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Commission



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

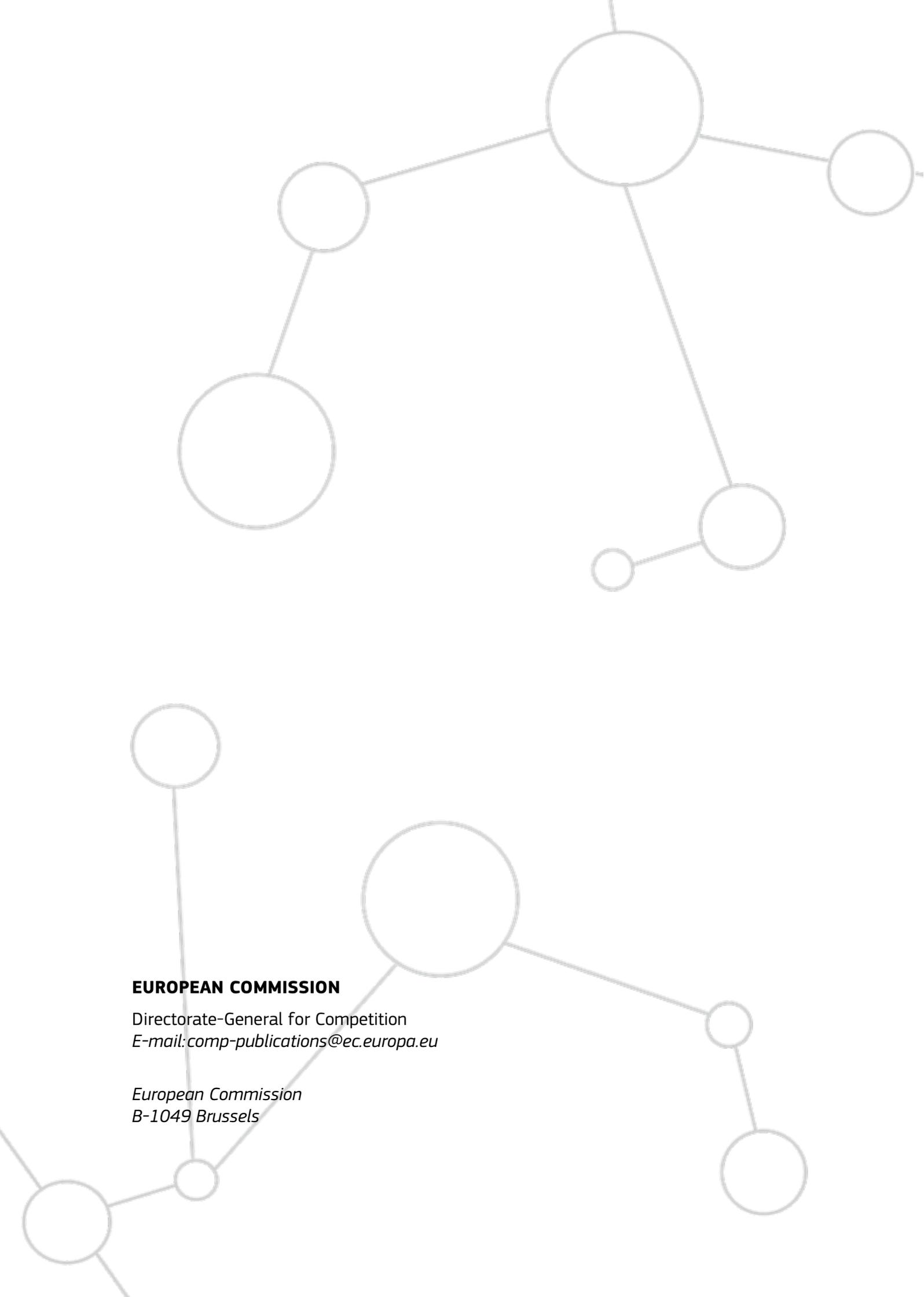
Prepared by



Annex 1

Country-level reports

Competition

An abstract graphic consisting of several circles of varying sizes connected by thin lines, forming a network-like structure. The circles are arranged in a way that suggests a hierarchy or a flow of information, with some larger circles and some smaller ones. The lines are thin and grey, and the circles are also thin and grey.

**EUROPEAN COMMISSION**

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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 1 – Country-level reports

13 October 2021

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Luxembourg: Publications Office of the European Union, 2022

Catalogue number: KD-04-22-037-EN-N

ISBN: 978-92-76-56994-7

DOI: 10.2763/41707

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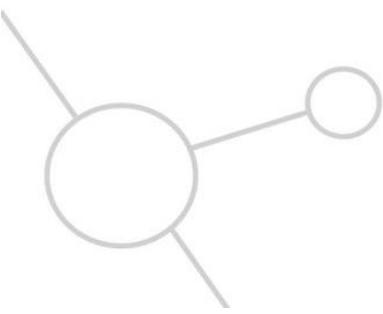
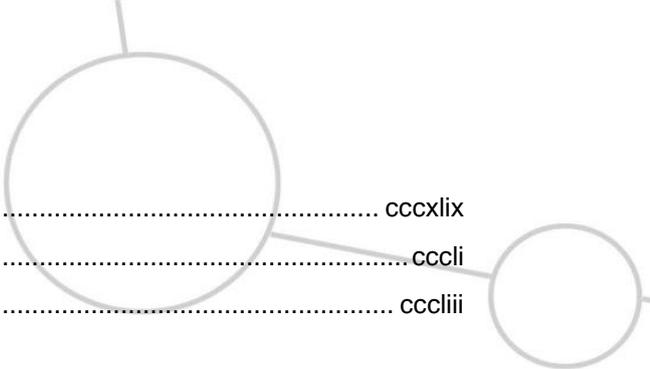
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# Introduction

This Annex reproduces the country mapping research that was undertaken by our national experts for each of the 27 EU Member States. This research was carried out during January-April 2021, based on desk research and interviews with experts such as competition and labour lawyers, competition authorities, government representatives, social partners and other relevant stakeholders and experts. We aimed for five interviews per Member State, but the actual number of interviews varies considerably by country, due to factors such as availability and willingness of experts to be interviewed, and the relative importance of the topic in individual countries.

The information contained in these country mapping reports supports the clustering exercise that is set out in Annex 5 of this report. These reports contain information relating to the incidence and trends in relation to self-employment in the Member States, statistics relating to platform working, information about collective bargaining and the strength of the social partners, the legal situation in relation to employment law and competition law, and how this interacts with collective bargaining for self-employed workers, any relevant case law, and any relevant collective agreements that cover self-employed workers. They also cover the social security and tax situation of self-employed workers.

**It is important to stress that these mapping reports are intended as points of information to inform the clustering rather than polished stand-alone reports, as the length, level of detail of information and issues covered varies greatly between reports.**

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# Austria

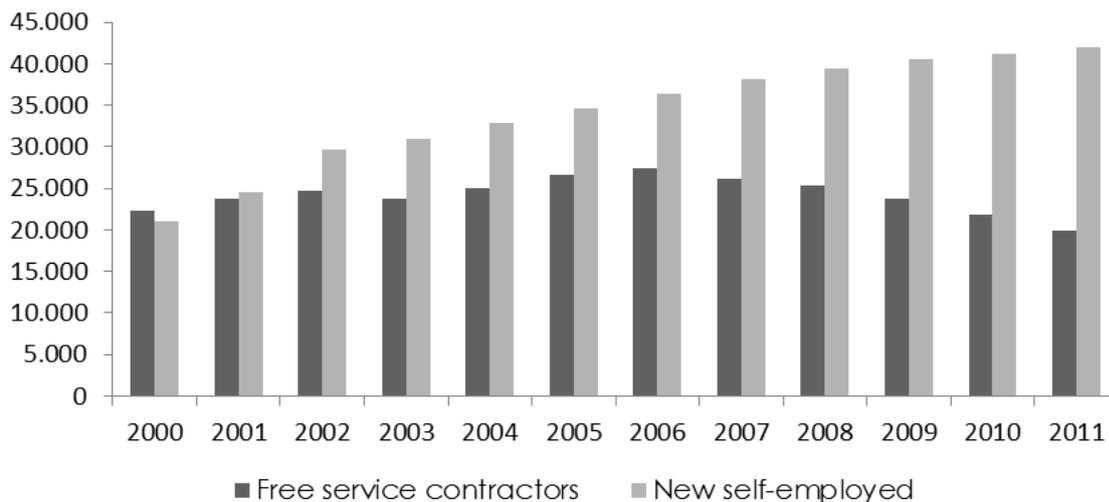
## Background information

Overall, the share of self-employed workers in Austria has remained relatively stable over the past decade - approximately 13% of all employees are self-employed (IZA 2013<sup>1</sup>).

However, according to Eurofound<sup>2</sup>, 36% of self-employed workers in Austria said that they were working in this way because there were no other alternatives for work. This is higher than the European average of 20% of self-employed workers who said this.

Dependent self-employment occurs in various ways in Austria, either in hybrid employment categories (“new self-employed”, “free service contractors” or “contractors of work and services”) or as own-account workers – see below for more details. As shown in the following graph, the number of free service contractors decreased between 2000 and 2011, after reaching its highest level in 2006, while the number of “new self-employed” workers steadily increased, doubling from 21,000 in 2000 to 42,000 in 2011.

Together with the rise over time in own-account workers, this development indicates that the number of dependent self-employed workers is increasing. One reason for this is recent legal change that implies that free service contractors are treated in a manner similar to employees, thus making this employment type less attractive to employers.



Source: IZA (2013)

In terms of individual sectors, there are around 274,000 employees working in approximately 31,000 firms in the Austrian construction sector. The share of one-person firms (own-account workers) is approximately 35%, compared to 55% on average across all sectors.

The creative sector<sup>3</sup> is characterised by a high share of own-account workers. In 2008, 63% of all firms in the creative sector were own account workers (compared to 37% in the whole economy). The workforce within the creative sector is very heterogeneous and includes highly trained workers in highly regulated professions as well as a large number of workers in “free professions” that do not require any

<sup>1</sup> IZA Research Report No. 54 (2013). Social Protection Rights of Economically Dependent Self-employed Workers

<sup>2</sup> Eurofound (2017). Exploring self-employment in the European Union

<sup>3</sup> The creative sector consists of architecture, design, music, books & artistic occupations, radio & TV, software & games, publishing, video & film, advertisement, libraries, museums as well as botanic and zoological gardens

formal qualification certificate. Dependent forms of self-employment, atypical employment and network-based production forms are increasingly common within many parts of the creative sector.

Workers in the creative sector are not deemed to be particularly vulnerable, as they do include some highly trained and therefore well-paid workers. In the construction sector, pay is not as high (although no detailed figures are available), but there are no reports of these workers being particularly vulnerable. Overall, in Austria, according to CEPS (2018<sup>4</sup>), platform work (defined here as paid services intermediated via an online platform) is especially prevalent in the context of food delivery and personal transportation. These activities are centred in the capital Vienna; outside of this, platform work is not well-known or a subject of much public discourse in the country. The debate mostly takes place in popular media and among social partners – see below for more details.

A quantitative survey on self-employed persons without employees conducted by Schubert and Keck (2006)<sup>5</sup>, provides some information on the sectors in which self-employed people work. 337 people were interviewed for the survey; 84% of them hold a trade licence, 18% are 'new self-employed' or holders of a 'free service contract' and around 5% belong to the category of traditional liberal professions (klassische freie Berufe), such as lawyers, physicians or architects (multiple answers were possible, such that the percentages add up to more than 100%).

A great amount of variety exists in Austria's platform economy in terms of services offered and manner of platform operation. The scale of tasks varies from small to large, requiring basic or advanced skills. Workers and platform, or workers and clients, can be matched in a number of ways, including through offers and contests.

According to a survey carried out by Huws and Joyce (2016<sup>6</sup>), with financial support from the Arbeiterkammer Wien (Vienna Chamber of Labour), based on an online survey of just over 2,000 workers, around 18% of the respondents indicated they had found work via sharing economy platforms in the last year. 5% of the respondents indicated they found paid work via online platforms at least once a week, while 9% did so at least once a month. Just over half (59%) of the platform workers were men. Moreover, platform work is somewhat more likely to be performed by younger people. Most platform work is conducted as a side activity: of the 451 Austrians in this survey who had found paid platform work, only 2% indicated they receive all their income from platform work, 11% receive more than half, while 59% earn less than half. However, this survey may potentially be overestimating the incidence of platform work in Austria, according to experts interviewed by CEPS (2018). Further, a Eurobarometer telephone survey carried out in 2016 found that less than 2% (7 out of 501 respondents) regularly offer services using platforms (on a monthly basis). This figure is less than a quarter of the findings of the Huws and Joyce survey.

There are no data available on the phenomenon of false self-employment that refers to self-employed without employees only. However, a survey on 'new self-employed' workers (Fink et al. 2005<sup>7</sup>), which encompasses 81% self-employed people without employees, revealed that the thesis that most 'new self-employed' persons are 'spuriously' self-employed (scheinselbständig), i.e. working for one client only, is not applicable. This study found that 65% of all respondents had more than one client, whereas 38% were working for more than five different clients. However, 35% of the interviewees could be seen to be close to spurious self-employment as their professions were, for example, kitchen help, waiter/waitress, personal secretary or financial accountant. If some qualitative aspects are considered, the survey concluded that about 10% to 20% of the people interviewed were spuriously self-employed. These findings, however, somewhat contrast with the results of other studies and surveys, which suggest that an indefinable but supposedly significantly higher share of 'freelance contractors' and 'new

<sup>4</sup> Employment and working conditions of selected types of platform work. National context analysis: Austria (2018) Willem Pieter De Groen, Zachary Kilhoffer and Karolien Lenaerts (CEPS), Elias Felten (University of Salzburg)

<sup>5</sup> Schubert, Martina/Keck, Wolfgang (2006): Österreichischer Bericht über die Befragung von Ein-Personen-Unternehmen (2006), Version 0.2, Wien

<sup>6</sup> Crowd work in Europe. FEPS Studies. Preliminary results from a survey in the UK, Sweden, Germany, Austria and the Netherlands Ursula Huws, Neil H Spencer Joyce Simon Joyce (2016).

<sup>7</sup> Fink, Marcel/Riesenfelder, Andreas/Tálos, Emmerich/Wetzel, Petra (2005): Forschungsbericht. Neue Selbständige in Österreich, Wien

self-employed' persons can be classified as spuriously self-employed, at least in some branches of the economy (e.g. the private adult education sector, call centres, etc<sup>8</sup>). These alternative studies usually take into account not only the personal and economic dependence from one (main) client but also other indicators (indicating a relationship of actual, not formal subordination to the quasi-employer/s) as criteria for examining actual dependence

### Collective bargaining framework

The main actors in Austrian industrial relations are the Österreichische Gewerkschaftsbund (ÖGB, Austrian Trade Union Federation), which is the umbrella organisation for trade unions; Arbeiterkammer (AK, Chamber of Labour); Wirtschaftskammer Österreich (WKÖ, Austrian Federal Economic Chambers); and Landwirtschaftskammer (LK, Chamber of Agriculture).

Austrian employment law states that not only trade unions with voluntary membership, but also representative bodies of employers and employees characterised by mandatory membership, can conclude legally binding collective agreements. Minimum wages are determined by collective agreements, which apply to approximately 98% of the Austrian workforce (Eurofound 2009)<sup>9</sup>. Collective agreements and therefore minimum wages only apply to Austrian platform workers who are formally employed, and only if the platform is a member of the concluding party, which requires that the platform is in Austria.

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. Consequently, 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 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%. This – by international standards – extremely high coverage rate is mainly since almost all agreements are concluded by subunits of the WKÖ, of which membership is obligatory.

As is the case in Germany, wage bargaining in Austria is strongly coordinated across the economy. This is because a practice of 'pattern bargaining' prevails, in which the metalworking industry takes on a leading role as the first major sector conducting wage negotiations in the annual bargaining process. The results have a considerable signalling effect for other sectors and are taken as a role model. In practice, though, they often mark one of the highest wage agreements compared to other sectors due to the relative strength of the metalworkers' trade unions. Despite this high degree of bargaining coordination, Austria's collective bargaining system is not marked by centralised wage-setting. While trade union membership in Austria is voluntary, all employees (including free service contractors) are obligatory members of the workers' association (*Arbeiterkammer*). On the other hand, all self-employed workers are obligatory members of the employers' association (*Wirtschaftskammer*). This means that self-employed workers are counted on the 'other side' of the labour market, as their official status automatically leads to membership in an employer's association. Therefore, their interests are not aggregated and represented (IZA 2013).

There are three main organisations that organise the interests of self-employed workers:

<sup>8</sup> ÖGB, AK (2003) Österreichischer Gewerkschaftsbund (ÖGB)/Arbeiterkammer (AK) (2003): *Atypisch beschäftigt – typisch für die Zukunft der Arbeit?*, Wien; Wimmer, Günter (2004): *Private versus öffentliche Anbieter sozialer Dienstleistungen (Diplomarbeit)*, Wien; Pernicka, Susanne/Aust, Andreas (ed.) (2007): *Die Unorganisierten gewinnen. Gewerkschaftliche Rekrutierung und Interessenvertretung atypisch Beschäftigter – ein deutsch-österreichischer Vergleich*, Berlin

<sup>9</sup> Eurofound (2009), 'Austria: Wage formation', Dublin.

- chambers of commerce (covering only self-employed workers).
- chambers for liberal professions (the self-employed or self-employed and employees).
- a trade union for private sector employees, graphical workers and journalists (employees and self-employed workers).

All three undertake awareness-raising activities about certain issues such as health and safety, as well as offering training, giving access to networks, providing support with taxes and social security issues, and offering other support. 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. Most businesses in Austria are therefore covered by the chambers, although there are exceptions such as the media, private training, and social and healthcare services, which are exempt from mandatory membership.

An umbrella organisation in Austria is the Federal Conference of Liberal Professions (BUKO), an umbrella organisation for all chambers of the liberal professions such as the Austrian Medical Doctors' Chamber, the Austrian Chamber of Pharmacists, the Austrian Chamber of Dentists, the Austrian Chamber of Notaries, the Austrian Chamber of Patient Attorneys, the Austrian Bar Association, the Austrian Chamber of Public Accountants, the Austrian Chamber of Veterinarians and the Austrian Chamber of Architects and Engineering Consultants. Half of these cover only self-employed workers, and the other half both self-employed workers and employees, depending on the occupation covered.

During the past two decades, the main trade union confederation ÖGB and its affiliates have extended their membership domains to self-employed workers without employees. For some years now, the unions have seen the need to dedicate increasing resources to organising new (and continuously increasing) member groups, to revitalise their organisations. In particular, the GPA-DJP launched a large-scale reform of its organisation in June 2000, aimed at recruiting new social groups such as dependent self-employed workers.

The independent trade union GPA-djp<sup>10</sup> (Union of Private Sector Employees, Graphical Workers and Journalists) organises free service contract holders and the newly self-employed. A particular interest group for employees with atypical employment relationships – called work@flex – was formed within the GPA-djp. Many of the predominantly white-collar workers organised by GPA-djp have employment relationships on the border of dependent employment and self-employment. GPA-djp covers 15% of the self-employed in its sector and is very active. They organise awareness-raising campaigns on precarious work and false self-employment. A website called Watchlist-Prekaer<sup>11</sup> has been created to inform, share experiences, and offer advice when needed.

In Austria, the Labour Constitution Act (Arbeitsverfassungsgesetz) states in paragraph 4 that collective agreements can only be signed by bodies whose decision-making is independent of the other side. This means that workers who employ other workers cannot be involved in union decision making. This conflict of interest, between workers and employers, is described by the ÖGB Austrian union confederation as a basic principle of Austrian employment law.

In principle, the Labour Constitution Act sees no role for collective bargaining in setting term and conditions for self-employed workers 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 agreements to be negotiated and signed.**

However, by sector, some self-employed workers are organised in trade unions. For example, in the case of journalists, both freelancers and employees are represented by the GPA, which is the union for non-manual employees in the private sector, as a result of the GPA-djp, the journalists' printing and paper union, merging with the GPA in 2006.

<sup>10</sup> <https://www.gpa.at/>

<sup>11</sup> <https://www.watchlist-prekaer.at/beratungsangebot>

With regard to 'permanent freelance staff' (*ständige freie Mitarbeiter*) in the print media sector, in 1999 a collective agreement was first concluded for freelance journalists of daily newspapers by the journalism section of the KMSfB and the VÖZ. This is the first ever and – thus far – only collective agreement for a certain form of 'freelance contractors', i.e. the 'permanent freelance' journalists. This agreement contains regulations on pay schemes and extra remuneration, provisions on copyright and procedures regarding the termination of the employment relationship, as well as rules on the partial extension of the works council's representational domain to freelance staff. The most recent version of this agreement dates from 2016<sup>12</sup>. A similar agreement setting minimum pay standards for journalists of monthly journals and magazines was achieved for the first time in 2005 (Blaschke et al 2007<sup>13</sup>).

Regarding freelance journalists at the ORF, the KMSfB (through works councillors organised by the union) and the ORF management concluded a works agreement which grants the freelance staff rights (in terms of labour law and co-determination) that come close to those of 'standard' employees.

In the private adult education and training sector, which is one of the rare business areas in Austria that do not fall within the representational domain of the WKÖ, a first ever collective agreement was concluded in February 2005 by a voluntary employer association and two unions, i.e. the then white-collar GPA and the then blue-collar Commerce, Transport and Traffic Workers' Union (Gewerkschaft Handel, Transport, Verkehr, HTV, now vida). The agreement contains a clause whereby the bargaining parties commit themselves to continuing negotiations in order to improve the economic and social situation of self-employed workers in the sector, who are not covered by the agreement. Such a clause explicitly addressed to formally self-employed workers is – apart from the media sector – unique in Austria's tradition of collective bargaining (Eurofound 2009).

In the call centre industry, where around 30% of all call centre agents are thought to be 'free-service contract' workers (which is unlawful in many cases), social partner talks were initiated between WKÖ and GPA-DJP in 2006. These talks, aimed at achieving legal certainty regarding the sector's employment relationships for both employers and employees, were opened after the GPA had begun to initiate proceedings on behalf of call centre agents against some employers who were suspected of intentionally bypassing labour law. Specifically, the social partners were planning to jointly set up a regulatory framework, providing a clear-cut demarcation between 'standard' employees and 'free-service contract' workers. From GPA's point of view, binding regulations on working hours and payment for atypical workers should also be established. GPA aimed to release call centres from the general trade collective agreement and to negotiate a specific industry agreement for call centres, which would include regulations on the use of 'free service contracts'. Employers' reactions to this initiative were mixed and no subsequent developments took place.

In terms of employee representation at company level, a works council exists at Foodora, supported through the trade union Vida. Foodora is a food delivery service that utilises bicycle couriers. While works councils may only contain employees as members, the Foodora works council allows the self-employed couriers of Foodora to take part in discussions on an informal basis. The works council had been in negotiations with the platform concerning provision of services such as bike repair as well as wages.

The legislator has provided for an official procedure called an extension order (*Satzungserklärung*), whereby a collective agreement (or part of it) can be extended to include employment relationships of essentially the same nature which are not covered by an agreement. An extension order is issued by the Federal Arbitration Board (Bundeseinigungsamt) on application from an employer or employee organisation possessing the capacity to conclude agreements. In practice, such a procedure is relatively unusual, since there are only a few areas of employment which are not covered by a collective agreement. They also do not cover self-employed workers.

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<sup>12</sup><https://www.kollektivvertrag.at/kv/tageszeitungen-redakteure-u-reporter-ang/tageszeitungen-redakteure-u-reporter-gesamtvertrag-fuer-freie-journalistinnen-zusatz/4184546>

<sup>13</sup>

However, in Austria it is compulsory for companies to be member of employers' associations, which can be seen as a functional equivalent, resulting in high collective bargaining coverage. Employers are obliged to be members of the Chamber of Trade and Commerce, which is the collective bargaining partner from the employers' side.

No reports of a retaliation action against a company following its refusal to negotiate with self-employed services providers were found during research.

## Legal framework

*Main relevant legal provisions: Labour Constitution Act Article 4, Journalist Law Part 2, articles 16-23, Home Work Law Part 5, articles 43-50*

Austrian law contains the employment statuses of Arbeitnehmer (employee), Selbstständiger (self-employed), and an intermediate category of arbeitnehmerähnliche Person (employee-like person). For details, see below.

Austria is one of the many countries where dependent employment is defined by the criterion of legal subordination. However, it has been recognised that a strict dichotomy between dependent employment and the autonomy of self-employment did not reflect the actual situation in the labour market, and consequently an extensive social security reform took place in 1997, defining several hybrid categories of employment and extending certain right to groups of self-employed

Therefore, as in Germany, some employment regulations are also applicable to 'employee-like persons' (*arbeitnehmerähnliche Personen*). 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.

There are different types of hybrid status of worker. These are:

- Workers on free service contracts (*freie Dienstnehmer*), a type of contract that was introduced in 1997. For social security purposes, workers on these contracts are treated as employees, to whom the General Social Security Act (Allgemeines Sozialversicherungsgesetz, ASVG) applies. In terms of tax, however, the fiscal regime applicable is that which applies to the self-employed. They provide on-going services, often to a single employer for a long period of time, even if it is legally conducted on a fixed-term basis. This means they are dependent on the client, who as their employer normally also has to provide their working materials. In 2008, Austria included free service contract workers in the unemployment and health scheme, and they now also have the right to take parental leave and are thus treated similar to employees.
- New self-employed workers (*neue Selbständige*). This category was introduced in the General Social Insurance Act in 1998 as a residual category in order to avoid self-employed workers escaping from paying social security. This category is not recognised in labour law. They are obligatory part of the sickness, work accident and pension insurance system if they earn over a certain amount per year. This category contains a heterogeneous group of workers, such as scientists, artists and journalists.
- Contractors of work and services (*Werkvertragnehmer*). These workers have a contract for work and services without a trade licence, or are freelance workers in some liberal professions (e.g. psychologists, psychotherapists, lecturers and trainers, etc.). They are executors of clearly defined tasks for clients rather than continual tasks for the same client. They can also subcontract their work, putting them in a middle position, and most labour law regulations do not apply to them. Like new self-employed workers, they are obligatory part of the sickness, work accident and pension insurance system if they earn over a certain amount per year. Despite seemingly being more independent, they often fall into the category of dependent self-employment as they are increasingly used to replace "standard" with "non-standard" employment relationships.

These categories of dependent self-employment are still mainly seen as self-employed in terms of labour law, meaning that specific employee provisions on working time and health and safety do not apply to them. However, in terms of social security, they are treated similarly to employees, following a social security reform in 2008 (see below).

In Case C-681/11 (*Bundeswettbewerbsbehörde, Bundeskartellanwalt v Schenker & Co. AG and Others (Schenker)* [2013]) the CJEU found that a cartel limiting prices and fixing output, with a maximum market share of less than 4% of the relevant market in Austria was in breach of Article 101 TFEU. Importantly, the judgment went against an assurance, which had been issued by the Austrian competition authority that such an agreement would be exempt. In terms of the significance of this judgement for collective bargaining, it would seem to reinforce the principle that any type of price fixing, even if it does not cover a large market share, contravenes competition law.

Platform workers are usually not considered to be employees. However, CEPS (2018) found that a minority of Austrian platform workers are employees by merit of an employment contract, which establishes an employment relationship between platform worker and platform. Two illustrative examples are BOOK A TIGER, a cleaning service, and Foodora, a food delivery service that utilises bicycle couriers. All cleaners for BOOK A TIGER are employees, while expert interviewees for the CEPS study indicated that a minority of couriers working for Foodora are employees.

Relatedly, some scholars have discussed when platform workers could meet criteria for personal dependence on a platform, and thus be classified as an employee. For example, Risak (2015; 2017<sup>14</sup>) and Warter (2016<sup>15</sup>) write that if a platform specifies the timeframe in which a task must be completed, it is indicative of personal dependence, but not necessarily sufficient to prove it.

### Labour market trends and other factors

The Austrian government has encouraged research and debate on platform work, and the active participation of social partners in discussions. According to expert interviewees for the CEPS study (2018), the Austrian government under the former ruling coalition, headed by the Sozialdemokratische Partei Österreichs (SPÖ, Social Democratic Party of Austria), was active in promoting dialogue on platform work between platform workers and platforms. The SPÖ-led coalition emphasised that platform work has risks for working and employment conditions, but potential to create new employment.

There is no specific debate in Austria about collective bargaining and competition law as such, although Case C-681/11 (*Bundeswettbewerbsbehörde, Bundeskartellanwalt v Schenker & Co. AG and Others (Schenker)* [2013]) does seem to reinforce the principle of forbidding price fixing (see above). In terms of individual sectors, one of the interviewees for this study spoke of the situation of self-employed court translators and interpreters, who are covered by fixed rates for their services. They thought that collective bargaining would not be a suitable solution, as there is no counterpart in terms of employer, and trade union density among these workers is very low.

Overall, the debate on platform work in Austria has taken place largely among social partners and in popular media, such as newspapers. The Austrian Chamber of Labour has been especially active in facilitating discussions among platform workers, platforms, and traditional industries, as well as commissioning research. In the newspapers and public media, the debate largely concerns whether platform work is desirable, as remuneration can be low, and working conditions are often perceived as less favourable than in other forms of work. On the other hand, the debate highlights the benefits of forms of labour that offer workers more flexibility. Most discussion focuses on the advantages and disadvantages of local platform work activities through platforms like Uber and Foodora.

<sup>14</sup> Risak, M. (2015), 'Crowdwork - eine erste rechtliche Annäherung an eine "neue" Arbeitsform', *Zeitschrift für Arbeitsrecht und Sozialrecht*, Vol. 1, pp. 11-19.

Risak, M. (2017), '(Arbeits-)Rechtliche Aspekte der Gig-Economy', in Lutz, D. and Risak, M. (eds.), *Arbeit in der Gig-Economy*, ÖGB-Verlag, Vienna.

<sup>15</sup> Warter, J. (2016), *Crowdwork*, ÖGB-Verlag, Vienna.

There have in the past been some initiatives on the part of trade unions to redefine and modernise the present concept of 'employee', by making the existence of economic dependence the only criterion for classifying people as employees, regardless of working time, workplace and nature of work. Accordingly, labour law would be extended to cover 'self-employed workers. However, this initiative has proved unsuccessful thus far (Eurofound 2009).

According to IZA (2013)<sup>16</sup>, there is evidence that regulations that increase social and labour market protection for certain groups of labour market participants may increase dependent self-employment as firms have an incentive to find "cheaper" and more flexible ways to deploy labour. For instance, when new regulations in Austria increased the social security protection of free service contractors and the subsequent costs of deploying them, employers increasingly replaced them with contractors of work and services or "regular" self-employed workers.

In terms of trends and policy on a sectoral level, despite the absence of figures on dependent self-employment within the construction sector, both the trade unions and employers' associations state that the numbers of dependent self-employed have been increasing over the last years. The issue of dependent self-employment has recently gained more attention within the Austrian Construction and Wood Workers' Union (Gewerkschaft Bau-Holz), with the main concern that the increasing numbers of dependent self-employed comes at cost of regular jobs and therefore affects the employment prospects of workers. At the same time, dependent self-employment bears the risk of undercutting labour law and thereby may deteriorate working standards.

The increase in dependent self-employment is associated with an increase in the relevance of the so-called "free professions" (freie Gewerbe) in the construction sector. Becoming self-employed in these professions does not require any qualification certificate, which means that these professions are weakly regulated. Therefore, it is easy to register as self-employed.

In the creative sector, the increasing prevalence of dependent self-employment has recently gained attention within Austrian trade unions. The situation of younger workers' employment prospects within the sector raises concerns, since most jobs offered are in the form of (dependent) self-employment and are often associated with precarious working conditions and a higher income uncertainty. Trade unions also report that many dependent self-employed workers are not able to pay their social security contributions. The reasons for working in the form of dependent self-employment in the creative sector are partly driven by the lack of job opportunities associated with regular working conditions. It appears that especially younger workers are unaware of their legal rights. There also seems to be little control of working conditions. **For example, the collective agreement for filmmakers defines certain tasks as obligatory performed by employees, but in many cases are outsourced to dependent self-employed workers.** Particularly in the field of media, Austria shows a very low number of potential employers that increasingly outsource parts of their production to dependent self-employed workers.

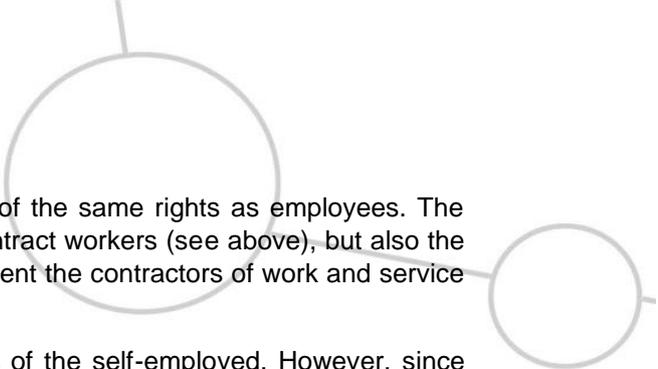
On the worker side, the desire to work as self-employed is much more pronounced within the creative sector than in other sectors. This is also reflected by the increasing number of network-based production units, where several self-employed persons share an office and subcontract work to each other in varying teams. Thus, the distinction between self-employed worker and subcontractor becomes blurred, while workers may also profit from these production forms by expanding their networks and regular exchange. Older workers in the creative sector particularly seem to prefer self-employment over regular dependent employment (IZA 2013).

Austria has a mandatory social security system that encompasses all forms of employment – from dependent employment (employee) to independent (self-employed) work. The Austrian mandatory insurance system is composed of sickness insurance, pension insurance, workplace accident insurance and unemployment insurance.

Since social security reforms in 1997 and 2008, many general provisions have covered both employees and self-employed workers. To capture the element of dependency, several midway categories were

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<sup>16</sup> IZA Research Report No. 54 (2013). Social Protection Rights of Economically Dependent Self-employed Workers



created with their own legal status, which can receive some of the same rights as employees. The categories to which this applies are mainly the free service contract workers (see above), but also the new self-employed (*Neue Selbständige*) and even to some extent the contractors of work and service (*Werkvertragnehmer*).

In Austria, special schemes are available for different groups of the self-employed. However, since 2005, pension systems have been harmonised (except for those of farmers, who continue to have a special fund). 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. In the case of artists, the Law on Social Security for Artists (2001) treats freelance artists as self-employed artists. As a result, they are subject to mandatory social security contributions and have access to a pension supplement and voluntary unemployment insurance.

Some self-employed workers benefit from legal advice, both general and specifically tailored to the concerns of the individual: with the support of the Chamber for Labour, it is offered to the key self-employed groups, whether they are union members or not. The table below gives an overview of the scope of social protection for employees, self-employed and dependent self-employed in Austria.

	<b>Employees</b>	<b>Self-employed</b>	<b>Dependent self-employed</b>
Financing	Contributions (insured persons and employers) and taxes.	Contributions (self-employed) and taxes.	Contributions and taxes from the self-employed
Sickness and Maternity	Compulsory social insurance scheme for employees with earnings-related benefits with the continuation of payment of wages and salaries by the employer. Maternity: 8 weeks before and after birth. Earning-related cash benefits, subsequently either benefits in kind (universal) or earning-related cash up to 36 months (variations).	Compulsory social insurance scheme, but all benefits imply an initial charge of 20% to be borne by the self-employed.	Free service contractors: follows employees. New self-employed workers and contractors of work and services: they are obligatory part of the sickness insurance system if the earn over a certain amount per year (2012: EUR 6.453,36). Maternity: only universal benefits in kind.
Long-term care	Long-term care benefit of the Federal Government, benefits in kind by public and private providers.	Universal	Universal
Invalidity	Compulsory social insurance scheme financed by contributions covering workers with earnings-related pensions depending on contributions and the duration of affiliation.	The only particularity is the different definition of invalidity.	Follows employees and pension regulation (see above).
Old age	Compulsory social insurance scheme financed by contributions covering workers providing earnings-related pensions depending on contributions and the duration of affiliation.	Follows employees.	Free service contractors: follows employees. New self-employed workers and contractors of work and services: they are obligatory part of the old age system.
Survivors	Compulsory social insurance scheme financed by contributions for workers with benefits depending on the pension of the deceased.	Surviving spouses may also elect to maintain the undertaking of the deceased spouse, without widow pension yet with accumulate insurance period.	Universal.
Accidents at work	Independent compulsory social insurance scheme financed by contributions for employees,	Special regulation for farmers.	Follows employees.

	certain categories of self-employed and other groups with benefits in kind and earnings-related cash benefits.		
Family benefits	Universal scheme for all residents financed by employers' contributions and taxes providing child benefits, a child-raising allowance and some special categories.	Businessmen and farmers are entitled to family benefits of the general scheme.	Universal.
Unemployment	Compulsory social insurance scheme financed by contributions for all employees and assimilated groups with earnings-related benefits.	Self-employed persons can choose whether or not to be insured against unemployment, and thereby further improve their social protection. Not applicable to all self-employed.	Follows self-employment.

Source: IZA Research Report No. 54 (2013). Social Protection Rights of Economically Dependent Self-employed Workers

There is not a lot of information on pay levels for self-employed workers in comparison with employees. This is also linked to the heterogenous nature of self-employment, which encompasses both highly paid workers, such as independent professional workers and IT workers, and low-paid workers, such as those performing unskilled and manual work. Eurofound<sup>17</sup> quotes the Schubert and Keck survey<sup>18</sup> that has some data on the income situation of self-employed workers. While not revealing respondents' exact level of income, the survey asks interviewees whether they consider their income to be sufficient to earn a living. Nearly 60% of the respondent's state that their income is sufficient, although this means that more than 40% regard their income as insufficient to earn a living

## Conclusions

Our research showed that under Austrian law, self-employed workers are not allowed to bargain collectively under national law. There are exceptions for some categories of professionals such as permanent freelance journalists working for media companies and home workers, where the law allows agreements to be negotiated and signed.

## Interviews

Name of interviewee	Organisation
1. Mario Ferrari	Head of the Vienna section, GPA trade union
2. Martin Risak	Associate Professor, Department of Labour Law and Law of Social Security, University of Vienna.
3. Susanne Pernicka	University of Linz
4. Representative of Austrian Ministry of Labour	Austrian Ministry of Labour, Social Affairs, Health and Consumer Protection (BMASGK)
5. Liese Katschinka	Member of the ÖVGD Board (transactors and interpreters)

<sup>17</sup> <https://www.eurofound.europa.eu/publications/report/2009/austria-self-employed-workers>

<sup>18</sup> Schubert, Martina/Keck, Wolfgang (2006): Österreichischer Bericht über die Befragung von Ein-Personen-Unternehmen (2006), Version 0.2, Wien

# Belgium

## Background information

According to the Ministry of Work and Economy (which reports on figures collected by INASTI),<sup>19</sup> on 31 December 2019 **1,145,015 self-employed workers** were registered with a social security fund.<sup>20</sup> More than 60% of these were in Flanders, almost 10% in Brussels and almost 30% in Wallonia. There has been a steady annual growth of 2.9% between 2009 and 2019, with the strongest increase in the Brussels Capital Region (3.1% on average per year). In Flanders, the growth of self-employment only started in the last five years, with a 2.4% average annual growth between 2014 and 2019; in Wallonia, the growth rate was only 2.1% on average per year during the same period. According to StatBel,<sup>21</sup> 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). The share of self-employment is highest in the Brussels Capital Region (16.3%), followed by Flanders (12.8%) and Wallonia (11.9%). Self-employment is also significantly higher among men (16.1%) than women (9.2%). The share of self-employed workers in Belgium also seems to remain relatively stable over the years, consistently fluctuating between 12% and 13% each year since 2015 (in 2015, self-employment was 13.8% in Belgium). The number of 'new self-employed workers' has slightly increased over the years, from 7.4% in 2015 to 8.6% in 2019 (i.e. as a percentage of all self-employed workers). A 2019 report by the High Council for Employment<sup>22</sup> notes that, compared with the EU (where we see that the share of self-employment on average has been decreasing, in Belgium the number of self-employed workers has continued to increase ever since the financial crisis of 2008/2009 (see Figure 12 in Annex).<sup>23</sup>

Looking at the **characteristics of self-employed workers**, on 31 December 2019 747,589 (65.3%) were full-time self-employed, followed by 281,210 (24.6%) part-time self-employed and 116,216 (10.1%) retired self-employed workers.<sup>24</sup> Most self-employed workers are between 35 and 49 years old (421,157 or 36.8%), followed by self-employed workers between the ages of 50 and 64 years old (372,179 or 32.5%). The sectors in which self-employment is most common are the free or regulated professions (359,458 or 31.4%), trade (329,866 or 28.9%), (heavy) industry (264,190 or 23.07%) and agriculture (98,404 or 8.6%). In the fishing industry, there seems to be hardly any self-employment anymore. Looking at the growth over time, there seems to be a decrease of self-employment in the trade sectors, but the growth of self-employment in the free or regulated professions, (heavy) industry and agriculture sectors remains constant over time. A study published in 2019 provides more details on the background of self-employed workers in Belgium (e.g. share of women and self-employed workers with a migrant background).<sup>25</sup>

### 1.1 Solo self-employment and freelance work

A 2017 study on economically dependent employment looking at European Labour Force Survey data found that, between 2008 and 2016, solo self-employment in Belgium had increased by 14%. As a result, **solo self-employment accounted for 70% of all self-employment** in 2016 in Belgium (see Figure 8 in Annex).<sup>26</sup> The 2019 report mentioned above shows that this figure has remained relatively

<sup>19</sup> <https://websta.rsvz-inasti.fgov.be/nl/statistical/insured>

<sup>20</sup> [https://economie.fgov.be/nl/themas/ondernemingen/kmos-en-zelfstandigen-cijfers/zelfstandigen-belgie#:~:text=een%20onzekere%20arbeidssituatie,-De%20cijfers%20in%20detail,RSVZ\)%20aangesloten%20bij%20sociale%20verzekeringsfondsen.](https://economie.fgov.be/nl/themas/ondernemingen/kmos-en-zelfstandigen-cijfers/zelfstandigen-belgie#:~:text=een%20onzekere%20arbeidssituatie,-De%20cijfers%20in%20detail,RSVZ)%20aangesloten%20bij%20sociale%20verzekeringsfondsen.)

<sup>21</sup> <https://statbel.fgov.be/nl>

<sup>22</sup> On 22 December 1995, the High Council for Employment was established in Belgium. Its mission has been to promote employment and examine the conditions which encourage employment, both at EU and federal level in Belgium. In 2019, the High Council published a report on the trends and conditions of self-employed work in Belgium. See: [https://cse.belgique.be/sites/default/files/content/download/files/rapport\\_cse\\_2019\\_-\\_avis\\_independants\\_-\\_pv.pdf](https://cse.belgique.be/sites/default/files/content/download/files/rapport_cse_2019_-_avis_independants_-_pv.pdf)

<sup>23</sup> P. 15 [https://cse.belgique.be/sites/default/files/content/download/files/rapport\\_cse\\_2019\\_-\\_avis\\_independants\\_-\\_pv.pdf](https://cse.belgique.be/sites/default/files/content/download/files/rapport_cse_2019_-_avis_independants_-_pv.pdf)

<sup>24</sup> <https://economie.fgov.be/nl/themas/ondernemingen/kmos-en-zelfstandigen-cijfers/zelfstandigen-belgie/het-profiel-van-zelfstandigen>

<sup>25</sup> <https://economie.fgov.be/nl/publicaties/ondernemerschap-en-diversiteit>

<sup>26</sup> [http://www.ftu-namur.org/fichiers/CSC-ChaireTU-Independants\\_economiquement\\_dependants.pdf](http://www.ftu-namur.org/fichiers/CSC-ChaireTU-Independants_economiquement_dependants.pdf)

stable since then: in 2019, 71% of all self-employed workers were solo self-employed; 29% were self-employed workers with staff (see Figure 13 in Annex).<sup>27</sup> The figures also show that, whereas the share of solo self-employed workers has increased by 12% between 2008 and 2019, the share of self-employed workers with staff has decreased by 5% over the same period. Moreover, for 66% of these workers, self-employment is their principal activity or source of income. The sectors with the highest shares of solo self-employed workers are companies providing professional services, construction, healthcare and social action, retail and car garages. The sectors where the highest increase of solo self-employment could be observed were construction (+44%), catering (+56%), professional services such as IT (+38%) or professional services to companies (+40%), health and social action (+15%) and the cultural and creative sectors (+60%). In the so-called 'intellectual professions' (such as doctors, academics or managers), 35% are solo self-employed. Solo self-employment has been decreasing in manufacturing (+17%), car garages (-15%) and, to a lesser extent, agriculture (-7%) (see Figure 9 in Annex). The report also shows that a large majority of people in solo self-employment are men (65% in 2016), and that in certain sectors solo self-employed workers are almost exclusively male (e.g. construction, transport and logistics and (heavy) industries). In the more 'intellectual' sectors, the share of women and men in solo self-employment is more equal. If we look at the number of working hours for 2016, we can see that across all sectors solo self-employed workers work more hours (52.5 hours on average per week) than employees (average of 39.2 hours per week) (see Figure 10 in Annex).

A 2019 report by UNIZO<sup>28</sup> provides **estimates on the number of freelancers in Flanders and Brussels**, based on a selection of NACE codes which are traditionally linked to high proportions of freelancers (see Figures 1-3 in Annex). The study defines freelancers as *"entrepreneurs without staff who primarily, but not exclusively, provide services in a B2B context based on temporary contracts, assignments or projects"* [in Dutch: "een ondernemer zonder personeel die hoofdzakelijk, maar niet uitsluitend in een business-to-business (B2B) context zakelijke diensten verleent en dit op basis van tijdelijke contracten, opdrachten of projecten."].<sup>29</sup> The report estimates that, in 2019, there were 135,710 freelancers in Flanders. This is an increase of 6.6% compared with 2018 (128,277 freelancers) and 23.9% compared with 2016 (109,539 freelancers). In Brussels, the number of freelancers in 2019 is estimated at 31,945, an increase of 5.0% compared with 2018 (30,420). The report also shows that **most freelancers provide consultancy, technical or ICT services**. The sectors with the highest share of freelancers are advisory bureaus on business management; IT services; photography, translation services and designers; creative and entertainment services; educational services; and business support. Looking at the financial position of these freelancers, the report shows that, 65% (65% in 2018) indicated they were earning well or very well in order not to have to worry; 27% (25 in 2018) said they made just enough money to get by; and 8% (11% in 2018) indicated they were not making enough money and expected to get into financial troubles. More figures on the sectors with high shares of self-employment are provided in Figure 14 (See Annex).

There are also some other reports which provide some more specific figures on certain sectors in which there is a high share of freelancers. These are provided below:<sup>30</sup>

- **Journalism:**<sup>31</sup> the Flemish Union of Journalists (VVJ/AVBB) keeps a record of all journalists in Flanders and their specialisations. In 2016, 24% of all journalists were working on a freelance basis; and 39% of all intern-journalists were also working as freelancers.
- **Creative industry:**<sup>32</sup> data from 2015 (see Figure 4 in Annex) shows that the highest share of freelancers can be found in the architecture, music and fashion industries, closely followed by the performing arts, design, written press, advertising and audio-visual services. As a general rule, artists in Belgium are employees, unless they can prove they are self-employed, in which

<sup>27</sup> [https://cse.belgique.be/sites/default/files/content/download/files/rapport\\_cse\\_2019\\_-\\_avis\\_independants\\_-\\_pv.pdf](https://cse.belgique.be/sites/default/files/content/download/files/rapport_cse_2019_-_avis_independants_-_pv.pdf)

<sup>28</sup> <https://www.unizo.be/sites/default/files/freelancerfocus2019.pdf>

<sup>29</sup> *Ibid.* p. 7.

<sup>30</sup> [https://www.serv.be/sites/default/files/documenten/StIA\\_20171023\\_Freelancers\\_RAP.pdf](https://www.serv.be/sites/default/files/documenten/StIA_20171023_Freelancers_RAP.pdf)

<sup>31</sup> <https://journalist.be/journalistendatabank>

<sup>32</sup> <https://www.flandersdc.be/uploads/media/5899bb6261131/58c66c8a87b25.pdf>

case they can apply for an 'artist statuses'.<sup>33</sup> This gives them advantages in terms of when they are eligible for unemployment benefits (i.e. lower amount of days per year required to work).

- **Interpreters and translators:** interpreters and translators are another group with a high number of self-employed workers. According to an interviewee from the Belgian Chamber of Translators and Interpreters (CBTO/BKVT), there are currently around 1,500 self-employed interpreters in Belgium, many of whom must go through brokers or platforms to get clients (according to the interviewee, only 20% of clients are 'direct clients'). This means that these brokers take a cut on their salary, and in addition to this, wages have remained flat for around 30 years now (and have also not been indexed), meaning that interpreters, these days, earn around 60-70% less, and these large brokers are working internationally, meaning that translators and interpreters have to compete with low salaries at global level.
- **False self-employment:** precise figures on false self-employment in Belgium are lacking. The UCL study from 2017 cited above notes that there has been a strong increase in forms of 'atypical subordination' of solo self-employed workers. It is estimated that almost 0.5 million workers in Belgium are falsely self-employed. The study says that the sectors most affected by false self-employment are construction, media, IT, professional services, healthcare and social sectors.<sup>34</sup> On 21 September 2012 (Article 99, § 2),<sup>35</sup> the Belgian federal government published a list of so-called 'sensitive sectors' for false self-employment, i.e.: construction, security, transport, cleaning, agriculture and horticulture. For these sectors, specific criteria were developed (in addition to the four generic criteria) to help combat false self-employment (more on this in section 4 below). The interviews conducted as part of this research reveal that there are many sectors beyond those listed by the government where false self-employment occurs, e.g.: shared economy or in translation and interpretation services, because workers in these sectors (1) cannot always choose *when* they work (e.g. there is a seasonal nature to interpretation, because usually there are no big conferences or meetings taking place over the summer or early in the year); (2) or *where* they work (e.g. interpreters need to 'go where the conference is').

## 1.2 Platform work

Another important share of self-employed workers is to be found in the **shared economy**. As discussed in section 3, current legislation in Belgium on the legal and social status of employees and self-employed workers is not clear on which category platform workers belong to, which is why many platform workers either work illegally or as self-employed workers. This is one of the reasons why there are **no official figures on the total number of platform workers** in Belgium, and the list of 127 recognised platforms by the Federal Ministry of Work and Economy is also incomplete,<sup>36</sup> according to Karolien Lenaerts, a leading academic from KU Leuven in the field of Belgian and EU employment, social affairs and social dialogue.<sup>37</sup> For instance, the list contains Uber Eats, but the Uber ride hailing service is not included on there. Another reason why there are no official figures on the number of platform workers in Belgium is because platform work in Belgium only emerged in 2015 (when Uber started offering its services) and it is also not that popular among Belgian citizens in general. According to the 2016 Flash Eurobarometer survey on the use of collaborative platforms,<sup>38</sup> 61% of Belgian respondents in 2016 had never heard of collaborative platforms (compared to the EU-average of 46%); 2% (compared to 4% in the EU) had used such platforms and paid for a service once; 4% (compared to 9% in the EU) used them occasionally; and only 2% (compared to 4% in the EU) used them regularly. The follow-up Flash Eurobarometer survey 467 in 2018, similarly, puts Belgium (far) below the EU-average and the leading Member States when it comes to participation in the platform economy as clients and platform workers. In 2018, only 15% of the Belgian respondents who had never offered

<sup>33</sup> [https://www.belgium.be/nl/werk/arbeidscontract/soorten\\_contracten/artiesten\\_en\\_sportlui](https://www.belgium.be/nl/werk/arbeidscontract/soorten_contracten/artiesten_en_sportlui)

<sup>34</sup> <https://www.nexteconomy.be/2017/09/half-miljoen-schijnzelfstandigen-in-belgie-vorig-jaar/>

<sup>35</sup> [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&table\\_name=wet&cn=2012092104](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2012092104)

<sup>36</sup> <https://financien.belgium.be/sites/default/files/downloads/127-deeleconomie-lijt-erkende-platformen-20190509.pdf>

<sup>37</sup> <https://www.nexteconomy.be/2019/08/welk-beleid-reguleert-de-platformeconomie-interview-met-karolien-lenaerts-deel-1/>

<sup>38</sup> [https://data.europa.eu/euodp/en/data/dataset/S2112\\_438\\_ENG](https://data.europa.eu/euodp/en/data/dataset/S2112_438_ENG)

services through an online platform before would consider doing so in the future (EU-average of 19%); 84% would not consider doing so (78%). Similarly, a 2017 survey by IDEA Consult on the shared economy, conducted among 1,000 respondents in Flanders, found that only 4% of respondents had worked as a platform worker in the previous year; 26% was considering doing so in the future; and 87.1% said they did not know anyone who worked in the platform economy.<sup>39</sup>

**Platform work is concentrated in the transport, household and professional services sectors**, and it is mostly found in the country's capital and its major cities. With regard to the types of platform work, it appears that especially on-location platform work of different skills levels is prevalent in Belgium. Online platform work seems less popular. Related to this, the majority of platform workers are young and highly educated men living in urban areas, or older workers (inactive, retired). As discussed above, translation and interpretation services are, in a way, also a form of platform work, as for most of their work these workers have to go through brokers, which have started moving their services online to connect workers and clients from across the globe.<sup>40</sup>

With regards to the **background of solo self-employed workers**, an interviewee from United Freelancers said that most platform workers are young people, often people who have just graduated and are looking for work whilst working for companies such as Deliveroo or TakeAway. In the construction sector, many self-employed workers come from outside Belgium, in the EU, such as Bulgaria, Hungary, Romania and Poland. This is confirmed by figures from INASTI,<sup>41</sup> which shows that in 2019, 24,546 self-employed workers were Romanian, 7,198 were Polish and 5,440 Bulgarian.

## Collective bargaining framework

### 2.1 Overall importance of collective bargaining

**There is a strong tradition and history of social dialogue in Belgium.** The way in which social dialogue in Belgium is organised today is still largely based on the fundamental principles enshrined in the Social Pact of 1944,<sup>42</sup> which "*laid the foundations for an all-encompassing social security framework and stable employee-employer relations*" [own translation from Dutch].<sup>43</sup> Evidence shows that there has been a relatively stable and slightly increasing influence of trade unions in Belgium. Nonetheless, social dialogue in Belgium has started coming under pressure, due to flexible employment and the gig economy.<sup>44</sup>

The first official regulation on collective bargaining dates back to 5 December 1968, with the **adoption of the collective bargaining law or 'CLA Law'** (*CAO Wet*).<sup>45</sup> On the Belgian federal Ministry of Work and Economy's website, a CLA is defined as "*an agreement between one or more employer organisations and one or more employee organisations in which the individual and collective arrangements between the employee and employer in companies are stipulated, and the rights and obligations of the contracting party are regulated*" [translated from Dutch].<sup>46</sup> CLAs can be concluded at three levels:

- **National or 'inter-sectoral' level:** CLAs concluded as part of the National Labour Council (*Nationale Arbeidsraad* – NAR/CNT) between employer and employee organisations from different private sector companies, who together represent at least 90% of all employers and employees working actively in the private sector across the whole country. These CLAs apply to the whole private sector.<sup>47</sup>

<sup>39</sup> [https://www.ideaconsult.be/images/Vlaamse\\_deeeconomie.pdf](https://www.ideaconsult.be/images/Vlaamse_deeeconomie.pdf)

<sup>40</sup> Interview with CBTI/BKVT representative, 11 February 2021.

<sup>41</sup> <https://websta.rsvz-inasti.fgov.be/nl/statistical/insured>

<sup>42</sup> <https://www.belgiumwwii.be/nl/belgie-in-oorlog/artikels/sociaal-pact-het-28-december-1944-de-geboorte-van-de-sociale-zekerheid.html>

<sup>43</sup> [https://www.steunpuntwerk.be/system/files/overwerk\\_2019\\_1\\_17.pdf](https://www.steunpuntwerk.be/system/files/overwerk_2019_1_17.pdf)

<sup>44</sup> *Ibid.*

<sup>45</sup> [https://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg\\_2.pl?language=nl&nm=1968120503&la=N](https://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=nl&nm=1968120503&la=N)

<sup>46</sup> <https://werk.belgie.be/nl/themas/paritaire-comites-en-collectieve-arbeidsovereenkomsten-caos/collectieve>

<sup>47</sup> For an overview, please visit: <http://www.cnt-nar.be/Cao-lijst.htm>

- **Sectoral level:** agreements concluded within joint (sub-)committees (*'paritair (sub-)comité*) between sectoral employee and employer representatives. The sectors for which CLAs have been agreed are the following (and these are also subject to regular revisions and updates): metal, machine and electronic construction workers; food industry; cleaning and disinfection undertakings; security; construction; furniture and wood processing; road transport and logistics; agriculture; horticulture; electric installation; employees; white-collar workers; metal, machine and construction for clerical workers.<sup>48</sup> Any sectors for which it is not clear which of the twelve aforementioned collective agreements should be applied, the Ministry refers people through to the website of the Paritary Subcommittee on minimum wages.<sup>49</sup>
- **Company level:** agreements concluded between one or more representative employee organisations ('trade unions') and one or more employer organisations.

Most collective agreements exist at national level, followed by the sectoral level. At sectoral level in particular, these agreements have been put in place to ensure that companies give their workers fair working conditions and remuneration in line with the hazards to which they are most often exposed in their sector (e.g. long or irregular working hours, road transport, work with dangerous materials or chemicals, etc.).

## 2.2 Strength of social partners

Social partners have a long and strong tradition in Belgium, with high membership numbers. Jobat says that **approximately 60% of all Belgian employees are affiliated to a trade union**.<sup>50</sup> Membership numbers vary according by sector and company size. In large companies and the public sector, almost all employees are member of a trade union. This is less the case of people working for SMEs. The three biggest trade unions in Belgium are the Christian (ACV, around 1.7 million members), Socialist (ABVV, around 1.3 million members) and Liberal (ACLVB, around 250,000 members) trade unions.<sup>51</sup> The monthly fee to join a trade union in Belgium is relatively low, and is around 15 EUR per month, which means the threshold to join a trade union for employees is quite low in Belgium. The main benefits of joining a trade union in Belgium is legal support/advice, support during strikes/unemployment, as well as extra allowances for birth, marriage, pension and death.

A recent study by Hermans et al. (2020)<sup>52</sup> on the **influence of trade unions** shows that the presence of union representation in companies increases employees' possibility to follow CPD, increases the knowledge of employee rights and benefits, and on the actual application of collective agreements by employers. Employees working in companies with trade union representation also indicate that they feel more job secure and believe that their job quality will remain stable. At the same time, though, the study shows that the actual influence on management decisions by trade unions remains limited.

## 2.3 Collective bargaining for self-employed workers

The self-employed are allowed to join trade unions. There are also **trade unions for self-employed workers with and without personnel**, with the largest one being the Neutral Trade Union for Self-Employed Workers (*National Syndicaat voor Zelfstandigen – NSZ/SNI*), which has over 70,000 members (including freelancers).<sup>53</sup> UNIZO is another big trade union – one of the largest in Flanders – which represents the interests of SMEs and solo self-employed workers.<sup>54</sup> Both organisations, however,

<sup>48</sup> For an overview, please visit: <https://employment.belgium.be/en/themes/international/posting/working-conditions-be-respected-case-posting-belgium/working>

<sup>49</sup> <https://werk.belgie.be/nl/themas/verloning/minimumlonen-paritair-subcomite>  
<sup>50</sup> <https://www.jobat.be/nl/art/lid-worden-van-de-vakbond-doen-of-niet#:~:text=Bijna%2060%25%20van%20de%20Belgische,zo%20het%20geval%20bij%20KMO's>.

<sup>51</sup> For an overview of all trade unions, please visit the collective encyclopaedia Wikipedia: [https://nl.wikipedia.org/wiki/Lijst\\_van\\_vakbonden\\_in\\_Belgi%C3%AB](https://nl.wikipedia.org/wiki/Lijst_van_vakbonden_in_Belgi%C3%AB); membership figures are taken from this website: <https://mens-en-samenleving.infonu.nl/carriere/106985-welke-belgische-vakbond-kiezen-acv-abvv-of-aclvb.html#:~:text=Het%20ACV%20is%20met%20zo,aantal%20leden%20van%20iedere%20vakbond>.

<sup>52</sup> [https://limo.libis.be/primo-explore/fulldisplay?docid=LIRIAS3269263&context=L&vid=Lirias&search\\_scope=Lirias&tab=default\\_tab&lang=en\\_US&fromSiteMap=1](https://limo.libis.be/primo-explore/fulldisplay?docid=LIRIAS3269263&context=L&vid=Lirias&search_scope=Lirias&tab=default_tab&lang=en_US&fromSiteMap=1)

<sup>53</sup> <https://www.nsz.be/nl>

<sup>54</sup> <https://www.unizo.be/>

represent both self-employed people *with* and *without* employees, and therefore do not represent solo-self-employed workers only.

The Christian Trade Union (ACV) also has a **dedicated trade union for solo self-employed workers**, United Freelancers.<sup>55</sup> An interviewee from United Freelancers explained that in fact they are the only organisation in Belgium which *really* defends the rights of solo self-employed workers, because organisations such as UNIZO or the Trade Union for Self-Employed Workers also represent micro- and SMEs, of which many hire freelancers or solo self-employed workers. These organisations can therefore not *fully* represent the rights of self-employed workers (since there are conflicting interests within their own organisation). During an interview, an academic explained that because there are so many social partners in Belgium, many of whom have the same target groups, there is some level of competition between them, and this makes the social partner landscape very complex and perhaps not always as effective as it should be (see Figure 16 in Annex, which provides a comparison of the social contributions made by self-employed workers and employees).

As part of its services, **United Freelancers** offers legal and professional advice to individual freelancers, as well as collective bargaining services at company, sector or national level to ensure there is a good and fair relationship between the freelancer and the client [*opdrachtgever* in Dutch].<sup>56</sup> Other major trade unions are also discussing what could be their role in representing and defending the rights of freelancers (see for instance an interview with the president of BBTK<sup>57</sup>). In 2020, the sectors in which United Freelancers has intervened the most through social dialogue for solo self-employed workers are: the culture and creative sectors (16% of interventions), construction (9%), sales (8%), healthcare (8%), beauty salons, hairdressers, etc. (8%) and deliveries (4%). See Figure 11 in Annex for a full list of all the sectors and professions for which United Freelancers has offered social dialogue services. An interviewee from United Freelancers explained that they have several collective bargaining projects running for taxi drivers (they negotiated a collective agreement for solo self-employed taxi drivers that in times of low work, they cannot be fired), trainee-doctors (to ensure they do have *some* sort of employment agreement), interpreters (are helping to negotiate an agreement with some of the biggest brokers and clients of self-employed translators and interpreters) and platform workers (see below).

More specifically, United Freelancers (ABVV, the socialist part) has been getting actively involved in **defending the rights of platform workers**. Almost immediately after the first platform started offering its services in Belgium, they started reviewing the National Labour Code (NAR/CNT) and the collective agreements, as well as the Central Economic Council (CRB/ECE) to identify measures that could support employment, entrepreneurship and economic growth, and the sustainability of the social security system. So far, this has only led to a limited number of recommendations at the federal level, supporting strikes<sup>58</sup> and filing court cases against major platforms such as Deliveroo or Uber. In January 2020, for instance, Freelancers United announced that it would go to court against Deliveroo in response to its violations of labour law.<sup>59</sup> According to representative from Freelancers United,<sup>60</sup> platforms such as Uber or Deliveroo are not part of the shared economy (*“nothing is being shared”* [interview quote translated from Dutch]), but should be considered employers in the transport sector, and follow the collective bargaining agreement negotiated for that sector (they argue the same for the taxi industry and false self-employment in the transport industry more broadly). The court case is ongoing (a verdict is expected in September 2021 on Uber), and according to United Freelancers these workers have the right to receive a ‘thirteenth month’ and paid holidays, as well as have their social contributions paid for, in order to be eligible for unemployment benefits and sick pay. The interviewee also mentioned that many Deliveroo riders are young people, many of which are either still school or university students who are forced to become self-employed. As a result, they receive an actual income,

<sup>55</sup> <https://www.unitedfreelancers.be/home-nl>

<sup>56</sup> <https://www.unitedfreelancers.be/onzediensten>

<sup>57</sup> <https://www.nexteconomy.be/2019/04/een-vakbond-voor-freelancers-het-is-iets-waar-we-goed-over-moeten-nadenken/>

<sup>58</sup> In 2018, for example, Freelancers United supported a strike of 200 Deliveroo riders organised by ‘Couriers Collectief’ (*Koeriers Kollektief*) in Brussels, Antwerp, Mechelen, Ghent. Another strike on the rights and working conditions of platform workers is planned in February 2021. See: <https://www.hln.be/binnenland/koerierscollectief-bij-deliveroo-wil-morgen-werk-neerleggen-in-vijf-belgische-steden-ae657a72/?referrer=https%3A%2F%2Fwww.google.com%2F>

<sup>59</sup> <https://www.unitedfreelancers.be/actualiteit/2020/1/22/aktie-voor-de-fietskoeriers-van-deliveroo>

<sup>60</sup> Interview with Steven Steyaert (Freelancers United) conducted on 11 February 2021.

on which they pay taxes, which means that their parents are no longer eligible for child benefits from the government. Young people also do not realise how poor their work conditions are. He gave the example of a rider who said, “I made some 100 EUR today, which is great!”, but they had to work 11 hours for this. The negative consequences of poor working conditions of platform workers are wide-ranging.

On 9 March 2018, in a **court case against Deliveroo**, the Commission on the Regulation of Employment Relations (*Commissie Arbeidsrelaties*) ruled that because Deliveroo asks riders to be available between certain time slots and checks where riders are at all times through GPS-tracking (among other ‘control’ activities), working for Deliveroo is an employment relationship (see the ‘authority’ principle explained below).<sup>61</sup> There has been another big **court case against Uber** in the Brussels Capital Region, to decide whether or not Uber should be classified as a ‘taxi service’ or ‘car rental service with driver’ (which are two different service types which exist in Brussels). Court cases in 2015 and 2016 ruled that the services offered by UberPop and UberX were illegal, which meant that ride-sharing services had to respect legislation for all other taxi services in Brussels. As a result, UberPop terminated its services and UberX continued to offer its services, provided their drivers obtained a specific taxi license. The same result was confirmed in a new court case at the beginning of January 2019, but a more recent ruling by the same Brussels court in the second half of 2019 reversed this ruling, saying that UberX is not a transport service, but an *intermediary* in the transport sector, with the drivers themselves being the providers of the services concerned.<sup>62</sup> Court cases against Uber are likely to be picked up again.

There are also **numerous trade unions for specific sectors** with high shares of self-employed workers as part of their membership. Some of these are listed below:

- **Construction and agriculture:** there are no real separate trade unions for these two sectors under the socialist ABVV trade union, they are part of the ‘General Service’ (*Algemene Centrale*) of the union.<sup>63</sup>
- **Transport sector:** one of the largest trade unions for the transport sector is the socialist trade union ABVV-BTB, which has separate categories for maritime transport, port workers and road transport (this is a separate sub-union of the overarching ABVV).<sup>64</sup> There is a separate union for train workers (NMBS/SNCB), but these are all civil servants.<sup>65</sup>
- **Translation and interpretation services:** the Belgian Chamber of Translators and Interpreters (CBTI/BKVT)<sup>66</sup> has around 500 members, 100 of whom are interpreters. As described further below, based on the example in the Netherlands (where collective bargaining for self-employed workers with large companies on which a collective of self-employed workers is economically dependent), the Chamber has tried to enter into discussions with large translation brokers (such as *Acolad*), but unsuccessfully – see also the ‘Belagora’ initiative described below).
- **Journalism:** there is a trade union for Flemish journalists in Belgium (*Vlaamse Vereniging Journalisten* – VJJ).<sup>67</sup> There is also a French-speaking counterpart, called the *Association des journalistes professionnels* (AJP).<sup>68</sup>
- **Creative industry:** there is a trade union for artists in Belgium, called ACV Puls (part of the Christian Trade Union).<sup>69</sup>

<sup>61</sup> [https://www.steunpuntwerk.be/system/files/overwerk\\_2019\\_1\\_17.pdf](https://www.steunpuntwerk.be/system/files/overwerk_2019_1_17.pdf)

<sup>62</sup> Orb., 16 januari 2019, AR A/18/02920, see <https://www.socialweb.be/Socialweb/NL/publichome/html/free/articles/3063152>

<sup>63</sup> <https://www.abvv.be/vakcentrales>

<sup>64</sup> <https://www.btb-abvv.be/>

<sup>65</sup> <https://www.ovs-sic.be/>

<sup>66</sup> <https://www.cbti-bkvt.org/>

<sup>67</sup> <https://journalist.be/>

<sup>68</sup> <http://www.ajp.be/>

<sup>69</sup> <https://www.cultuurvakbond.be/>

In addition to freelancers having the right to join trade unions (and of there being specific trade unions for freelancers), as described above, one interviewee noted that **many self-employed workers form associations**. This is especially the case in the free or regulated professions (e.g. doctors, lawyers, architects etc.) and is in a way a slightly more ‘unofficial way’ of collective bargaining at company level (without these self-employed workers ‘actually’ working together for the same firm). For example, these self-employed workers set up ‘group practices’ where a group of GPs or architects jointly open a practice, have the same secretariat and agree on minimum tariffs between them, but they then each have their own private clients and jointly buy products from the same supplier against the same tariffs.

#### 2.4 Coverage of self-employed workers by collective agreements

Strictly speaking, the CLA Law is only there to regulate employer-employee relations, and therefore **in theory the CLA Law does not apply to self-employed workers** (who do not have one ‘fixed’ employer). However, discussions are ongoing at federal level to regulate ‘economically dependent self-employed workers’ through the CLA Law (see section 4.2 below). According to Eurostat figures, 1.5% of all self-employed workers in Belgium were ‘economically dependent’ (i.e., (1) they are heavily reliant on one employer as a source of income, (2) they are unable to choose their working hours and (3) they are solo self-employed) – at EU level, this figure would be 4%.<sup>70</sup>

According to a recent article written by Pulignano and Hendrickx (2019),<sup>71</sup> article 2 §1 of the CLA Law states that it applies to “*all persons who are carrying out work under the authority of another person*” [translated from Dutch], and that it therefore could in theory be applicable to a wider category of workers (and not just people with an employment contract). Many self-employed workers – such as platform workers or false self-employed workers – are not ‘fully self-employed’ in the traditional sense of the word, as they do not have freedom over the amount of work, the organisation of their work and the amount of time worked (or when they work). Many of them work under ‘some form of authority’. As mentioned above, it is based on these grounds that in the last couple of years trade unions have been playing an increasingly strong role in defending the rights of platform workers.

Even though collective bargaining is not possible in theory, desk research and interviews reveal that “**collective bargaining for self-employed workers is a fact**” in Belgium and, according to an interviewee from United Freelancers, “*a right of everyone who works*” [quote from interview in Dutch: “collectief onderhandelen is een feit [...] een recht van iedereen die werkt”]. There is a collective agreement between doctors and health insurance firms, for example, which is the ‘**accord medico-mutualiste**’.<sup>72</sup> This has been in place since 2011 and is being updated every one to two years.

There was once also **almost a collective agreement for platform riders**. 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 employment contract, they were guaranteed a minimum wage and minimum shifts of three hours.<sup>73</sup> 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.<sup>74</sup>

An interviewee from the Belgian Chamber of Translators and Interpreters (CBTI) also said that, in 2003 as part of what was called the ‘**Belagora initiative**’, translators and interpreters united to prepare a list of ten critical working conditions to be ensured for interpreters and translators. More than 100 signatures

<sup>70</sup> P. 46 [https://cse.belgique.be/sites/default/files/content/download/files/rapport\\_cse\\_2019\\_-\\_avis\\_independants\\_-\\_pv.pdf](https://cse.belgique.be/sites/default/files/content/download/files/rapport_cse_2019_-_avis_independants_-_pv.pdf)

<sup>71</sup> [https://www.steunpuntwerk.be/system/files/overwerk\\_2019\\_1\\_17.pdf](https://www.steunpuntwerk.be/system/files/overwerk_2019_1_17.pdf)

<sup>72</sup> <https://www.inami.fgov.be/fr/professionnels/sante/medecins/soins/Pages/accord-medico-mutualiste.aspx>

<sup>73</sup> <https://www.etui.org/publications/working-papers/work-in-the-platform-economy-deliveroo-riders-in-belgium-and-the-smart-arrangement>

<sup>74</sup> *Ibid.*

were collected, but no board members of the CBTI would get on board to support it, out of fear to get penalised (because of the existence of article 101 of the TFEU (EU Competition Law)).

## Legal framework

*Main relevant legal provisions: 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 self-employed workers, Article 3, Law De Croo, 1 July 2016*

### 3.1 Legal status of self-employed workers

With regard to the **employment status**, an important development in Belgium has been the abolition as per the Law of 26 December 2013 of the distinction between workers (*arbeiders*) and servants (*bedienden*), i.e., those who do manual labour or desk-based work.<sup>75</sup> This aimed to ensure more equal treatment of people working in manual labour and desk jobs. In practice, though, when filling out forms in Belgium this is still something which is asked very regularly, and there are still regular articles published asking questions such as ‘When will workers finally be treated equally?’, which suggests that the issue has not been fully solved yet.<sup>76</sup>

According to the Annual Report of 2019 by the Administrative Commission on the Regulation of the Employment Relationship (ACR – *Administratieve Commissie ter regeling van de Arbeidsrelatie*),<sup>77</sup> there has been unclarity for years as to what it means to be employed or self-employed in Belgium, as it relies on “*the vague principle of working under someone else’s authority*” [own translation from Dutch].<sup>78</sup> The website ‘socialsecurity.be’ defines employment and self-employment as follows:<sup>79</sup>

- One is considered to be an **employee** when working for an employer that has ‘authority’ over you, i.e. the employer has a leading role in determining where, when and how you work and can control this. An employment contract needs the following elements: (1) labour, (2) wage and (3) the exertion of ‘authority’ by an employer.
- One is **self-employed** when carrying out a profession that generates income, but where there is no relation of authority with an employer. In most cases, self-employed people work on a project-basis for different clients. There are many different types of self-employments:<sup>80</sup>
  - **Full-time self-employed worker**: this is the case for workers for whom their independent activity is their only source of income.
  - **Part-time self-employed worker**: employees (working at least part-time on a monthly basis), civil servants (working at least 200 days or 8 months per year) and teachers (working at least 6/10<sup>th</sup> of a full teaching schedule) are able to generate income from self-employment in addition to their main income. Unemployed people receiving benefits are also allowed to carry out work on a self-employed basis on an occasional basis.
  - **Self-employed helper**: this is someone who (in a capacity as a ‘natural person’) replaces or assists a self-employed worker. This is often a family member of the self-employed worker.
  - **Collaborating spouse**: the spouse of a self-employed worker who supports their spouse with their business activities on a regular basis (i.e. minimum 90 days per year) and does not receive another income can have this status.

<sup>75</sup> [https://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&table\\_name=wet&cn=2013122608](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2013122608)

<sup>76</sup> See for example this opinion piece: <http://guytegenbos.be/2019/01/09/hoelang-nog-zal-belgie-arbeiders-benadelen/>

<sup>77</sup> <https://commissiearbeidsrelaties.belgium.be/docs/rapport-2019-nl.pdf>

<sup>78</sup> *Ibid.*, p. 17.

<sup>79</sup> <https://www.socialsecurity.be/citizen/nl/werknemer-zelfstandige>

<sup>80</sup> <https://economie.fgov.be/nl/themas/ondernemingen/een-onderneming-oprichten/belangrijkste-stappen-om-een/aansluiting-bij-een-sociaal/het-sociaal-statuut-van-de>

- Business owners, partners and directors: these people are subject to the social status of 'self-employed' (described in section 4 below).
- Self-employed student:<sup>81</sup> students who regularly follow classes, are between 18 and 25 years old and carry out an activity for which it is required to register as a self-employed worker can apply for this status. They get some social security advantages.

On 1 July 2016, a new tax regime ('Law De Croo') was introduced as part of the Programme Law (*Programmawet*),<sup>82</sup> which introduced a sort of **unofficial 'peer-to-peer (P2P) statuses** for people working in the shared economy (more details on this legal change are presented in section 3 below). It should be noted, though, that this is not a separate 'third' legal status as such. 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 in Belgium. One interviewee explained that at one of the many study colloquiums organised by the Ministry on this subject, three reasons were mentioned as to why creating a third, separate legal status for this group of workers would not be good. Firstly, it would make it even easier for companies such as Deliveroo and Uber to 'push' workers into this 'vague middle status'. Secondly, it would create a 'grey zone', thereby making the distinction between self-employed and employed even more unclear. Thirdly, the interviewee believed that all self-employed workers should be treated equally, and as soon as one group is 'favoured' or treated differently over the other, problems may arise. Instead, there seems to be a greater interest in adjusting existing regulation in order to account for the fragile and unclear position of platform workers and people in false self-employment more broadly. An interviewee from United Freelancers explained that, as part of an ongoing court case against Uber, they are suing the company in order to treat Uber drivers as regular employees rather than self-employed workers. There have recently been strikes in Brussels against a decision by the Brussels Court of Justice,<sup>83</sup> which declared that the use of online applications by Uber constituted 'unfair competition' vis-à-vis other taxi and limousine services. Uber is now appealing against this decision, and the court case is ongoing. A similar case is running against Deliveroo.

### 3.2 Inclusion or exclusion of self-employed workers by collective bargaining

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.

As described in section 2.3 above, the **CLA Law does not apply to self-employed workers**, as it only covers regulation of employee-employer relations. Nevertheless, the quite vague 'authority clause' is used by social partners to negotiate collective agreements for self-employed and platform workers. There are also discussions ongoing at federal level (described in section 4 below) to bring more clarity on the application of the CLA Law to self-employed workers.

An important case, which has been picked up in Belgium as well, is one from the Netherlands where the Court of Justice had to rule whether a **collective agreement on wages for 'stand-in' musicians** (who are self-employed) was legal or not.<sup>84</sup> The court ruled that this was legal if the self-employed workers were actually *false* self-employed workers, that is if they were in a situation similar to people with a real employment contract. Pulignano and Hendrickx (2019) note that this ruling is so important because it extends the application of CLA Law to 'false' self-employment and almost equates this kind of work to 'regular' employment. They then continue by saying that, rather than being 'false' self-employed workers, perhaps what the Court *actually* meant was that if workers *rely* on one (or a limited number of) employer(s) for work, then collective bargaining should be allowed for them.<sup>85</sup>

An interviewee from Uniter Freelancers indicated that those self-employed workers **are excluded from two important laws**: (1) the 1996 law on well-being at work and (2) the law on minimum wage (see

<sup>81</sup> <https://socialsecurity.belgium.be/nl/sociaal-beleid-mee-vorm-geven/statuut-student-zelfstandige-faq>

<sup>82</sup> <https://financien.belgium.be/nl/programmawet>

<sup>83</sup> <https://www.vrt.be/vrtnws/nl/2021/03/01/chauffeurs-uber-mogen-in-brussel-geen-ritten-meer-aanvaarden-op/>

<sup>84</sup> Hof van Justitie. (2014, 4 december). nr. C-413/13 FNV Kunsten Informatie en Media. Geraadpleegd via: <http://curia.europa.eu/juris/liste.jsf?language=nl&num=C-413/13>

<sup>85</sup> [https://www.steunpuntwerk.be/system/files/overwerk\\_2019\\_1\\_17.pdf](https://www.steunpuntwerk.be/system/files/overwerk_2019_1_17.pdf)

section 4.3). According to the interviewee, many self-employed workers have one or only a handful of 'regular' employers, and these employers should (in his opinion) be obliged to ensure health and safety conditions for self-employed workers, as well as a minimum wage.

A stakeholder indicated that there is case law in Belgium concerning the coverage of self-employed workers by collective bargaining and balancing this with fair competition, but she could not provide the names of any such cases. If names of such cases are required for the study, Francois can look into this further but has no time now. One interviewee mentioned that within the 'order of architects' (*Orde van architecten*) in Fladners,<sup>86</sup> a collective agreement was negotiated on minimum tariffs. This was seen as unfair competition, because any self-employed architect who was not part of this order of architects could therefore almost impossibly compete. The interviewee said that "*Belgium has poor competition*" (in Dutch: *Belgie heeft een gebrekkige concurrentiewerking*).

A social partner also mentioned that 'what comes closest' to collective bargaining for self-employed workers in the agricultural sector is the 'chain negotiation' (in Dutch: *ketenoverleg*).<sup>87</sup> This tries to regulate the 'chain' from farmer to the supermarket, and all the actors in between, to avoid abuse of 'power position' by one of the players within this chain (e.g. a supermarket could lower its prices to satisfy lower demand by its consumers, but this then has an impact on the entire chain of actors (e.g. those who deliver the seeds, the farmers, the seasonal workers, the transport sector, etc.).

## Labour market trends and other factors

### 4.1 Labour market regulation

In Belgium, regulation on entrepreneurship and self-employment dates back to 10 February 1998, when the federal government adopted the **Programme Law on the Promotion of Entrepreneurship** (*Programmawet ter bevordering van het zelfstandig ondernemerschap*).<sup>88</sup> Over the years, the law has been subject to several changes, and the most important one is the amendment of 1 July 2016, which introduced a new tax regime ('Law De Croo').<sup>89</sup> This introduced a sort of unofficial 'peer-to-peer (P2P) status' for people working in the shared economy. Alexander De Croo, Belgian Federal Minister for the Digital Agenda at the time, proposed this to "*reduce the administrative burdens on people using peer-to-peer services as a complementary activity and to promote the growth of the sharing economy*".<sup>90</sup> An 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. In doing so, **Belgium was the second EU Member State to regulate peer-to-peer income in the EU**. Articles 35-39 and articles 40-43 of this law made several changes to the Income Tax Code of 1992 and the Value Added Tax code, thereby making it possible for people working in the shared economy to earn up to around 5,000 EUR per year (or around 500 EUR per month),<sup>91</sup> free of any income tax and subject to indexation – provided this money was made from one of the 127 officially recognised platforms by the federal government.<sup>92</sup> Similar regulation existed for income generated from working for a non-profit organisation (e.g. in a youth organisation or as a sport instructor)<sup>93</sup> or 'occasional services between civilians'.<sup>94</sup> Any income above this threshold would be taxed at a flat rate of 20% (instead of 33%, which is common for miscellaneous income), on which another deduction of 50% was applied, meaning that only 10% VAT had to be paid on any income above the annual threshold. In April 2020, however, the Constitutional Court annulled the Law De Croo, but this has been restored on 1 January 2021, and now the regulation from 1 July 2021 applies again.

<sup>86</sup> <https://www.architect.be/>

<sup>87</sup> <https://www.boerenbond.be/kenniscentrum/onderwerpen/ketenoverleg>

<sup>88</sup> [https://www.etaamb.be/nl/programmawet-van-10-februari-1998\\_n1998016046.html](https://www.etaamb.be/nl/programmawet-van-10-februari-1998_n1998016046.html)

<sup>89</sup> <https://financien.belgium.be/nl/programmawet>

<sup>90</sup> <https://www.political-intelligence.com/fr/belgium-2d-eu-country-to-set-up-tax-rate-for-peer-to-peer-income/>

<sup>91</sup> In 2019, the amount was 6,250 EUR per year, and in 2020 it was 6,350 per year. More details available here: <https://financien.belgium.be/nl/particulieren/belastingvoordelen/bijklussen#q1>

<sup>92</sup> <https://financien.belgium.be/sites/default/files/downloads/127-deeleconomie-lijst-erkende-platformen-20190509.pdf>

<sup>93</sup> [https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet?\\_ga=2.254111041.89273637.1613031279-1591027635.1613031279#/document/0f3ec3a2-5d16-4888-988a-2d57a39c89b1](https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet?_ga=2.254111041.89273637.1613031279-1591027635.1613031279#/document/0f3ec3a2-5d16-4888-988a-2d57a39c89b1)

<sup>94</sup> [https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet?\\_ga=2.254111041.89273637.1613031279-1591027635.1613031279#/document/dc073223-64c3-4eda-9e66-eddc45bd9940](https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet?_ga=2.254111041.89273637.1613031279-1591027635.1613031279#/document/dc073223-64c3-4eda-9e66-eddc45bd9940)

For PRP income generated from working for non-profit organisation, this is no longer possible from 2021 (but there is an exception for the sport sector in 2021).<sup>95</sup>

There is also **legislation to tackle false self-employment**, which dates to amendments to the Programme Law (*Programmawet*) of 28 December 2006, which then received some alterations in 2012 and led to the foundation in 2013 of the Administrative Commission on the Regulation of Employment Relations (*Administratieve Commissie ter regeling van de Arbeidsrelatie*). These three important steps are described in turn below:

- First, in 2006 the Programme Law formulated **four criteria** to determine whether someone was in fact an employee rather than self-employed. These are: (1) free will of the parties, i.e. freedom of choice in the way both parties collaborate (i.e. worker and their client/employer); (2) freedom on when to work (i.e. a self-employed worker has the freedom to choose when they work, whereas an employee is bound to specific working hours, imposed by their employer); (3) freedom on how to work (i.e. a self-employed worker can work however he or she likes (an employee needs to follow instructions from their employer very precisely)); (4) hierarchical control (i.e. a self-employed worker is not subject to controls or checks by the client who gives them an assignment, whereas an employee can be checked/controlled by their employer).
- Since there are sectors where there are higher levels of false self-employment than others (and abuse of self-employment contracts), in 2012 the government introduced **9 specific criteria for 'sensitive professions'**.<sup>96</sup> Six professions are included on this list (i.e. security, construction, agriculture, horticulture, cleaning services and transport). If at least half of the 9 specific criteria apply, then workers should receive a regular employment contract (and not be self-employed). These criteria are (1) absence of financial or economic risk of the worker in the company; (2) absence of responsibility or decision power in the company; (3) absence of decision power in which materials are (or are not) to be bought as part of the activities carried out by the company; (4) absence of decision power over pricing policy of the company (except when pricing is set by law); (5) absence of influence on performance targets; (6) guaranteed fixed remuneration, unlinked to the performance of the company worked for; (7) not having any personnel working for you; (8) not (being allowed to) represent yourself as a self-employed worker vis-à-vis clients, but rather as a representative of the company you are working for; and (9) working in spaces which one does not rent or own, and working with material that is being made available by the client.
- A third important development in relation to labour market regulation on false self-employment (and employment relations in general) is the establishment in 2013 of the **Administrative Commission on the Regulation of Employment Relations** (*Administratieve Commissie ter regeling van de Arbeidsrelatie*).<sup>97</sup> The 2019 annual report shows that between 2014 and 2019, the ACR had to process between 17 and 36 requests each year (see Figure 6 in Annex).<sup>98</sup>

#### 4.2 Political context/debate

According to an interviewee from the Belgian Chamber of Translators and Interpreters (CBTI),<sup>99</sup> the Belgian Federal Minister David Clarinval, who is responsible for Middle Class, Self-Employed Workers, SMEs and Agriculture, Institutional Reform and Democratic Innovation, is currently in discussion with several trade unions to discuss the **possibility of regulating social dialogue for self-employed workers** and their working conditions. In February 2021, for example, the Minister will meet with representatives of the CBTI). No information was identified on any debates in Belgium on how collective bargaining for self-employed workers interacts with competition law. Debate in Belgium on the classification of self-employed workers has been included above (i.e. the current distinction between

<sup>95</sup> <https://www.vlaanderen.be/onbelast-bijverdiene>

<sup>96</sup> [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&table\\_name=wet&cn=2012092104](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2012092104)

<sup>97</sup> <https://commissiearbeidsrelaties.belgium.be/nl/index.htm>

<sup>98</sup> <https://commissiearbeidsrelaties.belgium.be/docs/rapport-2019-nl.pdf>

<sup>99</sup> Interview conducted on 1 February 2021.

self-employment and employment is not good enough to take into account new forms of employment, but there is no desire to create a third separate category to cover these new/alternative forms of employment (like false-self-employment)).

#### 4.3 Benefits for self-employed workers

The social status of (solo) self-employed workers is regulated by the **Social Security Service (Rijksdienst Sociale Zekerheid – RSZ)**.<sup>100</sup> In addition to paying income tax, self-employed workers (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 to:

- **Health insurance:** insurance for smaller medical issues (e.g. visiting GP, physiotherapy, etc.) as well as larger medical issues (e.g. surgery, going to hospital, etc.).
- **Support when incapable to work:** self-employed workers who pay their social contributions are able to receive government support when they are incapable of working (e.g. due to illness).
- **Maternity benefits:** the maternity benefits for self-employed mothers in Belgium are included as a best practice example in a recent EU publication from 2019. Following a Royal Decree on 11 August 2017, which entered into force in September 2017, *“maternity benefits are now granted semiautomatically, meaning self-employed women no longer need to apply for maternity benefits themselves. Provided they meet the qualifying conditions, women are automatically contacted by the social insurance fund to ask if they would like to receive support”*.<sup>101</sup>
- **Adoption leave:** self-employed workers have the right to take leave when adopting an underaged child.
- **‘Bridging right’ (overbruggingsrecht):** the exemption of having to pay social contributions for one year (i.e. four quarters) in times of financial difficulty – e.g. during the COVID-19 crisis this has been extended even more, in order to support self-employed workers.
- **Informal care:** monthly government allowance in case a self-employed worker has to take care of a family member or close friend (e.g. because they are ill or old).
- **Pension scheme:** this is more complex, but self-employed workers do have the right to receive state pension, provided they can prove they have worked a least 2/3 of the required minimum number of years (for regular employees), either as an employee and/or as self-employed, and that they have reached the minimum retirement age. It is also possible to retire early, receive pension of a deceased spouse, etc. But as indicated, it is all very complicated.
- **Child support:** this is regulated at regional level, and each region has its own rules as to when and how much child support self-employed workers are eligible to receive (i.e., Flanders,<sup>102</sup> Wallonia,<sup>103</sup> German-speaking region,<sup>104</sup> and the Brussels Capital Region<sup>105</sup>).

As shown in Figure 15 (see Annex), it should be noted that these benefits only apply to full-time self-employed workers, this does not cover part-time self-employed workers (as their social security is often covered by their ‘principal’ activity or source of income). A social partner interview revealed that, apparently, part-time self-employed workers are eligible to ‘accumulate’ social security rights if they earn around 14,000 EUR or above on an annual basis, and that there have been discussions to lowering this threshold to 7,000 EUR per year – the RSVZ website, however, clearly states that *“part-time self-employed workers do not accumulate extra social security rights within their status as self-employed”*.

<sup>106</sup> Interviews with an academic and social partner also revealed that, from an EU perspective, the social

<sup>100</sup> [https://www.rsvz.be/sites/rsvz.be/files/publication/brochure\\_rechten\\_en\\_plichten\\_04\\_2019.pdf](https://www.rsvz.be/sites/rsvz.be/files/publication/brochure_rechten_en_plichten_04_2019.pdf)

<sup>101</sup> P. 14: <https://op.europa.eu/en/publication-detail/-/publication/878b7c31-22ae-11e9-8d04-01aa75ed71a1/language-en>

<sup>102</sup> [www.groeipakket.be](http://www.groeipakket.be)

<sup>103</sup> <https://www.iriscare.brussels/fr/>

<sup>104</sup> [www.avig.be](http://www.avig.be)

<sup>105</sup> [www.ostbelgienfamilie.be](http://www.ostbelgienfamilie.be)

<sup>106</sup> <https://www.rsvz.be/nl/zelfstandige-bijberoep>

protection of self-employed workers in Belgium is pretty strong (see Figure 16 for a comparison with other EU countries, which shows that, after Finland, Belgium has one of the strongest systems) and the areas covered for self-employed workers and employees are roughly the same (e.g. they both have the right to maternity leave). There are, however, **some important differences with the extent or level of coverage**. For example, whereas employees have the right to 14 or 15 weeks of maternity leave, for self-employed mothers this is only 12 weeks. The interviewee explained that the reasoning behind this is that self-employed workers (on average) pay fewer social contributions than employees who, in addition to income tax and social contributions, also have social contributions which their employers have to pay for them. As a result, self-employed workers 'contribute less to the system', and therefore they receive slightly less social security coverage. An important recent change to the social protection of self-employed workers has also been the **equalisation of pensions for self-employed workers and employees** as of 1 January 2021.<sup>107</sup> Until the end of 2020, the pension of self-employed workers was calculated based on 70% of their income only (as opposed to 100% for employees).<sup>108</sup>

There are no precise figures on the salary levels of self-employed workers. In an article from July 2019 by Freelancers United,<sup>109</sup> an estimation is made **comparing the average monthly salary of employees and self-employed workers**. They conclude that, based on an average day rate of 242 EUR (before tax) and the *actual* number of days solo self-employed workers can work for, they conclude that this group of workers, on average, earns more than 20% less (after tax) than regular employees. INASTI has figures on the average annual revenue of full-time self-employed workers ((see Figure 18 in Annex), which shows that just over 30% earn between 15,000 and 30,000 EUR per year, just under 30% earn between 5,000 and 15,000 EUR per year; and only just over 15% earn between 30,000 and 50,000 EUR per annum – these are not extremely high-income levels for self-employed workers.

As opposed to many other EU countries, **Belgium has no minimum wage** at national level. These are all agreed upon through collective labour agreements, which means that there are no minimum wages for self-employed workers and differences between sectors.<sup>110</sup> All minimum wages, per sector, can be consulted on the 'minimum wage database' of the federal government.<sup>111</sup> There is something called a 'Minimum Average Monthly Income', but this is not the same as a monthly minimum wage, as it takes into account other payment elements such as a 'thirteenth month' and end of year bonus. There are some collective labour agreements at national level with regards to the minimum wage, which regulate the minimum wage for young people. The first one is CLA 43,<sup>112</sup> adopted in 1989, which regulates the minimum wage for people aged 18, 19 and 20 years old. The second one is CLA 50,<sup>113</sup> adopted in 1991, which regulates the minimum wage of people aged under 18 years old (see Figure 7 in the Annex for an overview of the percentages of the minimum wage applicable to different ages). There is automatic indexation in Belgium of minimum wages, but evidence (see paper cited below) that in real terms, minimum wages have barely increased in real terms over the past 15 years.

A study from July 2020 shows that "*In Belgium, wages are primarily set in collective bargaining agreements. As the descriptive analyses have shown, the weight of decision making on minimum wages lies at the sectoral level, as – on average – sectoral wage ceilings are 19% above the national minimum wage, and less than 3% of workers earn within 5% of the national minimum wage, compared to 10% of workers for the sectoral minimum wage*".<sup>114</sup> This shows that if companies covered by sectoral agreements on minimum wages potentially have better minimum wage arrangements for their staff. The study also shows that "*a higher likelihood of firm involvement in the bargaining process*

<sup>107</sup> <https://www.tijd.be/politiek-economie/belgie/federaal/gelijktrekken-pensioen-van-zelfstandige-is-wel-rechtvaardig/10265951.html>

<sup>108</sup> The calculation for employees was: '(income x 60%)/45' (45 is number of working years needed before you can retire). For self-employed workers this was: '((income x 60%)/45)x70%'. This has been abolished, and now the pension for self-employed workers is calculated in exactly the same way.

<sup>109</sup> <https://www.unitedfreelancers.be/kenniscentrum/2019/7/25/voorbeeld-van-vergelijking-tussen-het-inkomen-van-een-loontrekkende-en-een-zelfstandige>

<sup>110</sup> <https://werk.belgie.be/nl/themas/verloning/loon>

<sup>111</sup> <https://werk.belgie.be/nl/themas/verloning/minimumlonen-paritair-subcomite/databank-minimumlonen>

<sup>112</sup> [http://www.cnt-nar.be/CAO-ORIG/cao-043-ter-\(19.12.1989\).pdf](http://www.cnt-nar.be/CAO-ORIG/cao-043-ter-(19.12.1989).pdf)

<sup>113</sup> [http://www.cnt-nar.be/CAO-ORIG/cao-050-\(29.10.1991\).pdf](http://www.cnt-nar.be/CAO-ORIG/cao-050-(29.10.1991).pdf)

<sup>114</sup> <https://www.nbb.be/doc/ts/publications/wp/wp387en.pdf> p. 18

indeed enhances ‘endogenous’ wage setting, in which minimum wage levels and wage dispersion are simultaneously determined”.<sup>115</sup>

## Conclusions

There is a **strong tradition and history of social dialogue in Belgium**, with high membership numbers of trade unions among employees and a relatively stable and increasing influence of trade unions in Belgium. Jobat says that approximately 60% of all Belgian employees are affiliated to a trade union.<sup>116</sup> Most trade unions also accept membership from self-employed workers, and there is even a specific union for self-employed workers called United Freelancers, which is very active in defending the rights of self-employed workers, including platform workers.<sup>117</sup> The way in which social dialogue in Belgium is organised today is still largely based on the fundamental principles enshrined in the Social Pact of 1944,<sup>118</sup> which “*laid the foundations for an all-encompassing social security framework and stable employee-employer relations*” [own translation from Dutch].<sup>119</sup> The first official regulation on collective bargaining dates back to 5 December 1968, with the adoption of the collective bargaining law or ‘CLA Law’ (CAO Wet),<sup>120</sup> which regulates the working conditions between employers and employees.

As a result of the strong position of social partners in Belgium and more flexible forms of employment – statistical data also shows that there is an increase in the number of self-employed workers overall – , the **traditional model of social dialogue regulation has come under increasing pressure in Belgium**. According to the Annual Report of 2019 by the Administrative Commission on the Regulation of the Employment Relationship (ACR – *Administratieve Commissie ter regeling van de Arbeidsrelatie*),<sup>121</sup> there has been unclarity for years as to what it means to be employed or self-employed in Belgium, as it relies on “*the vague principle of working under someone else’s authority*” [own translation from Dutch].<sup>122</sup> This has led to social partners playing an increasing role in defending the rights of self-employed workers (despite CLA Law not being officially applicable to self-employed workers), smaller ‘associations’ of self-employed workers (especially in the free or regulated professions) and also government-level policy developments. For instance, in relation to platform work, Belgium introduced some important changes to the Programme Law on the Promotion of Entrepreneurship in 2016 (*Programmawet ter bevordering van het zelfstandig ondernemerschap*).<sup>123</sup> In doing so, Belgium was the second EU Member State to regulate peer-to-peer income in the EU. Amendments dating back to 28 December 2006 also aimed to tackle false self-employment.

Despite all these developments, **formally very little has changed yet** to bring more clarity and improve the working conditions of solo self-employed workers. Given the strong increase in the number of solo self-employed work in Belgium (which is stronger than in other EU countries), most stakeholders interviewed agreed that ensuring better working conditions for solo self-employed workers is the most important priority today. Some of the main challenges solo self-employed workers are facing relate to their weaker social protection compared with employees. However, compared with the EU, solo self-employed workers are very well protected in Belgium. Social partners also play an increasingly active role in defending their rights, which is helping to slowly ‘move things’.

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<sup>115</sup> *Ibid.* p.

<sup>116</sup> <https://www.jobat.be/nl/art/lid-worden-van-de-vakbond-doen-of-niet#:~:text=Bijna%2060%25%20van%20de%20Belgische,zo%20het%20geval%20bij%20KMO's>.

<sup>117</sup> <https://www.unitedfreelancers.be/home-nl>

<sup>118</sup> <https://www.belgiumwwii.be/nl/belgie-in-oorlog/artikels/sociaal-pact-het-28-december-1944-de-geboorte-van-de-sociale-zekerheid.html>

<sup>119</sup> [https://www.steunpuntwerk.be/system/files/overwerk\\_2019\\_1\\_17.pdf](https://www.steunpuntwerk.be/system/files/overwerk_2019_1_17.pdf)

<sup>120</sup> [https://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg\\_2.pl?language=nl&nm=1968120503&la=N](https://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=nl&nm=1968120503&la=N)

<sup>121</sup> <https://commissiearbeidsrelaties.belgium.be/docs/rapport-2019-nl.pdf>

<sup>122</sup> *Ibid.*, p. 17.

<sup>123</sup> [https://www.etaamb.be/nl/programmawet-van-10-februari-1998\\_n1998016046.html](https://www.etaamb.be/nl/programmawet-van-10-februari-1998_n1998016046.html)

## Interviews

Name of interviewee	Organisation
1. Max De Brouwer	Belgian Chamber of Translators and Interpreters (BKVT/CBTI)
2. Steven Steyart	United Freelancers (ABVV)
3. Martin Willems	United Freelancers (ACV)
4. Anne Guisset	KU Leuven
5. Bertel Cousaert & Thomas Pirars	UNIZO

## Annexes

**Figure Error! No text of specified style in document.-1: Evolution of number of freelancers in Flanders and Brussels by year (2015-2019).**

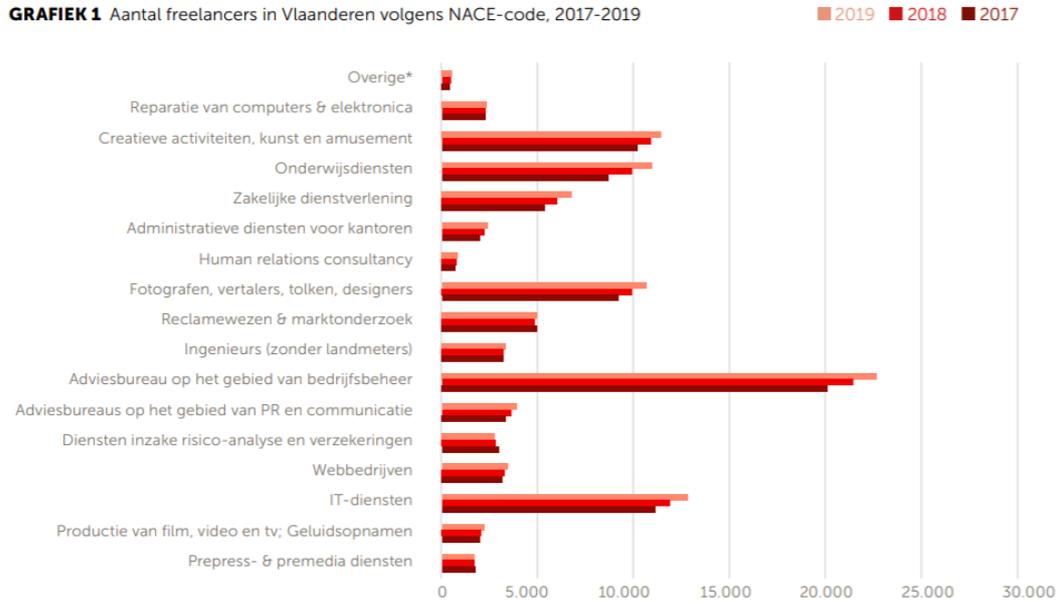
**TABEL 1** Aantal freelancers in Vlaanderen en Brussel en jaar-op-jaar evolutie (%)

	2019	2018	2017	2016	2015
Vlaanderen	135.710 (6,6%)	127.277 (6,6%)	119.435 (9,0%)	109.539 (5,6%)	103.767
Brussel	31.945 (5,0%)	30.420 (7,3%)-	28.362 -	-	-
<b>Totaal</b>	<b>167.655</b> <b>(6,3%)</b>	<b>157.697</b> <b>(6,7%)</b>	<b>147.797</b> -	-	-

*Bron: Craydon Belgium nv, bewerking door UNIZO*

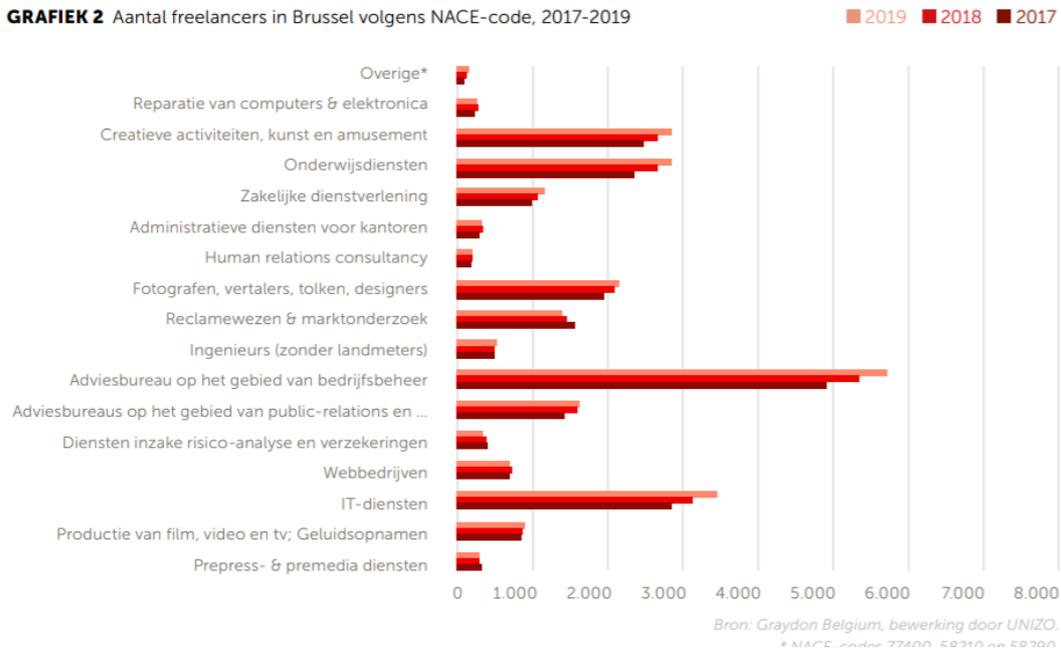
Source: p. 7: <https://www.unizo.be/sites/default/files/freelancerfocus2019.pdf>

**Figure Error! No text of specified style in document.-2: Number of freelancers in Belgium according to NACE code (2017-2019)**



Source: <https://www.unizo.be/sites/default/files/freelancerfocus2019.pdf>

**Figure Error! No text of specified style in document.-3: Number of freelancers in Brussels according to NACE code (2017-2019)**



Source: <https://www.unizo.be/sites/default/files/freelancerfocus2019.pdf>

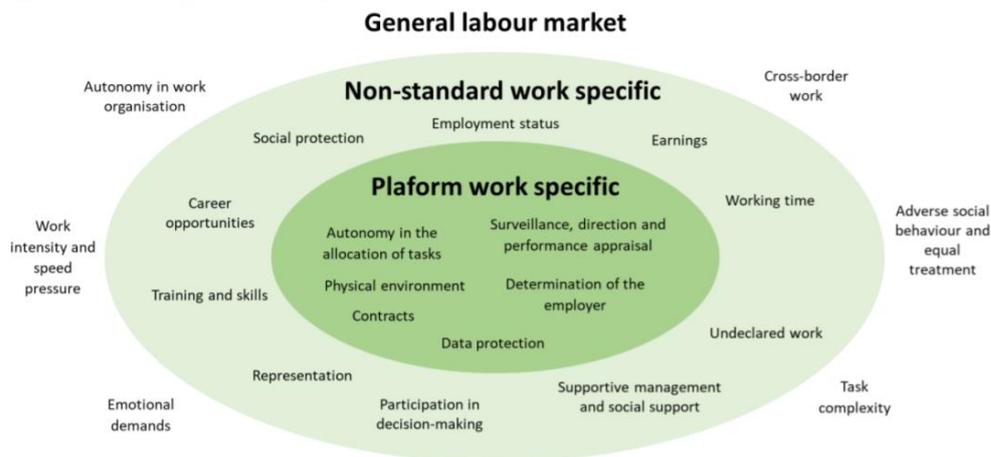
**Figure Error! No text of specified style in document.-4: Number of self-employed workers in the creative industry in Flanders (2015)**

Sector	Zelfstandigen (# personen)	Werkgevers (#)	Werknemers (VTE)	Omzet (€)	Toegevoegde waarde (€)
Architectuur	10.106	912	5.307	1.670.314.293	762.536.717
Audiovisueel	3.270	280	6.950	2.736.638.344	1.145.828.279
Beeldende kunst	2.504	256	911	360.700.760	155.097.813
Design	4.916	283	988	594.916.608	223.787.971
Erfgoed					
Gaming	146	59	451	223.948.310	75.188.751
Geschreven media - boeken	2.964	521	6.702	1.007.294.178	327.752.503
Geschreven media - pers	3.652	743	5.959	2.597.055.725	685.105.166
Mode	7.723	3.577	26.887	9.255.595.288	2.027.881.641
Muziek	9.904	568	3.298	1.455.695.888	610.163.884
Nieuwe media					
Podiumkunsten	4.400	312	4.779	1.328.939.948	446.464.093
Reclame & Communicatie	3.891	658	7.751	2.331.580.689	714.270.743
<b>Creative Industrieën</b>	<b>53.477</b>	<b>8.169</b>	<b>69.983</b>	<b>23.562.680.031</b>	<b>7.174.077.561</b>

Source: p. 17 <https://www.flandersdc.be/uploads/media/5899bb6261131/58c66c8a87b25.pdf>

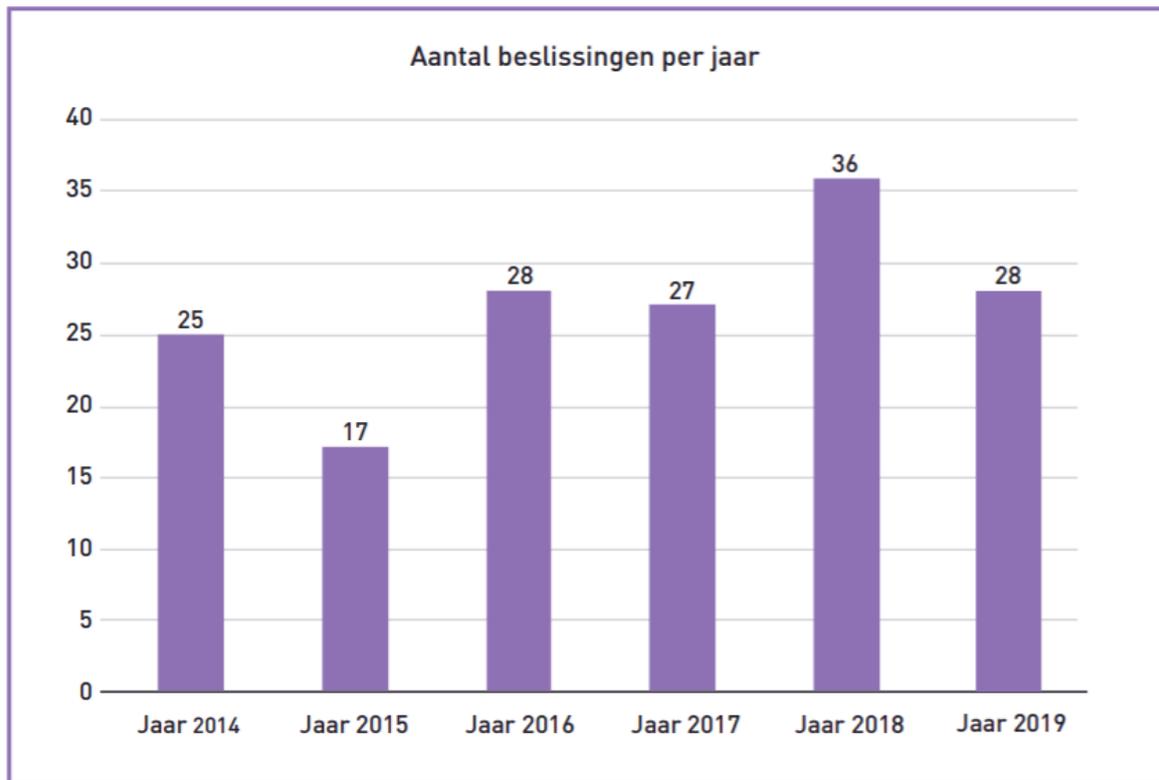
**Figure Error! No text of specified style in document.-5: Overview of main challenges facing platform workers**

Figure 1: Challenges summary



Source: <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8280&furtherPubs=yes> p. 16

**Figure Error! No text of specified style in document.-6: Number of decisions per year taken by the Administrative Commission on the regulation of Employment Relations (ACR)**



Source: p. 7: <https://commissiearbeidsrelaties.belgium.be/docs/rapport-2019-nl.pdf>

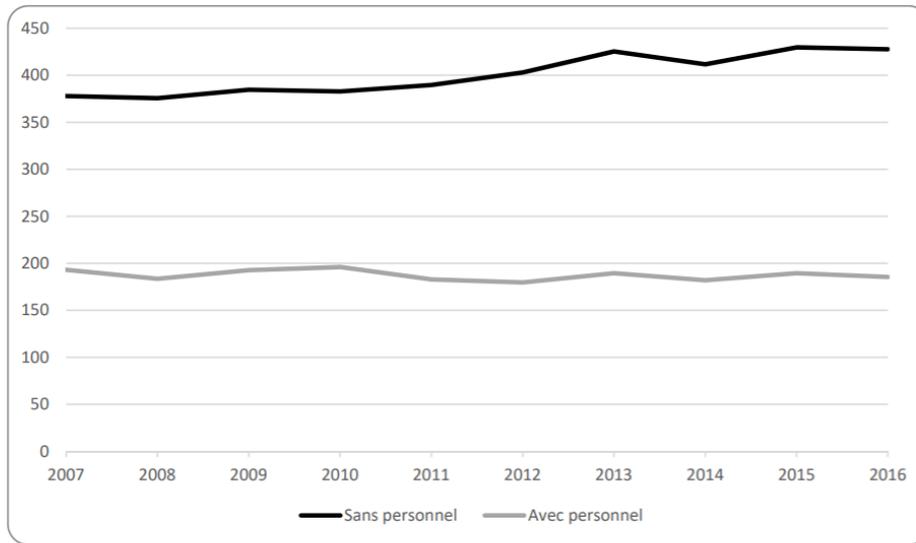
**Figure Error! No text of specified style in document.-7: Minimum wage for people aged 16-20 years old**

Leeftijd	% van het minimumloon	Min. bruto/maand
16 jaar	70%	1.051,27 euro
17 jaar	76%	1.141,38 euro
18 jaar	82%	1.231,49 euro
19 jaar	88%	1.321,60 euro
20 jaar	94%	1.411,08 euro

Source: <https://www.jobat.be/nl/art/heb-ik-recht-op-een-minimumloon>

**Figure Error! No text of specified style in document.-8: Evolution of the number of economically dependent workers in Belgium with and without personnel (2007-2016)**

**Graphique 1 – Évolution 2007-2016 de l’emploi indépendant avec et sans personnel  
Belgique, 20-64 ans, en milliers**

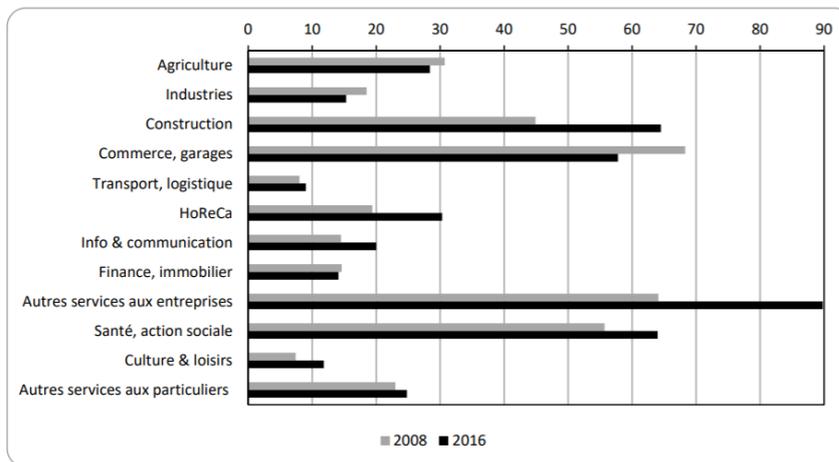


Source : Eurostat, LFS

Source: p. 13 [http://www.ftu-namur.org/fichiers/CSC-ChaireTU-Independants\\_economiquement\\_dependants.pdf](http://www.ftu-namur.org/fichiers/CSC-ChaireTU-Independants_economiquement_dependants.pdf)

**Figure Error! No text of specified style in document.-9: Evolution of solo self-employed work by sector (2008-2016)**

**Graphique 2 – Évolution 2008-2016 de l’emploi des indépendants sans personnel, par secteur d’activité  
Belgique, 20-64 ans, en milliers**



Source : Eurostat, LFS (classification sectorielle NACE)

Source: p. 14 [http://www.ftu-namur.org/fichiers/CSC-ChaireTU-Independants\\_economiquement\\_dependants.pdf](http://www.ftu-namur.org/fichiers/CSC-ChaireTU-Independants_economiquement_dependants.pdf)

**Figure Error! No text of specified style in document.-10: Weekly working hours of employees and solo self-employed workers in 2016**

**Tableau 7 – Durée hebdomadaire habituelle du travail à temps plein des salariés et des indépendants solos, selon les catégories de métiers Belgique, 2016, en heures par semaine**

	Hommes		Femmes		Tous	
	Salariés	Solos	Salariés	Solos	Salariés	Solos
Tous les métiers	39.8	53.8	38.2	49.6	39.2	52.5
Directeurs, cadres de direction et gérants	43.8	53.4	42.0	53.9	43.2	53.5
Professions supérieures : intellectuelles, scientifiques, médicales et de gestion	39.6	52.4	37.1	48.3	38.3	50.8
Professions intermédiaires (paramédicales, sociales, etc.), techniciens, assistants	40.0	50.5	38.7	47.9	39.5	49.6
Vendeurs et autres métiers des services aux particuliers	39.3	55.2	38.5	49.1	38.8	51.8
Métiers qualifiés de l'agriculture, sylviculture et pêche	39.1	63.6	–	61.6	39.1	63.3
Métiers qualifiés de l'industrie et artisanat	39.1	53.1	38.7	–	39.1	53.1

Source : Eurostat, LFS, classification des professions ISCO

Source: p. 19 [http://www.ftu-namur.org/fichiers/CSC-ChaireTU-Independants\\_economiquement\\_dependants.pdf](http://www.ftu-namur.org/fichiers/CSC-ChaireTU-Independants_economiquement_dependants.pdf)

**Figure Error! No text of specified style in document.-11: Collective bargaining for solo self-employed workers by United Freelancers in 2020, by sector**

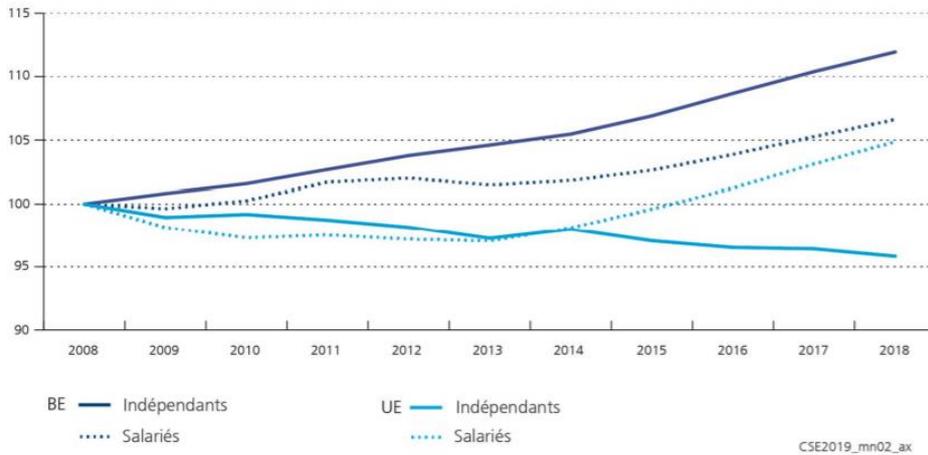
Ventilation  
des appels à  
UF par métier  
/ secteur

<b>Alimentation &amp; services</b>		<b>11%</b>
Horeca	4%	
Alimentation	2%	
Nettoyage, Jardins, Gardiennage	2%	
Sport	2%	
<b>BIE</b>		<b>17%</b>
Construction, bâtiment, électricité	9%	
Beauté, soin, coiffure, coaching	8%	
<b>CNE&amp;PULS&amp;Transcom</b>		<b>64%</b>
Consultance + IT	5%	
Art, spectacle, événement	16%	
Architecture & design	1%	
Media	2%	
Traduction/interprète	3%	
Commerce, vente	8%	
Santé, médical, paramédical	8%	
Soin enfants	2%	
Graphisme, pub, design, photo	3%	
Tourisme, guide	2%	
Services immobilier	1%	
Services fin., gestion, ass., compta., HR, secrétariat	4%	
Juriste	1%	
Livraison	6%	
Taxi, chauffeur	2%	
<b>Enseignement</b>		<b>4%</b>
Enseignement	4%	
<b>Metal</b>		<b>4%</b>
Metal/garage/auto/industrie	4%	

Source: Information shared by interviewee from United Freelancers.

**Figure Error! No text of specified style in document.-12: Evolution of employment and self-employment in Belgium and the EU (2008-2019)**

**Graphique 2 – Évolution de l'emploi salarié et indépendant (indices 2008=100)**

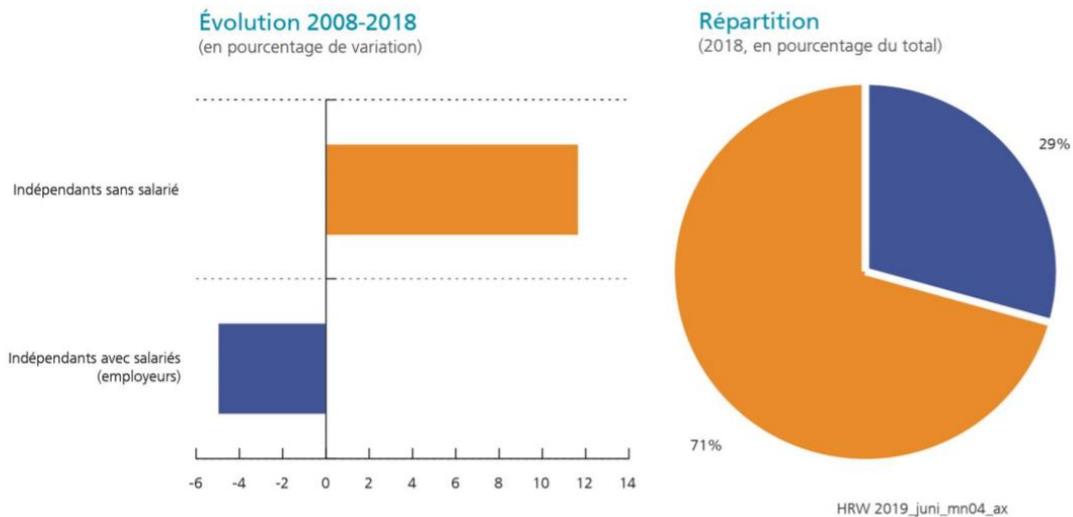


Sources: BNB, CE (comptes nationaux).

Source: p. 16 [https://cse.belgique.be/sites/default/files/content/download/files/rapport\\_cse\\_2019\\_-\\_avis\\_independants\\_-\\_pv.pdf](https://cse.belgique.be/sites/default/files/content/download/files/rapport_cse_2019_-_avis_independants_-_pv.pdf)

**Figure Error! No text of specified style in document.-13: Evolution of solo self-employed workers and self-employed workers with staff (2008-2019)**

**Graphique 4 – Indépendants avec ou sans salariés**



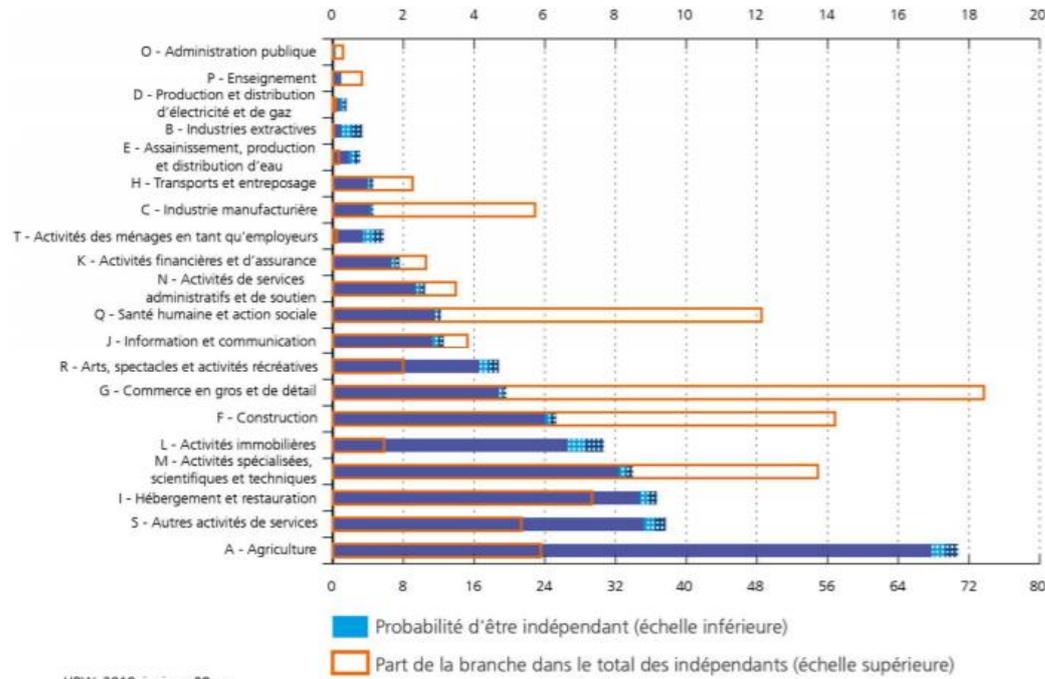
Source: CE.

Source: p. 18 [https://cse.belgique.be/sites/default/files/content/download/files/rapport\\_cse\\_2019\\_-\\_avis\\_independants\\_-\\_pv.pdf](https://cse.belgique.be/sites/default/files/content/download/files/rapport_cse_2019_-_avis_independants_-_pv.pdf)

**Figure Error! No text of specified style in document.-14: Likelihood of self-employment by sector (2008-2017)**

**Graphique 8 – Indépendant par branche d'activité<sup>1</sup>**

(probabilité sur la base du modèle Probit à effets fixes de temps<sup>2,3</sup>, et part de la branche dans le total des indépendants, 2008-2017<sup>4</sup>, population en emploi âgée de 15 ans ou plus, en pourcentage)



HRW\_2019\_juni\_mn08\_ax

Source: 9. 23 [https://cse.belgique.be/sites/default/files/content/download/files/rapport\\_cse\\_2019\\_-\\_avis\\_independants\\_-\\_pv.pdf](https://cse.belgique.be/sites/default/files/content/download/files/rapport_cse_2019_-_avis_independants_-_pv.pdf)

**Figure Error! No text of specified style in document.-15: Social protection of self-employed workers by status (2019)**

**Tableau 4 – Protection sociale selon le statut**

	Indépendants		Salariés				
	Activité principale	Activité compl.	Temps plein/ temps partiel	Fixe/ temporaire	T. saisonnier	Flexi-jobs	Étudiant
Soins de santé							
Maladie							
Maternité/paternité							
Pension							
Chômage							
Assistance sociale							
Soins de longue durée							
Invalidité							
Accident du travail							
Allocations familiales							

Sources: BNB, CE (2019), ONEM.  
 Rouge: nulle ; orange, partielle ; verte, effective.

Source: p. 37 [https://cse.belgique.be/sites/default/files/content/download/files/rapport\\_cse\\_2019\\_-\\_avis\\_independants\\_-\\_pv.pdf](https://cse.belgique.be/sites/default/files/content/download/files/rapport_cse_2019_-_avis_independants_-_pv.pdf)

**Figure Error! No text of specified style in document.-16: International comparison of social security for self-employed workers**

**Tableau 6 – Protection sociale des indépendants : comparaison internationale**

	Soins de santé	Maladie	Maternité/ paternité	Pension	Pension survivant	Chômage	Assistance sociale	Soins de LT	Invalité	Accident du travail	Allocations familiales
BE	Verte	Verte	Verte	Verte	Verte	Orange	Verte	Verte	Verte	Rouge	Verte
DE	Verte	Orange	Orange	Orange	Orange	Rouge	Verte	Verte	Orange	Rouge	Verte
DK	Verte	Verte	Verte	Verte	Rouge	Orange	Verte	Verte	Verte	Rouge	Verte
FI	Verte	Verte	Verte	Verte	Verte	Orange	Verte	Verte	Verte	Verte	Verte
FR	Verte	Orange	Orange	Verte	Verte	Rouge	Verte	Verte	Verte	Rouge	Verte
NL	Verte	Rouge	Orange	Orange	Verte	Rouge	Verte	Verte	Rouge	Rouge	Verte
SE	Verte	Verte	Verte	Verte	Verte	Orange	Verte	Verte	Verte	Verte	Verte

Sources: BNB, CE, ONEM.  
Rouge: nulle ; orange, partielle ; verte, effective.

Source p. 40 [https://cse.belgique.be/sites/default/files/content/download/files/rapport\\_cse\\_2019\\_-\\_avis\\_independants\\_-\\_pv.pdf](https://cse.belgique.be/sites/default/files/content/download/files/rapport_cse_2019_-_avis_independants_-_pv.pdf)

**Figure Error! No text of specified style in document.-17: Social contributions of self-employed workers and employees**

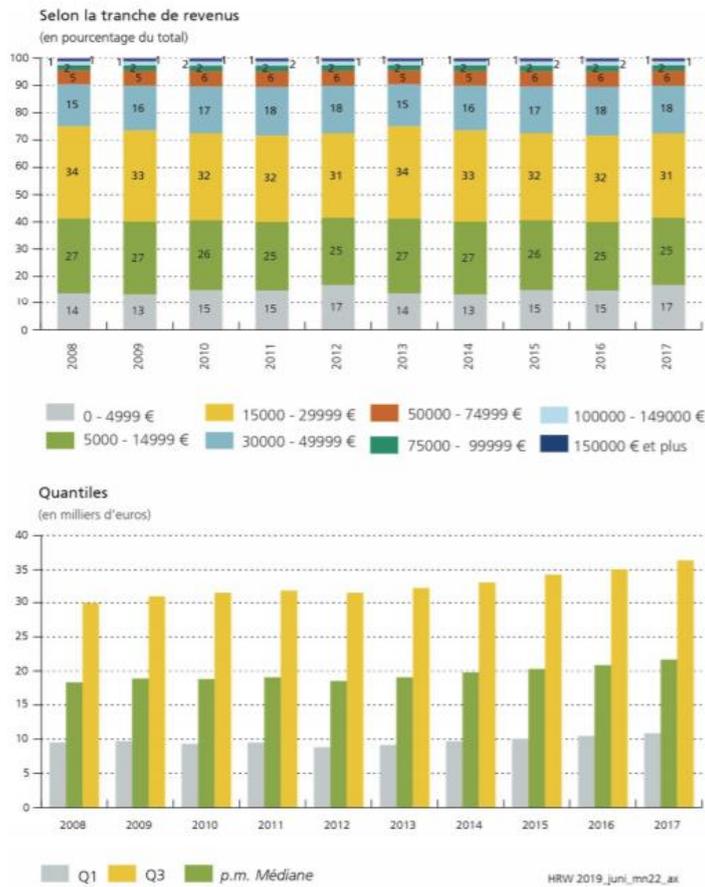
Indépendants	
<b>En activité principale :</b>	
Revenus compris entre 0 et 59 795,61 €	20,50 %
Revenus compris entre 59 795,61 et 88 119,80 €	14,16 %
Revenus supérieurs à 88 119,80 €	Plafond max.: 4 067,20 €
→ Min 709,68 € - Max 4 067,20 €	
<b>À titre complémentaire :</b>	
Revenus inférieurs à 1 531,99 €	0 %
Revenus supérieurs à partir de 1 531,99 €	Idem activité principale
<b>Après la pension :</b>	
Revenus inférieurs à 3 063,98 €	0%
Revenus compris entre 3 063,98 et 59 795,61 €	14,7%
Revenus compris entre 59 795,61 et 88 119,80 €	14,16 %
<b>Étudiant indépendant :</b>	
Revenus compris entre 0 et 6 923,69 €	0 %
Revenus compris entre 6 923,69 € et 13 847,39 €	20,50 %
Revenus supérieurs à 13 847,39 €	Idem activité principale
<b>Starters :</b>	
Possibilité de payer des cotisations réduites durant les 3 premières années puis régulation sur la base des revenus réels	
Salarisés	
<b>Après la pension :</b>	
Cotisations patronales	24,92 %
Cotisations employés	13,07 %

Sources: INASTI, ONSS, UCM.

Source: p. 38 [https://cse.belgique.be/sites/default/files/content/download/files/rapport\\_cse\\_2019\\_-\\_avis\\_independants\\_-\\_pv.pdf](https://cse.belgique.be/sites/default/files/content/download/files/rapport_cse_2019_-_avis_independants_-_pv.pdf)

**Figure Error! No text of specified style in document.-18: Salary of full-time self-employed workers in Belgium by sector (2008-2017)**

**Graphique 19 – Répartition du revenu des indépendants en activité principale**



Source: INASTI.

Source : p. 43 [https://cse.belgique.be/sites/default/files/content/download/files/rapport\\_cse\\_2019\\_-\\_avis\\_independants\\_-\\_pv.pdf](https://cse.belgique.be/sites/default/files/content/download/files/rapport_cse_2019_-_avis_independants_-_pv.pdf)

# Bulgaria

## Background information

According to Eurostat (2021) there were 330 thousand self-employed workers in Bulgaria aged 15 years or over and 309.8 thousand self-employed workers in the age group 15 to 64. The self-employed group of workers in Bulgaria consists of two categories: self-employed persons (own-account workers) and self-employed persons with employees (employers). Out of those 330 000 - 215 300 are self-employed workers without employees and 114 700 are self-employed workers with employees.

### 1.1 Occupation

The graph shows the occupation groups of self-employed workers in Bulgaria in 2019 aged 15 to 64 years (Labour Force Survey (LFS) 2020).<sup>124</sup> As demonstrated in the graph above self-employed workers are mostly concentrated in the service and sales workers occupational group, followed by managers, self-employed workers in agriculture, forestry and fishery<sup>125</sup> and professionals. There are no statistics available on the amount of self-employed in creative professions (e.g. actors, musicians, authors), self-employed journalists and other professionals who work as freelancers in Bulgaria. There is also no information available around false self-employment in Bulgaria.

Self-employment by occupation, age 15+, thou persons, 2019



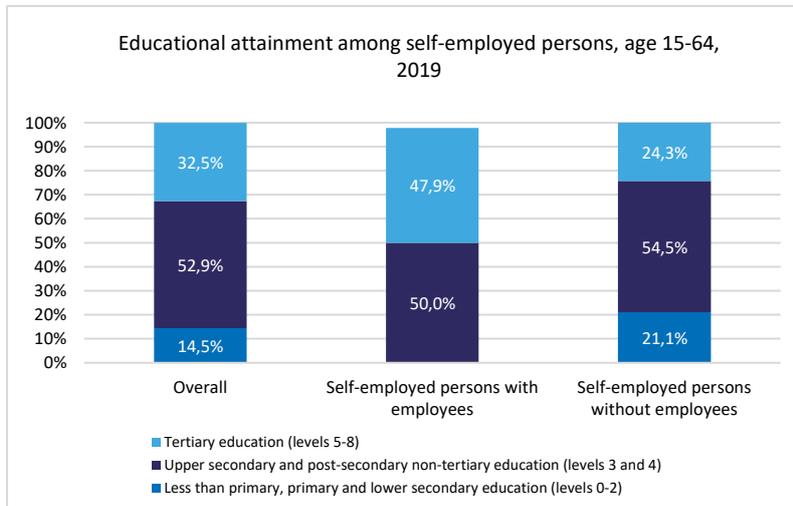
Source: Eurostat, 2020

<sup>124</sup> Labour Force Survey Bulgaria 2020 (<https://www.nsi.bg/en/content/6471/labour-force-survey>)

<sup>125</sup> According to Bulgarian legislature, all registered farmers are self-employed.

## 1.2 Educational Attainment

More than half of all self-employed persons in Bulgaria (53%) have completed their upper secondary and post-secondary non-tertiary education (Eurostat 2020)<sup>126</sup>. One third (32.5%) of self-employed workers have a university degree. Only 14.5% of self-employed persons in Bulgaria have completed less than primary, primary or lower secondary education (Eurostat 2020).



Source: Eurostat, 2020

The graph also shows the educational attainment of self-employed persons with employees and self-employed persons without employees. There is a similar trend between the two groups, where the majority (50% and 54.5%) have completed their upper secondary and post-secondary non-tertiary education. The percentage of self-employed persons with employees who have university degree is almost two times higher (47.9%) compared to the percentage of self-employed persons without employees (24.3%).<sup>127</sup>

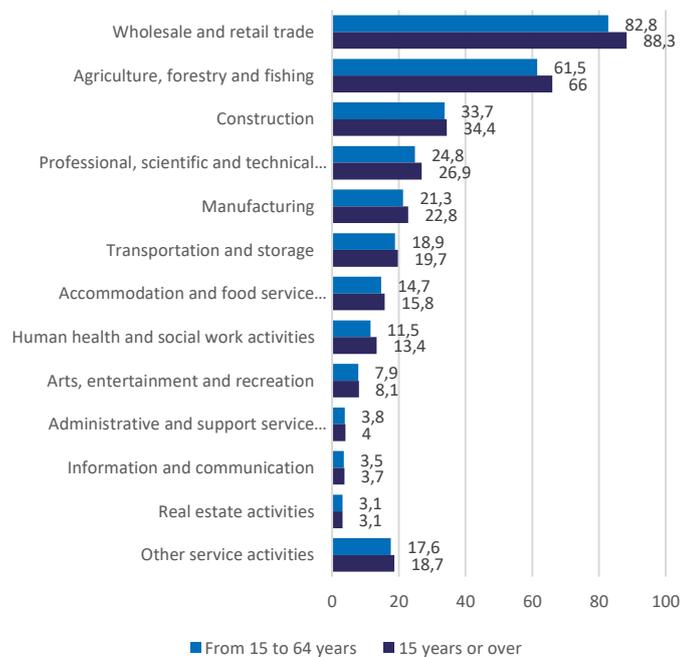
## Economic Sectors

<sup>126</sup> Eurostat, Self-employment by sex, age and educational attainment level (1 000) [lfsa\_esgaed]

<sup>127</sup> Ibid.

In terms of distribution among the economic sectors, self-employed workers are mostly concentrated in the wholesale and retail trade sector, agriculture, forestry and fishery sector<sup>128</sup>, construction and professional, scientific and technical activities.(Eurostat, 2020). The sectors with the least number of self-employed workers are the following: real estate activities, information and communication and administrative and support services.

Self-employed persons by economic sector, thou persons, 2019



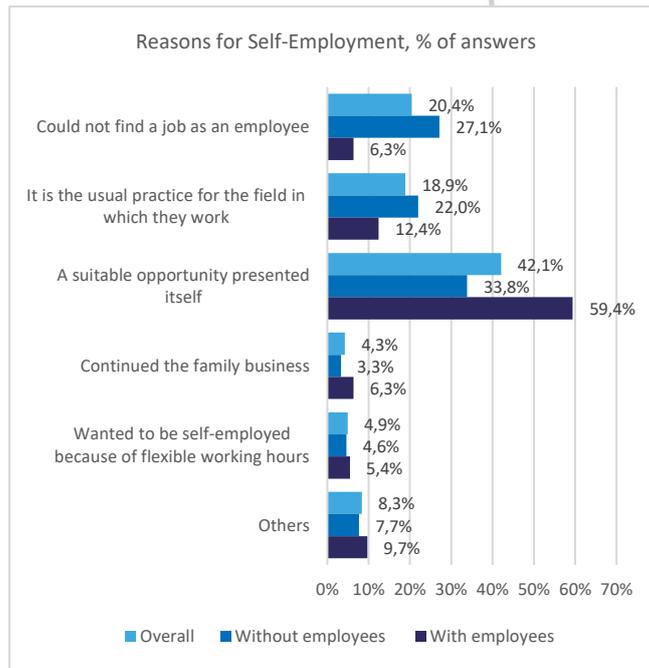
Source: Eurostat, 2020

#### 1.4 Reasons for self-employment

Below are displayed the most common reasons for self-employment by both categories of self-employed workers (National Statistics Institute (NSI), 2017).<sup>129</sup> The emergence of an appropriate opportunity is the most common reason expressed by both self-employed workers with employees (33.8%) and self-employed workers without employees (59.4%). The second most common reason among self-employed workers with employees is that they did not find a job as an employee (27.1%), compared to only 6.3% of own-account workers. 12.3% of self-employed workers without employees shared that they became self-employed because this is the usual practice for the field in which they work, compared to 22% of self-employed workers with employees (NSI 2017). This graph demonstrated the difference in the reasoning behind making the decision to become self-employed between both groups

<sup>128</sup> All farmers in Bulgaria are registered as self-employed.

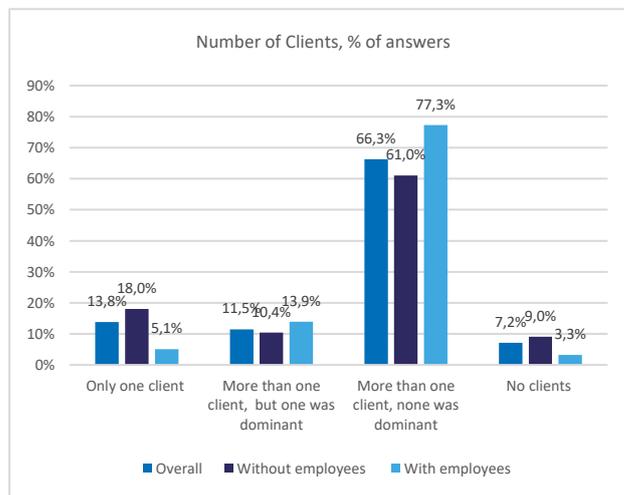
<sup>129</sup> National Statistical Institute (2017) [link here](#)



Source: Eurostat, 2020

### 1.3 Number of Clients

Self-employed usually work for more than one client and none is dominant – this is the case for 61% of the own-account workers and for 77.3% of the self-employed with employees, according to the 2017 LFS ad-hoc module. There are significantly more self-employed persons without employees with only one client (18%), compared to only 5.1% self-employed persons with employees. The same trend is observed in terms of having no clients, where 21 600 (9%) own-account workers reported having no clients compared to only 3 700 (3.3%) of the employers. The distribution of the answers reveal that the economic independency of the self-employed is relatively high.



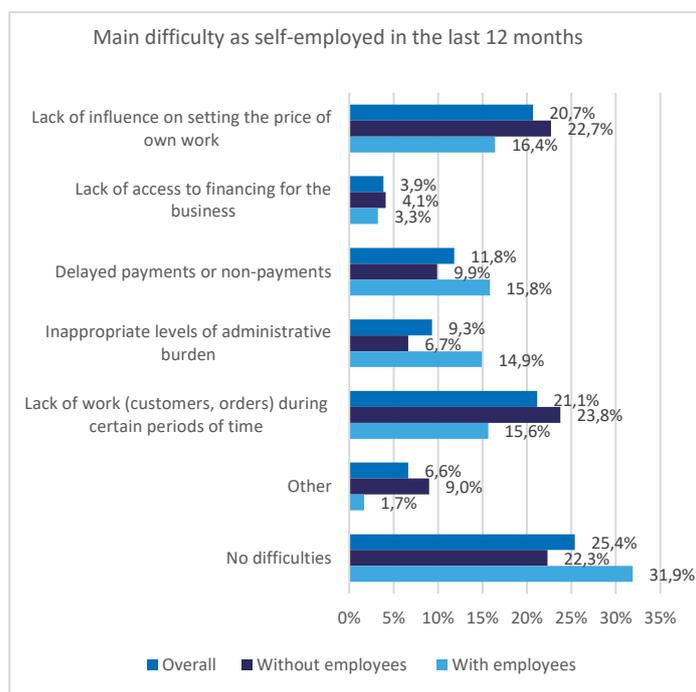
Source: Eurostat, 2020

### 1.4 Main Difficulty by Economic Sector

The graph below summarizes the most common difficulties self-employed workers have faced over the last 12 months. Most common difficulties relate to interruptions in the work due to periods of having no customer, no assignments or project to work on and to limited independence on setting the prices of own work. Interestingly, the share of self-employed that reported no difficulties is also significantly high, especially among self-employed with employees. Looking at the differences between the economic sectors, self-employed that operate in the services sector usually report no

difficulties (32.4% of the answers for the sector) or lack of work (24.3%). In the industry, lack of work and delayed and non-payments are the most identified problems, with respective shares of 28.5% and 20.3% of the answers in the sector.

Source: Eurostat, 2020



### Vulnerable workers:

There is no specific information or data available for vulnerable workers. The reports and statistical data gathered for research purposes reveals that that group is not researched in the country. The only relevant data that can give some insights of which groups of self-employed workers could be considered vulnerable relates to the average annual wage in the private sector. The average wages in the economic sectors where most self-employed workers operate are, respectively:

- Trade – 90% of private sector average
- Construction - 81% of private sector average
- Professional – 151% of private sector average

The data refers to 2019.

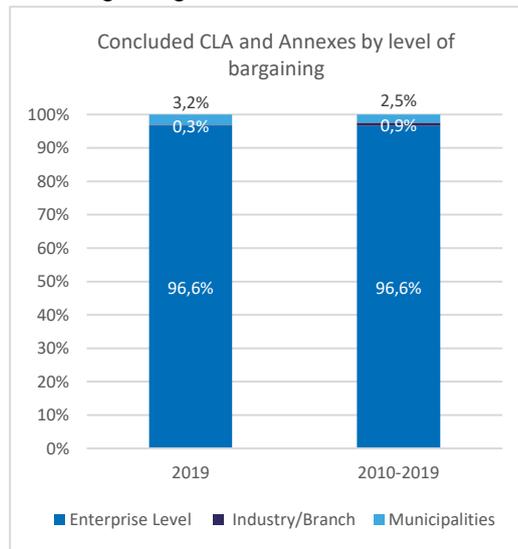
### Platform workers:

Digital platform work and online/remote work is now becoming more and more popular in Bulgaria, especially after the outbreak of the Covid-19 pandemic. However, there is no statistical data available on those sectors as they are quite new and still emerging. In 2019 Uber was banned from Bulgaria<sup>130</sup> after accusations in violation of competition rules from other transport companies. Other similar companies that operate are engaged mainly in food delivery (e.g. FoodPanda and TakeAway), however there is no official data on how many (self-employed) people are associated with or employed in these companies and what are the terms and conditions under which they work. It is important to note that those platforms are mostly, if not only, available in the capital of Bulgaria and some other major cities.

<sup>130</sup> <https://www.mediapool.bg/sadat-potvardi-zabranata-na-yuber-news290687.html>

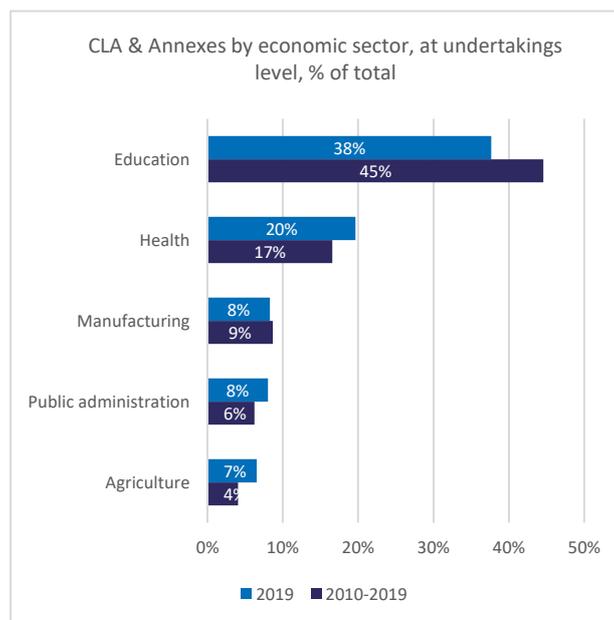
## Collective bargaining framework

According to the data provided by the National Institute for Conciliation and Arbitration (NICA) there were a total of 13 300 signed collective labour agreements (CLA) and annexes in Bulgaria for the period from 2010 to 2019. However, the number of signed CLAs and Annexes has been consistently declining over this period. For example, there were 1,700 CLA and Annexes in 2012 compared to only 1,111 CLA and Annexes in 2019. Overall, we can observe a 21.3 % decrease in concluded collective labour agreements and annexes in Bulgaria in 2019, compared to 2010. The trend can indicate a decline in the overall importance of collective bargaining.



Source: Eurostat, 2020

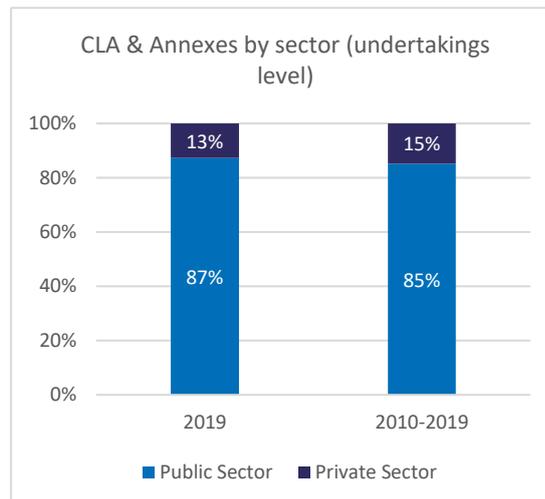
According to the Labour code, the CLA could be signed at enterprise, industry and municipality levels. NICA data reveals that the majority of the CLA are signed at enterprise level with a very limited, and declining over the years, role for industry level agreements.



Source: Eurostat, 2020

Traditionally, the majority of the CLA cover undertakings in Education and Health sectors (38% and 20% of all signed CLA and annexes in 2019 at enterprise level, respectively) due to the strong trade unions there and the large number of publicly owned entities. In the sectors where self-employed workers are concentrated, the number of CLA is limited – 5 agreements were signed in 2019 in Construction, 3 in Trade and 4 in Professional services.

CLA are more common in the public sector (state owned enterprise and public administration). Out of the total 1,073 agreements and annexes signed in 2019, 937 were in the public sector and only 136 in the private sector. This distribution has been broadly unchanged since 2010



Source: Eurostat, 2020

There are two large trade unions in Bulgaria: Labour Confederation “Support” and Confederation of Independent Trade Unions in Bulgaria (CITUB). However, unions do not provide official data on membership levels and involvement in bargaining.

As mentioned above, there are 3 levels of collective bargaining in Bulgaria: Enterprise level, Industry/Branch level and Municipalities level. The collective CLAs and bargaining in Bulgaria are usually concluded by two sides which differ according to the level of bargaining: On enterprise level, the CLA is concluded between trade unions representing employees and the employer. On industry and municipal level, the CLA is between trade unions and a national employers' organisation. Thus, the employer's side could be represented by a national employers' organisation or a company.

In terms of the size of the company, the majority of CLA and Annexes for the period 2010 – 2019, are concluded by small size enterprises (6 141 CLA & Annexes ), followed by medium size enterprises (4 046) and large size enterprises (2 240 CLA & Annexes) (NICA 2020). According to the statistical data, provided by the National Statistical Institute (NSI, 2019) in Bulgaria out of a total of 419 681 non-financial enterprises, 388 980 are micro enterprises (up to 9 employees) which represents 92% of all non-financial enterprises in the country in 2019.

In Bulgaria, there are several different organisations representing the self-employed, mostly by groups of occupations with similar features, such as the liberal professions, registered self-employed workers, sole traders and home workers. The services offered vary from awareness-raising, training, support with taxes and social security, to preparation for and organisation of professional exams. A highly specialised organisation is the Trade Union of Self-employed and Informal Workers: Edinstvo. The driving force behind the creation of Edinstvo was the Association of Home Workers (Eurofound, 2015c), which seeks to address challenges such as low wages and job insecurity. It also aims to help the self-employed to move from the informal to the formal economy.

There are no formal restrictions on who can join a trade union. Trade unions are usually registered as non-government non-profit organisations.

The term self-employed is not present anywhere in the Labour Code of Bulgaria and the law states that collective agreements could be signed between (organisations of) employers and employees. Therefore self-employed workers are not covered by collective agreements and related issues covered by CLAs. (interviews). According to the Labour Code: "At the joint request of the parties under the collective labour agreement, excluded at sectoral or branch level, the Minister of Labour and social policy can extend the application of treaties or individual clauses in all enterprises in the industry or branch after the written consent of all organisations of workers and employees and of workers recognized as representatives at national level." These extensions do not cover self-employed workers.

Based on the information provided above, it could be concluded that self-employed workers could not collectively bargain and therefore there are no reports in Bulgaria of a retaliation action against a company following its refusal to negotiate with self-employed services providers.

## Legal framework

*Main relevant legal provisions: Bulgarian labour code, Art. 51.*

There are no legal provisions that relate to self-employed workers under collective agreements. The legal framework of the labour law in Bulgaria does not provide any protection for self-employed people, moreover the law itself makes it impossible for self-employed people to take part or be protected under collective agreements. Only employees can be a side in collective agreements.

There is no definition of the term "employee" in the Labour Codes in Bulgaria, moreover there is no definition of self-employed person in the Labour Code or Labour Law. In Bulgaria self-employed workers are defined as self-insured workers in the Social Security Code. Self-insured workers are obliged to pay social security contributions at their own expense. They are obliged to pay contributions to the state social insurance at their own expense if they are: Persons registered as exercising a free profession and / or craft activity; persons exercising labour activity as sole traders, owners or partners in commercial companies, the natural persons - members of impersonal companies; registered farmers and tobacco growers.

Self-insured persons are compulsorily insured for disability due to general illness, old age and death. For other schemes, such as those for healthcare and maternity leave, affiliation is based on voluntary social security contributions. Additionally, the self-employed can voluntarily opt in for paid sick leave in Bulgaria. There is no access to coverage against accidents and work and occupational diseases in Bulgaria. Self-employed workers who earn under a certain income threshold can be exempted from paying into a pension scheme but can opt in to avoid gaps in their contribution record. There are no or limited unemployment benefits available for the self-employed.

Specific laws apply only for some liberal professions, but they are not focused on the classification of employees.

As mentioned above, self-employed workers in Bulgaria could not be protected or covered by collective bargaining, therefore there are no important case law relating to the matter. On the issue of balancing fair competition, we were not able to allocate information relating to this, even after the interviews.

## Labour market trends and other factors

The matter of self-employment is not a popular topic of discussion in Bulgaria. Therefore, no trends towards labour market deregulation or tightening of regulation that might affect self-employment have been identified after desk research and interviews.

Regarding the issue of collective bargaining for self-employed workers, it was not not been identified as an issues or topic of debate in the country. Moreover, there is no link between self-employed workers and competition law so at the moment no common areas are identified.

There is no official data relating to false self-employment. There are estimates on grey economy activity but those also cover people that are not self-employed.

There are no discussions in relation to issues surrounding collective bargaining and self-employment in Bulgaria at the moment. The Ministry of Labour was contacted and asked to participate in this study but did not respond to the invitation nor send written comments on the topics for discussion.

No information on changes in tax and social security schemes that might influence the level of self-employment in Bulgaria was identified throughout desk research and interviews.

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. Share of the person's income is recognised as cost and it is deducted from the tax base used for the calculation of social contributions.

There is no any information on salary levels and whether they differ between sectors, depending on whether they are covered by a collective agreement. Usually this type of information is confidential under the contracts for collective agreements. However, the issue of salary levels is one of the areas that is tackled through collective bargaining and agreements

No information on salary levels within the same sector, comparing pay of companies with and without collective agreements to the question was identified after desk research and interviews

## Conclusions

The National Law does not allow self-employed workers to take part in collective bargaining. The regulation on collective bargaining requires employers and employees to participate as sides in the agreement and the self-employed in the country are considered independent business units (undertakings) and not employees. Hence, in the case of self-employed people and collective bargaining, there is no one to represent the "employer side" (if self-employed are considered the "employee" side). Besides, the group of self-employed is very diverse in terms of type of activities that it covers and incentives for being self-employed. Some of the liberal professions are regulated with case laws and there are internally agreed "codes of conduct" for some sectors/activities. Generally, information collected through the interviews reveal that most of the self-employed find some possibilities in being self-employed (mostly related to the freedom to provide services that are adapted and tailored to the needs of a client and to manage the delivery of the service). The interviews revealed that there is a need for raising awareness among self-employed persons on the importance of signing formal agreements and contracts with their clients and for increased familiarity with their rights and options for legal protection in case of fraudulent behavior on the client's side. There is no official information or estimates on employment via digital platforms.

## Interviews

Invitations for participation in an interview were sent to the Ministry of Labour and Social Policy but no responses were returned until the deadline.

Name of interviewee	Organisation
1. Mariya Mincheva, Jasmina Saraivanova	Bulgarian Industrial Association
2. Mariana Ivanova	National Institute for Conciliation and Arbitration
3. Lyubomir Levicharov, Blagovesta Dzhabirova	Bulgarian Chamber of Commerce and Industry
4. Violeta Zlateva	Trade Union of Self-employed and Informal Workers: Edinstvo
5. Doychin Ivanov	IY Lawfirm

# Cyprus

## Background information

Overall, the number of the self-employed, as proportion of the workforce, is connected to the economic cycle, decreasing in good times and increasing in bad times. Interestingly, however, Cyprus is one of the EU countries, which, between 2008 and 2015, that in the midst of the recent financial crisis and the related austerity measures, experienced a strong decrease (- 4 percentage points) in the proportion of self-employment in the employed labour force. A strong driver of this decline was agriculture. More specifically, roughly 19% of the drop in the number of the self-employed workers in Cyprus during the reference period is due to the fall in the engagement of the self-employed in the agricultural sector (Eurofound, 2017a: 7-8). Furthermore, when considering changes into own account self-employment, excluding agriculture, then the decrease in the percentage of the self-employed in Cyprus was 9.8% (for the years between 2011 and 2016 and those aged 20-64) (Fulton, 2018: 24).

Based on data of the Statistical Service of the Republic of Cyprus (henceforth CYSTAT) for the third semester of 2020, the labour force<sup>131</sup> in the country included 452,154 people or 62.9% of the total population (men 70%, women 56.4%). One year ago (i.e. in the third semester of 2019) the labour force in Cyprus included 447,206 people (which was equal at that point to 63% of the total population). During the third semester of 2020, the number of those employed<sup>132</sup> in Cyprus amounted to 414,920 people and the employment rate equalled 57.7% (men 64.5%, women 51.5%). Moreover, for the same time period, the number of the unemployed<sup>133</sup> was 37,234 people and the unemployment rate amounted to 8.2% of the labour force (men 7.9%, women 8.6%). One year ago (i.e. in the third semester of 2019) the numbers of those employed and unemployed in the country were respectively 417,118 people (58.7%) and 30,088 people (6.7%).

Taking into account, once again, the available CYSTAT data for the third semester of 2020, the **number of the self-employed<sup>134</sup> in Cyprus amounted to 57,621 people** - equal to 13.9% of total employment - out of which 38,475 were men and 19,146 women (17.3% and 9.9% respectively of the total employment in the country during the reference period). In comparison to one year ago (i.e. the third semester of 2019), **the total number of the self-employed in the country increased**; the same holds true for the men involved in self-employment activities. More specifically, the relevant numbers were 56,328 for the total of the self-employed and 36,499 for the male self-employed (which were equal to 13.5 and 16.3 respectively of the total employment in Cyprus during the reference period). By contrast, between the third semester of 2020 and the third semester of 2019, there was a minimal decrease in the number (and therefore the percentage) of the women engaged in self-employment activities in the country: from 19,828 in the third semester of 2019 (and 10.3% of the total employment) to 19,146 in the third semester of 2020 (and 9.9% of the total employment).

Additionally, while, as already mentioned above, the self-employed in the third semester of 2020 amounted to 57,621 people (38,475 men and 19,146 women), a total of 2,703 self-employed workers (1,460 men and 1,243 women), during the same reference period, were reported to be unemployed. **Between the first and the third semester of 2020, the number of the self-employed who were unemployed increased**: from a total of 1,608 people in the first semester of 2020 to 2,287 in the second semester (and, next, as previously mentioned, to 2,703 in the third semester of that year).

The CYSTAT data on the professional status and the specific sector of the economic activity of the self-employed<sup>135</sup> during the third semester of 2020 (per gender) also reveals significant variation in the

<sup>131</sup> In accordance with the definition provided by CYSTAT, the 'labour force' is the economically active population, i.e. both the employed and the unemployed, who are 15 years old and above.

<sup>132</sup> In accordance with the definition provided by CYSTAT, the category of those 'employed' includes every individual over the age of 15 who, during the survey reference week, had worked, even for one hour; but also workers who, during the time of the survey, had been temporarily absent from their job position.

<sup>133</sup> In accordance with the definition provided by CYSTAT, being classified as 'unemployed' depends on conforming to multiple criteria, such as being available to start working within two weeks after the survey reference week.

<sup>134</sup> The term 'αυτοεργοδοτούμενοι' is broadly used.

<sup>135</sup> The classification of the self-employed in Table 1 is based on NACE, that is the statistical classification of economic activities in the EU (deriving from the French term 'Nomenclature statistique des activités économiques dans la Communauté européenne').

number of the self-employed who developed activities in different sectors of the Cypriot economy. Table 1 (below) includes the relevant information:

**Table 1:**  
**Classification of the Self-Employed in Cyprus**  
(Based on their professional status and the sector of their economic activity)

Professional status/Sector of economic activity	First Semester 2020			Second Semester 2020			Third Semester 2020		
	Total	Men	Women	Total	Men	Women	Total	Men	Women
<b>Total</b>	60,467	38,318	22,149	55,895	36,856	19,039	57,621	38,475	19,146
<b>A. Agriculture, Forestry and Fisheries</b>	6,220	4,949	1,271	7,547	5,915	1,632	7,514	5,698	1,816
<b>B. Mining and Quarrying</b>	53	53	0	66	66	0	58	58	0
<b>C. Processing</b>	4,150	3,030	1,121	4,206	2,984	1,223	4,323	3,202	1,121
<b>D. Electricity, Gas, Steam and Air Conditioning Supply</b>	0	0	0	0	0	0	0	0	0
<b>E. Water Supply, Sewerage, Waste Management and Remediation Activities</b>	112	112	0	53	53	0	58	58	0
<b>F. Construction</b>	6,035	6,035	0	6,963	6,963	0	6,765	6,532	233
<b>G. Wholesale and Retail Trade, Repair of Motor Vehicles and Motorcycles</b>	7,884	6,383	1,501	6,207	4,860	1,347	7,159	5,677	1,483
<b>H. Transport and Storage</b>	2,228	2,228	0	1,998	1,998	0	1,544	1,544	0
<b>I. Accommodation and Food Service Activities</b>	3,168	2,022	1,146	2,562	1,931	630	2,713	2,137	576
<b>J. Information and Communication</b>	862	620	242	736	513	223	1,226	1,018	208
<b>K. Financial Services and Insurance Activities</b>	1,328	1,033	295	1,724	1,427	296	1,843	1,456	387
<b>L. Real estate management</b>	308	235	73	455	374	81	759	759	0
<b>M. Professional,</b>	5,042	2,790	2,252	4,125	2,201	1,923	4,636	2,802	1,834

<b>Scientific and Technical Activities</b>									
<b>N. Administrative and Support Service Activities</b>	3,628	1,269	2,359	3,037	1,182	1,855	2,800	1,199	1,600
<b>O. Public Administration and Defence, Compulsory Social Security</b>	606	237	369	199	23	176	211	88	123
<b>P. Education</b>	5,978	1,939	4,038	5,402	2,011	3,390	4,895	2,199	2,696
<b>Q. Human Health and Social Work Activities</b>	4,403	1,830	2,573	3,005	1,122	1,883	3,118	896	2,222
<b>R. Arts, Entertainment and Recreation</b>	1,510	1,017	493	1,403	907	496	1,359	1,033	326
<b>S. Other Service Activities</b>	6,222	2,272	3,950	5,861	2,057	3,803	6,264	1,885	4,379
<b>T. Household Services</b>	730	263	467	348	268	80	376	234	142
<b>U. Activities of Extraterritorial Organizations and Bodies</b>	0	0	0	0	0	0	0	0	0

Additional data from CYPSTAT sheds light upon the professional status and the specific occupations<sup>136</sup> of the self-employed in Cyprus (per gender). Table 2 (below) includes the relevant information:

**Table 2:**  
**Classification of the Self-Employed in Cyprus**  
(based on their professional status and their specific occupation)

Professional Status/Specific profession	First Semester 2020			Second Semester 2020			Third Semester 2020		
	Total	Men	Women	Total	Men	Women	Total	Men	Women
<b>Total</b>	<b>60,467</b>	<b>38,318</b>	<b>22,149</b>	<b>55,895</b>	<b>36,856</b>	<b>19,039</b>	<b>57,621</b>	<b>38,475</b>	<b>19,146</b>
<b>0. Armed Forces Occupations</b>	0	0	0	0	0	0	0	0	0
<b>1. Managers and Administrative Officers</b>	1,052	968	83	1,029	952	77	1,511	1,345	166
<b>2. Professional</b>	14,606	6,789	7,817	11,744	5,445	6,299	11,858	5,700	6,158

<sup>136</sup> The classification is based on the ISCO-08 classification of occupations (ISCO stands for 'International Standard Classification of Occupations'). Yet, there seems to be, at least in some cases, a discrepancy between the names of the major ISCO-08 codes utilized (in English) and the ones included in the relevant CYPSTAT archives (in Greek). The latter read as follows: 0. Στρατιωτικοί/1. Διευθυντές και Διοικητικοί Λειτουργοί/2. Προσωντούχοι και Άλλοι Ειδικοί/3. Τεχνικοί, Βοηθοί και Ειδικοί Γραφείς/4. Γραφείς, Δακτυλογράφοι και Ταμίες/5. Υπάλληλοι Υπηρεσιών και Πωλητές/6. Γεωργοί, Κτηνοτρόφοι και Ψαράδες/7. Τεχνίτες Παραγωγής και Παρόμοιοι/8. Χειριστές Μηχανών και Εργαλείων/9. Ανεπίδητοι Εργάτες.

and Other Experts									
<b>3. Technicians and Associate Professionals</b>	4,590	3,215	1,375	4,450	3,263	1,187	4,554	3,411	1,143
<b>4. Clerical Support Workers</b>	2,038	921	1,117	1,563	779	784	1,751	1,072	679
<b>5. Service and Sales Workers</b>	12,793	6,238	6,555	11,226	4,919	6,306	11,615	4,958	6,657
<b>6. Skilled Agricultural, Forestry and Fishery Workers</b>	5,728	4,340	1,388	6,363	4,511	1,851	6,518	4,742	1,776
<b>7. Craft and Related Trades Workers</b>	10,911	10,061	850	11,249	10,256	993	12,244	11,334	910
<b>8. Plant and Machine Operators and Assemblers</b>	3,159	3,093	66	2,967	2,967	0	2,249	2,249	0
<b>9. Elementary Occupations</b>	5,589	2,693	2,897	5,303	3,762	1,541	5,321	3,664	1,657

Cyprus is also reported to be the **EU country with the highest share of self-employed in the public administration, education and health sectors** (10% in 2015). Furthermore, in contrast to the strong decrease in total self-employment in the country (- 4 percentage points, between 2008 and 2015), there was a very high increase in absolute value (+ 5 percentage points, between 2007 and 2015) in the number of the self-employed who were involved in the aforementioned sector (Eurofound, 2017a: 7; European Commission, 2018: 15, 157).

Next, as far as **reasons for self-employment** are concerned, and in accordance with the findings of the sixth European Working Conditions Survey (henceforth EWCS), 71% of the survey respondents in Cyprus reported that they became self-employed due to their personal choice. **Only 15% mentioned that they had entered self-employment because there were no other alternatives for work.** Moreover, 14% of the survey respondents claimed that they decided to become self-employed, after considering both their personal choice and the absence of other work alternatives. By contrast, difficulties related to getting funding for business (37.6%) and financial insecurity (28.2%) are the two most frequent reasons mentioned for not becoming self-employed in Cyprus<sup>137</sup>.

This data should be viewed in conjunction with the data included in the 2017 EU Labour Force Survey ad hoc module on self-employment, according to which **25.2% of the respondents in Cyprus entered into self-employment, because they could not find a job as an employee**; 2.5%, because the respondent's former employer requested from her/him to become self-employed; 20.5%, because it's the usual practice; 23%, due to a suitable opportunity; 8.7%, because they wished to continue the family business; 3.7% did not want to or planned to become self-employed, but started working as self-employed for another reason than the ones listed previously; 8.1% wanted to become self-employed, because of the flexible working hours; and, finally, 8.3% decided to enter into self-employment for another reason (not explicitly mentioned). When asked about the difficulties experienced, while working as self-employed, the answers of the respondents ranged significantly: from 'lack of access to financing for the business' (1.1%) up to 'periods of financial hardship' (23.7%).

<sup>137</sup> This and the next two paragraphs draw on Eurofound, 2017a: 10-11, 13 and Eurostat, 2018: 40, 47, 54, 61, 68, 74, 87.

A percentage equivalent to 77.5% works alone (i.e. neither with a co-owner nor with another self-employed in a network) and 94% of the respondents does not plan to hire employees or subcontractors. The most frequent reason reported by the respondents for not having employees was that 'there is not enough work' (53.4%), while, at the other end of the spectrum, the least frequent reason was the 'high social contribution' (1.6%). Yet, **87.2% of the respondents argued that they were satisfied (to a large extent or to some extent) from their work.** The very vast majority (90.4%) of the respondents was not interested in changing its professional status.

The so-called 'Prospects index', which combines indicators on employment status (being self-employed or a dependent employee), the type of contract, the prospects for career advancement (as perceived by the worker), the perceived likelihood of losing a job and experiencing the downsizing of a company/organisation, also provides information concerning reasons for self-employment. Cyprus, alongside Greece, is reported to have the lowest 'Prospects index' (Eurofound, 2017b: 97).

Qualitative research findings on the everyday work experience of citizens in Cyprus are in line with the above results. More specifically, a number of interviewees from this research (see e.g. Ioannou, 2011: 159) argued that they were tempted by the idea that the income of the self-employed is relatively high. Others, however, mentioned that they wanted to avoid the risk and time drain associated with owning a business. **Broadly speaking, becoming self-employed appears to be both liberating and suffocating.** While one might enjoy the freedom of not having a boss, at the same time she/he must cope with factors such as the ups and downs of the financial markets or the pressure from the banks. These parameters often create a **context of anxiety and precariousness**, from which it is difficult to escape.

That being said, while there is no systematic data (or studies) on the types of workers deemed to be vulnerable, as reflected in information on the income levels, working conditions, health and safety risks, and the working time of these workers (or on the sectors with high numbers of self-employed workers, deemed to be more vulnerable, due to factors, such as precarious working arrangements and low pay), it should be noted that, between 2007 and 2015, the share of the self-employed without employees in Cyprus significantly increased. Furthermore, **the earnings of this category of the self-employed were below the 60% of the employee median earnings** for the same period (European Commission, 2018: 15, 43).

This finding should be viewed alongside data from the Social Insurance Services in Cyprus, according to which (for the year 2019) the average annual insurable earnings of the self-employed in the country (for full contributors) amounted to 13,174 Euros. Therefore, the earnings of the self-employed in Cyprus appear to be significantly lower than those of dependent employees, which, for the year 2019, amounted to 20,373 Euros.

Overall, while there are reasons to believe that the income of the self-employed is under-reported, there is no doubt that **a share of the self-employed in Cyprus is experiencing conditions of acute vulnerability.** These conditions are largely linked to the phenomenon of the so-called 'false self-employment' (or false self-employment) discussed in the last part of this section (as well as in Section 4 of the present report).

Moreover, during the current Covid-19 related crisis, the category of the self-employed is arguably amongst the most affected by the crisis. This remark seems to hold true especially for those employed in **creative professions** (1,359 people, based on the data included in Table 1). Or, broadly speaking, liberal professions, which, according to the Directive on Recognition of Professional Qualifications (2005/36/EC), are 'those practised based on relevant professional qualifications in a personal, responsible and professionally independent capacity by those providing intellectual and conceptual services in the interest of the client and the public'. Despite the absence of relevant statistics, the situation appears to be less difficult, however, for other categories of the self-employed, whose work is not extensively hindered by the restrictions of freedom of movement and the related measures adopted by the Cypriot government in the course of the crisis [e.g. journalists or freelancers in the information and communication technology sector (commonly known as ICT sector)].

**Platform workers**, that is workers who work through online platforms, carrying out work on a task basis, are also regarded as a particularly vulnerable share of the self-employed. All those who had been interviewed for this report agreed that the category of platform workers is quite vulnerable, and that this

is one of the categories of the self-employed that is most in need of protection in Cyprus. Yet, they disagreed on whether the number of platform workers has increased or decreased over time.

The (minimal) data on these subject reveals that, in contrast to countries like France and Ireland, **in Cyprus only a very small share of the population (2%) is active in platforms**<sup>138</sup>. The shares of the population which are active in the platform economy and provide goods and services via platforms are likewise very low: 0.6% and 1% of the population respectively.

Finally, while appearing, on paper, to be self-employed, an increasing number of employees in Cyprus are, in practice, dependent employees, offering cheap labour to employers in both the public and the private sectors of the Cypriot economy. Illustrative of this phenomenon, which is largely associated with labour market deregulation (discussed in detail under Section 4 of the present report), is the so-called **'service lease'**; i.e. a form of employment, which results into the employer being exempt from most of her/his obligations towards employees [e.g. paying contributions to the social insurance services, granting employees with leave(s), etc.].

On their part, employees end up accepting work positions, which are, essentially, false or **false self-employment** (or, alternatively, 'disguised employment'). They are hired as self-employed, but in reality their work situation is comparable to that of dependent employees. Additionally, the earnings for these positions are relatively low (and often very low), whereas employees do not benefit from the protection offered by labour law (including minimum wage rates, social security coverage and paid sick leave). This category of the self-employed in Cyprus may be sometimes hired via temporary work agencies (for which, as of 2013, no data is available; or the existing data is regarded as unreliable). In accordance with Eurostat data (2018: 98) the share of the dependent self-employed over the self-employed in Cyprus amounts to 7.3%.

### Collective bargaining framework

**Collective bargaining, as a means of regulating the employment relationship in Cyprus, is important.** Based on information from the Department of Labour Relations, a department operating under the auspices of the Ministry of Labour, Welfare and Social Insurance, collective agreements are the main method utilised in Cyprus as a means to define the terms and conditions of employment. These agreements, which include information on a series of work-related issues, such as the payroll, working hours, leaves, etc. of dependent employees, usually have a two- or three year-duration. Given that their duration is negotiable, collective agreements may, however, also have a shorter or longer validity period.

The Department of Labour Relations keeps an archive of collective agreements. According to the provisions of the so-called 'Industrial Relations Code' (presented in detail below) trade unions are obliged to forward to the Ministry any agreements signed between them and the employers.

**Cyprus has a long tradition in developing healthy working relationships.** Yet, the system of labour relations in the country began to develop rapidly, solely following the establishment of the Republic of Cyprus (and therefore the Treaty of Nicosia in 1960)<sup>139</sup>. The system is based on the British model of labour relations and is characterized by voluntarism (Ioannou and Sonan, 2019: 111). As a result, collective bargaining in Cyprus lacks what may be defined as a 'legal'/legally binding status.

The major features of the Cypriot system of labour relations include tripartite cooperation, freedom of speech, social dialogue and free collective bargaining. The system has been developed around two main axes. The first regards the commitment of the state and that of social partners (trade unions and employer organizations) to use social dialogue and tripartite cooperation, as the principal tools for decision- and policymaking. The second axis emphasises respect for the fundamental rights of the organisations representing employees and employers, as well as collective bargaining. Both axes are protected by the Cypriot Constitution and by international conventions ratified by the Cypriot state.

<sup>138</sup> This and the next two paragraphs largely draw on CEPS and IZA, 2018: 15, 21.

<sup>139</sup> See <https://peacemaker.un.org/cyprus-nicosia-treaty60>.

Milestones in the development of the labour relations system in Cyprus include, inter alia, the signing (in 1962) of the so-called 'Basic Agreement' by the social partners, which, in spite of having no legal status, stipulated, for the first time, procedures for negotiations between the representatives of employees and those of employers, as well as for the settlement of labour disputes in the context of free collective bargaining; and the signing (in 1977) of the Industrial Relations Code, i.e. a voluntary, once again, agreement (that is without any legal force), which, up to the present time, defines, among other things, the rights and obligations of social partners with regard to collective bargaining, as well as the procedures to be followed by employers and trade unions, together with the competent mediation service of the Ministry of Labour, Welfare and Social Insurance for the resolution of labour disputes (which may arise out of the interpretation or the implementation of collective agreements, but also during their negotiation or renewal).

The submission of requests to employers by trade unions, on behalf of their members, for the conclusion and/or renewal of a collective agreement, is a sign of democratic social dialogue. In line with the Code, trade unions submit their requests two months before the expiry of the existing collective agreement(s). In case that the parties involved in collective bargaining do not reach an agreement through direct negotiation, then the Department of Labour Relations assumes mediation duties. The Department prepares a compromise proposal that the foregoing parties are called upon to accept or reject. It will therefore either manage to put an end to the dispute or these parties will be free to reach their own decisions.

The development of labour relations and collective bargaining in Cyprus also includes, however, more recent milestones. While the Ministry of Labour, Welfare and Social Insurance decided that there was no reason to change the voluntary arrangements used in the negotiation process for the conclusion or renewal of collective agreements, it acknowledged the need to introduce new regulations at the stage before the implementation of the Code-related procedures. The reason was that these procedures presupposed the prior recognition by the employer of one or more unions for negotiation purposes, and that, in many cases, employers refused to recognise the trade unions that represented employees; therefore, depriving them of the fundamental right to negotiate with the employer, so as to enter into a collective agreement. Against this backdrop, and after four years of dialogue with the social partners, the Ministry has managed to get the unanimous vote of the House of Representatives on the **'Recognition of Trade Union Organisations'** and the **'Right of Trade Union Facilitation for the Purpose of Recognition of Collective Bargaining'** [See Law 55(I)/2012), as well as the (Amending) Law of 2012 (Law 10(III)/ 2012) regarding the Convention on the Representatives of Employees].

Trade unions and employers are the parties involved in the negotiations targeted at the conclusion (and the renewal) of collective agreements<sup>140</sup>. As already mentioned, **these are essentially 'gentlemen's' agreements, lacking a legal status**. Hence, they are not legally binding. In a similar vein, there are no legal instruments to impose the implementation of these agreements after their expiry.

In contrast to trade unions and employer organisations in Cyprus, which, in terms of organisational structure, are, broadly speaking, centralised, the procedures governing collective bargaining are predominantly decentralised at the industrial and the workplace/enterprise level. Collective agreements at the sectoral/industrial level have been signed, for instance, by the pharmaceutical, the dairy or wine industries and at the pan-Cypriot level by car importers, metallurgists, electricians, printers, builders, etc..

The Department of Labour Relations claims that, overall, and despite its voluntary character, the Industrial Relations Code is accepted and respected by the parties involved in collective bargaining. No law can oblige the employers to sign a specific collective agreement. Still, they have a clear obligation to negotiate in good faith with employees for this purpose.

On the other hand, however, the trade union movement in Cyprus increasingly requests from the state to proceed with providing legal status to collective agreements. This petition is largely associated with the **rise in violations** of these agreements. Especially in the aftermath of the recent financial crisis, collective agreements have been undermined; both directly, i.e. through employer refusal to have or abide by these agreements, and indirectly, i.e. through not enforcing particular provisions of the existing

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<sup>140</sup> This and the next paragraph draw on Ioannou and Sanon, 2019: 113.

agreements, and excluding some workers from them. Not to be covered by a collective agreement often became implicitly a condition for being offered a job in the first place. Overall, violations should be viewed in conjunction with the increase in employers' power to resort to individual contractual agreements outside collective bargaining, hiring people on terms worse than those included in collective agreements; but also, with the very high incidence (estimated to be approximately 25%) of undeclared work in Cyprus, as well as with the expansion of false or false self-employment.

Moreover, despite the lack of comprehensive and accurate figures, the extent of collective bargaining in Cyprus is very close to that of union density. Union density appears to be the key factor in determining collective bargaining coverage. In other words, **the trade unions with the highest number/share of members may be more effective in signing collective agreements with employers.** The decline in union density (from 63.4% in 2001 to 45.2% in 2013) has arguably led, however, to a drop in collective bargaining as well. Enterprise-level bargaining also grows at the expense of the industry level, signalling enhanced (and disorganized) decentralisation (Ioannou and Sonan, 2019: 112-114).

The development of the trade union movement in Cyprus, alongside that of employer organisations, has been crucial to implementing what is a 'voluntary' labour relations system; and vice versa, given that this system (the Industrial Relations Code in particular) has enabled social partners to have a say on many policy issues, albeit on a consultative basis (Ioannou and Sonan, 2019: 111-112). Yet, we should keep in mind that, while employees have the right to organise freely in the trade union of their choice [see also Law 71/1965 on trade unions, which discusses, inter alia, the rights and obligations of these unions]<sup>141</sup>, **the strength of social partners and particularly that of the trade union movement in Cyprus have seriously decreased during the last decade.** Trade unions are often simply informed by the state authorities and employers on what will happen in a sector.

There is an exception to every rule, however. In the case of Cyprus this exception regards the representation and the power of the **public sector unions**, which are particularly strong and efficient in securing and maintaining good pay and conditions for their members. Rather unsurprisingly therefore, **trade union density in the public sector is reported to have reached 99%** (Ioannou, 2014: 108-111, 113, 120-121).

Broadly speaking, however, both employer organisations and trade unions in Cyprus are well-established, with strong and effective organisational structures, as well as significant experience in their respective fields. There are two employer organisations, i.e. OEB (Cyprus Employers and Industrialists Federation) and KEBE (Cyprus Chamber of Commerce and Industry). Moreover, the main national, multi-sectoral organisations representing employees in the country are the following: PEO (the Pancyprian Federation of Labour), SEK (the Cyprus Workers Confederation), DEOK (the Democratic Labour Federation of Cyprus), and POAS (the Pancyprian Federation of Independent Trade Unions). Other independent sectoral organisations representing employees are PASYDY (the Pancyprian Union of Public Servants), POED (the Pancyprian Organisation of Greek Teachers), OELMEK (the Organisation of Greek Secondary Education Teachers) and ETYK (the Union of Banking Employees of Cyprus).

As far as the type and the size of employers in Cyprus is concerned, SMEs are far more common than large companies: according to the EU definition for SMEs, **94% of the companies in the country are characterised as being very small.** Interestingly, and based on data from the business inventory of CYSTAT (for the year 2005), a large number of SMEs (67,000) operates in the field of agriculture and fisheries. Out of these, approximately 60% employ only one person and 34% from 2 to 9 people. Furthermore, a total of 314,000 people is working for these SMEs.

As will be discussed in more detail below, **the self-employed in Cyprus are allowed to join trade unions.** This means that, among other things, their right to participate in a trade union is guaranteed, as well as that they are protected against not being offered a job, due to their participation in a union. Yet, the trade union landscape, which emerged in Cyprus after 1974 and comprises three major trade union confederations and several smaller independent trade unions, covers mainly dependent employment and employees (Ioannou and Sonan, 2019: 111); not self-employment and the self-

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<sup>141</sup> See [http://www.cylaw.org/nomoi/enop/non-ind/1965\\_1\\_71/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1965_1_71/full.html).

employed. Collective agreements in Cyprus likewise concern the former and not the latter category of workers.

We should also keep in mind that the self-employed are a highly segmented category of workers and may not be particularly interested in their extensive representation by social partners and/or their coverage by collective agreements. Both might result into losses of income and of their (rather well-desired) labour market flexibility.

Instead, the self-employed in Cyprus may often express an interest in getting access to benefits, such as the unemployment benefit (for which, as will be discussed in Section 4 of this report, they are not eligible). This interest seems to be linked to a 'moral hazard' rationale, i.e. the idea that an entity has the incentive to increase its exposure to risk, because it does not bear the full costs of that risk. Furthermore, at least in some cases, the self-employed in Cyprus appear to be interested in the issue of working time regulations; such is the case of the self-employed represented by POVEK (the Confederation of Professional Craftsmen and Shopkeepers], i.e. one of the trade unions active in sectors where there are high levels of self-employment.

**POVEK represents self-employed workers with employees (up to 250 per company), but also without employees, in a different range of sectors,** which concern all spheres of economic activity (e.g., retail, services, technical professions, public transport, etc.). The confederation has more than 10,000 members. In the course of its long history, POVEK has played a key role in a series of important achievements, such as contributing to the introduction of the legislation governing public transport and of the tenancy law, to the legal regulation of the work schedule of stores and technical professions, etc. POVEK has moreover participated in the debate on the access of the self-employed to social benefits in Cyprus and has concluded several relevant agreements, in order to protect the interests of its members (e.g., the adoption of health and safety provisions in butchers' shops) (Eurofound, 2017: 57). More recently, the confederation has also undertaken initiatives to include the self-employed in the beneficiaries of the Human Resource Development Authority of Cyprus (henceforth HRDA), i.e., a body, governed by public law, and targeted at the planned and systematic training and development of the human potential of Cyprus at all levels and in all areas. POVEK is, however, an employer organisation, mainly representing its member's interests at the sector level (e.g., automotive engineering). The individuals who are active in each sector are registered at the confederation as 'natural persons'. Broadly speaking, POVEK's priority is therefore to promote the rights of the people employed in the sectors and not those of the 'self-employed' *per se*.

**The self-employed are also represented at the national level by OEB and KEBE.** Both represent nearly the entirety of the business/entrepreneurial community of Cyprus, since all individual professional associations are affiliated with either OEB or KEBE; or in some cases with both. Individual enterprises can become direct members to either, or both, of these organisations; or they can be affiliated with them, through their membership to a professional association, which, in turn, is a member of OEB or KEBE.

OEB comprises more than 65 of the main professional/sectoral associations in Cyprus, as well as hundreds of companies from the sectors of manufacturing, services, construction, commerce, environment, energy, tourism, education, health and agriculture. In total, OEB has more than 10,000 members. There are three categories of members: individual employers, industrialists or entrepreneurs (of all nationalities); professional associations and federations of employers; and professional organisations. The professional associations and other organised bodies affiliated to OEB are active in the following sectors: industry (9 associations); energy and environment (10 associations); construction (4 associations); services (21 associations); tourism (5 associations); education (5 associations); health (13 associations); trade (3 associations); other (3 associations). Hence, while being an OEB member presupposes to be the employer of at least one employee, the federation also represents self-employed workers without dependent employees (via the professional associations affiliated to OEB; e.g. the Cyprus Medical Association).

KEBE has more than 8,000 members, from the whole spectrum of business activity. Most of the business community of Cyprus (95%) is a KEBE member. Furthermore, a total of 145 professional associations from the sectors of trade, industry and services (tourism included) are affiliated to KEBE. More specifically: in the field of primary and manufacturing production 35 associations; in the

trade sector 20 associations; in the services sector 56 associations; in the bilateral sector 34 associations. These associations deal autonomously with specialised issues for each sector of economic activity. However, by acting, they also promote matters and interests that regard a series of sectors.

Overall, there is no detailed data on unions operating in specific sectors, where there are high levels of self-employment, such as construction, warehousing, docks, administration, creative professions, journalism, etc..

It should be also noted that PEO has ties to associations of employees, who claim to be dependent employees, while appearing, on paper, to be self-employed. For instance, those teaching at state training institutes and who, due to a political decision, were 'baptized' overnight (in 2013) 'self-employed', essentially remain members of the federation (and pay some kind of 'symbolic' contribution to PEO). **PEO is greatly interested in defending the rights of employees, who are offering dependent employment, but falsely appear to be self-employed.** To this end, PEO, which denounces the extensive use of disguised dependent employment or false self-employment by the public or the broader public sectors, to decrease the cost of labour and deregulate the labour market, often mediates between employers and this category of employees (even on an individual basis, that is in the case that these employees are affiliated to a professional association). SEK has also recently tried to offer membership to employees who are only in theory self-employed.

Moreover, we should keep in mind that not all the categories of the self-employed are collectively represented. Interestingly, during the Covid19-related crisis, groups of self-employed workers who had no representation beforehand, launched their own professional associations. Examples include self-employed workers in creative professions or in the technical event support field (e.g. sound engineers). During the same period, some professional associations are also reported to have started taking collective action, in pursuit of a particular objective (e.g. the participation of their members in training or other state programmes).

That being said, whereas the self-employed are not covered by collective agreements, the social partners mentioned beforehand may take part in negotiations, which lead to the conclusion or renewal of collective agreements (e.g. in agreements that concern the rights and the obligations of the dependent employees working in a specific industry). **Broadly speaking, however, when it comes to the rights of the self-employed *per se*, the organisations representing the self-employed are, as already mentioned, mainly interested either in regulating their working conditions (as POVEK did in the case of the working hours of small shops and SMEs); or in defending the rights of people engaged in activities, which are essentially false or false self-employment, and not dependent employment.**

Additionally, as we have already seen, the self-employed in Cyprus are represented by associations. Some of these associations (e.g. the associations representing medical doctors, lawyers, etc.) are quite powerful. Their statutes may also allow them to 'regulate' aspects of the work and the expertise provided by their members (e.g. to determine the minimum price for a service or to remove members who showed unprofessional behaviour). These associations may moreover negotiate with the state issues related to the interests of their members. A recent example may be found in the negotiations between the Cyprus Medical Association and the Cypriot government, which took place during the establishment of the General Healthcare System.

Even the most powerful associations, however, 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. Furthermore, other associations have relatively minimal power (e.g. the associations representing the self-employed in creative professions, such as cameramen).

At the same time, the essential absence of extension mechanisms at the industry level, as well as of effective *erga omnes* rules at the company level in Cyprus, is argued to be accompanied, as already mentioned above, by the convergence between trade union density and collective bargaining coverage. Neither there is a legal extension mechanism, regarding the existing collective agreements, which would oblige employers to abide by them, in respect of their non-unionised employees. An attempt made (in

2012) to push through an extension clause in the union reform law was blocked by the employers. Despite the absence of a functional equivalent of legal extension mechanisms, the existing collective agreements may sometimes act, however, as a sort of 'benchmark' for non-union workers, not formally covered by collective agreements in each industry; especially as far as wage levels are concerned (Ioannou and Sonan, 2019: 113-114).

In sum, to make a long story short, the discussion regarding extension mechanisms in Cyprus has just started. The country does not essentially operate a system of extending collective agreements to an entire industry. There are only two exceptions: the construction industry and the hotel industry (in the case of the latter there are also provisions defining the minimum pay rates for different employment positions). We should also keep in mind that employment contracts are usually agreed at the firm level and then applied to all those who are active in the specific firm; in which case the debate over extension mechanisms, as one of the people interviewed for this report mentioned, is out of question. It goes without saying that the self-employed workers are excluded from the above arrangements.

Last, there are no reports from Cyprus of a retaliation against a company, following its refusal to negotiate with self-employed service providers (e.g., boycott, strike, other types of collective action, etc). As discussed in Section 4 of this report, the main debate and collective action initiatives (e.g., strikes) regarding self-employment in Cyprus concern false or false self-employment.

## Legal framework

*Main relevant legislative provisions: Industrial Relations Code, 1965 law on trade unions (Law 71/1965)*

As discussed in the previous section, the provisions included in the Industrial Relations Code and/or the legislation concerning the recognition of trade union organisations and the right of trade union facilitation for the purpose of recognition of collective bargaining do not lead to the mandatory conclusion of collective agreements. Collective agreements in Cyprus are basically 'gentlemen's agreements' that regard the relationship between employers and dependent employees and have therefore no legal/legally binding status.

The 'voluntary' Cypriot system of labour relations, which largely draws on the British system of labour relations, does not pay attention to the rights, obligations, etc., which are linked to the provision of services under self-employment. There are no legal provisions that relate specifically to the exclusion or the inclusion of self-employed workers under collective agreements. In practice, however, labour legislation reflects the main interest of the legislators (and of the Cypriot state) in addressing the rights, obligations, etc. of dependent employees. Although the self-employed are allowed to join trade unions, this remark holds true also for the legislation regarding trade unions and trade union membership [e.g. the 1965 law on trade unions (Law 71/1965)].

Hence, in sum, first, **there is no legal framework in the country concerning collective bargaining and collective agreements**; and second, despite the lack of any explicit reference to the self-employed (including their exclusion or inclusion in collective agreements), these agreements concern only dependent employees. The situation described does not tend to vary according to the sector or the type of the self-employed worker. Neither appears to have an influence on the motivation to hire and/or be recruited as self-employed, as well as on the motivation for self-employment.

Furthermore, as also mentioned in Section 2 of the present report, some professional associations, which represent specific categories of the self-employed (e.g. medical doctors), may have the ability to regulate aspects of their profession, as well as to negotiate with the state. Yet, both the character and (obviously) the outcomes of these negotiations are not legally binding.

**Overall, self-employment and the self-employed are arguably left out of the scope of labour legislation in Cyprus.** They are recognised, however, as a distinct category of workers for social insurance (as well as taxation) purposes. As a result, the self-employed are, inter alia, represented at the so-called '*Social Insurance Council*', *an advisory body that takes part in consultations with the representatives of the Cypriot Ministry of Labour, Welfare and Social Insurance and other relevant authorities, regarding social insurance issues.* Even the legislation, however, regarding the social insurance contributions of the self-employed is relatively obsolete. There is a legal gap, for example,

concerning the contributions of those being employed in parallel as part-time dependent employees and part-time self-employed professionals.

Additionally, we should keep in mind that, according to the relevant bibliography (see e.g. Fulton, 2018), the competition law, in national interpretation of the Treaty on the Functioning of the EU, is considered to have a negative impact on collective bargaining rights. Unfortunately, while **competition authorities might intervene to prevent unions signing agreements, self-employed workers who join forces to improve their working conditions may often be regarded as a cartel plotting to distort or eliminate competition.** For this reason, organisations such as ETUC (the European Trade Union Confederation) underline, among other things, the need for EU institutions to change the competition law, so that it is no longer a barrier to collective bargaining for the self-employed. However, as discussed in the next section, there is currently no debate in Cyprus concerning the effects of competition law on self-employment and the rights of the self-employed.

The relative 'marginality' (or 'invisibility', as one of the persons interviewed for this report mentioned) of the self-employed in Cyprus is also reflected in the fact that issues regarding the self-employed do not fall within the remit of the Department of Labour Relations at the Cypriot Ministry of Labour, Welfare and Social Insurance. Once again, this situation should be viewed in light of the dominant rationale in the Cypriot system of labour relations, which is quite different from the so-called 'continental' model; and considers the self-employed as a rather 'marginal' category of entrepreneurs, who work at the 'periphery' of what was, for decades, the main mode of employment in Cyprus (i.e. dependent employment). For that identical reason, as mentioned in the previous section, only employees who appear, on paper, to be self-employed, but are offering dependent employment to employers, are the ones who may attract the attention of the trade union movement.

In a similar vein, the national definition of 'employee' is associated with the concept of 'dependent employment'. Law 24/1967 on the termination of employment is a milestone in the development of the relevant legislation<sup>142</sup>. Article 2 of the foregoing law explicitly mentions, inter alia, that 'an employee is a person employed by another person either under an employment or apprenticeship contract or under such circumstances from which the existence of an employer-employee relationship can be inferred...'. It should be noted that, as discussed in more detail below, there is no single test/criterion for determining, however, whether a person is a dependent employee (or not).

**A definition for the term 'self-employed' may be found, among other things, in the social insurance legislation.** According to Law 41/1980 (currently abolished), an independent employee was any person who worked in her/his own business or did any work for her/his own account (e.g. farmer, stockbreeder, craftsman, shopkeeper, industrialist); or, broadly speaking, any self-employed person. Men under the age of 16, employed in family farms and living with their parents, were excluded. The Social Insurance Law [59(I)/2010] likewise refers to self-employment as the form of employment that is targeted at profit, excluding, once again, the agricultural activities of individuals below the age of 16.

Indeed, some of the people interviewed for the present report, argued the social insurance legislation is the only existing 'framework' in Cyprus linked to the concept of 'self-employment' and the definition of the 'self-employed'. Being self-employed is also reported to be one of the existing three social insurance 'regimes' in the country; the other two being a 'dependent employee' and 'optionally insured'. The activities of the self-employed also largely fall under the provisions of the so-called 'Chapter 149', which concerns contracts for the provision of services<sup>143</sup>. Moreover, based on a definition used by CYSTAT, an 'enterprise refers to an economic unit, which is a legal entity – a firm or self-employed – engaging in one, or predominantly one, kind of economic activity (Statistical Service of Cyprus, 2017: 14).

When it comes to the classification of workers as self-employed, there is extensive case law. The judicial authorities delve into the nature of the relationship between an employer and an employee and decide, inter alia, whether the relationship should be defined as dependent employment or self-employment. The relevant issues discussed at courts include, among other things, the following: the content and the extent of the financial risk linked to carrying out a specific work/task; if the employer has the right and

<sup>142</sup> See [http://www.cylaw.org/nomoi/indexes/1967\\_1\\_24.html](http://www.cylaw.org/nomoi/indexes/1967_1_24.html).

<sup>143</sup> See [http://www.cylaw.org/nomoi/enop/non-ind/0\\_149/full.html](http://www.cylaw.org/nomoi/enop/non-ind/0_149/full.html).

the ability to impose disciplinary measures upon an employee; the legal provisions governing the relationship between the employer and the employee, etc.

Overall, the study of the legal provisions and of the case law that relate to the classification of workers as self-employed in Cyprus allows us to reach the following conclusions (often by defining what is dependent employment and what is not):

- a) Labour law protects dependent employment;
- b) The labour legislation does not provide an unambiguous, crystal clear definition of dependent employment and/or of the employee-employer relationship;
- c) In accordance with the legal decisions of the Supreme Court of Cyprus, the employee-employer relationship is always examined in the light of a specific case;
- d) The decision about the nature of the foregoing relationship and on whether a person, inter alia, offers her/his services to another person for a fee, under conditions of 'legal dependence', is based on the examination of various features;
- e) A person cannot be considered, however, to be someone else's employee, only because she/he receives a salary for the provision of her/his services;
- f) For a person to be considered to be (or not) someone else's employee, a series of additional factors should be taken into account [e.g. whether the employer exercises control over the work of the aforementioned person (or not)/whether there is a contract that defines the rules and the conditions of the work performed (or not)/ whether this person works in a specific space and according to a specific schedule (or not)/ whether she-he has the opportunity to work for other employers (or not)/ but also parameters such as the arrangements made for tax, national insurance, value-added tax (VAT) purposes, as well as statutory sick pay and other contractual provisions (including holiday pay, sick pay, notice, fees, expenses, etc.)];
- g) The development of professional activities, in which workers have more opportunities to use their initiative (e.g. artists, scientists), resulted, over the course of time, into changes in the criteria related to verifying the existence (or not) of a dependent employment relationship (e.g. the supervision of the work performed by an individual is no longer a 'safe' criterion that this person is a dependent employee);

After taking into account contemporary phenomena, such as the large extent of false or false self-employment, the courts pay more attention to whether an employee is genuinely self-employed (or not); In order to distinguish a contract of dependent employment (and a dependent employee) from a contract of service provision (and a self-employed worker), the Supreme Court of Cyprus has adopted factors mentioned in excerpts from the relevant English legislation and case law; The English legislation and case law stressed, inter alia, that when the person who has undertaken the services in question performs them as a person working on her/his own account (i.e. as a person in business on her/his own account), then the contract is deemed a contract of service provision and the person should be regarded as self-employed; In order to decide whether someone is self-employed (or not) the judicial authorities take into account a series of criteria [i.e. whether the service provider uses her/his own equipment, whether she/he hires her/his own assistants, the degree of the financial risk assumed by the worker, the degree of the responsibility for the management of the performed activity, etc.]; m) Yet, there is no exhaustive list of criteria that should be taken into consideration, so as to decide whether someone is genuinely self-employed (or not). Neither there are very strict rules in terms of the relative weight that should be given to the foregoing criteria in specific cases. In accordance, once again, with the decisions reached by English courts, the statement, incorporated in a work contract, that the worker will be considered as a self-employed or independent contractor should be completely ignored by the judicial authorities, in case that the rest of the contractual terms reveal that she/he is essentially a dependent employee.

Finally, there is no important case law that relates to the coverage of self-employed workers by collective bargaining and balancing this with fair competition. As mentioned, several times in the present report, the self-employed in Cyprus are not covered by collective agreements.

### **Labour market trends and other factors**

Although the forecasts for employment needs in the Cypriot economy between 2017 and 2027 include no specific reference to the terms 'labour market deregulation' or 'tightening of regulation', the need to

improve the adaptability of the human resources in the country and establish an effective and flexible labour market is explicitly mentioned. Furthermore, given the assumptions and the scenarios used by HRDA [e.g., the further development and modernisation of the health sector and of professional services (legal, financial and accounting), i.e. sectors which are 'traditionally' dominated by the self-employed], we may assume that part of the upward trend in total employment, anticipated for the period 2017-2027, is associated with an increase in self-employment. Illustrative of this trend is that legal professionals, accountants and medical doctors are included in the high-level occupations with the highest future demand (HRDA, 2017).

At the same time, the discourse on flexibility and the increasing deregulation of the domestic labour market became more intense after 2009, when the financial crisis reached Cyprus as well<sup>144</sup>. The Memorandum of Understanding between the Republic of Cyprus and the so-called Troika created a framework for the restructuring of the labour relations system in the country and enhanced the disrespect often shown by employers to collective agreements, bipartite memoranda and tripartite labour relations conventions.

**Cyprus was one of the EU countries which, among other things, experienced a significant reduction in employment protection.**

This context encouraged the promotion of personal employment and personal services contracts, which essentially involved subcontracting and piecework. Violations became common practice, especially at the hotel, the recreation and the construction industries, where working terms and conditions often diverge(d) from those adopted under collective agreements. The work conditions for those who were employed outside the framework of collective agreements and under 'service contracts' also deteriorated. That being said, a number of self-employed workers ended up being 'unregistered'. Additionally, there was a rise in false or false self-employment, which further enhanced labour market fragmentation.

Illustrative of the expansion of false or false self-employment in Cyprus is the increasing number of public education teachers, who are employed on a temporary basis under various personal contract schemes, with inferior employment conditions; compared to those of 'regular'/dependent employees. The strikes of primary school teachers in 2016–2018 focused precisely on this issue.

As also discussed in the previous section, PEO is one of the social partners that is very active in collective action initiatives against the expansion of false or false self-employment, as a means to decrease the cost of labour and deregulate the domestic labour market. According to PEO representatives, this phenomenon is particularly intense in the public and the broader public sectors of the Cypriot economy. The control of false or false self-employment seems to be more difficult in the private sector, where the extension of self-employment via outsourcing is, however, an undeniable fact (e.g. in the construction sector, but mainly in the field of product distribution). Against this backdrop, some of the trade unions that represent a share of the self-employed in Cyprus (especially POVEK) expressed their strong disapproval of policy interventions, which were deemed disastrous for SMEs and favourable only for large enterprises (e.g. the country being 'transformed' into a unified tourist zone) (INE-GSEE, 2014: 203).

Hence, while there is essentially no debate in Cyprus on the issue of collective bargaining for self-employed workers and on how collective bargaining for these workers interacts with competition law, the existing debate on the classification of self-employed workers is largely connected to the one on the expansion of precariousness in the Cypriot labour market and the increase in false or false self-employment. Parties of the opposition have accused the Anastasiades government for the cruel exploitation of employees, who are only on paper 'self-employed'; e.g. through the decision of the Anastasiades government in 2013 to convert from dependent employment to self-employment the employment status of more than 2,000 teachers at state training institutes. Other public services would

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<sup>144</sup> This and the next two paragraphs draw on Ioannou, 2011, 2014, 2017, and Ioannou and Sanon, 2019: 114, 117-118.

follow. This practice is argued moreover to have rapidly expanded in the private sector as well (INE-GSEE, 2014: 208).

The above situation should be viewed in light of a relatively recent OECD/European Commission survey, which provided, inter alia, countries with the opportunity to discuss any forms of work currently capturing considerable policy attention in a national or sub-national context. Interestingly, Cyprus was one of the countries, where the survey participants did not respond to the following questions: i) 'What forms of employment are being discussed in the policy arena in your country?' and (ii) 'What topics/issues related to new forms of work capture the most attention?' Cyprus was likewise one of the countries that did not respond to a survey, conducted under the auspices of the European Trade Union Institute (ETUI), which focused, among other things, on the rights and the union membership of the self-employed. The country reported nevertheless increases in financial penalties for undeclared work (Fulton, 2018: 10; OECD, 2019: 13, 49).

There is currently no information on tax and social security schemes or changes to these schemes that might influence the level of self-employment in Cyprus. Solo self-employed workers were first included in the Cypriot social insurance system in 1962 and enjoy various types of benefits (Ioannou, 2011: 42). The coefficient of determination of the minimum amount of insurable earnings is different for different categories of the self-employed; e.g. while this coefficient is the same for medical doctors, accountants and lawyers, it is different for other categories of the self-employed, such as farmers or builders<sup>145</sup>. Compulsory minimum insurable incomes are established per occupation<sup>146</sup>. Yet, the self-employed can opt to pay higher contributions (up to a certain maximum).

Healthcare, maternity and family benefits, as well as pensions, are universal in Cyprus. While maternity leave is part of the social protection coverage for the self-employed, they have no access to coverage against accidents at work and occupational diseases. Furthermore, there is a waiting period of nine days for self-employed workers to receive sickness benefits. This waiting period does not apply, however, in the case of hospitalisation. On the other hand, the self-employed are not entitled to unemployment benefits.

Overall, the statutory access of the self-employed to social protection in Cyprus is full in the case of healthcare, sickness and maternity/paternity benefits, old-age and survivor's pensions, social assistance, long-term care, invalidity and family benefits. By contrast, **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 (Fulton, 2018: 72-73).

These benefits should be seen alongside the policy measures targeted at the self-employed in Cyprus and offering them, inter alia, support in fields such as those of business financing, consultancy, education and training (HRDA, 2002). Furthermore, in 2011, an effort was made to include the self-employed in those benefiting from the training programmes offered under the auspices of HRDA. Despite the initial interest expressed by the self-employed, it was not possible, however, to reach an agreement.

As far as the **earnings** of the self-employed are concerned, the European Working Conditions Survey (henceforth EWCS) indicates that Cyprus is one of the countries where the percentage of those who refuse to disclose net earnings is relatively low. Given that the self-employed (together, however, with men, older workers, managers, professionals, technicians, those working in the transport sector and those who find that it is 'easy or 'relatively easy' to make ends meet) are the ones, who appear to be less likely to report how much they earn, compared to other population groups, we may assume that the level of the net earnings of the self-employed in Cyprus is less under-estimated than in other countries. Yet, this conclusion is obviously far from safe (Eurofound, 2017b: 39). Additionally, 72% of

<sup>145</sup> [http://www.mlsi.gov.cy/mlsi/sid/sidv2.nsf/page95\\_en/page95\\_en?OpenDocument](http://www.mlsi.gov.cy/mlsi/sid/sidv2.nsf/page95_en/page95_en?OpenDocument).

<sup>146</sup> An amendment was introduced in 2006 to establish the level of contributions to be paid, depending on the occupation and years worked (based on a table that sets minimum earnings, as a way to avoid false declaration with regard to the social security contributions due).

the self-employed in Cyprus claimed that, in the case of a long-term illness, they would not be financially secure (Eurofound, 2017a: 13).

**There is no national collective agreement in Cyprus, neither a national minimum wage.** In accordance with the 1941 Law on Minimum Wage (Chapter 183), the government, in consultation with the social partners, sets, however, annually the minimum wage for certain professions, in which coverage by trade unionism and collective bargaining is low. Based on the Minimum Wage Decree (180/2012), which covers nine occupations and is in force since April 1st 2012, the monthly minimum wage for seven (out of these nine occupations), including sales staff, clerical workers, auxiliary health-care staff, auxiliary staff in nursery schools, crèches and schools, and caretakers, currently stands at 870 Euros; after a continuous six-month service to the same employer, it goes up to 924 Euros. Due to the recent financial crisis, these amounts have been 'frozen' since April 2012. For cleaners, the hourly rate amounts to 4.55 Euros and 4.84 Euros; and for security guards to 4.90 Euros and 5.20 Euros (Ioannou and Sonan, 2019: 112).

Furthermore, although, as mentioned in previous sections of this report, the Industrial Relations Code does not include any specific reference to the self-employed, it explicitly refers to collective agreements as the main means of defining work-related earnings. Taking also into account the violations of the existing collective agreements, it goes without saying that not being covered by a collective agreement may often result into ending up with lower earnings and worse working conditions, compared to those who are covered by a collective agreement.

That being said, broadly speaking, there are differences in the pay levels included in different collective agreements. In a similar vein, there are differences in the pay levels between sectors, depending on whether they are covered (or not) by a collective agreement; as well as differences in the salary levels within the same sector, depending, once again, on whether they are covered (or not) by a collective agreement.

While there is information on the differences in the salary levels between and amongst sectors (e.g. the public and the private sector of the Cypriot economy or the education, health and public administration sectors), sometimes in conjunction with data on the effects of austerity measures on the aforementioned levels (see e.g. Christofides and Michael, 2013, Michael and Christofides, 2020), there is no systematic data, however, on the relationship between differences in the pay levels of different sectors and their coverage (or not) by a collective agreement. The same holds true for the salary levels within the same sector, depending on whether companies are covered (or not) by a collective agreement.

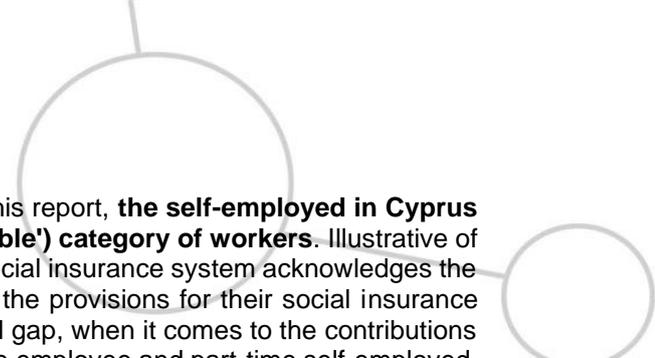
Under the impact of the recent financial crisis and the austerity-related measures, the trade union movement has made several steps towards demanding from the state a minimum set of rights for all those excluded from collective agreements; including those who appear, on paper, to be self-employed, but, in reality, are dependent employees (Ioannou and Sanon, 2019: 113, 126). The introduction of a national minimum wage has been linked, however, by the Anastasiades government to the drop in the unemployment rate nationwide below 5%.

Last, the relevant debate should be viewed in conjunction with the argumentation in favour and/or against the establishment of a national minimum wage, but also the discussion on extension mechanisms.

## Conclusions

Although no explicit reference is made to the inclusion or exclusion of the self-employed from collective agreements, the Cypriot system of labour relations is a 'voluntary' system, focused on dependent employment and dependent employees. This means that there **is essentially no legal (or other) framework concerning the involvement of self-employed workers in collective bargaining, as well as that the existing collective agreements regard exclusively dependent employees.**

In a similar vein, while the professional associations representing categories of the self-employed in Cyprus (e.g. medical doctors) may often undertake initiatives targeted at regulating specific aspects of their profession (e.g. the minimum price for a service), they cannot conclude collective agreements. Only trade unions and employer organisations can.



Overall, in the words of some of the persons interviewed for this report, **the self-employed in Cyprus may be argued to be a relatively 'marginal' (or even 'invisible') category of workers.** Illustrative of this 'marginality' (or 'invisibility') is that, although the Cypriot social insurance system acknowledges the self-employed as a distinct from others category of workers, the provisions for their social insurance contributions are rather obsolete. For instance, there is a legal gap, when it comes to the contributions of a person who is working in parallel as a dependent part-time employee and part-time self-employed. These findings should be viewed in conjunction with the relatively minimal interest of the social partners in the self-employed. The few exceptions to this rule regard the interest of employer organisations and trade unions in regulating the working hours of SMEs/shops or in defending the rights of workers who are engaged in false or false self-employment activities.

The extension of collective agreements to the self-employed is also arguably characterized by a series of advantages and disadvantages. On the one hand, for example, this is a way to protect the labour rights of this group (especially in the case of particularly vulnerable sub-categories of the self-employed, such as those involved in platform work). Expanding the protection of the self-employed by means of collective bargaining is also helpful in regulating the domestic labour market and coping with phenomena, such as the extensive tax evasion often associated with self-employment (please note that individuals with annual income below 19,500 Euros in Cyprus are exempt from taxation).

On the other hand, the extension of collective agreements to the self-employed may, above all, contradict the very nature of being self-employed. Especially as far as enjoying a relatively higher level of 'freedom' in working conditions, compared to dependent employees, is concerned; even though this freedom is inevitably accompanied by precariousness.

Moreover, the challenges linked to the effort to expand collective agreements to the self-employed in Cyprus should not be ignored. Illustrative of these challenges is the questionable willingness of the self-employed *per se* to be covered by collective agreements; since these agreements would significantly restrain the entrepreneurial freedom of the self-employed, but also their income (especially in the case of the so-called 'high-flyers').

The **highly fragmented landscape of the self-employed** (as well as of the organisations representing them and the employer side) in Cyprus also makes difficult (if not impossible) the coverage of the self-employed by collective bargaining. Likewise, it makes difficult (if not impossible) the (well-desired?) conclusion of collective agreements targeted at the self-employed at the national or the sectoral level. Against this backdrop, **there is currently no debate in Cyprus about the issue of collective bargaining for self-employed workers** and/or the intersection of competition law and collective agreement coverage. The only existing debate concerns the rise in false or false self-employment, which seems nevertheless to be encouraged by the state (as a means to decrease, inter alia, the cost of labour).

Yet, in order to better protect the working conditions of the self-employed in Cyprus, the EU could adopt a range of different actions. These include **defining in a clearer way self-employment and considering the establishment of a legal framework that would safeguard the labour rights of this category of workers, while also undertaking initiative so as to cope with (or remove) the threat of the EU competition law.** Collective agreements may be a viable means of increasing protection for self-employed workers; on the condition, however, that the content and the limits of self-employment in Cyprus will be more strictly defined; leaving therefore much less space for violations and the extensive (and intentional) expansion of false or false self-employment.

Last, we should keep in mind that, under the current circumstances, it is difficult for the self-employed in Cyprus to claim their labour rights; it is equally difficult, however, for the Cypriot state to control this group of workers.

## Interviews

Name of interviewee	Organisation
1. Louis Christofides	University of Cyprus /University of Guelph, Canada
2. Gregoris Ioannou	University of Glasgow, United Kingdom
3. Lena Panayiotou	Cyprus Employers and Industrialists Federation (OEB)
4. Sotiroula Charalambous	Pancyprian Federation of Labour (PEO)
5. Giorgos Stylianou	Confederation of Professional Craftsmen and Shopkeepers (POVEK)
6. Xenios Mamas (we had a short phone conversation, but he mainly answered to my questions by email)	Department of Labour Relations, Ministry of Labour, Welfare and Social Insurance

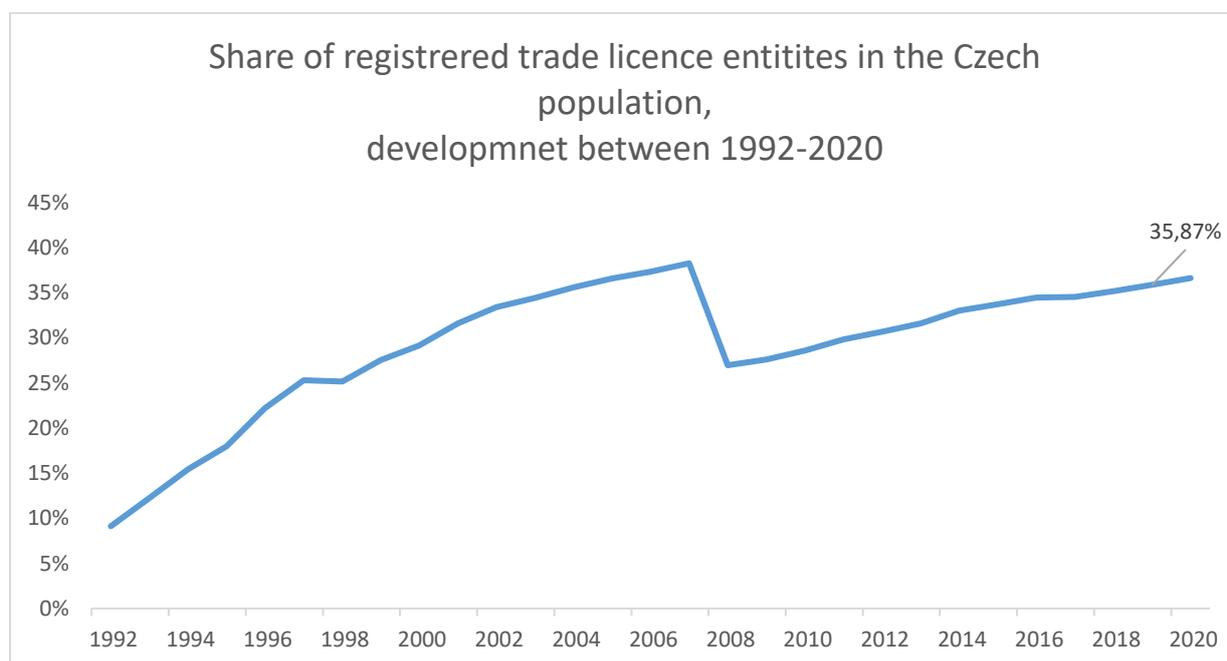
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# Czechia

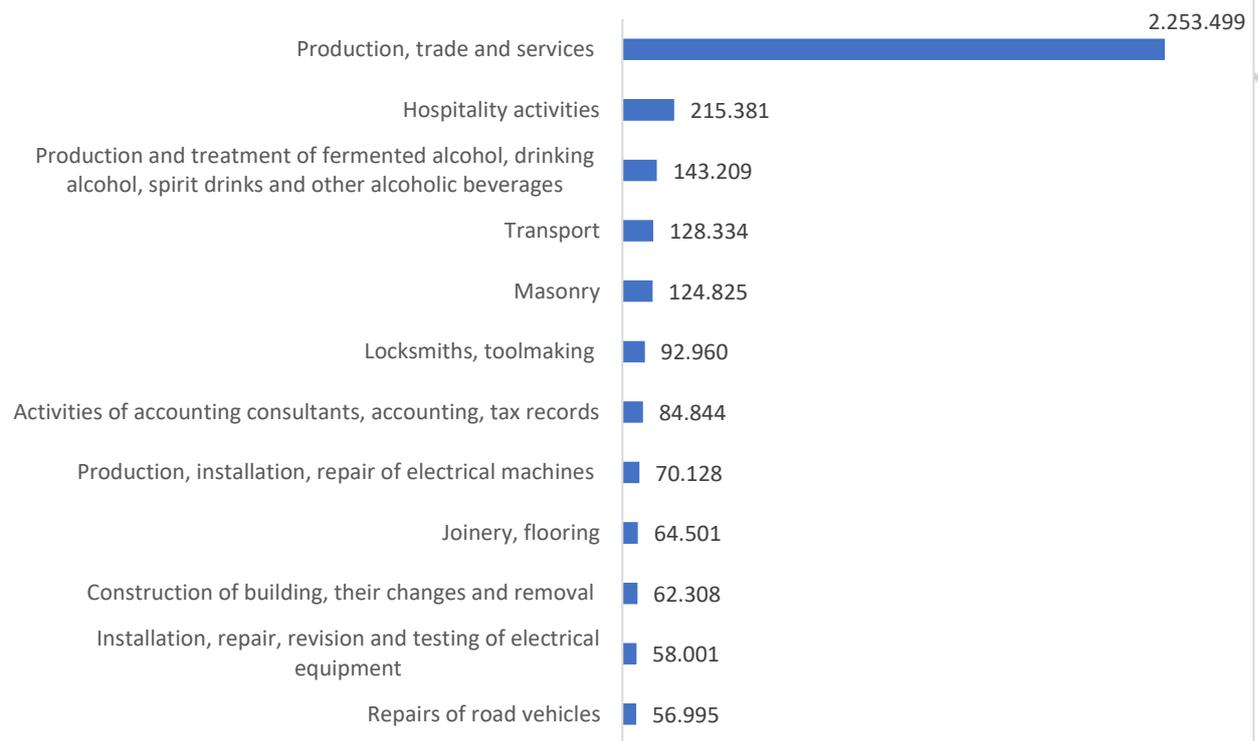
## Background information

The number of self-employed people in Czechia has been steadily increasing in the last years. In 2020, there was 3,921,322 registered entities with trade licence, from which 3,023,756 (77%) were physical persons and 897,566 (33%) legal entities. The graph below presents the development of registered trade licences including both, physical persons and legal entities, as a share of the population between 1992 and 2020. The share of self-employed people has been steadily increasing from 1992 until 2007 when the share sharply dropped by 11% in 2008. Since then, the share has been again steadily increasing, however with slower rate compared to the period before 2008. The share of self-employed people/entities with trade licence in Czech population has reached **36% in 2020**.

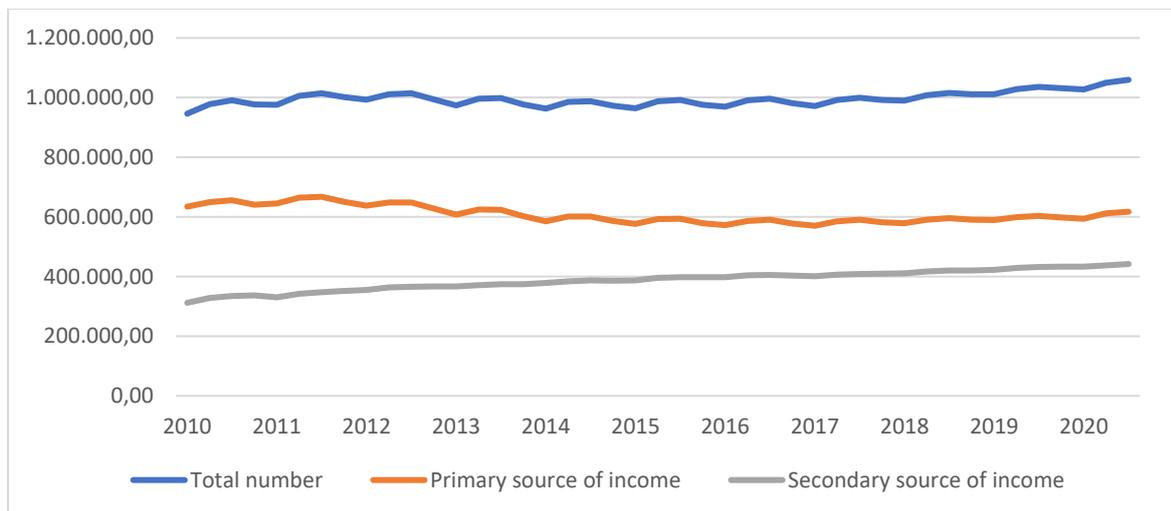


In the last quarter of 2020, the total number of registered people/entities with trade licence in Czechia was 3,921,322. The graph below shows the number of people working in different sectors (top 12). **More than half of the self-employed people (57,5%) in the last quarter of 2020 were employed in production, trade and services.** The number of self-employed people in other professions was more evenly distributed, ranging from 5.5% in a case of Hospitality activities to 1.45% of Repairs of road vehicles.

## Number of self-employed people by profession (top 12)



However, looking at the data from the Czech Social Security Administration<sup>147</sup>, the number of self-employed people actively paying the social security contribution is much lower, this means that **not all registered self-employed people are actively using their trade licence**. The graph below presents the number of people paying their social security to Czech Social Security Administration as self-employed workers as their primary and secondary income.



Therefore in 2020, out of total 3,921,322 registered self-employed workers, there was only 1,059,579 of those actively using their trade licence.

The total number of self-employed workers actively paying the social security contribution has been stable and around 1mil. people between 2010-2020. From those, on average around 61% of all actively

<sup>147</sup> Czech Social Security Administration, [data set](#) (OSVC)

self-employed people use self-employment as a primary source of income, another 39% are workers use self-employment as a secondary source of income.

Based on the data from 2019, there was total of 598, 086 primary self-employed people (the main source of income), and over 433,000 of self-employed people with self-employment as a source of secondary income. Compared to the previous quarter, the number of secondary self-employed people has increased by 800 and has increased by more than 12,000 compared to the previous year. **Since 2010, the number of secondary self-employed people has increased by 100,000.**

A research study conducted as part of a project KOOPERACE funded by the European Social Fund, conducted a survey among self-employed people<sup>148</sup>. The sample of respondent was 600 self-employed people, including representative samples of people based on gender, regions, age, education and income level. The study was conducted in 2014/2015 and found the following:

- less than a fifth of the active population on the labour market are self-employed workers
- self-employed workers include a higher share of men (69% in 2014/015) compared to women
- the highest share of self-employed men is in crafts and technically oriented professions
- the highest share of self-employed women is in services, specialist in science, education, health, ICT, public administration and law
- self-employed workers reported feeling little support from the state
- corruption and a high degree of bureaucracy, frequent changes in laws, decrees and regulations related to self-employment were named as the main barriers in starting a business/being self-employed in Czechia

#### **Artists and freelancers, people in creative industries**

The income tax equally applies to the taxation of self-employed people (15% of the tax base). If for example, the freelance artist reaches a certain income, he must apply for a tax identification number from the relevant local tax office. However, if the artist also performs, for example, in production or other similar business and intermediary activities, it already requires obtaining a trade license. These activities fall within the scope of free trades, which artists and freelancers report to any trade licensing office.

Artists as self-employed persons can only keep so-called tax records (they do not have to keep accounts) if their turnover did not exceed CZK 25 million (97,1552 EUR) in the previous calendar year. If their turnover was higher, they must keep accounts in the balance sheet and do accounting (based on the data and documents provided by the interviewee).

#### **Gender disparities and vulnerable workers**

Vulnerable people on the labour market include people with disabilities, people with no or low qualification and education, people 55+, early school leavers, young people below 24, parents after maternity/paternity leave, people released from prison and people with a criminal record<sup>149</sup>.

Looking at the differences in education level, **the highest share of self-employed people in 2014 were self-employed workers with high school diploma (74%)**, followed by 23% of highly educated people and only 2% were people with primary education. The share of self-employed men is almost twice higher compared to the share of women in self-employment. In 2014, there was 69% of men compared to 31% of women in self-employment.

**The number of self-employed women has been increasing in the last years.** There are support centres and working spaces supporting specifically women and their self-employment activities. Women often do business in their family home, in order to balance work and family responsibilities. In 1995, there were only 15% of women among the self-employed, which has more than doubled in the recent

<sup>148</sup> Michal Broz, Tomas Kolomaznik, Klara Potockova. Output of the project COOPERATION: Self-employed workers and life-long learning. 2015 <https://koopolis.cz/sekce/knihovna/462-vystup-projektu-kooperace-osoby-samostatne-vydelecn-cinne-a-dalsi-profesni-vzdelavani>

<sup>149</sup> Employment National Strategy, <https://www.mpsv.cz/documents/20142/848077/strategiepz2020.pdf/a666485c-355f-3d35-4fe7-0692661e271a>

years up to 32%. Nevertheless, the share of self-employed women remains significantly smaller compared to self-employed men.

### **Platform workers – the case of Uber in Prague**

There is no official available statistics or study focused on platform workers in Czechia. The research conducted on European level by CEPS and IZA and focused on online platforms found that Czechia belongs to the category of countries with low share of platform workers together with e.g., Cyprus, Malta. The share of population using the online platforms in Czechia is 7% compared to for example France (36%) or Ireland (35%). Also, the share of population providing goods and services on online platforms is only 3% in Czechia compared to 10% in Hungary or 5% in Poland.

The percentage of temporary agency workers in Czechia has been increasing over the last years, from 0.9% in 2008 to 1.3% in 2016. Regarding the education level, 70% of temporary agency workers in Czechia obtained low level of education, which is a very high share compared to other MS (for example, 27% in Germany).

Based on the news article, in 2017, there were around 1,100 Uber drivers in Prague and the base of drivers had expanded by 70% compared to the previous year 2016. It is expected that the numbers are currently lower due to the impact of the pandemic. The market value of the service has dropped due to a low demand; therefore, the workers are driving for lower rates which directly impacts their income, the change was from 10CZK per km to 8CZK which equals to 0.31EUR (information provided by UBER driver through a FB chat). The current situation of platform workers is challenging because drivers directly rely on the market value based on the current demand which is low. Additionally, due to the pandemic, the Prague UBER offices are closed, and the drivers are able to communicate with the platform only via chatbot (reported by the drivers).

Based on the information from the UBER driver in Prague, most of the drivers work for both online platforms available in Czechia, UBER and Bolt, and most of them use it as a secondary source of income. In 2018, the taxi drivers in Prague were protesting the platform drivers because there were disparities in the regulations valid for taxi drivers and platform workers. As a result, the law<sup>150</sup> has been amended and since 2020, the platform drivers are obliged to have the same licence and fulfil the same requirements as the taxi drivers (for example, to have a ‘taxi’ sticker visible on the car).

### **Collective bargaining framework**

**Collective bargaining of self-employed people in Czechia is not allowed.** The protection of competition on the labour market prevails and **the bargaining of self-employed people is therefore seen as illegal activity** and an attempt to distort the competition on the labour market. In 2018, the Office for the Protection of Competition in Czechia published guidelines aiming to ensure transparency and predictability of the procedure of the Office for the Protection of Competition<sup>151</sup>. Fines imposed for violations of the law are expected to fulfil the function of an administrative punishment and shall be sufficiently relevant for the competitors or public authorities concerned.

The fine for a legal entity or self-employed person is measured based on the value of sales of goods directly or indirectly affected by the anti-competitive conduct (turnover on the relevant market) during its duration and the current total net turnover of the competitor.

In the case of an association of competitors (including self-employed), a fine may be imposed based on the total turnover. This includes situations where the association has only a limited number of members who achieve high turnovers on the markets in which they operate, while the association itself does not generate any (or negligible) turnover.

<sup>150</sup> Act No. 111/1994 Coll., Road transport, [UBER Guidelines](#)

<sup>151</sup> <https://www.uohs.cz/cs/legislativa/hospodarska-soutez.html>

The **Notification of the Office for the Protection of Competition** from November 2013<sup>152</sup> further describes the protection of competition (Leniency program). Based on this document and the information shared by the interviewees, **the cases of collective bargaining of self-employed would be considered as a cartel agreement**. The cartel agreements have negative effects on competition and the Office considers the fight against them to be one of their main priorities. Cartel agreements are classified as horizontal agreements between two or more competitors with an aim to coordinate their competitive behaviour on the market and / or to influence competition, (e.g., by setting purchase or selling prices, setting production or sales quotas, market sharing, including so-called bid-rigging, and restricting imports or exports).

The Office for the Protection of Competition in Czechia was not available to participate in this research study but shared their views on this matter, which are summarised below:

*The Office for the Protection of Competition deals with issue of collective bargaining of self-employed, especially in relation to certain professions such as cameramen, professional photographers or acting associations and other free professions, whose members want to negotiate under a collective bargaining, however in a context of the Czech law, it would be considered as a cartel agreement.*

*The EU competition rules do not apply to the collective bargaining of employees, however, in relation to the collective bargaining of self-employed, which are considered to be "entities" (ie competitors within the meaning of Act No. 143/2001 Coll. On the Protection of Competition), and therefore the competition rules apply to them. From the point of view of competition, self-employed are viewed as one-member competitors, ie the addressees of the competition rules, for whom there is currently no exception from the scope of the Act on the Protection of Competition. Therefore, negotiations by self-employed persons, for example with representatives of employee organizations, can be classified as a prohibited decision of an association of competitors restricting competition.*

*In the recent years, the Office for the Protection of Competition has been trying to educate self-employed and solve their possible competitive "mistakes" with the so-called competitive advocacy, rather than the sanction administrative process. The Office is currently involved in the Commission's initiative and is participating in the discussions with other national competition authorities within the European Competition Network.*

### **Overview of the main trade unions in Czechia**

The main trade union for self-employed and businesses in Czechia is Business Union. The Union consist of 14,433 registered members, of which: 12,565 are self-employed people, 1,806 are companies, and 62 members are associations. The main goal of the Business Unions is to protect entrepreneurs and self-employed from unwanted or unjustified state interference in business, they are protecting the rights and interest of businesses, lobby for better conditions of self-employed people in Czechia and support its members by offering them guidance, consulting and legal services. The Union is a permanent member of the subcommittee of the Chamber of Deputies of the Parliament of the Czech Republic for the businesses.

Czech-Moravian Confederation of Trade Unions (CMKOS) is the largest trade union in Czechia. CMKOS is a voluntary, open and independent democratic association of 31 trade unions, whose mission is to protect wages, working and living conditions and the rights of employees. As one of the social partners, it actively participates in tripartite negotiations with the government and employers within the Council of the Economic and Social Agreement of the Czech Republic. The CMKOS is also a member of the European Trade Union Confederation (ETUC), the International Trade Union Confederation (ITUC) and the OECD Trade Union Advisory Committee (TUAC).

The 31 trade unions are:

- Railway Traffic Alliance

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<sup>152</sup> <https://www.uohs.cz/cs/legislativa/hospodarska-soutez.html>

- Czech-Moravian trade union of civilian employees of the army
- Czech-Moravian trade union of hospitality, hotels and tourism
- Czech-Moravian trade union of education workers
- Actors' Association
- Independent trade union of workers in the food industry and related fields of Bohemia and Moravia
- trade union of transport
- trade union of ECHO (energy and chemistry industries)
- Firefighters trade union
- trade union of Translators and Interpreters
- trade union KOVO (metal industry)
- trade union of Media
- trade union of workers of wood processing industries, forestry and water management in the Czech Republic
- trade union of workers of mining, geology and oil industry
- trade union of library staff
- trade union of workers of cultural facilities
- trade union of workers of culture and nature protection
- trade union of financial and insurance workers
- trade union of workers of the textile, clothing and leather industry of Bohemia and Moravia
- trade union of science and research workers
- trade union of state bodies and organizations
- trade union of STAVBA ČR (builders and civil engineering)
- trade union of Aviation staff OS
- trade union of employees of postal, telecommunication and newspaper services
- trade union of healthcare and social care in the Czech Republic
- trade union of North Bohemian Association of Mining Trade Unions
- trade union of professional singers of the Czech Republic
- trade union of Orchestral Musicians of the Czech Republic
- trade union of employees in trade, logistics and services
- Universities trade union
- trade union of UNIOS - is an independent, voluntary association of employees of various professions working in public and private sector organizations, especially services (including students, apprentices, women on maternity leave, pensioners and the unemployed people).

The **Act No. 2/1991 Coll. Collective Bargaining Act<sup>153</sup>** regulates collective bargaining between trade unions and employers/organisations.

The procedure for concluding collective agreements is as following:

- collective bargaining is initiated by submitting a written proposal of a collective agreement by one of the contracting parties to the other contracting party
- the contracting party is obliged to respond to the proposal in writing (no later than within 7 working days unless agreed otherwise), and to comment on the proposed conditions
- the contracting parties are obliged to negotiate with each other and to cooperate
- if the collective agreement was concluded for a definite period, or if it was concluded for an indefinite period and the participants agreed on the possibility of its change on a certain date, or if it was terminated, the participants in the collective agreement are obliged at least 60 days before termination of the existing collective agreement, or before the date on which the participants agreed on the possibility of its amendment, to start negotiations on the conclusion of a new collective agreement
- the contracting parties may agree in the collective agreement on the possibility of amending the collective agreement and its scope; this change is the same as when concluding a collective agreement.

The aim of collective bargaining is to agree on the working conditions of employees (including remuneration) and to regulate relations between the employer and the trade union (employee representative) operating in the organisation. The state sets the minimum standards of the collective agreement with an aim to create such conditions that will help companies to ensure stability and allow it to focus on its strategic goals while providing employees with a guarantee of wages and working conditions.

An important part of collective bargaining in Czechia is **higher-level collective agreements** and the **extension** of their binding force to employers in the same sector. This serves primarily to avoid an unjustified competitive advantage for similar employers through a significantly more advantageous price of labour at the expense of its employees. At the same time, extending the binding force of higher-level collective agreements is recognised as a state measure to promote collective bargaining under the Conventions and Recommendations of the International Labor Organization ratified in Czechia in 1998<sup>154</sup>.

The extension mechanism of bargaining agreements is binding for all other employers with a predominant activity in the specific economic sector, with the exceptions of the following employers:

- employer in a bankruptcy
- employer who employs more than 50% of employees with disabilities,
- employer employing less than 20 employees,
- employer in the state of an emergency, (or its consequences)
- employer for whom another higher-level collective agreement is already binding.

The **Ministry of Labour and Social Affairs<sup>155</sup>** conducted a research study in 2020 exploring the **content of the collective agreements in Czechia**. The sample of collective agreements included 1,262 of collective agreements and 21 higher level collective agreements. The results of the survey show that compared to the previous year, there was a change in the development of monthly wage

<sup>153</sup> Ministry of Labour and Social Affairs, <https://www.mpsv.cz/web/cz/kolektivni-smlouvy-vyssiho-stupne-zavazne-pro-dalsi-zamestnavatele>

<sup>154</sup> [https://www.senat.cz/xqw/xervlet/pssenat/webNahled?id\\_doc=31266&id\\_var=26711](https://www.senat.cz/xqw/xervlet/pssenat/webNahled?id_doc=31266&id_var=26711)

<sup>155</sup> <https://www.mpsv.cz/vysledky-z-setreni-informace-o-pracovnich-podminkach>

tariffs. While in 2019 the development of wage tariffs ranged from 6.4% to 9.5%, in 2020 the growth of dynamics slowed down significantly and reached level of 1.9% - 6.4%.

The analysis also showed that the level of minimum monthly **wage tariffs varies considerably among the trade unions**. While the amount of the tariff wage for employers in the scope of glass, ceramics and porcelain industry reaches only CZK 27,021 / month (1,044 EUR), the employees in energy and chemistry industry are paid about 40% higher (CZK 37,790 / month, 1,460 EUR).

More than 69% of the analysed **collective agreements deal with wage tariffs** and more than 84% of company collective agreements consider the surcharge for overtime work. In 2020, surcharge was agreed for overtime work on a working day in 43.3% of collective agreements, for extra work on weekend in 31.1% of agreements and for general overtime work in 40.6% of collective agreements. The average level of agreed overtime pay on a working day was 26.3% of average earnings and the agreed overtime pay on Saturdays and Sundays was 47.9% of the average earnings.

In 2020, the **provision of life insurance contributions** was agreed in 23.6% of collective agreements, which is approximately the same number of agreements as in the previous year. The average amount of monthly contribution provided by the employer increased by CZK 68 (2.63 EUR) compared to 2019 and amounts to total of CZK 704 (27.21 EUR) per month. The minimum amount of the contribution is on average CZK 548 (21.18 EUR) and the maximum amount of the contribution to the life insurance reaches CZK 849 (32.81 EUR).

The survey results show that 32.6% of organisations in their collective agreements negotiate the **creation of a social fund** and 17.3% of organizations create other social programs supporting the employees. On average the social fund contribution from the companies amounts to CZK 2,121 (82 EUR), and to CZK 7,377 (285 EUR) in cases of other social programs. In 13.9% of company collective agreements, employees are allowed to use the social fund in the form of personal accounts.

## Legal framework

*Main relevant legislative provisions: Act No. 143/2001 Coll./ Act on the Protection of Competition and on the Amendment of Certain Acts (Act on the Protection of Competition)*

### Defining self-employment in Czechia

Based on the income tax law (*Act of the Czech National Council on Income Taxes No. 586/1992 Coll.*<sup>156</sup>), *Act of the Czech National Council on the organization and implementation of social security*<sup>157</sup> (No. 582/1991 Coll), and *Act on Public Health Insurance and on Amendments to Certain Related Acts*<sup>158</sup> (No. 48/1997 Coll.), there are two types of self-employments in Czechia. Self-employment as the main source of their income, and self-employment as a source of secondary income.

Act No. 155/1995 Coll., Pension Insurance Act<sup>159</sup>, defines that self-employed activity is a secondary self-employed activity if the self-employed person in a calendar year:

- was employed
- was entitled to a disability pension or received a retirement pension
- was entitled to parental allowance or maternity or sickness benefit due to pregnancy and childbirth if these benefits are covered by employees' sickness insurance, or personally cared for a person under the age of 10 who is dependent on the care of another person.

<sup>156</sup> Act of the Czech National Council on Income Taxes No. 586/1992 Coll <https://www.zakonyprolidi.cz/cs/1992-586?text=%C4%8D.+586%2F1992+Sb>

<sup>157</sup> Act of the Czech National Council on the organization and implementation of social security, <https://www.zakonyprolidi.cz/cs/1991-582?text=%C4%8D.%20582%2F1991%20Sb>

<sup>158</sup> Act on Public Health Insurance and on Amendments to Certain Related Acts, <https://www.zakonyprolidi.cz/cs/1997-48?text=%C4%8D.+48%2F1997+Sb.>

<sup>159</sup> Pension Insurance Act, 155/1995 sb <https://www.zakonyprolidi.cz/cs/1995-155#cast2>

- performed military service in the Armed Forces, unless they are professional soldiers or civilian service
- was a dependent child.

### **Legislation directly linked to self-employment:**

- Act No. 455/1991 Coll. Trade Licensing Act (Trade Licensing Act)

This Act regulates the conditions of trade business/ self-employment and control its implementation. It sets up the legal framework for self-employment and defines what self-employment is and what self-employment is not.

Definition of self-employment:

'A self-employment is a systematic activity carried out independently, in one's own name, at one's own risk, for the purpose of making a profit and under the conditions stipulated by this Act.'

It further classifies the self-employment types into three main categories (the Annex of this Act list all professions which belong to these categories:

1. Reporting self-employment with a specialisation which requires specific education, qualification and/or training (craft professions, e.g., bakery)
2. Tied self-employment professions (e.g., Massage, reconditioning and regeneration services)
3. Free professions (a free profession is a trade entitling to perform activities for which this Act does not require proof of professional or other competence) (e.g., Advisory and consulting activities, elaboration of expert studies and assessments)

- Government Regulation No. 278/2008 Coll. Government regulations on the content of individual trades

Pursuant to Section 73a of Act No. 455/1991 Coll., On Trade Licensing (the Trade Licensing Act), as amended by Act No. 130/2008 Coll.:

This Regulation includes:

- a) the description of crafts professions
- b) the description of the tied professions
- c) the description of the licensed trade professions
- d) the description of free trade according to individual fields of activity

- Act No. 540/2020 Coll. which changes the previous Act No. 586/1992 Coll. Act of the Czech National Council on Income Taxes

This Act incorporates the relevant regulations of the European Union and regulates personal income tax, and corporate income tax. In 2020, the law was amended (valid from the beginning of 2021) and introduced the flat-rate income tax of 15% for all self-employed people who earn less than 1mil CZK per year (38,862 EUR).

Starting in 2021, the flat rate tax will therefore be CZK 5,469 per month (212 EUR), this includes CZK 2,976 social insurance (115 EUR), CZK 2,393 health insurance (93 EUR) and CZK 100 income tax (3,89 EUR)<sup>160</sup>.

- Act No. 143/2001 Coll./ Act on the Protection of Competition and on the Amendment of Certain Acts (Act on the Protection of Competition)

This Act regulates the protection of competition in the market of products and services against its exclusion, restriction, other distortion or threat of:

- a) agreements of competitors
- b) abuse of a dominant position of competitors,
- (c) a merger of competitors, or
- d) state administration bodies in the exercise of state administration.

The law prohibits agreements between competitors, decisions of their associations and concerted practices of competitors, the object or effect of which is distortion of competition, are prohibited and invalid. Agreements whose impact on competition is negligible are not prohibited.

The agreements effecting or distorting competition are:

- direct or indirect determination of prices, or other business conditions,
- restriction or control of production, sales, research and development or investment,
- division of the market or purchasing resources,
- that the conclusion of the contract will be bound to the acceptance of further performance, which is not related to the subject of the contract, in fact or in accordance with business practices and principles of fair trade,
- the application of different conditions to individual competitors in the same or comparable performance, by which some competitors are at a competitive disadvantage,
- that the parties to the agreement will not trade or otherwise cooperate economically with competitors that are not parties to the agreement or will otherwise cause them harm (group boycott).

In 2019, the **Czech Chamber of Commerce** launched a '**Legal electronic system**<sup>161</sup>', which is a free support service for all businesses and self-employed people to help them understand the regulations and law which relates to their self-employment activities. This activity aims to tackle the problem of constant changes in laws, regulations, decrees, which are imposed on entrepreneurs and self-employed people and creates confusing environment which might be discouraging not only for the businesses, but it might also create a barrier for people to start a business/self-employment activity.

The result of this effort is a comprehensive online system which provides an overview of imposed laws, including the obligations arising from them which apply to entrepreneurs. The aim of this initiative was to reduce the burden of bureaucracy which is imposed by state on self-employed people and businesses. This centralised legal electronic system also contributes to cost savings on the part of entrepreneurs. It monitors obligations on behalf of a particular entrepreneur or self-employed person - when they have the obligation to pay certain fees, where and how to apply, what form to send, with regard to the field of their business or self-employment activity. In this way it prevents the state to fine self-employed people/businesses for not fulfilling their obligations. This system is thought to be an online mentor for entrepreneurs. It does not file or fulfil any obligation on behalf of the entrepreneur, but

<sup>160</sup> <https://www.podnikatel.cz/clanky/v-lednu-startuje-pausalni-dan-zde-je-velky-manual-a-formular-pro-prihlaseni/>

<sup>161</sup> Czech Chamber of Commerce <https://www.komora.cz/pes/>

it monitors the deadlines and advises which form to use for filing or fulfilling the obligation arising from the law.

### Labour market trends and other factors

In 2016, the government introduced the electronic records of sales (called EET) which has become a compulsory tool for all businesses receiving customers' payment in cash or checks (does not affect those who receive the payment only via bank transfers or online card payment). The reasoning for this initiative was to make all transactions from businesses (especially focused on small/medium businesses such as shops, bakeries, butchers, pubs, restaurants) transparent in order to avoid tax avoidance. The initiative has several implementation phases and should be fully implemented by 2023. So far, it has not been well received by the businesses because they disagree with tightening up the regulations against their activities and increasing controls. To comply with EET, the business must purchase an EET system which will monitor all transactions and print the receipt for a customer. The receipt is important because it proves that the transaction has been processed by the EET system and therefore the business will pay a tax from it. In the first implementation phases, the government introduced a communication campaign incentivising customer to demand the receipt from every transaction/purchase. The government introduced a game when the customer with a receipt enters the unique receipt code in an online lottery with a motivation to win a valuable price (including a car or money in a range from 100 CZK/3.83 EUR– 1,000,000 CZK/ 38,269 EUR)<sup>162</sup>. This stimulated customers behaviour to create a pressure on businesses to give them receipt with the unique code for every purchase and consequently implementing the EET system.

The system is controversial because it has not been shown that it will reduce the tax avoidance. There is no evidence that the cost benefit analysis will be beneficial in a long term because the government is spending money not only on the maintenance of the EET centralised system but also on the inspectors who come in disguised to check whether the businesses are operating the system well and accordance to the guidelines. On the side of businesses, some of them were closed because of introducing this system (examples are small pubs and 'beer gardens' in villages) because they couldn't afford to pay for the EET system. Businesses are sceptical towards EET, they do not like that the government is collecting so much background data on the transactions – based on the information from the transaction, many other information can be derived such as when the business is the most profitable, what items are sold the most etc. Based on the survey conducted in 2020<sup>163</sup>, only 20% of businesses is ready for the implementation, 62% business struggle with the technical implementation of EET and do not know how to implement it in their business.

The general public mostly agrees with the EET implementation (65%) and sees it as a good tool to tackle tax avoidance (general public survey conducted in 2020<sup>164</sup>).

### The classification of self-employed workers

**Act No. 455/1991 Coll. Trade Licensing Act** classifies self-employment into three main categories (the Annex of this Act list all professions which belong to these categories<sup>165</sup>:

1. Reporting self-employment with a specialisation which requires specific education, qualification and/or training (craft professions, e.g., bakery)
2. Tied self-employment professions (e.g., Massage, reconditioning and regeneration services)
3. Free professions (a free profession is a trade entitling to perform activities for which this Act does not require proof of professional or other competence) (e.g., Advisory and consulting activities, elaboration of expert studies and assessments)

<sup>162</sup> <https://www.loterie-uctenkova.cz/vyhry-v-uctenkove-loterii/>

<sup>163</sup> <https://www.businessinfo.cz/clanky/vetsina-zivnostniku-a-remeslniku-je-proti-eet-vplyva-z-pruzkumu/>

<sup>164</sup> <https://www.stem.cz/elektronickou-evidenci-trzeb-stabilne-podporuje-vetsina-verejnosti/>

<sup>165</sup> <https://www.zakonyprolidi.cz/cs/1991-455?text=druhy+zivnosti>

## **Social benefits for self-employed**

To receive the social and health benefits, the self-employed must pay an insurance, similarly as employees. The base for health and social insurance of self-employed is calculated as 50% of the difference between the income and expenditures of self-employed person. Social security contributions are derived as 29.2% of the base, health insurance is 13.5% of the base. If the self-employment is the main income for the self-employed, the person is obliged to pay deposit for health and social insurance. An exception is sick-leave insurance, to which the self-employed only applies voluntarily<sup>166</sup>.

### **Benefits provided to self-employed people from health insurance<sup>167</sup>**

The financial support during the sick leave is calculating as:

- a) 60% of the daily base income from the 15th to the 30th calendar day of the duration of temporary incapacity for work or ordered quarantine
- b) 66% of the daily base income from the 31st to the 60th calendar day of the duration of temporary incapacity for work or ordered quarantine,
- (c) 72% of the daily base income from the 61st calendar day of the duration of the temporary incapacity for work or ordered quarantine.

### **Maternity allowance**

The general conditions valid for employees also apply to the self-employed. However, in addition to the conditions of paying/contributing to the insurance for at least 270 calendar days during the last two years before the maternity leave, the self-employed person have to comply with the following:

- paying health insurance for self-employed for at least 180 days in the period of one year before the day of starting the maternity allowance
- during the period of receiving the maternity allowance, the self-employed cannot continue the self-employment activity.

### **Paternity leave**

The general conditions for employees also apply to the self-employed, and in addition, to receive the paternity leave support, the self-employed men must:

- Contribute to the health insurance of self-employed persons for at least three months before the day of paternity leave
- during the period of receiving the paternity allowance, the self-employed cannot continue the self-employment activity.

### **Entitlement of self-employed to sick leave benefits**

The general conditions valid for employees also apply to the self-employed. However, in addition, the self-employed person must comply with the following:

- participation in the sick-leave insurance of self-employed persons lasted for at least three months before the day of temporary incapacity for work
- the self-employed person does not personally perform a self-employed activity during the period of temporary incapacity for work
- self-employed persons who have been declared temporarily incapable of work or who have been ordered quarantine are entitled to sickness benefits if the temporary incapacity for work or quarantine lasts longer than 14 calendar days.

### **Entitlement of self-employed with long term caring responsibilities**

<sup>166</sup> <https://www.kalkulackaosvc.cz/popis-vypoctu-odvodu-osvc>

<sup>167</sup> <https://www.cssz.cz/web/cz/nemocenske-pojisteni-osvc>

The general conditions valid for employees also apply to the self-employed. However, in addition, to receive the support, the self-employed person must comply with the following:

- self-employed person contributed to the health insurance for at least three months before starting the long-term caring responsibilities
- self-employed person does not personally perform a self-employed activity or any other employment activity while receiving the long-term health support.

## False employment

Based on the study conducted by Institute for Democracy & Economic Analysis (IDEA) in 2013<sup>168</sup>, the differences in taxation of employees and entrepreneurs in the Czech tax system are significant. Although self-employed people have significantly higher average gross incomes than employees, they pay on average almost 27% lower taxes. Comparing self-employed people and employees with similar gross incomes, entrepreneurs with the lowest gross incomes face tax rates as high as the lowest-income employees. All other groups of entrepreneurs however, face tax rates significantly lower than employees in the same income category, and this by 10 - 15 %.

There is therefore disparity between the taxation of employees and entrepreneurs which motivates employers to use contracts of self-employment even in cases where they would otherwise use a standard employment contract. Within the Czech context, this is called the Švarc system named after Miroslav Švarc who after the Velvet revolution in 90s started to hire people as self-employed contractors for the same work they would usually deliver to the employer as employees (under the employment contract). This system is taking advantage of the benefits of self-employment such as reduced taxes; therefore the state is actively trying to tackle this issue and impose financial sanctions on self-employed people and companies engaging in Švarc system. According to the interviewee, cases of Švarc system in Czechia are common (however, there are no official statistics available online).

In case of violation of the Employment Act, paragraph 139 describes the sanctions for self-employed person, and paragraph 140 describes the sanctions for legal entities and companies. The sanctions were changed in 2012 when the definition of illegal work was amended. Consequently, the sanctions were doubled for employers by up to 10 million crowns, and by up to 100 thousand crowns for self-employed person. Additionally, in case of Švarc system the authorities impose on employer a fine of min. 250,000 (EUR 9,714).

The sanctions imposed on people engaging in Švarc system are not insignificant within the Czech context and include the following<sup>169</sup>:

Financial sanctions for violation of the Employed Act by self-employment worker	
Type of violation	Financial sanctions are up to:
a) discriminate or does not ensure equal treatment	CZK 1,000,000
b) enables or mediate employment without a permit	CZK 2,000,000
c) performs illegal work	CZK 100,000
d) enables illegal work	CZK 5,000,000
e) fails to comply with the notification obligation according to the paragraph 87 of the Employment Act (related to employment of foreigners)	CZK 100,000

<sup>168</sup> Who and how much contributes to the common budget? Taxation of income from employment and business in the Czech system, 2013, IDEA, [https://idea.cerge-ei.cz/files/IDEA\\_Studie\\_8\\_2013.pdf](https://idea.cerge-ei.cz/files/IDEA_Studie_8_2013.pdf)

<sup>169</sup> Article 2012, <https://www.podnikatel.cz/specialy/svarcsystem/sankce-a-kontroly/>

### Financial sanctions for violation of the Employment Act by a legal entity

Type of violation	Financial sanctions are up to:
a) discriminates or does not ensure equal treatment	CZK 1,000,000
b) mediates employment without a permit or otherwise violates Act or good morals when arranging employment	2,000,000
c) enables illegal work according to paragraph 5	CZK 250,000 - CZK 10,000,000
d) fails to fulfil the notification obligation	CZK 100,000

The government is actively trying to tackle this issue and lower the number of false employments especially for the tax purposes. However, Švarc system is not seen by all stakeholders as a false employment. For example, the stakeholder interviewed for this research on behalf of Trade Union does not share this view. According to his opinion, the self-employment is equal form of labour activity to employment and therefore there should not be any distinction between these two activities. He disagrees with the term of false employment because according to this logic it does not exist (employment cannot be false – it is only a different relationship between the employer/employee or business/self-employed) . Švarc system is only another way of the labour market activity which is legal and therefore the businesses/employees have the rights and freedom to switch to businesses/self-employed relationship.

### Conclusions

Collective bargaining for self-employed workers is prohibited by competition law in Czechia. The protection of competition on the labour market prevails and bargaining for self-employed workers 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<sup>170</sup>.

On the other hand, there are many trade unions in Czechia protecting employees in wide range of sectors and negotiating the collective agreements with employers protecting their working conditions, wage tariffs, health benefits, insurance contributions and social fund benefits.

According to the interviewees, there is a lack of support for self-employed in Czechia and the conditions of self-employed are not equal to the conditions of full-time employees.

The interviewee, representative from Czech-Moravian Confederation of Trade Unions agrees that there is a strong need to provide self-employed with more support, especially in the sector of culture. The Czech-Moravian Confederation of Trade Unions would welcome EU legislative directive which would allow the collective bargaining of self-employed in Czechia and other MS. Currently, there are uneven conditions for self-employed in EU MS as each state interprets the EU recommendations in their own way, therefore there is a need for harmonising the conditions on the EU level and legalising the collective bargaining for self-employed across the EU.

The main problem of self-employed in Czechia is that they have different conditions compared to employees/e.g. collective bargaining is illegal for self-employed but legal for full time employees. The main need is to bring the self-employment protection as close to the employment law as possible, set

<sup>170</sup> <https://www.uoohs.cz/cs/informacni-centrum/tiskove-zpravy/hospodarska-soutez/2446-sdruzeni-prekladatel-u-a-tlumocniku-porusovala-soutezni-pravo.html>

up clear rules regarding the payment of taxes, insurance, wages because currently self-employed are not entitled to the same conditions as full-time employees. Therefore, the goal should be to close the gap of differences between the conditions of self-employed and employees and equalise the conditions for both forms of employment (including the protection of self-employed through collective bargaining).

The interviewee from Business unions (defending the rights and interests of entrepreneurs) echoed that there are great disparities in conditions and protections between full-time employees and self-employed in Czechia. While full-time employees enjoy the protection, there is almost no protection for self-employed. The debate regarding the collective bargaining of self-employed is only among the experts in Czechia, there is no active involvement from state in this debate. The interviewee welcomes EU initiatives, especially the past initiative focused on micro enterprises in 2008 was very successful, according to his opinion.

Platform workers are among the self-employed in Czechia, most of them use the online platform as a secondary source of income, e.g., UBER and Bolt drivers. However, there is a lack of data and statistics regarding the platform workers in Czechia, there is no umbrella organisation for platform workers which would advocate for their protection and interests.

## Interviews

Name of interviewee	Organisation
1. Judr.Vit Samek	Ceskomoravska konfederace odborovych svazu
2. Radomil Bábek	Podnikatelské odbory - Unie podnikatelských a živnostenských spolků

# Germany

## Background information

There is no legal definition of self-employment in Germany. The difference between self-employment as independent work and dependent employment has been established in court by case law and is derived from the legal definition for dependent employment, defining that someone is an employee if that worker is dependent on the employers' instructions in terms of (i) place, (ii) time and (iii) content of work, (iv) is incorporated into the organisational structure of the employer, and (v) uses the production equipment of the employer<sup>171</sup>.

Further, an individual is self-employed (*freiberuflich*) if they practise one of the following professions but are not employed in a company:

- Doctor, veterinarian, dentist, lawyer, tax consultant, notary, engineer, architect, interpreter (these professions are also called "catalogue professions"/"Katalogberufe".)
- Teacher, lecturer, journalist, musician, author, designer, artist, as well as other scientific, literary, artistic or education-related professions (these occupations are also called "Tätigkeitsberufe" or "Activity Professions".)
- designers, structural engineers, photographers, graphic artists or similar technical or creative professions (these professions are referred to as "Ähnliche Berufe" or "similar occupations".)

A total of 9.6% of the German workforce was classified as self-employed in 2019, according to OECD figures<sup>172</sup>. This is broadly like 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<sup>173</sup>. It may be that the pandemic has resulted in an increase in self-employment, although the most recent overall figures for self-employment from the German statistical office<sup>174</sup>, show that the total number of self-employed workers in Germany was 3,999,000 in 2020, down from 4,515,000 in 2010.

- Categories of self-employed workers:
  - *sector of self-employed worker*
  - *specific occupations of self-employed worker*
  - *reasons for self-employment – eg individual choice, no other work available, mixture of the two*
- Details of vulnerable self-employed workers. There may be studies or statistics showing which types of workers are deemed to be vulnerable in terms of income levels, working conditions, health and safety risks, working time
- Any details relating to the sectors with high numbers of self-employed workers deemed to be more vulnerable due to factors such as precarious working arrangements, low pay.

In terms of sectoral trends, although there has been stagnation in the numbers of self-employed people in sectors such as insurance intermediaries, retailers, crafts people and taxi drivers, self-employment

<sup>171</sup> [http://ftp.iza.org/report\\_pdfs/iza\\_report\\_54.pdf](http://ftp.iza.org/report_pdfs/iza_report_54.pdf)

<sup>172</sup> <https://data.oecd.org/emp/self-employment-rate.htm>

<sup>173</sup> [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648803/IPOL\\_STU\(2020\)648803\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648803/IPOL_STU(2020)648803_EN.pdf)

<sup>174</sup> <https://de.statista.com/statistik/daten/studie/979999/umfrage/anzahl-der-erwerbstaetigen-mit-arbeitsort-in-deutschland/>

has increased significantly in a larger number of occupations, particularly in creative occupations, cosmetics, old-age care, IT consulting and the construction industry<sup>175</sup>. Around 40% of all persons active in creative occupations are self-employed – with no specific information available on dependent self-employment. This share is higher in larger cities such as Berlin, where 53% of all creatives can be classified as freelancers.

### False self-employment

If an individual is officially working as a self-employed person, but, in fact, only has a single employer and does not work independently, their work is categorised as "*Scheinselbständigkeit*" or "false self-employment"- which means that the individual is self-employed only on paper but treated like an employee. False self-employment is punishable in German law both for employee and employer.

*Please report any available statistics relating to:*

- Platform workers. These are workers who work through online platforms, carrying out work on a task basis. They include those who work for platforms such as Uber or Deliveroo, but also those who carry out any type of task-based work arranged through platforms, such as click work, care work, cleaning, specialised work such as web design, administrative work or accountancy work etc.
- Self-employed workers in creative professions, such as actors, musicians, authors
- Self-employed journalists and other professionals who work as freelancers
- Self-employed in liberal and regulated professions (please name the specific professions)
- Any information around false self-employment, i.e. persons hired as self-employed but in a situation comparable to that of employees

Platform working is not very widespread in Germany overall. It is reported that only about 1-2% of the adult population is active in platform work according to national surveys:

Study	Percent of adults currently active in platform work	Equivalent number of people	Survey Year
<b>National Surveys</b>			
<b>Bonin and Rinne (2017)</b>	0.9	620,000	2017
<b>Serfling (2019) *</b>	2.6	1,791,000	2017-2018

Source: Omnibusbefragung zur Verbesserung der Datenlage neuer Beschäftigungsformen, Holger Bonin and Ulf Rinne. IZA research paper no. 80, 2017. Oliver Serfling Crowdfunding Monitor No. 2, BMAS (2019)<sup>176</sup> \*Only paid work considered

However, even 1% of the workforce translates into around 500,000 workers in Germany and therefore platform work involves a significant number of workers. Platform workers in Germany tend to be young and engaged in platform work for part but not all of their income, therefore often having more than one job (Bertschek et al. (2016)<sup>177</sup>).

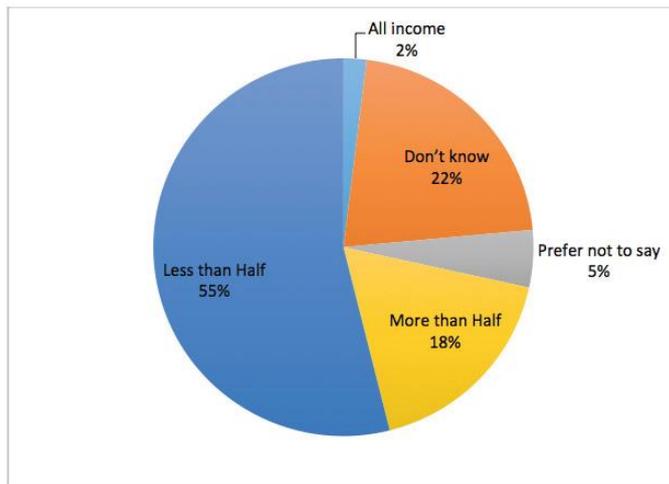
<sup>175</sup> [http://ftp.iza.org/report\\_pdfs/iza\\_report\\_54.pdf](http://ftp.iza.org/report_pdfs/iza_report_54.pdf)

<sup>176</sup> [https://www.researchgate.net/publication/334259906\\_Crowdworking\\_Monitor\\_No\\_2](https://www.researchgate.net/publication/334259906_Crowdworking_Monitor_No_2)

<sup>177</sup> Bertschek, Irene; Ohnemus, Jorg; Viete, Steffen (2016): Befragung zum sozioökonomischen Hintergrund und zu den Motiven von Crowdworkern. Unter Mitarbeit von Jörg Ohnemus und Steffen Viete. Hg. v. Bundesministerium für Arbeit und Soziales (Forschungsbericht, 462).

Research carried out in 2016 by the University of Hertfordshire and Ipsos MORI, in association with the Foundation for European Progressive Studies (FEPS), UNI-Europa, ver.di, and IG Metall, shows that, based on an online survey of 2,180 German adults aged 16-70, 22% say they had tried to find work managed via online 'gig economy' platforms such as Upwork, Uber or Handy during the previous year, equivalent to nearly 13 million people<sup>178</sup>. A total of 4% of respondents claimed to find paid work via online platforms at least once a week, equivalent to around 2.3 million adults, with 6%, or around 3.5 million, finding such work at least once a month. However, very few workers relied solely on this type of work for all of their income. See figure below.

**Proportion of income from crowd work in Germany (% of all crowd workers)**



Source: [https://www.uni-europa.org/wp-content/uploads/2016/11/crowd\\_working\\_survey\\_Germany.pdf](https://www.uni-europa.org/wp-content/uploads/2016/11/crowd_working_survey_Germany.pdf)

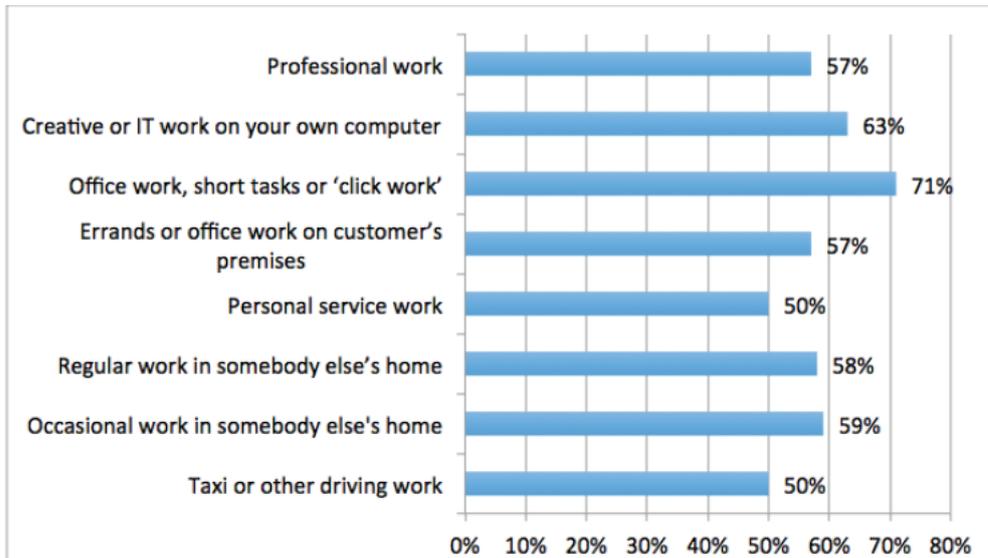
[https://www.uni-europa.org/wp-content/uploads/2016/11/crowd\\_working\\_survey\\_Germany.pdf](https://www.uni-europa.org/wp-content/uploads/2016/11/crowd_working_survey_Germany.pdf)

*Unweighted base: 330 online German adults 16-70 who have found paid crowd work online. Where percentages do not sum to 100, this may be due to computer rounding, the exclusion of "don't know" categories, or multiple answers.*

This survey also contains information about the type of work that crowd workers carry out, as set out in the figure below. Workers often work in different types of jobs and therefore gave multiple answers to the survey. As can be seen, in the figure below, the range of work being carried out is extremely broad, from high-skill professional work at one extreme to running errands at the other. The most common type of crowd work, done by more than 71% of crowd workers, is office work, short tasks and 'click work' done online. However large numbers (63%) are doing creative or IT work or (57%) professional work.

<sup>178</sup> [https://www.uni-europa.org/wp-content/uploads/2016/11/crowd\\_working\\_survey\\_Germany.pdf](https://www.uni-europa.org/wp-content/uploads/2016/11/crowd_working_survey_Germany.pdf)

### Types of work being carried out by crowd workers in Germany

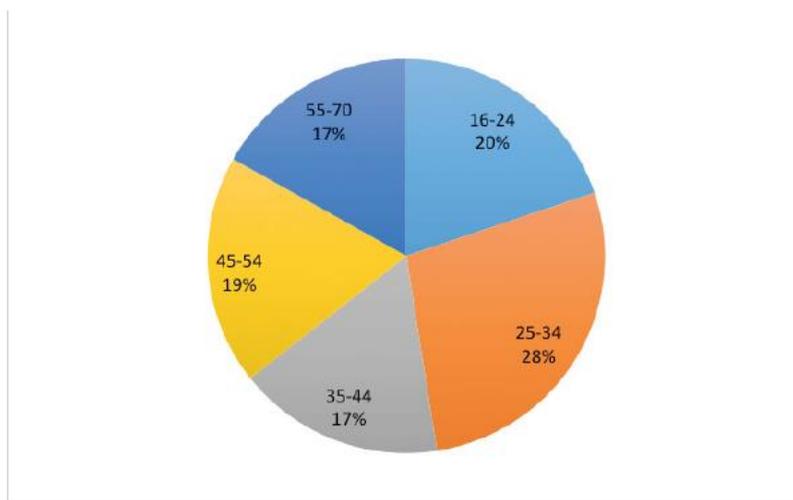


Source: [https://www.uni-europa.org/wp-content/uploads/2016/11/crowd\\_working\\_survey\\_Germany.pdf](https://www.uni-europa.org/wp-content/uploads/2016/11/crowd_working_survey_Germany.pdf)

Unweighted base: 330 online German adults 16-70 who have found paid crowd work online.

Crowd workers are more likely to be young than old, but not dramatically so, as can be seen in the figure below. One in five (20%) is aged between 16 and 24, with over a quarter (28%) between 25 and 34. The remainder are distributed widely across the older age bands, with 17% aged 35-44, 19% 45-54 and 17% 55-70. There are clearly significant numbers of 'silver surfers' among the crowd workforces. It is often thought that most crowd workers are students. This is not the case in Germany. Only 10% of those doing crowd work in the sample were students, a proportion that dropped below 5% among those doing crowd work at least weekly.

### Age of crowd workers in Germany



Source: [https://www.uni-europa.org/wp-content/uploads/2016/11/crowd\\_working\\_survey\\_Germany.pdf](https://www.uni-europa.org/wp-content/uploads/2016/11/crowd_working_survey_Germany.pdf)

Unweighted base: 330 online German adults 16-70 who have found paid crowd work online.

## Collective bargaining framework

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. There is a divide of responsibilities in terms of the setting of pay and conditions: trade unions negotiate collective agreements at sectoral level and works councils engage with the employer at company level, with powers in a number of aspects of working conditions, such as the organisation of working time, within the framework set by the sectoral collective agreement.

Separate agreements between trade unions and specific companies are less common, although there are some exceptions (such as the agreement covering the motor company Volkswagen), and they are found more frequently in the former East Germany. Overall, in 2018, 3% of workplaces in the former East Germany had company agreements, compared with 2% in western Germany<sup>179</sup>.

The coverage of the workforce by collective agreements (*Tarifbindung*) varies by sector and is related to the strength of trade unions and of social dialogue overall in the sector. Traditionally, the metalworking sector sets the pace in terms of collective negotiations, concluding an agreement in a particular German region, with other sectors beginning their collective bargaining once this sector has reached an agreement. This is particularly important in terms of pay negotiations.

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<sup>180</sup>, 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.

In terms of sector, the IAB figures show that the number of companies covered by a sectoral collective agreement ranges from 83% in public administration, 51% in construction and 49% in the energy, water, waste and mining sector, to just 4% in ICT and 14% in transport and logistics.

Landwirtschaft u. a. (agriculture)	23
Energie/Wasser/Abfall & Bergbau (energy, water, waste and mining)	49
Verarbeitendes Gewerbe (manufacturing)	20
Baugewerbe (construction)	51
Großhandel, Kfz-Handel und -reparatur (auto trade and repair)	20
Einzelhandel (retail)	18
Verkehr & Lagerei (transport and logistics)	14
Information & Kommunikation (ICT)	4
Finanz- und Versicherungsdienstleistungen (finance and insurance)	22
Gastgewerbe & Sonstige Dienstleistungen (hospitality)	24

<sup>179</sup> <https://www.worker-participation.eu/National-Industrial-Relations/Countries/Germany/Collective-Bargaining>

<sup>180</sup> [http://doku.iab.de/arbeitsmarktdaten/Daten\\_zur\\_Tarifbindung.xlsx](http://doku.iab.de/arbeitsmarktdaten/Daten_zur_Tarifbindung.xlsx)

Gesundheit & Erziehung/Unterricht (health and education)	29
Wirtschaftl., wissenschaftl. u. freiberufl. Dienstl. (Professional, scientific and technical activities*)	15
Organisationen ohne Erwerbscharakter	30
Öffentliche Verwaltung/Sozialversicherung (public administration)	83
<b>Gesamt (total)</b>	<b>25</b>

\*This covers liberal professions such as legal and accounting activities, architectural and engineering activities, scientific research and development and veterinary activities.

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. The vast majority of union members are in the main union confederation, the Confederation of German Trade Unions (Deutscher Gewerkschaftsbund, DGB), but within it individual unions, such as IG Metall (metalworking) and Ver.di (service sector and some public sector workers – see below), have considerable autonomy and influence. Trade unions are involved in collective bargaining at regional sectoral level.

There have been some trade union initiatives in Germany that aim to improve the rights of self-employed and platform workers. For example, faircrowdwork.org<sup>181</sup> is a cross-country trade union website (IG Metall in Germany, AK and ÖGB in Austria and Unionen in Sweden that gathers and presents information about platform working conditions, as provided by platform workers. The site offers ratings of working conditions on different online labour platforms based on surveys with workers<sup>182</sup>.

As in many EU Member States, most employers in Germany tend to be SMEs, although in terms of numbers of workers employed, large companies employ significant numbers of workers. In terms of the nature of employers for platform workers, there is generally a mix of employers, either online platforms or branded platforms belonging to specific companies.

There are several trade unions that are not only open to dependent employees but organise freelancers and self-employed workers. The largest of these trade unions which organises - among others - freelancers and self-employed workers without employees is the United Services Union (Vereinte Dienstleistungsgewerkschaft, ver.di) which is affiliated to the Confederation of German Trade Unions (Deutscher Gewerkschaftsbund, DGB). It took the decision to represent solo self-employed workers when it was founded in 2001. It is therefore open to freelancers and self-employed workers in a wide range of service industries. According to the ver.di website, around 30,000 of its 2.2 million members are self-employed.

Further, the Association of German Writers (Verband deutscher Schriftsteller, VS) is a trade group within ver.di. The association of German speaking translators of literature (Verband deutschsprachiger Übersetzer literarischer und wissenschaftlicher Werke, VdÜ) is associated to the VS.

The German Federation of Journalists (Deutscher Journalisten-Verband, DJV) is not affiliated to the DGB but is the biggest trade union of journalists. This union has about 40,000 members throughout the whole media sector, of which 15,000 are freelancers. The DJV offers a wide range of services to freelance journalists.

The German Union of Education (Gewerkschaft Erziehung und Wissenschaft, GEW) has some 250,000 members and organises according to GEW estimates a couple of thousand self-employed workers in further education.

<sup>181</sup> <http://faircrowd.work/>

<sup>182</sup> <http://faircrowd.work/platform-reviews/>

In terms of German unions engaging with the issues faced by self-employed workers, ver.di has over a decade of experience supporting and representing the interests of self-employed persons, especially journalists.

Further, the metalworking trade union IG Metall has been open to self-employed members since 1 January 2016, with a focus on crowd- and platform-based workers. As of April 2017, self-employed members of IG Metall may receive insurance for legal costs up to EUR 100,000 in cases of legal disputes with clients. IG Metall participated in the Frankfurt Declaration on Platform-Based Work, a call for “transnational cooperation between workers, worker organizations, platform clients, platform operators, and regulators to ensure fair working conditions and worker participation in governance in the growing world of digital labour platforms”<sup>183</sup>.

The DGB offers advice and guidance on self-employment to migrant workers on its website<sup>184</sup> and urges all workers to join a trade union.

Collective bargaining on behalf of freelancers and dependent self-employed people is rare in Germany. In principle, antitrust law (*Kartellrecht*) prohibits self-employed workers without employees - as well as companies - from seeking arrangements on prices.

However, according to article 12a of the German Collective Agreement Act (*Tarifvertragsgesetz*), it is possible to conclude collective agreements for those persons who are considered by law to be ‘similar to an employee’ (*Arbeitnehmerähnliche Personen*). This covers those freelancers who are economically dependent and usually work exclusively for one client or more than 50% (30% in the media sector) of their income is paid by one client<sup>185</sup>.

Overall, although the legal conditions for collective bargaining for some self-employed workers are clear, in practice, employer resistance has meant that there are very few collective agreements making use of these rights. Currently agreements covering economically dependent freelancers only exist in public sector broadcasting companies and in some daily newspapers. These agreements provide collectively agreed rates of pay. According to ver.di, these collective agreements are usually honoured by the companies<sup>186</sup>.

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 like compensation when engagements are not renewed or hours are reduced, and some, like Südwestrundfunk, also set a range of rates, not just minimum rates.

There is another collective agreement concluded between the DJV, ver.di and the Federation of German Newspaper Publishers (Bundesverband Deutscher Zeitungsverleger, BDZV) and several regional publisher associations. This collective agreement covers self-employed journalists, who are treated before the law as being similar to the employees at daily newspapers in Germany. The agreement provides collectively agreed rates of remuneration for text and pictures provided by freelance journalists. This agreement is considered by ver.di to be not very meaningful in practice - as in many cases publishers pay less than the agreed rates and freelance journalists working in a highly competitive market rarely consider their position strong enough to insist on being paid the proper rates. However, ver.di considers the agreement useful in so far as it offers an orientation for freelancers about appropriate rates of pay.

A framework agreement (Rahmentarifvertrag) sets rates of pay for “sworn” translators<sup>187</sup>, based on character count. This is set by the Ministry of Justice and the rates have not been increased since 2013,

<sup>183</sup> <http://faircrowd.work/unions-for-crowdworkers/frankfurt-declaration/>

<sup>184</sup> <https://www.dgb.de/themen/+++co++327d5c40-bf8a-11e5-b6c9-52540023ef1a>

<sup>185</sup> [https://www.etuc.org/sites/default/files/publication/file/2018-10/Trade%20unions%20protecting%20self-employed%20workers\\_EN.pdf](https://www.etuc.org/sites/default/files/publication/file/2018-10/Trade%20unions%20protecting%20self-employed%20workers_EN.pdf)

<sup>186</sup> <https://www.eurofound.europa.eu/publications/report/2009/germany-self-employed-workers>

<sup>187</sup> Sworn translation is generally recognised as an officially accepted translation of a legal document or any document that needs to be accepted in a legal situation, such as birth certificates, academic certificates or declarations

according to an interviewee for this study. These rates tend to lead rates for the sector and are higher than rates for more general translation. This is not, however, a collective agreement as it is not bargained in any sense between two parties. The Ministry refused to increase the rates from 1 January this year.

In general, trade unions would like to negotiate agreements in other parts of the media, such as in magazine publishing, where talks started in 2003, or private broadcasting or in news agencies, but so far this has not been possible. However, a breakthrough is possible in the education sector in Berlin, where the regional government, made up of the Social Democratic Party, the Left Party (Die Linke) and the Greens, has promised to improve the conditions of self-employed individuals working, for example, as music teachers, teachers of adults or teachers supporting the integration of non-German born children.

In theory, the law provides for the extension of collective agreements across a whole sector, but this provision is rarely used in practice.

Collective agreements can be extended either under the Collective Agreements Act or under the Posted Workers Act. Under the former, the federal as well as the regional labour ministers may extend an agreement if the extension is approved by a bipartite wage committee. Under the Posted Workers Act, the federal labour minister may react to a plea by the collective bargaining partners and extend a sectoral agreement to the national level. The number of extensions strongly decreased over the 2000s. Sectoral agreements can be extended if the extension is 'in the public interest'; previously, they had to cover at least 50% of the sectoral employees to be eligible for extension.

## Legal framework

*Main relevant legislative provisions: Homeworkers Protection Act (Heimarbeiterschutzgesetz, HAG), Arts. 17 and 19; Collective Agreement Act (Tarifvertragsgesetz, TVG). Art. 12a*

Since 2017 national labour law contains a definition of the term 'employee' in section 611a of the Civil Code (Bürgerliches Gesetzbuch – BGB). This definition follows from the earlier case law of the Federal Labour Court (Bundesarbeitsgericht, BAG), according to which an employee is someone who carries out work under civil law in personal dependence. Employees are defined by law as 'Arbeitnehmer' and enjoy the full range of employment protections connected with this, such as the right to minimum wages, holidays, severance payment, dismissal protection and limited liability.

It can sometimes be the case that companies provide internal platform work within their own company, i.e., the employer recruits the workforce through a platform from their own staff or the staff of the group. In these cases, these platform workers are employees.

The BGB provides for a further category between employees and totally independent persons: persons with employee-like status (*Arbeitnehmerähnliche Personen*). Employee-like persons 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 minimum wages, nor do they enjoy dismissal protection or protection in the case of transfer of undertaking. They can, however, be covered by collective bargaining (see above).

A special type of employee-like persons are homeworkers, who enjoy protection under labour law acts a higher degree than other employee-like persons. These are workers who, for example, might work in manufacturing, working on piece rates. For example, homeworkers who work predominantly for one establishment are covered by the works constitution.

Additionally, there is special legislation covering homeworkers (Heimarbeitsgesetz - HAG, Homeworkers Act), which provides for the possibility to conclude collective agreements for homeworkers. In the absence of collective agreements, special committees for homeworkers may create minimum pay rates. The interviewee from ver.di said that this mechanism could be used to cover self-employed workers in some way in the future.

The Federal Labour Court has also decided that high-skilled workers such as IT specialists could be homeworkers, the concept of homework is not restricted to simpler tasks. But the HAG will only apply if the work is carried out for an economic purpose which excludes occasional work.

The works council in a company can represent workers only if they are employees or persons engaged in homework who work principally for one and the same establishment. However, in practice it may be difficult to get in touch with platform workers, especially if there is only a virtual link to the establishment, as in the case of digital platforms.

Case law under the BAG provides a test that assesses whether someone is economically dependent mainly from one undertaking and, therefore, needs social protection<sup>188</sup>.

Platform workers are considered under German law to be self-employed workers, as they can choose which jobs they accept, as determined by case law<sup>189</sup>. Connected to this, platform workers may be under monetary pressure to accept the offer, but case law has found that this is only a question of economic dependence<sup>190</sup>.

This issue is, however, quite complex. The BAG has also ruled that in the case of very simple tasks, the contract may be deemed to be an employment contract irrespective of the absence of any directions of the employers (e.g., a newspaper deliverer)<sup>191</sup>. In such instances, the instructions follow ultimately from the duties. This case law may be applicable for platform workers.

Self-employed workers 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.

Most **platform workers** earn only supplemental rather than their main income in the gig economy. This was confirmed by interviewees for this study. Generally, this supplemental income is not covered by social insurance in Germany as it does not meet income and working time eligibility criteria: supplemental income below the threshold of EUR 450 per month cannot be insured. These coverage gaps translate into lower protection levels, at least in schemes which rest on the principle of contribution-benefit equivalence, such as pension benefits.

The current Covid-19 pandemic has exposed weaknesses in the social insurance coverage of self-employed workers in Germany. In contrast to standard employees, self-employed workers had no access to the very widely-used short-time allowances, paid by the state (*Kurzarbeitergeld*) – even if they opted for voluntary unemployment insurance. Also other key social protection benefits during this crisis, such as sickness or unemployment benefits, have, usually, not been paid to self-employed or platform worker) due to low voluntary coverage.

<sup>188</sup> BAG from 17 October 1990, case 5 AZR 639/89, *Arbeitsrechtliche Praxis*, Munich, ArbGG 1979§ 5 no. 9.

<sup>189</sup> Landesarbeitsgericht München, 4 December 2019, Case 8 Sa 146/19; Schubert (2019) 364 et seq.; Lingemann/Otte, (2015) 1042 et seq.

<sup>190</sup> Landesarbeitsgericht München, 4 December 2019, Case 8 Sa 146/19; Schubert (2019) 369, 370 et seq.

<sup>191</sup> BAG from 16.7.1997, case 5 AZR 312/96, *Neue Zeitschrift für Arbeitsrecht*, Munich 1998, p. 368.

There have been two cases related to platform workers seeking status as employees. In both cases, employee status was denied by the Appeal Courts<sup>192</sup>.

None found. The Ministry of Labour and Social Affairs has been engaging specifically with this theme recently, in view of trying to find a way to extend some protection to vulnerable self-employed workers at present, however, no concrete steps have been taken.

The interviewee from ver.di noted that the main issue here is labour market power, and those that do not have any of this power are the ones who need the protection. Those in liberal professions and worker such as IT workers have a lot of power and are well-paid. It is the workers who are at the margins of the labour market, in unequal power situations, such as platform workers, or unskilled and low-earning workers, who need protection.

### Labour market trends and other factors

There is some speculation around the possible effects of Covid-19 on areas of the labour market such as platform working, with expectations that platform working may increase in order to soak up the jobs lost during the pandemic. In the context of this expected growth, the German Federal Ministry of Labour and Social Affairs (BMAS) aims to foster a strong platform economy, which enables companies to make the most of its potential, while at the same time ensuring that good working conditions and access to social security are guaranteed. To find out more about the issues involved, the German government organised two hearings with experts in 2019. The recommendations from these hearings were:

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

Policy options that are currently being evaluated within BMAS include a reversal of the burden of proof concerning worker-classification (as employee or as self-employed), in order to strengthen the enforcement of existing labour law. Specific regulations for platform work (e.g. with regard to notice periods or aspects of health and safety) and requirements for platforms to contribute to pension insurance for self-employed service providers in the platform economy are also being discussed, as well as requirements around platforms' reporting and information obligations.

There have been a range of discussions on the impact of digitisation on the labour market over the past few years in Germany. In particular, the Work 4.0 dialogue process (Arbeiten 4.0 Dialogprozess<sup>193</sup>), was initiated by the Federal Ministry of Labour and Social Affairs in April 2015 and concluded in November 2016. One aim of the initiative was to identify challenges in the future labour market (relating to job gains and losses due to digitisation, changing skills needs, working conditions, company structures and work organisation) by encouraging co-operation among actors from business and industry, unions, civil society and research, and political authorities.

The process led to the publication of the White Paperwork 4.0 in 2016 (Weißbuch Arbeiten 4.0<sup>194</sup>), which identifies needs for reform, such as improving social security for solo self-employed workers, and includes recommendations for political action.

The process also generated debate on the working conditions and social security of those self-employed without employees and, with respect to the Information and Communication Technology (ICT)sector, on the working conditions of crowd workers.

<sup>192</sup> Landesarbeitsgericht München, 4 December 2019, Case 8 Sa 146/19; Landesarbeitsgericht Hessen, 14 February 2019 – 10 Ta 350/18, Neue Zeitschrift für Arbeitsrecht- Rechtsprechungsreport, Munich 2019, p. 505.

<sup>193</sup> <https://www.bmas.de/DE/Themen/Arbeitsmarkt/Arbeiten-vier-null/arbeiten-4-0.html>

<sup>194</sup> BMAS (2017). Weißbuch Arbeiten 4.0. Online: [https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Publikationen/a883-weissbuch.pdf?\\_\\_blob=publicationFile](https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Publikationen/a883-weissbuch.pdf?__blob=publicationFile)

There is currently a debate in Germany about whether to broaden the concept of employee or at least employee-like persons, to include platform workers. See comments above on the actions and priorities of the ministry.

Access to social security is based on dependent employment according to Section 7 of the Social Code book IV (Sozialgesetzbuch IV – SGB IV).

The German government<sup>195</sup> estimates that around three-quarters of self-employed persons are not obliged to contribute to a pension scheme or make old-age pension plans; that less than half of solo self-employed persons are not contributing to a social protection scheme; and that only a few self-employed persons contribute to the statutory pension scheme. This was confirmed by one interviewee in the case of self-employed translators and interpreters, who noted that this group of workers generally do not pay into pension schemes.

The difference between the employed and self-employed is most significant concerning insurance against unemployment, where no specific scheme exists, and the self-employed do not have the option of joining regulated unemployment funds. Dependent self-employment also has not been defined in this respect, and thus always falls under the same rules as the regularly self-employed.

Reforms have been on the political agenda and have been fixed in the coalition agreement of the current government. The government is currently preparing a draft law that foresees mandatory contributions to the statutory pension insurance for all self-employed. The draft law would include an opt-out rule for self-employed who can prove that they have made adequate private pension plans<sup>196</sup>.

Data for 2010 on the median household net equivalent income shows self-employed without employees received €1,500, whereas wage earners received €1,570 and entrepreneurs €2,000 per month. Some self-employed without employees combine their earnings with income from other sources available in the household context, such as spouse's earnings, pensions, unemployment benefits, parental leave benefits or earnings from a second (i.e., dependent) job. Self-employed without employees also tend to save less than entrepreneurs, and thus run a risk of old-age poverty<sup>197</sup>.

## Conclusions

Self-employed workers are not allowed to bargain under national law in Germany. However, there are some categories of worker, for whom there are collective agreements in place. These are workers in the print and journalism sector (see above). Another potential mechanism (at present not widely used) is legislation governing home workers.

## Interviews

Name of interviewee	Organisation
1. Veronika.Mirschel@verdi.de	Ver.di (service-sector trade union)
4. Natascha Dalügge-Momme, MA	President of the professional association of sworn translators and interpreters

<sup>195</sup> BMAS (2016): Solo-Selbständige in Deutschland – Strukturen und Erwerbsverläufe. Forschungsbericht 465. <https://www.bmas.de/DE/Service/Medien/Publikationen/Forschungsberichte/Forschungsbericht-e-Arbeitsmarkt/fb-465-solo-selbstaendige.html>

<sup>196</sup> Bundestag (2020): Hybride Erwerbsformen in Deutschland. Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Jessica Tatti, Susanne Ferschl, Matthias W. Birkwald, weiterer Abgeordneter und der Fraktion DIE LINKE (Drucksache 19/16288). <http://dip21.bundestag.de/dip21/btd/19/166/1916658.pdf>

<sup>197</sup> Brenke, K., 'Solo-Selbständige in Deutschland – Strukturen und Erwerbsverläufe', Untersuchung für das Bundesministerium für Arbeit und Soziales, Forschungsbericht 423. 2011b.

# Denmark

## Background information

In this section, I use LFS data from the Eurostat website.

Numbers as a proportion of the workforce: According to the EU Labour Force Survey, 205.200 Danes aged 15-64 were self-employed in 2019. Out of the 205.200, 115.100 were self-employed without employees (own-account workers).<sup>198</sup> In 2019, **self-employed without employees constituted 3,9 % of the Danish workforce (the active population) and 4,1 % of total employment.**<sup>199</sup> This share has remained rather stable since 2010.

### Categories of self-employed workers:

Sector of self-employed worker: solo self-employment is overrepresented in certain sectors in Denmark. According to the EU LFS, solo self-employment was more widespread in these sectors (NACE activities) in 2019<sup>200</sup>:

- 'Other services activities' (here, solo self-employment accounted for 14,2 % of all employment in the sector compared to 4,1 % of total employment).
- 'Agriculture, forestry and fishing' (13,8 % compared to 4,1 % of total employment)
- 'Professional, scientific and technical activities' (11,7 %)
- 'Arts, entertainment and recreation' (9,6 %)
- 'Construction' (8,6 %)
- 'Information and communication' (6,8 %)
- 'Administrative and support service activities' (6,1 %)

The reason for the high share of solo self-employment in agriculture is a more special case that has to do with Danish farmers often working alone at their farm. If this sector is disregarded then 'professional, scientific and technical activities' and 'other service activities' have the highest shares of solo self-employment. The first category includes activities such as accounting, different forms of consultancy, translation, design and photography. The second category includes for instance hairdressers, beauty treatment, funeral services and repair services. 'Arts, entertainment and recreation' covers artists, sports activities, cultural activities and fitness services. 'Information and communication' covers publishing activities and consultancy relating to computer programming. Activities in 'administrative and support service activities' could be cleaning and tour operator activities (European Commission 2008). The high share in construction is associated with the fact that many craftsmen are self-employed.

Specific occupations of self-employed worker: solo self-employed are also overrepresented in certain occupational categories. According to the EU LFS, solo self-employment was more widespread within these occupations (ISCO08) in 2019, which corresponds well with the NACE activities just reported:

- 'Craft and related trade workers' (7,8 % of all employment in this sector but only 4,1 % of total employment)

<sup>198</sup> <https://ec.europa.eu/eurostat/web/lfs/data/database> → Self-employed – LFS series → Self-employment by sex, age and economic activity (from 2008 onwards, NACE Rev. 2) - 1 000 (lfsq\_esgan2).

<sup>199</sup> 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).

<sup>200</sup> <https://ec.europa.eu/eurostat/web/lfs/data/database> → Self-employed – LFS series → Self-employment by sex, age and economic activity (from 2008 onwards, NACE Rev. 2) - 1 000 (lfsq\_esgan2) and Employment – LFS series → Employment by sex, age and economic activity (from 2008 onwards, NACE Rev. 2) - 1 000 (lfsa\_egan2).

- 'Professionals' (4,4 %)
- 'Skilled agricultural, forestry and fishing workers' (17,1 %)
- 'Technical and associate professionals' (4,9 %)
- 'The no response category' (18 %).<sup>201</sup>

Reasons for self-employment – eg individual choice, no other work available, mixture of the two: Solo self-employment is to a large extent an individual choice in Denmark. In the EU LFS ad hoc module from 2017, solo self-employed were asked about their reasons for self-employment. Here, approximately 8 % of all solo self-employed in Denmark were involuntarily in self-employment (replied either 'no job found as employee' or 'not planned or wanted to but started for another reason'). 12,6 % replied that they chose self-employment because of 'usual practice in the field', 22,5 % because it was a 'suitable opportunity' and 14,3 % because of 'flexible working hours'. 34,7 % replied 'wanted for other reasons'.<sup>202</sup>

Details of vulnerable self-employed workers. There may be studies or statistics showing which types of worker are deemed to be vulnerable in terms of income levels, working conditions, health and safety risks, working time. No statistics available, but it is often argued that foreign workers in solo self-employment are most vulnerable. The National Centre for Working Environment (NFA) in Denmark is mapping the extent of vulnerable foreign workers but their results are not public yet.

Any details relating to the sectors with high numbers of self-employed workers deemed to be more vulnerable due to factors such as precarious working arrangements, low pay. No statistics available but it is often argued that construction, cleaning and food delivery are sectors with a high share of foreign vulnerable workers, also in solo self-employment.

Please report any available statistics relating to:

Platform workers. Statistics regarding platform work in Denmark is 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). Platform work was captured by a question on whether the respondents in the previous 12 months had earned money by performing tasks found on websites or apps, for instance Uber. This study also found that almost two third of those who had earned money from platform work had earned less than 25.000 Danish kroner (Ilsøe & Madsen 2017:41). This suggests that platform work – at that time at least - was more likely to be a supplementary income and not the primary source of income. The study also found that **young people (age 20-29), people with a non-Danish background and people with low incomes are overrepresented as platform workers**. Around one in three are students while more than half are employed, but platform work is more common among employees in temporary positions and newly employed (Ilsøe & Madsen 2017:42-43).

Self-employed workers in creative professions, such as actors, musicians, authors. According to the LFS data reported earlier, solo **self-employment is more widespread within the sector 'arts, entertainment and recreation'**, where many of the creative professions are found (almost 10 % of all employment in the sector). In a study from Larsen and colleagues on creative workers, they report more detailed information on solo self-employment in the creative sector in Denmark. In their definition of the creative sector, they include subsectors such as publishing, video, television and music production, broadcasting, news agencies, architectural activities, photography, design, translation, performing arts, artistic creation, library and museum activities etc. (Larsen et al 2018:9). Based on tailor-made figures from Statistic Denmark, they report that 14 % of all employment in the sector in 2017 was solo self-

<sup>201</sup> <https://ec.europa.eu/eurostat/web/lfs/data/database> → Self-employed – LFS series → Self-employment by sex, age and occupation (1 000) (lfsa\_eggais) and Employment – LFS series → Employment by sex, age, professional status and occupation (1 000) (lfsa\_eggais).

<sup>202</sup> <https://ec.europa.eu/eurostat/web/lfs/data/database> → LFS ad-hoc modules → 2017 Self-employment → Self-employment → Self-employed persons by main reason for becoming self-employed, sex and professional status (lfsa\_17sereas).

employment (Larsen et al 2018:10). They also report that solo self-employment is very widespread within graphical design, where 46 % of all employment is solo self-employment. This is also confirmed by interviewee 2 and 4 from the trade unions. Also, 40 % of all companies within the sector use freelancers to perform specialized tasks in connection to projects (Larsen et al 2018:16). Furthermore, they report of a large share of solo self-employment within architecture, journalism, the gaming industry, fashion design and among musicians, actors and performers without giving exact numbers (Larsen et al 2018:16-18). Solo self-employment is widespread both within liberal and regulated professions.

Any information around false self-employment, i.e., persons hired as self-employed but, in a situation, comparable to that of employees. In general, false self-employment is difficult to capture with existing statistics, but in a quantitative study by Scheuer on atypical employment in Denmark from 2017, he tried to identify how large a share of the Danish solo self-employed that were in a situation comparable to an employee. In a survey targeted solo self-employed he asked how many clients the solo self-employed had worked for during the last 6 months. Here, 9 % answered that they had only worked for one major client and 30 % answered that they had worked for one major client and 1-3 minor clients. Furthermore, he asked whether the solo self-employed often worked for the same client. Here, 83 % answered yes. Scheuer argues that not all 39 % are in a position where they should have been hired as an employee, but he emphasizes that over time it's problematic to have only one major client and to work for this client often, since it can create a relation where the solo self-employed is dependent on that specific client (Scheuer 2017:88). Scheuer also **estimates that 15-20 % of all solo self-employed in Denmark may be false self-employed**, a share that resembles the international estimates (Scheuer 2017:88-89). In Scheuer's study it's not possible to identify in which sectors false self-employment is present, but it is well known that **false self-employment is quite widespread within the construction sector**, where eastern European solo self-employed are hired at construction sites but, are in a dependent relationship to the entrepreneur. There are also reports (from media and trade unions in particular) of false self-employment within journalism, graphical design and transportation. False self-employment is also debated in relation to **platform work**, where the platforms most often categorise the workers as a self-employed/freelancers, but their employment conditions are often more like an employee/wage-earner.

### Collective bargaining framework

In Denmark, there is a **strong tradition for voluntarily bargaining between the social partners (employer organisations and trade unions)**, who agree upon wages and working conditions for employees/wage-earners without state intervention.

A collective agreement is not defined by law but is understood as an agreement between an organisation of employees and an organisation of employers or an individual employer (company) on the wages and working conditions to be applied in the relationship between the individual employee and the employer and on the general relationship between the partners (Bendixen 2002:22).

**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 not a law on minimum wages in Denmark), terms of notice, pension contribution etc. Therefore, collective bargaining is *the* most important way of regulating the employment relationship in Denmark.

The bargaining institutions are highly institutionalized 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 exist. Two different measures for collective agreement coverage are used, which gives slightly different results: 1) membership data collected by DA (the Danish confederation of Employers) combined with register data and 2) cross-sectional survey data collected among Danish workers.

According to membership data from DA, the **collective agreement coverage was 82 % for the entire Danish labour market** (DA 2020). In the public sector, collective agreement coverage is 100 % or very close to since all employers here are member of employer organisations. In the private sector, collective

agreement coverage is 73 % (DA 2020). Survey data suggest that collective agreement coverage in the private sector is even lower (65 % in 2014) (Høgedahl 2019). The real collective agreement coverage is probably somewhere in between.

There are also **sectoral differences** in the extent of collective agreement coverage in the private sector. At the parts of the private labour market where companies are more likely to join employer organisations, the collective agreement coverage is higher (86-87 %) and correspondingly lower at parts of the private labour market where companies to a lesser extent join employer organisation. However, companies who are not members of employer organisations can still have agreements since they can enter into existing agreements, or they can make local agreements with the trade unions without being members of employer organisations (Rasmussen et al 2016:16). According to DA (Danish Employer Association) 57 % of the unorganized private labour market had collective agreement coverage in 2018 (DA 2020). **Construction and manufacturing are areas at the private labour market with higher collective coverage while the private service sector (cleaning, hotel, restaurants, and transportation) has lower collective coverage** (Ibsen 2012). Collective agreements can also have spill over effects to the unregulated labour market, where companies without agreements will orient themselves after the content in the collective agreements in order to attract qualified workers.

**Strength of the social partners and particularly trade unions: Indicators for this will include membership levels and involvement in bargaining.** An important prerequisite for the voluntarily bargaining system in Denmark (described in the previous section) is that the **social partners are representative, hold strong positions and have mutual respect for each other's positions**.

Employers can join employer organisations, who negotiate the collective agreements with the employee side (the unions) on behalf of their members. However, it's not mandatory for employers to join an employer organisation and employers can bargain independently without being member of an employer organisation. In the public sector, all employers are member of employer organisations. At the private labour market 58 % of all employers have joined an employer organisation (Ibsen 2014:126). There exist around 160 employer organisations in Denmark and they can also join larger employer associations, who coordinate the collective bargaining. The largest and most significant employer associations at private labour market are DA (Dansk Arbejdsgiverforening) and FA (Danish Employers' Association for the Financial Sector). In the public sector there are three employer associations - KL (Local government Denmark), Danske Regioner (Danish Regions) and the ministry of Finance.

Historically, the **Danish unions have been organized by trades** and there exists over 70 different unions targeted different groups at the labour market, for instance painters, construction workers, electricians, teachers etc. Recently, ideological alternative unions (also called yellow unions) have become more popular, but these unions are not regarded as 'real' unions, since they don't bargain collectively and are often not considered a legitimate negotiating partner. If all types of unions are included, then **union density is 64 %** and if the alternative unions are disregarded, then union density is 52,8 %. **Over time union density has declined** (unpublished numbers from interviewee 1). Despite the decline in union density, the unions still hold their strong positions in the collective bargaining system and they are still perceived as a legitimate negotiating partner. However, it is debated whether the unions have lost power and whether union density is approaching a critical level.

Types of employers: Denmark has a large share of small and medium sized companies (less than 250 full-time employees). Often small companies are not part of the collective agreement system and the unregulated labour market there are many small companies.

Regarding the question on the employers is the platform or a specific company, then the **platform companies who operate in Denmark normally don't perceive themselves as the employer** but only as a mediator between the client and the buyer. This is also why they are reluctant to define the platform workers as employees.

Traditionally, the Danish trade unions have been targeted employees/wage-earners and the unions have perceived themselves as representing the interests of wage-earners. However, **it has become more common for solo self-employed to also join a union and some unions now market themselves more directly to self-employed**. Some unions don't allow self-employed to become members at all. Others are targeted only self-employed, and others again allow both wage-earners and self-employed to join.

According to the study by Scheuer mentioned earlier, **28 % of all solo self-employed are member of a union**, which is still quite low compared to wage-earners (Scheuer 2017:91). Some self-employed choose to become a member of a business organisation instead of union membership or to have both memberships, but the majority of the solo self-employed does not have representation (Scheuer 2017:92).

Some of the ideological alternative unions market themselves as unions for self-employed, for instance ASE, Det Faglige Hus and FRIE. However, since they are not part of the collective agreement system, they mainly offer juridical guidance and networks for self-employed.

More relevant are the following unions who all operate and are active in sectors with many solo self-employed/freelancers and who also actively work for achieving better protection and working conditions for their freelance and solo self-employed members:

- **Dansk Journalistforbund (The Danish Union of Journalists)**. A union for people working with journalism, media and communication. They have approximately 18.000 members and around 3000 of them are freelancers/solo self-employed. The union has established 'Freelancegruppen', which is a special group in the union targeted freelance and solo self-employed members.

- **Teknisk Landsforbund (The Danish Association of Professional Technicians)** is a trade union for technicians and designers. They have approximately 30.000 members. It is not known how many of them, who are self-employed, but a part of their website and their member service is targeted solo self-employed.

- **The union HK (Denmark's largest trade union for salaried employees)** organises people working within retail and administrative staff in both public and private sector. They have over 200.000 members. It's not known how many of their members who work freelance/solo self-employed, but a part of their website and their member service is targeted freelance members.

- **The union 3F is one of the largest unions for skilled and unskilled workers** in many sectors with approximately 270.000 members. Now, they play a significant role in ensuring better working conditions and collective agreements for platform workers (cleaning and food delivery in particular). They have also played a significant role in the construction sector where false self-employment has been widespread.

- Finally, worth mentioning is also **DJØF, IDA (The Danish Society for Engineers) and DM (Danish Association of Masters and PhDs)** who are unions for different groups of academics. Now, they are active in ensuring better working conditions for those of their members who perform work at digital platforms (see next section).

As mentioned previously, the collective agreements in Denmark have traditionally targeted employees/wage-earners, but **there are examples of collective agreements targeted freelancers/solo self-employed** and other similar agreements/collaborations that provides protection for self-employed. In all cases, unions were involved on the negotiations.

There are examples of collective agreements that cover self-employed workers 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 . 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/Hilfr case (a Danish-owned platform company that provides cleaning in private households – see below), which illustrates that genuine self-employed workers 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.<sup>203</sup>

The oldest example is the group of **Danish doctors**, who work as general practitioners. They are self-employed because they own their own practice, but their union PLO (The Danish Organization of General Practitioners) have negotiated a collective agreement with Danish Regions. The agreement describes terms, framework conditions, quality goals etc. for the general practitioners and contains also information on how the general practitioners receive remuneration for different tasks.

The **Danish Union of Journalists** has negotiated several collective agreements for their freelance members (freelance work on wage-earner like terms). Therefore, these agreements do not cover solo self-employed who have registered their own company (work under a CVR number). The main content in these agreements is regulation concerning prices (typically minimum hourly prices or price per task), supplement pay for work at unusual hours, travel allowance, holiday pay and copyright issues.

The most famous example is the case of **Hilfr (a Danish owned platform company that provides cleaning in private households)** who in April 2018 signed an agreement with the union 3F (United Federation of Danish Workers) who represents workers in the cleaning industry. This was **the first attempt in Denmark to regulate platform work**. The agreement was a trial agreement that came into force in August 2018. Basically, those who perform work through Hilfr have status as self-employed (Freelance Hilfrs), but after 100 hours of work they can choose to continue to work as a self-employed or to gain employee status (become a Super Hilfr), where they get coverage from the company agreement. This implies receiving a higher hourly minimum wage than the freelance Hilfrs and obtaining right to pension, sick pay and holiday entitlements (for a more detailed description see Ilsøe and Jesnes 2020). In early 2019, only one in seven had become Super Hilfrs and around on third of the cleaning tasks was performed by Super Hilfrs<sup>204</sup>, which suggests that the agreement is still quite marginal. In August 2020, the Danish Competition and Consumer Authority decided that Hilfr and Happy Helper (another cleaning platform) were not allowed to set minimum hourly prices for cleaning tasks at their website for the freelance Hilfrs at their website, since freelance Hilfrs are regarded as self-employed and setting minimum wages hinder free competition.<sup>205</sup>

Since the Hilfr agreement **other similar agreements with platform companies have been established**. In September 2018 Voocali (a translation service platform) made an agreement with the union HK. At Voocali it's possible to work as a freelancer without a CVR number, a freelancer with CVR-number and as an employee, because the clients (municipalities) can use the platform for their own employees. The agreement consists of two elements: 1) Voocali enters into an existing collective agreement for salaried employees and 2) a trial agreement for freelancers. Both agreements ensure a minimum hourly rate for the translators who use the platform and guaranteed payment for performed tasks or tasks that are cancelled with short notice.<sup>206</sup> Furthermore, HK has gained influence on the platform's business terms in order to ensure that they are not changed to the detriment of the freelancer without prior negotiation.

In March 2019, **Worksome (a freelance and consulting platform for workers with higher education) made an agreement with three unions** who represents academic groups (DM, DJØF and IDA). This is not a collective agreement but a binding cooperation, where the unions work together with

<sup>203</sup> <https://www.kfst.dk/media/vi2gzmje/20200826-minimumspris-p%C3%A5-happy-helpers-platform.pdf>

<sup>204</sup> <https://www.dr.dk/nyheder/penge/kun-hver-syvende-rengoeringsmedarbejder-er-paa-banebrydende-overenskomst>

<sup>205</sup> <https://www.kfst.dk/afgoerelser-ruling/konkurrenceomraadet/afgoerelser/2020/20200826-minimumspriser-pa-hilfrs-platform/>

<sup>206</sup> <https://www.hk.dk/aktuelt/nyheder/2018/10/01/hk-indgaar-overenskomst-med-platformsvirksomhed>

<https://www.hk.dk/aktuelt/blogs/baloti-blogger/2018/10/02/nyaftale>

the platform in order to ensure decent terms and conditions for the self-employed who use the platform.<sup>207</sup>

Most recently (January 2021), the employer organisation Dansk Erhverv (The Danish Chamber of Commerce) made a national agreement with the union 3F regarding food delivery services which ensures minimum hourly wages, pay during sickness, holiday entitlements and pension contributions for workers delivering food. The workers are considered wage-earners/employees. The food delivery service Just Eat has recently become member of DE and is the first company to sign the agreement. It will come into force later in 2021.

Furthermore, two unions (HK and Teknisk Landsforbund) have established so called '**service agencies**' for those of their members who work freelance but has not yet established their own business. In Denmark it's possible to do freelance work and earn up to 50.000 Danish kroner a year without having to register as a company owner at the authorities. When the yearly income is more than 50.000 DKK, then it's necessary to establish a company and register as a company owner with a CVR number and pay VAT. The service agency is targeted the first group (the freelancers without a CVR number). The freelancer finds a potential client and makes agreements about the content of the task, the payment and the time perspective. Then the freelancer approaches the service agency, who makes sure that the agreement is appropriate (especially the payment level). Then the service agency employs the freelancer in a fixed-term position against a fee of 8 % and takes over the dialog with the client. Here, the service agency sends out an order confirmation and makes the final invoice. In return, the freelancer receives a salary from the service agency that is similar to the salary for similar work in the collective agreements. The agency also provides insurance and make sure that the freelancer gets paid during sickness etc. In this scheme, the freelancer gains social protection provided by the service agency but has legally status as an employee/wage-earner.

There is no system of extending collective agreements to an entire industry in Denmark.

## Legal framework

*Main relevant legislative provisions: Determined by case law and the Danish Competition Act (Consolidation Act No. 869 of 8 July 2015)*

In section 2, I wrote that collective agreements are the most important way of regulating the employment relationship in Denmark. These collective agreements are not regulated by law but are formalized in a main agreement (Hovedaftalen). **The first main agreement was established in 1899 (The September Agreement) and has been revised several times.** This agreement constitutes the overall framework for the collective bargaining system in Denmark. Here, the social partners acknowledge each other's right to exist and to be organised. So is the employer's managerial power, the right to strike and the duty of peace.

Along with this system exists some legislation, but it does not concern the social partners right to exist and be organised or the content or scope of the collective agreements. This **legislation is rather about how to solve conflicts and disputes in the collective bargaining system.** Here, we have the Act on the Labour Court (Arbejdsretsloven) and the Act on Public Conciliator (Forligsmandsloven). The Conciliation institution is regulated through the Conciliation Act and assists in conflicts of interest between the social partners. They can help the social partners in concluding agreements without labour disputes. Cases concerning breach and interpretation of the collective agreements can be brought to the Danish Labour Court, but cases are normally first brought to the court if it has not been possible for the partners to solve disputes themselves.

In terms of legislation, it is also worth mentioning that at some areas of the labour market the **collective agreements are supplemented by legislation**, for instance The Employment Contract Act, The Maternity Act, The Act on Working Time, The Holiday Act and The Danish Salaried Employees Act

<sup>207</sup> <https://www.akkademiikerbladet.dk/aktuelt/2019/marts/dm-djoef-og-ida-indgaar-samarbejde-med-freelanceplatformen-worksome>

aimed at white-collar workers (Funktionærloven). Some of these laws are only targeted wage-earners/employees while others are targeted both wage-earners and self-employed. This is for instance the case for The Equal Treatment Act and the Maternity Leave Act. EU legislation also plays a role, but the partners most often aim to implement EU directives directly in the collective agreements supplemented by minimum legislation for those who are not covered by the collective agreements (Munkholm and Schjøler 2018:122-123).

Competition law also play a role. It only applies to real self-employed, but it forms the outer limit for the collective agreements (see description below). The competition authorities can determine whether an agreement is an agreement for real employees or real self-employed (Interviewee 3).

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. To be in this second category of freelancer, workers must be working under conditions that are more similar to employees in a company compared to real self-employment. This is a clarification of genuine and false self-employment and matches the FNV Kunsten CJEU ruling.

The partners who negotiate the collective agreements are free to determine, to whom the agreements shall apply. This means that collective agreements can apply to different types of employees, also employees in fixed-term contracts, temporary agency work and part-time work and self-employment/freelance work. However, the competition law function as an outer limit for the collective agreements. This law states that collective agreements can't be made for 'real self-employed companies' because price agreements are not allowed here. **The collective agreements can therefore only cover solo self-employed/freelancers if they work under conditions that are more like employees in a company compared to real self-employment** (Interviewee 3). This is for instance the case with the collective agreements for freelancers organised in the Danish Trade Union for Journalists described in section 2.

In terms of national definition of 'employee', first, it's important to know that employed persons can fall into two different categories in Denmark: 1) employees/wage-earners and 2) self-employed. There is not one national definition of an employee in Denmark in the existing regulations or legislation, but most often an employee is defined as a person who receives remuneration for personally work in an employment relationship (Munkholm and Schjøler 2018:124). However, whether a person is defined as an employee is dependent upon a specific assessment.

In principle, a solo self-employed is not covered in the definition of an employee, but if a solo self-employed worker is performing work that resembles the work of an employee, then a self-employed worker can be covered by the definition of an employee. This could be the case for some types of freelancers.

Through case law some general principles of what characterises an employment relationship has derived (Munkholm and Schjøler 2018:124ff). Through these principles, it is also possible to learn about the classification of self-employed. One main issue is 'the degree of the right of the employer to make decisions in the contractual relationship and the duty of the employee to follow these directions' (Munkholm and Schjøler 2018:12). If a person is under instructions from the employer on how the work is performed and if the employer has the right to control the work, then it points towards employee status. If not, then it points more towards self-employment. Another main issue is 'the economic arrangement between the parties, how the remuneration is calculated and paid' (Munkholm and Schjøler 2018:124). Here, an employee will receive set remunerations based on time or results, the employee will not benefit from the surplus and will not bear the costs related to the work. Reversely, a self-employed will pay for materials, tools, pay taxes etc. Thirdly, if there is a duty to perform the work personally, then it points towards employee status. If the person can choose to hire an employee to perform the task, then it points towards self-employment. Fourth, is the degree of connectedness between the parties, such as for instance the length of the work and whether the contractual arrangement is the main or supplementing source of income. Finally, the social perception of the relationship is also important (Munkholm and Schjøler 2018:124ff).

When dealing with definitions of employees and self-employed it is also important to mention that there are different definitions in different types of legislation, for instance in the tax legislation, the Unemployment Insurance Act and in the Self-employed Business Act. This means that a person can be defined as an employee or a self-employed in one type of legislation but not in the other and vice versa (Mailand & Larsen 2018:4-5).

There are some examples of case law relating to the coverage of self-employed workers by collective bargaining and balancing this with fair competition. This mostly dates from the 1990ies and 000es where the competition authorities determined that certain collective agreements conflicted with the competition law. This was the case for freelance photographers and journalists who made agreements with media houses, but here the competition authorities ruled that they were genuine self-employed (had own business with a duty to pay taxes) and the agreements with stipulations concerning prices were not allowed (Interviewee 3; (Munkholm and Schjøler 2018:128).

### Labour market trends and other factors

In general, there are no clear trends towards deregulation or tightening of regulation, that may affect self-employment. I'm not sure whether this information is relevant, but in recent years it has been mandatory for foreign companies to register in the so-called RUT-register (The register for foreign service provision) if they want to perform work in Denmark. Not all foreign solo self-employed are obligated to register, but if the solo self-employed performs work in the construction sector, then registration is necessary. One of the reasons for the establishment of this register had to do with many false self-employed in the construction sector and problems with complying the Danish rules and regulations (social dumping). With the registration in the RUT-register it is easier for the Danish authorities to make sure that the foreign companies comply with the Danish rules and regulations. The trade unions can also access the information in the register and make sure that the companies comply with minimum wages in the collective agreements. It's a general understanding in Denmark that **this register plays a role in limiting the extent of false self-employment** in the construction sector.

The main public and political debate on self-employed in Denmark are about the **classification of platform workers as either self-employed or employees**. This debate took its beginning when Uber entered the Danish labour market in 2014 and has continued as more platform companies have emerged. Now, the public debate mainly concerns the food delivery services such as Wolt and Just Eat, who have golden times during the corona crises where restaurants are shut down and take away is the only way for restaurants to earn money. The main issue in these debates is about platform workers being classified as self-employed by the platform companies but, they probably resemble employees more. Collective bargaining for these groups is debated but the debate is mainly centered around the understanding that the platform companies ought to consider the workers as employees and it is debated how they can be persuaded to enter collective agreements so that the service providers on the platform can gain the protection and the working conditions they deserve. A couple of years ago the public debate was mainly focused on false self-employment in the construction sector (described in the previous section). In these years there also is a debate about the precarisation of the Danish labour market, that covers all types of atypical employment, including solo self-employment. In this debate the lack of protection for solo self-employed is often mentioned.

The Danish Government respects the voluntary bargaining system and the role of the social partners in this system. Therefore, the Government rarely discuss more ideological issues publicly, nor make very clear statements about the collective agreement system.

However, there are some recent examples of more ideological discussions and actions from the government and some of the political parties concerning platform work. This probably has to do with the fact that platform work is a type of employment that has been quite difficult for many Danes (and politicians) to get hold of, because **it has not been (and is probably not still) clear how this form of contractual arrangement is compatible with the Danish tradition for collective agreements**. For instance, when Uber entered the Danish labour market in 2014 there emerged a strong alliance between some political parties, the trade unions and the tax haulers. They launched a massive

campaign against Uber where Uber was portrayed as a threat against the Danish labour market. Later on the **Danish parliament passed a bill without the bourgeois minority government that adjusted to taxi legislation and made Uber illegal.** After that, Uber left the Danish labour market.

In May 2018, the Danish government concluded an agreement ('Better conditions for growth and correct tax payment in the sharing and platform economy') with a number of initiatives that can be understood as a first step to ensure a better regulation of the sharing and platform economy. This agreement has a broad understanding of sharing economy and platform economy and is not solely about work platforms. However, in terms of work platform it is argued in the agreement that the sharing economy needs to be integrated within the framework of the Danish model of collective agreements (Erhvervsministeriet 2018:10). This can be interpreted as a more ideological standpoint.

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. These changes in the unemployment insurance system may influence the level of self-employment in positive direction, since self-employed now enjoy better income protection.

First, access to health care is universal and does not depend on employment status or labour market participation. Secondly, solo self-employed have the same right to maternity leave and maternity allowance as employees. They have also access to publicly funded sickness benefit and disability pension.

The unemployment insurance system (arbejdsløshedsforsikring) plays a large role in Denmark and the **majority of the workforce is member of an unemployment insurance fund and therefore have the possibility of receiving unemployment insurance benefit** (dagpenge) in case of unemployment. Since 1978 it has been possible for self-employed to be insured against unemployment in the unemployment insurance funds. For quite some years, the unemployment insurance system has been criticized for not providing enough income security for atypical employees, including self-employed and freelancers. In 2018, a **reform of the unemployment insurance scheme was made, and this reform provided self-employed with a better safety net than before.** One of the significant changes is that all types of employment now counts when eligibility for unemployment insurance is calculated rather than the type of contractual arrangement. This makes it easier for people with different types of employment forms to get access to the benefits.

In terms of old age pension, solo self-employed are covered by the standard old age pension, but not by the pension arrangements in the collective agreements. Here, solo self-employed have to save up to pension themselves. According to the study by Scheuer mentioned a couple of times, solo self-employed save up for pension to a lesser extent than typical employees and only one in two solo self-employed feels that they save adequately up (Scheuer 2017:90).

Ibsen, Holm and Rasmussen (2019) have studied whether there is a wage premium for employees working under collective agreements in the private sector in Denmark compared to employees not working under collective agreements. They used data from 2009 and 2011. They found a **small, but significant wage premium of 1 % for those working under collective agreements.** The small difference can be explained by the fact that companies without collective agreements are under pressure to match the wage levels at the regulated part of the labour market. They also found that the **collective agreements give the occupational groups at the bottom of the wage hierarchy the largest wage premiums (for instance 5 % for skilled workers) while occupations in the higher end of the wage structure have no or a negative wage premium.** For instance, collective agreements give managers a negative wage premium of approximately 10 %. Therefore, the collective agreements work in favour of the lowest income groups and thereby reduce the overall wage spread at the regulated labour market.

## Conclusions

The collective bargaining system is central to the Danish labor market. Historically, the system has primarily targeted employees/wage-earners, but solo self-employed and freelancers can be part of the

system since the agreements themselves regulate their scope. There are also several unions that already negotiate on behalf of those of their members who work as solo self-employed/freelancers, for instance HK and DJ. However, the primary problem, is that they 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 here prevents them from doing so. A point of attention here could be that competition law could allow for collective bargaining for genuine solo self-employed and/or small companies with few employees. It is a general perception of the two interviewees from the unions that competition law views all self-employed (large and small) equally but they both see a **need to differentiate** because it would allow for more protection in the collective agreements for the solo self-employed.

## Interviews

Name of interviewee	Organisation
1. Laust Høgedahl	Labour market researcher at Center for Labour Market Research at Aalborg University, expert in the Danish collective bargaining system and platform economy
2. Kirstine Baloti	Consultant in HK Union, expertise in freelancers
3. Natalie Videbæk Munkholm	Lawyer at Aarhus University, expert in labour law
4. Sus Falch	Front person in 'Freelancegruppen' which is a part of the Danish Union of Journalists targeted members who are freelancers and solo self-employed

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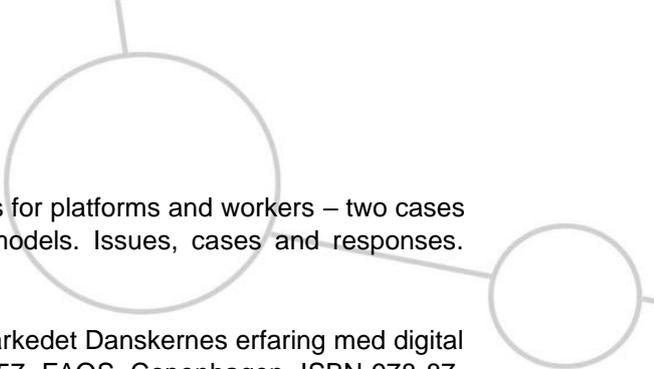
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# Estonia

## Background information

### Self-employment

Despite the emergence of new forms of employment including new forms of self-employment, self-employment in its different forms is not thoroughly researched in Estonia. Arguably, one of the limiting factors is available statistics based on Estonian Labour Force survey – only general trend is published both in Eurostat and Statistics Estonia website.

According to available statistics from the European statistical system, **the share of atypical forms of employment and self-employment, is smaller in Estonia** than in a number of EU countries. During the recent year, the share of solo self-employed persons has slightly increased by one percentage point. Arguably, this is due to emergence of new forms of self-employment and increasing supportive sentiment to entrepreneurship in public sphere.

**Table 19. Employment by status, %, 15-64**

	201 1	201 2	201 3	201 4	201 5	201 6	201 7	201 8	201 9	202 0
<b>Employed persons</b>	100 %									
<b>Employees</b>	91%	91%	91%	91%	91%	91%	90%	89%	89%	89%
<b>Employed persons except employees</b>	9%	9%	9%	9%	9%	9%	10%	11%	11%	11%
<b>Self-employed persons</b>	8%	8%	9%	9%	9%	9%	10%	11%	11%	11%
<b>Self-employed persons with employees (employers)</b>	4%	4%	4%	3%	4%	4%	5%	4%	5%	5%
<b>Self-employed persons without employees (own-account workers)</b>	4%	5%	5%	5%	6%	5%	5%	6%	6%	6%
<b>Contributing family workers</b>	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%

Source: Eurostat, table code: *lfsa\_egaps* (authors calculation of proportions)

Not much is known about socio-demographic or sectoral-occupational background of self-employed persons. However, similarly to most of the European countries, men (15%) are more likely self-employed than women (7%).

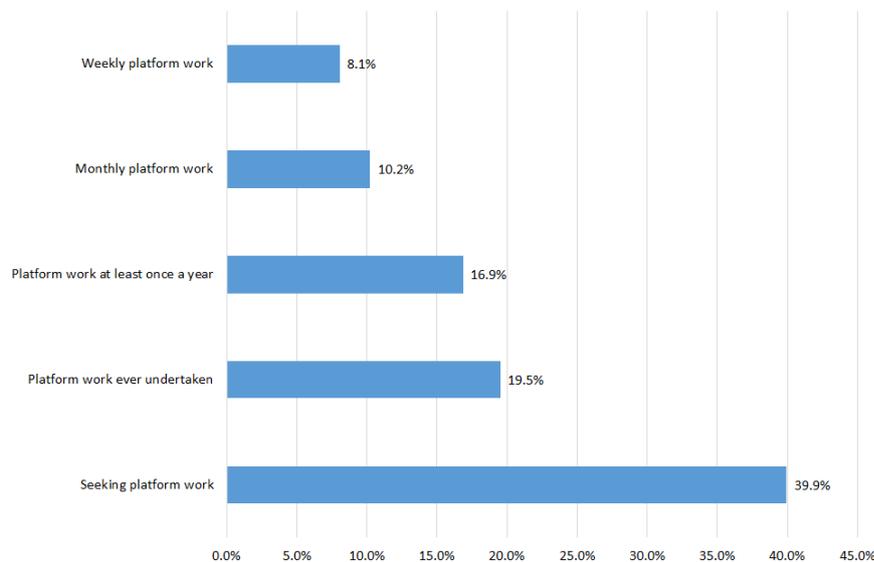
According to Eurostat (table code *ilc\_li04*) **self-employed persons have higher at risk of poverty rate** – in 2019, 8.3% of employees and 28.9% employed persons except employees are at risk of poverty (60% median equivalised income after social transfers). Also, **self-employed persons are more likely to be severely materially deprived** compared to employees (Eurostat, table code

ilc\_mddd12) and have higher absolute poverty rate<sup>208</sup> (10) than employees (0.8) (Statistics Estonia, table HHS02).

### Platform work

The emergent form of self-employment is platform work. Estimates on the prevalence and characteristics of platform work have been missing from official employment and economic activity statistics. According to an ad hoc survey (SSCU 2019), **8.1% of Estonians claim to be doing work via “gig economy” platforms** (such as Upwork, Uber or Handy) at least once a week, and 10.2% found such work at least once a month. However, if the definition is focused to workers who carried out work that they had found via a website or app and used an ‘app’ to notify them when work was available, the proportion was reduced to 3.6% who both undertook such work at least once a week and were informed of its availability at least once a week. Also, retrospectively, the proportion who had undertaken such work was 19.5%, equivalent to approximately 161,100 people. The gender differences in platform work reflect gender differences in self-employment – **women (13%) were less likely than men (26.4%) to undertake work this way**. The breakdown of the Estonian platform workforce indicate that **younger people** are more likely to participate in platform economy with 29.5% aged 18-24, 36.1% aged 25-34, 15.4% aged 35-44, 9.1% aged 45-54 and 9.8% aged 55-65.

Figure 20. Estonian platform workers



Source: SSCU 2019

According to the survey, **platform work is a secondary employment** and source of income. 13.9% of platform workers have more than one paid job which rises to 18.8% for those undertaking platforms work at least weekly. Also, for over three-quarters of platform workers (76.4%), the income from platform work represents less than half of their total income. Only 4.2% of platform workers self-evaluate that it is their only source of income (equivalent to 4,400 people across the working age Estonian population) and 23.6% saying that it represents at least half of their income (equivalent to 24,800 people). The employment in gig economy has been characterised as temporary. The survey indicates that 10.4% of

<sup>208</sup> Absolute poverty means that a person's income is below the absolute poverty threshold. The threshold is calculated on the basis of equivalised disposable income that takes into account the composition of the household (the weight of the first adult member is 1, the weight of each additional member aged at least 14 years is 0.7 and the weight of everyone under 14 years of age is 0.5), i.e. the total household income is divided by the sum of equivalence scales of household members. The absolute poverty threshold is the estimated subsistence minimum, which represents the financial cost of meeting minimum needs. The absolute poverty rate is the proportion of people whose equivalised disposable income is below the absolute poverty threshold.

platform workers described themselves as being on temporary contracts and the figure is similar for those undertaking platforms work at least weekly (9.5%).

## Collective bargaining framework

### Industrial relations system

Estonian industrial relation system has been characterised as **state centred, with limited social partner representation, bargaining power and capability to collectively determine employment conditions** (European Union, European Commission, and Directorate-General for Employment 2016; (Welz et al. 2016)). In the system, the government regulation of terms of employment and working conditions is more important than collective agreements. The unionisation has been decreasing and the recent surveys estimates that only 5% of employees are members of trade unions.

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 (see 3.3.1). At national level, only minimum wages are negotiated. Since 1992, the national minimum wage has been agreed between social partners – bipartite meetings between Estonian Trade Union Confederation (EAKL) and Estonian Employers' Confederation (ETTK). According to different surveys, around **19% of employees are covered by company or sector level collective agreements** (but all employees are covered by national level minimum wage agreement).

### Types of self-employment

There are variety of forms self-employed person could be economically active, though there are some differences in their social guarantees, especially dependent on whether they are making compulsory contributions to social protection system, their terms of employment, working conditions are not regulated by employment law. That includes, as discussed further below, **they are not covered by collective bargaining**.

Formally self-employed persons could fall into one of the four categories:

- **People employed on non-standard contracts** – self-employed natural person who offers goods or services for charge in his or her own name whose terms of employment and service status are regulated with Civil Code and Law of Obligations Act (i.e. service contract).
- **System of Entrepreneur Account**– natural persons can sell services and goods to other natural persons and sell goods to legal persons for up to €25,000 annually (In order to avoid abuse, no services can be sold to legal persons). The terms and conditions of account holder are regulated by Simplified Business Income Taxation Act, and terms of contracts by with Civil Code and Law of Obligations Act (i.e. service contract).
- **Sole proprietors** – self-employed natural persons who offer goods or services for charge in his or her own name and whose status is regulated by the Commercial Code. Terms of service contract are regulated with Law of Obligations Act.
- **Members of a management board** – oftentimes self-employed person, in this case entrepreneurs who offer goods or services via company<sup>209</sup>. The status of the company and management board is regulated with Commercial Code. Terms of service contract are regulated with Law of Obligations Act (i.e. authorisation contract).

<sup>209</sup> A company is a general partnership, limited partnership, private limited company, public limited company or commercial association.

## Collective bargaining and self-employment

Trade unions mostly represent employed employees. The Trade Union Act specifies that trade unions could be founded by **employees** to represent and protect the employment, service-related, professional, economic and social rights and interests of **employees**. In other words, the other forms of employed persons could not formally find, participate or be represented by trade unions. Despite the limitation, **self-employed persons can associate to other professional organisations** (e.g., taxi drivers that are usually solo self-employed persons have Taxi Drivers Association).

Regarding self-employed workers (including self-employed without employees), trade unions have argued that formally self-employed workers are their own employers, and thus, they are not represented by trade unions. However, trade unions have provided **legal counselling** to self-employed and also trade unions has represented the interests in legislation development, i.e., that the demarcation of employee and self-employment would be clear, and self-employment would not be used fraudulently.

Similarly, the **regulation of collective agreements excludes collective bargaining of self-employed**, including solo-self-employed persons. According to the [Collective Agreements Act](#), a collective agreement is 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. It implies that persons who do not work under an employment contract are not covered by representation rights. Thus, in principle, collective agreements could be applied to employees and not to other forms of employment. That includes the regulation of extension – the act stipulates conditions for extension of collective agreement, but it does not enable extending agreement to industry/sector self-employed persons.

Also, the Competition Act stipulates that also the sole proprietor or other 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.

The regulation has led to at least some tension in practice. First, in January 2018, Taxify riders organised a meeting to campaign against new pricing scheme introduced by Taxify in December that resulted in decrease in real income for the drivers. During the meeting, the riders expressed their dissatisfaction with the pricing policy, including lack of co-determination in the price policy. Although the campaign did not lead to self-organisation of self-employed Taxify riders nor concluding agreement, the organisation still had effect on the platform pricing policies. Second, as discussed above, one of the two sectoral agreements in Estonia has been concluded in transportation sector. However, recently social partners have evaluated that the motivation to bargain and conclude the agreement has decreased due to fraudulent forms of self-employment. It has been difficult to enforce the agreement to employers/self-employed persons who among other things do not pay fully taxes and social protection contributions and this way distort competition.

## Legal framework

*Main relevant legislative provisions: Collective Agreements Act; Competition Act; Employment Contract Act*

The employee is defined in Employment Contract Act: Based on an employment contract a natural person (employee) does work for another person (employer) in subordination to the management and control of the employer; the employer pays to the employee remuneration for such work. The definition implies that in all the other forms a natural person could be employed, he/she is not an employee. Consequently, the **definition does not cover any category of self-employed workers**, and hence excludes self-employed workers from the right to associate to trade unions or conclude or to be covered by collective agreements.

Yet, the correct classification of employees and self-employed workers is challenging in practice, as the key demarcation criterion in the definition is subordination, and the differences in taxation of

employment and self-employment incentives take up of different forms of self-employment. In principle, there is no clear cut stipulation that distinguishes false self-employment from legal and declared self-employment. However, the implementation of the measure is endorsed by the case law. The cases were also reminded during the interviews. The Estonian Supreme Court (RK) made three decisions (No. 3-3-1-12-15, No. 3-3-1-25-15, No. 3-2-1-82-14), which supported the Estonian Tax and Customs Board (EMTA) position that in some cases the **service agreements between companies can be considered fraudulent form of employment** with the purpose of avoiding employment taxes. The court decisions stipulated that service agreement between companies are considered employment relationship in case one establishment does work for another company in subordination to the management and control of the company. (EMTA, 15.10.15). Other conditions which according to the court decision give basis for requalifying service agreement between companies to employment contract or authorisation agreement (that is also civil law contract) between a company and a natural person are the following:

- the company that provides the service issues invoices to the recipient of the service in the same amount every month;
- the company provides services only or mostly to one client;
- the person who provides service is also the management board member of the company who receives the service;
- The service agreement has also elements similar to employment contract (e.g. fixed working time, control of the employer etc.). (Ärileht, 20.10.15)

When an actual employment relationship is hidden behind a service agreement between companies with the purpose of avoiding employment taxes, Estonian Tax and Customs Board (EMTA) has now the right to requalify those agreements to employment contracts and therefore obligate the companies to declare and pay employment taxes. EMTA has announced that they would possibly contact those companies that appear to use the fraudulent scheme and ask them to change their practise. Most of them are small companies, but EMTA stated that they would start with bigger companies whose tax payments would give higher revenue (Postimees, 12.10.15). There is no information how many companies there could be using the scheme. There were more than 23,000 companies (almost 25% of all companies) that did not declare labour taxes in 2015, however, these include also inactive companies and those without employees. EMTA's main goal is to help companies to improve their practices through guidance, instead of punishment. Therefore, they also published guiding materials which thoroughly explained what the characteristics of employment relationship and different contracts are, and when is it appropriate to use service agreements between companies (EMTA, 15.10.15).

Above, it was discussed that the question of **inequality in occupational health and safety could be considered the most crucial issue**. Here, recently the court (no 3-15-2979) gave the right to the Labour inspectorate in a dispute with an employer about whether the civil law contract, i.e. authorisation agreement in this case is in fact disguised employment contract. The worker had concluded civil law agreement with the employer, and when the accident happened the employer did not consider the accident occupational accident and did not deem itself responsible for the injury. The Labour Inspectorate, however, considered that the person working in subordination for another person for remuneration an employment contract. In sum, in this case the authorisation agreement was reconsidered employment contract and employers' obligations regarding safe work environment actualised. This case could influence enforcement of employment rights and making sure that equality in health and safety at the workplace is prevented.

In addition to the crucial court cases, administrative statistics indicate that about 3-4% percent of the labour disputes in labour tribunal are about detection of an employment contract relationship (Labour inspectorate, administrative statistics, 2016). It follows that the form is either rather relevant or causes considerable disruptions in the labour market.

It was already discussed that (EMTA) aspire to increase legal certainty via outreach and awareness rising actions. The same applies to the Labour Inspectorate, who has carried out different campaigns, and very recently launched [campaign](#) on contractual negotiations to encourage parties to have meaningful negotiations to reach suitable agreement.

## Labour market trends and other factors

### *Labour market regulation trends*

There are no specific or detailed policy proposal or developments. The key sentiment has been that as Estonia is small economy and new forms of employment like platform work are cross-border, there is need for European Union level solution to tackle the risks associated with correct classification of employment and improving social guarantees of solo self-employed persons. However, in January 2021 new coalition government has agreed to investigate reforming employment law to make it more flexible but not at the expense of security. In Estonia, temporary employment contracts are rigidly regulated<sup>210</sup> those incentives concluding service contracts with self-employed persons. Possible new optimum in flexicurity of fixed-term employment relationship could have minor effect.

Social partners and government have been in social dialogue on regulation of terms of employment and working conditions. The sentiment from both employers and employee representatives have been that one should limit the entrepreneurship freedom and overregulation of different forms of self-employment, including over-regulating their working conditions or social guarantees is not necessary. However, especially trade unions are sensitive to power imbalance in concluding service contracts with powerful platforms. As platforms have grown bigger and few platforms determine the service price and contract conditions the solo self-employed persons are not able to freely negotiate conditions that ultimately conditions the competition and dynamic of the service market. New mechanisms need to be found to ensure that parties and intermediaries have optimal balance of power.

However, the possible alternative regulations do not include the right to associate to trade unions or conclude collective agreements are specified with the current regulation of collective employment relations. Also, platforms and their representatives have been actively lobbying that the regulation shall not force them to reorganise their business model from being intermediary between service buyer and service vendor to being employer for the person delivering the service.

### *Social guarantees regulation trends*

The key challenge with the solo self-employed persons is that their market income is both more precarious and less generous. One of the determinants of this is that the national level minimum wage does not apply to self-employed natural persons who offers goods or services for charge in his or her own name whose terms of employment and service status are regulated with Civil Code and Law of Obligations Act. So far, as the collective bargaining does not cover self-employed persons the question of extending the regulation to categories of self-employed persons has not emerged in bargaining.

Similarly, largely, the social protection policy rules for self-employed persons vary (see more detailed description in Masso, Kadarik, 2016). Actual **social protection coverage depends on factual activity and income from the employment, and the tax compliance**. Solo self-employment might be precarious form of employment (due to transitions between 'tasks' and 'jobs', related income fluctuations and low level, and issues of taxation and tax -compliance) that could influence eligibility and calculation of the benefit (e.g. unemployment insurance, health insurance). Also, considerable differences in taxation of labour and capital in Estonia create perverse incentive to self-employment,

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<sup>210</sup> Since the new Labour Contract Act entered into force on 1 July 2009 the definition of fixed time work stated that fixed term contract may be made if it is justified by good reasons arising from the temporary fixed-term characteristics of the work, especially a temporary increase in work volume or performance of seasonal work (§9); a fixed-term employment contract may be made for up to five years if it is justified by good reasons arising from the temporary fixed-term characteristics of the work, specially a temporary increase in work volume or performance of seasonal work; if an employee and an employer have on more than two consecutive occasions entered into a fixed-term employment contract for similar work or extended the fixed-term contract more than once in five years, the employment relationship shall be deemed to have been entered into for an unspecified term from the start; up on cancelling a fixed-term employment contract for economic reasons<sup>210</sup> an employer shall pay an employee compensation to an extent that corresponds to the wages that the employee would have been entitled to until the expiry of the contract term (no compensation is paid if the employment contract is cancelled due to force majeure) (§ 100 (3)).

and self-employed persons could opt-out from the social protection by preferring self-employment to employment relationship and ultimately not declaring social protection contribution. Thus, the factual coverage of social protection in solo-self-employment might be smaller.

Social protection coverage of self-employed also depends on activity thresholds. Since September 2020, it is possible in Estonia to take on temporary work while being registered as unemployed, i.e., to work and receive benefits simultaneously (Laurimäe 2020). The amendment was also supported by The Association of Estonian Sharing Economy that argued it would contribute to a quicker return to the labour market during unemployment as the habit of working would remain to some extent and it would also serve the whole society by allowing the provision of the services available through the platforms. Also, currently **most categories of self-employed persons do not pay unemployment insurance contributions and could not receive unemployment insurance benefits (but could apply for unemployment allowance)**. The Ministry of social affairs is developing policy amendment that would harmonise the formal coverage across different forms of employment, including self-employment (Laurimäe 2019). Yet, it could be foreseen that although changes to improve formal coverage can improve the coverage only to certain extent. For instance, solo self-employed persons can already buy on their own discretion health insurance coverage from the Estonian Health Insurance Fund, however their precarious, insecure, low income does not always make it possible for them to make contributions for permanent/continuous insurance. This has also triggered discussion on whether and how to introduce universal health care system where coverage does not depend on contributions (Koppel et al 2018).

## Conclusions

During the recent year, the share of solo self-employed persons has slightly increased by one percentage point. In 2019, 6% of employed persons were self-employed persons without employees (own-account workers) and 5% self-employed persons with employees (employers). The statistical estimates point that self-employed people are at bigger risk of poverty than employees.

The regulation of unionisation to trade unions and collectively bargaining terms of employment and working conditions specifies that only employees but no other forms of employed persons can be represented by trade unions and covered by collective agreements. Despite the limitation, self-employed persons can associate to other professional organisations. However, the competition regulation prohibits concluding agreements between undertakings which have as their object or effect the restriction of competition. In practice, trade unions have provided legal counselling to self-employed and also trade unions has represented the interests in employment legislation development, i.e., that the demarcation of employee (dependent employment) and self-employment would be clear, and self-employment would not be used fraudulently.

Redefining competition law and collective employment relations law to enable an improvement of working conditions through collective bargaining agreements – not only for employees, but also, under some circumstances, for the solo self-employed persons – might not lead to improved terms of employment and working conditions of Estonian self-employed persons. Due to low unionisation and collective bargaining coverage in Estonia, it would have limited effect on improvement of precariousness of solo self-employment. Exception here could be extending national minimum wage agreement also to solo self-employed persons.

On the one hand, improving the social protection coverage of self-employed person is needed via social protection policy reforms and prevention of false or fraudulent self-employment is need via better enforcement of employment and tax law. On the other hand, the challenge remains, how to shift the bargaining power from oftentimes monopoly platforms as intermediaries to self-employed persons who currently cannot renegotiate terms and conditions of their work.

## Interviews

Name of interviewee	Organisation
1. Piia Zimmermann	Employers Confederation, social partner
2. Nelli Loomets	Trade Union Confederation, social partner
3. Ulla Saar	Ministry Of Social Affairs, employment law
4. Gea Lepik	Ministry of Justice, competition law

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# Greece

## Background information

Greece has the highest incidence of self-employment across the EU. In 2019, the self-employment rate stood at 31.9% (OECD estimates),<sup>211</sup> while in 2020 it was 33.2% (World Bank estimates).<sup>212</sup> Indeed, one of the most distinctive features of the Greek labour market is its large share of the self-employed: Greece has by far the highest self-employment rate in the EU and the second highest in the OECD countries.<sup>213</sup> According to the latest data from the Hellenic Statistical Authority (ELSTAT), in the 3<sup>rd</sup> quarter of 2020, there were 1.114.3 million self-employed in Greece, representing 28.4% of the workforce (see also Table 1 in the Annex).<sup>214</sup>

The category of 'self-employed' persons comprises the 'independent self-employed' (or 'liberal professions'), sole traders (freelancers) and 'farmers' who, depending on their profession, are insured in different social insurance funds, resulting in differences and gaps in provision.<sup>215</sup> However, there are two types of self-employed included in the available statistical data (3<sup>rd</sup> quarter of 2020):<sup>216</sup>

- (i) Self-employed with employees ('employers') (308,535, representing 7.9% of the workforce), and
- (ii) Self-employed without employees ('own-account' workers) (805.8 thousand, representing 20.5% of the workforce)

It should be noted here that the self-employed in Greece may also include a large share of (very) old workers who, following the financial crisis and its aftermath which hit that country particularly hard, are either delaying retirement, or moving into self-employment after retiring from an employee job (See also Table 5 in Annex).<sup>217</sup>

### ▪ sector of self-employed worker

In terms the sectors where most of the self-employed can be found, these include

- (i) agriculture, forestry and fishing; (ii) wholesale and retail trade as well vehicle repair services; (iii) professional, scientific and technical activities; (iv) hospitality; and (v) manufacturing (see Table 2 in the Annex for a full breakdown of self-employed workers by category and sector in the 3<sup>rd</sup> quarter of 2020). Compared to the distribution of the self-employed in the EU, the self-employed in Greece are over-represented in agriculture, the distributive trades, the hospitality sector and storage and communication. Conversely, they are under-represented in the various service activities (arts and entertainment, education, health, administration), as well as in financial real estate activities, construction and manufacturing.<sup>218</sup>

<sup>211</sup> <https://data.oecd.org/emp/self-employment-rate.htm>

<sup>212</sup> [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](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).

<sup>213</sup> Andriopoulou, E., Kanavitsa, E. and Tsakoglou, P., (2020). *Decomposing Poverty in Hard Times: Greece 2007-2016*, Hellenic Observatory Discussion Papers on Greece and Southeast Europe, GreeSE paper No 149, London School of Economics (LSE), <https://www.lse.ac.uk/Hellenic-Observatory/Assets/Documents/Publications/GreeSE-Papers/GreeSE-No149.pdf>

<sup>214</sup> Greek Statistics (ELSTAT), (2020). *Labour Force Survey: 3<sup>rd</sup> Quarter of 2020*, Press Release, 17/12/2020, [Workforce Statistics – 3rd Quarter of 2020 - Press Release - ELSTAT - 17.12.2020.pdf](https://www.elstat.gr/Workforce-Statistics-3rd-Quarter-of-2020-Press-Release-ELSTAT-17.12.2020.pdf)

<sup>215</sup> Theodoroulakis, M., Sakellis I. and Ziomas D., (2017). *ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts - Greece*, European Social Policy Network (ESPN), Brussels: European Commission, <https://ec.europa.eu/social/main.jsp?pager.offset=20&advSearchKey=ESPNSensw&mode=advancedSubmit&catId=22&policyArea=0&policyAreaSub=0&country=0&year=0>

<sup>216</sup> Greek Statistics (ELSTAT), (2020). *Op.Cit.*

<sup>217</sup> OECD, (2018). *Inclusive Entrepreneurship Policies: Country Assessment Notes - Greece, 2018*, <https://www.oecd.org/cfe/smes/GREECE-IE-Country-Note-2018.pdf>

<sup>218</sup> OECD, (2018). *Inclusive Entrepreneurship Policies: Country Assessment Notes - Greece, 2018*, <https://www.oecd.org/cfe/smes/GREECE-IE-Country-Note-2018.pdf>

- **specific occupations of self-employed worker**

As regards the occupational breakdown of the self-employed, these primarily are (i) skilled agricultural, forestry and fishery workers; (ii) service and sales workers; (iii) professionals (e.g., science and engineering professionals, legal and arts professionals); and (iv) craft and related trades workers (see Table 3 in the Annex for a full breakdown of self-employed workers by category and occupation in the 3<sup>rd</sup> quarter of 2020.

- **reasons for self-employment – e.g., individual choice, no other work available, mixture of the two**

The evidence points to a mixed picture when it comes to the motivation of being self-employed. As the ELSTAT's 2017 survey of the self-employed found the reasons for self-employment can be individual choice (voluntary), lack of alternative employment (involuntary), coincidental or a combination of all three. For example, 24.5% of self-employed respondents stated that they continued the family business – with this response being most common among the self-employed with employees and those working in the primary sector and in manufacturing.<sup>219</sup>

According to the survey results, one fifth (20.2%) of respondents chose to be self-employed because this is common in their professional field. Most of these were either highly educated workers or non-manual high-skilled professionals.<sup>220</sup> At the other end, 13% of respondents – mostly women, younger workers and/or migrant workers – were self-employed because they could not find salaried employment. Finally, 16.4% became self-employed by coincidence, responding to a suitable opportunity. Most of these were unskilled, low-skilled or not skilled (self-employed) workers.<sup>221</sup>

However, other evidence underlines the fact that a large proportion of self-employed workers do so due to lack of alternative employment opportunities.<sup>222</sup> For example, according to the latest available (2015) data from the 6<sup>th</sup> European Working Conditions Survey (EWCS), 27% of self-employed felt they had no alternative employment option (compared to an EU average of 18%).<sup>223</sup> Indeed, as the OECD points out, this often means these do not usually seek to grow their business which, in turn, dampens the economy's potential.<sup>224</sup>

According to the General Confederation of Greek Workers (GSEE), the only workers' confederation at the national level, the Covid-19 pandemic has hit the self-employed people (as well as freelancers) particularly hard, due to, for example, cancellation of work assignments, the slow-down of economic activity and uncertainty about the future strength of recovery (and its timing).<sup>225</sup>

Platform workers are workers who work through online platforms, carrying out work on a task basis. They include those who work for platforms such as Uber or Deliveroo, but also those who carry out any type of task-based work arranged through platforms, such as click work, care work, cleaning, specialised work such as web design, administrative work or accountancy work, etc.

There are no official data about the magnitude of platform workers in Greece, not least because to date platform work is not widespread in that country.<sup>226</sup> However, according to existing literature, interviewed

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<sup>219</sup> Greek Statistics (ELSTAT), (2018). *Self-Employment Labour Force Survey – Ad Hoc Module 2017*, Press Release, 22/11/2018, [statistics](#)

<sup>220</sup> *Ibid.*

<sup>221</sup> *Ibid.*

<sup>222</sup> Bulman, T., (2020). *Rejuvenating Greece's Labour Market to Generate more and Higher Quality Jobs*, OECD Economics Department Working Papers No. 1622, 2/10/2020, [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ECO/WKP\(2020\)30&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ECO/WKP(2020)30&docLanguage=En)

<sup>223</sup> Eurofound, (2016). *Sixth European Working Conditions Survey (EWCS): 2015, Overview Report*, 17/11/2016, [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1634en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1634en.pdf)

<sup>224</sup> Bulman, T., (2020). *k*

<sup>225</sup> Greek General Confederation of Labour (GSEE), (2020). *Implications of the Covid-19 pandemic for workers*, Response to ETUC, 22/4/2020, <https://www.ccoo.es/4f25eb3380c1df59d22b9916cd4bff43000001.pdf>

<sup>226</sup> 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, <https://ec.europa.eu/social/main.jsp?langId=en&catId=1047&newsId=9746&tableName=news&moreDocuments=yes>

stakeholders and anecdotal evidence, as in other countries, platform workers in Greece are likely to be young and well-educated.<sup>227</sup> For example, many translators, including subtitle translators are platform workers.

According to ELSTAT, in the 3<sup>rd</sup> quarter of 2020, there were about 13,900 self-employed workers in creative professions (see Table 2 in the Annex)

According to ELSTAT, in the 3<sup>rd</sup> quarter of 2020, there were about 12,400 self-employed workers in information and communication services, including media/journalism (see Table 2 in the Annex)

Liberal professions, characterised as 'independent self-employment' include the following: doctors, dentists, pharmacists, veterinarians, lawyers, notaries, architects, engineers, topographers, auditors, accountants, tax advisors/professionals, etc.<sup>228</sup> Many them are classified under 'Professional, scientific and technical activities' which in the 3<sup>rd</sup> quarter of 2020 amounted to about 115,000 see Table 2 in the Annex). Alternatively, using the broader occupation classification 'Professionals' which includes science and engineering professionals, legal, cultural professionals, etc.), these amounted to about 205,700 (see Table 3 in the Annex).

There is no hard data on false self-employment and dependent self-employment ('workers with blokakia' - εργαζόμενοι με μπλοκάκια), as they are called unofficially) in Greece. However, as a result of the economic crisis and its aftermath, according to media articles, there has been a notable increase on both forms of self-employment.<sup>229</sup> It has also been argued that the fact that Greece has one of the lowest proportions of self-employed individuals with employees provides indirect evidence of the (considerable) extent of false employment, since false self-employed individuals are very unlikely to employ staff on their own.<sup>230</sup> Indeed, it is widely acknowledged that the widespread presence of economically dependent self-employed workers is a particular important feature of self-employment patterns in Greece.<sup>231</sup>

Moreover, as the ILO underlines, given the fact that the transactions of (self-employed) own-account workers in Greece are often not declared, many of such workers will be regarded as 'false self-employed'.<sup>232</sup> It is worth pointing out here that, according to the European Commission's European Platform for Undeclared Work, Greek authorities have neither tried to estimate the magnitude of false self-employment nor collected information which would allow a reliable estimate of the number of cases where this involves only one contractor.<sup>233</sup>

According to the same study, one sector where false self-employment is widespread in Greece is agriculture which employs many seasonal (often migrant) workers with no employment contract. Indeed, it is estimated that false self-employment (either dependent or 'grey zone' self-employment) accounts for almost 40% of all employment in agriculture, forestry and fishing.<sup>234</sup> Other sectors where

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<sup>227</sup> *Ibid.*

<sup>228</sup> OECD, (2018). *Op.Cit.*; European Economic and Social Committee (EESC), (2014). *The State of Liberal Professions Concerning their Functions and Relevance to European Civil Society*, <https://www.eesc.europa.eu/resources/docs/summary-en-final-glossy.pdf>

<sup>229</sup> Theodoroulakis M., Sakellis I. and Ziomas D., (2017). *Op.Cit.*

<sup>230</sup> Koukiadaki, A. and Kokkinou, C., (2016a). *The rise of the dual labour market: Fighting precarious employment in the new member states through industrial relations (PRECARIR) – Greece National Report*, [https://www.dcu.ie/sites/default/files/dcubs/greece\\_national\\_report\\_precarir.pdf](https://www.dcu.ie/sites/default/files/dcubs/greece_national_report_precarir.pdf)

<sup>231</sup> ILO, (2014). *Productive Jobs for Greece*, [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_319755.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_319755.pdf)

<sup>232</sup> International Labour Organisation (ILO), (2016). *Diagnostic report on undeclared work in Greece*, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/documents/projectdocumentation/wcms\\_531548.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/projectdocumentation/wcms_531548.pdf)

<sup>233</sup> European Commission, (2021). *The practices of enforcement bodies in detecting and preventing false self-employment*, European Platform Undeclared Work, 28/1/2021, <https://www.eurofound.europa.eu/data/platform-economy/records/the-practices-of-enforcement-bodies-in-detecting-and-preventing-false-self-employment>

<sup>234</sup> International Labour Organisation (ILO), (2020). *Diagnostic report on False Self-Employment in Greece and Recommendations for Reforms*, Report prepared for the ILO by Jason Heyes, University of Sheffield, UK, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/documents/publication/wcms\\_686998.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_686998.pdf)

false self-employment is prevalent include construction, transportation and distribution, tourism, hospitality, and domestic work.<sup>235</sup>

### Collective bargaining framework

In relation to Greece, one should differentiate between the importance of collective bargaining before and after the Great Recession of the late 2000s which hit that country particularly hard. Prior to the crisis, 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.<sup>236</sup>

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.<sup>237</sup> For example, following law 1876/1990 which also introduced five types of collective agreement (national general, sectoral, enterprise, national occupational and local occupational) between 1990 and 2012 the minimum wage was negotiated and agreed by the national social partners and formed part of the General National Collective Agreement (*Εθνική Γενική Συλλογική Σύμβαση Εργασίας*, EGSSE).<sup>238</sup> EGSSE stipulated the minimum terms of employment for all persons, irrespective of whether they were trade union members or not and, as such, served as the point of reference for negotiations at lower levels.<sup>239</sup> In that period, it was estimated that the various collective agreements covered 85% of workers.<sup>240</sup>

However, following a raft of new legislation<sup>241</sup> enacted between 2010 and 2012, most notably Law 4093/12, collective bargaining between social partners as regards the minimum wage was effectively abolished, while for the first time the concept of ‘legally defined national minimum wage’ was introduced.<sup>242</sup> The new rules also made it possible for the government to unilaterally reduce wages.<sup>243</sup> In addition, in 2011, two procedures supportive of collective agreements – the extension mechanism of the sectoral collective agreements and the favourability principle – were suspended. At the same time, ‘associations of persons’ were allowed to enter firm-level agreements in the absence of trade union representatives.<sup>244</sup>

Following the completion of Stability Support Programme in August 2018, the Greek government reinstated the extension and favourability procedures, as part of labour reforms which have significantly changed the collective bargaining system and the setting of the minimum wage. In relation to the latter, the new minimum wage setting mechanism – initially introduced by Law 4172/2013 (Article 103) and amended in June 2018 with Law 4564/2018 – was applied for the very first time. This comprises a step-by-step consultation to determine the minimum wage, involving the government, the social partners,

<sup>235</sup> *Ibid.*; European Commission, (2021). *Op.Cit.*

<sup>236</sup> 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](https://www.research.manchester.ac.uk/portal/files/84724029/Chapter_2.pdf)

<sup>237</sup> *Ibid.*; ETUI, (2020). *Greece – Collective Bargaining*, <https://www.worker-participation.eu/National-Industrial-Relations/Countries/Greece/Collective-Bargaining>

<sup>238</sup> These include: the General Confederation of Greek Workers (GSEE) and the main employers’ associations (SEV, ESEE, GSEVEE, SETE). See Eurofound, (2014). *Greece: Representativeness of the European social partner organisations in the cross-industry social dialogue*, EurWORK, 16/3/2014, <https://www.eurofound.europa.eu/publications/report/2014/greece-representativeness-of-the-european-social-partner-organisations-in-the-cross-industry-social>

<sup>239</sup> Koukiadaki, A. and Kokkinou, C., (2016b). *Op.Cit.*

<sup>240</sup> *Ibid.*

<sup>241</sup> This new legislation included Law 3899/2010, Law 4024/2011, Law 4046/12 (‘second memorandum’) and Law 4093/12

<sup>242</sup> Eurofound, (2019). *Greece: Developments in working life 2018*, <https://www.eurofound.europa.eu/sites/default/files/wpef19036.pdf>

<sup>243</sup> Eurofound, (2013). *Greece - How the minimum wage has evolved*, 28/7/2013, <https://www.eurofound.europa.eu/sr/publications/article/2013/how-the-minimum-wage-has-evolved>

<sup>244</sup> Bulman, T., (2020). *Op.Cit.*

specialized scientific, research bodies, and experts.<sup>245</sup> Table 10 in the Annex shows the monthly minimum wage level for adult workers between 2015 and January 2021.

It is worth adding here that prior to the crisis and the ensuing changes in collective bargaining arrangements, the EGSSE (national collective agreement) used to serve as the basis for a few hundred sectoral and occupational agreements. For example, in 2010, there were 272 occupational or sectoral agreements, 233 of which were terminated by May 2013 and only 33 renewed.<sup>246</sup> On the other hand, the number of company-level agreements soared from 227 to 976 in 2012, only 27% of which were signed by the union.<sup>247</sup> Table 11 in the Annex shows the evolution of collective agreements between 2010 and 2018. Since the re-instatement of the extension, 10 national sectoral agreements have been declared compulsory for all employers.<sup>248</sup>

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 been shifting away from collective agreements.<sup>249</sup> As Figure 1 in the Annex shows, another major effect of the termination of national agreements in 2010 and collapse of centralised pay and sectoral bargaining was a sharp contraction of bargaining coverage in Greece.<sup>250</sup> Indeed, the crisis-induced collective bargaining reforms leading to decentralisation of collective bargaining the suspension of the extension and favourability procedures has resulted in a surge in firm-level agreements and a dramatic drop by 65 percentage points of the share of the workforce covered by collective agreements.<sup>251,252</sup>

That said, there are no official figures on the proportion of employees covered by collective bargaining. However, in the past trade unions estimated that 85% of employees were covered by agreements other than the EGSSE (see above), while other academic estimates put it around 65-70%. According to ETUI estimates, 65% seems reasonable for collective bargaining coverage prior to the Great Recession and the subsequent radical changes in the Greek system of industrial relations, especially since the collective agreements which expired were not replaced.<sup>253</sup> Indeed, according to some estimates, including the ILO's, 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.<sup>254</sup> OECD puts the extent of collective bargaining coverage a little higher, at 25.5% in 2016 (down from 89.8% in 2011).<sup>255</sup> Against this backdrop, it is not surprising that trade unions continue to voice their wish that the regime of bipartite collective agreements that existed up to 2012 and which determined the minimum wage be re-instated.<sup>256</sup>

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<sup>245</sup> Eurofound, (2019). *Op.Cit.*

<sup>246</sup> Visser, J., (2016). 'What happened to Collective Bargaining during the Great Recession?', *Journal of Labor Policy*, 5:9, <https://izajolp.springeropen.com/track/pdf/10.1186/s40173-016-0061-1.pdf>

<sup>247</sup> *Ibid.*

<sup>248</sup> Mercans, (2020). *2020 Global Payroll & HR Country Guide for Greece*, <https://mercans.com/wp-content/uploads/2020/06/Greece-Payroll-HR-Country-Guide-2020.pdf>

<sup>249</sup> Mercans, (2020). *Op.Cit.*; Koukiadaki, A. and Kokkinou, C., (2016b). *Op.Cit.*

<sup>250</sup> Visser, J., (2016). *Op.Cit.*

<sup>251</sup> European Trade Union Institute (ETUI), (2019). *Benchmarking Working Europe 2019*, <https://www.etui.org/sites/default/files/BENCHMARKING%202019%20Web%20version%20-%20Copy.pdf>

<sup>252</sup> International Labour Organisation (ILO), (2018). *Social dialogue and tripartism*, Report VI, International Labour Conference 107<sup>th</sup> Session, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_624015.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_624015.pdf)

<sup>253</sup> ETUI, (2020). *Greece – Collective Bargaining*, <https://www.worker-participation.eu/National-Industrial-Relations/Countries/Greece/Collective-Bargaining>

<sup>254</sup> 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

<sup>255</sup> OECD – Collective Bargaining Coverage Database, <https://stats.oecd.org/Index.aspx?DataSetCode=TUD>

<sup>256</sup> Eurofound, (2020). *Minimum wages in 2020: Annual review*, Minimum wages in the EU series, Publications Office of the European Union, Luxembourg, <https://www.aranagenzia.it/attachments/article/10663/Eurofound%20-%20Minimum%20wages%20in%202020%20-%20Annual%20review.pdf>

There are no official figures for the number of trade union members in Greece, but according to the latest available data (2020), about 545,000 workers are trade union members.<sup>257</sup> In terms of trade union density, for 2016, estimates range between 25% and 20%.<sup>258</sup> One possible explanation for this discrepancy lies in the fact that, according to ICTWSS database estimates, around a fifth of union members are unemployed or retired, i.e. are not in employment. As a result, this database estimates Greece's trade union density in 2016 to stand at 20.2%, a similar figure to that of the OECD's database.<sup>259</sup>

As argued in the literature and underlined during the interviews, while the presumption of an employment relationship can in some cases apply to platform workers so that they are classified as employees, it is not useful for most of such workers. These tend to work for multiple platforms and for a shorter period than nine consecutive months which is one of the criteria of a dependent employment relationship. Consequently, the legal presumption of an employment relationship in most cases cannot be applied to platform workers.<sup>260</sup> There is no data about the type of employer as regards platforms. According to both stakeholders and grey literature, in Greece there both international (e.g. Wolt for food delivery) and domestic (e.g. e-Food for food delivery, Taxibeat) platforms.<sup>261</sup> However, Uber is not allowed to operate in Greece.

The collective representation of the self-employed varies and very much depends on the relevant sector and occupation. For example, scientists are organised by sector and locality in associations (Athens Medical Association, Piraeus Medical Association, Medical Association of Patras, Athens Bar Association, Thessalonica Bar Association, etc.). Such associations do not usually distinguish between self-employed people with and without employees.<sup>262</sup> In general, all members, including self-employed individuals, of the liberal professions such as lawyers, notaries, pharmacists and engineers must be members of their respective mandatory organisations. The latter which take the form of state-law entities have been created deliberately by the legislator.<sup>263</sup>

Such mandatory organisations are typically Chambers or Associations, e.g. Chamber of Commerce and Industry, Technical Chamber, Professional Chamber such as the Athens Chamber of Tradesmen (*Επαγγελματικό Επιμελητήριο Αθηνών/ΕΕΑ*)<sup>264</sup> (whose members can also be self-employed people without staff such as restaurant owners, insurers, owners of small tourist establishments, etc.), Chamber of Small and Medium-sized Enterprises (*Βιοτεχνικό Επιμελητήριο Αθήνας/ΒΕΑ*)<sup>265</sup>, Bar Association, Medical Association, Pharmaceutical Association, etc. All Chambers are members of the Union of Hellenic Chambers of Commerce and Industry.<sup>266</sup>

Moreover, since 1919, the Hellenic Confederation of Professionals, Craftsmen and Merchants (*Γενική Συνομοσπονδία Επαγγελματιών Βιοτεχνών Εμπόρων Ελλάδος, Γ.Σ.Ε.Β.Ε./GSVEE*)<sup>267</sup> – a third level, cross-sectoral federation – has been representing micro, small and medium enterprises (SMEs) and self-employed professionals active in manufacturing, trade and services sectors. Its members include self-employed persons with and without staff (own-account workers).<sup>268</sup> GSEVEE incorporates 1,100 main unions with 140,000 natural persons (entrepreneurs/self-employed professionals) registered.<sup>269</sup>

<sup>257</sup> EURES, Worker representation in Greece, 7/2020, <https://ec.europa.eu/eures/main.jsp?catId=8502&acro=living&mode=text&recordLang=el&lang=el&parentId=7779&countryId=GR&regionId=>

<sup>258</sup> ETUI, (2020). *Greece – Trade Unions*, <http://www.worker-participation.eu/National-Industrial-Relations/Countries/Greece/Trade-Unions>

<sup>259</sup> OECD – Trade Union Density Database, <https://stats.oecd.org/Index.aspx?DataSetCode=TUD>

<sup>260</sup> Papadimitriou, C., (2020). *Op.Cit.*

<sup>261</sup> Σωτηρόπουλος, Δ. Α. και Χουλιάρη, Α., (2020). 'Η Covid-19 και η Απασχόληση στην «Οικονομία των Επί Μέρους Παραδοτέων» στην Ελλάδα', *Dianeosis*, June 2020, <https://www.dianeosis.org/2020/06/gig-economy/>

<sup>262</sup> Lampousaki, S., (2009). *Greece - Self-employed workers*, Eurofound, 22/2/2009, <https://www.eurofound.europa.eu/it/publications/report/2009/greece-self-employed-workers>

<sup>263</sup> *Ibid.*

<sup>264</sup> ΕΕΑ has over 150,000 members - See <https://www.eea.gr/>

<sup>265</sup> <https://acsmi.gr/>

<sup>266</sup> <https://uhc.gr/el>

<sup>267</sup> <https://www.gsevee.gr/>

<sup>268</sup> Friedrich Ebert Stiftung (FES), (2000). *The Development and Structure of Labour Unions*, May, <https://library.fes.de/fulltext/bueros/athen/00740003.htm>

<sup>269</sup> <https://www.gsevee.gr/en/organisation>

Another relevant organisation here is the Hellenic Confederation of Commerce and Entrepreneurship (ESEE)<sup>270</sup>, a peak employer organisation representing companies engaged in commerce as well as SMEs at both domestic and international level. It is one of the four employer organisations who are involved in the conclusion of the National General Collective Agreement (EGSSE).<sup>271</sup> Its membership also includes self-employed persons with and without staff (own-account workers).<sup>272</sup> Both ESEE and GSEVEE report to their non-employer members mainly through memoranda and involvement in tripartite committees.<sup>273</sup>

In general, trade union membership among self-employed workers is quite rare.<sup>274</sup> That said, it is worth adding here that in certain sectors such as informatics and telecommunications, construction and engineering there have been attempts to collectively organise employees with spurious self-employment contracts (*εργαζόμενοι με μπλοκάκια*).<sup>275</sup> To this end, as far back as 1999, workers in these sectors organised themselves around a sectoral-occupational union, the Union of Waged – of Wage Earner – Technicians (*Πανελλαδικό Σωματείο Μισθωτών Τεχνικών/SMT*)<sup>276</sup>.<sup>277</sup>

This union has over 2,200 members around Greece, with most of them residing in Athens. SMT's members are engineers and technicians working in various sectors, e.g., telecoms, construction and engineering. However, a distinctive characteristic is that contrary to other trade unions, SMT does not distinguish between employees in regular dependent employment and those in false self-employment. These, paid through invoices, include 'associates', sub-contractors or freelancers who offer their technical expertise and services to employers from a subordinate position in terms of economic dependency. Interestingly, the union's own statute forbids the distinction between those officially classified as dependent employees, and those deemed to be 'associates' who are, however, in an economically dependent employment relationship.<sup>278</sup> Crucially, following many years of struggle and protests, SMT finally managed to sign a collective agreement for engineers that would also include 'associates' or 'free-lancers, i.e. self-employed technicians who by providing their services solely or primarily for an employer were deemed to be economically dependent workers.<sup>279</sup> Specifically, in 2004, in a collective agreement signed with employers, SMT succeeded in securing the extension of the agreement's provisions to such workers.<sup>280</sup> As has been argued, this was 'a major step towards the official recognition that many dependent employment workers are actually being deprived of the rights provided by Labour Law'.<sup>281</sup>

In 2007, the SMT resorted to the Mediation and Arbitration Service (OMED)<sup>282</sup> which, in turn, issued an arbitration decision (No 13/2007)<sup>283</sup> recommending that all economically dependent workers be

<sup>270</sup> <https://eseef.gr/f>

<sup>271</sup> Georgiadou, P., (2012). 'Social Dialogue Project for the Commerce Sector', presentation, Riga, May 2012; Lampousaki, S., (2009). *Op.Cit.*

<sup>272</sup> *Ibid.*; <https://www.ekathimerini.com/economy/161232/hundreds-of-thousands-of-firms-have-shut-down/>

<sup>273</sup> Lampousaki, S., (2009). *Op.Cit.*

<sup>274</sup> Eurofound, (2009). *Self-employed workers: Industrial relations and working conditions*, [http://praha.vupsv.cz/fulltext/ul\\_975.pdf](http://praha.vupsv.cz/fulltext/ul_975.pdf); Lampousaki, S., (2009). *Op.Cit.*

<sup>275</sup> Kornelakis, A., (2016). 'Inclusion or Dualization? The Political Economy of Employment Relations in Italian and Greek Telecommunications', *British Journal of Industrial Relations*, 54(2), pp.385-408, [https://kclpure.kcl.ac.uk/portal/files/49134719/BJIR\\_final\\_draft\\_post\\_refereeing.pdf](https://kclpure.kcl.ac.uk/portal/files/49134719/BJIR_final_draft_post_refereeing.pdf); Lampousaki, S., (2009). *Op.Cit.*

<sup>276</sup> <http://somt.gr/>

<sup>277</sup> Vogiatzoglou, M., (2015a). *Precarious Workers' Unions in Greece and Italy*, European University Institute (EUI), [https://cadmus.eui.eu/bitstream/handle/1814/37908/2015\\_Vogiatzoglou.pdf?sequence=1](https://cadmus.eui.eu/bitstream/handle/1814/37908/2015_Vogiatzoglou.pdf?sequence=1)

<sup>278</sup> Vogiatzoglou, M., (2015b). "'Varieties of Precarious Workers' Unionism: The Case of Greece & Italy', in della Porta, D., Hänninen, S., Siisiäinen, M. and Silvasti, T., (eds), *The New Social Division*, Springer, [https://www.researchgate.net/publication/304985706\\_Varieties\\_of\\_Precarious\\_Workers'\\_Unionism\\_The\\_Case\\_of\\_Greece\\_and\\_Italy/link/5f4b9bca92851c6cfd01d440/download](https://www.researchgate.net/publication/304985706_Varieties_of_Precarious_Workers'_Unionism_The_Case_of_Greece_and_Italy/link/5f4b9bca92851c6cfd01d440/download)

<sup>279</sup> Vogiatzoglou, M., (2015a). *Op.Cit.*

<sup>280</sup> Kretsos, L. and Vogiatzoglou, M., (2015). 'Lost in the Ocean of Deregulation? The Greek Labour Movement in a Time of Crisis', *Relations industrielles/Industrial Relations*, Spring, 70–2, [https://www.riir.ulaval.ca/sites/riir.ulaval.ca/files/70-2\\_kretsosfinal.pdf](https://www.riir.ulaval.ca/sites/riir.ulaval.ca/files/70-2_kretsosfinal.pdf)

<sup>281</sup> Vogiatzoglou, M., (2015a). *Op.Cit.*

<sup>282</sup> [www.omed.gr](http://www.omed.gr)

<sup>283</sup> OMED (2007). Δ.Α. 13/2007 για τους όρους αμοιβής και εργασίας των εργαζομένων (τεχνικοί) που απασχολούνται σε τεχνικές, κατασκευαστικές και μελετητικές επιχειρήσεις στην περιοχή Αθηνών, Πειραιώς και Περιφέρειας Αττικής, Πανελλαδικό Σωματείο Μισθωτών Τεχνικών | OMEΔ ([omed.gr](http://omed.gr))

included in the collective agreement for employees in the construction and engineering sector.<sup>284</sup> According to this decision, *'there is a contract of employment and, for that reason, a salaried worker is subject to the provisions of this decision, regardless of the manner in which the salary is determined or paid, provided that the worker is placed in a position of legal subordination by the employer. This is manifested in the latter's right to exercise control and oversight as to the place, the time and the manner of providing work and to issue instructions and orders that are binding on the worker regarding proper provision of services.'*<sup>285</sup> Interestingly, employers in the construction and engineering sectors began legal proceedings to have the collective agreement mentioned earlier withdrawn and the arbitration decision described above annulled. In the end, SMT won which, in turn, enhanced its credibility and appeal.<sup>286</sup> However, in 2012, following the bail-out agreement with the IMF, European Commission and ECB mentioned earlier, which practically ended sector-level collective negotiations, the SMT's agreement was finally unilaterally cancelled.<sup>287</sup> The SMT is still an active sectoral-occupational union.

Finally, it is worth adding that the above should also be seen against a backdrop of increased labour market flexibility together with the growth of atypical forms of employment and precarious employment in Greece – as elsewhere in the EU. In response, since the early 2000s, a number of initiatives to mobilise and unionise precarious workers, including those in false self-employment, have been launched. Apart from the telecom sector mentioned above, such initiatives have covered catering services, cleaning services and courier services.<sup>288</sup> These initiatives – often referred to as Precarious Workers' Unions (PWUs) – were mostly driven by precarious workers and involved 'grassroots' organisations, operating both at the enterprise- and/or sectoral level, and mostly populated by precarious workers.<sup>289</sup> Again, a large number of these workers could be classified as working under the guise of false self-employment. The SMT mentioned above is one of the larger and stronger PWUs. As mentioned earlier, the Hellenic Confederation of Professionals, Craftsmen and Merchants (GSVEE) has been representing SMEs and self-employed professionals active in manufacturing, trade and services sectors. As one of the five social partners involved in the conclusion of the National General Collective Agreement (EGSSE), it actively participates in social dialogue and collective bargaining at national level.<sup>290</sup>

As regards Chambers or Associations representing those in liberal professions – a large majority of which are self-employed, although the law stipulates that their purpose is to safeguard, further and represent the professional interests of their members, such mandatory organisations cannot conclude collective labour agreements.<sup>291</sup> Even so, the Chambers are invited informally by the competent ministry and play an advisory role in the social dialogue on matters concerning their members by submitting memoranda.<sup>292</sup>

It is worth adding here that the Athens Chamber of Tradesmen (EEA)<sup>293</sup> – a statutory advisory body set up in 1925 and whose members also include self-employed persons with or without staff such as free lancers who operate in the commerce and other services sectors in the Attiki region, has recently (in October 2020) reached an agreement with the Regional Governor of that region that its members who are

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<sup>284</sup> Eurofound, (2007). 'Employers refute decision to acknowledge economically dependent workers', 18/11/2007, <https://www.eurofound.europa.eu/it/publications/article/2007/employers-refute-decision-to-acknowledge-economically-dependent-workers>

<sup>285</sup> *Ibid.*; Lampousaki, S., (2009). *Op.Cit.*

<sup>286</sup> *Ibid.*

<sup>287</sup> Vogiatzoglou, M., (2015a). *Op.Cit.*

<sup>288</sup> Vogiatzoglou, M., (2020). 'Trade Unions in Greece: Protest and Social Movements in the Context of Austerity Politics', in Grote, J. R. and Wagemann, C. (eds), *Social Movements and Organized Labour*, Publisher: Routledge, [https://www.researchgate.net/publication/343977042\\_Trade\\_Unions\\_in\\_Greece\\_Protest\\_and\\_Social\\_Movements\\_in\\_the\\_Context\\_of\\_Austerity\\_Politics](https://www.researchgate.net/publication/343977042_Trade_Unions_in_Greece_Protest_and_Social_Movements_in_the_Context_of_Austerity_Politics)

<sup>289</sup> *Ibid.*

<sup>290</sup> These five partners are: the Greek General Confederation of Labour (GSEE), peak trade union organisation representing private sector employees and the following four employer organisations which represent private sector employers: the Hellenic Federation of Enterprises (SEV), the Hellenic Confederation of Professionals, Craftsmen and Merchants (GSVEE), the National Confederation of Greek Trade (ESEE) and the Association of Greek Tourist Enterprises (SETE).

<sup>291</sup> Lampousaki, S., (2009). *Op.Cit.*

<sup>292</sup> *Ibid.*

<sup>293</sup> Athens Chamber of Tradesmen (EEA), (2018). *Athens Chamber of Tradesmen – Profile*, [https://www.eea.gr/wp-content/uploads/2018/12/ATHENS\\_CHAMBER\\_OF\\_TRADESMEN\\_ENGLISH\\_PROFILE.pdf](https://www.eea.gr/wp-content/uploads/2018/12/ATHENS_CHAMBER_OF_TRADESMEN_ENGLISH_PROFILE.pdf)

own-account workers / freelancers will be allowed to take part in a major training/upskilling programme that will be run by the Region of Attiki.<sup>294</sup> As mentioned earlier, the Greek government has now reinstated the extension and favourability procedures. Indeed, as a result of Decree No. 32921/2175/13-6-2018, which re-established the extension mechanism of the sectoral collective agreements and the favourability principle, the number of such agreements initially picked up: 15 out of 16 occupational and 23 sectoral collective agreements were extended across workplaces, covering employing 220,000 workers in sectors including banking, shipping, hospitality, and mining. These agreements typically applied to workers earning well above the minimum and provided for modest rises. Only one sectoral collective agreement involved non-wage issues, by providing for reduced working hours and greater parental allowances.<sup>295</sup>

More recently, in October 2019, the government gave the Minister of Labour discretion to extend sectoral collective agreements, and to exclude firms facing temporary financial hardship from extensions. It also allowed certain categories of firms to include special or opt-out clauses in collective agreements, in circumstances that are still to be defined. A year later, by October 2020, no extension of sectoral collective agreements had been signed.<sup>296</sup>

## Legal framework

*Main relevant legislative provisions: : Article 1 of Law 1876/1990, Law 4808/2021, published on 19 June 2021*

According to the available evidence and stakeholder feedback, collective agreements constitute is one of the few exceptions – if not the only one – where economic dependency is considered. Specifically, according to Article 1 of Law 1876/1990 on free collective bargaining, such bargaining shall also apply 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’.<sup>297</sup> Therefore, as has been pointed out, ‘associations of economically dependent persons or trade unions can conclude collective agreements with associations of persons for whom they perform their work so that they obtain benefits provided to employees by collective bargaining’. 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<sup>298</sup>. To date, such a special collective agreement has never been concluded, nor was a clause concerning specifically economically dependent workers inserted in a collective agreement.<sup>299</sup>

In general, although employment rights are not extended to workers in dependent self-employment, these do have the right to conclude collective agreements.<sup>300</sup> However, although the right to collective bargaining of dependent self-employed is recognised by Greek Law, following Article 1 of Law

<sup>294</sup> <https://www.newmoney.gr/roh/palmos-oikonomias/epixeiriseis/epangelmatiko-epimelitirio-athinon-prasino-gia-programmata-aftoapascholoumenon/>

<sup>295</sup> Bulman, T., (2020). *Op.Cit.*

<sup>296</sup> *Ibid.*

<sup>297</sup> Law 1876, of 7 March 1990, concerning free collective bargaining and other provisions, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/20025/117820/F-757641532/GRC20025%20Eng.pdf>

<sup>298</sup> 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>

<sup>299</sup> Papadimitriou, C., (2020). *Op.Cit.*

<sup>300</sup> International Labour Organisation (ILO), (2020). *Diagnostic report on False Self-Employment in Greece and Recommendations for Reforms*, Report prepared for the ILO by Jason Heyes, University of Sheffield, UK, [https://www.ilo.org/wcmsp5/groups/public/-/ed\\_emp/documents/publication/wcms\\_686998.pdf](https://www.ilo.org/wcmsp5/groups/public/-/ed_emp/documents/publication/wcms_686998.pdf); ILO, (2013). *Op.Cit.*

1264/1982, they are not allowed to join the trade unions that are entitled to conclude the collective agreements.

Greece does not have a statutory definition of employment or self-employment; determining the existence of an employment contract, which does not have to be in writing, relies on case law.<sup>301</sup> Indeed, the definitions of what constitutes a contract of employment have been developed by Greek jurisprudence.<sup>302</sup> Specifically,

*'In Greece, in "measuring" whether a person is sufficiently subordinated to justify qualification of the relationship as one of employment, the courts apply the co-called 'qualitative' criterion. Accordingly, the courts put aside the quantity of the relevant criteria ascertained in each case and highlight the "qualitative" element, that is, the quality of the worker's engagement and dependence which "necessitate protection according to the rules of labour law"'*<sup>303</sup>

As has been argued, the Greek courts put great emphasis on the importance of a 'qualitative' assessment of the employment relationship. In that regard, *'the central question of whether the worker's engagement and dependence are such that they "require providing protection by the rules of labour law"'*<sup>304</sup>

That said, there seems to be a binary divide between employment and self-employment, with an absence of a category of 'employee-like persons' to whom employment protection legislation can be extended. As has been argued, this leaves to economically dependent workers more vulnerable and 'unprotected – even when their working conditions are often (much) worse than those on standard employment contracts.<sup>305</sup> Moreover, as has been pointed out, court proceedings in Greece are often lengthy, while the criteria used to establish the existence of an employment relationship are insufficiently clear.<sup>306</sup>

Interestingly, in contrast to countries such as the UK, and to some extent, Ireland, where there is a separate for 'workers', this is not the case in Greece.<sup>307</sup>

It is worth adding here that Greece does not have statutory definition of 'employer' either.<sup>308</sup>

Under Article 1 of Law 3846/2010 there is a legal presumption of dependent employment relationship. A presumption in favour of self-employment was abolished in 2010 and the opposite presumption in favour of an employment relationship was introduced in order to address the issue of disguised employment.<sup>309</sup> As has been argued, *'This [legal presumption of dependent employment relationship] has the potential to significantly affect the labour market and the application of labour law and increase the protective scope of the latter in the light of increasing use of new and precarious forms of employment'.*<sup>310</sup>

However, several difficulties involved in detecting false self-employment and determining workers' employment status remain, not least the fact that the Greek labour inspectorate (SEPE)'s labour inspectors have competence only in relation to direct waged employment. As a result, SEPE has no

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<sup>301</sup> International Labour Organisation (ILO), (2020). *Op.Cit.*

<sup>302</sup> Waas, B. and Heerma van Voss, G. (eds), (2017). 'Comparative overview', in *Restatement of Labour Law in Europe: The Concept of Employee*, Volume I, Hart Publishing, <https://www.bloomsburycollections.com/book/restatement-of-labour-law-in-europe-volume-i-the-concept-of-employee/comparative-overview-this-overview-was-composed-by-bernd-waas>

<sup>303</sup> *Ibid.*

<sup>304</sup> ILO, (2013). *Regulating the Employment Relationship in Europe: A guide to Recommendation No. 198*, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---dialogue/documents/publication/wcms\\_209280.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_209280.pdf)

<sup>305</sup> Papadimitriou, C., (2020). *Op.Cit.*

<sup>306</sup> International Labour Organisation (ILO), (2020). *Op.Cit.*

<sup>307</sup> Waas, B. and Heerma van Voss, G. (eds), (2017). *Op.Cit.*

<sup>308</sup> Waas, B. and Heerma van Voss, G. (eds), (2017). *Op.Cit.*

<sup>309</sup> *Ibid.*

<sup>310</sup> Clauwaert, S., Rasnača, Z. and Liakopoulou, M-E, (2017). *The crisis and national labour law reforms: A mapping exercise – Country report: Greece*. ETUI, January 2017, [https://www.etui.org/sites/default/files/ez\\_import/JP\\_Report%20Greece%202010-2017%20final.pdf](https://www.etui.org/sites/default/files/ez_import/JP_Report%20Greece%202010-2017%20final.pdf)

mandate to investigate cases of suspected false self-employment.<sup>311</sup> Moreover, it is widely acknowledged that SEPE is poorly resourced.<sup>312</sup>

In general, in Greece, an employment contract entails a relationship of 'personal dependence' or subordination between the parties. In order to assess whether such a relationship exists, it is, therefore, crucial to determine whether and to what extent a person is subjected to another person's power to direct and exercise control over his/her work activity. Based on case law to date, such direction may refer to the content and place of work, the way of performing the work tasks and the working time.<sup>313</sup>

This is important since in Greece the exercise of direction, control and supervision as regards when, where and how work is performed determines the extent to which an employment contract can be distinguished from a contract for the provision of independent services. In the latter case, although a self-employed person provides his/her services to a company for remuneration, he/she is not under that company's control.<sup>314</sup>

Significantly, to fight false self-employment, the presumption of self-employment was abolished in 2010. Instead, since 2010, a legal presumption concerning the employment status of the individual exists: *'in cases where work is provided personally, solely or primarily for the same employer for nine consecutive months, it is presumed that the contract constitutes a dependent employment contract'*.<sup>315</sup>

However, as underlined by both stakeholders and existing literature, this presumption of a dependent employment relationship is rebuttable. This, in turn, means that the employer has the possibility to prove that the worker is not subject to his or her instructions as regards where, when and how the work is performed.<sup>316</sup> That said, proof of the worker's economic dependence – e.g. working for the same employer either solely or primarily for nine consecutive months or over – is very important since it is one of the key criteria for establishing a presumption of an employment relationship.<sup>317</sup>

As regards platform work, there is neither a legal definition nor case law in Greece.<sup>318</sup> Depending on their conditions of employment, platform workers may be either dependent workers or self-employed. In the first case, they are considered to be dependent workers, 'if they are subjected to the power of direction of work for another person, the employer'.<sup>319</sup> As such, labour law provisions are applied to their dependent employment relationship, while, for self-employed platform workers, only civil law provisions are applied.<sup>320</sup> In general, platform workers are considered to be self-employed as long as they are free to determine the working conditions, including working time, of their work and to reject job/project offers.<sup>321</sup>

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 service provider 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.

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<sup>311</sup> *Ibid.*

<sup>312</sup> Kornelakis, A. et al, (2017). *Prospects for a new employment relations and labour market model in Greece*, LSE, [https://eprints.soton.ac.uk/410761/1/HO\\_FINAL\\_REPORT\\_pub\\_002.pdf](https://eprints.soton.ac.uk/410761/1/HO_FINAL_REPORT_pub_002.pdf)

<sup>313</sup> Papadimitriou, C., (2020). *Op.Cit.*

<sup>314</sup> Papantonopoulou, K. and Patsalia, T., [Bernitsas Law Firm], (2019). 'Greece – Employment Law', in *International Employment Law*, 2<sup>nd</sup> edition, Juris Publishing, Inc, <https://www.bernitsaslaw.com/wp-content/uploads/2020/03/International-Employment-Law-Greece.pdf>

<sup>315</sup> Papadimitriou, C., (2017). *Op.Cit.*; Papadimitriou, C., (2020). *Op.Cit.*

<sup>316</sup> Papadimitriou, C., (2017). *Op.Cit.*; Papadimitriou, C., (2020). *Op.Cit.*

<sup>317</sup> Papadimitriou, C., (2017). *Op.Cit.*; Papadimitriou, C., (2020). *Op.Cit.*

<sup>318</sup> Papadimitriou, C., (2020). *Op.Cit.*

<sup>319</sup> *Ibid.*

<sup>320</sup> Papadimitriou, C., (2020). *Op.Cit.*

<sup>321</sup> *Ibid.*

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).<sup>322</sup>

Finally, it is worth noting that tourist guides and technicians in cinema and broadcasting are two specifically designated groups who are legally considered to be economically dependent workers, irrespective of the features of the work they perform.<sup>323</sup>

### Labour market trends and other factors

Both the literature reviewed, and stakeholders interviewed expressed concern about the future trends as regards self-employment, including false self-employment in Greece. The interviewees also stressed that the adverse effects of the Covid-19 pandemic on the Greek economy and labour market are likely to increase the incidence of self-employment (e.g. freelancing) and false self-employment, in view of the current and future job losses. For example, in the field of translation/interpretation, clients, including large companies are already reneging on agreed contracts, asking for major cuts in the agreed price.

As regards false self-employment, both literature and interviewees underlined several structural factors that are likely to continue to contribute to its upward trend. These range from the current reliance on the courts to determine one's employment status which often entails very lengthy legal procedures; the lack of sufficient clarity among the criteria used for establishing one's employment status; the fact that the Greek Labour Inspectorate (SEPE) which both lacks the authority to investigate and issue sanctions in relation to false self-employment and the necessary resources for doing so; and the absence of information systems and databases that would allow for suspected cases of false self-employment to be identified and checked.<sup>324</sup> That said, the Ministry of Labour's ERGANI database was mentioned as having the potential to spot instances of false self-employment through its efforts to tackle undeclared work.

In addition, according to available documentation and stakeholder feedback, platform work is expected to grow in Greece.<sup>325</sup>

This discussion should also be seen against the backdrop of considerable deregulation and liberalisation of labour markets, employment protection systems, social protection systems and collective bargaining institutions that took place in Greece as a result of its economic adjustment programme over the past 10 years combined with some (failed) attempts at labour market reform in the early 2000s.<sup>326</sup>

According to stakeholders, although there is academic debate about the classification of self-employed workers (as well as a debate among lawyers and jurists), there is not public debate about this issue

According to stakeholders, there is no public debate about the issue of collective bargaining for self-employed workers.

According to stakeholders there is no debate – neither among policy makers, trade unions, the media or the public – about how collective bargaining for self-employed workers interacts with competition law.

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<sup>322</sup> See [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---dialogue/documents/publication/wcms\\_209280.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_209280.pdf)

<sup>323</sup> ILO, (2013). *Op.Cit.*

<sup>324</sup> International Labour Organisation (ILO), (2020). *Diagnostic report on False Self-Employment in Greece and Recommendations for Reforms*, Report prepared for the ILO by Jason Heyes, University of Sheffield, UK, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/documents/publication/wcms\\_686998.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_686998.pdf)

<sup>325</sup> Papadimitriou, C., (2020). *Op.Cit.*

<sup>326</sup> ILO, (2016). *Evaluating the effects of the structural labour market reforms on collective bargaining in Greece*, Report prepared by A Koukiadaki and D Grimshaw, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_538161.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_538161.pdf); Kennedy, G., (2018). *Austerity, Labour Market Reform and the Growth of Precarious Employment in Greece during the Eurozone Crisis*; Koukiadaki, A. and Kokkinou, C., (2016a). *Op.Cit.*

According to stakeholders, there is no public debate as such as regards false self-employment. However, the high incidence of undeclared work in the black economy has been the subject of lively debate for a long time. Indeed, Greece is among the countries with the largest undeclared economies in Europe – for example, the size of its undeclared economy is commonly estimated to be equivalent to around 24-25% of its GDP.<sup>327</sup> This has indirect implications for the self-employed, since, the high incidence of self-employment in Greece is regarded as a catalyst for undeclared work.<sup>328</sup>

For example, according to a 2013 Eurobarometer survey, of all undeclared work, 67.3% was undeclared waged employment, 10.2% was underdeclared self-employment and 22.5% paid favours conducted for close social relations, such as kin, friends, acquaintances and neighbours.<sup>329</sup> As indicated by a more recent ILO report on Greece, there is undeclared own-account work conducted on a self-employed basis where all or some of their transactions are not declared. Moreover, many of own-account self-employed workers in Greece may well be ‘false self-employed’.<sup>330</sup> At a more general level, a substantial body of evidence points to the prevalence of undeclared work as being highest among the self-employed.<sup>331</sup> For example, research has shown that occupations with the highest incidence of tax evasion in Greece are (self-employed) lawyers, doctors, accountants, private tutors, and engineers whose actual income is estimated to be up to 2½ times larger than that officially declared.<sup>332</sup> Indeed, the considerable tax evasion

Platform work is also not widely debated, e.g. in the Greek media, although its manifestation and implications (e.g. for the working conditions of platform/gig economy workers) are increasingly the subject of academic and legal debate.<sup>333</sup>

According to the interviewees, currently there is no discussion about the issues surrounding collective bargaining and self-employment. However, at present, a debate has started in government (and Parliament) about the necessary steps for the transposition of the Directive 2019/1152 on Transparent and Predictable Working Conditions into Greek Law (which has to be completed by 2022).<sup>334</sup> According to stakeholders, since the issue of false or false self-employment falls under this Directive, it is likely that the resulting legislation will have a bearing upon self-employed persons that can be described as such.

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.<sup>335,336</sup> Specifically, freelancers’, farmers’ and self-employed persons’ social insurance contributions are no longer linked to their declared income. Instead, they must choose amongst six

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<sup>327</sup> European Commission, (2017). *Factsheet on Undeclared Work – GREECE*; ILO, (2016). *Diagnostic report on undeclared work in Greece*, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/documents/projectdocumentation/wcms\\_531548.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/projectdocumentation/wcms_531548.pdf)

<sup>328</sup> *Ibid.*

<sup>329</sup> *Ibid.*; Kornelakis, A. et al, (2017). *Op.Cit.*

<sup>330</sup> ILO, (2016). *Op.Cit.*

<sup>331</sup> Matsaganis, M. and Flevotomou, M., (2010). *Distributional implications of tax evasion in Greece*, GreeSE Paper No. 31, The Hellenic Observatory, LSE, <https://www.lse.ac.uk/Hellenic-Observatory/Assets/Documents/Publications/GreeSE-Papers/GreeSE-No31.pdf>; Matsaganis, M., C. Leventi and Flevotomou, M., (2012). ‘The Crisis and Tax Evasion in Greece: What Are the Distributional Implications?’, ifo Institut - Leibniz-Institut für Wirtschaftsforschung an der Universität München, München, *CESifo Forum*, Vol. 13, Iss. 2, pp. 26-3213, 2: 26-32, <https://www.econstor.eu/bitstream/10419/166478/1/cesifo-forum-v13-y2012-i2-p26-32.pdf>; Mitsopoulos, M. and Pelagidis, T., (2011). ‘The Real Cause of Greek Debt: Taxation and Labour Market Distortions in Greece.’ *Intereconomics* 46(2), pp.112-120, <https://www.intereconomics.eu/contents/year/2011/number/2/article/the-real-cause-of-greek-debt-taxation-and-labour-market-distortions-in-greece.html>

<sup>332</sup> Artavanis, N., Morse, A. and Tsoutsoura, M., (2012). *Tax Evasion across Industries: Soft Credit Evidence from Greece*, Chicago Booth Paper No. 12-25. Chicago: Fama-Miller Centre for Research in Finance, <http://www2.stat-athens.aueb.gr/~ipan/SSRN-id2109500.pdf>

<sup>333</sup> Papadimitriou, C., (2020). *Op.Cit.*

<sup>334</sup> Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, PE/43/2019/REV/1, OJ L 186, 11.7.2019, pp. 105–121, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1152&from=EN>

<sup>335</sup> European Commission, (2020). *The new reform of the social insurance system in Greece*, ESPN Flash Report 2020/11, March, [https://www.researchgate.net/publication/340477807\\_The\\_new\\_reform\\_of\\_the\\_social\\_insurance\\_system\\_in\\_greece](https://www.researchgate.net/publication/340477807_The_new_reform_of_the_social_insurance_system_in_greece)

<sup>336</sup> OECD, (2020). *OECD Economic Surveys – Greece Overview*, July, <https://www.oecd.org/economy/surveys/Greece-2020-OECD-economic-survey-Overview.pdf>

social insurance categories, each one of which corresponds to pre-defined amounts for the contributory (primary) pension and healthcare. According to the European Commission, this new system will significantly reduce the level of social insurance contributions for high-income self-employed persons. However, it appears that, compared to the previous regime, it increases the level of social contributions for the low-income self-employed.<sup>337</sup>

Following the outbreak of the pandemic, the self-employed affected by Covid-19-related shutdowns and revenue losses were given by the Greek government €800 each, covering the period mid-March to end-April.<sup>338</sup> Moreover, as a result of the Covid-19 pandemic which has hit the self-employed (and free lancers) particularly hard, the Greek government extended a 25% reduction in their social security contributions for April and May 2020.<sup>339</sup> The payment of social insurance contributions of February and March 2020 for free-lancers, farmers and the self-employed was also suspended until September 2020.<sup>340</sup>

It is worth adding here that prior to this latest legislative development, Law 4387/2016 on 'Uniform system of social insurance' – another important milestone – is also relevant as regards the self-employed in Greece.<sup>341</sup> Specifically, this law sought to rationalise the rather fragmented and disparate social insurance system by creating a more unified one. In order to streamline and rationalise the disparate social security programmes, the law created a new social insurance fund, the Uniform Social Insurance Fund (EFKA), which came into operation in January 2017.

This new fund subsumed the various existing social insurance funds for principal insurance, i.e. IKA (employees), ETAA (engineers, doctors, lawyers – many of whom are self-employed), OAEE (Social Security Organisation for the Self-Employed), OGA (agricultural workers), NAT (seafarers), ΤΑΥΤΕΚΩ (public welfare organization employees), and ETAT (bank employees). Law 4387/2016 'harmonised social insurance contributions, e.g. health insurance contributions,<sup>342</sup> for both employees and the self-employed and introduced social insurance provisions for workers in dependent self-employment'.<sup>343</sup> The latter are considered to be self-employed persons whose remuneration for their services is based on invoices (*Δελτία Παροχής Υπηρεσιών*) and comes for only one or two clients.<sup>344</sup>

In general, the social insurance contributions are shared by the self-employed and their client: one-third of the total contributions (6.67% of total remuneration) are paid by the dependent self-employed worker and two-thirds (13.33% of the worker's remuneration) by their employer/client.<sup>345</sup> This provision represented a major reform since until 2016, self-employed workers were wholly responsible for their own social security contributions. In order to support this reform, EFKA – the new insurance fund – set

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<sup>337</sup> *Ibid.*

<sup>338</sup> OECD, (2020). *OECD Economic Surveys – Greece Overview*, July, <https://www.oecd.org/economy/surveys/Greece-2020-OECD-economic-survey-Overview.pdf>

<sup>339</sup> Deloitte Greece, (2020). *COVID-19 - Μέτρα αντιμετώπισης των επιπτώσεων της εμφάνισης του κορωνοϊού*, Deloitte Greece Tax Alert, 2/6/2020, [https://www2.deloitte.com/content/dam/Deloitte/gr/Documents/tax/gr\\_2.6.2020\\_tax\\_alert\\_COVID\\_19\\_Measures\\_aiming\\_to\\_tackle\\_the\\_effects\\_of\\_the\\_Coronavirus\\_pandemic\\_GR\\_noexp.pdf](https://www2.deloitte.com/content/dam/Deloitte/gr/Documents/tax/gr_2.6.2020_tax_alert_COVID_19_Measures_aiming_to_tackle_the_effects_of_the_Coronavirus_pandemic_GR_noexp.pdf)

<sup>340</sup> European Commission, (2020). *The new reform of the social insurance system in Greece*, ESPN Flash Report 2020/11, March, [https://www.researchgate.net/publication/340477807\\_The\\_new\\_reform\\_of\\_the\\_social\\_insurance\\_system\\_in\\_Greece](https://www.researchgate.net/publication/340477807_The_new_reform_of_the_social_insurance_system_in_Greece)

<sup>341</sup> KPMG, (2016). *Greece – Social Security System Undergoes Major Reform*, 29/7/2016, <https://home.kpmg/xx/en/home/insights/2016/07/flash-alert-2016-086.html>; International Labour Organisation (ILO), (2016). *Op.Cit.*; International Labour Organisation (ILO), (2018). *Επιχειρησιακή Έρευνα με στόχο τον εντοπισμό των εμποδίων στη δημιουργία επίσημων θέσεων εργασίας και μέτρων για την αντιμετώπισή τους*, 19/12/2018, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/documents/publication/wcms\\_686997.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_686997.pdf)

<sup>342</sup> Specifically, health insurance contributions for employees and other categories insured with E.O.P.Y.Y. are set at 7.10% of the remuneration of any nature, including of the self-employed, with 4.55% being borne by the employer and 2.55% being borne by the employee. E.O.P.Y.Y. is the National Organization for Healthcare Provision, which resulted from the unification of most of the health-care funds in Greece, including the Private Employees' Fund (I.K.A.), the Farmers' Fund (O.G.A.), the Public Employees' Fund (O.P.A.D.), and the self-employed/Entrepreneurs' Fund (O.A.E.E.) - See KPMG, (2016). *Op.Cit.*

<sup>343</sup> International Labour Organisation (ILO), (2020). *Op.Cit.*

<sup>344</sup> KPMG, (2016). *Op.Cit.*

<sup>345</sup> International Labour Organisation (ILO), (2020). *Op.Cit.*

up a special 'platform' for workers in dependent self-employment which became operational in April 2017.<sup>346</sup>

According to Law 4387/2016, 'the base for calculating the contributions of self-employed individuals consisted of 85% of the sum of their taxable income for the previous year, together with the amount of their contributions paid during the previous year.'<sup>347</sup>

Since 2006, like other workers, the self-employed in Greece have been covered through occupational social protection systems (occupational funds). These social protection funds are set up by occupation rather than by employment status. Although these funds allow the self-employed access to healthcare and family benefits, they do not cover them for temporary incapacity to work, with the exception of accidents at work (which are covered).<sup>348</sup> Specifically, the funds offer no sickness benefits, while maternity benefits are usually a flat rate. At the same time, invalidity and pension entitlements are conditional upon a long record of contributions.<sup>349</sup>

As regards unemployment benefits, these are available only for certain groups of the self-employed, such as the liberal professions (under certain conditions and based on voluntary unemployment insurance contributions). For example, since 2011, self-employed workers in certain occupations, such as small traders, members of liberal professions and journalists, have been able to pay voluntary contributions (€10 a month) into their respective occupational (social security) fund and under certain conditions, can receive unemployment benefits.<sup>350</sup> Table 9 in the Annex summarises the various social protection benefits to which the self-employed, including solo self-employed have statutory access in Greece.

According to the ETUC, Greece belongs to a cluster of countries where the self-employed have low to no access to insurance-based benefits: the self-employed are unable to make voluntary contributions to most insurance-based benefits.<sup>351</sup> Moreover, even when they can contribute, it is often possible for them to do so at a minimum level, which does not necessarily reflect their actual income. This, in turn, means that the level of benefits to which they are entitled such as pensions is often inadequate to offer them full social protection. Indeed, as discussed later, this has led to a major reform on the social security system for the self-employed.

In addition, in recent years there have been some interesting developments in this area. For example, since mid-2018, following a Decision of the Minister of Labour (published in Government Gazette 3496/B', 25/7/2018), unemployment benefits are provided to self-employed doctors, lawyers, engineers under certain conditions. The unemployment benefit which amounts to €360/month is provided for a period of 3 to 9 months.<sup>352</sup> In addition, Law 4578 of 3/12/2018 reduced the level of social security contributions of the self-employed from January 2019 onwards. This is estimated to affect about 250,000 self-employed persons.<sup>353</sup>

In 2020, in response to a 2019 court ruling about the treatment of self-employed social insurance contribution rates, the Greek government introduced a major reform of the social security contribution system for the self-employed, whereby there is a shift to discretionary rates with a flat minimum. Specifically, the government shifted the pension and health insurance contribution rates of the self-employed to a minimum floor regardless of income, with the option of paying higher contributions for a

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<sup>346</sup> KPMG, (2016). *Op.Cit.*

<sup>347</sup> *Ibid.*

<sup>348</sup> Specifically, insurance against accidents and work and occupational diseases is included in the overall social security system for the self-employed

<sup>349</sup> Fulton, L., (2018). *Trade unions protecting self-employed workers*, ETUC, Brussels, [https://www.etuc.org/sites/default/files/publication/file/2018-10/Trade%20unions%20protecting%20self-employed%20workers\\_EN.pdf](https://www.etuc.org/sites/default/files/publication/file/2018-10/Trade%20unions%20protecting%20self-employed%20workers_EN.pdf)

<sup>350</sup> *Ibid.*

<sup>351</sup> *Ibid.*

<sup>352</sup> Eurofound, (2019). *Op.Cit.*

<sup>353</sup> *Ibid.*

higher level of pension coverage. Self-employed starting work will be able to pay reduced contributions for five years.<sup>354</sup>

The new system of a minimum charge combined with a voluntary scale allows the self-employed to choose to insure more than the minimum amount of their income for future pension payments at one of five contribution levels. As has been argued, 'Greece's minimum assumed income for social insurance contributions and flat fee for unemployment insurance are in part responses to assumed under-reporting of income'.<sup>355</sup> For example, in 2011, 64% of the self-employed declared income below the tax-free limit of €12,000 (their declared mean annual income amounted to just €4,300). Self-employed taxpayers combined paid less than 1% of the total tax revenue for that year – or, put differently, 2.8 million self-employed persons paid a total of €60 million in taxes (€21.4 each).<sup>356</sup> Indeed, according to estimates, about half (43%-45%) of the self-employed income was unreported – and thus untaxed – in Greece prior to the 2009-16 crisis.<sup>357</sup>

Despite better monitoring and enforcement put in place as part of Greece's Economic Adjustment Programme, such considerable under-reporting seems to have continued even after crisis: based on income tax data over 2017-2018, a much larger share of the self-employed reported very low incomes compared to dependent employees.<sup>358</sup> However, it has also been argued that the new system represents a rather blunt instrument which is likely to 'accentuate the high contribution wedge for low income self-employed while reducing the wedge for higher income self-employed'.<sup>359</sup>

Moreover, in May 2020, the European Commission approved a €500 million Greek scheme to support the self-employed, including self-employed managers of companies with less than 20 employees in sectors severely affected by the Covid-19 outbreak.<sup>360</sup> The scheme provides support like a wage subsidy in the form of a one-off payment of €800 per self-employed person. In doing so, the scheme (i) seeks to partially compensate the eligible beneficiaries for potential loss of income as a result of the pandemic and associated confinement measures such as lockdowns; (ii) its level of compensation, calculated with reference to the minimum national monthly wage, is proportional and (iii) its one-off payment is limited to the period 17 March-30 April 2020.<sup>361</sup>

Historically, the salary levels of public sector employees have been higher than those working in the private sector – although following the economic programme, the wage differentials between the two have been decreasing.<sup>362</sup> For example, according to a study by the Hellenic Federation of Enterprises (SEV) – one of the main employer associations – estimates that private sector workers earn an average of 38% less than in their counterparts in the public sector.<sup>363</sup>

In the private sector, as Table 12 in the Annex shows, there are considerable wage/salary differentials between different sectors (as well as between men and women). In 2018, the highest paying sectors were (i) Financial and insurance; (ii) Electricity, gas, steam and air conditioning supply; (iii) Professional, scientific and technical activities; (iv) Transportation and storage; (v) Information and communication; and (vi) Real estate. At the other end of the spectrum, the lowest paying sectors were (i)

<sup>354</sup> OECD, (2020). *OECD Economic Surveys – Greece*, July, <https://www.oecd-ilibrary.org/sites/b04b25de-en/1/3/2/index.html?itemId=/content/publication/b04b25de-en&csp=7bd5c7efa80b14d079b21ce4739c670a&itemIGO=oecd&itemContentType=book>

<sup>355</sup> *Ibid.*

<sup>356</sup> Georgakopoulos, T., (2016). *Tax Evasion in Greece – A Study*, Dianeosis, June, [Tax Evasion in Greece – A Study | Dianeosis](https://www.dianeosis.gr/en/1/3/2/index.html?itemId=/content/publication/b04b25de-en&csp=7bd5c7efa80b14d079b21ce4739c670a&itemIGO=oecd&itemContentType=book)

<sup>357</sup> Artavanis, N., Morse, A. and Tsoutsoura, M., (2016). 'Measuring Income Tax Evasion Using Bank Credit: Evidence from Greece', *The Quarterly Journal of Economics*, Vol. 131/2, pp. 739-798, <http://dx.doi.org/10.1093/qje/qjw009>

<sup>358</sup> OECD, (2020). *Op.Cit.*

<sup>359</sup> OECD, (2020). *Op.Cit.*

<sup>360</sup> The scheme was approved under the State Aid Temporary Framework adopted by the Commission on 19 March 2020, as amended on 3 April and 8 May 2020 – See European Commission, (2020). 'State aid: Commission approves €500 million Greek scheme to support the self-employed affected by coronavirus outbreak', Commission Press Release, 11/5/2020, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_858](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_858)

<sup>361</sup> *Ibid.*

<sup>362</sup> Kioulafas, K., Donatos, G. and Michailidis, G., (1991). 'Public and Private Sector Wage Differentials in Greece', *International Journal of Manpower*, Vol. 12 No. 3, pp. 9-14, <https://www.emerald.com/insight/content/doi/10.1108/01437729110143926/full/html?skipTracking=true>

<sup>363</sup> <https://www.keeptalkinggreece.com/2017/10/13/greece-private-sector-public-salaries/>

Accommodation and food service; (ii) Administrative and support services; (iii) Arts, entertainment and recreation; (iv) Other service activities; (v) Construction; (vi) Water supply and/or waste management; and (vii) manufacturing.

These are in line with other evidence which has shown that, over time, in Greece, the lowest paying sectors comprised accommodation, food and beverage services; manufacturing (e.g. textiles/leather products, plastics, furniture); construction; security, investigation and other personal services (e.g. washing, cleaning, hairdressing, physical well-being/training activities, funeral services).<sup>364</sup> To these, authors have added services involving data processing/web portal development; employment brokerage (e.g. employment agency/human resource provision); advertising and market research; and postal and courier activities.<sup>365</sup> The use of 'associates'/sub-contractors is prevalent in many of these sectors which tend to have a high incidence of false self-employment. For example, it is estimated that between 10% and 12.5% of those working in construction, administrative and support services and retail.<sup>366</sup>

In terms of whether wage determination, the Greek multilevel bargaining system that existed before the economic crisis of the late 2000s and the major reconfiguration of industrial relations that ensued was considered to contribute to increased wages since more decentralised negotiations could not lower already agreed wage levels.<sup>367</sup> This view was particularly held by major employer associations such as the Hellenic Federation of Enterprises (SEV) and the Hellenic Confederation of Professionals, Craftsmen and Merchants (GSEVEE).<sup>368</sup> Indeed, as in other EU countries, workers in highly unionised sectors (such as the Greek public sector and the banking sector) or in large private sector firms, have historically tended to enjoy relatively high wages and far better working conditions.<sup>369</sup>

Following the major changes on the regulatory framework of multi-level bargaining system that the crisis of late 2000s brought about, the strength and coverage of collective bargaining in Greece has been weakened, not least through adversely affecting both vertical and horizontal coordination.<sup>370</sup> For example, the greater decentralisation of collective bargaining, including wage bargaining at company level (as opposed to sectoral level) together with the changes in the regulatory function of the General National Collective Agreement (EGSEE) and its interplay with lower-level agreements, weakened sectoral coordination.<sup>371</sup>

In addition, as mentioned earlier and highlighted in Table 11, there has been a significant reduction of sectoral and occupational level agreements together with an upsurge in company level agreements in most sectors, further limiting the scope for coordination and enhancing instead the potential for unregulated and fragmented bargaining patterns. Crucially, as has been argued, the impact of the changes in the bargaining structure and level of collective bargaining coverage in Greece has been *'the rapid and extensive disconnection of wage determination from collective bargaining'*.<sup>372</sup>

<sup>364</sup> Papapetrou, E. and Tsalaporta, P., (2016). *Inter-industry wage differentials in Greece: Rent-sharing and unobserved heterogeneity hypotheses*, Paper No 213, Bank of Greece, November, <https://www.bankofgreece.gr/Publications/Paper2016213.pdf>

<sup>365</sup> *Ibid.*

<sup>366</sup> International Labour Organisation (ILO), (2020). *Diagnostic report on False Self-Employment in Greece and Recommendations for Reforms*, Report prepared for the ILO by Jason Heyes, University of Sheffield, UK, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/documents/publication/wcms\\_686998.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_686998.pdf)

<sup>367</sup> Katsaroumpas, I. and Koukiadaki, A., (2019). 'Chapter 13 - Greece: "contesting" collective bargaining' in Müller, T., Vandaele, K. and Waddington, J. (eds.), *Collective bargaining in Europe: towards an endgame, Volume II*, European Trade Union Institute (ETUI), <https://zbw.eu/econis-archiv/bitstream/11159/4868/1/1738765644.pdf>

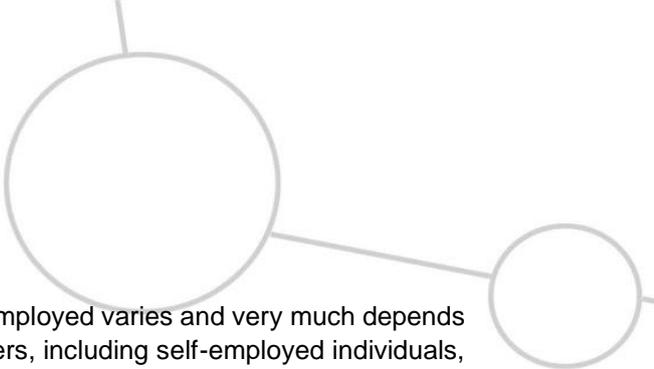
<sup>368</sup> Koukiadaki, A. and Kokkinou, C., (2016b). *Op.Cit.*

<sup>369</sup> Anagnostopoulos, A., (2011). *Labour Market Regulation in Greece - Assessing Impacts of Human Resources Management Practices and Outcomes Using a Workplace Survey*, [https://etheses.bham.ac.uk/id/eprint/1744/1/Anagnostopoulos\\_11\\_PhD.pdf](https://etheses.bham.ac.uk/id/eprint/1744/1/Anagnostopoulos_11_PhD.pdf)

<sup>370</sup> Visser, J., (2016). *Op.Cit.*

<sup>371</sup> ILO, (2016). *Evaluating the effects of the structural labour market reforms on collective bargaining in Greece*, Report prepared by A Koukiadaki and D Grimshaw, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_538161.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_538161.pdf)

<sup>372</sup> *Ibid.*



## Conclusions

As mentioned earlier, the collective representation of the self-employed varies and very much depends on the relevant sector and occupation. For example, all members, including self-employed individuals, of the liberal professions such as lawyers, notaries, pharmacists and engineers must be members of their respective mandatory organisations. The latter which take the form of state-law entities have been created deliberately by the legislator. Such mandatory organisations are typically Chambers or Associations which although seek to safeguard, further and represent the professional interests of their members, they cannot conclude collective labour agreements. Even so, the Chambers are invited informally by the competent ministry and play an advisory role in the social dialogue on matters concerning their members by submitting memoranda.

Another relevant organisation is the Hellenic Confederation of Professionals, Craftsmen and Merchants (GSVEE) which, since 1919, has been representing SMEs and self-employed professionals active in manufacturing, trade and services sectors. As one of the five social partners involved in the conclusion of the National General Collective Agreement (EGSSE), it actively participates in social dialogue and collective bargaining at national level. Likewise, the Hellenic Confederation of Commerce and Entrepreneurship (ESEE) – one of the four employer organisations involved in the negotiations for EGSSE – includes members who are self-employed persons with and without staff (own-account workers).

In general, trade union membership among self-employed workers is quite rare. However, in certain sectors such as informatics and telecommunications, construction and engineering there have been attempts to collectively organise employees with spurious self-employment contracts (*εργαζόμενοι με μπλοκάκια*). As far back as 1999, workers in these sectors organised themselves around a sectoral-occupational union, the Union of Waged – of Wage Earner – Technicians (*Πανελλαδικό Σωματείο Μισθωτών Τεχνικών/SMT*). A distinctive characteristic of SMT has been that contrary to other trade unions, it does not distinguish between employees in regular dependent employment and those in false self-employment.

After many years of struggle and protests, SMT finally managed to sign a collective agreement for engineers that would also include ‘associates’ or ‘free-lancers. In 2007, the SMT resorted to the Mediation and Arbitration Service (OMED) which, in turn, issued an arbitration decision (No 13/2007) recommending that all economically dependent workers be included in the collective agreement for employees in the construction and engineering sector. In 2012, however, following Greece’s bail-out agreement which practically ended sector-level collective negotiations, the SMT’s agreement was finally unilaterally cancelled.

Finally, it is worth adding that since the early 2000s, a number of initiatives to mobilise and unionise precarious workers, including those in false self-employment, have been launched. Apart from the telecom sector mentioned above, such initiatives have covered catering services, cleaning services and courier services. These initiatives – often referred to as Precarious Workers’ Unions (PWUs) – were mostly driven by precarious workers and involved ‘grassroots’ organisations, operating both at the enterprise- and/or sectoral level, and mostly populated by precarious workers. Again, a large number of these workers could be classified as working under the guise of false self-employment. The SMT mentioned above is one of the larger and stronger PWUs.

As regards national legislation, Greece does not have a statutory definition of employment or self-employment; determining the existence of an employment contract, which does not have to be in writing, relies on case law. Indeed, the definitions of what constitutes a contract of employment have been developed by Greek jurisprudence. This has implications for collective bargaining in relation to the self-employed, notably those deemed in an economic dependent relationship (e.g. ‘false’ self-employment).

So, although employment rights are not extended to workers in dependent self-employment, these do have the right to conclude collective agreements.

## Interviews

Name of interviewee	Organisation
<p>1. Vassiliki Dadavassili</p> <p>President of Panhellenic Association of Translators (PEM)</p>	<p>Panhellenic Association of Translators (PEM)</p>
<p>2. Professor Costas Papadimitriou</p> <p>Specialist in Greek and European Labour Law.</p> <p>He is member of the Department of Studies of the Greek Parliament since 1994. He is also national expert for different networks (European Labour Law Network, Free Movement of Workers Network, Odysseus Network). He is President of the Greek Association for Labour Law and Social Security Law</p> <p>He is the author of the 2021 Country Report for Greece on platform work (for DG EMPL)</p>	<p>School of Law, University of Athens</p>

## ANNEX

### Country: Greece

**Table 1: Workers by employment status (3<sup>rd</sup> Quarter 2020)**

	3 <sup>rd</sup> Quarter of 2020	Share (%) in total employment	2 <sup>nd</sup> Quarter of 2020	Change (%) vs. previous quarter	Change (%) vs. 3 <sup>rd</sup> quarter of 2019
Self-employed with employees ('employers')	308,535	7.9	288,825	6.8	10.2
Self-employed with no employees (own-account workers)	805,770	20.5	820,266	1.8	-3.2
Salaried employee	2,693,572	68.6	2,612,008	3.1	-1.7
'Helper' in family business	118,934	3.0	122,936	-3.3	-0.2
<b>Total</b>	<b>3,926,811</b>	<b>100.0</b>	<b>3,844,035</b>	<b>2.2</b>	<b>-1.1</b>

Source: Greek Statistics (ELSTAT), (2020). Labour Force Survey: 3<sup>rd</sup> Quarter of 2020, (Table 2), Press Release, 17/12/2020, [Workforce Statistics – 3rd Quarter of 2020 - Press Release - ELSTAT - 17.12.2020.pdf](#)

**Table 2: Self-employed workers by category and sector (in 000s, 3<sup>rd</sup> Quarter 2020)**

Sector (NACE Rev 2)	Self-employed with employees ('employers')	Self-employed with no employees (own-account workers)	Total
Agriculture, forestry & fishing	36.4	283.2	319.6
Mining & quarrying	0.4	0.2	0.6
Manufacturing	27.2	38.5	65.7
Electricity, gas, steam and air conditioning supply	0.0	0.4	0.4
Water supply; sewerage, waste management and remediation activities	0.1	0.7	0.8
Construction	14.3	43.4	57.7
Wholesale & retail trade, repair of motor vehicles and motorcycles	88.7	141.0	229.7
Transportation & storage services	7.8	44.2	52

Accommodation & food service activities	54.0	39.3	93.3
Information & Communication services	3.9	8.5	12.4
Finance & insurance activities	1.3	9.2	10.5
Real estate activities	0.4	1.2	1.6
Professional, scientific & technical activities	28.0	87.0	115
Administrative & support service activities	7.0	7.6	14.6
Public administration and defence, compulsory social security	0.0	0.2	0.2
Education	11.0	19.0	30
Human health and social work/care activities	13.3	43.8	57.1
Arts, entertainment & recreation	5.2	8.7	13.9
Other services	9.3	24.7	34
Activities of households as employers	0.3	4.9	5.2
<b>Total</b>	<b>308.6</b>	<b>805.7</b>	<b>1114.3</b>

Source: Greek Statistics (ELSTAT) – Labour Force Survey – 3<sup>rd</sup> Quarter 2020 Statistics (Table 3A), <https://www.statistics.gr/el/statistics/-/publication/SJO01/>

**Table 3: Self-employed workers by category and occupation (in 000s, 3<sup>rd</sup> Quarter 2020)**

Occupation (ISCO-08)	Self-employed with employees ('employers')	Self-employed with no employees (own-account workers)	Total
1. Senior Managers & administrators/officials	53.5	24.4	77.9
2. Professionals (e.g., science & engineering professionals, legal, social & cultural professionals)	54.6	151.1	205.7
3. Technicians & associate professionals	16.6	38.6	55.2
4. Clerical support workers	8.7	10.0	18.7

5. Service & sales workers	92.5	153.6	246.1
6. Skilled agricultural, forestry & fishery workers	35.5	280.3	315.8
7. Craft & related trades workers	38.2	88.0	126.2
8. Plant & machine operators & assemblers	6.4	49.3	55.7
9. Unskilled workers, manual workers & others in elementary occupations, e.g., street & related sales and services workers such as street vendors	2.5	10.5	13.0
<b>Total</b>	<b>308.5</b>	<b>805.8</b>	<b>1114.3</b>

Source: Greek Statistics (ELSTAT) – Labour Force Survey – 3<sup>rd</sup> Quarter 2020 Statistics (Table 11), <https://www.statistics.gr/el/statistics/-/publication/SJO01/>

**Table 4: Self-employed workers by category and gender (in 000s, 3<sup>rd</sup> Quarter 2020)**

Gender	Self-employed with employees ('employers')	Self-employed with no employees (own-account workers)	Total
Female	87.6	272.3	359.9
Male	220.9	533.5	754.4
<b>Total</b>	<b>308.5</b>	<b>805.8</b>	<b>1114.3</b>

Source: Greek Statistics (ELSTAT) – Labour Force Survey – 3<sup>rd</sup> Quarter 2020 Statistics (Table 5), <https://www.statistics.gr/el/statistics/-/publication/SJO01/>

**Table 5: Self-employed workers by category and age group (in 000s, 3<sup>rd</sup> Quarter 2020)**

Age group	Self-employed with employees ('employers')	Self-employed with no employees (own-account workers)	Total
15-19	0.0	1.0	1.0
20-24	2.0	8.5	10.5
25-29	8.0	36.5	44.5

30-44	104.3	250.3	354.6
45-64	176.2	460.0	636.2
65+	18.1	49.4	67.5
<b>Total</b>	<b>308.6</b>	<b>805.7</b>	<b>1114.3</b>

Source: Greek Statistics (ELSTAT) – Labour Force Survey – 3<sup>rd</sup> Quarter 2020 Statistics,  
<https://www.statistics.gr/el/statistics/-/publication/SJO01/>

**Table 6: Self-employed workers by category and educational level (in 000s, 3<sup>rd</sup> Quarter 2020)**

Education level	Self-employed with employees ('employers')	Self-employed with no employees (own-account workers)	Total
Received a post-graduate qualification	30.0	71.7	101.7
Completed tertiary education	81.8	140.7	222.5
Completed post-secondary technical/vocational education	28.3	65.0	93.3
Completed upper secondary education	117.6	280.2	397.8
Completed lower secondary education	25.4	97.0	122.4
Completed primary education	25.4	148.5	173.9
Not completed primary education	0.0	1.0	1.0
Attended no school at all	0.0	1.7	1.7
<b>Total</b>	<b>308.5</b>	<b>805.8</b>	<b>1114.3</b>

Source: Greek Statistics (ELSTAT) – Labour Force Survey – 3<sup>rd</sup> Quarter 2020 Statistics (Table 13),  
<https://www.statistics.gr/el/statistics/-/publication/SJO01/>

**Table 7: Self-employed workers by degree of urbanity of the place of residence (in 000s, 2019)**

Urban/rural location	Self-employed
Capital (Athens) Region	223.0
Thessaloniki Region	63.8
Rest of urban areas	266.8
Suburban areas	178.5
Rural areas	392.1
<b>Total</b>	<b>1124.2</b>

Source: Greek Statistics (ELSTAT), (2021). Annual Labour Force Survey Series 1981-2019, <https://www.statistics.gr/el/statistics/-/publication/SJO03/>

**Table 8: Self-employed workers by category and region (in 000s, 2019)**

Region	Self-employed with employees ('employers')	Self-employed with no employees (own-account workers)
Eastern Macedonia (Anatoliki Macedonia) & Thrace	16.9	60.1
Central Macedonia (Kentriki Macedonia)	50.5	149.1
Western Macedonia (Dytiki Macedonia)	4.1	29.6
Epirus	10.6	28.2
Thessaly	18.7	70.3
Ionian Islands (Ionia Nisia)	11.3	14.5
Western Greece (Dytiki Ellada)	19.9	64.9
Central Greece (Sterea Ellada)	16.3	51.2
Attica (Attiki)	79.5	193.4
Peloponnese	22.6	65.2
Northern Aegean	7.4	21.3
Southern Aegean	11.8	25.9

Crete	19.7	60.9
<b>Total</b>	<b>289.3</b>	<b>834.8</b>

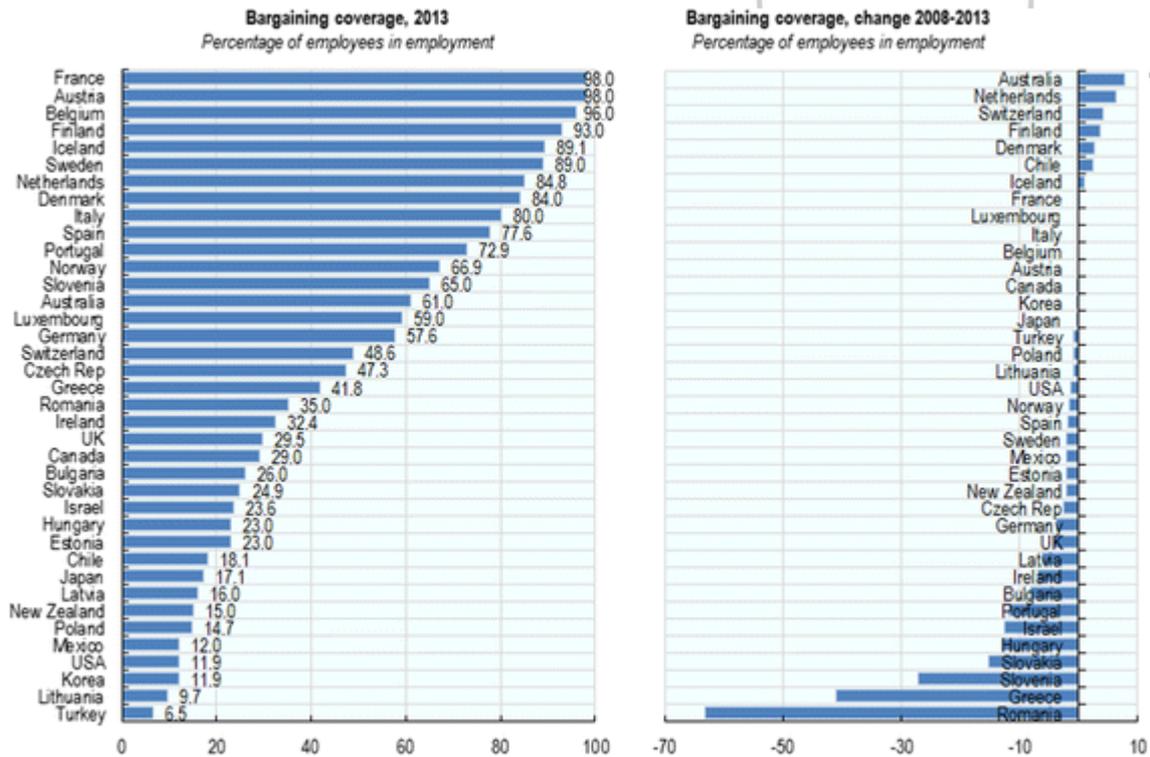
Source: Greek Statistics (ELSTAT), (2021). Annual Labour Force Survey Series 1981-2019, <https://www.statistics.gr/el/statistics/-/publication/SJO03/>

**Table 9: Statutory access to social protection benefits for the self-employed**

Social protection benefits	Greece
Healthcare	Full
Sickness benefit	None
Maternity/paternity	Part
Old-age pension	Full
Survivors' pension	Full
Unemployment benefit	Part
Social assistance	Full
Long-term care	Full
Invalidity	Full
Accidents at work	Part
Family benefits	Full

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

**Figure 21: Levels and changes in bargaining coverage, 2008–2013**



Source: Visser, J., (2016). 'What happened to Collective Bargaining during the Great Recession?', *Journal of Labor Policy*, 5:9, <https://izajolp.springeropen.com/track/pdf/10.1186/s40173-016-0061-1.pdf>

**Table 10: Monthly minimum wage (2015 to January 2021)**

2015	2016	2017	2018	2019	2020	2021
683.76	683.76	683.76	683.76	683.76 (1 <sup>st</sup> semester) 758.33 (2 <sup>nd</sup> semester)	758.33	758.33 (January)

Source: Eurostat Minimum Wage Data (earn\_mw\_cur), [https://ec.europa.eu/eurostat/databrowser/view/earn\\_mw\\_cur/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/earn_mw_cur/default/table?lang=en)

Note: Minimum wage is paid 14 months – See Eurostat, (2021). *Eurostat – Minimum wage statistics, Metadata*, [https://ec.europa.eu/eurostat/cache/metadata/Annexes/earn\\_minw\\_esms\\_an1.pdf](https://ec.europa.eu/eurostat/cache/metadata/Annexes/earn_minw_esms_an1.pdf)

**Table 11: Number of collective agreements: 2010 to 2018**

Year	Sectoral & Occupational	Company	Local occupational
2010	65	227	14
2011	38	170	7
2012	23	976	6
2013	14	409	10
2014	14	286	5
2015	12	263	7
2016	10	318	6
2017	15	244	6
2018	14	155	3

Source: Συλλογικές Συμβάσεις Εργασίας (Collective Labour Agreements) <http://www.ypakp.gr/>; ETUI, (2020). Greece – Collective Bargaining, <https://www.worker-participation.eu/National-Industrial-Relations/Countries/Greece/Collective-Bargaining>

**Table 12: Mean gross annual earnings by sector and sex (2018)**

Sector		Men	Women
NACE B	Mining and quarrying	22,603	23,643
NACE C	Manufacturing	20,300	17,292
NACE D	Electricity, gas, steam and air conditioning supply	30,623	22,663
NACE E	Water supply; sewerage, waste management and remediation activities	19,971	17,651
NACE F	Construction	17,781	14,471
NACE G	Wholesale and retail trade; repair of motor vehicles and motorcycles	20,304	14,291
NACE H	Transportation and storage	28,635	22,822
NACE I	Accommodation and food service activities	9,551	10,293

NACE J	Information and communication	25,956	18,603
NACE K	Financial and insurance activities	35,273	29,248
NACE L	Real estate activities	25,496	14,888
NACE M	Professional, scientific and technical activities	29,390	20,067
NACE N	Administrative and support service activities	13,050	11,305
NACE P	Education	21,605	19,564
NACE Q	Human health and social work activities	21,054	17,873
NACE R	Arts, entertainment and recreation	13,369	11,282
NACE S	Other service activities	15,434	13,586
	<b>Cross-sectoral average</b>	<b>19,234</b>	<b>15,947</b>

Source: Greek Statistics (ELSTAT), (2020). Έρευνα Διάθρωσης και Κατανομής των Αμοιβών: Έτος 2018, Δελτίο Τύπου, [Κεντρική Σελίδα ΕΛΣΤΑΤ - ELSTAT \(statistics.gr\)](http://www.statistics.gr)

# Spain

## Background information

- As of the 29<sup>th</sup> of January 2021, RETA (the Spanish Regime for Self-employed workers) had a total of **3,257,715** affiliates.<sup>373</sup> They represent around 15% of the total workforce in Spain.
- In the excel shared there is the split of self-employed per sector and autonomous community.
- Type of self-employed:
  - **Self-employed workers:** This is the most widespread and includes all those workers who manage a small business in their own name. They are normally self-employed, although they may have workers under contract. They usually pay contributions by modules, and artists and sportsmen and women are some of the professions that fall into this group.
  - **Self-employed and freelance professionals.** These workers are all those who are considered liberal professionals and are included in the list of professional activities<sup>374</sup> of the Economic Activities Tax. These self-employed persons work independently and can provide their services to several companies. The liberal professions include:
    - **Members of professional associations.** This group includes all workers whose professions are regulated by professional associations (such as architects, lawyers or economists). They do not usually contribute directly to the self-employed regime, but through mutual insurance companies via these associations.
    - **Non-registered self-employed professionals.** These professions are not regulated by a professional association and pay tax in the usual way: IRPF by simplified direct estimation. Both this case and the previous one may have employees and an establishment open to the public.
    - **Freelance.** This is a term that has become very widespread in recent years. However, this type of worker is considered to be self-employed, working from home and without employees. They pay personal income tax under the simplified direct estimation system.
  - **Self-employed/corporate entrepreneurs.** These are self-employed workers and professionals who own businesses of a certain size and number of employees who, once they have reached a certain level of activity, choose to create a company in order to reduce tax payments and limit the liability of the company's assets. In addition, they often have a majority shareholding in such companies and hold "director" positions. They are obliged to contribute to the self-employed regime.
  - **Economically dependent self-employed workers.** This type of self-employed or professional workers obtains 75% or more of their income from a single client. One of the requirements is that they cannot have dependent workers.
  - **Self-employed agricultural workers.** As their name suggests, they are self-employed workers who are engaged in agricultural activities and have a special contribution regime.
  - **Other types of self-employed**

<sup>373</sup>

<http://www.seg-social.es/wps/portal/wss/internet/EstadisticasPresupuestosEstudios/Estadisticas/EST8/EST10/EST305/EST309>

<sup>374</sup>

[https://www.agenciatributaria.es/AEAT.internet/Inicio/Ayuda/Manuales\\_Folletos\\_y\\_Videos/Manuales\\_practicos/Ayuda\\_Folletos/Actividades\\_economicas/2\\_Impuesto\\_sobre\\_Actividades\\_Economicas/2\\_1\\_Modelos/2\\_1\\_3\\_Clasificacion\\_de\\_las\\_actividades/2\\_1\\_3\\_Clasificacion\\_de\\_las\\_actividades.html](https://www.agenciatributaria.es/AEAT.internet/Inicio/Ayuda/Manuales_Folletos_y_Videos/Manuales_practicos/Ayuda_Folletos/Actividades_economicas/2_Impuesto_sobre_Actividades_Economicas/2_1_Modelos/2_1_3_Clasificacion_de_las_actividades/2_1_3_Clasificacion_de_las_actividades.html)

- **Self-employed collaborators:** these are the self-employed person's spouse or other family members up to the second degree of consanguinity who work in the business on a regular basis.
  - **Members of cooperatives:** these are workers, members of cooperatives, who decide to pay contributions under the special scheme for self-employed workers.
  - Joint owners or members of communities of property and irregular civil societies.
  - Industrial partners of partnerships and limited partnerships.
- If we look at age, the **self-employed have an increasingly ageing population**. Almost one in every two self-employed persons is aged between 40 and 54, and over 25% is over 55. Over 70% of all self-employed persons are over 40 years old, compared with only 2% who are under 25 years old. Self-employed workers over-50s tend to have a low level of educational attainment and employed in traditional sectors such as agriculture, wholesale and retail trade, transport and accommodation.<sup>375</sup>
  - According to interviewee, before the 2008 economic crisis the main reason to become self-employed in Spain was mainly due to family tradition. The weight of the family and family business in Spain is still quite visible. It is quite common is your parents have a business are self-employed that their children continue till the business disappears (e.g., due to depopulation in rural areas). After 2008, the reasons why someone decided to become self-employed in Spain are more varied and three new profiles have emerged.

1. **Self-employed people who became self-employed during the crisis.** Many workers lost their jobs and became self-employed during this time, so they could continue working or have a supplementary income. Many of these new self-employed were women, many of which remained self-employed today. Women are under-represented in the self-employed, but during the crisis many "came to the rescue" and started to become entrepreneurs. Having autonomy and flexibility in work was very attractive for women during the crisis. Many women were pushed out of paid work and had to look for alternatives. According to interviewees, they found a way of professional conciliation and greater equality as they put in their hourly wage.
2. Another profile is that of the **self-employed over 45 years of age**. They were also expelled from salaried work and the only way to get a pension in the last years of their professional career was to become self-employed. They are having problems with the following profile of self-employed.
3. **Digital and start-up entrepreneurs going into new strategic sectors.** This type of self-employed is very common now in Spain and it will become more common in the future. According to interviewees, there are many self-employed people with many years of managerial experience that do not know how to handle new technologies. And they need to compete with the new digital entrepreneurs which is becoming quite problematic.

First reason was family tradition, then necessity, and then by choice.

- **Vulnerable self-employed workers.** All self-employed workers in Spain are covered by the Spanish social protection system. According to interviewees compared to the rest of Europe, self-employees have equal nominal social coverage as employees. The main problem lies on **effective coverage**, because of the freedom self-employed workers have when they choose to pay their contribution to the social security. Around 90%, choose to pay contributions at the minimum rate. Minimum bases result in lower benefits, given the principle of contributory

<sup>375</sup>

<https://www.bde.es/f/webbde/SES/Secciones/Publicaciones/InformesBoletinesRevistas/ArticulosAnaliticos/19/T2/descargar/Files/be1902-art20e.pdf>

proportionality on which social security is based. A self-employed person has a lot of uncertainty about how long he/she is going to work month by month - and yet his/her contribution has to be monthly. Self-employed contribute as little as possible as they fear not being able to pay social security; this affects directly to their protection. The self-employed pay both employers and employee's taxes.

- **Fake self-employed workers in Spain.** There are many self-employed workers in Spain that have been forced to self-employment and do not decide on when they work or for whom they work. According to Spanish Office for statistics, around 145,000 fake self-employed workers were active in Spain in 2019<sup>376</sup>. These cases are detected by carrying out inspections. Many companies in Spain hire self-employed workers to avoid paying social security contribution. Fake self-employment has been reduced in Spain since the legal figure of TRADE was created – see below.
- The number of platform self-employed workers in Spain is estimated to be around **14,000 to 20,000** based on some data shared by platforms (like Glovo, Uber and Deliveroo) with some of the interviewees. However, a report suggests that “Spain has the highest volume of people in Europe working via online platforms, with **around 2.6%** of the working population for whom digital platform work is their main form of employment. However, broadening the focus to include all those who participate sporadically in platform work, the figure rises to 18%.<sup>377</sup>
- Of the 145,819 people working in the **creative sectors**, 82.5% work in the General Social Security Scheme, while the remaining 17.5% are self-employed.<sup>378</sup>

### Collective bargaining framework

- Self-employed workers in Spain are not covered by collective agreements for employees, as provided for under Title III of the Workers’ Statute (Ley del Estatuto de los Trabajadores). However, legislation introduced in 2007 covering autonomous work introduces a form of agreement (known as an AIP in Spanish) that can be used to regulate the terms and conditions of some self-employed workers. This legislation, the Statute for Autonomous Work (Ley 20/2007, del Estatuto del trabajo autónomo) was adopted following pressure from organisations representing the self-employed<sup>379</sup> (organisations interviewed), of which there are a number in Spain. The new law was, as the preamble to the legislation describes it, “**the first example of systematic and unitary regulation of autonomous work in the European Union**”<sup>380</sup>, and as well as providing for a system of agreements for some self-employed, it also covered a range of other topics, including setting up a council of autonomous work (Consejo de Trabajo Autónomo).
- **TRADE figure:** A key element of the legislation is that it identifies a particular group of self-employed workers as being “economically dependent”. In order to be in this category (trabajador autónomo económicamente dependiente – TRADE in Spanish), the worker must do most of his or her business with a single client. More specifically at least 75% of the individual’s income from employment and other economic and professional activity must come from a single person or entity (Article 11). In addition to be considered economically dependent, he or she must not have any employees or subcontract part of the work with others. Other conditions include indicating that the individual must be genuinely self-employed, rather than being an employee, such as

<sup>376</sup> <https://www.ine.es/dyngs/IOE/es/operacion.htm?numinv=59003>

<sup>377</sup> <https://digitalfuturesociety.com/es/report/el-trabajo-en-plataformas-digitales-en-espana-que-sabemos/>

<sup>378</sup> [https://www.elperiodico.com/es/barcelona/20200112/industrias-creativas-empleo-barcelona-7803266#:~:text=Alto%20n%C3%BAmero%20de%20aut%C3%B3nomos.ciudad%20\(10%2C9%25\).](https://www.elperiodico.com/es/barcelona/20200112/industrias-creativas-empleo-barcelona-7803266#:~:text=Alto%20n%C3%BAmero%20de%20aut%C3%B3nomos.ciudad%20(10%2C9%25).)

<sup>379</sup> There are six organisations in Spain representing the self-employed workers: ATA, UPTA, CEAT, UATAE, OPA and CONAE. We interviewed half of them.

<sup>380</sup> [https://www.etuc.org/sites/default/files/publication/file/2018-10/Trade%20unions%20protecting%20self-employed%20workers\\_EN.pdf](https://www.etuc.org/sites/default/files/publication/file/2018-10/Trade%20unions%20protecting%20self-employed%20workers_EN.pdf)

having enough material and resources to undertake the work excluding those provided by the client, and assuming the risks of the activity.

- These economically dependent self-employed (TRADE) workers can reach their own contracts with their clients, which should be registered with the appropriate authorities (although not published). However, the legislation also permits the negotiation of so-called “**agreements of professional interest**” (acuerdos de interés profesional - **AIP**) (Article 3.2 and Article 13 of Law 20/2007 of 11 July) which are agreed between companies using economically dependent self-employed workers 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”.<sup>381</sup> According to interviewees, these AIP are limited to certain industries for example in transport and construction. APA helped developed the current API agreement that exist between BIMBO (Spanish bread company) and their delivery self-employed workers that had a status of TRADE. In this API, the minimum rest conditions were established and more.
- UPTA, the organisation representing the self-employed, which is part of the UGT union confederation, estimated that only 3,000 self-employed workers were covered by an agreement of professional interest, and that almost half of them were in the area of direct marketing. UPTA signed an agreement of professional interest (AIP) with the direct marketing company APPCO, covering around 1,000 economically dependent self-employed workers, on 27 January 2017.<sup>382</sup>
- Another issue that not many self-employed people that are economically dependent on a client register as TRADE. Only 8.111 self-employed people in 2020 had a TRADE status. This is a tiny fraction of Spain’s almost over 3 million own-account self-employed workers.
- According to interviewees collective bargaining make sense for self-employed workers that are TRADE – dependent on a client but not for the rest. The self-employment in Spain and elsewhere is very heterogeneous. The self-employed do not need collective bargaining, only those self-employed that are also employers.
- The problem in Spain lies with those self-employed who have no autonomy - false self-employed workers. These should be employees and be part of collective bargaining for their sector as employed workers.
- In Spain, extending collective agreements to an entire industry exist only for salaried employees not for self-employed.
  - Unsatisfied with the effects of decentralisation, the most representative national unions and employers’ organisations signed in 1997 the “Interco federate Agreement on Collective Bargaining”, — AINC — with the tacit goal of avoiding any negative consequences that might derive from the new collective bargaining system. Said Agreement, of obligational applicability, opts for a centralised structure, with the national-level sectoral agreement as the typical bargaining unit, where the regulation of matters reserved to said level would be exhausted, adding other ones.<sup>383</sup>
  - One of the basic features of the Spanish collective bargaining system is that it is divided into various bargaining levels. Given the way in which collective bargaining is organised in Spain, the collective agreements can be negotiated between the representatives of workers and employers either at the decentralised company level or at the more

<sup>381</sup> Ministerio de Empleo y Seguridad Social. “Trabajadores Autónomos, Personas Físicas, en alta en la Seguridad Social”, 31 December 2017, [http://www.empleo.gob.es/es/sec\\_trabajo/autonomos/economia-soc/autonomos/estadistica/2017/4trim/Publicacixn\\_diciembre\\_\\_2017.pdf](http://www.empleo.gob.es/es/sec_trabajo/autonomos/economia-soc/autonomos/estadistica/2017/4trim/Publicacixn_diciembre__2017.pdf) (Accessed 30.01.2018)

<sup>382</sup> “Sólo cuatro de cada cien trabajadores autónomos dependientes están registrados y pueden ejercer sus derechos”, El Autónomo Digital, 11 April 2017, <http://www.elautonomodigital.es/solo-4-autonomos-dependientes-registrados/> (Accessed 30.01.2018)

<sup>383</sup> [https://www.mites.gob.es/ficheros/ministerio/sec\\_trabajo/ccncc/B\\_Actuaciones/Estudios/CollectiveBargainingInEurope.pdf](https://www.mites.gob.es/ficheros/ministerio/sec_trabajo/ccncc/B_Actuaciones/Estudios/CollectiveBargainingInEurope.pdf)

centralised industry level at its different geographical levels: local, provincial, regional or national.

- In Spain 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.
- In industries such as agriculture, construction, trade and hotels & restaurants, it is the majority bargaining level, being much more important than at aggregate level. However, national industry agreements predominate in the financial services industry and have above-average importance in industries such as manufacturing, business services and other services. Finally, company-level bargaining is practically all there is in the energy industry and of great importance in the extractive and transport industries.<sup>384</sup>

## Legal framework

*Main relevant legislative provisions: Employment Relationships Act, Art. 213; Law 20/2007 of 11 July; 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*

The collective agreement is defined in Title III of the **Workers' Statute** Collective bargaining and Collective agreements, as an instrument to regulate the workplace, since the representatives of both employees and employers negotiate the rights and duties contained in the agreement.

There are several types of collective agreements:

- Sectoral collective agreement that regulates a specific economic sector or branch of activity and is applicable nationally or in a particular autonomous community.
- Company or consortium of companies' collective agreement: in order to respond to specific organisation or productivity needs.

Although, article 85 of the Workers' Statute sets minimum requirements of the collective agreement, the representatives will have the autonomy **to extend the scope of the agreement**.

Spain's **Self-Employed Workers' Statute** came into force into July 2007.<sup>385</sup> One of the law's most original features is that it introduces a new source of contractual obligations between the client company and economically dependent self-employed workers, namely, "professional interest agreements", a form of collective agreement specially designed for these workers. Article 3 of the Statute lists such agreements among the sources underpinning their occupational status, while article 13 establishes a basic legal regime that can be summed up as follows:

1. The applicability of the agreements is restricted to economically dependent self-employed workers who belong to the trade unions or professional organizations having signed the agreements and who have expressly accepted their terms.
2. Once these requirements are fulfilled, there can be no opt-out from any part of the agreement; any clause of an individual contract at variance with a provision of the agreement is null and void.
3. The content of the agreements is outlined in article 13(1): "they can establish the terms – mode, time and place – on which specified work is to be performed, as well as other general conditions of the contract". But the scope of these agreements does not match that of collective

<sup>384</sup>

<https://www.bde.es/f/webbde/SES/Secciones/Publicaciones/PublicacionesSeriadas/DocumentosOcasionales/03/Fic/do0302e.pdf>

<sup>385</sup> Law No. 20/2007, Official Gazette, No. 166, 12 July 2007, pp. 29964–29978. Also available at <http://www.boe.es/boe/dias/2007/07/12/pdfs/A29964-29978.pdf>

agreements as defined in the Workers' Statute, which go considerably beyond the mere regulation of working conditions.<sup>386</sup>

No interactions between the self-employed workers statute and Spanish competition law beyond the misused of the TRADE status. In Spain false self-employment is a symptom of the precariousness of work, consisting of the use of the TRADE (economically dependent self-employed worker) modality to avoid the contract of employment as an employee under the Workers' Statute. This phenomenon is not exclusive to the traditional economy but is a frequent and controversial element in the new "collaborative economy", through the offer of delivery and transport services via mobile apps. **The need to find the lowest price on the market has led to attempts to avoid labour legislation in order to reduce costs: the company avoids labour contributions, no 30 days/year holidays, no maternity or disability leave, no obligation to pay the Minimum Interprofessional Wage...**, while the workers provide part of the work tools and pay the self-employed contribution, they are obliged to declare VAT and personal income tax every quarter, without receiving the risk or the benefits of the business.

Most recently, 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.

## Labour market trends and other factors

### Platform work

The Spanish Ministry of Labour and Social economy reached an agreement with trade unions and employers at the last meeting of the social dialogue on a new law regarding work taking place through digital platform. Delivery drivers on digital platforms will be considered, by default, salaried workers and companies will be obliged to demonstrate, in a reasoned manner and in each case, that they can legally operate as self-employed.<sup>387</sup> The meeting ended without a finalised text and without unanimous agreement between all parties. The social partners are waiting for the final draft to be sent to them before deciding whether to give their approval to the bill. Interviewees highlighted that there are not very happy with the proposed bill, as there are many flexible time workers like students that will be heavily affected. Moreover, they are worried that other industries might want to do the same taking away the right of many workers to choose how much and when they work.

Additionally, interviewees highlighted that platform work is very popular in the media – and its in the public eye. However, the amount of growth in false self-employment is limited in this sector when compared to false self-employment in sectors like construction and transport.

### Social rights

According to interviewees there are three social "nominal rights" that self-employed people are missing at this stage:

1. There is no such thing as part-time self-employment - the self-employed do not necessarily have a working day. One of the attractions and slavery of self-employment. That is why there is no partial retirement is available to self-employed workers.
2. Self-employed persons cannot go into early retirement - before the age of 61,
3. Severance pay/sick pay; it is comparable to that of an employee. But it is a long way from being recognised. In order to prove that the cessation of activity was involuntary, you have to prove a lot of things and the criteria are very strict. Despite being paying unemployment contributions, unemployment is often denied.

However, interviewees highlighted that have certain benefits that paid workers do not have.

1. Self-employed workers have sick leave from day 4 while employees have sick leave from day 16 (from 4 to 16 it is covered by the company).

<sup>386</sup> [https://www.ilo.org/wcmsp5/groups/public/@ed\\_dialogue/@actrav/documents/meetingdocument/wcms\\_161302.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@actrav/documents/meetingdocument/wcms_161302.pdf)

<sup>387</sup> <https://www.adigital.org/media/propuesta-regulatoria-plataformas-digitales.pdf>

2. Help for reincorporation after maternity leave (does not exist for salaried workers) - maternity is the same for the self-employed, but of course with breastfeeding there are some problems with the accreditation of this time to self-employed mums.

### **Debate regarding false self-employment**

The debate of false employment has been going on for while in ES. The practice of false self-employment is not a product of the Covid crisis. Their use spread in years of relative prosperity, to cut costs and help companies compete in the euro area and in a globalised world. But, the high costs associated with hiring workers have simply been passed on to the weaker and less able to bear them, the worker.

The blame, however, does not lie solely with companies. The taxation imposed by the Spanish state on individuals, SMEs and the self-employed in Spain is high. For example, the self-employed quota paid in Spain, whether false or real, is the highest in neighbouring countries. In Italy, France, Portugal and the United Kingdom, the self-employed are taxed according to their earnings, without a fixed quota; and in Germany the quota is lower (140 euros) and applies only if they earn more than 1,700 euros.<sup>388</sup>

In a country where unemployment tends to be quite high, part of the solution should be to reduce tax burdens on labour. How can these burdens be reduced? It would require more efficient public spending, and a more rational tax system, with more taxation on other activities and less on labour. This would help companies to hire at lower cost, and perhaps reduce the pressure to seek formulas such as false self-employment. To help young people in particular, the state would have to subsidise their hiring to facilitate their entry into the labour market, so that they can start an economic life on which the whole country depends. The fall in unemployment would probably compensate for the fall in income by increasing revenue from increased activity

### **Conclusions**

Self-employed workers in Spain are not covered by collective agreements for employees, however self-employers in Spain are well protected under Spanish national law and interviewees do not see the need to strengthen collective bargaining in Spain. The organisation representing self-employed people in Spain are quite vocal and have strong ties with national government and involved in EU policy making process – thus they have worked hard to ensure self-employed have very similar rights to those that are salaried employees. The Statute for Autonomous Work (Ley 20/2007, del Estatuto del trabajo autónomo) was adopted following pressure from organisations representing the self-employed. The law provides for a system of agreements for some self-employed, it also covered a range of other topics, including setting up a council of autonomous work (Consejo de Trabajo Autónomo).

There are still changes to be done and things to improve in Spain. Some aspects that should be considered for national and EU policy making actors include:

1. The need for the EC to help member states in the digital transformation and in the future of work. Help them to overcome the clichés and structures of the post-industrial era of the labour market.
2. Atypical forms of work are on the rise and policy makers need to work together on how to define work and how people should contribute to social security. At the moment it is all about time and place of work, and this needs to be changed to accommodate the new labour market.

### **Interviews**

<b>Name of interviewee</b>	<b>Organisation</b>
1. Celia Ferrero	ATA
2. Cesar Garcia	UPTA
3. María José Landaburu	UATAE

<sup>388</sup> [https://www.abc.es/economia/abci-urge-acabar-falsos-autonomos-202010050159\\_noticia.html](https://www.abc.es/economia/abci-urge-acabar-falsos-autonomos-202010050159_noticia.html)

# Finland

## Background information

According to Statistics Finland 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.<sup>389</sup> This is somewhat less than the 14% share of self-employed persons in the EU<sup>390</sup>, however it should be noted that there might be national variations in the definition of self-employed.

In Finland, the national law only recognises employees and entrepreneurs, but in public discussion the concept of *itsensätyöllistäjä* (lit. “self-employed”) is increasingly used to cover sole entrepreneurs (a person who works alone in either a limited liability company, public limited company, limited partnership or cooperative), professional practitioners with a trade name, freelance workers (a person who does not belong into any of the above categories, working e.g. on a freelancer’s tax card and usually has multiple simultaneous clients), and persons working on a grant.<sup>391</sup> Individuals self-employed in agriculture, forestry and fishing are usually not considered as a part of this group. Public discussion also acknowledges the concept of “light entrepreneur”; a person who uses a billing service which handles the invoicing of work and statutory obligations, serving as a bureaucratic service between the employee and the provider. Light entrepreneurs often fall under the category of a freelancer and may also work as employees.<sup>392</sup>

According to a 2017 report by the Ministry of Economic Affairs and Employment on self-employment and sharing economy<sup>393</sup>, the self-employed in Finland can be roughly divided into three categories. These are:

- Men aged 40-50 with a secondary education who work as sole entrepreneurs.
- Middle-aged men and women with a secondary education who work as professional practitioners; and
- Highly educated younger men and women working as either freelancers or professional practitioners.

There has been an increase in self-employment especially among construction workers, journalists and artists, but in general the occupational structure is very heterogenous (this was also confirmed by the interviewees for this study). The largest occupational groups according to the report are construction workers, service workers especially in the field of beauty care, legal experts and social and cultural experts.

The report notes that a previous study (Pärnänen & Sutela, 2014) has found roughly 40% of self-employed people in Finland to be self-employed by choice. Another 40% have ended up as self-employed by chance. The remaining 20% would prefer to do the same job as a wage-earning employee.

According to the Ministry of Economic Affairs and Employment report, sole entrepreneurs and practitioners are generally satisfied with their form of work, while one third of freelancers and a half of grant recipients express dissatisfaction. According to the report, the current legislation sets several

<sup>389</sup> 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](http://www.stat.fi/til/tyti/2019/13/tyti_2019_13_2020-05-07_kat_002_en.html)

<sup>390</sup> Eurostat (2019). Self-employed persons. Available at: <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/EDN-20190430-1>.

<sup>391</sup> Pärnänen, A. & Sutela, H. (2014) *Itsensätyöllistäjät Suomessa 2013*. Statistics Finland. [http://www.stat.fi/tup/julkaisut/tiedostot/julkaisuluettelo/yits\\_201400\\_2014\\_12305\\_net.pdf](http://www.stat.fi/tup/julkaisut/tiedostot/julkaisuluettelo/yits_201400_2014_12305_net.pdf)

<sup>392</sup> Koramo, M., Keinänen, J., Oosi, O. and Wennberg, M. (2017). *Itsensätyöllistäminen ja jakamistalous työelämän murroksessa. Työ- ja elinkeinoministeriön julkaisuja 13/2017*. <https://julkaisut.valtioneuvosto.fi/handle/10024/79272>.

<sup>393</sup> Koramo, M., Keinänen, J., Oosi, O. and Wennberg, M. (2017). *Itsensätyöllistäminen ja jakamistalous työelämän murroksessa. Työ- ja elinkeinoministeriön julkaisuja 13/2017*. <https://julkaisut.valtioneuvosto.fi/handle/10024/79272>.

challenges for the self-employed, particularly in terms of poor unemployment security. Earnings can also often be low for the self-employed, affecting pension security and the possibility to pay pension insurance premiums. The report considers the fact that self-employed workers do not have the opportunity to negotiate the price of their work the same way as employees do due to competition law to be particularly relevant for the self-employed who are considered entrepreneurs and who have a few clients in sectors that are highly competitive (see section 3). The cultural and creative industries are mentioned as examples of this.

According to a 2017 report by the Ministry of Education and Culture on the role of the creative sectors in the national employment<sup>394</sup>, “forced” self-employment is relatively common among cultural professionals and artisans, due to the limited labour market in these sectors. In addition, the client is often in the position to determine the legal form the employment will take. In the culture sector, only 52% of the self-employed are sole entrepreneurs, while in other sectors the average is 73%. The self-employed on the culture and artisanal sectors instead tend to more commonly work as freelancers than on other sectors. However, the report also acknowledges that the creative industries can create opportunities for profitable business and new employment. For example, in the fast-growing gaming industry, having an employment contract is common.

The representatives of businesses and entrepreneurs interviewed for this study noted that according to their view, the issues related to social security are best addressed through adapting and clarifying the legislation and rules on social security. On the other hand, issues such as bigger client companies dictating contract terms and disrespecting payment times are not unique to the self-employed and should thus be addressed in company law. The trade union representatives and representatives of exclusively self-employed professions, who were in favour of collective bargaining, considered that the sectoral issues are too diverse for this to be a feasible solution.

The number of people who are self-employed through the platform economy is still limited in Finland, also in comparison to other European countries<sup>395</sup>. A 2018 JRC study<sup>396</sup> found that 6% of the Finnish adult population have ever gained income via online platforms (compared to estimated 10% in the EU), while according to Statistics Finland in 2017 0,3% of the Finnish population (between 15 and 74 years of age) had earned at least 25% of their income through platforms over the past 12 months<sup>397</sup>. The interviewees also highlighted the difficulty of defining the concept of a platform worker. While the status of food couriers has recently been in the focus of public discussion, there are also self-employed people who for example use marketing platforms to connect with clients, without the dependency problem associated with the food couriers.

According to the Ministry of Economic Affairs and Employment 2017 report, the long distances and sparse habitation in Finland are seen as limiting factors for the platform economy, with the potential market mainly in the bigger cities of Southern Finland. It should also be noted that not everyone employed in the platform economy is self-employed, as some may also be employed by the platform. In the survey conducted as a part of the study, respondents stated that they mainly use social media and some sector-specific platforms to acquire work. The report does however acknowledge that the platform economy may have increased a new type of self-employment that does not appear in the statistics.

<sup>394</sup> Opetus- ja kulttuuriministeriö (2017). Luova talous ja aineettoman arvon luominen kasvun kärjiksi. Luovat alat Suomen talouden ja työllisyyden vahvistajina -työryhmän raportti. Opetus- ja kulttuuriministeriön julkaisuja 2017:18. <https://julkaisut.valtioneuvosto.fi/handle/10024/79725>.

<sup>395</sup> Pesole, A., Urzì Brancati, M.C, Fernández-Macías, E., Biagi, F., González Vázquez, I., Platform Workers in Europe, EUR 29275 EN, Publications Office of the European Union, Luxembourg, 2018, ISBN 978-92-79-87996-8, doi:10.2760/742789, JRC112157. [https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157\\_pubsy\\_platform\\_workers\\_in\\_europe\\_science\\_f\\_or\\_policy.pdf](https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157_pubsy_platform_workers_in_europe_science_f_or_policy.pdf). Also confirmed by interviewees.

<sup>396</sup> Pesole, A., Urzì Brancati, M.C, Fernández-Macías, E., Biagi, F., González Vázquez, I., Platform Workers in Europe, EUR 29275 EN, Publications Office of the European Union, Luxembourg, 2018, ISBN 978-92-79-87996-8, doi:10.2760/742789, JRC112157. [https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157\\_pubsy\\_platform\\_workers\\_in\\_europe\\_science\\_f\\_or\\_policy.pdf](https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157_pubsy_platform_workers_in_europe_science_f_or_policy.pdf).

<sup>397</sup> Suomen virallinen tilasto (SVT): Työvoimatutkimus [verkkojulkaisu]. ISSN=1798-7830. Alustatalous 2017. Helsinki: Tilastokeskus [viitattu: 12.1.2021]. Saantitapa: [http://www.stat.fi/til/tyti/2017/14/tyti\\_2017\\_14\\_2018-04-17\\_tie\\_001\\_fi.html](http://www.stat.fi/til/tyti/2017/14/tyti_2017_14_2018-04-17_tie_001_fi.html)

## Collective bargaining framework

Both employers and employees in Finland are historically strongly organised, and collective bargaining plays a central role in the country. Unions and employers have also played a direct role in shaping of public policy since the 1960s, with the social partners involved in formal consultation about key policy decisions.<sup>398</sup>

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.<sup>399</sup>

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.

Self-employed people are however considered entrepreneurs in the legislation (see section 3), so they fall outside the scope of collective agreements. Collective agreements on e.g. the minimum wage thus do not apply to contractual relations between self-employed people and their clients. On the other hand, cartel provisions in competition law prohibit agreements between entrepreneurs on pricing.<sup>400</sup>

Due to the general applicability, the national level of collective wage bargaining coverage is relatively high. In 2017, collective agreements covered 65.2% of the employees in the private sector (66.2% in 2014), due to their employment in organised companies. As a result of the general applicability, the total share of private sector employees covered by the agreements was 83.8 %. As all public sector employees are covered by collective agreements, in total 88.8 % of the employees in Finland were covered by collective agreements in 2017 (in 2014 this total share was 91.9% and in 2008, 87.5%).<sup>401</sup> It should again be noted that as the self-employed are not considered employees in the Finnish legislation, they are not included in these numbers.

Figure Error! **No text of specified style in document.**-22 below provides sectoral details of the collective agreement coverage, as calculated in Ahtiainen, 2019 (Publications of the Ministry of Economic Affairs and Employment 2019:62).

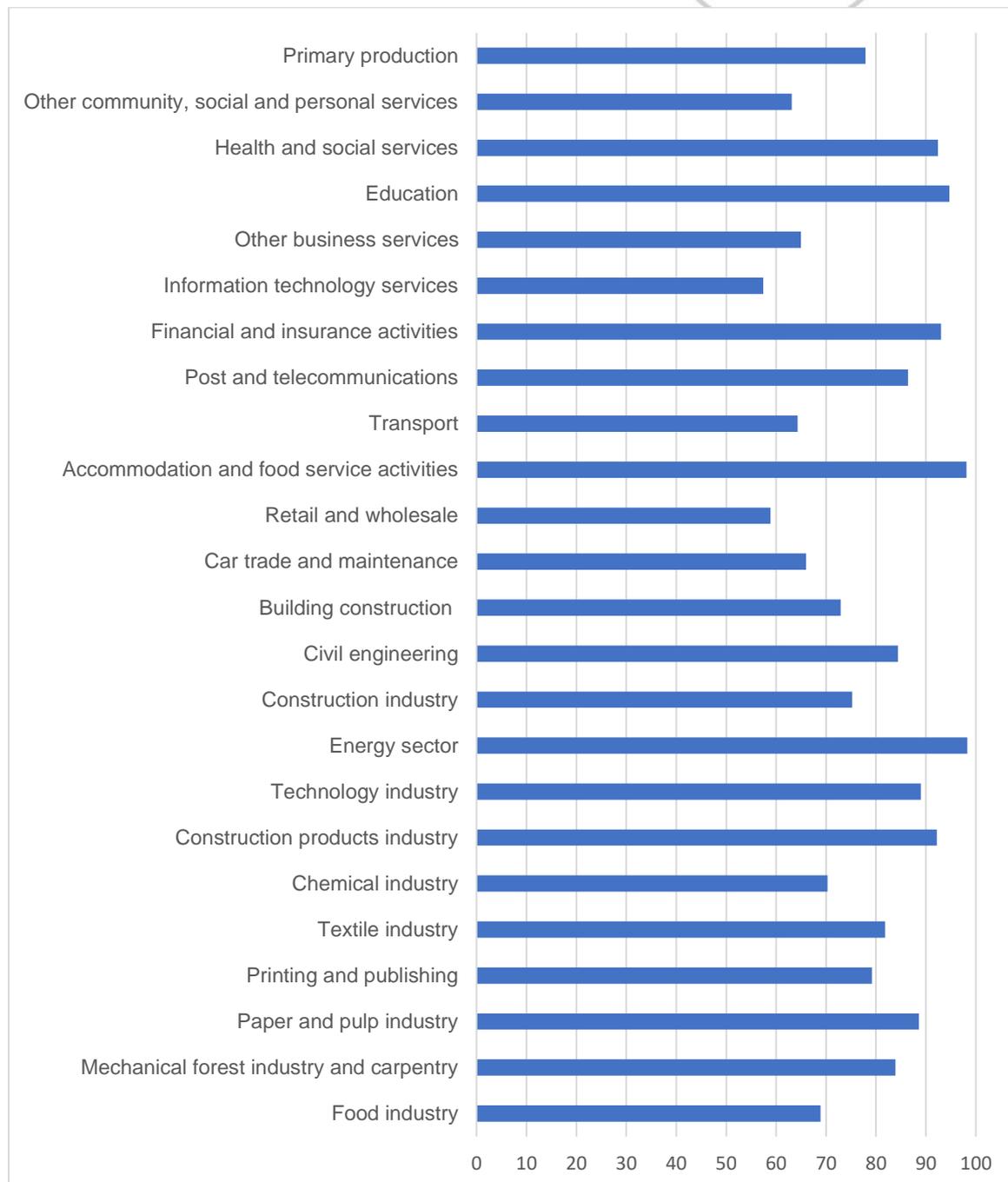
<sup>398</sup> Logue, J. (2019). Trade unions in the Nordic countries. Nordics.Info. <https://nordics.info/show/artikel/trade-unions-in-the-nordic-region/>; Eurofound (2020). Living and working in Finland. <https://www.eurofound.europa.eu/de/country/finland#collective-bargaining>

<sup>399</sup> Eurofound (2020). Living and working in Finland. <https://www.eurofound.europa.eu/de/country/finland#collective-bargaining>

<sup>400</sup> STTK (2015) Itsensätöyölistäjät. [https://www.sttk.fi/wp-content/uploads/sites/2/2015/05/STTK\\_Itsensatyoyolistajat\\_2015.pdf](https://www.sttk.fi/wp-content/uploads/sites/2/2015/05/STTK_Itsensatyoyolistajat_2015.pdf)

<sup>401</sup> Ahtiainen, Lasse (2019). Coverage of collective agreements in 2017/2018. Publications of the Ministry of Economic Affairs and Employment, TEM reports 2019:62. <https://tem.fi/julkaisu?pubid=URN:ISBN:978-952-327-474-7>; Ahtiainen, Lasse (2016). Työehtosopimusten kattavuus vuonna 2014. <http://urn.fi/URN:ISBN:978-952-327-091-6>

Figure Error! No text of specified style in document.-22 Sectoral coverage of collective agreements 2017/2018 (%)



Source: Ahtiainen, Lasse (2019). Työehtosopimusten kattavuus vuosina 2017/2018. Työ- ja elinkeinoministeriön julkaisu. <https://tem.fi/julkaisu?pubid=URN:ISBN:978-952-327-474-7>

As pointed out by the interviewees, the legal framework means that the collective agreements cannot be extended to cover individuals who are not considered employees (see section 3) without a change to the law.

There are three central organisations of trade unions in Finland:

- **The Central Organisation of Finnish Trade Unions (SAK)**<sup>402</sup>, whose members include e.g., the Construction Trade Union, Finnish Musicians' Union, General Union of Journalists, Finnish Social Democratic Journalists' Union, Trade Union for Theatre and Media, Finnish Electrical Workers' Union, Finnish Seamen's Union, Finnish Transport Workers' Union, Industrial Union and Service Union United. The member organisations have a total of over one million members, approximately 20% of the country's population.
- **The Finnish Confederation of Professionals (STTK)**<sup>403</sup>, representing salaried employees with a membership of 650,000. Its member organisations include e.g. the Federation of Special Service and Clerical Employees, the Association of Finnish Construction Engineers and Architects, and the Union of Finnish Foresters.
- **The Confederation of Unions for Professional and Managerial Staff in Finland (Akava)**<sup>404</sup>, representing employees with university-level, professional or other high-level training. With a membership of 609,000, its member organisations include e.g. the Academic Engineers and Architects in Finland (TEK), Finnish Association of Architects, Association of Finnish Lawyers and the Finnish Union of University Researchers and Teachers.

Many Finnish labour unions welcome self-employed members, and an existing employee member who switches to entrepreneurship can remain a member of a union and its unemployment fund usually for 18 months. After that, the possibility of a continued union membership depends on the union, but the entrepreneur can no longer remain a member of the employees' unemployment fund. A study commissioned by the national broadcasting company YLE in 2016 indicated that the fragmentation of the work life and increase of self-employment may be reducing the interest of young adults to join unions.<sup>405</sup>

Employee membership in trade unions has indeed decreased somewhat in recent years. In 2017, just over half of men and two thirds of women were members of a trade union, which is a decrease of five percentage points since 2013. Membership is more common in industry and the public sector than in the private service sectors.<sup>406</sup> Figure Error! No text of specified style in document.-23 below illustrates the development of union membership between 2002 and 2019.

<sup>402</sup> <https://www.sak.fi/en>

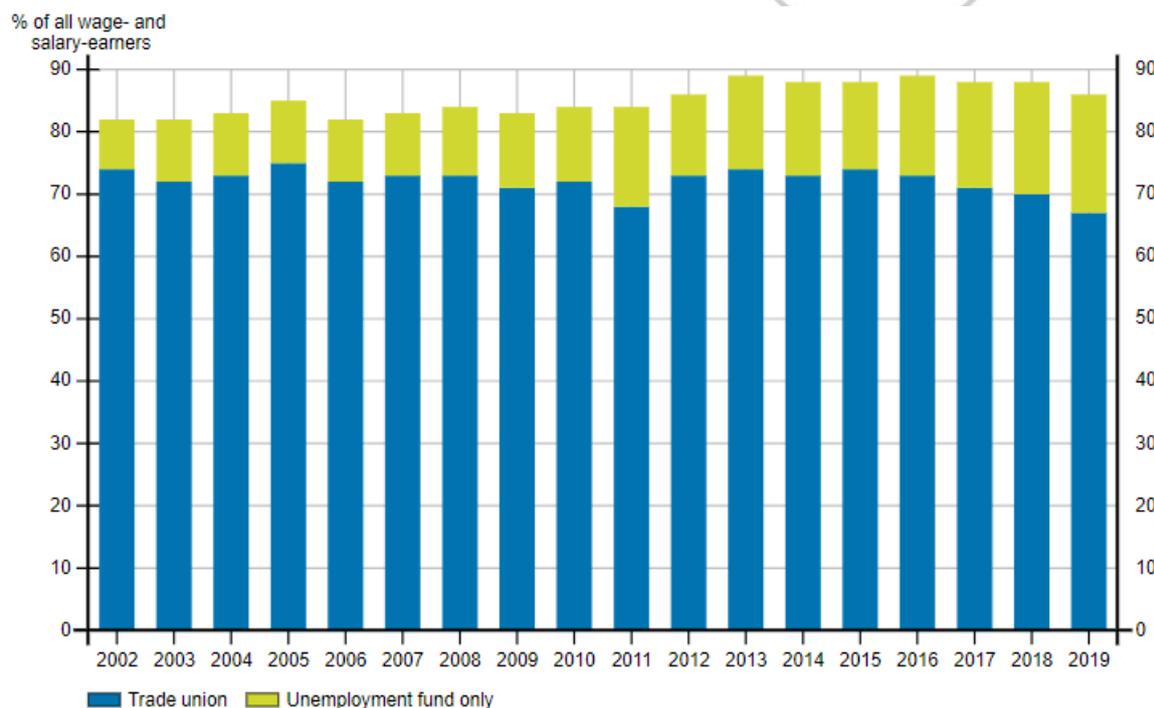
<sup>403</sup> <https://www.sttk.fi/en/>

<sup>404</sup> <https://akava.fi/en/frontpage/>

<sup>405</sup> YLE (2016). Ylen kysely: Nuorten into liittyä ammattiliittoon hiipuu. <https://yle.fi/uutiset/3-903655>; Tarvas, T. (2015). Yrittäjä joutuu yleensä luopumaan liitosta. Aikamerkki. <https://aikamerkki.org/yrittaja-joutuu-yleensa-luopumaan-liitosta/>

<sup>406</sup> Ahtiainen, L. (2019). Palkansaajien järjestäytyminen vuonna 2017. Työ- ja elinkeinoministeriön julkaisuja 2019:10. <https://julkaisut.valtioneuvosto.fi/handle/10024/161433>.

Figure **Error! No text of specified style in document.**-23 Membership in trade unions and unemployment funds 2002-2019



Source: Findicator (2020). Membership in employee organisations. <https://findikaattori.fi/en/36>, accessed 17/03/2021.

According to Eurofound<sup>407</sup>, “A collective agreement called ‘Yhtyneet’ seems to be the closest to collective agreements of self-employed workers”. ‘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. Hence, it is not a collective agreement in a strict sense.

## Legal framework

*Main relevant legislative provisions: The Finnish Competition Act (948/2011)*

The Finnish law provides a definition for an employment contract, which is used to determine whether a person is an employee or an entrepreneur. According to the Employment Contracts Act Section 1:

*“This Act applies to contracts (employment contracts) entered into by an employee, or jointly by several employees as a team, agreeing personally to perform work for an employer under the employer’s direction and supervision in return for pay or some other remuneration.”<sup>408</sup>*

Thus, a person who has entered such contract is to be considered an employee. It should however be noted that there is no legal requirement for the employment contract to be in writing or oral but can also

<sup>407</sup> Ibid.

<sup>408</sup> Employment Contracts Act 55/2011. English translation not legally binding. <https://www.finlex.fi/en/laki/kaannokset/2001/20010055>

in some cases arise implicitly. In borderline cases, examination of the apparent position in which the employee or self-employed person performs their work might be applied, i.e. whether the person is under the employer's control.<sup>409</sup>

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 framework of EU competition law”<sup>410</sup>. The self-employed are generally considered entrepreneurs in labour law, so they fall outside the scope of collective agreements.

There is no legal definition for a self-employed worker, and as they have not entered an employment contract, the self-employed are considered entrepreneurs in the Finnish legislation and thus are not in the scope of collective bargaining. In the early 1990s, the Finnish Competition and Consumer Authority prohibited the price recommendations by lawyers and architects.<sup>411</sup> More recently, in the context of a dispute over the working conditions of audio-visual translators in 2019, the National Conciliator noted that a change in legal framework, including EU competition law, would be required for collective bargaining to cover the self-employed.<sup>412</sup> The interviewees confirmed that the common consensus in Finland is that due to EU legislation it is not possible to extend the collective bargaining right to the self-employed.

### Labour market trends and other factors

Finland has a broad residence-based social security, which covers also the self-employed. Employment-based social security includes earnings-related unemployment allowance, retirement and old-age pensions, accident insurance and security against disability and illnesses.<sup>413</sup>

The lack of specific considerations in law for the self-employed sets challenges particularly when there is not enough work or income, as a person considered an entrepreneur is not entitled to unemployment benefits. The benefit can be obtained from the unemployment insurance fund for entrepreneurs, but this requires a certain level of pension insurance income per year, which, as discussed above, can be problematic for those with lower income.<sup>414</sup>

The entrepreneur's statutory social security is based on the entrepreneur's statutory pension insurance (YEL). The insurance defines income from work, which in theory corresponds to how much should be paid to an external who would do the same job as the entrepreneur does. It is therefore not tied to the company turnover. This defined income affects the amount of the contribution and the benefits consequently available (such as pension, earnings-related unemployment benefit, parental benefit).

<sup>409</sup> Minilex (n.d.). Ketä pidetään työntekijänä? <https://www.minilex.fi/a/ket%C3%A4-pidet%C3%A4%C3%A4n-ty%C3%B6ntekij%C3%A4n%C3%A4>

<sup>410</sup> 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

<sup>411</sup> OECD (2019). Competition Issues in Labour Markets – Note by Finland. Available at: [https://one.oecd.org/document/DAF/COMP/WD\(2019\)38/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2019)38/en/pdf)

<sup>412</sup> The Union of Journalists in Finland (2019), UJF and Akava Special Branches approve conciliation deal on AV translation companies. Available at: <https://journalistiliitto.fi/en/ujf-and-akava-special-branches-approve-conciliation-deal-on-av-translation-companies/>

<sup>413</sup> Expat Finland. (n.d.) Finnish Social Security. [https://www.expats-finland.com/living\\_in\\_finland/social\\_security.html](https://www.expats-finland.com/living_in_finland/social_security.html)

<sup>414</sup> Jonker-Hoffrén, P. (2019). Itsensätöylyttäminen haastaa käsityksemme työmarkkinoista. Ilmiö. <https://ilmiömedia.fi/artikkelit/itsensatyoylyttaaminen-haastaa-kasityksemme-tyomarkkinoista/>

The higher an entrepreneur declares their YEL income, the higher insurance premium they pay, but correspondingly, when the social risk materialises, the compensation is higher. Entrepreneurs seem to assess their earnings as rather low quite systematically, which means lower insurance premiums, but when a risk materialises, the social security available is also lower.<sup>415</sup>

Identified problems for the self-employed include poor knowledge of the practicalities of the available social security and the perceived high level of YEL pension insurance contribution, but also the low predictability of unemployment security, especially when there is a need to assess whether entrepreneurship is to be considered primary/full-time or secondary/part-time employment. Another problem is the lack of occupational health care.<sup>416</sup> The interviewees representing the self-employed also emphasised the relatively weak and unfair position of the self-employed against their usually larger clients when negotiating the conditions on e.g., remuneration and copyright. One of the interviewees also referred to the feedback submitted by the Association of Freelance journalists in Finland to the Commission initiative<sup>417</sup>, which points out that due to this lack of bargaining power to negotiate the terms and conditions, the freelance journalists in Finland only make half of the income of employed journalists.

The self-employed who responded to the survey for the 2017 Ministry of Economic Affairs and Employment report echoed the above concerns, highlighting social and unemployment security as the main area for development. The key aspects were the level of social security available and enabling unemployment security for a wider range of self-employed people. The entrepreneur's statutory pension insurance was also considered to need more flexibility and reasonability, as it is currently designed primarily with larger enterprises in mind. Other common requests included better occupational healthcare, and more understanding and less bureaucracy from employment agencies, e.g. to avoid inactivity traps.

According to the report, there has also been “a lively debate” about to what extent self-employed workers are only ostensibly entrepreneurs in a situation where they have only one customer. The customer relationship combined with limited opportunities to negotiate the price of one's own work has an impact on the financial situation of the self-employed.

The role of the “ostensible entrepreneur” (*näennäisyrittäjä*), i.e., a person who is technically self-employed but is essentially dependent on their sole client, is indeed discussed. For example, the Union of Journalists in Finland has called for an amendment of legislation, to ensure that the definitions of employee and entrepreneur are unambiguous. The Union argues that companies in different sectors cut their own costs by pushing their former employees into false self-employment, thus endangering their livelihood.<sup>418</sup> The Confederation of Unions for Professional and Managerial Staff in Finland has argued that according to a preliminary ruling from the European Court of Justice (C-413/13 FNV), self-employed workers who work in a dependent relationship with their client should be considered as employees. Thus, when such self-employed workers belong to a trade union organization party to a collective agreement, the definition of the minimum terms of their employment by the collective agreement is the result of a social dialogue and falls outside the scope of competition law.<sup>419</sup>

The Government Programme for the current Government of Finland lists the examination of the need for changes in legislation from the perspective of the transformation of work as one key measure under

<sup>415</sup> Kananen, J., Haapala, L., Paavola, J., Pulkka, V., Saikkonen, P. and Vainio, A. (2019). Sosiaaliturva työn murroksessa – palkkatyö, yrittäjyys ja toimeentulon riskit. Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja 2019:22. <https://julkaisut.valtioneuvosto.fi/handle/10024/161479>.

<sup>416</sup> Kananen, J., Haapala, L., Paavola, J., Pulkka, V., Saikkonen, P. and Vainio, A. (2019). Sosiaaliturva työn murroksessa – palkkatyö, yrittäjyys ja toimeentulon riskit. Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja 2019:22. <https://julkaisut.valtioneuvosto.fi/handle/10024/161479>.

<sup>417</sup> Available at: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12483-Collective-bargaining-agreements-for-self-employed-scope-of-application-EU-competition-rules/F1567496>

<sup>418</sup> Suomen Journalistiliitto (2019). Journalistiliiton valtuusto: Lakia on muutettava – työntekijä ei ole yrittäjä. <https://journalistiliitto.fi/fi/journalistiliiton-valtuusto-lakia-on-muutettava-tyontekija-ei-ole-yrittaja/>.

<sup>419</sup> Kieliasiantuntijat (2019). Akavan Erityisalat: Näennäisyrittäjille oikeus työehtosopimukseen. [https://kieliasiantuntijat.fi/naennaisyrittajille\\_oikeus\\_tyoehtosopimukseen/](https://kieliasiantuntijat.fi/naennaisyrittajille_oikeus_tyoehtosopimukseen/)

the theme of “Finland built on trust and labour market equality”<sup>420</sup>. In October 2020, the Finnish Labour Council, operating under the Ministry of Economic Affairs and Employment, released a statement supporting the legal position of food couriers as employees rather than entrepreneurs, and falling within the scope of application of the Working Hours Act<sup>421</sup>.

ITSET, or the Cooperation group for the self-employed, is a working group of trade unions and workers' organizations dealing with the issues of the self-employed, including labour law, competition law, and social security reforms for the self-employed. Their objectives for the government programme, published in 2018<sup>422</sup>, include:

- giving the trade unions the ability to represent the self-employed in negotiations.
- ensuring that those working in a “position akin to that of an employee”, i.e., dependent on one or a small number of clients, are regarded as employees.
- developing the social security system and the unemployment and pension security to be more flexible and comprehensive towards new forms of work.
- ensuring occupational health care and tools for wellbeing at work for the self-employed.
- ensuring reasonable compensation and copyright for the self-employed in creative sectors; and
- ensuring adequate information production, monitoring and impact assessments regarding the diversified forms of work, including e.g., the impacts on gender equality.

The self-employed have also been somewhat vulnerable to the impacts of COVID-19, in part due to their large share in the service and culture sectors. The ITSET group published a statement in the spring of 2020, pointing out that the pandemic crisis highlights the need for the self-employed to be better protected.<sup>423</sup>

## Conclusions

- Finland has a strong tradition of collective bargaining, with a principle of general applicability based in law. This however only applies to employees, defined as people who have entered into an employment contract. Therefore, no self-employed workers are allowed to bargain collectively under national law. Discussions on extending the right to collectively bargain to the self-employed have previously not proceeded past the observation that this would be against EU competition law.
- While the different parties interviewed disagree on whether collective bargaining would be a good solution for the problems faced by the self-employed, all strongly agreed that they do not wish to see a third category added next to the categories of employee and entrepreneur, as defined in the Finnish law. They consider that such third category would exacerbate the difficulty of defining a person's status, and potentially encourage forced self-employment. The interviewees also do not wish to see separate treatment for the liberal and regulated professions, although it was agreed that these professions are generally not as vulnerable as many other self-employed workers.
- It should also be noted that parties representing professions where self-employment is the only employment option are particularly concerned about the current position and status of the self-employed and are strongly in favour of the right to collectively bargain.

<sup>420</sup> The Finnish Government. Government Programme Strategic Themes: 3.5 Finland built on trust and labour market equality. <https://valtioneuvosto.fi/en/marin/government-programme/finland-built-on-trust-and-labour-market-equality>

<sup>421</sup> Ministry of Economic Affairs and Employment (2020). Labour Council takes a position on the legal status of food couriers. Press release. [https://tem.fi/-/tyoneuvosto-otti-kantaa-ruokalahettien-oikeudelliseen-asemaan?languageId=en\\_US](https://tem.fi/-/tyoneuvosto-otti-kantaa-ruokalahettien-oikeudelliseen-asemaan?languageId=en_US)

<sup>422</sup> ITSET (2018). ITSET-ryhmän yhteiset hallitusohjelmatavoitteet 2019. <https://journalistiliitto.fi/wp-content/uploads/2018/11/ITSET-hallitusohjelmatavoitteet-2019-lopullinen-002.pdf>.

<sup>423</sup> ITSET (2020). Itset-ryhmän koronakannanotto. <https://itset.fi/index.php/2020/04/07/itset-ryhman-koronakannanotto/>

- The interviewees pointed out that if the right to collectively bargain was extended, this would require rather substantial discussion regarding e.g., the organisation and representation of both the self-employed and their clients, the impact on employment and customer pricing, the potential dilution of the freedom of enterprise, and potential disincentives to enterprise growth. The interviewees however agreed that based on the limited information currently available on the Commission initiative, the full impact of extending the collective bargaining rights to the self-employed workers are impossible to estimate.

## Interviews

Name of interviewee	Organisation
1. Albert Mäkelä	The Federation of Finnish Enterprises
2. Jari Hellsten	The Central Organisation of Finnish Trade Unions
3. Markus Äimälä	Confederation of Finnish Industries
4. Elli Nieminen & Virve Haapajärvi	The Ministry of Economic Affairs and Employment
5. Jaakko Kankaanpää	KAOS (the Literary Translators' Branch of the Union of Journalists in Finland)

# France

## Background information

### Panorama and dynamics of self-employment in France

According to INSEE (National Institute of Statistics and Economic Studies, *Institut National de la Statistique et des Etudes Economiques*) at the end of 2017, in France, **3.2 million people were self-employed, either primarily or in addition to paid employment, i.e., 11,47% of total employment**. Excluding agriculture, the number of self-employed people rose sharply at the start of the decade, before almost stagnating between 2013 and 2017. From 2013 to 2019, the share of self-employment in employment remained stable overall, **in the order of 11% to 12%** of those in employment. In total, the number of self-employed people increased by 33% between 2008 and 2017. According to INSEE (the national institute for statistics and economic studies), at the end of 2018, the self-employed in EU represent on average 14.3% of people in employment, this share varying from less than 10% in Germany, Sweden, Luxembourg or Denmark to almost 30% in Greece. With 11.4% self-employed, France is one of the EU countries where self-employment is relatively uncommon.

This relative recovery can be explained by the success of **the new status of “auto-entrepreneur”, created in 2009 and renamed “micro-entrepreneur” in 2014**. At the end of 2017, 928,000 micro-entrepreneurs were economically active. Microentrepreneurs are particularly represented in home delivery activities, non-store retailing or in certain personal services. Three out of ten micro-entrepreneurs combine their self-employed activity with a salaried job, compared to one out of ten conventional self-employed non-microentrepreneurs. These pluriactive workers are numerous in education, both among traditional self-employed (19%) and among micro-entrepreneurs (49%), various health services - psychologists, dieticians, sophrologists and other unregulated professions - and social action (23% of traditional self-employed and 45% of micro-entrepreneurs), arts, entertainment and recreational activities (15% and 44% respectively), various specialized activities - design, photography, translation, etc.. - (12% and 34%), information and communication (12% and 38%), administrative and support services (14% and 32%), management consulting (16% and 35%). Pluriactivity also concerns 34% of specialist physicians and 21% of general practitioners.

At the end of 2017, in France, one in seven self-employed people worked in the agricultural sector in the broad sense, ie 444,000 people. Excluding agriculture, 49% of the self-employed work in trade and commercial crafts, health and social action and construction, while these sectors account for only 36% of private employees. 23% of the self-employed work in business and mixed services - more than half

of them in specialized scientific and technical activities (legal professions, accountants, management consulting, architecture, engineering, advertising, design, etc.) - and 21% in services to individuals other than health (catering, accommodation, artistic and recreational activities, education, hairdressing, etc.).

The 2008-2017 growth dynamic is particularly strong in business and mixed services (+ 62%) and in services to individuals except health (+ 50%). In particular, the number of self-employed persons increased by 12.4 in courier activities, including home delivery, an activity which has been booming since 2015. It has multiplied by 3.2 in various health services (activities of psychologists, dieticians, sophrologists and other unregulated professions) and social action, by 2.7 in specialized "other" activities (design, photography, translation, etc.), by 2, 4 in education and by 2.1 in arts, entertainment and recreation. Generally speaking, non-salaried work has long played a significant role in the cultural sectors, and more particularly in the visual arts, architecture and amateur artistic education.

Among the traditional self-employed (non-micro-entrepreneurs), the number of midwives, nurses and other paramedical professionals was the most dynamic between 2008 and 2017 (+ 51%). The number of traditional self-employed persons also increased markedly in legal and accounting activities (+ 24%) or veterinary activities (+ 16%). On the other hand, they fell in almost all the sectors invested by micro-entrepreneurs, except for various health services and social action (+ 14%) and activities of taxis and VTC - Tourist vehicle with Driver- (+ 13%). For the latter, the increase is driven by the rise of VTC drivers. Micro-entrepreneurs are particularly numerous in postal and courier activities, including home delivery. In this sector, they represent 95% of the non-salaried workforce, while the number of those not working under this status has decreased by 39% since 2008. More generally, there are many micro-entrepreneurs in sectors of activity that do not work. This is particularly the case in non-store retail trade (70% of micro-entrepreneurs), where the number of self-employed persons excluding micro-entrepreneurs decreased by 57% between 2008 and 2017, while that including micro-entrepreneurs grew 42% over the same period. Similarly, in various personal services such as the repair of goods or personal maintenance (66% of micro-entrepreneurs), the number of non-micro-entrepreneurs decreased by 36% while the number including micro-entrepreneurs increased by 85%. The same goes for unregulated health activities (activities of psychologists, dieticians, sophrologists, etc.), in certain specialized activities (design, photography, translation, etc.), education, the arts, shows and recreational activities. Micro-entrepreneurs are the majority in all cultural sectors and particularly in amateur artistic education, visual arts and performing arts. They are also the majority among VTC drivers (57% in 2016). On the other hand, they are almost or totally absent in sectors requiring significant installation costs (taxi drivers, catering trades) or composed mainly of regulated professions that do not give rise to this status (doctors, dentists, paramedical professions, etc. midwives, legal professions).

### **Breakdown by major sector of the self-employed**

At the end of 2017, in agriculture in the broad sense (i.e. including forestry and logging, agricultural support activities and landscaping services), 444,000 people were self-employed in France (excluding Mayotte), primarily or in addition to a salaried activity, ie 14% of all non-salaried workers.

At the end of 2017, 131,000 people were self-employed in industry, excluding commercial crafts. The self-employed represent 4% of those employed in industry, against 9% in all non-agricultural sectors.

At the end of 2017, 364,000 people were self-employed in the construction sector. The self-employed represent 20% of those employed in construction, compared to 9% in all non-agricultural sectors. The non-salaried workers in construction work in structural work (masonry, roofing, framework; 103,000), finishing work whether in carpentry (53,000) or not (painting, glazing; 94,000), as well as in installation work (electricity, plumbing; 99,000); on the other hand, they are rarer in the construction of buildings and civil engineering (16,000).

At the end of 2017, 504,000 people were self-employed in commerce and commercial crafts. The self-employed represent 12% of those employed in commerce, compared to 9% in all non-agricultural sectors. Seven out of ten self-employed people work in the retail trade: retail sale of various items, in stores (164,000) or outside stores (118,000) - for example in markets or remotely -, for food trades (

48,000) or in pharmacies (27,000). The other self-employed are engaged in the wholesale trade (80,000) or repair and sell automobiles (67,000).

At the end of 2017, 635,000 people were self-employed in the business and mixed services sector. The self-employed represent 9% of those employed in the business and mixed services sector, which is the same proportion as in all non-agricultural sectors.

At the end of 2017, 583,000 people were self-employed in the non-healthcare personal services sector. The self-employed represent 7% of those employed in the personal services sector, compared to 9% in all non-agricultural sectors. A third of them work in personal services, particularly in hairdressing, and another third in accommodation and restaurants. Of these, 83% work in catering, a less capital-intensive activity than accommodation.

At the end of 2017, 1,030,000 self-employed persons exercised a liberal profession, primarily or in addition to a salaried activity (Figure 1), or 37% of all self-employed persons excluding agriculture. Half of them work in health (doctors, nurses, pharmacists, etc.), 43% in the technical field, which encompasses the design and project management professions (regulated architects or interior, surveyors, etc.), expertise and consulting, accounting, insurance or teaching activities, as well as wholesale trade intermediaries, and 7% in the legal field (lawyers, notaries, etc.).

### **Working conditions of the self-employed**

The working conditions of the self-employed, like those of employees, can be understood through various occupational risk factors: physical arduousness of the work, accumulation of constraints of pace, lack of autonomy, isolation, influence of work on daily life or even insecurity of the employment situation.

Physical hardship is particularly severe in agriculture, among farmer operators - 60% were affected in 2016, compared to 28% of the self-employed as a whole - as among agricultural workers. In contrast, the liberal professions, heads of companies with ten or more employees and shopkeepers are the least exposed to physical strain, like salaried executives.

The self-employed work less subject to constraints of pace than employees: 23% are subject to a combination of these constraints, against 41% of employees. While 22% of employees say they lack autonomy, this is the case for only 6% of the self-employed and 1% of business leaders with at least ten employees. On the other hand, many self-employed workers always or often work alone: 74% of them, compared to 55% of employees. The self-employed are also more likely to take pride in a job well done (88%, compared with 72% of employees). Almost a third of the self-employed (and up to two-thirds of farmers) experience a strong influence of work over their lives (34% of men and 24% of women), against only 4% of employees, in particular due to a much longer working time, they find it more difficult to reconcile personal and professional lives. The self-employed, with the exception of entrepreneurs, are more worried about the sustainability of their jobs than employees.

### **Retirement of the self-employed**

At the end of 2016, 3.1 million retirees, or one in five retirees residing in France, were formerly self-employed, affiliated to the specific plans for farmers, the liberal professions or craftsmen or traders. Of these, 64% also receive a pension from an employee scheme. The average direct pension of these former principal self-employed persons (1,230 euros per month) is generally lower than that of all retirees (1,430 euros). Retirees from the liberal professions receive on average a direct pension of 2,510 euros per month, all schemes combined, with a large difference between men (2,920 euros) and women (1,720 euros). The pensions of former craftsmen (1,300 euros per month), traders (1,240 euros) and former farmers (900 euros) are significantly lower, and in particular lower than those of the average retiree.

### **Focus on Passenger Vehicles with Drivers (VTC)**

Although they have two similar occupations, self-employed and non-employer taxi drivers and chauffeur-driven transport vehicles (VTC) form two very distinct sub-populations. At the end of 2016,

the 7,000 VTC drivers were mostly micro-entrepreneurs (57%) and their business was recent. Conversely, the 24,000 taxi drivers are 99% traditional self-employed, long-established. In addition, the legislative framework sets them different conditions of activity. This heterogeneity translates into a significant non-salaried income gap: taxi drivers generate an average earned income of 1,230 euros per month, while those in VTC only receive 570 euros per month from their self-employed activity.

### Focus on artistic and cultural activities

At the end of 2016, in France, 175,500 non-salaried workers were working in cultural activities: artistic creation and its distribution, audio visual and multimedia, architecture, amateur artistic education or even in advertising agencies. In these sectors, the self-employed mainly represent almost a third of jobs: this is 2.5 times more than in all sectors of activity. Driven by the creation of the status of auto-entrepreneur, the number of self-employed persons working in these sectors exclusively or in addition to a salaried activity has almost doubled between 2007 and 2016. The creation of this status has aroused enthusiasm, attracting a new, younger, more feminine and multi-active population, representing 6% of all the self-employed (excluding agriculture). The visual arts and architecture alone account for half of this workforce. The book and press sector accounts for 17%, amateur artistic education 11%. The remaining workforce is mainly distributed in audio visual-multimedia (8%), advertising and performing arts (7% each). In 2016, more than half of the 41,900 "affiliated" author artists were graphic designers, painters, or photographers.

### Focus on digital platforms

In 2017, the Employment Survey conducted by INSEE revealed that 7% of the self-employed use a "digital platform or other intermediary" to meet their customers. **This also represents 200,000 workers, or around 0.8% of the active working population.** According to the COLLEEM 2020 study by the European Commission, this rate which is 0.8% in 2018 is then lower than that of countries such as Italy (0.9), Germany (1.2), Portugal (1.3), Spain (1.8) and the European Union average (1.1), but higher than that of Finland (0.7) or the Czech Republic (0.6). INSEE estimates that there are **around 100,000 self-employed people who come into contact with their customers exclusively through a digital platform** (or other intermediary), mainly in the transport, real estate and information and communication sectors. These 100,000 people who work exclusively with platforms have a profile that is distinct from non-exclusive users of platforms or other intermediaries, or from all self-employed: 40% of them are micro-entrepreneurs, against 23% of all self-employed. The professions most represented among these self-employed, exclusive users of an intermediary (outside the cooperative) are different from the most frequent professions among the self-employed in general. These include those of taxi drivers, independent transporters, real estate agents and consulting engineers, professions known to use digital platforms. These four professions represent 20% of self-employed exclusive users, compared to 6% of all self-employed. There are also professions which, in general, are not exercised exclusively by the self-employed: trainers, interpreters and psychologists represent 18% of exclusive users, against 3% for all self-employed. Building craftsmen (electricians, roofers, carpenters) constitute a third set of over-represented professions. But the number of platform workers is increasing in France, as shown by sectoral data. Between 2017 and 2018, for example, the number of registered passenger vehicles with driver (VTC) increased by 65%, e.g. 2.8 times more than in 2016. Likewise, the number of micro-entrepreneurs registered in the transport sector (including in fact VTC but also delivery) increased by 80.6% between 2017 and 2018.

## Collective bargaining framework

### The basics of collective bargaining on labour and employment in France

The bases of collective bargaining are at 4 levels: Labour national code (*Code du Travail*), collective agreements (*accords nationaux interprofessionnels-ANI*), branch agreements (*accords de branche*) and company agreements (*accords d'entreprise*).

**The Labour Code** has 2 parts, a legislative part and a regulatory part. The Labour Code sets a certain number of so-called "public order" principles from which it is not possible to derogate such as, for example, compliance with the minimum wage (except as provided in the Code), the obligation of « a

real and serious cause » to justify a dismissal, the right from a certain number of employees to be represented in the company (Staff Delegates or Company Social and Economic Council). For the sake of clarification, the law of 08/08/2016 then the ordinances (« ordonnances ») of 09/22/2017 now distinguish in several fields what comes under public order, collective bargaining and what in the absence of agreement will be applicable, this is for example the case for working hours, holidays, most of the provisions applicable to the Company Social and Economic Council.

The code provides that for each reform affecting individual and collective labour relations, employment, vocational training and what comes under national negotiation, must be the subject of prior consultation with representative trade union organizations and organisations of employers (art. L.1 to L.3 Labor C.)

**Collective agreements** are the expression of the right of employees to collective negotiation of all their conditions of employment, vocational training and work, as well as their social guarantees (art. L.2221-1 C .work.). Collective agreements and agreements are the concrete results of this right to bargain. They can be concluded at several levels, such as for example at national inter-professional level, at national level for a branch, or at regional level for a branch. Agreements can also be concluded at the level of a company, or an establishment, or within the framework of a group of companies (art. L.2232-30 C.trav.), or at the level of several companies. In particular, the branch collective agreement regulates working and employment conditions in a specific branch.

According to figures from the OECD, in France, 93% of employees are covered by a collective agreement, which is one of the highest rates in the world. A rate well above the average for OECD countries which was 56% in 2010. However, France is not the first country in the world in terms of conventional coverage. If we are to believe the latest figures from the OECD, Austria and Belgium have a higher coverage rate. That said, very clearly France is in the European and even world leaders.

- The convention can be: Non-extended, in this case it is only binding on signatory employers or members of signatory employers' unions. Collective agreements are governed by contract law and are in principle only binding on employers and employees belonging to signatory organizations. Almost all collective agreements refer to the NAF code (French nomenclature of activity) to determine their fields of application. Certain agreements relating to the length of the CDI (log-term job contract) trial period, leave for family events, severance pay, notice of bonding, are not necessarily generalized.
- - Extent, on the contrary, it is binding on all employers in the professional branch and in the geographical area concerned, from the publication in the Official Journal of the extension decree. Examples: professional equality between men and women, professional training, the salary scale, paid holidays, mutual insurance, ...
- - Extended, it is made compulsory in a branch or a geographical area in the event of a persistent conventional vacuum. In practice, branch collective agreements are most often applicable to all employees of the branch in question, because case law considers as covered by the agreement companies whose employers are not signatories. Case law considers that they adhere, explicitly or implicitly. According to case law, the explicit support of the employer may result from the presence, in the employment contract or in the letter of employment, of a reference to the collective agreement in question. In addition, when the employer applies certain significant clauses of the agreement, the judge considers that the employer tacitly expresses his willingness to adhere to it. However, the employer is often encouraged to partially apply collective agreements in order to benefit from certain public aids, such as reductions in social charges. Furthermore, the reference to article 36 of the Constitution, which affirms the right of all employees to receive fair remuneration, allows the courts to extend sectoral wage agreements.

There is no comprehensive national agreement to improve social protection for the self-employed. However, there are categorical agreements, for example for architects for whom a "compulsory voluntary" contribution to a retirement fund is imposed, as soon as one is registered with the order of architects. Similar provisions exist for lawyers, notaries and the liberal health professions, but there is no equivalent for unemployment insurance.

Since the law of 2016, the provisions relating to the social responsibility of digital platforms organize a presumption of independence for workers and establish from January 1, 2018, minimum rights in terms of social protection and collective labour relations. But Article L. 7342-5 of the Labour Code thus organizes the right to "movements of concerted refusal to provide their services" without this constituting a reason for termination or sanction in the context of relations with the platform. Article L. 7343-6 of the Labor Code also provides for these platform workers the right to form a trade union organization, to join it and to assert their collective interests through it. This opens the way to collective bargaining but to date it is almost non-existent in the sector of platform workers, social benefits are granted free of charge by the employer without prior negotiation or social dialogue, under pressure from the public authorities and judges (see below).

**Company agreements:** the right of employees to negotiate is also exercised in the company, many topics can be discussed, and a number of subjects must be negotiated regularly. A company agreement can set the frequency of negotiations but cannot go beyond 4 years. It cannot be more disadvantageous to employees than the industry agreement if it exists.

In the absence of a collective agreement, the employer must initiate negotiations: every year on remuneration, professional equality between women and men and the quality of life at work and every 3 years for companies with more than 300 employees on the management of jobs and career paths.

The employer must invite to negotiation all representative unions and / or having appointed at least one Trade Union Delegate in the company.

To be valid, in the presence of Trade Union Delegates, the agreements must comply with the majority principle (art. L.2232-12 Labor C.). That is to say, they must be signed by one or more representative trade union organization (s) having won more than 50% of the votes in the first round of the last Company economic and social Council-CSE elections (Law n ° 2007 130 of 31 January 2007). The number of branches where a single trade union organization can sign a majority agreement (and therefore not susceptible to opposition) is not negligible. But overall, the dynamic of negotiation in the branches, as at the inter-professional level, involves union alliances to form majorities of signature or opposition.

### Trade Union representativeness

The definition of union representativeness is set by law. The law requires the quality of a representative union so that it can legitimately speak on behalf of the collective of employees and sign collective agreements in the company. Until 2008, the question of this representativeness did not arise for the unions which adhered to the five confederations recognized by decree "representative at national level": CGT, CGC, FO, CFTC and CFDT. However, the other unions were imposed a system of proven representativeness. Reform n ° 2008-789 of August 20, 2008, put an end to this differential treatment by removing the system of presumed representativeness. Indeed, representativeness, a broader concept than that of representation, designates the recognized character of a person, party, union or organized group to represent its members. And for social dialogue, which is now at the center of labour law reforms, to be rich, the legitimacy of unions had to be stronger. It is going through elections today. However, the thresholds defining representativeness are low: 8% of voters at branch level, 10% at company level. The most representative unions in 2020 at national level are:

- The French Democratic Confederation of Labor (CFDT): 30.33%; The General Confederation of Labor (CGT): 28.56%;
- The General Confederation of Labor-Force Ouvrière (CGT-FO): 17.93%;
- The French Confederation of Management-General Confederation of Executives (CFE-CGC): 12.28%;
- The French Confederation of Christian Workers (CFTC): 10.90%.

A new list will be put in place in 2021. It should however be remembered that the unionization rate is very low in France. According to various national sources, the unionization rate in France in 2018 was

between 8.8% and 11%, a very significant drop compared to the 1960s (20%). According to national statistics, it is higher in the public sector (around 19%) than in the private sector (8%). This according to the OECD like other sources puts France as one of the least unionized countries in Europe. The OECD (2016) placed France at a rate of 8.8%, just ahead of Hungary and Estonia, but this rate remains very far from the EU average (23%), Italy (38%), Belgium (55%) and Denmark (63%).. And activists are getting older: at the start of the 1980s, it was among the thirties that we found the most union members. Today, the fifty-year-olds are the most numerous.

### **Unions are strongly present in sectors where the proportion of self-employed workers is high.**

The five representative organizations at the national level are also strongly present in the sectors of transport, construction, crafts, and to varying degrees in other professions. There is a great diversity of trade unions in the professional sector or even linked to a specific profession: for example the National Union of Magistrates and the Union of Magistrates (*Syndicat de la magistrature*); CID-UNATI, CEDI and SECI-UNSA for Commerce, the many and different unions of doctors, nurses, pharmacists, osteopaths, midwives, etc. in the health sector, the writers' union, the F3E and the SNAPAC, both affiliated to the CFTD, the FF-PMI for photographers.

A National Federation of Self Employed (FNAE) has been set up transversally. As regards the self-employed workers working in conjunction with platforms, specific unions have been set up, such as the Association of Independent Platforms (API), the Collective of Autonomous Delivery of Paris (CLAP), the SCP VTC union (vehicles with driver).

### **Towards a multiplication of branch and company agreements**

The 2017 ordinances gave the branch the possibility of imposing rules on companies in four areas (training and employment of disabled workers, prevention of occupational risk factors, premiums for dangerous and unhealthy work, setting of workforce thresholds and designation of union representatives and promotion of their career paths). 25 branches have taken up this possibility: 13 agreements concern disabled workers and 12 union representatives (number, workforce and professional background). Three agreements “lock in” the premiums for hazardous and unhealthy work. The annual collective bargaining review for 2019 was presented to the National Commission for Collective Bargaining, Employment and Vocational Training (CNCNCFP) on October 12, 2020.

**The national interprofessional negotiation** was the poor relation of the social dialogue in 2019. After the failure of the negotiation on unemployment insurance definitively recorded in February 2019, only amendments on the issue of supplementary pensions were negotiated and signed by the partners national social security plans in 2019. This breakdown of national inter-professional negotiation is the concrete expression of the employer's desire to limit collective bargaining to the sole perimeters of the branch and especially the company.

On the other hand, **branch negotiations are still at a good level**: 1,100 branch agreements signed in 2019). In 2019, the topic of salaries is once again the most discussed subject at branch level. Then come the conditions for negotiating / concluding agreements (318 texts), the conditions for applying the agreements (289 texts), professional equality between women and men (229 texts) and vocational training and apprenticeship (200 agreements).

**Corporate negotiation is progressing** with a total of at least 103,700 texts recorded in 2019, corporate negotiation is doing quite well. 45.9% of these texts (51.7% last year) were concluded with union representatives, 2.7% with an elected official or an authorized employee and 10.6% with an elected official. The agreements concluded without any employee representation therefore represent a majority of the texts recorded this year. Thus, 21.6% of the total texts were concluded with a referendum of 2/3 of the employees and 18.4% are the subject of a unilateral decision by the employer.

Almost half of the texts recorded come from companies with less than 50 employees, up 10 points compared to 2018. Retail and business services are the sectors most affected. In these companies, the texts were validated by staff approval by referendum to 2/3 of the employees (50%) or by unilateral decision of the employer. These companies clearly seized the new possibilities offered by the ordinances of September 2017 while exempting themselves from union presence to conclude agreements. Regarding large organizations, the propensity to sign ranges from 85% for the CGT to 94% for the CFDT. All companies combined, the CFDT signs the most agreements (58% of agreements), followed by CGT (44%), CGC (35%), FO (33%) and CFTC (21%), UNSA (9%) and Solidaires (3%). As every year, employee savings is the main theme of the agreements registered by the Ministry of Labour. Remuneration is the second negotiation topic: 22% in 2019. The working time topic represents 17.3% of agreements mainly relating to the organization of working time (85.8% of these agreements). Far behind come the questions of working time (17.3%) and overtime (16.9%). The theme of union rights (13.1% of agreements) was “boosted” in 2019 due to negotiations on the establishment of CSEs. Next come professional equality (6.1% of agreements) and working conditions (3.8% of agreements) for many on teleworking and the right to disconnect. However, while between 2015 and 2018 the unilateral decisions of the leaders had decreased (from 13% to 8% of the texts), they increased strongly in 2019 (+ 19%).

In recent years, the State has carried out reforms, giving ever more autonomy to collective bargaining vis-à-vis the legislator and the law, the legislator often having the role of "legitimizing the processes of collective or individual flexibility". As a result, company negotiation has become "an essential and major fact" in France. Today, the competitiveness of companies is becoming, with the development at company level of certain social standards, "an essential stake collective bargaining", which represents an upheaval in post-war regulations". It is a revolution for the unions, which for a long time considered the law, with labour rights won by hardship, "as a tool for the protection of the weakest", but it is also a fundamental change for French employers which for a long time refused to make competitiveness a contractual stake, because it would have been to admit that the collective bargaining is "part of the economic power".

However, the self-employed are currently concerned only with their role as employer, and the law does not say what is the case for economically dependent self-employed.

## Legal framework

*Main relevant legislative provisions: French Labour Code, Part VII, Article L.2132-2. New provisions, implanted by the ordinance of 21 April 2021 (Articles L.7341-1 to L7345-6); Articles L.420-1 of the Commercial Code; Ordinance of 21 April 2021 relating to the methods of representation of self-employed workers using platforms<sup>424</sup>*

### Definition of self-employed

Within the meaning of INSEE, employed persons who declare themselves to be “self-employed” or “employee, company director, agent manager, CEO” (within the framework of their main job, when they have several), before alignment with the profession. This definition does not prejudge the relationship of economic dependence, which according to this Institute concerns one in five self-employed, which is a relationship of dependence either on customers, or an upstream entity (group, central purchasing or cooperative, franchise, etc. brand license, lease-management, etc.), or an intermediary to access customers.

### Inclusion of SMEs in branch agreements

France has an administrative extension regime that allows a branch agreement to be extended to all companies in the sector. France is characterized by an almost automatic extension of collective agreements. According to the OECD (July 2017), France being in a major process of merging branches, a reform of the extension could be done step by step by experimenting with the use of criteria to be met

<sup>424</sup> <https://www.vie-publique.fr/loi/279617-ordonnance-21-avril-2021-representation-travailleurs-plateformes>

for the extension in the already merged branches in order to assess the advisability of this change. According to the Ministry of the Economy, this method is particularly useful for SMEs with less than 50 employees because it allows them to apply the employee profit-sharing scheme without having to negotiate a company agreement : a simple decision one-sidedness of the employer is sufficient.

Since the 2017 labor law reform, a group of experts has been tasked with assessing the economic and social effects likely to result from the extension of branch agreements concluded between employers' organizations and employees' organizations and having vocation to supervise labour relations (L. 2261-27-1 of the labor code). This group asked the Minister of Labor to request the Government to refer a request to the Competition Authority on the effects on competition that may result from these extensions. This advise of July 11, 2019 following the Government's letter of August 3, 2018, mentions that **from a social point of view, the extension of branch agreements plays a very important role, by ensuring the standardization of social guarantees and by framing the functioning of the labor market, in particular by limiting the practices of "social dumping"**, and makes it possible to compensate for the low rate of unionization of employees and the rate of employer coverage in France. But it notes that the arbitration carried out by the Minister of Labour between social objectives and the imperatives of free competition requires proceeding, on a **"case by case" basis**, to a prospective analysis of the effects induced by the extension of the agreement taking into account the real state of competition in the sector of activity concerned, and therefore to carry out **impact assessments** on a case-by-case basis within the professional branch concerned.

**For other legal framework perspectives, see below.**

## Labour market trends and other factors

### Self-employed income

According to INSEE, in 2017, self-employed people withdraw on average 2,580 euros per month from their self-employed activity in all sectors other than agriculture, and 1,410 euros in the agricultural sector. Post and courier activities (which include door-to-door delivery), non-store retailing, arts, entertainment and recreation, and personal services or education generate the lowest income: 330 to 920 euros on average per month. This low level of income is partly explained by a significant presence of micro-entrepreneurs in these sectors, the self-employed activity often constituting a side activity. All sectors combined, the traditional self-employed receive an average of 3,580 euros per month for their self-employed activity, ie almost eight times more than micro-entrepreneurs.

The least remunerative sectors are the same as for all the self-employed: 1,200 euros per month for non-store retail, 1,450 euros for personal services, 1,550 euros for arts, entertainment and recreational activities, and 1,640 euros for teaching. Taxis and VTC activities are added to this list, with an average monthly income of 1,410 euros in 2017. At the other end of the scale, the highest average income of conventional self-employed persons is perceived by specialist doctors and medical analysts (11,040 euros), dentists (9,120 euros), lawyers and accountants (8,340 euros), general practitioners (7,220 euros) and pharmacists (6,850 euros). For the same sectoral composition, women earn 32% less than men in the traditional non-salaried sector. Self-employed workers said they worked an average of 40.4 hours per week for their main job in 2017, against 48.5 hours for their male counterparts, according to the INSEE Employment Survey.

### Some of the self-employed are economically dependent

The revival of self-employment over the past ten years is part of a trend towards the diversification of forms of employment, which has resulted in the emergence, over the recent period, of several models situated on the borderline between salaried workers and non-salaried: wage portage, activity or employment cooperatives, economic dependence of certain non-salaried workers on a single principal, etc. Some of the self-employed, however, exercise their activity under a relationship of economic dependence on another entity, whether it is a customer, an upstream relationship (group, central purchasing or cooperative, franchise, brand license, lease-management, etc.) or an intermediary (digital platform, etc.). These economically dependent workers, counted among the self-employed, are not

identifiable in administrative sources, but can be apprehended in other sources, such as the 2017 Employment survey. According to the latter, considering the main declared job, a self-employed person out of five are economically dependent. Many of the self-employed are also unwantedly underemployed.

### **Social rights of self-employed workers**

The self-employed initially refused to join this common system out of mistrust of the state and because their patrimonial capital generally covered their risks. Mutualized and professional schemes were nevertheless set up, and even relatively early, such as old-age insurance (pensions) between 1946 and 1955. Faced with demographic imbalances, the State had to intervene quickly in the financing of these retirement schemes, prefiguring the current - important - financial solidarity mechanisms.

Over the past thirty years, **an alignment with social protection for employees of the general scheme has taken place**. Universal rights, covering both employees and the self-employed, were gradually implemented in terms of family policy (unification of the family branch in 1978) and benefits in kind from health insurance (creation of universal health coverage CMU basic in 1999 and implementation of universal health protection in 2016).

In addition, a partial harmonization of rights has taken place in the area of old-age insurance (the basic pension schemes for craftsmen and traders have become fully aligned with the general basic scheme for employees), but with strong differences between professions. New rights have gradually been opened up to self-employed workers: cover for industrial accidents and occupational diseases for farmers (very early, in 1966), maternity leave of at least eight weeks (2019), cover via cash benefits from health insurance (except liberal professions), compulsory supplementary pensions for farmers (2003), craft workers (1979) and traders (2004), etc. However, the tensions between the harmonization of rights and the maintenance of the professional specificities of the self-employed have favored a fragmentation of the social protection of the self-employed between various regimes, basic as well as complementary. The Self-Employed Social Scheme (RSI) brought them together in 2006, which made it possible to standardize certain rights. Laws, such as that of 2014 on pensions establishing a single liquidation of pension rights regardless of the schemes to which the worker has contributed, have contributed to the harmonization of schemes. One of the last emblematic episodes of this convergence is the full integration of all self-employed into the general social security system of the management of the collection of contributions, their risks of illness, old age and invalidity death as well as their pensions, marking thus the disappearance of the RSI in 2018.

Moreover, **benefits received under social protection are often subject to less favorable conditions than for employees**: waiting period of 7 days instead of 3 days in the event of sick leave, payment of daily allowances only after above a turnover of 3,806 € per year, no compulsory coverage by complementary health insurance, minimum turnover for the validation of quarters for basic retirement, no compulsory coverage for work accidents.

In terms of unemployment insurance, the law for the freedom to choose one's professional future of September 5, 2018, in accordance with President Macron's campaign promises, provided for the establishment of a flat-rate allowance for self-employed workers (ATI), in force on November 1, 2019. But there are many restrictive conditions: 1 ° to have carried out a self-employed activity without interruption for at least 2 years in one and the same company 2 ° the activity must have ceased because of a liquidation judicial or receivership 3 ° actively seek a job, that is to say be registered with Pôle emploi and make the necessary efforts to find one 4 ° the income must be at least 10,000 € per year on the 2 years preceding the cessation 5 ° have personal resources lower than the amount of the RSA, i.e. less than € 564.78 per month for a single person (sum of all possible income and allowances). If these conditions are met, the allowance is € 800 per month for 6 months only. Managers of companies and groups are excluded. Otherwise, RSA registration will remain the only solution. **Social rights of platform workers**

**The networking platforms were recently defined by the finance law** of December 29, 2015 for 2016 (article 242 bis of the General Tax Code): "The company, whatever its place of establishment, which as a platform operator connects people remotely, by electronic means, with a view to the sale of a good,

the provision of a service or the exchange or sharing of a good or a service, etc. ". This definition is repeated in article L. 111-7 of the Consumer Code.

In 2016, the law relating to work, the modernization of social dialogue and the securing of professional careers, known as « **El Khomri law** », takes note of the use of microentrepreneurs through the platform economy and establishes a social responsibility of the latter towards their workers. Article L. 7342 1 of the Labour Code, introduced by this law, establishes social responsibility for "an electronic contact platform" when it "determines the characteristics of the service provided or the good sold and sets its price ". Concretely, since January 1, 2018, the platform must cover the work accident insurance contribution taken out by the self-employed worker when the latter achieves a turnover greater than or equal to 13% of the annual ceiling of the Social security (approximately 5,348 euros in 2020). It must also bear the costs of support and compensation for loss of income as part of the validation process for prior experience.

There is therefore **pressure on the new platform operators to contribute, like any employer, to the constitution of rights**. This pressure comes both from the state and from the workers themselves. These recent provisions, which tend to grant a special status to self-employed mobility platform workers, are different from the recent California law which has applied since January 1, 2020 and which transforms independent drivers working for Uber or other companies into employees with the related social protection rights, a decision that deeply calls into question the economic model of these companies. They also do not follow the path advocated by some of inventing a new statute for the active, a path which takes on two often radically opposed interpretations: on the one hand, the establishment of a minimum universal income disconnecting employment from Social Protection ; on the other, the establishment of social guarantees, regardless of status, but linked to employment (widening of the criterion of wage employment, in particular to effective economic dependence.

The 2016 law also provides that self-employed workers benefit from the right to form a trade union organization, to join it and to assert their collective interests through it (article L. 7341 1).

It is also possible by law for the employer to **unilaterally develop Charters**. A unilateral Charter should only be drawn up by the employer, after consulting the Company economic and Social council or, failing that, the staff representatives, in the event of failure of negotiations to reach a collective agreement in companies employing at least 50 employees. This possibility has been used by Uber and various platforms in France to define different levels of social coverage.

**The mobility orientation law of 24 December 2019 (*Loi d'orientation des mobilités*)** completes the social responsibility regime for mobility platforms (driving a transport car with a driver and delivering goods using a two or three-wheeled vehicle, motorized or not). The latter will have the opportunity to conclude a social responsibility Charter by committing themselves in particular to improving the working conditions of the self-employed workers they mobilize. A prior administrative approval procedure for the charters will be required by consultation with the workers concerned. In return, before its promulgation, the law provided that the platforms would protect themselves against the risk of reclassification of the contractual relationship into an employee relationship. The Constitutional Council, in its decision of December 20, 2019, however, deemed unconstitutional this provision allowing platforms to set up social charters defining their obligations to prevent the requalification of their relationship with self-employed workers under employment contracts. **The judges' decision will therefore remain sovereign in this matter**. The law also makes it possible to secure the working conditions of workers, in particular by establishing transparency obligations. Before each service, they must be informed of the distance to be covered and of its guaranteed minimum price and will have the possibility of refusing the race without risk of penalty or of termination of the contractual relationship. The platform will have the obligation to publish on its website indicators relating to the duration of the activity and the income received from the activities of workers in connection with the platform. Workers will be able to choose their working hours and periods of inactivity and will have the right to disconnect during working periods without risk of breach of contract. These are all elements attempting to respond to the practices denounced by independent digital platforms during their protest movements. The modalities of representation and

consultation of delivery men and drivers are, for their part, referred to future ordinances (see the terms of the debate below).

## Conclusions

In terms of law, French legislation on collective bargaining does not provide for the signing of collective agreements for the 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 system, are considered employees. These are mainly three groups: independent journalists, those who work in the creative arts (actors, musicians and other performing artists) and those who work autonomously but who are not completely independent (under the system of "wage portage": a person provides a service to a client, for example by providing training or writing a report, however, the invoice for this work is not sent by the individual but by an umbrella company, with which the individual has an employment contract: the individual is then paid, but receives the money as a salary rather than payment for services). For example, the national agreement for insurance agents provides that its provisions on social protection (occupational diseases and accidents at work) be extended to independent insurance agents. Itinerant salespeople also have a collective agreement<sup>425</sup>. Most recently, new legislation, dating from April 2021, sets out a framework for collective bargaining between self-employed workers working through platforms and the platform in the delivery and personal transport sectors<sup>426</sup>.

**For employees and employers**, the law provides for compulsory and periodic negotiations on wages, working time, sharing of added value, professional equality between women and men, quality of life at work, management of jobs and career paths at the company level. This can be completed by other agreements at the national level or the sectorial or even at the enterprise level on security at work, pensions, health complementary schemes, etc.

**For the unemployed the situation is different.** The law has never explicitly recognized trade unions or movements of the unemployed as interlocutors of social dialogue, even if in practice these movements have played their role in improving unemployment compensation. The unions have misappropriated these issues of compensation because in the statutes of the unions, membership is linked to the status of employee. As in general, those who lose their jobs are also those who occupied the most precarious positions in the labour market, this means that they were also those who most often worked in establishments where unions are absent. For job seekers, unionism is very far away, and conversely unions are quite far from the unemployed in their capacity to organize.

**The debate is active on the protection of platform workers and the associated social dialogue.**

Today, platform workers, like the self-employed, have obtained the right to form unions, but the general framework for negotiation has not yet been set for platforms while it is already set for certain professions where the proportion of self-employed workers is high (lawyers, journalists, artists, health workers, etc.).

The debate on the dependent nature of platform workers has intensified and has given rise to various reports over the past five years, each of the authors having carried out multiple consultations with the stakeholders concerned:

- **The report of the General Inspectorate of Social Affairs "Collaborative platforms, employment and social protection"** (*Les plateformes collaboratives, l'emploi et la protection sociale*) of May 2016 identifies three possible ways of developing the protection of the self-employed: the first would aim at a untrusted, guaranteeing identical rights regardless of the professional status held (social security model for all), with considerable technical difficulties of design, financing and implementation; the second

<sup>425</sup> Convention collective voyageurs, représentants et placiers (VRP) no. 3075

<sup>426</sup> See <https://www.vie-publique.fr/loi/279617-ordonnance-21-avril-2021-representation-travailleurs-plateformes>

would aim to expand the portability and individual transferability of social rights within a collective framework, but its gradual implementation would not make it possible to know today which social rights will be included. The report proposes a third way, which would consist in continuing the movement of convergence of social rights between the different regimes : by universalizing what can be done, by generalizing the covers that are not yet covered and by bringing together the types of cover or by creating them when they are lacking. Among the proposals: creation of option rights opening up wider possibilities of affiliation to the general scheme, improvements in the acquisition of retirement rights, extension of mutualizations in terms of health and provident coverage, financial participation of platforms” engaged in “regular” subcontracting relationships with non-employees.

- **The report of the Institut Montaigne “Platform workers: freedom yes, protection too”** (*Travailleurs des plateformes : liberté oui, protection aussi*) of April 2019 issues two “non-proposals” and 16 recommendations aimed at “guaranteeing the responsible development of on-demand work platforms, respectful of workers' interests and sustainable in the long term.” He refuses to equate platform workers with employees and opposes the creation of a new statute for platform workers. Among the proposals: guaranteeing freelancers reasonable visibility on changes in the conditions of use of the platform; create the conditions for dialogue between freelancers and on-demand work platforms; encourage good practices in on-demand work platforms via collaborative sites; create an information platform for platform workers, listing all the necessary information (health rights, training, insurance, access to state aid, social protection, etc.); impose, sector by sector, cover for major occupational risks, in particular work accidents; establish a universal right to supplementary health and supplementary pension for workers not covered (neither students nor employees) above a certain threshold of turnover; support a full unemployment guarantee (partially compulsory) and create a “crisis” unemployment guarantee for the self-employed (compulsory); Inspired by the wage portage model, promote the emergence of “platform platforms” capable of pooling the individual risks of platform workers, and of inventing tailor-made collective guarantees. It should be noted that these ideas of using a cooperative wage portage have been taken up by several experts, but all the stakeholders suggest that this use would be at an excessive cost for the general economy of the platforms.

- **The report of the National Digital Council, “Work in the era of platforms. Update required”** (*Travail à l'ère des plateformes. Mise à jour requise*) of July 2020 militates for “a unifying social pact. France must support a more sustainable, more social and more responsible digital platform model”. The report indicates that the platforms have an ambivalent relationship to employment and the desire for autonomy of workers. Their economic model is based in part on a legal construction that turns their workers into micro-entrepreneurs. In this, they are resolutely part of the search for freedom, autonomy and control over one's destiny at work. In this model, it is the workers who bear the burdens and the economic risk and the platforms who benefit from it. Digital work platforms nonetheless represent extraordinary growth opportunities. The report examines three scenarios: the adoption of a third status, self-employment and re-qualification as employees. CNN rules out the creation of a third status, seen as a false good idea that does not provide a lasting solution. He considers the other two approaches to be complementary. The members of the CNN therefore believe that platforms which respect our laws and our social model must be encouraged: they are in fact a new face in the world of work and an undeniable source of jobs in the digital age. But as in any rule of law it will be up to the judge to sanction platforms that refuse to comply with the rules of labour law. The CNN recommends the adoption of a “DIGIScore” on all websites, mobile applications and other user interfaces of digital platforms, modeled on the nutriscore model of the agri-food sector, with the aim of raising the awareness of citizen consumers of platforms on the respect of several social criteria. He recommends going through social dialogue but notes that workers and platforms maintain relationships of mistrust which suggest that constructive negotiations could not be concluded immediately. From this perspective, social dialogue cannot and should not be reduced to simple consultations led by the platforms. The conditions for a

balance between the parties, capable of enabling them to negotiate, must be met; and it is the role of the State to ensure that balance.

**The Senate Report on “on the social law applicable to economically dependent self-employed workers”** (*Le droit social applicable aux travailleurs indépendants économiquement dépendants*) of May 2020 notes a great diversity of actors and models, but that this is a phenomenon whose scale should not be overestimated since self-employed workers using a digital platform for the exercise of their activity certainly represent a growing but tiny share (of the order of 1%) of the employed working population. It indicates that there are deficits in social protection for these workers. For the rapporteurs, on the question of the border between salaried workers and self-employment, the legislator has left the judges to apply a well-established case-law consisting in seeking, in concreto the indices allowing to conclude the existence of a relationship of subordination constituting an employee relationship to decide on a possible requalification in employee. For him, establishing a presumption of non-wage employment for all workers using a platform would lead to validating strategies for circumventing labor law to the detriment of workers. Conversely, qualifying, by legislative means, as employees' workers who remain free to organize their work without being subject to a managerial power by the networking platform would pose a certain number of difficult legal problems. Moreover, wage employment does not appear to be a demand shared by most of the workers concerned. And the creation of an intermediary status between self-employment and salaried work, which is sometimes proposed, does not seem desirable to them either. The Report considers that it is necessary to go beyond the debate on the status of platform workers and to develop rights and social coverage independent of the status, hence a series of recommendations for rights to be universalized, in particular: the prohibition of discrimination in hiring, paid vacation funds for workers who use a digital platform on a regular basis, written motivation for any temporary or permanent break in the relationship between a self-employed worker and a digital platform, offer to workers who use their services intermediation a collective supplemental health insurance contract, require platforms to insure workers against the risk of occupational accidents, introduce social criteria related in particular to health and safety as well as to workers' income, enter when certain activities are considered as low-qualifying an obligation to provide training.

Regarding social dialogue, 3 recommendations are made:

- create social dialogue bodies at both a sectoral and local level bringing together representatives of self-employed workers and representatives of platforms, or even, where applicable, user companies,
- define compulsory negotiation topics within these bodies, such as the methods for setting the tariff, the methods for developing professional skills and improving working conditions,
- provide a mechanism for extending the agreements concluded in this context to all self-employed workers in the sector.

- Finally, **the recent report to the Prime Minister by Jean-Yves Frouin “Regulating digital work platforms”** (*Réguler les plateformes numériques de travail*) of December 1, 2020. This report results from mission letters from the Prime Minister, to formalize proposals in terms of status, social dialogue and social rights, to secure legal relations and protect workers without undermining the flexibility provided by the self-employed status. Regarding the statute, he notes that certain work platforms are real service operators who precisely organize the service and set the price, so that the Court of Cassation in its Uber judgment of 4 March 2020, has reclassified as an employment contract the contractual relationship between a VTC driver and the platform. But he advocates a sort of status quo of self-employed worker status but, intermediary endowed with some of the rights applicable to employees, which can be requalified by the judge at any time. In terms of social protection, he opposes other reports and suggests generalizing the use by workers of platforms of a third party to pay them. “His salary depends on the turnover that his activity brings to the cooperative or to the employee carrier.

This protected independence is such as to satisfy all the objectives pursued: extension of workers' social rights, preservation of autonomy in the exercise of the activity, securing contractual relations. ” The report also recommends a social dialogue organizing negotiated manner of common rules, so as to rebalance contractual relations and reduce the asymmetry of powers between platforms and workers. He advocates the instrument of collective contracts with a relative effect, applying only to member workers, and as a relevant level of dialogue the sector of activity and, in the alternative, that of the platform. Representatives could thus be elected in each platform, with an aggregation of results at the level of the sector of the signatory organizations, with protection of the representatives.

However, it also proposes to regulate the platforms on several aspects: termination of the relationship, minimum remuneration. It proposes the establishment of a specific regulatory authority, supporting social dialogue and giving an opinion on the licenses granted to platforms. Finally, the report argues for the establishment of **a common statute, therefore a minimum basis of guarantees, for all forms of work, in particular the right to rest and to vocational training / retraining.**

### Outlook for 2021

Bruno Mettling, former HRD of Orange and head of the task force on the upgrading of platform workers (alongside Pauline Trequesser, freelance worker and leader of a freelance collective in Bordeaux, and Mathias Dufour, chairman of the #leplusimportant think tank) has just received its mission letter from Elisabeth Borne, the Minister of Labour on January 7, 2021.

In the wake of the report by jurist Jean-Yves Frouin, the trio will be responsible for working on the necessary modalities to promote social dialogue within the platforms, **establish a base of social rights for these workers and define a regulatory framework for the sector (the basics of a prescription).** Their report is expected by the end of April 2021.

### Conclusion

The Government therefore plans to **legislate by ordinance** on the subject. **The trend is in favor or more regulation but in favor of maintaining the possibility for platforms to agree with self-employed people when organizing the production and services.**

**France seems to have chosen to avoid the systematic reclassification of platform workers into employees, but without prohibiting it on a case-by-case basis, if the courts so decide; but by preserving the flexibility linked to the self-employed status, in particular of microentrepreneur,** while pragmatically improving the situation of workers on these platforms in terms of the minimum base, and by promoting social dialogue for the rest of the social protection sector. **The draft ordinance announced for April 2021 will have to be carefully analysed.**

### Interviews

Name of interviewee	Organisation
1.Odile CHAGNY And Franck BONNOT	IRES/Plateforme Sharers and Workers Plateforme Sharers and Workers
2.Emille SAUSSINE And Lucile CASTEX-CHAUVE	Chef du bureau Relations individuelles du travail Direction Générale du Travail Ministère du Travail , de l'Emploi et de l'nsertion  Chef de la Mission Etudes, Europe et International Direction Générale du Travail Ministère du Travail , de l'Emploi et de l'nsertion

3. Grégoire LOISEAU	Professeur à l'École de droit de la Sorbonne (Université Paris1)
4. Vincent TOUBIANA And Philippine REGNIEZ Joséphine HURSTEL	Secrétaire général adjoint Conseil National du Numérique (CNN) Rapporteur, Conseil National du Numérique (CNN)  Rapporteur, Conseil National du Numérique (CNN)
5. Cécile JOLLY And Antoine NABOULET	Cheffe de projet Département Travail, Emploi, Compétences France Stratégie Adjoint à la directrice Département Travail, Emploi, Compétences

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Isabelle Le Boëtté « Les indépendants : le rebond amorcé dans les années 2000 se poursuit en 2016 », INSEE Première, Août 2019

Cécile JOLLY, Jean FLAMEND, -Département Travail Emploi Compétences- France Stratégie- « Salarié ou indépendant : une question de métiers ? » Note d'analyse Septembre 2017

Pierre-Emmanuel BASTARD CHAUCHARD "Le contrat de travail à l'assaut des plateformes numériques" Village de la justice", mai 2020

Michel FORISSIER, Mmes Catherine FOURNIER et Frédérique PUISSAT, Sénat « Rapport d'information fait au nom de la commission des affaires sociales (1) sur le droit social applicable aux travailleurs indépendants économiquement dépendants, Mai 2020.

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Sharers and Workers

[https://www.clesdusocial.com/IMG/pdf/50\\_ans\\_d\\_accords\\_nationaux\\_interprofessionnels.pdf](https://www.clesdusocial.com/IMG/pdf/50_ans_d_accords_nationaux_interprofessionnels.pdf)

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CFE –CGC

<https://goo.gl/TdKTmU>

CGT-FO

<https://goo.gl/TdKTmUFO>

# Croatia

## Background information

In 2019, 197,000 persons were self-employed in Croatia (out of 1, 678, 000 overall employed persons, which translates to 12% of the overall workforce). Self-employed females accounted for 32%.<sup>427</sup> The self-employment rate in 2019 increased for the first time, since the 2008 baseline. The decrease in self-employment over the 2008-2013 period was mainly linked to fewer own-account workers or those self-employed without employees (registered as one person crafts or companies). In the same period, the number of crafts and freelance activities fell by 27 %, and that can be one of the reasons for the drop in overall self-employment.<sup>428</sup> The breakdown per sector is not available.

In terms of precarious work<sup>429</sup>, Croatia is at the very top of the EU scale, with 6.9 % of the employed population compared to an EU average of 2.3%. More than one third of temporary contracts were up to three months, while almost 80 % were up to one year and most frequently in agriculture, retail trades, and catering activities. The reasons which could explain this high share of precarity are Croatian dependency on tourism and its seasonality, labour legislation (temporary contracts are perceived to be among the most liberal in the EU) and employer's caution.<sup>430</sup> There are also differences in the protection of civil / state workers and workers in the private sector, where the former enjoys enhanced protective regulations.

Regarding the main reasons for the self-employed status, a relative majority (25%) of the surveyed self-employed selected *suitable opportunity presented itself and continued family business and could not find a job as an employee* (both 22%).<sup>431</sup> According to another Eurofound research, a relative majority (38%) selected *did not have alternative for work* as the main reason.<sup>432</sup>

The most vulnerable group is self-employed working with only one client (which is often the case with journalists or media professionals) due to their complete dependency on one source of income, putting them at a higher risk of precariousness. If they lose that one client, they do not have any welfare benefits to fall back on. Working with only one client can also be an indication of false self-employment.<sup>433</sup> Platform workers (on the Croatian labour market, they work mostly as drivers or couriers) are also recognised as a vulnerable group which is similar to the situation in other Member States. Their actual number is difficult to estimate, as recently confirmed by the Ministry of Labour, Pension System, Family and Social Policy. The reason behind this is that these individuals could use different contractual arrangements, such as student contracts, service contracts or author's contract (more info in Section 3) and there is no legal definition of platform work *per se*. Natural persons offering their services on platforms are not recognised as legal persons. According to a Eurofound study, around 10.7% of the Croatian population have been at a certain point engaged through platforms. The breakdown is as follows: 3.3% were sporadic platform workers (have tried platform work, but it is not a consistent part of their working life), 2.8% were marginal platform workers (less than 10 hours per week and less than 25% of their income), 3.5% were secondary platform workers (10–19 hours per week and/or 25–50% of their income) and 1.1% were doing it as their main job (more than 20 hours per week and/or at least 50% of their income).<sup>434</sup> Overall, platform workers have low pay and erratic schedules. Some professions have experienced worsening of their working conditions due to the liberalisation of the transport sector. For example, taxi drivers finding their customers on apps such as Bolt, now earn twice

<sup>427</sup>National Statistics Office. 2019. Available at: [https://www.dzs.hr/Hrv\\_Eng/publication/2019/09-02-06\\_02\\_2019.htm](https://www.dzs.hr/Hrv_Eng/publication/2019/09-02-06_02_2019.htm)

<sup>428</sup>[https://www.eizg.hr/userdocsimages/vijesti/vijesti\\_publicacije/IPOL\\_STU\(2019\)642345\\_EN.pdf](https://www.eizg.hr/userdocsimages/vijesti/vijesti_publicacije/IPOL_STU(2019)642345_EN.pdf)

<sup>429</sup>Eurostat defines as work with a contract of less than 3 months

<sup>430</sup>European Parliament.2019. The employment and social situation in Croatia. Available at: [https://www.eizg.hr/userdocsimages/vijesti/vijesti\\_publicacije/IPOL\\_STU\(2019\)642345\\_EN.pdf](https://www.eizg.hr/userdocsimages/vijesti/vijesti_publicacije/IPOL_STU(2019)642345_EN.pdf)

<sup>431</sup> Eurostat, Labour Force Survey (LFS) ad-hoc module 2017 on the self-employed persons (Publications Office of the European Union 2018).

<sup>432</sup> Eurofound (2017), Exploring self-employment in the European Union, Publications Office of the European Union, Luxembourg.

<sup>433</sup> According to the interview with a professor of labour law and social security.

<sup>434</sup> Eurofound. New forms of employment: 2020 update. Available at: [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef20027en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef20027en.pdf)

less compared to the period when they used to be employed as drivers. Their driving hours are also longer now, and their schedule is more erratic.<sup>435</sup>

Please report any available statistics relating to:

- Platform workers. These are workers who work through online platforms, carrying out work on a task basis. They include those who work for platforms such as Uber or Deliveroo, but also those who carry out any type of task-based work arranged through platforms, such as click work, care work, cleaning, specialised work such as web design, administrative work or accountancy work etc..
- Self-employed workers in creative professions, such as actors, musicians, authors
- Self-employed journalists and other professionals who work as freelancers
- Self-employed in liberal and regulated professions (please name the specific professions)
- Any information around false self-employment, i.e., persons hired as self-employed but, in a situation, comparable to that of employees,

There is no systematic break down of self-employed per type / sector in Croatia, due to many arrangements at their disposal (see Section 3 for more information). According to some limited available data, self-employed work as craftsmen (3.89%; and crafts can be established in any sector), farmers (1.32%) and independent professionals (1.35%).<sup>436</sup>

The extent of 'false' or 'dependent' self-employment is difficult to estimate but is a common phenomenon on the Croatian labour market. Non-standard contracts are used in some sectors of the economy to reduce total labour costs. One example that has triggered media debates<sup>437</sup> is linked to the IT sector, where individual workers are registered as independent craftsperson's and pay lump-sum taxes through the so-called flat-rate craft scheme (*paušalni obrt*). Due to relatively high taxes and social contributions for employees, IT professionals prefer to opt for the lump sum scheme, while still working for one employer only. Therefore, it seems that this trend is propelled by IT professionals themselves. If an employer refuses this arrangement, IT professionals can easily switch to another employer or work remotely for foreign companies, as they are high in demand.

### Collective bargaining framework

In 2017, 328 trade unions were operational.<sup>438</sup> Almost all trade unions are affiliated with one of the main central trade union groups: Federation of Independent Trade Unions of Croatia (SSSH); Independent Croatian Trade Unions (NHS); *Matica hrvatskih sindikata* - The Centre of Croatian Trade Unions (MHS); Croatian Trade Union Association (HUS); Croatian Trade Union Association (URSH);. Regarding the sectorial trade unions, the biggest ones are the Croatian Construction Trade Union (SGH) which recently adopted the Collective agreement in construction<sup>439</sup> and the Croatian Journalists' Union (SNH) gathering journalists and media professionals where collective agreements are adopted at the level of big news outlets (six collective agreements currently in place). There are no trade unions in the field of warehouse, docks and administration in Croatia.

Membership in Croatian trade unions fit into the global trend of constantly decreasing. In the last 15 years, the number of trade union members decreased by half a million (1998-2013), from 800,000 to

<sup>435</sup>SSSH. Platformski rad u Hrvatskoj regulirat će se izmjenama Zakona o radu. 2021. <http://www.sssh.hr/hr/vise/0-0/platformski-rad-u-hrvatskoj-regulirat-ce-se-izmjenama-zakona-o-radu-4679>

<sup>436</sup>D. SENČUR PEČEK, S. LALETA, Ugovor o radu i ugovor o djelu: Zbornik Pravnog fakulteta Sveučilišta u Rijeci, vol. 39, br. 1, 411-456 (2018)

<sup>437</sup>Example of the article explaining why IT professionals opt for lump-sum craft scheme: <https://novac.jutarnji.hr/novac/aktualno/krecu-izmjene-it-strucnjaci-vise-nece-moci-biti-pausalci-ili-ce-tvrtke-placati-kazne-9359687>

<sup>438</sup><https://mrosp.gov.hr/arhiva-3104-10582/popis-sindikata-registriranih-u-ministarstvu-rada-i-mirovinskoga-sustava-11527/11527>

<sup>439</sup><https://www.sgh.hr/userfiles/KUG%20-%20PRO%C4%8C%C5%A0%C4%86ENI%20TEKST%20-%2014.07.2020.%20-%20potpisano%20i%20evidentirano%20u%20MRMS.pdf>

338,085.<sup>440</sup> There is also a stark contrast between the public and private trade union membership. 68% of employees in the public sector are members of trade unions, while only 17% of those working in the private sector. All in all, collective agreements and trade union membership are much more dominant in the public sector than in the private sector. For example, in the media sector, only the largest outlets have collective agreements.

Collective bargaining in Croatia mostly takes place at the company level. However, there are also sectorial collective agreements stipulating the minimum rights of workers, which are then more specified at the company level. Sectorial collective agreements are binding only for employers who are members of the employers' association that signed the contract.<sup>441</sup> In the period between the end of June and the beginning of November 2014, there were about 570 valid collective agreements. Out of these, only 16 were sectorial collective agreements. The exact numbers are difficult to know as there are contracts that do not fulfil formal criteria but are still applicable and valid.<sup>442</sup>

The self-employed cannot join trade unions, are not covered by any collective agreements and have no right to strike, boycott, take collective action, etc. Nevertheless, in 2017, employed taxi drivers protested against Uber in three cities in Croatia. They claimed that Uber was illegal and created unfair competition (registered taxi drivers had to pay social contributions and had licence and vehicle maintenance costs, while Uber drivers were operating in the grey zone in 2017 which allowed them to offer lower prices and take over the market).<sup>443</sup> In 2018, the government introduced the new Law on road transport<sup>444</sup> establishing minimum requirements on the age of vehicles (no more than 7 years old). However, this law is still perceived as liberalising the taxi market.<sup>445</sup> In February 2021, taxi drivers protested in front of the Bolt headquarter in Zagreb. Interestingly, this time not only traditional taxi drivers were protesting, but also those who themselves use the app to find customers. The main reason was low taxi fares (uber called themselves the economy option giving customers a 20% discount on the ride), leading to unsustainable drivers' earnings. The drivers were also calling for minimal prices per kilometre to be added to the Law on road transport. The protest was organised by the recently established Independent Taxi Drivers Trade Union. However, members of this union are individuals who have registered transport crafts or drive for one.<sup>446</sup>

The type of employers who engage self-employed workers is unclear. Journalists and media professionals tend to work for larger media outlets as self-employed (more information in Section 3). Individuals engaged through platforms, in the vast majority of cases use global / European platforms (Uber, Bolt, Wolt, Glovo etc). There is no data on traditional companies / SMEs resorting to platform work.

## Legal framework

*Main relevant legal provisions: 2015 Law on Representativeness of Employers' Associations and Trade Unions*

The Law on Representativeness of Employers' and Trade Unions' Associations prescribes the criteria and procedure for determining the representativeness of employers' associations and trade unions for participation in tripartite bodies at national level and criteria and procedure for determining the representativeness of trade unions for collective bargaining.<sup>447</sup> This law only covers employees,

<sup>440</sup> <https://core.ac.uk/download/pdf/199709829.pdf>

<sup>441</sup> <http://www.kolektivni-ugovori.info/wp-content/uploads/2015/03/Komparativna-analiza-sustava-kolektivnog-pregovaranja.pdf>

<sup>442</sup> <https://www.smh.hr/wp-content/uploads/2014/12/Obilje%C5%BEja-sustava-kolektivnog-pregovaranja-u-Republici-Hrvatskoj.pdf>

<sup>443</sup> <https://www.vecernji.hr/vijesti/taksisti-trosimo-9-milijuna-kn-na-obveze-koje-uber-nema-1178186>

<sup>444</sup> <https://www.zakon.hr/z/245/Zakon-o-prijevozu-u-cestovnom-prometu>

<sup>445</sup> <https://www.politico.eu/article/uber-plots-reconquest-of-europe-via-smaller-countries-estonia-croatia/>

<sup>446</sup> <https://dnevnik.hr/vijesti/hrvatska/ceka-nas-novi-prosvjed-taksista-njihovi-zahtjevi-nece-se-svidjeti-svim-korisnicima---639169.html>

<sup>447</sup> Law on Representativeness of Employers' and Trade Unions' Associations. Available at: <https://www.zakon.hr/z/740/Zakon-o-reprezentativnosti-udruga-poslodavaca-i-sindikata>

meaning that self-employed are automatically excluded from its scope, and cannot join trade unions or engage in collective bargaining.

The Labour Law which is the main legal source on employment relationships covers only employees. For the purposes of this law, employees are defined as " a natural person who performs certain tasks for the employer in an employment relationship." Croatian legislation and literature usually refer to self-employed in two broad categories, however there is no unifying definition of self-employed. The two broad categories are:

- **"Self-employed without a registered company and trade"**, indicating those who work on service contracts or in the informal economy. They are more numerous, often from vulnerable groups, and are characterised by underemployment, low incomes, job instability and higher dissatisfaction rates.
- The second group are **self-employed with a registered company or craft**.<sup>448</sup> This group according to some interpretations can be generally seen as entrepreneurs and as such may not have the same issues as other types of self-employed workers.<sup>449</sup>

As above-mentioned, self-employed without a registered company and trade are usually engaged through a service contract. The **Law of Civil Obligations**<sup>450</sup> stipulates the service contract provisions (NN 35/05, 41/08, 125/11, 78/15, 29/18). This implies that self-employment in Croatia falls under the remit of civil or trade law and not the labour law. The service contract is a civil contract determining the performance of a one-time job (e.g. producing or repairing of something, performing some kind of physical and mental work) within a certain period of time and for a certain agreed fee. The main elements of this type of work are:

- The contractor works for the client independently.
- The contractor performs the agreed work as he / she sees fit, and not according to predetermined working hours;
- The contractor performs the work personally, but may also entrust it to third parties if the service contract does not define otherwise (the contractor is still responsible for the work delivered);
- The contractor can choose his / her own workspace;
- The client has the right to supervise the performance of work and give instructions when it corresponds to the nature of the work, and the contractor is obliged to follow them;
- The contractor is obliged to perform the work as agreed and according to the rules of the profession;
- If the client notices some problems with delivered work, they can warn the contractor and set a reasonable deadline to comply with new obligations, and if the deadline is not met, the client may terminate the contract and claim damages.<sup>451</sup>

A specific sup-type of this service contract is an author's contract. The performed work under this contract is of an intellectual, artistic or scientific nature<sup>452</sup> and mainly entails photography, written / languages pieces, IT products etc. The arrangements are like the service contract arrangements.

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<sup>448</sup>D. SENČUR PEČEK, S. LALETA, Ugovor o radu i ugovor o djelu: Zbornik Pravnog fakulteta Sveučilišta u Rijeci, vol. 39, br. 1, 411-456 (2018)

<sup>449</sup> Interview with the national competition authority

<sup>450</sup> Law of Civil Obligations / Zakon o obveznim odnosima. Available at: <https://www.zakon.hr/z/75/Zakon-o-obveznim-odnosima>

<sup>451</sup> <https://www.netokracija.com/ugovor-nezavisni-profesionalci-freelanceri-160861>

<sup>452</sup> Law on Copyright and Related Rights, Article 5

Self-employed can also register a company or a craft and be the only worker. This falls under the **Crafts Act**.<sup>453</sup> The Croatian self-employed often use the arrangement called the lump sum craft (see Section 1).<sup>454</sup>

Unlike some comparable countries (e.g. Slovenia) Croatian legislation does not recognise the third category of economically dependent individuals that could be seen as a grey zone between employees and self-employed. These persons are not workers because they do not meet the criterion of personal dependence, but they still need some protection due to economic dependence.<sup>455</sup> If Croatia were to follow the similar path, there should be a clear definition of this third category and monitoring of its implementation, making sure that it is not used to circumvent the rules or to cover false self-employment.<sup>456</sup>

Moreover, Croatian courts (including the Croatian Constitutional Court and the Supreme Court) have been looking into the professional status of journalists and media workers (set designers, theatre directors etc.) to answer whether these categories of workers could fall within the scope of employment relationships, despite being engaged through service contracts. In most cases, the main Croatian public broadcasting company (Croatian Radiotelevision) was the defendant.<sup>457</sup> The Supreme Court made significant decisions on these cases. The Supreme Court did not consider the employee's subordination to the employer (evidenced by giving instructions, working hours, place of work etc.) as relevant indicators of employment, nor the fact that the individual working on a service contract had performed work in the same way as those with employment contracts.<sup>458</sup> No other case law that relates to the classification of workers as self-employed has been identified.

No important case law that relates to the coverage of self-employed workers by collective bargaining and balancing it with fair competition has been identified.

Overall, therefore, as there is no explicit exemption from competition law nor from labour law, collective bargaining for self-employed workers should therefore be prohibited under competition law.

On the possible EU initiative of removing the current obstacle of EU competition law for solo self-employed, two points came into focus through the consultation with Croatian stakeholders.<sup>459</sup> Firstly, that type of EU-level initiative may not be the most effective to address the needs of self-employed. By granting that exception to self-employed, the competition law might be undermined due to the expected rise of associations that could lead to cartel activities and restrictive agreements or practices. Croatian legislation regarding collective bargaining is very general and it could be difficult to transpose the proposed EU-initiative. One suggestion is to adopt narrower regulations on price negotiations or working conditions which would apply to certain professions and would not fall under the scope of competition law. Secondly, there is a lack of an EU-wide definition of liberal professions and if the initiative were to cover that group, there may be issues in adopting the definition suitable for all Member States.

## Labour market trends and other factors

Overall, the Croatian labour market struggles with comparatively higher unemployment rates than the EU, including the youth unemployment rate (20.7% v. 17.8 % in the EU, both in 2020). Undeclared work and discrimination against certain groups, especially women, Roma and LGBT persons, are still frequent on the Croatian labour market. There is a strong skills mismatch on the market (partially also

<sup>453</sup>Zakon o obrtu / Crafts Act <https://www.zakon.hr/z/297/Zakon-o-obrtu>

<sup>454</sup>PRAVILNIK O PAUŠALNOM OPOREZIVANJU SAMOSTALNIH DJELATNOSTI [https://narodne-novine.nn.hr/clanci/sluzbeni/2020\\_01\\_1\\_1.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2020_01_1_1.html)

<sup>455</sup>D. SENČUR PEČEK, S. LALETA, Ugovor o radu i ugovor o djelu: Zbornik Pravnog fakulteta Sveučilišta u Rijeci, vol. 39, br. 1, 411-456 (2018)

<sup>456</sup>According to the interview with the labour law professor.

<sup>457</sup>D. SENČUR PEČEK, S. LALETA, Ugovor o radu i ugovor o djelu: Zbornik Pravnog fakulteta Sveučilišta u Rijeci, vol. 39, br. 1, 411-456 (2018)

<sup>458</sup>ibid.

<sup>459</sup>This mainly refers to the National competition agency representatives

resulting from the post-EU accession emigration when many qualified workers went to one of the EU Member States).

To address some of the challenges, the government has introduced some legislative changes and policy measures. A new Labour Act was introduced in 2014, which continued the path of labour market liberalisation, whereas legislation related to the responsibilities of the Croatian Employment Service (CES), such as employment mediation, unemployment protection or active labour market policies, has been subsumed into a single law—Law on the Labour Market—as of the beginning of 2019. A new Minimum Wage Act has also been in effect since 2019.<sup>460</sup> Following the COVID-19 crisis, the government amended the Aliens Act to introduce a “digital nomad scheme”<sup>461</sup>, facilitating remote work for foreign nationals. This scheme, coupled with the lump sum craft payment used by high-paying Croatian professionals, can be seen as attempts towards more labour market liberalisation. Additionally, the presence of a certain number of international / European platforms on the relatively limited Croatian market could also impact the increase of platform workers, especially in the aftermath of the pandemic, with the hospitality and tourism industries (employing most Croatians) being heavily hit. Overall, the market liberalisation could lead to a higher number of non-standard contracts, including self-employed workers.

The Ministry of Labour, Pensions, Family and Social Policy is aware of the European Commission’s Work Programme for 2021, which envisages the launch of a legislative initiative to improve the conditions of workers on platforms and the Ministry is also collecting information on how other EU Member States have partly regulated the issue of platform work. The Ministry plans to consult social partners to explore the needs to prescribe subjective rights and obligations arising from the specific nature of platform work, including fundamental rights and obligations based on work performance, compulsory insurance, protection and security, vacations, termination of contracts, co-determination and association.<sup>462</sup>

In Croatia, self-employed workers are not covered by any tailored social security scheme. Self-employed workers 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, self-employed workers 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. Family benefits are means-tested. Self-employed workers are excluded from unemployment benefits.<sup>463</sup>

The issue of collective bargaining for self-employed workers is still limited in Croatia. At present, there is no debate in Croatia on the issue of collective bargaining for self-employed workers, how collective bargaining for self-employed workers interacts with competition law, and false self-employment. Most court cases are related to the status of journalists, while platform work is still in its infancy, so the topic might gain some prominence in the future. The need for better protection of self-employed workers is mostly raised by academia<sup>464</sup> and through media investigations. However, in the context of the measures mitigating the COVID-19 impacts, the Government adopted an emergency package for the cultural sector, providing grants<sup>465</sup> to independent artists<sup>466</sup> in the period from March to June 2020. In addition, a special fund was established for independent professionals without a regulated status, those

<sup>460</sup>European Parliament.2019. The employment and social situation in Croatia. Available at: [https://www.eizg.hr/userdocsimages/vijesti/vijesti\\_publicacije/IPOL\\_STU\(2019\)642345\\_EN.pdf](https://www.eizg.hr/userdocsimages/vijesti/vijesti_publicacije/IPOL_STU(2019)642345_EN.pdf)

<sup>461</sup><https://www.euronews.com/travel/2021/01/28/meet-croatia-s-first-official-digital-nomad-as-country-opens-its-doors-with-special-visa>

<sup>462</sup>SSSH. Platformski rad u Hrvatskoj regulirat će se izmjenama Zakona o radu. 2021. <http://www.sssh.hr/hr/vise/0-0/platformski-rad-u-hrvatskoj-regulirat-ce-se-izmjenama-zakona-o-radu-4679>

<sup>463</sup>Eurofound (2017), Exploring self-employment in the European Union, Publications Office of the European Union, Luxembourg.

<sup>464</sup>Law professors recently drafted an article on employment relationships in the time of the pandemic where they call for more protection of self-employed, precarious and platform workers. Prof. dr. sc. Ivana Grgurev; Prof. dr. sc. Željko Potočnjak Pravni fakultet Sveučilišta u Zagrebu. Radni odnosi u vrijeme pandemije COVID-19

<sup>465</sup> Amount of the grants: HRK 2,000 and HRK 4,000; circa 260 – 500 EUR

<sup>466</sup> <https://min-kulture.gov.hr/vijesti-8/potpore-samostalnim-umjetnicima-koji-profesionalno-obavljaju-samostalnu-umjetnicku-djelatnost-i-kojima-se-doprinosi-placaju-iz-proracuna-republike-hrvatske/19371>

who are not on the taxpayers register, and those who do not pay social security contributions independently. Although this package was clearly linked to an unprecedented crisis, the provided support may nudge opening of some future avenues in this field.

Information on salary levels and differences between sectors, depending on whether they are covered by a collective agreement does not exist nor information on salary levels within the same sector, comparing pay of companies with and without collective agreements

## Conclusions

Self-employed workers are not allowed to bargain collectively under Croatian law. This is universal and covers all self-employed workers. The issue of collecting bargaining for self-employed has yet to reach a wider debate and find its place higher on the policy agenda in Croatia. The limited case law from the labour law perspective has mostly investigated the status of journalists and other media workers, while the High Commercial Court, covering the competition law issues, has not dealt with this issue.

## Interviews

<b>Name of interviewee</b>	<b>Organisation</b>
1. Ivana Grgurev	Faculty of Law, University of Zagreb
2. Mirta Kapural, Gorana Prašnički	National Competition Agency

# Hungary

## Background information

According to the Hungarian Central Statistical Office (KSH), in December 2020 there were 556 191 self-employed people. With an overall employment figure of 4 500 000, this accounts for 12.36% of the workforce.<sup>467</sup>

The table below contains the list of sectors and the number of self-employed people working in them

Sector	Number of self-employed
Mining and quarrying	35
Manufacturing	25,810
Electricity, gas, steam and air conditioning supply	50
Water supply; wastewater collection, treatment, waste management, decontamination	524
Industry (sum of the above)	26,419
Agriculture, forestry, fishing	25,635
Construction	67,738
Trade, car repair	62,334
Transport, storage	26,272
Accommodation services, hospitality	16,400
Information, communication	31,788
Financial and insurance activities	22,544
Real estate transactions	10,778
Professional, scientific and technical activities	87,941
Administrative and support service activities	38,412
Administration, defense; compulsory social security	–
Education	33,985
Human health and social work activities	22,982
Arts, entertainment, leisure	21,874
Other services	61,072
Other activities	17

The highest number of self-employed people (16% of the total) are in the 'Professional, scientific and technical activities' sector. The 'construction', 'trade, car repair' and 'other services' sectors/categories also have a large share (the three adding up to 34% of the total).

It is important to underline that these numbers reflect the definition of self-employment applied by the Central Statistical Office, and only consider those who were registered as such. Since undeclared work and false employment are still a considerable problem in Hungary, these estimates might not accurately reflect the actual figures. Moreover, platform-economy workers are not included in these statistics, and there are no estimates of the number of workers under such contracts.<sup>468</sup>

<sup>467</sup>

[https://www.ksh.hu/docs/hun/xstadat/xstadat\\_evkozi/e\\_qvd005c.html?down=1177.5999755859375](https://www.ksh.hu/docs/hun/xstadat/xstadat_evkozi/e_qvd005c.html?down=1177.5999755859375)

<sup>468</sup> [https://www.mjsz.uni-miskolc.hu/files/egyeb/mjsz/20180201/12\\_raczildiko.pdf](https://www.mjsz.uni-miskolc.hu/files/egyeb/mjsz/20180201/12_raczildiko.pdf)

According to interviewees, the most vulnerable groups of self-employed workers are working in the platform economy, including shipping and translators. Workers in the media industry, as well as taxi drivers were also mentioned in this group.

Albeit the labour code allows for all types of atypical contracts, only 4.1% of all employees were working part-time in 2019 (OECD)<sup>469</sup>, making the application of such specific contracts rather rare. This low rate indicates that there is in general a low take-up of even more atypical working contracts such as crowd work or platform-based work.<sup>470</sup>

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 the expert, the main reason why people choose self-employment. While this measure was designed to eliminate the underground economy, it can also lead to other issues, such as false employment through preference to fall into a different taxable category.<sup>471</sup>

### Collective bargaining framework

Collective bargaining is regulated by labour law (i.e. the labour code). Collective agreements are made between trade unions and employers. Extension mechanisms are legally possible but are seldom applied in Hungary.

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.<sup>472</sup>

Self-employed workers are not specifically covered by collective agreements, the labour code regulates their conditions. They can be covered by agreements in specific industries where trade unions operate. Due to competition rules (see next section on legal framework), they are legally not allowed to form trade unions but can join them. However, in one notable case (film industry trade union) the Registry Court allowed self-employed workers of the industry to unionise. The main aim here is to unify these workers – many of them are under false employment contracts, and employers can dictate the terms. The union offers advice and guidance, and for those employed it can also represent them

Trade unions in Hungary are historically weak (became obsolete during the socialist era), and their bargaining power is very limited. The estimates of the statistical office indicate that roughly 10% of workers are members of at least one trade union.

According to interviewees, the main obstacle for stronger representation of self-employed workers is related to the lack of discourse on this issue and a very weak drive to take action. While on the side of working conditions (working hours, salary, etc.) there is a demand for a better position, they are also risking their preferential treatment in terms of taxation and flexibility. The generally low prevalence of atypical contracts also explains the low interest in bargaining for a stronger position among workers included in these categories.<sup>473</sup>

Among the relatively vulnerable groups, there are several trade unions in the arts sector, including the film industry, creative artists, theatre workers, writers and musicians. Workers of the construction and education sector are also represented.

<sup>469</sup> <https://data.oecd.org/emp/part-time-employment-rate.htm#indicator-chart>

<sup>470</sup> [https://ajk.kre.hu/images/doc6/DOKTORI/dr\\_Racz\\_Ildiko\\_PhD\\_ertekezes\\_muhelyvitara.pdf](https://ajk.kre.hu/images/doc6/DOKTORI/dr_Racz_Ildiko_PhD_ertekezes_muhelyvitara.pdf)

<sup>471</sup> [https://www.parlament.hu/documents/10181/1789217/Infoiegyzet\\_2019\\_41\\_platform\\_alapu\\_munka.pdf/01d74d1e-1999-f2a3-eedc-66e0f9fb1a31?t=1572440162981](https://www.parlament.hu/documents/10181/1789217/Infoiegyzet_2019_41_platform_alapu_munka.pdf/01d74d1e-1999-f2a3-eedc-66e0f9fb1a31?t=1572440162981)

<sup>472</sup> <https://g7.hu/kozelet/20201031/a-magyarok-magukra-vannak-hagyva-amikor-a-fizetesukrol-egyezkednek-ezen-valtoztatna-most-az-eu/>

<sup>473</sup> [https://ajk.kre.hu/images/doc6/DOKTORI/dr\\_Racz\\_Ildiko\\_PhD\\_ertekezes\\_muhelyvitara.pdf](https://ajk.kre.hu/images/doc6/DOKTORI/dr_Racz_Ildiko_PhD_ertekezes_muhelyvitara.pdf)

## Legal framework

*Main relevant legislative provisions: Hungarian Labour Code 2012 Act I, Law on the Right of association, 2011/18*

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 labour code takes a binary view on employment, as it only considers employees and enterprises, and self-employment falls in the latter. Creating a third category is currently not on the agenda, with the issue of false-employment and unregistered workers still being considered the most important. The issue of self-employment is in the discourse on taxation rather than in the legal one.

No case law found, and the experts didn't identify any cases. Platform workers do not form a group (even the self-identification of this group is lacking) for collective action. The only moderately relevant example would be taxi drivers; they have a very strong lobby and are pushing for regulation and other issues (e.g. prices are now standardised; also Uber was banned after a fight between the two groups).

## Labour market trends and other factors

As noted above, the question of collective rights of the self-employed remains marginal (if not non-existent) in Hungary. The legal barrier on collective agreements of the self-employed and bargaining from a competition point of view is therefore not the main hurdle in securing a better position.

While some legal academics have started exploring the issue, this does not translate into any type of public discourse – be that technical or political. According to interviewees, people in these conditions do not have a strong awareness of this issue themselves, although there are signs that demands for better conditions are growing. With the expected increase in the number of atypical contracts and self-employed, the issue might grow in importance. Nonetheless, against the backdrop of a weak collective bargaining framework and feeble trade unions on the short run the rights of the self-employed will depend largely on external developments (e.g. EU initiatives, regulations, etc.).

As noted above, self-employment is mostly considered as a taxation issue, with the government pushing for eliminating the informal economy. False employment comes up in a similar context and receives more attention than self-employment itself. As noted above, favourable tax conditions due partly to this government policy is making self-employment a relatively good option for many. However, this raises serious issues regarding social benefits, especially on pensions, where the result of lower contributions can lead to problems on the long run.

Trade union experts and studies suggest that earnings are higher in industries where trade unions operate, and thus collective agreements are present. However, in Hungary collective agreements are more common at the enterprise level, rather than covering entire industries.<sup>474</sup>

## Conclusions

With a relatively weak system of trade unions, a low coverage of collective agreements and a labour market that is not fully adapted to atypical working contracts, the bargaining position of the self-employed is feeble in Hungary. Their collective bargaining is not allowed under the labour law – ie only trade unions have the right to collective bargaining, which excludes the self-employed to a large extent – but the willingness to engage in such discussions is also generally absent from the discourse. The relevant initiatives are generally restricted to sharing information and know-how among the participants rather than as a means to reach better agreements through collective action. The labour code does not contain a specific category for self-employed. As this is currently not a question on the agenda of either the social partners or the government, this is unlikely to change in the near future.

<sup>474</sup> <https://q7.hu/kozelet/20201031/a-magyarok-magukra-vannak-hagyva-amikor-a-fizetesukrol-egyezkednek-ezen-valtoztatna-most-az-eu/>; <https://hvdsz2000.eu/files/FilemanItems/filename/1424679582.pdf>

## Interviews

Name of interviewee	Organisation
1. Dr. Ildikó Rác	Károli Gáspár University of the Reformed Church in Hungary
2. Dr. Szabó Imre Szilárd	National Federation of Workers' Councils

# Ireland

## Background information

Data from the Central Statistics Office (CSO) Quarterly National Household Survey records 312,000 individuals as self-employed in 2017, or 15% of total employment in Ireland.<sup>475</sup> According to CSO figures, there were 331,200 individuals recorded as “self-employed” in 2019 amounting to 14% of the workforce. Of that 14%, 9.8% (232,300) described themselves as “self-employed without employees” – or “own- account workers” – a decrease from 12.97% in 1998. 63% of those “own- account workers” were employed in the agriculture sector, 25% in construction and 19% in transport.<sup>476</sup> There was a reduction in self-employment between 1999 and 2017 in some traditional high-employment sectors such as:

- accommodation and food services (from 16.43% to 8.08%); and
- retail and wholesale sectors (from 17.46% to 10.74%).<sup>477</sup>

The same period (1999 – 2017) saw an increase in sectors such as construction, ICT and ‘Other NACE activities’ (which includes sport, the arts, gambling and computer repairs).<sup>478</sup> It is worth noting, however, that in more recent years the trend has been a decrease in self-employment in all sectors with the exception of ICT and ‘Other NACE activities’.<sup>479</sup>

Therefore, in Ireland the sectors with a large proportion of self-employed workers include agriculture, construction, transport, ICT, professional activities and other NACE activities. There are a wide range of occupations of self-employed workers in Ireland including farmers, train drivers, builders, plumbers, barristers, journalists, artists, musicians, actors, translators, pilots, etc. Figure 1 below provides details of the share of self-employment as a proportion of total employment.

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<sup>475</sup> <https://www.cso.ie/en/releasesandpublications/er/lfses/lfsemploymentseriesq12019/>.

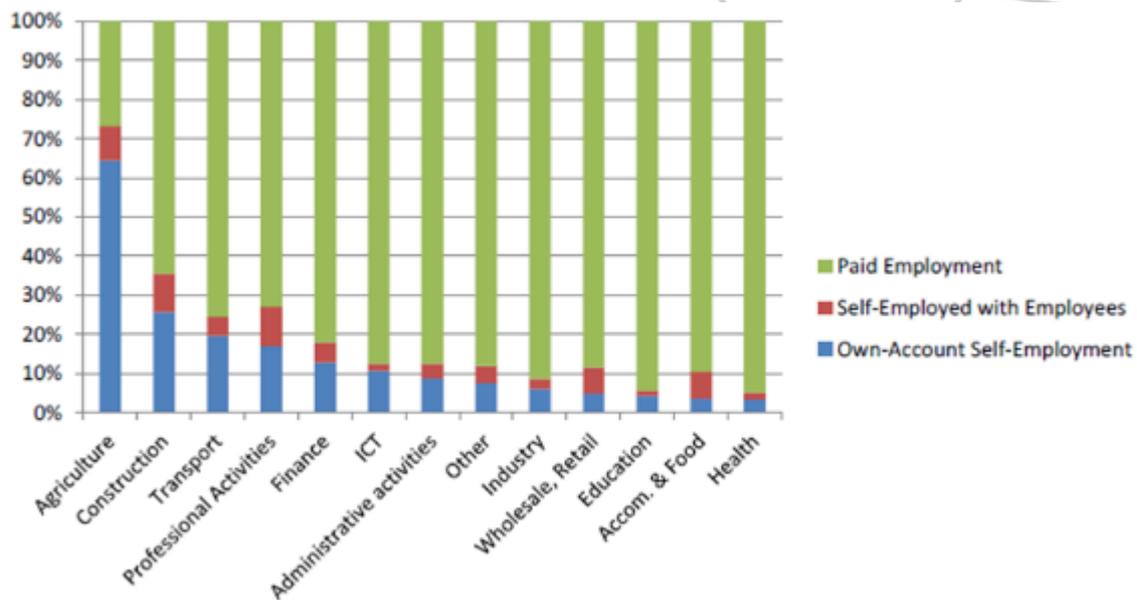
<sup>476</sup> <https://www.cso.ie/en/releasesandpublications/er/lfses/lfsemploymentseriesq12019/>.

<sup>477</sup> Ibid.

<sup>478</sup> Ibid.

<sup>479</sup> Information obtained through consultation with stakeholder (employment lawyer, January 2021).

**Figure 1: Self-Employment Share of Total Employment<sup>480</sup>**



Overall, these trends can be interpreted as meaning that the overall level of self-employment is falling and there are more people now working as sole agents on their own account, potentially as dependent or disguised self-employed workers. One of the main issues remains the capacity to accurately identify the number of persons in self-employment who are in positions of false or false self-employment.<sup>481</sup>

- reasons for self-employment – eg individual choice, no other work available, mixture of the two

According to an interviewee, 90% of the time people go into self-employment out of their own personal choice. They often want the flexibility of it and it suits their lifestyle. This is particularly the case for women with young children.<sup>482</sup> For instance, 75% of freelance translators in Ireland are women.<sup>483</sup> Moreover, it is interesting to see that according to a number of Covid surveys conducted by the International Federation of Translators (FIT Europe)<sup>484</sup> that over 95% of freelance translators/interpreters are firmly committed to staying in the profession after the pandemic despite in many cases that there has been a lack of work and support measures given by the government during the pandemic, highlighting their personal choice to be self-employed.

No studies or statistics were found on vulnerable or self-employed workers through desk research. However, interviewees consulted indicated that the most vulnerable self-employed workers in Ireland include platform workers, construction workers, people working in the arts (i.e. theatre workers, actors, musicians and film workers) who are generally low paid and have poor working conditions.<sup>485</sup> Self-employed professionals including freelance translators and interpreters, pilots (see false self-employment below regarding safety risks), barristers and journalists are also considered to be vulnerable in terms of having no proper working conditions and job security.<sup>486</sup> It should be noted, however, that well-established barristers and journalists are not considered vulnerable in terms of their income,

<sup>480</sup> <https://www.cso.ie/en/releasesandpublications/er/lfses/lfsemploymentseriesq12019/>.

<sup>481</sup> Information obtained through consultation with stakeholder (employment law academic, February 2021).

<sup>482</sup> Information obtained through consultation with stakeholder (freelance translator, February 2021).

<sup>483</sup> Ibid.

<sup>484</sup> <http://fit-europe-rc.org/en/results-from-fit-europes-covid-19-take-3-survey/>

<sup>485</sup> Information obtained through consultations with stakeholders (Trade Union and freelance translator, February 2021).

<sup>486</sup> Information obtained through consultation with stakeholder (Trade Union, February 2021).

As mentioned directly above, there are high levels of self-employed workers who are deemed to be very vulnerable due to precarious working arrangements, low pay and lack of security in the construction and arts sectors, platform workers and a number of self-employed professionals indicated above.<sup>487</sup>

There is a lack of robust data on the size of the platform economy in Ireland, but based on European data, the number of platform workers seems to be above the European average. Nonetheless, we can refer to the COLLEEM II data for some indicative figures in Ireland<sup>488</sup>. The data suggests the numbers of platform workers, while small in absolute terms, are relatively high in European terms; 7.2% of workers are classified as 'main' or 'secondary' platform workers' (as against 5.7% in Germany).<sup>489</sup> A high proportion of the workers that provide services via digital labour platforms are foreign born (mainly Brazilian), and mainly work for food delivery services (e.g. Deliveroo) in Ireland.<sup>490</sup>

There are an estimated 9000 licensed pilots in Ireland, the vast majority of whom are not based or work in Ireland or even enter Irish air space. All of these pilots are false /falsely self-employed. Approximately half of pilots operating in Irish-registered airlines are not employed directly by the airline they fly for but are false self-employed. Ireland is thus used as a platform for the false self-employment of pilots across Europe.<sup>491</sup>

The Connect Trade Union also claims that false self-employment is rampant in the construction industry.<sup>492</sup> The Irish Congress of Trade Unions indicated that in 2019 only 24.3% of those working in construction were classified as self-employed with no employees.<sup>493</sup>

Other than pilots and the construction industry, no further information on false self-employment in other sectors in Ireland was found.

### Collective bargaining framework

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.<sup>494</sup>

Trade Unions have emphasized that collective bargaining is a critically important means of regulating the employment relationship in Ireland.<sup>495</sup> 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.<sup>496</sup>

Irish law does not recognise class actions, and while unions can represent workers, they cannot launch actions in their name in order to enforce the rights of the respective workers. The Irish 'voluntarist' system of industrial relations does not provide for works councils (outside of EU law obligations) or give trade unions mandatory bargaining rights.<sup>497</sup>

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<sup>487</sup> Ibid.

<sup>488</sup> Urzi Brancati, C., Pesole, A., Fernández-Macias, E. (2020). New evidence on platform workers in Europe. Results from the second COLLEEM survey, EUR 29958 EN, Publications Office of the European Union, Luxembourg, 2020, [https://publications.jrc.ec.europa.eu/repository/bitstream/JRC118570/jrc118570\\_jrc118570\\_final.pdf](https://publications.jrc.ec.europa.eu/repository/bitstream/JRC118570/jrc118570_jrc118570_final.pdf)

<sup>489</sup> Ibid.

<sup>490</sup> Information obtained through stakeholder consultation (employment lawyer, January 2021).

<sup>491</sup> Information obtained through stakeholder consultation (pilot, February 2021).

<sup>492</sup> Martin Wall, 'New proposals to clamp down on false self-employment practices', 25 March 2019, available at: <https://www.irishtimes.com/news/politics/new-proposals-to-clamp-down-on-false-self-employment-practices-1.3837094>.

<sup>493</sup> Jack Horgan-Jones, 'Building sector's abuse of self-employed classification to be outlined', 31 January 2019, available at: <https://www.irishtimes.com/news/ireland/irish-news/building-sector-s-abuse-of-self-employed-classification-to-be-outlined-1.3776517>.

<sup>494</sup> 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>.

<sup>495</sup> Information obtained through consultation with stakeholder (Trade Union, February 2021).

<sup>496</sup> Information obtained through consultation with stakeholder (employment lawyer, January 2021).

<sup>497</sup> Information obtained through consultation with stakeholder (Trade Union, February 2021).

There are however many different trade unions in Ireland representing the different employment sectors. The overall trade union membership rate in Ireland was estimated in 2018 as being 28% of the workforce, although figures from the Irish Congress of Trade Unions (Congress) show that union density and membership is much higher in the public sector.<sup>498</sup> As indicated above, involvement of trade unions in collective agreements is also declining<sup>499</sup>, a situation exacerbated by the recent High Court decision in *Náisiúnta Leictreach Contaitheoir Eireann v. Labour Court*<sup>500</sup> declaring constitutionally invalid the system of sectoral employment order agreements established under the Industrial Relations (Amendment) Act 2015.<sup>501</sup> Sectoral employment orders had been established in the construction sector, the mechanical engineering sector and the electrical contracting sector (S.I. No. 251 of 2019). The orders applied to every “worker” of the class, type or group in the economic sector to which it was expressed to apply, irrespective of trade union membership with “worker” being defined as including a person who has entered into or works under not only a “contract of service” but also a “contract personally to execute any work or labour”.<sup>502</sup>

However, in the High Court decision in *Náisiúnta Leictreach Contaitheoir Eireann v. Labour Court*, it was indicated that Irish law does not provide that a trade union has a “right” to be recognised by an employer for the purposes of collective bargaining. The “voluntarist” nature of Irish industrial relations is echoed in the High Court decision in *Association of General Practitioners v. Minister for Health*<sup>503</sup> where O’Hanlon J. said:

“I do not consider that there is any obligation imposed by ordinary law or by the Constitution on an employer to consult with or negotiate with any organisation representing his employees or some of them when the conditions of employment are to be settled or reviewed. The employer is left with freedom of choice as to whether he will negotiate with any organisation or consult with them on such matters.”<sup>504</sup>

Normally, regarding platform workers, the employer is not the actual platform but an intermediary service.<sup>505</sup> Moreover, regarding false self-employed pilots, the employer is a pilot service company.<sup>506</sup> There are 700-800 pilot service companies (PSC) established in Ireland. These PSCs then contract out pilot labour to the airline.<sup>507</sup>

Employers are usually SMEs in Ireland.<sup>508</sup> For example, the pilot service companies are usually SMEs with between 5-8 directors each. The pilots are the directors of the companies. The company will not have normal employees other than the directors.<sup>509</sup>

Several registered trade unions include self-employed workers as members. Indeed, the Irish Postmasters’ Union, which is the representative body for 90% of the independent Postmasters who operate An Post branches (but is not affiliated to the Irish Congress of Trade Unions), is solely comprised of self-employed persons, many of whom would not operate as “own- account workers”.<sup>510</sup> Other trade unions who would have self-employed workers as members include the Irish Medical Organization (IMO), Veterinary Ireland (which is both a trade union and a trade organisation), the National Union of Journalists, and SIPTU; all of which are affiliated to the Irish Congress of Trade Unions. In its capacity as a trade organisation, Veterinary Ireland is affiliated to the Small Firms Association. The Irish Airline Pilots’ Association represent self-employed pilots. SIPTU and UNITE represent the construction sector and train drivers. SIPTU also represent administration and the ‘arts’

<sup>498</sup> [https://www.worker-participation.eu/National-Industrial-Relations/Countries/Ireland/Trade-Union#:~:text=In%20the%20most%20recent%20period,overall%20employment%20has%20also%20grown;F.Walsh'TradeUniondensityinIrelandsince2003:whatdothestatisticstellus?'availableat:https://researchrepository.ucd.ie/bitstream/10197/9907/2/irn\\_2018.pdf](https://www.worker-participation.eu/National-Industrial-Relations/Countries/Ireland/Trade-Union#:~:text=In%20the%20most%20recent%20period,overall%20employment%20has%20also%20grown;F.Walsh'TradeUniondensityinIrelandsince2003:whatdothestatisticstellus?'availableat:https://researchrepository.ucd.ie/bitstream/10197/9907/2/irn_2018.pdf).

<sup>499</sup> <https://www.oecd.org/employment/emp/collective-bargaining-Ireland.pdf>.

<sup>500</sup> [2020] IEHC 303; [2020] 2 I.L.R.M. 183.

<sup>501</sup> Industrial Relations (Amendment) Act 2015, S.I. 27 of 2015, available at: [http://www.irishstatutebook.ie/eli/2015/act/27/enacted/en/html#:~:text=An%20Act%20to%20make%20further,to%20amend%20and%20extend%20the;A.Kerr,TheTradeUnionandIndustrialRelationsActs\(5thedn,2015\)301.](http://www.irishstatutebook.ie/eli/2015/act/27/enacted/en/html#:~:text=An%20Act%20to%20make%20further,to%20amend%20and%20extend%20the;A.Kerr,TheTradeUnionandIndustrialRelationsActs(5thedn,2015)301.)

<sup>502</sup> A. Kerr, *The Trade Union and Industrial Relations Acts* (5th edn, 2015) 301.

<sup>503</sup> [1995] 1 I.R. 382, 391.

<sup>504</sup> *Ibid.*

<sup>505</sup> Information obtained through consultation with stakeholder (employment law academic, February 2021).

<sup>506</sup> Information obtained through consultation with stakeholder (pilot, February 2021).

<sup>507</sup> *Ibid.*

<sup>508</sup> *Ibid.*

<sup>509</sup> *Ibid.*

<sup>510</sup> *Tierney v. An Post* [2000] 1 I.R. 536.

(i.e., theatre workers, actors, musicians and film workers), warehousing and docks.<sup>511</sup> The Irish Airline Pilots' Association represents self-employed pilots. Moreover, there is no specific trade union representing platform workers in Ireland.

Although there is no statutory prohibition on self-employed workers joining trade unions (false self-employed can also join trade unions as voluntary members), some union rule books make it difficult, if not impossible, for such workers to join.<sup>512</sup> A recent example is provided by the case of *O'Connell v. Building and Allied Trades' Union*<sup>513</sup>. Under the union's rules, membership is only open to "workers" which the union interpreted as meaning only block layers in direct employment. The plaintiff, as a registered subcontractor, did not meet that criterion. His inability to obtain union membership impacted on his ability to secure work on building sites and he was eventually awarded €15,000 damages for breach of his constitutional right to earn a livelihood.<sup>514</sup>

Since the enactment of the 2017 Competition Act (mentioned below), which gives certain self-employed workers (i.e., voice-over actors, session musicians or freelance journalists) the right to enter into collective agreements, no such collective agreements have been negotiated by the three trade unions to immediately benefit from its enactment – Equity, the Musicians' Union and the National Union of Journalists. Nor have there been any applications from trade unions representing "false" or "fully dependent" self-employed workers for an exemption from section. 4 of the 2002 Act.<sup>515</sup> According to an interviewee at an ICTU conference she attended last year there was discussion that some other self-employed groups are considering action in this area but no application for other categories of self-employed persons have been taken to date.<sup>516</sup>

In terms of the reasoning as to why no applications have been made, it is believed that there is a real fear on the union side that whatever the first collective agreement attempt they try to bring under the act needs to be bullet proof as it will be challenged by the court, given their hostility towards collective bargaining.<sup>517</sup> According to one trade union interviewed, they also indicated that the criteria set out in the act is too narrow (e.g. requirement that the fully dependent self-employed worker's main income derives from not more than two persons, is very difficult to fulfil for a number of self-employed people).<sup>518</sup>

Under Section 50 of the 1936 Registered Employment Act<sup>519</sup> which became part of the Industrial Relations Act 1946<sup>520</sup> (there was a system whereby a collective agreement could be extended to the entire sector if the unions and employers were seen as being sufficiently represented). This mainly related to construction, mechanical and electrical engineering (three main sectors) who were employees. The system worked very well in terms of ensuring a level playing field because the registered employment agreement could cover not just pay but all other kinds of conditions (sick pay, pensions, work time). The opposition to that system was the smaller 1,2 and 3 person employers using migrant labour not the large employers. This system was struck down as being unconstitutional (see info above).<sup>521</sup> There are also Employment Regulation Orders (EROs) which set the minimum rates of pay and conditions for workers in a specified business sector (i.e. contract cleaning and security sector) but these also only apply to employees.<sup>522</sup>

It is unlawful for self-employed contractors to boycott or go on strike in Ireland.<sup>523</sup> However, one interviewee noted that Deliveroo riders (i.e. platform workers, an estimated 70% of whom are Brazilian

<sup>511</sup> Information obtained through consultation with stakeholder (Trade Union, February 2021).

<sup>512</sup> Ibid.

<sup>513</sup> [2014] IEHC 360; [2016] IECA 338.

<sup>514</sup> *O'Connell v. Building and Allied Trades' Union* [2018] IEHC 815.

<sup>515</sup> Information obtained through consultations with stakeholders (employment law academic, employment lawyer, CCPC, January and February 2021).

<sup>516</sup> Information obtained through consultation with stakeholder (CCPC, February 2021).

<sup>517</sup> Information obtained through consultation with stakeholder (employment law academic, February 2021).

<sup>518</sup> Information obtained through consultation with stakeholder (Trade Union, February 2021).

<sup>519</sup> Conditions of Employment Act 1936, available at: <http://www.irishstatutebook.ie/eli/1936/act/2/enacted/en/html>.

<sup>520</sup> Industrial Relations Act 1946, available at: <http://www.irishstatutebook.ie/eli/1946/act/26/enacted/en/html>.

<sup>521</sup> Information obtained through consultation with stakeholder (employment law academic, February 2021).

<sup>522</sup> Ibid.

<sup>523</sup> Information obtained through consultation with stakeholder (pilot, February 2021).

students) staged a strike recently (tuned off apps for a few hours) in a bid to get improved pay and working conditions, security and value standards and to be taken seriously by the police when they are victims of crime. Moreover, it was reported that several Deliveroo couriers have suffered violence and have been knocked down on their bikes, and the police have not taken their cases seriously.<sup>524</sup> This is the only instance that interviewees knew of and that was found through desk research.

## Legal framework

### *Main relevant legislative provisions: Competition (Amendment) Act 2017*

There is nothing in employment law that relates specifically to the exclusion or inclusion of self-employed workers under collective agreements. Efforts were made to bring across into employment legislation the concept of false/false self-employment through various bills (see below) but nothing has been enacted.<sup>525</sup>

Irish competition law has always prohibited agreements between “undertakings” which have as their object or effect the prevention, restriction or distortion of competition in services (The Competition Act 1991<sup>526</sup> and, subsequently, the Competition Act 2002<sup>527</sup>). An ‘undertaking’ is defined in the Competition Act 2002 as including an individual engaged for gain in the provision of a service (i.e., a self-employed person).

The Labour Party introduced a Private Members Bill in January 2016, to provide that section. 4 of the 2002 Act would not apply to collective bargaining and collective agreements in respect of “a relevant category of self-employed worker”. As initiated<sup>528</sup>, the Bill had provided that, where an individual engaged for gain under a contract with an undertaking “personally to do any work or provide any services” (whether work or services of a manual, clerical, professional or vocational nature), then the trade union of which those individual and other individuals so engaged were members was deemed not to be an association of undertakings for the purposes of section. 4 of the 2002 Act. The Bill had further if section .4 would not apply to any agreement affecting the terms and conditions under which such work was done, or such services were provided. During its legislative passage however, the Bill was heavily amended by the Government because, in the words of the Minister for Jobs, Enterprise and Innovation, “it exempted people other than vulnerable self-employed workers”<sup>529</sup> and it was ultimately enacted in June 2017 as the Competition (Amendment) Act 2017.

### **Competition (Amendment) Act 2017:<sup>530</sup>**

The enactment of the Competition (Amendment) Act 2017 gives certain categories of self-employed workers the right to enter into collective agreements. This Act provides a specific exemption from 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 self-employed workers to engage in collective bargaining in the future. It should be noted, however, that no collective agreements have as yet been concluded under this Act.

This Act provides a specific exemption from section. 4 of the 2002 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 self-employed workers to engage

<sup>524</sup> Information obtained through consultation with stakeholder (employment lawyer, January 2021); <https://www.dublinlive.ie/news/business/deliveroo-couriers-strike-6pm-tonight-19683959>.

<sup>525</sup> Information obtained through consultation with stakeholder (employment lawyer, January 2021).

<sup>526</sup> Competition Act 1991, No. 24 of 1991, available at: <http://www.irishstatutebook.ie/eli/1991/act/24/enacted/en/html>.

<sup>527</sup> Competition Act 2002, No. 14 of 2002, available at: <http://www.irishstatutebook.ie/eli/2002/act/14/enacted/en/html>.

<sup>528</sup> <https://data.oireachtas.ie/ie/oireachtas/bill/2016/8/eng/initiated/b816s.pdf>.

<sup>529</sup> <https://www.oireachtas.ie/en/debates/debate/seanad/2016-11-10/10/>.

<sup>530</sup> Competition (Amendment) Act 2017, No. 12 of 2017, available at: <http://www.irishstatutebook.ie/eli/2017/act/12/enacted/en/html>.

in collective bargaining in the future. Two relevant categories are defined in the 2017 Act: “false self-employed workers” and “fully dependent self-employed workers”.<sup>531</sup>

A “false self-employed worker” is defined as an individual who:

- (i) performs for a person under a contract the same activity or service as an employee of that other person;
- (ii) has a relationship of subordination in relation to that other person for the duration of the contractual relationship;
- (iii) is required to follow the instructions of that other person regarding the time, place and content of their work;
- (iv) does not share in the other person’s commercial risk;
- (v) has no independence as regards the determination of the time schedule, place and manner of performing the tasks assigned to him or her; and
- (vi) for the duration of the contractual relationship forms an integral part of that other person’s undertaking.

A ‘fully dependent self-employed worker’ is defined as an individual who perform services for another person and whose main income in respect of the performance of such services is derived from not more than two persons.

There are a lot of caveats in the 2017 act around these categories of false employed worker and fully dependent self-employed worker.<sup>532</sup>

Under the 2017 Act, a trade union may make an application to the Minister for Business, Enterprise and Innovation to permit groups of self-employed workers, who fall within either of the above definitions, to engage in collective bargaining with employers in relation to working conditions and terms of employment, including pay rates. Such an application can only be granted if the Minister is satisfied with certain stringent conditions, namely that the exemption will have no or minimal economic effect on the market in which those workers operate; will not lead to or result in significant costs to the State; and which will not otherwise contravene the requirements of the Act or any other enactment, including EU law, relating to the prohibition on the prevention, restriction or distortion of competition in trade in goods or services.

The Competition and Consumer Protection Commission was not in favour of the introduction of the 2017 Act and worked closely with the Department of Business, Enterprise and Innovation to significantly restrict its scope.<sup>533</sup> The 2017 Act thus operates solely within the “relatively narrow confines” of trade union membership and collective bargaining. On 13 February 2018, a Private Members Bill was introduced in the Seanad designed to apply the false self-employment test contained in the 2017 Act across the board for all employment rights legislation. The Protection of Employment (Measures to Counter False Self-Employment) Bill 2018 sought, inter alia, to provide protection for persons who were retained to carry out work and were incorrectly designated as self-employed.<sup>534</sup>

The Bill had its Second Reading on 28 February 2018, during which the Minister for Employment Affairs and Social Protection indicated that the Government would not be opposing the Bill at that point but that she would be tabling amendments when the Bill reached Committee Stage<sup>535</sup>. Committee Stage was taken on 27 March 2019, where the Bill was opposed by the Government on the basis that the Minister would be bringing forward her own proposals on the issue and the Bill then failed to proceed to Report Stage.<sup>536</sup>

The term “self-employed” is not defined in Irish law but is used to describe a person who is engaged under a “contract for services”, as opposed to a “contract of service”. Only persons engaged under

<sup>531</sup> [https://one.oecd.org/document/DAF/COMP/WD\(2019\)67/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2019)67/en/pdf)

<sup>532</sup> Information obtained through consultation with stakeholders (CCPC, February 2021).

<sup>533</sup> [https://one.oecd.org/document/DAF/COMP/WD\(2019\)67/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2019)67/en/pdf)

<sup>534</sup> <https://data.oireachtas.ie/ie/oireachtas/bill/2018/17/eng/initiated/b1718s.pdf>.

<sup>535</sup> <https://www.oireachtas.ie/en/debates/debate/seanad/2018-02-28/7/>.

<sup>536</sup> <https://www.oireachtas.ie/en/debates/debate/seanad/2019-03-27/13/>.

the latter type of contract are regarded as “employees”.<sup>537</sup> Ireland therefore maintains a strict binary divide between employees and the self-employed.

During the discussions on the Social Partnership agreement known as the Programme for Prosperity and Fairness<sup>538</sup>, concern was expressed that there were increasing numbers of individuals categorised as “self-employed” where the indicators might be that “employee” status would be more appropriate. Accordingly, in 2001, the Government established the Employment Status Group, which was comprised of representatives from the relevant Government departments, the Revenue Commissioners and the Social Partners. The Group subsequently issued a Code of Practice on determining employment status<sup>539</sup>, the express purpose of which was to eliminate misconceptions and provide clarity. It was specifically stated as not being intended to bring individuals who were “genuinely self-employed” into employment status.

The Code of Practice sets out a variety of criteria as to whether an individual is an employee or is self-employed but emphasises the importance of looking at the job as a whole and the reality of the relationship. The overriding consideration “will always be whether the person performing the work does so as a person in business on their own account” and the fundamental question is whether that person is “a free agent with an economic independence of the person engaging the service?”

The Code indicates that an individual would normally be regarded as self-employed if he or she:

- owns his or her own business.
- is exposed to financial risk, by having to bear the cost of making good faulty or substandard work carried out under the contract;
- assumes responsibility for investment and management in the enterprise
- has the opportunity to profit from sound management in the scheduling and performance of engagements and tasks;
- has control over what is done, how it is done, when and where it is done and whether he or she does it personally;
- is free to have other people, on his or her terms, to do the work which has been agreed to be undertaken;
- can provide the same services to more than one person or business at the same time;
- provides the materials, equipment and/or machinery for the job, other than the small tools of the trade; and
- provides his or her own insurance cover.

It has been accepted by the Minister for Employment Affairs and Social Protection that the Code of Practice needs further updating and being put on a statutory footing<sup>540</sup> and, in August 2018, a Working Group was established to determine the necessary revisions.<sup>541</sup> No further progress has been made but it is clear that the issue of employment status is not simply a box-ticking exercise.

If a dispute arises as to whether a person is an employee or is self-employed, there are a series of tests which have been developed by the Superior Courts in Ireland to aid in the identification of those who work under a contract of service and those who work under a contract for services. As the nature of work has changed over the past 150 years, so the tests have evolved from the straightforward “control”

<sup>537</sup> For a detailed treatment of the issue of employment status in Ireland, see A. Kerr in B. Waas and G. van Voss (eds), *Restatement of Labour Law in Europe: Vol 1: The Concept of Employee* (2017, Hart Publishing), Chapter 16.

<sup>538</sup> <https://www.oireachtas.ie/ga/debates/debate/seanad/2000-02-10/4/>

<sup>539</sup> <https://www.revenue.ie/en/self-assessment-and-self-employment/documents/code-of-practice-on-employment-status.pdf>.

<sup>540</sup> Seanad Eireann, 27 March 2019: <https://www.oireachtas.ie/en/debates/debate/seanad/2019-03-27/13/>, a confirmation reiterated in Dáil Eireann on 25 September 2019: <https://www.oireachtas.ie/en/debates/debate/dail/2019-09-25/8/#s9>.

<sup>541</sup> Joint Committee on Employment Affairs and Social Protection, 8 November 2018: [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_employment\\_affairs\\_and\\_social\\_protection/2018-11-08/4/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_employment_affairs_and_social_protection/2018-11-08/4/).

test of the nineteenth century to a more multi-faceted approach developed in the latter half of the twentieth century which looks at the “economic reality” of the relationship, regardless of how the parties describe themselves. The evolution can be seen clearly from the 1998 decision of the Supreme Court in *Henry Denny & Sons (Ireland) Ltd v. Minister for Social Welfare*.<sup>542</sup> This case concerned the employment status of a “supermarket demonstrator” for the purposes of the company’s social insurance contributions. The contract between the company and the worker stipulated that she was self-employed and was not an employee of the company. In upholding a decision of a Social Welfare Appeals Officer that she was an employee, the Supreme Court said that whether a person was retained under a contract of service depended essentially upon the actual relationship between the parties and not their statement as to how liability for tax and social insurance should arise or be discharged.

Also, in *McCotter v. Quinn Insurance Ltd*<sup>543</sup>, the Employment Appeals Tribunal was hearing an unfair dismissal complaint brought by a Regional Claims Manager. He had worked under an agreement “for the provision of insurance investigation and settlement services” and was the director and 100% shareholder of a limited company to which payments were made following the submission of invoices. He made his tax returns as a self-employed person but argued that the economic reality was that he was an employee as he had to carry out the work himself, was provided with the company’s business cards and had a company email address. The Tribunal, however, concluded that he was self-employed and dismissed the complaint saying:

“Whether a worker is an employee or self-employed depends on many factors. The Tribunal wishes to stress that the issue is not determined by adding up the number of factors pointing towards employment and comparing that result with the numbers pointing towards self-employment. It is the matter of the overall effect which is not necessarily the same as the sum-total of all individual details. Not all details are of equal weight or importance in any given situation. The details may also vary in importance from one situation to another. When the detailed facts have been established the right approach is to stand back and look at the picture, to see if the overall effect is that of a person working in a self-employed capacity or a person working as an employee in somebody else’s business. If the evidence is evenly balanced, the intention of the parties may then decide the issue. In summary there is no single test. Each case must be considered in the light of its own particular facts.”

Finally, mention should be made of the collective agreement entered into between Veterinary Ireland and the Department of Agriculture, Food and the Marine which was registered by the Labour Court in April 2019 and subsequently confirmed by the Minister for State at the Department of Business, Enterprise and Innovation pursuant to the provisions of the Industrial Relations (Amendment) Act 2015.<sup>544</sup> The agreement sets out the “agreed terms and conditions” to apply to all Temporary Veterinary Inspectors (TVIs) engaged by the Department to provide meat inspection services.

The employment status of TVIs has been the subject of long- running litigation as to whether they were “employees” of the Department and thus entitled to statutory minimum notice and redundancy payments on the closure of meat plants. The Department had consistently maintained that the TVIs were self-employed, and thus not so entitled, in proceedings before the Employment Appeals Tribunal and, on appeal, to the High and Supreme Courts (*Barry v Minister for Agriculture and Food*). When the claims came before the Tribunal for the third time, it ruled, by a majority of two to one, that the TVIs were not employed under contracts of service<sup>545</sup>.

There has been no case law directly concerning platform workers in Ireland. There has been no important case law that relates to the coverage of self-employed workers by collective bargaining and balancing this with fair competition since the enactment of the 2017 Competition (Amendment) Act.<sup>546</sup>

Before the enactment of the 2017 Act, in March 2003, the Competition Authority initiated an investigation into possible price-fixing among self-employed voice-over actors and advertising

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<sup>542</sup> [1998] 1 I.R. 34.

<sup>543</sup> UD 242/2011; [2013] E.L.R. 45.

<sup>544</sup> Registered Employment Agreement (Veterinary Ireland) Order 2019 (S.I. No. 662 of 2019).

<sup>545</sup> *Barry v. Minister for Agriculture and Food* [2008] IEHC 216; [2011] IEHC 43; and [2015] IESC 63.

<sup>546</sup> Information obtained through consultation with stakeholder (CCPC, February 2021).

agencies. The Authority noted that this practice appeared to have been going on for at least 15 years. In August 2004, the Authority ruled that the 2002 agreement between Irish Actors Equity (a registered trade union) and the Institute of Advertising Practitioners, in respect of the terms and conditions under which advertising agencies would hire radio and television voice-over actors, was in breach of section 4 of the 2002 Competition Act.<sup>547</sup> The actors, being self-employed, were considered to be “undertakings” and the union was acting as a trade association and not engaging in collective bargaining. At the request of the Irish Congress of Trade Unions (Congress), the Authority reviewed but reconfirmed its decision in 2008.

Following the December 2014 decision of the Court of Justice of the European Union in Case C-413/13, *FNV Kunsten Informatie en Media*<sup>548</sup>, the **Irish Congress of Trade Unions** (Congress) asked the Competition and Consumer Protection Commission (which had replaced the Competition Authority) to again revisit the 2004 decision, but the Commission determined, in June 2015, that the analysis and conclusions of its predecessor remained valid<sup>549</sup>. It acknowledged, however, that, were the voice-over actors to be proved to be “false self-employed”, then a different conclusion would have emerged. Congress then lodged a **complaint against Ireland with the European Committee on Social Rights** alleging a breach of the Right to Bargain Collectively contained in Article. 6.2 of the European Social Charter.<sup>550</sup>

In its decision on the Congress complaint, the European Committee of Social Rights found that the ban on collective bargaining for the self-employed workers who were the subject of the complaint was not necessary in a democratic society and that the situation that occurred before the 2017 Act came into operation was in breach of Article. 6.2 of the European Social Charter.<sup>551</sup> Given that the 2017 Act removed the impediment on such workers engaging in collective bargaining and provided a mechanism whereby other groups of self-employed workers could so engage, most of the Committee members found that the situation was now in conformity with the Charter. They did warn, however, that an “overly restrictive” interpretation of the conditions set out in the 2017 Act would run the risk of being in violation of Article. 6. Two members of the Committee<sup>552</sup> went further, however, and said that the conditions and procedural requirements that had to be satisfied by trade unions introduced “a regulation on the freedom to take part in collective bargaining which left room for all sorts of subjective interpretation by the executive”. That type of regulation was at variance, they said, with the measures to promote collective bargaining required by Article. 6.2 of the Charter.

Congress also made representations to the ILO Committee of Experts on the Application of Conventions and Recommendations as to Ireland’s compliance with Convention No. 98 on the Right to Organise and Collective Bargaining<sup>553</sup>. Congress maintained that there were increasing categories of self-employed workers who found themselves classified as “undertakings” and hence excluded from “the right to collective bargaining”. These included (in addition to voice-over actors, session musicians and freelance journalists) writers, photographers, dancers, performers, models, bricklayers, and other trades in the construction industry. Congress accepted that competition law should preclude price-fixing agreements between “cartels of businesses” but submitted that, in order to protect “legitimate collective bargaining”, there needed to be a “workable distinction between the sole-trader carrying on a business and a worker in the everyday sense of the word who is in a position of subordination”.

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<sup>547</sup> Ref. E/04/002 (31 August 2004): available at: [https://www.cccpc.ie/business/wp-content/uploads/sites/3/2017/04/E\\_04\\_002-Actors-Fees-Enforcement-Decision.pdf](https://www.cccpc.ie/business/wp-content/uploads/sites/3/2017/04/E_04_002-Actors-Fees-Enforcement-Decision.pdf). The Authority threatened to fine the union up to €EUR 4 million if it sought to implement the collective agreement.

<sup>548</sup> ECLI:EU:C:2014:2411.

<sup>549</sup> See Note on Competition Issues in Labour Markets, paragraph .12 available at: [https://one.oecd.org/document/DAF/COMP/WD\(2019\)67/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2019)67/en/pdf).

<sup>550</sup> Complaint No. 123/2016.

<sup>551</sup> Irish Congress of Trade Unions v. Ireland (Complaint No. 123/2016) available at: [<sup>552</sup> Petros Stangos and Barbara Kresel.](https://hudoc.esc.coe.int/eng/#{%22sort%22:[%22ESCPublicationDate%20Descending%22],[%22ESCDIdentifier%22:[%22cc-123-2016-dmerits-en%22]}. See also B. Rombouts “ICTU v Ireland: Expanding the Scope of Self-Employed Workers Entitled to Collective Bargaining Rights in Relation to Competition Law Prohibitions” (2019) International Labour Law Rights Case Law 17.</a></p></div><div data-bbox=)

<sup>553</sup> [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C098](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098)

The ILO Committee of Experts reiterated that the right to collective bargaining should cover organisations representing the self-employed and invited the Irish Government to hold consultations with all parties concerned with the aim of limiting the restrictions created by the Competition Authority's 2004 decision to ensure that self-employed workers might bargain collectively. To that end, the Committee suggested that the Government and the social partners concerned might "wish to identify the particularities of self-employed workers that have a bearing on collective bargaining, so as to develop specific collective bargaining mechanisms relevant to them".<sup>554</sup>

**Competition Authority v Irish Medical Organisation (IMO):** In 2013, the IMO decided to instruct its members to withdraw certain patient services in protest at Government cuts to fees paid to family doctors. The Competition Authority issued High Court proceedings and, in 2014, the IMO provided undertakings not to organise or recommend the collective withdrawal of services by its members and, further, to advise its members that they should decide individually, not collectively, whether to participate in publicly funded GP health services on such terms as may be offered by the Minister.<sup>555</sup> Since 2014, discussions between the IMO and the State on contractual arrangements for GPs are held under the auspices of a framework agreement between the Minister for Health and the IMO which takes account of competition law concerns and incorporates the High Court undertakings given by the IMO in 2014.<sup>556</sup>

### Labour market trends and other factors

According to interviewees, there are not really any trends towards labour market deregulation or tightening of regulation that might affect self-employment as most employment rights legislation does not apply to the self-employed.<sup>557</sup> On the social security side, there has certainly been a move towards extending social welfare benefits to the self-employed, for instance the pandemic unemployment payment which originally would have only been available to employees has been extended to the self-employed, and extending the Jobseeker's Benefit (unemployment assistance) to the self-employed. This allows them to access certain types of social welfare benefits, which takes away one of the advantages of being an employee.<sup>558</sup> More information is provided in the relevant question on social security below.

(see information provided above). Moreover, the General Secretary of the Irish Congress of Trade Unions pointed out to the Joint Committee on Employment Affairs and Social Protection that the practice of misclassifying workers as self-employed had very negative consequences for the workers concerned, caused a significant financial loss to the State and conferred significant benefits on the person who in normal circumstances would be the employer.

She called for various control measures to minimize risk and to detect the fraudulent classification of workers as self-employed including:

- (1). Workers should only be permitted to register as self-employed if they satisfied criteria laid down in an agreed Code of Practice.
- (2). Principal contractors should be made liable for employer PRSI (social insurance contributions) for all subcontractors.
- (3). The Revenue Commissioners' capacity of PRSI/PAYE non-compliance intervention should be strengthened.

<sup>554</sup> Report of the Committee of Experts on the application of Conventions and Recommendations, 2016, ILO Report III (Part 1A) available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_448720.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_448720.pdf).

<sup>555</sup> <https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/02/2014-05-28-CA-v-IMO-Signed-Settlement-Agreement.pdf>.

<sup>556</sup> <https://health.gov.ie/blog/publications/framework-agreement-between-the-minister-for-health-and-the-irish-medical-organisation-in-respect-of-a-process-for-engagement-concerning-the-gms/gp-contract>.

<sup>557</sup> Information obtained through consultations with stakeholders (employment lawyer and employment law academic, January and February 2021).

<sup>558</sup> Information obtained through consultation with stakeholder (employment lawyer, January 2021).

(4). Legislation should be enacted to clearly define the terms “worker” and “employee”.<sup>559</sup>

(See above). In addition, the Competition and Consumer Protection Commission (CCPC) has set out its position in a Note on Competition Issues in Labour Markets provided to the Competition Committee of the OECD’s Directorate for Financial and Enterprise Affairs in June 2019.<sup>560</sup> The Commission noted that it was not in favour of the introduction of the 2017 Act and that it had worked closely with the Department of Business, Enterprise and Innovation to restrict its scope and continued:

“The application of EU competition law to self-employed workers provides important protections for consumers and the State. It ensures that members of professions, trades and other self-employed individuals (doctors, lawyers, plumbers, electricians etc) compete in the markets in which they are active. Such competition promotes efficiency, puts downward pressure on prices, helps to maintain or develop a high standard of service and works for the benefit of clients and consumers generally.”<sup>561</sup>

The Commission did recognise, however, that changes in the workforce had caused the line between “employees” and the “self-employed” to become blurred and that some workers who appeared to be self-employed service providers might, in fact, be “false self-employed” and were employees. If they were employees, then competition law did not apply. The Commission indicated that it would not be in favour of extending collective bargaining rights more widely than those provided for under the 2017 Act.<sup>562</sup>

According to interviewees, they are not aware of any other debates in Ireland regarding the issue of collective bargaining for self-employed workers.<sup>563</sup>

The case and tensions around trying to keep the competition space for significant real issues and leave the rest (a small number of specified groups of vulnerable self-employed persons in the employment space) was in debate in Ireland for many years and culminated in the enactment of the 2017 Competition Act described above.<sup>564</sup>

Namely, after the Irish Actors Equity Case described above, there were calls on successive Irish Governments to exempt the categories of self-employed workers involved from the relevant provisions of the Competition Act 2002. The argument for exemption was not solely based on employment status, but also on the alleged vulnerability of the workers involved, due to the sporadic nature of their work, the relatively low incomes accruing and the imbalance of power between the workers and the organisations contracting their work. Two Private Members’ Bills were put forward in the Irish Parliament (in 2007 and again in 2012) to give effect to this request for an exemption. Neither progressed beyond the initial stages of the legislative process. The Government then agreed, in the Social Partnership agreement known as Towards 2016, to amend the 2002 Act to exempt voice-over actors, session musicians and freelance journalists from its scope but this commitment was vetoed by the EU/IMF/ECB as not being consistent with the goals of the Programme for Financial Support accepted by the Government in November 2010.<sup>565</sup> The European Commission subsequently expressed the view that exempting such workers from competition law would not necessarily have been an effective means of protection and suggested, in a letter to the Irish Congress of Trade Unions, that the issues could be addressed by extending certain employment rights to “vulnerable self-employed workers who are de facto employees”<sup>566</sup>

<sup>559</sup> [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_employment\\_affairs\\_and\\_social\\_protection/2019-01-31/3/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_employment_affairs_and_social_protection/2019-01-31/3/)

<sup>560</sup> [https://one.oecd.org/document/DAF/COMP/WD\(2019\)67/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2019)67/en/pdf).

<sup>561</sup> Ibid.

<sup>562</sup> Ibid.

<sup>563</sup> Information obtained through consultations with stakeholders (employment lawyer and freelance translator, January and February 2021).

<sup>564</sup> Information obtained through consultations with stakeholder (CCPC, February 2021).

<sup>565</sup> See A. Kerr “Social Rights in Crisis in the Eurozone: Work Rights in Ireland” in C. Kilpatrick and B. de Witte (eds), *Social Rights in Times of Crisis in the Eurozone: The Role of Fundamental Rights’ Challenges* (EUI Working Paper LAW 2014/05).

<sup>566</sup> Letter to David Begg, General Secretary of the Irish Congress of Trade Unions, dated 18 April 2013 from István Székely, a representative of the Commission’s Directorate General for Economic and Financial Affairs.

In early 2016, a further Private Members' Bill was introduced and, following debate and amendment, was enacted – in mid-2017 - as the Competition (Amendment) Act 2017.

Moreover, in tandem with calls to exempt workers affected by the 2004 Act, the Irish Government also faced repeated calls to extend collective bargaining rights to an additional group of self-employed workers in Ireland- namely family doctors (known as General Practitioners or "GPs") contracted by the State to provide medical services without charge to eligible patients. In 2010, the Competition Authority carried out a study amongst self-employed General Medical Practitioners (GPs) providing health care services under the General Medical Services (GMS) contract with the Department of Health.<sup>567</sup> The Authority made several recommendations designed to address what it considered to be anti-competitive practices in the sector. Among the recommendations made was those decisions about the fees and allowances to be paid to GPs under the GMS contract should be made unilaterally by the Minister and not by a collective agreement with the GPs' representative body – the Irish Medical Organisation (IMO).

In the build-up to the 2017 Act, there were also renewed calls on the Irish Government to include a provision which would have allowed GPs and other self-employed professionals providing services to the State under similar contracts to collectively negotiate. The group of self-employed professionals potentially affected included barristers and solicitors providing services under the Free Legal Aid Scheme, dentists, pharmacists, opticians, veterinary surgeons etc. The CCPC was opposed to such proposals.<sup>568</sup>

The issue of 'false (or false) self-employment' has been the subject of much policy debate in Ireland<sup>569</sup>.

The political debates on the issue of false or false self-employment have become more frequent in recent years. During a Dáil debate on 20 February 2018<sup>570</sup>, Deputy O'Dea asked the Minister for Employment Affairs and Social Protection to clarify her plans to deal with the issue, and Deputy Penrose specifically questioned the Minister's intentions in the context of challenges to the reliability and validity of the CSO data regarding the self-employed. The Minister responded:

"False self-employment arises where an employer wrongly treats a worker as an independent contractor in order to avoid tax and social insurance contributions. There are already robust arrangements in place for dealing with complaints of false self-employment. Where evidence of non-compliance is detected, this will be pursued ... Any worker who has concerns about his or her employment and/or PRSI status should contact my department and the matter will be investigated. This can only happen with the co-operation of the worker."

Answering further questions in the Dáil (Parliament) on 4 April 2019<sup>571</sup>, the Minister said that she would be seeking a four-pronged approach to curtail false self-employment:

- Establish a dedicated team in her department to deal with social insurance inspection work involved in large companies.
- Provide for Deciding Officers in the relevant section of her Department to make determinations on the employment status of groups or classes of workers without having to process complaints individually.
- Put the Code of Practice for determining employment status on a statutory footing.
- Provide anti-victimisation measures for workers seeking a determination of their employment status.

<sup>567</sup> <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/03/General-Medical-Practitioners-Report.pdf>.

<sup>568</sup> [https://one.oecd.org/document/DAF/COMP/WD\(2019\)67/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2019)67/en/pdf).

<sup>569</sup> 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>

<sup>570</sup> <https://www.oireachtas.ie/en/debates/debate/dail/2018-02-20/19/#s22>.

<sup>571</sup> <https://www.oireachtas.ie/en/debates/debate/dail/2019-04-04/10/#s11>.

The Joint Committee on Employment Affairs and Social Protection also held a number of hearings on the issue of false self-employment in 2018 and 2019, and a dedicated inspectorate team, the Employment Status Investigation Unit, was established in late 2019 by the Department of Employment Affairs and Social Protection (DEASP).<sup>572</sup> At the Joint Committee, employer representatives stated that they were “manifestly opposed” to the practice of false self-employment because of the competitive advantage it gave non-compliant employers but said that they were concerned as to the risk of creating a framework which removed, for all practical purposes, genuine self-employment. They also maintained that the practice of false self-employment was not as widespread a problem as suggested by the trade unions and pointed out that, where it did arise, there was an existing legal framework to address it. The appropriate response to the issue “has to be stronger enforcement of existing laws and remedies”.

In May 2018, the DEASP launched an awareness-raising advertising campaign highlighting the problem of false self-employment and its impacts on workers and the Irish economy.<sup>573</sup> There was also a commitment to revise the Code of Practice for Determining the Employment Status of Workers 2007<sup>574</sup> and place this on a statutory footing (the current Code does not have force in legislation and is merely advisory).

In relation to false self-employed pilots, **Ireland is unique in that it is used as a platform for the false self-employment of pilots across Europe.** Most of these pilots are not based, do not work or do not enter Irish airspace. There are 700-800 pilot service companies (PSCs) who have established themselves in Ireland and who contract out pilot labour to airlines. The whole arrangement is normally put in place by an intermediary agency. These are thus false self-employed pilots, and this system circumnavigates all protections afforded to normal employees in any airline (they have no unfair dismissal rights, no minimum wage rights, no right to sick leave, no right to annual leave, no right to collectively bargain and they work on zero-hour contracts, which means that if they do not fly they have zero pay which was the case during the pandemic). These PSCs therefore use the Irish regulation to their own advantage and to keep costs low. These contracts have also introduced personalised pilot fuel league tables, which enables pilots to be assessed on how much fuel they burn which is linked to performance. The bottom 20% of pilots who use the most fuel is in the ‘red zone’ and receive letters telling them their performance is not meeting the standards and as a result potentially won’t get work the next week. This pressure placed on pilots to perform while using as little fuel as possible is very unsafe. The effect of such atypical employment arrangements and the impact of such employment arrangements on safety decisions made by pilots is thus very alarming.<sup>575</sup>

The Irish Air Line Pilots’ Association has raised this matter with numerous Government bodies and made presentations to various Joint Committees including the Transport Committee and the Employment Affairs & Social Protection Committee (20 June 2019). For example, on 9 December 2020, the Irish Air Line Pilots’ Association sent a letter to the Minister for Transport reiterating the issue of precarious and false self-employment in European Aviation and Ireland through its employment laws being a facilitator of this and asking him to give serious consideration to signing the Declaration entitled ‘Covid-19 Recovery: Towards Socially Responsible Connectivity’ where the declaring countries (AT, BE, DK, FI, IT, LU, NL and PT) expressed their common goal of fostering socially responsible air connectivity in Europe, where social rights are safeguarded, safety is further enhanced and competition is based on fair conditions rather than on dumping practices.<sup>576</sup> The EU thus needs to take action on this before an accident happens.

As described above, there is a massive debate in Ireland around self-employment and particularly false self-employment, where several bills have been introduced on the issue. Moreover, as collective bargaining is voluntary in Ireland, the government’s attitude is that it is voluntary and are not concerned

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<sup>572</sup> [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_employment\\_affairs\\_and\\_social\\_protection/2018-11-08/4/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_employment_affairs_and_social_protection/2018-11-08/4/);  
[https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_employment\\_affairs\\_and\\_social\\_protection/2019-03-28/3/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_employment_affairs_and_social_protection/2019-03-28/3/);  
[https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_employment\\_affairs\\_and\\_social\\_protection/2019-06-20/3/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_employment_affairs_and_social_protection/2019-06-20/3/).

<sup>573</sup> See <https://ec.europa.eu/social/BlobServlet?docId=22207&langId=en> [accessed August 14 2020].

<sup>574</sup> Revenue (2007). Code of Practice for Determining Employment or Self-Employment Status of Individuals, available at: <https://www.revenue.ie/en/self-assessment-and-self-employment/documents/code-of-practice-on-employment-status.pdf>

<sup>575</sup> Information obtained through stakeholder consultation (pilot, February 2021).

<sup>576</sup> Ibid.

with whether collective bargaining applies to the self-employed or employees.<sup>577</sup> The courts are also incredibly hostile towards collective bargaining which goes back 50 years in law.<sup>578</sup>

*Taxation:* Self-employed workers make an annual tax payment under the self-assessed system of tax collection. Through the deduction of certain work-related expenses, a self-employed worker can have a much smaller tax liability compared to an employee, which can encourage more people to be self-employed. No information was found on any changes to these schemes.<sup>579</sup>

*Social Insurance:* The total social insurance contribution (PRSI) in respect of self-employment is limited to the contribution of 4% paid by the self-employed worker on his or her earnings. This gives a self-employed worker the right to a reduced range of benefits.<sup>580</sup>

*Social security entitlements:* 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.<sup>581</sup> 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 aged 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<sup>582</sup>.

Moreover, since November 2020 in response to covid-19, self-employed ill people can claim sick pay. There is income replacement support for freelancers, including translators and interpreters (EUR 350 a week for up to 6 weeks).<sup>583</sup>

(See directly above). Also, *employment rights:* The self-employed have very limited rights under protective labour legislation. Legislation, such as the Unfair Dismissals Acts 1977-2015<sup>584</sup> and the Organisation of Working Time Act 1997<sup>585</sup>, only applies to employees and the self-employed are specifically excluded from the scope of those Acts. It is the case, however, that the scope of some employment protection legislation is extended beyond employees to include some of the self-employed. So, in the Employment Equality Acts 1998-2015 (which prohibit discrimination on a range of grounds such as gender, age, race, religion, sexual orientation and disability), "employee" is defined as not only including a "temporary agency worker" but also an individual who agrees with another person "personally to execute any work or service for that person".<sup>586</sup>

No information was found through desk research or interviews. According to one interviewee, in the 'arts' sector, there is no information of the different salary levels of the different professions that make

<sup>577</sup> Information obtained through consultation with stakeholder (Trade Union, February 2021).

<sup>578</sup> Information obtained through consultation with stakeholder (employment law academic, February 2021).

<sup>579</sup> Information obtained through consultation with stakeholder (employment lawyer, January 2021).

<sup>580</sup> Ibid.

<sup>581</sup> 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.

<sup>582</sup> <https://www.revenue.ie/en/employing-people/what-constitutes-pay/employees-pension-payments/personal-retirement-savings-account-prsa.aspx>; accessed August 26 2020.

<sup>583</sup> <http://fit-europe-rc.org/en/measures-around-europe-in-response-to-covid-19-to-support-interpreters-and-translators/>

<sup>584</sup> Unfair Dismissals Acts 1977-2015, No 10 of 1977, available at: [https://www.lawreform.ie/fileupload/RevisedActs/WithAnnotations/HTML/EN\\_ACT\\_1977\\_0010.htm](https://www.lawreform.ie/fileupload/RevisedActs/WithAnnotations/HTML/EN_ACT_1977_0010.htm).

<sup>585</sup> Organisation of Working Time Act 1997, No 20 of 1997, available at: <http://www.irishstatutebook.ie/eli/1997/act/20/enacted/en/html>.

<sup>586</sup> <https://www.ihrec.ie/guides-and-tools/human-rights-and-equality-for-employers/what-does-the-law-say/eea-summary/>

up the 'arts' sector (other than that they are low paid) and whether they differ depending on whether they are covered by a collective agreement.<sup>587</sup>

No information was found through desk research or interviews. According to one interviewee, in the pharmaceutical sector, collective bargaining is strong, and wages are high, but there is no evidence if these high wages are linked to collective bargaining as such.<sup>588</sup> Another interviewee indicated that there is information on the salary levels of pilots in the airline industry generally<sup>589</sup> but not across different companies. Pilots who are in direct employment, are properly organised and unionised enjoy better pay terms and conditions than self-employed contractors.<sup>590</sup> Moreover, it was indicated by another interviewee that collective bargaining agreements are industry agreements and are not comparable with the pay of companies, so this information is not available.<sup>591</sup>

## Conclusions

Although self-employed workers are generally not allowed to bargain collectively under national law in Ireland, certain groups are permitted to bargain collectively. according to the Competition (Amendment) Act 2017, these are voice-over actors, freelance journalists and session musicians (see above).

## Interviews

Name of interviewee	Organisation
1. Professor Michael Doherty (employment law academic)	Maynooth University, Department of Law
2. Professor Anthony Kerr (Barrister-at-Law and employment law academic)	University College Dublin, Department of Law
3. Rachael Ryan	Industrial, Professional and Technical Union (SIPTU)
4. Deirdre McHugh (Head of International, Policy and International Division) and Siona Ryan (Director of the Policy and International Division)	The Irish Competition and Consumer Protection Commission
5. Imelda Maher (competition law academic)	University College Dublin, Department of Law
6. Annette Schiller	Freelance translator and Head of Irish Translators/Interpreters Association
7. Evan Cullen	Pilot and President of the Irish Airline Pilots' Association (professional association and registered trade union established to represent the interests of Irish pilots)

<sup>587</sup> Information obtained through consultation with stakeholder (Trade Union, February 2021).

<sup>588</sup> Information obtained through consultation with stakeholder (employment law academic, February 2021).

<sup>589</sup> A person working as a Pilot in Ireland typically earns around 66,900 EUR per year. Salaries range from 34,100 EUR (lowest) to 103,000 EUR (highest): <http://www.salaryexplorer.com/salary-survey.php?loc=104&loctype=1&job=80&jobtype=3#:~:text=A%20person%20working%20as%20a,%2C%20transport%2C%20and%20other%20benefits.>

<sup>590</sup> Information obtained through consultation with stakeholder (pilot, February 2021).

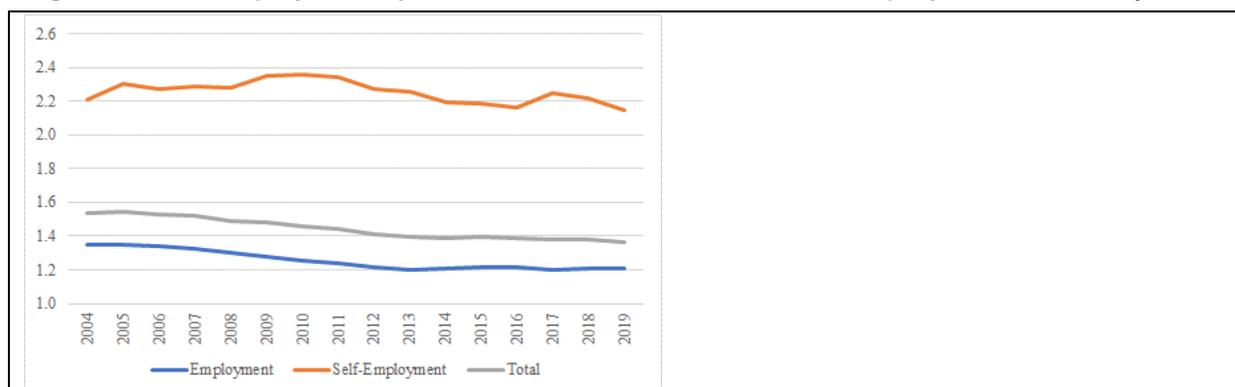
<sup>591</sup> Information obtained through consultation with stakeholder (Trade Union, February 2021).

# Italy

## Background information

In Italy, in 2019 the total self-employed workers amounted to thousand 5,312, when total workers were thousand 23,360. The male workers prevail in self-employment and the ratio of male to female workers has been quite stable in the last decades, while the same ratio is markedly lower and progressively decreasing among employees (Figure 1).

**Figure 13. Self-employment by sex: ratio of male to female workers (15 years and more)**



Source: elaboration by Ismeri Europa on ISTAT LFS data

According to the Italian National Statistics Institute (ISTAT), the total share of self-employed workers (*independent workers*) has gradually declined during the past 15 years, passing from 25.7% of the total labour force in 2004 to 20.5% in 2019 (see Table 1). All the categories of self-employment recorded a decreasing trend – entrepreneurs, autonomous workers with and without employees, family helpers, worker-members in cooperatives, and freelancers – except liberal professionals (Semenza and Mori 2019).

**Table 14. Italy: self-employment as percentage of labour forces<sup>592</sup> by main categories (15 years and more).**

Year	Entrepreneurs	Liberal professionals (with and without employees)	Autonomous workers (with and without employees)	Family helpers	Worker-members in cooperatives	Freelancers (with and without a project)	Total self-employed workers
2004	1.7	4.6	14.9	2.3	0.3	2.0	25.7
2008	1.1	4.7	14.4	1.6	0.1	1.8	23.7
2015	0.9	5.2	12.7	1.2	0.2	1.4	21.5
2019	1.1	5.5	11.8	1.2	0.1	0.8	20.5

Source: elaboration by Ismeri Europa on ISTAT LFS data

More in detail, within the segment of liberal professionals, the share of professionals with employees increased from 3.8% of the total labour forces in 2004 to 4.8% in 2019, while the share of professionals without employees has remained stable around 0,8% (see Table 2). In contrast, in the same period the number of “autonomous” workers<sup>593</sup> decreased in total and in both the components with and without employees.

<sup>592</sup> The original definitions used by ISTAT are from the left to the right: imprenditore; libero professionista; lavoratore in proprio; coadiuvante nell'azienda di un familiare; socio di cooperative; collaboratori (con o senza progetto) e prestatori d'opera occasionali; totale lavoratori indipendenti.

<sup>593</sup> This category in Italian is called “lavoratori in proprio” and includes the most traditional self-employed workers, while the other specific types of self-employed typologies deriving from contractual forms or position in the organisation are mentioned in table 1.

**Table 15. Italy: sub-categories of “liberal professionals” and “autonomous workers” in percentage of total employment (15 years and more)**

Year	Professionals		Autonomous workers			
	Professional with employees	Professional without employees	Autonomous employees	with	Autonomous without employees	without
2004	3.8	0.8	10.7		4.2	
2008	3.8	0.9	9.9		4.5	
2015	4.3	0.9	8.6		4.1	
2019	4.8	0.8	8.2		3.5	

Source: elaboration by Ismeri Europa on ISTAT LFS data

The tendencies of self-employment show a stability in the agriculture, forestry and fishing sectors (from 7.7% of total self-employment in 2008 to 8% in 2019), a decline in industry (from 11.7% to 9% in 2019) and in construction (from 12.2% to 9.6%), and a remarkable increase in the tertiary sector, which passed from 68% of total self-employed workers in 2004 to 73% in 2019 (see Table 3).

**Table 16. Italy: self-employed workers by macro-economic sectors (NACE – Rev.2) as percentage of total self-employment (15 years and more).**

Year	Agriculture, forestry and fishing (NACE code A)	Industry (without construction) (NACE codes B-F)	Construction (NACE code E)	Trade, accommodation and food (NACE codes G-I)	Other activities and services (NACE codes J-U)	Total
2008	7.7	11.7	12.2	30.5	37.9	100.0
2015	7.6	9.8	11.0	30.6	41.0	100.0
2019	8.0	9.0	9.6	30.1	43.3	100.0

Source: elaboration by Ismeri Europa on ISTAT LFS data

The next table 4 highlights that self-employed workers of the tertiary sector are concentrated in “trade” (22.4%) and “real estate and professional services” (21.2%) sectors; “accommodation and food” and “households as employers” absorb around 8% of total self-employment workers each.

**Table 4. Italy: composition of self-employment in tertiary sector as percentage of total self-employment.**

	2019
Wholesale and retail trade (NACE code G)	22.4
Transport and storage (H)	2.4
Accommodation and food service activities (I)	7.8
Information and communication (J)	2.3
Financial and insurance activities (K)	2.2
Real estate, professionals and technical activities, administrative services (L, M, N)	21.2
Public administration, defence and education (O, P)	1.7
Human health and social work activities (Q)	5.8
Arts, entertainment and recreation and other service activities (R, S)	0.1
Activities of households as employers and activities of extraterritorial organisations (T, U)	7.6
<b>Total tertiary sector</b>	<b>73.4</b>

Source: elaboration by Ismeri Europa on microdata in report by ISTAT and others national institute (ISTAT et al.,2020)

Nearly half of the total self-employment performs qualified and technical professions; the 50% of self-employment workers covers executive or artisan professions and the remaining 4% is employed as not qualified personnel (see Table 5).

**Table 5. Italy: self-employed workers by types of professions\* in Italy (% of total self-employment).**

	2019
Qualified and technical professions	46.1
Executive professions in trade and services	25.1
Working and artisan professions	25.2
Not qualified personnel	3.6
Total	100,0

Source: elaboration by Iseri Europa on microdata in report by ISTAT and others national institute (ISTAT et al.,2020). \*Military are excluded.

### *Why self-employed*

According to ISTAT, most self-employed workers chose this condition (85.6% in 2018), driven by different rationales: the 39% had this opportunity, the 24% entered a family business, the 8% searched for more flexibility on times schedule, the 7% reported that this type of work is a conventional practice in their sector/activity (8.2% for other reasons). A limited share of self-employment (13.6%) is forced to accept this condition for various reasons: 10% did not manage to find a job as employee, while the 2.4% were demanded by the employer/contractor to become a self-employed.

### *The weak boundary between dependent contractors and false self-employed workers*

The ILO defined a new worker classification to grasp those blurred configurations between employment and self-employment, the so-called **dependent contractor, a worker who is formally self-employed (without employees) but, in fact, s/he has a relationship of subordination towards a single contractor or client who limits his/her access to the market and the organisational autonomy**. The boundary between this category and the actual condition of 'false' self-employment is unclear and weak, but regardless the classification these self-employed workers overall experience various kinds of job vulnerability, as a result of the fact that they might be forced into this condition.

In Italy, 452,000 workers configure as dependent contractors in 2019 (ISTAT et al. 2020); this amount is made up by 25.5% of freelancers (*collaboratori*), 37.2% of autonomous workers (*lavoratori in proprio*) and 37.3% of liberal professionals (*libero professionista*). The 50% of dependent contractors affirms to have just one contractor or client, whereas the other 50%, has more than one client. This component of dependent contractors with several clients performs qualified and technical professions with higher frequency.

Dependent contractors have lower job autonomy: only one out of two is free to manage his/her work, while the remaining share has to accept organisational constraints, such as working in client's workplace or respect working times (33.4% of dependent contractors experiences these conditions). Only the 32% of dependent contractors can autonomously choose both the workplace and the working time. Working time represents a further element of vulnerability: the 20.4% of dependent contractors works up to 20 hours per week, while almost 30% of dependent contractors has a part-time job, that in most of the cases is an involuntary part-time (65.2%).

### *Other available data concerning self-employment*

In 2018 the annual report of INPS (the national institute for social protection) contains a section dedicated to the gig economy in Italy. According to this section of the report, persons who work exclusively in the gig economy amount to around 137.000-175.000 people, increasing up to 589.000-753.000 including also those performing a second job in gig-economy.

The "Plus" survey (Participation, Labour, Unemployment, Survey) of INAPP carried out in 2018 was based on a sample of 45.000 individuals living in Italy between 18 and 74 years old; the survey had an 'ad hoc' module dedicated to the gig economy<sup>594</sup>. The results of this survey show that **0.5% of working age population**, nearly 213.000 persons, are gig workers. They are mostly distributed among "cleaning and household services" (almost 30%), urban transportation (25%) while "food delivery" occupies only

<sup>594</sup> See INAPP, I mercati digitali del lavoro – Lavoratori delle piattaforme evidenze su dati INAPP-PLUS, Powerpoint presentation by Nicastro Paola to Parliament, 25 settembre 2019 Roma. Presentation available at [https://oa.inapp.org/xmlui/bitstream/handle/123456789/508/Nicastro\\_Presentazione\\_Audizione\\_GW\\_25\\_09\\_2019.pdf?sequence=1&isAllowed=y](https://oa.inapp.org/xmlui/bitstream/handle/123456789/508/Nicastro_Presentazione_Audizione_GW_25_09_2019.pdf?sequence=1&isAllowed=y).

the 15%. The 46.8% of gig workers has a high school degree, 34.7% has a lower secondary degree, and 15.8% a bachelor's degree. With respect to the age, gig-workers are concentrated in 25-29 age class (25%) and 40-49 age class (24%). The 42% of gig workers affirms to have informal arrangements while the 19% has an "occasional collaborative agreement" (*contratto di collaborazione occasionale*). Among the total share of gig workers, almost 40% has another job, 23.8% are in search of a job, while only 17% are students. The 50% of the sample states that having a gig work is comfortable/useful but, at the same time, is not sufficient to have a decent lifestyle, and for almost the 30% of gig workers says that the gig work is necessary. The INAPP-PLUS evidence confirm a general fragility in terms of contractual conditions and salary of platform workers.

Concerning journalists, in 2019 professional journalists enrolled in the national register were 104.000 and the 55% of them worked as employee, while the remaining 45% as freelancer (ConfProfessioni, 2020).

### Collective bargaining framework

In Italy, collective bargaining represents the most important mechanism for regulating the terms and conditions of employment, which applies to subordinated workers. The bargaining system is based on a two-tier system: at the sectorial central level, national collective agreements (NCAs hereinafter) are negotiated every three years, defining the main contractual arrangements of the employment relations including wage levels, working conditions, job classification, working time and access to social security protections (e.g. maternity allowances and leaves, holidays, sickness allowance and leave, injuries). 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. **In Italy, in fact, 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.** The regulation of terms and conditions of employment for self-employed is not covered by collective bargaining, nor by NCAs which explicitly refer to the law for the regulation of working conditions of self-employed workers.

At the decentralised level, second-level integrative agreements are negotiated, primarily at the company level (in some sectors also at territorial level: in the construction sector, tourism and agriculture at the provincial level; in the handicraft sector at the regional level). In decentralised agreements, company-specific arrangements delegated by NCAs are established, such as performance-related pay, productivity standards, and additional allowances and indemnities. Likewise at the national level, decentralised CAs do not apply to self-employed workers, but exclusively to employees, and there is not regulatory or legislative mechanism to automatically extend them to self-employed workers.

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 the total employment (OECD.stat data). The coverage rate displays some cross-sector variations: the public sector represents the only sector where the NCSa are compulsorily applied to the entire personnel employed, while in the private sector is comparatively a bit lower. However, a recent study published by Eurofound, based on a survey, showed that the 98% of the private sector personnel employed in companies with more than 10 employees is covered by any form of collective wage agreement (Aumayr-Pintar 2020).

Recently, in some sectors where the use of false self-employed work or the misuse of semi-subordinated forms of work was widespread, attempts have been made to regulate the working conditions of specific segment of self-employment through collective bargaining.

The telecommunication NCA signed in 2013 by the three most representative trade unions in the sector (SLC CGIL, FISTEL CISL, and UILCOM UIL) and by two employers' associations (ASSOCONTACT and ASSOTELECOMUNICAZIONI-ASSTEL) applied to semi-subordinate workers contractualised with the so-called "project contract" (*contratto a progetto*) working in call-centres. They represent an intermediate contractual category, peculiar of the Italian labour market, combining employment conditions typical of subordinated work with other characteristics featuring self-employment: "project

workers” are, in fact, formally autonomous given that there is no formal subordination to the employer, but they are functionally assimilated within the company’s organisational chart and their contractual relationship is linked to a specific project or service they have to accomplish for the employer. Accordingly, this NCA aimed to prevent misuses of the project workers in the call-centres as a way to hide a condition of subordination; to introduce some common protections to this specific category of semi-subordinated workers, as well as to set more adequate wage levels. Then, the Jobs Act reform of the labour market in 2015 abolished the project contracts.

Similarly, at the end of 2015 several NCAs were signed covering Co.Co.Co. semi-subordinated workers (see below for details on this category of workers) in call centres, private schools and universities, credit recovery institutions, organisations providing occupational training (Fulton 2018).

In the logistic sector, the NCA signed in 2018 by the three most representative trade unions (FILT-CGIL, FIT CISL and UILTRASPORTI) and many employers’ organisations formally recognised the professional position of the food delivery rider as a subordinated worker, instead of self-employed, entitled to benefit from the same employment conditions and protections ensured to the other employees in the sector. Despite the contractual recognition, the agreement is not widely applied by the companies owning the platforms of food delivery which did not sign the NCA.

#### *Trade unions organising self-employed*

The collective representation of self-employed workers in Italy represents a thorny issue from the union perspective (Semenza and Mori 2020). The most representative confederal trade unions in Italy (CGIL – General Italian Confederation of Labour; CISL – Italian Confederation of Workers’ Unions; and UIL – Italian Union of Labour) belatedly responded to the transformations of the labour market relating to the growth of self-employment, in some sectors. Their organisational strategies, in fact, have long focused on “traditional” subordinated workers with open-ended contracts, neglecting the segment of self-employed workers for multi-fold and intertwined reasons. First, unions’ renewal strategies primarily tried to tackle the new forms of precarious work that were spreading in the country, including atypical and flexible contractual arrangements, false self-employment and misuse of semi-subordinate work, which markedly spread in the Italian labour market since the late ‘90s. At the same time, self-employed workers have long been considered as an inaccessible segment of wealthy professionals, in many cases protected by the professional registers, or assimilated to undertakings rather than to workers. From the perspective of the self-employed, they have rarely tried to approach unions, due to a cultural suspicion towards the unions’ action, considered a sort of counterpart given their independent status in the labour market. Furthermore, in several professions a core role in the collective representation is compulsory played by the professional registers (as according to the Article 2229 of the Civil Code), whose proliferation characterises the Italian system of professions (Feltrin 2012).

Against this backdrop, the three union confederations at the end of the ‘90s reacted to these transformations by promoting new internal union categories to extend their collective representation to the broader category of non-standard workers (Ambra 2013) based on their precarious contractual position, including self-employed workers together with agency workers, temporary workers and zero-hour contracts. According to the Italian legislative framework, in fact, self-employed workers fully enjoy the right to join a trade union (Fulton 2018).

The CGIL, the largest union confederation in Italy, in 1998 established the new category called NIDIL – New Identities of Work to represent temporary agency and atypical workers, including semi-subordinate workers. NIDIL organisational strategy is focused on contrasting the improper use of semi-subordinate contracts (an intermediate category between self-employment and employment) as a cheaper alternative to subordinated contracts and to tackle the increasing precariousness and flexibility in the labour market. NIDIL had 94,000 members in 2016 (Fulton 2018). Then, in 2009 it launched the Council of Professions, a permanent forum at the national level aiming at stimulating and facilitating the discussion among the different organisations active in the field of self-employment (such as the other unions, registered and non-registered professional associations and social movements). Overall, the

Council represented the first structured experimentation of dialogue between the most representative organisations for self-employed workers in Italy: it represented not only a strategic body where the different actors can meet regularly but also a venue for mediating between the different stances, for jointly planning and coordinating lobbying and advocacy actions.

The CISL, the second largest union confederation, in 1989 launched the category called CLACS – Coordination of Autonomous Workers in Retail and Services to coordinate the various traditional categories where self-employed workers were enrolled. In 1998 then, the category ALAI – Association of Atypical and Temporary Workers was launched to extend the collective representation new forms of work: likewise, NIDIL, this union primarily targeted semi-subordinated and atypical workers. ALAI and CLACS were merged in 2009 in the federation called FELSA – Federation of Temporary Autonomous and Atypical Workers, which represents also self-employed workers in low-skilled sectors, such as gas station attendants and newsagents. FELSA has 42,000 members in 2016 (Fulton 2018). More recently, CISL established vIVAce!, a community devoted to self-employed workers in both traditional and new professions. By building a collective voice, the community acts as lobbyist towards the trade union to get a fairer social security system, a cheaper taxation system and more employment rights for the members.

The UIL, the third union confederation in terms of organisational density, in 1998 created the CPO – Coordination for Occupation, then re-labelled UILTemp – National Category of Temporary Autonomous Atypical and Vat holder Workers, to collectively represent all kind of new contractual arrangements, including self-employment. UILTemp had 69,000 members in 2016 (Fulton 2018).

A relevant difference in union collective representation of self-employed compared to employees concerns the sectorial distinction. In Italy trade union structure is organised on sectorial basis: accordingly, a specific union category is devoted to each sector (e.g., public sector, metal sector, chemical and pharmaceutical sector, building sector etc...). Conversely, in the case of self-employed workers, a unique union category is devoted to this segment of workers, grouped according to the nature of their contractual condition and regardless the sector of belonging. A partial exception is represented by some specific professions characterised by high skilled self-employed working with a significant degree of autonomy in the performance of their activity, like journalists and performing artists (Pedersini and Coletto 2010). For these categories of self-employment, sectorial unions have a significant share of self-employed workers among their membership. The SLC-CGIL, for instance, organises both employees and self-employed in the live performing sectors (actors and other performers), together with a wider membership in the communications sector more in general (Fulton 2018).

Overall, in relation to self-employed workers, 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. This stems from the fact that there is no legal category of economically dependent workers in Italy. Further, Gramano (2021)<sup>595</sup> states that it is not entirely clear whether autonomous workers are 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<sup>596</sup>.

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<sup>595</sup> Gramano E: Italy (chapter 8), in *Collective Bargaining for Self-Employed Workers in Europe* (2021). Edited by Bernd Waas, Christina Hießl <https://rus.wolterskluwer.com/store/product/collective-bargaining-for-self-employed-workers-in-europe/>

<sup>596</sup> [https://www.eclavoro.it/wp-content/uploads/2018/03/rinnovo\\_Ccnl\\_call\\_center\\_010318.pdf](https://www.eclavoro.it/wp-content/uploads/2018/03/rinnovo_Ccnl_call_center_010318.pdf)

## Legal framework

*Main relevant legislative provisions: 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*

### Overview

In the case of those working on a semi-subordinate contract Co.Co.Co. – Continuous and Coordinated Contractual relationship (see below) – 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.

### Legal definitions of self-employment

In Italy, the definition of self-employment has a legal basis. It is disciplined by the Title III of the Civil Code where a “genuine” self-employed worker is defined as a worker who legally commits himself to perform a service or a work under payment, without being subject to any form of subordination towards the customer, working with her own assets and mainly through her own work (Art. 2222). Unlike employees, self-employed workers assume an “obligation of result”, namely the commitment to achieve a given outcome agreed with the customer/employer, rather than an “obligation of means” as in the case of subordinated work, that implies the commitment to provide work for a given period of time. Employees or subordinated workers, in fact, are those workers who commit themselves, by virtue of a contract and in exchange for a salary, to subordinately provide their intellectual or manual work under the direction of a subject called employer. The employer gives instructions to the employee, provides him with the raw materials and the tools necessary for carrying out the work.

According to this regulatory framework that juxtaposes self-employed workers to subordinated ones, the status of independence attached to self-employment implies that they cannot be salaried and that they are not subject to the social protections associated with salaried work (i.e. they are excluded from major employment protection acts).

Furthermore, the Article 2225 of the Civil Code disciplining the payment to be corresponded to the self-employed worker in exchange for his service, states that if not agreed by the parties and cannot be determined according to the professional rates or habits, it is established by the judge in relation to the result obtained and the work normally required to obtain it. Hence, the Code does not refer to collective bargaining, but conversely, specifically refers to a bilateral agreement between the self-employed and the customer.

The regulatory framework for self-employment in the so-called liberal professions is based on a dual system. The Civic Code distinguishes between the registered professions, whose practice is subordinated to a state examination and the registration in a professional register, and the non-registered professions. For the former, the enrolment to the register is compulsory, but it follows a state examination carried out under the control of the professional association, entrusted by the State and under the surveillance of the Ministry of Justice (Article 2229). In some cases, a period of professional internship precedes the state examination, whose length is established by the association. The main responsibilities of the professional register concern: updating the members’ list; ensuring the application

of the legal ethics; guaranteeing to customers the quality of the services offered, as well as their congruity with the professional fee applied; monitoring members' continuous training and education. In Italy, the total number of registered professions is particularly high, amounting to more than 30 associations: such a high number has no equal in the other European member states (Feltrin 2012). The registration to the professional orders generally ensures to the members a private, professional social security fund, as well as an insurance system covering maternity leave (albeit limited), illness and pension scheme. Juxtaposed to the registered professions, a wide array of non-registered professions has spread in Italy (there are more than 200 associations) which did not enjoy the same legislative recognition by the State. They are generally organised and supervised by professional associations whose membership is not compulsory. The legislative discipline regulating these professions was recently reformed: the law no. 4/2013, in fact, introduced some innovations and similarities with the legal frameworks applied to registered professions, by establishing a parallel associative system dedicated to all the professional activities that are not recognised by law. The reform was driven by a twofold reason. On the one hand, the EU has strongly encouraged the member states to liberalise the market for private professions, with the directives 1988 and 1992 on professions, followed by the Bolkestein Directive - 2006/123/EC, oriented to discourage the creation of new professional registers. On the other side, the reform acknowledged the growing need to give full recognition to an expanding share of professional workers who were operating in a completely unregulated market, outside the system of professional registers. Hence the law no. 4/2013 established the possibility for non-registered professional associations to be formally recognised by the Ministry of Economic Development, according to a defined set of criteria that these associations must comply with (peer review and control; specific requirements for vocational training; the approval of an ethical code).

#### *The hybrid status of semi-subordinated workers*

Starting from the late '90s, a wave of reforms introduced in the Italian labour market generated new types of flexible non-standard contractual arrangements. These legislative interventions aimed at raising employment, by promoting higher contractual flexibility. These new contractual arrangements called "semi-subordinated", configured as non-pure forms of self-employment that can be located in between subordinated work and self-employment, combining employment conditions typical of subordinated work with other characteristics featuring self-employment. The semi-subordinate contract called Co.Co.Co. – Continuous and Coordinated Contractual relationship was introduced in 1997 by the law no. 196/1997 (the so-called "Treu package"). 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. This entitles the employer to coordinate their activities according to the company's demands, hence representing a limitation to the full autonomy. The "project contract" (Co.Co.Pro) introduced by the law no. 30/2003 (the so-called "Biagi Reform") presents most of the characteristics of the Co.Co.Co. but, differently from the previous one, each contractual relationship has to be linked to a specific project or service specified by the customer. The Jobs Act reform in 2015 abolished it. The "occasional collaborator" represents a further semi-subordinated profile where autonomous workers engage in an occasional, and not continuous, contractual relationship with a customer to provide a service without either form of subordination or coordination power from the customer, and without being assimilated within the company's organisational chart.

These hybrid contracts show a number of grey zones in terms of application, since they leave a high discretion to the employers (Pallini 2006). In fact, they have been widely exploited as a contractual alternative to the subordinated work, representing an instrument to hire staff at cheaper labour costs, given the lower social contributions to be paid by the employer compared to the dependent workers. Moreover, the social protections attached to these contracts are residual, further lowering the labour costs and enhancing the numerical and organisation flexibility that the employers may leverage. To provide some data, in 2018 more than half of the total share of semi-subordinated workers (59%, corresponding to 753,783 workers) had a unique source of income, namely the salary paid by the employer ([www.inps.it](http://www.inps.it)). The Italian National Institute for Social Security (INPS) provides detailed data

on the scope of the phenomenon: the total share decreased from 1,523,490 in 2014 to 1,285,061 in 2018 (www.inps.it), as an effect of the Fornero reform in 2012 (law no. 92/2012) and of the Jobs Act in 2015 which introduced specific legislative measures to limit the misuse of the semi-subordinated work.

### *Case law and legislation concerning the classification of self-employment*

The food delivery riders in Italy are classified as semi-subordinated workers with a Co.Co.Co contract. Their terms and conditions of employment since 2018 have been targeted by an initiative of the Minister Luigi Di Maio aiming 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): it introduced 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, if this does not represent the prevalent payment mode. The hourly basic salary will be recognised to all riders for each hour worked during which the worker accepts at least one call. The NCA is allowed to define diversified incentive and remuneration schemes, which consider the different organisational models. Against this backdrop, in 2018 was signed the NCA in the transport sector presented in the previous section. Nevertheless, a crucial issue remains the classification of food delivery riders as semi-subordinated workers. In this direction goes an important judgment of the Court of Appeal of Turin issued in 2019 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 NCA for the logistic and transport sector. Accordingly, the riders got entitled to benefit from paid holidays, allowances in case of sickness and to have the "thirteen" extra-months of salary paid, likewise the 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.

### *Right to strike*

The right to strike was extended to autonomous workers and is based on the judgment of the Constitutional Court No 222 of 1975<sup>597</sup>. 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.

## **Labour market trends and other factors**

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<sup>597</sup> For a discussion on this, see

In Italy, self-employed work has traditionally represented an important source of employment, which has followed three main phases of development. Until the '70s, the major share of self-employment was composed of "small bourgeois" in the retail sector. Then, during the '70s and the '80s, the growth of the industrial district has led to the increase of self-employment in the small manufacturing enterprises. A third phase started during the '90s and currently in evolution is characterised by the proliferation of professional self-employed workers in the tertiary sector, following the post-industrial transformation of the economy. Given the numerical incidence of self-employed workers over the last decades, it has played, and it is still playing, a crucial role in the Italian economic development, despite its centrality has not always been fully acknowledged in the public debate, because of a deficit in the political representation, in the involvement in the policy making and in the cultural influence an important part of the productive and occupational system is suffering (Ranci 2012:55).

Three main perspectives have dominated the public debate and political recognition of self-employment in Italy. First, self-employment has long been associated with the small and medium enterprises which characterised the development of the Italian productive system. Accordingly, the small size of such companies has been interpreted as the incapacity of the industry to growth, to invest and to expand in order to maintain and possibly to increase its competitiveness and its capacity to innovate. Second, self-employment has been often seen as a permanent area of fiscal parasitism. The world of liberal professions and self-employed workers in Italy is associated with the idea of political nepotism and fiscal privileges they enjoy form a fiscal point of view. Third, the spread of self-employed workers in professional activities and in the advanced tertiary sector has been predominantly interpreted by commentators and scholars as an effect of the spread of false self-employment (Pallini 2006).

### *False self-employment*

Such misconception of self-employment deals with a double development in the Italian labour market since the '90s. On the one hand, the notable diffusion of economically dependent self-employed workers has long explained the growth of self-employment (Pedersini 2002), linked to the improper use of self-employed work in the more traditional liberal professions. Economically dependent self-employment corresponds to an intermediate blurred area of self-employment, where the workers are generally hired through a service contract featured by an exclusive contractual relationship with a unique customer. Such a work relationship turns out to be only formally independent, but substantially characterised by economic dependency from one single employer, who also sets organizational constraints. These two features undeniably qualify the work as false self-employment. In the specific case, independent professionals providing services for a company, or an associated studio have been increasingly forced to a condition of dependence from customers/employers who tied them within spurious service contracts. Despite their legally autonomous status, the pure autonomy of the independent professionals was restricted by imposing a daily working time, a physical working space and by limiting their work to a single customer. The presence of a unique customer for long periods can hide a situation not only of limited organisational autonomy, but also of economic dependence. This type of relationship does not properly configure itself as independent. On the other hand, the origin of false-self-employment in Italy traced back to the introduction of semi-subordinate contractual arrangements in the labour market to raise employment by introducing some degrees of flexibility in the labour market. What followed was a widespread abuse of these semi-subordinate contractual arrangements as a cheaper and more flexible alternative to traditional subordinated contracts. False self-employment certainly embodies an important share of independent work in Italy, but neither the only one nor the most relevant. Nevertheless, public opinion and media debate have long considered self-employment as a spurious form of employment compared to the traditional salaried and subordinate employment relations. Only recently, there has been a significant rise in the interest towards self-employment and its public regulation, thanks both to some contributions of scholars and the increased visibility in the political arena of policy initiatives purposely addressing demands and needs of self-employed.

In the attempt to contain the spread of false self-employment, the government issued specific measures. The Law no. 92/2012 (the so-called “Fornero Reform”) addressed the improper use of semi-subordinated contracts by imposing more specific and rigid standards to configure a project contract as genuine. These standards envisage that: the contractual relationship must be more strictly linked to a project whose final goals have to be clearly specified by the customer, and not simply to a task or to a phase of the work; the worker has to be able to autonomously manage his work objectives and, accordingly, the contract cannot refer to merely executive tasks. Importantly, the payment has to amount to at least to the minimum salary established by the NCA signed in the sector of reference. Furthermore, this reform introduced specific criteria to distinguish self-employed workers from semi-subordinated workers with a Co.Co.Co contract. According to the law, self-employed work has to be framed as a coordinated and continuous relationship, hence constituting a semi-subordinated employment relationship (with the burden of proof on the customer) if at least two of the following conditions exists: i) the work relationship lasts more than eight months in the solar year; ii) the compensation deriving from the relationship constitutes more than 80% of the total yearly income of the worker during the solar year; iii) the worker has access to a work space at the customer’s offices.

### *Access to social protections*

**The access to social protection schemes for self-employed workers in Italy is limited and fragmented.** Spasova et al. (2017) in their European comparative study of national social security schemes for self-employed clustered Italy within the group of country with low to no access, meaning that “self-employed cannot opt into one or more insurance-based schemes, while salaried employees are mandatorily covered by the scheme(s) concerned” (p. 13). A structural characteristic of the Italian social protection infrastructure is the lack of a homogeneous social security system applicable to all self-employed workers, as it applied to employees. Conversely, differences in the right to access social protections trace back to the dualism in the regulatory framework between the registered and the non-registered professions (Semenza and Mori 2020).

Self-employed workers in the registered professions are compulsory members of their respective professional register: such membership ensures the belong to their own private professional social security funds linked to the register. These private funds, within minimum standards established by law, offer social security schemes to their members according to specific rules and provisions. They also have their own insurance system concerning maternity leave and allowance (albeit limited), sickness allowance and pension. Conversely, all the range of non-registered professions have long been excluded from the protections ensured by the professional registers (Bologna 2015). To compensate such lack of protections, the Law no. 335/1995 that reformed 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 self-employed workers not covered by other compulsory private pension funds and to semi-subordinate workers. The Separate Management Fund hence offers a minimum social assistance to these categories of workers, who have to compulsory enrol to this Fund. Self-employed workers are demanded by law to fully pay their own social contributions, calculated on the basis of the total earning declared for the year of reference. In the case of semi-subordinated workers, instead, the payment of the social contributions is split between the worker (1/3) and the client (2/3).

The dualism between self-employed workers in registered and non-registered professions applies also to maternity leaves and allowances. If the formers are covered by their own private professional social security funds, according to the specific conditions established by each fund (generally quite limited), the latters do not have access to any scheme. A different regime was introduced for semi-subordinated workers enrolled in the Separate Management Fund of INPS. In this case, maternity leave is not compulsory (as for subordinated workers) but the entitlement to the allowance does not occur in case of permanence at work. Maternity allowance, paid by the INPS, covers the 80% of the previous income for a maximum of 5 months, hence rather limited.

A further characteristic of the Italian social protection infrastructure for self-employed is the lack of a dedicated unemployment scheme (Spasova et al. 2017, p. 38). A partial exception applies to semi-subordinated workers: in fact, in 2015 the Legislative Decree no. 22/2015 established a new allowance in case of unemployment for semi-subordinated workers, the so-called DIS-COLL. The scheme provides for a monthly allowance to be corresponded to the semi-subordinate workers enrolled in the Separate Management Fund of INPS. Accordingly, the reform excluded the whole population of self-employed workers from the list of beneficiaries.

Similarly, a scheme in case of sickness is not provided for self-employed workers in non-registered professions. A sickness allowance was introduced only for semi-subordinated workers enrolled in the Separate Management Fund and not members of any other compulsory social security fund. They are entitled to receive a sickness benefit in case of both hospitalization and illness, variable according to the total amount of social contributions corresponded.

Despite the limited and fragmented access to social protections for self-employed in Italy, the issue has long remained excluded from the political agenda and the public debate. More recently, following up the lobbying action carried out by a coalition of associations and unions organising self-employed workers, the Government issued in 2017 the Jobs Act for the Autonomous Work (Law no. 81/2017). The approval of new regulatory framework embodies a milestone regulation in the segment of self-employment in Italy, since it introduced for the very first time important legislative provisions aiming at improving working conditions and social protections for the whole population of self-employed workers (Perulli and Fiorillo 2017). The main measures introduced include the right to access social protections as maternity and sickness paid leaves; the right to participate in public tenders and funding calls, previously reserved to undertakings; and the possibility to deduct from taxes 100% of the costs incurred for training and professional updating. This law also created ad hoc Job centres, aimed at offering to self-employed guidance services, information, and advice for participation in tenders and the opening of new autonomous activities, as well as providing matching services between demand and supply of work. Furthermore, it introduced wider guarantees on the contractual clauses between the self-employed and the client – generally more favourable for the latter – in particular regarding the conditions for withdrawal from the contract and the payment times (maximum 60 days). Despite the symbolic and practical relevance of this legislative intervention, the actual implications for working conditions of self-employed workers are still limited. The new provisions have not been implemented yet and according to some commentators the Law no. 81/2017 seems to have simply systematised in a unique regulatory framework a series of policies already adopted in the Italian labour market, without actually introducing new protections and rights (Perulli XXX).

## Conclusions

- Collective bargaining represents the most important mechanism for defining the terms and conditions of employment in Italy, which applies to subordinated work. In fact, according to the Civil Code (Title V) setting the legislative framework for self-employment, the contractual relations between the self-employed worker and the client (employer) is established through a bilateral contract between the parties. Furthermore, the Article 2225 of the Civil Code disciplining the payment to be corresponded to the self-employed worker states that if not agreed by the parties and if it cannot be determined through the professional rates or habits, it is established by the judge. Hence, there is neither a legislative reference to the possibility for the collective bargaining to regulate the working conditions for self-employed workers nor an explicit denial.
- Nevertheless, the transformations of the Italian legislative framework and of the labour market that took place over the last decades have altered this picture. The introduction of the **semi-subordinated contractual arrangements introduced an intermediate status/category** which configured as non-pure forms of self-employment, but that can be located in between subordinated work and self-employment, combining employment conditions typical of subordinated work with other characteristics featuring self-employment. Given the degree of subordination featuring these

contracts and the often misuse as a cheaper alternative to subordinated contracts, collective bargaining has been extended to the semi-subordinated contracts. The Legislative Decree no. 81/2015, at the Article 2 disciplines the collaborations organised by the employer. It establishes that starting from 1<sup>st</sup> January 2016, the collaborations that take the form of exclusively personal work performance, continuative in nature and whose work arrangements are organised by the client also with reference to time and place of work have to be treated as subordinated relationships. The Article 2 applies to the continuous collaborations regulated by NCAs, as well as to the professional collaborations carried out by autonomous workers who are members of professional registers. In these cases, the collective bargaining might apply to this specific configuration of self-employment.

- The scholarly debate in the field of labour law in Italy is harshly debating around the solidity of the dichotomy employment/self-employment, whose boundaries in the practice turned to be increasingly blurred and overlapped. If on the one hand several elements of subordination are currently characterising the use of self-employment, on the other hand degree of autonomy are increasing in subordinated contracts (Tommasetti 2018). Hence, the regulation of the terms and conditions of employment of the two groups should keep these transformations into consideration. In this direction are going, for instance, the legislative and contractual attempts to frame food delivery riders as subordinated workers instead of autonomous, and to regulate their working conditions through collective bargaining.

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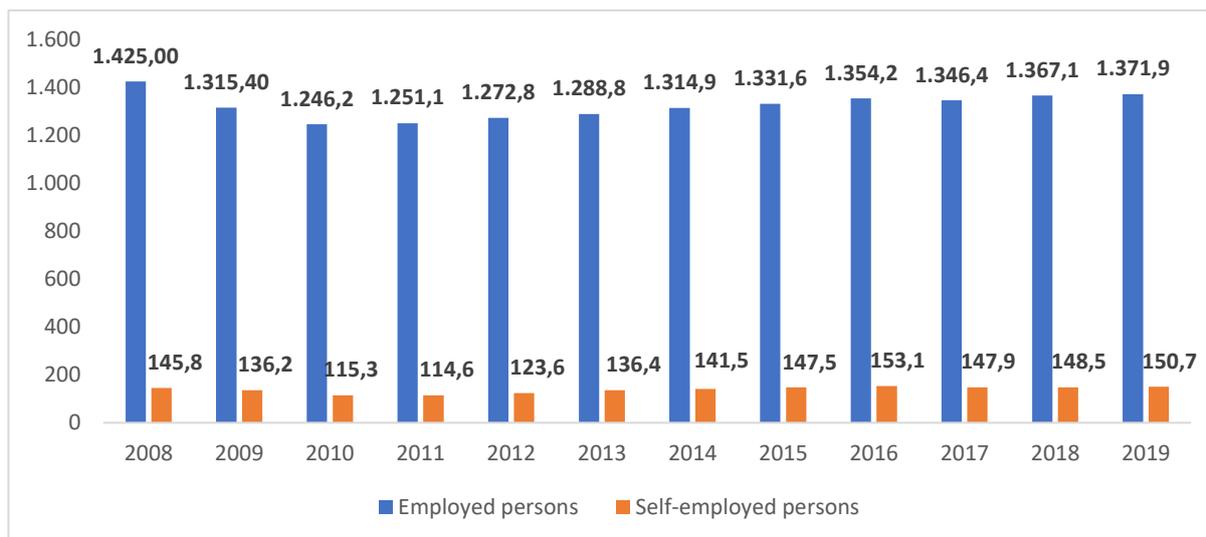
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# Lithuania

## Background information

In Lithuania, almost **11% of employed population** was self-employed in 2019. The number of self-employed has been fluctuating throughout the years and has been steadily increasing since 2017 (see Figure 24).

Figure 24. Evolution of the numbers of employed and self-employed workers in Lithuania (in thousands)



Source: Eurostat, 2020<sup>598</sup>

As illustrated in

Figure 25 more than **113.2 thousands of self-employed (70% )** were between **25-54 years old** in 2019. Self-employment is more popular among males with only 30% of self-employed females in the 3Q in 2020. More than half of self-employed were working in services sector in 2020 urban areas followed by sectors of agriculture, forestry and fishing and construction.<sup>599</sup> There is little information available about the specific occupations of self-employed workers. However, according to Eurostat data (3Q 2020), there were more than 30 thousand of craft and related trades workers, 28 thousand of skilled agricultural, forestry and fishery workers and a bit more than 21 thousand of managers and service and sales workers under the self-employment contract.<sup>600</sup>

<sup>598</sup> Eurostat (2020). Employment by age, professional status and NUTS 2 regions (1 000). Available at: <https://ec.europa.eu/eurostat/en/web/products-eurostat-news/-/ddn-20200401-1>

<sup>599</sup> Statistics Lithuania (2020). Self employed persons (thousands) by sex, place of residence and economic activity (thousands). Available at: <https://osp.stat.gov.lt/en/statistiniu-rodikliu-analize?hash=b1c97039-0fbf-4162-9c65-7b6ac8329efb>

<sup>600</sup> Eurostat (2020). Self-employment by sex, age and occupation (1 000). Available at: <https://ec.europa.eu/eurostat/databrowser/bookmark/55911aef-1c58-4a65-92de-e20ff55e9bbd?lang=en>

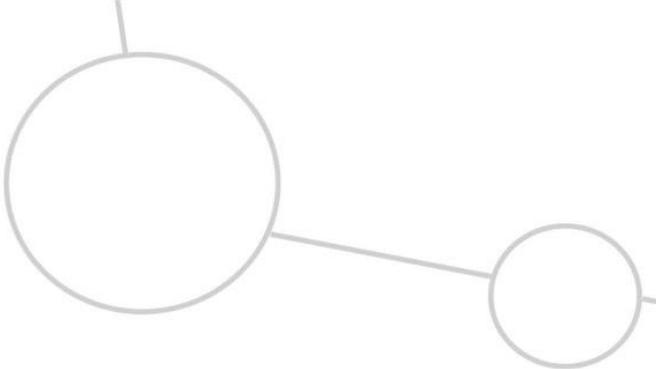
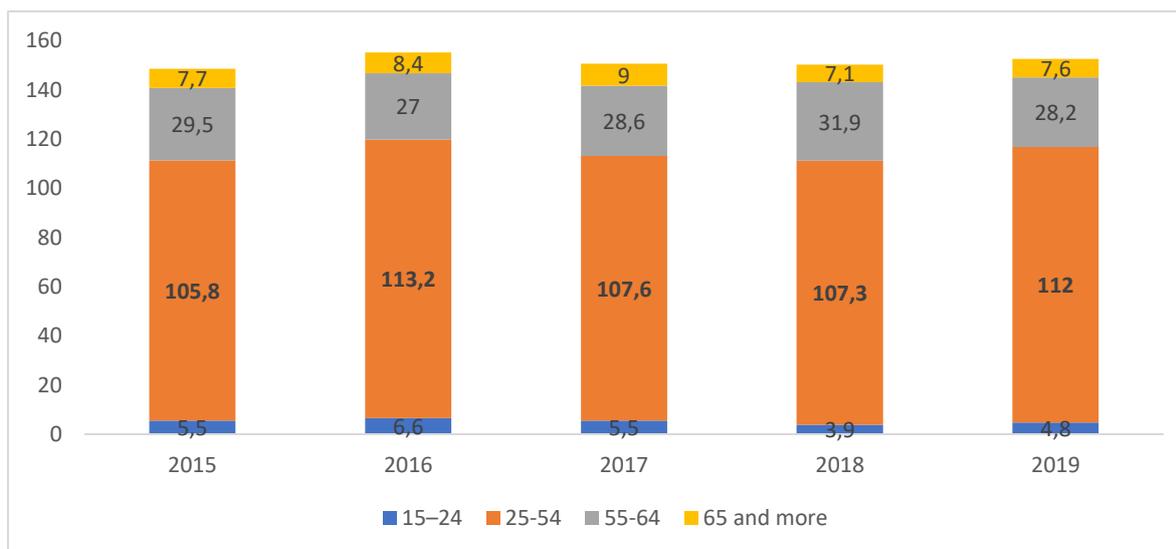


Figure 25. Self employed by age group in Lithuania (in thousands)



Source: Statistics Lithuania, 2020<sup>601</sup>

In Lithuania, self-employed must have either a business licence or a service contract for self-employed. Based on annual data collected by the State Tax Inspectorate, more than 110 thousand persons had a business licence and more than 130 thousand a service contract in 2020.<sup>602</sup> The highest number of business licences have been registered in accommodation rental services (20%), hairdressers and beauty salons (9.5%), trade in non-food products (9.4%) and special constructions works (6.9%). Persons with service contracts mostly worked in passenger transport (7.9%), hairdressers and beauty salons (5.9%), education (4.4%), auto technical services (4.2%) and postal and courier services (4.1%). The main reasons for self-employment according to the Sixth European working conditions survey conducted by Eurofound in 2017, were their personal preference (60%) followed by no other alternative for work (21%) and a combination of both (19%).<sup>603</sup>

In 2019, the number of part-time employees reached 225.1 thousand (17.5% of the total employees). The most people with part-time contracts were working in companies related to education (17.8%) wholesale and retail trade; repair of motor vehicles and motorcycles (14.8%), and human health and social work activities (12%).<sup>604</sup> The main reasons why employees had chosen to have a part time job in

<sup>601</sup> Statistics Lithuania (2020). Self employed persons (thousands) by age group. Available at <https://osp.stat.gov.lt/en/statistiniu-rodikliu-analize?hash=a2778473-d66b-44b0-852c-26985bfa03ca>

<sup>602</sup> See: <https://www.vmi.lt/cms/mokesciu-moketoju-registravimo-statistika-2020-m>

<sup>603</sup> Eurofound, 2017, Sixth European working conditions survey (2017 update)

<sup>604</sup> Statistics Lithuania (2020). Labour Market in Lithuania (edition 2020). Available at: <https://osp.stat.gov.lt/darbo-rinka-lietuvoje-2020/darbo-uzmokestis-darbo-sanaudos-ir-streikai/darbuotoju-skaicius>



2019 where inability to find a full-time job (20.6%), personal or family reason (21.6%), studies (12.6%) or own illness or disability (9.7%) among others.<sup>605</sup>

Based on the COLLEEM survey, there were 13.5% of platform workers in Lithuania in 2017.<sup>606</sup> However, there is little data to indicate their occupations.

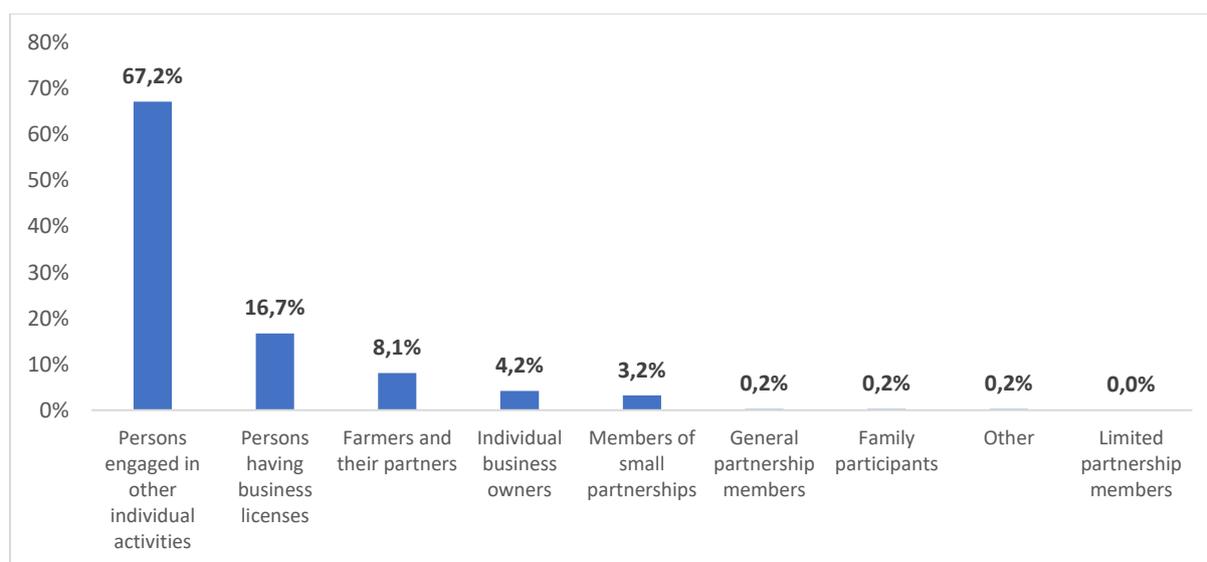
According to the International Labour Organisation (ILO), 42% of self-employment in Lithuania corresponds to dependent self-employment, 'whereby workers are self-employed but have a *de facto* employment relationship, if not *de jure*, not least because they only work for one employer'<sup>607</sup>.

Research shows that there were around 12 thousand people working under copyright agreements, including sportsmen and artists in 2015. The number which has been steadily decreasing since 2010 when there were 20.6 thousand persons under the same copyright agreement. According to Miežienė and Gruževskis (2016), it can be explained by the changes in income tax rates and procedures introduced in 2011.<sup>608</sup>

According to the State Social Insurance Fund Board, only 4.1% of self-employed (or 59.1 thousand) insured themselves (had a social insurance coverage) compared with 96% of employees whose social contributions were paid by their employer in the third quarter of 2020.<sup>609</sup>

Figure 26 shows that most of the insured self-employed were persons engaged in other individual activities (67.2%), persons having business licenses (16.7%) and farmers and their partners (8.1%).

Figure 26. The distribution of the insured of self-employed, %



Source: State Social Insurance Fund Board, 2020, 3 quarterly data<sup>610</sup>

<sup>605</sup> Statistics Lithuania (2020). Main reasons for part time employment. Available at: <https://osp.stat.gov.lt/en/statistiniu-rodikliu-analize?hash=704b1c8e-9ce5-4ff5-aa45-4ee3a9625fe3>

<sup>606</sup> Pesole, A., Urzi Brancati, M.C, Fernández-Macias, E., Biagi, F., González Vázquez, I., Platform Workers in Europe, EUR 29275 EN, Publications Office of the European Union, Luxembourg, 2018, ISBN 978-92-79-87996-8, doi:10.2760/742789, JRC112157. Available at: [https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157\\_pubsy\\_platform\\_workers\\_in\\_europe\\_science\\_f\\_or\\_policy.pdf](https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157_pubsy_platform_workers_in_europe_science_f_or_policy.pdf)

<sup>607</sup> Williams, C. and Lapeyre, F. (2017). Dependent self-employment: Trends, challenges and policy responses in the EU, Employment working paper No. 228, International Labour Organisation, Geneva, p.7. Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/documents/publication/wcms\\_614176.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_614176.pdf)

<sup>608</sup> Rasa Miežienė, R., Gruževskis, B. (2016). Atypical Forms of Employment in Lithuania: Main Characteristics and Prevalence. Social Research. 2016, Vol. 39 (1), 27–36.

<sup>609</sup> State Social Insurance Fund Board (2020). The distribution of the insured in a selected category in the third quarter of 2020. Available at: <https://atvira.sodra.lt/en-eur/>

<sup>610</sup> State Social Insurance Fund Board (2020). The distribution of the insured in a selected category in the third quarter of 2020. Available at: <https://atvira.sodra.lt/en-eur/>

## Collective bargaining framework

According to the labour code, collective bargaining agreements can be signed between employers, employer organisations, trade unions and trade union organisations. It is also emphasised that only trade unions can represent employees in collective bargaining.<sup>611</sup> In the past few years, the uptake of collective bargaining agreements, almost entirely remained in the public sector, including agreements signed in the sectors of education, health care, and social care in 2017-2018.<sup>612</sup> Since 2020, national collective bargaining agreements are being signed between the Lithuanian government and selective trade unions annually regulating the minimum wage of public sector employees and extra social guarantees to trade union members.<sup>613</sup>

Based on Eurofound Lithuanian country profile information, “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”.<sup>614</sup>

Discussions on collective bargaining increased in the past years when the new conditions were included in the new Labour Code in 2017 in Lithuania, however, collective bargaining coverage remains among the lowest in the EU. According to the European Company Survey 2019 by Eurofound it equals 10%<sup>615</sup> or only 7% indicated by the European Trade Union Confederation (ETUC) in September 2020. According to ETUC, collective bargaining coverage in Lithuania has dropped by -8% since 2000 with only 92 834 workers covered by collective bargaining, leaving around 1.2 M workers unprotected (ETUC, 2020<sup>616</sup>). However, according to the interviewee, the coverage is much higher. Ministry of Social Security and Labour in Lithuania must register the collective agreements and based on their records, they cover around **17% of all employed**.<sup>617</sup>

According to the interviewee, the low membership rates can be explained partly by the weak social dialogue tradition in Lithuania. 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.<sup>618</sup> Thus, collective bargaining is mostly **considered as a formality by employers and trade unions**.<sup>619</sup> Since 2017, a full register of collective agreements is publicly available on the ministerial website.<sup>620</sup>

In Lithuania in the beginning of 2021, there were more than 108 thousand economic entities, out of which 87 thousand were SMEs. Most of the SMEs were private companies (79%), followed by individual enterprises (10%) and small partnerships (9%).<sup>621</sup> The most common sectors for SMEs include wholesale and retail trade (27.8%), professional, scientific and technical activities (12.4%) and construction (10.7%).<sup>622</sup> The main employer confederations include Lithuanian Confederation of Industrialists and the Lithuanian Business Employers' Confederation (LVDK)<sup>623</sup> whose members together employ almost 30% of all employees. The latter also has a branch organisation – the

<sup>611</sup> Labour code, art. 186-202 str. Available: <https://www.infolex.lt/ta/368200#>

<sup>612</sup> Eurofound (2019). Working life in Lithuania. Blaziene, I. and Mieziene, R. Lithuanian Social Research Centre. Available at: <https://www.eurofound.europa.eu/country/lithuania#collective-bargaining>

<sup>613</sup> Lithuanian Trade Union Confederation (2019). National collective bargaining agreement 2020. Available at: <https://www.lpsk.lt/naujienos/2020-metu-nacionaline-kolektyvine-sutartis/>

<sup>614</sup> 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>

<sup>615</sup> 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>

<sup>616</sup> 'EU countries with weak collective bargaining have lowest wages', Press release, European Trade Union Confederation, 10<sup>th</sup> September 2020. Available at: <https://www.etuc.org/en/pressrelease/eu-countries-weak-collective-bargaining-have-lowest-wages>

<sup>617</sup> According to the national level interview conducted on 08 February 2021

<sup>618</sup> According to the national level interview conducted on 04 February 2021

<sup>619</sup> See: <https://www.lpsk.lt/en/2019/02/01/collective-bargaining-in-lithuania-current-situation-and-priorities/>

<sup>620</sup> See

<sup>621</sup> Statistics Lithuania (2021). Number of small and medium-sized enterprises in operation by legal form and county at the beginning of the year. Available at

<sup>622</sup> Statistics Lithuania (2021). Number of small and medium-sized enterprises in operation by economic activity (NACE Rev. 2, section level), legal form and county at the beginning of the year. Available at:

<sup>623</sup> See: <https://lvk.lt/en/members/>

Lithuanian Association of Small Businessmen and Traders (LSVPA) representing the self-employed working under both business licences and service contract for self-employed. Furthermore, there are many associations that represent large enterprises and small firms as well as self-employed persons.<sup>624</sup>

Representation of self-employed by trade unions is even more limited than other employees. There is no statistical data to understand how many trade unions were established to represent self-employed and what are the total numbers of self-employed who are represented by various trade unions. According to the interviewee, usually trade unions represent only statutory employees who have labour relations with an employer, however, some also have self-employed members.<sup>625</sup>

Trade unions that should mostly represent those working under a service contract for self-employed or a business licence, include Journalist trade union (almost 100 members)<sup>626</sup> and Lithuanian Federation of trade unions of agricultural workers (8,035 members) just to name a few. In 2018, trade union 'May 1' was established which represent among the others the courier association (whose members include platform workers (food delivery apps, passenger transport apps), however, the overall number of their members is unknown.<sup>627</sup>

As of 2009, only the trade union of Journalists was engaged in social dialogue and collective bargaining issues. In 2015, they signed the first collective bargaining agreement between the employer - Taurage newspaper 'Taurage courier' and Taurage newspaper 'Taurage courier' trade union. It resulted from the EU funded project to strengthen a social dialogue in journalism sector and creation of professional journalists. The agreement included joint resolution of conflicts and the possibility to reward employees with good performance results. However, the agreement was only applicable to the newspaper employees and their employer.

Even though, protest organised by the trade unions are rather popular in Lithuania, there is not much information about the retaliation actions against companies following their refusal to negotiate with self-employed service providers. In 2020 July, „Bolt Food“ carriers 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.<sup>628</sup>

## Legal framework

*Main relevant legislative provisions: Lithuanian Labour Code Art. 21 and 66<sup>629</sup>*

Any employee according to the labour code is 'a natural person who is obliged to perform a work function for remuneration under an employment contract with an employer'.<sup>630</sup> The following types of employment contract are included in the Labour Code:

- open-ended,
- fixed-term employment,
- temporary agency employment,
- apprenticeship employment,
- project-based employment,
- job share employment,
- multiple-employer employment,

<sup>624</sup> Eurofound (2009). Lithuania: Self-employed workers. Blažienė, I. Available at: <https://www.eurofound.europa.eu/publications/report/2009/lithuania-self-employed-workers>

<sup>625</sup> According to the national level interview conducted on 04 February 2021

<sup>626</sup> See: [http://www.lzs.lt/lt/nacionaline\\_zurnalistu\\_kureju\\_asociacija/nzka\\_nariu\\_sarasas.html](http://www.lzs.lt/lt/nacionaline_zurnalistu_kureju_asociacija/nzka_nariu_sarasas.html)

<sup>627</sup> See: <http://q1ps.lt/kurjeriai/>

<sup>628</sup> Davulis, T. (2020). Ar legalus yra maisto išvežiotjų „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/>

<sup>629</sup> <https://www.infolex.lt/ta/368200#>

<sup>630</sup> Labour code (2020). Art. 21. Available at: <https://www.infolex.lt/ta/368200#>

- seasonal employment contract.<sup>631</sup>

Job contracts of apprenticeships, project work, job sharing, employment contracts for several employers are new additions to the labour code since 2017.<sup>632</sup>

As mentioned before only trade unions can represent employees in collective bargaining agreements. There are no restrictions to who can create a trade union: '*all natural persons with legal capacity and ability to form and join trade unions at the state, branch or territorial level are free to do so and participate in their activities.*'<sup>633</sup> Self-employed with a business licence who are employers are excluded from joining a trade union established by their employees inside their company.<sup>634</sup> In general, only a few trade unions represent self-employed.<sup>635</sup> However, collective bargaining is regulated by the labour code and in some occasions, particularly platform workers, do not have contractual labour relations with an employer to be protected under the labour code.

As mentioned before, persons considered to be self-employed if they obtained a business certificate or an individual activity certificate (service contract for self-employed). Self-employment in Lithuania is governed mostly by the Law on Income Tax of Individuals and Law on State Social Insurance, and other legal acts.<sup>636</sup> According to the law on state social insurance, 'farmers and their partners', members of social families and persons engaged in individual activities must have mandatory pension, sickness and maternity, health and unemployment social insurance, social insurance of occupational accidents and occupational diseases.<sup>637</sup> Different obligations arise for those who have business licences.<sup>638</sup>

In Lithuania, 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.<sup>639</sup>

No important case law that relates to the coverage of self-employed workers by collective bargaining and balancing this with fair competition was found.

### Labour market trends and other factors

There were changes in income taxation introduced in Lithuania in 2011 for persons working under copyright agreements. They made compulsory to pay a full amount of their social security contributions (up to almost 40% in some cases) which resulted in a steady decrease of persons working under copyright agreements, sportsmen and artists from 26.7 thousand in 2010 to 19.4 in 2011.<sup>640</sup> No further information on tax and social security schemes or changes to these schemes that might influence the level of self-employment in Lithuania has been identified.

According to the interviewee, there are some income tax reductions for self-employed. It depends on the annual income level and varies between 5% (less than 20 thousand EUR per year), between 5-15%

<sup>631</sup> Labour code (2020). Art. 66. Available at: <https://www.infolex.lt/ta/368200#>,

<sup>632</sup> See: <https://socmin.lrv.lt/lt/veiklos-sritys/darbo-rinka-uzimtumas/darbo-teise/darbo-santykiai>

<sup>633</sup> Trade unions law (2013), art. 1. Available at: <https://e-seimas.lrs.lt/portal/legalActPrint/lt?ifwid=32wf8vsw&actualEditionId=PToeCHJGQn&documentId=TAIS.2293&category=TAD>

<sup>634</sup> See: <https://e-seimas.lrs.lt/portal/legalActPrint/lt?ifwid=-wd7z8t16w&actualEditionId=OGYrZvXVqc&documentId=TAIS.2293&category=TAD>

<sup>635</sup> According to the national level interview conducted on 04 February 2021

<sup>636</sup> Rasa Miežienė, R., Gruževskis, B. (2016). Atypical Forms of Employment in Lithuania: Main Characteristics and Prevalence. Social Research. 2016, Vol. 39 (1), 27–36.

<sup>637</sup> See: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/f85b15f062c011e5b316b7e07d98304b?ifwid=5sjojge5y>

<sup>638</sup> Persons engaged in individual activities under business certificates, shall be covered on a compulsory basis only by pension social insurance to receive the basic and supplementary parts of a pension (Point 1 of Article 3 of this Law), by sickness and maternity social insurance, where a person is insured to receive only the maternity, paternity and maternity (paternity) benefits (Point 2 of Article 3 of this Law). Owners of individual enterprises, members of small partnerships, and general partners of general partnerships, who received income specified in Article 7(2)(1) of this Law, shall be covered, on a compulsory basis, by pension social insurance for the basic and supplementary parts of a pension (Point 1 of Article 3 of this Law). Available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/f85b15f062c011e5b316b7e07d98304b?ifwid=5sjojge5y>

<sup>639</sup> According to the national level written submission received on 12 February 2021

<sup>640</sup> Rasa Miežienė, R., Gruževskis, B. (2016). Atypical Forms of Employment in Lithuania: Main Characteristics and Prevalence. Social Research. 2016, Vol. 39 (1), 27–36.

(20-35 thousand) and 15% if annual income exceeded 35 thousand euros.<sup>641</sup> In comparison, a general income tax for employed since 2019 was 20% or 32% for higher income (excluding exceptions).<sup>642</sup>

According to ETUC research, Lithuania has one of the lowest wages in the EU (24 out of 27) which is directly linked to low levels of collective bargaining in the country.<sup>643</sup> However, no information on salary levels in the same or between sectors, depending on whether they are covered by a collective agreement was identified.

In 2019, the Lithuanian Trade Union Confederation (LPSK) identified various problems in the area of collective bargaining agreements in Lithuania. These were:

- A lack of quality collective agreements in the private sector.
- A lack of adequate monitoring regarding the size of base salary and wage payment systems;
- A lack of trade unions in some sectors, particularly in banking/financial sectors and representation of employees in transnational enterprises;
- Implementation of a new double employee representation system which weakened the collective bargaining even more. Information and consultation are the main functions of work councils, however, the right of collective bargaining belongs exclusively to trade unions;
- **More attention to freelancers and self-employed persons is needed.** The LPSK was looking how to include them under the collective bargaining umbrella and enhance their social protection and benefits.
- Capacity building of trade unionists who are more competent in collective bargaining on different levels<sup>644</sup>

In the beginning of 2021, more government attention was given to improve the labour law regulation for self-employed, particularly for platform workers. According to the interviewee, the Ministry of Social Security and Labour is considering regulatory measures regarding health and safety for self-employed as well as improving their social protection. Taking into account platform work, they have recently had initial discussions on platform workers with social partners with the aim of hearing both sides, i.e. platform workers shared the most problematic aspects of their work while some platforms gave an opinion about possible improvements, at the Tripartite Council of the Republic of Lithuania.<sup>645</sup>

In detail, on 12<sup>th</sup> January, the Tripartite Council discussed the issues expressed by the courier association faced by the platform workers, mainly a lack of legal regulation for their working relations and contractual obligations, a lack of accident insurance during working hours and requested more information to be shared between the platforms and the government and social partners. All partners involved agreed that the social dialogue must continue in the future.<sup>646</sup>

There is also more media coverage and numerous protests requesting the government to review the labour regulations for new types of employment. According to the interviewee, there are discussions on the classification of self-employed persons which are in the early stage, therefore, no concrete proposals are yet in place.<sup>647</sup>

The discussions regarding platform workers have recently started in the national parliament. The Committee on Social Affairs and Labour discussed the specified topics in the Commission's work programme for 2021 where one of the topics included a legislative proposal to improve the working conditions of people providing services through platforms.<sup>648</sup>

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<sup>641</sup> See: <https://www.jonavoszinios.lt/naujiena/kokius-mokescius-turi-moketi-dirbantieji-savarankiskai>

<sup>642</sup> See: <https://www.finansistas.net/gyventoju-pajamu-mokestis-gpm.html>

<sup>643</sup> 'EU countries with weak collective bargaining have lowest wages', Press release, European Trade Union Confederation, 10<sup>th</sup> September 2020. Available at: <https://www.etuc.org/en/pressrelease/eu-countries-weak-collective-bargaining-have-lowest-wages>

<sup>644</sup> <https://www.lpsk.lt/en/2019/02/01/collective-bargaining-in-lithuania-current-situation-and-priorities/>

<sup>645</sup> According to the national level written submission received on 12 February 2021

<sup>646</sup> See: [https://socmin.lrv.lt/uploads/socmin/documents/files/veiklos-sritys/darbas/partneryste/trisal-taryb-protokolai/TT%20prtkl%202021%2001%2012\\_g.pdf](https://socmin.lrv.lt/uploads/socmin/documents/files/veiklos-sritys/darbas/partneryste/trisal-taryb-protokolai/TT%20prtkl%202021%2001%2012_g.pdf)

<sup>647</sup> According to the national level written submission received on 12 February 2021

<sup>648</sup> According to the national level written submission received on 12 February 2021

Overall, according to the interviewee, trade unions are too weak to make any structural changes and the government must juggle many interests in their decision-making processes, therefore, more support from the EU level, including new regulations would be welcome.<sup>649</sup>

## Conclusions

Overall, only trade unions can sign collective bargaining agreements. Self-employed can create trade unions in Lithuania or join national, sectorial or territorial trade unions based on their activities. However, if any trade unions that sign the collective agreements have self-employed members, they **cannot** be covered by these agreements. For example, if a trade union of hairdressers sign a collective agreement which has both employed and self-employed members the collective agreement will only apply to those who have an employee status<sup>650</sup> because a duty to apply a collective agreement belongs to an employer.<sup>651</sup>

Moreover, those self-employed who have civil law contracts (copyright agreements, contracts for the performance of service, etc.) regulated under the Civil Code have extra labour relations restrictions. Therefore, according to the interviewee, it is necessary to expand the definition of an employee in the Labour Code including new employment forms for self-employed.<sup>652</sup> Expanding collective bargaining agreements to self-employed workers might bring legal challenges, however, more vulnerable self-employed persons, particularly platform workers could benefit from more bargaining power regarding their working conditions and remuneration.<sup>653</sup>

The Ministry of Social Security and Labour has started to investigate how collective bargaining could also cover the self-employed, particularly the platform workers who lack a negotiation power. Collective bargaining could increase their protection, regarding their health and safety, work and rest time, minimum wage, discrimination, information and consultation rights and social insurance against accidents at work.<sup>654</sup>

## Interviews

Name of interviewee	Organisation
1. Dr. Inga Blaziene, Senior Researcher	Labour Market Research Department of the Lithuanian Centre for Social Sciences
2. Aušra Bagdonaitė, Head manager	Social dialogue unit, Ministry of Social Security and Labour
3. Unknown	Ministry of Social Security and Labour

<sup>649</sup> According to the national level interview conducted on 04 February 2021

<sup>650</sup> Labour code (2020). Art. 197. Available at: <https://www.infolex.lt/ta/368200#>

<sup>651</sup> According to the national level interview conducted on 08 February 2021

<sup>652</sup> According to the national level interview conducted on 04 February 2021

<sup>653</sup> According to the national level written submission received on 12 February 2021

<sup>654</sup> According to the national level written submission received on 12 February 2021

# Luxembourg

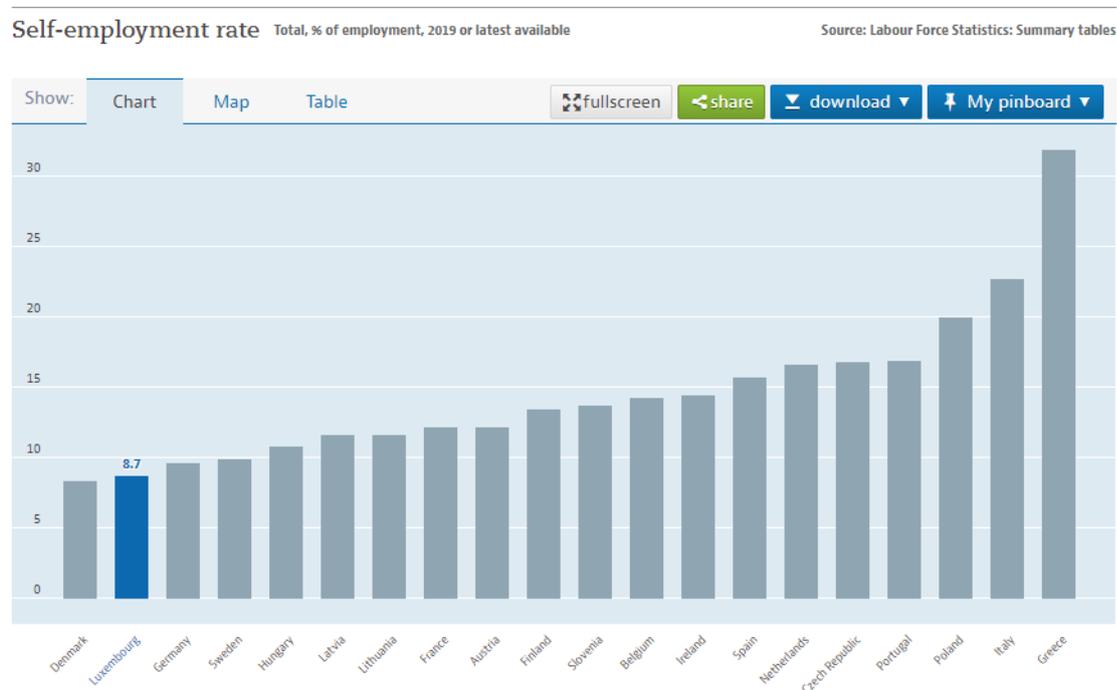
## Background information

As of March 31, 2020, the employment situation in Luxembourg is as follows:

- Total domestic employment: 474.294 including 205.031 cross-border workers (43,23 %);
- Employees in the private sector: 413.565 including 198.121 cross-border workers;
- Civil servants: 32.906 including 1711 cross-border workers;
- Self-employed: 27.823 , including 5.199 cross-border workers.<sup>655</sup>

According to [OECD data](#), the total percentage of self-employment rate among those employed in 2019 in Luxembourg was 8.7%, as demonstrated by the figure below.<sup>656</sup> Luxembourg is one of the European countries where self-employment is least common. In fact, according to a [Eurofound report](#), “Self-employment is most common in Greece (31%), Italy (23%) and Romania (19%) and least common in Denmark (8%), Estonia (9%) and Luxembourg (9%).”<sup>657</sup> However, self-employment rates increased in Luxembourg by 3 percentage points between 2008 and 2015.

Figure 1: Self-employment rate<sup>658</sup>

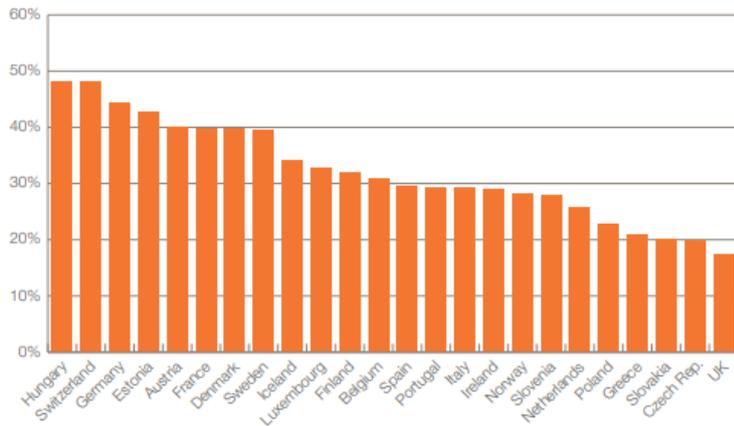


According to [Eurostat](#), as of 2013, over 30% of self-employed workers in Luxembourg have employees, as also evidenced by the figure below.

Figure 2: Percentage of self-employed workers with employees I the Europe-24 countries (2013)<sup>659</sup>

<sup>655</sup> <https://ec.europa.eu/eures/main.jsp?catId=2643&countryId=LU&acro=Imi&lang=en&regionId=LU0&nuts2Code=%20&nuts3Code=&regionName=National%20Level>  
<sup>656</sup> <https://data.oecd.org/emp/self-employment-rate.htm>  
<sup>657</sup> <https://www.european-microfinance.org/sites/default/files/document/file/exploring-self-employment-in-the-european-union.pdf> (p. 7)  
<sup>658</sup> <https://data.oecd.org/emp/self-employment-rate.htm>  
<sup>659</sup> Eurostat

Percentage of self-employed workers with employees in Europe-24 countries, 2013

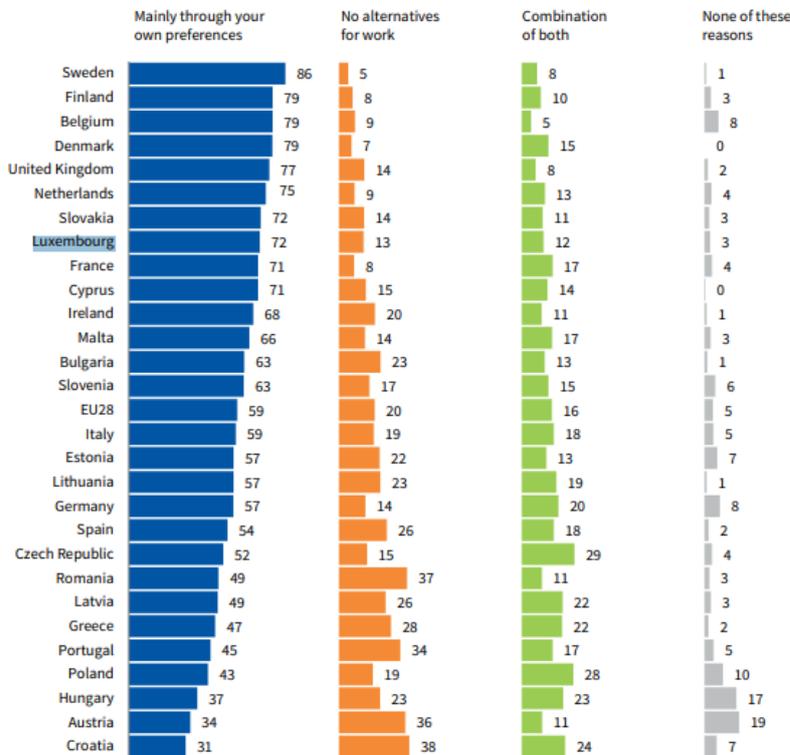


Source: Eurostat Labour Market Database (Eurostat 2014a)

As demonstrated by the figure below, Luxembourg's self-employed mainly chose their profession because of their own preferences (72%), 13% became self-employed because there were no other alternatives for work, and 12% because of a combination of preference and no alternative.<sup>660</sup>

Figure 3: Reasons for self-employment by country

Figure 5: Reasons for self-employment, by country



<sup>660</sup> <https://www.european-microfinance.org/sites/default/files/document/file/exploring-self-employment-in-the-european-union.pdf>

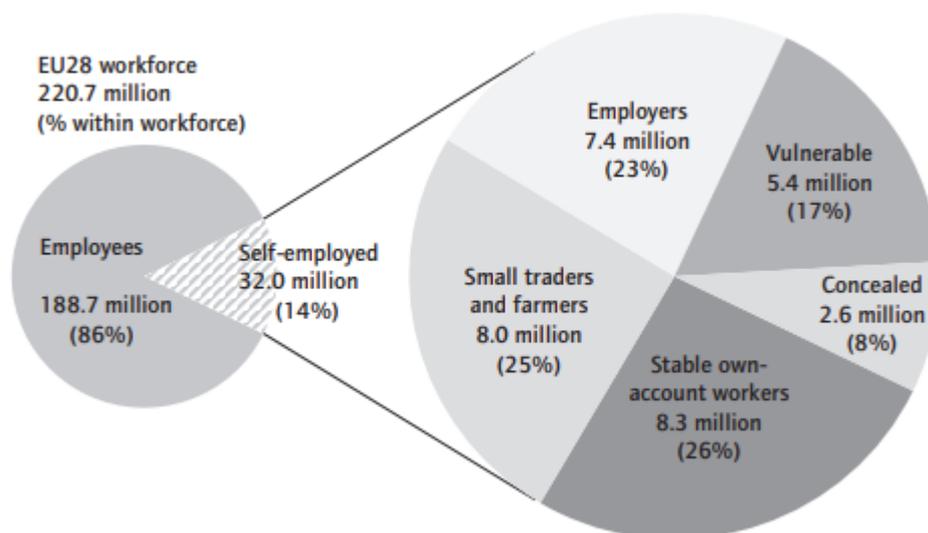
Overall, most self-employed people look favourably on the notion of being their own boss in Luxembourg (98%), this demonstrates high satisfaction rate with their professional choice.<sup>661</sup>

The self-employed are no homogenous group, in fact, self-employed workers can be split in the following categories: small traders and farmers, employers, stable own account workers, vulnerable, and concealed. This differentiation is further explored in a relevant Eurofound study.<sup>662</sup> However, details on vulnerable self-employed workers in Luxembourg is hard to access and has not been found for the purpose of this mapping.<sup>663</sup>

According to the interviewee, now because of Covid, self-employed workers are more vulnerable for small businesses and hospitality workers. Platform workers are vulnerable, but Luxembourg does not have specific policies directed towards these workers, and this is an issue because of the law where there is a distinction: either you work for someone or you don't, whereas platform workers are hybrid.

Figure 4: Clusters of self-employed, EU28 (2017)<sup>664</sup>

Figure 2 Clusters of self-employed, EU28



Source: Eurofound (2017), based on the EWCS.

In Luxembourg, the organisations that represent self-employed workers make no distinction between self-employed workers who are employers and those who are not. 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.

According to [this Eurofound report](#), for what concerns the social protection available to self-employed workers, in Luxembourg, “the system for self-employed workers is very similar to that of employees, except for a number of elements for which they receive special treatment that takes into account their circumstances. Social protection covers all risks, including unemployment if they register as jobseekers. There is a specific system for accidents at work for farmers. For sickness benefits, waiting periods exist for the self-employed, requiring them to accumulate contributions for a certain period before being able to draw upon the right”. Additionally, self-employed workers who lose their job can receive

<sup>661</sup> <https://www.european-microfinance.org/sites/default/files/document/file/exploring-self-employment-in-the-european-union.pdf>

<sup>662</sup> De Moortel D. and Vanroelen C. (2017) Classifying self-employment and creating an empirical typology, technical report prepared for Eurofound, Dublin.

<sup>663</sup> [https://www.etui.org/sites/default/files/Chapter%205\\_9.pdf](https://www.etui.org/sites/default/files/Chapter%205_9.pdf)

<sup>664</sup> [https://www.etui.org/sites/default/files/Chapter%205\\_9.pdf](https://www.etui.org/sites/default/files/Chapter%205_9.pdf)

unemployment benefit if they register as jobseekers, as demonstrated by the table below. In Luxembourg, the self-employed are also covered by compulsory insurance, but at minimum of 24 months of contributions is required, in comparison to four in case of regular employment.<sup>665</sup>

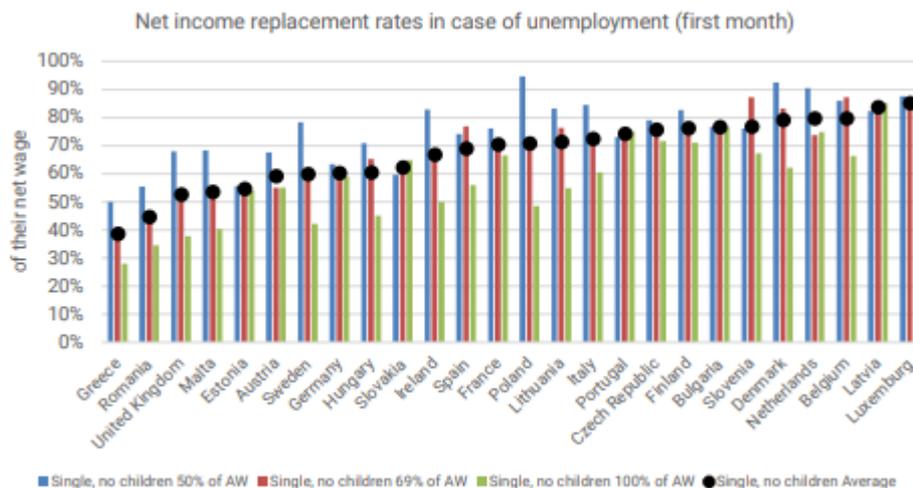
Table 1: Countries by type of unemployment insurance for the self-employed<sup>666</sup>

<b>Compulsory insurance (8 countries):</b> Czech Republic, Croatia, Finland, Hungary, Luxembourg, Portugal, Slovenia, Sweden	<b>Partial insurance (7 countries):</b> Denmark, Estonia, Greece, Ireland, Lithuania, Poland, United Kingdom
<b>Voluntary opt-in (4 countries):</b> Austria, Slovakia, Spain, Romania	<b>No insurance (9 countries):</b> Belgium, Bulgaria, Cyprus, France, Germany, Italy, Latvia, Malta, Netherlands

Source: Based on MISSOC database (1 January 2017 version) and ESPN 2016/17 country reports.

Luxembourg offers the most generous net income replacement rates which are above 80% of one's previous earnings independent of the wage level.

Figure 5: Net income replacement rates in case of unemployment<sup>667</sup>



For what concerns social protection for self-employed workers in Luxembourg, [this LSE paper](#) demonstrates that it is one of the most progressive countries in Europe.

I could not find any recent data detailing the variety of occupations of the self-employed in Luxembourg, however I found data regarding the latter from 2006. It is important to note that this data does not fully present an overview of the occupations because it is about intellectual professions. Thus, the most vulnerable positions are in all likelihood left out (construction, agricultural, manufacturing workers, etc).

Table 2: Self-employed intellectual workers by profession<sup>668</sup>

	2000	2003	2006
<b>Total</b>	4,404	5,851	6,650
<b>Lawyers</b>	704	859	1,091
<b>Notaries</b>	19	17	17

<sup>665</sup> <https://www.lse.ac.uk/european-institute/Assets/Documents/LEQS-Discussion-Papers/LEQSPaper141.pdf>

<sup>666</sup> <https://www.lse.ac.uk/european-institute/Assets/Documents/LEQS-Discussion-Papers/LEQSPaper141.pdf>

<sup>667</sup> <https://www.lse.ac.uk/european-institute/Assets/Documents/LEQS-Discussion-Papers/LEQSPaper141.pdf>

<sup>668</sup> <https://www.eurofound.europa.eu/publications/report/2009/luxembourg-self-employed-workers>

<b>Judicial officers</b>	16	15	16
<b>Registered attorneys</b>	2	2	1
<b>Doctors</b>	806	860	896
<b>Dentists</b>	240	265	287
<b>Pharmacists</b>	84	84	80
<b>Veterinarians</b>	73	79	83
<b>Medical assistants</b>	244	288	289
<b>Architects</b>	323	340	353
<b>Consultant engineers</b>	96	103	93
<b>Quantity surveyors</b>	3	2	1
<b>Inspectors</b>	1	1	1
<b>Technicians</b>	11	8	5
<b>Assessors</b>	16	15	17
<b>Chartered accountants</b>	176	153	157
<b>General insurance representatives</b>	8	8	7
<b>General insurance agents</b>	176	153	135
<b>Dance teachers, physical training instructors, etc</b>	35	27	21
<b>Literary workers</b>	14	13	11
<b>Musicians</b>	12	15	11
<b>Artists</b>	97	100	88
<b>Miscellaneous</b>	1,268	2,444	2,992

Source: STATEC

In Luxembourg nearly 50% of the residents is foreigner so it's a very specific scenario, half the labour force is coming from the neighbouring countries. The economy is mostly 'intellectual'. (Ministry of classe Moyenne also can provide some interesting information on this). The breakdown is as follows:

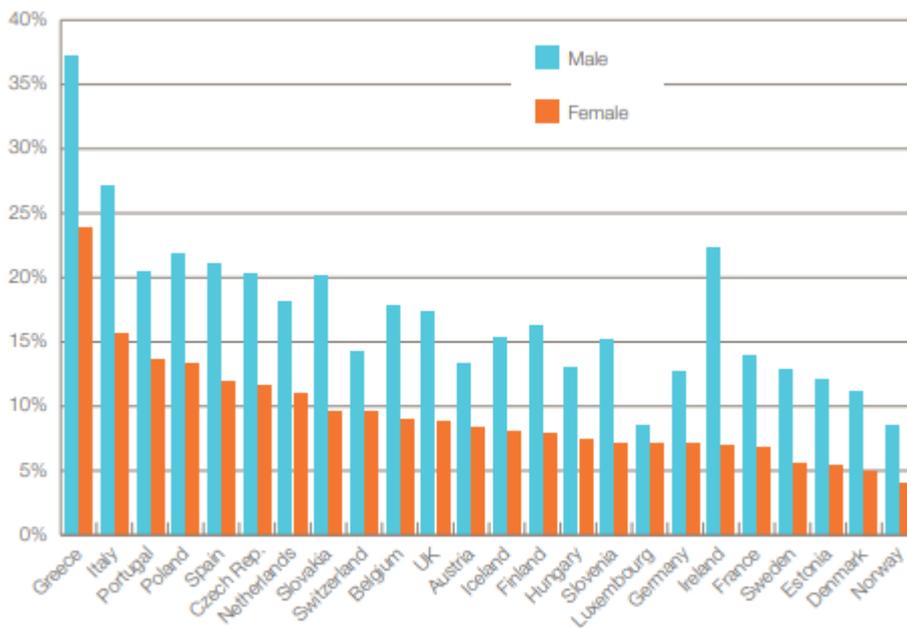
- Luxembourgish residents: 329.500
- Foreign residents: 296.500

Across Europe, men are 90 per cent more likely to be self-employed than women. In every country the female self-employment rate lags behind the male rate, with the difference at its greatest in Ireland, Sweden and Denmark, and lowest in Luxembourg, Switzerland and Portugal, as demonstrated in the figure below.

Figure 6: Female and male self-employment rates in Europe<sup>669</sup>

<sup>669</sup> <https://www.european-microfinance.org/sites/default/files/document/file/exploring-self-employment-in-the-european-union.pdf>

Female and male self-employment rates in Europe-24 countries, 2013



Source: Eurostat Labour Market Database (Eurostat 2014a)

In Luxembourg, more than a quarter of full-time self-employed people are at risk of poverty and social exclusion.<sup>670</sup> However, I could not find data detailing which were the most vulnerable categories or occupations for self-employed workers.

For what concerns platform workers, it is important to note that **some experts consulted in the study mentioned indicated that undeclared work in the platform economy is neither regarded nor discussed as an issue in Luxembourg.**<sup>671</sup> However, Luxembourg’s [Third Industrial Revolution Strategy](#) deals broadly with changes in the ‘world of work’ in the digital age, which includes the possibility of new platform work regulation.<sup>672</sup>

In Luxembourg, the principal sanction applied in cases of false self-employment is requalification of the employment status. However, again, I could not find data on the rates of false self-employment in Luxembourg.

Labour inspectorate is doing the controls for false self-employment: according to the law, if you’re working for someone, even if there is no written contract, it’s clear that you work for this business, Luxembourg doesn’t really have stats on this because it isn’t really an issue in Lux (ITM controls this). Nevertheless, an oral employment contract between the employer and employee is just as valid as a written contract. In this case, it is necessarily agreed for an indeterminate period of time. In case of a dispute, it is purely the employee’s responsibility to prove its existence.

There is currently a legal case for a food delivery service to allow the platform to access social security benefits – the interviewee mentioned this but says it is confidential information because the case is still going ahead.

### Collective bargaining framework

<sup>670</sup> <https://www.european-microfinance.org/sites/default/files/document/file/exploring-self-employment-in-the-european-union.pdf>  
<sup>671</sup> Study to gather evidence on the working conditions of platform workers VT/2018/032 Final Report 13 March 2020 CEPS, EFTHA, and HIVA-KU Leuven p.93  
<sup>672</sup> Ministère de l’Économie et al. (2016), “Troisième Révolution Industrielle [Third Industrial Revolution]”, Luxembourg, November (<https://www.troisiemerevolutionindustrielle.lu/etude-strategique/>).

There is a lot of collective bargaining is discussed between social partners, but it is always about the relationship between the bosses and the workers, so there is no collective bargaining with self-employed workers.

The following information is sourced from this [Eurofound report](#) (directly sourced, not paraphrased):

### **Bargaining system**

The collective agreement is an agreement concluded between employers and employees at company or sectoral level. It enables the regulations of the labour laws to be adapted to the needs and specific requirements of a company or a sector. Any collective agreement must be negotiated between social partners according to certain formalities and filed with the [Inspectorate of Labour and Mines](#) (*Inspection du Travail et des Mines* - ITM) for approval by the Minister of Labour and Employment. There are two types of collective agreements:

- standard collective agreements negotiated between an employer or a group of businesses (or their representatives) and a trade union. They are legally binding between signatories.
- collective agreements extended by a grand-ducal regulation and which are applicable to all employers and employees of the profession concerned.

The most important levels for negotiations are at 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. Their single-industry agreement covers 100% of the workforce (see representativeness studies for [banking](#), [insurance](#) and [private security](#)) as are extended by the Ministry of Labour. However, many sectors have no industry-level agreements. In 2010, 59% of all employees had their terms and conditions of employment regulated by collective bargaining.<sup>673</sup> The high level of decentralisation of collective bargaining and the weakness of collective bargaining in some sectors explains this trend. Unless stipulated otherwise in the collective agreement, senior management is not concerned by the working and salary conditions established in the collective agreement which applies to the staff. The following are considered to be senior management:

- employees whose salary is significantly higher than the salaries paid to the staff covered by the collective agreement;
- where the salary forms the counterpart in exchange for a true and effective power of management;
- employees who benefit from independence in the organisation of their work and a large flexibility in their working hours.

### **Wage bargaining coverage**

There is no national collective bargaining on wages. Luxembourg is characterised by the prevalence of company-level collective agreements over sectoral-level agreements. However, there is a mechanism of wage indexation. Salaries, wages and social contributions (including the minimum wage) are adjusted in line with the cost of living. When the consumer price index increases or decreases by 2.5% during the previous quarter, salaries are normally adjusted by the same proportion. The consumer price index and its impact on the sliding wage scale are published monthly by the national statistics body (Statec). The employer must, where applicable, increase all wages by 2.5%. Sectoral collective agreements may include salary rates linked to grade and coefficient. At company level, collective agreements on wages are often concluded for shorter periods.

The latest national data about collective bargaining coverage were published in 2013 and refer to 2010. The collective bargaining coverage was estimated at 59% of the workforce, with a large difference between the public sector (100%), education (87%) and social and care activities (87%), and some activities in the private sector such as hotel and restaurant (12%) or technical and scientific activities

<sup>673</sup> Ries, J. (2103), 'Regards sur la couverture des conventions collectives de travail', Regards, No. 6, Statec, Luxembourg.

(13%). The coverage rate differs with the size of the companies, from 30% (10 to 49 employees) to 79% (over 1,000 employees). The global rate includes the public sector and is based on the EU Structure of earnings survey (SES), in contrast to the data provided by the European Company Survey (see table), which focus on companies of the private sector with more than 10 employees.

### Bargaining levels

Intersectoral agreement are rare and never cover issues such as wages or working time. They mainly implement EU-wide agreements concluded by social partners, such as [telework](#) or [harassment at the workplace](#). The most important levels for negotiations are at the sectoral and company level. Sectoral-level agreements initially apply only to those companies that belong to the employers' associations which have signed the agreement, but are often extended by the government to the entire sector – around 27 are currently extended in this way, according the labour inspectorate (ITM, '[Conventions collectives de travail déclarées d'obligation générale](#)').

There are many more company-level agreements dealing with wages than at sectoral-level. In 2014, the Labour inspectorate registered 79 company agreements compared with 11 sectoral-level agreements ([ITM, Annual report, 2014](#)).

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. Their single-industry agreement covers close to 100% of the workforce (see representativeness studies for [banking](#), [insurance](#) and [private security](#)). However, many sectors have no industry-level agreements.

### Levels of collective bargaining 2014

	National level (Intersectoral)		Sectoral level		Company level	
	Wages	Working time	Wages	Working time	Wages	Working time
<b>Principal or dominant level</b>					x	x
<b>Important but not dominant level</b>			x	x		
<b>Existing level</b>						

The following information is sourced from [Eurofound](#):

Self-employed workers are represented by professional associations. Most of these belong to the Federation of Craft Workers (Fédération des Artisans). The Chamber of Trades (Chambre des Métiers) is a public body set up by the amended law of 4 April 1924 on the creation of elected professional chambers and currently regulated by the provisions of the Grand-Ducal decree of 8 October 1945. Its main role is to safeguard and defend the interests of craft businesses.

These associations make no distinction between self-employed workers who employ personnel and those who work alone. A large number of professional associations belong to the Federation of Craft Workers: Federation of Luxembourg Carpenters Federation of Food Workers Luxembourg Association of Professional Abattoirs Federation of Bakers and Cake Makers Federation of Cake-Makers, Confectioners and Ice-Cream Makers Federation of Butchers Federation of Master Caterers Federation of Qualified Beauticians Federation of Dry Cleaners and Laundry Owners Association of Master Furriers Federation of Master Watchmakers and Jewellers Federation of Barbers and Hairdressers Confederation of Fashion Workers Association of Master Orthopaedists and Truss-Makers

Federation of Dental Laboratories Federation of Opticians and Optometrists Pedicurists  
Section Grouping of Importers and Repairers of Construction Business Equipment Federation of Lift-  
Makers Federation of Mechanics for Bicycles, Motorbikes, etc.

The associations defend the interests of the trades and are national in nature. For the Chamber of Trades, which covers the craft trades, the enrolment rate is 100%, since enrolment is compulsory in order to be legally entitled to carry out the work. For the Federation of Craft Workers, which includes various professional associations, the organisation estimates that the rate is between 80% and 85%.

In Luxembourg there is dialogue social between the state, trade unions and workers. UEL (union des entreprises Luxembourgeoise) where all the chambers (metiers, artisans, commerce etc) are represented. UEL represents the Luxembourg private-sector businesses except for the primary sector and includes the Grand Duchy's professional chambers and employer federations.

## Legal framework

*Main relevant legislative provisions: Law of 30 June 2004, Article 1*

In Luxembourg, **the legal framework of collective bargaining is restricted in its scope of application to employees and no provision is made for the inclusion of freelance or self-employed workers.**<sup>674</sup>

**Article 133-2 of the Labour Code states:** (1) A contract under which an employee is hired to be lent to a user undertaking in violation of Article L. 133-1 [cases in which the conclusion of such a contract is admissible] is void. (2) In the case mentioned in paragraph (1), the user undertaking, and employee are deemed to have entered into an open-ended contract since the beginning of the job performance. However, the employee can terminate the contract with immediate effect and without owing damages as long as he/she is being hired-out to a user undertaking.<sup>675</sup>

### Categories of worker<sup>676</sup>

To distinguish the several categories of workers, it is essential to define the elements characterising an employment agreement. Along with the fact that under an employment relationship work is performed in exchange for monetary remuneration, a relationship of subordination must exist, meaning that the employee must be placed under the authority of the employer, who will:

- Give orders.
- Control the performance of the duties of the employee.
- Control the due execution of such duties.

If one of these elements is not present, the judge will consider the relationship to be a self-employed agreement (for example, a service agreement, consultant agreement, mandate, and so on).

**Executive and non-executive employees.** Differences exist between regular employees (non-executive employees) and executives. The Labour Code defines executives as those employees:

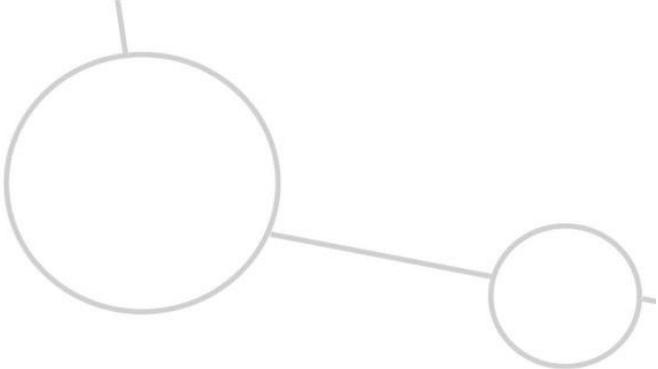
- With a higher level of remuneration.
- With an effective and real management power.
- With a large degree of independence in work organisation and an absence of constraints regarding working hours.

**Other categories.** The Code also recognises other categories of workers, such as:

<sup>674</sup> [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---dialogue/documents/publication/wcms\\_209280.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_209280.pdf)

<sup>675</sup> [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---dialogue/documents/publication/wcms\\_209280.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_209280.pdf)

<sup>676</sup> [https://uk.practicallaw.thomsonreuters.com/5-503-2946?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/5-503-2946?transitionType=Default&contextData=(sc.Default)&firstPage=true)

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- Agency workers.
  - Apprentices.
  - Students.
  - Trainees.

### Entitlement to statutory employment rights

Unlike employees, self-employed persons are not subject to the Labour Code but are subject to the general provisions of the Civil Code and the Commercial Code.

Only certain provisions of the Labour Code apply to apprentices, students, trainees and agency workers.

Finally, executive employees will be excluded from the scope of any bargaining agreement (unless otherwise specified) as well as from certain provisions of the Labour Code (for example, the regulations on overtime).<sup>677</sup>

Under Luxembourg law, two categories of collective bargaining agreements can be identified:

- Those negotiated on the company, group or sector level by and between the employer(s) and the trade union representatives.
- Those applicable to some specific sectors (banking and insurance, building and civil engineering, social sector, and so on), which are published in the *Official Gazette* and are available on the Inspectorate of Labour and Mines' website (*Inspection du travail et des Mines*).

The following information is directly sourced from the [ETUI website](#):

### THE FRAMEWORK

The most important levels for negotiations in Luxembourg are at industry and company level. Industry level agreements initially apply only to those companies, which belong to the employers' associations which have signed the agreement but are often extended by the government to the entire sector – around 25 are currently extended in this way. Company level agreements apply only to the company concerned.

There are many more company than industry level agreements: 69 company agreements were registered with the ministry of labour in 2011, compared with only six industry level agreements.<sup>1</sup> However, the relative importance of the two levels of agreement varies from industry to industry. In banking and insurance for example, there is a single industry agreement for the banks and another for insurance. However, in the retail sector, each of the main groups, such as Auchan, Match or Monopol has its own company agreement. (The six industry level agreements signed or amended in 2011 covered banking, construction and civil engineering, temporary work agencies (two), pharmacies and garages.) Many industries have no industry level agreements.

Overall, a study by the national statistics office Statec indicates that 50.1% of employees in the private sector were covered by collective agreements in 2008, although there were substantial differences between industries. For example, in construction, where there is a national agreement, 73.0% of employees were covered, and in finance the figure was 68.2%. However, in hotels and restaurants it was only 1.2%.<sup>2</sup>

There is no national level pay negotiations for the whole economy, although legislation introduced in 2004 allows for national level agreements in the area of social dialogue for the first time.

The system is designed to encourage consensus and agreement. Employers are obliged to begin negotiations if asked, either individually or through their employers' associations. If they refuse to do so

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<sup>677</sup> [https://uk.practicallaw.thomsonreuters.com/5-503-2946?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/5-503-2946?transitionType=Default&contextData=(sc.Default)&firstPage=true)

or if the negotiations break down without agreement, the issue is referred to the national conciliation machinery, which in some cases involves arbitration. This means that before industrial action can be taken both sides must first have tried to negotiate a settlement and if that has failed to have sought external conciliation.

### **WHO NEGOTIATES AND WHEN?**

Legislation introduced in 2004 has formalised the situation to ensure that only representative unions can negotiate and sign collective agreements. It provides for a negotiating committee on the union side, made up of unions who are nationally representative, plus unions who are representative in that sector. These unions must be part of the negotiating committee, as must any other union which has got the support in elections for employee representatives of at least 50% of the employees covered by the collective agreement under negotiation. Unions who do not meet these conditions can be admitted into the negotiating committee, but only if the unions already present unanimously agree to do so.

Ideally all the unions involved should sign the agreement. However, if this is not possible, the agreement can be signed by one or more of the unions, provided that they also invite the other unions to sign. If the other unions are unwilling to sign, the unions wanting to do so can go ahead, provided that individually or together they have the support of at least 50% of the employees covered by the agreement, as shown in the most recent election for employee representatives.

On the employers' side agreements, which must be in writing and must be registered with the labour ministry, can be reached by individual employers and employers' associations.

Collective agreements can last between six months and three years. Typically, they are for two to three years.

### **THE SUBJECT OF NEGOTIATIONS**

The agreements cover the whole range of industrial relations issues, including both pay and working conditions. The 2004 legislation sets out a range of issues which must be included in the agreement and as well as pay, working time and holidays, agreements must cover the level of premia for night work, additional payments for particularly difficult or unpleasant work, the mechanisms for ensuring equal pay and the way that sexual harassment and bullying will be tackled.

Pay in Luxembourg, as in neighbouring Belgium, is indexed: it rises in line with prices. In the past, there was an automatic increase in all salaries and wages in the month following an increase in the consumer price index by 2.5%, although in periods of economic crisis it was possible to postpone the increase, if a tripartite committee made up of the unions, employers and the government agree that this should be done. However, following a failure to reach agreement in the tripartite committee at the end of 2011, the government changed the rules. It introduced legislation under which the increase to match inflation would only be paid once a year, in October, for at least three years – 2012, 2013 and 2014 – in addition, alcohol and tobacco were removed from the calculation.<sup>3</sup>

As well as the topics, which are dealt with at industry or company level, the legislation allows for social dialogue agreements at national level. The specific examples listed in the legislation include the organisation of working time, training and the implementation of European level agreements and directives. The European agreement on teleworking was implemented in Luxembourg in this way in February 2006.

Luxembourg also has a national minimum wage, which as well as setting a basic minimum rate, also provides a 20% higher rate for more highly skilled workers. The minimum wage is linked to the price index in the same way as other agreements and the level of the national minimum wage must also be reviewed at least every two years.

The following information is sourced from this [Eurofound report](#):

#### **Industrial action and disputes: legal aspects**

In Luxembourg, the right to strike is based on a judicial interpretation (Supreme Court ruling of 1952) of the concept of freedom of collective industrial organisation as enshrined in Article 11(4) of the [Constitution](#). The right to commence strike action is subject to the observance of preliminary conciliation procedures. Every industrial dispute arising in one enterprise must be referred - before any stoppage or cessation of work - to the National Conciliation Service. When all possibilities of conciliation have been exhausted, the joint conciliation committee formed within the service draws up a memorandum stating the points still in dispute. Over the next 48 hours one of the parties may refer the dispute to an arbitration panel composed of a chairperson nominated by the Government and employers, and an employee representative designated by their organisations. The panel's decision must be delivered within eight days. If accepted, it is equivalent to the conclusion of a collective agreement. Otherwise, if attempts at conciliation and arbitration have proved unsuccessful, strike action may be initiated quite lawfully, and an employee's participation in such a strike does not constitute grounds for dismissal. Consequently, the 'arbitration' element of these procedures is not really arbitration in the sense in which the term is used in English; it is more akin to mediation in that the parties need not necessarily accept the outcome and may still go on to take industrial action.

### Incidence of different forms of industrial action 2010–2013

<b>Work-to-rule or refusal to do overtime</b>	<b>2%</b>
<b>Work stoppage or strike for less than a day</b>	2%
<b>Strike of a day or more</b>	0%
<b>Blockade or occupation</b>	0%

*Percentage of private sector establishments reporting any form of Industrial action during the indicated period.*

Source: European company survey

### Collective dispute resolution mechanisms

The industrial relations culture is based on trust and discussion between social partners. A report by CEPS-INSTEAD<sup>678</sup> stresses the low level of industrial dispute in Luxembourg. All the four studies quoted by CEPS-INSTEAD show an absence of collective action and strikes. The study explains that this 'social peace' is the result of various means of dispute resolution, such as mediation under the umbrella of the National Conciliation Office ([Office National de Conciliation](#), ONC). Since 2009, between six and a dozen disputes in the context of collective bargaining were brought each year before the ONC. However, due to the economic crisis, industrial disputes have appeared in some sectors or companies in the framework of renewal of collective agreements. But employees never went on strike even if unions had organised a vote in favour of a strike, and a negotiated solution was found between social partners before the launch of a strike.

### Individual dispute resolution mechanisms

The employer and an employee may ask the Labour inspectorate to resolve an individual industrial dispute. If the parties agree to accept the recommendation resulting from conciliation, than the dispute is considered resolved ([L.652-1 LC](#)). However such initiatives are rare and no data are available.

### Conclusions

No collective bargaining is allowed under national law for self-employed workers.

<sup>678</sup> Rey, F. (2010), '[La place du Luxembourg dans les portraits statistiques des système de relations professionnelles](#)' [The place of Luxembourg in statistical portraits of the industrial relations system], *Les Cahiers du CEPS/INSTEAD*, No. 2010-06, CEPS/INSTEAD, Esch-sur-Alzette.

## Interviews

Name of interviewee	Organisation
1. Tom OSWALD	LE GOUVERNEMENT DU GRAND-DUCHÉ DE LUXEMBOURG Ministère du Travail, de l'Emploi et de l'Économie sociale et solidaire

# Latvia

## Background information

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<sup>679</sup>. 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.

Overall, more than one-third of the self-employed at a tertiary level education in 2017 (36.3%), while 57.5% had an upper secondary and post-secondary non-tertiary level education (Figure 3b). Relative to the EU average, the self-employed in Latvia were more likely to have higher education levels. Self-employed women were more likely than self-employed men to have a tertiary education (44.6% vs 30.5%). The proportion of self-employed with high levels of educational attainment has increased for both men and women.

The self-employed were much more likely to be working as Managers in 2017 relative to the EU average (30.8% vs. 11.8%) but less likely to be as Professionals (13.0% vs. 21.0%) (Figure 3c). As suggested by the high educational attainments of the self-employed, the majority are working as Managers, Skilled agriculture, forestry and fishery workers, and Professionals – 60.6% combined, which was substantially above the EU average of 46.6%. Self-employed women were almost half as likely as men to Managers (21.9% vs. 37.0%) but were twice as likely to be Professionals (18.2% vs. 9.5%). There were also gender differences among self-employed Service and sales workers (24.3% of self-employed women were working in this occupation relative to 3.4% of men) and Craft and related trades workers (3.8% of self-employed women were working in this occupation relative to 16.4% of men).

## Collective bargaining framework

Chapter VIII of the Constitution (*Satversme*) defines the fundamental rights and freedoms of Latvian citizens and contains certain provisions on labour rights, such as the prohibition of discrimination (Section 91), the freedom of association (Section 102), the right to remuneration (and minimum wage) and the right to weekly holidays and annual paid leave (Section 107), as well as the right to conclude collective agreements, to strike and to the freedom of trade unions (Section 108). Since accession to the EU in 2004, Latvia was obliged to adopt existing and future EU Directives into national law. Latvian legal system is based on the Romano-Germanic (civil law) model.

The European Union labour law is divided into individual labour law and collective labour law. Individual labour law covers all related matters of compliance with and performance of the individual employment contract, the employer and employee rights and obligations, such as employment issues and rest time, pay, termination of employment contract. In contrast, collective labour law covers the regulation of issues such as workers' representatives, trade unions and employers' organizations, strikes and lockouts. Thus, the employment relationship can also be divided in:

- (a) the individual employment relationship which arises between employers and individual employees directly on an individual employment contract basis for fulfilling the obligations of such a contract.

<sup>679</sup> <https://www.oecd.org/cfe/smes/LATVIA-IE-Country-Note-2018.pdf>

- (b) a collective labour relationship which arises between the employer or several employers, employers' representatives and employees' representatives, in information and consultation of employees' representatives with a strike or lockout, etc. (Slaidiņa & Skultāne, 2011)

The following legal acts set the foundation for individual labour rights and for collective bargaining:

- the Labour Law (effective since 1 June 2002, amended on 12 December 2002);
- the Labour Protection Law (effective since 1 January 2002);
- the Labour Disputes Law (effective since 1 January 2003);
- the Law on Strikes (effective since 26 May 1998, amended on 16 October 2002);
- the State Labour Inspection Law (effective since 1 January 2002);
- the Law on the Protection of Employees in the Event of Insolvency of Employer (effective since 1 January 2003);
- the Law on Trade Unions (effective since 13 December 1990, amended on 5 June 2003);
- the Law on Employers' Organisations and their Associations (effective since 2 June 1999);
- the Support for Unemployed Persons and Persons Seeking Employment Law (effective since 1 July 2002);
- the Law on Informing Employees of European Community-scale Commercial Companies and European Community-scale Groups of Commercial Companies and Consulting Such Employees (effective since 1 January 2002).

Overall importance of collective bargaining as a means of regulating employment relations in Latvia is low.

Collective bargaining is enshrined in the Constitution of the Republic of Latvia as a fundamental human right. The Constitution of the Republic of Latvia Article 108 states that "workers have the right to collective bargaining as well as the right to strike. Country protects the freedom of trade unions.". Furthermore, Article 1 of the Labour Law stipulates that "employment relations are regulated by the Constitution (*Satversme*) of the Republic of Latvia, judicial norms of international law binding on Latvia, this Law and other regulatory enactments, as well as the collective agreement and the rules of procedure of work." (Labour Law, 2001). Still, in contemporary Latvia, the role of collective bargaining is rather limited and there are no workers' councils or committees (traditionally understood) in Latvia at national level. The main and only trade union confederation in Latvia (LBAS) cites relatively low union density rate of 11.8% in 2018. This is primarily concentrated around public sector employment, with the largest trade union by far representing education and science workers, followed by a union for railway and transportation workers. Co-determination rights only exist in so far as they are defined by specific collective agreements.

Historically, collective agreements in Latvia were designed to be mutually beneficial to both employers and employees (Slaidiņa & Skultāne, 2011). For employees, the collective agreement was meant to ensure fewer disputes, lower turnover and more favourable relations, and for employers it was meant to reduce wage fluctuations and make it easier to manage costs (Mucinieks, 1934). This tradition carried over to the present day in the form of a National Tripartite Co-operation Council (the NTCC), the main task of which is to ensure and promote co-operation of the Government, employers' organizations and employees' organizations at the national level with the objective to ensure solutions of social and economic development problems, which are acceptable to all social partners. This, however, is only a consultative body used for the purposes of receiving feedback on proposed labour legislation (such as the Labour Law, for example).

In Latvia, collective labour relations are established by signing a collective agreement based on which the employer or the employers' organization agrees with the employees' representatives on the alliance and representation of interests with respect to labour rights. The parties in the collective agreement are the employees' representatives and the employer representatives. Article 10 of the Latvian Labour Law

stipulates that “employees have social and economic rights, and the protection of professional rights and interests is exercised directly or through employee representatives.” (Labour Law, 2001)

There are three types of employee representation models present in Latvia: authorized employee representatives; trade unions; and the European Works Council (EWC). Of the three models, the easiest model to create is employee authorized representatives, as no formal registration is required and only 5 employees are required to establish a representative office. However, when evaluating the range of representation models in information and consultation implementation, collective bargaining and dispute settlement, it can be concluded that trade unions could be considered the most effective model for employees working in both Latvian and cross-border companies. This is justified by the fact that employees authorized representatives have fewer rights than trade unions, for example, they do not have the right to request consent in the event of an employee's dismissal (Mickeviča, 2010).

#### Authorized representatives

The legislation of Latvia does not contain a definition of employee authorized representatives. Nonetheless, when evaluating Article 10. of the Latvian Labour Law, it can be concluded that authorized representatives of employees are elected by employees to defend their social, economic and professional rights and interests in an enterprise which employs five or more employees.

#### Trade unions

According to Article 1 of the Law on Trade Unions, trade unions are independent public organizations that express, represent, and defend their member social, economic and other labour-related rights and interests. Trade unions operate in accordance with the Trade Union Law, other regulatory enactments in force in the Republic of Latvia and the statutes of trade unions of the Republic of Latvia, as well as in compliance with the principles and norms set out in the Universal Declaration of Human Rights and other international treaties and conventions.

The restoration of the independence of the Republic of Latvia motivated the development of trade unions. On May 25 and 26, 1990, 24 Latvian trade unions met to decide on their mutual objectives. The main guideline was for trade unions to be independent and democratic (Babre et al, 1998). In accordance with international practice, the trade union had to meet three factors, which are still considered today, in order to be considered free: they must be free from political party influence, free from state influence, and free from administrative influence.

#### European Works Councils

According to the European Foundation for the Improvement of Living and Working Conditions (Eurofound), the establishment and operation of the European Works Councils are very important, especially in response to the "Europeanisation" of business resulting from the European Union's common market policy. The EWC law does not contain a definition of EWC but provides the statutory procedure for the purpose of ensuring the right of employees of European Union-wide commercial companies or European Union-wide groups of commercial companies to information and consultation. According to the definition provided by the Eurofound, the EWCs are standing bodies that facilitate the information and consultation of employees in European companies and European groups of companies, as required by the 1994 European Works Council Directive. The definition in Directive 94/45/EC states that the European Works Council is a board established for informing and consulting employees. The term of office of EWC members is four years, unless terminated prematurely at the initiative of a board member or for other reasons (loss of capacity, resignation, long-term illness, violation of the provisions of this law, etc.), or unless an agreement between the central management and the special negotiating body states otherwise (European Foundation for the Improvement of Living and Working Conditions, 2019).

### The bargaining system

Collective bargaining is voluntary, usually initiated by trade unions. It has neither increased nor decreased in recent years. Sector level collective bargaining is weak. Wage bargaining coverage is not monitored at national level. It can be roughly characterized by using data from the annual LBAS survey, but as mentioned above, this data is collected on voluntary basis and may not be fully accurate or representative of the actual situation. In 2016, 1,152 collective agreements were concluded by LBAS affiliates. In 2015, trade unions were established in 1,990 enterprises (European Foundation for the Improvement of Living and Working Conditions, 2021).

### Collective wage bargaining coverage in LBAS affiliates

	2013	2014	2015	2016
<b>Number of collective agreements concluded</b>	1,339	1,284	1,268	n.a.
<i>of which: For one year</i>	789	820	67	n.a.
<i>For 1-2 years</i>	214	167	110	n.a.
<i>For an indefinite time period</i>	172	203	166	n.a.
<b>Number of employed covered by collective agreement</b>	121,150	119,484	116,278	n.a.
<b>Established trade union organisations</b>	2,183*	2,093	2079	n.a.
<b>Share of employed covered by collective agreements concluded in LBAS affiliates</b>	13.6	13.5	13.0	n.a.

Source: LBAS surveys 2014, 2015, 2016

### Collective wage bargaining coverage of employees at different levels

Level		Source	Comments
All levels	7%	2013 – ECS	
All, excluding national level	6%	2013 – ECS	
All levels	13%	2015 – LBAS (number of employees covered by collective agreements), CSP (number of employees)	Only covers trade unions affiliated to LBAS
All levels	15%	ILO (2013)	

Sources: Eurofound, European Company Survey 2013 (ECS), private sector companies with establishments >10 employees (NACE B-S) – multiple answers possible.

The most relevant issues in sectoral, regional and national general agreements are minimum wage, subsistence minimum ratios, indexation of wages, pensions, social benefits and quality of employment. The content of these differs by sector. In some cases, they are a general agreement on wages, setting the lowest allowed wage in this industry. In other cases, general agreements are broader and attempt to regulate labour conditions (length of working day, additional education, additional holidays, etc.) (Buka – Vaivade, 2005).

It should be noted that in Latvia companies with a smaller number of employees are less likely to be members of employers' organizations. Not having a devoted partner with whom to discuss a general agreement further limits the bargaining power of industry unions (Buka – Vaivade, 2005).

Sector-level general agreements are more common in the public sector, such as education, health care. The public sector is better organized through employers (state and municipal institutions) and trade unions. In the private sector wages tend to be higher and employers are more likely to be positioned against trade unions. Moreover, in the private sector, the coverage of industry contracts differs as well. The coverage of collective general agreements is broader in sectors where large, privatized companies operate (energy, transport, food industry, etc.). Most industry level general agreements have been

signed in large state-owned and privatized companies which, as a result, represent relatively strong trade unions and thus a successful social dialogue (Buka – Vaivade, 2005).

Currently, there are two branch collective agreements in force in the private sector: the railway sector and the construction sector. The general agreement in the railway sector does not set minimum wage rates but provides for guidelines for wage setting at the enterprise level in the railway sector. The general agreement in the construction sector covers all the employers and employees within the construction sector. This agreement provides for a projected wage growth setting the minimum wage at EUR780/month and a monthly continued professional development benefit of 5% (EUR39) for any job-relevant training. Employers, on the other hand, are entitled to define 6 months' summary working time accounting period and to compensate for overtime at 50% of the wage amount (Ministry of Welfare, 2020).

Many smaller companies (SMEs) lack the tradition of forming alliances, which makes it more difficult for other employers and trade unions to involve them in their organizations. Foreign multinationals tend to avoid entering collective general agreement as well as they frequently invest in Eastern European countries due to lower labour expenses (Buka – Vaivade, 2005).

### **Strength of the social partners and particularly trade unions**

The number of trade union members in LBAS member organisations that are the main trade unions at sector level was around 92,000 in 2017. The number of employees in 2017 was 0.89 million. The trade union density rate was 10.3% in 2017 (data from the Central Statistical Bureau of Latvia (CSP) and LBAS).

As previously discussed, there are three types of employee representation models present in Latvia: authorized representatives; trade unions; and the European Works Council. Employee representatives have the right to: (1) request and, in good time, receive information from the employer on the current economic and social situation of the company, as well as on the possible changes; (2) consult the employer before acceptance of decisions which may affect the interests of employees, in particular decisions which may influence wages, working conditions, employment in the company, participation in work, determination of pay regulations, working environment, working conditions, organization of working time, safety and health of employees, access to workplaces and meetings of employees in the work premises; and (3) to monitor the compliance to legislative regulations, rules of the collective agreement and rules of work procedure (Labour Law, 2001).

Through information and consultation, it is possible to reach symmetry and balance of interests between the employer and the employee, between freedom of establishment and the protection of workers. Information and consultation are only possible through quality social dialogue and social partners of equal status (BDO Zelmenis & Liberte, 2010). Article 11 of the Labour Law lists the rights and obligations of employees' representatives, as well as clarifies the concept of consultation and information.

When examining the Labour Law, it can be concluded that the provisions of Article 11 of the Labour Law employee representatives must exercise their rights, as well as the employers are obliged to inform the employee representatives in cases when:

- the employer amends the labour standards;
- the employer amends the rules of procedure in undertakings which employ at least ten employees;
- if collective lay-offs are to be initiated;
- if, due to the nature of the work, the employer has to establish a six-day working week for the employees;

- determining the duration of work breaks;
- granting annual paid leave;
- if organizational, technological or social measures are to be taken in respect of employees in companies where a transfer of companies is planned;
- to ensure a continuous course of work, the employer wishes to manage employee work time in shifts;
- in cases when the employer wants to determine the total working time for employees, if the employees cannot determine its normal daily or weekly working time (Labour Law, 2001).

In practice, situations often arise when trade union members are provided with more favourable conditions than non-union employees, thus promoting the involvement of employees in a trade union in order to defend their economic and social rights.

Respectively, the collective agreement stipulates the subjects to whom the collective agreement applies. This means that non-union employees are not provided with equal treatment and employment conditions.

The Labour Law contains several legal provisions that reassure that the existence of a collective agreement should not be based on an assessment of employee categories and popularization of a trade union, but rather on the general well-being of workers, social security and employment practices that ensure economic growth. This is supported by the provisions of Article 20. of the Labour Law: "*A collective agreement is binding for the parties and its provisions apply to all employees who are employed by the relevant employer or his company, if the collective agreement does not state otherwise. Whether the employment relationship with the employee has been established before or after the establishment of the collective agreement is irrelevant.*" (Labour Law, 2001)

According to the Latvian Labour Law article 1 "Employer" is defined as a natural or legal person or a partnership with legal capacity that, based on an employment contract, employs at least one employee. If an employment contract with an employee is entered into by a labour supply service provider in order to assign an employee to work for the benefit and management of a labour supply service recipient for a specified period, the labour supply service provider shall be deemed to be the employer.

Most employers are concentrated in the Riga region, less in urban centres regions, but very few ones are in rural areas. In 2019, most vacancies (79%) were registered in major groups of medium-skilled occupations (servants, service and sales staff, agricultural, forestry and fisheries workers, plant and machine operators and assemblers), followed by (12%) low-skilled occupations (auxiliary workers, manufacturing labourers, label stickers, construction workers) and highly skilled occupations (9%) (managers, senior specialists, specialists). The most significant increase of the number of vacancies can be observed in the Construction industry - builders, auxiliary workers, construction workers, bricklayers, painters, as well as in the activities of administrative and support services- truck drivers, cooks, metal welders and electricians (Ministry of Welfare, 2020).

According to provisional data from the Central Statistical Bureau, there were 113 755 economically active individual merchants and commercial companies in Latvia in 2017. 99.8% of these firms were SMEs and 93.1% of SMEs were micro-sized. Only 0.2% of firms in Latvia in 2017 were large firms (OECD, 2020).

Table 27.2. **Distribution of firms in Latvia, 2017**

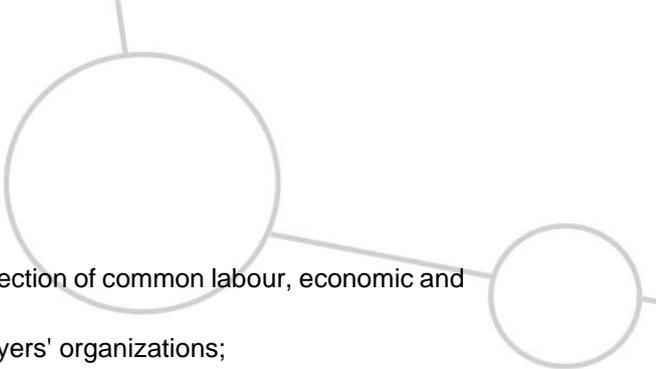
Class size	Latvia Number of enterprises			Number of persons employed			Value added		
	Latvia		EU-28	Latvia		EU-28	Latvia		EU-28
	Number	% share	% share	Number	% share	% share	Billion €	% share	% share
Micro	104 795	92.1	93.1	208 970	33.5	29.4	2.5	20.9	20.7
Small	7 344	6.5	5.8	146 547	23.4	20.0	2.8	23.0	17.8
Medium	1 421	1.2	0.9	138 276	22.1	17.0	3.2	26.1	18.3
SMEs	<b>113 560</b>	<b>99.8</b>	<b>99.8</b>	<b>493 793</b>	<b>79.0</b>	<b>66.4</b>	<b>8.5</b>	<b>70.0</b>	<b>56.8</b>
Large	195	0.2	0.2	131 173	21.0	33.6	3.6	30.0	43.2
Total	<b>113 755</b>	<b>100</b>	<b>100</b>	<b>624 966</b>	<b>100</b>	<b>100</b>	<b>12.1</b>	<b>100</b>	<b>100</b>

Note: These are estimates for 2017 produced by DIW Econ, based on 2008-2015 figures from the Structural Business Statistics Database (Eurostat). The data cover the 'non-financial business economy', which includes industry, construction, trade, and services (NACE Rev. 2 sections B to J, L, M and N), but not enterprises in agriculture, forestry and fisheries and the largely non-market service sectors such as education and health. The following size-class definitions are applied: micro firms (0-9 persons employed), small firms (10-49 persons employed), medium-sized firms (50-249 persons employed), and large firms (250+ persons employed). The advantage of using Eurostat data is that the statistics are harmonised and comparable across countries. The disadvantage is that for some countries the data may be different from those published by national authorities.

Overview of main trade unions active in sectors where there are high levels of self-employment.

- Please give details of unions operating in relevant sectors, such as construction, warehousing, docks, administration, creative professions, journalism and other relevant sectors

The activities of trade unions, as independent non-governmental organizations, are regulated by the Trade Union Law. The aim of a trade union is to pay attention to the needs of employees, to achieve a continuous increase in their income, to protect their labour rights and to provide such social guarantees that would promote a free and comprehensive development of the personality (Free Trade Union Confederation of Latvia, 2021). Trade unions sign a collective agreement with their employers on behalf of their members on labour and other social and economic issues.



Latvian trade union functions are to:

- unite sectoral and professional trade unions for the protection of common labour, economic and social rights;
- implement social dialogue with government and employers' organizations;
- represent the interests of employees in state and administrative institutions and in court;
- perform expertise of draft laws and other legal acts and develops proposals for changes;
- organize the education of its members;
- participate in the international trade union movement.

According to Orbis, there are 135 entities with the NACE code 9420 operating in Latvia.

The number of trade union members in LBAS member organisations that are the main trade unions at sector level was around 92,000 in 2017. The number of employees in 2017 was 0.89 million (data from the Central Statistical Bureau of Latvia (CSP) and LBAS). The trade union density rate was 10.3% in 2017. In 2016, trade union membership in LBAS affiliates decreased by 2746 persons compared with the figures for 2015 (Eurofound, 2021).

As of 2012, some traditional trade union sectors, such as industry, saw their membership decrease to just 4,226 members. In 2013, when the largest metallurgical enterprise in Latvia - Liepajas Metalurgs - was almost closed, Latvian Industrial Workers Trade Union (LIA) lost 694 members. The decline has continued. In 2014: the trade union lost 102 members and in 2015 it lost 215 members and its membership declined to just 3,187 in 2016 for a sector with more than 110 thousand employees in total (Eurofound, 2021).

Trade unions seldom exist in retail trade companies – including those that are foreign owned – and small private companies. In some services sectors (such as inland water, hairdressing, personal services), trade unions do not exist. The number of members in affiliates of Trade Union of Commerce dropped from 31,900 people in 1992 to just 1,734 in 2016 (Eurofound, 2021).

The following are some of the largest trade unions in Latvia:

- Latvian Free Trade Union Confederation (LBAS) - [www.lbas.lv](http://www.lbas.lv), [www.arodbiedribas.lv](http://www.arodbiedribas.lv)
- Latvian Trade Union of Education and Research Workers - [www.lizda.lv](http://www.lizda.lv)
- Latvian Public Service and Transport Workers' Trade Union - [www.lakrs.lv](http://www.lakrs.lv)
- Latvian Joint Police Trade Union - [www.policistuarodbiedriba.lv](http://www.policistuarodbiedriba.lv)
- Latvian Builders' Trade Union - [www.lca.lv](http://www.lca.lv)
- Latvian Railwaymen and Traffic Industry Trade Union - [www.ldzsa.lv](http://www.ldzsa.lv)
- Latvian Communications Workers' Trade Union - [www.lsab.lv](http://www.lsab.lv)
- Latvian Merchant Navy Seamen's Trade Union - [www.latseaunion.lv](http://www.latseaunion.lv)
- Trade union of Latvian state institutions, local governments, companies and financial employees - [www.lvipufda.lv](http://www.lvipufda.lv)
- Latvian Health and Social Care Workers' Trade Union - [www.lvsada.lv](http://www.lvsada.lv)
- Latvian Nurses' Trade Union - [www.masas.lv](http://www.masas.lv)
- Latvian United Members' Trade Union - [www.arodbiedriba.lv](http://www.arodbiedriba.lv)
- Latvian Home Affairs Workers' Trade Union - [www.lidarodbiedriba.lv](http://www.lidarodbiedriba.lv)

Trade unions can be formed according to trade, sectoral, territorial or other principles. The forms of operation of trade unions, the organizational structure and the procedure for their formation shall be determined and regulated by the statutes adopted by the trade unions themselves and the Trade Union Law.

Section 4 of the Trade Union Law stipulates that everyone has the right to establish a trade union, without restrictions. Today, a trade union can be established by a person who is not a citizen of the Republic of Latvia and one who does not work or study in Latvia. The introduction of such a provision in the law was intended to “make the regulation of the activities of trade unions in line with the International Labour Organization (ILO) Convention No. 87 of 1948 ‘On Freedom of Association and Protection of the Right to Organize’. One of the principles of freedom of association is to give everyone the right to form an organization without discrimination. Article 2 of Convention No 87 provides that workers have the right, without exception, to form and join organizations of their choice, without prior authorization, on the basis of the rules of the organization concerned (International Labour Organization, 1948).

The state protects the freedom of trade unions, as it is specified in Article 108 of the Constitution of the Republic of Latvia (*Satversme*). The right to form and join a trade union is determined by Section 4 of the Trade Union Law, namely, everyone has the right to form a trade union freely, without any discrimination and, in compliance with the statutes of the trade union, to join it, as well as the right not to join a trade union. In addition, when establishing an employment relationship, an employee is not obliged to inform his employer of his membership of a trade union (Law on Trade Unions, 2014).

Trade unions are prohibited from working in certain sectors important to national security and defence. The law prohibits the establishment and involvement in trade unions of officials and employees of the state security institutions and soldiers. Police officers and firefighters, on the other hand, are allowed to join unions, but they are not allowed to go on strike (Law on Trade Unions, 2014).

The law does not prohibit self-employed, non-employed persons, pensioners and students from becoming members of trade unions, unless permitted by the statutes of the particular organization (Law on Trade Unions, 2014); nonetheless, the ILO 's Freedom of Association Committee has stated that all employees, regardless of whether they are employed for a fixed or indefinite period with or without an employment contract, are entitled to voluntarily form, as well as to join trade unions (International Labour Organization, 2006). Therefore, the self-employed have the right to freedom of association.

### **Level and details of coverage of self-employed workers by collective agreements**

A collective agreement is a written agreement signed between an employer or its representative and the employee representative. The parties of the collective agreement agree on the rules governing the employment relationship content, as well as the agenda, social protection and rights of employees. The collective agreement is a positive outcome of the social dialogue that structures the labour relationship.

The collective agreement has historically had three main functions:

- protection function (protects employees as the economically weaker party);
- peace function (helps to resolve and prevent labour disputes);
- social function (redistributing social welfare) (BDO Zelmenis & Liberte, 2010).

The main structure of the collective agreement consists of:

- 1) general provisions;
- 2) the obligations of the employer, the trade union and the employees;
- 3) the employment contract;
- 4) wages and work management;
- 5) working and rest time;
- 6) social and labour protection;
- 7) social guarantees;
- 8) guarantees for the operation of the trade union;

9) the procedures for amending and supplementing the collective agreement (BDO Zelmenis & Liberte, 2010).

A collective agreement may be aimed at regulating issues of importance to employees, such as:

- wages;
- labour protection;
- establishment and termination of legal employment relations;
- raising the qualification of employees;
- social protection of employees;
- a ban on signing an employment contract with other employers;
- the length of working time on weekends and before public holidays;
- the granting of study and/or additional leave;
- a shorter notice period and the employee's right to withdraw and other employment-related rights questions (BDO Zelmenis & Liberte, 2010).

The collective agreement pays the most attention and focuses specifically on employee pay issues, often employee security issues, that result in various injuries at work or even loss of life. The legislation of collective agreements in Latvia mostly covers employers and employees and does not have specific inferences to the self-employed.

In Latvia, collective agreements can be divided into two categories:

- 1) a collective agreement in the company;
- 2) collective agreement in a sector or territory (general agreement).

The main difference between these collective agreements is the range of people to whom they apply. A collective agreement in a company is one of the legal forms through which an employer can involve employees in solving the company's economic and social issues, in this way promoting the interest of employees in the successful development of their workplace, the rights of employees and their guarantees (Rācenājs, Pastare and Ozoliņa, 2009).

Based on Article 18., Section two of the Labour Law, a general agreement is a collective agreement in a sector or territory, which is signed by an employer, a group of employers, an employer's 'organization or an association of employers' organizations with an employee union if:

- 1) the parties have an appropriate authorization; or
- 2) the right to enter into a general agreement is specified in the statutes of these associations (unions).

At the territorial level, a general agreement can be concluded between companies in the same territory and trade unions. Thus, the force of the general agreement will be related to the territorial principle.

The legislation does not have specific inferences of these agreements covering self-employed workers. There have not been public reports from Latvia of a retaliation action against a company following its refusal to negotiate with self-employed services providers.

## Legal framework

*Main relevant legislative provisions: 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*

Collective bargaining is regulated by Part B of the Labour Law (Section 17 – Section 27). The law describes the content and form of collective agreements, parties to a collective agreement, effect of collective agreements over time, effect of a collective agreement on workers, procedures for entering

into a collective agreement, approval of a collective agreement, amendments to provisions of a collective agreement, familiarisation with a collective agreement, and settlement of disputes. Trade unions in Latvia are regulated by the Trade Union law, but they are also bound by the provisions of the Law on Associations and Foundations on Associations.

The legislative regulation of the collective agreement is mainly included in the Constitution of the Republic of Latvia (*Satversme*) Articles 102 and 108, Part B of the Labour Law “Collective Labour Agreement”, as well as set by legally binding international conventions and organizations - Articles 20 and 23 of the United Nations General Assembly human rights declarations, Article 11 of The European Convention on Human Rights, Article 8. of The International Covenant on Economic, Social and Cultural Rights, Part I Article 6. of the European Social Charter, and in several Conventions of the International Labour Organization (135, 154, 91, 143, 87).

The following legal acts set the foundation for individual labour rights and for collective bargaining:

- the Labour Law (effective since 1 June 2002, amended on 12 December 2002);
- the Labour Protection Law (effective since 1 January 2002);
- the Labour Disputes Law (effective since 1 January 2003);
- the Law on Strikes (effective since 26 May 1998, amended on 16 October 2002);
- the State Labour Inspection Law (effective since 1 January 2002);
- the Law on the Protection of Employees in the Event of Insolvency of Employer (effective since 1 January 2003);
- the Law on Trade Unions (effective since 13 December 1990, amended on 5 June 2003);
- the Law on Employers' Organisations and their Associations (effective since 2 June 1999);
- the Support for Unemployed Persons and Persons Seeking Employment Law (effective since 1 July 2002);
- the Law on Informing Employees of European Community-scale Commercial Companies and European Community-scale Groups of Commercial Companies and Consulting Such Employees (effective since 1 January 2002).

The labour law states that collective bargaining is carried out by and between the employer, its representatives, or employer organization and the employee or its representatives. Article 13 of the Labour Law states that “A collective conflict of interest is a dispute between employees (a group of employees) or employee representatives and an employer, employers (a group of employers), an employers' organization or an association of such organizations, or a sectoral governing body arising in connection with the collective bargaining process, working conditions of employment conditions.” No specific inferences to self-employed workers are made.

According to the Latvian labour law Article 3. “An employee is a natural person who, on the basis of an employment contract for an agreed remuneration, performs specific work under the guidance of an employer.” This definition does not cover self-employed workers.

The term self-employed person is legally used only if a natural person has also registered for the performance of economic activity as a payer of compulsory social insurance contributions, i.e. pays the so-called social tax from his or her income. The term self-employed can be found only in the law "On State Social Insurance". This is the only law in the Latvian legislation that contains the definition of a self-employed person. Article 1. of the law lists that a self-employed person is a person who earns income as:

- a person whose permanent place of residence is in the Republic of Latvia and who receives a royalty (copyright or neighbouring rights remuneration), except for an heir to copyright and a successor in interest to other copyright;

- a sworn notary,
- a sworn advocate,
- a sworn auditor,
- a doctor in practice, a pharmacist in practice, a veterinary practitioner, an optometrist in practice;
- another natural person whose permanent residence is in the Republic of Latvia and who has registered as a payer of income tax obtained in economic activity,
- another natural person whose permanent place of residence is in the Republic of Latvia and who has registered as an economic activity income tax payer;
- an owner (owners) of a farm (fishing undertaking) who, not being in legal employment relationship with an administrative authority of his or her farm (fishing undertaking), performs the management function of such a farm (fishing undertaking) if, in accordance with the procedures laid down in law, a manager (director) has not been appointed (elected) in such a farm (fishing undertaking);
- a sworn bailiff;
- an individual economic operator, including an individual economic operator who is driving a taxi or passenger car for the commercial carriage of passengers;
- a micro-enterprise taxpayer.

Latvia operates a civil law model; therefore its judicial system is not based on cases of judicial decisions, but rather on constitutions, statutes, or regulations.

## Conclusions

Self-employed workers are not permitted to bargain collectively under Latvia labour legislation.

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# Malta

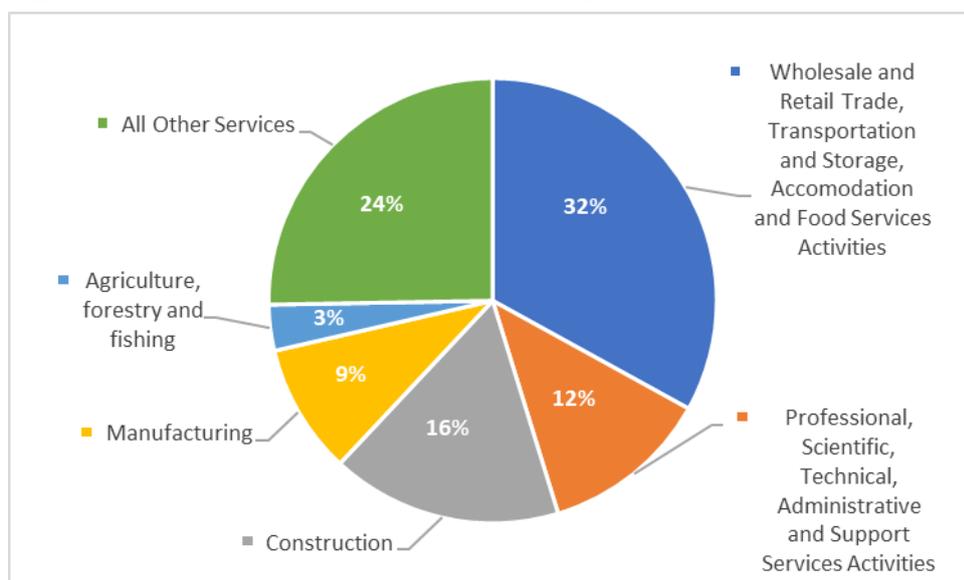
## Background information

Self-employment is an important element of the Maltese labour market. Official statistics show that in 2019, the total number of self-employed workers in Malta amounted to around 37,300, representing 15% of the total national employment. Around 69% of these self-employed are own-account workers.

The largest share of self-employed in Malta are males and are aged between 25 to 49 years followed by those aged between 50 to 64 years. Almost half of the self-employed workers have merely a primary level of education, with only 26% of the total self-employed workers achieving a tertiary level of education.

As depicted in Figure 1, the highest concentration of self-employed workers in Malta is found in the Wholesale and Retail Trade, Transportation and Storage, Accommodation and Food Services sector estimated at 32%, followed by the Construction sector at 16% and the Professional, Scientific, Technical, Administration and Support Services sector estimated at 12%.

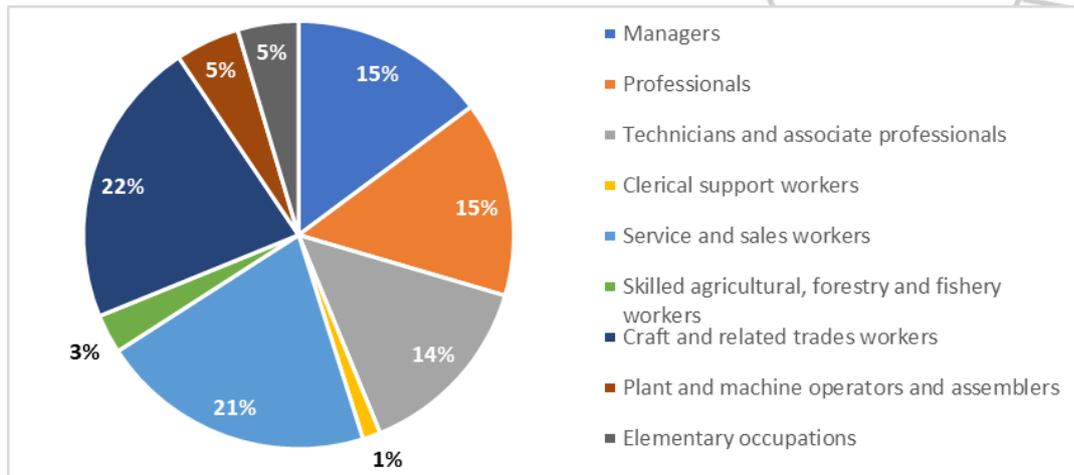
**Figure 27: Sectoral Distribution of Self-employed Workers**



Source: Eurostat

Furthermore, self-employment tends to be concentrated in specific occupations in Malta. As shown in Figure 2, the most common occupations among self-employed individuals is crafts and related trades (22%), followed by Service and Sales-related jobs estimated at 21% and Managers and Professionals, estimated at 15% respectively.

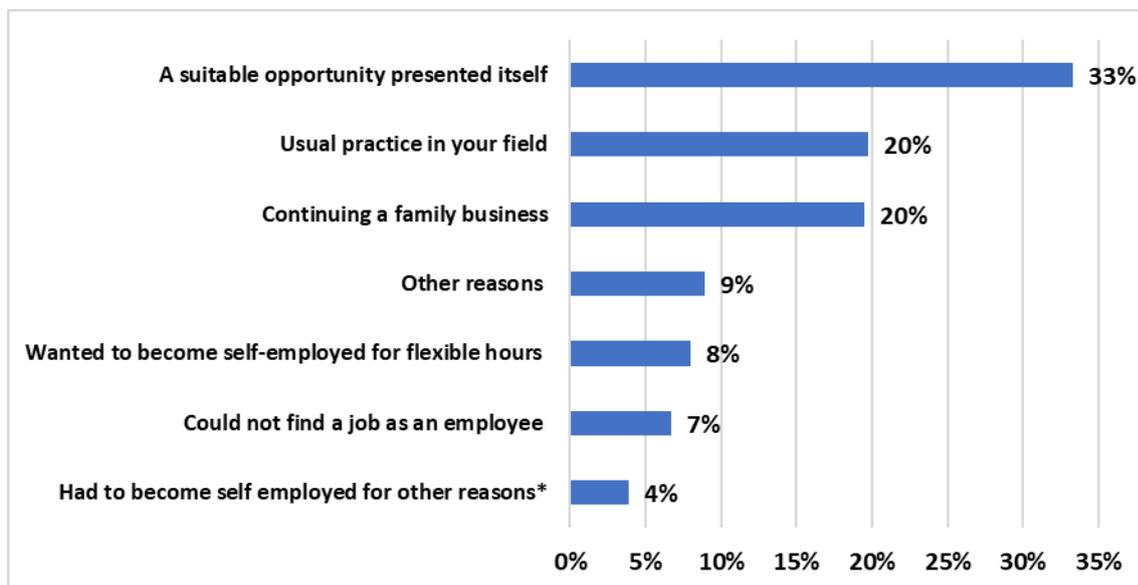
**Figure 28: Occupations Among Self-employed**



Source: Eurostat

An ad hoc report prepared by the National Statistics Office (NSO) on the basis of the Labour Force Survey (LFS) in 2017 indicates that over a third of the self-employed workers in Malta chose this employment status as a result of a suitable work opportunity which presented itself at the right time, another 20% stated that it is the usual practice in their field of work, whereas another 20% followed their family business. LFS estimates also indicate that a higher share of females chose to become self-employed when compared to their male counterparts due to flexible working hours.

**Figure 29: Main Reason for Becoming Self-employed**



Source: NSO(2017), Adhoc module findings from the LFS.  
 \*Under-represented – between 20 and 49 sample observations

It is also worth noting that according to LFS findings, around one in seven employees stated that they were willing to work as self-employed, however, financial insecurity, stress, responsibility or risk and difficulties with getting finances for their business were the main issues which prevented them from going forward with such a decision.

LFS findings also revealed that around 29% of the self-employed did not encounter any difficulties in their work experience. The main issues encountered by those who did face problems as self-employed are related to delayed payments or non-payments by clients, followed by lack of income in case of sickness as well as periods of financial hardships.

Although self-employed workers are not generally perceived as being vulnerable, discussions with stakeholders revealed that there are some segments which tend to be subject to precarious conditions. In Malta, this is mostly seen among foreign workers, particularly those who are less visible. During the past years, the increase in the immigrant population and foreign workers has created situations of unregulated pockets of labour market activity, as immigrants offer their services through informal work arrangements which may, although not necessarily, be exploitative. In many instances, such as in the domestic housework sector, informal work practices are freely entered and negotiated between the parties involved. Some unions have been raising alarm bells about numerous working practices, both legal and illegal, labelling them under an umbrella heading of 'precarious employment'. There are certain sectors which tend to attract more of these workers including the construction industry and outsourced services in security, cleaning, and care-working sectors. Most people who are nowadays doing such jobs in Malta are foreigners, and mostly Third Country Nationals (TCNs).

During the past few years, Malta has also seen a rise in new categories of workers, including platform workers who service companies offering digital interfaces between consumers and businesses. In most instances, these platform workers are officially listed as self-employed, however, their working conditions are somewhat like that of an employee. Among the factors that are putting such workers at a vulnerable situation include lack of stable income, lack of health and safety protection and long working hours. These new arrangements have particularly intensified with the outburst of the COVID-19 pandemic, particularly in the food services sector. Platform companies recruit 'partners' without the constraints of formal contracts. The nature of the relationship between platform companies and their 'partners' is ambiguous and is, yet, unregulated in Malta. In the Platform economy, the boundary between employment and self-employment is blurred. On the one hand, 'partners' providing their service to such companies are free to decide on their working time, can refuse task or briefs, are not bound by exclusivity and are not reimbursed for the costs they incur in the provision of their service to the platform company. On the other hand, the latter has brand visibility and some sort of organisational structure, quality control of sorts, control over prices charged by their 'partners' and also require the completion of the task before effecting payment for the services rendered.

It is also worth noting that differences exist in employment of such platform workers. On the one hand, there are platform workers who are directly engaged by the platform company whereas on the other hand, there are those who are recruited through a sub-contracting or recruitment agency. With regards to the latter, apart from being treated as self-employed contractors, in breach of Maltese law and lacking ordinary workers' rights, recruitment agencies enjoying partnerships with such platform companies are effectively benefiting from half of the income earned by the platform worker. In Malta, this is particularly evident in the food delivery services where food couriers receive around €5.35 for a regular delivery, whereas a courier employed through a recruitment agency would earn just €2.70 for the same delivery<sup>680</sup>. Procuring the company jacket and bag is another irregularity across agencies. Some couriers report having received all the equipment for free, whereas others reported paying a deposit or having the cost deducted from their first payment. Charging inflated recruitment fees is also a widespread practice. These working conditions are forcing such platform workers into a state of vulnerability, leading many migrant workers to sell their assets or borrow money in order to finance an employment opportunity. Although such work arrangements are perceived to be on the increase, no statistics are currently available in Malta.

Other types of platform workers that are also quite common in Malta include self-employed who commercialise their properties through a sharing economy platform and freelancers who may also showcase their products or services on a platform, including: creative professionals such as actors, musicians and authors, journalists as well as liberal and regulated professions including lawyers and

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<sup>680</sup>[https://www.maltatoday.com.mt/news/national/107237/food\\_couriers\\_losing\\_half\\_their\\_wages\\_in\\_illegal\\_employment\\_practice#.YCDu--hKhPY](https://www.maltatoday.com.mt/news/national/107237/food_couriers_losing_half_their_wages_in_illegal_employment_practice#.YCDu--hKhPY)

engineers. Nonetheless, these types of self-employed are not considered to be vulnerable in Malta although the recent COVID pandemic has left this specific segment particularly exposed.

Table 1 shows the number of self-employed individuals occupying these kinds of professions in Malta.

**Table 17: Number of Self-employed by profession**

Profession	Number of Self-employed
Accountants and other financial services professions	498
Aircraft pilots and related associate professionals	24
Architects and engineers	545
Artistic, creative and entertainment professions	1,617
Doctors, dentists, pharmacists and other professions in the health care sector	651
Journalists	23
Lawyers, notary and other legal professions	768
Marketing, management and business professions	1,172
Programmers, web developers and other ICT related professions	327
Scientists	16
Social sciences professions	77
Translators, interpreters and other linguists	180
<b>Total</b>	<b>5,898</b>

Source: Jobsplus

Economically dependent workers constitute another category of workers who are legally and for statistical purposes considered to be part of the group of self-employed persons. These individuals do not have an employment contract as dependent employees but are dependent on a single employer for their source of income. In Malta, economically dependent workers are present in a variety of sectors with occupations including gas cylinder distributors, port hauliers, lotto agents, beverage salespersons, English language tutors and cable television installers. Most of these economically dependent workers are usually disguised as self-employed.

The Department of Employment and Industrial Relations has in the past carried out a series of inspections to tackle the problem of false self-employment in Malta. False self-employment was mostly found in the English language tuition sector since 'self-employed workers' in this sector were found to be under the immediate direction and control of the employer. Similar work situations occurred in the hospitality industry, security and cleaning services. This has led to the introduction of Legal Notice 44 of 2012 which regulates incidences of improper practices in this regard. No statistics are currently available with respect to false self-employment practices in Malta.

### Collective bargaining framework

The Employment and Industrial Relations Act (EIRA) is the main legislation dealing with collective bargaining in Malta. This Act does not deal with self-employment since it regulates situations involving relations between an employer and an employee or a group of employees.

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. Such a decentralised system ensures that wage increases, and other factors being bargained and agreed upon are more in tune with the exigencies of each firm, hence no objections have so far been raised on such system. In Malta, there is no obligation on the employer to negotiate with the union. Nonetheless, it is common practice for an employer to grant sole recognition to a union in a particular workplace if more than half of the employees are members of such union, although there might be some cases where different unions are recognised for different groups of workers.

Discussions with stakeholders affirm that the share of employees covered by collective bargaining in Malta stands between 50% to 57%<sup>681</sup>. Many of those who are not covered by collective agreements are, however, covered by the 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. Wage regulation orders are made following recommendations from a board for the industry concerned made up of unions, employers and government-appointed experts. In Malta, collective bargaining takes place predominantly in instances where there are large number of workers whose skills are highly available on the market. This is particularly apparent in the manufacturing and the public sector.

Over the years, trade unions were an essential part in drafting collective agreements and conditions of employment which are over and above the minimum standards set by the Maltese government. Collective bargaining agreements exert an important influence on working conditions in Malta. Throughout the years, there have been additions to the content of collective agreements as new aspects have increased in importance including health and safety, work-life balance and training and development, among others. Nonetheless, wage bargaining has always remained a priority for unions.

In Malta, both trade unions and employers’ associations are represented in the Malta Council for Economic and Social Dialogue (MCESD), which is Malta’s national tripartite institution for social dialogue. Through their participation, the Council seeks to provide advice to the Maltese government on matters of national economic and social importance, including those related to employment conditions.

In recent years, the power of unions has fallen significantly in most European countries including Malta. Studies show that although Malta ranks among the European Union countries with the highest membership densities, union density in Malta fell from 52.9% in 2012<sup>682</sup> to an estimated 39% in 2019<sup>683</sup>. This is partly a result of the numerous directives and labour market regulations which are being introduced at the EU level towards better protection of workers, irrespective of whether they are unionised or otherwise. Another reason for the decline in union density in Malta is the increasing share of foreign workers within the Maltese labour market, who work in industries where union membership is neither common nor encouraged, such as the gaming and the construction sector.<sup>684</sup>

The EIRA defines a trade union as,

“An organisation consisting wholly or mainly of workers and of which the principal purpose is by its rules the regulation of relations between workers and employers or employers’ associations.”

Such definition rules out the possibility of registering a trade union explicitly for self-employed workers. Nevertheless, self-employed individuals are still allowed to join a trade union, but they cannot be the majority group members in such organisations<sup>685</sup>. This was also highlighted during the interviews with stakeholders.

The Malta Chamber of Small and Medium Enterprises (SMEs) is the main representative organisation for the self-employed in Malta. The Chamber of SMEs represents the largest number of SMEs and self-employed persons in the services sector, including traders, retailers, wholesalers, crafts, transporters, cargo hauliers and construction workers. This organisation has around 7,871 members<sup>686</sup>, including a substantial though unspecified number of micro businesses with less than ten employees and self-employed persons without employees. A very small fraction of these self-employed use the service of a platform.

<sup>681</sup> <https://www.etui.org/sites/default/files/CB%20Vol%20II%20Chapter%2020.pdf>

<sup>682</sup> Debono, M. (2018). An analysis of trade union membership in Malta. *Xjenza*, 6(1), 46-58.

<sup>683</sup> <https://timesofmalta.com/articles/view/unions-and-migrant-workforce-godfrey-baldacchino.750712>

<sup>684</sup> Same source as footnote 4.

<sup>685</sup> <https://www.eurofound.europa.eu/publications/report/2009/malta-self-employed-workers>

<sup>686</sup> Annual Report by the Registrar of Trade Unions 2019-2020

Nonetheless, there are other trade unions and employers' associations which incorporate self-employed persons as members in their organisation. These include:

Trade Union	Description
Malta Employers Association (MEA)	The MEA is a constituted body which brings together employers from all sectors of industry and commerce in Malta. This association covers between 800 and 900 companies which employ around 35% of the labour force. The vast majority of their members are medium to large companies. Self-employed members in this association are usually those who employ workers.
General Workers Union (GWU)	This is the largest general trade union with around 51,026 members. Although the majority of its members are employees, there are also some self-employed individuals who are members of this union.
Union Haddiema Maghqudin (UHM)	This union is the second largest general union in Malta with 25,967 members. It includes around 115 Valletta Hawkers (street sellers of goods) who are self-employed and around 180 Lotto Receivers who are economically dependent on Maltco Lotteries.
Malta Union of Tourist Guides (MTUG)	This union has around 205 members, slightly half of whom are self-employed guides.
Meat Sellers Association (MSA)	This association incorporates a substantial number of self-employed persons without employees out of its 220 members.

Source: Interviews with stakeholders and the Annual Report by the Registrar of Trade Unions 2019-2020

Apart from the MEA and the UHM, which are involved across all economic sectors, all the above-mentioned trade unions or associations operate at sectoral level. These organisations mostly tackle issues associated with general conditions of work, such as salaries, working environment, unfair competition, taxes and other state expenses levied on their members. The outcomes of these activities are usually an agreement or a declaration. With regards to issues relating to their members who are self-employed without employees, these unions and associations usually deal with public authorities.

Although some self-employed workers are members of a trade union in Malta, no collective agreements are in place to cover these individuals. Rather, self-employed individuals, including professionals such as accountants and lawyers, are undertakings by law and thus, the application of collective agreements among self-employed would be in breach of competition law.

## Legal framework

*Main relevant legislative provisions: Employment and Industrial Relations Act (Act XXII of 2002) (Cap. 452)*

The EIRA<sup>687</sup> (Chapter 452 of the Laws of Malta) and the Recognition of Trade Unions Regulations<sup>688</sup> (Subsidiary Legislation 452.112), are the principle legislative acts which regulate collective bargaining in Malta. These legal provisions do not cover self-employed workers. Indeed, the EIRA defines collective agreement as,

“An agreement entered into between an employer, or one or more organisations of employers, and one or more organisations of employees regarding conditions of employment in accordance with the provisions of any law in force in Malta.”

<sup>687</sup> <https://legislation.mt/eli/cap/452/eng/pdf>

<sup>688</sup> <https://legislation.mt/eli/sl/452.112/eng/pdf>

The same legislative act defines an employee as,

“Any person who has entered into or works under a contract of service, or any person who has undertaken personally to execute any work or service for, and under the immediate direction and control of another person, including an outworker, but excluding work or service performed in a professional capacity or as a contractor for another person when such work or service is not regulated by a specific contract of service.”

Whereas self-employed persons are defined as,

“All persons pursuing a gainful activity on their own account.”

In 2012, the Government of Malta enacted the Employment Status National Standard Order<sup>689</sup> (SL452.108) which serves as a basis for distinction between an employee and a self-employed individual. This subsidiary legislation was particularly introduced to address precarious working conditions brought about by false self-employment. It stipulates that a person shall be deemed to be an employee if five out of the following eight criteria are met:

1. they depend on one single person for whom the service is provided for at least 75% of their income over a period of one year;
2. they depend on the person for whom the service is provided to determine what work is to be done and where and how the assigned work is to be carried out;
3. they perform the work using equipment, tools or materials provided by the person for whom the service is provided;
4. they are subject to a working time schedule or minimum work periods established by the person for whom the service is provided;
5. they cannot sub-contract the employee's work to other individuals to substitute themselves when carrying out work;
6. they are integrated in the structure of the production process, the work organisation or the company's or other organization's hierarchy;
7. the person's activity is a core element in the organization and pursuit of the objectives of the person for whom the service is provided; and
8. they carry out similar tasks to existing employees, or, in the case when work is outsourced, they perform tasks similar to those formerly undertaken by employees.

A notable case law which dealt with the application of the Employment Status National Standard Order is the case of Albert Falzon vs Melita Mobile Ltd which was brought before the Industrial Tribunal in November 2014 and decided in January 2017. Mr Falzon was engaged with Melita Mobile Ltd through a contract as a self-employed in 2011. In 2012, Mr Falzon received a notice of termination from Melita Mobile Ltd informing him that the period of engagement was expiring. As the Employment Status National Standard Order came into force, Mr Falzon referred the case to the Industrial Tribunal alleging a change in employment status from one of a self-employed to one of indefinite term employment. The Tribunal considered the facts of the case and applied them to each of the criteria set out in the Order, concluding that Mr Falzon satisfied criteria (2), (4) and (5). The Tribunal noted that the five criteria required by the Order had not in fact been satisfied, and thus there was no resulting indefinite employment relationship existing between the parties. Mr Falzon appealed the decision, and the Court of Appeal confirmed the Tribunal's decision on the same basis<sup>690</sup>.

From a legal perspective, self-employed workers are considered to be undertakings and thus, they are regulated by the general laws on trade and commerce without the protection of employment laws. Discussions with legal experts and social partners revealed that the use of collective bargaining among

<sup>689</sup> <https://legislation.mt/eli/sl/452.108/eng/pdf>

<sup>690</sup> <https://www.legal500.com/developments/thought-leadership/up-for-a-gig-the-risks-of-worker-misclassification-in-the-gig-economy/>

self-employed is prohibited in Malta and is considered as a violation of competition law. In fact, no case laws were found in this respect<sup>691</sup>.

Whilst the application of collective bargaining agreements for self-employed is prohibited, employers' associations and trade unions often provide support to self-employed workers through representation at national level, the provision of information and legal advice. A case where a group of self-employed workers were collectively represented by a union is that of Government vs Valletta Hawkers represented by the UHM. The issue was about the temporary transfer of the hawkers from their usual business area in the core of the capital city Valletta to its outskirts, due to the pavement works that were being affected in the whole area. On termination of the works, the hawkers would then be relocated in a smaller permanent area nearby their usual place. The hawkers refused this arrangement by claiming that it would result in financial losses. Following a number of consultation meetings, both parties reached an agreement which enabled the hawkers to temporarily operate at Freedom Square, situated at the Valletta City Gate, until works at the new permanent site were completed. The government also committed itself to provide new standardised stalls to hawkers and to install proper signage around the city indicating the new location of the flea market. It is important to note that in this case, the trade union was representing the group of self-employed on business matters. Hence, although self-employed were collectively represented by a union, this case cannot be referred to as collective bargaining as it is not related to conditions of employment.

### Labour market trends and other factors

During the past years, efforts have been directed towards the introduction of more stringent labour market regulations in Malta. As previously stated, the Employment Status National Standard Order was enacted in 2012 to address precarious working conditions brought about by false self-employment. This regulation stipulates that if a person performing services as a self-employed for another person is found to have an employer-employee relationship according to the stipulated criteria, the contractor will be treated as an employee on an indefinite contract of employment, with all the rights and protections that such a status brings about. The recipient of the services would be liable for social security, the withholding of the contractor's income tax contributions and a host of other obligations in its capacity as employer.

The Law Compliance Unit (LCU) within Jobsplus<sup>692</sup> handles issues related to abuses in the Maltese Labour Market including those related to undeclared work. This Unit employs a number of inspectors who conduct random as well as ad hoc inspections whereby employees are interviewed about their employment status and their employers – be it legal or natural persons in the Maltese labour market. The Unit receives information through hotlines, emails, referrals as well as online forms and follows up on the allegations. Additionally, the Unit adopts a risk-based matrix in order to tackle the inspections from a proactive stance.

Infringements which are dealt with by inspectors within the Law Compliance Unit concern:

1. Employment not Endorsed (Maltese and EU employees who are not registered by their employer or as self-employed be it Full-time, Part-time or casual employment)
2. Underage Employment – Employment of Minors who are still of compulsory school age
3. TCNs – the employment of employees who are citizens of countries outside the EU
4. Strike Offs (employment of persons who are seeking active employment)
5. Employers who do not cooperate with the Law Compliance Unit's legitimate requests (e.g. disclosing of information)
6. False declarations (e.g. false identities)
7. Termination Form not endorsed

The rapid growth of the platform economy has posed new regulatory challenges in Malta. Several unions and social partners are publicly speaking about the need to adjust the regulatory framework to

<sup>691</sup> This was also reaffirmed by interviewees, as none of them was aware of any case law which relates to the coverage of self-employed workers by collective bargaining in Malta.

<sup>692</sup> Malta's Public Employment Service

adequately reflect the new trends in the platform economy, particularly to recalibrate the rights and duties in the three-way relationship between suppliers, customers and platform workers and abolish zero-hour contracts. This issue is also being discussed at the Employment Relations Board which is a tripartite body composed of representatives of employers' associations, trade unions and Government.

The Department for Industrial and Employment Relations is also conducting several inspections on companies in the Platform economy sector to ensure that there is no false self-employment and that such platforms are performing in line with the Employment Status National Standard Order. Discussions with stakeholders revealed that there is currently no debate at national level on the introduction of new legislation to protect vulnerable platform workers, however, the Maltese Government is seeking to regulate such work arrangements through the further application of the Employment Status National Standard Order. Furthermore, no debates are currently in place at a national level with regards to the application of collective bargaining arrangements for self-employed workers.

Self-employment has been a priority in Malta's political agenda 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. 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. This measure might potentially influence the level of self-employment in Malta as it will cut down on bureaucracy for these operators and make it more rewarding to operate as a self-employed.

The social security system also distinguishes between the entitlements of a self-employed person and those of an employee particularly in the following areas:

Social Security Benefit	Description
Sick Leave and Sickness Benefits	Unlike an employee, a self-employed person cannot claim sick leave and injury leave benefits unless s/he provides evidence that the business has been closed. The entitlement will be granted from the fourth day following the closure of the business onwards.
Maternity Leave	Self-employed women are not entitled to the 13 weeks of paid maternity leave that is granted according to law by employers to their employees. Instead, they are entitled to a social security grant which approximately amounts to half the statutory minimum wage for 13 weeks.
Widow/er Benefits	The widow/er of a self-employed person is not entitled to benefits unless the surviving partner liquidates the business. A widow/er is disqualified from receiving a widow/er's pension, widow/er's benefit or a survivor's pension in cases where her/his income from a gainful occupation exceeds the national minimum wage. However, where a widow/er has the custody or care of children who are still under 16 years, he/she can take part in a gainful occupation whatever the income earned. This exemption is extended to widows/ers caring for children under 18 if the child is still at school and not receiving any stipends for his/her studies.

In 2019, the Malta Employers' Association conducted a study<sup>693</sup> to determine the extent of wage inflation in Malta as experienced by employers and the various influences that are having an impact on wage determination. This study is the result of workshop sessions which were conducted among MEA members, and which were followed by an online survey. This study indicates that the extent of wage increases differs between unionised and non-unionised companies.<sup>694</sup> In general, around 37% of non-unionised companies reported a wage inflation of higher than 8%, as compared to 17% among unionised companies. On the other hand, 36% of the non-unionised companies reported a wage inflation of between 0% to 5%, compared to 54% among unionised companies. This reflects the fact

<sup>693</sup> Wage Inflation Survey, MEA (2019)

<sup>694</sup> The term unionised companies refers to companies whose employees are members of a trade union and are covered by collective agreements, whereas the term non-unionised companies refers those whose employees are not covered by collective agreements.

that unionised companies tend to be more concentrated in relatively lower value-added sectors. It is also possible that employers with a union cannot give high increases to types of workers as they would have to give such increases to all unionised employees, thus limiting increases in wages. = While data on differences in wages is limited, it is worth noting that these results might not be necessarily reflective of the national situation given that this study was exclusively conducted among MEA members.

## Conclusions

In Malta, self-employed individuals can be categorised into two distinct groups based on their work arrangements. On one end of the spectrum, there are entrepreneurial self-employed including professional self-employed workers who provide their service to several different customers or companies. In Malta, these self-employed are not considered to be vulnerable. On the other end, there is a group of self-employed individuals who work for a particular customer or company on a zero-hour contract with similar working conditions to those of an ordinary employee, but lacking employment rights. This work arrangement is a common practice among platform workers and migrant workers who are among the vulnerable self-employed in Malta.

In recent years, the Maltese Government has enacted the Employment Status National Standard Order to regulate the abuse of false self-employment and inspections have been conducted across several workplaces to detect individuals with working conditions of an employee but who are registered as self-employed. This regulation is also being used to address the regulatory lacunae which has been created with the rise of the platform economy, which has intensified during the COVID-19 pandemic.

In Malta, the system of collective bargaining as regulated by the EIRA covers only agreements entered between an employer, or one or more organisations of employers, and one or more organisations of employees regarding conditions of employment. Thus, as things stand, none of the registered self-employed workers are allowed to bargain collectively under Maltese law, albeit they still have the right to join a trade union. Given that collective bargaining relates to agreements on employment conditions, collective agreements among self-employed would be considered in breach of competition law.

Discussions with stakeholders and social partners suggest the need to distinguish between entrepreneurial self-employed and platform workers whose working arrangements are like those of an employee but have a self-employment status. EU legislation should address the ambiguity which exists in respect to working relationships in the platform economy and introduce legal safeguards to protect such workers, possibly also through the extension of collective bargaining rights.

## Interviews

Name of interviewee	Organisation
Dr Manwel Tabone	Centre for Labour Studies, University of Malta
Dr Ron Galea Cavalazzi	Partner at Camilleri Preziosi whose practice involves Employment and Industrial Relations
Ms Abigail Mamo	CEO, Malta Chamber of SMEs
Mr Joseph Farrugia	Director General, Malta Employers' Association
Ms Diane Vella Muscat, Ms Mary Grace Cassar & Mr Anthony Azzopardi	Department for Industrial and Employment Relations

# Netherlands

## Background information

More detailed information can be found in the Appendices.

- 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.
- The sectors with the highest share of self-employed are Agriculture, forestry and fishing (48% of the workforce), other service activities (40%), Culture, sports and recreation (37%) and Construction (36%). More specific: the share of self-employed is especially large (more than 60 percent) in the somewhat smaller branches such as art, industrial design, hair and beauty care and the finishing of buildings.<sup>695</sup>
- Sectors with the lowest share of self-employed are Public administration and services (0%), Water supply and waste management (3%), Financial Institutions (3%), Energy supply (4%) and Manufacturing (5%)
- Three quarters of all self-employed people would rather work as a self-employed person than as an employee, 16 percent prefer to be employed (SEO, 2018).
- The most common reasons to work as a self-employee, based on a survey, are that people were looking for a new challenge (37% of all self-employed), people want to decide for themselves how much and when they work (31%), people always wanted to be self-employed (31%) and people did not want to work for a boss anymore (25%). The specific group of solo-self-employed frequently mentioned the reason that their profession is usually self-employed (21%).

About vulnerable self-employed:

- According to CBS, based on a model-based calculation, if the income of the self-employed is lost for three months, the remaining financial resources of the household fall below the minimum wage limit for 19 percent of them. With a full year of loss of income, more than a third of self-employed persons have their financial resources below this critical limit.<sup>696</sup>
- Self-employed persons aged 45 or older are less vulnerable to loss of income than younger self-employed persons, according to the simulation; the over-45s usually have more freely absorbable power.
- SEO (2018)<sup>697</sup> found that:
  - 19.6% of all self-employed in the Netherlands also has a salaried job
  - About 50% of all self-employed are working 32 or more hours on a weekly basis. Half of them indicates to work 40+ hours a week
  - About 7 percent of all self-employed persons had only one client in 2017, 31 percent had two, three or four clients and approximately 60 percent less than ten clients
  - About 14 percent of all self-employed workers get more than 75 percent of their turnover from the largest client
  - Data suggests that a large proportion of the self-employed who work for private individuals are at the lower end of the market, but at the same time there are hardly any long-term assignments for the same client.

<sup>695</sup> SEO (2018). Karakteristieken en tarieven zzp'ers.

<sup>696</sup> CBS (2020). Het effect van het wegvallen van het zelfstandigeninkomen. Via <https://www.cbs.nl/nl-nl/nieuws/2020/28/het-effect-van-het-wegvallen-van-het-zelfstandigeninkomen>

<sup>697</sup> SEO (2018). Karakteristieken en tarieven zzp'ers. Via <https://www.seo.nl/publicaties/karakteristieken-en-tarieven-zzpers/>

- Very low hourly rates (10 percent of the self-employed with business clients have an hourly rate below € 5) are mainly found in the postal and courier, accommodation, art and cultivation sectors under glass, passenger land transport and other services.
- Of all self-employed entrepreneurs without employees, 41 percent say they have not made any provision in case they become incapacitated for work. Self-employed entrepreneurs without employees who have not taken out disability insurance, cite mainly financial reasons for this: 46 percent indicate that the costs of such an insurance do not outweigh the benefits, 37 percent say that they cannot afford the costs for insurance. More than a fifth of all uninsured persons indicate that they can bear the financial risk themselves. This reason is cited more often the closer the respondents are to the state pension age. In addition, one fifth can fall back on the partner's income. There are relatively many women in this group. A small group claims not to be accepted under insurance due to age or health. People over 55 relatively often (14 percent) cite this ground for rejection.<sup>698</sup>
- See more data in the appendices or the full CBS/TNO (2019)<sup>699</sup> report for other data on i.e. number of working hours, (physically and mentally) dangerous work, health, undesirable behaviour.
- Based on interviews a high share of vulnerable self-employed work in the cultural sector and food delivery. No specific data available to support these claims.

#### About platform workers:

- No unequivocal conclusion can be drawn about the number of workers who work via platforms in the Netherlands. Based on Dutch research, the estimated share of platform workers is less than 1 percent of the labor force and this share has remained stable between 2017 and 2019. For most workers, platform work complements their job as an employee or as a self-employed person, but for some of them it is the main activity and main source of income (SER, 2020)<sup>700</sup>.
- At the end of 2017, an estimated 34 thousand people were employed in the gig economy. This concerns, for example, employees in the food delivery, taxi sector and cleaning, but also substitute workers in the catering industry and handymen working in and around homes. ABU and SEO (2020) found that the most common activities in the gig economy are delivering meals (34%), household cleaning services (14%) and passenger transport (14%).<sup>701</sup> The Dutch Bureau voor Statistics (CBS) is currently investing in more detailed information on platforms and platform workers<sup>702</sup>
- Most platform workers work less than 20 hours a week, although there are large differences in the number of hours worked between professions. A considerable part of the workers in the gig economy are young and highly educated (more than a third of workers in the gig economy have a diploma at MBO level, almost half are highly educated). The education level of workers in the gig economy differs according to the type of activity. Workers who clean in households are often low educated, while workers who take photos and transport people are relatively often highly

<sup>698</sup> CBS (2019). 4 op 10 zzp'ers geen voorziening arbeidsongeschiktheid. Via <https://www.cbs.nl/nl-nl/nieuws/2019/27/4-op-10-zzp-ers-geen-voorziening-arbeidsongeschiktheid>

<sup>699</sup> CBS/TNO (2019). Zelfstandigen Enquete Arbeid 2019, p. 51 via <https://www.cbs.nl/nl-nl/publicatie/2019/27/zelfstandigen-enquete-arbeid-2019>

<sup>700</sup> SER (2020). Hoe werkt de platformeconomie? Via <https://www.ser.nl/nl/Publicaties/hoe-werkt-platformeconomie>

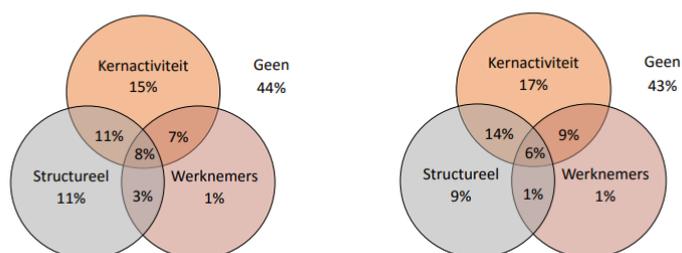
<sup>701</sup> ABU (2020). Whitepaper platformwerk. Via <https://www.abu.nl/app/uploads/2020/03/Whitepaper-Platformwerk-in-2020-de-tussenstand.pdf>

<sup>702</sup> CBS (2020). Meer zicht op online platformen in Nederland. Via <https://www.cbs.nl/nl-nl/corporate/2020/37/meer-zicht-op-online-platformen-in-nederland>

educated (CBS, 2019).<sup>703</sup> What is relevant here is that the survey asked for the highest diploma obtained. This is usually not the final level of education to be achieved for young people.

- The situation in which platform workers are regarded as contractors (self-employed persons), whereby an agreement of assignment is entered into with the ultimate customer of the service or with the platform, applies to approximately 60 percent of the workers in the gig economy at the end of 2017. The variant on this is that workers are active as contractors, without being entrepreneurs in a fiscal sense (false self-employed). This applies to about 10 percent of the workers in the gig economy. The second intended situation is that there is an employment contract between the worker and the platform. This is true for about 15 percent of gig economy workers.
- The platform economy offers opportunities for people to earn extra money and to organise their work flexibly and with a degree of autonomy. Given the high level of satisfaction of most platform workers, they evidently appreciate these aspects of the platform economy. However, there is low job security, generally lower earnings and limited scope for training. A small group of platform workers also experience high pressure of work and thus a negative impact on their health; people who are dependent on the work and who work online are particularly vulnerable in this regard (SCP, 2021).
- SEO (2018) found that, based on the legislation in force that time, about 10-13% of all self-employed can be referred to as false/false self-employed.<sup>704</sup>
  - In figure 6.2 below the share of self-employed is displayed which perform work which is part of client's core activities (kernactiviteit), structurally work (structureel) and work that is also done by employees of the client (werknemers). The left part of the figure displays the shares concerning all hourly fee-rates, the right part of the figure displays the shares only from the self-employed with hourly fee rates (after deducting all costs) of € 18.
  - For more than half of all self-employed persons with business clients, the work performed is wholly or partly part of the client's core activities
  - About a third of all self-employed persons with business clients perform very structurally work for the same client
  - About a quarter of the freelancers with business clients perform work that is sometimes or regularly also by employees of the client executed (p. 58)

Figuur 6.2 Venn-diagram met type werkzaamheden zzp'ers met zakelijke opdrachtgevers, voor alle uurtarieven (links) en bij een uurtarief van minder dan €18 na aftrek kosten (rechts)



## Collective bargaining framework

Most employees in the Netherlands are covered by collective bargaining, mostly at industry level. However, many large companies negotiate their own deals. Negotiators generally follow the recommendations agreed at national level and recent pay increases have been moderate. The pay and

<sup>703</sup> CBS (2019). Werkenden in de kluseconomie in Nederland. Via <https://longreads.cbs.nl/dynamiek-op-de-nederlandse-arbeidsmarkt-2019/werkenden-in-de-kluseconomie-in-nederland/>

<sup>704</sup> SEO (2018). Karakteristieken en tarieven zzp'ers.

conditions of most employees are set through collective agreements reached either at industry or at company level. Collective agreements must be registered with the ministry of labour.

Some CLA's are universally binding on the company if the company fits the scope of a certain CLA. Under Dutch law, CLA's can be declared universally binding from time to time by the Minister of Social Affairs. As a result, the CLA is applicable during the periods in which the CLA has been declared universally binding. A company might be granted dispensation from the obligation to participate in the CLA for the first three years. The agreements in a collective labor agreement take precedence over the agreements in an individual employment contract.

A collective labour agreement is established through negotiations between employers or employer organizations and trade unions. The trade unions negotiate collective employment conditions with employers on behalf of their members, the employees.

The number of collective labour agreements has increased in recent years. The Netherlands has approximately 1100 collective labour agreements, of which approximately 250 are concluded for a sector or branch, the remaining 850 collective agreements apply to individual companies or concerns.

Most employees in the Netherlands are covered by a collective labor agreement: the exact number is a matter of definition, but a total employee between 5.5-6 million is a well-founded estimate based on data from the trade unions<sup>705</sup>. This is 75-80% of the Dutch working population. This percentage has been stable for decades.

Trade Unions: At the end of March 2017, there were 1.7 million union members in the Netherlands according to Statistics Trade movements. This is the lowest number recorded since 1990. Members of a trade union can be employees, but also self-employed, unemployed or persons who do not belong to the labour force. The number of persons affiliated with a union is also in declined in recent years. In 2017, this decrease was 15 thousand compared to the year before, in 2016 it was 17 thousand. The decline in recent years has been slower than before.<sup>706</sup> Average over the period 2012–2016) of all employees were between the ages of 15- and 75-years 19 percent member of a union. This share did not show any fluctuations during this period. Most union members are 45 to 65 years old: 883 thousand in 2017. That comes down to more than half of all members. With 66 thousand, young people up to the age of 25 are the smallest group.

There are three major unions: the Christian-democratic "Christelijk Nationaal Vakverbond (CNV)", the social-democratically oriented "Federatie Nederlandse Vakbeweging (FNV)" and the "Federation of Managerial and Professional Staff Unions (VCP)". All are federations of sector-based labour unions. The FNV has about 14 million members the largest of the three. The CNV has 350,000 members and the MHP 160,000. The FNV has 17 affiliate unions, the CNV 11 and the MHP 4.

Employer organizations: The Netherlands has a number of organizations that represent the interests of employers. The main employers' organization is VNO-NCW. Other employers' federations are AWWN (umbrella for approx. 80 branches and 900 individual employers), MKB-Nederland (for small and medium-sized businesses), UNETO-VNI (for installation sector and technical retail) and LTO Nederland (for agriculture and horticulture).

Self-employed: There is discussion if self-employed can be a member of a trade union. Self-employed can be a member of a trade union in the Netherlands, according to the FNV. They have a lot of self-employed as a member in one of their affiliated sectoral trade unions. Besides, FNV and CNV – the biggest trade unions in the Netherlands – did establish a trade union especially for solo self-employed recently. Other parties are doubting if it could be possible for self-employed to be in a trade union. They argue that if self-employed (considered companies) are organizing themselves this will be an employer organization. Since a collective labour agreement can only be agreed on by both employers and

<sup>705</sup> Among others: CNV (2020). Wat is een CAO? Via <https://www.cnv.nl/werk-en-inkomen/cao/wat-is-een-cao/>

<sup>706</sup> CBS (2018). Wie is er nog lid van een vakbond? Via <https://www.cbs.nl/nl-nl/achtergrond/2018/25/wie-is-er-nog-lid-van-een-vakbond->

employees, an agreement cannot be made with employers and organized self-employed, some interviewees say.

There are some examples of collective agreements covering self-employed workers. For example, agreements exist for architects<sup>707</sup> and in theatre and dance<sup>708</sup>, 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 self-employed workers covered by the agreements, noting that this provision can only apply to bogus self-employed workers as referred to in the FNV Kunsten case. There is also an agreement for painters (Schilders)<sup>709</sup>, which requires that solo self-employed painters should pay into the industry pension fund, in addition to an agreement for bus transport<sup>710</sup>, 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.

Retaliation action against a company: based on the interviews, there are some examples of strikes in the branches of taxi drivers and meal delivering, because of the unwillingness to bargain with the (organized) self-employed in this sector.

## Legal framework

*The Competition Act; Dutch Authority for Consumers and Markets: Price arrangements between self-employed workers* <https://www.acm.nl/sites/default/files/documents/2020-07/guidelines-on-price-arrangements-between-self-employed-workers.pdf>

The main laws governing employment in relation to self-employed workers are:

- Civil Code (Burgerlijk Wetboek)
- Collective Labor Agreement Act (Wet op de collectieve arbeidsovereenkomst)
- Competition Act (Mededingingswet)

### National definition of 'employee':

The essential elements for establishing an employer/employee relationship are that the employer provides the employee with remuneration in exchange for the latter personally performing work activities, subordinated to the authority of the employer. Where this occurs for the same employer every week for three months or for at least 20 hours a month, an employment contract is deemed to exist, whether such a contract has expressly been concluded; in the event of any dispute, it is up to the employer to prove that there is no employment contract.

A services contract is defined as an agreement whereby one party, as an independent contractor (either directly or through a company owned by him or her), agrees to perform specific services for the principal. There is no master and servant relationship between the independent contractor and its principal and there is no obligation for the independent contractor to perform his or her services personally.

The employment contract has been defined in Section 7:610 of the Civil Code and the services contract has been defined in Section 7:400 of the Civil Code.

However, employees are differently defined in labour law, competition law or tax law.

### Overview of self-employment and competition law

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

<sup>707</sup> Onderhandelaarsakkoord-CAO-Architecten: <https://www.sfa-architecten.nl/cao/>

<sup>708</sup> <https://www.napk.nl/wp-content/uploads/2019/12/Cao-TD-2020-2021.pdf>

<sup>709</sup> <https://www.fnv.nl/cao-sector/bouwen-wonen/schilders/cao-schilders>

<sup>710</sup> <https://www.fnv.nl/cao-sector/toer/cao-besloten-busvervoer>

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<sup>711</sup>.

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<sup>712</sup>.

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.

#### Price arrangements between self-employed workers.

The Authority for Consumer & Markets (ACM)<sup>713</sup> has drafted a guideline on price arrangements between self-employed workers.<sup>714</sup> There are four situations in which self-employed workers are allowed to decide with each other about rates and other conditions. They are allowed to do so, if:

- the self-employed workers work side-by-side with employees,
- or their turnovers and market shares are small, or\*
- the benefits outweigh the drawbacks, or\*
- the arrangements concern a rate that is not higher than necessary for safeguarding the subsistence level.\*

\*apply to all companies

Side-by-side: The first bullet is probably the most important one. Here the question is if a self-employed person is a business, in terms of competition law. The simple answer to the question of ‘in what situations does a self-employed worker fall under the Dutch Competition Act and its cartel prohibition’ is if they conduct activities as an undertaking. According to competition law, every economic unit that offers goods or services on a market, is an undertaking. A natural person can also be an undertaking. It is quite possible that someone is an employer for certain activities, and, as such, does not run an undertaking, based on a part-time labour contract, for example, but does run an undertaking of their

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<sup>711</sup> 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>

<sup>712</sup> 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>

<sup>713</sup> The Netherlands Authority for Consumers and Markets (ACM) is an independent regulator that champions the rights of consumers and businesses. ACM is charged with competition oversight, sector-specific regulation of several sectors, and enforcement of consumer protection laws. The ultimate goal is to create a level playing field, where all businesses play by the rules, and where well-informed consumers exercise their rights. Via <https://www.acm.nl/en/about-acm/our-organization/the-netherlands-authority-for-consumers-and-markets>

<sup>714</sup> ACM (2020). Price arrangements between self-employed workers. Via <https://www.acm.nl/sites/default/files/documents/2020-07/guidelines-on-price-arrangements-between-self-employed-workers.pdf>

own outside of that labour contract. The legal form that is chosen to do so, registration with the Chamber of Commerce, the legal form of contracting, and the ownership and financing of the undertaking, or the presence of a profit motive are all not the deciding factors. For self-employed workers that offer their own labour, the key question is whether they offer services independently on a market. Self-employed workers who run undertakings, carry the financial and commercial risks of their activities themselves. This means that the purchases, investments, costs, damage, and losses that come with the work that they offer, are paid out of their own pockets. As such, 'independence' is an essential feature of the concept of undertaking. A self-employed worker whose only commercial activity is the provision of services through their own labour is not necessarily truly independent. If their independence is merely nominal, the self-employed worker will not be regarded as an undertaking for the activities in question for the purposes of the Dutch Competition Act. Such situations are also referred to as misclassification of self-employed workers (in Dutch, such a contractor is referred to as: schijnzelfstandige or 'quasiself-employed'). As a result, thereof, the cartel prohibition does not apply to any possible price arrangements with other quasi-self-employed, and such quasi-self-employed are able to benefit from collective-bargaining agreements. For the question of whether a self-employed worker is independent in name only, it needs to be assessed whether the self-employed worker is in a situation that is comparable to that of an employee. This can only apply to self-employed workers whose only commercial activity is the provision of services through their own labor. The European court lists 5 characteristics for determining whether a self-employed worker is in a situation that is comparable to that of an employee:

1. In practice, the self-employed worker does not determine their own market conduct independently, which instead is dictated by their clients. This is even more the case if the self-employed worker only has a single client.
2. The self-employed worker de facto performs specific services for remuneration on the authority of the client. Subordination is an important characteristic of a self-employed worker who is in a situation that is comparable to that of an employee.
3. The self-employed worker acts by order of the client regarding their schedule, the location and the manner in which the tasks assigned to them are performed. In this regard, the self-employed worker can be compared to an employee who, in practice, does the same work for the client.
4. The self-employed worker does not share in the financial and commercial risks of the client.
5. The self-employed worker is admitted to the undertaking for the duration of the employment relationship, and, to the outside world, is part of the undertaking.

It is about 'the broad picture', the sum of elements and circumstances that characterize the relationship, and about more than just a snapshot. In order to get this broader picture, ACM uses as a practical rule of thumb that, if a self-employed worker de facto works side-by-side with one or more employees, and is indistinguishable from those employees in day-to-day operations, the self-employed worker is not considered to be an undertaking within the meaning of the Dutch Competition Act. Self-employed workers who work side-by-side with employees may be part of the group of vulnerable self-employed workers society is concerned about. However, the application of the rule of thumb is, in principle, not limited to these situations. The side-by-side rule can also apply to better paid self-employed workers, while self-employed workers who are paid lower rates, do not, by definition, work side-by-side with employees.

According to the Ministry of Social Affairs and Employment, the most important case law - regarding self-employed and collective bargaining - are:

- **Hoge Raad, 6 November 2020, nr. 19/03369 ECLI:NL:HR: 2020:1746.** On Friday, November 6, 2020, the Supreme Court ruled that the intention of the parties is no longer relevant in assessing whether someone is working based on an employment contract (as an employee) or on the basis of an assignment agreement (as a self-employed person). The actual execution of the agreement is therefore even more important than before.  
See <https://www.navigators.nl/document/idab734f05db024e3c9a31bd3fe03fd542>

- **Gerechtshof Amsterdam, 16 februari 2021, zaaknr 200.261.051/01 ECLI:NL:GHAMS:2021:392.** Deliverers who work for Deliveroo are not self-employed, but work based on an employment contract. Considering all circumstances, the Court of Appeal concluded that only the freedom allowed for the performance of the work is a circumstance that would suggest the absence of an employment contract. All other elements, including the way of paying wages, the control exercised, and the legal presumption, indicate the presence of an employment contract. Therefore, the Court of Appeal concluded that the Deliveroo riders are working based on an employment contract.

See <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHAMS:2021:392>)

## Labour market trends and other factors

### Trends:

- More and more collective company-level agreements are agreed on between employers and one small trade union (affiliated with the company), and without the largest trade unions FNV and CNV involved. This happened in the retail sector several times and with the painters.<sup>715</sup> By doing this, the traditional trade unions are bypassed. These traditional trade unions identified this trend as worrisome.

### Debate:

- In the Netherlands there is a broader public debate about the functioning of the labour market. There is broad consensus the flexibilization of contract forms (including working as a self-employed person) is gone too far. The report of the commission Regulation of Work published a widely supported report in 2020 in which they state that the Netherlands needs to take 'drastic steps' to reform the labour market if the country wants to maintain its current high level of prosperity. The commission is particularly concerned about the rise in self-employment which is driving insecurity and hurting innovation. Workers are becoming more insecure about their jobs and are failing to invest in boosting their skills and in their future. At the same time, employers are bringing in too many people on flexible contracts and failing to invest in them because they are only with the company short term. The main recommendations include:<sup>716</sup>
  - o Companies will have to prove that the self-employed workers they use really are self-employed, reversing the burden of proof
  - o Staffing agency workers should only be able to work for 26 weeks for the same firm, and the work they do must be temporary to cover peak periods or an unexpected rush
  - o Employers should be able to adapt jobs, location and working hours in line with the demands of the economy
  - o Employers should also be able to apply for 'partial redundancy' if necessary
  - o Everyone in work should pay the same taxes
  - o Everyone should have a personal training fund
  - o Employers should pay towards extra training for all workers, regardless of status and compensation for redundancy should be paid into this fund The tax allowance for freelancers should be gradually scrapped. (This is already happening.)
  - o Temporary contracts should cover no more than two years – the current limit is three People on flexible contracts should have a higher minimum wage
  - o People employed via staffing agencies should have the same secondary benefits as people in regular jobs at the same firm Internet-based employment platforms (such as meal delivery services and bar staff apps) should be treated as employers and responsible for taxes and premiums – ending the freelance status of the gig economy
  - o Sick pay should be cut from two to one year
  - o There should be a public basic insurance policy against invalidity for everyone which would kick in after one year.

<sup>715</sup> <https://www.vpro.nl/argos/lees/nieuws/2020/cao-in-de-uitverkoop.html>

<sup>716</sup> Also see <https://www.uu.nl/en/news/reforming-the-dutch-labour-market-will-foster-entrepreneurship>

- Employees would keep their current provisions
- Reducing the differences between employees, freelancers and flex workers will probably be the task of the new Dutch government the coming years.

The previous Dutch government tried to minimize the hourly fee rate for solo self-employed, without success.

## Conclusions

The conclusion can be drawn that some self-employed workers are allowed to bargain collectively under national law. This is true for self-employed workers whose only commercial activity is the provision of services or create works through their own labour, which work side-by-side with employees.<sup>717</sup>

Additionally, all self-employed are allowed to bargain collectively, just like all other companies, when their turnovers and market shares are small, the benefits outweigh the drawbacks and when the arrangement concern a rate that is not higher than necessary for safeguarding the subsistence level.

## Interviews

<b>Name of interviewee</b>	<b>Organisation</b>
1. Koen van Schie	AWVN
2. Evita Bookelmann	Ministry of Social Affairs and Employment
3. Remi van Steenderen	ACM
4. Irene van Hest & Florian de Jager	FNV

<sup>717</sup> <https://www.acm.nl/sites/default/files/documents/2020-07/guidelines-on-price-arrangements-between-self-employed-workers.pdf> (p. 3)

## Appendices

### Section 1: Background information number of self-employed in the Netherlands 2019

Sector/branches (SIC 2008)	Employment type	Total employed*	Self-employed**	
	Periods	x 1,000	x 1,000	% of total
A-U All economic activities	2019*	9576	1581	17%
A Agriculture, forestry and fishing	2019*	202	97	48%
B Mining and quarrying	2019*	8	0	0%
C Manufacturing	2019*	803	44	5%
D Energy supply	2019*	28	1	4%
E Water supply and waste management	2019*	36	1	3%
F Construction	2019*	498	177	36%
G Wholesale and retail trade	2019*	1507	166	11%
H Transportation and storage	2019*	411	36	9%
I Accommodation and food serving	2019*	462	67	15%
J Information and communication	2019*	318	45	14%
K Financial institutions	2019*	207	6	3%
L Renting, buying, selling real estate	2019*	75	11	15%
M Other specialised business services	2019*	804	242	30%
N Renting and other business support	2019*	1276	271	21%
O Public administration and services	2019*	490	0	0%
P Education	2019*	550	52	9%
Q Health and social work activities	2019*	1485	216	15%
R Culture, sports and recreation	2019*	181	67	37%
S Other service activities	2019*	209	84	40%
T Activities of households	2019*	27	0	0%
U Extraterritorial organisations	2019*	.	.	

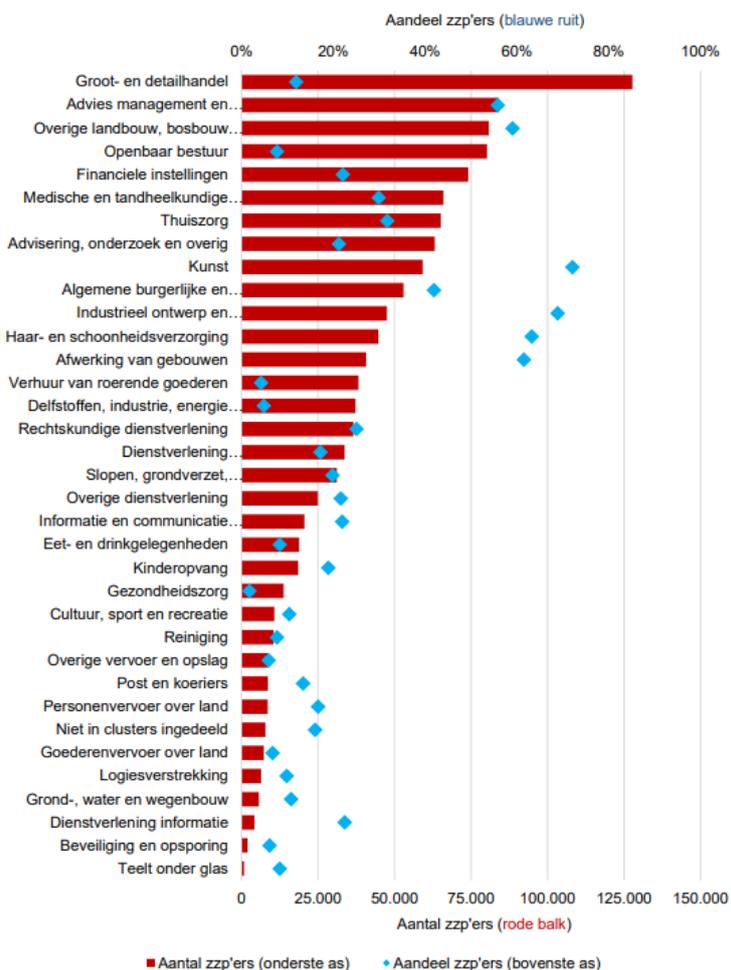
Source: CBS 2019 via <https://opendata.cbs.nl/#/CBS/en/dataset/84164ENG/table?ts=1612950630740>

\* Someone working for a company located in the Netherlands, or an institution or private household in the Netherlands.

\*\*According to the labour accounts someone is self-employed if they provide an income by working for their own account and risk in their own company or in an independent profession, or by working in the company as a family member.

NB: Data of 2018 and further are provisional.

## Total number of freelancers versus share of freelancers in total number of jobs per sector (2017) – in Dutch



Source: SEO (2018). Karakteristieken en tarieven zzp'ers (p. 15)

## Type of self-employment and their median level of income/wealth

Type of self-employment	Self-employed as main income		All incomes			
	Number of self-employed	Median income*	Median wealth**	Number of self-employed <sup>718</sup>	Median income*	Median wealth**
Self-employed	1291.5	34.3	191.0	1951.3	17.3	171.2
Solo self-employed	971.1	29.7	164.1	1594.7	12.7	150.9
Self-employed with employees	297.8	51.8	299.9	319.6	48.8	298.5

<sup>718</sup> The difference between the number of (all-incomes) self-employed in this table with respect to table 1 may be due to the fact that in this table all self-employed are shown, including the self-employed without any income. In table 1 only the self-employed with (any) income are included.

Contributing family worker	22.6	6.0	233.0	37.0	0.0	223.6
Self-employed entrepreneur	966.5	32.0	156.9	1245.6	23.4	151.8
Owner-manager	218.6	63.2	538.1	251.2	57.6	543.8
Other self-employed	83.8	7.5	114.1	417.4	1.3	117.3

Source CBS 2019 via

<https://opendata.cbs.nl/#/CBS/en/dataset/84164ENG/table?ts=1612950630740>

\*The income as a self-employed person comprises income from a self-owned company or practice, directorial wage, and other self-employed income (e.g. as a freelancer).

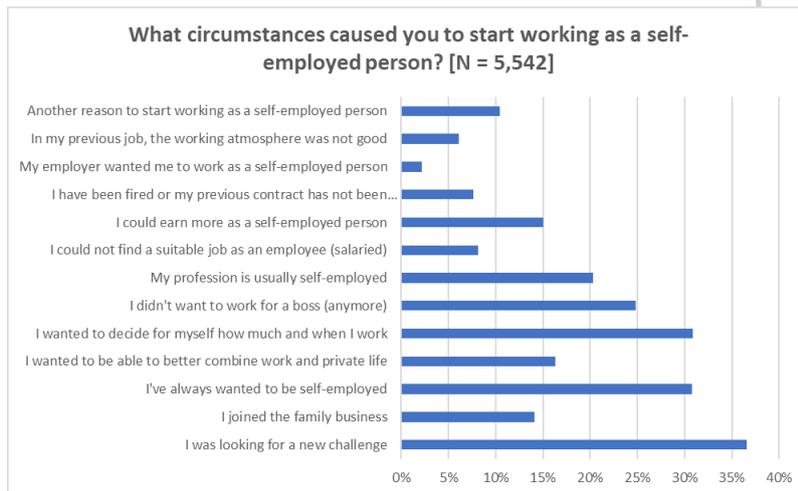
\*\*The capital of the household to which the self-employed person belongs, assigned to all household members as a measure of wealth. Balance of assets and liabilities of a household, allocated to the people in that household as an indicator of personal wealth.

### Reasons for self-employment

	Total	Type of self-employed		Sex		Age			Sector			
		Self-employed with employees	Solo self-employed	Male	Female	15-44	45-54	55+	Agriculture	Industry	Commercial service	Non-commercial services
I was looking for a new challenge	37%	32%	38%	37%	36%	40%	40%	30%	11%	37%	41%	37%
I joined the family business	14%	29%	10%	14%	14%	11%	15%	16%	70%	12%	11%	3%
I've always wanted to be self-employed	31%	38%	29%	35%	24%	37%	30%	24%	27%	36%	33%	25%
I wanted to be able to better combine work and private life	16%	8%	19%	12%	24%	19%	20%	11%	6%	11%	17%	21%
I wanted to decide for myself how much and when I work	31%	17%	35%	29%	34%	37%	31%	24%	13%	27%	32%	38%
I didn't want to work for a boss (anymore)	25%	21%	26%	30%	22%	29%	27%	18%	9%	27%	27%	25%
My profession is usually self-employed	20%	11%	23%	17%	26%	22%	17%	21%	21%	9%	13%	40%
I could not find a suitable job as an employee (salaried)	8%	4%	9%	8%	8%	8%	8%	8%	2%	8%	8%	10%
I could earn more as a self-employed person	15%	13%	16%	18%	10%	21%	14%	9%	5%	19%	16%	14%
I have been fired or my previous contract has not been renewed	8%	4%	9%	8%	7%	6%	8%	9%	2%	10%	8%	7%
My employer wanted me to work as a self-employed person	2%	2%	2%	2%	2%	4%	1%	1%	0%	2%	2%	3%
In my previous job, the working atmosphere was not good	6%	4%	7%	6%	7%	6%	7%	6%	0%	6%	6%	8%
Another reason to start working as a self-employed person	10%	8%	11%	10%	12%	9%	10%	12%	5%	9%	11%	12%

Source: CBS/TNO (2019). Zelfstandigen Enquete Arbeid 2019, p. 51 via <https://www.cbs.nl/nl-nl/publicatie/2019/27/zelfstandigen-enquete-arbeid-2019>

### reasons for self-employment



Source: CBS/TNO (2019). Zelfstandigen Enquete Arbeid 2019, p. 51 via <https://www.cbs.nl/nl-nl/publicatie/2019/27/zelfstandigen-enquete-arbeid-2019>

### Number of clients the past 12 months

	Total	Type of self-employed		Sector			
		Self-employed with employees	Solo self-employed	Agriculture	industry	commercial service	non-commercial services
none	2,6%	2,6%	2,5%	12,4%	0,7%	2,3%	1,2%
1	4,1%	1,5%	4,8%	13,3%	1,6%	4,6%	2,1%
2-3	12,4%	4,0%	14,5%	22,5%	10,5%	13,3%	8,4%
4-9	20,3%	5,4%	24,2%	17,1%	24,8%	19,5%	0,0%
10-19	13,2%	6,5%	15,0%	10,4%	17,0%	11,9%	14,3%
20-49	14,0%	11,7%	14,6%	11,3%	19,4%	11,7%	15,8%
50-99	8,5%	10,6%	8,0%	7,1%	11,5%	7,0%	9,9%
100+	25,0%	57,8%	16,4%	7,0%	14,5%	29,7%	28,3%

Source: CBS/TNO (2019). Zelfstandigen Enquete Arbeid 2019, p. 51 via <https://www.cbs.nl/nl-nl/publicatie/2019/27/zelfstandigen-enquete-arbeid-2019>

### Share turnover from biggest client past 12 months

	Total	Type of self-employed		Sector			
		Self-employed with employees	Solo self-employed	Agriculture	industry	commercial service	non-commercial services
0 - 10 %	35,8%	59,1%	29,6%	22,1%	28,4%	36,8%	42,8%
10 - 40 %	28,9%	24,0%	30,3%	26,3%	36,7%	28,1%	26,4%
40 - 60 %	16,2%	6,9%	18,6%	14,1%	18,3%	15,2%	17,4%
60 - 90 %	11,3%	5,7%	12,9%	15,0%	12,9%	12,1%	7,8%
90 - 100%	7,7%	4,3%	8,6%	22,5%	3,7%	7,8%	5,7%

Source: CBS/TNO (2019). Zelfstandigen Enquete Arbeid 2019, p. 51 via <https://www.cbs.nl/nl-nl/publicatie/2019/27/zelfstandigen-enquete-arbeid-2019>

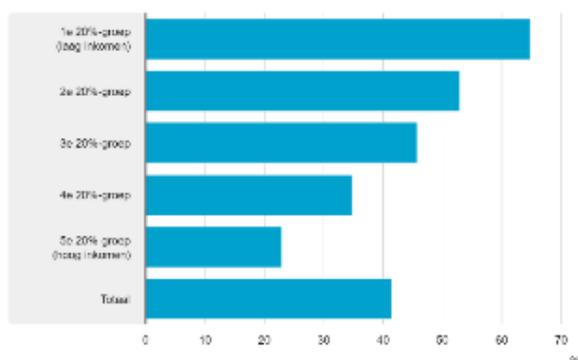
## What is the financial situation of your company at the moment?

	Total	Type of self-employed		Sector			
		Self-employed with employees	Solo self-employed	Agriculture	industry	commercial service	non-commercial services
very poor	4,6%	2,8%	5,0%	4,9%	3,5%	5,3%	3,9%
poor	12,2%	9,8%	12,9%	10,9%	11,5%	11,8%	14,0%
average	28,6%	25,2%	29,5%	28,0%	23,9%	28,4%	31,9%
good	44,0%	49,3%	42,6%	47,8%	50,4%	42,5%	41,7%
excellent	10,6%	12,8%	10,0%	8,4%	10,7%	12,0%	8,6%

Source: CBS/TNO (2019). Zelfstandigen Enquete Arbeid 2019, p. 51 via <https://www.cbs.nl/nl-nl/publicatie/2019/27/zelfstandigen-enquete-arbeid-2019>

## Percentage self-employed which is insured for incapacity for work

On the x-axis the percentage of self-employed without any work incapacity insurance is displayed. On the y-axis self-employed are classified in incomes groups. The first group (1e 20%-groep) are the 20 percent self-employed with the lowest incomes, etc. The lower the income, the higher the share of self-employed without any work incapacity insurance.



Source: CBS (2019). 4 op 10 zzp'ers geen voorziening arbeidsongeschiktheid. Via <https://www.cbs.nl/nl-nl/nieuws/2019/27/4-op-10-zzp-ers-geen-voorziening-arbeidsongeschiktheid>

## Most common activities in the gig economy

<b>passenger transport</b>	<b>14%</b>
deliver (meals)	34%
household services (cooking)	2%
deliver (other)	6%
household services (babysitter)	4%
household services (cleaning)	14%
micro jobs (taking photos)	11%
professional services (craftsmen)	8%
professional services (catering)	5%
other	2%

# Poland

## Background information

According to latest available OECD data, in 2019 Poland was found to be the 9th country globally and 3rd within European Union (EU) with highest prevalence of self-employment which accounts for 20% of all forms of employment in the country (OECD, 2021)<sup>719</sup>. In 2019, there were 1 599 052 micro-enterprises (not employing or employing maximum one person) (GUS, 2020a). Out of all self-employed in 2019, more than two-thirds are men (70.6%) and the majority are people working in the cities (70.2%) (PARP, 2020).

These data consider all of the self-employment, while the National Statistics Office in Poland (GUS) divides self-employment in two main categories of: 1) self-employed person employing at least one person and 2) person working for their own account and not employing other people ("own-account workers"). Similar division is applied to the Eurostat data, in 3Q of 2020 in Poland there were 2 905 200 of self-employed people, of which 2 301 000 were own-account workers (Eurostat, 2021a).

Importantly, Eurostat and GUS methodology differs, as Eurostat includes additionally self-employment in agriculture or contributing family workers (Eurostat, 2021a; Chłoń-Domińczak et. al, 2017). GUS data does not include contributing family workers or agriculture, as it is organised within different legal form of 'agricultural business activity'. According to GUS data, both in 2019 and 2018, the own-account workers accounted for 1,3 million, which amounts to 8,3% of national workforce. By comparison, in 2016 it was 1,15 million (4,5% of workforce), in 2017 it was 1,2 (4,3 % of workforce). (GUS, 2018a, 2018b, 2019b, 2020a).

In 2019 self-employment (self-account workers or employing up to one person) were the most popular in the following sectors: **services** (948 674 people), **trade and repair of motor vehicles** (283 176 people, 18,8% of workforce), **construction** (229 620 people). Other two categories of business were significantly less popular: 132 472 people were found in industry while only 5 113 were found in the agriculture, forestry, and fishing (GUS, 2020 b, PARP, 2020).

Eurostat data provides different occupational categories, as well as different methodology (including self-employed in agriculture or contributing family workers). In 2019 in Poland occupational categories of own-account workers included: managers (37 400), professionals (383 200), technicians and associate professionals (220 300), clerical support workers (15 800), service and sales workers (219 000), skilled agricultural, forestry and fishery workers (948 000- please note that this may include both people on special category of 'agricultural business activity' as well as people on regular self-employment), craft and related trade workers (321 200), plant and machine operators and assemblers (96 200), elementary occupations (17 100) (Eurostat, 2021b).

The two main reasons of self-employment in Poland are: 'continuing family business' (26%) and 'willingness to earn higher income' (16%). The latter is applicable in the context of 'false workers' that is highly specialised employees who want to voluntarily go under self-employment while if fact they should be covered by regular employment relations. This is the case due to the tax regulations, as high-income employees can pay lower rate of income tax, and this can lower their payments even by 1/3 within self-employment when compared with regular employment. It is believed that until 2019 false self-employment was mostly prevalent among high income group (Sawulski, 2019). This, however, changed due to 'maly ZUS' reform that proportionally lowered the social security dues for people with lower income, making self-employment more financially attractive for them as well (Sawulski, 2019). Other reasons of self-employment include: 'self-employment a is dominant form of employment in the

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<sup>719</sup> 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".

sector' (12,9%), 'inability to find a job as the contracted employee' (9.8%), 'requirement from employer to work as self-employed' (2.9%) or 'otherwise motivated need to take up self-employment' (4.8%) (GUS, 2018c).

A 2017 data collection revealed that large proportion of respondents were satisfied with their form of employment and over 80% declared willingness to keep their self-employed status. Respondents eager to change a form of employment were found to either: to not have an influence on the scope of their tasks, to be working for one employer only or to be found in economical dependency on clients (GUS,2018c). The same report revealed that the main disadvantages of self-employment in Poland were lack of the ability to have an influence on the price of products or services provided, periods of income instability or orders scarcity, excessive administrative workload, difficulties in enforcement for payments, resulting in delays or non-payments, lack of income during illness, complicated legal system, lack of capital for financing the business (GUS, 2018c).

A 2019 report on in- work poverty (IWP) in Poland diagnoses self-employment as one of the risk factors for falling into poverty. Indeed, in 2017 IWP rate for self-employed people in Poland was above EU average and accounted for 28.5 %. Importantly, the higher risk of poverty is associated with agriculture while the opposite tendency is found considering self-employment outside the agriculture. However, estimates of the Ministry of Finance show that in 2017 30 % of self-employed people (excluding these in agriculture) had an income below the minimal wage, which confirms overall financial vulnerability associated with self-employment (Chłoń-Domińczak et. al, 2017).

Additionally, according to interviewees consulted during the data collection, the following sectors were identified as characterised by high vulnerability of self-employed workers: security workers, cleaners, medical workers<sup>720</sup>. In case of security workers, forced 'false employment' seems to be prevalent where workers are not offered regular contracts, but they are required to self-employ.

Please report any available statistics relating to:

- Platform workers. These are workers who work through online platforms, carrying out work on a task basis. They include those who work for platforms such as Uber or Deliveroo, but also those who carry out any type of task-based work arranged through platforms, such as click work, care work, cleaning, specialised work such as web design, administrative work or accountancy work etc
- Self-employed workers in creative professions, such as actors, musicians, authors
- Self-employed journalists and other professionals who work as freelancers Self-employed in liberal and regulated professions (please name the specific professions)
- Any information around false self-employment, i.e. persons hired as self-employed but in a situation comparable to that of employees,

National Labour Inspectorate (PIP) report from 2019 provides data on 'natural persons conducting business activity and not employing other people' that may be associated with own-account workers. It reads that by the end of 2018 in the category 'culture, entertainment and recreation' there was 13 551 people (PIP, 2020).

No data on freelancing as a proportion of workforce was identified. However, the 2020 report on freelancing in Poland found that self-employment is not particularly popular among this group, only 20,4% of respondents declared this type of work. The following occupations were identified as prevailing among all freelancers (no data on how many of these are self-employed): copywriting and social media (27.9%), computer graphics (17.8%), web design (12.3%), photography, video and animation (9%), programming and IT (8.1%), translations (8.1%) (Usemé, 2020).

No data on liberal and regulated professions as the proportion of the workforce was identified. However, the 2017 report on liberal and regulated professions found that self-employment is popular among this group. Report found that 60,5% of participants of the study declared to be self-employed while only

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<sup>720</sup> Interview 1

22,4 % were found in regular work relations. Report included professions such as: doctors, nurses, midwives, paramedics, physiotherapists, psychologists, pharmacists, veterinarians, dentists, dental technicians, prosthetists, accountants, sworn translators, IT specialists, lawyers, notaries, legal advisers, property appraisers, architects, surveyors, civil engineers and managers, property managers, ophthalmologists, opticians, statutory auditors and tax advisers. (Deutsche Bank Polska, 2017).

A 2019 European Trade Union Institute survey regarding internet and platform work established that in Poland 1.9% of the survey respondents tried platform work, of which 0.4%- conducted platform work at least once a month, another 0.4% did it at least once a week. 0.1% (Piasna and Drahokoupil, 2019). Differently, a 2018 report on new forms of work states that 11% of respondents had an experience in platform work, however, only 4% worked on platform on a regular basis (Owczarek, 2018b). Additionally, the report shows that the most popular platforms in Poland were Uber, Mturk, Hojo Clean or TakeTask. Platform work in Poland was more prevalent among younger people. As much as 22,4% of all platform workers were in 18- 24 age group and 14,3 % were found in 25- 34 age group. Consequently, most platform workers in Poland had elementary (16,7%) and secondary school education (16,7%). Additionally, platform workers tended to live in the bigger cities: from 200,000 to 499,000 inhabitants - 15.3%, over 500,000 inhabitants - 13.1%) (Owczarek, 2018a).

For 74% of respondent's platform work was seen as an additional source of income, 40% of platform workers are found to earn less than 1000 PLN (220 euro) per week. Platform workers were found in non-standard form of employment: 14.1% of them were self-employed, 14.7% have contract of employment on specified time or working without any kind of contract (13,8%). Only 21,5% of the respondents positively evaluated work on the platform. Least appreciated aspects are access to trade unions (16,1%), social security (16,8%) while most appreciated aspects are flexible working hours (30, 3%) and workload, length of work, amount of stress (24,5%) (Owczarek, 2018).

Representative of the Commissioner for Human Rights Office reported attempts by the office to gather information about the numbers and status of the Uber Eats workers<sup>721</sup> but these attempts have largely failed as the platform workers fear data collection might lead to revealing any irregularities in their employment, consequently, they refuse to contribute to research. One of the problematic aspects of this case was the fact that many drivers of Uber Eats have been actively recruited by a Polish private higher education institute, who brings them from India to Poland as cheap labour force, under the pretext of school enrolment.<sup>722</sup> This group (foreigners employed through platforms) are considered by the Office particularly vulnerable and not protected well by the law<sup>723</sup>. They first pay high enrolment fees in order to reach Poland and gain student visa (which comes with work permit) and later have no other means of survival than low-paid work for Uber Eats.

There is a recognition of false self-employment or false self-employment as significant problem, however the scale and extent of this phenomena is not captured. In 2017 as many as 166 000 people could have been involved in false self-employment, this estimation is based on the amount of people working for one entity only (Sawulski, 2019), while In 2017 it was as 85 000. These estimations involved different criteria of economical and organisational dependency on the employers. This dependency was understood as at least 75% of income a self-employed person coming from one entity and as inability to decide on the working time (GUS, 2018 c).

### Collective bargaining framework

While the trade unions in Poland have been historically a strong political factor, considering quantitative aspect, **the importance of collective bargaining in Poland decreases**. This is the case when multi-employer collective agreements are considered. In the recent years, no multi-employer collective labour agreement has been registered.<sup>724</sup> Additionally, as the registry of the Ministry of Development, Labour and Technology reads since 1995 the total number of 174 multi-enterprise collective labour agreements,

<sup>721</sup> [Uber Eats pod lupą Rzecznika Praw Obywatelskich | Rzecznik Praw Obywatelskich \(rpo.gov.pl\)](#)

<sup>722</sup> [Uber Eats pod lupą Rzecznika Praw Obywatelskich | Rzecznik Praw Obywatelskich \(rpo.gov.pl\)](#)

<sup>723</sup> Interview 1

<sup>724</sup> Interview 4

have been registered, however, only 61 are still binding<sup>725</sup>. Single-employer collective labour agreements are more popular. Over the years the number of registered collective bargaining cases varied: in 2013 there were 284 registered cases, in 2014- 254, in 2015- 1202 (which 603 in education), in 2016 - 242, in 2017-9492 (of which 9046 in education) and the last available data for 2018- accounted for 354 cases (GUS, 2016, 2018d, 2020c).

Pay and working conditions are most frequent topics of collective bargaining. Between 2013-2018 the pay was an issue of the at least half of registered collective bargaining cases while working conditions were mentioned in the 15,1 % to 36,2 % of all bargaining cases, depending on the year. Social security, trade unions rights and freedoms and other issues were proportionally less frequent, each category did not exceed 15 % of coverage in all collective bargaining cases (PIP, 2014, 2015, 2016, 2017, 2018, 2019) Notably, in 2019 almost all registered bargaining cases included issues of pay (PIP, 2020).

Importantly, not all the single-employer collective bargaining cases end up with agreements, many of these cases have been unresolved or are still ongoing. In 2014 there were already 8 173 registered and binding single-employer collective labour agreements, which involved 1,8 million people. In the following years the number of collective labour agreements increased on a slow pace, in 2015 there were 69 new agreements, in 2016- 79, in 2017- 50, in 2018- 54. (PIP, 2014; PIP, 2015; PIP, 2016; PIP, 2017; PIP, 2018; PIP, 2019). Overall, the mismatch between the number of registered cases of collective bargaining and the number of agreements achieved may be the reason of low collective bargaining power to regulate working relations. As the 2019 European Company Survey shows only 10 % of Polish business establishments regulated wages of employees under collective labour agreements (Houten and Russo,2020).

The current law states that the provisions of collective agreements cannot be less favourable than already existing laws, hence, this would imply that salary wise there should be positive differences between people covered and not covered under collective bargaining agreements. One of other interviewees expressed that in general collective bargaining do not often cover income issues, if so, these tend to be rather concentrated on financial bonuses<sup>726</sup>. Another interviewee confirmed that especially multi-company collective agreements tend to cover non-financial issues of working relations<sup>727</sup>. The highest coverage of agreements was found in manufacturing, production of supply of energy, water, gas and water, transport and warehouse management and finance and insurance (PIP 2016, 2017, 2018, 2019). Interestingly, the higher number of single- employer collective agreements was not necessarily correlated with strong trade unions operating in the chosen sector. In 2018 unionisation level in manufacturing accounted for 12,7%, in transport and warehouse management- 9,7 % while supply in water and energy was at the level of 2,5 % and construction accounted only for 1,6 % (GUS, 2019a).

Sector	Number of single- employer collective agreements	Number of people
Mining and quarrying	5	762
Agriculture, forestry, hunting and fishing	3	220
<b>Manufacturing</b>	<b>92</b>	<b>34 672</b>
<b>Production and supply of energy electricity, gas, water</b>	<b>27</b>	<b>28 600</b>
Water supply; sewage and waste management	29	3 943
<b>Construction</b>	<b>11</b>	<b>8 856</b>
Wholesale and retail trade, vehicle repair car	16	2 981

<sup>725</sup> <http://www.dialog.gov.pl/dialog-krajowy/uklady-zbiorowe-pracy/stan-rejestru-prowadzonego-przez-ministra-rodziny-pracy-i-polityki-spoecznej/>

<sup>726</sup> Interview 4

<sup>727</sup> Interview 5

<b>Transport and warehouse management</b>	<b>21</b>	<b>88 540</b>
<b>Finance and insurance</b>	<b>2</b>	<b>8 151</b>
Real estate market services	9	1 459
Culture, entertainment, and recreation	2	318
Professional, scientific, and technical activities	17	4 511
Healthcare and social assistance	9	2682
Administration services	6	4788
Accommodation and catering services	2	709
Information and communication	1	113
Other services	1	886
Other	2	187

**Membership level in trade unions is rather low and tends to decrease over the years.** According to the latest available report on trade unions, in 2018, 1.5 million people belonged to the 12 500 trade unions. People associated in trade unions accounted for 4.9% of the adult population of Poland and 16.3% of employed population. In 2018 the number of people unionised decreased by 1.1% when comparing with 2014 level. Additionally, between 2014-2018 the number actively operating of trade unions decreased by 2.9% (GUS, 2019a). Each case of collective bargaining needs to involve trade unions as the Act on Trade Unions confirms trade union's right to represent workers under Art. 21. Therefore, if any action towards collective bargaining is taken it is due to actions of trade unions. **Consequently, to some extent, the low number of trade unions may translate to low numbers of collective labour agreements.**

One of the reasons for low number of collective bargaining agreements has to do with the fact that the law offers little incentives to the employers and such agreements are considered favourable only to the workers<sup>728</sup>. The article Art. 9 § 1 of the Labour Code states that the provisions of collective labour agreements may not be less favourable for employees than the provisions of the Labour Code and other acts of law and implementing provisions. Additionally, the multi-employer collective labour agreement may not be less favourable than single-employer's collective agreements. **Since 2018, the collective bargaining includes self-employed people, however, it is not clear to what extent the abovementioned statistics from 2018 covers also collective bargaining with participation of self-employed people.** (GUS, 2016, 2018d, 2020c). Interviews with the social partners revealed that there is no such centralised data on the national level.

Social partners are not exceptionally strong in representing the interests of self-employed and this fact significantly hinders progress of developing effective legal framework<sup>729</sup>. Interviewees pointed out low levels of interest of social partners in the question of self-employed. Trade unions have traditionally represented workers, for most part through company-level agreements and it is judged that they are not well prepared to represent also the self-employed.<sup>730</sup>

Representatives of social partners pointed out that generally, self-employed people do not join the unions in significant numbers (although no national level statistical data was available) and they approach trade unions only in situations of already pending personal problem (instead of strategic involvement in policy development and lobbying). Since the law change in 2018, All-Poland Alliance of

<sup>728</sup> Interview 6, Interview 5

<sup>729</sup> Interview 1, 3, 6

<sup>730</sup> Interview 1

Trade Unions noted only several hundred applications from self-employed workers for their organisation (Wnp.pl; 2020).

Self-employed people can join trade unions if they do not employ other people. First, trade unions decide whether self-employed person can be qualified to join chosen trade union.<sup>731</sup> Then, if such a self-employed person decides to join collective labour agreement another level of verification happens. Each collective agreement needs to be registered by appropriate institution. While registering chosen collective agreement the institution needs to confirm that chosen self-employed people can, indeed, be covered by collective agreement.<sup>732</sup> Therefore, technical possibility to join trade unions does not fully grant ability to exercise rights by self-employed person when it comes to collective bargaining.

**The current legal framework does not provide substantial basis for effective inclusion and representation of the self-employed people by the trade unions<sup>733</sup>.**

Workers' Initiative Union is a trade union active in the sectors with high levels of self-employment. Worker's Initiative operates as the umbrella organisation and lends its legal status for people willing to unionise along different sectors and locations. Worker's Initiative Unions has sectoral branches at construction, education, culture, and media (OZZIP, 2021) sectors, which are associated with high levels of self-employment. Their Commission of Journalists and Journalist is particularly active around deterioration of working conditions in sector and organises local actions if needed. In 2018, they created an open letter to the employers in the media industry, claiming that self-employment is one of the reasons of worsening working conditions in the media (OZZIP, 2018) No other major trade unions in the sectors with high levels of self-employment were identified. Both Solidarity and All-Poland Alliance of Trade Unions (OPZZ) have been successful in bringing the law change and opening the access to collective bargaining for self-employed people. Additionally, Solidarity has been lobbying for the implementation of so called 'entrepreneurial test', that according to Solidarity, would allow to effectively halt false-self-employment.<sup>734</sup> Equally, National Association of Trade Unions (OPZZ) addresses the end of false employment as one of their main demands (OPZZ). Similarly, another big trade union- Forum of Trade Unions also expresses the willingness to represent self-employed workers interests (FZZ; 2021).

One of our interviewees confirmed that overall trade unions are open to include self-employed people as their members, some of them have accepted self-employed people even before the law change in 2018.<sup>735</sup> However, only recently trade unions started to recognise the issue of platform work. Consequently, adequate solutions have not been yet implemented. A study on trade unions and Uber drivers in Poland has found that these groups were found mutually sceptical about the possibility of cooperation. Uber drivers were found unwilling to organise and join trade unions as they diagnosed their precarious working conditions as a standard and their occupation as temporary. On the other hand, trade unions were found to be organised around common interest and values. They found Uber driver's attitude's as antagonistic and highly concentrated around individual interests. Therefore, trade unions found it difficult to establish what is the common interest of Uber drivers to be able to act on their behalf (Polkowska; 2021). Additionally, a report on gig economy in Poland finds that trade unions are disabled provide comprehensive framework for platform workers. It is due to the fact that platform workers are highly scattered, and organisation of this group would require resources that trade unions in Poland do not have (Owczarek, 2018b).

Trade unions dedicated to self-employed people were not identified. **First collective labour agreements including self-employed are thought to happen in the following sectors and companies: construction, transportation<sup>736</sup>, energetics, delivery.<sup>737</sup>** However, as this is still

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<sup>731</sup> Interview with 6

<sup>732</sup> Interview 5

<sup>733</sup> Interview 6

<sup>734</sup> Interview 6

<sup>735</sup> Interview 6

<sup>736</sup> Interview 4

<sup>737</sup> Interview 5

dynamic process the extend of coverage and any further details around self-employed participants are still unknown.

## Legal framework

Main relevant legislative provisions: Act on Trade Unions, 5 July 2018 (Art. 1), Labour Code (Art. 2)

### Overview with relation to self-employed workers

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:

- o Employees, and
- o 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 workers 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 workers.** 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, is it 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<sup>738</sup>.

### Detail of legislative provisions

Legal foundations of self-employment are simultaneously covered in various areas of Polish legal system. Self-employment- by definition, is associated with entrepreneurship and, consequently, is regulated under Act on Competition and Consumer Protection from 2007. On the other hand, since the 2018 change of Act on Trade Unions self-employed people are additionally legally defined as 'person performing paid work'. Thus, they can enjoy trade unions rights, including right to collective bargaining. This, however, interferes with competition law as entrepreneurs are forbidden to make the agreements between each other as it may violate the freedom of competition. Notably, Poland does not operate on the basis of case law, consequently, no case law on self-employment and self-employment and collective bargaining was identified.

*Labour Code* introduces two types of collective agreements: the multi-employer collective labour agreement (*Section 11, Chapter 2*) and the single-employer collective labour agreement (*Section 11, Chapter 3*). These differ according to the scope and participants included in the collective labour

<sup>738</sup> Comments sent by the author of the Bulletin Of Comparative Labour Relations –

Collective Bargaining for Self-Employed Workers in Europe (Wolter Kluwers)

agreement. *Art. 241<sup>14</sup> § 1* states that that multi-employer collective labour agreement is undertaken between the multi-employer trade unions organisation and the organisation of the employers. *Art. 241<sup>23</sup>* reads that single-employer labour agreement is conducted between employer and trade union in the establishments.

**Until 2018 collective bargaining and unionisation was not available for the self-employed people.**

As such, trade unions in Poland were unable to meet obligation of International Labour Convention due to the inadequate labour law in Poland.<sup>739</sup> Consequently, this issue has been discussed on the Social Dialogue Council, which is triparty body, consulting labour issues between government, employees, and employers. Further, the proposal from the was submitted to the Constitutional Tribunal by All-Poland Alliance of Trade Unions (OPZZ). The verdict of Constitutional Tribunal from 2015 supported the claims of trade unions by announcing that all people under working relations, regardless of type of employment should have a right to join trade unions and thus should enjoy the right of trade unions, including the right to collective bargaining agreements. Additionally, the verdict stressed that this should apply to people who fall under the characteristics of employee and hence do not employ other people.

Novelisation of the Act on Trade Unions, came into force in 2018, introduced ability to join and create trade union as well as collective bargaining to the self-employed people by adding the category of 'person performing paid work' (Art.1). Before the change in 2018, collective bargaining was only available to 'an employee' 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.

However, as expressed by one of our interviewees, simply adding the definition that includes self-employed people does no guarantee that self-employed people will be able to effectively join collective bargaining.<sup>740</sup>

As the Labour Code reads both types of collective agreements can tackle issues including but not limited to a) monitoring, which was newly added in 2018, (Art. 22 2§ 6) b) terms and conditions of the remuneration for work and grant of other work-related benefits (Art. 77 1) c) issues around business travel allowances (Art. 77 5 § 3) d) ability to partial non-cash remuneration (Art. 86 § 2) e) system of work split up over the day (Art.139 § 3) f) additional breaks not included in working time (Art. 141) g) working time systems, patterns and adopted working time settlement periods (Art.150 § 1) h) maximum overtime (Art.151 § 3 and § 4) i) and all other issue not explicitly regulated under Labour Code if they are not governed by the mandatory provisions of labour law (Art. 240).

**Scope of collective labour agreements does apply to employees and not to self-employed people. Self-employed people are not covered by any provisions offered by Labour Code.**

Therefore, is it unclear what is the scope of collective labour agreements that can cover self-employed people, especially considering entry level provisions for further negotiation.<sup>741</sup> This is the core issue with ability of the self-employed people to benefit from unionisation and collective bargaining: in theory, they can be covered by the collective bargaining, while in practice the law (Labour Code) does not recognise their specific situation on the labour market.

The Article 22 of the Labour Code allows to question self-employment based on the premise that self-employed is false. This can be done by submitting the case to the Labour Court, and further to higher instances if needed. Importantly, as one of our interviewees claims this is a long, difficult, and overall ineffective process<sup>742</sup>. Another interviewee stressed that most cases are submitted by pregnant women, under false- self-employment who due to self-employment status are unable to enjoy maternity benefits.

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<sup>739</sup> Interview 6

<sup>740</sup> Interview 6

<sup>741</sup> Interview 6

<sup>742</sup> Interview 2

<sup>743</sup> Interview 1

As self-employed people can be part of the collective bargaining it interacts with the competition law. This is due the fact that equally self-employed people fall under the category of entrepreneurs. This is regulated under *Act on Competition and Consumer Protection from 2007*. The Section II, Chapter 1, Article 6 that reads that all the agreements between entrepreneurs that violate the freedom of competition are prohibited. The article further specifies scope of the prohibited agreements that shall not involve issues like: fixing the prices and other conditions for the purchase or sale of goods; limiting or controlling production or sales; the use of onerous or non-uniform terms and conditions of contracts in similar contracts with third parties; making the conclusion of the contract conditional on the acceptance or performance by the other party of a different performance; limiting access to the market or eliminating from the market entrepreneurs not covered by the agreement; agreeing by entrepreneurs joining the tender or by these entrepreneurs and the entrepreneur the terms of the offers submitted, in particular the scope of work or the price.

Consequently, collective bargaining and collective agreements could be interpreted as the form of the unlawful agreements between entrepreneurs. Especially, while comparing the scope of the collective agreements it could be seen that issues covered by collective agreements like pay are conflicted with parallel category of price within the competition law. To avoid collision of the collective bargaining and competition law exemption from the prohibition of competition in case of self-employed people under certain types of agreements could be applied. Such an exemption is possible, and it is regulated under *Act on Competition and Consumer Protection from 2007 in the Art. 8. 4).*<sup>3</sup> that gives Ministry of Councils the right to exclude certain types of agreements from the regulations under Article 6 of the same act. Such an exemption should specify the conditions that must be met for the agreement to be considered exempt from the prohibition as well as period of validity of the exemption and the scope of exempted agreements.

### Labour market trends and other factors

The question of how self-employed should be approached (or categorised) has been in fact a subject of a debate, including a parliamentary one. The recent legal and policy developments point toward a certain type of dichotomic (binary) thinking where self-employed are considered either as entrepreneurs or employees. In case of Poland, legislative approach to the issues has been characterised as some sort of 'split personality' approach (Cieslik, 2019). Mainly, on the one hand, without doubt the Entrepreneurs Act (2018) states that self-employed running a business are considered entrepreneurs. At the same time, the 2018 Labour Unions Act novelisation by opening the flanks of trade unions and collective bargaining to the self-employed 'pulls them' towards the definition of employees (introducing a definition of 'persons carrying out income generating activities'). Lastly, they fall under the definition of in the entrepreneur of the Act on Competition and Consumer Protection from 2007 that further broadens the definition in Section 1, Art. 4. 1). b) which reads that entrepreneur "is a natural person practicing a profession on his own behalf and for his own account or operating within the framework of practice such a profession".

This binary situation has provoked a debate about a need to regulate the position of self-employed as something between entrepreneurship and employment (Cieslik, 2019)<sup>744</sup>. Part of the solution would address the position of highly qualified self-employed who choose to build working relations in such way (so not being forced into self-employment). At the same time, such regulation of the status of self-employed working for one employer (the so-called 'false' employment) would run the risk of enhancing the phenomenon and legitimising it (Cieslik, 2019). The debate however is characterised by 'ideological dimension', where promotion of entrepreneurship and own-account working has been considered as 'ideal capitalist model', contrary to the reminiscence of the Poland's socialist past (Cieslik, 2019). Such ideological placement of promotion of self-employment led to introduction of social security benefits and tax incentives promoting self-employment, based on the notion that setting up of one or two-person micro businesses will in long term lead to business growth and employment of more people (countering unemployment and creating new jobs). The assumption has been partially verified by an empirical research carried out in Warsaw between 2015 and 2018, which revealed that two thirds of people

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<sup>744</sup> Also, Interview 1, Interview 4

launching of start-ups do not plan to grow and expand. The remaining ones tend to be overoptimistic in this regard (Cieslik, 2019).

There is a growing sense of poor social protection and regulation of the platform working and the fact that the current system is unable to effectively ensure just and legal labour in this domain<sup>745</sup>. Over the 2020 there has been debate and attempts to better regulate Uber and transportation uber-like companies. This organised within so-called 'Uber lex'. This regulation was aimed introduction the obligation of requiring special licence by drivers and well as the requirement of having cash registers in vehicles. Despite several attempts this initiative so far has not been finalised (Kolodziej, 2021). In case of implementing such a regulation this can contribute to decrease in the number of platform workers at Uber-like companies.

There is a general understanding that the current system does not encourage social security net for the self-employed who are not covered by the social benefits payments by their employees/clients, and they are not obliged to pay their own retirement fund contributions. Effectively, self-employed tend to reduce current expenses and forgo retirement funds. This thinking is enhanced by various tax and benefits reductions offered to newly self-employed (including 6-months period of not paying social benefits, reduced charges after it), which promote immediate financial gain at the expense of long-term planning and considering retirement<sup>746</sup>.

Employed people need to pay income tax at the level 18% or 32% while self-employed people need to pay 19% income tax. However, self-employed person may be granted several payment reliefs, mostly in the social security dues. There is so called 'start relief' that allows 6-month waiver from social security payment. Then, 'maly ZUS' allows to pay substantially lower social security dues during period of another 2 years. Finally, there is a third relief called 'maly ZUS II' that equally allows to pay lower social security dues provided that the specified amount of revenue is not exceeded. Therefore, in the best scenario, self-employed person can secure social security payment relief in the period of 5,5 years. At the same time employed people need to pay social security dues at the rate of 28,4% and the payment is divided between employer and employee. This creates especially strong incentive for high- income people to change regular employment relations to self-employment. (Cieslik, 2019) Additionally, self-employment tends to be found as financially attractive among younger people who have no or little trust in state pension system, therefore, are unwilling to pay social security dues (Owczarek, 2020)

The issue of collective bargaining of self-employed has been largely absent in the public domain, although interviews conducted for this study indicate that the issue has been on the agenda of involved parties (parts to the Social Dialogue representing government, employers and social partners)<sup>747</sup>.

There has been a project of project of 'entrepreneurial test' proposed by the Ministry of Finances. It assumes that National Tax Office could conduct the examination, based on tracking the invoices, under suspicion of false self-employment. In case of proving right National Tax Office would automatically covert self-employment into regular working conditions (Bartman, 2020). Additionally, in 2020 there has public debate on possible changes to self-employment within, then upcoming, novelisation of the Labour Code. Propositions included either some form of banning of the self-employment or introducing new category of 'self-employment in economic dependency'. This new category was aimed at involving people working for one contractor for at least 21 hours through at least 182 days. This was aimed at extending catalogue of working rights towards people possibly found in false self-employment (Biskupski, 2020) In the end, none of these changes were introduced.

While no specific legislative projects have been identified, analysis of literature and interviews signal that reduction or elimination of privileges offered to the self-employment in the first three years of business operation could help counter the phenomenon of 'false employment' or poor consciousness about short-sightedness of not paying full benefits contributions. As such, the model of 'false employment' would become less attractive to both sides and ensuring full payment of all the benefits

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<sup>745</sup> Interview 1, 4, 6

<sup>746</sup> Interview 6

<sup>747</sup> Interviews 4,5,6

would strengthen social insurance of the persons (their retirement pension). COVID- 19 highlighted vulnerability of self-employed people, as poor social security exposed them to negative impacts of the economic crisis. This has been addressed by Polish government via so called 'anti-crisis shield/ financial shield". First, in April 2020 it offered three months temporary exemptions from social security dues and was directed at solo self-employed persons and microenterprises (up to 9 people) (Eurofound, 2020a). Further, since 2021 Financial Shield 2.0 was introduced as the follow- up to previous support. This offers further subsidies, and the level of the support is granted upon the decrease of revenue. This is again provided for solo self-employed and enterprises up to 9 people and includes chosen entities operating in the following sectors: wholesale and retail, transportation and storage, accommodation and food services, information and communication, professional, scientific and technical activities, administrative and support services, education, human health and social work, arts, entertainment and recreation (Eurofound, 2020b).

Despite low social security of self-employed, several sources (Forsal, 2020; Ratajczak, 2020; Chądzyński and Osiecki,2020; Slowik, 2021) indicate that self-employment in Poland can further increased due to legislative and policy changes as the response to COVID-19 pandemic. This prognosis is based on initial analysis of the data from National Institute of Social Security and Labour Offices which shows increase in the self-employment due to lowering the social security payments for self-employed as well as governmental programmes providing non-refundable grants for people entering self-employment as part of countering pandemic. These findings, however, should be analysed considering the lack of significant unemployment increase despite numerous businesses struggles in times of pandemic. Therefore, some experts imply that anticipated increase in self-employment can be rather forced by employers than voluntarily chosen by prospective self-employed (Forsal, 2020; Ratajczak, 2020; Chądzyński and Osiecki,2020; Slowik, 2021).

The latest report of GUS shows that COVID-19 had an impact on the level of self-employment (while considering both own-account workers and self-employed employing other people). In the in the fourth quarter of 2020 the number of people on atypical contracts decreased while the overall number of all self-employment increased. This shift from atypical form to self-employment allows to suspect that the vast majority of self-employment concerns false own-account workers (Rozwadowska, 2021). Apart from beforementioned social security payment waiver and non-refundable grants for newly self-employed people, the parliament is currently discussing the idea of the 'vacation' for own-account workers who have been performing their activity continuously for at least 6 months. This is aimed at supporting self-employed people who may lose financial liquidity due to the pandemic, however, if in place, this can further support the increase the false self-employment and further strengthen binary status of self-employed people considered both as entrepreneurs and workers (Rozwadowska, 2021; Szewiła 2021).

Questions on the beneficial nature of self-employment arise due to pandemic. LOT- national flight carrier included interesting changes due to pandemic- both including self-employment and collective bargaining. LOT as the response to COVID-19 started to negotiate layoffs within collective bargaining. Interestingly, these layoffs include 200 contacted employees and not a single self-employed person. (Karpieszuk, 2021). After the layoff, further 80 contracts of self-employed staff were suspended, leaving these employees without income. Now they are calling upon government to include their activity into so called 'financial shield' and provide them with financial support as they became income-less. (Łakomski, 2021) On the other hand, the case study of Glovo platform workers shows that Glovo food couriers perceived their job as a good option during the pandemic. As expressed by the participants, the platform job allowed them to stay afloat for those who unexpectedly lost their income due to pandemic (Polkowska, 2021).

## Conclusions

Since 2018 the self-employed people are entitled to join collective bargaining, however, still little information on how collective bargaining for self-employed people works in practice is available. Importantly, collective bargaining is available only for own-account workers, people who are self-employed and not employ other people. Following years should bring more perspectives on that,

especially as first collective bargaining cases involving collective bargaining are ongoing. Additionally, following years should bring more insight to the extent to which collective labour agreements involving self-employed people, indeed, collides with competition law and whether this can effectively pose a barrier to collective bargaining for self-employed people.

From the legal point of view, it is not still clear whether self-employed platform workers are able to participate in the collective bargaining, one obstacle is the difficulty is establishing the employer-employee relation.<sup>748</sup> On the one hand, employer position of the platform is difficult to prove in the first place, especially as platform companies themselves tend to claim that they operate as interconnector between customers and individual contactors.<sup>749</sup> On the other hand, the platform workers situation is also unclear as not all of them are self-employed. Some of them work on other forms of atypical contracts but these people are also able to join collective bargaining. However, part of the platform workers is employed via employment agencies which effectively disables them to prove direct employment relationship with chosen platform.<sup>750</sup> However, some of our interviewees claim that in case of workers directly cooperating with the platform the employee-employer relationship is possible to prove, however, it may be long and difficult process.<sup>751</sup>

Additionally, the factual ability of self-employed people to join collective bargaining is another issue. Self-employed people are not granted individual working rights within Labour Code, and thus, are not entitled to issue like paid leave, sick leave or regulated working time. Therefore, the question persists to what extent these issues could be covered in the collective labour agreement in the first place.<sup>752</sup>

Finally, the question of overall effectivity of collective bargaining in Poland arises. Both the unionisation level and coverage of collective bargaining agreements is not spectacular and tends to decrease over time. Due to the low popularity of both multi-employer and single employer collective labour agreements the internal work regulations tend to be the predominant form of regulating working issues like pay or working conditions. These are created by each employer individually and they should be consulted with trade unions if these exist in chosen establishment. However, it is unilateral tool that indeed shall be consulted with workers, but it does not provide a space to properly accommodate workers' perspective.<sup>753</sup>

## Interviews

Name of interviewee	Organisation
1. Lesław Nawacki	Commissioner for Human Rights
2. Krzysztof Baran	Jagiellonian University
3. (requested full anonymity)	National Regulatory Body
4. Małgorzata Chomiak	Ministry of Development, Labour and Technology
5. Karolina Woźniczko	Ministry of Development, Labour and Technology
6. Marcin Zieleniecki	Solidarity Trade Union

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<sup>748</sup> Interview 1

<sup>749</sup> Interview 3

<sup>750</sup> Interview 3

<sup>751</sup> Interview 2

<sup>752</sup> Interview 6

<sup>753</sup> Interview 6

[kodeksie-pracy-solidarnosc-chce-konca-smieciowek-i-pozorowanego-samozatrudnienia-6503334664484481a.html](https://kodeksie-pracy-solidarnosc-chce-konca-smieciowek-i-pozorowanego-samozatrudnienia-6503334664484481a.html)

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# Portugal

## Background information

In 2020, 16.4 % of the active labour force in Portugal is self-employed, with 4.6% being an employer and 11.8% working as a solo-self-employed. The rate of self-employment in Portugal has been steadily dropping for the past 10 years for both categories, from 22.2% of active population in 2010<sup>754</sup>. This is partly explained by the reduction of the agricultural sector in Portugal over the same period in which a lot of self-employed were active in. The average self-employed worker in Portugal is usually male, with low educational attainment (secondary level or lower) and working on the following sectors by order of importance:

- Agriculture, animal production, hunting, forestry and fishing (71% of employees)
- Real state (36% of employees)
- Consultancy and other technical/scientific sectors (29% of employees)
- Construction (21% of employees)
- Services and Commerce (27.4% of employees)
- Tourism and Catering (20.3% of employees)
- Arts and Sports (19.6% of employees)

There is a high level of self-employment among the 65+ years olds (71% of the employed population) which can be explained by the number of self-employed in the Agricultural and fisheries sector (71.5% of employees in the sector).<sup>755</sup>The most common professions for self-employed in Portugal are, by order of importance:

- Farmers and other technical staff related to the agricultural sector
- Directors and managers
- Administrative personnel
- Qualified Industrial and Construction workers

The reasons for self-employment in Portugal are varied and include the following<sup>756</sup>:

- 14% a good opportunity to work as a self-employed showed up
- 13.3% could not find a normal work situation
- 12.9% took this path to join a family business
- 10% started this since it is an usual practice in sector
- 3% due to flexible work schedule
- 0.5% due to employer's pressure
- 5% did not want or planned to become one but did it for the reasons listed above
- 12% other reasons

<sup>754</sup>[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](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)

<sup>755</sup>[https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine\\_estudos&ESTUDOSest\\_boui=315734796&ESTUDOSmodo=2](https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_estudos&ESTUDOSest_boui=315734796&ESTUDOSmodo=2)

<sup>756</sup> Ibid

For the case of solo self-employed, a 2018 study from the National Statistics Office<sup>757</sup> found out that the main reason for solo self-employment was for 41.6% of respondents the lack of enough work to justify an employee, the desire to work alone for 7.8% of respondents and for 6.6% the high cost of hiring employees. Other reasons cited was the impossibility of having employees for the profession they worked in or the preference of some clients for having a personalised approach to the work delivered.

As it will be discussed further down in this report, the issue of false employment and vulnerable self-employed ( 'falsos recibos verdes' in Portuguese) has been a hot political topic in Portugal for the past 10 years, with a lot of action and debate on how to actively fight against the practice and protect the rights of workers. **Nevertheless, finding precise statistical data on the number of self-employed in this situation has been difficult.** The interview with *Precarios Inflexiveis* confirmed that indeed data on the topic is very difficult to find and that official government sources are scarce and non-public (ie. number of complaints to the labour authorities for false self-employment). They mentioned that several sectors have been badly affected by labour market precariousness, namely lawyers, journalists, nurses, culture, designers, architects, tourism and state workers.

**For the situation of platform work in Portugal, there is a general lack of information and hard evidence on who are the platforms active in the country, what is the general profile of self-employed engaged with these platforms and the type of work provided.** The only solid source of evidence found was the COLLEEM (Collaborative Economy) research project survey<sup>758</sup> which included Portugal as one of the 14 countries in the sample.

According to the study, **Portugal ranked in the third highest position amongst the 14 countries covered by the survey, with 10.6% of the total adult population in the country engaged in platform work.** It was clear from the study that platform work as a main activity is still not very common in the country with less than 2% of respondents declaring PW to be their main activity. Nonetheless, around 9% of respondents declared to occasionally or frequently engage with platform work and 4% signalled that they got significant income from platform work (over 50% of their income), showing the importance of this type of work for some groups of workers.

In terms of profile, platform workers are on average younger and higher educated than the average working population, but it seems that there is not major differences in terms of gender, with as many women as men spend at least 10 hours working on platforms or earn at least 25% of their income through platform work.<sup>759</sup> In terms of tasks performed, Portugal seems to have a balance between digitally performed services (micro tasks, clerical and data entry, etc.- 10% of all services provided) and services performed on-location (i.e. transport, delivery, housekeeping, etc. – 11% of all services provided) but there are tasks that are clearly more women dominated (ie. location, ancillary services, and translation) and others more male dominated (ie. software and transportation). The breakdown of the most common type of platform services in Portugal is as follows:

- Online clerical and data-entry tasks - 45%
- Online creative and multimedia work - 39%
- Online professional services - 35%
- Online sales and marketing support work - 35%
- Online writing and translation work - 30%
- Online micro tasks (e.g. object classification, tagging, content review, website feedback and similar) - 28%

<sup>757</sup> Torres, Raposo (2018), O trabalho por conta própria em Portugal, INE, [https://iefp.eapn.pt/docs/EDE5\\_Trabalho\\_por\\_conta\\_prpria.pdf](https://iefp.eapn.pt/docs/EDE5_Trabalho_por_conta_prpria.pdf)

<sup>758</sup> <https://ec.europa.eu/jrc/en/colleem>

<sup>759</sup>

[https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157\\_pubsy\\_platform\\_workers\\_in\\_europe\\_science\\_f\\_or\\_policy.pdf](https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157_pubsy_platform_workers_in_europe_science_f_or_policy.pdf)

- Online software development and technology work - 25%
- Transportation and delivery services - 27%
- Interactive services (e.g. language teaching, interactive online lessons, interactive consultations and similar) - 20%
- On-location services (e.g. housekeeping, beauty services, on-location photography services and similar) - 15%
- On-location ancillary services (e.g. housekeeping, cleaning) specifically to short-term rental accommodation (i.e. apartments listed on Airbnb and similar) - 10%

The majority of platform workers in Portugal are dedicated to one of the above-described tasks but in some cases, they can be active in two or more of these tasks but it is not common.

### Collective bargaining framework

According to Ramalho (2013)<sup>760</sup>, Portuguese labour law relies mostly on legal provisions but also on collective agreements concluded between the employers' associations (or the employers per se) and the trade unions, as representatives of the employees. **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 – but the main source of labour rights has been the Portuguese Constitution of 1976 with its complete catalogue of fundamental workers' rights related to employment contracts and industrial relations (Articles 53 and ff.).

In relation to employment rights, the Portuguese Constitution grants free access to a job or profession and rights to good working conditions, equal pay, a balanced reconciliation of family and working life, annual paid holidays, and protection against unfair dismissal and in involuntary unemployment. As regards industrial relations, the Constitution guarantees the freedom to create trade unions and workers' councils, collective bargaining rights and the right to strike. Finally, concerning social security, the Constitution confers social protection in old age or invalidity and in cases of accidents or illnesses related to work.

This said, the collective bargaining still plays a relevant role in Portugal today in regulating the employment relationship albeit at a lower level than before the 2011 financial crisis. The predominant type of collective bargaining agreement is sectoral agreements (*Contratos Coletivos 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<sup>761</sup> (*Acordos Coletivos* in Portuguese – 16% of all agreements in 2016)<sup>762</sup>. The usual elements covered by these agreements are as follows:

- Salary;
- Holidays;
- Trainings
- Rules of safety, hygiene and health at work;
- Rights and duties of both parties;
- Means of resolving disputes and conflicts.

As mentioned above, these agreements are only binding for the parties signing it in Portugal (representatives of companies and trade unions) and are not automatically extended to non-unionised workers, but the Portuguese Government can extend these to all workers if one of the negotiating

<sup>760</sup> Working Paper n° 53, Portuguese labour law and industrial relations during the crisis, ILO (2013)

<sup>761</sup> ie collective agreements established between a group of individual companies/entities and the trade unions.

<sup>762</sup> DGERT, Livro verde sobre as Relações laborais (2016)

parties requests it and the party represents 50% of employees (or 30% if coming from an SME representative)<sup>763</sup>. By law, the only parties authorised to negotiate collective agreements are companies, employers' representatives and trade unions but there are some rare cases of worker councils successfully negotiating atypical company level agreements without intervention of trade unions as it happened in AutoEuropa Volkswagen plant in 2018<sup>764</sup>. According to Ramalho (2013) these atypical collective agreements tend to be more flexible than the top-level agreements in areas such as working time (for instance, flexible working-time arrangements that are not prescribed by law), remuneration (more flexible schemes), and response to the economic crisis (putting in practice alternatives to lay-offs)

In terms of distribution of collective agreements in Portugal, the sectors in which they are more common are Industry (20 agreements), Transportation and Teamsters (12 agreements), Health care and social support (9 agreements), Agriculture and Fisheries (6 agreements) and Tourism (5 agreements). Some sectors with a high level of self-employment such as construction, IT and communication and administration also have some agreements, but they are less common than in other sectors. Nevertheless, it must be said that the number of collective agreements has been steadily falling since 1995, from more than 200 to just 76 in 2016. The rate of unionisation in Portugal has been as well sharply dropping over the same period from 26% in 1995 to around 15% in 2018.

Companies in Portugal are in their majority (95%) micro-size companies (with less than 10 workers) with only 3.3% being small and 0.5% medium-sized companies. Large companies are a rare sight in the Portuguese economic landscape. They are usually represented by employers' associations (384 registered) organised around 9 main confederations:

- CIP – Empresarial de Portugal; **(Large Companies)**
- CCP – Confederação do Comércio e Serviços de Portugal; **(Services and Commerce)**
- CAP – Confederação dos Agricultores de Portugal; **(Agriculture)**
- CTP – Confederação do Turismo Português; **(Tourism)**
- CNA – Confederação Nacional da Agricultura; **(Agriculture)**
- CPPME – Confederação Portuguesa das Micro, Pequenas e Médias Empresas; **(SME)**
- CPCI – Confederação Portuguesa da Construção e do Imobiliário; **(Construction and Real State)**
- CSP – Confederação de Empregadores dos Serviços de Portugal; **(Services)**
- CNEF – Confederação Nacional da Educação e Formação. **(Education and Training)**

Of these 9, only the CAP, a CCP, a CIP e a CTP have a seat at the Social Economic Committee (CES) and the Permanent Commission for Social Dialogue (CPCS). For trade unions, the panorama is also very fragmented with almost 377 different trade unions organised around 6 large confederations:

- CGTP/IN – Confederação Geral Dos Trabalhadores Portugueses – Intersindical Nacional **(Left-Wing)**
- UGT – União Geral De Trabalhadores **(Center-Left)**
- Conf-Quadros – Confederação Portuguesa De Quadros Técnicos E Científicos **(Technical and Scientific Professions)**
- CGSI – Confederação Geral De Sindicatos Independentes **(Centre)**
- USI – União Dos Sindicatos Independentes **(Centre)**

<sup>763</sup> <http://www.oecd.org/employment/emp/collective-bargaining-Portugal.pdf>

<sup>764</sup> <https://www.publico.pt/2019/11/18/economia/noticia/autoeuropa-bate-recorde-producao-mes-meio-fim-ano-1894177>

- FESMARPOR – Confederação Dos Sindicatos Marítimos E Portuários (**Sea and Dock Workers**)

Of these 5, only the CGTP/IN and the UGT have a seat at the Social Economic Committee (CES) and the Permanent Commission for Social Dialogue (CPCS).

**While there is no specific law that prevents independent workers from joining and/or creating trade unions, the interview with *Precarios Inflexiveis* highlighted that trade union membership among self-employed is usually low in Portugal because the statutes of trade unions do not usually allow them to join the unions, or when they do join, they do not enjoy the same rights as regular workers.** For example, self-employed are not covered by collective bargaining agreement since they are not considered to be working in the sector but as externals. Nonetheless, there are trade unions that have made changes to their statutes to include some level of self-employed representation such as CENA-STE which represents workers in the cultural and creative sector and *Sindicato Dos Jornalistas* for journalists and other workers in the sector. Both these sectors are heavily reliant on self-employed, so unions felt that they had no choice in extending their membership to them in order to be representative. The researcher has not been able to confirm this situation though an interview with the Trade unions in question.

In Portugal, the self-employed can be part of a chamber of commerce and professional chambers (including those of a wide range of liberal professions, ranging from doctors to economists). Some of these have voluntary membership, and others are obligatory. They give assistance regarding training, enrolment on the correct register, ethical codes and so on, but do not have a specific role in social dialogue. Other kinds of associations catering for the needs of atypical workers or self-employed in need of protection have also appeared in recent years such as *Associação de Combate à Precariedade* which focus on fighting against false-employment. Desk research also found some associations such as *Sindicato Motoristas TVDE Portugal* which aims at defending the rights of platform workers working in transportation but not much information about their actions was found.

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 self-employed workers 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.

### Legal framework

*Main relevant legislative provisions: Labour Code, Art. 10, Law No. 101 of 8 September 2009*

**In Portugal, employment relationships are built on a ‘presumption of employment’. There is no official definition of self-employment in the legal code – by law, being self-employed is understood as an exception to the norm, which is to be an employee.**

Several criteria apply to characterise subordinate employment and only if these are not met is the situation considered to be self-employment. The criteria in the Labour code (Articles 11–12) are:

- if the worker does not own the place of work or the equipment used;
- if the worker does not have control over his/her own working schedule;
- if the worker is not paid a steady, periodic amount;
- if the worker does not perform a leadership function in the organisation;

**The status of economically dependent worker has been defined in respect of the ‘amount of the total value of the worker’s yearly activity one collective entity benefits from’.** When this amount is at least 80%, then the worker is considered economically dependent on the collective entity. One of the reasons for this is to include economically dependent workers in social protection and unemployment benefit regulations. Since 2011, the employer/collective entity is required to pay a contribution to the worker’s social security scheme if benefiting from 80% or more of the worker’s yearly

activity. In 2012, unemployment benefits were extended to cover economically dependent workers, while other self-employed workers have benefited only since 2013.

**No direct laws were created regarding the right or extension of collective bargaining agreements to self-employed as far as the author knows** but, according to the interview with Precarios Inflexiveis, the idea of **extending collective bargaining agreements to outsourced workers has been discussed by the government very recently but not approved**<sup>765</sup>.

For platform workers, Portugal made some interesting strides on to defend the rights of self-employed working for transport related platforms (such as Uber or Lyft). In 2016, the entry of a ride-hailing company and other electronic platforms that provide intermediation services between drivers who offer Individual Paid Transport of Passengers with Unmarked Vehicles provoked major protests of the traditional taxi operators that resulted in negotiations between the government and the entrepreneurial associations of taxi operators to prevent unfair competition from these new market players. In August 2018, the national Parliament approved the Law 454/2018 that introduces a specific regulation for the transport of passengers by platform workers (TVDE – Individual Paid Transport of Passengers with Unmarked Vehicles). The Law 45/2018 created the legal figure of the TVDE-operator as the sole entity that entitled to hire TVDE-drivers, thus functioning as a kind 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 remits 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 him/her under the law. According to *Precarios Inflexiveis*, this status does not cover any other platform workers in Portugal.

It should be noted that 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).

In January 2020, the State Secretary of Labour announced plans to produce a Green Paper on the Future of Work this year “so that Portugal can align itself with the countries that are managing to regulate the new forms of work”. It is expected that the Green Paper will be presented at the beginning of 2021 and that it will contribute to the legal clarification of the status of platform workers (dependent vs. independent).

Another interesting legislative process was the Law 63/2013 (27 August 2013) so called ‘Law against False Self-Employment’ which reinforced the mechanism for the Authority of Labour Conditions (ACT) to verification of improper use of the service contract, as well as a new special action in the Code of Labor Procedure (CPT), called “Action for recognition of the existence of an employment contract,” whose proposition is the responsibility of the Public Prosecutor’s Office, of an urgent nature and relieving the worker of the procedural initiative. Two distinct but complementary procedures were established. On the one hand, and as mentioned above, an administrative procedure within the competence of the ACT that aims at the voluntary regularisation by the employer when there is an illegal recourse to the provision of services. On the other hand, in case such regularisation does not occur, the ACT refers the process to the Public Prosecutor’s Office to propose the respective judicial action. False self-employment is now punishable as a very serious administrative offence. This law is the result of an intense campaign by self-employed in need of protection, mainly through the *Associação de Combate à Precariedade*, that pushed the government to adopt stronger measures to protect workers against the situation of false self-employment.

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<sup>765</sup> <https://www.publico.pt/2020/10/02/economia/noticia/trabalhadores-subcontratados-passam-abrangidos-contratos-colectivos-193380>

## Labour market trends and other factors

During the past two decades, precarious work has become a major public concern in Portugal, and governments have made increasing efforts to preserve the dominance of regular employment relations on the labour market. During the years of the adjustment programme (2011-2014) that resulted from the Memorandum of Understanding between the Troika (ECB, EC and IMF) and the Portuguese government, the conditions for the continuation of these efforts were not favourable, with numerous attempts to change the Labour Code to 'bring flexibility to the labour market' including revising the role of collective bargaining agreements in the establishment of employment relations in the country. The measures proposed at the time can be classified around 4 main objectives<sup>766</sup>:

- **Reduce the costs associated with employment contracts** with measures such as the reductions in severance and overtime pay and the prohibition on increasing the minimum wage.
- **Increasing the flexibility of the legal system** by reducing the measures on dismissal on the grounds of the worker's unsuitability, the elimination of work positions and enlarging schemes that were already in place (for instance, the measures that enlarged flexible working-time arrangements).
- **Relaunch collective bargaining and collective agreements under a new framework**, with the limits imposed on the administrative extension of collective agreements, facilitating the replacement of collective agreements and more decentralised approach to the system by allowing workers' councils as a counterpart in collective agreements at plant level
- **Implement active labour policies** to promote the employment of specific groups like the youth and the long-term unemployed by, for example, changing the unemployment benefits legislation to force unemployed people to be more active in searching for new jobs.

Many of these measures were implemented through different changes of the Labour Code and are still in vigour but not all of them stayed in their original form after the change of government (right wing to left-wing) in 2015 and, particularly, the great importance of the issue in public opinion and the population's enormous sympathy with the struggle for stable employment relations. It was during the Troika-years that the associations of precarious workers (who are relatively weak organisations) were able to promote the largest mass demonstrations since the revolution in 1974-75. Nevertheless, the measures implemented during the Troika years showed a marked preference for a more loose and unstable work relationship than was in vigour in Portugal before the crisis and contributed to the great increase in part-time work, false self-employment and precarious work contracts we saw during the last 10 years<sup>767</sup>. As mentioned before, the crisis promotes the emergence of several organisations dedicated to fight against precariousness and the issue of false-self-employment was (and still is) a major political issue even after the passing of Law 63/2013. The issue of collective bargaining for self-employed is, as far the researcher knows, not a main claim of these organisations and is not mentioned as a solution for these issues, even related to platform work.

The last 10 years also saw a lot of legal changes that increased the rights and protections of dependent self-employed in Portugal, particularly regarding access to social security and unemployment benefits.

- **Extending unemployment benefits to self-employed workers (Decree-Law 65/2012)**- The coverage of unemployment benefits was extended to "economically dependent independent workers" (*trabalhadores independentes economicamente dependentes*) who provide a majority of their services to a contracting entity that provided that more than 50% of the total annual income of the self-employed activity (which also determines a mandatory contribution on the part of said contracting entity to the Social Security). Self-employed workers who are not considered as economically dependent still do not have access to unemployment benefits.

<sup>766</sup> Working Paper n° 53, Portuguese labour law and industrial relations during the crisis, ILO (2013)

<sup>767</sup> [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/587285/IPOL\\_STU\(2016\)587285\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/587285/IPOL_STU(2016)587285_EN.pdf)

- **Effective inclusion of independent workers into the public social security scheme (Decree-Law 2/2018)** - In January 2018, the Portuguese government approved the Decree-Law 2/2018 (DL 2/2018) that changes the contributive regime of the public social security for independent workers. The new regime introduced in 2018 obliges all independent workers with very few exceptions to declare their income for each quarter of the year and must pay during the month following the trimester the respective contribution. The monthly contributive chargeable corresponds to a third of the relevant income detected in each declarative period for a contribution rate of 21.4%. The new regime entitles independent workers to receive social benefits in case of maternity and paternity, unemployment and sick leave. The higher contributions of independent workers do also increase the old age pension they are entitled to receive when they reach retirement age.

In terms of taxation and advantages that might lead to more people wanting to become self-employed, there is nothing in the current research that points to specific incentives to become one in Portugal. As mentioned above, the reason for self-employment seems to be more related to personal preference, the sector the person works in and the lack of opportunity to find regular employment in the sector. Regarding platform workers, the interview with *Precarios Inflexiveis* highlighted that platform work is predominantly done in Portugal by immigrant workers who do not have access to regular work for several reasons going from language to legal status. This forces them to use platform work to earn a living but also means that platform workers are a particular vulnerable group that need protection. Regarding COVID-19, the situation for platform works and self-employed became very difficult, with access to work severely reduced and access to governmental support being erratic and not clearly communicated to self-employed.

## Conclusions

The law does not explicitly forbid collective bargaining for self-employed workers, but they 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 to collectively bargain.

Collective bargaining agreement does not seem to be the preferred solution for self-employed to improve their working conditions. They are not common in the country (restricted to big industries) and recognition and fighting against false self-employment through regularisation of working relationships through a contract seems to be for stakeholders the best solution at hand.

## Interviews

<b>Name of interviewee</b>	<b>Organisation</b>
1. <i>Mafalda Brilhante e Daniel Carapau</i>	<i>Associação de Combate à Precariedade</i>
2. <b>Inês Avelar, João Cardoso Pereira, Marta Rocha, Sónia Moura - AdC</b>	Autoridade da Concorrência (AdC)

# Romania

## Background information

The most recent statistical numbers related to self-employed workers in Romania are presented in the “Monthly Statistical Bulletin” for the month of October 2020 by the National Institute of Statistics (Institutul National de Statistica – INS).<sup>768</sup> The bulletin covers the first three quarters of 2020 in terms of employment, by status of employment (employees vs. self-employed) and by activity sectors. According to it, in Q3 of 2020, **Romania had 1.800.200 self-employed workers, out of 8.482.700 employed persons (21.22%).**<sup>769</sup> According to the methodological note of the bulletin, self-employed are “the persons who are the sole owners or co-owners of an enterprise without legal personality, where they work. This category includes: unpaid family workers, including those working in unincorporated enterprises involved in market production, home workers whose income depends on the value of the products resulting from the production process and workers who carry out either individually or collectively production activities entirely meant for their own final consumption or own capital formation”.<sup>770</sup>

In terms of reports covering a full year, the latest such work available is the 2020 report of the National Institute of Statistics “Labour force in Romania – Employment and unemployment the year 2019”.<sup>771</sup> According to it, in 2019, Romania accounted for around 1.354.000 self-employed workers, or 15.6% out of the total 8.680.000 employed population. Most of the self-employed workers were men (19.6% out of the total employed population, in comparison to 10.2% represented by women) and were living mostly in the rural area of Romania (29.0% out of the total employed population, in comparison to 4.7% living in the urban area).

Employment distribution by gender and urban/rural area, by status in employment, in 2019

	Total	Men	Women	Urban	Rural
<b>TOTAL EMPLOYMENT</b> (thousand persons)	<b>8680</b>	<b>4958</b>	<b>3722</b>	<b>4783</b>	<b>3897</b>
	- in % as against total -				
Employee	75.8	74.5	77.5	93.3	54.3
Employer	1.1	1.6	0.6	1.4	0.8
Self-employed	15.6	19.6	10.2	4.7	29.0
Contributing family worker	7.5	4.3	11.7	0.6	15.9

Figure 30 – Employment distribution by status in employment in Romania, 2019. Source: Labour force in Romania – Employment and unemployment the year 2019, p. 33

It is important to mention that for the methodology of the survey, a self-employed person was understood as a person who carries out their activity in their own unit or in individual business, hiring no employee, being helped or not by contributing family members.<sup>772</sup> In concrete terms, this status includes “entrepreneurs (peddlers, coaches, women taking care of children, carters, private taxi-drivers etc.), free-lancers (strolling musicians, fine artists, lawyers), occasional day-workers, holders of

<sup>768</sup> Ibid, p. 190.

<sup>769</sup> Institutul National de Statistica, “Monthly Statistical Bulletin – 10”, p. 137, available at [https://insse.ro/cms/sites/default/files/field/publicatii/buletin\\_statistic\\_lunar\\_nr10\\_2020\\_0.pdf](https://insse.ro/cms/sites/default/files/field/publicatii/buletin_statistic_lunar_nr10_2020_0.pdf), last accessed on 11.02.2021.

<sup>770</sup> Ibid, p. 190.

<sup>771</sup> 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](https://insse.ro/cms/sites/default/files/field/publicatii/labour_force_in_romania_2019_0.pdf), last accessed on 11.02.2021.

<sup>772</sup> Ibid, p. 14.

management or franchise contracts who do not use employees, individual farmers or those who work in agricultural associations”.<sup>773</sup>

In comparison with the numbers presented in the previous annual labour force reports, in 2018 self-employed workers represented 16.3% out of the total employed population (or around 1.416.307)<sup>774</sup> while in 2017 they represented 17.1% (or around 1.482.741).<sup>775</sup> This would show that while the proportion of self-employed workers was kept constantly over a 15% threshold, there is a descending trend between 2017 and 2019.

**According to the INS’s October bulletin, the majority of self-employed workers work in the “Agriculture, forestry and fishing sector” – 1.423.800<sup>776</sup> out of a total of 1.800.200 self-employed workers for Q3 of 2020 (79%).** This sector is followed by the “construction” sector, where we have 184.600<sup>777</sup> self-employed workers (10.25%) and the “wholesale and retail; repair of motor vehicles and motorcycles; transport and storage; hotels and restaurants” with 70.100<sup>778</sup> self-employed workers (3.89%).

When it comes to the reason behind self-employment, the 2018 independent work survey revealed that:<sup>779</sup>

- 48.8% of the independent workers (mostly self-employed workers, but the survey included also owners) were forced to start a business/activity on their own, because “they could not find a place to work”, “the former employer asked them to work this way” or “they had to be self-employed for other reasons”;
- 32.7% wanted to start a business/activity on their own, the reasons invoked being “it is a common practice in the field of activity”, “they wanted to carry out an independent activity due to the flexible work schedule” and “they wanted to carry out an independent activity for other reasons”;
- for 18.5% of the independent workers, the decision to work on their own was a conjunctural one.

Out of those stating that they started an independent activity because they couldn’t find a work place, 40.3% have a low level of education, 38.7% have a medium level of education, while 20.1% have a high level of education.<sup>780</sup>

When it comes to clients, 17.5% of independent workers have no clients, 9.6% have one client, 20.6% have between 2-9 clients, 52.3% have ten or more clients.<sup>781</sup> The independent workers stating that they had no clients in the previous 12 months are the workers from the agriculture sector; 87% of them declaring that agricultural products are intended exclusively for self-consumption.<sup>782</sup>

A 2019 “Thematic Report on In-work poverty” by the European Social Policy Network shows that in general, self-employed persons are a vulnerable group. According to the report, in comparison with employees, self-employed workers are at a much higher risk of in-work poverty. According to it, while in 2017 the in-work poverty for employees in Romania was at 5%, the in-work poverty for non-employees (self-employed and contributing family members) was at 55.1% - 11 times higher than the exposure amongst employees and twice the EU28 level.<sup>783</sup> When it comes to the risk of poverty or

<sup>773</sup> Ibid.

<sup>774</sup> Institutul National de Statistica, “Labour force in Romania – Employment and unemployment 2018”, p. 33, available at [https://insse.ro/cms/sites/default/files/field/publicatii/labour\\_force\\_in\\_romania\\_2018\\_0.pdf](https://insse.ro/cms/sites/default/files/field/publicatii/labour_force_in_romania_2018_0.pdf), last accessed on 11.02.2021.

<sup>775</sup> Institutul National de Statistica, “Labour force in Romania – Employment and unemployment 2017”, p. 33, [https://insse.ro/cms/sites/default/files/field/publicatii/labour\\_force\\_in\\_romania\\_2017\\_0.pdf](https://insse.ro/cms/sites/default/files/field/publicatii/labour_force_in_romania_2017_0.pdf), last accessed on 11.02.2021.

<sup>776</sup> Institutul National de Statistica, “Monthly Statistical Bulletin – 10”, p. 137.

<sup>777</sup> Ibid.

<sup>778</sup> Ibid.

<sup>779</sup> Institutul National de Statistica, “Activitatea independenta”, p.23.

<sup>780</sup> Institutul National de Statistica, “Activitatea independenta”, p.25.

<sup>781</sup> Ibid, p. 29.

<sup>782</sup> Ibid.

<sup>783</sup> Luana Pop, “In-work poverty in Romania”, European Social Policy Network, 2019, p. 8, available at <https://ec.europa.eu/social/BlobServlet?docId=21095&langId=en>, last accessed on 11.02.2021.

social exclusion, this was four times higher amongst self-employed than employed (62.5% compared to 15%).<sup>784</sup>

If we are to look at specific categories of self-employed, according to the data presented above, as well as from the information received through interviews, **one of the most vulnerable categories is the self-employed workers in the agriculture sector.** This vulnerability comes from the high percentage of self-employed workers concentrated in this sector (79% in Q3 of 2020 according to INS) and the fact that in most cases their production is intended exclusively for self-consumption (subsistence agriculture). The vulnerability of this category of self-employed workers is also mentioned by a 2017 Eurofund report - "Exploring self-employment in the European Union" – which states that the highest share of vulnerable self-employed can be found in Romania, with the cluster being "overrepresented in agriculture" (subsistence crop framers).

In 2018, the National Institute of Statistics has released a report as well dealing exclusively with independent activity. The research for the report was conducted in Q2 of 2017, as a module attached to the yearly labour force survey, with the aim of providing information on various aspects specific to independent workers, such as more detailed characteristics than in the annual labour force report, as well as information on satisfaction of the current professional situation and job. According to this report, the following are the characteristics of self-employed workers in Romania:<sup>785</sup>

- Age: most self-employed workers belong to the "55 and over" age group – 34.1%, followed by "35-44 years old" group – 23.8% and "45-54 years old" group – 23.1%;
- Education level: 48.9% of self-employed workers have a low level of education, 47.3% have a medium level, while 3.8% have a high level of education;

If we were to compile a profile of the average self-employed person in Romania based on the information gathered, the person would work in the agriculture sector, would probably be male, living in the rural area, with low to medium education attainment, being at risk of in-work poverty.

Additionally, all self-employed workers are more vulnerable than employees in a situation where the company with which they had concluded a collaboration contract goes bankrupt. According to Romanian legislation, in the case of insolvency of a company, unpaid salaries are considered privileged debt and have to be paid as a priority. Remuneration owed to a self-employed is not considered privilege debt, and even if the work of the self-employed is like the employee's one, self-employed workers will be treated at a disadvantage when it comes to recuperating their remuneration.<sup>786</sup>

No national reports were found regarding platform workers. However, a 2018 JRC science for policy report – "Platform workers in Europe" estimates that 14.2% of Romanian Internet users have ever provided labour services via platforms.<sup>787</sup> Thus, Romania places third out of the fourteen countries covered, after Portugal (15.7%) and Spain (15.1%).

In terms of self-employed workers in creative professions, such as actors, musicians, authors, according to INS's October 2020 Bulletin, in Q3 of 2020 Romania had 52,300 self-employed workers in the sector "Arts, entertainment and recreation; repair of household goods and other services"<sup>788</sup> (there are no separate numbers just for arts and entertainment).

In terms of false self-employment, no official estimations were found, however one of the interviewees did raise the issue that several of the online delivery platforms functioning in Romania require the worker to be already registered as a "authorised natural person" (persoana fizica autorizata) in order to be able

<sup>784</sup> Ibid.

<sup>785</sup> Institutul National de Statistica, "Activitatea independenta", p.22, available at [https://insse.ro/cms/sites/default/files/field/publicatii/activitatea\\_independenta\\_0.pdf](https://insse.ro/cms/sites/default/files/field/publicatii/activitatea_independenta_0.pdf), last accessed on 11.02.2021.

<sup>786</sup> Interview with Raluca Dimitriu, Department of Law, Bucharest Academy of Economic Studies, 05.02.2021.

<sup>787</sup> Pesole, A., Urzı Brancati, M.C., Fernández-Macías, E., Biagi, F., González Vázquez, I, "Platform workers in Europe", JRC Science for policy report, p. 15, available at [https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157\\_pubsy\\_platform\\_workers\\_in\\_europe\\_science\\_for\\_policy.pdf](https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157_pubsy_platform_workers_in_europe_science_for_policy.pdf), last consulted on 11.02.2021.

<sup>788</sup> Institutul National de Statistica, "Monthly Statistical Bulletin – 10", p. 137.

to work with them.<sup>789</sup> This would mean that platform workers would be forced into becoming self-employed if they want to work on the platform, despite the fact the recruitment process is the same as for an employee. This opinion seems to be confirmed by another interviewee, who states that situations of false employment have been reported to them in the car transportation sector, but the interviewee does not have statistical data.<sup>790</sup>

The same interviewee also stated that in agriculture and construction, workers are much more similar to ordinary employees, the worker-beneficiary relationship being rather close to a dependent labour relationship. The motivation for hiring self-employed workers is of a financial nature. Comparatively, in other sectors such as culture, the way of providing the activity is much closer to the definition of the self-employed, the service usually addressing several beneficiaries of the services.<sup>791</sup>

Also, the 2019 ESPN report states that “most of the self-employed work informally; data regarding compulsory pension insurance suggest that only about 12% of those who declare themselves to be self-employed are covered by social insurance and pay tax on their income. Widespread informal self-employment is an important challenge for Romania, being prevalent among young people, the rural population and low-educated employees”.<sup>792</sup>

In 2015, in order to reduce false self-employment, the Fiscal Code was amended in order to include extra criteria to define independent work. According to art. 7, point 3<sup>793</sup> - independent activity is any activity carried out by a natural person for the purpose of obtaining income, which meets at least four of the seven listed criteria. If the minimum four criteria are not met, the National Agency of Fiscal Administration will consider the work as dependent/waged employment and will recalculate taxes in line with waged employment.<sup>794</sup>

But the action of the fiscal authorities would not requalify the contract itself into a work contract. In order to obtain this, the worker must bring an action in court. Starting with 2017, the consensual character of the employment contract was recognized, in the sense that it produces effects even if it was not concluded in writing, or even if it was not concluded under the name of employment contract. If action is brought, the court would be able to reclassify the contract, revealing its true legal nature, using its own criteria (for example, those proposed by the International Labour Organization in 2006).<sup>795</sup>

### Collective bargaining framework

**Collective bargaining in Romania is regulated by the Law on Social Dialogue no. 62/2011.**<sup>796</sup> The law was passed as a consequence of Romania signing several Memoranda of Understanding on Financial Assistance starting 2009 in order to enter a bailout programme following the global financial crisis.<sup>797</sup> The goal of the law was to remove labour market rigidities and increase the flexibility.<sup>798</sup> It was passed by the Romanian government using emergency law, without Parliamentary debate, “to push through a major liberalising labour law reform, despite a relatively high union density and union protests, notably in the public sector”.<sup>799</sup>

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<sup>789</sup> Interview Raluca Dimitriu.

<sup>790</sup> Interview with Mirela Caravan, Coordinator International relations Department, Blocul National Sindical Trade Union, 04.02.2021.

<sup>791</sup> Interview with Mirela Caravan.

<sup>792</sup> Luana Pop, “In-work poverty in Romania”, p. 9.

<sup>793</sup> Law no. 227/2015 on the Fiscal code, available at [https://static.anaf.ro/static/10/Anaf/legislatie/Cod\\_fiscal\\_norme\\_11022020.htm#A7](https://static.anaf.ro/static/10/Anaf/legislatie/Cod_fiscal_norme_11022020.htm#A7), last accessed on 11.12.2021.

<sup>794</sup> Colin C Williams, Ioana Alexandra Horodnic, “Tackling false self-employment: some lessons from Romania”, 2017, pp. 5-6, available at <https://eprints.whiterose.ac.uk/114198/9/williams%20formatted.pdf>, last accessed on 11.02.2021.

<sup>795</sup> Interview Raluca Dimitriu.

<sup>796</sup> Parliament of Romania, Legea Dialogului Social nr. 62/2011, available at <https://lege5.ro/gratuit/gmzdoovqm/legea-dialogului-social-nr-62-2011>, last accessed on 11.02.2021.

<sup>797</sup> Jamie Jordan, Vincenzo Maccarrone, Roland Erne, “Towards a Socialization of the EU’s New Economic Governance Regime? EU Labour Policy Interventions in Germany, Ireland, Italy and Romania (2009–2019)”, *British Journal of Industrial Relations*, 2020, p. 11, available at <https://onlinelibrary.wiley.com/doi/full/10.1111/bjir.12522>, last accessed on 11.02.2021.

<sup>798</sup> *Ibid*, p. 13.

<sup>799</sup> *Ibid*, p. 14.

The highest negotiating level under the current legislation is the sector level, followed by negotiations for groups of companies and company/organisation level negotiations.<sup>800</sup> National-level negotiations, while possible under the previous law, are not covered anymore by the Law on Social Dialogue. When it comes to sector agreements – these are binding on the entire industry only 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. If this is not the case they are treated as agreements for a group of companies and only cover companies belonging to the organisations that have signed them” (extension clause).<sup>801</sup> At company level, there is an obligation to negotiate (but not to conclude an agreement) only for companies that employ more than 21 employees.<sup>802</sup>

According to art. 133 (1) of the Law on Social Dialogue, the clauses of the collective labour agreements produce effects as follows<sup>803</sup>:

- a) for all employees of the unit, in the case of collective labour agreements concluded at this level;
- b) for all employees employed in the units that are part of the group of units for which the collective labour contract has been concluded.
- c) for all employees employed in the units in the sector of activity for which the collective labour contract has been concluded and which are part of the employers' organizations signing the contract.

Following the restrictions of the new Social Dialogue law, the number of collective agreements at sector level have dropped. According to Eurofund, in 2019, only two sector collective agreements were concluded, one in the public healthcare sector and the other in the pre-university education sector.<sup>804</sup>

However, in January 2016 the law was amended, and it allowed for the representative trade union federation to sign collective agreements in the cases where companies do not have a legally representative trade union.<sup>805</sup>

Government Decision no. 1260/2011 established 29 activity sectors in which collective labour agreements can be concluded. Subsequently, Law no. 1/2016 for the amendment and completion of the Social Dialogue Law no. 62/2011, added that, for the future, the activity sectors will be established by the Tripartite National Council, following the approval by Government decision.<sup>806</sup>

Currently, the number of collective bargaining agreements concluded at sector level is very small. Indeed, under the law, the course of collective bargaining is dependent upon the extent to which both social partners previously acquired representativeness at this level. Therefore, if the employer organizations do not apply for and do not acquire representativeness, the trade union organizations – even representative – have no one to negotiate with.<sup>807</sup>

As mentioned above, in February 2021, at the sector level, only two sector collective agreements were concluded, one in the public healthcare sector and the other in the pre-university education sector.<sup>808</sup>

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<sup>800</sup> Parliament of Romania, Legea Dialogului Social nr. 62/2011, art. 128 (1).

<sup>801</sup> Romania – collective bargaining, available at <https://www.worker-participation.eu/National-Industrial-Relations/Countries/Romania/Collective-Bargaining>, last accessed on 12.02.2021.

<sup>802</sup> Parliament of Romania, Legea dialogului social nr. 62/2011, art. 129 (1).

<sup>803</sup> Ibid, art. 133 (1).

<sup>804</sup> Eurofund, “Living and working in Romania”, available at <https://www.eurofound.europa.eu/pl/country/romania>, last accessed on 12.02.2021.

<sup>805</sup> Victoria Stoiciu, “Romania’s Trade Unions at the Crossroads - Challenged by Legislative Reforms, Economic Crises and a Power-loss of 60 per cent”, Friedrich Ebert Stiftung, 2016, p. 8, available at <http://library.fes.de/pdf-files/id-moe/12924-20161123.pdf>, last accessed on 12.02.2021.

<sup>806</sup> Interview with Raluca Dimitriu.

<sup>807</sup> Interview with Raluca Dimitriu.

<sup>808</sup> Eurofund, “Living and working in Romania”.

Previous to the 2011 legislative changes, Romania (together with Slovenia) was considered one of the strongest countries in Eastern Europe in terms of union density and influence over labour legislation.<sup>809</sup> Following the legislative changes, academic literature shows that collective bargaining was weakened in some key fields of interest such as minimum wage negotiations, large numbers of workers were no longer covered by collective agreements and there was an increased difficulty of trade unions to operate effectively.<sup>810</sup>

The new legislation made it harder for new trade unions to be established. While the old legislation would allow for the establishment of a basic trade union if it associated at least 15 employees of the same branch or profession<sup>811</sup>, the new legislation is requiring 15 employees from the same unit.<sup>812</sup> This article has proved controversial, including prompting a reaction from the ILO, as it makes it impossible to establish a trade union in small enterprises<sup>813</sup> (as you will be able to see two questions below, in 2018, 93% of Romanian enterprises were micro firms employing up to 9 persons).

According to one of the interviewees, in February 2021, 900.000 employees are covered by collective bargaining agreements at company level.<sup>814</sup>

Micro enterprises would be the most common employer. According to a 2019 factsheet of the European Commission, in 2018 93% of Romanian enterprises were micro firms (0-9 persons employed), 5.9%

### SMEs — basic figures

Class size	Number of enterprises			Number of persons employed			Value added		
	Romania		EU-28	Romania		EU-28	Romania		EU-28
	Number	Share	Share	Number	Share	Share	Billion €	Share	Share
Micro	430,925	88.1%	93.0%	930,720	22.8%	29.7%	13.6	17.6%	20.8%
Small	46,299	9.5%	5.9%	903,635	22.1%	20.1%	13.5	17.5%	17.6%
Medium-sized	8,533	1.8%	0.9%	857,129	21.0%	16.8%	13.6	17.6%	18.0%
<b>SMEs</b>	<b>485,757</b>	<b>99.7%</b>	<b>99.8%</b>	<b>2,691,484</b>	<b>65.8%</b>	<b>66.6%</b>	<b>40.8</b>	<b>52.7%</b>	<b>56.4%</b>
Large	1,667	0.3%	0.2%	1,397,566	34.2%	33.4%	36.6	47.3%	43.6%
<b>Total</b>	<b>487,424</b>	<b>100.0%</b>	<b>100.0%</b>	<b>4,089,050</b>	<b>100.0%</b>	<b>100.0%</b>	<b>77.3</b>	<b>100.0%</b>	<b>100.0%</b>

*These are estimates for 2018 produced by DIW Econ, based on 2008-2016 figures from the Structural Business Statistics Database (Eurostat). The data cover the 'non-financial business economy', which includes industry, construction, trade, and services (NACE Rev. 2 sections B to J, L, M and N), but not enterprises in agriculture, forestry and fisheries and the largely non-market service sectors such as education and health. The following size class definitions are applied: micro firms (0-9 persons employed), small firms (10-49 persons employed), medium-sized firms (50-249 persons employed), and large firms (250+ persons employed). The advantage of using Eurostat data is that the statistics are harmonised and comparable across countries. The disadvantage is that for some countries the data may be different from those published by national authorities.*

Figure 31 – SMEs basic figures. Source: European Commission, 2019 SBS fact Sheet – Romania

were small firms (10-49 persons employed) and 0.9% were medium-sized firms (50 – 249 persons employed).<sup>815</sup>

<sup>809</sup> Aurora Trif, "Dialogul social în timpul crizei economice - Supraviețuirea negocierilor colective în sectorul industrial din România", Friedrich Ebert Stiftung, 2015, available at <https://library.fes.de/pdf-files/bueros/bukarest/12419.pdf>, last accessed on 12.02.2021.

<sup>810</sup> Magdolna Vallasek, "Collective Bargaining and Social Dialogue in Romania", Acta Univ. Sapientiae, Legal Studies, 8, 1 (2019), p. 120, available at <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ausapls8&div=12&id=&page=>, last accessed on 11.02.2021.

<sup>811</sup> Luminita Chivu, Constantin Ciutacu, Raluca Dimitriu, Tiberiu Ticlea, "The Impact of Legislative Reforms on Industrial Relations in Romania", ILO 2013, p. 5, available at [https://www.epsu.org/sites/default/files/article/files/ILO\\_Romania\\_-\\_Impact\\_legislative\\_reform\\_on\\_IR.pdf](https://www.epsu.org/sites/default/files/article/files/ILO_Romania_-_Impact_legislative_reform_on_IR.pdf), last accessed on 11.02.2021.

<sup>812</sup> Parliament of Romania, Legea dialogului social nr. 62/2011, art. 3 (2).

<sup>813</sup> Luminita Chivu, et al., pp. 5-6.

<sup>814</sup> Interview Bogdan Iuliu Hossu, President Cartel ALFA trade union, 03.02.2021.

<sup>815</sup> European Commission, 2019 SBS fact Sheet – Romania, p. 2, available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiO8frxnezuAhWpw4sKHTxZB-EQFiACegQIAxAC&url=https%3A%2F%2Fec.europa.eu%2Fdocsroom%2Fdocuments%2F38662%2Fattachments%2F24%2Ftranslations%2Fen%2Frenditions%2Fnative&usq=AOvVaw1woaQKlfbKYQ0dkFt0aGTm>, last accessed on 12.02.2021.

In February 2021, there are five trade union confederations representative at national level:

- Confederația Națională a Sindicatelor Libere din România (CNSLR – Frăția) - The National Confederation of Free Trade Unions in Romania. Currently it counts 800.000 members from all branches and activity levels:<sup>816</sup>
- Blocul Național Sindical (BNS) - The National Trade Union Bloc. Currently it counts 320.000 members, from sectors such as machine building, transportation, communal household, construction and construction materials, post and telecommunications, printing services, electronics, electrical engineering, automation and defence industry, culture, energy, textile industry, health, public administration, agriculture, finance-banks, mining and geology, sports.<sup>817</sup>
- Confederația Sindicatelor Democratice din România - Democratic Trade Union Confederation of Romania (CSDR) – no website available;
- Confederația Națională Sindicală „Cartel Alfa” - National Trade Union Confederation „Cartel Alfa”. Currently it counts over 600.000 members from 41 professional trade unions;<sup>818</sup>
- Confederația Sindicală Națională „Meridian” - National Trade Union Confederation „Meridian”. The membership is not mentioned on their website. It was formed in 1994 by uniting two federations: the Federation of Copper Mining Unions in Romania and the Federation of Trade Unions in the Rubber Industry in Romania. Later, other trade union federations joined CSN Meridian, so that at present it is one of the nationally representative trade union confederations, fulfilling the conditions of representation provided by law.<sup>819</sup>

Self-employed are not allowed to join trade unions.

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 authorization, to form and/or join a trade union.<sup>820</sup> Since self-employed are not employed under an employment contract, they are not allowed to join a union.

This is different from the previous collective bargaining law, which according to the ILO granted unionization rights not only to employees, but also to civil servants, the self-employed, independent contractors, farmers, and apprentices.<sup>821</sup>

Trade unions opposed the larger austerity measures that were implemented between 2009 and 2010 and organised a series of protests asking the government not to take unilateral decisions when it came to austerity measures, to ensure the implementation of collective agreements and remove restrictions from legislation on the freedom of collective bargaining. Because the unions did not get much support neither from international bodies, nor the Romanian public, they failed to secure work conditions for their member and to significantly get involved in collective bargaining and social dialogue.<sup>822</sup>

Article 143 (5) states that the application of the collective labour contract registered at the level of a sector of activity will be extended to the level of all units in the sector, by order of the Minister of Labour, Family and Social Protection, with the approval of the Tripartite National Council to the signatories of the collective labour agreement at sectoral level.<sup>823</sup> According to one of the interviewees, this would

<sup>816</sup> Confederația Națională Sindicală CNSLR – Fratia, <http://www.cnslr-fratia.ro/despre-noi/>, last accessed on 12.02.2021.

<sup>817</sup> Blocul Național Sindical, <https://bns.ro/descriere>, last accessed on 12.02.2021.

<sup>818</sup> Confederația Națională Sindicală „Cartel Alfa”, <https://www.cartel-alfa.ro/ro/structura-65/>, last accessed on 12.02.2021.

<sup>819</sup> Confederația Sindicală Națională „Meridian”, available at <http://www.csnmeridian.ro/articol/ro/7/csnm-Scurt+istoric.html>, last accessed on 12.02.2021.

<sup>820</sup> Parliament of Romania, Legea dialogului social nr. 62/2011, art. 3 (1).

<sup>821</sup> Luminita Chivu et. al., *op. cit.*, p. 1.

<sup>822</sup> Aurora Trif, *op. cit.*, p.7.

<sup>823</sup> Parliament of Romania, Legea dialogului social nr. 62/2011, art. 143 (5).

mean that the collective labour contract could be extended at sector level, but it wouldn't be applicable to self-employed workers.<sup>824</sup>

According to the legislation, self-employed are not covered by collective bargaining negotiations.

## Legal framework

*Main relevant legislative provisions: Romanian Labour Code, Art. 2, Social Dialogue Law 62/2011 Art. 3(1)*

Collective bargaining in Romania is regulated by the Law on Social Dialogue no. 62/2011.<sup>825</sup> The law was passed as a consequence of Romania signing several Memoranda of Understanding on Financial Assistance starting 2009 in order to enter a bailout programme following the global financial crisis.<sup>826</sup> The goal of the law was to remove labour market rigidities and increase the flexibility.<sup>827</sup> It was passed by the Romanian government using emergency law, without Parliamentary debate, "to push through a major liberalising labour law reform, despite a relatively high union density and union protests, notably in the public sector".<sup>828</sup>

Art. 3 (1) of the Social Dialogue Law specifies that only persons employed under individual employment contracts, civil servants and civil servants with special status under the law, cooperating members and employed farmers have the right, without any restriction or prior authorization, to form and/or join a trade union.<sup>829</sup> Since self-employed are not employed under an employment contract, they are not allowed to join a union.

This is different from the previous collective bargaining law, which according to the ILO granted unionization rights not only to employees, but also to civil servants, the self-employed, independent contractors, farmers, and apprentices.<sup>830</sup>

According to art. 133 (1) of the Law on Social Dialogue, the clauses of the collective labour agreements produce effects as follows<sup>831</sup>:

- a) for all employees of the unit, in the case of collective labour agreements concluded at this level;
- b) for all employees employed in the units that are part of the group of units for which the collective labour contract has been concluded.
- c) for all employees employed in the units in the sector of activity for which the collective labour contract has been concluded and which are part of the employers' organizations signing the contract.

In 2015 the law was amended, and it allowed for the representative trade union federation to sign collective agreements in the cases where companies do not have a legally representative trade union.<sup>832</sup>

According to art. 1 (g) of the law on Social Dialogue, employee is the natural person, part of an individual employment contract or employment relationship, who performs work for and under the authority of an employer and benefits from the rights provided by law, as well as from the provisions of applicable employment contracts or collective agreements.<sup>833</sup>

The Fiscal Code is defining what "independent activity" is, in comparison with "dependent activity".

<sup>824</sup> Interview with Mirela Caravan.

<sup>825</sup> Parliament of Romania, *Legea Dialogului Social nr. 62/2011*.

<sup>826</sup> Jamie Jordan, Vincenzo Maccarrone, Roland Erne, *op. cit.*, p. 11.

<sup>827</sup> *Ibid.*, p. 13.

<sup>828</sup> *Ibid.*, p. 14.

<sup>829</sup> Parliament of Romania, *Legea dialogului social nr. 62/2011*, art. 3 (1).

<sup>830</sup> Luminita Chivu et. al., *op. cit.*, p. 1.

<sup>831</sup> Parliament of Romania, *Legea dialogului social nr. 62/2011*, art. 133 (1).

<sup>832</sup> Victoria Stoiciu, *op. cit.*, Friedrich Ebert Stiftung, 2016, p. 8.

<sup>833</sup> Parliament of Romania, *Legea dialogului social nr. 62/2011*, art. 1 (g).

According to art. 7, point 3<sup>834</sup> - independent activity is any activity carried out by a natural person for the purpose of obtaining income, which meets at least 4 of the following criteria:

- the natural person has the freedom to choose the place and the way of carrying out the activity, as well as the work schedule;
- the natural person has the freedom to carry out the activity for several clients;
- the risks inherent in the activity are assumed by the natural person carrying out the activity;
- the activity is carried out by using the patrimony of the natural person who carries it out;
- the activity is performed by the natural person by using his/her intellectual capacity and/or physical performance, depending on the specifics of the activity;
- the natural person is part of a professional body/order with the role of representation, regulation and supervision of the profession, according to the special normative acts that regulate the organization and exercise of the respective profession;
- the natural person has the freedom to carry out the activity directly, with employed staff or through collaboration with third parties in accordance with the law.

According to one of the interviewees, there is also another law dedicated to certain categories of workers - such as the Day Laborers' law - Law 52/2011.<sup>835</sup> This law regulates the activity of day laborers as a work relationship, but they do not conclude employment contracts, being regulated only through a register of day laborers in which the activity performed is entered. For this category of workers, certain limits are stipulated by law, similar to those regulated in the Labour Code, regarding the work schedule, health and safety at work, work accidents, etc.. On the other hand, daily laborers do not benefit from other facilities granted by the individual employment contract, the employer not having, for example, the obligation to pay the insurance contribution for the work.

**Self-employed workers are exempted from the regulations of the Labour Code, as the Labour Code applies only to:**<sup>836</sup>

- a) Romanian citizens employed with an individual employment contract, who perform work in Romania;
- b) Romanian citizens employed with an individual employment contract and who perform the activity abroad, based on contracts concluded with a Romanian employer, unless the legislation of the state on whose territory the individual employment contract is executed is more favourable;
- c) foreign citizens or stateless persons employed with an individual employment contract, who provide work for a Romanian employer on the territory of Romania;
- d) persons who have acquired refugee status and are covered by an individual employment contract on the territory of Romania, in accordance with the law;
- e) apprentices who perform work on the basis of an apprenticeship contract at the workplace;
- f) employers, natural and legal persons;
- g) trade unions and employers' organizations.

### Labour market trends and other factors

When it comes to platform work related to transportation of individuals (ridesharing services), we have witnessed in the past year the regulation of these type of services. Starting February 2020, the Law for the approval of the Government Emergency Ordinance no. 49/2019 on alternative transport activities

<sup>834</sup> Law no. 227/2015 on the Fiscal code.

<sup>835</sup> Interview with Mirela Caravan.

<sup>836</sup> Labour Code, art. 2, available at <https://www.codulmuncii.ro/integral.php>, las accessed on 12.02.2021.

with car and driver (or colloquially known as the Uber Law) came into force.<sup>837</sup> The law states that those who own ridesharing services, and the drivers have to have more paperwork and approvals in order to be able to legally function starting the 1<sup>st</sup> of February.<sup>838</sup>

The law was necessary due to the position adopted by taxi drivers and the trade unions representing them. The taxi drivers have organised protests asking the government to forbid ridesharing services in Romania. Since their request wasn't successful, they involved the national trade union federations active in the field of transportation, such as COTAR (Confederația Operatorilor și Transportatorilor Autorizați din România) and FORT (Federația Operatorilor Români de Transport), who have lobbied the government and the Ministry of Regional Development and Public Administration. Following their activities, the law regulating taxi services was changed, defining as public utility transport only maxi-taxis, busses and taxis, and leaving ridesharing services outside the law. Therefore, ridesharing services had to be separately regulated<sup>839</sup>, which ended up increasing the administrative burden with the possibility of increasing the cost of the service as well.

According to our research, there isn't much debate in Romania with regards to self-employed workers and collective bargaining. While one of the interviewees stated that Blocul National Sindical trade union has constantly reiterated in all legal debates the need to adapt the legislation in order to broaden the scope of the Social Dialogue law by using the term "worker" instead of "employed persons under individual employment contracts"<sup>840</sup>, it seems that most of the activity of trade unions revolves around easing sector agreements and wage negotiations, as well as better involvement in social dialogue<sup>841</sup>. But even under these circumstances, there is little debate on the activities undertaken by trade unions (such as protests).

In autumn 2018 a legislative proposal on changing the law on Social Dialogue was made.<sup>842</sup> The proposal went through several steps and in March 2020 it was entered on the agenda of the plenary of the Chamber of Deputies (subject to the submission of the report). For seven months there were no developments, until October 2020, when before the legislative elections, the legislative proposal has received a favourable report from the Commission for Labour and Social protection. No new developments followed until the drafting of this case study.

The initial draft law stated that persons employed with 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 authorization, to form and/or join a trade union. However, the scope of the applicability of the law was extended through an amendment which states that persons employed under an individual employment contract or having employment relationships of any kind, civil servants and civil servants with special status, cooperating members and farmers, **the self-employed** and the unemployed, have the right, without any restriction or prior authorization, to constitute and/or join a union. Therefore, should the proposal be adopted, it would extend collective bargaining to self-employed workers as well.

In 2021, for self-employed workers (authorised natural person – persoana fizica autorizata PFA, independent natural person – persoana fizica independenta PFI, individual business – intreprindere individuala II, liberal professions – copyright law) 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 and an

<sup>837</sup> Parliament of Romania, Law for the approval of the Government Emergency Ordinance no. 49/2019 on alternative transport activities with car and driver, available at <https://i0.1616.ro/media/2/2621/33217/19164032/3/ridesharing.pdf>, last accessed on 12.02.2021.

<sup>838</sup> Digi 24, „Legea Uber” intră în vigoare. Noi reglementări pentru companiile de transport alternativ, de la 1 februarie, available at <https://www.digi24.ro/stiri/actualitate/legea-uber-intra-in-vigoare-noi-reglementari-pentru-companiile-de-transport-alternativ-de-la-1-februarie-1251105>, last accessed on 12.02.2021.

<sup>839</sup> Playtech Impact, „Legea anti-Uber: ce e, ce face și de ce s-au jelit transportatorii și taximetriștii pentru ea”, available at <https://playtech.ro/stiri/legea-anti-uber-tot-ce-trebuie-sa-stii-9911>, last accessed on 12.02.2021.

<sup>840</sup> Interview with Mirela Caravan.

<sup>841</sup> Cartel Alfa, „Acțiunile de protest continuă! - Scrisoare către premier”, available at <https://www.cartel-alfa.ro/ro/ultimele-noutati-4/ac%c8%9bunile-de-protest-continua-scrisoare-catre-premier-102/>, last accessed on 12.02.2021.

<sup>842</sup> Parliament of Romania, Legislative proposal on social dialogue - Pl-x nr. 715/2018, available at [http://www.cdep.ro/comisii/munca/pdf/2020/rp715\\_18.pdf](http://www.cdep.ro/comisii/munca/pdf/2020/rp715_18.pdf), last accessed on 12.02.2021.

employee is the fact that for the self-employed the payment of health and social contributions is optional, if he/she earns in a year less than 12 minimum wages. For 2021, the minimum gross salary per economy was set at 2.300 lei per month, respectively 27.600 lei per year.<sup>843</sup>

Therefore, self-employed earning less than 27.600 lei in 2021 can opt out from paying health and social insurance.

In the case of health insurance, persons who earn income from independent activities under the ceiling, or do not earn income at all, can optionally be insured in the public health system on a calculation basis equal to 6 minimum wages per economy and pay a contribution of 1.380 lei per year.<sup>844</sup>

In the case of social insurance, persons who realize incomes from independent activities under the ceiling, can be ensured optionally, the calculation base is the same, minimum 12 minimum salaries on the economy (meaning a payment of 6.900 lei per year).<sup>845</sup>

Self-employed who earn above this ceiling are legally obliged to pay social contributions but have the option to choose the calculation basis to which the 25% will be applied. This would mean that a self-employed person earning more than the 12 minimum wages in a year can choose to pay social contributions based on the minimum wage and not his/her actual income, keeping the difference as income.<sup>846</sup>

This is a choice that employees do not have, as they must pay social contributions based on their actual income. And this could be a reason why a person would go towards false self-employment - this would allow him/her to pay fewer social contributions (or not at all depending on the annual income) and increase their income. On the short to medium term this could be a financial advantage, but as one of the interviewees put it, this would create a social bomb for the future, when these persons would have to retire.<sup>847</sup>

Health and social contributions are mandatory for self-employed persons earning more than 12 minimum wages in a year. Optional insurance payments can be made for leave and social health insurance benefits<sup>848</sup> and unemployment<sup>849</sup>.

As mentioned in the sections above, following the restrictions of the new Social Dialogue law, there is no nation-wide collective contract and the number of collective agreements at sector level have dropped. According to Eurofund, in 2019, only two sectoral collective agreements were concluded, one in the public healthcare sector and the other in the pre-university education sector.

According to the October 2020 bulleting of the National Institute of Statistics, the average gross earning in "Human health and social work activities" was 6.802 lei in October 2020, while the gross earnings in the "Education" sector was 6.177 lei (but this would include the entire sector, not just the pre-university sector for which a sectoral agreement was concluded).<sup>850</sup> Both sectors were above the medium gross earnings for 2020, which was 5.429 lei.<sup>851</sup>

No information was found on salary levels within the same sector, comparing pay of companies with and without collective agreements.

## Conclusions

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<sup>843</sup> Ghid PFA, Taxe si contributii sociale datorate in 2021, available at <https://gestiunepfa.ro/taxe-si-contributii-sociale-datorate-in-2021/>, last accessed on 12.02.2021.

<sup>844</sup> Ibid.

<sup>845</sup> Ibid.

<sup>846</sup> Ibid.

<sup>847</sup> Interview with Bogdan Iuliu Hossu.

<sup>848</sup> Ghid PFA.

<sup>849</sup> Avocat.ro, PFA-urile pot fi beneficiare ale șomajului, dacă sunt asigurate în sistem și au plătit contribuții, available at last accessed on 12.02.2021.

<sup>850</sup> Institutul National de Statistica, "Monthly Statistical Bulletin – 10", p. 89.

<sup>851</sup> Startup Café, <https://www.startupcafe.ro/afaceri/salariu-mediu-brut-2020.htm>, last accessed on 12.02.2021.

In a move to liberalise the labour law a few years after the start of the financial crisis, the Romanian government adopted the Law on Social Dialogue no. 62/2011, using emergency law, without Parliamentary debate. The law represented a major blow to trade unions, which saw their bargaining power weakened in key fields of interest such as minimum wage negotiations and encountered increased difficulty in operating effectively, due to administrative requirements, but also due to the specifications of the law which made it harder for basic unions to be formed and for sector-level agreements to be concluded. Workers were affected in a negative way as well; the national level bargaining agreement couldn't be renewed and large numbers of them were no longer covered by collective agreements. As one of the interviewees put it, Romania ended up with a legal framework which is characterised by divergence between the North American (liberalisation) model and the social policies of the European Union.<sup>852</sup>

When it comes specifically to self-employed workers, they saw themselves excluded from the scope of the new Social Dialogue law, being in the impossibility of being covered by collective bargaining agreements.

Over the years, several attempts were made by trade unions to amend the Social Dialogue Law, but none succeeded. The latest attempt is the 2018 legislative proposal, which received a favourable report from the Commission for Labour and Social protection. If it will pass the vote of the Chamber of Deputies, the new law will apply to self-employed workers as well.

As studies and interviewees mentioned, there is a need to protect self-employed workers. A 2019 ESPN report showed that Romanian non-employees (self-employed and contributing family members) are 11 times more likely than employees to be in a situation of in-work poverty. In Romania, 48.8% of the independent workers (mostly self-employed workers, but the survey included also owners) stated that they were forced to start a business/activity on their own, because “they could not find a place to work”, “the former employer asked them to work this way” or “they had to be self-employed for other reasons”; while 79% of self-employed workers in Q3 of 2020 were working in the “Agriculture, forestry and fishing sector”.

If we were to compile a profile of the average self-employed person in Romania, the person would work in the agriculture sector, would probably be male, living in the rural area, with low to medium education attainment, being at risk of in-work poverty.

When it comes to platform workers, no national data was identified. However, as mentioned in the sections above, a 2018 JRC science for policy report – “Platform workers in Europe” estimates that 14.2% of Romanian Internet users have provided labour services via platforms at least once.<sup>853</sup> This places Romania third out of the fourteen countries covered, after Portugal (15.7%) and Spain (15.1%).

As one of the interviewees put it, there is the necessity at national level to modify the legislative framework to provide self-employed workers with the means by which they can actually participate in the social dialogue in order to protect their interests (their coverage through collective labour agreements, especially sectoral collective agreements).<sup>854</sup>

When asked what, in their view, is the possible range of actions at EU level to better protect the working conditions of self-employed workers, our interviewees proposed the following solutions:

- A directive that would ensure minimum conditions for self-employed workers if they are not covered by collective agreements, while leaving certain freedom according to the existing conditions;<sup>855</sup>

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<sup>852</sup> Interview Bogdan Iuliu Hossu.

<sup>853</sup> Pesole, A., Urzì Brancati, M.C., Fernández-Macías, E., Biagi, F., González Vázquez, I, “Platform workers in Europe”, JRC Science for policy report, p. 15, available at [https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157\\_pubsy\\_platform\\_workers\\_in\\_europe\\_science\\_for\\_policy.pdf](https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157_pubsy_platform_workers_in_europe_science_for_policy.pdf), last accessed on 11.02.2021.

<sup>854</sup> Interview with Mirela caravan.

<sup>855</sup> Interview with Bogdan Iuliu Hossu.

- The involvement of the European Labour Authority in the identification of false self-employment and in providing support to the national labour inspectors when it comes to the identification and protection of this category.<sup>856</sup>

## Interviews

Name of interviewee	Organisation
1. Bogdan Iuliu HOSSU	Cartel ALFA Trade Union
2. Mirela Caravan	Blocul National Sindical Trade Union
3. Raluca Dimitriu	Department of Law, Bucharest Academy of Economic Studies

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# Slovakia

## Background information

According to the 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 the Eurostat data, the lowest was 355,500 in 2012, while the highest was 376,900 in 2019.)

In Slovakia, the self-employed people include:

- sole traders (self-employed) – persons doing business on the basis of a trade licence (according to the Slovak Business Agency (SBA), there were 323,894 in 2019),
- self-employed farmers (SBA states 3,719 persons) and
- free-lance profession (SBA states 21,405 persons for 2019) – including artists, lawyers, doctors and others whose activities are required by special regulations.

According to Labour Force Survey (VZPS), in Q3 2020, most self-employed people worked in the construction sector (98,800), in the trade sector (48,500), in the industry sector (46,000), in the professional, scientific and technical activities sector (29,500), in the health and social work sector (24,800), in the IT sector (17,700), in the transport and warehousing sector (14,800) and in the finance and insurance sector (14,000 people). There are also self-employed in the agriculture sector (10,200), administrative services (8,400), accommodation and food services sector (8,200) and in the arts and recreation sector (6,700 people).

The self-employed make up a significant part of workers in the following sectors (VZPS 3Q 2020): construction (43.4%), professional, scientific and technical activities (37.3%), finance and insurance (26.0%), informatics (18.1%), trade (16.0%), health and social work (13.2%) and in the transport and warehousing (9.4%). The self-employed are also important in smaller sectors - real estate (43.6%), finance and insurance (26.0%), agriculture (16.5%), accommodation and food services (8.6%), and also in the arts and recreation sector (20.6%). The share of the self-employed in industry (which is the largest according to the number of workers - 627,000 workers), is 7.3% of the number of workers.

According to the Eurostat database, the biggest number of the self-employed is (ISCO-08) crafts and related trades workers (in 2019, there were 111,700 persons); quite a lot of self-employed work as service and sales workers (68,400), technicians and associate professionals (52,800), professionals (51,000) and managers (in 2019, it was 39,000 persons). Relatively less people worked as plant and machine operators and assemblers (23,700), skilled agricultural workers (13,400), workers in elementary occupations (11,000) and clerical support workers (5,900). Self-employed men work more than women as crafts and related trade workers (106,000 men but only 5,100 women), plant and machine operators (22,500 men compared to unrecorded number of women), as well as managers (29,500 men compared to 9,600 women). The self-employed women work more than men as service and sales workers (20,100 men but up to 48,300 women).

No specific studies have been prepared. However, the statistical data from Eurostat for 2017 show, that the most common reason for working as self-employed is for men: "suitable opportunity" (32.5%), "usual practice in the field" (24.1%) and "no job found as employee" (16.1%). For women, the reasons are the same but in different order – the most common reason is "usual practice in the field" (29.6%), followed by the reason "suitable opportunity (27.4%) and also the reason "no job found as employee" (21.7%).

As far as the risk of work is concerned, only those occupational accidents are included in the number of registered occupational accidents when employees were injured. According to the indicator on the number of occupational accidents per 100,000 employees, the Eurostat statistics for 2018 showed a

higher occupation accident rate in industry (646 accidents per 100,000 employees), agriculture (710), real estate sector (693), administrative activities sector (787) and trade sector (427). In the construction sector, this indicator is lower (202 occupational accidents per 100,000 employees), but the overall accident rate in this sector is higher, because up to 43% of self-employed people work in this sector and occupational accidents of these workers are not included in the statistics of registered occupational accidents. The National Labour Inspectorate publish monthly statistics on the number of occupational accidents - fatal, serious and registered.

In Slovakia, the wage level is one of the weakest in the European Union, and statistics also show a low level of income for the self-employed. For example, the publication of the Statistical Office (SO SR) "Income and Expenditure of Private Households in the Slovak Republic in 2019" states that the total gross cash income per year per one self-employed household member in 2019 averaged 6,316 EUR, while the average for all households was 6,930 EUR. According to the data of the Statistical Office of the Slovak Republic for 2019, we recorded the lower level of average monthly wages in the sectors of construction (746 EUR), agriculture (824 EUR), accommodation and food services (658 EUR), administrative activities (948 EUR) and art (909 EUR). On the contrary, the wage is significantly higher than the monthly average for the entire economy in 2019 (EUR 1,092) in the IT (1922 EUR) and finance (1941 EUR) sectors.

In the Construction industry, there are frequent cases of hiring the self-employed instead of employing employees. There are several reasons - lower wage costs for the self-employed than for employees and also the fact that the self-employed are not included in public accident insurance and costs for occupational safety and health (OSH) of the self-employed are largely covered by the self-employed themselves (but the OSH costs for employees are paid by the employer).

A study published by CELSI in 2020 states: "the platform economy in Slovakia still consists of a marginal source of the population's income and labor market attachment. Nevertheless, there are signals from neighboring countries, e.g., Czechia, but already partly in Hungary, that a growing demand for Airbnb housing services further deepens precarity especially in the dimensions of working time and autonomy at work due to stress exposure and flexibility in cleaning jobs. As demand will increase for platform-mediated housing and transport services, the share of on-demand platform work is expected to grow. "

Workers in the creative professions are for the most part employees of various mostly cultural facilities (e.g. theatres) and they are not self-employed..

According to the information received from the Statistical Office of the Slovak Republic, in 2019 (and also in 2020) only 12 actors, dancers and other workers (NACE 90.01) had the status of the self-employed. Even though, (according to the REP survey - Eurofound, Dublin) in 2019, a total of 2,382 workers (i.e. both employees and self-employed) worked in the creative professions (NACE 90.01).

According to the information received from the Statistical Office of the Slovak Republic, a total of 110 workers in the field of artistic creation (NACE 90.03) had a self-employed status in 2019 (and also in 2020), including journalists. According to the REP survey - Eurofound Dublin - 4,499 people worked in the audio-visual sector (NACE 59 and 60) in 2019, out of which 1,135 were self-employed.

According to the Slovak Craft Industry Federation (SŽZ), we can only assume that some self-employed provide their services to only one supplier, and thus the performance of their business activities depends on the agreed conditions with one entity.

### **Collective bargaining framework**

According to Braxator, T. et al. (2017), the collective bargaining is a part of collective labour relations. The collective labour law effectively complements the individual labour law and forms a relatively well-developed protection mechanism in relation to the individual labour law. In the Slovak Republic, the collective labour relations are regulated by the Act No. 2/1991 Coll. on collective bargaining, some special aspects of collective labour relations (e.g. the right to transnational information, the right to co-decision, the right to control activities) are regulated by the Act No. 311/2001 Coll. the Labour Code.

The Act on Collective Bargaining defines in the Article 1 par. 1, that the collective bargaining is bargaining between the competent bodies of the trade unions and the employers, the aim of which is to conclude a collective agreement. It is further defined that the collective bargaining is a tool for promoting an effective social dialogue and achieving social peace based on the bipartite principle.

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.

The current state of collective bargaining regarding the Multi-employer Collective Agreements (KZVS) (as of 2 February 2021): at present, 28 KZVS in 15 branches of the Slovak economy are registered and deposited at the Ministry of Labour, Social Affairs and Family of the Slovak Republic, for two branches of the Slovak economy (engineering and finance) no KZVS are currently concluded. For comparison - in 2015, according to the Association of Energy Employers, 31 KZVS were deposited at the Ministry of Labour, Social Affairs and Family, and also no KZVS were concluded in two sectors (at that time, in the sectors of wood processing industry and civil aviation).

According to the study by Benedeková et al. (2020), in Slovakia, the coverage by collective agreements generally reaches less than 25%.

According to Benedeková et al. (2020), the coverage by the collective agreements is highest in the manufacturing divisions (NACE 24, 30, 35, 36) - over 90%, then in the postal services division (53) - 91.8%, in the library activity division (91) - 88.1%, education (85) - 86.2%, public administration (84) - 83.9%. On the contrary, a very low coverage by collective agreements according to the same source is in the sectors - divisions - legal and accounting services (NACE 69) - 0.3%, computer programming (62) - 2.8%, crop production, animal breeding (1) - 5.6%, wholesale (46) - 9.1%, textile production (13) - 11.5%, rental and leasing (77) - 12.5%, security and investigation services (80) - 14.6%, construction of buildings (41) - 15.9%, restaurant activities (81) - 16.9%, administrative activities (82) - 19.3%, leather production (15) - 19.5% or furniture production (31) - 19.6%.

Trade union density in terms of active employees : around 17% in 2010, around 13% in 2014 and around 12% in 2018. Trade union membership: in 2010 there were 313,000 persons, in 2014 about 255,000 persons and in 2018 about 250,000 persons. (Eurofound (2020): Living and working in Slovakia)

Employers' organisation density in terms of active employees is higher than in trade unions – in 2010 it was 30%-35% and in 2018 38%. (Eurofound (2020): Living and working in Slovakia)

At present, according to the Confederation of Trade Unions (KOZ SR), it is basically impossible to negotiate conditions even for employees in micro-enterprises, as the trade unions do not operate in those enterprises. This is based on the legislation, as a trade union can only be founded by at least 3 physical persons over the age of 18. So the trade unions usually do not operate in small businesses.

In Slovakia, it is not possible to conclude collective agreements related to the self-employed, because the Act on Collective Bargaining defines the conclusion of collective agreements only for employees.

Concerning the possibility of extending the right to have collective bargaining to platformist workers and other self-employed persons, Slovak Craft Industry Federation (SŽZ) said that the real effectiveness in practice is very difficult to assess, due to the fragmentation of interests; for the self-employed, collective agreements would probably reflect the expectations of the customer and would contain only minimal improvements for themselves. However, KOZ expects better protection of work and strengthening of workers' rights in the future, regardless of the type of contract, i.e. also platformist workers.

According to the Slovak Business Agency (SBA, 2020), small and medium-sized enterprises in Slovakia make up 99.9% of the total number of business entities, provide employment in the corporate economy to almost three quarters (74%) of the active workforce and account for more than half (55%) on creation of the added value. 97% of small and medium-sized enterprises are micro-enterprises employing less

than 10 employees. More than three quarters of SMEs are active in sectors such as business services, trade, construction and industry (SBA, 2020).

In the construction and transport sectors, the Integrated Trade Union operates which concludes multi-employer collective agreements with employers' organizations, the Association of Construction Entrepreneurs, and the Association of Employers of Urban Public Transport. In the trade sector and in the accommodation and catering sectors, there operates the trade union Association for Trade and Tourism Workers. Slovak Metalworkers' Federation (OZ KOVO), the largest trade union in Slovakia, and other industrial trade union associations operate in the industrial sector. In the sector of professional, scientific and technical activities, there exists the trade union Association of Employees of the Slovak Academy of Sciences. In the sector of health care and social work operates the sectoral trade unions of health care and social work employees. In the sector of finance and insurance, there are trade union associations of employees in the finance and insurance sectors. In the agricultural sector, there are trade union associations of agricultural workers in Slovakia and trade union associations of wood, forests and water. The sectoral trade union of public administration and culture operates in the

Overall, self-employed people are allowed to join unions.

Until recently, it was possible to extend the multi-employer collective agreements to exactly defined divisions of the industry, with the self-employment covering only a very limited extent. With effect from 1 March 2021, the representative collective agreements will be cancelled, so that the extension of collective agreements to other entities within the sector will not be possible. The original legislation was strict, what significantly complicated the conclusion of such collective agreements, and only a few trade unions were able to negotiate them but for a limited number of companies and not for the whole sector. Employers often also put obstacles so that they did not create partners for negotiation on their side (the law was circumvented so that associations were not created, only such associations were created that refused to negotiate). There will be no expansion at this time.

## Legal framework

*Main relevant legislative provisions: 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)*

In Slovakia, according to Act 2/1991 Coll. on collective bargaining, it is not possible to conclude collective agreements that relate to self-employed

The term employee is defined in the Article 11 of the Labour Code (Act No. 311/2001 Coll.): An employee is a natural person who performs dependent work for the employer in employment relations (and, if provided for by a special regulation, also in similar employment relations). The dependent work is work performed in a relationship between the superiority of the employer and the subordination of the employee, personally by the employee for the employer, according to the instructions of the employer, on his behalf, during working hours determined by the employer.

The term self-employed is based on the definition of the trade in the Act no. 455/1991 Coll. on Trade Licensing (the Trade Licensing Act). A trade is a continuous activity performed independently, in his/her own name, on his/her own responsibility, for the purpose of making a profit or for the purpose of achieving a measurable positive social impact, if it is an economic activity of a registered social enterprise. According to the Act 461/2003 Coll. on social insurance, a self-employed is a natural person who has reached the age of 18 and in the calendar year, which is decisive for the establishment or duration of the compulsory sickness insurance and compulsory pension insurance, the self-employed achieved income from business and other self-employed activity.

Thus, employed and self-employed persons are significantly differentiated.

In Slovakia, the self-employed persons include: sole traders - persons doing business on the basis of a trade license (Act No. 455/1991 Coll. on Trade Licensing - Trade Licensing Act), self-employed farmers (Act No. 105/1990 Coll. on Private Entrepreneurship of Citizens) and the so-called free professions, including artists, lawyers, doctors and others, whose activities are provided for by special regulations. Slovakia lacks a law on the liberal professions as such, they are not established anywhere. In practice, a free profession does not mean a "free" but a "more regulated" profession. According to SŽZ, the professions of teachers, researchers or people developing certain areas are lost in the system as independently performed professions. There is an effort to include them under certain chambers (of lawyers, teachers, dentists and other professional associations), which then also perform the function of protecting their members.

According to the Trade Licensing Act, trades are divided into craft trades (e.g. production of food, furniture, construction, vehicle repair, hairdressing services, etc.), further regulated trade (e.g. optics, elaboration of documentation and project of simple constructions, education and training in the labour protection, operation of a travel agency, massage services, etc.) and finally free trade (where the professional competence of the worker is not declared as a condition for the operation of the trade).

Special provisions for the self-employed are also in the Act no. 595/2003 Coll. on income tax, the Act no. 461/2003 Coll. on social insurance, the Act no. 222/2004 Coll. on value added tax, the Act no. 124/2006 Coll. on occupational safety and health and in other laws.

There are no such manifestations. And there is no discussion. According to the trade unionists (KOZ SR), the current changes in legislation suggest that social dialogue and collective agreements reduce competition for the legislator. These are represented by the adopted changes in the Labour Code regarding the activities of the trade unions, changes in the law on tripartite consultations due to unequal access to the social partners' representatives to participate in the tripartite decisions at national level and changes in the law on collective bargaining where the representative collective agreements were cancelled (i.e. extension of the multi-employer collective agreements within the sector).

### **Labour market trends and other factors**

After 2016, the issues of the self-employed support became more open. In the last period of 2 years, the tax burden of the self-employed has slightly decreased. During the corona crisis in 2020, the government provided financial assistance to those self-employed who, as a result of the government measures, had to reduce their business activities. A minimum old-age pension has also been introduced due to the threat that the self-employed will have low old-age pensions (as the calculation of their pension is disadvantageous for them).

In the opinion of SŽZ, there is no need for collective bargaining for the self-employed groups. The tradition in the Central Europe is rather to have professional associations, e.g. historically guilds, today rather associations or societies that perform, in relation to the natural persons providing services or goods, a certain roof protection at various levels, not only in terms of working conditions. They are the center of education in the relevant field, they fulfill a social function - meetings, exchange of information, support, if necessary, often create codes of ethics for execution of professional work, are an impartial place for consumers to assess complaints and last but not least, they monitor legislation for the given profession and give feedback to the state administration on legislative changes.

The very need for collective bargaining can only arise if a larger number of the self-employed people provide the services to one larger organization, e.g. in industrial production, on platforms or on construction sites. However, tools for punishing illegal work are more likely to be used here, as this type of service provision may have signs of dependent work.

According to SŽZ, the collective agreements cannot solve problems in various systems where the self-employed are disadvantaged - pension, sickness, accident, occupational safety and health. They have potential only in relation to working conditions and this is insufficient in the Slovak conditions.

The opinion of the Slovak Association of Small and Medium-Sized Enterprises and Self - Employed Persons (SAMP) is similar – The collective bargaining is considered as an unnecessary burden for entrepreneurs: “Fair entrepreneurs will agree with employees and self-employed even without a collective agreement, unfair entrepreneurs will not respect the law. ”

However, KOZ SR is in favour of discussion and finding the best solution to ensure protection of the self-employed, also in the form of extending collective bargaining to the self-employed persons.

In Slovakia, there does not exist any discussion about the overlap of the competition law and coverage by the collective agreements. Employers try to avoid being covered by collective agreements in order not to increase labour costs in general. They argue with a potential reduction in competitiveness in international markets.

This issue was discussed 5-10 years ago - see e.g. the article in the newspaper *Hospodárske noviny*, where the author points out that this problem exists and that such workers are difficult to detect (Skýpala, M., 2015). In 2011, the Statistical Office published concrete numbers concerning the information that there are 100,200 people as forced labourers (Valček, A. 2011). Back in 2015, the Confederation of Trade Unions reported the number of 94,000 traders forced to work for the companies. There were doubts about the published data, especially on the part of employers (for example, the National Union of Employers, 2011), and since then such data have not been collected.

In its Program Statement, the new government committed itself to promote measures to maintain employment and create new jobs, including improving the quality of the business environment, reducing employment bureaucracy and reducing the tax burden; it also wants to promote social dialogue and strengthen the importance of dialogue between employees 'and employers' representatives. However, discussions on collective bargaining for the self-employed are not taking place.

It has already been mentioned that there is a special system of taxation for the self-employed, as well as a special system of payment of social and health insurance contributions. These rules are regulated in more detail in the Act no. 595/2003 Coll. on income tax - (the rate is 19% or 25% for income higher than 176.8 times the subsistence income; but for example for small traders there is the possibility of deducting flat-rate expenses from the tax base up to € 20,000 per year). Payment of health insurance contributions is regulated by the Act no. 580/2004 Coll. on health insurance (the rate is 14% of the assessment base, which is about 67% of the achieved profits). Payment of social insurance contributions is regulated by the Act no. 461/2003 Coll. on social insurance (the rate is a total of 33.15% of the assessment base, which is about 67% of profits). Discussions have been going on over the amount of both the tax burden and the burden of self-employed social and health insurance for decades, and the government makes from time to time decisions about changes - sometimes to the benefit, sometimes to the detriment of 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 an work accident or an occupational disease.

The Confederation of Trade Unions (KOZ, 2017) is convinced that collective bargaining makes a significant contribution to wage increases. Thus, the level of wages should be higher in those companies where employees are covered by collective agreements. However, no specific investigation was carried out on this issue.

## Conclusions

Theoretically, the self-employed can join the trade unions and thus participate in the collective bargaining. However, it is more common for the professional associations of the self-employed that they are represented by employers' associations in negotiations with the trade unions.

#For some groups of the self-employed, it would be useful to change the national law so that the professional organizations are involved in the collective bargaining. SŽZ points out that the professional

organizations interpret the needs of the self-employed at various levels: they are mostly part of the multi-employers' organizations that are members of the social dialogue at the national level (for example, SZZ is a member of the Association of Industrial Unions). SZZ thinks that the professional organizations representing the self-employed should be included in the national social dialogue directly, not only through multi-employers' organizations. KOZ SR has a similar opinion.

In discussions with stakeholders, in my opinion, there is no requirement for independent self-employed collective bargaining. There is a willingness to address the improvement of working conditions self-employed, but so far outside the mechanisms of collective bargaining.

## Interviews

Name of interviewee	Organisation
1. Miriam Bellusova	Slovak Craft Industry Federation
2. Peter Andrisin	Slovak Association of Small and Medium - Sized Enterprises and Self - Employed Persons
3. Maria Sulavikova	Ministry of Labour, Social Affairs and Family of the Slovak Republic
4. Miroslav Hajnos	Confederation of Trade Unions of the Slovak Republic

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11. February 2021

# Slovenia

## Background information

The Statistical Office of the Republic of Slovenia (SORS) provides data on the active population (including self-employed) from two sources: Labour Force Survey (LFS) and administrative registers. Data on the self-employed from both sources differ; with LFS constantly showing higher numbers.

According to the register, 94,909 persons were self-employed in November 2020, out of these 67,142 were self-employed individual persons (*samostojni podjetniki posamezniki*), 6,456 were self-employed professionals/own account workers (*osebe, ki opravljajo poklicno dejavnost*) and 21,311 were self-employed farmers.<sup>857</sup>

According to the LFS, 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). 771,000 individuals or 84.4% had a status of employees.<sup>858</sup> After a period of continuous increase, the number of self-employed started to decline in early 2019.<sup>859</sup>

No statistical data on self-employed workers by sector of activity or by occupation were readily available. However, for example, a media house in 2018, reported that the highest number of solo entrepreneurs were, according to the standard occupational classification, registered in the following occupations: (1.) other business and management consultancy activity, (2.) road transport, (3.) hairdressing, (4.) accounting, bookkeeping and auditing activities; tax advice and (5.) maintenance and repair of motor vehicles.<sup>860</sup>

In SOSR survey, carried out in Q22017, 30.7% of self-employed stated that they become self-employed because a suitable opportunity for that appeared, 25.5% because they inherited a family business, 13.2% stated that they become self-employed because they could not find employment (17.8% for women, 11.2% of men) and 7.5% were asked to do that by the former employer. For 7.5% self-employment presented a common form of work in their profession. 3.5% had to become self-employed for other reasons, 5.8% wanted to be self-employed because of flexible working hours, and 10.7% wanted to be self-employed for other reasons.

The same survey also asked self-employed regarding the satisfaction with their work, in which 50.3% expressed that they are very satisfied, 47.3% partly satisfied and 4.9% only a little. 2.1% stated that they are not satisfied at all.<sup>861</sup>

It has to be noticed that the overall category of self-employed workers in Slovenia covers an enormous range of working situations, ranging from individuals working in precarious poorly-paid conditions, often in economic dependence, to well-paid and well-educated autonomous workers, for example, in consultancy sectors.

However, for example, the SORS survey from 2019 on precarious work indicated that 22% of 6,000 persons in employment performing precarious forms of work were self-employed who did not employ others and worked predominantly for one client.<sup>862</sup>

The discussions around the vulnerability of self-employed workers in Slovenia is often related to the discussions around hidden and precarious forms of work. There is no definition of precarious work in Slovenian legislation. However, among others, the **linguistic professionals** (including due to

<sup>857</sup> Statistical Office of the Republic of Slovenia, <https://www.stat.si/StatWeb/News/Index/9334>

<sup>858</sup> 2.2% worked through student agency, 1.1% in other forms of employment, and 3% supported family members.

<sup>859</sup> In the last quarter of 2018, 124.000 people of 12.6% were self-employed.

<sup>860</sup> Siol.net, <https://siol.net/posel-danes/moja-sluzba/slovenija-dezela-samostojnih-podjetnikov-413349>

<sup>861</sup> Statistical Office of the Republic of Slovenia, <https://pxweb.stat.si/SiStatData/pxweb/si/Data/-/0780105S.px/>

<sup>862</sup> Statistical Office of the Republic of Slovenia, <https://www.stat.si/StatWeb/News/Index/9047>

increasing trend in dumping in translation tariffs and often irregular payments or delays in fees), **media workers** (most visibly journalists, but many other related professions, who are reporting extremely low incomes, lowering of the reporting standards and a brain associated with unfair working conditions), **cultural workers** (often reported as being an economically depended workers) as well as **some professions** in the field of **care and assistance at home**, particularly the institute of the "family support" (druzinski pomocnik) are highlighted as in vulnerable working situation. **Youth**, is, in general, highlighted as a group vulnerable for self-employment that could lead to precarious work, including due to limited other employment opportunities. Among them, **young people in liberal professions** have also been highlighted as a vulnerable group; including due to noted cases of exploitation of young professionals under compulsory (e.g., health care, education, justice) or optional, but traditionally expected (e.g. architecture) internships.<sup>863</sup>

The discussion in other sectors, such as construction, is, for example, oriented towards prevention of "social dumping" and widespread use of referrals and agency work,<sup>864</sup> while recent discussions have also exposed the difficult working conditions of the self-employed providers of transport services.

Please report any available statistics relating to:

- Platform workers. These are workers who work through online platforms, carrying out work on a task basis. They include those who work for platforms such as Uber or Deliveroo, but also those who carry out any type of task-based work arranged through platforms, such as click work, care work, cleaning, specialised work such as web design, administrative work or accountancy work, etc.

There are no extensive surveys carried out in regard to the **extent of platform work in Slovenia**. The Eurobarometer study found, for example, that 8% of the population has already worked through online platforms.<sup>865</sup> Furthermore, the Eurofund report highlighted that 36.3% of those aged 18–55 had performed work via platforms at least once in the past, 23.6% find paid work at least once a month through online platforms, 18.5% find paid work at least once a week, while 5.7% earn at least 50% of their income through such platforms.<sup>866</sup> The study *The Platformisation of Work in Europe* found that approximately 18% of survey participants in Slovenia participate in the online economy as a source of income once per week. However, more than 60% of them has been doing that as a form of supplementary income while being in regular employment.<sup>867</sup>

The transport and delivery on the location is dominating the discussions around platform work<sup>868</sup> (food delivery, transport and cleaning).

- Self-employed workers in creative professions, such as actors, musicians, authors

Self-employed workers in culture can have a status of classic self-employed (sole proprietors or so-called s. p.) or **can obtain a special status of self-employed in culture** by entering the register of self-employed at the Ministry of Culture. Those are defined as creators who independently perform a specialised profession in the field of culture, have the appropriate education or demonstrate their ability to perform this activity. Their number has increased from 2,200 registered in 2009 to approximately 3,000 in 2018, with growth being more intensive since 2016. In 2018, 829 were registered under the architecture and design, 481 music and 473 performing arts.<sup>869</sup>

Data on **linguistic professionals** indicated that as much as 60% of the total of 1,815 individuals registered as translators, interpreters, proof-readers and other linguists were self-employed (sole-

<sup>863</sup> See, for example, Zagar & Eror, 2020, [https://fotogalerija.dz-rs.si/datoteke/Publikacije/Zborniki\\_RN/2020/Samostojni\\_poklici.pdf](https://fotogalerija.dz-rs.si/datoteke/Publikacije/Zborniki_RN/2020/Samostojni_poklici.pdf) ; Babič, ur. [http://socialna-druzba.si/sd\\_w1/wp-content/uploads/2021/02/PREKARNO-DELO-IN-PREKARIAT\\_Poro%C4%8Dilo-in-smernice-za-razvoj\\_2020.pdf?fbclid=IwAR0s6Es\\_5zJX9YBCGL7kN3X6IBspDa1A2ED2LVF\\_4HbECq6Yd4m-gdN3IZY;](http://socialna-druzba.si/sd_w1/wp-content/uploads/2021/02/PREKARNO-DELO-IN-PREKARIAT_Poro%C4%8Dilo-in-smernice-za-razvoj_2020.pdf?fbclid=IwAR0s6Es_5zJX9YBCGL7kN3X6IBspDa1A2ED2LVF_4HbECq6Yd4m-gdN3IZY;) Interview with a representative of trade union

<sup>864</sup> ZSSS, <https://www.zsss.si/socialni-damping-je-skodljiv-2810/>

<sup>865</sup> European Commission, 2018 [TBC]

<sup>866</sup> Huws et al, 2019 in Eurofund, [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef20027en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef20027en.pdf)

<sup>867</sup> Carried out on a sample of 2001 survey participants.

<sup>868</sup> Eurofund, <https://core.ac.uk/download/pdf/219377081.pdf>

<sup>869</sup> Ministry of Culture, <https://www.gov.si/assets/ministrstva/MK/Dialoske-skupine/Zapisniki/Samozaposleni-priloga-k-zapisniku-petega-delovnega-sestanka.pdf>

proprietor) at the end of 2018, 78% of them were women.<sup>870</sup> 2017 Soglasnik Language Cooperative survey (sample of approximately 300 translators) confirmed that 56% of self-employed translators in Slovenia are self-employed and that only 9% of respondents had a full-time employment relationship.<sup>871</sup>

**Freelance journalists** can register as independent journalists at the Ministry of Culture after a positive preliminary opinion received from the registered professional organisation of journalists. They can obtain the status of a freelance journalist or for a freelance self-employed (s.p.). It is estimated that one-third of journalists in Slovenia are employed in non-standard forms of employment,<sup>872</sup> with the trend noted towards a reduction of the number of regular employees and increasing cooperation with self-employed media professionals in media houses, because the civil law employment contracts are being associated with lower costs.

There are several areas in Slovenia dominated by **liberal professions** where professionals have the status of independent, self-employed workers. The status of each profession is regulated by sectoral laws (e.g. notaries are governed by the Law on Notary) and the general definition of engaging in any permitted activity as a sole or principal occupation.<sup>873</sup> Those include professions, such as notaries, advocates, private investigators, architects and engineers. As mentioned above, in Q42020, there were 6,456 self-employed persons who perform the professional activity/work on their own account.<sup>874</sup>

Slovenian legislation and statistics also recognise farmers and members of farm holdings as well as other persons who engage in agricultural activity as their sole or principal occupation.<sup>875</sup> 21,311 self-employed farmers were registered in the last quarter of 2020. Clerical or any other religious workers are also included in the category of self-employed.<sup>876</sup>

Slovenian legislation recognises the institute of **economically dependent persons**, who are defined as self-employed persons, who do not employ anyone and work mostly (80%) for one client.<sup>877</sup> They enjoy limited employment security. There is no official register of economically dependent persons. However, according to data collected, in 2012, there were 7.9% of such self-employed persons in Slovenia (9,000 self-employed) and 12.7% in 2016 (14,000 self-employed). According to the latest survey carried out in 2017, which took into account uniform criteria at European level,<sup>878</sup> there was about 5% (6,000) economically depended self-employed in the 2<sup>nd</sup> quarter of 2017.<sup>879</sup> Reports highlight that category of such workers exists predominately in the cultural sector, particularly in the fields of journalism, where there work at the premises of the contractor, without employees' rights, as well as in the sports, transport and cleaning sectors.<sup>880</sup>

However, the economically depended person should not be equated with disguised employment, which is prohibited under the Employment Relationships Act. The later states that work that has elements of the employment relationship should not be performed on the basis of civil law contracts (i.e., by self-employed). The labour inspectorate has the power to intervene in case of violations and can issue a prohibitory decision prohibiting the employer from performing the work until the irregularity has been addressed. The inspectorate may issue a decision on the misdemeanour to the employer by imposing a fine of between 3,000 and 20,000 euros. In 2017, (according to media reported and incomplete data), the Labor Inspectorate found 163 companies violating this provision.<sup>881</sup>

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<sup>870</sup> Zidar Forte, 2019 in X

<sup>871</sup> Soglasnik v Bela knjiga o prevajanju, [www.belaknjigaoprevajanju.si](http://www.belaknjigaoprevajanju.si)

<sup>872</sup> Kanjuo Marčela and Ignjatović, 2018 in Zagar & Eror, 2020 [https://fotogalerija.dz-rs.si/datoteke/Publikacije/Zborniki\\_RN/2020/Samostojni\\_poklici.pdf](https://fotogalerija.dz-rs.si/datoteke/Publikacije/Zborniki_RN/2020/Samostojni_poklici.pdf)

<sup>873</sup> Eurofund, <https://www.eurofound.europa.eu/publications/report/2009/slovenia-self-employed-workers>

<sup>874</sup> Statistical Office of the Republic of Slovenia.

<sup>875</sup> Statistical Office of the Republic of Slovenia.

<sup>876</sup> Eurofund, <https://www.eurofound.europa.eu/publications/report/2009/slovenia-self-employed-workers>

<sup>877</sup> Employment Relationship Act

<sup>878</sup> There were economically dependent self-employed people who are unemployed and work for only one client or earn most of their income (at least 75%) by working for one client and working time. cannot determine for themselves,

<sup>879</sup> Statistical Office of the Republic of Slovenia

<sup>880</sup> Eurofund, <https://www.european-microfinance.org/sites/default/files/document/file/exploring-self-employment-in-the-european-union.pdf>

<sup>881</sup> Siol.net, <https://siol.net/posel-danes/moja-sluzba/slovenija-dezela-samostojnih-podjetnikov-413349>

## Collective bargaining framework

In the period before entering the EU, Slovenia had a highly centralised collective bargaining system, which was a key instrument for enforcing a wage-restraint policy. After the accession to the EU in 2004, the gradual transformation of the collective bargaining system begun, marked by diverging trends in the private and public sectors. Stojanovic and Poje, for example, noted that the changing legal, political and economic framework and conditions led to a decrease in coverage rate from almost 100% to 79% (73% in 2016 in the private sector). The interplay of the reduced coverage and the decline in employers' and employees' membership, including union density, have also gradually changed the dynamics and the quality of collective bargaining, resulting in increasing flexibilisation of wages, working time and employment regimes, and even leading to the conclusion of extra "slim" agreements, such as for instance in private security in 2016.<sup>882</sup>

These observations are echoed by trade unions, who are emphasising the trend of a devaluation of the collective bargain agreements in Slovenia and lowering of the standards of protection offered to the workers, including in regard to the salary values, which are – generally - assessed as unrealistic and "shamefully low".<sup>883</sup>

According to the OECD assessment, the system of collective governing in Slovenia in 2015, was predominantly sectoral, centralised and without coordination, while the quality of labour relations was assessed as low. The coverage rated was 60-70%.<sup>884</sup> As of January 2021, there were 46 active Collective Agreements in Slovenia.<sup>885</sup>

The membership and the union density in Slovenia are falling in recent years. From union density in the 1990s stabilising around 40%, density was halved to 37% in 2005 and to 20% in 2015.<sup>886</sup> According to the OECD, in 2015, the trade union density in the private sector was 10-20% (29.6% in 2010), and the employer organisation density was 60-70%.<sup>887</sup> The unions active in public sectors are considered stronger, compared to those in private sectors. However, in general, unions are faced with underfunding and human resources constraints.<sup>888</sup>

They are also described as highly fragmented, with ten union confederations as well as several autonomous unions. The largest union confederations are the Slovenian Association of Free Trade Unions (Zveza svobodnih sindikatov Slovenije, ZSSS), the Confederation of Public Sector Trade Unions (Konfederacija sindikatov javnega sektorja Slovenije) and the Confederation of Trade Unions of Slovenia Pergam (Konfederacija sindikatov Slovenije Pergam). Of these three, ZSSS, which is anchored mainly in the private sector, is the largest confederation, covering around 40% of all unionised workers.<sup>889</sup> The ZSSS currently covers 22 trade unions, which have approximately 130,000 members.<sup>890</sup> The ZSSS has been involved in the collective agreements dialogue for at least 13 collective agreements concluded in the last decade.<sup>891</sup>

Within ZSSS, the largest affiliated union is the Trade Union of Metal and Electrical Workers of Slovenia (Sindikat kovinske in elektroindustrije Slovenije, SKEI), which has its strongest presence in export-oriented companies in the metalworking industry. KSJS is the largest confederation in the public sector, with the Education, Science and Culture Trade Union of Slovenia (Sindikat vzgoje, izobraževanja, znanosti in kulture Slovenije, SVIZ) as its largest affiliate.

The relatively steep de-unionisation and the decline in the unions' power have been assessed as an important factor in 'loosening' the collective bargaining system's regulative capacity in Slovenia.

<sup>882</sup> Stanojević & Poje <https://www.etui.org/sites/default/files/CB%20Vol%20III%20Chapter%2026.pdf>

<sup>883</sup> Zsss, <https://www.zsss.si/wp-content/uploads/2017/09/ZSSS-vsebina-v1-poro%C4%8Dilo-o-delu.pdf>

<sup>884</sup> OECD, <https://www.oecd.org/employment/emp/collective-bargaining-Slovenia.pdf>

<sup>885</sup> MDDSZ, <https://www.gov.si/assets/ministrstva/MDDSZ/Druge-oblike-dela-dokumenti/Evidenca-kolektivnih-pogodb.docx>

<sup>886</sup> Broder in Stanojević & Poje <https://www.etui.org/sites/default/files/CB%20Vol%20III%20Chapter%2026.pdf>

<sup>887</sup> <https://www.oecd.org/employment/emp/collective-bargaining-Slovenia.pdf>

<sup>888</sup> Interview with trade union

<sup>889</sup> Broder 2016 in Stanojević & Poje <https://www.etui.org/sites/default/files/CB%20Vol%20III%20Chapter%2026.pdf>

<sup>890</sup> Interview with trade union

<sup>891</sup> Zsss, <https://www.zsss.si/wp-content/uploads/2017/09/ZSSS-vsebina-v1-poro%C4%8Dilo-o-delu.pdf>

The experts are warning that, if the weakening of unions continues and if the current conditions for obtaining the status of representativeness remain in force, a decline in the collective agreement coverage rate will be inevitable and the area of concession bargaining and the establishment of collective bargaining as a mechanism for legitimising the systematic lowering of labour standards is expected to expand.<sup>892</sup>

The most important interest organisation on the employer side is the Chamber of Commerce and Industry of Slovenia (Gospodarska zbornica Slovenije, GZS). It was based on compulsory membership until 2006, when voluntary membership was introduced, with a steep decrease in membership from 34.000 in 2015 to about 6,000 members in 2019. Nevertheless, it still remains the main negotiator on the employer side,<sup>893</sup> and has been engaged in 20 out of 46 active collective agreements.<sup>894</sup>

Self-employed and freelancers in Slovenia are not subject to labour legislation but to civil law, with wages and working conditions being negotiated individually and submitted to market competition. Nevertheless, the issues of self-employed workers are represented by numerous associations, chambers and unions, which negotiation strength differs, including based on the relative market position of the concrete group of self-employed workers or the profession represented and their number.<sup>895</sup>

In terms of trade unions, no data on the exact representation of the self-employed persons could be obtained. Available recent research on the precarious form of work shows low participation of self-employed in unions, with the representation in the unions being higher among the workers with the contracts for an indefinite period (56%), while it was only 10% among the agency workers and only 7% among the self-employed.<sup>896</sup>

However, in general, experts are assessing that self-employed workers present a challenge to Slovene unions' strategies and approaches to worker's representation, and their representation in the social dialogue is assessed as quite underdeveloped and fragmented.<sup>897</sup>

Freelance self-employed workers are organised in special sections within the frame of trade unions (cultural workers, musicians, journalists, sportspeople), most of them being affiliates of the above mentioned Union of Free Trade Unions of Slovenia.

In this regard, one of the recent attempts in the organisation of self-employed was in **2016 established "Sindikat prekarcev"**, which aimed to connect and represent those self-employed who are also in a precarious relationship. However, after selected initial coordinated actions, the Union has been reporting poor motivation and low interest of targeted members<sup>898</sup> and has not managed to grow into a more representative and active body. The union is part of the broader civil movement called "Movement for decent work and welfare society", a non-profit and non-governmental organisation that organises public campaigns dedicated to contemporary labour force issues. There are also other civil society non-governmental organisations, which are committed to workers' rights and the prevention of precariousness among workers' rights, such as Delavska svetovalnica (Workers Counselling), dedicated to advocacy, protection, promotion and development of workers', social and status rights of workers and other vulnerable groups.<sup>899</sup>

Within representative trade union in the sector of culture GLOSA, a special Union Conference of Freelance Workers in Culture and Media (Sindikalna konferenca samostojnih ustvarjalcev na področju kulture in informiranja, SUKI) was established and has been for years, – unsuccessfully - advocating

<sup>892</sup> Stanojević & Poje <https://www.etui.org/sites/default/files/CB%20Vol%20III%20Chapter%2026.pdf>

<sup>893</sup> Stanojević & Poje <https://www.etui.org/sites/default/files/CB%20Vol%20III%20Chapter%2026.pdf>

<sup>894</sup> GZS, <https://www.dnevnik.si/1042886783>

<sup>895</sup> Eurofund, <https://www.eurofound.europa.eu/publications/report/2009/slovenia-self-employed-workers>

<sup>896</sup> Institut za delo, <https://institut-delo.com/S50100/Predstavitev>

<sup>897</sup> Mic, 2018, <https://www.hippocampus.si/ISBN/978-961-7023-90-9/181P.pdf>

<sup>898</sup> Interview with trade union

<sup>899</sup> Delavska svetovalnica, <http://www.delavskasvetovalnica.si/o-nas/>

for the collective agreement for self-employed in the field of culture. Other NGOs, such as Association Asociacija, are advocating for improved position of self-employed in culture.<sup>900</sup>

**Sindikat mladi**, is committed to the rights of students, high school students and the young unemployed, with special attention dedicated to the self-employed, 'authors' and 'entrepreneurs'.<sup>901</sup> However, engagement and representation of the later within the union is fairly limited.<sup>902</sup> The union is also active in the field of voluntary internships.

**The Slovenian Union of Journalists** together with the Association of Journalists represent the sector of journalism, including freelance journalists with the status, as well as those who meet the conditions for obtaining the status of freelance journalist but are not in the register of freelance journalists of the Ministry of Culture. The Trade Union of Musicians organises workers in the field of music in a broad sense. The Trade Union of Sports Workers (SSS) organises professional sports workers.

Various **associations of translators, interpreters and proof-readers**<sup>903</sup> have joined a professional group of specialised language users and issued a White book in translation (Bela Knjiga o prevajanju),<sup>904</sup> which is highlighting the situation, challenges and recommendations for the improvement of the profession.

Union in the field of construction has been recently mostly engaged with social dumping and widespread use of agency work in the sector.

In other cases, the interests of self-employed are represented by professional organisations. Occupations with a high level of professionalisation are organised within the framework of associations or chambers (Chamber of Attorneys, Chamber of Notaries, Chamber of Engineers, Chamber of Doctors, Chamber of Architecture and Space, the Association of Auditing) where not all of the members are self-employed. Some of them are public and some private, while some have compulsory membership (Notary, Private Investigation Chamber).

**Craft workers** are organised in the Chamber of Crafts (Obrtna Zbornica Slovenije) and farmers in the Agriculture and Forest Chamber of Slovenia (Kmetijsko-Gozdarska Zbornica Slovenije).

However, the collective representation of self-employed workers in Slovenia does not respond to the needs of this group of workers. The above-mentioned organisations/movements try to fill the existing gap in this area, but they are too small and do not have enough members, while also being constrained with limiting enabling environment, to be an important player with an impact on labour policy; thus, the collective representation of self-employed workers in Slovenia remains weak, fragmented and underdeveloped.<sup>905</sup>

There is a practice of self-employed service providers traditionally being included in collective agreements, however, mostly as a member of the Chamber of Commerce and Industry of Slovenia representing their interests, thus on the side of employers. There is less evidence on the inclusion of self-employed workers as employees in collective agreements, including, because the labour law recognises only workers with employment contracts, leaving freelancers and self-employed workers with limited opportunity to bargain collective agreements.

Mapped collective agreement, which explicitly covers self-employed workers, is a Collective Agreement for Professional Journalists, which was concluded by the Chamber of Commerce and Industry of Slovenia, Council of RTV Slovenia and Association of Radio Stations of Slovenia on behalf of employers and Trade Union of Slovenian Journalists on behalf of employees. The agreement was concluded in

<sup>900</sup> Asociacija, [http://www.asociacija.si/wp-content/uploads/2021/01/Uredba-o-bolni%C5%A1kem-nadomestilu-za-leto-2021\\_-Asociacija\\_F\\_L.pdf](http://www.asociacija.si/wp-content/uploads/2021/01/Uredba-o-bolni%C5%A1kem-nadomestilu-za-leto-2021_-Asociacija_F_L.pdf)

<sup>901</sup> Sindikat Mladih, <https://www.mladiplus.si/kdo-smo/o-nas/>

<sup>902</sup> Interview with trade union

<sup>903</sup> Representatives of the Association of Conference Interpreters of Slovenia (ZKTS), the Proofreading Association of Slovenia (LdS), the Association of Permanent Court Interpreters and Legal Translators of Slovenia SCIT, the Association of Scientific and Technical Translators of Slovenia (DZTPS), the Association of Slovenian Literary Translators (DSKP) and Slovenian film and television translators (DSFTP)

<sup>904</sup> Bela knjiga o prevajanju, [http://belaknjigaoprevajanju.si/files/2019/03/Bela\\_knjiga\\_cela.pdf](http://belaknjigaoprevajanju.si/files/2019/03/Bela_knjiga_cela.pdf)

<sup>905</sup> Mic, 2018, <https://www.hippocampus.si/ISBN/978-961-7023-90-9/181P.pdf>

1991, with its validity continuously extended. Apart from the employees, as narrowly defined in the Employment Relationship Act, the agreement also applies to freelance journalists and trainees who are training for the journalistic profession.<sup>906</sup> Nevertheless, as far as journalists are concerned, the collective agreement for professional journalists, has not been reflecting in the positive changes in the labour market conditions in journalism.<sup>907</sup>

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.

The provision in the Law on Collective Bargain states that if a collective agreement is concluded by representative unions and associations of employers, which employs more than half the workers in the industry they represent, then the Ministry of Labour can, on the initiative of one of the contracting parties, decide whether the collective agreement should be extended to all employers in one or several industries. However, the required 50% threshold in most cases presents a practical limitation to the extension of many agreements.<sup>908</sup>

Both interviewers acknowledged that the extension of the collective agreements could be an option to extend collective bargain agreements to self-employed workers, if certain provisions are changed. Nevertheless, given the current trend in weakening collective agreements, concerns were raised by the trade union representative that this might negatively affect the position of those self-employed who are in the position to negotiate better conditions.

The following **retaliation actions** have been mapped:

- 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. Since then, it has subcontracted the tasks to transport companies rather than employing drivers themselves. Although the contracts between GoOpti and the transport companies specify that the transport companies should employ drivers, in reality, the transport companies decide whether they employ drivers or hire self-employed people, students and pensioners. The labour inspectorate's inspection in 2017 confirmed that some transport companies hire self-employed workers contrary to the Law.<sup>909</sup>
- In 2017, there was an attempt to organise in a union (a section under the Sindikat Prekarcev) around 300 sellers of magazines at the newsstand. The sellers were employed through franchise agreements with the companies Delo Prodaja and 3dva, and were, according to this model, quasi-business partners. However, they have been completely subordinated to the franchisor in their work, and left without sick and annual leave. The attempt of unisation never succeeded, because – according to the Unions - the employers managed to scare most workers, including by stating that they will be forced to start closing the newsstands. Months before this attempt, the situation of Delo Prodaja's newsstand sellers deteriorated, as the franchise company began to supply them with fewer and fewer goods. Sellers announced the protest closure of the traffic, which was decided by few after the threats from the administration.<sup>910</sup> By now, most of the newsstands closed anyway.

<sup>906</sup> Pirs, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=KOLP49>

<sup>907</sup> Eurofund, <https://www.eurofound.europa.eu/publications/report/2009/slovenia-self-employed-workers>

<sup>908</sup> The Law on Collective Bargain

<sup>909</sup> Eurofund, <https://www.eurofound.europa.eu/publications/report/2018/employment-and-working-conditions-of-selected-types-of-platform-work>

<sup>910</sup> Regional, <https://www.regionalbala.si/novica/kmalu-protestni-shod-prekarcev-svoje-pravice-bodo-zahtevali-tudi-trafikanti>

- The employer associations, unions, and NGOs are also heavily opposing the agreement concluded between the Government of Slovenia and Uber in 2015, which is stipulating conditions of Uber entering the Slovenian market. The agreement was followed by the proposed amendments of the Transport Act, as more in details explained below.

## Legal framework

*Main relevant legislative provisions: Employment Relationships Act Art. 213*

### Overview

There is a doctrinal debate about whether self-employed workers 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 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'. Self-employed workers are usually considered as undertakings with no right of collective bargaining (Eurofound 2009<sup>911</sup>). 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.

### Detail of legal position

In Slovenia, the self-employed are not subject to Labour legislation, but to Civil and obligatory Law.<sup>912</sup> The wages and work conditions are negotiated individually and submit to market competition, with the status of these workers being intertwined with the status of economic operators who provide economic services independently for their own account and are subject to the EU rules on the prohibition of restrictions of competition.<sup>913</sup>

The Law on Collective Bargaining does not contain any provisions, which would exclude self-employed from collective agreements. The Law also does not specifically define the term "employee", which is – narrowly-defined in the Employment Relationship Act with reference to the performance of work on the basis of an employment contract. Thus, in this case, the Law on Collective Bargain is leaving the definition open for interpretation. The definition of employee is also not included in the laws regulating trade unions.

Nevertheless, in practice, the provisions on personal validity in most of the reviewed collective agreements use a narrow definition of employee, defined as, for example, "any natural person who is employed by an employer",<sup>914</sup> or interpret the term in the narrow sense of the provisions of the Employment Relationships Act (if not otherwise regulated by the collective agreement of the institution or another general act thereof the institution).

<sup>911</sup> <https://www.eurofound.europa.eu/publications/report/2009/slovenia-self-employed-workers>

<sup>912</sup> For example, the According to the Law on Commercial Companies governs sole proprietors, while numerous other laws govern specific occupations, ranging from the Law on Agriculture for farmers, the Craftwork is regulated by the Law on Crafts, the Law on Notary, etc.

<sup>913</sup> Kresal Šoltes, <http://www.pf.uni-lj.si/media/prekarno.delo.pdf>

<sup>914</sup> Pirs, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=KOLP302>

Some collective agreements, such as for construction, are, for example, valid also for pupils and students undergoing practical training and agency workers.<sup>915</sup> **However, unless regulated differently, it appears that most of the existing agreements are, in practice, excluding self-employed.**

Furthermore, –weak representation and unionisation of the self-employed workers in Slovenia –, as discussed above, in practice, presents a challenge in ensuring collective agreements of self-employed workers.

Slovenian labour legislation defines the concept of an employee (Article 5), the concept of an employment relationship (Article 4) and the concept of an economically dependent person (Article 213) in the Employment Relationships Act.<sup>916</sup> The employee is narrowly defined as an employee with reference to the performance of work on the basis of an employment contract; thus, the provisions of the Employment Relationships Act apply only to employment relationships (the relationship between an employee and an employer, where the former voluntarily engage in the work process, which he carries out in person, continuously and for remuneration under the supervision and according to the instructions of the employer) but not for other forms of contracts.<sup>917</sup>

However, for example, the Occupational Safety and Health Act, extends the concept of an employee (for the purposes of this Act) to persons who, on any other legal basis, perform work for an employer or perform work for training. The laws in the field of trade union freedom or collective bargaining nowhere explicitly refer to the use of the term work in the sense of Employment Relationship Act.

Thus, legal experts recommend for the Slovenian labor courts to interpret the scope of the Collective Bargaining Act and other laws in the field of trade union freedom so broadly that it would recognise the right to trade union association and collective bargaining to self-employed and dependent self-employed.<sup>918</sup>

The Employment Relationship Act, as mentioned above, contain the provision of the economically dependent worker defined as self-employed persons who do not employ other persons besides themselves and, as a rule, obtain 80% of all their annual income from the same subscriber.

This law defines an economically dependent person as a self-employed person who, on the basis of a contract civil law, in person, for remuneration, independently and for a longer period of time performs work in circumstances economic dependence and does not employ workers itself.

It states further that economic dependence means that a person has at least 80 percent of his annual income from the same client and that an economically dependent person shall be provided with limited employment legal protection after this law.

Unless otherwise provided by a special regulation, the provisions shall apply to it of this Act on:

- non-discrimination,
- ensuring minimum notice periods,
- prohibition of termination of the contract in case of unfounded grounds for termination, providing remuneration for contractually agreed work as comparable in type, scope and the quality of the work undertaken, taking into account the collective agreement and the general binding acts the contracting authority and the obligations to pay taxes and contributions,
- asserting liability for damages.

An economically dependent person is entitled to limited legal protection under the previous two paragraphs after the end of each calendar or during the financial year is obliged to inform the contracting authority, on which it is economically dependent, of the conditions under which it operates by providing

<sup>915</sup> Pirs, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=KOLP510>

<sup>916</sup> Employment Relationship Act, 2013

<sup>917</sup> See, Združenje Center alternativne in avtonomne produkcije, [http://socialna-druzba.si/sd\\_w1/wp-content/uploads/2021/02/PREKARNO-DELO-IN-PREKARIAT\\_Poro%C4%8Dilo-in-smernice-za-razvoj\\_2020.pdf?fbclid=IwAR0s6Es\\_5zJX9YBCGL7kN3X6IBspDa1A2ED2LVF\\_4HbECq6Yd4m-gdN3IZY](http://socialna-druzba.si/sd_w1/wp-content/uploads/2021/02/PREKARNO-DELO-IN-PREKARIAT_Poro%C4%8Dilo-in-smernice-za-razvoj_2020.pdf?fbclid=IwAR0s6Es_5zJX9YBCGL7kN3X6IBspDa1A2ED2LVF_4HbECq6Yd4m-gdN3IZY)

<sup>918</sup> Kresal Šoltes, <http://www.pf.uni-lj.si/media/prekarno.delo.pdf>

the contracting authority with all the evidence and information necessary for assessment of the existence of economic dependence.

The self-employed, as defined by the national legislation, perform the work in person, along the lines of a civil law contract. The Act provides the economically dependent person with limited employment security: prohibition of discrimination, minimum notice periods, the prohibition of termination of the contract in case of unjustified grounds for termination, adequate payment for contractually agreed work, including payment of taxes and contributions and liability for damages. However, the economically dependent person must ensure by her/him selves that she or he is entitled to limited employment protection by providing the employer all the evidence and information necessary to assess economic dependence. The institute has not been fully adopted, particularly due to the above-mentioned provisions.

There is also no register of economically dependent persons who meet the conditions under Act. The cited regulation of the protection of “economically dependent workers” is supposed to be in force until the adoption of a special law that would comprehensively regulate this content.<sup>919</sup> Nevertheless, there is no indication that the current government would be initiating any such laws in the near future.

Furthermore, the Employment Relationship Act, prohibits employment under the civil contract in cases where the existence of an employment relationship can be established and hand over powers to labour inspectorate to assess and fine such violations. However, there are critics towards such an arrangement, as inappropriate and ineffective in practice.<sup>920</sup>

So far, there **has been no case law relating** to the coverage of self-employed workers by collective bargaining.<sup>921</sup>

### Labour market trends and other factors

Although Slovenian labour market is, on the one hand, still characterised with a fairly large share of the active population (still) working in standard employment relationships, experts are highlighting a noticeable trend towards flexible and atypical, including precarious forms of work, which – if continue to grow – is, on the one hand posing a risk to the individual while also undermining the effectiveness of social security systems in the long term.<sup>922</sup>

The last major labour market reform in Slovenia, carried out in 2013, focused on two problems: the above-average prevalence of standard employment (i.e. insufficient labor flexibility) and the problem of non-standard employed, precarious and unemployed.<sup>923</sup> Thus, the observed results of the labour market reform, adopted with the cooperation and agreement of all social partners, were the liberalisation of the regime for dismissals and somewhat improved regulation of some types of non-standard employment.<sup>924</sup> In this line, the legislative amendments introduced the payment of social security contributions for individuals on civil contracts, students and individuals performing supplementary work for individuals.<sup>925</sup> However, it was observed that the later was, partly substituted by a strong increase in new forms of precarious work, such as false self-employment and agency work. The entire trend gradually shifted the power balance in favour of the employers.<sup>926</sup>

Apart from that, sector-specific, the amendments of the Road Transport Act were proposed by the Government of Slovenia in 2018, which would allow private individuals to work through platforms such as Uber. If the amendments are adopted, this will most likely result in the deregulation of services, as the taxi drivers will no longer need to obtain a state licence, the transport inspectorate will no longer

<sup>919</sup> Pergam, <http://sindikar-fergam.si/informacije-za-zaposlene/>

<sup>920</sup> Kresal Šoltes, <http://www.pf.uni-lj.si/media/prekarno.delo.pdf> [TBC]

<sup>921</sup> Kresal Šoltes, <http://www.pf.uni-lj.si/media/prekarno.delo.pdf>

<sup>922</sup> Pogačar, 2018, p. 1318, see Bohinca in [https://fotogalerija.dz-rs.si/datoteke/Publikacije/Zborniki\\_RN/2020/Samostojni\\_poklici.pdf](https://fotogalerija.dz-rs.si/datoteke/Publikacije/Zborniki_RN/2020/Samostojni_poklici.pdf)

<sup>923</sup> European Union, <https://op.europa.eu/en/publication-detail/-/publication/878b7c31-22ae-11e9-8d04-01aa75ed71a1/language-fr>

<sup>924</sup> Stanojević & Poje <https://www.etui.org/sites/default/files/CB%20Vol%20III%20Chapter%2026.pdf>

<sup>925</sup> European Union, <https://op.europa.eu/en/publication-detail/-/publication/878b7c31-22ae-11e9-8d04-01aa75ed71a1/language-fr>

<sup>926</sup> Stanojević & Poje <https://www.etui.org/sites/default/files/CB%20Vol%20III%20Chapter%2026.pdf>

have the authority to control taxi services, and the regulation of taxi services will be the responsibility of local communities, of which only a few have regulated taxi services to date.<sup>927</sup> The amendments came after the Government of Slovenia and Uber sign agreement on the terms and conditions of the platform's entry into the national transport market in 2015. The agreement was heavily opposed by the employer organisations, trade unions and non-governmental organisations (NGOs) and has provoked considerable negative publicity, raising issues concerning workers' economic and social insecurity, lower protection of consumers, and deregulation of the transport sector. The position of the government has remained unchanged, and it emphasises the new employment opportunities, flexible work organisation and new sources of revenue inherent to this new form of employment.<sup>928 929</sup> The amendments have - to that date – not been adopted.

There are discussions around precarious forms of employment, with trade unions, other workers' associations and NGOs calling for the improvement of status and strengthening of the protection and rights of the self-employed working in such conditions. Some of the current debates and initiatives that could be mapped are:

- The Working Group on Sustainable Dialogue with the Self-Employed in Culture, established under the Ministry of Culture, aims to prepare a proposal to improve the position of the self-employed in culture for the new National Program for Culture (2020-2027). Furthermore, within the sphere of culture, the union SUKI's (continuous) efforts are, for example, to change the status of the self-employed in culture from employers to workers, thus, giving them the right to social dialogue and the conclusion of collective agreements.<sup>930</sup>
- Various associations of linguistic professions joined forces in preparation of the White Book on Translation in 2019, which presents recommendations aiming to improve the most pressing problem areas of the field. They are, among others, calling for the necessity to regulate the status of a sole proprietor for linguistic professions, regulate the profession with its professional regulation, establish a translation union or chamber, establish a register of translators, achieve legal prevention of dumping, etc..<sup>931</sup>
- A group of NGOs and associations, including Society Movement for Decent Work and Welfare Society (Društvo Gibanje za dostojno delo in socialno družbo)<sup>932</sup> developed a report Precarious Work And Prekariat: Situation in Slovenia 2020, which contains a list of guidelines to address the situation. Proposals include changes to the Employment Relationship Act, and inclusion of legal definitions of legal employment in the specifics of atypical types of employment in civil law contracts, in order to prevent their violation or to encourage and facilitate the emergence/growth of precariousness. They are also advocating for the legalisation of the minimum hourly rate for the self-employed.<sup>933</sup>

The Ministry of Labour has co-financed a publication on precarious work forms published by the University of Ljubljana, and is, interested in looking into regulations of so-called platform workers, which in Slovenia is still not assessed as being very extensive. However, the ministry – at the moment and according to available information– is not foreseeing any changes or reforms of labour legislation, including any changes that would change the status or clarification of self-employed. The trade unions in the sectors where dependent work is observed are making attempts to raise the issue of collective

<sup>927</sup>

<sup>928</sup> Ministry of Infrastructure of the RS, 2018 in Eurofund, <https://www.eurofound.europa.eu/publications/report/2018/employment-and-working-conditions-of-selected-types-of-platform-work>

<sup>929</sup> Eurofund, <https://www.eurofound.europa.eu/publications/report/2018/employment-and-working-conditions-of-selected-types-of-platform-work>

<sup>930</sup> Glosa, <http://www.sindikato-glosa.si/assets/suki/boj-z-mlini-na-veter2612016.pdf>

<sup>931</sup> See, [http://socialna-druzba.si/sd\\_w1/wp-content/uploads/2021/02/PREKARNO-DELO-IN-PREKARIAT\\_Poro%C4%8Dilo-in-smernice-za-razvoj\\_2020.pdf?fbclid=IwAR0s6Es\\_5zJX9YBCGL7kN3X6IBspDa1A2ED2LVF\\_4HbECq6Yd4m-gdN3IZY](http://socialna-druzba.si/sd_w1/wp-content/uploads/2021/02/PREKARNO-DELO-IN-PREKARIAT_Poro%C4%8Dilo-in-smernice-za-razvoj_2020.pdf?fbclid=IwAR0s6Es_5zJX9YBCGL7kN3X6IBspDa1A2ED2LVF_4HbECq6Yd4m-gdN3IZY)

<sup>932</sup> Združenje Center alternativne in avtonomne produkcije, socialno podjetje; Društvo Gibanje za dostojno delo in socialno družbo; Društvo Organizacija za participatorno družbo; Zavod za podporo civilnodružbenih iniciativ in multikulturno sodelovanje Pekarna Magdalenske mreže Maribor

<sup>933</sup> See, [http://socialna-druzba.si/sd\\_w1/wp-content/uploads/2021/02/PREKARNO-DELO-IN-PREKARIAT\\_Poro%C4%8Dilo-in-smernice-za-razvoj\\_2020.pdf?fbclid=IwAR0s6Es\\_5zJX9YBCGL7kN3X6IBspDa1A2ED2LVF\\_4HbECq6Yd4m-gdN3IZY](http://socialna-druzba.si/sd_w1/wp-content/uploads/2021/02/PREKARNO-DELO-IN-PREKARIAT_Poro%C4%8Dilo-in-smernice-za-razvoj_2020.pdf?fbclid=IwAR0s6Es_5zJX9YBCGL7kN3X6IBspDa1A2ED2LVF_4HbECq6Yd4m-gdN3IZY)

bargaining, and are in general, in favour of such amendments to the Collective Agreements Act, which will remove the current obstacles to the conclusion of collective agreements and promote the interest of the social partners in collective bargaining, particularly as it refers to the 50% employer's representation.

The most direct requirement for the collective agreement in the field of culture come from the Union SUKI. However, the situation has not changed much, and the union is receiving little response from the government, Ministry of Culture or employers organisations even though they have been pursuing activities for more than 20 years, producing several declarations, preparing a draft collective agreement and passing it to the Ministry of Culture, undertaking an analysis of the impact of a collective agreement on the sector and so on. A similar situation is observed in the field of journalism.<sup>934</sup>

**Although the government admits that the issue of self-employed artists and freelance journalists has so far not been properly regulated, the trade unions' view is that it wishes to regulate it independently, through legal amendments. This appears to be also preferred solution for the Ministry of Labour.**

The current centre-right government is in general known as endorsing and supporting neoliberal reform policies and has been favouring most of the provisions leading to the deregulation of the Slovenian labour market; thus, it is unlikely that they would be in favour of or support extension of meaningful collective bargaining to self-employed or any changes of the status of self-employed that would allow them to do so.

However, for example, the amendments of the Decree on the Self-Employed in Culture in 2012, 2014 and 2016, had - to some extent - facilitate the acquisition of the right to pay contributions for independent cultural workers by the state, extended the period for granting the right to pay contributions from 3 to 5 years and introduced measures for the self-employed, such as daily allowance for the first 30 working days of self-employment and work scholarships. Those changes are associated with an increased percentage of self-employed in culture with the right to pay contributions from 50% to 70% in ten years as well as an increase in the overall numbers of self-employed in culture.<sup>935</sup>

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 workers.

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).

However, the system is considered as not being fully adjusted to the specifics of the self-employed, with the access of self-employed persons to rights is often limited in practice. The followings are some of the highlighted challenges:

- **The self-employed** are insured for the right to payment for health services, the right to reimbursement of travel expenses related to the provision of health services and the right to salary compensation during a temporary absence from work, but only from the 31st day of absence, when the compensation is paid by the Health Insurance Institute of Slovenia. In practice, the consequence of such provision is that the self-employed do not take sick leave.<sup>936</sup>

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<sup>934</sup> Eurofund, <https://www.eurofound.europa.eu/publications/report/2009/slovenia-self-employed-workers>

<sup>935</sup> Ministry of Culture, <https://www.gov.si/assets/ministrstva/MK/Dialoske-skupine/Zapisniki/Samozaposleni-priloga-k-zapisniku-petega-delovnega-sestanka.pdf>

<sup>936</sup> Mapa, <http://www.pf.uni-lj.si/media/prekarno.delo.pdf>

The EU-level study also showed that 62% of self-employed in Slovenia are indicating that they would not be financially secure in the case of a long-term illness (EU average: 48%).<sup>937</sup>

- **Pursuant to the provisions in the Health Care and Health Insurance Act, self-employed and their insured family members (except children) are deprived of their rights to health services and cash benefits from compulsory health insurance, in case they have not paid their contributions. Until then, only emergency treatment can be claimed from compulsory health insurance. When the self-employed person pays the unpaid contributions, he/she can claim reimbursement of the costs of health services at the Health Institute of Slovenia. This retention of rights does not apply to workers.**
- Insured persons who were not insured on the basis of an employment relationship (ie also self-employed persons) could not exercise the right to cash benefits if the withdrawal from all social insurance was not due to objective reasons.<sup>938</sup>
- The differences is also related to the insurance rating base that is the basis for the calculation of both the contributions and the level of the pensions and other earnings replacement benefits.<sup>939</sup> The self-employed, as a rule, pay contributions from the lowest insurance base, which will be reflected in lower long-term pensions for the self-employed and if not sufficient for survival, they will depend on cash social assistance or childcare allowance.

Specifically, The Decree on Self-employed Persons in the Field of Culture offers a legal basis for a model of legal and financial arrangement where the Ministry of Culture can pay social and health insurance contributions for artists and journalists listed on the Register'. However, according to experts, most of these types of workers consider themselves to be economically dependent since they work at the premises of the contractor, without employees' rights.<sup>940</sup>

The Unions are, on a monthly basis, calculating the amounts of the minimum basic wages, the amount of the annual leave allowance and the reimbursement of meals during work and transport costs to and from work under the collective agreements for the private sector. They also provide information on average monthly gross and net earnings according to the standard classification of activities.<sup>941</sup> Nevertheless, this does not provide direct comparison or insights on the differences whether they are covered by the collective agreements or not.

## Conclusions

There is no provision that would directly exclude self-employed workers from bargaining collectively under national Law, which can be - as also seen from the Collative Agreement for professional journalists – covered by the agreement if stated so. Nevertheless, the usage of a narrow definition of employee, as stipulated in the Employment Relationship Act and the status of the self-employed as economic actors, in practice, prohibits most of the self-employed participation in collective bargaining.

Furthermore, other practical obstacles, which would prevent or limit the effective exercise of collective rights of self-employed, particularly those in a more precarious working arrangement, include the actual scope of the traditional role of the social partners, i.e. weak unisation trade union, underdevelopment of the sector and challenges in ensuring required representation. This is also linked to the fragmentation of self-employed, which, as seen above, represent a fairly diverse group under Slovenian legislation.

<sup>937</sup> European Union, <https://op.europa.eu/en/publication-detail/-/publication/878b7c31-22ae-11e9-8d04-01aa75ed71a1/language-fr>

<sup>938</sup> Mapa, <http://www.pf.uni-lj.si/media/prekarno.delo.pdf>

<sup>939</sup> Eurofund, <https://www.eurofound.europa.eu/publications/report/2009/slovenia-self-employed-workers>

<sup>940</sup> Eurodfund, <https://www.european-microfinance.org/sites/default/files/document/file/exploring-self-employment-in-the-european-union.pdf>

<sup>941</sup> Zsss, [https://www.zsss.si/wp-content/uploads/2021/02/Placni-priročnik-JANUAR\\_-2021\\_1.pdf](https://www.zsss.si/wp-content/uploads/2021/02/Placni-priročnik-JANUAR_-2021_1.pdf)

## Interviews

<b>Name of interviewee</b>	<b>Organisation</b>	<b>Date interview carried out</b>
1. Damjan Masera	Ministry of Labor, Family, Social Affairs and Equal Opportunities	12.02.2021
2. Lidija Jerkic	The Association of Free Trade Unions of Slovenia	11.02.2021

# Sweden

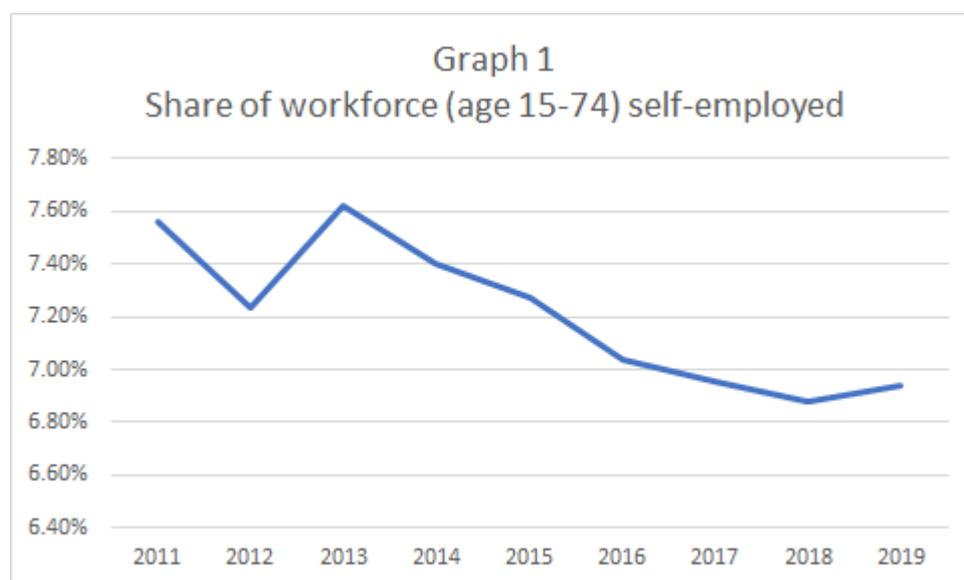
## Background information

**The status of self-employed and employed.** Self-employed are those who are active and have a sole proprietorship, trading company or limited partnership. However, not one who runs his own company in the form of a limited company (incorporated company registered on the stock market).<sup>942</sup>

Employed persons: The classification of gainfully employed persons is mainly based on control and declaration information from the Swedish Tax Agency. To be classified as employed, the person must have a wage income that exceeds an estimated limit amount or engage in active business activities. In addition, the person must be registered in Sweden on 31 December and be between 16 and 74 years old. Even those who were temporarily absent during the measurement period, e.g. due to illness, included. For a more detailed description of the method, see the register-based labor market statistics (RAMS).<sup>943</sup>

In the Swedish system, the concept of self-employed is determined primarily in tax law, and a worker's status on the labour market is based on filed taxes. Typically, regular employees have their taxes paid by their employers whereas self-employed, or as the Swedish tax-authorities refer to them 'sole-traders', manage their own taxes and are responsible for abiding to certain work regulations (e.g. working hours). To be classified as a self-employed (sole-trader), the tax authorities must have provided the worker with an authorisation which gives him/her access to pay the so-called F-tax. Overall, **there is very little, if any, legal middle-ground between a full employee or a self-employed** (sole trader). (Interview Unionen)

As indicated below in graph 1, there was a 0.7 % decline in the share of self-employed 2011-2019. Meanwhile, the absolute number of self-employed has stayed nearly unchanged (2011: 410 900, 2020:415 500). From these macro-economic numbers, it is not clear that the gig-economy (which started in Sweden around 2014) has had a significant impact yet on the share of self-employed.



Sources: Own calculations

Swedish statistics (2020): [Total population](#), Employment rate: [Population 15-74 years \(LFS\), percentage by sex, age, labor force affiliation and year](#)

<sup>942</sup> <https://www.scb.se/hitta-statistik/statistik-efter-amne/arbetsmarknad/sysselsattning-forvarvsarbete-och-arbetstider/yrkesregistret-med-yrkesstatistik/pong/tabell-och-diagram/5-vanligaste-yrkena-for-egenforetagande-kvinnor/>

<sup>943</sup> <https://www.scb.se/hitta-statistik/statistik-efter-amne/arbetsmarknad/sysselsattning-forvarvsarbete-och-arbetstider/yrkesregistret-med-yrkesstatistik/pong/tabell-och-diagram/5-vanligaste-yrkena-for-egenforetagande-kvinnor/>

Eurostat (2020): [Self-employment by sex, age and occupation](#) (age 15-74)

### Gender distribution and sectors among self-employed

**5 most common occupations for self-employed women** (Self-employed 16-74 years by number of women in the profession, in 2018)<sup>944</sup>

Profession, Number of women, In total, % Women in the category of self-employed

- Hairdressers, 9 421, 10 946, 86%
- Forest workers, 5,908, 16 986, 35%
- Cleaners, 3 242, 4 252, 76%
- Plant growers and animal breeders, mixed operation, 3 092, 12 529, 25%
- Selling store managers and department heads in store, 2 928, 6 505, 45%

**5 most common occupations for self-employed men** (Self-employed 16-74 years by number of men in the profession, in 2018)<sup>945</sup>

Profession, Number of men, In total, % Men in the category of self-employed

- Forest workers, 11 078, 16 986, 65%
- Breeders and caretakers of agricultural pets, 9 785, 11 733, 83%
- Plant growers and animal breeders, mixed operation, 9 437, 12 529, 75%
- Growers of agricultural plants, fruits and berries, 7 800, 8 744, 89%
- Woodworkers, carpenters, etc., 7 240, 7 348, 99%

The number of new firms started has been between 65 000 and 70 000 for some years (for 2019 the number was 66 892). Statistics show that of the firms started in 2014 76% survived three years. **Of the firms started in 2019 33% were started by women and 30% by foreign-born. The share of women is quite stable over the years but the share of foreign-born shows a quite high increase, 12% over a decade.** Most new firms are start-ups by people aged 31-50 years old and fewest by the oldest and the youngest. This pattern has been stable over the past decade.<sup>946</sup>

### Self-employment by economic activity

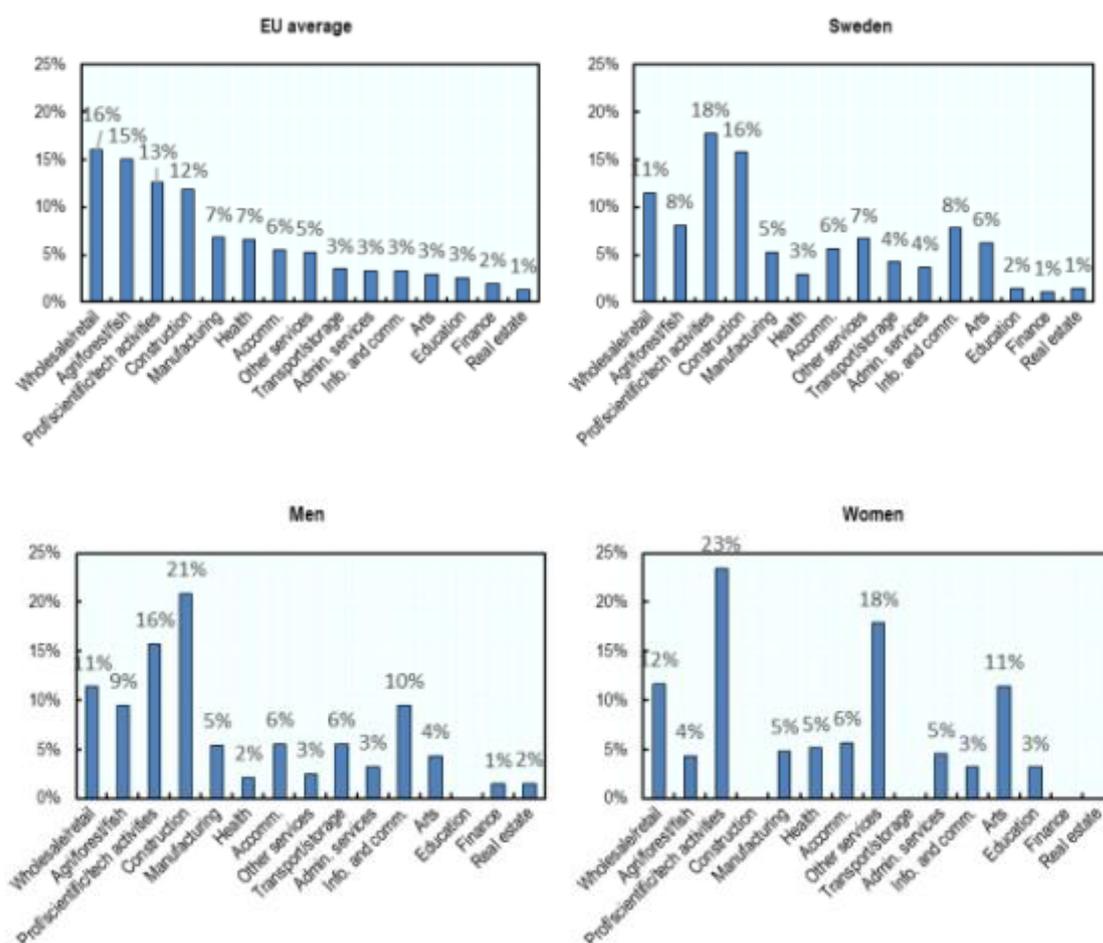
According to OECD, about one-quarter of the **self-employed in Sweden worked as professionals in 2017 (25.7%), which was slightly above the EU average (21.6%) (Figure 1.8)**. Other important occupations included Technicians and associate professionals (17.9%) and Craft and related trades workers (16.6%). Self-employed men were more likely than women to be working as Craft and related trades workers (21.4% vs. 4.7%), while self-employed women were much more likely to be Professionals (33.2% vs. 22.9%) and Service and sales workers (26.6% vs. 11.7%). The distribution of self-employed older workers mirrors the national average. Data for youth are incomplete, but it is clear that one-third of self-employed youth worked as Professionals (32.4%) in 2019.

<sup>944</sup> [5 vanligaste yrkena för egenföretagande kvinnor \(scb.se\)](#)

<sup>945</sup>

<sup>946</sup> Tables found in the report: OECD. Inclusive Entrepreneurship Policies, Country Assessment Notes – Sweden. 2020. <https://www.oecd.org/cfe/smes/Sweden-IE-2020.pdf>

## Distribution of the self-employed by sector in Sweden, 2019<sup>947</sup>



### Working conditions for self-employed

According to a survey indicated that seven out of ten self-employed experience stress in their entrepreneurship and that young self-employed are the ones who experience stress the most. Among younger self-employed aged 16-34 years, 53 percent always or often experience stress compared to 37 percent for those aged 35 to 44 years. Self-employed aged 16 to 34 also belong to the group that has the least coverage of health insurance to the least extent (apart from solo entrepreneurs 65+). Only a third of the self-employed did have a health insurance, which makes them vulnerable. For self-employed, having an insurance is very important for creating a sustainable business and makes it easier to relax and concentrate on the business.<sup>948</sup>

According to another survey (2018) every third self-employed works more than 60h per week. 60% have been self-employed more than 5 years.<sup>949</sup>

**Although many entrepreneurs meet the terms of collective agreements without actually signing them, many can not afford to offer the salaries or conditions they contain.** This is especially true

<sup>947</sup> Eurostat (2020), Labour Force Survey, <https://ec.europa.eu/eurostat/web/lfs>.

Tables found in the report: OECD. Inclusive Entrepreneurship Policies, Country Assessment Notes – Sweden. 2020. <https://www.oecd.org/cfe/smes/Sweden-IE-2020.pdf>

<sup>948</sup> <https://www.foretagarna.se/nyheter/riks/2016/mars/stress-stort-problem-for-soloforetagare/>

<sup>949</sup> <https://www.foretagande.se/nyheter/sa-manga-timmar-jobbar-egenforetagare>

for sole proprietorships and studies have also shown that sole proprietorships often work long hours and do not save enough before retirement age.<sup>950</sup>

Among liberal professions, choosing self-employment is often motivated by tax considerations, since the tax for extracting company profits is lower than the tax paid for the generated income. In general, the self-employed regulate their own terms and conditions and are free to get coverage by a pensions-insurance, life-insurance, accident-insurance etc.<sup>951</sup>

### Entrepreneurial well-being

Entrepreneurial well-being can be defined as **“the experience of satisfaction, positive affect, infrequent negative affect, and psychological functioning in relation to developing, starting, growing, and running an entrepreneurial venture.”**<sup>952</sup>

Shir, Nikolaev and Wincent (2019) use representative data sample, originating from the Swedish Global Entrepreneurship Monitor, in order to examine variations in well-being and basic psychological needs between entrepreneurs and non-entrepreneurial employees. Drawing on a quantitative analysis, findings suggest that well-being is strongly and positively associated with entrepreneurial task engagements. A positive contribution of entrepreneurship to basic psychological needs and well-being is found.<sup>953</sup>

In this debate, it is an important to recognise the distinction between necessity-based entrepreneurship and opportunity-based entrepreneurship.

### Choice and necessity based entrepreneurship

As the main reason for self-employment, surveyed Swedes predominantly outline that it was their genuine choice, putting them in the EU top in that regards.<sup>954</sup>

The proportion of nascent entrepreneurs and new business owners that start self-employment out of “necessity” is traditionally low in Sweden – the data highlights a large difference between the EU average (18.8%) and Sweden (8.0%). Youth is the group in Sweden with the highest necessity-based rate (9.8%) and seniors with the lowest (6.5%). The reason for the low rate of necessity-based entrepreneurship is the strong social security system in Sweden, a system that secures living conditions for all. This positive view on entrepreneurship is shown in the reason for start-ups. According to the *Entreprenörskapsbarometern 2016*, more than half of new entrepreneur’s state “personal development and realisation of ideas” as a reason to start-up. “Independence” is the prime driver for existing entrepreneurs. Younger people perceive fewer hindrances while women and foreign-born perceive more, for foreign-born people financing is much more of a hurdle. More than half intend to create a business in teams (60%), notably women and youth (63% and 66%, respectively)<sup>955</sup>

### Platform work

A study from 2016 showed that 10% of Sweden's population between 16 and 65 at some point had worked in the gig economy. The study concludes that for a small proportion (2.8% of the study's respondents) of the workers, gig jobs are their largest source of income.<sup>956</sup> Overall, platform work has not had much impact on the general working conditions and legislation in Sweden.<sup>957</sup>

<sup>950</sup> Swedish Entrepreneur Forum. (2020). *Swedish Global Entrepreneurship Monitor* [https://entreprenorskapsforum.se/wp-content/uploads/2020/04/GEM2020\\_rapport\\_web.pdf](https://entreprenorskapsforum.se/wp-content/uploads/2020/04/GEM2020_rapport_web.pdf)

<sup>951</sup> Interview Svenskt Näringsliv

<sup>952</sup> Shir, N., Nikolaev, B. N., & Wincent, J. (2019). Entrepreneurship and well-being: The role of psychological autonomy, competence, and relatedness. *Journal of Business Venturing*, 34(5), 105875.

<sup>953</sup> Ibid

<sup>954</sup> <https://www.european-microfinance.org/sites/default/files/document/file/exploring-self-employment-in-the-european-union.pdf>

<sup>955</sup> OECD. Inclusive Entrepreneurship Policies, Country Assessment Notes – Sweden. 2020. <https://www.oecd.org/cfe/smes/Sweden-IE-2020.pdf>

<sup>956</sup> Huws, U., Spencer, N., & Joyce, S. (2016). Crowd work in Europe: Preliminary results from a survey in the UK, Sweden, Germany, Austria and the Netherlands.

[https://uhra.herts.ac.uk/bitstream/handle/2299/21934/crowd\\_work\\_in\\_europe\\_draft\\_report\\_last\\_version.pdf?sequence=1](https://uhra.herts.ac.uk/bitstream/handle/2299/21934/crowd_work_in_europe_draft_report_last_version.pdf?sequence=1)

<sup>957</sup> European Commission. *Mutual Learning Programme Peer Review on “Platform Work” Germany, Summary Table of Peer Country Comments Papers*. 12-14 October 2020.

The platform workers can be found across economic sectors, which means they are not a homogeneous group of workers. Instead, this group are faced with very different challenges and needs. The collective bargaining model is able meet these needs thanks to its self-regulating and flexible nature (Interview Unionen).

**There is no legal definition of platform workers, while the status of platform workers remains ambiguous in terms whether they should be categorised as employees or self-employed in the binary system.** In social security legislation the status of platform workers is also unclear because the administrative courts interpret the degree of dependency differently in each individual situation. A business model where the platform worker himself decides when to work is ill-suited to the Swedish social security model. **Overall, the status of platform workers in labour law is unclear due to the lack of: cases from the Labour Court, definitions in collective agreements and authoritative statements from the legislator.** Most platform workers will probably be classified as employees.<sup>958</sup>

The most crucial question is whether platform workers should be defined as employees or self-employed. **Labour law and collective agreements only apply to employees.** 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.<sup>959</sup>

In Sweden, several trends intersect: the gig economy is growing rapidly; immigrants find it challenging to find work; and integration policies increasingly focus on the role of the first job as a benchmark for integration. Webster and Zhang (2020) analyse the immigrant women's daily working experiences within a transactional gig platform, "Yummy". **The study demonstrates that immigrant women in Sweden are accessing the gig economy as a pathway to entrepreneurship or to labour market integration.** However, the question remains as to why immigrant women are choosing these routes and the degree to which these strategies work for vulnerable populations. On the one hand, Yummy is successful in helping women, especially vulnerable ones, to start businesses. The platform provides a forum for experimentation and firm activities provide spaces for the women to network and gain quality information on business development. On the other hand, it is hard to see a sustainable future for these small businesses either within or apart from Yummy using home-based strategies.<sup>960</sup>

### Dependent contractors

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.<sup>961</sup>

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<sup>958</sup> European Commission. *Mutual Learning Programme Peer Review on "Platform Work" Germany, Summary Table of Peer Country Comments Papers*. 12-14 October 2020.

<sup>959</sup> Ibid.

<sup>960</sup> Webster, N. A., & Zhang, Q. (2020). Careers delivered from the kitchen? Immigrant women small-scale entrepreneurs working in the growing Nordic platform economy. *NORA-Nordic Journal of Feminist and Gender Research*, 28(2), 113-125. <https://www.tandfonline.com/doi/full/10.1080/08038740.2020.1714725>

<sup>961</sup>

## False employment

Primarily in the construction and transport sectors, but also in the media professions and home care, more and more workers in the Swedish labour market are forced to start their own to find work, even though they are working on a single company and performs the same work tasks. This allows the employer to avoid several obligations, including social security contributions and tax payments. This can be used to circumvent the Swedish system where collective agreements are concluded between equally strong parties in the labour market. With a forced F-tax (tax used by self-employed), the employer loses a variety of rights and weakens its relation to the employer. Self-employed workers are not covered by employment - protection, the right to vacation or other labour laws. So-called false self-employment creates a parallel labour market where neither labour law nor collective agreement apply, and where the conditions are much worse, and where incomes are lower. This can be used to circumvent the Swedish system where collective agreements are concluded between parties of equal strength in the labour market. With a forced F-tax loses job - taker a variety of rights and weakened in relation to the employer as hen is completely dependent for their livelihood. A self-employed worker not covered by employment - protection, the right to vacation or other labor laws.<sup>962</sup>

Generally, false employment in Sweden remains a marginal phenomenon. In case law, there are a few judgements that demonstrate when an employee is false self-employed. Notably, no case has yet been brought to trial concerning false employment among workers at digital platforms (Interview Unionen).

Anxo and Ericson (2019) found that self-employment is prevalent in Sweden but that there is a lower incidence of false self-employed compared to other EU member states. False self-employment appears to be more prevalent in certain segments of the labour market, in industries such as construction, transport and personal household services. The specificity of the industrial relations system in Sweden, with strong social partners, high union density and coverage rate of collective agreements in all sectors of the economy, may explain the limited development of false self-employment and relatively low incidence compared to other member states.<sup>963</sup>

### Tackling false employment (according to an employer's organisation)

In Sweden, there are issues concerning false employment, however the rules are not the issue but rather the lack of following them. The current system works well, as false employment is dealt with by a union or the tax authority. Adding more rules to solve the current issues is not the solution.<sup>964</sup>

## Collective bargaining framework

Each collective agreement is the result of **negotiations** between the parties to the agreement and regulates, among other things, salaries, general terms and conditions regarding the forms of employment, illness, holidays, other leave and working hours and insurance cover.<sup>965</sup>

There are more than **680 collective agreements** on wages and general terms of employment signed between employers 'organizations and employees' organizations, both in the private business sector and in the state, municipalities and county councils.<sup>966</sup>

It is **voluntary** for companies to sign collective agreements. However, a trade union can take industrial action to obtain a collective agreement, which is why signing an agreement is de-facto not always a

<sup>962</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/motion/reform-av-f-skattesystemet\\_H702234](https://www.riksdagen.se/sv/dokument-lagar/dokument/motion/reform-av-f-skattesystemet_H702234)

<sup>963</sup> Anxo, D., & Ericson, T. (2019). False self-employment in Sweden. In *Self-Employment as Precarious Work*. Edward Elgar Publishing. <https://www.elgaronline.com/view/edcoll/9781788115025/chapter09.xhtml>

<sup>964</sup> Interview Svenskt näringsliv

<sup>965</sup> Confederation of Swedish Enterprise. 2020. [https://www.svensktnaringsliv.se/sakomraden/arbetsgivarsamverkan/sa-fungerar-kollektivavtal\\_1006616.html](https://www.svensktnaringsliv.se/sakomraden/arbetsgivarsamverkan/sa-fungerar-kollektivavtal_1006616.html)

<sup>966</sup> Ibid.

choice but can rather be considered as an informal obligation. In the absence of a collective agreement the rules of the law apply instead.<sup>967</sup>

In 2010, workers paid a fee to IF Metall (an industry trade union) that was more than four times higher than a civil engineer (white-collar worker) did. **The very high fees in 2010 industrial workers' funds in combination with the increasingly bright economic situation is probably the main explanation for the declining degree of organization among industrial workers, while the low - or in the case of the Union cashier declining fee - prevented a similar development among white-collar officials.**<sup>968</sup>

### Collective bargaining and self-employed

**In Sweden, collective bargaining agreements do not cover self-employed, and the supporting legislation does not allow self-employed to participate in these agreements.**<sup>969</sup> The two negotiating parties, who regulate the working conditions for employees, are the employer organisation and the employees (trade unions). By definition, a self-employed is the employer and does not have any workers or employees. As such, a self-employed cannot be part of a collective bargaining agreement.

However, several unions offer memberships for self-employed where they offer pension schemes and beneficial insurances (e.g. accident insurance, sick-leave insurance)<sup>970</sup>. Furthermore, unions advocate on their behalf on issues pertaining to e.g. access to sickness benefits and parental leave. Note that the unions do not represent our self-employed members in negotiations. Generally, anti-trust legislation prohibits collectively bargaining on behalf of self-employment.

In the broader scheme, different unions offer different services and advocacy, depending on their sector. Some unions publish lists on e.g. recommended hourly fees for their sole trader members, but these are indeed only just recommendations.

In addition to that, there have been cases where the relationship between a person in sole tradership and their client has been deemed to be close enough in mimicking an employer-employee relationship that a collective bargaining process has been stipulated to be legal. Regardless, this is rather uncommon, but principally interesting.

### How open are trade unions to self-employed people?

Historically, unions have only accepted employees as members, and it is only recently that many unions have begun to welcome self-employed people as members of the union. This is because an increasing number of people in Sweden are choosing to start their own companies. **By gathering many small business owners, the unions can negotiate benefits (e.g. pensions, health insurance) for small business owners. The union can also assist with support and advice if the self-employed have thoughts about agreements, rules, etc.**<sup>971</sup>

**Trade unions welcome self-employed to varying degrees.** Within Swedish Trade Union Confederation (LO), which represents 14 unions with a total of 1.4 million members<sup>972</sup>, few of the unions accept self-employed persons as members. An exception is the Swedish Musicians' Association, which organizes professional musicians and artists. There you can become a member if you have your own company and are active in the music industry. **One reason why LO does not usually accept self-employed people as members is that they see a conflict of interest between being a worker and**

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<sup>967</sup> Ibid.

<sup>968</sup> Ibid.

<sup>969</sup> The Swedish government. 2021. *Employment (Co-Determination in the Workplace) Act (1976:580) Section 23*. <https://www.government.se/4ac87f/contentassets/bea67b6c1de2488cb454f9acd4064961/sfs-1976580-employment-co-determination-in-the-workplace-act>

<sup>970</sup> e.g. Unionen <https://www.unionen.se/medlemskapet/egenforetagare>

<sup>971</sup> Fackliga organisationer. 2021. <https://www.fackligaorganisationer.se/egenforetagare>

<sup>972</sup> Swedish Trade Union Confederation. 2021. [https://www.lo.se/start/lo\\_fakta/lo\\_forbundens\\_medlemsantal\\_2011\\_2020](https://www.lo.se/start/lo_fakta/lo_forbundens_medlemsantal_2011_2020)

**running their own company. LO has sprung from the labour movement and stands up for workers' conditions towards entrepreneurs.**<sup>973</sup>

Within the Swedish Confederation of Professional Associations (SACO) gathering 21 trade unions and 700,000 members<sup>974</sup>, all of whom are academics or graduate professionals with a university or college degree, it is more common to find unions for self-employed people.<sup>975</sup> Saco has a more open view of running their own company than LO because many of their members have professions where it is common to run their own company.<sup>976</sup> **Every tenth professional member of Saco is an entrepreneur.** Services to these members include income insurances, business insurances, seminars, networks and advice in areas including pricing, consulting agreements, employment contracts, pensions, unemployment insurance, and more.<sup>977</sup>

The white-collar trade union Unionen gathers 700 000 members, among which 10 000 are self-employed (1.42% of the total membership)<sup>978</sup>. The number of self-employed members in Unionen increased 11% since 2015.<sup>979</sup>

In Sweden, the non-manual confederation TCO explains why unions are now taking the concerns of self-employed workers more seriously.

“This is due to a shift in the industry; many of those who are now self-employed used to be employed and have kept their membership. The unions dealing with large numbers of self-employed have responded to this shift and are providing services that are sought after and relevant for the self-employed.”<sup>980</sup>

The Sweden journalists' union (Journalistförbundet) has around 12,700 working members, of whom 1,800 (14%) are freelancers.<sup>981</sup>

### **Collective bargaining agreements in art professions**

Despite the fact that the law potentially allows the negotiation of agreements covering some self-employed workers, **there are relatively few agreements of this sort, and they only cover traditional freelance areas, essentially those working in the media or the arts.** The topics that they cover are also limited, with pay normally not included.<sup>982</sup>

There are two agreements covering freelance journalists. The most important of these is the agreement signed between the Media Industry Employer Association within the overall service sector employers' association, Almega, and the Swedish journalists' union, Journalistförbundet. This agreement, which came into force in September 2015, replaces earlier agreements covering daily newspapers, magazines and freelance journalists in the public services, and it extends the scope of the agreement by bringing in broadcast commercial media for the first time. The agreement, which is ongoing, with a three-month notice period, covers issues such as compensation for cancelled assignments, late delivery, expenses, payment terms for invoices, copyright and compensation for ending assignments after long service. It does not cover the amount to be paid for the material, but the employers association has agreed to inform its member companies of the union's freelance fees calculator. The second

<sup>973</sup> Fackliga organisationer. 2021. <https://www.fackligaorganisationer.se/egenforetagare>

<sup>974</sup> Swedish Confederation of Professional Associations (SACO). 2021. <https://www.saco.se/om-saco/>

<sup>975</sup> Fackliga organisationer. 2021. <https://www.fackligaorganisationer.se/egenforetagare>

<sup>976</sup> Fackliga organisationer. 2021. <https://www.fackligaorganisationer.se/egenforetagare>

<sup>977</sup> Swedish Confederation of Professional Associations (SACO). 2021. <https://www.saco.se/karriar/jag-driver-eg/>

<sup>978</sup> Interview Unionen.

Unionen. 2021. <https://www.unionen.se/om-unionen/det-har-ar-unionen#:~:text=Unionen%20%C3%A4r%20en%20medlemsstyrd%20organisation,p%C3%A5%20%C3%B6ver%2065%20000%20arbetsplatser.>

<sup>979</sup> Calculation made by numbers retrieved from the interview and from this source:

Swedish Radio. 2015. <https://sverigesradio.se/artikel/6329415>

<sup>980</sup> ETUC. TRADE UNIONS PROTECTING SELF-EMPLOYED WORKERS WHY SELF-EMPLOYED WORKERS NEED BETTER RIGHTS? WHAT UNIONS ARE DOING? WHICH PRIORITIES FOR THE FUTURE?. [Trade unions protecting self-employed workers EN.pdf \(etuc.org\)](https://www.etuc.org/en/publications/Trade_unions_protecting_self-employed_workers_EN.pdf)

<sup>981</sup> Ibid.

<sup>982</sup> Ibid.

agreement which is also signed by other unions, such as the Photographers Federation, is with Swedish Television (Sveriges Television) the Swedish Educational Radio in Sweden (Sveriges Utbildningsradio), a television broadcaster. In contrast to the Media Industries Agreement, which does not cover pay, this agreement sets hourly and daily rates for freelancers. First signed in February 2010, to cover the period until the end of 2011, it has been extended on an annual basis since that date.<sup>983</sup>

Swedish Union for Performing Arts and Film (Teaterförbundet för scen och film) also has collective agreements covering self-employed workers. It negotiates on behalf of a wide range of workers across the entertainment, creative and cultural industries, including authors, directors, technical and administrative staff, as well as performers, like actors and singers and dancers. In most collective agreements, the only terms which relate to self-employed workers are those covering copyright.<sup>72</sup> However, unusually the 2016-17 agreement with the audiobook company Storyside sets pay rates for self-employed actors reading the texts.<sup>984</sup>

TCO, the union confederation to which both the journalists' union and the Swedish Union for Performing Arts and Film belong, reports that there have been no legal problems in negotiating these agreements.<sup>985</sup>

### **Collective bargaining – a (white-collar) trade union's perspective**

The collective bargaining model constitutes an integral part of the Swedish society and is supported widely across the political spectrum. The model, which dates back to 1907, provides the concerned parties (employers and employees) the right to negotiate, and to set labour market regulations and conditions. Government legislation has a supportive function to support the model, and to guarantee certain basic workers' rights (e.g. social coverage) (interview Unionen).

More specifically, the legislation supporting the collective bargaining model is *Act 1976:580: Employment Co-Determination in the Workplace*<sup>986</sup>. It is a piece of legislation that applies to the relationship between employer and employee (associated to a trade union or not), and entrusts the parties to self-regulate, based on the value that labour market issues are best dealt with by those directly concerned. Among other elements, the act offers the legal basis for the right of association and the right to take collective action. Overall, to understand the system the model, case law and legislations must be considered (interview Unionen).

The Swedish labour market is centred around the collective bargaining model, which has proven to be capable of incorporating the gigeconomy. Until today, there have been three signed agreements with white collar private sector platforms (the first ones in Europe?). The first two were agreements with temporal work agencies, and the third one was in the media sector (Inteviu Unionen)

Normally, collective bargaining agreements are rewritten periodically on a 1–3-year basis. This means that, although the model is old, it constantly reinvents itself to the new economy. Until today, the experience has been that the model has been applicable to incorporate new business models such as the gigeconomy (interview Unionen).

### **Collective bargaining and the gigeconomy – a (white-collar) trade union's perspective**

Fundamentally, the gigeconomy is not its own sector but that rather a way of doing business – often involving transport services, temporary jobs or IT-services. As such, from the perspective of Unionen, platform companies should be able to sign collective bargaining according to their sector. The

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<sup>983</sup> Ibid.

<sup>984</sup> Ibid

<sup>985</sup> Ibid.

<sup>986</sup> The Swedish government. 2021. *Employment (Co-Determination in the Workplace) Act (1976:580)* <https://www.government.se/4ac87f/contentassets/bea67b6c1de2488cb454f9acd4064961/sfs-1976580-employment-co-determination-in-the-workplace-act>

gigeconomy is still young and it is likely that, as it will mature, it will embrace collective bargaining agreements. The business model itself is still developing, and in many cases, it is not yet very profitable. Many of the entrepreneurs who run platform businesses are individuals who have little knowledge of collective bargaining and need to be informed about it (Intevju Unionen).

A comparison can be made with the temporal work agencies which were made legal in the early 90s. At the beginning, trade unions had little idea of how to organise and position themselves towards this kind of new business model. Today, almost 30 years later, the temporal work agencies are an integrated part of the Swedish economy. Similarly, today, the digital platforms are a new phenomenon. It should be noted that changes on the labour market are slow by nature and that progress has been made already. Today, Foodora (a major food delivery platform) and the transport union has just signed an historic collective agreement. Only two years ago, no one would have thought that was possible (Intevju Unionen).<sup>987</sup>

### **Platform companies finally embracing collective bargaining agreements?**

The collective bargaining agreement between Foodora and the transport Union (Transport) this is the first collective agreement in Sweden between a trade union and a so-called platform company. **This is a pioneering step for the entire gig economy in Sweden but also Europe. "This shows that the Swedish model works, and that platform work must also be regulated within the framework of the collective agreement model"**.<sup>988</sup>

The changes that come in connection with the new agreement include increased salaries and compensation for bids during certain times, annual salary increases, compensation for maintenance of bicycles and work clothes and pensions and insurance that are in line with Transport's other collective agreements. Routines and guidelines regarding how the parties should work for the bicycle and moped bidders' best working environment must also be updated.<sup>989</sup>

**However, the collective agreement does not cover the entire Foodora fleet.** The collective agreement covers the company's operations, including bicycle and moped bids. The Transport Workers' Union fought for a long time for this to also apply to Foodora's car drivers, which they eventually succeeded in doing. According to a Foodora employee, a large part of Foodora's image offerings is employed via Hungry Delivery. These will therefore not be included in the collective agreement. Most of Foodora's car bidders are employed through Hungry Delivery, and they do not yet have an agreement. These drivers represent more than 30 percent of Foodora's bids.<sup>990</sup>

Hungry Delivery, a food delivery app, merged with Foodora at the end of 2019. Already at the time of the merger, however, Hungry Delivery would continue to act as an employer for the bidders who would continue to work for Foodora. In February 2021, more than a year later, Hungry Delivery is still the employer of most the company's car bidders. Foodora and Hungry Delivery are formally different companies but have basically identical boards with the same CEO.<sup>991</sup>

Foodora bids employees of Hungry Delivery say that their hourly wage is zero, and compensation is only paid in the form of a commission of 40 kronor per delivery. At the same time, the bids must cover their own cars, as well as all expenses for maintenance, petrol and the special expenses required to use the car for commercial purposes. A bid says that of the 9,000 kronor he earned during a month, 7,000 went to various expenses connected to the car.<sup>992</sup>

In Norway, a collective agreement was signed for bicycle bids at Foodora in 2019. But after the agreement was signed, the company began to use more and more bids, especially car bids, as self-employed people. Today, an increasing part of the assignments at Foodora Norway are distributed to car bidders, who thus lack a collective agreement. Bicycle couriers who, due to the lack of assignments,

<sup>987</sup> <https://arbetet.se/2021/02/25/klart-foodora-och-transport-tecknar-kollektivavtal/>

<sup>988</sup> Ibid.

<sup>989</sup> <https://www.ehandel.se/foodora-ar-med-kollektivavtal-vi-ar-stolta-men-inte-nojda>

<sup>990</sup> Ibid.

<sup>991</sup> Gigwatch. 2021. <https://www.gigwatch.se/2021/02/28/hundratals-foodora-bud-saknar-fortfarande-kollektivavtal/>

<sup>992</sup> Ibid.

want to change to a car are forced to resign their employment and reclassify themselves as self-employed.<sup>993</sup>

Moreover, not all platforms find was to keep their collective bargaining agreements. After becoming one of few platform companies with a collective bargaining agreement, the platform company Bzzt, which offers taxi and delivery food services, replaced collective agreements with "so called self-employment". Whin short notice, the drivers all lost their employee title and became "so-called self-employed", which is a kind of middle ground between a regular employment and self-employed.<sup>994</sup>

### **Why do platform companies sign up for a collective bargaining agreement? – a (white-collar) trade union's perspective**

First of all, the economic cost of signing a collective bargaining agreement is relatively low. In Sweden, employee salaries are set by industry-standards which means that signing a collective bargaining agreement is not implying a substantial increase of labour costs. Even without a collective bargaining agreement, relevant labour market fees and taxes must be paid. The experience of Unionen is that in the white-collar sector, usually B2B-centred, the cost of labour is not the focus of concern (Intevju Unionen).

Secondly, not all platforms have a business model that requires them to circumvent labour standards and regulations. There are numerous examples of platforms that have an interest to be seen as a serious actor and who have chosen to be a part of a collective bargaining agreement (e.g., day-care services). These platforms demonstrate that they are willing to provide their employees with social protection and pay them decent wages. In turn, these platforms increase their attractiveness to recruit talent, and to attract new clients (Intevju Unionen).

As 9 out of 10 of the companies in Sweden have a collective bargaining agreement and those who do not have one are typically seen as outliers. To avoid bad publicity and to keep investors satisfied, signing a collective bargaining agreement is a proven solution which involves minor economic costs and gains on several fronts (Intevju Unionen).

### **Trade union density in Sweden**

#### **Trade union density by sector (%), workers (blue collar)**<sup>995</sup>

Year	2010	2012	2013	2014	2015	2016	2017	2018	2019
<b>Industry</b>	79	78	77	76	76	75	74	73	72
<b>Construction</b>	71	69	68	67	65	66	64	63	62
<b>Retail</b>	57	56	56	53	52	54	53	52	52
<b>Private service excl. retail</b>	57	55	54	54	51	50	49	49	48
<b>Total private service sector</b>	57	55	54	53	51	51	51	50	49
<b>Total private sector</b>	65	63	62	61	59	59	58	57	57

<sup>993</sup> Ibid.

<sup>994</sup> Transportarbetaren. 2020. <https://www.transportarbetaren.se/bzzt-dumpar-kollektivavtal-for-egenanstallningar/>

<sup>995</sup> Kjellberg, A. (2019). Kollektivavtalens täckningsgrad samt organisationsgraden hos arbetsgivarförbund och fackförbund. (Studies in Social Policy, Industrial Relations, Working Life and Mobility; Vol. 2019, Nr. 1). Department of Sociology, Lund University

[https://portal.research.lu.se/portal/en/publications/kollektivavtalens-tackningsgrad-samt-organisationsgraden-hos-arbetsgivarfoerbund-och-fackfoerbund\(384bb031-c144-442b-a02b-44099819d605\).html](https://portal.research.lu.se/portal/en/publications/kollektivavtalens-tackningsgrad-samt-organisationsgraden-hos-arbetsgivarfoerbund-och-fackfoerbund(384bb031-c144-442b-a02b-44099819d605).html)

Public sector	83	80	79	77	77	74	72	71	72
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### **Trade union density by sector (%), white-collar<sup>996</sup>**

<i>Year</i>	2010	2012	2013	2014	2015	2016	2017	2018
<b>Industry</b>	79	80	79	80	80	79	78	78
<b>Retail</b>	60	61	63	64	66	64	65	66
<b>Private service excl. retail</b>	65	65	66	66	67	66	65	65
<b>Total private service sector</b>	64	65	65	66	67	66	65	65
<b>Total private sector</b>	67	67	68	68	69	68	67	67
<b>Public sector</b>	84	84	84	83	82	82	82	81

### **Change in trade union density by sector (%), workers and white-collar 2006-2019<sup>997</sup>**

<i>Category of worker</i>	<i>Workers</i>	<i>White-collar</i>
<b>Industry</b>	-13	-2
<b>Construction</b>	-20	-
<b>Retail</b>	-12	+5
<b>Private service excl. retail</b>	-20	-1
<b>Total private service sector</b>	-18	0
<b>Total private sector</b>	-17	-2
<b>Public sector</b>	-14	-9

<sup>996</sup> *ibid.*

<sup>997</sup> *ibid.*

To explain why the trade union affiliation has developed so differently for workers and white-collar officials, it is necessary to consider the considerable and growing difference in the fee to belong to the unemployment insurance since 2010. In that year, a worker paid a fee to IF Metall (an industry trade union) that was more than four times higher than that for a civil engineer (white-collar worker) did. **The very high fees in combination with the increasingly bright economic situation is probably the main explanation for the declining degree of trade union penetration among workers, while the low fee for white-collar workers prevented a similar development.**<sup>998</sup>

## Legal framework

*Main relevant legislative provisions: Co-determination Act 1976 Section 1(2)*

Under Swedish competition law, agreements between employers and employees relating to wages and other conditions of employment are exempted from the application of competition law. There are no explicit exemptions from the application of the rules when it comes to collective bargaining of the self-employed, however the Swedish Competition Authority (SCA) follows the approach laid down in the jurisprudence of the Court of Justice of the EU which has made it clear that “false self-employed” should not be considered as undertakings. The question of who can be considered to be “false self-employed” or otherwise has not been adjudicated in a competition law context in Sweden. However, it should be noted that the SCA has so far not encountered any cases in its enforcement work where collective bargaining agreements involving platform workers in Sweden have raised any concerns about their compatibility with the competition rules.<sup>999</sup>

### The legal statue of self-employed

The labour law legislation and collective agreements apply to employees but not to contractors (self-employed). It is therefore important to clarify whether the contractual relationship between the employer and the person performing a task is to be regarded as an employment relationship or an agreement between a client and a contractor.<sup>1000</sup>

The starting point is that the concept of employee is of a mandatory nature and that the parties cannot themselves have the legal qualification of their agreement.

If the contractual relationship is unclear, one must instead assess all the circumstances in the individual case and weigh these, in order to determine what is the case. This means that even if the parties have defined the relationship as a contractual relationship, the court may, after an examination in the individual case, conclude that it is in fact an employment relationship.

Examples of issues that are relevant in this examination are whether there is an obligation to perform the tasks personally, if a person is available for ongoing tasks, the duration of the relationship, and if a person is under the other party's work management and if a guaranteed salary is paid.

### The definition of self-employed

**A government report concluded that there is no common view of what is meant by self-employment or other similar phenomena.** The lack of such a common starting point for various discussions risks leaving many issues relating to the job and work environment security of self-employed people, since the issue of liability is not always clear.<sup>1001</sup>

However, according to a major employer's organisation, **there is no issue regarding the fact that there is no uniform definition of self-employed in Sweden.** In essence, they believe, labour market conditions should not be decided by the EU-policy but by the parties on the labour markets. More broadly, there is no need for European solutions regarding collective bargaining. Moving forward, it is imperative that the exceptions regarding the rights to negotiate is not widened. If the rights to negotiate

<sup>998</sup> Ibid.

<sup>999</sup> Written feedback by the Swedish Competition Authority

<sup>1000</sup> Interview Svenskt Näringsliv

<sup>1001</sup> The Swedish government. 2021. [F-skattesystemet – en översyn - Regeringen.se](https://www.regeringen.se/pressmeddelanden/2021/04/f-skattesystemet-en-oversyn)

widen it could lead to cartel situations which would distort competition and raise prices for consumers. Overall, the competition law is not concerned with self-employed, and should not be so.<sup>1002</sup>

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### **The gig economy in Sweden - Working conditions and salaries**

In Sweden, joining an unemployment fund to get access to voluntary UI benefits is voluntary. Being a member of a union and being covered by union-provided UI top-ups is also voluntary. And finally having a job where the wage and other benefits are collectively agreed is similarly voluntary. Effectively this introduces many voluntary elements into Swedish UI coverage. The self-employed and gig workers have access to publicly provided UI. But they do not have a union which can give them access to additional union-run UI top-ups. Nor are they covered by collective agreements, which means that they miss out on additional UI and severance payments granted by collective agreements. In addition, collective agreements contain important pension, sickness insurance and workers' compensation benefit those non-standard workers cannot benefit from.<sup>1008</sup>

More broadly, wages and working conditions are not determined according to law but primarily through collective agreements. Despite this, Sweden has some of the world's best working conditions and highest wages. In fact, a recently submitted EU proposal would on implementing an EU-wide minimum wage in fact reduce the minimum wage agreed through collective agreements in Sweden. Wages and working conditions are thus negotiated by trade unions and employers. The gap between employees of established companies with collective agreements and one-man companies without collective agreements is particularly visible in the gig economy.<sup>1009</sup>

As pointed out above, gig workers rarely have the same terms of employment as employees in Sweden. This is because those collective agreements do not automatically apply to gigs - whether they are self-employed or using an intermediary of some kind (self-employed). This can result in a deeper division of the Swedish labor market with large differences in wage levels and other benefits. This exacerbates

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<sup>1002</sup> Interview Svenskt Näringsliv

<sup>1003</sup> The Swedish government. 2021. *Employment (Co-Determination in the Workplace) Act (1976:580) Section 23*. <https://www.government.se/4ac87f/contentassets/bea67b6c1de2488cb454f9acd4064961/sfs-1976580-employment-co-determination-in-the-workplace-act>

<sup>1004</sup> Written feedback, lawyer at Svenskt Näringsliv

<sup>1005</sup> Ibid.

<sup>1006</sup> Ibid.

<sup>1007</sup> Ibid.

<sup>1008</sup> OECD. The future of Social Protection 2018. <https://www.oecd-ilibrary.org/sites/9789264306943-11-en/index.html?itemId=/content/component/9789264306943-11-en>

<sup>1009</sup> Swedish Entrepreneur Forum. (2020). *Swedish Global Entrepreneurship Monitor* [https://entreprenorskapsforum.se/wp-content/uploads/2020/04/GEM2020\\_rapport\\_web.pdf](https://entreprenorskapsforum.se/wp-content/uploads/2020/04/GEM2020_rapport_web.pdf)

an already unequal situation. The implicit assumption in contract work is that the contractor is able to negotiate working conditions for themselves (or refrain from them of their choice).<sup>1010</sup>

### Giggers, freelancers or businesses?

**In Sweden, unlike some other countries, it is not possible to perform paid work without registering at any regulatory body.** Also, **solo contractors or sole proprietors must register with the Swedish Tax Agency.** They must also notify the authority if they plan to invoice customers (F-tax), pay a salary (A-tax) and submit tax returns each year, regardless of their annual revenue. Most business starters register one sole proprietorship, but limited liability company is also a relatively common form of business. **The fact that entrepreneurs need to register with the tax authorities have consequences.** A positive effect is that entrepreneurship with the intention of reporting profit becomes visible in the statistics, which is useful from a policy perspective. A less positive aspect is the relatively extensive administration that surrounds entrepreneurship (and thus also the gig workers) in terms of being responsible for accounting, make sure you are familiar with tax rules and send submit tax returns to the authorities. **This can have a cooling effect on gigging** - or even driving people to work illegally. When a person is employed in Sweden, he/she must abide to company rules regarding working hours and certain working conditions. But when a person works through another company - often as a consultant - this obligation is revoked.<sup>1011</sup>

Alternative forms have also emerged for those who work with gig work where they instead invoice their employer. This form is known as self-employment and has also given rise to platforms that make it possible for individuals to invoice via a holding company - against one charge. Coolcompany and Frilansfinans, for example, are both platforms in Sweden who sends invoices and pays another salary an individual for a fee of just over six percent per invoice. **The effect of this is that it is often difficult to distinguish between gigs, freelancers and entrepreneurs** - all three can use formal ways to get paid. **This also means that it's hard to get a clear picture of how much gigging actually performed.** Self-identification of individuals is likely also subjective, which further makes it difficult to compare relevant groups.<sup>1012</sup>

In the Swedish gigeconomy, the majority of (white-collar) platforms have employees and there are few cases where workers are sending invoices to the entity they work for (which would mean that they would not be classified as employees).<sup>1013</sup>

Looking forward, the issue of social security coverage for self-employed needs to be further elaborated by the legislator. Anyone who is not employed by an employer, risk ending up in conflict with the social security system, because it is designed for those who have an employer and works full time. This is a broader issue than the gigeconomy.<sup>1014</sup>

### Rights for self-employed

in Sweden, unemployment benefit for the self-employed is based on the average income according to the most recent tax statement, or on the average income from the last two tax statements, depending on which alternative is most favourable to the self-employed. For those who have been self-employed for less than 24 months, special rules apply whereby compensation can be based on earnings before the start-up of the business.<sup>1015</sup>

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<sup>1010</sup> Ibid.

<sup>1011</sup> Swedish Entrepreneur Forum. (2020). *Swedish Global Entrepreneurship Monitor* [https://entreprenorskapsforum.se/wp-content/uploads/2020/04/GEM2020\\_rapport\\_web.pdf](https://entreprenorskapsforum.se/wp-content/uploads/2020/04/GEM2020_rapport_web.pdf)

<sup>1012</sup> Ibid.

<sup>1013</sup> Interview Unionen.

<sup>1014</sup> Ibid.

<sup>1015</sup> European Commission. Access to social protection for people working on non-standard contracts and as self-employed in Europe A study of national policies 2017. [researchgate.net/profile/Bart-Vanhercke/publication/316739736\\_Access\\_to\\_social\\_protection\\_for\\_people\\_working\\_on\\_non-standard\\_contracts\\_and\\_as\\_self-employed\\_in\\_Europe/links/591046a4458515978188f7e4/Access-to-social-protection-for-people-working-on-non-standard-contracts-and-as-self-employed-in-Europe.pdf](https://www.researchgate.net/profile/Bart-Vanhercke/publication/316739736_Access_to_social_protection_for_people_working_on_non-standard_contracts_and_as_self-employed_in_Europe/links/591046a4458515978188f7e4/Access-to-social-protection-for-people-working-on-non-standard-contracts-and-as-self-employed-in-Europe.pdf)

More broadly, the social protection system is very inclusive in Sweden (comparable to other Nordic countries) under which self-employed in general, have the same social protection as employees. In addition to payroll taxes, contributions are paid for health insurance and sick leave, pension and survivor pensions, parental leave, occupational injuries and labour market fees. Sick pay and parental allowance are calculated on annual income. The self-employed can apply for unemployment insurance, which can offer the self-employed support to start their business, in addition to unemployment benefit. The Public Employment Service makes the eligibility decision, as well as deciding on the level of support.<sup>1016</sup>

**Unemployment / Unemployment Insurance Fund:** Self-employed people have protection in the event of unemployment. However, the self-employed must have been a member of the unemployment insurance fund, AEA, for twelve months to meet the conditions for compensation. If the self-employed have had the company for less than two years, the compensation can be based on the most recent income as an employee. Otherwise, the unemployment insurance fund is based on the most recently taxed income in the company or on an average of the two previous tax years, depending on what is most advantageous. Thus: The lower the income in the company (salary taken at a limited company or surplus at a sole proprietorship), the less compensation in the event of unemployment.

**Parental benefit and sickness benefit:** If the self-employed becomes ill and cannot work or needs to take sick leave for to take care of his/her child, the self-employed can apply for compensation from the Swedish Social Insurance Agency. The principle is about the same as for the unemployment benefit; the sickness benefit qualifying income (SGI) is based on surplus / salary in the company. If you do not take out a salary or have a surplus, there is a risk that you will not receive any compensation in the event of illness or parental leave.

**Pension:** To achieve the same pension as an employee, the self-employed must take out a salary in the limited company or get a surplus in an individual company and pay in fees and taxes, which form the basis for the pension. The lower the salary / surplus the self-employed has in the company, the lower the general pension. According to the Swedish Pensions Agency, a rule of thumb is that self-employed people need to set aside approximately 4.5 percent of their salary in order to receive an occupational pension corresponding to the level of most employees.

## Labour market trends and other factors

### The Swedish Gig and Sharing Economy 2019

In an international comparison of the gig and sharing economy, Sweden reaches relatively high levels. In 2018, **only South Korea, Israel, Chile, Ireland and the United States showed higher levels.** Overall, **the Swedish gig and sharing economy increased from 8.4 percent in 2018 to 9.8 percent in 2019.**<sup>1017</sup>

The Swedish Global Entrepreneurship Monitor (GEM) 2018–2019 reveals that **an average of 30 percent of Swedish entrepreneurs have been active in the gig and sharing economy, which is about three times as high as for Swedes in general.** One interpretation is thus that gig and sharing contractors do not necessarily replace traditional entrepreneurship, rather, gig is a complementary source of income. In the future, however, it should be investigated in more detail who can be considered gig-worker or traditional entrepreneur. Although the threshold for being part of the gigeconomy is expected to be low, in general, there are specific conditions that raises it. The complex legislation surrounding start-ups raises the threshold to join the gigeconomy.<sup>1018</sup>

**In 2019, the age group 18–24 year showed the highest participation in the gig and sharing economy. It is relatively uncommon for older individuals to participate in the gig and sharing**

<sup>1016</sup> <https://www.european-microfinance.org/sites/default/files/document/file/exploring-self-employment-in-the-european-union.pdf>

<sup>1017</sup> Swedish Entrepreneur Forum. 2020. *Swedish Global Entrepreneurship Monitor* [https://entreprenorskapsforum.se/wp-content/uploads/2020/04/GEM2020\\_rapport\\_web.pdf](https://entreprenorskapsforum.se/wp-content/uploads/2020/04/GEM2020_rapport_web.pdf)

<sup>1018</sup> Ibid.

economy while it is much more common that the younger ones do.<sup>1019</sup> There are also clear differences between the sexes in question on participation in the gig and sharing economy in 2019. In total, about 15 per cent of men had experience of the gig and sharing economy, while the corresponding proportion for women was 4.3 per cent (see Figure 3.3). Consequently, it is more than three times as common for men to participate in the gig and sharing economy than for women.<sup>1020</sup>

### The Swedish Gig economy in an international context<sup>1021</sup>

Sweden is just one of many countries that have seen an increase in gig and sharing economy. On the one hand, the gig economy could be said to offer entrepreneurs and established companies help at a fraction of the cost - with more flexibility and with less risk - than hiring in a traditional way. This can be seen as positive for both gigs and those who hire them. This possibility could be especially important when it applies to new arrivals in Sweden, as it is notoriously difficult for them to enter the labour market<sup>1022</sup>. An increased degree of flexibility, reduced risk-taking for one client and visibility of performance, can thus lower the entry barrier and give it a soft introductory phase into the Swedish labour market. At the macro level, however, it does not necessarily yield a long-term positive effect on the economy. Instead, individuals' risk to remain outside the more traditional economy without permanent employment. This is problematic for a country where the welfare state is built around the "employment model", and where gigs often have lower wages and probably difficult to save enough for retirement age. Even though Sweden is known for being international competitive country where it is easy to do business, the complexity of the economy is both an opportunity and a challenge when it comes to gig and sharing work. This is not least since gigging takes place both among low and high-income earners - in Sweden and abroad. Finally, a regional aspect (in a large country such as Sweden) on the sharing economy suggest that individuals living in well-populated urban areas find it easier to share things while those who live in sparsely populated areas have less opportunity to do so.<sup>1023</sup>

### Driving forces behind the gig economy

The overarching reason for gigging and sharing has grown - and continues to grow - is accessibility and digitalisation. As individuals have become more accustomed to use platforms and mobile devices and expect immediate connection and delivery of services, platforms have emerged that meet their needs. The financial crisis of 2008 is seen as a turning point as income gaps widened and youth unemployment in many countries, including Sweden, rose. Since then, there is a steady supply of people who cannot really handle their financial situation - either because they are young and unemployed, or because they have a form of employment which does not provide coverage for living expenses or desired standard of living. But there are also those who have embraced the flexibility that gigging and sharing offer that a kind of cultural norm - some choose gigs as a lifestyle, especially those who have the luxury of offering qualified services in areas of high demand. This is linked to the difficulties in distinguishing the driving forces of gig contractors vis-à-vis traditional entrepreneurship. In both cases, for example, it may be a consequence of unemployment or underemployment.<sup>1024</sup>

According to McKinsey (2016)<sup>1025</sup>, gig entrepreneurs can classify into four categories based on what drives them:

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<sup>1019</sup> Ibid.

<sup>1020</sup> Ibid.

<sup>1021</sup> Swedish Entrepreneur Forum. 2020. *Swedish Global Entrepreneurship Monitor* [https://entreprenorsforum.se/wp-content/uploads/2020/04/GEM2020\\_rapport\\_web.pdf](https://entreprenorsforum.se/wp-content/uploads/2020/04/GEM2020_rapport_web.pdf)

<sup>1022</sup> Quillian, L., Heath, A., Pager, D., Midtbøen, A. H., Fleischmann, F., & Hexel, O. (2019). Do some countries discriminate more than others? Evidence from 97 field experiments of racial discrimination in hiring. *Sociological Science*, 6, 467-496.

<sup>1023</sup> Ibid.

<sup>1024</sup> Ibid.

<sup>1025</sup>

<https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/Employment%20and%20Growth/Independent%20work%20Choice%20necessity%20and%20the%20gig%20economy/Independent-Work-Choice-necessity-and-the-gig-economy-Full-report.pdf>

1. Free agents derive most of their income from independent work. They choose this working style, and they want to continue doing independent work in the future
2. Casual earners engage in independent work for supplemental income. While most of them have traditional jobs, approximately 40 percent are students, retirees, or caregivers. Like free agents, casual earners say they pursue independent work out of choice. Some do so for the extra earnings, but they might also undertake these assignments purely to pursue an interest, to develop new skills, or to stay engaged.
3. Reluctant derive most of their income from independent work but would prefer to switch to a traditional job if one were available. This group includes people who resort to independent work because they cannot find a traditional job that pays well or fits their needs—or they can't find one at all. This could include some people on short term probationary contracts (although it excludes those who are long-term temps or permatemps, as noted in our original definition of independent work).

The financially strapped are those who use independent work for supplemental income to make ends meet but would prefer not to have to take side jobs. In general, as we discuss below, these individuals are more likely than casual earners to be in low-income households

## Conclusions

### Key conditions and developments

- The Swedish legislation that regulates collective bargaining, the Employment (Co- Determination in the Workplace) Act 1976 (Medbestämmandelagen – MBL 1976), states that, “an employees’ organisation [a union] shall have the right to negotiate with an employer on any matter relating to the relationship between the employer and any member of the organisation who is, or has been, employed by that employer” (Section 10). But employees are not narrowly defined. The legislation states that, “the term ‘employee’ as used in this Act shall also include any person who performs work for another and is not thereby employed by that other person but who occupies a position of essentially the same nature as that of an employee”
- In Sweden, legislation allows agreements to be signed for self-employed workers, provided that the individual “occupies a position of essentially the same nature as that of an employee”<sup>1026</sup>
- Despite the fact that the law potentially allows the negotiation of agreements covering some self-employed workers, there are relatively few agreements of this sort and they only cover traditional freelance areas, essentially those working in the media or the arts. The topics that they cover are also limited, with pay normally not included.<sup>1027</sup>
- Generally, self-employed workers are not allowed to bargain collectively under national law. They can, however, turn to the trade unions become members and have favourable pension schemes, insurances etc.<sup>1028</sup>
- Generally, anti-trust legislation prohibits collectively bargaining on behalf of self-employment.<sup>1029</sup>
- There are, as of yet no industry-wide collective agreements for platform work. Employers’ organisations and unions at industry level do not yet consider platform work as an industry of its own in accordance with the Swedish model.
- In recent years there have been a lot of initiatives about precarious employees and how to improve social security for the self-employed. Few of these initiatives take the situation of platform

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<sup>1026</sup> ETUC. TRADE UNIONS PROTECTING SELF-EMPLOYED WORKERS WHY SELF-EMPLOYED WORKERS NEED BETTER RIGHTS? WHAT UNIONS ARE DOING? WHICH PRIORITIES FOR THE FUTURE?. [Trade unions protecting self-employed workers\\_EN.pdf \(etuc.org\)](#)

<sup>1027</sup> Ibid.

<sup>1028</sup> Ibid.

<sup>1029</sup> Written feedback Unionen (white-collar trade union)

workers into account. Depending on the business model, platform workers are sometimes excluded from the scope of the suggested solution.<sup>1030</sup>

- In the cases of platform workers gaining access to collective bargaining agreements, for example in the Foodora case, - they are considered legally as employees.
- In the case of Foodora (a food delivery service) and the transport union signing a collective bargaining agreement, Foodora created a separate entity where a significant number of platform workers were **not** covered by the agreement. There may be reason to believe that business will be transferred to this entity.<sup>1031</sup>

### Recommendations for future policy:

- Clarify classification of platform workers as either employees or self-employed.<sup>1032</sup>
- Secure the social partners' possibilities of concluding collective agreements for platform workers, also those that are classified as solo self-employed. Make an exemption in EU competition legislation for collective agreements for solo self-employed in need of protection.<sup>1033</sup>

### The gig economy - key conditions and developments:

- In Sweden joining an unemployment fund to get access to voluntary unemployment insurances (UI) benefits is voluntary. Being a member of a union and being covered by union-provided UI top-ups is also voluntary. And finally having a job where the wage and other benefits are collectively agreed is similarly voluntary. Effectively this introduces many voluntary elements into Swedish UI coverage. The self-employed and gig workers have access to publicly provided UI. But they do not have a union which can give them access to additional union-run UI top-ups. Nor are they covered by collective agreements, which means that they miss out on additional UI and severance payments granted by collective agreements. In addition, collective agreements contain important pension, sickness insurance and workers' compensation benefits that non-standard workers cannot benefit from.<sup>1034</sup>
- Overall, the Swedish gig and sharing economy increased from 8.4 percent in 2018 to 9.8 percent in 2019.<sup>1035</sup>
- Younger, low-income earners and men are overrepresented in gig and sharing economy.
- The proportion of men is about four times greater than the proportion of women.
- Women are significantly less likely to be a gigger (the proportion corresponds to 30 percent of men's gigging).<sup>1036</sup>
- The measurement difficulties are significant but entrepreneurs in gig- and the sharing economy seems to complement and not replace traditional entrepreneurship.<sup>1037</sup>

### Recommendations for the gig economy<sup>1038</sup>

<sup>1030</sup> European Commission. *Mutual Learning Programme Peer Review on "Platform Work" Germany, Summary Table of Peer Country Comments Papers*. 12-14 October 2020.

<sup>1031</sup> Gigwatch. 2021. <https://www.gigwatch.se/2021/02/28/hundratals-foodora-bud-saknar-fortfarande-kollektivavtal/>

<sup>1032</sup> European Commission. *Mutual Learning Programme Peer Review on "Platform Work" Germany, Summary Table of Peer Country Comments Papers*. 12-14 October 2020.

<sup>1033</sup> Ibid.

<sup>1034</sup> OECD. *The future of Social Protection 2018*. <https://www.oecd-ilibrary.org/sites/9789264306943-11-en/index.html?itemId=/content/component/9789264306943-11-en>

<sup>1035</sup> Swedish Entrepreneur Forum. 2020. *Swedish Global Entrepreneurship Monitor* [https://entreprenorscapsforum.se/wp-content/uploads/2020/04/GEM2020\\_rapport\\_web.pdf](https://entreprenorscapsforum.se/wp-content/uploads/2020/04/GEM2020_rapport_web.pdf)

<sup>1036</sup> Ibid.

<sup>1037</sup>

<sup>1038</sup> Ibid

- The gig and sharing economy can bring a positive welfare effect but also lead to undesirable distributional policy effects and an increased division of the labour market. At the same time, one can and should not hinder new technology-based entrepreneurship.<sup>1039</sup>
- It should be investigated to what extent Swedish institutions are able to combine an emerging gig and sharing economy with reasonable working conditions, a functioning competition and privacy. Inspiration can take from similar analyses in other countries.<sup>1040</sup>
- To include gig workers in unemployment insurances (UI), OECD suggests that the solution to require gig workers to set up firms of their own which they would need to close to receive UI, a curb that seems to work for the self-employed. However, such a regulation would risk reducing gig worker employment as it involves more administrative duties for the individual worker. The trade-off in this case is between simplifying employment, and thereby increasing employment, and providing social protection by curtailing gig worker employment.<sup>1041</sup>

## Interviews

Name of interviewee	Organisation
1. Graeme Jarvie	Swedish Competition Authority
2. Victor Bernhardt, Hedvig Forsselius Sverker Wickberg, Thomas Göransson	Unionen (white collar trade union)
3. Bengt Göransson, Stefan Sagebro	Confederation of Swedish Enterprise

<sup>1039</sup> European Commission. *Mutual Learning Programme Peer Review on "Platform Work" Germany, Summary Table of Peer Country Comments Papers*. 12-14 October 2020.

<sup>1040</sup> Ibid.

<sup>1041</sup> OECD. *The future of Social Protection 2018*. <https://www.oecd-ilibrary.org/sites/9789264306943-11-en/index.html?itemId=/content/component/9789264306943-11-en>



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