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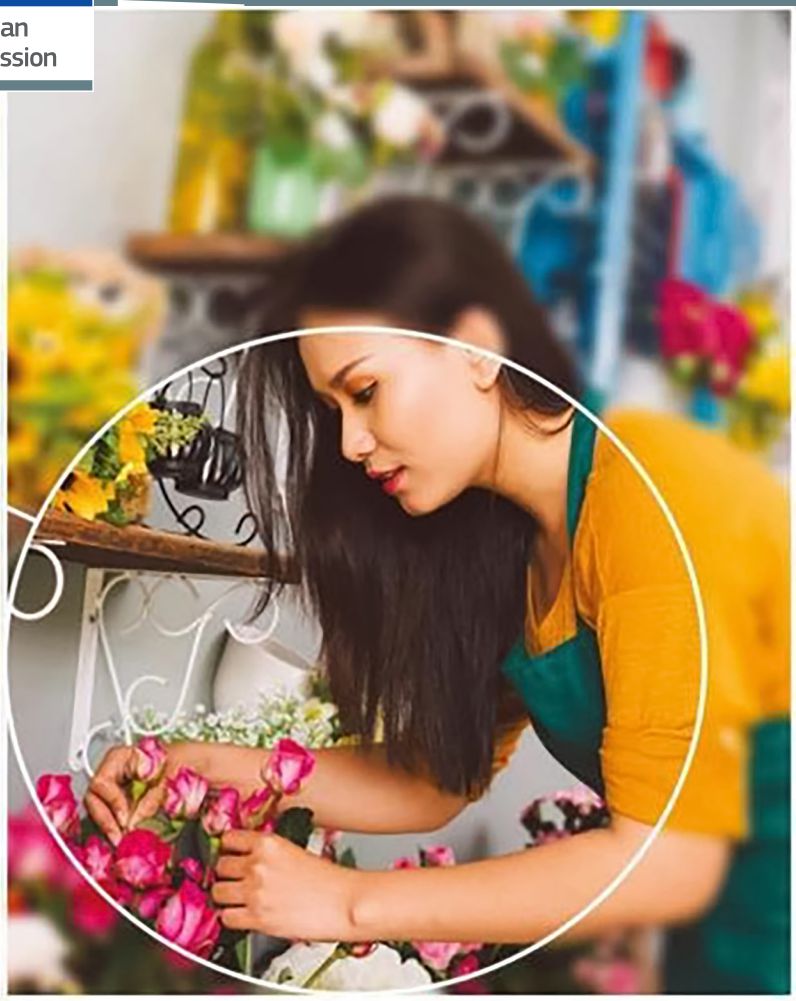


Study to support the impact assessment of a possible EU initiative to the application of competition rules to collective bargaining by self-employed

Prepared by

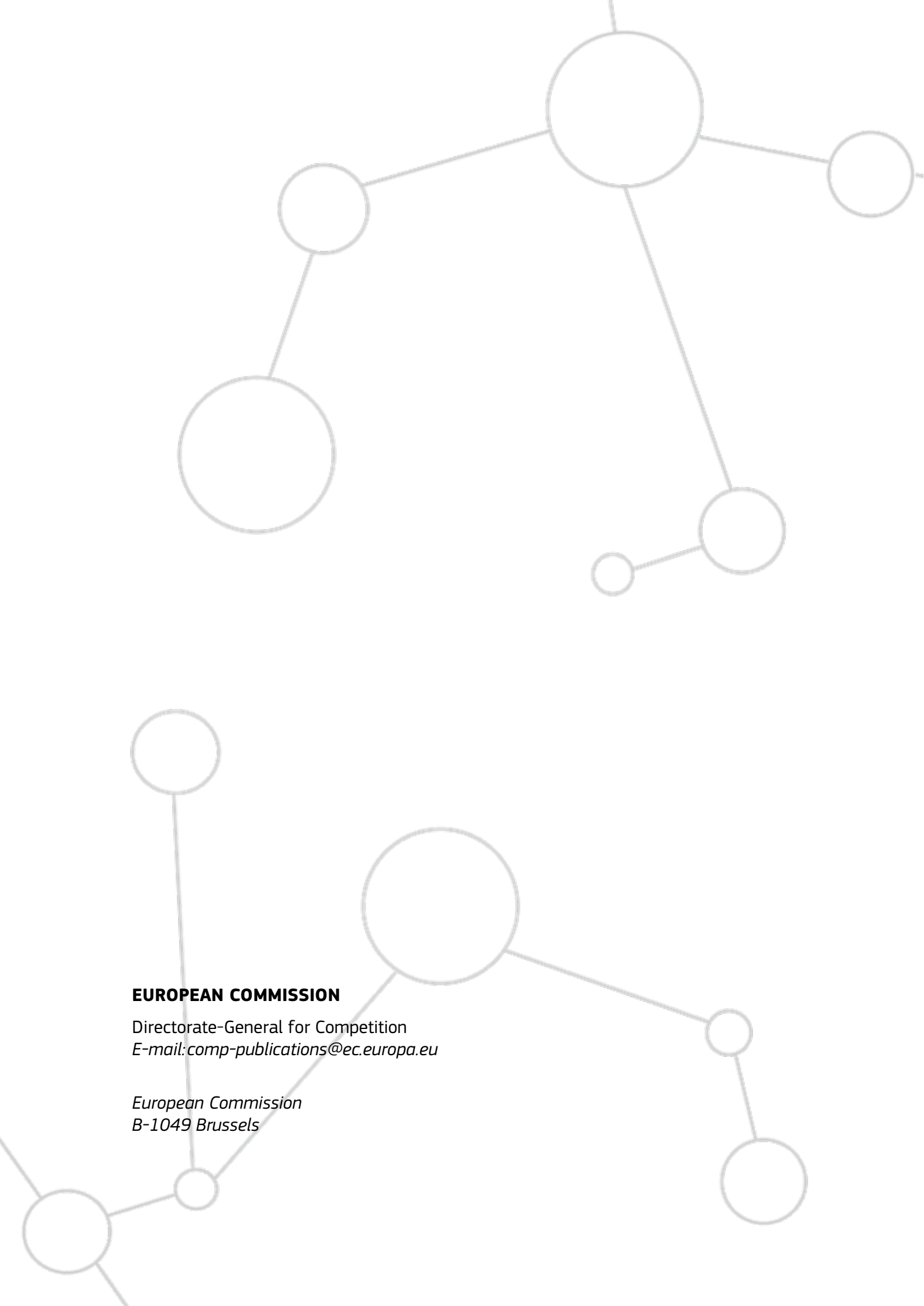
ECORYS ies

ISMERI EUROPA GfK GHS

Universiteit Utrecht

Annex 2
Literature review

Competition



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Directorate-General for Competition
E-mail:comp-publications@ec.europa.eu

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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 2 – Literature review

13 October 2021

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1. Literature review

1.1. Introduction and synthesis of main findings

The literature review aims to provide an overview of the main issues connected to the initiative of the EC on collective bargaining of self-employed workers and integrates the broader mapping exercise carried out in Task 1.

The themes of the literature review are set out below. In particular the review includes:

- **The definition of self-employment**, which has multiple implications for the study. For example: the preference for a specific policy option requires a clear understanding of these concepts, and the different options require clear definitions of the different eligible workers since in legal terms different national definitions of self-employed may influence the enforcement and the effectiveness of the EU initiative. The review proceeds through "concentric circles" and analyses the definitions of self-employed work, the intermediate (or "third") category used in some Member States to identify self-employed with subordinated characteristics, the phenomenon of 'false' self-employed and platform work.
- **Analysis of quantitative studies,** examining the dynamic of self-employment and solo self-employed and highlights some of the main trends which have to be taken into consideration in the assessment of the proportionality and the potential impacts of the EU initiative. In other parts of this study quantitative analyses are carried out in a more targeted manner in preparation for the scenarios. This review identifies the results of more general studies and the main statistical sources used.
- **Trends and drivers of self-employment**, focusing on the causal mechanisms affecting the development and structure of self-employment. These aspects are complex and include the interaction of many different factors, but examination of these factors helps to understand the possible future scenarios and the socio-economic context and the possible structural challenges to take into consideration in the preparation of policy options.
- **Collective bargaining and social dialogue for non-standard workers**, providing an overview of the issues directly connected with the EU initiative and in particular: social protection, which is one of the main reasons to reinforce collective bargaining among solo self-employed ; collective representation and social dialogue for self-employed , which influences the potential effectiveness of collective bargaining in this sector; and the relationship between collective bargaining and competition law, which is the key point on which the EU initiative intends to act. This review aims to illustrate the main debate on the role of competition law in regulating self-employment. It also focuses on the debate in relation to platform workers from this perspective.
- **Overview of non-EU countries**, offering a general view on how other economically advanced countries are regulating collective bargaining and social protection for self-employed.

The literature revolving around the topic of self-employment is extremely wide and particularly heterogeneous, since the phenomenon embodies a traditional form of employment. It is also a traditional research topic which has undergone structural transformations over the last decades in terms of sector of development, workers involved, degree of consideration and attention also from the public and the political sphere. The picture is further complicated by the fact that different analytical lenses

have investigated the topic, ranging from economic sociology and sociology of labour to labour law, to labour economics, statistics and industrial relations.

Against this complex backdrop, the present literature review starts from the references presented in the original call for tender for this study and from the most cited literature in the sociological debate over the last decades. Starting from this first selection of articles and documents, the literature reported in the reference lists of these contributions was consulted and, if considered relevant for the study, included. Further, a search using keywords was carried out within the main sociological repositories and digital libraries (specifically: Web of Science and JSTOR). The keywords used in the search were: *self-employment, self-employed, independent worker, economically dependent self-employed, autonomous worker, collective bargaining and competition law, platform work, gig work*, and *gig worker*.

The approach to this review was predominantly sociological because the majority of contributions come from that discipline. However, attention has been paid to the juridical debate raised in recent years in labour and competition law on self-employment and the way to ensure appropriate levels of protection for self-employed. On these aspects, the review examines the positions of competition law experts who have intervened in recent years, such as: (Daskalova 2019), who proposes a coordinated mix of adjustments in competition and labour law to protect solo self-employed ; Schiek and Gideon (2018), who suggest a reinterpretation of EU competition law to adapt it to the new employment market conditions; Lao (2018), who proposes an expansion of the antitrust labour exemption to gig workers; the OECD (2019c), which suggests to pay more attention to the effects on labour market in antitrust policy; Lianos, Countouris and De Stefano (2019), who point out the increasing conflict between labour law and competition law and the necessity of enlarging the right to collective bargaining; and Lianos (2021), who examines different possible strategies for reforming the interaction between labour and competition law.

The literature review includes academic studies, documents elaborated by international organisations, as well as studies carried out by European social partners (e.g. ETUC), which represent scientific studies conducted by internal experts. However, in order to avoid biased interpretations, the political documents produced by the social partners, such as standing papers or manifestos, have been excluded. The literature review has tried to take into account the debate in EU countries and focuses mainly on contributions in English, which reflect an international debate, and on comparative studies. Due to language limitations, the same level of coverage could not be ensured for all EU countries. To mitigate this limitation, comparative studies published by acknowledged and prestigious research bodies and institutions, such as Eurofound, ILO, KPMG, covering all the EU Member States have been analysed in depth and represent a reliable comparative source of information.

In terms of the temporal scope of the analysis, the review starts from the most recent publications on the topic published over the last decade, tracing back to the 1980s when relevant contributions or seminal scholarships were identified. More specifically, the most cited literature in the academic debate as well as in the most relevant EU projects on this topic was included, consisting of academic studies, documents elaborated by international organisations (e.g. KPMG, ILO), as well as studies carried out by European social partners (e.g. ETUC), which represent scientific studies conducted by internal experts. Conversely, the political documents produced by the social partners, such as standing papers or manifestos, have been excluded in order to avoid biased interpretations. As expected, the cited literature is particularly recent on the topic of gig and platform work, while the debate on self-employment and its transformations includes older contributions.

There are, however, some limitations that have to be taken into account. First, as anticipated, methodologically it does not represent a systematic review of all the literature available in the field, carried out by browsing all potential outlets and keywords. Second, due to language constraints, predominantly English literature only has been included, accordingly excluding potentially relevant contributions in other languages.

Main findings of the literature review

Definitions of self-employment – The review records a general difficulty that national legal frameworks have in defining new types of work and new forms of self-employment. In the past the EU Parliament and the EU Commission have exhorted the Member States to improve their definitions in order to reduce the phenomenon of false self-employment, but no significant improvements have been signalled.

Three main issues are debated in the literature on these themes:

1. False self-employment, which depends on a different legal definition of the job, but also on a fiscal and regulatory framework which allows the development of this category of workers. False self-employment is one of the main reasons why an EU initiative to support the protection of self-employed is needed. The FNV Kunsten ruling by the ECJ on this topic represents a pioneering judgement affirming the protection of this fragile segment of self-employed via the application of collective agreements. In practice, the weakest self-employed deserve policy attention but their condition is difficult to define and to identify in legal terms. This paradox, if not addressed, could weaken policy initiatives to support self-employed who are in a weak position.
2. The identification of a 'third category' (neither employed nor self-employed) of workers, which are so-called 'economically-dependent self-employed' workers, which joins elements of subordination and independence. This aimed to reduce the phenomenon of false self-employment but does not appear very successful. In addition, these approaches are difficult to generalise because they are consistent with the individual legal framework of the country which adopted them and are therefore relatively diverse.
3. 'Platform workers', who belong to the most dynamic and emerging group among the different forms of self-employment. Technological and organisational innovations have contributed to the increase in their numbers, but have also made their legal and analytical definition more complex. These workers are experimenting with new forms of "technological" dependence and at the same time they benefit from new levels of flexibility in working time. However, many of these workers experience a low level of social protection and higher level of personal risk. These elements make platform workers the most pressing challenge to existing legal definitions and fuels the debate on the social protection of self-employed who are in a comparatively weak position.

The review highlights some definition issues that have to be taken into consideration when the EU policy initiative covering collective bargaining of self-employed is designed:

- The definitions of self-employed in the Member States and their assimilation into undertakings in EU competition law are based on concepts (independence, self-organisation, etc.) that are different from those used to define platform workers or liberal professionals as included in the policy options. The contemporary use of different types of definitions (platform workers, self-employed, liberal professionals) may create potential difficulty in the interpretation of the initiative;
- Member States do not adopt the same definition of self-employment and even if the basic concepts are shared, this can produce different interpretations and coverages of the EU initiative;
- Platform workers are defined by the use of new technology and this is changing rapidly. This may generate a relatively rapid obsolescence of some definitions in the EU initiative.

The analysis of quantitative studies – Quantitative studies highlight a progressive change in self-employment. The overall number of self-employed has tended to decrease in the last decades but this trend does not affect all the components in the same way: the number of self-employed in agriculture and the craft sector has significantly decreased, while self-employed in platform-related jobs and liberal professionals has increased. Quantitative findings suggest that an updating of both competition and labour law is required to regulate this new phenomena in self-employment and the EU initiative may

have a significant role in this direction. However, the limited information available on the new forms of self-employment makes it difficult to estimate the potential effects of different policy options and requires a combination of different statistical sources to estimate impacts.

Trends and drivers – Scholars generally share the idea that platform workers and new forms of self-employment will increase further in the future, based on a number of different drivers: technology and especially ICT, increasing flexibility of production, new forms of outsourcing and organisation of large and medium firms; increasing tertiarisation of production processes; changes in lifestyles and individual preferences, and decreasing opportunities for stable employment. All these drivers are rooted in current socio-economic trends but are hard to model to predict future changes. However, they are important elements in terms of assessing the relevance and the potential impacts of the different policy options of the EU initiative.

Social protection – Social protection schemes for self-employed are based on a voluntarist approach and for the weakest segments of these workers social protection is very limited. In addition, self-employment is regulated by commercial and competition law and not by labour law. Accordingly, self-employed do not enjoy the protections ensured by labour rights and collective bargaining. These factors generate a key challenge for the social protection of self-employed across the EU and justify the EU initiative on collective bargaining. In fact, it is recognised in the literature that collective bargaining can play an important role with regard to this aim, especially for workers covered by lower levels of protection. Other instruments for reinforcing social protections (labour law, taxation, access to private social protection schemes, etc.) are also important in the literature and some Member States have developed specific schemes. The use of these instruments may also be accelerated by collective bargaining.

Collective representation and social dialogue - The role of trade unions and collective bargaining as the primary means of collective representation for workers has declined since the last decades of the 20th century. Consequently, traditional industrial regulation based on collective bargaining is becoming less effective and hardly applicable to emerging industries (such as the platform economy). In this context, collective bargaining at company level or individual bargaining is growing. The individualisation of bargaining brings about an increase in individual risks and opportunities and a growing disequilibrium between workers in strong and weak positions. The application of collective bargaining to self-employed may reduce these distortions and produce other long-term effects, such as stabilising market conditions for enterprises, promoting job creation and quality, generating new regulatory frameworks for new types of work, and improving the working environment.

Trade unions are extending their influence on the self-employed and, even where the recruitment of the self-employed is forbidden, trade unions provide services and assistance. However, the representativeness of the traditional trade unions is still weak and fragmented among self-employed, while new forms of associations (called 'quasi-unions') to provide assistance and lobbying activities are growing. This situation may represent an obstacle to the immediate effectiveness of collective bargaining and, probably, the effects of the EU initiative will take some time before being fully activated.

Relationship between collective bargaining and competition law – There is a general agreement on the fact that EU competition law should better embrace the rights and needs of self-employed and intervene on their right for collective bargaining. An EU initiative is also considered as necessary to enforce changes in the rules for collective bargaining. However, possible initiatives to this aim differ among scholars; some crucial points determine the main differences among the current positions:

1. Pre-eminence between competition and labour law (or rights);
2. Definition of self-employed in a double perspective:
    a. If (or when) they have to be considered undertakings or workers and consequently are subject or not to competition law;

b. distinguishing the different types of self-employed in order to be able to apply 'selective' rights for collective bargaining;

3. The different market power of supply and demand of self-employed and the more general need for assessing effects of competition decisions on labour market as well and not only on consumers;
4. The effects provoked by changes in the EU competition law for self-employed may be significant and in particular on: working conditions and industrial relations of the involved sectors, market regulations and interpretation of competition rules, other EU and national initiatives for self-employed.

Overview of non-EU countries – Advanced economies are facing similar problems in regulating the new forms of self-employment. A brief overview of some experiences in the USA, Canada, Australia and South Korea offers some hints for EU initiatives. These countries are dealing with the same issues highlighted above (e.g. legal definition of self-employment, coherence between competition law and labour rights); in particular Canada and Australia allow collective bargaining for self-employed with quite simple and realistic approaches, while the USA and South Korea do not allow collective bargaining, but are committed to better define and regulate self-employed work.

In the **USA** the definition of self-employed worker differs among States and this created a legal uncertainty on non-standard workers. In 2015 the Department of Labour published a memorandum to reduce this ambiguity. In general, collective bargaining is not allowed for independent contractors, but some collective bargaining has taken place and a general diffusion of unions among workers of new platforms and the gig economy is growing. A recent law in California equalizes several categories of independent contractors to employees and in this way extends social protection standards to these self-employed; around 1 million of workers should be impacted by these rules.

Canada adopts a legal definition of the different types of work quite articulated with the aim to discourage employers to use self-employed in an inappropriate way. Collective bargaining for 'dependent contractors' (self-employed working under certain types of subordination) is allowed. Since the beginning of 1960s the capacity of collective bargaining of diminishing the power imbalance in the labour market was recognised by employees as well as dependent contractors.

In **Australia** competition law allows businesses, including independent contractors, to collectively negotiate with suppliers or customers if the Australian Authority on Competition considers that collective bargaining would result in overall public benefits. One advantage of this approach is that it does not require the categorisation of workers. To implement collective bargaining according to that rule, a formal procedure is outlined and has to be complied with.

In **South Korea** the labour law does not allow independent contractors for promoting collective bargaining; however, in recent years cases law are less reluctant to consider some independent contractors as employees. All self-employed are still excluded by protections defined for employees, but recently a relevant national authority formulated a code of conduct for fair contract terms between workers and platform companies.

On the basis of these findings it is possible to affirm that all the examined countries are, to a different extent, adjusting their regulatory system to these new forms of labour and types of self-employment. In general, there are two main challenges: the misclassification of self-employed and the basic rights and social protection of weakest self-employed. Where misclassification is limited (e.g. Australia, Canada), the number of self-employed needed for major social protection is also limited. The experience of the examined countries is comparable to the policy options assumed by the EC:

- The USA is comparable to option 1 (platform workers), the large predominance of false self-employed and the unbalanced market power in some sectors led to specific regulatory initiatives or a cases-by-case acceptance of collective bargaining;

- Canada and Australia may be associated to option 3 and 4 (all solo self-employed without or with liberal professions), but with different legal approaches and restrictions on allowed self-employed;
- South Korea cannot be associated to any policy option, in spite of some initial initiative to regulate self-employment according to the new labour market conditions;
- The Australian experience is partially associated to Option 2. In Australia a turnover threshold identifies the enterprises eligible to the exemption, as in Option 2 a threshold of the size of the employer companies should identify the eligible self-employed. However, the Australian initiative is designed for enterprises rather than self-employed and uses the threshold differently from Option 2 (directly in relation to undertakings instead of indirectly in relation to self-employed employers).

Some direct observations on the four policy options under assessment – The literature review has analysed some basic and debated factors concerning the conciliation of competition law and labour law and the possible improvements of the collective bargaining right for the self-employed. The main implications of the previous findings on the policy options of the EU initiative can be summarised in the following elements:

- The general discrepancy between the definitions of self-employed assumed in the policy options (platform workers, liberal professions, etc.) and the definitions adopted in law cases and labour legal frameworks (false or dependent self-employed, dependent contractors, etc.) should be clarified. To consider all the self-employed as 'undertakings' may result hardly compatible with the policy options aimed to reinforce the market power of the weakest self-employed. Some authors reflected on the possibility of introducing new definitions of workers capable to better reconcile labour law and competition law. At the moment, this possibility is out of the scope of the current initiative, which, however, has to take into careful consideration the definitions of self-employed to cover because the homogeneous enforcement of the new rules in all the Member States depends on this.
- Option 1 (platform workers) responds to a general preoccupation for one of the weakest and growing component of the self-employed. More generally, the utility of focussing a regulatory initiative on the groups of weakest self-employed, as well as the necessity of an EU initiative for enforcing widespread and standardised rules, is recognised by many observers. Some cases law and national policy initiatives already recognised the right to bargaining and the need for higher salaries and social protection of these self-employed; however, this occurred because workers were considered false-self-employed and with unbalanced market power of their costumers, not simply because they work through or for platforms.
- Option 2 (platform workers + solo self-employed providing their own labour towards professional customers of a certain size) includes a wide range of self-employed. It may encounter difficulties in terms of implementation because information on solo self-employed per type of customers have to be extracted from tax registers and introduces segmentations in relation to both self-employed and enterprises. The criterion of dependence (e.g. number of clients, autonomy) is generally more used in legal and analytical terms to identify self-employed suffering from subordination or weakness in their contractual position.
- Option 3 (platform workers + all solo self-employed - except regulated/liberal professionals - providing their own labour to professional customers of any size). Observations on this option are similar to that of the following option 4, with the exception of the exclusion of regulated/liberal professional. The number of self-employed in this category is increasing according to the growing tertiarisation of the EU economy and phenomena of dependence are frequent as in the platforms. The exception of liberal professions may result not fully justifiable, as well as difficult to manage for the differences in the national regulation of the professionals,

- Option 4 (platform workers + all solo self-employed providing their own labour to professional customers of any size). Some authors[1], would prefer this broader option, based on a "rights-inspired approach", considering that all the workers, dependent or independent, have the same rights to bargaining collectively. Some non-EU countries, such Canada and Australia, already adopt similar approaches. However, this option raises the question of respecting the level playing field, which should be reached with specific references to the market powers of the involved solo self-employed. In this respect Ireland and Australia propose examples of notification and control of these processes.

1.2. Definition of self-employment

Self-employed

The systematisation of the international debate concerning the definition of self-employment requires comprehension of the differences existing across European Member States: despite the growing relevance of the phenomenon of self-employment over the last decade, there is no universally-accepted definition of this. It is commonly acknowledged that self-employment encompasses multiple categories of workers in terms of occupations, job structure, degree of autonomy and professionalism. Moreover, from a cross-country comparative perspective, national legislative and institutional frameworks influence which categories of workers included in the definition of self-employed worker.

The European Commission in article 2 of the Council Directive (86/61 3/EEC) on the application of the principle of equal treatment between men and women and on the protection of self-employed women considers a self-employed all those person pursuing a gainful activity for their own account, under the conditions laid down by national law.

For statistical reasons, Eurostat European Union Labour Force Survey defines a self-employed person as "the sole or joint owner of the unincorporated enterprise (one that has not been incorporated i.e. formed into a legal corporation) in which he/she works, unless they are also in paid employment which is their main activity (in that case, they are considered to be employees)" (Eurostat 2013). According to Eurostat, the category of self-employed people also include: i) unpaid family workers; ii) outworkers (who work outside the usual workplace, such as at home); iii) workers engaged in production done entirely for their own final use or own capital formation, either individually or collectively. It clearly emerges a wide and heterogeneous category of workers from this definition, but which is also recalled in further studies, in particular the reports carried out by Eurofound on the topic.

Competition law, instead, considers self-employed people as undertakings, rather than a category of workers.

From our literature review four main critical aspects further complicate this definition and the boundaries of self-employment. These aspects are crucial since they have to be taken into consideration when the legal boundaries to the phenomenon have to be drawn to circumscribe the scope of the application of collective agreements.

First, the literature offers a variety of labels to define self-employed, which are not fully overlapping and do not refer to the same categories of workers. These include: independent professionals (Leighton 2013), autonomous workers, I-Pros - independent professionals (Rapelli 2012), new self-employed (Schulze Buschoff and Schmidt 2009, Westerveld 2012), autonomous workers of second generation (Bologna and Fumagalli 1997), self-employed without employees (Dekker 2010), freelancers (Heery et al. 2004), and own-account workers (Murgia et al. 2020). These various definitions only partially refer to the same phenomenon, each implying a different definitional shadow. Furthermore, the review of the international literature shows how each of these definitions, according to the country of reference, might

[1] See, for instance, Lianos, Countouris and De Stefano (2019) and (2021).

address different groups of workers, reflecting differences in regulatory and legal frameworks across the EU. Such heterogeneity reflects a variety in the juridical configurations of the status of self-employed in Europe, which might at its turn affect the application of collective agreements. Such heterogeneity reflects a variety in the juridical configurations of the status of self-employed in Europe, which might at its turn affect the application of collective agreements.

Second, from a methodological perspective, self-employment is often equated to small enterprises and entrepreneurship (European Employment Observatory Review 2010; Henrekson 2007). “This somewhat vague notion refers to the idea of the innovative self-made man who starts out with nothing and becomes a captain of industry” (Rapelli 2012, p. 6). The professional profile of the self-employed worker is, in fact, erroneously assimilated into the role of the entrepreneur who autonomously establishes and leads their own business with entrepreneurial and managerial ambitions, often employing dependent personnel. This perspective can be misleading since it does not categorise self-employment as detached from a pure entrepreneurial role. This is relevant since the application of collective agreements is a priori excluded for entrepreneurs. Nevertheless, from the perspective of the antitrust law self-employed have to be considered as undertakings, rather than workers, in any case.

Third, critical aspects emerge when self-employment presents specific characteristics that locate it at the intersection with the boundary of dependent employment. In some European countries, an intermediate category of dependent self-employed (Muehlberger 2007) has been created, defined as “workers who are legally self-employed but in fact wholly dependent on the company” (Pernicka 2006, p. 125). Despite some scholars clustering dependent self-employment as a new specific contractual form, other researchers locate this phenomenon between “false freelance” and “forced freelance” (Nies and Pedersini 2003). False freelancers are substantially dependent employees falsely registered as self-employed, while forced freelancers correspond to self-employed formally detached from the workforce of a company although substantially dependent on a single employer. Similarly, other researchers have addressed this intermediate category by adopting the notion of salaried entrepreneurs (Bureau and Corsani 2014). Here, the authors refer to a blurred category ranging from “independent workers disguised in dependent ones” since they are formally salaried workers of a company but substantially autonomous in the exercise of their functions (*indépendants déguisés en salaries*), to independent contractors with employee status who are responsible for generating their own business. This critical aspect, deeper investigated in the following paragraph, is relevant given the repercussion it triggers on the definition of the boundaries of self-employment for the range of application of collective agreements, for the realm of coverage of the EU competition law, as well as for the potential intersection between the two regulatory frameworks,

Fourth, a further source of complexity in the definition of self-employment arises from the false dichotomy we find in some literature between low-skilled manual salaried workers and high-skilled professional self-employed (Bronzini 1997). This misleading conception can be attributed to the dichotomy between professional jobs − characterised by highly skilled and intellectual tasks, generally associated with autonomy − and low-skilled manual jobs which would require a dependent “more protected” contractual arrangement. However, the category of self-employed encompasses a wide and multifaceted array of occupations and type of job content, regardless of educational background, and including both manual and white-collar jobs. This is likewise the case for subordinated work. Historically, self-employed work developed in the agriculture, manufacturing and handicraft sectors, involving occupations that were inherently manual despite their technical content (Ranci 2012). Self-employment subsequently proliferated in highly-qualified professional sectors, ranging from financial services, ICT, creative sectors, consultancy and intermediation services. Such distinction is important to clearly identify what categories of self-employment might require an explicit protection of working conditions through collective agreements.

Furthermore, the heterogeneity of self-employment is difficult to capture from official statistics, which are still based on traditional classifications that are unable to grasp the “hybrid areas of work” (Murgia et al. 2020), and can vary significantly in relation to the definitions adopted, which are heterogeneous

and not mutually exclusive, as shown above. Most of the data on self-employment comes from national labour force surveys, which ask respondents to classify themselves as either employees or self-employed according to their status in their main job. According to this question, however, all kinds of self-employed work seem to be included in this category, such as owner-managers of incorporated businesses, which represent a substantial share of self-employment in some countries, but not necessarily in others. Moreover, this definition risks to encompass groups of workers who are not solo self-employed or not fully autonomous.

All in all, the definition of self-employment embodies a multifaceted and transversal category of workers, the boundaries of which can vary across countries according to the legal and fiscal framework adopted in each context for different purposes (taxation, social security law, labour law, etc.) A systematic and comparative analysis of the legal definition and of the main domains in which self-employment has been defined across the EU Member States is proposed by Eurofound (2009). The picture that emerges is heterogeneous and complex. In this regard, the lack of homogeneous definitions makes it more difficult to carry out a comparative analysis.

Nevertheless, some fruitful attempts to define clear-cut criteria to circumscribe self-employment do emerge from the literature. Some scholars root their classifications on the way in which a task or a job is performed. Murgia and colleagues (2020) derive the definition of self-employment from three macro-sets of criteria: i) hetero-direction of the work and its external control, which implies the power for the employer to give instructions and direct the employee's work; ii) hetero-organization, which means that the work is integrated into someone else's organisation and business; and iii) risk assessment, which essentially investigates whether the worker carries the ultimate risk of loss or chance of profit. Similarly, Cherry and Aloisi (2017) distinguish employees from self-employed to a large extent according not to the type of work they do, but the way in which tasks are accomplished and structured.

In other studies, the boundary between employment and self-employment is set through the nature of the contract applied: as underlined by Verhulp (2017), generally employees work under a contract of employment, whereas self-employed operate under a contract for services.

A more structured and systematic distinction between employees and self-employed is offered by Brancati et al. (2020), who distinguish the two statuses according to the following key job-related dimensions: the type of contract; the method of payment; the mutuality of obligations; the control over how the work is done; the risk of loss; the place of work; the time of work; the type of work; the ownership of the main assets; the opportunity to profit; the number of jobs; the workers' role; and who actually does the work.

Eurofound (2009) adopts a similar approach. By systematising the relevant international literature, a set of dimensions, which have also been used at national level to reform and adjust existing legislation are used to define self-employment: investment of own capital; autonomy in the labour market; responsibility for and control of own work; presence of employees. Based on these criteria, the broad category of self-employment is clustered in five basic sub-groups which are most often used in the relevant literature: i) entrepreneurs, who run their business with the help of employees; ii) traditional 'free professionals', who, in order to work in their occupation, must meet specific requirements, abide by regulations and duty-bound codes and often pass examinations to be listed in public registers; iii) craft workers, traders and farmers, who represent the traditional forms of self-employment; iv) self-employed in skilled but unregulated occupations, sometimes referred to as 'new professionals'; and v) self-employed in unskilled occupations, who run their business without the help of employees, but can sometimes be assisted by family members (Eurofound 2009).

All in all, despite the quantitative growth over the last decade and the increasing relevance of the labour market segment of self-employment, a universally-accepted and clear-cut definition of this phenomenon is not available. In a wider sense, self-employment could be defined by exclusion, in opposition to what constitutes the category of employee. Nevertheless, self-employment, in general terms, encompasses a variety of categories of workers in terms of occupations, job structure, degree of autonomy and

professionalism. Furthermore, from a cross-country comparative perspective, a definitory exercise has to take into consideration that each national legislative and institutional framework actually delineate which categories of workers are to be included in the definition of self-employed worker.

"Third intermediate category" between employee and self-employed

As anticipated in the previous section, the literature reports a growing application across EU Member States, under different legal definitions and labels, of an intermediate category between employee and self-employed worker. Self-employed clustered within this intermediary category display specific characteristics that locate them at the intersection with the boundary of subordinated work (Böheim and Muehlberger 2006).

Across Europe the definition of this category is patchy and blurred, as demonstrated by Murgia et al. (2020) who, in their contribution, talk about the challenges and future directions of the "hybrid areas of work between employment and self-employment" with a specific focus on "solo self-employed", which represents the category of interests for this study.

Some Member States choose to legally define a "third category" of workers and the rights and obligations under which workers in this category fall, such as Spain and France. Other countries have, instead, decided to stick to the binary distinction employee/self-employed and accordingly to take measures to facilitate the allocation of workers to either one or the other category, like in Belgium. In an attempt to systematically compare the legal definitions adopted to describe this category across countries, Eurofound (2017b) highlighted four main approaches adopted to address such in-between status. Some countries have opted to create a new third status, either by introducing a new hybrid status (Italy and Austria) or by adopting the "economically dependent worker status" (Spain, Portugal, Slovakia, Slovenia). Other countries instead have opted to introduce criteria to improve the legal and fiscal framework for these workers: Germany, Latvia and Malta introduced criteria of economic dependence to combat and identify false self-employment, while Belgium, Ireland, Norway and Poland have applied stricter criteria to distinguish employment from self-employment, therefore tracing back intermediate status to the traditional dichotomy between employed and self-employed.

Looking at the empirical experience of some countries in dealing with this intermediate status, Cherry and Aloisi (2017) refer to the category of "dependent contractor" and use a comparative approach to analyse three different legal frameworks in which diverse legislative solutions have been adopted: in Canada the category of dependent contractor was introduced, in Italy the category of semi-subordinated workers, the so-called "co.co.co", and Spain where the third category is TRADE (*Trabajador Autonomo Dependiente*).

The phenomenon of false self-employment

The phenomenon of false or bogus self-employment is defined by Eurofound as follows: "when direct subordinated employment is disguised as self-employment, it is termed bogus" (Eurofound 2017b, p. 2). This is the case where workers "who are 'contracted' to perform an activity and deliver a product/service (in a self-employed capacity) find themselves in a situation of factual subordination and dependence (the same de facto position as an employee)" (Eurofound 2017b, p. 2). The European Parliament Resolution on Social Protection for All (14 January 2014) has recalled that the lack of a clear national definition of self-employment increases the risk of the spread of false self-employment. Similarly, the European Parliament Resolution on the Renewed Social Agenda (6 May 2009) prompted Member States to take initiatives that would "lead to a clear distinction between employers, genuine self-employed and small entrepreneurs on the one hand and employees on the other".

However, in the mundane application, two diverse definitions might potentially cover these ambiguous situations: 'false self-employment' and 'economically dependent self-employed'. If the former definition underlines the intention of the employer to circumvent labour regulation, the latter refers more to an unintended consequence of the contractual arrangements adopted than a deliberate choice. The

identification of the phenomenon of false self-employment, and its demarcation in regard to the economically dependent self-employed, is crucial given that it may enable to clearly circumscribe the potential range of application of collective agreements. Indeed, in case of future potential application of collective agreements to self-employed and to economically dependent self-employed, it is important to include only “pure” or genuine self-employed. In case of false self-employment, instead, the law should provide a framework to identify them and to change the employment status from self-employed to employee. The risk, otherwise, is to include into the definition of self-employed who are only formally but misleadingly autonomous and substantially subordinated. If they are actually subordinated, a different regulation of work and different collective agreements then should apply.

Given the spread of the phenomenon of false self-employment, the European Court of Justice has ruled up, consulted by the Watford Employment Tribunal (UK) on the case of the courier working for Yodel in the UK arguing that, although he had signed a contract to work as self-employed independent contractor, he was in fact a ‘worker’ for the purposes of the Working Time Regulations 1998 (WTR). The status of “worker” (specific to the UK legislative framework) would have entitled him, amongst other contractual arrangements, to paid holidays. The European Court of Justice has reaffirmed in that case-law that the decisions regarding employment status remain a statutory prerogative of national courts, but it also specified that being classified as an independent contractor under national law does not prevent a person being classified as an employee within the meaning of EU law, if his independence is merely notional, thereby disguising an employment relationship.

In general terms, the European Court of Justice, ruled that any classification dealing with this concept has to be based on objective criteria and requires overall assessment of all the circumstances of the case. Against this backdrop, the essential characteristic of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives a remuneration.

The issue of ‘false self-employment’ raises questions and uncertainties also in respect of social protections attached to this status. An emblematic case, from this perspective is represented by the case of FNV Kunsten Informatie en Media (hereafter: FNV KIEM) raised in the Netherlands, where the European Court of Justice (ECJ) was asked to rule on this issue. The trigger of the case was represented by the substitution of subordinated workers in a Dutch orchestra with self-employed. To these independent workers, however, a collective agreement fixing minimum wages and equating the wage level of autonomous and of subordinated workers in the sector was applied, raising the charge of violating the antitrust law. By equating the compensation levels paid to subordinated musicians to the self-employed one, the NCA violated the competition law and enacted a restriction to the free market competition. The ECJ ruled on this, stating that the application of the NCA and, accordingly, a containment in the application of the competition law with the predominance of collective bargaining applies only in case false self-employed are at stake.

Beyond the court’s definition, also the OECD proposes a definition in which false self-employment refers to subordinated workers “who declare themselves (or are declared) as self-employed simply to reduce tax liabilities, or employers’ responsibilities” (OECD, 2000, p. 156). More generally, an individual can be classified as false self-employed when the specific features and tasks characterising self-employment − such as autonomy in organising work and time, tendering for different clients, and so on − are limited or non-existent. Accordingly, false self-employed show characteristics of subordinated employment relationships as: i) the long-term engagement with a single contractor/client/employer; ii) the lack of control or autonomy over the organisation of work (working place and time); iii) the lack of own resources and equipment to perform the job.

The picture, however, remains complex, given that these aspects might characterise also the category of economically dependent self-employed: the boundaries between the two definitions are blurred and overlapping, distinguishable basically only through the intentionality of the employer. In an attempt to clarify the distinction, Eurofound (2017) presents a list of elements specifically characterising false self-

employed: they receive a salary; they are subordinated or controlled by the employer; they are integrated into the employer's organisation; they are economically dependent on the employer; and they are obligated to accept work given by the employer. In Eurofound (2017b) we can find an overview of genuine and false self-employment definitions and trends in Spain, the UK and Czechia.

Other contributions try to provide straightforward criteria to point out false self-employment. In the Annual Platform Survey, Williams (2019) presents two aspects characterising false self-employed on which there is a large consensus despite there being no universal definition: i) false self-employment is an employment relationship in which workers are self-employed but have a de facto employment relationship; ii) two types of dependence are important, namely economic dependence and personal dependence. Nevertheless, there is no consensus on whether both forms of dependence need to be present, or only one, and on the measures used to define economic and personal dependence.

Similarly, the ETUI (2018), in an attempt to identify and rectify situations of misuse of self-employment provides criteria to indicate economic dependency, referring to individuals in a comparable position to workers who do not work in a relationship of subordination (or of personal dependency) but who are economically dependent on their contractual partners, as they do not perform fully on the market.

The identification of the phenomenon of false self-employment, and its demarcation in regard to the economically dependent self-employed, is crucial given that it may enable to clearly circumscribe the potential range of application of collective agreements and policy initiatives specifically targeting this group. Indeed, in case of future potential application of collective agreements to self-employed and to economically dependent self-employed, it is important to include in the definition only "pure" or genuine self-employed. In case of false self-employment, instead, the law should provide a framework to identify them and to change the employment and the change of status from self-employed to employee. 'False' self-employment is not only an analytical category, but is an important reason why an EU initiative clarifying the application of EU competition rules, in support to the social protection of self-employed is needed. In practice, the weakest self-employed deserve policy attention but their condition is difficult to define and to be identified in legal terms; this paradox could weaken policy initiatives to support them or other forms of weak self-employees. The FNV KIEM ruling by the ECJ on this topic might represent a pioneering ruling stating the protection of these fragile segment of self-employed via the application of collective agreements.

Furthermore, the attempt in some countries to identify a third category of workers, the so called "economically-dependent self-employed" which shows in their contractual status elements of both subordination and autonomy, does not seem resolutive. These experiences help to understand the possible elements to differentiate workers and to solve those intermediate professional profiles poorly regulated and often misused, but they are not generalised and are consistent with the individual legal framework of the country which adopted them. They even did not solve the issue of the 'false' or false self-employment, highly spread in several of the countries applying this third category. "Bogus" self-employment depends on a different legal definition of their jobs, but also on a fiscal and regulatory framework which allows the diffusion of these workers.

Platform work

The new emerging category of platform worker can be grouped with other types of non-standard work, often assimilated into the category of self-employment. The literature collecting information about the status and working conditions of platform workers has recently grown, discussing a range of analytical and critical dimensions concerning this phenomenon (Eurofound 2018).

First, there is no common definition or clear-cut conceptualisation of the platform economy and platform work across Europe. Eurofound (2018) has pointed out a series of alternative terms for platform work used across EU Member States, ranging from sharing economy, platform economy, gig economy, crowd employment, on-demand economy, collaborative economy, crowd sourcing, peer-to-peer economy, and freelance (p. 10).

Second, the scale of the platform economy and its importance for the labour market across EU Member States has called the policy and research attention across Europe over the last years and, relatedly, the available data on platform work(ers) are still limited and based on unofficial sources, but new surveys are providing an increasing amount of information at the European level (see next section). Nevertheless, the picture changes rapidly in the platform economy where jobs and workers are often intermittent and not easy to quantify. These quick transformations are difficult to be grasped in the short term. Furthermore, the phenomenon is relatively new and the bulk of study is growing but it is still limited compared to the long-lasting debate on the traditional self-employment. In addition, platform work is potentially global, and this global provision of workforce is difficult to be investigated.

Third, platform work is highly diverse across platforms and countries, and models are constantly changing over time in order to quickly adapt to the changing demands of the economy.

Fourth, some working conditions of platform workers, and in particular job-related weaknesses and critical aspects are similar to those found in the traditional labour market (Drahokoupil and Fabo 2016). According to Drahokoupil and Fabo, in fact, five different trajectories of work transformation were already at stake, but they have been exacerbated by the advent of the platform-mediated jobs: i) the re-organisation of the job activities that traditionally relied on the employment relationship into activities of self-employment; ii) the remote provision of services and tasks, potentially leading to the outsourcing and to the offshoring of work from local labour markets; iii) the increase competition by lowering barriers to entry even if they only reorganize self-employment, leading to greater pressure on pay and working conditions; iv) the further contribute to the marketization of the world of work, emphasized by the reputation mechanisms used by the platforms; v) the growing breakdown of working activities into individual tasks, which are then "differentiated between the ones that require the creative and highly skilled work of 'heads' and those that can be left to 'hands'. While the former kind of skilled work entails a very high standard of employment in terms of pay and other perks, the latter kind of low-skilled work is constantly threatened by offshoring and automatization" (2016, p. 4).

All in all, the use of new technologies creates specific new challenges for working conditions. Many platform workers are in fact misclassified as self-employed: their employment status certainly represents a core issue triggered by the platforms, because it is often difficult to distinguish between genuine and false self-employment. Further challenges include the lack of information available to the platform workers about their working conditions, dispute resolution, collective rights and non-discrimination rights. The huge study carried out by CEPS, EFTHEIA, and HIVA-KU Leuven across EU countries (2019) investigated the working conditions of platform workers, by focusing in particular on the challenges relating to: i) the work-related aspects, which concern job content, working conditions and work organisation, that impact physical and psychological risks for the platform workers; ii) the employment-related aspects, relating to "the formal context in which a platform worker performs tasks, such as their employment status, the nature and content of their contract with the platform, the level of social protection, and the composition of their earnings" (by CEPS, EFTHEIA, and HIVA-KU Leuven 2019, p. 17); iii) the social relations, concerning interactions, social dialogue and collective representation at work, both formally and informally. This comparative research shows that work-related challenges are largely, or only partially, unaddressed within the national contexts. In fact, in the EU there are no or only a few national responses addressing the autonomy in the allocation of tasks and in work organisation, while only a minority of the MSs addressed the issues concerning the physical work environment and surveillance, direction and appraisal of the hob performance. As far as employment-related aspects are at stake, the authors draw the conclusion that some measures have been taken at the national level trying to regulate the contract status, while other aspects remained largely unaddressed. Finally, regarding the social relations, the challenges pointed out in terms of collective representation and voice turned to be unaddressed within the various countries, except for undeclared work which has be targeted. The report concludes that "the specificity to platform work is also important. Indeed, the platform-specific challenges can be addressed solely for platform work, whereas, because

of their nature, other challenges require a more general approach that also addresses other forms of non-standard work or general labour market policies" (p. 223).

The ETUC (2017) shows that platform work can be considered a more 'flexible' form of work, whereas current labour and social law are not able to frame it. Kilhoffer et al. (2019) gathers evidence on the working conditions of platform workers for the EU Commission across the 28 EU Member States, plus Norway and Iceland. By focusing on challenges platforms raise for working conditions and social protection, it highlights different approaches adopted by countries, either through top-down initiatives (legislative intervention and case law) or bottom-up actions (e.g. collective agreements, actions by platform workers or platforms). Overall, this national mapping and legal analysis provides support to the need to undertake further action on platform work.

Finally, despite recent attempts to give platform workers a collective voice, they are usually poorly or not adequately represented.

To respond to the challenges raised by the growth of platform work, Lenaerts et al. (2017) evaluated government responses to the platform economy in seven EU countries: Belgium, Denmark, France, Germany, Hungary, Slovakia and Spain. They show that, due to the lack of a specific regulatory framework within each country governing the platform economy, countries generally attempt to apply existing legislation, regulations and policies concerning labour and social protections of the workers to the new challenges that the platform economy brings. In particular the application of the existing tools involves the status of workers, working conditions, and industrial relations and social dialogue. Regarding the status of workers, platform-related work relationships are less clearly defined, which makes it difficult to distinguish employees from self-employed or other types of workers – the contractual status that are traditionally recognised in most of the countries. Given the lack of a specific regulation governing the status of platform workers, the countries investigated applied the existing framework of laws, policies and regulations to the platform economy, underestimating the peculiarities of platform work. As far as working conditions are at stake, once again, "due to the lack of a specific framework regulating work in the platform economy, countries generally rely on their existing framework governing working conditions, and again these are rather diverse across Europe. The existing framework, however, is not necessarily adequate to deal with the challenges of the platform economy. In fact, some have argued that it is not equipped to respond to the challenges of digitalisation in general" (p. 8). Coming to the social dialogue institutions dealing with platform work, the report pointed out that "none of the member states hold industrial relations and social dialogue in the platform economy high on the agenda. In most countries, there was no real discussion on the topic, no government initiatives, no court cases and no legislative or regulatory responses" (p. 10). All in all, the study sheds light on a still fragmented framework, shaped by the national institutional models and unequipped to respond to the challenges raised by the platform-mediated jobs.

In this vein, De Stefano and Aloisi (2018), from a labour law perspective, have provided a contribution meant to contrast the sense that new realities of work have outgrown legal concepts. They believe that the application of existing regulation could be useful to contain and to cope with the challenges triggered by the platforms but it must be reinforced, in order to avoid the risk that platform workers are considered by default as falling in a normative vacuum. The collective bargaining institutions adopted in each country could be shaped and adapted to the specific issues raised by the platform-mediated work. They note that, all in all, creating a level playing field between traditional and digitally-enabled companies is the only way to reap the full benefits of on-going digital transformation.

Platform work embodies to the most dynamic and emerging job among the different forms of self-employment. The spreading technological and organisational innovations pushed their diffusion but also made their legal and analytical definition complex, together with the fast and unpredictable transformation. These workers are experimenting new forms of "technological" dependence and at the same time they benefit from new flexibility in working time and place; some of them choose the platform as a unique working opportunity while for others it is an option or a source of extra-income to top up an

insufficient salary. However, many of these workers are associated by a low level of social protection and higher level of personal risk. Furthermore, platform-related work relationships are less clearly defined, which makes it difficult to distinguish employees from self-employed or other types of workers according to the contractual status that are traditionally recognised in most of the countries. Given the lack of a specific regulation governing the status of platform workers, these elements make platform workers the most evident challenge to the existing legal definition and social protection of weak self-employed. As comparative studies have shown, platform work specific challenges can be effectively addressed uniquely for platform works through 'ad hoc' policies. However, because of their transversal nature, other challenges concerning social protection schemes, employment protections and representation require a more general approach that jointly addressed other forms of non-standard work, self-employment or general labour market policies.

1.3 An analysis of quantitative studies

If the qualitative analysis concerning the developments and the main trends of self-employment has proved to be quite informative (Bologna 2018), this is not the case for platform workers, where the picture is still unclear, and quantitative analysis of this phenomenon reflects this difference.

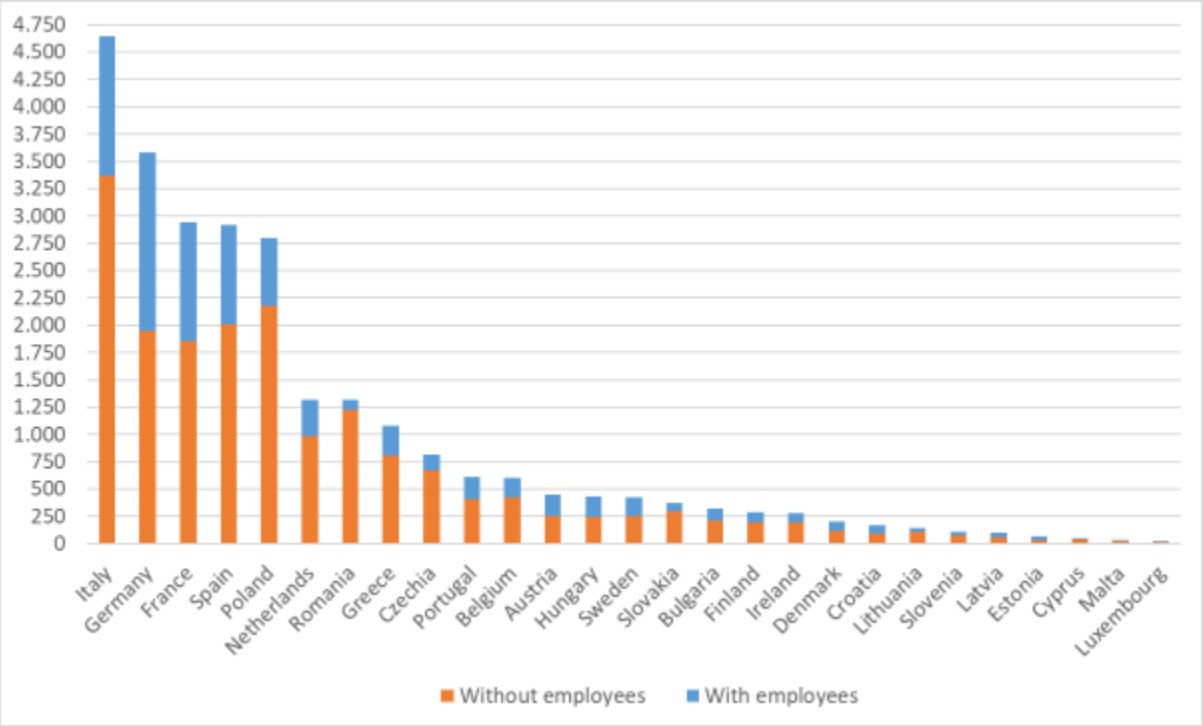
There are systematic comparative studies reporting the quantitative trends displayed by self-employed in Europe. Semenza and Pichault (eds.) (2019) specifically investigated the trajectories of quantitative transformation of professional self-employed across selected European countries (Italy, Belgium, Germany, Spain, Slovenia, France, UK, and Sweden), showing an overall increase of professional self-employed without employees across Europe over the past decade.

At European level, the main source of data is Eurostat – Labour Force Survey (LFS)[2]. This EU survey is based on the same statistical method in all the EU countries, and this makes data comparable; in addition, LFS is quarterly and this provides updated and constant information. Unfortunately, the sample of LFS is not sufficiently big to detail the characteristics of the self-employed and only few details are available (solo or with employees, gender, level of education, etc.) Data from the LFS show a decreasing trend of total self-employed persons aged 15-64 between 2007 (27.6 million) and 2018 (26 million), while a small increase was recorded in 2019 (+124,000 in comparison to 2018). Over the entire period 2002-2019 self-employed males are more than twice the number of self-employed females. The decreasing trend in overall self-employed was mainly the result of a reduction in the number of male self-employed.

The following Figure 1 shows the number of self-employed, distinguishing self-employed with and without employees, in EU-27 countries as an average in the 2017-2019 period. At EU-27 level, the average between 2017 and 2019 is around 26 million, broken down to around 8 million for self-employed with employees, and 18 million for self-employed without employees.

[2] You can find the Eurostat explained statistics about self-employment, here: https://ec.europa.eu/eurostat/statistics-explained/index.php/Self-employment_statistics

Figure 1. Average of number of self-employed in period 2017-2019, self-employed with employees and self-employed without employees. Values in thousands. Age 15-64.



Source: processing by Ismeri Europa based on Eurostat – LFS data [lfsa_esgaed]

Solo self-employed are distributed unevenly among the different sectors. Agriculture accounts for around 20% of these workers in the EU27 but this has been decreasing steadily. An important increase of the share of self-employed without employees was recorded in “Financial and insurance activities, real estate activities, professional activities” as shown in Table 1.

Table 1 Self-employed without employees in EU-27 by (re-categorized) economic sector NACE – Rev. 2; percentage values. Age 15-64

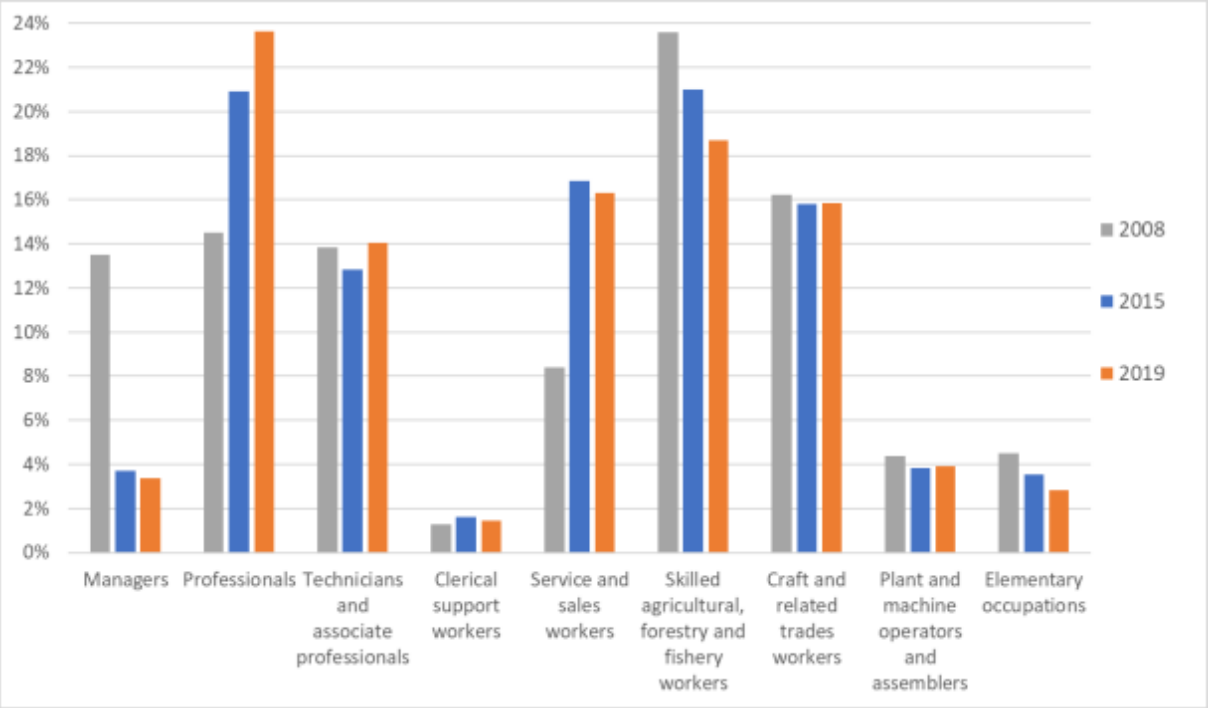
Self-employed without employees in EU-27 by economic sector (%)	2008	2015	2019
Agriculture, forestry and fishing	25.6	21.9	19.0
Industry[3] and construction	17.5	16.7	16.9
Wholesale and retail trade; repair of motor vehicles and motorcycles	16.5	15.0	14.1
Transportation and storage, accommodation and food service activities, information and communication	9.9	9.9	10.3
Financial and insurance activities, real estate activities, professional activities	13.0	15.7	17.1
Administrative and support service activities, public administration and defence, education and human health and social work activities	9.4	11.8	12.9
Arts, entertainment and recreation, other service activities, activities of households as employers; undifferentiated goods- and services-producing activities of households for own use	8.2	9.0	9.8
All activities	**100**	**100**	**100**

Source: processing by Ismeri Europa based on Eurostat – LFS data [lfsa_esgan2]

Figure 2 illustrates the type of occupation covered by self-employed without employees at European level. The occupations with the highest percentage of the total in 2019 are “financial and insurance workers, and professionals” (23.7%); “skilled agricultural, forestry and fishery workers” (18.7%); “service and sales workers” and “craft and related trades workers” (both around 16%). “Financial and Professionals” and “service and sales workers” are the most dynamic occupations in recent years, while “managers” and “skilled agriculture workers” are in decline. LFS does not identify “platform workers”, but riders and drivers are in the transport sector with many other types of self-employed; this sector shows a slight increase in its weight on the total self-employed accounted by the LFS.

[3] Industry involves: mining and quarrying, manufacturing, electricity, gas, steam and air conditioning supply and water supply; sewerage, waste management and remediation activities.

Figure 2. Self-employed without employees by occupation in EU-27. Percentage values. Age 15-64.



Source: processing by Ismeri Europa based on Eurostat – LFS data [lfsa_esgais]

An in-depth investigation of self-employed was carried out in 2017 with an "ad-hoc" module in the LFS. The main aim of this survey was to provide information on self-employed persons and on persons in an ambivalent professional status in the between of employment and self-employment. The investigation allowed to detect the so-called "economically dependent self-employed" (or dependent self-employed) defined as self-employed without employees who worked during the last 12 months before the reference week of the survey for only one client or for a dominant client and this client decides about his/her working hours. A client was defined as dominant if provided at least 75% of the self-employment income of the respondent in the last 12 months (Eurostat, 2018). For the purpose of the survey the category "Self-employed persons without employees (own-account workers)" is made up of:

- Independent self-employed without employees (own-account workers).
- Dependent self-employed without employees (own-account workers).
- Self-employed without employees (own-account workers), dependency not known.

At European level, in 2017, the number of dependent self-employed (aged 15+) was 805,700 persons, namely 4.1% of the total self-employed (19.7 million), while 2.6% of self-employed said that they did not know their status. The remaining 93.3% were independent self-employed. It is not possible an analysis of the dependent self-employed by sector, but the occupation (ISCO8) of these workers indicates that in 2017 at EU27 level professionals were equal to the 32% of the total dependent self-employed, technicians and associate professionals to the 16% and services and sales workers to the 15%.

Data on the subcategory of "dependent self-employed" are often missing for single EU countries because statistical significance is too low and, therefore, here only the most relevant information for self-employed without employees (aged 15+) at EU-27 level[4] are reported:

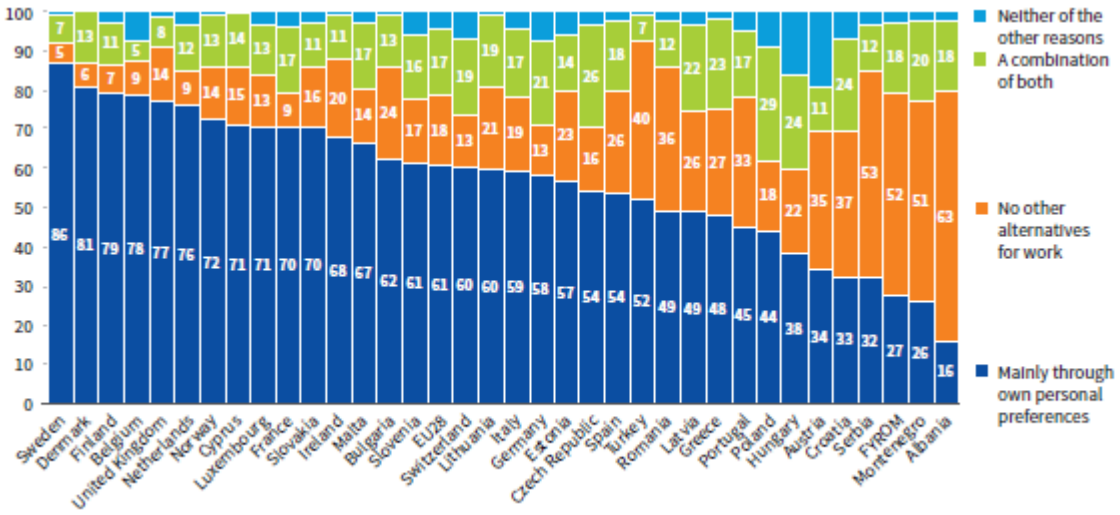
[4] Total changes because of data missing and no response are not taken into account in our data processing

- 4.9% had 2 or more jobs, while 95.1% had only 1 job. Total: 19.7 million
- 82.1% can decide on the content and the order of his/her tasks, while 8.4% cannot decide either on the content or the order. The remaining 9.5% can decide just on one (content or order). Total: 19.1 million.
- 88.8% said that they are satisfied[5] (high satisfaction 42.7% and medium satisfaction 46.1%) of her/his job; while 11.2% has low satisfaction levels (8.4%) or are not satisfied at all (2.8%). Total: 19 million.
- 48.1% do not want to change their working time; 11.6% would like to increase their working time while 15.1% would prefer to decrease it. However, 25.3% of the interviewed people did not answer this question. Total: 19.7 million.
- 80.0% usually works 35+ hours per week; 14% between 20 and 34 hours; 8.2% 1-19 hours and 6.8% have hours varying from week to week. Total: 19.4 million.
- 25.3% says that they have no difficulties as self-employed. By contrast, 14.7% indicates that periods of having no customers or no assignments is the main difficulty; 11.4% indicates administrative burden and 10.6% delayed payments or non-payments as well as periods of financial hardship; 9.7% has difficulties due to the lack of influence over price setting; 8.1% indicates the lack of income in case of sickness/illness. Total: 18.5 million.
- 35.9% says that “not enough work” is the main reason for not having employees; 26.1% indicates that they prefer to work alone; 10.6% indicates that is not possible to have employees because of the type of the respondent’s occupation; 9.2% because of the high cost of social contributions; 3.6% indicates that was a client’s wish; 3.2% claims that is difficult to find suitable staff; 2.7% prefers to work with sub-contractors or associates; and 1.6% claim that there is a complicated legal framework. Other reasons: 7.2%. Total: 18.3 million.

Other significant investigations involving self-employed were carried out by Eurofound in the European Working Condition Survey (EWCS). The survey aims to measure working conditions across European countries, analyses the relationships between different aspects of these, identifies groups at risk, highlights issues of concern and areas of progress and, ultimately, contributes to developing EU policy aimed at improving job quality. In 2015[6], the sixth EWCS interviewed almost 44,000 workers (both employees and self-employed people) in 35 European countries: the 28 EU Member States, the five EU candidate countries, and Norway and Switzerland. This survey is not focused on self-employment but it provides interesting information also on this kind of employment. For instance, the next figure illustrates the reason to be self-employment recorded by this survey in 2015; the EU resulted strongly divided into at least two group of countries; Northern and Anglo-Saxon countries where self-employment is a choice and southern and some eastern countries where self-employment is often an obliged option.

[5] The questionnaire of the ad-hoc module asked to self-employed about their general level of satisfaction for their job, not individually about working conditions, pay, and other factors.
[6] The survey had to be implemented in 2020, but the pandemic made it impossible; probably in this year should be compelted the itnerviews.

Figure 3 Main reason for being self-employed, by country (%; 2015)



Source: Sixth European Working Conditions Survey - Eurofound

In the same report, self-employed (with and without employees) declared the higher number of worked hours in comparison to the employees. In addition, the self-employed without employees asserted a high financial insecurity in case of illness. In general, the report reinforces the awareness of the fragility of some self-employed, but does not enter in the detail of their characteristics.

All the quantitative studies at the European level that try to record either numbers or the status of platform workers underline the lack of adequate and sufficient data to carry out a robust and soundly-based analysis. The Online Labour Index (OLI), developed by the Oxford Internet Institute (Kässi and Lehdonvirta, 2016) was created in an attempt to fill this gap. The OLI is an economic indicator that provides the online gig economy equivalent of conventional labour market statistics: it measures the utilisation of online labour across countries and occupations by tracking the number of projects and tasks posted on platforms in near-real time.

Other studies allow to identify the number of platform workers in Europe and some of their main characteristics. Nunu et al. (2018) measured and compared the development of the collaborative economy[7] in the EU and at sectoral level (transport, accommodation, finance and online skills). According to this study, in the EU-28 the overall size of the collaborative economy in 2016 was €26.5 billion as total revenues earned both by people working through collaborative platforms (€22.7 million) and the platform itself as intermediary (3.8 million). The majority of activities were concentrated in the following sectors: finance (€9.6 billion), accommodation (€7.3 billion), online skills (€5.6 billion) and transport (€4 billion). The collaborative economy provides about 394,000 jobs across the EU; the largest markets for the collaborative economy are France, UK, Poland and Spain. In total, 651 platforms were identified as collaborative domestic platforms in the transport, accommodation, finance and online skills sectors. In addition to the platforms originating in the EU and operating in Member States, there are 42 internationally operating platforms originating from outside the EU (mainly from the United States) and operating in international markets.

[7] In the study collaborative economy is defined as the business models meeting all criteria simultaneously: a) Business transactions take place between three parties – the service provider, the online platform and the customer; b) Service providers offer access to their goods, services or resources on a temporary basis; c) The goods, services or resources offered by the service provider are otherwise unused; d) The goods, services and resources are offered with or without compensation (i.e. for profit or non-profit/sharing).

Williams (2019) presents a detailed analysis of the third Annual Survey of Platform members from the EU Member States as well as Iceland and Norway (the survey was run by the European Platform tackling undeclared work). The survey was launched and completed in 2019. Three issues were addressed: tackling undeclared work in the collaborative economy and false self-employment; data exchange and data protection; and cross-border sanctions. Main findings were: the prevalence and intensity of platform work are increasing and undeclared work and false self-employment on online platforms appears to be increasing and that it is difficult to apply workers' rights to the non-standard forms of work found in online platforms. Legislation authorities are attempting to keep pace with these rapid developments in the collaborative economy. It is proving difficult to verify the legal status of employment relationships on online platforms and to ensure compliance with labour law and tax obligations, especially in cross-border service provision.

Other significant investigations on platform workers are COLLEEM I, the first pilot wave completed in 2017, and the second wave COLEEM II with data as at 2018. An analysis of COLEEM II data and its comparison with COLLEEM I is reported in Brancati (et al., 2020). Here, we present the structure of the survey and main findings.

COLLEEM I gathered a total of 32,389 responses from 14 Member States. The COLLEEM 2018 survey gathered a total of 38,022 responses from internet users aged between 16 and 74 years old in 16 EU Member States: Croatia, Czech Republic, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, the Netherlands, Portugal, Spain, Sweden, Slovakia, Romania, and the United Kingdom. In addition, COLLEEM 2018 includes a booster sample of 856 respondents who were identified as platform workers in 2017 and were re-invited to participate in the survey.

In broad terms, the definition of platform workers remains the same in both surveys to ensure comparability. This definition includes those who have ever gained income from providing services via online platforms, where the match between provider and client is made digitally, payment is conducted digitally via the platform, and work is performed either (location-independent) web-based or on-location (so-called sporadic platform workers). According to this broad measure, there is a small but clear increase in the prevalence of platform work in all countries under investigation, except for Italy and Slovakia. However, the broad measure of platform work may refer to people who have provided services just once in the past and is therefore inconsequential. For this reason, only estimates referring to narrower but more correct definitions (marginal, secondary and main platform workers) are reported in the following table according to the intensity of the hours working and the earned income.

Table 2 Defining platform work based on income and hours worked

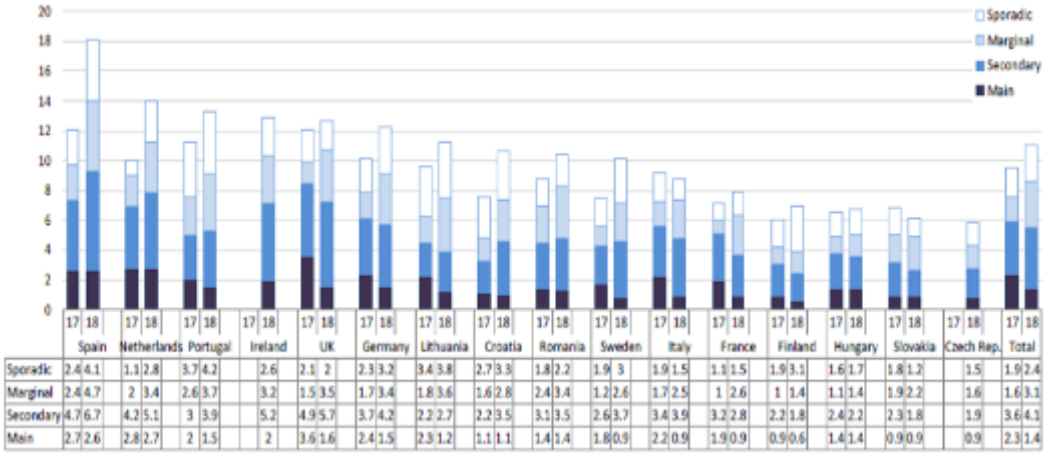
	Less than 10 hours a week	Between 10 and 19 hours a week	More than 20 hours a week	No answer
Less than 25% of personal income	Marginal	Secondary	Secondary	Marginal
25%-50% of personal income	Secondary	Secondary	Main	Secondary
More than 50% of personal income	Secondary	Main	Main	Main
No answer	Marginal	Secondary	Main	(missing)

Source: Table 1 from "New evidence on platform workers in Europe"; Brancati (et al., 2020)

From the following Figure 4, platform work in Europe is increasing slowly but steadily. Only for a small proportion of interviewed persons - around 1.4% of the working age population in the 16 countries

participating in COLLEEM II – is platform work the main form of employment (percentage falls in comparison to 2017).

Figure 4. Percentage of the working age population that corresponds to each of the four categories of platform workers across the countries participating in the COLLEEM I (2017) and II (2018).



	Spain		Netherlands		Portugal		Ireland		UK		Germany		Lithuania		Croatia		Romania		Sweden		Italy		France		Finland		Hungary		Slovakia		Czech Rep.		Total	
	17	18	17	18	17	18	17	18	17	18	17	18	17	18	17	18	17	18	17	18	17	18	17	18	17	18	17	18	17	18	17	18	17	18
Sporadic	2.4	4.1	1.1	2.8	3.7	4.2		2.6	2.1	2	2.3	3.2	3.4	3.8	2.7	3.3	1.8	2.2	1.9	3	1.9	1.5	1.1	1.5	1.9	3.1	1.6	1.7	1.8	1.2	1.5		1.9	2.4
Marginal	2.4	4.7	2	3.4	2.6	3.7		3.2	1.5	3.5	1.7	3.4	1.8	3.6	1.6	2.8	2.4	3.4	1.2	2.6	1.7	2.5	1	2.6	1	1.4	1.1	1.4	1.9	2.2	1.6		1.6	3.1
Secondary	4.7	6.7	4.2	5.1	3	3.9		5.2	4.9	5.7	3.7	4.2	2.2	2.7	2.2	3.5	3.1	3.5	2.6	3.7	3.4	3.9	3.2	2.8	2.2	1.8	2.4	2.2	2.3	1.8	1.9		3.6	4.1
Main	2.7	2.6	2.8	2.7	2	1.5		2	3.6	1.6	2.4	1.5	2.3	1.2	1.1	1.1	1.4	1.4	1.8	0.9	2.2	0.9	1.9	0.9	0.9	0.6	1.4	1.4	0.9	0.9	0.9		2.3	1.4

Source: Figure 1 from "New evidence on platform workers in Europe"; Brancati (et al. 2020)
Data were adjusted for frequency of internet use using the ICT survey (*isoc_ci_ifp_fu).*

Among those who were platform workers in 2017 and were interviewed again in 2018, 41.4% remained platform workers as opposed to 58.6% who dropped out. Moreover, data suggests that transportation platforms have a higher turnover rate than professional online platforms or platforms that mediate microwork.

In 2018, platform workers were younger, prevailingly male and highly educated. However, while the proportion of younger men has remained stable, or decreased very slightly across all categories of platform workers, the proportion of older men providing services via platforms as their main job dropped by nearly 8 percentage points in comparison to the year before. The proportion of younger women rose across the different categories of platform workers, and in particular among those who do this as a secondary or main activity. The proportion of foreign-born workers is higher among platform workers than offline workers in all countries with the exception of Lithuania. At EU level, the percentage of foreign-born platform workers in 2018 is 16.3% for marginal platform workers, 14.4% for secondary platform workers and 13.3% for main platform workers, as opposed to offline workers for which the percentage of foreign-born workers is only 6%.

Regarding the status of platform workers, the COLLEEM survey asked those respondents who did not claim to be primarily self-employed if they carried out a side activity as self-employed besides their main occupation (side-gig self-employed). The self-reported employment status has not changed notably between 2017 and 2018, especially among the non-platform workers, the majority of whom identifies as employees. By contrast the self-employed, (either as primary activity or as a side gig) increase with the intensity of platform work (from marginal to main platform worker). In addition, the proportion of platform workers who claim to be self-employed is substantially higher in 2018.

Among main platform workers, those identifying as employees dropped sharply between 2017 and 2018 (from 38% to 25%) whereas those who consider themselves self-employed either as a primary activity or as a side gig increased from approximately 56% to 64%.

Interesting findings stemmed from the analysis of quantitative studies. First, the total number of self-employed tend to decrease, while new forms of self-employment, such as platform workers and professional self-employed without employees, is increasing significantly. These general trends confirm that a "self-employment" problem per se does not exist, but internal changes and the new forms of self-employed work created a social and political apprehension. Second, knowledge on these new forms of work is increasing but it is still quite limited and statistics encounter difficulties in capturing so fragmented and diversified phenomena. This means that policy decisions have to be taken with a limited rationality in relation to sizes, trends and preferences of these workers. Third, the analysis reviewed also several recent surveys (COLLEEM, Eurofound), that can complement the traditional European Labour Force Survey. This integration has to be carefully implemented, because data from the different sources are not mutually comparable and their geographic and thematic coverage differs

1.3 Trends and drivers of self-employment

Flexible specialisation, the new digital economy and globalisation are some of the key concepts generally used to describe the transformations of contemporary capitalism and of labour markets in the advanced EU economies. The common response to these challenges adopted by all the European countries consisted in the search for more flexibility in the regulation of the economy and its dynamics. Governments, unlike in the past when they used to intervene to reduce social inequalities through legal controls on the recruitment and dismissal practices in countries such as Italy, France and Spain, have more recently implemented reforms to liberalise and deregulate the labour market and reduce employment protections, pursuing increasing flexibility and competitiveness.

Since the 1990s, the economic literature has promoted labour market flexibility for companies as a way to adapt more easily to fluctuations in demand, increasing their performance through a reduction of labour hoarding, but from an empirical point of view, evidence of the relationship between flexibility and productivity is quite uncertain (Malgarini, Mancini and Pacelli 2013). The socio-economic debate on flexibility sheds light on contrasting effects. If on the one hand positive outcomes follow the adoption of non-standard contracts, including self-employment, on companies' performance, due to a reduction in labour costs and an increase in companies' ability to innovate and compete on global markets, on the other hand negative impacts have been reported, linked to a decrease in human capital investment and hence in performance and competitiveness in the long term. Against the backdrop of these transformations, the drivers and trends concerning self-employment can be better understood.

In their seminal work on the second generation of self-employed, Bologna and Fumagalli (1997) systematically trace the origins of the proliferation of self-employment back to transformations in the organisation of work, in the ICT sphere, as well as in the preferences expressed by workers in terms of lifestyles. Following up that research tradition, Pichault and Semenza, in their edited international volume published in 2019, confirmed the dynamics of growth of professional self-employed without employees all around Europe, driven by the tertiarization of the economy, the digital transformation of work, the request for flexible and highly qualified professional profiles demanded through the contracting out of tasks and activities as main mode of production along a growingly fragmented value chain. Similarly, Murgia et al. (2020) within the framework of an on-going ERC project, underlined analogous trajectories of transformation, as pointed out more than two decades ago by Bologna and Fumagalli.

Over the past few decades, the search for increasing flexibility in the production chain has placed major pressures on companies, which as a response started to outsource a growing number of activities and tasks. Restructuring practices based on outsourcing led to the widening of the labour supply to autonomous workers (Stanworth et al. 2004). Moreover, under growing international pressure, firms started to downsize their directly-employed workforce, increasingly having recourse to external self-employed.

Importantly, marked tertiarisation of the advanced economies further contributed to the demand for self-employed professional workers in the labour market (Nye and Jenkins 2016) . New labour market

segments emerged in sectors such as intermediation, financial activities, consultancy and information sharing. This dynamic is intertwined with the development of the ICT industry. New research streams are shedding light on self-employed and the new economies, including the platform economy (Drahokoupil and Fabo 2016), the collaborative economy (European Commission 2016) and the gig economy (McKinsey & Company 2016). Despite these economic segments involving a limited share of the workforce, they open new possibilities in terms of the digital labour market, characterised by poorly regulated, segmented or even unregulated working conditions for freelancers who offer their services online.

A third aspect to take into consideration concerns the change in individual preferences concerning lifestyle and the need to find alternative access to employment, due to a lack of standard employment contracts. In Matijević (2018) employment through the non-standard contracts for many is no longer a matter of personal choice, but a consequence of the shortage of full-time, permanent jobs, combined with high unemployment rates. Moreover, for some groups of workers, atypical employment has already become 'typical'. However, self-employment might also represent a response to the search for alternative and innovative contractual arrangements that enable workers to experience hourly flexibility, high mobility and multi-employer commitment (Benz and Frey 2008). Since the 1970s, European and American sociologists attributed the surge in the population of self-employed to a sort of spontaneous and liberating uprising of new generations of workers, attracted by new lifestyles as an alternative to the status of salaried dependent workers that is tied to constraints set by the firms (Bureau and Corsani 2014). This is characterised by the desire for greater autonomy, flexibility, discretion in the management of working time and place and the chance to grasp the opportunities offered by societal innovations (Schulz et al. 2017).

Other commentators have partly attributed the revival of self-employment to the decline of employment opportunities in the salaried economy (Dawson et al. 2009; Hatfield 2014). It may be symptomatic of labour market deficiencies, rather than the result of fundamental changes in the "advanced industrial economies that made self-employment more attractive and/or competitive" (Blau 1987, p. 447). In this vein, Murgia and colleagues (2020) identified at the macro level three main drivers to explain the progressive increase in the number of self-employed in Europe, particularly when looking at the self-employed without employees. Firstly, solo self-employment has been a response to the shift from the industrial to a service economy and to the significant (de)regulation processes that have affected all European countries. Secondly, there have been unprecedented changes connected to internationalisation, new technologies and decentralisation of production, with increasing outsourcing activities by enterprises. Finally, socio-cultural trends have also played a crucial role, mainly by promoting autonomy and the idea of becoming an entrepreneurs as the model to which to aspire.

To sum up, structural transformations such as the tertiarization of the economy and the growing share of labour demand in the economy of services and knowledge, together with changes in organisation of work towards the digitalization and the platformization of work have affected the most recent developments and the structure of self-employment. These trends turned to be structural, associated with the more recent production needs, following up for instance the effect of the economic crisis exploded in 2008-09. Furthermore, these dynamics are complex, under continuous transformation and include the interrelations of many different factors, but they help to understand the possible future scenarios and the socio-economic context in which a regulatory initiative on self-employed takes place and the structural challenges to take into consideration in the preparation of the policy responses.

1.4 Collective bargaining, social dialogue and social protection for non-standard workers

Social protection

In the international literature on social protection and welfare systems, the phenomenon of self-employment is acknowledged as raising critical challenges for social policy systems across EU countries. Self-employed, and in particular professional self-employed, embody a social group that is difficult to locate in the class structure: in the post-industrial economy they are, in fact, located in diametrically opposite positions by class and by status. On the one hand, these self-employed professionals have good social status and a high level of education, but, looking at their income rate and their occupational position, they look more like the middle class or even the lower class (Ranci 2012, Semenza and Mori 2020). Hence, the increase of these figures has widened the misalignment between class and status, reflected also in the gap between the high levels of professional skill attached to their occupational position and their low social status in terms of social rights and institutional protections, including low income, precarious working conditions and lack of universal welfare protections (D'Amours 2009).

A further contradiction characterises the status of self-employed worker from a welfarist perspective. Similar to employees, self-employed rely on selling their labour. However, differently from employees, they are generally subject to the civil and commercial legislative framework, and not to labour law: accordingly, they do not enjoy employment protections ensured by labour rights and by collective bargaining (Schukze, Buschoff and Schmidt 2009). This difference has led to a raising gap in employment and social protections between the two groups of workers.

The remarkable increase in professional self-employed with a highly qualified background in Europe has further emphasised this gap and this lack of protection, which in many cases was not reflected in any formal overall review of the social protection position of self-employed. Some preliminary contributions at the beginning of the 1990s had already pointed out these issues, observing a "policy vacuum" and a "stagnation" of social security policy devoted to self-employment (Brown 1992; Corden 1999). More recent studies have confirmed the lack of an appropriate social security system for self-employed: "unlike dependent employees, a large proportion of self-employed people are not included in social security systems. Alongside the general protection scheme, which provides a minimal level of security, self-employed people are not or only partially covered by statutory systems. And even in case of coverage, the statutory social security systems for the self-employed are very heterogeneous" (Fachinger and Frankus 2015, p. 135).

Traditionally, social protection schemes for self-employed have been characterised by a high degree of voluntarism. Self-employed, in fact, are to a certain extent free to establish the level of protection they are willing to achieve to ensure themselves against social risks, including invalidity, short- and long-term sickness, widowhood, disability, lack of clients (corresponding to unemployment), and delays in payment (DG Employment, 2014). More specifically, when health insurance is at stake, in most of the EU Member States self-employed are covered by the country-specific national healthcare system, but which generally represents, once again, a basic insurance that does not take into account the specific needs and demands of self-employment. The need to fill in the gaps in the social security entitlements of this segment of the labour market therefore emerges as a question of legitimate rights and of justice (Schulze, Buschoff and Schmidt 2009). The issue is often addressed by policy and law-makers in terms of the need to cope with their vulnerability in the social and welfare system. But vulnerability is only one aspect requiring policy intervention: "virtually no I-Pros [independent professional] self-define as vulnerable" (Leighton 2013). What the literature has highlighted is the need to recognise that standard subordinated employment makes up only a part of labour markets and economies (Leighton 2015).

Against these general premises, the literature underlines a lack of social protection for self-employed. Semenza and Pichault (2019) clearly show a fragmented and patchy framework of social protection devoted to self-employed across different European countries (Italy, Belgium, Germany, Spain, Slovenia, France, UK, and Sweden). In the same vein, the ESPN Reports (2017) analyse the social and labour market situation of the self-employed and non-standard workers in 35 European countries,

by looking at their statutory and actual access to the main social protection schemes and by identifying the recent national reforms aimed at extending social protection to these categories of workers. The reports shows that non-standard workers have in general “high” statutory access to social protection schemes whereas the picture is less clear for self-employed, whose access to insurance-based schemes varies considerably among countries. Even when non-standard workers and the self-employed are formally covered by a social protection scheme, they often fail to gain actual access to it because eligibility criteria are not tailored to them. Spasova et al. (2018) investigated the access to social protection for self-employed across 35 countries by linking the results to the typologies of welfare regime adopted in each institutional framework.

To wrap up, both the traditional and the new forms of self-employment are acknowledged as raising critical challenges for social policy across the EU. Social protection schemes for self-employed are characterised by a high fragmentation and a high degree of voluntarism. In addition, these workers are generally subject to the civil and commercial legislative framework and not to labour law; accordingly, they do not enjoy protections ensured by labour rights and collective bargaining. In this respect, self-employed, and especially the weakest ones, suffer from different and minor protections, but also a specific system of social protection for these workers is generally lacking. The examined literature confirms the need for initiatives aimed to extend and customise social protections for the weakest self-employed; the recognition of broad labour rights and collective bargaining can play a positive role to this aim.

Collective representation and social dialogue

During the last decades of the 20th century, the role of trade unions and collective bargaining as the primary means of collective representation for workers began to decline. This was due to industrial, economic, political and social changes (Regalia, 2009; Visser, 2010; Crouch, 2014). Therefore, the trade unions have gradually become less successful in attracting new workers with different types of employment contracts, especially in non-standard jobs and in self-employment. Relatedly, the traditional industrial regulation model based on collective bargaining has become difficult to apply to a growing share of new emerging industries (for example the platform economy) and to new forms of employment. At the same time, collective bargaining is becoming less and less effective also for a growing share of the traditional standard jobs, due to limited coverage of collective agreements and weak coordination among social partners (Crouch, 2014, pp. 84-85). This picture is even worse for non-traditional forms of employment, including self-employment. This trend has been well described by Visser (2010), who reports that in most European countries, the rate of standard workers covered by collective bargaining is decreasing and negotiations for the definition of terms and conditions of employment takes place more and more at a decentralised company level, rather than at a centralised national level.

When collective bargaining becomes weaker even at company level, individual bargaining becomes stronger (Crouch 2014), although the use of the word bargaining at the individual level might be misleading: the company, in fact, often offers a pre-defined job position and the worker can only accept or refuse the contractual arrangements offered. Real bargaining can only happen in the case of “strong” workers, ie those who have skills that are in great demand on the market, and who therefore have notable bargaining power towards their counterpart, the employer. The spread of individual bargaining is strictly connected to the processes of individualisation of working conditions, which has taken place in every industrialised country. The process is ambiguous as it bears both risks and opportunities. On the one hand, it gives more freedom and self-determination, but on the other hand the worker is forced to face all risks on an individual basis (Bologna and Banfi 2012). This ambiguity related to these processes of individualisation is well represented by the category of self-employed who work mainly in the advanced tertiary sector and represent an heterogeneous group, including both intellectual and technical professionals, various work contracts, incomes and who work in different markets.

As a response, the application of collective bargaining to this segment of workers might represent a viable solution to improving their working conditions and ensuring universal social protection, well beyond the limited protection established at the individual level. Lindström (2019) shows how social dialogue is essential in promoting job creation and job quality in a changing world of work. Similarly, Doherty and Franca (2019) argue that, rather than focusing on individual employment status and litigation, it is by developing a regulatory framework supportive of, and that involves key stakeholders in, strong sectoral collective bargaining, that work in the platform economy can be adequately regulated for the benefit of workers, business and the State. According to the OECD (2019a), the existence across European countries of direct dialogue and of mixed forms of employee voice (where representative institutions co-exist with direct forms of voice) are associated with a higher quality of the working environment (compared to the absence of voice arrangements). By contrast, workers with access to representative voice arrangements, but no direct voice, are on average more stressed (and, in particular, they are in more demanding jobs) than workers in firms with no voice arrangements.

The relevance of collective bargaining in improving working conditions and social protection for self-employed is directly connected to the collective representation of this segment of workers by organisations who can access the negotiating table, ie trade unions (Conaty, Bird and Ross 2016). Since the late 1990s, the trade unions in Europe have tried to extend their representation to new emerging forms of work, including autonomous work (Gumbrell-McCormick 2011). In some countries, they have implemented new strategies and organisational actions to respond to the specific protection needs of these workers (McCormick and Hyman 2013). Some trade unions have offered services, such as legal, fiscal and social security assistance. Some have adopted the servicing model (Traxler 2005) not only for autonomous workers, but for the entire world of non-standard jobs. In other cases, trade unions have innovated by adopting new organising models to promote the direct participation of these workers. This last model represents a more active approach, based on the idea that the unions do not try just to attract workers but they directly go and look for them (Frege and Kelly, 2004). Both servicing and organising models belong to a general strategy to expand trade union collective representation to new sectors and to new labour market segments that are traditionally not organised ("organising the unorganised"). This also represents a reaction to the general decline of unionisation rates across Europe and to the loss of centrality of the traditional industrial relations models and centralised collective bargaining (Tattersal, 2011; Burawoy, 2008).

Interestingly, along trade unions, other organisational forms have been highlighted in the literature as emerging actors in the collective representation of non-standard workers and, in particular, self-employed. These are quasi-union (Hecksher and Carrè, 2006) and labour market intermediaries (Autor, 2008).

Quasi-unions have flourished mainly where traditional trade unions have not taken into adequate account the peculiarity of the new generation of professional self-employed. Trade unions, in fact, have often considered these to be atypical workers, false self-employed and/or entrepreneurs: in general terms, they have neither understood nor represented their specific demands in terms of both professional and social protection needs. In the international literature, these organisations have been variedly defined: Jenkins (2012) used the definition "pre-union" while Sullivan (2010) defines them "proto-union". They have a common target: to increase the voice capacity of workers who face risks in terms of their working conditions on an individual basis. They also have similar networking strategies (Heer et al, 2004; Hecksher and Carrè, 2006; Sullivan, 2010). Despite the important role quasi-unions play in lobbying and advocacy actions to call the attention of policy-makers on the specific issues of self-employed, they do not have a role in collective bargaining. They in fact are not recognised as legitimate social partners allowed to negotiate agreements.

All in all, the transition from a labour market primarily grounded on a salaried workforce towards a society in which the demand and supply of labour are dominated by self-employed sheds light on the inefficacy and the incongruity of the traditional model of collective representation. Such a shift triggers a profound redefinition of employment relations, which calls for a revitalisation in the strategies and

organisational forms of unions to collectively represent workers' interests, while a number of scholars agree there are some concerns in terms of integrating the increasingly heterogeneous constituencies of self-employed into the union movement (Dølvik and Waddington, 2002; Gottschall and Kroos, 2003).The difficulty of building collectivism within the population of self-employed is recognised, since they have limited personal contacts with other workers in their conditions of employment (Pernicka 2006).

More recently, the growth of the platform economy and of platform workers has further jeopardised collective representation, by further exacerbating the difficulties raised by the self-employed (Drahokoupil and Fabo 2016). As reported by Lindström (2019) there is as yet a limited amount of literature covering trade unions' reaction to the platform economy. Lindström shows that in Sweden, the platform economy remains moderate, and trade unions have taken the initiative to include platform workers; in France, there has been an increased dualisation between standard and non-standard workers; while in the UK trade unions have managed to put pressure on the government to introduce basic rights for the most vulnerable workers.

Relation between collective bargaining and competition law

The scholarly debate concerning the relation between collective bargaining and competition law for self-employed in Europe has started flourishing over the very last years. The two issues have long remained detached. Only recently, in particular labour law scholars have started questioning the relationships between the two regulatory frameworks: the one concerning the regulation and protection of self-employment and the other regarding the scope of application of the competition law for self-employed. In fact, the competition rules have always applied to the self-employed and this has never caused much question or debate because these self-employed people have long being perceived as genuine entrepreneurs (Daskalova 2019).

From a labour law approach, a number of labour rights are identified as being fundamental rights and as such are often protected by national and supranational legislation (De Stefano and Aloisi 2018b). Among these fundamental rights, the right to collectively bargain is often ensured by international instruments for all the workers, including self-employed unless explicitly excluded. Furthermore, commentators such as the OECD (2019c) find that, whilst competition law enforcement has been so far limited, it may have an increased role to play in labour input markets, particularly in addressing anticompetitive agreements that artificially create monopsony power, abuses of monopsony power and merger transactions leading to increased buyer power on the labour demand side. The ETUC (2018) also reaffirms the same interpretation: self-employed who join forces to improve their working conditions should never be considered a cartel plotting to distort or eliminate competition, and in this regard competition law cannot override a fundamental right.

Biasi (2018), a labour law scholar, starts from the recognition that wide-reaching collective representation for (genuine) self-employment and the collective negotiation of fair fees for independent contractors might represent a viable solution to ensure fair and protected working conditions, but case law in both civil and common law jurisdictions showcases how antitrust law can hamper the collective negotiation of workers' minimum fees. This view is based on the legal premise that a collective agreement setting the rates of pay for non-subordinate labour acts as a restraint on trade. The author contends that this view is too narrow and limited, due to an application of antitrust law that is too extensive, based on the principle that workers who personally carry out their activity cannot be treated as businesses operating on a free market, because they are - akin to employees - individuals who lack the power to tangibly affect the terms and conditions of their work.

Daskalova (2019) in her contribution discusses the role that EU competition law can play in regulating the new forms of self-employed who are formally considered as micro-enterprises rather than workers. In particular, she concentrates on self-employed engaged via matchmaking platforms arranging for work to be contracted on demand. Despite their unequal bargaining position and their weak working

conditions, these self-employed have no access to collective bargaining due to the EU competition rules. She argues that the problem could not be solved by altering the definition of “worker” and “undertaking” in EU competition law, or by introducing exceptions under Article 101 TFEU. On the contrary, she suggests a mix of competition rules and control for matchmakers on one hand and new protections for self-employed from labour law on other hand.

Similarly, referring to the gig economy, Schiek and Gideon (2018) identify that EU competition law as interpreted by the Court of Justice of the European Union would hinder collective organisation of those serving the gig economy and develop a comprehensive re-interpretation which allows adaptation of EU competition law to smart employment markets. They built on the case of drivers delivering meals in London booked via the food-delivery platforms Deliveroo and UberEATS who got noticed since they challenged working practices in the gig-economy through collective industrial action in August 2016. Their dissatisfaction resulted from extremely low levels of pay as well as a new payment calculation system being introduced without consultation. The case was emblematic since it shed light on the fact that “collective industrial action is far from structurally impossible for self-employed in the platform-economy, even though the employers/platforms rely on anonymous and automated management of their workforce. The authors identify that EU competition law as interpreted by the Court of Justice would hinder collective organisation and industrial action of self-employed engaged in the platform economy, suggesting a comprehensive reinterpretation of the EU competition law to encompass these workers.

Also Lao (2018) argues that, given the uncertainties and risks, the simpler approach of extending the antitrust labour exemption to permit collective action by gig economy workers seems to be the most suitable path. Lao’s contribution starts from the acknowledgment that gig workers experience marked disparities in the contractual relationships with the platforms, which benefit from workers flexibility and transfer all the market risks onto the workers. Specifically, gig workers locate between employee and independent contractor and, accordingly, could not benefit from the social and employment protections that are attached to subordinated employment. As a solution, the author argues for the expansion of the antitrust labour exemption, at the moment limited to subordinated employment activities performed by employees, to encompass also the segment of gig workers. Such exemption from the antitrust law would allow them to collectively bargain with the platforms over compensation level and other contractual benefits without exposure to antitrust liability.

Against this growing juridical literature arguing for the inclusion of gig economy workers into the collective bargaining of working conditions and protections, at a more mundane level the issue of collective labour rights for platform workers has been at the centre of policy debate in a limited number of Member States, as reported by Kilhoffer et al. (2019). Some European countries have initiated legislation granting collective rights for (some categories of) dependent self-employed whereas in others collective agreements have been concluded between some platforms and the platform workers (including self-employed) often concerned with basic working conditions and rights such as protection against accidents at work, minimum pay rates, working time and rest periods. Traditional trade unions in Member States are (still) cautiously but increasingly embracing the needs of platform workers, whereas the latter often take recourse to collective action in situations of conflict. Platform workers have created representative organisations only in a few countries and there is no uniform approach where collective labour rights for platform workers are concerned.

Lianos, Countouris and De Stefano (2019) point out that maintaining the status quo of the tense relationship between labour law and competition law outlined in the opening sections of this paper is not a sustainable option. Moreover, they claim that collective agreements covering workers, including self-employed providing personal work and services, should be exempt from the application of EU competition law if they pursue the objective of protecting minimum terms and conditions of employment and the effects restrictive of competition are merely consequential and inherent to the pursuit of those objectives. In a subsequent article, in 2021, the same authors restate their ‘labour law’ approach, that consider collective bargaining as a fundamental and universal labour rights to be enjoyed by all workers.

This view contrasts with the limited "labour exemption" contained in the recent competition caselaw (cfr. FNV Kunsten mentioned above). In this recent contribution, Lianos, Countouris and De Stefano refer to the concept of "predominantly personal work", as a more balanced and nuanced approach around which labour rights and competition law could define their respective scope of application. According to this new broader clusterisation of worker, the boundaries of the concept of worker can refer to the concept of 'personal work', which according to each national definition can be defined as "exclusively personal work" or "predominantly personal work". This boundary represents a watershed, given that these two concepts cover individuals that would otherwise be *clustered as self-employed along the continuum between subordination and autonomy.* Accordingly, to protect these intermediate workers, it is suggested to extend the scope of the concept of subordinate worker by referring to the notion of economic dependence or to the notion of personal, or predominantly personal, work.

A few exceptions are reported by De Stefano and Aloisi (2018b), who contributed to the growing debate on how to reshape labour regulation to accommodate the spread of non-standard forms of employment, including self-employment, acknowledging that scarce attention has been paid to the access of non-standard workers to fundamental labour rights. In particular, the authors focus on the self-employed engaged in the platform economy (or gig economy) since this segment of the labour market being relatively new might be particularly exposed both to the violation of fundamental rights, as well as to the exclusion from the legal scope of application of these rights, which are sometimes guaranteed only to workers in a subordinated contractual relationship. In the case of self-employed – including platform workers – these violations often include the full access to the rights of freedom of association and to collective bargaining. The latter in particular is denied as a fundamental right when their collective activities are found to be in breach of antitrust regulation. In their study, De Stefano and Aloisi contend that preventing self-employed who do not own a genuine and significant business organisation from bargaining collectively is at odds with the recognition of the right to collective bargaining as a human and a fundamental right. Consequently, they argue that only self-employed individuals who do not provide "labour" but "services" using an independent, genuine and significant business organisation that they own and manage can have their right to bargain collectively restricted. In all the other cases, the right to collective bargaining should prevail over antitrust law.

Lianos (2021), after having explored the current discretion on collective bargaining for self-employed in the EU competition law, proposes some possible strategies for reforming the interaction between competition law and labour law:

1. Following a case-by case approach, examining the economic realities between supply and demand of workers and exploiting the FNV Kunsten case to better distinguish between employees and self-employed;
2. Excluding from the competition law some categories of self-employed, to preserve the provisions designed to prevent social dumping and guaranteeing the internal consistency of competition law in the application of the proportionality principle;
3. Adopting a new definition of 'worker' in competition law;
4. Taking a fundamental rights-inspired approach and relaying on its systematic enforcement by case law to ensure value consistency.

Lianos does not express a preference for one strategy in comparison to the others, but outlines the main issues linked to each strategy. In particular, strategy 2 (excluding some categories of self-employed) is analogous to the EU initiative. In the analysis of this strategy the Author refers to the Irish experience of the amendment of Competition Act to provide "false self-employed" and "fully dependent self-employed" workers for collectively bargaining. He recognises that, in the absence of an equivalent exception in competition law, the implementation of this strategy would be difficult. In particular, Lianos points out that the legislative intervention is necessary because MSs are obliged to apply Article 101

TFEU whenever they may affect trade on the internal market and the interpretation by the Court of "effect on trade in the internal market' tends to be very broad.

To conclude, the debate revolving around the interrelation between collective bargaining and competition law is relatively recent and has grown mainly over the last years as a reaction to some case laws hampering the right of collective bargaining of salary for self-employed and for gig economy workers. One aspect of this debate concerns the pre-eminence of labour rights over EU competition law and the consequent necessity of adjusting the latter to the former. This stance moves from the premise that self-employed should be first considered as workers, and then as autonomous. Being recognised as workers implies the pre-eminence of the application of the employment rights over the competition rights. Labour lawyers, in fact, consider of particular relevance the fact that the right to bargain collectively is recognized as a fundamental right by a number of supranational and regional sources, including European and EU ones. This argument is widespread, but not all scholars share it. Some authors point out the definition of self-employed; collective bargaining for some self-employed, including fees, should be granted since they are not real undertakings; sub-groups of self-employed providing personal service and work can be selected to this aim. Other authors focus on the unbalanced market power of the supply and demand of self-employed and propose to reduce the exaggerated powers of some platforms or to adjust the EU competition law to the new labour markets and self-employment conditions. Others underline that adjustment in the EU competition law are necessary to enforce new approaches to collective bargaining and should be coordinated with the numerous national legislative initiatives to ensure in homogeneous way basic rights and social protection.

1.3. Overview of non-EU countries

United States of America

The level of self-employment in comparison to total employment is equal to 6.1% in the US according to ILO-OECD (2020). Lim et al. (2019) shows that from 2001 to 2016 the number of self-employed - or independent contractors, as defined in the study according to tax declarations – grew over this period. The recent evidence from *United States Bureau of Labour Statistics* (2018) indicates that in the USA platform workers in 2017 accounted for 1% of total employment.

An analysis by the ETUI (2019) shows how this type of work is gradually changing the structure of the US labour market. Mainly as a result of the financial crisis, it has seen a sharp rise in atypical work and the creation of many small companies, so-called '1099 filings' (in the US the 1099 form is used to report payments to independent contractors), corresponding to a fall in full-time employment. Since 2010, the US economy has been growing again, but without a significant increase in full-time employment and with '1099 filings' rising steadily. This can be considered the fruit of the "platformisation" of the economy. As shown by the National Bureau Economic Research (2018), the limited available evidence suggests that much of the online work in the USA is supplementary rather than something participants undertake as a primary activity.

There is no uniform definition of 'employee' under US federal or state laws, and no single test to determine conclusively whether a worker should be classified as an employee or an independent contractor. Most courts adopt the common law test approach to examine whether the hiring party retains the right to control the manner and means by which the work is done. For instance, in Raef Lawson, v. Grubhub Inc, the District Court of Northern District of California found that the complainant who delivered food for a platform company, Grubhub, was an independent contractor, as the company lacked all necessary control of his work, including how he performed his deliveries. Similarly, in Razak v. UberBlack, the District Court of Eastern District of Pennsylvania held that the drivers are independent contractors, not employees, due to the company's lack of control over how the work is to be performed. In addition, the Court noted other factors indicating an independent contractor status, including the

control to decline trip requests, the ownership of vehicles and the lack of permanence of the working relationship (International Organization of Employers, 2019)

Due to legal uncertainty on the definition of self-employed persons and especially on non-standard workers, many disputes go to law cases, arbitrations or out-of-court settlements. Disputes which do run their full judicial course are frequently characterised by individual case-related circumstances without any overall consistency emerging (ETUI 2019). To support the classification of employees and independent contractors, the Department of Labour published its Administrator's Interpretation *No. 2015-1*, a 15-page memorandum which shows how to determine whether a worker is an employee or an independent contractor[8], and stresses that "most workers are employees under the [Fair Labor Standards Act]'s broad definitions" and therefore entitled to the legal benefits associated with employee status (Baggett et al. 2015). In March 2021 the US Department of Labour published the final rules to clarify the standard for employee versus independent contractor status under the Fair Labor Standards Act. Two core factors are considered the most probative: a) the nature and degree of control over the work; b) the worker's opportunity for profit or loss based on initiative and/or investment. If the previous factors are not sufficient, other factors to be used are: the amount of skill required for the work, the degree of permanence of the working relationship between the worker and the potential employer, whether the work is part of an integrated unit of production. In addition, the actual practice of the worker and the potential employer is considered more relevant than what may be contractually or theoretically possible[9].

In terms of collective bargaining, despite self-employed being usually excluded from collective bargaining due to competition laws[10], the federal National Labour Relations Act protects employees' right to form unions and to engage in collective bargaining, but not independent contractors. However, and although there are no statutory collective bargaining rights for independent contractors, some collective bargaining agreements have been concluded between independent contractors and companies. One example is that between the International Association of Machinists and Uber, in 2016, that allows its members to engage with Uber management of New York in a consultative dialogue forum (International Organisation of Employers, 2019). Another example is in Seattle: through the "Drivers' Collective Bargaining ordinance", in 2015, ride-hailing drivers were granted the right to unionise and, therefore, bargain collectively (ILO-OECD, 2020). The Seattle Ordinance did not take a position on whether the drivers are independent contractors or employees. Rather, the stated goal of the Ordinance was to "level the bargaining power between for-hire drivers and the entities that control many aspects of their working conditions". Moreover, new unions and organisations have been appearing such as: the Seattle App-Based Drivers Association (SADA), the California App-Based Drivers Association (CADA) both involving platform or app-based workers; but there is also, in New York, a "Freelancers Union" that is not exclusively for digital-based or platform workers (Mexi 2019).

In the US the most important legislative initiative, approved in September 2019, was the *California Assembly Bill No. 5;* according to this, many rideshare drivers and other independent contractors working in the ride hailing industry will have to be reclassified as employees. In this way they will be

[8] The checklist includes six questions: A) Is the Work an Integral Part of the Employer's Business? B) Does the Worker's Managerial Skill Affect the Worker's Opportunity for Profit or Loss? C) How Does the Worker's Relative Investment Compare to the Employer's Investment? D) Does the Work Performed Require Special Skill and Initiative? E) Is the Relationship between the Worker and the Employer Permanent or Indefinite? F) What is the Nature and Degree of the Employer's Control?

[9] For more detail see https://www.dol.gov/newsroom/releases/whd/whd20210106.

[10] In Lao (2018) some examples of cases in this direction are identified; see, e.g.,: L.A. Meat & Provision Drivers Union, Local 626 v. United States, 371 U.S. 94, 96, 103 (1962) (finding that grease peddlers were "independent entrepreneurs" who shared "no job or wage competition or economic interrelationship" with the other members of the appellant union); United States v. Women's Sportswear Mfg. Ass'n, 336 U.S. 460, 463-64 (1949) (holding that the stitching contractors were entrepreneurs, not employees); Columbia River Packers Ass'n v. Hinton, 315 U.S. 143, 144-45 (1942) (emphasizing that the fishermen represented by the union were independent fishermen, not employees of the processor-buyers, and that they "carr[ied] on their business as independent entrepreneurs, uncontrolled by [the processor buyers]"); Hawaiian Tuna Packers v. Int'l Longshoremen's & Warehousemen's Union, 72 F. Supp. 562 (D. Haw. 1947) (finding that fishermen were independent businessmen who together decided to fix the prices of fish); Am. Med. Ass'n v. United States, 317 U.S. 519, 532-36 (1943) (rejecting assertions that the antitrust labor exemption applies to concerted efforts by independent physicians and their professional associations to boycott Group Health to force it to cease operation).

eligible for legal protections, sick leave, a minimum wage, and other rights that employees in traditional employment relationships enjoy. Advocates of the law, which include labour activists and trade unions, argue that it is necessary to provide economic security for the ride hailing workforce. Opponents, including ride hailing firms - Uber, Lyft and DoorDash - claim that the law jeopardises their business model that relies on flexibility and are pushing for a ballot proposal to exempt themselves from the new rules. More than one million workers in California will be impacted by the new rules (Eurofound – Platform Economy Database).

BOX on California Assembly Bill 5 (AB5)[11]

California Assembly Bill 5 (AB5) is a piece of legislation signed into law by Governor Gavin Newsom in September 2019. It went into effect on first of January 2020 and required companies that hire independent contractors to reclassify them as employees, with a few exceptions. In September 2020 the California legislature passed Assembly Bill 2257, which rewrote a number of the requirements of AB5 and exempts a substantial list of job categories.

California's AB5 expanded on a ruling made in a case that reached the California Supreme Court in 2018, Dynamex Operations West, Inc. vs. Superior Court of Los Angeles. In the 2018 Dynamex case, the California Supreme Court ruled that companies must use a three-pronged test (known as the ABC test) in determining whether to classify workers as employees or independent contractors. This test assumes that workers are employees unless the company that hires them can prove the following three things:

1. The worker is free to perform services without the control or direction of the company.

2. The worker is performing work tasks that are outside the usual course of the company's business activities.

3. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

This test holds companies to a higher standard in proving workers are independent contractors than was previously used in California. AB5 made this test the new gold-standard requirement for companies that hire workers in the state of California.

AB5 pros:

- Creates a level playing field between gig economy workers and those hired as regular employees
- Workers entitled to a minimum wage, employee benefits, and other perks

AB5 cons:

- Potential loss of flexibility in regard to work hours for gig workers reclassified as employees
- Cost of reclassifying gig workers as employees could raise prices for consumers

Since February 2021 the US Congress has been debating the "Protecting the Right to Organize Act of 2021 – PRO Act", that is not directly targeted to self-employed, but involves their rights too. The act wants to extend the right to collective bargaining, prevent the misclassification of workers and, in general, combat the unfair labour practice[12].

Canada

[11] Complete information is available at https://www.investopedia.com/california-assembly-bill-5-ab5-4773201.
[12] See https://www.congress.gov/bill/117th-congress/senate-bill/420.

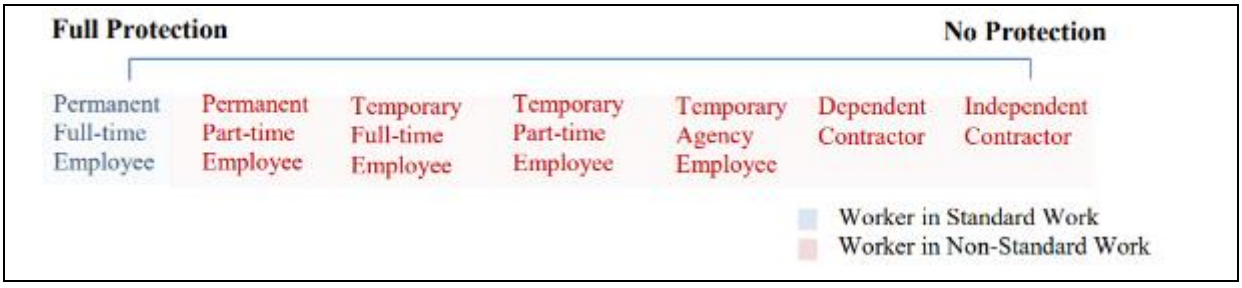
In Canada, according to OECD data from 2019, the share of self-employed persons in total employment was 8.2%. Lahouaria Yssaad and Vincent Ferrao (2019) show, according to Statistics Canada data in 2018, that self-employment rose in professional, scientific and technical services while fell in agriculture. The same study highlights that one-third of self-employed cited independence as the main reason they were in self-employment. The nature of the job was the second most common reason for being self-employed i.e., the worker had to be self-employed because their employment cannot be organised in another way.

Sung-Hee Jeon, Huju Liu and Yuri Ostrovsky (2019) identify platform workers on the basis of the characteristics of their work arrangements and how these are reported in tax data. The study introduces a definition of platform work specific to the work arrangements reported in the Canadian tax system and estimates the size of the platform economy in Canada according to these administrative data: the share of platform workers among all workers rose from 5.5% in 2005 to 8.2% in 2016. The analysis highlights gender differences in the trends and characteristics of platform workers. By linking administrative data to 2016 Census micro-data, this study also examines educational and occupational differences in the prevalence of platform workers.

The Government of Canada's 2006 Fairness at Work report recognised that the binary division between "employees" and "independent contractors" did not address the full continuum of employment relationships and recommended the creation of a new category of 'autonomous worker' with limited coverage in comparison to that offered by Part III of *Canada Labour Code*, since many autonomous workers do not want or need to be covered by Part III[13]. Therefore, the recommendation was that special regulations should be enacted, following a sectoral conference, to permit them to be covered in limited respects (Arthurs 2006). A labour market review commissioned by the Ontario Ministry of Labour suggested amending the definition of "employee" to include that of dependent contractors (OECD 2019e).

In Canada both dependent and independent contractors are identified as "non-standard workers" (or worker different from standard employees) and they both are the categories less protected as shown by Figure 5. However, only employees (including those in non-standard work) have full protection under Part III of the *Canada Labour Code*.

Figure 5 Spectrum of work



Source: Employment and Social Development Canada (2019),

New types of work, such as gig work, task-based work and zero hours contracts (contracts with no guaranteed hours), as well as older forms, such as freelance work, fall along different points of the spectrum and many workers do not fit precisely in one category. For example, a worker in task-based work could be treated by their employer or client as an employee, a dependent contractor or an independent contractor depending on a number of factors, including how much control they have over their work. They could also be considered a part-time or full-time worker, with that label changing

[13] The provisions in Part III of the Code set labour standards for employment conditions by establishing minimum working conditions in the federally regulated private sector, such as hours of work, minimum wages, statutory holidays and annual vacations, as well as various types of leave. They also create a level playing field for employers by requiring all of them to meet these minimum entitlements.

depending on a given week or month if their hours vary. If they work under multiple contracts, it is possible that many different labels would apply to them at the same time.

To discourage employers from misclassifying employees as self-employed, the Canada Labour Code was amended in 2018 to explicitly forbid employers from treating employees as independent contractors (e.g. by misclassifying them) and placed the burden of proof on the employer. The rules are effective from January 1, 2021(OECD, 2019e).

Despite Canada labour law not having an intermediate category of worker, the definition of "employee" under Part I of the Canada Labour Code, which applies to collective bargaining in the federally-regulated private sector, includes "dependent contractors". In particular, Part I defines a "dependent contractor" as:

a. the owner, purchaser or lessee of a vehicle used for hauling, other than on rails or tracks, livestock, liquids, goods, merchandise or other materials, who is a party to a contract, oral or in writing, under the terms of which they are:
    i. required to provide the vehicle by means of which they perform the contract and to operate the vehicle in accordance with the contract;
    ii. entitled to retain for their own use from time to time any sum of money that remains after the cost of their performance of the contract is deducted from the amount they are paid, in accordance with the contract, for that performance;
b. a fisher who, pursuant to an arrangement to which the fisher is a party, is entitled to a percentage or other part of the proceeds of a joint fishing venture in which the fisher participates with other persons
c. any other person who, whether or not employed under a contract of employment, performs work or services for another person on such terms and conditions that they are, in relation to that other person, in a position of economic dependence on, and under an obligation to perform duties for, that other person.

The origins of this approach were in arguments by H. W. Arthurs in the 1960s – many Canadian jurisdictions adopted the definition of dependent contractor in the following decades – that collective bargaining is a way of addressing a power imbalance and, due to similarities between dependent contractors and employees, the dependent contractors are eligible for unionisation. This allows for their inclusion in the same bargaining unit as other unionised employees to which the same collective agreement would apply. A separate collective agreement only for dependent contractors is also legally permissible (OECD, 2019e)

Although this status of "dependent contractor" has not been widely applied in practice (and is not a recent reform), the rationale that underpinned this approach has relevance for discussions today. Nonetheless, in Canada, dependent self-employed have had the right to bargain collectively since the mid-1900s and there is some evidence that the status of dependent self-employment is relatively limited today, potentially because such workers have obtained employee rights in other ways (OECD, 2019e).

Australia

In 2019 self-employed in Australia accounted for 9.7% of total employment, according to OECD data. The Australian Bureau of Statistics[14] shows that in 2019 the industries which had the highest percentage of independent contractors (namely, self-employed who are neither employees nor owner managers of incorporated/corporated enterprises[15]) were construction (27%), administration and support services

[14] https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/characteristics-employment-australia/aug-2019#main-features.
[15] Form of employment in the glossary of Australian Bureau of Statistics: https://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/6333.0Appendix3August%202018

(17%) and professional, scientific and technical services (14%). The largest relative increases of independent contractors from 2014 to 2019 were in transport, postal and warehousing (10.7% to 13.2%) and information media and telecommunications (5.7% to 9.3%).

The first comprehensive national survey of digital platform work in Australia, which elicited more than 14,000 usable responses, is described in McDonald et al. (2019). The study indicates that: a substantial minority of adults in Australia (7.1%) indicate that they currently participate or have participated within the 12 months prior to the interview in digital platform work and a further 6.0% have done so in the past. 7.1% of respondents were currently working (or offering to work) through a digital platform or did so within the 12 months prior to the interview; 13.1% of survey respondents have, at some time, undertaken digital platform work and 38.7% of them have only done work in-person at a specified location, while 28.2% have done computer or internet-based work only, and the remaining (almost one-third) have undertaken both types of work at some time. The type of digital platform work undertaken was highly varied: 12 categories of work undertaken by respondents were identified, two of which – education and personal services – were unanticipated before the survey. Digital platform work appears to commonly supplement other forms of income. Only 2.7% said they earned all of their income via this means. Yet a not-insignificant minority (15.4%) are strongly reliant on such income, indicating that their earnings via platform work is essential for meeting basic needs.

In order to help firms and workers, in 2016 the Australian Government launched an "Independent Contractors Decision Tool"[16] based on 16 questions and 6 main criteria (precisely: a) Ability to subcontract/delegate, b) Basis of payment, c) Equipment, tools and other assets, d) Commercial risks, e) Control over the work, f) Independence) to determine what type of working relationship workers have and to identify whether they have to be classified as contractors or employees (ILO-OECD, 2020; OECD, 2019e).

Many workers with variable hours fall under the broader definition of "casual employee", which accounts for approximately 25% of all employees in Australia as at 2019. As regards these casual workers, as well as the part-time workers, most occupations and industries have a set of minimum standards, including clauses on minimum engagement periods (e.g. three hours in the fast food industry), ordinary hours of work and overtime, and procedures around providing and changing rosters. In addition, in exchange for not having access to the full set of employment benefits as do permanent employees (specifically, paid leave entitlements), casual employees receive a pay loading of 15-25% of the equivalent hourly permanent rate. In Australia, as a result of a 2017 decision by the independent Fair Work Commission, some "eligible casual employees" have the right to request conversion to permanent employment (full-time or part-time). However, that right is available only to "long term casual employees", namely those who work for an employer "on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months" (Fair Work Commission decision, 2017). Employers may only refuse this request on reasonable grounds (OECD, 2019e).

On 22 October 2020, the Australian Competition and Consumer Act announced a class exemption that, from early 2021allows businesses, including independent contractors, to collectively negotiate with suppliers or customers[17] if the Australian Competition and Consumer Commission (ACCC) considers that collective bargaining would result in overall public benefits. To obtain the protection of the class exemption, an eligible business (listed below) must send a one-page "*Collective bargaining class exemption notice form*" to the ACCC and the *form* will be published in a public register.

Provided this notice form has been given, each business in the group that meets the eligibility criteria gets protection under the competition law when collectively bargaining within the terms of the class exemption. Moreover, if some members of a proposed bargaining group do not meet the requirements

[16] https://www.business.gov.au/people/contractors/employee-or-contractor

[17] The Australian competition law does not allow collective bargaining between businesses: collective bargaining occurs where two or more competitors negotiate with a supplier or customer ("target" business) about terms, conditions and/or prices.

(for example, their turnover is too high), the group is still able to receive legal protection to collectively bargain (ACCC, 2021). One advantage of this exemption is that it does not require a complex categorisation of businesses or self-employed according to definitions of dependence or vulnerability This approach is based on the fact that collective bargaining reduces disequilibria in market powers and produces social benefits; on the basis of this criterion, social benefit, the ACCC assess the notification and intervene when these benefits are not evident. The assessment is mainly implemented with qualitative methods and available information. It is estimated that the exemption can cover 98.5% of Australian businesses. (OECD, 2020a)

The class exemption, more specifically[18], allows:

- a business or independent contractor with aggregated turnover of less than Australian $10 million in the preceding financial year, to form or join a collective bargaining group to negotiate with suppliers or customers about the supply or acquisition of goods or services. The choice of that threshold is linked to taxation rules since small business in Australia are eligible for tax concessions if their turnover is less than Australian $ 10 million[19]. In this way for a business is easy to know if it can use the class exemption to collectively bargain and for the ACCC is quite easy the verify its eligibility. The turnover threshold is the only requirement in order to make the application of the class exemption simple and universal; no requirements about operating in a specific sector or territorial area are in force.
- franchisees to collectively bargain with their franchisor (regardless of the franchisee's aggregated turnover);
- fuel retailers who have fuel re-selling agreements with the same fuel wholesaler, and operate under the same system or marketing plan determined, controlled or suggested by the fuel wholesaler or an associate of the fuel wholesaler, to collectively bargain with their fuel wholesaler (regardless of the fuel retailer's aggregated turnover).

Bargaining groups will have to complete a simple, one-page notice and provide it to:

- the Australian Competition and Consumer Commission (ACCC), when the bargaining group is formed,
- each target business the group proposes to collectively bargain with, when they first approach the target business.

The class exemption does not oblige target businesses to negotiate with any bargaining group. Nor does it override any existing legal or contractual obligations between the parties, such as confidentiality clauses in contracts.

Collective bargaining groups sometimes want to be able to refuse to supply to, or to buy from, a particular customer or supplier, unless or until they reach agreement on terms and conditions with that customer or supplier. This is referred to as a 'collective boycott'. The class exemption does not provide protection from competition laws for collective boycotts. Businesses can, however, seek legal protection to engage in collective boycotts using the authorisation or notification processes. The ACCC will assess each collective boycott proposal on a case-by-case basis.

The ACCC can vary or revoke the class exemption if it is concerned that the notified priocedure is not operating as intended. Before doing so, the ACCC consult with all bargaining groups (using the contact information in the notice form) and inform each group of any implications that are relevant to them,

[18] The main legislative passages and legislative contents about class exemptions are in: https://www.accc.gov.au/public-registers/class-exemptions-register/collective-bargaining-class-exemption

[19] Around Eur 6.1 million in August 2021.
https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-aud.en.html

A group of businesses may sometimes appoint a representative, such as an industry association, to act on their behalf in negotiations (ACCC, 2021).

South Korea

Self-employed in South Korea corresponded to 24.6% of total employment in 2019, according to OECD data. OECD (2019e) highlights that the Korean government established a taskforce composed of labour market experts to design concrete policies for workers in between employment and self-employment, such as non-regular workers and dependent contractors. The ILO (2018) describes the different working categories in Korea; the classification of status in "employment" is complemented by a classification of "type of employment" (for employees only) with a dichotomy between non-regular workers and regular workers. Within the group of non-regular workers there is a category of "contract labour on achievement" defined as: "workers, not having a designated office or workplace and being allowed to make independent decisions with respect to the methods and times of providing their labour/services, perform their jobs that are not under their control. Their income directly depends on their own work performances. Delivering products and services through sales, transport, delivery, subscriptions, etc. can be classified as in this category". This category is classified by Statistics Korea as a subset of employees but may overlap with the proposed category of "dependent contractors" that, in 2018, was recognised as defined category in ICSE-18[20]. In August 2017, 493,000 persons were employed in this category (contract labour on achievement), representing 2.5% of "waged workers". No information about the number of self-employed or non-waged workers that might be classified as "dependent contractors" in South Korea is available in the literature.

The Labour Standards Act (LSA), approved in 2007 and frequently amended till 2019, is the main law regulating minimum standards for a wide range of work conditions. These standards supersede any provision that is less favourable from the employee's point of view in:

- employment contracts;
- collective bargaining agreements (CBA);
- rules of employment (ROE).

Only employees are entitled to the minimum standards under the LSA. These include: maximum working hours, overtime limits and overtime allowances, night time and holiday work allowances, minimum annual leave, minimum severance payment and restrictions on dismissal. While, on the other hand, the LSA does not regard independent contractors who are not entitled to the employment rights in LSA. To be identified as independent contractor one or more of the factors characterising the relationship employer-employee has to be missing (Han Lee at al. 2020):

- The employer determines the individual's duties, time and location of work;
- There are applicable work rules and the person the employer substantially supervises and orders the employee;
- The duties are not such that the individual is able to delegate them to a third party;
- The individual does not own work equipment and materials;
- Remuneration is in correlation to the amount of work the individual does, based on a fixed rate of pay, and income tax is withheld;
- The relationship is continuous and the individual works exclusively for the employer;
- Other regulations that class the individual as an employee.

[20] The aim of paper (ILO, 2018) was that to describe the rationale and background to the development of a proposal to include a category of "dependent contractors" in the revised International Classification of Status in Employment (ICSE-18)

Employees are free to form a labour union that may negotiate a CBA with the employer. Generally, the CBA applies only to union members. Employment conditions may therefore vary between union members and non-union members. However, the CBA will also apply to the non-union employees engaged in the same work at the same workplace or in the same business, if both (*section 35, Labour Union and Labour Relations Adjustment Act*):

- A majority of the employees ordinarily engaged in a given type of work at a given workplace or in a given business are union members and the CBA applies to the union members.
- The general employment rules contain conditions less favourable than those under the CBA.

From a legal point of view, Sean Hayes (2018) notes that in recent years the Korean Court System has been less reluctant to consider an independent contractor as "employee" under the Labor Standards Act (LSA). This fact remains true even when an employer proves that the independent contractor is aware that they were contracted as an independent contractor, not a regular employee. Upon the establishment of their status as "employee" the individual is entitled to all of the benefits of an employee. More recently, and in response to the growth of platform work and occupational accidents of platform workers, the Korean government planned to extend the Occupational Safety and Health Act in a way that "all working people" were protected. It has also been preparing to revise the Occupational Safety and Health Act to require employers to take specific health and safety measures (e.g. providing protective equipment and training) for non-regular workers, including dependent contractors and delivery workers (OECD 2019e).

Looking in-depth at platform workers and the digital labour work, Eunjin Oh et al. (2020) offer a review of previous research on technology development and platform labour and provides a policy plan for the future digital job creation and career developments. The study is based on findings arising from noteworthy literature reviews examining Korea, such as Kim Joon-young (2019), which estimates the number of digital platform workers in terms of people over 15 years of age, as of 2018, from 469,000 to 538,000 people, representing 1.7% to 2.0% of all employed people; while Jang Ji-yeon (2019) shows that the proportion of self-employed in digital platform workers was 2.9%

KLSI (2020) highlights that according to official statistics 30-40% of the working population are irregular workers, and the gender pay gap is the highest among OECD countries, at 32.5%. Platform businesses argue that they are just intermediaries and not involved in any direction of work, evaluation or discipline regarding workers. However, platforms effectively exercise control and discipline over platform workers with client review and online evaluation on the platform, which determine their fees and eligibility to use the platform. Recently, the courts decided that workers of the digital platform Yogiyo have an employment relationship with this platform. There are platforms where workers are denied autonomy in setting the prices for their service or choice of clients, the work schedule is shared with the platform and penalties are imposed based on screenshots or business logs. In this case, it is likely that an employment relationship is recognised. In particular, the following should be recognised as employees:

- those who provide labour or services to employers for compensation;
- employees disguised as the self-employed or independent contractors;
- platform workers whose tasks can be performed only under direct or indirect supervision and direction of employers, even if those workers are technically regarded as the self-employed.

KLSI (2020) shows also how industrial bargaining in Korea should be promoted and, more in general, reflects on the reasons why reforms about the extension of collective agreements should be undertaken: first, workers need to be covered by collective agreements, even if they cannot join unions; second, the current Trade Union Act hampering the extension of collective agreements beyond company level, do not cover workers in businesses without unions (see below, the proposed revision of article 36 of the Trade Unions and Labor Relations Adjustment Act).

Table 3 South Korea: Trade Unions and Labor Relations Adjustment Act, in the chapter III "Collective bargaining" presents the article 36 that is object of proposed of revision (KLSI, 2020)

Geographical Binding Force) at the moment:
When two-thirds or more of the workers of the same kind of job employed in an area are subject to one collective agreement, the administrative agencies may, with resolution of the Labor Relations Commission, at the request of either of the parties to the collective agreement or ex officio, make a decision that the said collective agreement shall apply to other workers of the same kind of job and their employers engaged in the same area.
Proposed revision of article 36:
When there is a collective agreement in an industry, area, or category of business, the administrative agencies may, with resolution of the Labor Relations Commission, at the request of either of the parties to the collective agreement or ex officio, make a decision that the said collective agreement shall apply to other workers[21] of the same kind of job and their employers engaged in the same industry, area, or category of business. In that case, the Labor Relations Commission shall make a resolution considering whether the content of the collective agreement to be applied serves the social and public interest.

Source: Table 12. "Proposed revision for expanding collective agreement coverage" by KLSI (2020).
Trade union and labor relations adjustment act, can be found here: Self-employed Canadians: Who and Why?

In this regard, the social partners were also involved in an urgent policy discussion which was initiated by the ruling party on the revision of legislation to support SMEs and self-employed. The employer's representatives called for measures on economic promotion and the worker's representatives addressed issues on labour rights for vulnerable groups and emphasised stable employment. Amid these law revisions and countermeasures, grey areas need to be tackled in employment relations and working conditions. The Labour Standards Act (LSA) establishes the terms and conditions of employment of workers through its provision on minimum wages, collection of insurance premiums, employment insurance and industrial accident compensation insurance. However, workers such as platform workers, self-employed persons, domestic workers and workers in the special type of employment whose status are between employee and self-employed are excluded from the scope of LSA and its protections (Gil 2020).

In the interest of platform workers, in May 2020, the Committee on the Digital Transformation and Future of Work announced a code of conduct that formulates guidelines for fair contract terms between workers and platform companies on matters such as payment method, fees, tax, non-discrimination, performance assessment programmes and dispute settlement.

From July 2021 in South Korea employment insurance is also compulsory for dependent self-employed, which aims to cover perinatal and unemployment spells[22].

Final considerations

Notwithstanding the fact that the analysis of the extra-EU countries would need more detailed investigations, that is out of the scope of the current study, it is possible to provide some basic conclusions deriving from the literature review on four important advanced countries, On the next page Table 4 summarises and compares the four countries according to the main elements concerning: definition of self-employed, workers covered by collective bargaining and the relation between

[21] Including independent contractors (editor's note).
[22] See http://www.moel.go.kr/english/mobile/view.jsp?idx=1603

competition law and collective bargaining. On the basis of these findings some general observations are:

- as is the case with the EU, the examined countries are all dealing with a changing labour market and the need for an appropriate regulation of the new types of self-employment in order to ensure social protections and basic rights to the weakest components of the self-employed. Two common objectives can be highlighted: reducing false self-employment and enlarging (or ensuring) the rights and the social protection of self-employed; on this latter objective several initiatives involve collective bargaining.
- The definition of self-employment matters. Where the definition is diversified and fragmented in state competences, as in the USA, the regulation of collective bargaining is also fragmented; by contrast, where the definition is homogenous (Australia and South Korea) and strictly applied (Canada) the number of self-employed requiring protections seems more limited and the regulation of collective bargaining seems more consistent. All the countries do not use definitions based on the profession or the sector (like liberal profession or platform workers) in their legal framework, but prefer definitions based on the dependence and autonomy of the self-employed worker and the type of work organisation in which he/she operates.
- The approach to collective bargaining varies among the examined countries. Collective bargaining of independent contractors is forbidden in the USA and South Korea by competition law, while Canada allows collective bargaining for “dependent contractors” and Australia allows businesses and independent contractor to collectively bargain under the control of the Australian Authority on Competition, which scrutinises the effects on competition of each negotiation and can block it.

Table 4 Table Summary of the main elements stemmed from the extra-EU analysis

	Definitions of employee and self-employee	Workers covered by collective bargaining law	Competition law and collective bargaining: the position of the enforcement
United States of America	– No uniform definitions of employee among States and no uniform tests to determine if a worker is an independent contractor – In 2015 the Department of Labour published its Administrator's Interpretation *No. 2015-1* to guide the identification based on: integration with employer's business, linkage to employer profit and loss, investment of the worker, required skill and initiative, permanent or indefinite relationship, degree of employer's control.	– The federal National Labour Relations Act protects employees' right to form unions and to engage in collective bargaining, but it does not cover independent contractors who were usually excluded. – in the last years, and in some cases where bargaining power were too asymmetric between employers and self-employed, collective bargaining between independent contractors and companies was allowed	– The position of enforcement, despite its fragmentation at state level, intends to balance the bargaining power in favour of independent contractors when they are weak or comparable to employees – Sometimes these balances were regulated by Ordinance, as in case of Seattle Ordinance, or by legislative initiative as in California with Assembly Bill no.5
Canada	– "Employee" is differently considered at federal level (by Canada Labour Code, CLC) and at provincial level. – In non-standard work (less protected than standard work) there are both dependent and independent contractors – dependent contractors are defined by CLC (Part I), while independent contractors are not regulated by CLC[23]	– Employees and dependent contractors have the right to bargaining since the mid-1900s; – Independent contractors have not the right to collective bargaining.	– to avoid a contrast between collective bargaining and competition law, workers are quite easily identified as employee, dependent contractor or independent contractor – CLC, since February 2021, explicitly forbid employers from treating employees as independent contractors and placed the burden of proof on the employer – the status of "dependent" contractors appears not very widespread today due to the reason that workers have obtained employee rights in other ways
Australia	– Employee includes "permanent employee" (has an ongoing employment relationship) and "casual employee" (does not have a continuing contract with his/her employer) – A person can be an employee or an independent contractor according to 6 main criteria; a) Ability to	– With the exemption foreseen by the Australian Competition and Consumer Act, from early 2021, all kinds of employees and independent contractor can negotiate collectively. – The exemption is allowed if the Australian Competition and Consumer Commission	– Enforcement of competition law is assured by the Australian Competition and Consumer Commission – Competition law appears subordinated to overall public benefits that a collective bargaining can promote

[23] However, CLC determines the worker-employer relations on the model outlined in the case of the Supreme Court of Canada, *671122 Ontario Ltd. v. Sagaz Industries Canada Inc. and based on the following criteria: control, tool and equipment, profit and risk of loss, integration. See:* https://www.canada.ca/en/employment-social-development/programs/laws-regulations/labour/interpretations-policies/employer-employee.html#appi2

	Definitions of employee and self-employee	Workers covered by collective bargaining law	Competition law and collective bargaining: the position of the enforcement
	subcontract/delegate, b) Basis of payment, c) Equipment, tools and other assets, d) Commercial risks, e) Control over the work, f) Independence	(ACCC) considers that collective bargaining would result in overall public benefits.	
South	– The Labour Standards Act (LSA) defines an employee broadly as a person who offers work to a business or workplace for the purpose of earning wages. – Expanding on that definition, the Supreme Court has determined a set of factors that point to an employer-employee relationship[24]. – To be identified as independent contractor one or more of the seven factors characterising the employer-employee relationship has to be missing.	– Only employees can collectively bargain and are covered by collective agreements (only union-member employees, unless the non-union employees are engaged both in the same work and at the same workplace or business). – LSA does not regard independent contractors who are not entitled to the employment rights, among others the right to collective bargaining.	– government planned to extend the Occupational Safety and Health Act in a way that "all working people" – a proposed revision of article 36 of the Trade Unions and Labour Relations Adjustment Act may introduce a mechanism to extend collective agreements "to other workers of the same kind of job and their employers engaged in the same industry" – In addition, in 2020 the Committee on the Digital Transformation and Future of Work announced a code of conduct and related guidelines for fair contract terms between workers and platform companies on matters such as payment method, fees, tax, non-discrimination, performance assessment and dispute settlement

[24] They are: a) The employer determines the individual's duties, time and location of work; b) There are applicable work rules and the employer substantially supervises and orders the employee; c) The duties are not such that the individual is able to delegate them to a third party; d) The individual does not own work equipment and materials. e) Remuneration is in correlation to the amount of work the individual does; f) The relationship is continuous and the individual works exclusively for the employer; g) other regulations that class the individual as an employee. See https://content.next.westlaw.com/6-508-2342?transitionType=Default&contextData=(sc.Default)&__lrTS=2&firstPage=true

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