, **under EU law, a worker is integrated into the employer's company and forms an economic unit with it** (e.g. CJEU 4 December 2014, C-413/13, FNV Kunsten Informatie en Media). They are hetero-organised, although they could also not be tightly hetero-directed (i.e. subject under the employer's directive power).

A further fundamental step in the definition of labour relationships was achieved by the judgement **FNV Kunsten Informatie en Media**. This case is particularly important because it introduced the **concept of 'false self-employed'** and thereby suggested a solution to the possible conflicts between EU labour and competition law. In addition, this decision is significant when it comes to new and non-standard forms of work, and for this reason is particularly relevant to defining the worker at EU level.

In the judgement FNV Kunsten Informatie en Media, a trade union representing musicians negotiated a collective agreement with an organisation representing orchestras in the Netherlands. The scope of this agreement included not only the musicians having the status of employees, but also self-employed musicians working as substitutes in case another musician falls ill or so on. This case posed a conflict with EU competition law, since being self-employed is considered as an undertaking in its own right in

[85] Judgment of the ECJ of 14 December 1987, The Queen v Ministry of Agriculture, Fisheries and Food, ex parte Agegate Ltd., C-3/87, EU:C:1989:650, paragraph 36.

[86] Judgment of the ECJ of 16 September 1999, Criminal proceedings against Jean Claude Becu, Annie Verweire, Smeg NV and Adia Interim NV, C-22/98, EU:C:1999:419, paragraph 26.

[87] See: CJEU, C-256/0, Allonby v Accrington & Rossendale College (2004), para 68 and 72.

EU law under Article 101(1) TFEU,[88] where a collective agreement for the self-employed would be considered as fixing prices and therefore impairing competition in the internal market.[89] However, in this case, the Court referred to the Advocate General's observation[90] that in 'today's economy it is not always easy to establish the status of some self-employed contractors as 'undertakings', such as the musician substitutes at issue in the main proceedings.'[91] Indeed, according to the CJEU, the substitutes in the case under consideration are in fact 'false self-employed', 'that is to say, service providers **in a situation comparable to that of employees**.' [92] Therefore, a 'collective labour agreement, in so far as it sets minimum fees for service providers who are "false self-employed", cannot, by reason of its nature and purpose, be subject to the scope of Article 101(1) TFEU.' [93]

In doing this, the Court also maintained that '**a "self-employed person" under national law does not prevent that person being classified as an employee within the meaning of EU law** if his independence is merely notional, thereby disguising an employment relationship.'[94]

Thus, 'the status of "worker" within the meaning of EU law is not affected by the fact that a person has been hired as a self-employed person under national law, for tax, administrative or organisational reasons, as long as that person acts under the direction of his employer as regards, in particular, his freedom to choose the time, place and content of his work, does not share in the employer's commercial risks, and, for the duration of that relationship, forms an integral part of that employer's undertaking, so forming an economic unit with that undertaking.' [95] It is therefore crucial to determine whether her own conduct on the market is 'entirely dependent', or not, on her 'principal'.[96]

Therefore, the FNV Kunsten case introduced the concept of 'false self-employed' at EU level, independently from the national definitions. However, prior to the FNV Kunsten case, the Court of Justice had already highlighted that the **concept of worker cannot be changed according to the different national definitions[97] or reinterpreted in a strict way by MSs**.[98]

In terms of its *modus operandi,* generally the CJEU has to base decision-making on the interpretation of the worker concept under EU law. In particular, it 'must base that classification on objective criteria and make an **overall assessment of all the circumstances** of the case brought before it, having regard both to the nature of the activities concerned and the relationship of the parties involved.'[99] With 'objective criteria', the Court is referring to the criteria set by the Lawrie Blum formula, which has been enriched further by subsequent case-law, thereby adding new elements into the formula and progressively broadening the concept of direction. Therefore, these criteria should be taken into consideration together with the overall assessment of all the circumstances, which refer not only to the *nomen iuris* of the contract, i.e. what is formally set in a contract, but also the factual situation. This last

[88] In CJEU 4 December 2014, C-413/13, FNV Kunsten Informatie en Media, par. 23, it is highlighted that 'the Court has held that agreements entered into within the framework of collective bargaining between employers and employees and intended to improve employment and working conditions must, by virtue of their nature and purpose, be regarded as not falling within the scope of Article 101(1) TFEU (see, to that effect, judgments in *Albany*, EU:C:1999:430, paragraph 60; *Brentjens'*, EU:C:1999:434, paragraph 57; *Drijvende Bokken*, EU:C:1999:437, paragraph 47; *Pavlov and Others*, C-180/98 to C-184/98, EU:C:2000:428, paragraph 67; *van der Woude*, EU:C:2000:475, paragraph 22; and *AG2R Prévoyance*, C-437/09, EU:C:2011:112, paragraph 29).'

[89] Art. 101 TFEU.

[90] The CJEU refers to the Opinion of Advocate General Wahl delivered on 11 September 2014.

[91] CJEU 4 December 2014, C-413/13, FNV Kunsten Informatie en Media, par. 32.

[92] CJEU 4 December 2014, C-413/13, FNV Kunsten Informatie en Media, par. 31.

[93] CJEU 4 December 2014, C-413/13, FNV Kunsten Informatie en Media, par. 41.

[94] CJEU 4 December 2014, C-413/13, FNV Kunsten Informatie en Media, par. 36. See, to that effect, judgment in CJEU, C-256/0, Allonby v Accrington & Rossendale College, EU:C:2004:18, paragraph 71.

[95] KNV Kunsten, para 33.

[96] KNV Kunsten, para 33.

[97] Case C-75/63.

[98] Case C-53/63.

[99] CJEU, Case C-428/09, Union syndicale Solidaires Isère v Premier ministre and Others [2010] ECLI:EU:C:2010:612,, par. 29; but also : CJEU 20 November 2018, Sindicatul Familia Constanta, par. 42.

principle cuts across multilevel legal systems, and is coherent with both the ILO Employment Relationship Recommendation[100] and the MSs national legal systems.[101]

The need to look at the facts is also confirmed by the recent Yodel case, in which the CJEU followed a formalistic approach instead and the result was found lacking.[102]

In any case, according to the CJEU, the services provided by the worker, in return of which they receive remuneration, should be **real and effective**,[103] and should also **exclude activities so small as to be purely marginal and ancillary**,[104] i.e. 'any person who pursues activities which are real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a "worker"'.[105]

5.4 Scholarly contributions

New forms of work have arisen, hand in hand with pre-existing non-standard forms of work. This phenomenon is posing new problems to be addressed from a legal perspective, including the main question of how to ensure adequate protection to these workers (Hendrickx, 2018). As already mentioned, the MSs adopt different solutions for classifying new and non-standard forms of work, thereby exposing their position within the internal market to social dumping risks, with negative impacts on freedom of movement and fair competition. That is, inferior working conditions in one MS act as a barrier to workers moving to that state; thereby constituting a barrier to freedom of movement. Equally, inferior working conditions can lead to social dumping in that state as employers outsource undertakings to that state.

Scholarly debates highlight two key factors challenging worker classifications. First, borders between employment and self-employment are blurring, raising doubts regarding the legal status of certain workers, and the regulation that should be applied. Currently, only when a worker is considered an employee under national law, can they access traditional and broader employment protection.

Second, a further phenomenon makes the picture even more complex: bogus self-employed work, which is the result of misusing regulation to avoid labour costs. In this case, it could be difficult for workers to be recognised as employees by their clients: there is a risk that the Court makes a negative decision, due to the lack of clarity regarding the legal status of new forms of work; plus, considerable legal costs discourage workers' legal action (Cherry, 2019).

According to Risak and Dullinger (2018), there are two types of option for providing adequate protection for the new forms of work. First, creating a **third category** of worker (in addition to employed and self-employed). Second, **redefining the concept of employee**, in two possible ways: through the ECJ's wider interpretation of the concept of the worker; and 'explicitly including definitions that go beyond the perceived notion of the worker'.

Regarding the proposal of introducing a **third category** at EU level, Waas (2017), for example, suggests the German case of solo-entrepreneurs as an inspiration for designing a new category. For decades, a 'third category' of worker has progressively been adopted in a number of MSs in order to extend selected labour rights to those self-employed workers considered economically dependent. Therefore, it is possible to think of a similar initiative at EU level (Cherry and Aloisi, 2017).

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[100] ILO Employment Relationship Recommendation, n. 198, 2006, Par. 9: '…the existence of [an employment] relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterised in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties'.

[101] See the national comparison in this report.

[102] Case C-692/18, B v Yodel Delivery Network Ltd (2020) ECLI: EU:C:2020: 288.

[103] ECJ 8 June1999, C-337/97, C.P.M. Meeusen, par. 13).

[104] CJEU, 1 October 2015, C-432/14, O v Bio Philippe Auguste SARL, par. 22; CJEU, 4 February 2010, C-14/09, Hava Genc, par. 19, criteria set since the Levin case: Judgment of the Court of 23 March 1982. - D.M. Levin v Staatssecretaris van Justitie. - Reference for a preliminary ruling: Raad van State - Netherlands. - Right of residence. - Case 53/81, 23 March 1982, C-53/81, Levin, par. 17. See than also e.g. CJEU 19 July 2017, C-143/16, Abercrombie & Fitch Italia Srl, par. 19; CJEU 14 October2010, C-345/09, van Delft e a., par. 89; 16 July 2009, C-208/07, von Chamier-Glisczinski; 20 November 2001, C-268/99, Jany.

[105] E.g.: Judgment of the Court (Fifth Chamber) of 17 July 2008, Andrea Raccanelli v Max-Planck-Gesellschaft zur Förderung der Wissenschaften eV., Case C-94/07, par. 33.

On the one hand, the intermediate category can be a 'secondary entrance', which can ensure the recognition of selected labour rights, compared to the 'gateway' of the employment contract (De Stefano and Aloisi, 2018). However, on the other hand, the concept of 'economically dependent work' could also have negative effects, attracting all the new forms of employment under its umbrella – new forms of employment which are characterized by poor working conditions, uncertain career prospects and non-continuity of employment (Sciarra, 2005) – which could create a risk of stratification in regulation. Furthermore, the third category risks could also extend to workers who are actually employees, but who could be misclassified as dependent self-employed; there could be an incentive for employers to misclassify effective employees because of the lighter labour protections afforded to the intermediary category workers. Such misclassification is facilitated by the use of new technologies in the exercise of employer powers. If we look for examples of automatic management, it appears that while algorithms are presented by platform owners as a way to provide a service for self-employed workers, who can access both the platform and the final clients, they are actually a way for employers to exercise their powers. As described in detail in Section 4.2, algorithms are indeed '… absorbing many organisational functions that managers traditionally would perform' (Cherry, 2016). Algorithmic management gives very few possibilities for workers – even self-employed workers – to freely decide significant aspects of the work, and can intensify self-control (Manzanian et al., 2013), in turn increasing stress and impacting negatively on workers' health and safety.

In redefining the boundaries between employment and commercial law, the idea of '**semi dependent workers**' by Mark Freedland (2003) seems particularly interesting and focuses on the concept of a '**personal employment contract**'. Here, a unified body of employment law could desirably apply to both employees and dependent self-employed under a reconceptualization of the employment contract.[106] The 'personal employment contract' idea has been further developed by other authors, such as Ewing et al (2016) at the national level, and by Countouris and De Stefano (2019) at EU level.

In particular, Countouris and De Stefano (2019) propose the idea of a 'personal work relation', which is based on the fact that many self-employed workers are not actually enjoying any autonomy in providing their work. The idea of a 'personal work relation' could be used to 'define the personal scope of application of labour law as applicable to any person that is engaged by another to provide labour, unless that person is genuinely operating a business on her or his own account.'[107] The authors believe that the concept of 'direction' (under a strict test of control and subordination) could be inadequate to ensure that the worker definition includes those self-employed workers in a weak contractual position, who are precisely in need of protection through, for example, collective bargaining. For this reason, the authors propose an alternative definition of worker focused on personal work, able to include the main aspects of the KNV Kunsten decision.

As a counterbalance, Countouris and De Stefano (2019) also foresee limitations. The authors envisage the possibility of exclusions from the concept of personal work and related labour protection, in particular for those self-employed who are "genuinely operating a business on her or his own account" (p.7). In terms of which categories of self-employed may be excluded from the concept of personal work, this aspect is explored further in the next Section 5.5.

The personal work relation idea also seems particularly effective in addressing possible conflicts between EU competition law and the potential for self-employed to access collective bargaining. As already mentioned in Section 6.3, under EU law,[108] self-employed workers are considered as an 'undertaking', so self-employed collective agreements would be seen as price-fixing and thus impairing competition in the internal market. This problem has been extensively discussed in recent years and it is still at the centre of the debate in this field (Aloisi, 2019; Ales et al., 2018). However, the absence of a collective agreement guaranteeing minimal terms and conditions for self-employed could increase the risk of social dumping or substitution with workers implying less costs (Lianos et al., 2019). The recent

[106] This concept raises the question of whether a personal employment contract could favour, or impede, the reunification of employment law. This issue is discussed in Deakin (2007).

[108] Art. 101 TFEU.

study by Lianos et al (2019) suggests embracing four main strategies to reconcile the different approaches of competition law and labour law:

- Adopting a case-by-case analysis and realistically designing the boundaries between workers and those that are self-employed.
- Excluding some categories of false self-employed workers from the scope of competition law.
- Expanding the existing category of 'workers', in order to include exemptions to competition law.
- Re-interpreting the concept of restricting competition through the lenses of the 'social market economy' as well as collective bargaining at the EU level.

In particular, according to Lianos et al. (2019),

> *collective agreements covering workers, including self-employed workers providing personal work and services, should be exempted from the application of EU competition law if they pursue the objective or protect minimum terms and conditions of employment as well as the effects of restrictive competition that are merely consequential and inherent to the pursuit of those objectives (p.47).*

Thus, they propose expanding the concept of worker to those 'self-employed persons providing personal work and services in sectors and industries where the absence of a collective agreement covering their terms and conditions of employment may significantly weaken the negotiating position of workers in the industry by raising a risk of social dumping or substitution' (Lianos et al., 2019:48).

When considering redefining a concept of worker, two further aspects should be addressed. First, the significance of algorithms and other technological modalities should be taken into consideration in a possible definition of worker at EU level because they tend to become more and more relevant in the exercise of managerial powers. For example, in deciding on the Uber case, the CJEU highlighted the company's power to take decisions and to control riders' conduct through algorithms,[109] which can be considered elements causing the impossibility for workers to independently determine their own conduct on the market (following the language of the KNV Kunsten case).

Second, in order to identify the party obliged to fulfil labour obligations, which is commonly attributable to the concept of employer, it is necessary to go beyond a traditional view and take into account those parties that exercise typical employer powers despite having atypical organisational forms. Therefore, with the aim of understanding who is the subject responsible for obligations based on the employment contract – which is essential to guarantee labour rights – scholars suggest focusing on the company's organisational structure or on the managerial role providing directions in order to assess whether, in each specific case, the typical employer's powers are exercised (Prassl, 2018). In this way, instead of looking at who is the employee, the idea is to focus on who is the employer (or in any case the party responsible for labour obligations, such as paying the wage, recognising labour rights, etc.). This approach shows an understanding of the transformation of employer structures and their ways of exercising power: from a hierarchical and centralized structure, to decentralized structures and economic activities. In this way, the reach of employer powers extends beyond the boundaries of the firm, as Corazza and Razzolini (2015) highlight when speaking about groups of firms, outsourcing and subcontracting.[110] This complexity should be taken into consideration when redesigning a category of employee – and the concept of employer should be redesigned in parallel.

[109] C-434/15 *Asociación Profesional Elite Taxi v Uber Systems Spain,* 2018.
[110] See also the interesting work by Ratti (2009) and Ratti (2018).

5.5 Proposal for a European definition of worker

5.5.1 The Definition

By defining a concept of worker at EU level, the EU would support and complement the actions of the MSs according to Art. 153 TFEU, with the aim of recognising a nucleus of rights to all those persons falling under the new EU worker definition. This is not only advisable, but also necessary in order to guarantee the development of a social market economy in the EU, characterized by fair competition within the internal market, clear rules and respect for fundamental rights.

A definition of worker under EU law would not interfere with the competence of each MS to adopt and keep their own national definitions of worker. At the same time, the legal nature of a working relationship with regard to national law cannot have any consequence on a worker for the purposes of EU law (CJEU, February 21, 2018, C-518/15, Matzak, par. 29).[111]

In order to address the current challenges of the world of work, a proposed definition of worker at EU level should integrate two dimensions:

- Dimension 1: The main elements of the worker concept under EU law, as established along the years by the rulings of the CJEU (as highlighted in Section 6.3).
- Dimension 2: Scholarly contributions in highlighting the main problems behind the classification of workers, with a special focus on new and non-standard forms of work (as highlighted in Section 6.4).

In other words, an effective definition of worker at EU level, able to guarantee minimum requirements for gradual implementation in the labour law domain, should integrate the concept of worker as established over the years by the CJEU (Dimension 1), in light of the pending issues and proposals identified by scholars (Dimension 2).

As a starting point, these two dimensions can be modelled on the definition suggested by the Proposal for a Directive on Transparent and Predictable Working Conditions (TPWC) in the EU.[112] In the TPWC directive, 'worker' means 'a natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration'; and 'employer' means 'one or more natural or legal person(s) who is or are directly or indirectly party to an employment relationship with a worker'. This definition of worker contains the main elements of the Lawrie-Blum formula (see Section 5.3), and it can be fine-tuned further by integrating more aspects. In particular, as detailed in Table 5, the three additional aspects to be considered are: first, key elements that have been added to the Lawrie-Blum formula through CJEU decisions over the years; second, the automatic management modality; third, the personal work concept.

[111] See also Balkaya: para 33 "the concept of worker, referred to in Article 1(1)(a) of Directive 98/59, cannot be defined by reference to the legislation of the Member States but must be given an autonomous and independent meaning in the EU legal order (see, by analogy, the judgment in Commission v Portugal, C-55/02, EU:C:2004:605, paragraph 49); para 35 "it is clear from the settled case-law of the Court that the nature of the employment relationship under national law is of no consequence as regards whether or not a person is a worker for the purposes of EU law (see, to that effect, the judgment in Kiiski, C-116/06, EU:C:2007:536, paragraph 26 and case-law cited)."

[112] COM(2017) 797 final.

As such, the definition of worker at EU level proposed in this report reflects the Lawrie-Blum formula and embraces these three further elements:

- The main elements which have been integrated into the Lawrie-Blum formula along the years. In particular, the hetero-organisation and the 'quality' of the work, which should correspond to activities that are not purely marginal and ancillary.
- **Automatic management modality**, which includes not only the use of algorithms, but any new technological tools that could be employed to exercise managerial powers. Since they are new tools, characterising in particular the new forms of work, they should be taken into consideration in a legal definition, in order to avoid national Courts misunderstanding their effects on labour when applying EU law. The impact of automatic management modalities on labour is analysed in scholarly work (for example: Cherry, 2016; Hensel et al, 2016) and is evident in new Spanish regulation (please, see Section 4.2.1.).
- The **personal work concept**. This notion is based on the work of Countouris and De Stefano (2019), and is able to extend the concept of worker to include those who "provide personal labour, unless they are genuinely operating a business on her or his own account" (p.7)[113]

Table 5. Intersections between the different dimensions of the proposal

Proposal TPWC	One person	Direction	Remuneration	Period of time
CJEU (Dimension 1)	X	X **'False self-employed'** **Not strict direction** **Hetero-organisation**	X[114] Exclude activities so small as to be purely marginal and ancillary.	X[115]
Scholars (Dimension 2) **Highlighted issues and suggestions**	X	Two main problems: • **Algorithms**: way of exercising managerial powers (Cherry, 2016; Hensel, Koch, Kocher and Schwarz, 2016). • Strict test based on direction: risk of exclusion. Strict test of direction: need to integrate the definition with the concept of **personal work** (Countouris, De Stefano, 2019; Menegatti, 2019; Todoli, 2020).	X	Assigning tasks Need to be considered by legal scholars. See Spanish example (Section 4.2) and literature review on algorithmic management.

[113] They base the exclusion from employment protection on "genuine financial and business autonomy of a subject rather than on the employment tests of control and subordination in the execution of work" (Countouris and De Stefano, 2019).
[114] Broad interpretation: Judgment of the ECJ of 14 December 1987, The Queen v Ministry of Agriculture, Fisheries and Food, ex parte Agegate Ltd., C-3/87, EU:C:1989:650, paragraph 36. See also: E. Menegatti, The Evolving Concept of "worker" in EU law, Italian Labour Law e-Journal, Issue 1, Vol. 12(2019), p. 73.
[115] Broad interpretation: Judgment of the ECJ of 16 September 1999, Criminal proceedings against Jean Claude Becu, Annie Verweire, Smeg NV and Adia Interim NV, C-22/98, EU:C:1999:419, paragraph 26.

Based on this, the two dimensions are integrated into the following proposed definition of worker at EU level:

> *Proposed definition of worker under EU law*
>
> *A worker under EU law is a natural person who, for a certain period of time, performs services for and under the direction of another person and/or integrated in the organisation of another person in return for remuneration. The employer's direction and/or organisational power can also be carried out through algorithms and any other technology, which also has to comply with the recognized labour rights of the worker, including the right to information. Activities so small as to be purely marginal and ancillary are excluded from the definition.*
>
> *In any case, a 'worker under EU law' is a person that is engaged by another to provide personal labour, unless that person is genuinely operating a business on her or his own account.*
>
> *In case of legal action for the recognition of an employment relationship under EU law, all the circumstances have to be taken into consideration.*

Summarizing in other words, the definition proposed here integrates the aspects of **direction** and **remuneration** – which are the hard nucleus of the worker concept in the Larry-Blum formula – with other significant elements established by the CJEU, such as **hetero-organisation** (being integrated in the organisation of another person) and **the work not being marginal and ancillary**. The definition is also able to articulate the different ways that the aforementioned elements can be developed through new managerial tools (such as algorithms and other technology). Last but not least, the definition also introduces the concept of personal work, which enables the EU worker concept to include those 'self-employed' who cannot be considered genuine. This last idea echoes the FNV Kunsten case, which included the false self-employed within the EU concept of worker.

The definition also needs to articulate ongoing transformations in organisational structures, and ensure that these transformations do not enable the evasion of responsibility by those who actually organise and enjoy the fruits of people's labour. Therefore, it is also crucial to include the definition of employer already proposed by the Proposal for a Directive on Transparent and Predictable Working Condition:[116] *"*Employer' means one or more natural or legal person(s) who is or are directly or indirectly party to an employment relationship with a worker".

It is also important to go beyond the formalities of the contract, enlarging the definition of an employment relationship as per the Proposal for a Directive on Transparent and Predictable Working Condition:[117] *"*Employment relationship' means the work relationship between workers and employers as defined above, independently from the existence of a formal contract*"*.

[116] COM(2017) 797 final.

[117] COM(2017) 797 final.

5.5.2 Feedback from the experts

The definition of worker proposed in this report has been submitted to a pool of experts,[118] whose feedback has been taken into consideration in the finalising of this report. They express appreciation for the proposal's methodology, the wording of the final proposed definition, and its response to a clear need for protection.

Dr. Sylvain Nadalet, Senior Researcher at the University of Verona, maintains that the adoption of a uniform definition is particularly necessary in order to avoid disparities in the application of the different national notions; also, in terms of competition between MSs, where a legal qualification of worker can actually work as a competition regulator. In the same way, Dr. Adrián Todolí, Lecturer (*Profesor Contratado Doctor*) at the University of Valencia, thinks that the entire labour force should 'be subject to the same – or at least similar in the relevant aspects – regulation [to avoid] creating inequality and delegitimizing labour law itself.' Following from this, according to Professor Dr. Krzysztof Stefański, Associate Professor at the University of Lodz and Dr Anna Piszczek, Assistant Professor at the University of Lodz, 'a definition of worker at the level of EU law is needed. A definition built on CJEU case-law and doctrine is susceptible to change and therefore unstable.'

The experts propose taking into consideration specific aspects.

In particular, the most critical element found by the experts is to understand the line that is set when a labour provider falls under the definition of worker.

In this sense, Dr. Miriam Kullmann, Assistant Professor at the University of Vienna, suggests a better explanation of the meaning of '*…genuinely operating a business'.*

In this regard, Professor Krzysztof Stefański and Dr. Anna Piszczek suggest looking at the effective possibility for the labour provider to compete with another entrepreneur in the market. That is, we should look at the possibility for the labour provider to directly access the market 'without any functional and operational subordination to any other business entity.'[119]

This aspect is also confirmed by Dr. Sylvain Nadalet, according to whom the need for protection arises from being **a weak contractual party**.

As a *modus operandi* for drawing the line between self-employed and employed, within and without the definition, Dr. Todolí suggests applying the '**ABC test**' of the California State Supreme Court Ruling nº 222732 of 30 April 2018, Dynamex operations v Charles Lee:

> *Under the ABC test, a worker is considered an employee and not an independent contractor, unless the hiring entity satisfies all three of the following conditions: 1) The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; 2) The worker performs work that is outside the usual course of the hiring entity's business; 3) The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.*

[118] The experts are: 1) Krzysztof Stefański, Associate Professor at the University of Lodz; 2) Dr Anna Piszczek, Assistent Professor at the University of Lodz; 3) Sylvain Nadalet, Senior Researcher at the University of Verona; 4) Miriam Kullmann, Assistant Professor at the University of Vienna; 5) Adrián Todolí Signes, Lecturer (Profesor Contratado Doctor) at the University of Valencia.

[119] See Menegatti (2019:14): 'The capacious "container" that is the single EU concept of worker can be applied to workers "without adjectives", excluding only genuinely self-employed workers and entrepreneurs, that is to say, workers with "direct" access to the markets they work in, where they normally perform services for multiple clients, without any functional and operational subordination to any other business entity.'

In light of this feedback, the definition offers two possibilities: first, verifying the employment nature of the relationship on the basis of criteria with which national courts have become familiar (those developed by the CJEU). Furthermore, the role of technological modalities (including algorithms) is established and overcomes the idea that they are neutral. Second, in the event that the former criteria are not satisfactory in a concrete case, the definition offers a second test based on personal work.

The traditional elements of subordination – direction and/or hetero-organisation, remuneration, work not being marginal and ancillary – are combined with the idea of personal work (Countouris and De Stefano, 2019), which is based on

> *the fact that workers (regardless of any particular label that might apply to them) will be weakly positioned in the labour market vis-à-vis the superior buying power of their employers, for the very basic fact that they can only make ends meet by relying on their personal labour as a means of subsistence' (Countouris and De Stefano, 2019, p.67).*[120]

The CJEU concept of worker in combination with the personal work notion is a unique definition bringing advantages in defining who is a worker:

- The combined definition avoids a traumatic break between what already exists (CJEU concept of worker) and what it is new (platform worker and other new forms of non-standard work).
- It can be progressively explored and developed through the notion of personal work.

The combined definition creates a framework in which both the ABC test and the access-to-the-market test can be mobilised in order to understand whether a business is genuine or not.

5.5.3 The Scope and the Rights

In order to effectively guarantee minimum standards of rights for all workers and the conditions for a fair and competitive internal market, it is not only important to propose a definition of worker at EU level which is able to include platform workers and self-employed in need of protection, but it is also crucial to extend to them the rights recognised for EU workers in the directives. This can be done by: first, adopting the definition of EU worker proposed here, when EU directives refer to the term 'worker'; second, where EU directives refer to national worker definitions, replace such national definitions with the EU definition of worker.

Otherwise, the impact of the new definition would be excessively limited in its scope. Instead, the scope of the definition should be adapted to the protection needs of workers employed in new and non-standard forms of work, but, at the same time, should not include the genuine self-employed.

The risk would be to dilute the rights of EU workers, which must be strengthened and not weakened. Therefore:

- All those who meet the criteria of direction and/or hetero-organisation, remuneration, work not being marginal and ancillary, must be considered European workers and have access to full protection.
- All those who are not genuinely running a business and the false self-employed, in line with the FNV Kunsten CJEU's decision, should be considered as European workers and have access to full protection.

Within such a framing, it is clear that work such as such as Uber taxi drivers and food-delivery riders would fall within the category of worker at EU level.

[120] See also Countouris & De Stefano (2019:24): it is also possible to think of certain dependent professionals, for instance lawyers acting for a significant part of their time as in-house council for corporations, as also integrated into the boundaries of the firm.

Looking to the future, and as a policy recommendation, it is important to identify a direction and goals to be achieved in the coming years in order to strengthen the positive impact of the worker definition on the internal market and EU worker rights.

Although EU competence in social law is limited, the Pillar of Social Rights sets out a rights framework to be achieved in the coming years, as a political project to rebalance the social dimension of the EU with the economic dimension. This project has a holistic approach (Ales, 2017) and envisages, for example, in Art. 12, that 'regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection'. This important political directive from the European Institutions, understood within the EU legal framework already mentioned in Section 5.2, calls for effective action, especially in times, such as the pandemic, in which the social need for an intervention has become even more urgent. In light of this, the rights attributed to 'workers' should be developed at EU level, coherent with the commitment embedded within the Pillar of Social Rights and, even more important, coherent with EU Institutions' binding obligations to guarantee the fundamental rights defined in the Charter of Fundamental Rights of the EU.

In this regard, it would be crucial not only to introduce a definition of worker at EU level, entitled to full labour rights, but also to intervene for the self-employed. The self-employed should have access to universal rights common to all workers, including, for example, health protection and social security protection.

It is also crucial to take into consideration those self-employed workers, who, although genuinely running a business, are not able to significantly influence their working conditions. The unbalanced contractual positions between parties should justify a selective intervention of labour law, which would enable the weak self-employed to access – apart from common universal rights – the possibility of rebalancing their position in the market through collective bargaining to establish those minimum working conditions that guarantee a fair market based on decent work. This would provide a way to avoid social dumping and guarantee a fair market by ensuring direct access to the market under conditions that are considered fair. Competition should be free within a framework that respects the social dimension of the EU market economy.

6. Conclusions

This report has contributed to debates on platform work, and national and EU regulatory actions to improve labour rights and social protections for platform workers and other non-standard workers.

The report has contextualised the emergence of platform work within the ongoing erosion of the Standard Employment Relationship (SER) model. The flexibilization of labour markets and developments in ICT have resulted in an increase and diversification of non-standard employment relationships in the EU. Moreover, these trends have complexified relationships between different forms of employment contracts (such as open-ended and fixed-term contracts) and work arrangements (such as flexitime), thus challenging the binary distinction between SER and non-standard or atypical forms of employment (Huws et al., 2018). The corollary of those changes is that work is becoming re-commodified, as many workers are forced to operate under marketized relationships lacking protection.

Platform work, based on digital labour platforms which connect workers with consumers of work, reinforces those trends towards the commodification of labour. However, platform work is not internally homogenous and is indeed becoming more diverse because of the constant evolution of labour platforms. Therefore, **Section 2.1 of the report has revised existing typologies and classifications of platform work** outlining two main variants:

- Platform work provided by a labour platform or 'app' where work is executed locally and primarily offline (known as 'work on-demand via app' or 'on-location platform work'). This form of platform work is internally heterogeneous, as it covers different activities carried out either in public spaces (transport, food-delivery) or private spaces (cleaning, clerical services) and with different levels of specialisation and qualification.
- Platform work which entails the development of online or remote tasks through an online digital platform (known as 'crowdwork'). This form of platform work is also internally diverse in terms of: the content of the tasks (micro-tasks vs larger projects); the qualifications required; and the selection and hiring process, or the form of matching work demand and supply through the platforms.

Noting that the report does not include all those forms of activities closer to the notion of the sharing economy, through which individuals use platforms to sell goods peer-to-peer or to lease assets (so-called capital platform work).

Section 3 has analysed, through a systematic literature review, the prevalence and socio-demographic characteristics of platform work, the managerial control methods used by digital labour platforms through algorithmic management, and the working conditions of platform workers.

In terms of prevalence, the main comparative studies revised show that platform work only accounts for a low proportion of workers in the EU. Research outcomes also show that platform work does not constitute the main source of income for most platform workers and is, in most cases, only a secondary or marginal form of work (Urzi Brancati et al., 2020; Huws et al., 2016, 2019).

The analysis of socio-demographic characteristics, managerial control methods and working conditions of platform workers reveals that, despite its internal heterogeneity, platform work shares some common features:

- Platform workers are predominantly men, younger than traditional workers and more educated than the usual workforce. There is also a higher proportion of platform workers who have migrant status (ILO, 2021; Urzi Brancati et al., 2020; Huws et al., 2016).
- All types of platform work are subjected to algorithmic management through which the digital labour platforms direct, evaluate and exercise disciplinary power over platform workers (Kellogg et al., 2020). These methods replace and are less transparent than traditional managerial functions carried out by managers, thereby hindering workers' understanding of the work process as well as trade union capacity to exercise information and consultation rights, and the right to collectively bargain regarding working conditions. They also influence certain

negative working conditions (such as overtime, irregular working time patterns and work intensity).

- Most platform workers are classified as self-employed. However, in many cases, platform workers' formal autonomy is seriously limited because of the labour platforms' capacity to unilaterally set working conditions and exercise control over work processes. Thus, platform workers are at risk of being misclassified and thereby deprived of labour and social security rights
- Platform workers also share some precarious working conditions. For example, they have a high risk of precarity in terms of income, and this problem has been exacerbated during the COVID-19 pandemic crisis (Apouey et al., 2020; Howson et al., 2021). Furthermore, they are more exposed to the risk of overtime and tend to work under irregular and atypical working time schedules (Urzi Brancati et al., 2020). Platform workers also have higher exposure to: psychosocial risks, such as social isolation, insecurity, work stress, work intensity and cyber-bullying; certain physical risks, such as road accidents or harassment (for food-delivery and transport workers); and physical harms such as postural disorders or eye strain (for crowdworkers) (Eurofound, 2018; Bérastégu, 2021).

Platform work also shares similarities in terms of employment and working conditions with other non-standard forms of employment, such as bogus self-employment, on-call work, temporary employment and temporary agency work.

Section 4 has compared the main national responses to platform work in four countries. The countries selected were Germany, Finland, Hungary, and Spain, which represent different employment models and industrial relations traditions (Sanz de Miguel et al., 2020). These countries also differ in the prevalence of platform work: the proportion of the working age population who have performed a kind of platform work at some time it is higher in Spain (18%) and Germany (12.3%), and lower in Finland and Hungary (both around 7%) (Urzi Brancati et al., 2020). To better understand potential solutions for platform work, the section started by comparing the legal definitions of 'worker' in the four countries. It has been shown that there are no significant differences in the legal definition of 'dependent employment' in the four countries covered, although each system developed its own legal interpretation of the main elements of the definition. The section has also illustrated how labour protection has developed around the traditional definition of employee, and that the gap between these protections and those of the self-employed is substantial. Therefore, in all four countries, individual and collective labour rights, together with the right to conclude collective agreements, are not ensured outside the scope of the national definition of employee. In light of the framework constituted by this binary classification, which in Spain and Germany is blunted by the presence of a third category, it is not easy to understand where platform workers fit in. Similarly, it is also unclear where other non-standard forms of work fit into this framework.

In this context, research has found a trend towards increasing recognition for platform workers as employees in Finland, Germany and Spain. Either through Court decisions (Germany and Spain), policy proposals or opinions (Finland and Germany), or specific legislation stimulated by case-law (Spain). Moreover, in Germany, Finland and Spain, several policy proposals, opinions or declarations of intent have been formulated with different aims: improving access to social protection and working conditions for platform workers (Germany and Finland); and improving the transparency and reporting of labour platforms (Germany and Spain). It is also worth highlighting the Spanish regulation of algorithmic management in platform work, which focuses on transparency of information and information rights. In contrast, in Hungary, the phenomenon of platform work and has not given rise to lawsuits nor caught the attention of legislators.

At industrial relations level, the report has documented several tripartite initiatives (or joint government-social partners actions) in Finland and Germany, which have been oriented towards improving knowledge and understanding of platform work. Tripartite actions have also formulated policy proposals and opinions aimed at clarifying platform workers' employment status (Finland). In the case of Spain, a tripartite social dialogue agreement impacting the recent legislation on platform work has been highlighted. At bipartite level, the research has not identified any genuine collective agreement in force

which was explicitly concluded for platform workers in any of the four countries studied. However, in Germany, research has identified a significant bipartite action jointly developed by trade unions and labour platforms, which has developed codes of conduct and conflict resolution mechanisms for crowdworkers. Research has also showed that trade unions' unilateral actions developed to improve platform workers' working and living conditions differ in the four countries studied. A more comprehensive repertoire of trade union actions is identified in Germany, Spain and, to a lesser extent, Finland. In these countries, significant worker actions have been developed in the food-delivery and courier sector, where grassroots unions have played a key role in mobilising workers, often in coalition with mainstream trade unions. Workers' actions have also been significant in the ride-hailing platform sector in Spain and Germany, where mainstream trade unions have supported taxi-driver associations or have litigated against labour platforms (particularly in Spain). In contrast, Hungarian trade unions, which are comparatively weaker, are still 'exploring' the platform work landscape (Makó et al., 2019).

Finally, the report has provided a key policy recommendation in **Section 5: a definition of the concept of 'worker' at EU leve**l. It has been argued that with this proposal, the EU would support and complement the actions of the MSs according to Art. 153 TFEU, with the aim of recognising a nucleus of rights to all those persons falling under the new EU worker definition. Moreover, a definition of worker under EU law would not interfere with the competence of each MS to adopt and keep their own national definitions of worker. The proposal formulated has integrated: the main elements of the concept of 'worker' under EU law, as established along the years by the rulings of the CJEU (and formerly the ECJ); and scholarly contributions highlighting the main problems behind the classification of workers, with a special focus on new and non-standard forms of work.

6.1 *Policy pointers*

- On the basis of similarities in terms of employment and working conditions between platform work and other non-standard forms of employment, a unified policy proposal should be formulated to improve working conditions and social protections for all non-standard forms of employment.
- A unified concept of worker at EU level could guaranteeing adequate social protection as well as a nucleus of labour rights to those workers in more precarious jobs, such as platform workers and other non-standard workers.
- It is possible to formulate an EU definition of worker by combining the main elements of the concept of worker under EU law (as established along the years by the rulings of the CJEU) with key scholarly contributions highlighting the main problems underlying the classification of workers, with a special focus on new and non-standard forms of work.
- A definition of worker at EU level should reflect the Lawrie-Blum formula and include three further elements:
    - The main elements which have been added and integrated into the **Lawrie-Blum formula** along the years. In particular, **hetero-organisation** and the 'quality' of the work, which should correspond to activities that are **not purely 'marginal and ancillary'** (Menegatti, 2019).
    - **Algorithms and any other technology**, which includes not only the use of algorithms, but any new technological tools that could be employed to exercise managerial powers. Since they are new tools, characterising the new forms of work in particular, they should be taken into consideration in a legal definition, in order to avoid national Courts misunderstanding their effects on labour when applying EU law. The impact of automatic management modalities on labour relying on algorithms which replace traditional managerial practices is analysed in scholarly work (Cherry, 2016; Hensel et al, 2016) and is evident in new Spanish regulation.
    - The **personal work concept**. This notion is based on the work of Countouris and De Stefano (2019), and extends the concept of worker to include those who "provide personal labour, unless they are genuinely operating a business on her or his own account*"* (p.7).
- On this basis, a worker under EU law could be defined as '*A natural person who, for a certain period of time, performs services for and under the direction of another person and/or integrated in the organisation of another person in return for remuneration. The employer's direction and/or organisational power can also be carried out through algorithms and any other technology, which also has to comply with the recognized labour rights of the worker, including the right to information. Activities so small as to be purely marginal and ancillary are excluded from the definition. In any case, a worker under EU law' is a person that is engaged by another to provide personal labour, unless that person is genuinely operating a business on their own account. In case of legal action for the recognition of an employment relationship under EU law, all the circumstances have to be taken into consideration*.'
- In order to effectively guarantee minimum standards of rights for all workers and the conditions for a fair and competitive internal market, it is also crucial to extend the rights recognised in all directives to workers falling under this proposed EU worker definition.
- At national level, regulation could improve the protection for platform workers by introducing a legal presumption that platform workers are employees. For platform workers to be classified as self-employed, the burden of proof should be placed on the platform.
- An effort should be made to reinforce monitoring and compliance with labour standards, considering that labour platform business models challenge the effectiveness of traditional labour inspectorates' and social partners' instruments to generate and enforce labour standards.
- National governments could also focus on improving access to social protection for platform workers. These measures should, in particular, ensure that platform workers have an adequate income level during non-work periods and adequate rights while carrying out the work. While

permanent measures should be designed, some temporary income-related social protection measures could be developed to protect those workers affected by the COVID-19 pandemic crisis, considering that loss of pay has been a major risk for platform workers during the pandemic.

- National governments should also address the problem of providing minimum social standards for all self-employed workers, and recognise specific rights for those self-employed workers, who, although being genuinely self-employed and although not being in a comparable position to an employee, find themselves in a weak bargaining position.
- At industrial relations level, efforts should be made to give platform workers a collective voice, and to enable social dialogue and collective bargaining. As shown in some country studies, cooperation between mainstream trade unions and grassroots unions can contribute towards improving workers' representation and collective voice.

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7. National Reports

7.1 Spain
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1. State of play of labour platforms

1.1 Prevalence and socio-demographic characteristics of platform workers in Spain

Spain accounts for one of the highest rates of platform workers in Europe. According to most recent COLLEEM estimates for 2018, by 18% of the Spanish working age population stated to have ever made some income from working through digital platforms, a share significantly higher than the 10% average for the 14 EU Member States covered in the survey (Urzi Brancati et al, 2020). Most of platform workers rely to this form of employment as a secondary source of income and spent less that 20 hours a week working in this way, while the share of workers that make more than 50% of their total income from platform work represented by 2.6% of total working population. The incidence of platform work is therefore rather small and usually it is considered as supplemental or complementary to main occupations.

The composition of platform workers in terms of their personal characteristics and the type of activities involved does not significantly differ from that in other EU countries. Platform workers are younger than offline workers, predominantly men and more educated than the usual workforce. According to the Hertfordshire survey conducted in Spain for 2018, by 35% of platform workers provided qualified online work on regular basis, while around 30-34% of respondents reported to be carrying out different forms of personal and household services, and the participation in transportation and delivery services represented around 27%-28% of platform workers (Huws et al, 2019).

1.2 Main employment and working conditions of platform workers in Spain

Public and academic debates stirred by the irruption of digital platforms have been focused on the misclassification of platform workers' employment status as self-employed, but much lesser attention has been placed to the analysis of working conditions of this group of workers (Rodríguez Fernández, 2019). Beyond anecdotal evidence by the press, the main sources of information about the working conditions of platform workers are provided by different reports issued at the initiative trade union organisations. An early study at the initiative of the CCOO Catalan Confederation (2018) applying a similar methodology than Huws et al (2019) found in line with general evidence on the field that prevalence of platform work is higher among the self-employed and highly qualified professionals, mostly as a secondary source of income. However, most of the information gathered on the quality of working conditions is referred to their main occupation, which do not correspond to platform work.

Notably, the focus of research initiatives and public debates on platform work have been placed on certain groups of workers which are in a most vulnerable settings, namely those providing on-demand services such as rideshare drivers and delivery riders and, to a much lesser extent, household and care workers. Platform work has been therefore assimilated to precarious employment and working conditions. Yet, this does not necessarily fit with the realities of many other platform workers in online

services, about which there is much less evidence but also pointing to an increased segmentation of working conditions (Martín-Artiles et al, 2020).

Platform-based delivery riders have become the paradigmatic case of the precarious working conditions in the platform economy. Working conditions in the delivery platforms such as Glovo and Deliveroo are not only contingent on the misclassification of riders' employment status but also and mostly on a set of work organisation practices, such as the absence of minimum guaranteed pay and working time and algorithmic forms of control that put into question the alleged autonomy and flexibility of platforms' employment models (Fabrellas, 2021, Revilla and Blázquez, 2021). Platforms' expansion strategies in the delivery sector are built on exposing an increased number of riders to competition for the allocations of time slots to reduce service costs. These strategies have resulted in increased uncertainties on income levels, leading to widespread use of fraudulent practices in the sector. Many riders in need end by paying for the allocation of working time slots to brokers that make use of hacking applications, while many other riders used to work through rented accounts on a commission basis for the owner which may represented by 40% of their total income (UGT, 2020).

Working conditions in rideshare companies working under the umbrella of platforms as Uber and Cabify are conditioned by a subcontracting system in which companies assume the main risks of the business. This is translated into a great pressure on drivers to meet turnover targets upon which their wages are based. Drivers are compelled to work up to 60 hours a week to meet these targets, under the threat or being penalised or dismissed due to low performance. Companies argue that these records cover all the time that drivers are logged into the application and shall not be considered as effective working time, but different Courts' rulings had recognised that these practices are in contradiction with legal provisions on working time.

1.3 Impact of COVID-19 pandemic crisis on platform work.

Platform riders were considered as essential workers during confinement but they were not provided with special protective measures by the authorities. Amid the couriers' criticism or the lack of protective measures, during the first days of lockdown Glovo platform changed the pay system for their couriers in large Spanish cities without prior consultation. The new system meant the reduction by more than half of basic rates per order in exchange of an increase of variable pay (Sánchez Ocaña, 2020). All riders' associations agreed that these changes meant a reduction of total revenues, which forced them to work longer hours and taking more risks, and criticised the frequent changes on the service's terms and conditions unilaterally implemented by the platforms.

The impact of the pandemic on the demand of mobility services added to existing financial difficulties faced by many rideshare companies. Most of these companies resorted to temporary layoffs and other measures enabled by Government, such as the exemption of social security contributions. In some cases, these were supplemented by the agreement of additional cost-reduction measures with workers representatives aimed at ensuring the viability of the companies in the mid turn.

2. Regulatory framework and debates

2.1 Main regulatory debates.

The Spanish case stands out as one with a highest judicialization of the dispute over the classification of platform work, with nearly fifty rulings issued in recent years. Most of the legal controversies have been put to an end by a Supreme Court decision in September 2020 establishing the recognition of a rider as employee. The judgement set that an employment relationship exists on the grounds that the platform was not acting as an intermediary but rather as a company which determines the terms and conditions of the service through the implementation of a reputation system. The ruling was subsequently translated into a legal amendment of Workers' Statute following to the agreement of Social Dialogue bargaining table in May 2021. The so-called "Rider Law" has established the presumption of employment relationship in the delivery platforms and will come into force on the 12th August. The main issues in current debates are how delivery platforms will adapt their business model to the new legislation, which will presumably result in the reduction of employment, and the new prospects for collective regulation of working conditions in the sector.

The passing of the Rider Law has raised criticisms among riders' associations. On the one hand, a group of professional riders' associations which claim to be recognised as genuine self-employed called for street demonstrations in different cities against the law. These associations had advocated for a change in the legislation aligned with proposals advanced by the same delivery platforms, which pointed to the recognition of riders as "economically dependent self-employed". In their view, the recognition of such figure would have allowed riders to preserve the alleged flexibility of the platforms' employment model while extending social protection and income security through the agreement of minimum rates and bonuses.

On the other hand, Riders for Rights, the main riders' grass-roots movement which had been campaigning for the enactment of the Law, showed criticism for its limited scope, as it falls to short of the initial expectations raised by the same Government's initiative, which aimed at bringing into the scope of the labour law all forms of bogus self-employment in the platform economy.

2.2 Platform work legal status

In the view of prominent scholars in the field, the meaning of the Supreme Court ruling was in line with recent case law which provided for a comprehensive reinterpretation of the concept of employee by expanding its scope non-dependent forms of employment (Todolí, 2020 and 2019). The new Law has established a new presumption of employment in the field of delivery platforms, but it also covers other aspects which are of special interest for the future development of collective representation in the platform economy and other sectors in which algorithmic forms of work organisation had become increasingly present (Todolí, 2021a).

The first provision of the Law consists of the introduction of a new Additional provision in the Workers' Statute on the presumption of employment in the field of delivery platforms, by which an employment relationship exists in the delivery or distribution of any kind of consumer product or good, where the service or the working conditions are managed through a digital platform or by algorithmic means. In this way, the new regulation clearly states that the requirement of legal dependency is met provided that the employers' work organisation, management and control prerogatives are exercised directly or indirectly by algorithmic means.

This issue is of special relevance in the light of the solutions that delivery platforms are already implementing to adapt to the new regulation by subcontracting to job-placement agencies and other

companies which take the responsibility of hiring the riders as employees. Similar systems are already in use by ride hailing platforms such as Uber and Cabify since these were required to provide their services through licensed transport companies. Indeed, these business models have been under increased scrutiny by the Spanish Labour enforcement agencies as these are found in breach with legal provisions on subcontracting. Cabify and two companies were fined by a Labour Inspectorate for illegal assignment of workers. It is argued that the platform should not be allowed to subcontract to third companies an activity which is essential to the transport service provided through the application. Therefore, it is the platform that should hire the drivers as long as it provides the digital infrastructure through which the whole transport service is organised (Todolí, 2021b)

The second provision of the law has introduced an amendment to the Workers' Statute related to workers' legal representatives right to information on algorithmic management. In application of this provision, all workers' representatives shall be informed of whether the company is using any algorithm influencing work organisation and working conditions and the rules and instructions on which these are based.

2.3 Main industrial relations' responses

Ride-hailing is the sector which concentrates the most relevant initiatives for the regulation of platform through collective bargaining. However, the development of the bargaining rounds initiated in 2019 at national level and regional level had come to standstill. The divisions between independent and class unions organisations resulted in the breaking of the negotiations in the Madrid region. This decision followed to the annulment of a collective agreement concluded by an independent union and an employer association by labour authorities on the grounds that it lacked the required union representativeness to apply to the whole sector. Therefore, most of the subcontracting companies working for the Uber and Cabify lack of a reference collective agreement that may be used as a benchmark or standard for determining working conditions beyond minimum guaranteed in the Workers' Statute.

In the case of delivery platforms, social partners have made significant attempts towards the inclusion of these activities into the scope of collective bargaining. Early in 2019 social partners agreed the inclusion of delivery riders into the National Framework of the HORECA sector and, more recently, an agreement has been reached for its inclusion in the hospitality collective agreement in the Basque Country. However, there are still some controversies on the corresponding sectoral agreement that should apply, as some judicial rulings on the employment status of riders established their recognition as employees under the terms and conditions of the logistic and goods' transport, which fits better with the real activity of these platforms and provide better working conditions. Unlike transport sector, class unions' representativeness in these two sectors is prevalent.

3. Conclusions

Spain has become the first European Union Member State in recognising platforms workers as employees and to make mandatory for platforms and companies to inform about how algorithms have an impact on employment and working conditions. Whether these legal developments will be translated into an effective improvement of platform workers' conditions is still an open question. On the one hand, the new legislation is limited to the introduction of a presumption of employment in the field of delivery platforms. This provision means that the responsibility for demonstrating that platform riders

meet the criteria for being classified as self-employed lies with the company, otherwise these will be classified as employees. The new law does not undertake a new definition of employee and exclude from the scope of its application other workers which work through online platforms as dependent employees and often with precarious working conditions, namely drivers working in rideshare companies, but also workers in household and home care platforms.

Most of the online platforms in home care services such as Quideo and others providing a wide range of household services such as Cronoshare or Clintu are acting as placement agencies between clients and workers and the arrangement of the service is regulated through the "special employment relationship of household employees", which do not guarantee equivalent rights to those workers under general employment schemes, such as unemployment protection. A critical feature of this employment regime is that the responsibility for formalising the employment contract lies with the final client and this contract can be terminated at the clients' initiative without the need to allege any cause. Whether the regulation of labour market intermediation services applies to these platforms is under discussion since some of these companies have been found to meet the requirements to be considered as an employer. However, under the current framework of the regulation of domestic work to which most of these platforms adhere, the responsibility for any legal infringement relies on the client household, not the platform. The fact is that many client households do not meet their legal obligations and the platform is not made accountable of the intermediation. Therefore, these workers are left without protection.

On the other hand, there are still many uncertainties about how delivery platforms will adapt their business models to the new regulatory framework. According to estimates by ADigital (2020), a platforms' business association, the transition to a 'fleet system', by which riders are contracted by third companies, would entail the loss of 75% of total employment in delivery platforms. In addition, there are some indications that platforms adaptation strategies are likely to result in a higher fragmentation of employment and working conditions in the sector. Some platforms are relying on different forms of subcontracting which may be deemed as fraudulent in the light of case law on illegal assignment of workers. Other platforms, and notably Glovo, have just announced plans to directly hire part of their riders as employees while also keep on working with self-employed, through the implementation of a new system that will provide real autonomy and comply with the Supreme Court and ECJ rulings on the issue.

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7.2 Germany

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1. State of play of labour platforms

1.2 Prevalence and socio-demographic characteristics of platform workers in Germany

In Germany, the debate on platform work is characterized by its highly heterogeneous structure. This is the reason why there is still missing a coherent definition of platform work beyond sectors and branches (Nierling et al. 2020). Nevertheless, the studies available - including comparative studies across European countries - offer important insights into trends of socio-demographic state of affairs of crowd work in Germany until 2020. Interestingly, international studies report a higher prevalence of platform work for Germany than national studies. For instance, Huws et al. 2016 estimates up to 9% crowd work of the working age population whereas the German economist Serfling estimates that only 1-2% of the German working age population are platform workers (Serfling 2018, 2019). These differences arise from different measurement as well as from different definitions of crowd work with regard to the German labor market. Nevertheless, the dynamic nature of platform work indicates a continuous rise of the (digital) platform economy, "such as the need for platform work to train evolving artificial intelligence (AI) applications" (European Commission 2020:3). This is true for European countries as well as for Germany. Furthermore, the pandemic situation has forced to emphasized the insecurity of data alongside an increasing importance of the model of home office. However, there is agreement about rising trends with regard to employment in general, the percentages of gender and age of crowd workers in Germany.

All studies on sociodemographic characteristics agree on the empirical observation that men are slightly more represented among platform workers than women in Germany (Serfling 2019, Nierling et al. 2020). According to the selection of tasks, as well as to the variety of platforms, it seems that men represent a higher proportion in the fields of consulting, testing and programming. In contrast, in the fields of different types of "click work" as well as digital organized care services, the female percentage of on-line platform work seems higher. The differentiation of the crowd workers by "gender" and "qualification" seems important in studies on crowd work in Germany, because the specific tasks implemented as platform work re-define "gender" and "qualification" to a great extent. For instant, the high proportion of female workers performing "click work" represents the high proportion of women presenting this type of low qualified jobs on German labour markets. With regard to age, there is an: "inverse linear trend of attitudes towards crowd working and age: the younger the age group, the higher the share of crowd working affinity and active crowd work compared to its population share" (Serfling 2019). This observation seems still coherent for some types of platform work (i.e. upwork) focusing on individual initiative, flexible working patterns and digital expertise. Despite the problems concerning the different age structure of actual samples, all the studies confirm that younger populations are more represented in the segment online macro task crowdwork than older working population. However, there are slight shifts towards older workers in general. In sum, the high proportion of young people seem to refer to flexible working pattern as well as to the increasing affirmation of digital technologies.

Furthermore, for students and young people in vocational training, platform work offers the possibility to earn some extra money.

1.3 Main employment and working conditions of platform workers in Germany

In Germany, the number of platform work is connected with the employment status of platform workers. According to Serfling: "the majority (32%) of active crowd workers declares themselves as being self-employed, while the share of full-time employees (27%) is lower than the share of all respondents. This result seems to be plausible due to the nature of tasks that are distributed via platforms. Additionally, there are slightly more students (9% of the active crowd workers) and unemployed (8% of the active crowd workers) and fewer pensioners amongst crowd workers than in the overall respondent's population (12.6% of the active crowd workers N/A)" (Serfling 2018:24). Status, as well as the social security model of self-employment, seem to be the key to the question whether crowd work is considered a phenomenon of the German labour population, or as a new type of work within the complete labour force. According to Serfling, the share of self-employed crowd workers for highly qualified work (i.e. designing, consulting, programming etc.) seems comparatively high. In contrary, medium qualified work (i.e. testing, writing etc.) and low qualified work (micro tasking) is widespread among groups such as students, unemployed persons, migrants and pensioners (Serfling 2018, 2019, Nierling et al. 2020). The estimations about working conditions differ in literature and are described from two perspectives: the first focuses on unsecured working condition and the individual risks for the workers (Pongratz et al. 2018). The second perspective focuses on the establishment of transition labor markets with different options for the workers (Weber 2018). Both perspectives are strengthening (political) efforts of regulations with regard of minimizing the risks for the workers.

1.4 Overview of the impact of COVID-19 pandemic crisis on platform work

Due to COVID-19 pandemic situation, a large number of countries have implemented lockdown strategies, which obliged people to stay and to work at home. Generally, the following issues seem relevant under pandemic situation for all professions: (a) health risks, (b) income, and (c) (in)security of work. The specific situation for platform workers can be summarized as follows:

Ad (a) Health risks are relevant specifically for services of delivery, care and cleaning. Here, measurements of protection differ according to these services: many of the measures adopted by platforms have been "insufficient" or they imply the usual measurements like wearing a facemask or/and keep distance to other people. However, a petition demanding that the platform *Lieeferando* provide disinfectants and protective clothes for all workers was signed in April 2020 (Nierling et al. 2020). Active protests as well as petitions seemed widely necessary to improve health and safety protection for platform workers.

Ad (b): Income is of high relevance for platform workers. Since the majority of platform workers in Germany are self-employed, the impact of the pandemic situation reaches from the loss of work to less work to no impact on the workload. However, up to now, there is no empirical evidence of those trends; it seems that platform workers are more affected by this unstable situation. Because of their legal status, they tend to be irregularly paid, have unstable employment and limited protection to withstand the negative effects of the pandemic situation.

Ad (c): Although the platform work in Germany is still not widespread as regular employment, the (in)security of work play a crucial role. Facing the heterogeneous models of platform work, the situation differs significantly according to the type of platform work, the contractual situation of the working relation as well as the income. These differences cannot be described generally, but at the end of the day, they define the security and/or the insecurity of these conditions.

2.Regulatory framework and debates

2.1 Main regulatory debates

Standards of Social Security play a central role in German public debate when reflecting and debating on regulatory framework of platform work. This debate is normatively embedded into a long tradition of the German model of social partnership. However, there are different perspectives on the legal situation of crowd work, which still create a high level of insecurity for the plattform workers in nearly all branches. In order to avoid this situation, the *German Federal Ministry of Labour and Social Affairs (BMAS)* and specifically the Think Tank "*Denkfabrik*" of the Ministry has started initiatives to foster the platform economy and to ensure that good working conditions and access to social security are guaranteed by: (a) improving the lack of evidence-based data on platform work in order to develop a better understanding of platform work in Germany; (b) developing sustainable policy proposals, which requires "cooperation between all relevant departments in the Ministry, as well as the in-depth integration of external perspectives and stakeholders at an early stage" (European Commission 2020: 12); (c) to developing regulations for a fair and balanced platform economy at national and EU level (Fairwork Germany 2019).

2.2 Platform work legal employment status

Generally, the employee status is the entry to full labor law protection under German law. An employee enjoys the right to minimum wages, holidays, severance payment, dismissal protection and limited liability. With regard to platform work, there are two different types of regulation: (a) in the first model, enterprises are using and providing internal digital platforms to work with; here the working situation for the workers remain the same. In these cases, platform workers continue to be classified as "employees"; (b) the second model consists of external digital platforms, where the enterprise recruits the workforce from outside the company. Here, it may be highly disputable if a worker is an employee according to national law.

Since 2017 national labor law contains a definition of the term 'employee' in section 611a of the Civil Code (*Bürgerliches Gesetzbuch – BGB*). This definition follows from the earlier case law of the Federal Labor Court (*Bundesarbeitsgericht – BAG*) according to which an employee is someone who carries out work under civil law in personal "dependence".[121] The dependence will find its manifestation in the power to direct of the employer and in the integration of the worker in the workplace entity.

The latter viewpoint has, however, not yet been adopted by the Parliament, respectively has been debated intensively based on some law cases. Actually, platform work can be carried out under the direction of the platform or the client. In many cases, platform workers could be qualified as self-employed since they are, as foreseen in many platforms' standard terms and conditions, able to reject job offers. This

[121] For a combination of former case law and the economic approach, especially focusing on crowdwork: Schneider-Dörr (2019).

does not mean that workers are automatically self-employed if they agree to perform a task. However, in reality, platform workers are often classified as self-employed because they are able to design the circumstances of their work (tasks). The *Federal Social Court (Bundessozialgericht, BSG)* seems to be more likely to qualify someone as an employee if they have to subordinate to the framework of the organization of their client. If someone is not an employee, they are classified as self-employed. This may be an independent contractor who enjoys protection only under civil and commercial law.[122] The social protection under these rules, however, falls short, which characterized the actual situation of many platform workers in Germany.

2.3 Main industrial relations' responses

From the very beginning, the unions were very active in shaping the public debate on this new type of work in Germany (Nierling, 2018). Hereby, policies of worker's protection were/are not only anchored in union's communication strategies, but were also taken up by measures and specific formats designed by the unions. Furthermore, the main political actors in this field, such as the *Federal Ministry of Labour and Social affairs* (BMAS), and/or the *Hans Böckler Foundation* were very active in the debate, not least, by putting platform work on the political agenda of the German parliament or by providing resources for research activities.

With regard to union's activity in Germany, a certain "division of labor" has been developed. From the very beginning, the biggest German union, the *IG Metall*, has been active in the field of platform work. In cooperation with online platforms, it established formats to address platform work and to reach out to workers. This was performed either with respect to conflict resolution like the established *Ombuds Office* or by setting up an evaluation format on platforms where the workers could evaluate the working conditions at platforms, like on the fair crowd work website. Further, the union reached out to new types of crowd workers in the net (Fairtube & youtubers union) and started a cooperation on crowd work with international unions. The *IG Metal* mainly covers online platform work and has recently widened its portfolio to creative digital workers, e.g. YouTubers in order to develop a framework of protection in digital work.

The union for alimentation NGG ("*Gewerkschaft Nahrung, Genuß und Gaststätten"*) was/is taking over care of the field of food delivery as a type of locally based platform work in this branch. In recent years, the improvements of working conditions in food delivery were by far the most dynamic in the field of platform work. Here, the public visibility of riders on the streets, which contributed to the public attention, but also the protests of riders in some German cities, led to the success of the bottom-up movement "*Liefern am Limit*" ("deliver at the limit") by the workers. Here, the main achievement with regard to worker's rights was the establishment of work councils, which could be even saved and kept when there were major company mergers on the German food delivery market.

In contrast, the union traditionally responsible for service work, Ver.di (*Vereinte Dienstleistungsgewerkschaft*), supports platform workers "as required". Here, Ver.di invented a format for online consultation designed for self-employed workers, which can be also used by platform workers (Nierling et al. 2020).

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122 Landesarbeitsgericht München from 4 December 2019, Case 8 Sa 146/19; with regard to the concept of "employee" in Europe, see also Wank (2008).

3. Conclusions

As many reports describe, platform work in Germany is still dispersed with regard to data, empirical evidence and its statistical importance compared to the labor market. However, the proportion of platform work is growing steadily. It seems that platform work has a certain impact on the different branches and sectors. This may be specifically true in the actual pandemic situation, where the flexibilisation of work (i.e. increase of home office in nearly all branches) as well as the importance of "digital work" became significant (Krings et al. 2021). Empirical evidence with regard to the impact on platform work during pandemic situation still is not available. The debate shows, however, that there will be shifts in the organization of work models in the nearest future with regard to "digital" and "flexible" work. At the same time, compared to other European countries, in Germany there have been already significant governmental and non-governmental initiatives in order to improve the working conditions of platform workers. Hereby, the objective of the German Government explicitly is to figure out the chances and options of "digital work" (i.e. platform work) in order to develop new forms of sustainable work models (BMAS 2017). With regard to the legal situation in Germany, the objective is to close the gap between standardized and non-standardized work. Envisaged reform measures, however, may solve only parts of the platform work in the coverage of gaps. Because of the global character of platform work models, the most important issues belong to the following issues (see European Commission 2020:19 ff, ETUI 2020), which have to be collected, analyzed in common national and international efforts:

- Frame of **working models of social protection** (social security, sickness benefits, etc.)
- **Definition of the legal status of platform worker** (employee status versus self-employed status)
- Establishment and recognition of **Codes of conducts and certification of platforms**
- **Social Dialogue** with platforms operator, platform worker and political mediation (Development of collective bargaining processes)

In Germany, these issues strengthen very much the tensions between standardized and non-standardized work (inside and outside the labor market) and between local and global organization of work. Envisaging this (traditional) structure of German labor markets by opening the box through platform work, this implies the integration of migrants, less qualified and unemployed workers etc. within labor markets of standardized work. At the end of the day, integrating and resolving these issues are becoming the political challenge for establishing sustainable work conditions in Germany.

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7.3 Finland

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List of abbreviations.

Akava: Confederation of Salaried Employees
ETUC: European Trade Union Confederation
FinUnion: The EU representation of SAK and STTK representing 1,4 million workers in Finland
PwC: PricewaterhouseCoopers International Limited
PAM: Service Union United
SAK: The Central Organisation of Finnish Trade Unions in industry, the public sector, transport and private services in Finland.
STTK: The Finnish Confederation of Salaried Employees in both private and public sector
TFEU: Treaty on the Functioning of the European Union
Yle: The Finnish Broadcasting Company is Finland's national public service media company.

1. State of play of labour platforms.

1.1. Prevalence and socio-demographic characteristics of platform workers in Finland.

In Finland, the size of the working-age population deriving earnings from platform work is still fairly small, i.e. between 0.3 to 0.9 % (Nordic Law, 2020:14). It falls in line with platform work done in other EU member states, as Pesole et al. (2018) states, where only 2% of the working age population receive their main income from platform work. The lack of a unanimous definition of the platform concept and its continuous evolvement, amongst others have made statistical data compilation of the topic difficult (Alsos et al 2017; Sutela 2018). Data about thesize of digital platforms collected in Finland is mainly derived from three larger studies and some smaller ones commissioned by trade unions. The core summarised in this report have been done by the Statistics Finland (2018), Ali-Yrkkö et al. (2020) and PwC (2017).

Statistics Finland compiled data for the first time about platform workers in Finland during their data collection for the Labour Force Survey in 2017. The Statistics Finland defined digital platform as 'various online platforms through which a person can sell his or her work input or otherwise earn income' (Statistics Finland 2018). The results of the survey showed that during the last previous 12 months, the percentage of the working-age population who have earned at least 25% of their income from either work or non-work related platform activities was 0.3%. The majority of the platform workers were men under 35 years of age. Making an earning through platform work was also more common for sole entrepreneurs (1.4 %) than for employees (their share was only 0.2 per cent). We have to keep in mind that the definition of platform was fairly broad in the survey where the term referred to work done over diverse online marketplaces, including Facebook, selling sites for cars and homes, amongst others. Additionally, several of the respondents mentioned billing sources as a frequent online source making the direct connection to platform jobs somewhat obscure.

A recent study focusing on the size of digital economy and its impact on taxation (Ali-Yrkkö et al. 2020), discusses the composition of the digital economy and how it influences on both possible tax gaps and taxation system. The authors stress that there is a lack of definition of the term digital economy among academics as well as a need of further quantitative studies about the size of the digital economy. The researchers utilized a method particularly focusing on value added from *partly* digitalized goods and digitalized services in the evaluation of the size of the digital economy: 'This approach bases its computation of the size of the digital economy in non- ICT industries 'on the relative importance of ICT workers' (measured by the share of the total wage sum of ICT employees) 'and online sales in an industry' (measured by the share of total sales in e-commerce) (ibid 2020: 86). Based on these results, it can be stated that digital economy is still growing fairly slowly in Finland despite increasing its value-added share. For example, in the end 2017 digital economy comprised 10.9% of the GDP, more than EUR 21 billion euros (ibid).

According to a PwC study (2017) about online collaborative economy, non-standard agreements are increasing in Finland. This goes in line with the demand of on-line services and individual purchase events. The latter comprises mainly of collaborative finance (65%) followed by accommodation and space (19%) and of small tasks and household services (14%). The two latter forms also represent an occupational field mainly occupied by low-skilled workers such as taxi drivers (e.g., Uber) and food

couriers (e.g., Foodora and Volt) in Finland. In other words, there is a significant prospect of potential growth for collaborative economy in Finland.

1.2. Main employment and working conditions of platform workers in Finland.

In Finland, the discussion of platform work and workers has mainly focused on their employment status. A majority of platform workers are in a precarious position without the legal status of an employee, despite recent recommendations for changes to existing legislation. Employees and employers are guided by flexible work arrangements creating both opportunities and loopholes in the form of temporary work, zero-hour contracts and so-called light entrepreneurship or independent part-time work. In practice, platform workers are only partly covered by social protection. The latter does not include a paid sickness leave or access to occupational safety and health (OSH services). Particularly, taxi transport (Uber) and food couriers (Wolt, Foodora) have received a great deal of attention, because of unclear regulations governing whether platform worker should be classified as a employees or independent entrepreneurs.

Currently, there is no particular law focusing explicitly on platform work. Instead, there are several laws and recommendations guiding platform work. Several trade unions argue for the legislation of the legal labour status of platform workers as employees instead of entrepreneurs. This has to do with the comprehensive social protection of the employees' rights including access to occupational health and safety services.

The main argument against the legalisation of platform workers' employee status relates to expenses. As stated in the statement by SAK - the Central Organisation of Finnish Trade Unions to the Finnish government (Employment and Equality Committee 2018):

From the point of view of employers, platform work provides in some circumstances an excellent opportunity to avoid taking care of the employer obligations and transfer these to the worker conducting the job. Furthermore, the control of platform economy is difficult and offers an opportunity to informal economy.[123]

Opinion of SAK for the Finnish Government, 19.11.2018

1.3. Overview of the impact of COVID-19 pandemic crisis on platform work

The social and economic consequences of COVID-19 have been grave both in Finland and beyond. For some sectors, this has meant increased opportunities and economic gains, such as for the grocery delivery market comprising both food delivery platforms and grocery markets focusing on online retail. The reversed has been seen in the transport sector because of a lack of customers using either public or private transport services. Less information is available about [platform based] cleaning and care sectors, with few exceptions made by trade unions who represent the voices of invisible platform workers and other non-standard workers. Attention has been given particularly to the precarious working conditions of cleaners working for platform-based cleaning companies during COVID-19. (Perkiö & al. 2020).

123 Free translation from: 'Työnantajan näkökulmasta alustatalous näyttää tarjoavan joissakin tilanteissa oivallisen keinon kiertää työnantajavelvoitteista ja siten siirtää kaikki työnantajavelvoitteet työn tekijän kannettavaksi. Lisäksi alustatalous tarjoaa mahdollisuuden harmaaseen talouteen, kun alustojen valvonta on osoittautunut lähes mahdottomaksi' (*SAK lausunto Valtioneuvoston tulevaisuusselonteon 2. osaan "Ratkaisuja työn murroksessa*, Employment and Equality Committee, 2018).

Online-based care services are fairly new in Finland, i.e., it was not possible to find any published information about how COVID-19 has impacted this particular occupational category.

Mobility restrictions have led to an increase of diverse forms of on-line consumption. For example, Finnish grocery markets rapidly adopted platform-based grocery delivery services, which had been very modest before COVID-19. The dominating platform-based food delivery companies are Foodora and Wolt. These companies' economic gain is also partly based on low cost and high efficiency logics, shown in the recruitment of a temporary, unprotected workforce comprising mainly of students and migrants.

Food couriers belong to a potential risk group of being infected by COVID-19 because of these workers daily mobility in areas with high numbers of people, such as grocery stores and restaurants. We have to keep in mind that food couriers are depended on the activity ratings shown by the platforms, i.e., new jobs depend greatly on digital surveillance which prevents couriers from staying home in the case they experience symptoms of illness, requiring them to self-quarantine (Perkiö et al 2020). Furthermore, there is a risk of transmitting the virus (or other types of illnesses) to the customers. A social movement, entitled as 'Justice for Couriers' – a informal network of food couriers, have tried to bring the problems to the awareness of employers and public media.

2. Regulatory framework and debates

2.1. Main regulatory debates.

Debates about platform and other kinds of non-standard work focus mainly on platform work done within transport (e.g., Uber) and food delivery (e.g., Foodora and Wolt) sectors. Discussion has mainly taken place among social partners and media focusing on the food couriers' unclear legal status of work arrangements. During recent years, labour inspectors from the Regional State Administrative Agency, have either discovered or received information about obscure practices relating to food couriers' working conditions, such as imprecise legal employment statuses of the couriers and lack of regulations governing their working hours. Additionally, the companies who have recruited food couriers, have not provided any criteria regulating amounts of minimum or maximum work. Instead, the food couriers were free to switch shifts with each other or trade shifts with another person. (Labour Council's opinions TN 1481-20). In other words, these couriers were contracted as self-employed, making their legal status obscure because the "self-employed" category does not exist in the Finnish legislation. In practice, these couriers should have been either employed as employees or contracted as entrepreneurs.

In the Spring of 2020, the Regional State Administrative Agency expressed their concern whether (platform workers) who work as food couriers should be considered as employees or as entrepreneurs (Ministry of Economic Affairs and Employment, 2020). The Labour Council gave its support in defining food couriers as employees to be covered by the Working Hours Act after a unanimous vote (6-3, the last by employers) (see also Labour Council's opinions TN 1482-20; TN 1481-20). The tripartite Labour Council is an autonomous actor under Ministry of Economic Affairs and Employment. In the future, the council's decision can also guide developments in platform work.

"Justice for Couriers" highlights the value of the Labour Council's opinion hoping it 'would lead to negotiations towards a collective agreement between the companies and inclusion within an existing labour union such as the Service Union United, PAM' (#justice4couriers, 2020). However, the

improvement of food couriers' legal status has already had some negative consequences in the form of terminated contracts for several thousand couriers, while the food companies are recruiting new couriers or diminishing the importance of the Labour Council's opinion for its couriers with statements such as, 'everything is in order' (ibid).

2.2. Platform work legal employment status.

In Finland there are no laws providing a particular legal status for platform workers or other non-standard workers. As several trade unios have stated, there is a need for a law defining the working rights and social protections of these workers. Workers' employment status is guided by **Employment Contracts Act (55/2001)** stating:

'This Act applies to contracts (employment contracts) entered into by an employee, or jointly by several employees as a team, agreeing personally to perform work for an employer under the employer's direction and supervision in return for pay or some other remuneration' (section 1). In other words, the person performing work for an employer needs to have an employment contract making her/his employment relationship legal (Chapter 1 section 1 of the Employment Contracts Act (55/2001). Consequently, it is correct to refer to an employee (instead of a worker) when there is an employment contract. The Finnish translation from worker does only focus on an employee leaving the worker term without legal status.

As the above-legal statement shows, the employer and or employee cannot freely choose their legal status. Still, further clarification is needed in unclear cases, such as the one of platform workers, who can be (informally) defined as self-employed persons and fall between the legal rights of employer and employee. In legal terms, there is no definition for self-employed but in practice the same rights apply to entrepreneurs and those who are self-employed because the latter are not covered by same rights as a worker with an employee status.

The tripartite system and Finnish legislation have excluded the application of a third category, i.e., in legal terms the worker cannot be categorised as an entrepreneur commissioned by an employer. The latter would remove the employers' obligation to pay social security benefits amongst others (Interview with the lawyer from PAM, 17.05.2021).

2.3. Main industrial relations' responses.

In Finland, statements made by the Labour Council provide guidance to the contemporary discussion about the legal status of platform workers. It goes in line with trade unions' strategies focusing on the working conditions and legal status of platform workers. The following sections are based on information received from trade unions and their representatives.

Some of the biggest trade unions, such as: *SAK- the Central Organisation of Finnish Trade, Akava-Confederation of Unions for Professionals and Managerial Staff in Finland* and *PAM - Service Union United* have actively taken part in the discourse on the improvement of collective rights and social dialogues relating to non-standard employment, particularly regarding the legal situation of platform workers. Unions stress the need to include platform workers and other workers with non-standard legal statuses as part of the legal employee status:

Platform workers, or whoever, also self-employed persons, or those who are working as so-called self-employed workers, who do their work practically under the supervision of the employer – these workers should have the same rights as other employees.

Pekka Ristelä[124], head of international affairs at SAK

Trade unions have also expressed their concern about the platform economy and platform workers' (dis)advantages beyond the Finnish context. These unions urge the Commission to draw distinct directives clarifying the legal status not only of platform workers, but all non-standard workers. An emphasis should be given to the minimum standards of employment, the rights to education and training and social rights, amongst others.

In February 2021, the FinUnions stressed that the Commission has its full support for improving the position of those working in the platform economy[1] from the FinUnions member organisations, SAK and STTK. The FinUnions encourage the EU Commission to take an active role by obliging member states to guarantee the employment status for those entitled to it. According to Finunions, an option of partnership or any other non-standard status should be ruled out, because a person working for a platform company as a partner may not have the freedom of choosing wage amounts and work periods/working hours independently. Neither will (s)/he be covered by same extension of social protections as an employee in an employment relationship, i.e., there is a risk that the worker is not covered by 'occupational safety and health, job security, employee insurance, and earnings-related social security'(FinUnions).

3. Conclusions

The report presented an overview of labour platforms in Finland and key occupational sectors where digital labour platforms are used. It also explored the employment regulatory framework by pointing out existing advantages and disadvantages with the current legislation impacting the protection of platform workers. In addition, the report analysed industrial relations' responses and strategies to platform work in terms of collective rights and social dialogue.

The biggest challenge related to workers' rights is to provide a legal protection for platform workers and other workers performing non-standard work, because of a lack of definition of their legal status. The Finnish labour legislation only makes a distinction between employee and entrepreneur. The so-called "third category" is excluded. Neither is the term "self-employed" used in Finnish legislation. Still, in practice, companies interpret, for example, food couriers and free-lancers as "self-employed". The latter definition has been a popular interpretation among employers who favour drafting short-term contracts between the company and the courier. These leave the latter without several key worker rights and create precarity. Many of the platform workers are in a vulnerable position, e.g., the majority of the food couriers are students, and, or migrants with lack of knowledge of their rights (Pajarinen et al., 2018). Similarly, a third of freelancers are migrants who work for big online companies, such as Upwork. In the future, the control of platform companies is necessary, particularly when these companies will continue to utilise "virtual migration", the latter not requiring the physical presence of workers (ibid).

[124] An interview conducted in April 8th 2021.

So far, no court cases have been brought on the employment status of platform workers. Instead, the Labour Council, has issued a statement where it emphasizes the need to consider platform workers as employees instead of self-employed persons or entrepreneurs. Each case should be evaluated on the basis of the criteria of an employee, an employment contract should be between the worker and the company if the criteria of an employee are fulfilled. This is also strongly recommended by the trade unions.

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7.4 Hungary

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1. State of play of labour platforms

1.1 Prevalence and socio-demographic characteristics of platform workers in Hungary

The first attempt to estimate the size of platform workers in 14 European countries has been made by the COLLEEM survey. The survey results are shown in the next table in a somewhat simplified version.

Table 1: The number of platform workers as a percentage of the total adult population (2017)

Country	**Adjusted estimates**
U.K.	12.0
Spain	11.6
Germany	10.4
Netherlands	9.7
Portugal	10.6
Italy	8.9
Lithuania	9.1
Romania	8.1
France	7.0
Croatia	8.1
Sweden	7.2
Hungary	**6.7**
Slovakia	6.9
Finland	6.0
Total	9.7

Source: Pesole et al. 2019: 15, (COLLEEM dataset).

According to the estimates of the COLLEEM survey, a non-negligent share of the Hungarian adult population (6.7%) makes some earnings from platform works. This ratio is well below the European average. As we mentioned earlier, the COLLEEM survey was the first attempt to map the quantitative and qualitative characteristics of platform workers in some selected

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European countries by using an empirical survey.[128] Another survey carried out by ETUI in 2019 investigated the incidence of platform work in the Central and Eastern European (CEE) post-socialist countries and found significantly lower share of regular platform workers. The results are presented in Table 2.

Table 2: The incidence of platform work in selected CEE countries

	Ever tried	**At least monthy**	**At least weekly**	**At least 50% of income the *last time did this work***
Bulgaria	4.4%	1.5%	0.8%	1.1%
Hungary	7.8%	3.0%	1.9%	3.4%
Latvia	4.0%	0.8%	0.5%	0.7%
Poland	1.9%	0.4%	0.4%	0.1%
Slovakia	7.1%	1.1%	0.4%	1.0%

Source: ETUI Internet and Platform Work Survey in Piasna and Drahokoupil, 2019:10.

Note: Share among all respondents aged 18-64.

According to the results 7.8% of the Hungarian population aged 18-64 tried at least once platform work. The ratio of those who work at least on a monthly basis drops to 3.0%, while the share of those who use platforms at least once a week is less than 2%. It is interesting to note that the share of those who earn significant amount of money by this type of work is relatively high: 3.4% of the respondents made at least half of their income via platform work.

These figures represent pre-COVID levels, and while it is likely the percentage has risen significantly, new firm data has been able to establish the pandemic effect on platform work.

1.2 Main employment and working conditions of platform workers in Hungary

There are various issues related to platform work, particularly related to the protection of workers, which require particular legal solutions due to the fact that the majority of these workers are neither regular employees or true self-employed.

One of the unique features of platform work is -the so-called algorithm-based management, which is the basis of worker assessment and pricing. The service provider is assessed by the customer during the evaluation process. For instance, the five-star rating system promoted by the Amazon website, has become widespread in many customer ratings of services, such as Uber (Chan, 2019) and its competitors, and this has led to concerns of unfair pressure on workers, who, as we examine below, stand to lose in the "ratings game" with no recourse to bad customer reviews that drop their ratings below near-perfect scores. The Job Success Score (JSS) is a more sophisticated method used by Upwork: the client assesses the successful project

[128] To our knowledge, the new COLLEEM survey is in the preparatory phase.

and thereby the service provider. Evaluation is often a source of confidence of the service provider, but the lack of transparency in assessment inevitably leads to problems. For example, if a service provider does not agree with a service user's rating (score), they are unable to negotiate and find a consensus in most situations because there are no channels where they can make their voices heard. Moreover, below a certain score or unfavourable feedback from service customers, the platform automatically disconnects the service provider. All this puts platform workers in a vulnerable position, especially in terms of bargaining power, as they struggle to satisfy the dictates of the clients and/or the algorithm. The timeliness and relevance of this issue is well illustrated by the recent reemphasis of the Nordic countries leading digital work on key features of platform work, such as transparency, fairness, accountability, benefit-sharing, learning and innovation (Seppanen–Poutanen,2020).

The issues arising from algorithm-based management and digital assessment are entirely absent from the legislation of Hungarian labour law, rendering it difficult to call out the flaws and potential correction of online service evaluation. Currently, disciplinary sanctions or the severance of legal relationships are the two potential effects of online evaluation. For example, in the case of a taxi platform operated by Bolt, the passenger evaluates the driver's work on a scale of 1 to 5. The latter does not know the evaluation aspects of the passenger, the passenger evaluates anonymously, therefore it is extremely difficult to modify the unfavourable evaluation and have a subsequent correction. An even bigger problem in the case of Bolt is that the platform operator asks the passenger to evaluate the overall quality of the trip ("How was your trip?"), not just about the job of the driver. Consequently, if there are issues – for example, the mobile application underestimates the waiting time before the taxi arrives or incorrectly locates the geographical position of the passenger (these are daily issues) – the disappointment of the passenger is reflected in the negative evaluation of the driver and not in the business.[129]

1.3 Overview of the impact of COVID-19 pandemic crisis on platform work

The COVID-19 had varied impacts on the platform workers. While robust quantitative data on the effects of the pandemic on this sector are lacking, in the case of the "location-based platforms" we could observe both a sharp decline in services (i.e., ride-hailing service: Bolt) and sharp increase in the delivery sector (e.g., food and other item couriers: Wolt). In the case of the "online web-based platforms," a simultaneous increase and decrease of demand for service took place. Demand for high-skilled and high-paid software-design and technology development and service development increased substantially, while demand for clerical and data entry, creative and multimedia work declined. Additionally, due to the physical proximity of the personal service deliverers, "location-based platform workers" were more heavily exposed to the virus contamination while the "online web-based" platform workers were more protected due to their physically isolated work.

2. Regulatory framework and debates

[129] Of course, it is also possible to evaluate the journey in text, but this is much more difficult than giving stars.

2.1 Main regulatory debates

The Hungarian labour law follows the classical binary model with no intermediary category between the employee status regulated by labour law and those who are self-employed and contracted by the client, a relationship regulated by the civil code. The Hungarian labour law has no clear, established definition of self-employment *per se*, on its own. In practice, self-employed persons are independent contractors who work under a civil law contract (Kiss, 2013; Gyulavári, 2014; Kun et al., 2020). Irrespective of the nature of the contract (i.e., employment contract or civil contract,) all workers are entitled to a certain minimum right: free movement, social security and equal treatment protection, health and safety at work. However, only employees are entitled to some important rights: protection against termination of employment, employers' liability, and collective rights including the right to conclude collective agreement. Furthermore, Hungarian case law shows that although the self-employed have some important rights indicated above, these are hardly ensured and applied in practice (Gyulavári, 2014).

Employees are entitled to labour law protection under the Labour Code Act I of 2012 (hereafter referred to as LCA). However, the provisions of Act V of 2013 on the Civil Code (hereafter: CC) and, in the case of self-employed persons, the provisions of Act CXVII of 1995 on personal income tax and, in part, Act CXV of 2009 on self-employed persons, apply to the employment of self-employed platform workers. CC is the underlying rule of the LCA and applies to other employment relationships. The parties must choose between these two categories according to the nature of their cooperation, and labour inspection has the right to change it in order to prevent bogus self-employment.

2.2 Platform work legal employment status

There is currently no special legislation regulating the work of platform workers. In the evolving Hungarian labour market in both its traditional and newly emerging (i.e. digital) environment, it is rather difficult to forecast the development patterns of atypical and traditional employment.

However, during the re-codification of the Labour Code, the interpretation and regulation of the legal relationship of a person engaged in "platform work" arose since the scope of certain institutions of labour law extends to the legal relationship of these persons. The platform worker does not become an employee and is covered only by specific employment laws that would have applied only if the service provider could not be expected to pursue another regular gainful employment other than performing the contract (Kiss, 2013).

With the aim of harmonisation, labour protection and the reduction of sham or concealed contracts, the Hungarian legislation was based on the German regulation of economically dependent workers, but with a narrower scope. The economically dependent worker would not have been regarded as an employee, but subject only to certain labour law provisions (working time, rest periods and paid holidays). It would have been applicable to personal and regular employment only if the service provider could not be expected to engage in any other regular

gainful activity while performing the contract. From a social protection point of view, the application of notice periods severance-pay and the mandatory minimum wage would also apply to economically dependent workers (Szekeres, 2018). However, the proposal was rejected by almost all employers' and employees' representatives without substantive discussion, and the political decision-maker did not support it, either. (Kiss, 2020)

During the re-codification of the Labor Code in 2011, a third category of employees was formulated in Hungary as well; the third category of employees is the concept of an economically dependent person, but its form in the draft legislation would have further complicated the current regulations.[130] More specifically, it would have made it more difficult to make a legal assessment of the sham contracts and the case-law. At the same time, it would not have been a solution in the employment conditions of those who work through the platform (Rácz, 2021). At present, the legal status of the employees and the self-employed differs greatly, like the two ends of the spectrum, and wage cost of the latter group of workers are unreasonably lower for both the employer and the employees. This suggests there is a trade-off in the case of self-employed where legal protection is given up for more money.

2.3 Main industrial relations' responses

The core experience learned from the interviews conducted among the leaders and officials of Hungarian trade union confederations/federations, trade union experts, and relevant research literature is that there is a growing concern and uneasy situation on how to best cope with the challenges of interest representation in the fast-growing digital economy. Until now, Hungarian trade unions have not succeeded in systematically collecting empirical experiences on the working and conditions of platform workers or employment concerns of digital labour in general. In addition, they have been unable to fill this knowledge gap with the systematic and comparable empirical research produced by the academic community in Hungary and in other Central and Eastern European (CEE) countries. For example, the first workshop on shared (platform) economy took place in 2018 in Budapest and was organised by the Central European Labour Studies Institute (CELSI) located in Bratislava (Meszmann, 2018).

Experience from the recent platform-based work survey of trade unions indicates that most trade union leaders consider the future role of trade unions to be significant. In addition, supporting new social movements and alliances is considered important by some trade union confederations, such as the Intellectual Trade Union Confederation (Borbély et al.,2020).

Optimistically, online work and specifically platform work may force unions to change the existing practice of their operations and discover new forms of recruiting new members in the

[130] There is no terminology and substantive consent on the term of "dependent worker" at EU and national level legal regulations. The most often cited emblematic work is the following: Perulli, A. (2002) Economically dependent/quasi-subordinate (parasubordinate) employment: legal, social and economic aspects. European Commission (Microsoft Word – 479950EN.doc (europa.eu). In our paper we used the following concept of Eurofound: "The concept of 'economically dependent worker' falls between the two established concepts of employment and self-employment. It refers to those workers who do not correspond to the traditional definition of employee because they do not have an employment contract as dependent employees. However, although formally 'self-employed', they are economically depdendent on a single employer for their source of income."(European Observatory of Working Life, EurWork, 1st June, 2007:1)

context of the extremely low unionisation rate. However, there are substantial obstacles for this to occur, in part because of the generational shift; unions are for many younger platform workers a "thing of the past" that doesn't relate to their needs, and unions may in theory seek to engage with and serve the needs of platform workers but are not able to do so in practice.

The traditional organisational tools of recruiting new members appear to be ineffective. To reach platform workers there is a need to identify the employees through recruiting methods that are consistent with the specific needs of the platform workers. For example, in addition to inventing new forms of recruiting techniques there is a need to focus more on the strategy of advocacy in contrast to the more traditional forms of organising strategies. During counselling, advising services could function as an organisational or collective learning process for both trade union staff and their new future 'clients' (various categories of the platform workers), while also creating mutual trust and engagement between trade unions and platform workers.

3.Conclusions

In the period of the "Great Reset" following the COVID-19, both national and European (global) stakeholders are operating in a political-economic context that is more receptive to adopting a new road of development in the digital labour market.(Schwab – Mallaret, 2020) Leading global platform companies have signed the Charter of Principles for Good Platform Work at the 2020' World Economic Forum covering the following issues: 1) diversity inclusion, 2) safety and wellbeing, 3) flexibility and fair conditions, 4) reasonable pay and fee, 5) social protection, 6) learning and development, 7) voice and participation, 8) data management. (agendas.contact@weforum.org, www.weforum.org)

In this more receptive "post-pandemic" socio-economic context, one of the key challenges is to develop minimum standards, including legal regulations across working conditions and the employment of platform workers. In order to develop a right mix of "hard" and "soft" regulation for the digital labour, it is necessary to understand the complexity of the platform work and its heterogeneous character and avoid the use of such generic label a "crowd work". Even in the case of Hungary, where the rate of "non-Standard Employment Relationship" (or "non-SER") is extremely low compared to other EU or OECD countries, it is necessary to make distinction between platform worker operating in the Mobile Labour Market (or "location-based platform") and those who are employed by the Online Labour Market (or "online web-based platforms"). The majority of the first group of platform workers is in the "non-SER" status and is in a vulnerable position, with low wages and low level of social protection. An illustrative example: according to the latest ETU survey, more than two third (68%) of workers who are engaged in Internet work earned annually less than the monthly minimum wage of the country (Piasna – Galgóczi – Rainone – Zwysen, 2020:58). In the case of the "online web-based platform", the majority of platform workers identify themselves as "entrepreneur" or "freelancer". In their case a special legal regulation respecting their independent status would be necessary. However, in the case of the "location-based platform" workers, progress at both national and EU level

can be achieved by first overcoming the present "limbo" of the labour code and civil code regulation.

A way forward would be to improve platform workers wellbeing by diminishing the current regulatory loopholes through both national (labour law regulation) and international standards facilitated by such global institutions as World Economic Forum (WEF) and especially the International Labor Office (ILO), which stressed the need for "the development of an international governance system that sets certain minimum rights and protections and requires platforms and their clients to respect them," and called for "human-in-command" approach to algorithmic management surveillance and control to ensure that "final decisions affecting work are taken by human beings" (ILO, 2021:27)

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