European Commission

Study to support the impact assessment of a possible EU initiative to the application of competition rules to collective bargaining by self-employed

Annex 5
Clustering methodology

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Study to support the impact assessment of a possible EU initiative to the application of competition rules to collective bargaining by self-employed (COMP/2020/008)

Annex 5 – Clustering methodology

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Cluster 1 : Legal system(s) where all solo self-employed[1] are allowed to bargain collectively

Poland

This cluster includes countries in which all of the self-employed are allowed by law to bargain collectively according to legal provisions. According to our research, Poland is the only country that fits into this cluster at present.

Legal instruments: *Act on Trade Unions, 5 July 2018 (Art. 1), Labour Code (Art. 2)*

Prevalence of self-employment: According to latest available OECD data, in 2019 Poland was found to be the 9th country globally and 3rd within European Union in terms of the prevalence of self-employment. Self-employment accounts for 20% of all forms of employment in the country (OECD, 2021)[2].

Collective bargaining: The significance of multi-employer collective bargaining is relatively weak in Poland, with no new agreements concluded in recent years. Single employer collective agreements are the dominant form of collective bargaining in Poland. Only around 10% of Polish business establishments regulated wages of employees by means of collective labour agreements in 2019[3]. Trade union density is around 16% of the workforce. There is a debate about the working conditions and pay of platform workers, in particular drivers and delivery workers, but no concrete measures have yet been taken.

Self-employment and collective bargaining: Amendments made in 2018 to the Act on Trade Unions introduce a new notion of 'person who performs paid work' (osoba wykonuj ca prac zarobkow). This refers to two groups:

- Employees, and
- other workers who:

(1) perform work in return for remuneration,
(2) on the legal basis other than employment relationship,
(3) do not employ other persons, and
(4) have occupational interests that can be collectively represented.

Self-employed therefore fall into this category and can therefore benefit from trade union rights, including the right to collective bargaining. Before the change in 2018, collective bargaining was only available to 'an employee' as defined in Labour Code (Art.2) as 'a person employed under an employment contract, appointment, election, appointment or a cooperative employment contract' consequently excluding people on atypical contracts from collective bargaining. **Thus, the legislator has now created the legal framework for collective bargaining for civil law contractors and self-employed.** However, self-employed people are not covered by any provisions offered by the Polish Labour Code. Therefore, from interviews carried out from our Polish mapping research, it is unclear what the scope of collective labour agreements covering self-employed people could be. There are also concerns relating to EU prohibition under competition law. Further, it seems unlikely that collective bargaining will suddenly become much more widespread. It can rather be expected that collective labour agreements concluded at the level of the particular establishment will regulate the rights and duties of both employees and non-employees who perform personal work for the benefit of a particular employer[4].

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[1] This clustering refers throughout to solo self-employed, ie without employees, except when mentioned otherwise.
[2] OECD definition of self-employed: "Self-employment is defined as the employment of employers, workers who work for themselves, members of producers' co-operatives, and unpaid family workers. The latter are unpaid in the sense that they lack a formal contract to receive a fixed amount of income at regular intervals, but they share in the income generated by the enterprise".
[3] 2019 European Company Survey, Houten and Russo 2020.
[4] Comments sent by the author of the Bulletin Of Comparative Labour Relations – Collective Bargaining for Self-Employed Workers in Europe (Wolter Kluwers)

Other protections for the self-employed: The self-employed do enjoy some social security protection, although this depends on their payments into funds such as pension funds. During the pandemic, there have been moves by the government to encourage self-employment by lowering social security contributions, which has translated into an increase in the number of self-employed.

Right to strike/incidence of strike action among self-employed: No reports of right to strike or strike action among the self-employed.

Cluster 2 : Legal system(s) where all self-employed are prevented from collective bargaining

Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, Hungary, Latvia, Lithuania, Luxembourg, Malta, Romania, Slovakia

This cluster includes all the countries where the legal system has not foreseen collective bargaining, neither under labour law nor under competition law, it also includes those where collective bargaining is neither explicitly allowed nor prohibited by law. In these countries, the law states either that all self-employed are prevented from collective bargaining or does not explicitly mention coverage of the self-employed. Many of these countries are the newer EU Member States from central and eastern Europe, which have a history of a more rigid labour market. The specific information on individual countries that has lead us to placing these countries into this cluster is set out below.

Belgium

Legal instruments: *Collective bargaining law (CAO Wet) of 5 December 1968*, *Law of 3 July 1978 on employment contracts (Articles 2 and 3), amended by the law of 17 July 1985)*, *Royal Decree No. 38 of 27 July 1967 organizing the social status of the self-employed, Article 3, Law De Croo, 1 July 2016*

Prevalence of self-employment: According to StatBel,[5] the total share of self-employment (as a percentage of the total working population aged 15-64 years old) was 12.9% in 2019 (Eurostat data). Solo self-employment accounted for 70% of all self-employment in 2016 in Belgium.

Collective bargaining: Overall, there is a strong tradition and history of social dialogue in Belgium, with a prevalence of collective agreements at national and sectoral level. Trade union density is around 60%.

Self-employment and collective bargaining: Self-employed do not fit the definition of employees under the 1978 law on employment contracts, amended in 1985. However, the law of 5 December 1968 (CAO Wet) established the legal framework in which collective agreements are concluded. Art. 2 §1) states that under this law, collective agreements apply to "workers". The definition of workers is quite broad in this law, as it refers to every person who provides labour services under the authority of another person, whether under a contract of employment or not[6]. However, it should be noted that there is some debate over whether Belgian legislation complies with article 101 TFEU[7]. As there is no explicit exemption from competition law nor from labour law, collective bargaining between self-employed should essentially be prohibited under competition law. Overall, given that there is no clear status of regulation regulating collective bargaining for the self-employed, Belgium is placed in this cluster.

Collective agreements concluded for the self-employed: There have been some collective agreements covering the self-employed. In 2016, SMart negotiated an agreement with two main food delivery platforms operating in Belgium at the time, one of which was Deliveroo, to standardise pay structures and worker protection. Food delivery riders had the choice to either work directly for the platform as a self-employed worker, or to sign an employment contract with SMart. If they signed an

[5] https://statbel.fgov.be/nl
[6] Eurofound (forthcoming): Regulating minimum wages and other forms of pay for self-employed workers
[7] Bulletin Of Comparative Labour Relations – Collective Bargaining for Self-Employed Workers in Europe (Wolters Kluwer) by Vincent Franquet & Jean-Benoît Maisin.

employment contract, they were guaranteed a minimum wage and minimum shifts of three hours.[8] In October 2017, however, Deliveroo announced it would terminate its collaboration with SMart and change its remuneration system, only paying riders on a 'per delivery' basis (from February 2018 onwards). When Deliveroo announced these measures, negotiations between SMart and trade unions were ongoing, and a collective agreement was almost reached for riders (of whom 90% worked via SMart). Evidence shows that the riders were unhappy with this decision by Deliveroo, and that their working conditions had deteriorated following this decision.[9] Another agreement was concluded by Taxi Vert with its drivers about work resumption following COVID-19[10].

Other protections for the self-employed: The self-employed enjoy a specific tax status. On 1 July 2016, a new tax regime ('Law De Croo') was introduced as part of the Programme Law (*Programmawet*), which introduced a sort of unofficial 'peer-to-peer (P2P) status' for people working in the shared economy. The issue was that platform work was taxed too highly by those who did correctly submit their tax returns; for those who did not, the regulation was also meant to tackle undeclared work and encourage people to correctly submit their tax returns. It should be noted, though, that this is not a separate 'third' legal status. Moreover, almost all the interviewees spoken with – and including the academic literature – indicate that there is no desire to create a separate third legal status for platform workers. Further, the self-employed (with or without personnel) have to pay quarterly social contributions, be affiliated to a health insurance fund and a social security fund. If they do all of this, then they are eligible for a range of social security benefits. Interviews with an academic and social partner also revealed that, from an EU perspective, the social protection of the self-employed in Belgium is strong: after Finland, Belgium has one of the strongest systems and the areas covered for the self-employed and employees are roughly the same (e.g. they both have the right to maternity leave).

Right to strike/incidence of strike action among self-employed: In 2018, the trade union organising the self-employed, United Freelancers, supported a strike of 200 Deliveroo riders organised by 'Couriers Collective' (Koeriers Kollektief).

Bulgaria

Legal instrument: *Bulgarian labour code, Art. 51*

Prevalence of self-employment: The self-employed account for around 11% of the Bulgarian workforce, according to Eurostat.

Collective bargaining: Collective bargaining has been steadily decreasing in importance in terms of setting the pay and conditions of workers. The main type of collective agreement is the company-level agreement, with very few multi-employer agreements in existence.

Self-employment and collective bargaining: The legal framework provided by the labour code in Bulgaria states that only employees can be covered by collective agreements. Labour law states that collective agreements can only be signed between employers and employees. No information was identified on any debates in Bulgaria on how collective bargaining for the self-employed interacts with competition law.

Other protections for the self-employed: Social benefits in Bulgaria depend on employment status. There are limited universal social security rights for self-employed people. They are only covered compulsorily for old age and invalidity. For other schemes, such as those for healthcare and maternity leave, affiliation is based on voluntary social security contributions.

Right to strike/incidence of strike action among self-employed: No reports of right to strike or strike action among the self-employed.

Croatia

[8] https://www.etui.org/publications/working-papers/work-in-the-platform-economy-deliveroo-riders-in-belgium-and-the-smart-arrangement
[9] *Ibid*.
[10] Collective Bargaining for Self-Employed Workers in Europe (Wolters Kluwer) 2021.

Legal instrument: *2015 Law on Representativeness of Employers' Associations and Trade Unions*

Prevalence of self-employment: The self-employed accounted for around 12% of the Croatian workforce in 2019. The extent of 'bogus' or 'dependent' self-employment is difficult to estimate but is a common phenomenon on the Croatian labour market.

Collective bargaining: Collective bargaining in Croatia mostly takes place at the company level. However, there are also sectoral collective agreements stipulating the minimum rights of workers, which are then defined and specified in more detail at the company level. Sectoral collective agreements are binding only for employers who are members of the employers' association that signed the contract.

Self-employment and collective bargaining: The self-employed are not explicitly mentioned in legislation on representativeness of the social partners. As there is no explicit exemption from competition law nor from labour law, collective bargaining for the self-employed should therefore be prohibited under competition law.

Other protections for the self-employed: They are not covered by any tailored social security scheme but are quite highly protected in terms of social security coverage, due to mandatory contributions. The self-employed are obliged to pay contributions on service contracts, author's contracts or any other contractual arrangements outside of employment relationships. These contributions include pension insurance contribution (20%), health insurance (15%), income tax (25%) and local taxes (depending on the municipality). Due to these contributions, the self-employed are covered by the general healthcare system, maternity leave (a flat rate) and pensions. Sickness benefit, which is quite limited in time for all workers in Croatia, is available from the 43rd day of reported sickness onwards.

Right to strike/incidence of strike action among self-employed: The self-employed cannot join trade unions, are not covered by any collective agreements and do not have the right to strike.

Cyprus

Legal instruments: *Industrial Relations Code*, *1965 law on trade unions (Law 71/1965)*

Prevalence of self-employment: The self-employed account for around 13% of the workforce, according to Eurostat.

Collective bargaining: Collective bargaining is an important feature in terms of setting the pay and conditions of workers in Cyprus, although there has been a decline in multi-employer bargaining in recent years, in favour of company-level bargaining. Trade union density has also declined, to around 45%, although it is estimated to be almost 100% in the public sector.

Self-employment and collective bargaining: There are no legal provisions that relate specifically to the exclusion or the inclusion of the self-employed under collective agreements. In practice, however, labour legislation reflects the main interest of the legislators in addressing the rights, obligations, etc. of employees only, and therefore does not cover the self-employed. Even the most powerful professional associations do not have the right to conclude collective agreements: only trade unions and employer organisations can do this. There is no institutional framework to provide the professional associations in Cyprus with such a right, even on a voluntary basis. Although the self-employed are not prohibited from joining trade unions, the self-employed do not join trade unions in practice. Trade union membership is made up of employees, and trade unions therefore focus on the rights of employees rather than the self-employed.

Other protections for the self-employed: The self-employed are not eligible for benefits related to unemployment and accidents at work. Cyprus is reported moreover to be one of the EU countries where the self-employed are unable to make voluntary contributions to most insurance-based provisions.

Right to strike/incidence of strike action among self-employed: No reports of right to strike or strike action among the self-employed.

Czechia

Legal instrument: *Act No. 143/2001 Coll./ Act on the Protection of Competition and on the Amendment of Certain Acts (Act on the Protection of Competition)*

Prevalence of self-employment: The self-employed account for around 17% of the workforce, according to Eurostat, although the overall number of physical persons and entities with a trade licence in Czechia is estimated to be around 36% of the population.

Collective bargaining: Collective bargaining takes place at sectoral and company level in Czechia, and there is provision for extension of collective agreements across a sector to cover all employers in that sector. Trade union density is estimated to be around 12%.

Self-employment and collective bargaining: Collective bargaining for the self-employed is prohibited by competition law in Czechia. The protection of competition on the labour market prevails and bargaining for the self-employed is therefore seen as illegal activity and an attempt to distort competition on the labour market. One relevant case here is the Czech National Competition Authority's 2018 Decision against the union of interpreters and translators[11]

Other protections for the self-employed: There is no third or hybrid category of worker and access to social security benefits is classed as average in the literature found by the mapping exercise.

Right to strike/incidence of strike action among self-employed: No reports of right to strike or strike action among the self-employed.

Denmark

Legal instruments: *Determined by case law and the Danish Competition Act (Consolidation Act No. 869 of 8 July 2015)*

Prevalence of self-employment: In 2019, self-employed without employees constituted 3.9 % of the Danish workforce (the active population) and 4.1 % of total employment.[12] This share has remained stable since 2010. Statistics regarding platform work in Denmark are in general quite sparse. Most important here is a study by Ilsøe and Madsen that, based on additional questions in the Danish Labour Force Survey in the spring of 2017, found that 1 % of the Danish population aged 15-74 had performed platform work in 2017 (Ilsøe & Madsen 2017).

Collective bargaining: Collective bargaining takes place at sector level with a typical interval of two or three years and at the local level, where sectoral agreements are often locally adjusted. The collective agreements normally cover issues such as working time, overtime work, minimum wages (there is no law on minimum wages in Denmark), terms of notice, pension contributions etc. Therefore, collective bargaining is the most important way of regulating the employment relationship in Denmark. The bargaining institutions are highly institutionalised and collective agreement coverage has traditionally been high. However, collective agreement coverage is difficult to determine precisely, since no central register for collective agreement coverage exists. However, the Danish employers' association DA estimates that collective agreement coverage was 82% for the entire Danish labour market (DA 2020), 100% in the public sector and 73% in the private sector. Union density is estimated to be 64%.

Self-employment and collective bargaining: On the basis of a body of case law, there are two classes of freelancers in Denmark – the freelancer considered to be independent (selvstændig freelancer), who cannot be covered by collective agreements, and a freelance wage-earner (freelance lønmodtagere) who can. However, to be in this second category of freelancer, workers must be working under conditions that are similar to employees in a company compared to real self-employment. Even though the case of Denmark is debatable, Denmark was placed in this cluster on the basis of the fact that the

[11] See https://www.uohs.cz/cs/informacni-centrum/tiskove-zpravy/hospodarska-soutez/2446-sdruzeni-prekladatelu-a-tlumocniku-porusovala-soutezni-pravo.html

[12] Numbers for active population (2.929.500) and employed persons (2.779.100) aged 15-64 in Denmark in 2019 was found here: https://ec.europa.eu/eurostat/web/lfs/data/database → Population – LFS series → Population by sex, age, citizenship and labour status (1 000) (lfsq_pganws).

concept of the freelance wage-earner would appear to be closer to an employment relationship than it is to being a particular category of self-employment. For specific examples of this, see the Danish country mapping in Annex I.

Collective agreements concluded for the self-employed: There are examples of collective agreements that cover the self-employed in Denmark, doctors who work as general practitioners; freelance journalists; and a number of collective agreements for workers working for a range of platforms, such as Voocali (a translation service platform), Worksome (a freelance and consulting platform for workers with higher education) and Just Eat[13]. However, trade unions can only negotiate for those members who work freelance/solo self-employed on more employee-like terms and not for the genuine self-employed, because competition law prevents them from doing so. This is reflected in the Happy Helper/Hiflr case (a Danish-owned platform company that provides cleaning in private households), which illustrates that genuine the self-employed cannot bargain collectively in Denmark due to competition law: In August 2020, the Danish Competition and Consumer Authority adopted commitment decisions according to which Hilfr and Happy Helper will no longer set minimum hourly prices for cleaning tasks on their website for their freelance workers, as these freelance workers are regarded as self-employed and setting minimum wages could infringe competition law.[14]

Other protections for the self-employed: Solo self-employed have to a large extent access to the same social security rights as employees but in some cases the benefit levels and the requirements for receiving the benefits can differ between the two groups.

Right to strike/incidence of strike action among self-employed: Nothing significant found.

Estonia

Legal instruments: *Collective Agreements Act* *https://www.riigiteataja.ee/en/eli/511112014001/consolide; Competition Act* *https://www.riigiteataja.ee/en/eli/ee/510042019001/consolide/current*; *Employment Contract Act* *https://www.riigiteataja.ee/en/eli/ee/520062016003/consolide/current*

Prevalence of self-employment: The self-employed without employees make up around 11% of the workforce in Estonia, according to Eurostat figures.

Collective bargaining: Collective bargaining in Estonia is very decentralised, and the dominant level of collective bargaining in Estonia has been and still is the enterprise level. There are only two sectors in Estonia with sectoral-level collective agreements – transport and healthcare. According to a range of different surveys, around 19% of employees are covered by company or sector level collective agreements, although all employees are covered by national-level minimum wage agreement. Trade union density is low, estimated by the ETUI to be around 7%.

Self-employment and collective bargaining: The Estonian Collective Agreements Act defines a collective agreement as a voluntary agreement between employees or an association or a federation of employees and an employer or an association or a federation of employers, and also state authorities or local governments, which regulates employment relationships between employers and employees. Therefore, the coverage of collective agreements does not apply to the self-employed. Further, the Estonian Competition Act stipulates that a sole proprietor or any other person engaged in economic or professional activities are considered undertakings and it is prohibited to conclude agreements between undertakings which have as their object or effect the restriction of competition.

Collective agreements concluded for the self-employed: In the live performance sector, the social partners in theatres have concluded collective agreements which in principle include self-employed (i.e. actors, producers etc who work not on the basis of an employment contract but as freelancers on the basis of other (service) contracts)[15]. Accordingly, The Estonian Actors Union and the Estonian Association of Performing Arts Institutions (employers) concluded a collective agreement in 2014 which

[13] For details, see the Danish country mapping document.
[14] https://www.kfst.dk/media/vi2gzmje/20200826-minimumspris-p%C3%A5-happy-helpers-platform.pdf
[15] Eurofound (forthcoming): Regulating minimum wages and other forms of pay for self-employed workers

regulates working time, pay and work organisation. It is stated in the agreement that the actors can choose themselves on which contractual basis they work (e.g. employment contract or service contract) and in principle the agreement is valid for all actors. However, there are doubts about the legitimacy of this agreement as the pay clauses have not been renewed, due to the fact that the employer did not agree to an agreement which covers the pay of the self-employed. De facto, however, the agreement is generally followed.

Other protections for the self-employed: Currently, most categories of the self-employed do not pay unemployment insurance contributions and are not eligible for unemployment insurance benefits (but could apply for unemployment allowance). The ministry of social affairs is developing a policy amendment that aims to harmonise formal coverage across different forms of employment, including self-employment.

Right to strike/incidence of strike action among self-employed: No reports of right to strike or strike action among the self-employed.

Finland

Legal instrument: *The Finnish Competition Act (948/2011); https://www.kkv.fi/en/facts-and-advice/competition-affairs/legislation-and-guidelines/competition-act/*

Prevalence of self-employment: According to Statistics Finland's Labour Force Survey, there were 187,000 sole entrepreneurs, own-account workers, freelancers, grant recipients (excl. self-employed in agriculture, forestry and fishing) in Finland in 2019. This group equals 7% of all workers aged 15 to 47.[16] This is somewhat less than the 14% share of self-employed persons in the EU[17], however it should be noted that there might be national variations in the definition of self-employed.

Collective bargaining: Both employers and employees in Finland are historically strongly organised, and collective bargaining plays a central role in the country. Collective bargaining generally takes place at national, industry and company levels. The national framework agreements on wages and employment conditions act as the basis for sectoral level bargaining, which are the legally enforceable basis of employment contracts. The sectoral agreements may transfer some issues to be negotiated locally in company-level agreements, and in recent years there has been a trend towards more local bargaining.[18] According to the principle of general applicability, employers not involved in collective bargaining, or not signatories to a collective agreement, must comply with the nation-wide sectoral level collective agreement considered representative in their sector (a sector-level agreement is generally applicable if it can be considered representative of the field in question, in other words it covers at least 50% of all employees on the sector). A special commission under the Ministry of Social Affairs and Health confirms the general applicability of the agreements. In 2017, collective agreements covered 65.2% of the employees in the private sector. Union density is estimated to be around 50%.

Self-employment and collective bargaining: The self-employed are excluded from collective bargaining under the Competition Act. Section 2 of the Act states that it "shall not be applied to agreements or arrangements which concern the labour market". However, it applies to "*undertakings*" which are defined under Section 4 of the Act as "*a natural person, one or more private or public legal persons, who engage in economic activity*". Consequently, self-employed cannot enter into collective negotiations or conclude collective agreements. This was tested in 2019 when the Finnish peak-level trade union Akava and its member the Union of Journalists in Finland argued for inclusion of self-employed translators into the collective agreement that covers audio visual translators. They also gave a strike warning that – for the first time in Finland - covered even the self-employed. The National Conciliator did not make a conciliation proposal in this matter because the Conciliator argued that "the matter would require legislative changes and is a matter that the legislators can solve within the

[16] Official Statistics of Finland (OSF): Labour force survey [e-publication]. ISSN=1798-7857. Employment And Unemployment 2019, 2 Employment and unemployment in 2019 . Helsinki: Statistics Finland [referred: 12.1.2021]. Access method: http://www.stat.fi/til/tyti/2019/13/tyti_2019_13_2020-05-07_kat_002_en.html

[17] Eurostat (2019). Self-employed persons. Available at: https://ec.europa.eu/eurostat/web/products-eurostat-news/-/EDN-20190430-1.

[18] Eurofound (2020). Living and working in Finland. https://www.eurofound.europa.eu/de/country/finland#collective-bargaining

framework of EU competition law"[19]. The self-employed are generally considered entrepreneurs in labour law, so they fall outside the scope of collective agreements.

Collective agreements concluded for the self-employed: According to Eurofound[20], a collective agreement called 'Yhtyneet' seems to be the closest to collective agreements of the self-employed. 'Yhtyneet' is a company-level collective agreement that covers freelancers working for Yleisradio Oy, the public broadcast company. The freelancers covered by this agreement are considered to be in an employment relationship with Yleisradio Oy although it is not a traditional employment relationship in the sense that they do not receive a salary but compensation for work. The employer is also not responsible for monitoring working hours as it would be in the case in a regular employment relationship and the employer does not pay social security fees for the employee etc.

Other protections for the self-employed: There is no hybrid category of worker in Finland. No other specific solutions are in place to provide protection for the self-employed.

Right to strike/incidence of strike action among self-employed: No reports of right to strike or strike action among the self-employed.

Hungary

Legal instruments: *Hungarian Labour Code 2012 Act I, Law on the Right of association, 2011/18*

Prevalence of self-employment:

Collective bargaining: Collective agreements in Hungary offer a relatively low coverage of the overall workforce. According to a 2019 survey, only 20% are covered by such agreements. However, the survey only looked at companies larger than 10 employees, therefore excluding the self-employed, and so likely inflating the real number. This number is among the lowest in Europe.[21]

Self-employment and collective bargaining: The Hungarian Labour Code does not contain any reference to the self-employed, which is interpreted by commentators such as Eurofound as an implicit ban on collective agreements for the self-employed. The self-employed are not regarded as employees: the Hungarian Labour Code takes a binary view on employment, taking into account employees and enterprises, and self-employment falls into the latter category. References to employees in the Labour Code relate to the social and economic interests of employees, employee's participation in the formation of working conditions, and interest representation for employees, including the setting up of trade unions to represent employees.

Other protections for the self-employed: There are several tax measures that make self-employment a good option for many. For instance, the flat tax for small entrepreneurs (KATA) allows them to operate under a tax regime that is far more favourable than the tax burden on larger enterprises. This is, in the view of one of the experts interviewed for this study, the main reason why people choose self-employment. While this measure was designed to eliminate the underground economy, which is an issue in Hungary, it can also lead to other issues, such as false employment through preference to fall into a different taxable category.

Right to strike/incidence of strike action among self-employed: No reports of right to strike or strike action among the self-employed.

Latvia

[19] Eurofound (forthcoming): Regulating minimum wages and other forms of pay for self-employed workers, see National Conciliator's Office Finland (2019), *Av-käännöstoimistojen työehtosopimusta koskevassa työriidassa sopu –työtaistelutoimi peruuntuu [Industrial action cancelled in the labour dispute concerning AV-translators]*, available at https://valtakunnansovittelija.fi/-/av-kaannostoimistojen-tyoehtosopimusta-koskevassa-tyoriidassa-sopu-tyotaistelutoimi-peruuntuu.

[20] Ibid.

[21] https://g7.hu/kozelet/20201031/a-magyarok-magukra-vannak-hagyva-amikor-a-fizetesukrol-egyezkednek-ezen-valtoztatna-most-az-eu/

Legal instruments: *Latvian Labour Code Articles 3 and 13 https://likumi.lv/ta/en/en/id/26019-labour-law, Anti-trust legislation, Section 11, Competition Act, Chapter VIII of the Constitution (Satversme), Articles 102 and 108*

Prevalence of self-employment: The self-employment rate in Latvia was slightly below the average rate for the EU in 2017 (11.8% vs. 13.7%), according to the OECD[22]. The rate has increased over the last decade in the country. These figures also show that the majority of self-employed people in Latvia work in agriculture, forestry and fishing, wholesale and retail, construction industries and professional, scientific and technical activities.

Collective bargaining: The overall importance of collective bargaining as a means of regulating employment relations in Latvia is low and the role of collective bargaining is limited in practice. There are no workers' councils or committees in Latvia at national level. Sector level collective bargaining is weak and the majority of bargaining takes place at company level. In 2016, 1,152 collective agreements were concluded by affiliates of the LBAS trade union confederation. In 2015, trade unions were established in 1,990 enterprises[23]. LBAS cites a relatively low union density rate of 11.8% in 2018, with membership primarily concentrated around public sector employment. By far the largest trade union represents education and science workers, followed by the trade union for railway and transportation workers.

Self-employment and collective bargaining: The Latvian labour code states in Part B Section 18 that the parties to a collective agreement are: "The employer and an employee trade union or authorised representatives of employees if the employees have not formed a trade union." Therefore, the self-employed are not covered by collective bargaining.

Further, Section 11 of the Latvian anti-trust legislation states that agreements between market participants, which have as their objective or effect the hindrance, restriction or distortion of competition in the territory of Latvia, are prohibited and null and void, including agreements regarding the direct or indirect fixing of prices and tariffs, or provisions for their formation, as well as regarding exchange of information relating to prices or conditions of sale. This is interpreted by researchers and experts as excluding the possibility of agreements covering the self-employed[24].

Other protections for the self-employed: The self-employed are not covered by the social security provisions for employees. The self-employed may regulate their own social contributions (which consequently impacts upon social benefits), and they are responsible for their own safety at work. They do not have coverage relating to accidents at work.

Right to strike/incidence of strike action among self-employed: None found.

Lithuania

Legal instrument: *Lithuanian Labour Code Art. 21 and 66: https://www.infolex.lt/ta/368200#*

Prevalence of self-employment: According to Eurostat data, in Lithuania, almost 11% of the employed population was self-employed in 2019. The number of self-employed has fluctuated throughout the years and has been steadily increasing since 2017.

Collective bargaining: Wages are mainly set at company (or even individual) level in the private sector. However, at national level, the social partners at the Tripartite Council of the Republic of Lithuania make recommendations to the government on the minimum wage. In the public sector wages are set mainly by legislation.[25] Collective bargaining coverage remains among the lowest in the EU: according to the

[22] https://www.oecd.org/cfe/smes/LATVIA-IE-Country-Note-2018.pdf
[23] European Foundation for the Improvement of Living and Working Conditions. (2021). Living and working in Latvia: https://www.eurofound.europa.eu/country/latvia#highlights-working-life-in-2020
[24] Eurofound (forthcoming): Regulating minimum wages and other forms of pay for self-employed workers
[25] Labour Code, art. 141 str. 2 d. Available: https://www.infolex.lt/ta/368200# . Also see: https://www.eurofound.europa.eu/country/lithuania#collective-bargaining

European Company Survey 2019 by Eurofound it equals 10%[26] or only 7% indicated by the European Trade Union Confederation (ETUC) in September 2020[27]. Union density is around 10% in Lithuania, which can be explained partly by the weak social dialogue tradition in the country. Trade unions have little or no power in negotiating wages or labour conditions for its members and the wage bargaining remains solely at the company level.[28] Thus, collective bargaining is mostly considered as a formality by employers and trade unions.[29]

Self-employment and collective bargaining: Collective bargaining for self-employed people is not permitted by the Lithuanian Labour Code, which defines an employee as is '*a natural person who is obliged to perform a work function for remuneration under an employment contract with an employer*'.[30]

Other protections for the self-employed: All self-employed persons are covered by pension insurance and most of the self-employed are covered by sickness and maternity social insurance. Owners of individual companies are also covered by unemployment insurance. Self-employed persons who pay social insurance contributions to the State Social Insurance Fund Board are guaranteed to receive pensions, sickness, maternity and unemployment benefits.

Right to strike/incidence of strike action among self-employed: In July 2020, Bolt Food couriers organised a protest against the company due to unfair unilaterally changed food transport payment rates, however, due to their self-employment status as platform workers and civil contract agreement with the employer, their protest concerning any labour regulations was deemed illegal and the employer had no legal obligation to comply with their demands.[31]

Luxembourg

Legal instrument: *Law of 30 June 2004, Article 1*
https://legilux.public.lu/eli/etat/leg/loi/2004/06/30/n1/jo

Prevalence of self-employment: According to OECD data[32], the rate of self-employment rate in 2019 in Luxembourg was 8.7%.

Collective bargaining: The most important levels for collective negotiations are sectoral and company level. The relative importance of the two levels of agreement varies from sector to sector. Sectoral agreements exist, for example, in sectors such as banking, insurance and private security. In 2010, 59% of all employees had their terms and conditions of employment regulated by collective bargaining.[33] However, many sectors have no industry-level agreements. Collective agreements can be extended by a grand-ducal regulation, making them applicable to all employers and employees of the profession concerned.

Self-employment and collective bargaining: The legal framework for collective bargaining, the law of 30 June 2004, is restricted in its scope of application to employees (Article 1) and no provision is made for the inclusion of freelancers or the self-employed. This places Luxembourg in the category of collective bargaining being prohibited for the self-employed.

Other protections for the self-employed: The social protection system covers the following risks: sickness and maternity, disability, death, old age, work accidents and occupational diseases. Those covered by the system also receive other benefits: family allowances and unemployment benefit under very restricted conditions. In Luxemburg, the self-employed are also covered by compulsory insurance,

[26] Eurofound (2020). *European Company Survey 2019 – Workplace practices unlocking employee potential*. Available at: https://www.eurofound.europa.eu/publications/flagship-report/2020/european-company-survey-2019-workplace-practices-unlocking-employee-potential#tab-04
[27] 'EU countries with weak collective bargaining have lowest wages', Press release, European Trade Union Confederation, 10th September 2020. Available at: https://www.etuc.org/en/pressrelease/eu-countries-weak-collective-bargaining-have-lowest-wages
[28] According to the national level interview conducted on 04 February 2021
[29] See: https://www.lpsk.lt/en/2019/02/01/collective-bargaining-in-lithuania-current-situation-and-priorities/
[30] Labour code (2020). Art. 21. Available at: https://www.infolex.lt/ta/368200#
[31] Davulis, T. (2020). Ar legalus yra maisto išvežiotojų „streikas"? In: Teise Pro, published: 15/07/2020. Available: http://www.teise.pro/index.php/2020/07/15/t-davulis-ar-legalus-yra-maisto-isveziotoju-streikas/
[32] https://data.oecd.org/emp/self-employment-rate.htm
[33] Ries, J. (2103), 'Regards sur la couverture des conventions collectives de travail', Regards, No. 6, Statec, Luxembourg.

but at minimum of 24 months of contributions is required, in comparison to four in case of regular employment.

Right to strike/incidence of strike action among self-employed: No reports of right to strike or strike action among the self-employed.

Malta

Legal instrument: *Employment and Industrial Relations Act (Act XXII of 2002) (Cap. 452)* [34]

Prevalence of self-employment: Maltese official statistics show that in 2019 the self-employed represented around 15% of the workforce.

Collective bargaining: In Malta, collective bargaining takes place at the enterprise level in the private sector, whereas common conditions are normally negotiated across a range of workplaces in the public sector. Discussions with stakeholders for this study confirm that the share of employees covered by collective bargaining in Malta stands between 50% to 57%[35]. Many of those who are not covered by collective agreements are, however, covered by minimum conditions of employment set by the government. These minimum conditions are mainly set through "wage regulation orders", which apply to specific industries, or "national standard orders" which have a more general application. Union density in Malta fell from 52.9% in 2012[36] to an estimated 39% in 2019[37].

Self-employment and collective bargaining: Labour law does not allow the self-employed to bargain collectively: the Employment and Industrial Relations Act (EIRA) regulates situations involving relations between an employer and an employee or a group of employees only, thus excluding the self-employed.

Other protections for the self-employed: The protection of the self-employed has been a priority for Malta`s government for a number of years, with various policies being implemented to protect the self-employed and to encourage more persons to venture into self-employment. For example, in the national budget for 2021, the Maltese Government announced an increase in the Value-Added Tax (VAT) exempt threshold from €20,000 to €30,000 in order to give a further boost to small operators in Malta including the self-employed.

Right to strike/incidence of strike action among self-employed: No reports of right to strike or strike action among the self-employed.

Romania

Legal instruments: *Romanian Labour Code, Art. 2*, *Social Dialogue Law 62/2011 Art. 3(1)*

Prevalence of self-employment: According to the Romanian National Institute of Statistics[38], in 2019, the self-employed accounted for 15.6% of the total employed population.

Collective bargaining: Collective bargaining in Romania is regulated by the Social Dialogue Law 62/2011.[39] The highest negotiating level under the current legislation is the sector level, followed by negotiations for groups of companies and company/organisation level negotiations. Sectoral agreements can be extended across a sector if the employers' associations that sign them employ more than half the employees in the industry concerned and the extension has been requested by the signatories and approved by the national tripartite council. However, the number of sectoral agreements is very low - in February 2021, only two sector collective agreements were concluded one in the public

[34] https://legislation.mt/eli/cap/452/eng/pdf
[35] https://www.etui.org/sites/default/files/CB%20Vol%20II%20Chapter%2020.pdf
[36] Debono, M. (2018). An analysis of trade union membership in Malta. Xjenza, 6(1), 46-58.
[37] https://timesofmalta.com/articles/view/unions-and-migrant-workforce-godfrey-baldacchino.750712
[38] Institutul National de Statistica, "Labour force in Romania – Employment and unemployment the year 2019", available at https://insse.ro/cms/sites/default/files/field/publicatii/labour_force_in_romania_2019_0.pdf, last accessed on 11.02.2021.
[39] Parliament of Romania, Legea Dialogului Social nr. 62/2011, available at https://lege5.ro/gratuit/gmzdoojvgm/legea-dialogului-social-nr-62-2011, last accessed on 11.02.2021.

healthcare sector and the other in the pre-university education sector.[40] The majority of collective agreements are concluded at company level.

Self-employment and collective bargaining: The self-employed are exempt from the regulations of the Romanian Labour Code.[41] Further, according to Art. 3(1) of the Social Dialogue Law, only persons employed under an individual employment contract, civil servants and civil servants with special status under the law, cooperating members and employed farmers have the right, without any restriction or prior authorisation, to form and/or join a trade union. Since self-employed are not employed under an employment contract, they are not allowed to join a union.

Other protections for the self-employed: There is social protection in place for the self-employed: in 2021, for the self-employed (authorised natural persons – persoana fizica autorizata (PFA), independent natural person – persoana fizica independenta (PFI), individual businesses – (intreprindere individuala II), liberal professions) the income tax is 10%, social insurance contribution is 25% and health contribution is 10%. These three contributions are the same as for an employee with an individual work contract (dependent activity), the only difference between a self-employed worker and an employee is the fact that for the self-employed worker the payment of health and social contributions is optional if he/she earns in a year less than 12 minimum wages.

Right to strike/incidence of strike action among self-employed: No reports of right to strike or strike action among the self-employed.

Slovakia

Legal instruments: *Act on Collective Bargaining (Act 2/1991) Art. 1 (1) and Art. 2 (2), Act No. 311/2001 on the Labour Code, Art. 229 (6) and Art. 231 (1)*

Prevalence of self-employment: According to the Slovakian Labour Force Survey (VZPS), a total of 362,400 people worked as self-employed in Slovakia in the 3rd quarter of 2020, which was 14.6% of workers. Their number and share has changed only little over the last 10 years (according to Eurostat data, the lowest was 355,500 in 2012, while the highest was 376,900 in 2019.)

Collective bargaining: Two-tier collective bargaining takes place at sector and company levels, where multiemployer and single-employer collective agreements can be concluded. No national-level collective bargaining exists in Slovakia. Provisions agreed in multiemployer as well as single-employer collective agreements are legally binding for the contracting parties. According to a study by Benedeková et al. (2020[42]), in Slovakia, the coverage by collective agreements generally reaches less than 25%. Trade union density in terms of active employees was around 17% in 2010, around 13% in 2014 and around 12% in 2018.

Self-employment and collective bargaining: In Slovakia, it is not possible to conclude collective agreements in relation to the self-employed, because the Act on Collective Bargaining (Act 2/1991) and the Act No. 311/2001 on the Labour Code define the conclusion of collective agreements as only for employees.

Other protections for the self-employed: The self-employed are entitled - after fulfilling the same conditions as employees - to almost all benefits from the public health and social system. However, the self-employed are not included in the accident insurance system, so they do not receive benefits in the event of a work accident or an occupational disease.

Right to strike/incidence of strike action among self-employed: No reports of right to strike or strike action among the self-employed.

[40] Eurofound, "Living and working in Romania".
[41] Labour Code, art. 2, available at https://www.codulmuncii.ro/integral.php, las accessed on 12.02.2021.
[42] Benedeková, M. a kol. (2020): Extenzia kolektívnych zmlúv vyššieho stupňa – princíp, realizácia, dopady. Implementačná agentúra MPSVR SR, Bratislava (Extension of multi-employer collective agreements - principle, implementation, impacts) https://www.kozsr.sk/wp-content/uploads/2020/06/Extenzia-kolekt%C3%ADvnych-zml%C3%BAv-vy%C5%A1%C5%A1ieho-stup%C5%88a.pdf

Cluster 3 : Legal systems where (some) self-employed are allowed to bargain collectively, under labour law, on the basis of an economic dependence criterion

Germany, Portugal, Slovenia, Spain, Sweden

This cluster includes countries that have used employment legislation to create a category of economically dependent worker who work in an autonomous way but in reality are carrying out the majority of work for one client. The specific information on individual countries that has lead us to placing these countries into this cluster is set out below.

Germany

Legal instruments: *Homeworkers Protection Act (Heimarbeiterschutzgesetz, HAG), Arts. 17 and 19*; *Collective Agreement Act (Tarifvertragsgesetz, TVG). Art. 12a*

Criteria: *Economically-dependent self-employed; Economically-dependent self-employed homeworkers not represented by a trade union and if remuneration is deemed insufficient*

Prevalence of self-employment: A total of 9.6% of the German workforce was classified as self-employed in 2019, according to OECD figures[43]. This is broadly similar to Eurostat LFS data, which shows that there were 3.56 million self-employed persons in Germany in 2018. In terms of trends, this data show that the share of self-employed in total employment decreased from 10.5% in 2004 to 8.8% in 2018. One explanation for that recent decrease in self-employment is that the labour market has increasingly offered more attractive employment opportunities, according to a 2020 European Parliament study[44].

Collective bargaining: Collective bargaining at sectoral level, negotiated by region rather than nationally, has traditionally been an important means of setting the pay and conditions of employees in a range of sectors in Germany. The overall coverage of collective bargaining in Germany has declined over the past few decades, most specifically since German unification at the beginning of the 1990s. At present, the German statistical institute estimates that 45% of dependent workers in Germany are covered by collective agreements. This figure is down from the estimated 70% in 1996. The latest figures from the IAB Betriebspanel[45], relating to 2019, based on a survey of establishments, shows that 44% of workers are covered by a sectoral collective agreement in Germany and 8% by a company-level agreement. Of those workers not covered by a collective agreement, terms and conditions for 51% of them are based on those contained in relevant collective agreements, which means that the de facto coverage of employees covered by a collective agreement is higher than the number formally covered.

Overall trade union density is estimated to be around 19.3% in Germany and has been declining steadily in Germany over the past three decades.

Self-employment and collective bargaining: Labour law (the Collective Agreement Act) provides for a further category between employees and totally independent persons: persons with employee-like status (*arbeitnehmerähnliche Personen*). This covers those freelancers who are economically dependent and usually work exclusively for one client for more than 50% (33% in the media sector) of their income. Employee-like persons can be covered by collective bargaining. They also enjoy specific labour law rights, including annual leave, paid sick leave, maternity protection and data protection. It should, however, be stressed that employee-like persons do not enjoy the right to statutory or collectively-agreed minimum wages, nor do they enjoy dismissal protection or protection in the case of transfer of undertaking. Nevertheless, there are some collective agreements covering self-employed journalists doing so (see below).

[43] https://data.oecd.org/emp/self-employment-rate.htm
[44] https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648803/IPOL_STU(2020)648803_EN.pdf
[45] http://doku.iab.de/arbeitsmarktdaten/Daten_zur_Tarifbindung.xlsx

Further, self-employed homeworkers, under the Homeworkers Protection Act Art 19, can bargain collectively if defined that they work by themselves, with family members or workers /auxiliary workers in their own premises and deliver contracted work to a gangmaster (a person who organises and oversees the work of casual workers) or employer. If there is no relevant collective agreement, or if trade unions only represent a minority of the homeworkers and remuneration is insufficient, the homework commission (Heimarbeitsausschuss) can determine minimum remuneration. However, this provision is not widely used in Germany.

Collective agreements concluded for the self-employed: Agreements covering economically dependent freelancers only exist in public sector broadcasting companies and in some daily newspapers in Germany. These agreements provide collectively agreed rates of pay. According to the trade union ver.di, these collective agreements are usually honoured by the companies[46]. In broadcasting, all public sector broadcasters, though none in the private sector, have agreements covering freelance staff, which set minimum rates, and establish arrangements for payments during sickness and holiday payments. Many agreements also cover issues such as compensation when engagements are not renewed or hours are reduced, and some, like Südwestrundfunk, also set a range of rates, not just minimum rates.

Other protections for the self-employed: The self-employed can choose between the so-called "voluntary statutory health insurances" (*freiwillige gesetzliche Krankenversicherung*) and private health insurances. In Germany, having health insurance is mandatory. For artists and publicists, in addition to the statutory and private health insurance, there is a third option: the Artists' Social Insurance or *Künstlersozialkasse* (KSK). As a member of KSK, half of the amount contributed to health, long-term care and pension insurance is covered by the state and other companies. Only a few selected professions are mandatorily covered by pension (e.g. lawyers and doctors) and accident insurance (e.g. farmers). Overall, about 3 million of 4 million self-employed people (who work as self-employed for their main job) remain uncovered by obligatory pension insurance. Access to unemployment benefits is restricted to individuals with longer social insurance records (at least 12 months in the last 24 months) who start their business as self-employed and work at least 15 hours a week.

Right to strike/incidence of strike action among self-employed: No reports of right to strike or strike action among the self-employed.

Portugal

Legal instrument: *Labour Code, Art. 10, Law No. 101 of 8 September 2009*

Criterion: *Situations in which work is performed by one person to another without legal subordination, where the provider of work is to be considered in the economic dependence of the beneficiary of the activity*

Prevalence of self-employment: In 2020, 16.4 % of the active labour force in Portugal was self-employed, with 4.6% being an employer and 11.8% working as solo-self-employed. The rate of self-employment in Portugal has been steadily falling for the past 10 years for both categories, from 22.2% of the active population in 2010[47].

Collective bargaining: The predominant type of collective bargaining agreement is sectoral agreements (*Contratos Colletivos de Trabalho* in Portuguese – 57% of all agreements in 2016) followed by company-level agreements (*Contratos de Empresa* in Portuguese – 27% of all agreements in 2016) and then group-level agreements[48] (*Acordos Coletivos* in Portuguese – 16% of all agreements in 2016)[49]. Portugal has traditionally had a high level of collective bargaining coverage (60%-70% of workforce coverage) – partially through the extension of agreements by the government. Agreements are only binding for the parties signing it in Portugal (representatives of companies and trade unions)

[46] https://www.eurofound.europa.eu/publications/report/2009/germany-self-employed-workers
[47] https://www.pordata.pt/Portugal/Popula%c3%a7%c3%a3o+empregada+total+e+por+situa%c3%a7%c3%a3o+na+profiss%c3%a3o+principal+(percentagem)-2576
[48] I.e. collective agreements established between a group of individual companies/entities and the trade unions.
[49] DGERT, Livro verde sobre as Relacoes laborais (2016)

and are not automatically extended to non-unionised workers but the Portuguese Government can extend these to all workers if one of the negotiating parties requests it and the party represents 50% of employees (or 30% if coming from an SME representative)[50].

Self-employment and collective bargaining: By law, the only parties authorised to negotiate collective agreements are companies, employer representatives and trade unions. The law does not explicitly forbid collective bargaining for self-employed people, but since the self-employed are rarely allowed to join unions and since trade unions have the exclusive right to negotiate these agreements, this creates a situation that effectively prevents self-employed from collectively bargaining.

However, Article 10 of the Labour Code creates an economically dependent category of worker, in cases where work is performed by one person for another without legal subordination, and where the provider of work is to be considered to be economically dependent on the beneficiary of the activity. Further, Law No. 101 of 8 September 2009 cites the extension of mandatory minimum wages and collective agreements to economically-dependent workers in the case of home working or handicrafts (regime de trabalho no domicilio).

Other protections for the self-employed: The past 10 years have seen a lot of legal changes that have increased the rights and protections of dependent self-employed in Portugal, particularly regarding access to social security and unemployment benefits.

Right to strike/incidence of strike action among self-employed: No reports of right to strike or strike action among the self-employed.

Slovenia

Legal instrument: *Employment Relationships Act Art. 213*

Sector/category: *Economically dependent workers as defined in Art. 213 of the Employment Relationships Act, usually journalists and workers in the cultural sector, in addition to the sports, transport and cleaning sectors.*

Prevalence of self-employment: According to the Slovenian Labour Force Survey, there were 105,000 self-employed (68,000 men and 37,000 women) in the last quarter of 2020, which represent 10.7% of the workforce (12.8% men and 8.3% women). After a period of continuous increase, the number of self-employed started to decline in early 2019.[51]

Collective bargaining: The system of collective in Slovenia is predominantly sectoral, centralised and without coordination. The coverage of collective bargaining, as rated by the OECD is around 60-70%.[52] As of January 2021, there were 46 active Collective Agreements in Slovenia.[53] The ETUI estimates that around four-fifths (79%) of employees are covered by collective bargaining in Slovenia[54], although there are no official figures, and negotiations take place at industry and company level, as well as at national level in the public sector. Coverage has fallen since a change in the law in 2006 which removed the obligation on employers to be members of the Chamber of Commerce and Industry. In 2006, Slovenia introduced the system of extending collective agreements. Out of 46 currently active collective agreements, 18 have extended validity, including agreements in the field of construction, catering and tourism activities and road passenger transport.

Self-employment and collective bargaining: There is a doctrinal debate about whether the self-employed are allowed to collectively bargain in Slovenia, on the basis that the right to collective bargaining is a fundamental right, guaranteed by the Constitution and binding international instruments, and that, although there has been no case law yet on this issue, in practice, the collective agreement for professional journalists from 1991 (see below), which also covers self-employed journalists, has never been questioned. Under Article 213 of the Employment Relationships Act: 'an economically

[50] http://www.oecd.org/employment/emp/collective-bargaining-Portugal.pdf
[51] In the last quarter of 2018, 124.000 people of 12.6% were self-employed.
[52] OECD, https://www.oecd.org/employment/emp/collective-bargaining-Slovenia.pdf
[53] MDDSZ, https://www.gov.si/assets/ministrstva/MDDSZ/Druge-oblike-dela-dokumenti/Evidenca-kolektivnih-pogodb.docx
[54] https://www.worker-participation.eu/National-Industrial-Relations/Countries/Slovenia/Collective-Bargaining

dependent person is a self-employed person who on the basis of a civil law contract performs work in person, independently and for remuneration for a longer period of time in circumstances of economic dependency and does not employ workers'. The self-employed are usually considered as undertakings with no right of collective bargaining (Eurofound 2009[55]). Economic dependency means that 'a person obtains at least 80% of his or her annual income from the same contracting entity'. This category of such workers exists predominantly in the cultural sector, particularly in the fields of journalism, where they work at the premises of the contractor, as well as in the sports, transport and cleaning sectors. Article 214(2) of this Act also states that the Act covers legal protection for these workers in relation to "ensuring payment for contractually-agreed work as comparable to the type, scope and quality of work undertaken, taking into account the collective agreement", which implies that reference should be made to any relevant collective agreement in relation to pay for these workers.

Collective agreements concluded for the self-employed: The collective agreement for professional journalists, which was concluded by the Chamber of Commerce and Industry of Slovenia, the Council of RTV Slovenia and the Association of Radio Stations of Slovenia and the Trade Union of Slovenian Journalists, also applies to freelance journalists[56].

Other protections for the self-employed: Slovenia has a single general social security system whereby the level of contributions and entitlements depends on the legal status of the individual. As a rule, the self-employed are entitled to all rights under the same (or at least comparable) conditions and the same method of assessment of rights as apply to employees. Thus, the self-employed are fully integrated into the general public pension insurance scheme (covering old age, long term incapacity for work and survivorship) and into the general health insurance scheme (covering health care and short term incapacity for work). They are compulsorily insured if their earnings attain a fixed minimum level (linked to the yearly statutory defined minimum salary).

Right to strike/incidence of strike action among self-employed: In 2014, there was a retaliation action against a GoOpti, a company established in 2011 as an 'online marketplace' for transport services, matching the supply of and demand for transport to nearby airports and other destinations. At its inception, the platform directly hired drivers and subcontracted self-employed drivers. Nevertheless, in 2014, the affiliated drivers posted leaflets on vans to protest against working conditions and, together with the trade union ZSSS, reported violations of drivers' rights to the labour inspectorate. The inspectorate sanctioned the platform on the grounds that the employment status of the workers was misclassified (they were classified as self-employed rather than employees), leading the platform, in 2015, to adopt a new business model.

Spain

Legal instruments: *Employment Relationships Act, Art. 213; Law 20/2007 of 11 July;*

Criterion: *A worker who depends economically on one main client, from which they obtain at least 75% of their income*

Prevalence of self-employment: The self-employed are estimated to represent around 15% of the total workforce in Spain, as at January 2021, according to the number of affiliates of RETA (the Spanish Regime for Self-employed workers), which was a total of 3,257,715.[57]

Collective bargaining: Collective bargaining takes place in Spain at a range of levels: national, regional, provincial and local. Overall, the negotiation of collective agreements takes place predominantly at the industry and provincial level, which represents an intermediate degree of centralisation. This is the bargaining level at which the working conditions of more than 50% of the workers covered by collective bargaining are established. Collective agreements can also be extended across an entire sector.

[55] https://www.eurofound.europa.eu/publications/report/2009/slovenia-self-employed-workers
[56] Pirs, http://www.pisrs.si/Pis.web/pregledPredpisa?id=KOLP49
[57] http://www.seg-social.es/wps/portal/wss/internet/EstadisticasPresupuestosEstudios/Estadisticas/EST8/EST10/EST305/EST309

Self-employment and collective bargaining: An economically dependent worker (trabajador autónomo económicamente dependiente – TRADE) is defined by Article 11 of Law 20/2007 of 11 July as a worker who depends economically on one main client, from which they obtain 'at least 75% of their income'. For these workers, legislation permits the negotiation of so-called "agreements of professional interest" (*acuerdos de interés professional* - AIP) (Article 3.2 and Article 13 of Law 20/2007 of 11 July) which are agreed between companies using economically dependent self-employed and unions or associations representing them. These agreements can establish "the conditions for the method, time and place for undertaking the said activity" as well as other general conditions relating to the contract. They must, however, "observe the limits and conditions established in the legislation in the defence of competition".

Other protections for the self-employed: All the self-employed in Spain are covered by the Spanish social protection system. However, the main problem lies in effective coverage, because of the freedom the self-employed have when they choose to pay their contribution to social security funds. Around 90%, choose to pay contributions at the minimum rate, which results in lower benefits, given the principle of contributory proportionality on which social security is based.

Right to strike/incidence of strike action among self-employed: No reports of right to strike or strike action among the self-employed.

Sweden

Legal instrument: *Co-determination Act 1976 Section 1(2)*

Criterion: *Dependent contractors, categorised as those who perform activities for someone as a contractor but who are dependent on one principal*

Prevalence of self-employment: Around 9.5% of the workforce in Sweden is estimated to be self-employed in 2020, according to figures from the World Bank and from the Swedish national statistics office.

Collective bargaining: The main level for collective bargaining in Sweden is the sector level. There are more than 680 collective agreements on wages and general terms of employment signed between employers 'organisations and employees' organisations, both in the private business sector and in the state, municipalities and county councils.[58] However, within the industry-level framework, around 91% of employees have part of their pay determined by local-level negotiations, and 28% have all their pay determined locally. The overall level of coverage of collective agreements is high – estimated at 88%[59].

Self-employment and collective bargaining: Some solo self-employed are classified as 'dependent contractors' under Section 1(2) of the Co-determination Act, as someone 'who works for another and at that time is not employed by them, but has a position that in essentials is the same as an employee's'. They have collective rights and the unions can conclude collective agreements for them. In the context of the 1976 Co-determination Act, 'dependent contractors' are treated as employees. The scope in the 1976 Co-determination Act is that it regulates conditions between employer and employee, and employees include 'dependent contractors' according to the 1976 Co-determination Act.

This means that these 'dependent contractors' have the same rights as employees under the 1976 Co-determination Act: the right to organise, to negotiate and to strike and that the social partners can conclude collective agreements for them. Dependent contractors are categorised as those who perform activities for someone as a contractor but who are dependent on one principal. The dependent contractor therefore differs from normal contractors who are independent in relation to their principal and might be considered to be genuinely self-employed.[60]

Collective agreements concluded for the self-employed: The Swedish Journalists' Union has an agreement for freelance journalists, negotiated with the Media Industries Employer Association, and

[58] Ibid.
[59] ETUI: https://www.worker-participation.eu/National-Industrial-Relations/Countries/Sweden/Collective-Bargaining
[60] Annamaria Westregård, Sweden (chapter 13) in Collective Bargaining for Self-Employed Workers in Europe (2021). Eds. Bernd Waas and Christina Hießl

this is the only concrete example of a collective agreement for the self-employed to date. This agreement does not contain any regulation on fees or minimum remuneration levels. It primarily contains rules on delivery terms. It also contains the rule that a freelance journalist who was on a permanent assignment which was subsequently suspended is entitled to a certain period of paid notice. Furthermore, the agreement clarifies that the client, in addition to the fee, shall reimburse the freelancer for other expenses in connection with the assignment[61].

Other protections for the self-employed: Social security legislation covers both employees and self-employed but is applied differently to the two groups in respect to entry and the calculation of benefits.[62] Several trade unions offer memberships for self-employed works in which they offer pension schemes and insurances such as accident insurance and sickness insurance. Unions also advocate on their behalf in relation to issues such as access to sickness benefits and parental leave.

Right to strike/incidence of strike action among self-employed: Under the 1976 Co-determination Act, dependent contractor have the same collective rights as employees, which includes the right to strike.

Cluster 4 : Legal systems where (some) self-employed are allowed to bargain collectively, under labour law, on the basis of the specific sectors they work in and/or on the basis of a specific category they belong to

Austria, France, Greece, Italy, Portugal, Spain

In this cluster, countries allow collective bargaining for certain sectors of the economy, usually journalists and media workers, those working in the arts sector and those in the platform economy. In the case of those working in the arts sector, the aim is to protect these workers, who may work for one employer for an extended period of time but then will move onto another employer when that engagement ends. It also includes all the countries where labour law has clearly stated that (some) self-employed working in a specific sector are entitled to bargain collectively and/or where a specific category regardless of the sector has been defined by law. Some of the countries in this cluster are also in other clusters, as this sectoral dimension is often the logical outcome of other solutions in other clusters, such as enabling collective bargaining for employee-like workers or dependent contractors. The specific information on individual countries that has led us to placing these countries into this cluster is set out below.

Austria

Legal instruments:

Labour Constitution Act Article 4, Journalist Law Part 2, articles 16-23, Home Work Law Part 5, articles 43-50

Sector/category: *Journalists, homeworkers*

Prevalence of self-employment: Overall, the share of the self-employed in Austria has remained relatively stable over the past decade - approximately 13% of all employees are self-employed (IZA 2013[63]).

Collective bargaining: In general in Austria, collective agreements are negotiated, almost without exception, at multi-employer sectoral level. This is because Austrian labour law confers the right to collective bargaining – with only very few exceptions – to the parties above company level. Most of the sectoral collective agreements cover the whole national territory and, in some cases, they are also concluded at the provincial (*Land*) level. Collective agreements are legally binding. Since the late 1980s a tendency towards 'organised decentralisation' of collective bargaining has been observed. As a

[61] Eurofound (forthcoming): Regulating minimum wages and other forms of pay for self-employed workers
[62] Ibid.
[63] IZA Research Report No. 54 (2013). Social Protection Rights of Economically Dependent Self-employed Workers

consequence, an agreement concluded between the two sides of industry at company level has been acquiring growing importance as an instrument for the regulation of terms and conditions of employment, as part of the generalised tendency towards greater flexibility, in particular in terms of working hours and, to a certain degree, pay. Austria's collective bargaining coverage rate adjusted for public employees is estimated to be over 95%, mainly due to the fact that almost all agreements are concluded by subunits of the employers' organisation WKÖ, of which membership is obligatory.

Self-employment and collective bargaining: In principle, the Labour Constitution Act sees no role for collective bargaining in setting term and conditions for the self-employed or those employed under contracts for service (*Werkverträge*). There are, however, two exceptions, covering permanent freelance journalists working for media companies and home workers, where the law allows collective agreements to be negotiated and signed – see below.

Collective agreements concluded for the self-employed: In the case of permanent freelance journalists working for media companies[64] and home workers[65], the law allows collective agreements to be negotiated and signed. These are the self-employed who are represented by the Austrian trade union confederation, rather than being members of the Austrian Chamber of Commerce, as would usually be mandatory for self-employed people[66].

Other protections for the self-employed: Since social security reforms in 1997 and 2008, many general provisions have covered both employees and the self-employed. To capture the element of dependency, several midway categories were created with their own legal status, in which workers are entitled to some of the same rights, e.g. particular social security benefits as set out below, as employees. The categories to which this applies are mainly the free service contract workers, but also the new self-employed (*Neue Selbständige)* and even to some extent the contractors of work and service (*Werkvertragnehmer*). Healthcare and maternity benefits, long-term care, invalidity, pensions and family benefits are similar to those of employees. There are limitations on sick leave, but it is possible to take out voluntary additional insurance. There is a specific voluntary unemployment insurance system for the self-employed. Economically dependent workers have, in certain situations, access to the social protection system for employees. Further, some employment regulations are also applicable to 'employee-like persons' (*arbeitnehmerähnliche Personen*). These are the Employees' Liability Act, the Equal Treatment Act, the Temporary Agency Work Act, the Act regarding Employment of Foreigners, and a few provisions of the Insolvency Act. In Austria, these individuals are defined as persons who perform work/services by order of and on account of another person without being in an employment relationship, but who may be considered employee-like owing to their economic dependence. This category gives some additional protection in terms of employment rights to the self-employed. However, it does not allow them to collectively bargain.

Right to strike/incidence of strike action among self-employed: No reports of right to strike or strike action among the self-employed.

France

Legal instruments:

French Labour Code, Article L.2132-2. Part VII, including new provisions, implanted by the ordinance of 21 April 2021 (Articles L.7341-1 to L7345-6) relating to the methods of representation of the self-employed using platforms https://www.vie-publique.fr/loi/279617-ordonnance-21-avril-2021-representation-travailleurs-plateformes; Articles L.420-1 of the Commercial Code; Ordinance of 21 April 2021

Sector/category:

[64] 17 et seqq. of the Journalist Law (Journalistengesetz)
[65] Sections 43 et seqq. of the Home Work Law
[66] Membership of the chamber of commerce is mandatory for the self-employed with a business licence, both for those who are self-employed (or businesses) with and without employees.

Independent journalists, those working in the creative arts (performing artists - artistes du spectacle), models, sales representatives, branch managers, salaried entrepreneurs members of an activity and employment cooperative, home-workers. New legislation sets out a framework for collective bargaining for platform workers in the delivery and transport sectors

Prevalence of self-employment: According to INSEE (the French National Institute of Statistics and Economic Studies*, Institut National de la Statistique et des Etudes Economiques*) from 2013 to 2019, the proportion of the self-employed remained stable overall, at around 11% to 12% of the workforce, although the figure increased by 33% between 2008 and 2017.

Collective bargaining: The basis of collective bargaining in France is made up of the following levels: the Labour Code (*Code du Travail*), collective agreements at cross-sector national level (*accords nationaux interprofesionnels-ANI*), sector agreements (*accords de branche*) and company agreements (*accords d'entreprise*). Industry-level agreements are the most important level for negotiation in terms of numbers covered, although legislation introduced in 2017 has given precedence to company-level agreements in certain areas. According to figures from the OECD, in France, 93% of employees are covered by a collective agreement. One of the distinguishing features of the French collective bargaining system is the mechanism of extending agreements across sectors. Extension can be requested by any of the parties to the agreement concerned, and the decision is taken by the minister, advised by a subcommittee made up of representatives of the unions and the employers. Other than requiring that the agreement meets a number of formal conditions, such as ensuring that the agreement has been signed by the appropriate bodies, there are no specific thresholds – such as covering a set proportion of employees – which need to be met, although, as a result of changes made in 2017, employers' organisations have a clear right to object to the extension of an agreement. In practice, sectoral collective agreements are most often applicable to all employees of the sector in question.

Self-employment and collective bargaining: French legislation on collective bargaining does not provide for the signing of collective agreements for the self-employed. Under Article L.2132-2 of the French Labour Code, employee organisations constituted as professional trade unions are the only bodies allowed to negotiate collective labour agreements. Further, the competition rules contained in Articles L.420-1 of the Commercial Code seem to exclude collective agreements by organisations of self-employed.

However, there are collective agreements for groups of workers who in many other countries would be considered self-employed but who, in the French employment legislation system, are considered employees – see below. Consequently, France has been placed in this cluster.

Collective agreements concluded for the self-employed: Workers who are covered by the provisions of the French Labour Code are mainly: independent journalists, and those who work in the creative arts (actors, musicians and other performing artists) and other categories such as sales representatives (French Labour Code art. L-7313-1) and homeworkers.

Under the French Labour Code, professional journalists, irrespective of the way that they are paid, are considered to be employees (Article L7112-1).The general labour law was specifically amended in 1974 with specific legislation ("Loi Cressard") to this end. This means that professional freelance journalists have the same rights as other employees, but they are paid by the line or word, rather than in some other way. Professional journalists are covered by the national collective agreement for journalists (CCNTJ), which has been extended by the government to cover all employers in the sector, not just the employers who are directly party to the agreement. There are also specific national agreements for freelance professional journalists. One, signed in November 2008, deals with issues such as pay supplements for long service, sickness payments, the election of employee representatives, 13th month payments and paid holidays.

Actors, musicians, dancers, singers, circus performers, variety artists and others are all considered to be performing artists (artistes du spectacle) under French Labour Code, and all contracts with these artists are considered to be employment contracts, unless the conditions of the contract suggest that the artist concerned is operating as a commercial entity – through being registered with the Chamber of Commerce (Code du Travail Article L7121-3). In other words, as with freelance journalists, performing

artists are considered to be employees, irrespective of the amount paid, or the length of time for which their services are used. The law also makes it clear that their status is that of an employee, even if they have liberty of expression, own all or part of the material they use in the performance, or themselves employ one or more people to help in the performance (Code du Travail Article L7121-4). There are three separate national collective agreements which cover all performing artists and technicians. These are for venues and performances subsidised by the state at national, regional and local level (convention collective nationale des entreprises artistiques et culturelles), for the private sector (convention collective nationale des entreprises du secteur privé du spectacle vivant) and for leisure parks (convention collective des parcs de loisir). In addition, there are company-level agreements for some theatres, leisure parks and other venues. The national agreements, which have been extended by the state to cover all employers, are detailed documents covering both pay and conditions, including holidays, sickness, welfare provisions, training, health and safety and employee representation. There are detailed pay scales covering a wide range of occupations. The company-level agreements typically improve on the national-level deals.

Sales representatives also have a collective agreement[67]. Most recently, new legislation, dating from April 2021, sets out a framework for collective bargaining between the self-employed working through platforms and the platform in the delivery and personal transport sectors[68].

Other protections for the self-employed: Over the past thirty years, an alignment with social protection for employees of the general scheme has taken place as noted by the French mapping expert. For example, universal rights, covering both employees and the self-employed, were gradually implemented in terms of family policy (1978) and benefits in kind from health insurance (creation of universal health coverage in 1999 and implementation of universal health protection in 2016).

Right to strike/incidence of strike action among self-employed: Articles L-7342-5 and L-7342-6/ of the Labour Code introduces the right to strike for the independent platform workers,

Greece

Legal instrument: *Article 1 of Law 1876/1990*, *Law 4808/2021, published on 19 June 2021*

Criterion: *Those who perform their work in a situation of dependence and require protection similar to that enjoyed by employees*

Prevalence of self-employment: Greece has the highest incidence of self-employment across the EU. In 2019, the self-employment rate stood at 31.9% (OECD estimates),[69] while in 2020 it was 33.2% (World Bank estimates).[70] Therefore, one of the most distinctive features of the Greek labour market is its large share of the self-employed.

Collective bargaining: Prior to the crisis of the late 2000s, collective bargaining was characterised by high bargaining coverage, average coordination levels both vertically (across different levels) and horizontally (across different sectors and regions), with sectoral bargaining being prevalent in all sectors, including in manufacturing.[71] However, as a result of the crisis and measures introduced following successive Memoranda of Understanding with the EU, IMF and ECB (as part of the bail-out packages Greece received from April 2010 to August 2018), the collective bargaining structure has fundamentally changed and its importance weakened – although some of the crisis measures were reversed in 2018.[72] In general, it is widely acknowledged that compared to the industrial relations regime before the crisis of the late 2000s, collective bargaining has been weakened, while wage setting has

[67] Convention collective voyageurs, représentants et placiers (VRP) no. 3075
[68] See https://www.vie-publique.fr/loi/279617-ordonnance-21-avril-2021-representation-travailleurs-plateformes
[69] https://data.oecd.org/emp/self-employment-rate.htm
[70] https://tradingeconomics.com/greece/self-employed-total-percent-of-total-employed-wb-data.html#:~:text=Self%2Demployed%2C%20total%20(%25%20of,compiled%20from%20officially%20recognized%20sources.
[71] Koukiadaki, A. and Kokkinou, C., (2016b). 'The Greek system of collective bargaining in (the) crisis', in I. Tavora and M. Martinez Lucio (eds.), *Joint Regulation and Labour Market Policy in Europe during the Crisis*, European Trade Union Institute (ETUI), https://www.research.manchester.ac.uk/portal/files/84724029/Chapter_2.pdf
[72] *Ibid.*; ETUI, (2020). *Greece – Collective Bargaining*, https://www.worker-participation.eu/National-Industrial-Relations/Countries/Greece/Collective-Bargaining

been shifting away from collective agreements.[73] Collective bargaining coverage in the private sector fell from 85% in 2009 (at the onset of the crisis) to 40% in 2013 to as low as 10% in 2016.[74] OECD puts the extent of collective bargaining coverage a little higher, at 25.5% in 2016 (down from 89.8% in 2011).[75]

Self-employment and collective bargaining: The right to collective bargaining of dependent self-employed is recognised by Greek Law (under Article 1 of Law 1876/1990 concerning free collective bargaining, the right to bargaining also applies to persons who, 'while not bound by a dependent employment relationship, perform their work in a situation of dependence and require protection similar to that enjoyed by employees'. However, following Article 1 of Law 1264/1982, they are not allowed to join the trade unions that are entitled to conclude the collective agreements. Therefore, there are currently no examples of collective agreements covering these workers. [76]

Recently under the new law 4808/2021, published in June 2021 (Article 69), there is a presumption of an employment relationship between platforms and the service provider working for the platform, unless the servicer provide can: use subcontractors or substitutes to provide the undertaken services; opt among various projects or has the ability to unilaterally set the maximum number of projects that will be undertaken; provide its services to third parties (including competitors of the platform); and determine the timeframe of services adapted to his/her personal needs and not to the interests of the platform. Article 70 of this law provides for the right of trade unions to negotiate collectively and conclude collective agreements on behalf of platform workers.

In addition, two specifically designated groups of persons exist who are legally deemed to be employees, irrespective of the given features of the work they perform (see Article 37 of the Greek Act 1545/1985, Article 2(1) of the Greek Act 358/1976 and Article 6(5) of the Greek Act 1597/1986).[77]

Other protections for the self-employed: In February 2020, the Greek government through Law 4670/2020 introduced a major reform of the social insurance system, including a new system of pension contributions and rights for the self-employed. Specifically, freelancers', farmers' and self-employed persons' social insurance contributions are no longer linked to their declared income. Instead, they must choose amongst six social insurance categories, each one of which corresponds to pre-defined amounts for the contributory (primary) pension and healthcare.

Right to strike/incidence of strike action among self-employed: Under Article 70 of the new law published in June 2021, the self-employed working for a digital platform have the right to set up trade unions in order to promote their professional interests; the right to strike.

Italy

Legal instruments: *Law no. 533/1973, Law no. 335/1995, Law no. 196/1997, Law no. 30/2003, Jobs Act reform 2015, Law Decree No 101 of 2019, converted by Law No 128 of 2019*

Criteria: *Some categories of worker that are autonomous and not subordinated*

[73] Mercans, (2020). *Op.Cit.*; Koukiadaki, A. and Kokkinou, C., (2016b). *Op.Cit.*

[74] Malagardi, A., (2017). 'Working together for employment, employability and decent work - Fight against undeclared work at a tripartite Level in Greece: A good practice for the social dialogue in the time of crisis', ILO presentation at the High- Level Working Group on Employment and Labour of the Union for the Mediterranean, Barcelona, 29/3/2017

[75] OECD – Collective Bargaining Coverage Database, https://stats.oecd.org/Index.aspx?DataSetCode=TUD

[76] It is worth noting that according to the Greek law 3846/2010, a general presumption in favour of an employment relationship exists. In case the work is provided personally, exclusively or predominantly for the same employer during nine consecutive months, the existence of an employment contract is presumed. Although this is debatable, this law seems to deal more with misclassification than economic dependence. Therefore, Greece was put in cluster 4 on the basis of the clearer presumption for platform worker, tourist guides and technicians in cinema and broadcasting as opposed to cluster 3.See in that sense Annex I and Papadimitriou, C., (2020). A new concept of employee or creation of a third intermediate category?, Peer Country Comments Paper – Greece, (online) Peer Review on 'Platform Work', Germany, 12-14 October 2020, p.2 available at ,https://ec.europa.eu/social/main.jsp?langId=en&catId=1047&newsId=9746&tableName=news&moreDocuments=yes

[77] See https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_209280.pdf

Prevalence of self-employment: According to the Italian National Statistics Institute (ISTAT)[78], the total share of the self-employed has gradually declined during the past 15 years, from 25.7% of the total labour force in 2004 to 20.5% in 2019.

Collective bargaining: In Italy, collective bargaining represents the most important mechanism for regulating terms and conditions of employment for subordinated workers. Bargaining is based on a two-tier system: at the sectoral central level, national collective agreements (NCAs) are negotiated every three years, defining the main contractual arrangements, including wage levels, working conditions, job classification, working time and access to social security protections. These NCAs are legally binding only upon employees and employers belonging to the organisations that have signed them, or that choose to apply them even though they are not a member of the signatory employers' association. NCAs cannot be automatically extended to the whole sector by legislation, but a 'de facto' extension is generally set out by labour courts in case of a dispute. Second-level agreements are negotiated at the company level, in which company-specific arrangements delegated by NCAs are established, such as performance-related pay, productivity standards, and additional allowances and indemnities. Despite the absence of mechanism for the automatic extension of the application of NCAs, the overall coverage of collective bargaining is high in Italy, amounting to 80% on average of total employment, according to OECD figures.

Self-employment and collective bargaining: There are some categories of autonomous worker who are able to bargain collectively in Italy, based on case law for some types of worker, and by the legislator in the case of platform workers. However, there is considerable uncertainty relating to this area as a whole. Further, Gramano (2021)[79] states that it is not entirely clear whether the category of autonomous workers is fully entitled to the same collective rights as subordinate employees. In practice, there is little collective bargaining carried out by autonomous workers, with the exception of commercial agents, call centre operators and platform workers. Case law has engaged with this issue, although mostly in relation to the right to strike. The main collective agreements covering autonomous workers are those for commercial agents, those working in the industrial sector, the commercial sector and the artisanal sector (Gramano, 2021). Further, an agreement covering call sector workers was concluded in 2018[80].

In the case of those working on a semi-subordinate contract Co.Co.Co. – Continuous and Coordinated Contractual relationship – these workers are seen as a third category of worker, between employee and self-employed worker. The definition of these workers is that they 'collaborate with a principal under a coordinated, continuous and mainly personal relationship, although without subordination'. Co.Co.Co. workers are formally autonomous given that there is no formal subordination to the employer, but they are functionally assimilated within the company's organisational chart. The Jobs Act reform in 2015 introduced a narrower category of Co.co.co. workers, called "hetero-organised", because they are subjected to "space and time" restraints imposed by the client's organisation of the production of goods or services. This latter category is covered exactly and entirely by the law that is applied to employees.

Most recently, Law Decree No 101 of 2019, converted by Law No 128 of 2019, introduced a framework to ensure minimum levels of protection for platform riders.

Food delivery riders in Italy are classified as semi-subordinated workers with a Co.Co.Co contract (see above). However, their terms and conditions of employment have since 2018 been targeted by a government initiative aimed at providing protections to this category of workers through an ad hoc collective agreement or the introduction of a specific legislative framework. The initiative involved the major food delivery operators in the country (Deliveroo, Foodora, Glovo, Just Eat, Uber Eats, Domino's, Moovenda and Socialfood). A specific legislative framework was approved in September 2019 (Law no. 101/2019) introducing a compulsory insurance system (INAIL) in case of job-related injuries, a sickness allowance paid by the company that owns the platform (being the employer of the riders), and a new definition of compensation levels based on a mix of piecework and hourly pay. Accordingly, riders can be paid based on the number of deliveries, as long as this does not represent the prevalent payment

[78]Elaboration by Ismeri Europa using ISTAT LFS data with reference to self-employed workers (I lavoratori indipendenti)
[79] Gramano E: Italy (chapter 8), in Collective Bargaining for Self-Employed Workers in Europe (2021). Edited by Bernd Waas, Christina Hießl https://lrus.wolterskluwer.com/store/product/collective-bargaining-for-self-employed-workers-in-europe/
[80] https://www.eclavoro.it/wp-content/uploads/2018/03/rinnovo_Ccnl_call_center_010318.pdf

mode. An hourly basic salary will be recognised for all riders for each hour worked during which the worker accepts at least one call. A collective agreement is allowed to define diversified incentive and remuneration schemes, which take into account the different organisational models.

Collective agreements concluded for the self-employed: There are a range of examples of collective agreements covering Co.co.co semi-subordinated workers in areas such as call centres, private schools and universities, credit recovery institutions, and organisations providing occupational training[81].

Other protections for the self-employed: Access to social protection schemes for the self-employed in Italy is limited and fragmented. A structural characteristic of the Italian social protection infrastructure is the lack of a homogeneous social security system applicable to all of the self-employed workforce. To compensate for this lack of protection, Law no. 335/1995 on reform of the Italian pension system (the so-called "Dini reform") established an *ad hoc* pension fund, the so-called Separate Management Fund of the National Institute of Social Security (INPS), devoted to the self-employed not covered by other compulsory private pension funds and to semi-subordinated workers[82].

Right to strike/incidence of strike action among self-employed: The right to strike was extended to autonomous workers and is based on the judgment of the Constitutional Court No 222 of 1975[83]. According to this judgement, the abstention from the activity of small entrepreneurs who do not employ any other worker is not classified as a lockout; it is a form of protest similar to the strike, which is also available to the self-employed. It is therefore clear that the right to collectively abstain from work is recognised in the case of autonomous workers who experience a real situation of social precariousness, including at least coordinated continuous collaborators.

Against this backdrop, and in the time leading up to the approval of the 2019 law, a national collective agreement was signed in 2018 in the transport sector. Nevertheless, a crucial issue remains the classification of food delivery riders as semi-subordinated workers. A significant judgment of the Court of Appeal of Turin goes some way towards this, issued in 2019[84] following the appeal presented by 5 riders working for the German multinational Foodora, asking to be recognised by the employer as subordinated workers. After the first court judgment that rejected the appeal, the Court of Appeal (second degree of judgment) accepted a substantial part of the appeal. Specifically, it established that the riders have the right to receive as payment a specific wage level calculated on the salary for employees set by the national collective agreement for the logistic and transport sector. Accordingly, the riders were entitled to benefit from paid holidays, allowances in case of sickness and the 13th extra month of salary, as is the case with subordinated dependent workers. Nevertheless, the judge repealed the request to recognise the existence of discriminatory dismissal. Furthermore, the judge indirectly acknowledged the need to frame the riders in a new category of workers, located between the pure subordinated form of employment and the status of workers with a continuous and coordinated contractual relationship.

Portugal

Legal instrument:

[81] Fulton L. (2018) Trade unions protecting self-employed workers. ETUC. Brussels. Available at: https://www.etuc.org/sites/default/files/publication/file/2018-10/Trade%20unions%20protecting%20self-employed%20workers_EN.pdf

[82] Hamann A J (1997) The Reform of the Pension System in Italy. IMF working paper https://www.imf.org/~/media/Websites/IMF/imported-full-text-pdf/external/pubs/ft/wp/_wp9718.ashx by AJ Hamann

[83] For a discussion on this, see Gramano E: Italy (chapter 8), in Collective Bargaining for Self-Employed Workers in Europe (2021). Edited by Bernd Waas, Christina Hießl https://lrus.wolterskluwer.com/store/product/collective-bargaining-for-self-employed-workers-in-europe/

[84] Decision 26/2019 of 4 February 2019

Law 454/2018

Sector/category:

The transport of passengers by platform workers (TVDE – Individual Paid Transport of Passengers with Unmarked Vehicles)

Collective agreements concluded for the self-employed: In August 2018, the Portuguese national Parliament approved Law 454/2018, introducing a specific regulation for the transport of passengers by platform workers (TVDE – Individual Paid Transport of Passengers with Unmarked Vehicles). It created the legal figure of the TVDE-operator as the sole entity that is entitled to hire TVDE-drivers, thus functioning as a type of mandatory mediator between the electronic platforms and the drivers. The electronic platform is not allowed to make a contract with the driver and it is the TVDE-operator who hires the driver. The Law 45/2018 in its article 9 obliges the drivers to have a written contract with a TVDE-operator and obliges the TVDE-operators to comply with all legal regulations of the activity, "including those resulting from labour legislation, health and safety at work and social security". The TVDE-operator may hire the driver as an independent worker or as an employee, but the law refers explicitly to the "presumption of an employment relationship" in Article 12 of the Labour Code, thus strongly reinforcing the assumption that the driver is a dependent worker and protecting them under the law.

Spain

Legal instruments: *Royal Decree-Law 9/2021 of 11 May amending the consolidated text of the Workers' Statute, approved by Royal Legislative Decree 2/2015 of 23 October, to guarantee the labour rights of persons engaged in distribution in the field of digital platforms*

Sector/category: Riders working for digital platforms, as set out in Royal Decree-Law 9/2021

The "Riders Act", adopted on 11 May 2021, sets out a presumption that all platform workers working as riders are employees. Therefore, platforms will be obliged to hire these workers on the basis of employment contracts, unless they can prove that they are genuinely self-employed. This means that Spain is placed in this cluster as well as cluster 3 above.

Cluster 5 : Legal systems where either (i) national competition law provides an exception to the application of the cartel prohibition so that (some) self-employed can bargain collectively or (ii) national competition authorities have adopted guidelines according to which they will not enforce the cartel prohibition against (some) self-employed under certain conditions

Ireland, Netherlands

In this cluster, countries have turned to competition law to give specific self-employed enhanced employment rights, in the form of exception to the application of national competition legislation and/or non-priority enforcement. There are two countries in this cluster. The specific information on individual countries that has lead us to placing these countries into this cluster is set out below.

Ireland

Legal instrument: *Competition (Amendment) Act 2017*

Criteria: *Exemption from Section 4 of the 2002 Competition Act for self-employed voice-over actors, session musicians and freelance journalists and potentially other groups of self-employed.*

Prevalence of self-employment: Data from the Central Statistics Office (CSO) Quarterly National Household Survey records 331,200 individuals recorded as self-employed in 2019, amounting to 14% of the workforce[85].

[85] https://www.cso.ie/en/releasesandpublications/er/lfses/lfsemploymentseriesq12019/.

Collective bargaining: Collective agreements in Ireland are not binding and completely voluntary and therefore the importance of collective bargaining as a means of regulating the employment relationship is entirely based on the will of the employees and the willingness of the employer to recognise unions and engage in collective bargaining.[86] A series of National Partnership Agreements provided a non-binding framework for pay bargaining from 1987 to 2009. However, this system collapsed as a result of the economic crisis, and the country returned to company level bargaining in the private sector with a relatively low level of coverage. Trade unions have emphasised that collective bargaining is a critically important means of regulating the employment relationship in Ireland.[87] The coverage of collective bargaining is however decreasing in Ireland as all the Foreign Direct Investment companies coming into Ireland are non-union and there is therefore a significant decline in trade union density. However, collective bargaining is still very important in different sectors for employees, particularly the public service and construction sectors. [88]

Self-employment and collective bargaining: The enactment of the Competition (Amendment) Act 2017 gives certain categories of the self-employed the right to enter into collective agreements. This Act provides a specific exception to the application of section 4 of the 2002 Competition Act (which prohibits anti-competitive agreements, decisions and concerted practices, and which mirrors Article 101 of the TFEU) for self-employed voice-over actors, session musicians and freelance journalists and provides a mechanism which could allow, in strictly defined circumstances, other groups of the self-employed to engage in collective bargaining in the future.

Other protections for the self-employed: In recent years (since 2017, in particular), more social protection payments that were traditionally confined to 'employees' have been extended to the self-employed; the most significant include Jobseeker's Benefit (unemployment assistance), Treatment Benefit, and the Invalidity Pension. It is now estimated that the self-employed have access to benefits accounting for more than 80% of social insurance expenditure.[89] In Ireland, healthcare is mainly funded through general taxation and thus not linked to employment status (healthcare is also partly financed by private insurance). Ireland has a 'pay-as-you-go' statutory public pension scheme, under which the self-employed are mandatorily covered There is also the State Pension (Non-Contributory) payment, which is a means-tested payment for people age 66 or over, who do not qualify for State Pension (Contributory) on their record of social insurance contributions. Private pension schemes are strongly encouraged, but not mandated, in the Irish system[90].

Right to strike/incidence of strike action among self-employed: The law does not permit any self-employed contractors to stage boycotts or go on strike in Ireland.[91] However, one interviewee for this study noted that Deliveroo riders (i.e. platform workers, an estimated 70% of whom are Brazilian students) staged a strike recently (turned off apps for a few hours) in a bid to obtain improved pay and working conditions, increased security and to be taken seriously by the police when they are victims of crime.

Netherlands

Legal instruments: *The Competition Act; Dutch Authority for Consumers and Markets's (ACM's) Guidelines Price arrangements between the self-employed*

[86] Information obtained through consultation with stakeholder (employment lawyer, January 2021); https://www.etui.org/covid-social-impact/ireland/labour-market-reforms-in-ireland-background-summary.
[87] Information obtained through consultation with stakeholder (Trade Union, February 2021).
[88] Information obtained through consultation with stakeholder (employment lawyer, January 2021).
[89] Department of Finance & Department of Employment Affairs and Social Protection (2018). The use of intermediary-type structures and self-employment arrangements: Implications for Social Insurance and Tax Revenues. Dublin. Government Publications, January 2018, available at: http://www.dsfa.ie/en/downloads/ReportIntermediaryStructuresSelfEmploymentJanuary2018.pdf; Department of Employment Affairs and Social Protection (2019). Jobseeker's Benefit for the Self-Employed, available at: https://www.gov.ie/en/service/a030c1-jobseekers-benefit-self-employed/; Spasova, S., Bouget, D., Ghailani, D. and Vanhercke, B. (2017). Access to social protection for people working on non-standard contracts and as self-employed in Europe. A study of national policies. European Social Policy Network (ESPN), Brussels: European Commission, at p.35.
[90] https://www.revenue.ie/en/employing-people/what-constitutes-pay/employees-pension-payments/personal-retirement-savings-account-prsa.aspx; accessed August 26 2020.
[91] Information obtained through consultation with stakeholder (pilot, February 2021).

https://www.acm.nl/sites/default/files/documents/2020-07/guidelines-on-price-arrangements-between-self-employed-workers.pdf

Criteria: *Bagatelle exception to the cartel prohibition contained in the Act; agreement setting a minimum rate for the self-employed that is not higher than necessary for safeguarding the subsistence level*

Prevalence of self-employment: In the Netherlands there are (depending on the definition) about 1.6 million solo self-employed. This number equals approx. 17% of the total workforce.

Collective bargaining: The vast majority of employees in the Netherlands are covered by collective bargaining, mostly at industry level. However, many large companies negotiate their own agreements. Negotiators generally follow the recommendations agreed at national level. The pay and conditions of most employees are set through collective agreements reached either at industry or at company level. Under Dutch law, collective agreements can be declared universally binding by the Minister of Social Affairs.

Self-employment and collective bargaining: The Dutch Competition Authority has adopted guidelines interpreting the Dutch Competition Act and setting priorities in relation to price arrangements between solo self-employed.

Interpreting Section 6(3) of the Dutch Competition Act, the ACM has given a broad interpretation of the existing exemption from the cartel prohibition under what it calls "efficiency improvement", for the benefit of solo self-employed. For that purpose, four conditions have to be met: a) The arrangements safeguard an objectively justified level of social protection; b) Without the arrangements, this protection will not be established, and the arrangements do not go beyond what is necessary for achieving this objective; c) The direct and indirect buyers will get a fair share of the benefits of the arrangements; and d) Sufficient room still remains for competition between the self-employed workers[92].

The ACM also states, in relation to Section 7 of the Dutch Competition Act that the self-employed can make their own minimum price arrangements if an agreement is of minor significance, i.e.:

> (i) the agreement involves no more than eight companies with an aggregate turnover in the provision of their services not exceeding EUR 1.1 million in the preceding calendar year (turnover threshold); OR
> (ii) the aggregate market share of the companies that are party to the agreement does not exceed 10% on any relevant market, and the agreement does not (potentially) have an appreciably adverse effect on trade between the Member States (market share threshold).

In addition, the ACM states that it will not impose any fines on arrangements between and with the self-employed that aim to set a minimum rate for the self-employed that is not higher than necessary for safeguarding the subsistence level[93].

The ACM has also provided its own interpretation of the FNV Kunsten ruling by stating that the self-employed are free to make minimum price arrangements if they are solo self-employed and not seen as an undertaking, and collective bargaining agreements are possible.

Collective agreements concluded for the self-employed: There are some examples of collective agreements covering the self-employed. For example, agreements exist for architects[94] and in theatre and dance[95], which have a minimum rate for the self-employed. The Minister has declared both of these agreements universally binding. However, the Minister made a reservation with regard to the minimum rate for the self-employed covered by the agreements, noting that this provision can only apply to false self-employed as referred to in the FNV Kunsten case. There is also an agreement for painters

[92] ACM Guidelines: Price arrangements between self-employed workers p.19. https://www.acm.nl/sites/default/files/documents/2020-07/guidelines-on-price-arrangements-between-self-employed-workers.pdf
[93] ACM Guidelines: Price arrangements between self-employed workers p.25. https://www.acm.nl/sites/default/files/documents/2020-07/guidelines-on-price-arrangements-between-self-employed-workers.pdf
[94] Onderhandelaarsakkoord-CAO-Architecten: https://www.sfa-architecten.nl/cao/
[95] https://www.napk.nl/wp-content/uploads/2019/12/Cao-TD-2020-2021.pdf

(Schilders)[96], which requires that solo self-employed painters should pay into the industry pension fund, in addition to an agreement for bus transport[97] ,which requires that the provisions of the agreement, including those relating to pay, should also apply to self-employed bus drivers used by bus operators.

Other protections for the self-employed: The self-employed in the Netherlands have medium to low access to social insurance benefits: they can opt into some insurance-based schemes but not others. For example, they are entitled to maternity leave and pay but not sick leave and pay, unemployment benefits or pensions. However, there is a social safety net based on the social minimum that the self-employed can apply for. This generally gives a much lower income then unemployment benefits.

Right to strike/incidence of strike action among self-employed: Based on interviews carried out for this study, there are some examples of strikes in the branches of taxi drivers and meal delivering, because of unwillingness to bargain with the (organised) self-employed in this sector.

[96] https://www.fnv.nl/cao-sector/bouwen-wonen/schilders/cao-schilders
[97] https://www.fnv.nl/cao-sector/toer/cao-besloten-busvervoer

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