STUDY

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The platform economy and precarious work

Policy Department for Economic, Scientific and Quality of Life Policies
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The platform economy and precarious work

Abstract

Platform work is non-standard work facilitated by online platforms which use digital technologies to 'intermediate' between individual suppliers (platform workers) and buyers of labour.

Platform work has rapidly developed since it first emerged in the EU, though concerns have been raised about the working conditions of platform work and the risk of precariousness it entails. Platform work has, therefore, been identified as a policy priority by European policy-makers.

This study presents a literature review that focuses on the challenges and risks of precariousness of platform work and explores possible pathways for EU action.

The document was provided by the Policy Department for Economic, Scientific and Quality of Life Policies at the request of the committee on Employment and Social Affairs (EMPL).

This document was requested by the European Parliament's committee on Employment and Social Affairs.

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AI	Artificial Intelligence
AMT	Amazon Mechanical Turk
BEPS	Base Erosion and Profit Shifting
Cedefop	European Centre for the Development of Vocational Training
CJEU	Court of Justice of the European Union
EC	European Commission
ELA	European Labour Authority
ESIP	European Social Insurance Platform
ETUC	European Trade Union Confederation
ETUI	European Trade Union Institute for Research
EU	European Union
EU-OSHA	European Agency for Safety and Health at Work
Eurofound	European Foundation for the Improvement of Living and Working Conditions
GDPR	General Data Protection Regulation
ICT	Information and communications technology
ILO	International Labour Organisation
JRC	Joint Research Centre
OECD	Organisation for Economic Co-operation and Development
P2B	Platform to business
SIP	Social Investment Package
TCAs	Transnational company agreements
TFEU	Treaty on the Functioning of the European Union
TPWC	Transparent and predictable working conditions (Directive)

UITP	International Association of Public Transport
UK	United Kingdom
US	United States
VAT	Value-added tax
WTO	World Trade Organisation

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EXECUTIVE SUMMARY

In recent years, powerful global **platform businesses** using **digital technologies to connect individual suppliers and buyers of labour** have entered service and labour markets in most European Union (EU) Member States, challenging traditional incumbents and regulatory frameworks. Platform work is high on the research and policy agenda due to its fast expansion in a rising number of sectors and its atypical, flexible work arrangements that attract growing numbers of workers.

Digital platforms facilitate or 'intermediate' **online** or **on-location services** provided by an individual to a client in exchange for payment. The business model of profit-oriented platforms is based on the monetisation and exploitation of the data provided and generated by their users. Platforms own the apps and technology they use to collect and analyse data to (1) connect clients and platform workers, and (2) allocate, organise and evaluate work. Platform work presupposes a **triangular or multi-angular relationship**, involving at least a platform, a platform worker and a client. Platform workers and clients can act in either a private or professional capacity, while clients can also be businesses engaging multiple platform workers. This gives rise to a multitude of possible service and contractual relationships between the parties involved.

This report provides a detailed **analytical literature review**, focusing on the main challenges and risks of precariousness inherent in platform work as it stands. It presents a state of play of the current EU policy framework and describes the views of EU social partners and global platforms of the main policy issues at stake. The report also documents mitigation policies suggested by the Organisation for Economic Co-operation and Development (OECD), the International Labour Organisation (ILO) and the Commission's High-Level Expert Group on the impact of digitalisation on the EU labour market. Finally, the report describes the mitigation pathways and actions proposed in selected research and by the study's authors. A separate policy briefing on mitigating strategies has been published beforehand. It summarises selected results[1].

The policy, stakeholder and research communities broadly agree that the **main challenge in platform work** is **the unclear employment status of platform workers**, with implications for their rights and obligations in terms of labour and social protection. The report identifies two main reasons for this. Firstly, there is no uniform concept of 'worker' or 'employee' in the EU. Platform work blurs the boundaries between the traditional legal concepts of 'employee/worker' and 'self-employed', given the triangular relationships and the high degree of flexibility and autonomy. Secondly, platforms' terms and conditions typically specify that platform workers are freelancers, irrespective of the actual conditions under which they work. This may be a misclassification (bogus self-employment) and is one that is found to particularly affect those in low-skilled on-location and online platform work. Many platform workers thus find themselves in a legal grey zone.

A second key challenge in platform work is the **absent, unclear or incomplete terms and conditions or rules of engagement** between the platform and the platform worker, regardless of that worker's employment status. Platforms unilaterally impose (changes to) terms and conditions on platform workers without prior information or consultation and vary their means of temporary or permanent contract termination without dispute resolution mechanisms. The use of algorithmic management, (semi-)automated decision-making without human involvement, and rating systems all aggravate the vulnerable position of platform workers, who are prone to exploitation, especially in the context of

[1] Hauben, H., Lenaerts, K. and Kraatz, S., *Platform economy and precarious work: Mitigating risks*, Briefing for the committee on Employment and Social Affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020, available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652721/IPOL_BRI(2020)652721_EN.pdf.

increased monopolisation of certain service or labour markets. The growing **appropriation of data** by large platforms presents a key challenge where such data have a business value for the platforms, without any sort of compensation for the users who share and generate those data.

This study confirms that platform workers who provide services using global profit-oriented platforms face **high risks of precariousness**, **irrespective of their employment status**, particularly those engaged in low-skilled and online platform work. The risks of precariousness include: (1) **low, fragmented and unstable income**, with insufficient fall-back options during intermittence periods; (2) **low protection of working conditions**, including **little or no access to training and career development**; (3) exposure to particular **health and safety risks characteristic of platform work**; (4) **low social protection coverage for risks that are particularly relevant for platform work** (e.g. work accidents, unemployment and sickness); and (5) **very low level of collective labour rights and representation**.

A recent European Commission study (2020a) reveals that **policy responses in EU Member States** have been rather limited and fragmented, diverse in nature and scope, and somewhat ineffective. Very few countries have taken legislative measures to address the labour and social protection of (self-employed) platform workers directly, while national court rulings differ on the employment status of platform workers. Structured collective action remains the exception.

At EU level, labour legislation only applies to workers (employees) and is thus of little relevance for most platform workers. Even where platform workers have an employment contract, EU labour legislation generally does not offer appropriate solutions, due to unfit legal concepts, derogation possibilities or constraints related to the enforcement of the provisions in respect of platform work practices. **Targeted legislative action was taken at EU level** in 2019, through the Regulation on promoting fairness and transparency for business users of online intermediation services (Platform to Business (P2B) Regulation) and the Directive on Transparent and Predictable Working Conditions (TPWC Directive). Although welcome, these concern only a small group of platform workers and require further improvement (European Commission, 2020a). Case-law of the Court of Justice of the European Union (CJEU) clarified the EU concept of 'worker', determining the personal scope of EU labour legislation, but did not consider the (economic) dependency criterion, which is of specific relevance for platform work. More generally, legislative and policy actions at both EU and national level have been slow and often insufficiently coordinated between policy fields and levels of authority, pointing to the need for more coordination and concerted action. **Recent EU-level initiatives**, such as the preparation of the Digital Services Act (under the Digital Market Strategy) and the initiative related to fair minimum wages (under the European Pillar of Social Rights) are steps towards protecting platform workers against the risks of precariousness more broadly.

The **OECD and ILO have promoted global strategies** to tackle the various challenges of the platform economy, which they view as a part of a global trend towards digitalisation in the economy and labour markets. Both organisations have emphasised the need to clarify the unclear employment status of platform workers and to ensure adequate social protection, labour and collective rights, and access to training for all, regardless of employment status. A key priority, according to the OECD, is uniform reporting by platforms to the Member States on the transactions they facilitate. This view is echoed by the European Commission's High-Level expert group on the impact of digitalisation on the EU labour market.

Several academics have called for a more uniform and broader definition of 'worker' across the EU that would account for economic dependency and address the unclear employment status in the longer term. The literature further identified **two main legislative pathways** to tackle the challenges of platform work in the medium-term. The first involves a directive on fair working conditions in the platform economy that would encompass a rebuttable assumption that the platform worker is employed as a worker, or a single directive ensuring equal treatment between all forms of non-standard work and standard work, or an adjusted Temporary Agency Work Directive for online crowdwork (based on the Employment chapter, Article 153(2)(b) and Article 153(1)(b) Treaty on the Functioning of the European Union (TFEU)). The second pathway is a regulation on the digital services facilitated by online platforms, synchronising some fundamental rights and obligations in the contractual relationship and use of data, applicable to all users (based on Internal market chapter and Article 114 TFEU). In the short-term, **more proactive and increased enforcement** of CJEU rulings on the current EU concept of 'worker' by national enforcement agencies may contribute to reducing undeclared work and bogus self-employment. The European Labour Authority (ELA) can play a leading role here, notably for cross-border and online platform work. Researchers also point to the need to **align competition and labour law** and to **promote universal minimum income (support) schemes** and **adequate social protection schemes**. Such schemes must target those in non-standard forms of work, including the self-employed (platform workers), and pay particular attention to protection against work accidents and short-term income replacement benefits in cases of illness and unemployment and during periods of income fluctuation

Other measures widely supported by all stakeholders - including policy makers, social partners and platforms - involve the **promotion of collective organisation and representation of platform workers** regardless of their status, the **promotion of (voluntary) codes of conduct** throughout the platform work economy, and **targeted information provision and awareness-raising** of the rights of platform workers, including through online forums.

Finally, building on this extensive literature review, **the authors recommend** (1) collecting data based on uniform concepts and to develop reporting and monitoring mechanisms; (2) enlarging the mandate of the EU Observatory on the Online Platform Economy to include platform work within its remit or to create an observatory dedicated to platform work; (3) imposing registration and reporting obligations on platforms and promote exchange of information between national administration; (4) promoting (global or EU) multi-party 'collective' agreements on fair working conditions; (5) adopting a voluntary decent work framework for platform work and (6) supporting and conducting research, particularly in areas that have been overlooked so far, e.g. the prevalence and the impact of online platform work, un(der)declared work, social security and taxation of cross-border platform work.

In brief, a **multi-pronged**, **well-coordinated and monitored European policy approach** is necessary to mitigate the adverse effects of platform work.

1. INTRODUCTION

'Digital transformation brings fast change that affects our labour markets. I will look at ways of improving the labour conditions of platform workers, notably by focusing on skills and education'. President of the European Commission, Ursula von der Leyen (2020, p. 10).

Platform work has only recently emerged in the (EU), prompted by the **adoption and expansion of digital technologies in the labour market** and affecting a growing number of business sectors. Online platforms match the demand and supply of services by connecting platform workers to clients. These services are provided by individuals, can take various forms, and are executed online or on-location in exchange for payment. Platform work has rapidly gained ground in European labour markets and continues to expand quickly.

Concerns have been raised about the **working and employment conditions** of platform workers and the associated **risks of precariousness**. There are numerous accounts of the **unclear employment status** of platform workers, **low and unstable pay**, **irregular and unpredictable working times**, **limited access to social protection**, and **platforms shifting risks and costs** onto their platform workers and clients.

Platform work, as a form of non-standard work, is high on the EU policy and research agenda. Since 2016, the European Commission and the European Parliament have issued several communications and resolutions, pointing to the need to **clarify uncertainties about the rights and obligations of those participating in the collaborative economy** and to **modernise existing labour legislation specifically for those non-standard forms of work that are at risk of precariousness**[2]. European institutions, international organisations (the International Labour Organisation (ILO), the Organisation for Economic Co-operation and Development (OECD)), European agencies (European Foundation for the Improvement of Living and Working Conditions (Eurofound), European Agency for Safety and Health at Work (EU-OSHA), and the European Centre for the Development of Vocational Training (Cedefop)) and independent researchers have undertaken substantial research into platform work. National and European social partners have issued a range of position papers, resolutions and initiatives, while global platforms have been similarly active in the policy debate and EU consultation processes. Since 2019, some EU legislation and policy initiatives have been adopted, with relevance for the labour and social rights of non-standard (including platform) workers. They focus on specific aspects of the existing challenges, while new EU initiatives have been announced and are currently being prepared.

As platform work is becoming increasingly common and more heterogeneous, having a deep **understanding of the nature and risks of the precariousness of platform work is crucial for policy-making**. This in-depth report provides an analytical literature review of the working conditions and of the risks of precariousness in platform work. The literature review focuses on **the identification of problems and potential policy solutions, in particular at EU level**. It thus continues the analytical work conducted by the European Parliament on the risks of precariousness in different settings, particularly its studies on precarious employment in Europe (European Parliament, 2016), on the risks of precariousness based on the European Working Conditions Survey (European Parliament, 2017) and on social protection of workers in the platform economy (European Parliament, 2017), among others.

[2] In spring 2016, the European Commission issued its Communication on a European Agenda on collaborative platforms and adopted the European Agenda for the Collaborative Economy. The European Parliament published three resolutions relevant to platform work: Resolution on a European Pillar of Social Rights of 19 January 2017, the Resolution on online platforms and the digital single market of 15 June 2017, and the Resolution on working conditions and precarious employment of 4 July 2017.

This report draws from a large number of sources (see references), paying particular attention to research and policy papers from the last two years so as to ensure an **up-to-date overview summarising the latest findings on the risks of precariousness of platform work**. The recent European Commission study (2020a) on the working conditions of platform workers (including an overview of the challenges and national responses to platform work, as well as screening the EU labour directives for relevance and adequacy in respect of the protection of the working conditions of platform workers) forms part of the present analysis.

A separate policy briefing on mitigating risks has been published beforehand. It summarises selected results[3].

[3] *Ibid.*, p. 10.

2. CONCEPT, TYPOLOGY AND PREVALENCE OF PLATFORM WORK

2.1. The platform economy and platform work

Recent studies from Eurofound (2018a; 2018b; 2019a) and the European Commission (2020a) observe that, in recent years, developments in digital technology have fuelled the emergence and rapid expansion of the **platform economy**. Strowel et al. (2019) define digital platforms as accessibility-based models that are fundamentally distinct from traditional businesses, as they rely on accessibility to resources rather than their ownership[4]. The platform economy is characterised by triangular or multi-angular relationships, in which online services provided by the platform business are used by the suppliers or seller-users, on the one hand, and the customer-users, on the other[5]. **Platform work is part of the wider platform economy** and concerns **access to services**, **expertise and know-how provided by individuals** in return for payment through, or by means of, an online platform.

Various types of platform businesses exist. **Globalised profit-seeking digital companies** garnered attention in public and policy debate, as well as in literature, as they proved to be most problematic and have challenged existing regulatory frameworks and legal institutions in many ways (Garben, 2019a; Strowel et al., 2019). The globalised platform business model is based on the monetisation of the big datasets they control and the interactions they enable. Data are obtained from individuals (consumers or platform workers) without compensation, which is contrary to what is usually referred to as 'labour', i.e. a worker's time or skills (European Commission, 2019; Arrieta-Ibara et al., 2018). A **growing number of locally operating for-profit business platforms** have emerged in recent years, with a similar business model based on the commercial exploitation of data provided by their users. But there are also many **platforms that function very locally**, **to the benefit of their users with no profit orientation or as a result of local cooperative initiatives**[6]. Examples of such local platforms are *Helpper*, a Belgian self-described 'social profit' platform launched in the city of Antwerp that connects people with (non-medical) care needs to care providers, and *SMart*, a Belgian cooperative employing (among others) platform workers in the food delivery sector, providing a base salary and minimum guaranteed paid hours.

2.2. Definition and conceptualisation of platform work

Drawing on the definitions of Eurofound (2018a) and the European Commission (2020a), this analysis defines **platform work** as 'all paid labour provided through, on or mediated by an online platform in a wide range of sectors, where work can be of varied forms'. Platform work consists of jobs that are often broken down into very small tasks, with services provided on demand, and relationships involving at least three parties: the platform, the client (customer) and the platform worker. The use of an app or technology owned by the platform rather than the client or platform worker (both are 'users' of the

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[4] Strowel et al. (2019) introduce a **typology of digital platforms** based on the types of resources to which they grant access: (1) information or content (TripAdvisor, Yelp, Google Maps, Youtube); (2) personal data and private content (Facebook, LinkedIn); (3) goods and/or services (Amazon, Booking.com, Airbnb, Uber); (4) workforce, expertise or intellectual capabilities (Task Rabbit, Upwork) and (5) money or capital (Kickstarter, Gofundme) or payment systems (PayPal, Mastercard, Bitcoin).

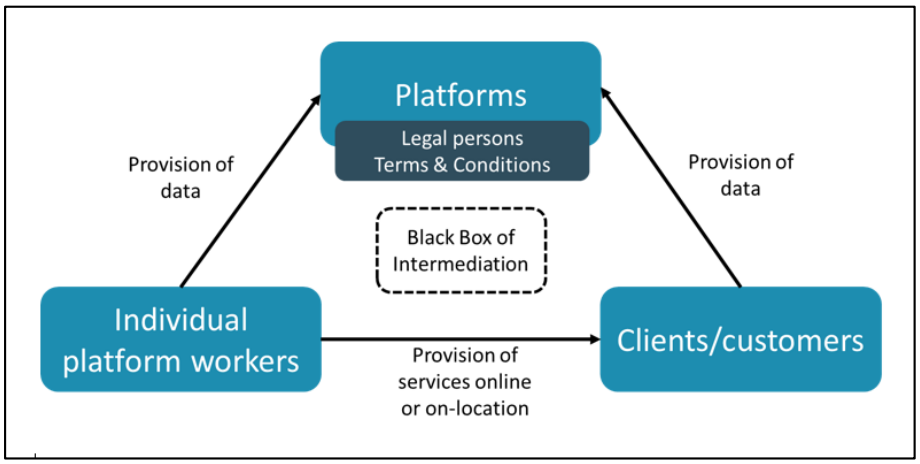
[5] The platform economy is a typical example of two-sided (or multi-sided) markets in which supply and demand is matched through the online intermediation and there is often some sort of competition between the users on either side. Online platforms operate in a separate market, as their prime asset is large datasets. Some platforms do not limit themselves to electronic intermediation services but have entered more traditional markets, challenging the incumbents. A typical example is Uber, a platform business that extended its operations to UberX, Uber Pop, Uber Eats, and others, and which, at the end of 2019, announced the launch of Uber Works in the United States (US).

[6] Johnston and Land-Kazlauskas (2019) define worker cooperatives as membership-based cooperative enterprises where members are also the owners and decide democratically on the main issues affecting them, thus distinct from platform cooperatives that operate in competition with standard labour platforms and cooperatives pooling resources.

platform) to **intermediate work** but also in **work allocation**, **organisation and evaluation** and in the **extensive collection and analysis of data provided or generated** by the platform worker and the customer is a key determinant, distinguishing platform work from other forms of work.

This conceptualisation of platform work is illustrated in Figure 1. The definition underpinning this analysis is sufficiently broad and flexible to account for the substantial heterogeneity in platform work. To date, however, there is no universally accepted definition of platform work[7].

Figure 1: Conceptualisation of platform work



Source: Authors' own elaboration, based on European Commission (2020a).

Based on the conceptualisation of platform work, definitions of 'platform' and 'platform worker' are derived from Eurofound (2018a) and European Commission (2020a). A **platform worker** is defined as 'an individual person carrying out platform work'. A **platform** is 'an online facility or marketplace operating on digital technologies that are owned by an undertaking, facilitating the matching between the demand for and supply of services provided by a platform worker'[8,9,10]. **Customers** requesting services through a platform can be natural or legal persons.

2.3. Typology of platform work

Research into platform work has primarily focused on the **features of the individual service provision** (e.g. Eurofound, 2018a), and paid less attention to the **(contractual) relationships between the parties** involved and the fact that **platform workers and customers share data with the platforms**.

Platform work comes in many forms and shapes and is characterised by a high and increasing **heterogeneity in terms of the activities** carried out. To better grasp the phenomenon, several typologies have been put forward that focus on the nature of the services or tasks. The typology of

[7] Many different concepts and definitions are used in public communication and research on the platform economy and platform work, such as gig economy, collaborative economy, sharing economy, P2P economy, on-demand economy, task platforms. Few definitions capture the concepts in all their facets, hindering (comparative) research and contributing to misunderstandings and confusion. This has led to the decision to use the terms 'platform economy', 'platform work' and 'online labour platforms' or 'online work platforms' throughout this report.

[8] This definition is narrower than the understanding of online platform in the Commission's Communication on Online Platforms and the Digital Single Market (COM (2016) 288), which includes e-commerce websites, search engines, social media, advertisement platforms, payment systems and communication services. Many platforms considered by the Communication fall outside the scope of this analysis: all platforms on which goods are exchanged are excluded (e-commerce), business-to-business platforms, and platforms on which services are provided free-of-charge.

[9] Some authors use the term 'labour platforms', while others use 'task platforms', which appears overly restrictive.

[10] Definitions in literature refer to 'open' marketplaces which the present authors believe minimises the role and control of platform businesses in matching processes through the use of algorithms and automated decisions.

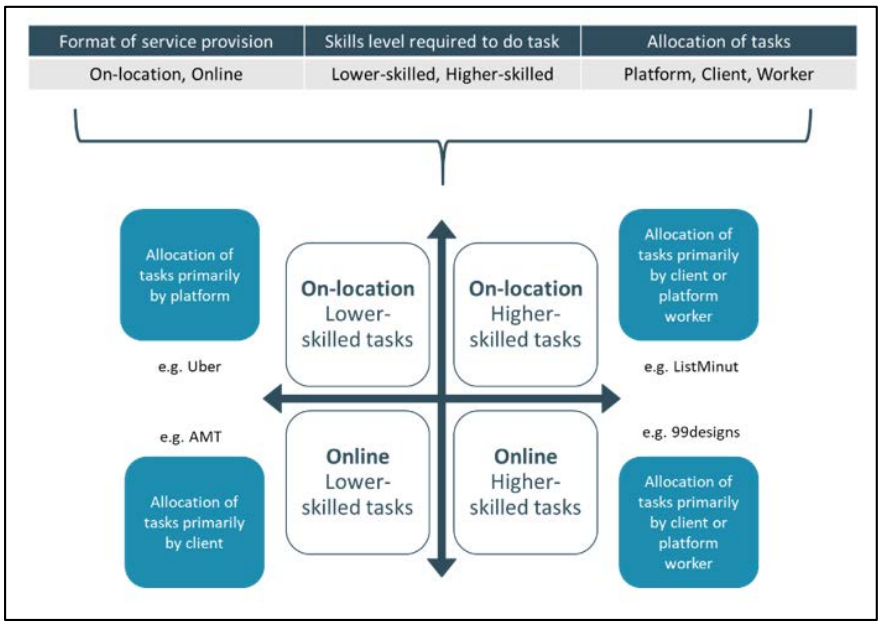
Eurofound (2018a) is the most comprehensive to date (see Riso (2019) for more detail). The Eurofound typology has identified 10 types of platform work[11] that have reached critical mass in Europe. These 10 types differ by scale of the tasks executed, format of service provision, skills level required, the actor 'allocating' the work, and the matching process (Eurofound, 2018a).

The European Commission study (2020a) concludes that three of these five determinants are key:

- the **format of service provision** (on-location or online) – influences health and safety and working conditions;
- the **skills level** required to execute the task (low to high) – determines whether a task can be allocated to anyone ('crowd') or only to workers with specific skills; and
- the **actor allocating tasks** (platform, client or platform worker) – signals the level of control platforms and/or clients can exercise over the platform worker.

Using these three determinants, **four types of platform work** can be distinguished: lower-skilled offline or on-location work (type 1), higher-skilled offline or on-location work (type 2), lower-skilled online work (type 3), and higher-skilled online work (type 4) (Drahokoupil, 2016; Eurofound, 2018a; Eurofound, 2019b; European Commission, 2020a). Within each of these four types, further distinctions can be made, depending on which actor allocates the work. Previous research from Eurofound (2018a; 2019b) found that lower-skilled tasks to be executed on-location are typically allocated by the platform, whereas client and platform workers have more control in higher-skilled tasks.

Figure 2: Platform work typology[12]



Source: Authors' own elaboration, based on European Commission (2020a).

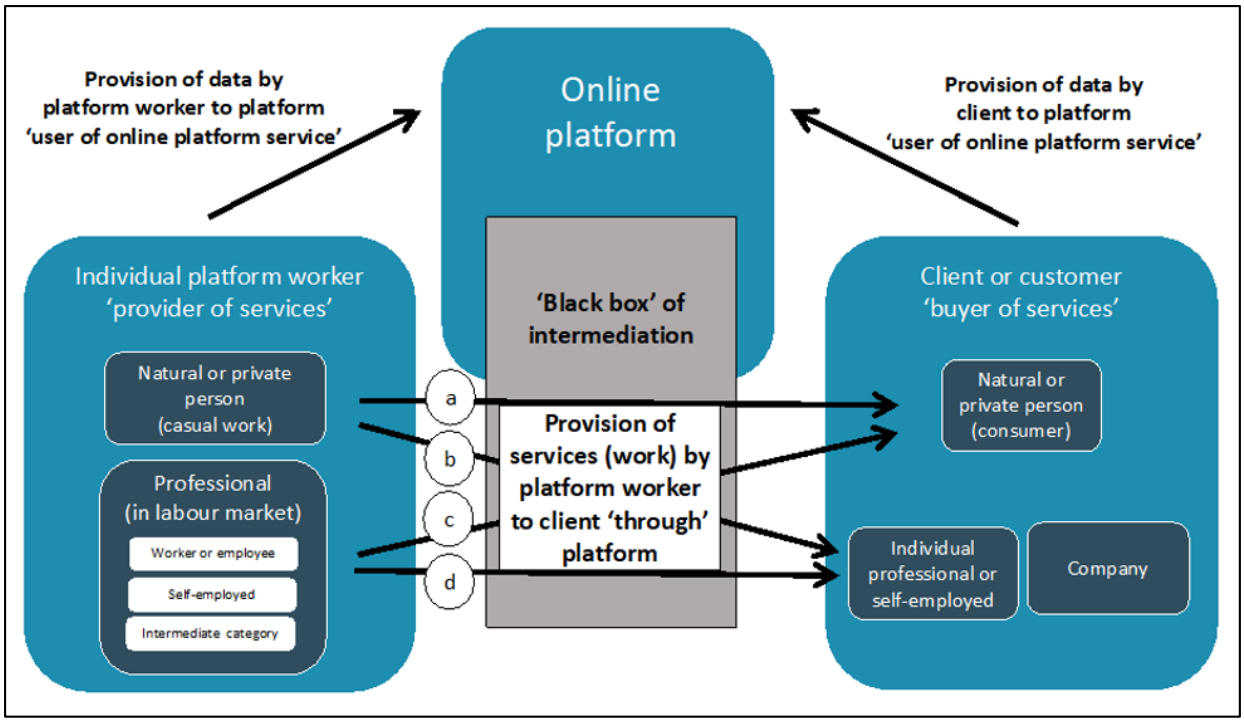
[11] The 10 types are: (i) on-location client-determined routine work, (ii) on-location platform-determined routine work, (iii) on-location client-determined moderately skilled work, (iv) on-location worker-initiated moderately skilled work, (v) online moderately skilled click-work, (vi) on-location client-determined higher-skilled work, (vii) on-location platform-determined higher-skilled work, (viii) online platform-determined higher-skilled work, (ix) online client-determined specialist work, and (x) online contestant specialist work (Eurofound, 2018a).

[12] Examples are: on-location lower-skilled tasks: Uber, Lyft and BlaBlaCar (personal transport services), and Deliveroo, Foodora and Glovo (delivery services); on-location higher-skilled tasks: ListMinut, Book a Tiger and Helpling (professional and household services), Care (care services) or Hilfr (cleaning services); online lower-skilled tasks: Amazon Mechanical Turk (AMT) and Clickworker (microwork platforms); online higher-skilled tasks: 99designs (graphic design), Gengo (translation services), GigNow (marketing, finance and cyber security), and TaskRabbit and Upwork (freelance work).

Research has paid less attention to the **underlying types of service provision or relationships between the platform worker and the client**, being both facilitated by the platform, and to the platform's role as a **work intermediation service**.

Figure 3 presents a more detailed conceptualisation of the 'contractual' relationships between the three parties involved in platform work. It seeks to demonstrate the large variety of platform work and the interconnectedness between policy domains such as labour protection, consumer protection, competition legislation, data protection and the (internal) market for services and data.

Figure 3: Contractual relationships in platform work



Source: Authors' own elaboration.

Platforms intermediate work that is provided by an **individual platform worker acting in a private capacity or as a professional** to a **client who also can be involved in a private capacity or as a professional** (company)[13].

Four basic situations exist in respect of the **<u>service provision relationship between the platform worker and the client</u>**:

(a) individual person acting in a private capacity provides services to another individual person acting in their private capacity;

(b) individual person acting in a private capacity provides services to a professional or a company;

(c) professional (having an employment market status as worker, self-employed or intermediate category) provides services to an individual person acting in their private capacity; and

[13] The Commission Communication on the collaborative economy refers to collaborative platforms that create an open market place for the temporary use of goods and services 'often provided by private individuals' (European Commission, 2016c), which minimises (1) the role of platform workers who provide their services as self-employed or as employees of a platform business, such as a rider or driver in the food delivery and personal transport sectors, and (2) the role of (some) platforms' function as work intermediation agencies similar to that of traditional temporary work or recruitment agencies.

(d) professional (having an employment market status as worker, self-employed or intermediate category) provides services to another professional or company.

In all four situations, the platform is operating as a **purely online intermediary** (in legal terms: a provider of an 'information society service'), connecting the platform worker with the client through its digital service. In some situations, its role is more elaborate, being the **provider of the underlying service** performed by the platform worker, when the digital service is part of the overall business organisation (e.g. personal transport services, delivery services or cleaning services). However, where platforms intermediate between job seekers and buyers of labour, their services resemble the **services provided by temporary work and recruitment agencies** (work intermediation platforms), especially when the clients are businesses and/or possible employers.

The dimension of the **contractual relationship between the platform and the platform worker** is equally important as it may imply (1) an employment relationship, (2) a business-to-consumer or (3) a business-to-business relationship.

The four situations outlined above have repercussions for the literature review. A platform worker in situation (a)[14] or (b) is providing **services outside of their (main) professional capacity** and such services could in some instances be considered **occasional work**, which is often exempt from the application of EU or national labour, social protection or taxation rules. In situations (c) and (d), the platform worker is **a professional** and has the labour market status of an employee (of the platform, the client or another party), self-employed or (in some countries) a third 'intermediate' category. In these cases, the platform worker is a professional (platform worker being a self-employed or an employee of the platform business) providing services either to a **consumer** (**business-to-consumer platforms**) (c), or to another professional or a **company** (**business-to-business platforms**) (d). Depending on the modality of the service provision, **different regulatory frameworks are triggered**, such as rules on fair competition, consumer protection or contractual liability, which may have different – and even conflicting – interests with provisions targeting the labour or social protection of platform workers.

The existence of a **company as a client** under (b) and (d) points to another important typology, which is specifically relevant for **online platform work**: the distinction between **crowdwork** and '**individualised services provided in a direct relationship between a single platform worker and a client or** '**on-demand work via apps**' (De Stefano, 2016). Crowdwork usually concerns impersonalised, interchangeable and often repetitive tasks, commissioned by an entity to 'the crowd', with the online platform organising the outsourcing of tasks to a large pool of workers (Prassl and Risak, 2016). Crowdwork is typical for micro-task platforms, such as Amazon Mechanical Turk (AMT) or Clickworker, in which the commissioning agency takes a prominent role in the allocation and organisation of the services requested. Such arrangements raise the question of whether the platform worker is 'employed' or engaged by the platform or the client, or indeed both? Waas and Van Voss (2017) use the concept of multi-employer arrangements, in which both the platform and the commissioning company share the role of employer.

What essentially differentiates platform work and platform businesses from standard work in more traditional business contexts is that **platforms generate data from their users through digital interactions**, which they analyse and exploit (Aloisi, 2019; De Stefano, 2019; Prassl, 2019). Platform workers not only provide their services and time to perform tasks in return for remuneration, but also

[14] Situation (a) is often referred to as peer-peer platform work (Riso, 2019), provided the platform is purely an intermediary and not an employer.

share data during the task execution, such as through geo-tracking applications or the real-time monitoring of 'stand-by' time when they are logged into the system (Rosenblat et al., 2016; Waters and Woodcock, 2017; Ivanova et al., 2018; Mateescu and Nguyen, 2019). These data are analysed and processed by the platform, using **digital algorithms leading to (semi-)automated machine-driven decisions on work allocation**, **work organisation and evaluation** (Burrell, 2016; Ivanova et al., 2018; European Commission 2020a). The data management and exploitation directly contribute to the economic business models of the platforms (Ivanova et al., 2018; Mateescu and Nguyen, 2019).

2.4. Prevalence of platform work

The **lack of available data** makes it very difficult to provide estimates on the overall number of (active) platform workers in Europe, and even more so for the number of (active) platform workers by type (see Eurofound, 2018a; Ellmer et al., 2019; OECD, 2019c; OECD, 2019d; Riso, 2019). The most cited data source to date is the Joint Research Centre (JRC)'s COLLEEM survey, which found that in the 14 EU Member States covered, an average 10% of the adult population had performed platform work, while **2% of the adult population earn more than 50% of their income through platform work** or **works via platforms over 20 hours a week** (Pesole et al., 2018). Other notable data collection efforts include the European Commission's Flash Eurobarometer 438 on the use of collaborative platforms and Flash Eurobarometer 467 on the use of the collaborative economy, the surveys by Huws et al. (2016; 2017; 2019) and the European Trade Union Institute for Research (ETUI) (2019), the ongoing efforts of national statistical offices and Eurostat to gather data on platform work (e.g. through labour force surveys), and the ILO's surveys on online work (Berg, 2016; Berg et al., 2018). Most EU countries do not require platforms to register or report on the number or volume of transactions, although some countries (e.g. the United Kingdom (UK)) are considering this option (Eurofound, 2018a; Riso, 2019). However, even in countries that require platforms to register, such as Belgium[15], hardly any aggregated data on platform work are (publicly) available (Riso, 2019).

Box 1: Some empirical evidence on the prevalence of platform work

Following a 2018 law combating fraud in France[16], which requires e-commerce and 'collaborative' economy businesses to report on the financial income generated, 99 platforms reported (in January 2020) on their income from 2019, revealing that about 1.2 million private persons and 400,000 professionals had made use of their services.

Uber reports having some 3.9 million drivers in 65 countries and in over 600 cities worldwide, and about 14 million Uber trips per day. Lyft reportedly has 1.4 million drivers, while Grab and Didi Chuxing count for 2.8 million and 21 million drivers, respectively[17].

In mid-March 2020, Belgian ListMinut reported on its website that its services have been used by 63,254 individual service providers and by 227,284 customers, for a total number of 234,681 working hours[18].

Source: Authors' own elaboration.

Data collection efforts at national and European level, however, yielded **vastly different results**. An OECD (2019c) review of available data found that estimates on the number of platform workers varied

[15] Registration is required for platforms in the 'sharing economy', covering platforms that aim to intermediate in the provision of services but also goods. As of 1 March 2020, 110 platforms were registered with the federal authorities in Belgium.

[16] LOI n°2018-898 du 23 octobre 2018 relative à la lutte contre la fraude - Article 10 (V).

[17] Uber statistics, https://www.businessofapps.com/data/uber-statistics/.

[18] Listminut statistics, https://listminut.be/nl/about (accessed on 22 March 2020).

widely across data sources, such as surveys, Big Data, administrative data, data obtained or extracted from platforms, and other sources. This is due to **differences in the scope**, **definitions and methodologies** used to measure the number of platform workers (OECD, 2019c). Riso (2019) notes that most data collection efforts are based on (online) surveys, with information often lacking on the extent to which they cover the target population. These issues lead to inconsistencies, complicate comparative analyses, and prevent the generalisation of conclusions or results (OECD, 2019c; Pesole et al., 2019; Riso, 2019), **hampering any assessment on the scope and scale of platform work**. Despite the scarcity of data and the methodological caveats, there is evidence that:

- **Platform work has grown tremendously in recent years**. Data from the 2018 Flash Eurobarometer suggest that 6% of Europeans had provided services as a platform worker and that 19% of those who had not yet worked as platform workers were considering doing so in the future (European Commission, 2018a). In 2018, 23% of Europeans had used services offered online (as clients), compared to 17% in 2016 (European Commission, 2016a; European Commission, 2018). It is evident that platform work, as part of the digital economy, is likely to stay and continue growing in the future;
- **Platform work has a stronger proliferation in some countries than others**. Pesole et al. (2018), for example, report a (much) higher prevalence of platform work in the UK, Germany, the Netherlands, Spain, Portugal and Italy than in Finland, Sweden, France, Hungary and Slovakia. Earlier surveys by Huws et al. (2016; 2017; 2019) and both European Commission Flash Barometers found similar results. Looking more closely at five countries in Central and Eastern Europe, ETUI (2019) reported a higher proliferation in Poland and Slovakia than in Hungary, Bulgaria or Latvia;
- **Platform work is concentrated in some sectors**: transport, accommodation, professional services and household services (Fabo et al., 2017; Eurofound, 2018a; Kässi and Lehdonvirta, 2016; Pesole et al., 2018; Vaughan and Daverio, 2016);
- **Most platform workers engage in platform work as a secondary activity**, on top of their main activity as an employee, self-employed or other status (Farrell and Greig, 2016; Huws et al., 2016; Huws et al., 2017; Pesole et al., 2018). This main activity typically provides the main source of income and grants access to social protection. Pesole et al. (2018) found that less than 8% of those surveyed undertake platform work regularly. Similarly, an ETUI (2019) survey in Bulgaria, Hungary, Latvia, Poland and Slovakia found that between 1.9% and 7.8% of adults surveyed had tried platform work, yet only 0.4% to 3% undertook platform work on a monthly basis or more frequently. Other research attained similar results (Eurofound, 2018a);
- **The main motivations for platform workers to engage in platform work** are the autonomy and flexibility in work organisation and working time, lower barriers to labour market entry and the (additional) income gained (Berg, 2016; Rosenblat et al., 2016; Pesole et al., 2018; ETUI, 2019; Eurofound, 2018a; Eurofound, 2019b). Other factors also mattered, including the content of the work, opportunities to build up clientele, and a lack of alternatives. Rosenblat et al. (2016) interviewed platform workers and found that their motivations differ, depending on whether they work part-time or full-time as platform workers, with a lack of alternatives more prevalent in the latter;

- **Platform workers engaged in low-skilled on-location work are typically young, highly educated men living in urban areas. Platform workers whose tasks are allocated by the platform are particularly likely to come from vulnerable groups** (e.g. migrants) (Brancati et al., 2019; Eurofound, 2018a; Eurofound, 2019b; OECD, 2019c). Regardless of age, platform workers generally have less experience in the labour market than the average worker (Pesole et al., 2018); and
- **There is very little evidence or research on platform work provided entirely online. Cross-border online platform work** (including the services provided to and from third countries) **and undeclared online platform work have been largely disregarded in spite of their expected importance** (European Commission, 2020a).

3. CHALLENGES AND RISKS IN PLATFORM WORK

3.1. The context: platform work and digital labour platforms in globalised markets

Policy and research papers from organisations such as OECD and ILO have consistently viewed the emergence of platform work as part of a larger **global trend towards the digitalisation of the economy and labour markets**. A recent study for the European Commission (2020a) notes that the **rise of global platforms**, such as transport platforms (e.g. Uber) or microtask platforms (e.g. AMT) pose **significant challenges to existing legislative frameworks and traditional incumbents**. Policy makers and social partners have warned that this may cause **unfair competition or an unlevel playing field in several ways**:

- The services that digital platforms intermediate or provide may be very similar to those of their traditional counterparts, such as traditional businesses active in the same sector (e.g. taxi firms), or those of 'traditional' temporary or private employment agencies;
- Global platforms based outside the EU may evade taxes and fail to comply with national and European regulations, pointing to the need to ensure fair competition between multinationals and national businesses, while not obstructing start-ups and smaller scale initiatives;
- Platform work in transnational settings may give rise to competition and inequality between platform workers from different countries performing similar tasks, especially where online platform work is concerned. Competition between workers may lead to the lowering of labour standards, undercutting of prices, or create competitive advantages for low labour cost countries; and
- Platform work may foster undeclared work, which is difficult to detect for enforcement agencies, specifically when the work is performed online.

International research identifies the increasing **appropriation of data by large online work platforms as a key challenge** in cases where data collection, analysis and processing are increasing platforms' business value (Strowel et al., 2019). The European Commission High-Level Expert Group on the impact of digitalisation on the labour market notes that platforms' business models are constructed around the monetisation of data, which are currently provided by users on the basis of a barter (exchange consumption of online services against the free provision of personal and behavioural data (European Commission, 2019). The provision of data by platform workers (and clients) is not seen as the production of data, and thus worthy of compensation. **Business models based on the monetisation of data and that systematically outsource resources and related costs** are often considered unfair competitors by incumbents in traditional business markets (e.g. personal transport, cleaning services) but also by (traditional) temporary work agencies, which operate under certain legal restrictions. **The appropriation of data is an essential part of the business model and concerns all types of platform work** (low/high-skilled and on-location/online platform work), irrespective of the labour market status of the platform worker and the status of the client (consumer/company).

3.2. Unclear employment status of platform workers

There is considerable literature and research on the **employment or labour market status of platform workers** (e.g. Berg, 2016; De Stefano and Aloisi, 2018; Brancati et al., 2019; European Social Insurance Platform (ESIP), 2019; Eurofound, 2018a; Eurofound, 2018b; Eurofound, 2019b; Johnston and Land-Kazlauskas, 2019; Davidson et al., 2018; Prassl and Risak, 2016; Prassl, 2018a; Daugareilh et al.,

2019; European Commission, 2020a). Employment status refers to the classification of a person as working in the framework of an employment relationship (employee or 'worker') or working on their own behalf and for their own account (self-employed)[19], revealing **the dichotomy on which traditional international**, **EU and national labour and social protection legislation** is constructed. Being an employee or a self-employed is **highly relevant**, as it determines **different rights and obligations and varying levels of labour and social protection of the individual worker under the prevailing legislation** (Countouris, 2007; Prassl and Risak, 2016; Waas and Van Voss, 2017; De Stefano and Aloisi, 2018; Eurofound, 2018a; European Commission, 2020a). The platform work practices of global profit-seeking companies have blurred the boundaries between the traditional concepts of 'worker' and 'self-employed', with the consequence that most platform workers have **an unclear status and/or are in practice treated as self-employed**, **with lower protection** (Donovan et al., 2016; Prassl, 2018a; Ellmer et al., 2019). The digital contracting and unilateral enforcement of the contractual terms imply, in practice, that platform workers often have **no real choice about their labour market status**. Platform businesses systematically qualify their relationship with platform workers as contracts for services, and platform workers as independent contractors or freelancers ('self-employed') and not as employees ('workers') (Eurofound, 2018a; Pesole et al., 2018; European Commission, 2020a) and commonly deny the existence of an employment relationship (Donovan et al., 2016). Engaging self-employed workers instead of employees generally implies lower costs, reduced responsibilities and liabilities, while commercial and operational risks are shifted onto the individual platform worker (Vandaele, 2018; Eurofound, 2019b; Daugareilh et al., 2019).

Not only have platform workers in effect no real choice in respect of their labour market status, they are often automatically **pushed**, **without consultation**, **into the least advantageous positions on the labour market**, **with higher risks and costs** and little recourse to collective action. For the genuinely self-employed, with established businesses (often the higher-skilled platform workers), this may not pose any particular issue, but it is undoubtedly a concern for platform workers who are contracted as freelancers involuntary or unlawfully.

Although no data exist on the precise shares of platform workers by labour market status, the available research shows that **almost no platform workers are formally employed** (Pesole et al., 2018; Eurofound, 2019b). This means a group of platform workers who are genuinely self-employed and a group with more ambiguous or intermediary employment statuses. For genuinely self-employed platform workers, the precariousness stems from their more limited individual and collective labour rights and social protection, compared to employees in similar jobs (European Parliament, 2016; De Stefano and Aloisi, 2018; Cavallini and Avogaro, 2019). For those platform workers with ambiguous or intermediary status, precariousness results from that unclear status, which leads platforms to push risks and costs onto platform workers, who may be misclassified as self-employed or in intermediary statuses that trade flexibility for security (Vandaele, 2018; Eurofound, 2019b; Daugareilh et al., 2019). Platform work may thus increase **labour market segmentation** (Brancati et al., 2019; Eurofound, 2019b), with the most vulnerable platform workers enduring the most precarious circumstances.

Labour and social protection legislation is primarily a Member State competence. There is **no uniform concept of 'worker' (employee) or 'self-employed' throughout the EU**, and Member States apply different definitions for the application of domestic labour and social protection law (Freedland and Kountouris, 2017; Robin-Olivier, 2018; Kountouris, 2018; European Commission 2020a). **Labour legislation concerns predominantly employees (or 'workers')** and generally does not apply to the

[19] Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019/C 387/01 of 15.11.2019), Article 7(b).

self-employed, whereas national social protection legislation provides different levels of access and protection depending on labour market status (Freedland and Kountouris, 2017; Kountouris, 2017; Robin-Olivier, 2018; Kountouris, 2018).

Box 2: National legislation addressing the employment status of platform workers

The European Commission study (2020a) shows that **Member States** have tackled the issue of employment status of platform workers in varying ways. Some Member States (Germany, Latvia, Malta) include **economic dependency** as a criterion to determine an employment relationship, so as to include dependent self-employed under the concept of 'worker'. Other Member States (Belgium, Portugal, the Netherlands) have introduced the legal technique of the **rebuttable presumption**, implying that individuals are presumed to be workers (employees) when certain criteria are met, shifting the burden of proof to the platform (Risak, 2017; Stevens, 2019; European Commission, 2020a). Some EU Member States have established a **hybrid status** and recognise 'employee-like persons' who are subject to the taxation of self-employed but entitled to social protection of employees (Austria, Italy) or have created an **intermediate or third employment status** category, comparable with self-employed but with enlarged protection in terms of working conditions or social protection. Portugal, Slovakia, Slovenia and Spain have created a subcategory of economically dependent workers and adjusted social protection systems to provide them with equal rights as employees. In the UK, three employment categories exist: self-employed or contractors, workers and employees (Risak, 2017; Eurofound, 2017; Eurofound, 2018a; Waas et al., 2017; ILO, 2016). Only France has introduced **national legislation directly aimed at the protection of (self-employed) platform workers**, while the Italian region of Lazio has introduced **similar legislation that applies to platform workers irrespective of their labour market status** (European Commission, 2020a).

Source: Authors' own elaboration.

The recent European Commission study (2020a) observes that national definitions for the concept of 'worker' or 'employee' systematically refer to the subordination criterion as the main determinant for the existence of an employment relationship, implying that the worker is providing their services under the 'direction', 'authority' or 'control' of the employer. In platform work, the qualification of **subordinated employment** is particularly difficult to establish, as work allocation and organisation are rather atypical and based on the use of technologies rather than human decisions. Platform workers have greater autonomy in the choice and performance of their jobs. It is not always clear which of the parties in the platform work relationship is exercising control over the platform worker (Eurofound, 2018a; Lenaerts et al., 2018; European Commission, 2020a; Mattila, 2019). Few Member States use **economic dependency** as a criterion for determining the existence of an employment relationship.

EU labour legislation on non-standard forms of work, individual and collective labour rights, health and safety, work-life balance and anti-discrimination at the workplace **concern predominantly employees (or 'workers')** and generally do not apply to self-employed (European Commission, 2020a). Although EU labour legislation is applicable to employees or workers only, it typically does not contain a definition of this concept. Court of Justice of the European Union (CJEU) case-law has, however, established **an EU-wide definition of a 'worker' under EU labour law** that is based on **the subordination criterion**, **the nature of work and the presence of remuneration**, the first being particularly challenged by platform work realities (De Stefano and Aloisi, 2018; Dieuaide and Azaïs, 2020).

Box 3: CJEU case-law relevant to the employment status of platform workers

EU labour law directives do not contain a definition of the concept of 'worker' and most often refer to the national legislation of Member States to determine its applicability. The CJEU, however, cautiously steered this process towards an EU-wide convergence in the interpretation of the concept of 'worker' as used in the directives. The CJEU did not introduce an autonomous EU definition of the concept of worker but, in cases where Member States are applying rules that are likely to jeopardise the objectives of a directive, the CJEU[20] ruled in favour of such an autonomous EU worker concept, overruling the national interpretation and provisions. For directives that do not refer to national law for the interpretation of the worker concept established therein, the CJEU went further, at first through its case-law concerned with the interpretation of Article 45 of the Treaty on the Functioning of the European Union (TFEU) on the free movement of workers[21] and **progressively developed a European concept of 'worker' with an autonomous meaning**[22].

The EU **worker concept** and employment relationship under Article 45 TFEU is characterised by the following features: a person performs services of some **economic value**, **for and under the direction or supervision** of another person and in return for **remuneration**, while the activities performed must be **effective and genuine**[23]. The nature of the legal relationship is immaterial to the application of the EU concept of worker, which also includes workers in public administration[24] and individuals who work only a few hours or are paid very little remuneration[25], provided that the activities are effective and genuine. The CJEU, however, excluded activities that are performed on a very small scale, and which are regarded as marginal or ancillary[26].

CJEU case-law is of **particular relevance and importance for platform work**, given the legal uncertainty in relation to the employment status of platform workers, as it implies **an obligatory 'reclassification'** on the basis of the European concept of worker of bogus self-employed platform workers **by national judges**, **based on an assessment of the factual circumstances of the individual cases**, **even when they are considered self-employed by national law or by the contracting parties**.

The CJEU **did not include the (economic or other) dependency criterion in its definition of the concept of worker** under EU labour legislation, as it did in its case-law on the collective rights of workers in the context of EU competition legislation (see infra)[27].

Source: Authors' own elaboration based on European Commission (2020a).

[20] Judgment of the CJEU, 17 November 2016, Case C-216/15, Betriebsrat der Ruhrlandklinik, para. 36-37.

[21] The more recent 2019 directives, such as the Transparent and Predictable Working Conditions (TPWC) Directive and the Work-life Balance Directive, which apply to 'workers' and which refer to national legislation for the interpretation of the concept, are now also explicitly referring to the relevant case-law of the CJEU. The interpretation that was given by the CJEU to the concept of 'worker' has now become fully incorporated into EU legislation.

[22] Judgments of the CJEU, Case C-66/85 Deborah Lawrie Blum v Land Baden-Württemberg (3 July 1986); Case 75/63 Hoekstra (née Unger) v. Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten (19 March 1964); Case C-428/09 Union Syndicale Solidaires Isère v Premier ministre and Others (14 October 2010); Case C-229/14 Ender Balkaya v Kiesel Abbruch- und Recycling Technik GmbH (9 July 2015); Case C-413/13 FNV Kunsten Informatie en Media v Staat der Nederlanden (4 December 2014); Case C-216/15 Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH (17 November 2016).

[23] Judgment of the CJEU, Case C-66/85 Deborah Lawrie Blum, op. cit.; Case 53/81 Levin v Staatssecretaris van Justitie (1982) ECR 1035, op. cit.

[24] Ms Deborah Lawrie Blum was a trainee teacher in Germany, who technically had the status of a civil servant.

[25] Mrs Levin worked part-time and her remuneration was below the minimum guaranteed remuneration in the sector.

[26] Judgment of the CJEU, Case 53/81 Levin, op. cit.

[27] Judgment of the CJEU, Case C-413/13 FNV Kunsten Informatie en Media v Staat der Nederlanden (2015) 4 CMLR 1.

Following CJEU rulings, the classification by platform businesses of their platform workers as self-employed **may be unlawful** on the basis of EU legislation, notably when platforms or customers exercise significant control over platform workers and the former are to be considered employers. This may imply a '**reclassification**' (or a correct implementation of EU labour law) by national judiciaries or enforcement agencies. Although the 2016 European Parliament study noted increasing concerns that legal designation as independent contractors does not match the factual reality of the platform workers' relationship with, and dependency on, a given platform or client, research shows that many platform workers find themselves in the grey area between being an employee or self-employed (De Stefano and Aloisi, 2018; European Commission, 2020a). The reclassification of labour market status is therefore not relevant for those platforms that engage genuinely self-employed or those that employ their workers with an employment contract.

The determination of an employment relationship is established on the basis of an assessment of the factual circumstances of individual cases, which is ultimately conducted by national courts during litigation (Prassl and Risak, 2016). While the CJEU ruled that cases of bogus or false self-employed should be reclassified, such reclassifications are done by national courts ex post and thus with a considerable time delay, prolonging the insecurity relating to the employment status of the platform worker. The European Commission study (2020a) reveals **many litigation cases in several Member States** addressing the **labour market status of platform workers** who were classified by platforms as self-employed and aiming for a reclassification of their status[28], with new court rulings in the first quarter of 2020. The outcomes of these rulings **vary not only between national jurisdictions but also between courts of first instance and higher courts within the same jurisdiction** and even **between peer judges of the same court**.

Box 4: National court rulings on the employment status of platform workers

Food delivery drivers working for the same platform business are considered self-employed in the UK but are classified as self-employed or employees in Spain, depending on the local labour court[29]. By contrast, national courts in Italy and France confirmed at the beginning of 2020 that food delivery riders of Foodinho (previously Foodora) and Deliveroo are workers (employees). Uber **drivers** in the UK[30] and France[31] are considered workers by the national judiciary, while UberX Drivers in Belgium are classified as self-employed (European Commission, 2020a). In a recent French case, Click and Walk - a platform engaging about 700,000 individuals to check the price and other information of goods available in supermarkets in return for remuneration varying between some cents and a few euro per task - was condemned in February 2020 to pay a fine of EUR 50,000 for disguised employment[32]. In Germany, Court of second instance of Munich ruled in December 2019 that **crowdworkers** are not to be considered workers[33].

Source: Authors' own elaboration.

[28] The European Commission study (2020a) reports that national court cases primarily concerned personal transport services and food delivery services. In at least 13 Member States, Uber was subject to national rulings that concerned market access and competition rules in the local personal transport sector, and, increasingly, on the employment status of platform workers. In seven Member States, cases were reported on the employment status of food delivery riders engaged by platforms such as Deliveroo, Take eat Easy, Foodora and Foodinho.

[29] Over the course of 2018 and 2019, there were reportedly seven different court cases on the employment status of riders for Glovo, Deliveroo and Take Eat Easy in Spain, four of which resulted in the classification of the riders as employees and three as self-employed (European Commission, 2020a).

[30] In the UK, the union of professional drivers (GMB) was successful in its 2016 case against Uber, on worker misclassification, with the result that independent contractors were reclassified into 'workers'. As a consequence, about 30,000 drivers across the UK could access basic employment provisions, including holiday pay, minimum wage and breaks (ILO, 2019b).

[31] Judgment of the Court of Cassation of 4 March 2020.

The **subordination dimension is particularly difficult to establish** in platform work. To qualify as a worker, the platform worker must pursue a **factual economic activity that is more than** '**purely marginal and accessory**' (European Commission, 2016b; Barnard, 2016), a consideration that is different across national systems and is often based on time and wage thresholds, which the piecemeal structure of platform workers' labour market activities do not easily accommodate (ILO, 2016; European Commission, 2016b; Eurofound, 2018a). Although the CJEU has limited the possibility to exclude marginal and accessory activities from the definition of 'worker', it remains relevant for platform work, especially in microtasking. The presence of **remuneration** distinguishes voluntary work from activities that are compensated. Financial transactions between the platforms, platform workers and clients vary substantially in practice, and the ultimate payment is, for the most part, directly or indirectly borne by the client and not by the platform, despite the latter often setting the selling prices of the services. The question of **who sets the price for the service** is often considered a determining factor in deciding the existence of an employment relationship (European Commission, 2020a).

Platforms often argue that they offer **purely online intermediation services** and not **the underlying service or integrated service** (e.g. good delivery or cleaning service). While the CJEU followed that reasoning in the recent case of Airbnb[34] (matching tourists with private accommodation services), it has strongly opposed this view in cases concerning Uber, which it qualified as a transport service[35]. The qualification between a purely information society service providing only digital intermediation services, on the one hand, and an integrated service, on the other, is fundamental in determining the existence of a contract of services or an employment contract in the triangular relationship between the platform, the client and the platform worker (Dieuaide and Azaïs, 2020). In such a triangular relationship, employers' traditional functions may be shared between the platform business and the end-user, implying a sort of **shared** '**employership**', which is atypical for the traditional employment markets and concept of standard work (Prassl and Risak, 2016; European Commission, 2020a).

It seems likely that **platform workers will continue to be regarded as self-employed** or **independent contractors for the foreseeable future**. While this may indeed reflect the real contractual relationship for some platform workers, others may find themselves in a grey area (Eurofound, 2018a; Dieuaide and Azaïs, 2020). Platform workers doing **low-skilled on-location tasks** (e.g. transport, household services) or who are active on platforms that exercise considerable control over the work allocation and organisation, set the transaction price and have extensive surveillance mechanisms, are most likely to be misclassified (European Commission, 2020a). Platforms that are active in several countries seem to adapt to the national legal and regulatory framework by, for example, only working with self-employed workers in one country, while offering multiple options elsewhere (European Commission, 2020a). Bogus self-employment is a much-discussed challenge for platform work, primarily for policy makers and inspection services, and has been the subject of calls for reclassification based on CJEU jurisprudence, yet it is unlikely to lead to widespread change in platform workers' status, as it presupposes time-consuming and costly litigation against powerful platform businesses.

[32] Judgment of the Court of Appeal of Douai (6th Chamber) of 10 February 2020, n° 19/00137.

[33] Judgment of the Landesarbeitssgericht of Munich of 4 December 2019, Az.: 8 Sa 146/19.

[34] CJEU, 19 December 2019, Case C-390/18, Airbnb Ireland.

[35] CJEU, 20 December 2017, Case C-434/15, Asociación Profesional Élite Taxi v Uber Systems Spain SL.

Box 5: Summary of the key challenges in employment status of platform workers

The review reveals that (1) **national legislators and judiciaries are struggling to find adequate responses for the employment status of individual platform workers**, (2) **there is an enormous diversity in approaches across Member States**, **with varying outcomes for identical platform workers**, **while** (3) **a lack of clarity persists for many individual platform workers**, pending a possible reclassification by national courts.

The incoherence between Member States' approaches and overall ambiguity in employment status is particularly worrisome for the protection of **lower-skilled online platform work provided (across borders) through boundlessness platforms**. On-location platform work is mainly delivered in the proximity of clients and bears greater similarities with more traditional employment practices, which tends to facilitate the employment classification. By contrast, higher-skilled platform work is more likely to be performed by individuals with larger degrees of independence. Current **EU labour legislation** is still shaped with the full-time permanent worker as the main reference point, making its application to all types of platform work **largely inadequate** (see infra).

Source: Authors' own elaboration.

The qualification as a contract for services with a self-employed person rather than an employment contract has **numerous consequences** for platform workers, resulting in lower or more limited protection levels **in areas that go well beyond the labour and social protection dimension** and are often insufficiently examined. The **applicable law** governing the contractual terms and conditions of the collaboration is unilaterally determined by the platform business, with no consultation of the platform worker and may be the law of a (third, even non-EU) country with lower protection levels for the platform worker in terms of working conditions, social protection, liability and consumer protection. This may lead to a series of conflicts of law (Garben, 2019a). The **contractual liability** of the platform businesses vis-à-vis the customer is passed on to the self-employed platform worker, who becomes accountable for poor performance or non-performance of the service (Devolder ed., 2019). Self-employed platform workers are considered undertakings under prevailing EU **competition law**, preventing them from forming associations and taking collective action (De Stefano and Aloisi, 2018; Prassl, 2018a; Prassl, 2018b; Daugareilh et al., 2018). Under contracts for services, the financial and administrative burden relating to **professional income taxation**, **VAT and social contributions** is largely shifted to the platform worker (Devolder ed., 2019).

3.3. Digital contracting and management practices of digital labour platforms

A matter that has received only limited attention in the literature is **how platform workers are engaged and contracted** by the platforms and/or the ultimate customer, a process that is somewhat atypical compared to traditional employment and/or business markets. Platform workers typically have **no written contract similar to an (employment or service) contract** in traditional businesses. Rather, the contracting is done online, through a simple subscription or enrolment, often without any personal contact between the parties. Platforms **unilaterally impose (changes to) the terms and conditions** on the platform workers, without any prior information or consultation, and often through a simple clickable 'read and approve' button when displaying their general terms and conditions. The material provisions contained in these terms and conditions vary widely between the platforms and are often unclear or incomplete in respect of the mutual rights and obligations of the parties, including some essential aspects of the collaboration (see infra). Of equal importance is the large variety in how platform businesses apply temporary or permanent **contract termination** through suspension or

closure of accounts, or diminish or interrupt work allocation, again often without any explanation or possibility for review (Garben, 2017; De Stefano and Aloisi, 2018; Daugareilh et al., 2018; Prassl, 2018a; Prassl, 2018b; Eurofound, 2018a; European Commission, 2020a). The absence of general (minimum) rules of engagement applicable to the contractual relationship between the platform and the platform worker makes the situation of platform workers **extremely prone to exploitation**, especially in a context of a growing monopolisation of certain (products and/or labour) markets[36].

The unilateral enforcement of decisions is further exacerbated by platform management practices based on **algorithmic management and (semi-)automated decision-making** with little human involvement. Algorithmic management refers to the use of a multitude of technological tools that structure working conditions and remotely manage the dispersed workforces (Mateescu and Nguyen, 2019). One of its components is the ability of (globalised) platforms to tap into large quantities of data, not only in respect of what data are collected but also how they are subsequently used as the basis for (semi-)automated management decisions affecting the conditions of platform workers (Eurofound, 2018a). Few platform workers are aware of what data platforms actually collect, how they can access these data, and how they subsequently feed into decision-making (Burrell, 2016; Mateescu and Nguyen, 2019; European Commission, 2020a). The internal logic of algorithms usually constitutes an **unintelligible** '**black box**', which keeps platform workers (willingly) in the dark about their **working conditions** (Aloisi, 2019) and **task allocation** (Mateescu and Nguyen, 2019), while the algorithms use **client feedback and rating systems to allocate work** (European Commission, 2020a)[37]. A structural distinction in the use of rating systems is observed between crowdwork (e.g. AMT) and work on-demand via apps (e.g. Uber, Lyft). For the former, a failure to accept a task may not negatively reflect on the platform workers, while in the latter case, these workers may be removed from the platform (Johnston and Land-Kazlauskas, 2019). This highlights the importance of a **broad right of access to personal data and the ability to obtain meaningful information** about automated algorithmic decisions, not just in terms of data protection, but in combating the precarious features of platform work (European Commission, 2020a; Mandl and Curtarelli, 2017; De Stefano, 2019; Prassl, 2019, Hauben and Waeyaert, 2020)[38].

Low-skilled and **online platform work** are the most affected by the risks posed by digital contracting and algorithmic management.

[36] Platform workers (like customers) are, in practice, users of the online technology offered by the platform and could be legally considered consumers of those technologies, at least when they act in a private capacity. Consumer protection law could offer ways to provide better protection in terms of the contracting issues mentioned.

[37] Customers' direct evaluation of the performance of platform workers is often used by platforms to support their position that their role is limited to mere online intermediation services and/or that platform workers are independent self-employed who directly deliver their services to customers (Hauben and Waeyaert, 2020).

[38] The UK case involving Uber drivers is a good example. Broad access to their personal data would allow Uber drivers insight into their duration of time logged on the platform (which would enable calculation of potential pay owed to the drivers in holiday pay and minimum wage back pay claims) and GPS data (which would enable drivers to calculate total operating costs, including revenue and non-revenue earning time and distance). Similarly, meaningful information about the allocation of tasks (i.e. automated dispatch decision-making) would enable Uber drivers to understand how they were profiled by Uber and the impact this may have on the quality, quantity and value of the work offered over time. At the same time, the obligation of the platform to tell the platform worker about the rationale behind potential suspensions or deactivations is crucial in maintaining employment and understanding how performance was monitored and managed over time (European Commission, 2020a).

3.4. Risks of precariousness and platform work

3.4.1. Risks of precariousness and non-standard work

Similar to platform work, there is **no single definition of precarious work**. For the purposes of this analysis, precarious work is understood as 'work that is uncertain, unstable, and insecure, and in which workers bear the risks of the work (as opposed to businesses or the government) and receive limited social benefits and statutory protections' (Kalleberg and Vallas, 2018)[39]. This definition captures precariousness both **at the level of the job and at the level of the worker** (Olsthoorn, 2014).

Due to its focus on small-scale piecework, the temporary nature and intermittent service provision, and the existence of an (online) intermediary, **platform work shares the very characteristics of some types of non-standard work**, **such as fixed-term**, **part-time or temporary (agency) work** (Garben, 2019a, Garben, 2019b, Eurofound, 2019b, European Commission, 2020a). However, due to its specificities and wide heterogeneity, **platform work practices do not fit into the more 'traditional' types or legal concepts of part-time**, **fixed-term or temporary agency work**. As the latter three categories of non-standard work have each been subject to EU and national labour legislation - with a view to ensuring equal treatment with standard work regarding the protection of their working conditions - many **platform workers may in practice be deprived of a similar legal protection** (see infra). The European Parliament study on **precarious work in Europe** (2016) considers precariousness along two main axes of analysis: **employment relations**[40] and **individual risk of precariousness**, with a link to the **quality of work**. The study distinguishes between **standard work** (permanent full-time employment for one single employer) and **various forms of non-standard work**, and identifies the following **risks of precariousness**: (i) low pay and in-work poverty, (ii) social protection, (iii) labour rights, (iv) career development and training, (v) low level of collective rights, and (vi) stress and health. The study reveals that some of the identified risks of precariousness arise for all types of employment relationships (e.g. low pay and in-work poverty), whereas others are relevant for some types only (e.g. a low level of collective rights for informal/undeclared work). In addition, the overall level of the risk of precariousness varies across employment relationship types, from low (e.g. standard work) to medium (e.g. self-employed/freelancers and temporary work) to high (e.g. zero-hours contracts and informal work) (European Parliament, 2016). **Non-standard forms of work are subject to more and higher levels of risk than standard employment**.

Figure 4 below presents the main **categories of employment relations** and their respective levels of precariousness (European Parliament, 2016)[41]. **Platform work** mostly **resembles (or is a mix of) the types of atypical employment relationships**, such as **zero-hour contracts**, **temporary work**, **(involuntary) self-employment**, **casual work**, **and informal and undeclared work**, which are subject to the highest risks of precariousness (European Parliament, 2016; De Stefano, 2016; De Stefano and Aloisi, 2018; Berg et al., 2018; European Commission, 2020a).

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[39] This definition is in line with the definition adopted in the resolution on working conditions and precarious employment of 4 July 2017 of the European Parliament, which refers to 'employment that does not comply with EU, international and national standards and laws and/or does not provide sufficient resources for a decent life or adequate social protection'.

[40] The concept of 'employment relationship' used in the European Parliament study (2016) has a non-legal meaning and is not referring to the concept of 'employment relationship' used in EU labour directives. The latter refer to a situation in which an individual is a 'worker' under the criteria set by CJEU case-law but does not necessarily have a 'contract'. The study identifies the following employment relationships: 'standard' open-ended full-time contracts; part-time work; temporary work; self-employment; zero-hours contracts; internships; and informal/undeclared work.

[41] A new third or 'intermediate' category of worker has been added to include the approach of some EU Member States, while the category of 'interns' was removed due to its low relevance for platform work.

Figure 4: Precarious employment and non-standard work

#	Employment Relations*	Level of risk of precariousness**
1	**Workers (employees)**	
1a	***Standard Work*** *(permanent – full-time – single employer)*	LOW
1b	***Non-standard Work***	
	Part-time work (Involuntary, marginal)	LOW - MEDIUM
	Temporary Work (Fixed-term work, temporary agency work, seasonal work, posted work)	MEDIUM-HIGH
	Zero-hour work contracts	HIGH
2	**Self-employed*** **	MEDIUM
3	**Intermediate category (hybrid between worker and self-employed)*****	MEDIUM
4	**Casual work******	MEDIUM-HIGH
5	**Informal and undeclared work**	HIGH

* The category 'interns' from the EP study has not been incorporated in present scheme as it has very low relevance for platform work; ** Income and in-work poverty; working conditions (including training and career development); health and safety; social protection; representation and collective rights; *** Self-employed are in literature considered as a type of non-standard work as it deviates from permanent, full-time labour contracts for one single employer; However international, EU and national labour law is traditionally construed on the binary divide between 2 forms of 'labour market status': employees (or workers) and self-employed; **** In some countries a third employment category has been established, often based on the concept of self-employed but with enlarged protection levels comparable to that of workers; ***** Casual work is as such not an employment status but is often exempted from labour law or social protection and subject to special income taxation regimes

Source: Authors' own elaboration, based on the European Parliament (2016) study on precarious employment.

The following sub-sections focus on **platform work practices through the scope of several dimensions of precariousness**, all of which have been flagged as highly relevant in the literature (Graham et al., 2019; Eurofound, 2019b; European Commission, 2020a): **income from work**, **working conditions**, **health and safety**, **representation** and **social protection**.

Each of these risks of precariousness is presented separately, highlighting the **main issues** that have been raised in the literature in respect of platform work. Where deemed useful, **concrete examples of platform work practices in EU Member States and the UK** are highlighted. Examples of **national policy responses** taken to address the challenges are given, where appropriate (e.g. specific legislation, court rulings, collective agreements). Reference is also made to **relevant CJEU rulings**, such as on the concept of 'worker' generally and in matters that affect the representation of the self-employed (platform workers). The issue of **EU policy responses and EU legislation** relevant to platform work are addressed in later chapters.

3.4.2. Income from work

The **ease of access to work** and **the opportunity to earn an (additional) income** is a major motivation for platform workers to take up platform work at all skill levels (Berg, 2016; Leimester et al., 2016; ETUI, 2019; Eurofound, 2018a; Eurofound, 2019b; Pesole et al., 2018; Prassl, 2018a; Prassl, 2018b). This also applies to self-employed professionals, for whom this income could be necessary to lift them out of in-work poverty (notably, self-employed without employees) (Eurofound, 2019b). Berg (2016) reports that 45% of the United States (US) platform workers using AMT and 26% of those using CrowdFlower primarily do so in order to earn additional income. Hall and Krueger (2015), similarly, found that 91% of US Uber drivers surveyed chose 'earning money' as the main reason for working with the platform. Turning to Europe, Pesole et al. (2018) found that monetary rewards are a key driver for those who are employed in their main activity to undertake platform work.

Nevertheless, the **income gained through platform work is typically (very) low** (Berg, 2016; De Stefano, 2016; Leimester et al., 2016; Prassl, 2018a), **unstable**, **insecure**, **and unpredictable** (Eurofound, 2018; 2019; Prassl, 2018a). This explains why many platform workers see that work as a way to supplement their income but only few are fully dependent on it or earn enough to make a living (Huws et al., 2016; Huws et al., 2017; Huws et al., 2019; Leimester et al., 2016; Pesole et al., 2018). This group, however, is growing and is particularly vulnerable (Eurofound, 2019b). Another concern is that even when platform work is not the only source of income, platform workers could still be financially dependent on it (Huws et al., 2016; Huws et al., 2017; Huws et al., 2019; European Commission, 2020a).

To understand the risk of income precariousness in platform work, the review looks first at the **level of pay**. Low pay is a major determinant of the individual risk of precariousness and is influenced by institutional factors such as the existence and functioning of a statutory national minimum wage, collective bargaining system and tax and social security schemes (European Parliament, 2016). 21 Member States have statutory minimum wages[42] but their levels vary considerably, from EUR 312 to EUR 2,142 per month in January 2020, revealing considerable disparities[43]. Minimum wages apply only to employees and not to the self-employed, which is particularly relevant in the context of platform work, where only a small minority of platform workers are effectively working under an employment contract.

The level of pay in platform work is determined by **several factors** (De Stefano, 2016; Eurofound, 2018a; Eurofound, 2019b; Graham et al., 2019; Juntunen, 2017; Leimester et al., 2016):

- Platform workers are typically **paid by task** rather than by hour.
    - The pay per task can be (very) low, especially when platforms or clients can determine the pay level, and depend on the scale of the task and the skills required to perform it (both level and specialisation) (Eurofound, 2018a; Eurofound, 2019b). A well-known example is click-work, where some tasks are paid only a few cents and the average pay per hour amounts to a few euro (Berg, 2016). In the example of CrowdFlower, the average pay per hour is between USD 2 and USD 3 (Prassl, 2018a; Prassl, 2018b).
    - Competition between platform workers may impose downward pressure on pay on global platforms where platform workers compete at a global scale and have to set their own price ('race-to-the-bottom'). This appears to be a particular problem on platforms intermediating low-skilled tasks that can be executed by anyone ('crowdwork').
    - Pay can be influenced by surge pricing, incentives or nudges (Rosenblat et al., 2016; Scheiber, 2017, Prassl, 2018a). Uber, for example, encourages riders to work during peak times at busy locations by offering higher pay rates.
- Platform workers may have to **bear costs** related to platform work.
    - These costs are related to materials, equipment or tools (e.g. bicycle, mobile phone) and other expenses (e.g. gas, insurance) linked to the platform work activities. They are not always accounted for when the price is set for a task. There is anecdotal evidence of food delivery riders who have an issue with their bike but cannot afford the repairs and thus cannot work (Eurofound, 2018a; Lenaerts et al., 2018).
    - Platform workers who can set their own price can account for these costs. This is often the case for platform workers performing online or on-location medium or high-skilled

[42] Austria, Cyprus, Denmark, Finland, Italy and Sweden have no statutory minimum wage but have collectively agreed minimum wages or a mixed system.

[43] Eurostat statistics, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Minimum_wages,_January_2020_(PPS_per_month).png.

tasks that require a certain expertise (Eurofound, 2018a; Eurofound, 2019b; European Commission, 2020a). Many are professionals (i.e. genuinely self-employed). Examples include those working as handymen and graphic designers.

- Some platforms enable their platform workers to push these costs onto the client. The Belgian platform ListMinut, which offers professional and household tasks, allows platform workers to claim travel costs as well as other expenses, such as purchase of materials, equipment rental, costs linked with waste removal, etc.
- Some platforms have partnered with third parties so that platform workers can buy equipment or materials at reduced prices. Deliveroo, for example, has partnered with bicycle shops, which offer reduced prices on bikes, spare parts, accessories and repairs. Some platforms, for example Foodora, rent out equipment or materials to their platform workers.

- Platform workers **pay fees** to use the platform.
  - Platforms can charge a fee to their platform workers and/or clients for their use of the platform. A fee can be charged on registration, when a match is made between a client and platform worker, or after the task has been completed (Eurofound, 2018a; 2018b). Fees can be a fixed amount/flat rate or a percentage on each transaction (e.g. 10% per task) (Lenaerts et al., 2018).
  - Fees can cover the use and services of the platform, insurance offered by the platform, or other items. 99designs, for example, charges the client a fee of 5% of the value of each transaction and a fee of 15% to entry-level designers, 10% to mid-level designers and 5% to top-level designers. The fees are for 'secure payment holds, dispute resolution, community curation, anti-fraud measures, payout processing, educational resources and the ongoing development of the platform' (99designs website). ListMinut similarly applies a commission fee on the use of its services by the service provider (platform worker) of 3-5%, which is withheld from the total amount of the payment received from the client. The commission fee is subject to unilateral change, at any time and without prior notification[44]. Clients using the platform services are not subject to any commission fee but the payments for the services provided by the platform worker are necessarily channelled through the digital platform.
  - The fact that platforms charge fees to platform workers is generally considered problematic (Berg, 2016; Eurofound, 2018a). Temporary work agencies, for example, are not allowed to charge such fees and have argued that platform work represents unfair competition (Lenaerts et al., 2018).
- Platform workers are subject to **unpaid time**.
  - Examples include time spent looking or waiting for tasks, waiting for replies from clients or the platform, travelling between locations when performing on-location work, work done when preparing to participate in a contest, and similar situations. This time is not always remunerated.

As a result, the **pay can be (very) low**, not only the total amount earned but also in comparison with others performing similar tasks outside of the platform economy. Prassl (2018a; 2018b) and Graham et al. (2019) have argued that this implies that platform workers may earn well below the minimum wage and that pay is often insufficient to cover the costs associated with platform work.

Low pay is particularly an issue among **platform workers who are not able to set their own price**,

[44] Article 7 of the general terms and conditions for service providers. Available at: https://listminut.be/p/cgv_listworker?locale=nl (accessed on 22 March 2020).

carry out low-skilled tasks that can be performed by anyone, **online or on-location**, **and that are allocated to them by the platform** (Eurofound, 2018a; Eurofound, 2019b). Examples are platform workers doing click-work (e.g. AMT), providing taxi services (e.g. Uber) or in food delivery (e.g. Deliveroo). Based on a survey of platform workers using AMT in the US, Berg (2016) reported a mean hourly pay of USD 5.6 and a median hourly pay of USD 4.7. The low level of pay is a major concern for these platform workers (Berg, 2016). A Deliveroo rider in Brussels, for example, receives EUR 7.25 per delivery (pre-tax, tips not included). To compensate, platform workers may work long hours or take on tasks they have little experience with, increasing the risks of accidents.

The risk of income precariousness in platform work is also linked to **pay insecurity**, **instability and unpredictability** (Berg, 2016; Eurofound, 2019b). Factors contributing to pay insecurity, instability and unpredictability in platform work are:

- Platforms can **unilaterally change the price per task at any time**, announced or unannounced.
    - This implies that platform workers are not certain of the amount they will actually receive.
- Platform workers are faced with **limitations in the number of available tasks** and **restrictions on the number of tasks they are allowed to carry out**.
    - Both the task assignment and the number of tasks that a platform worker can carry out may be unpredictable, such as in contest-based work. Food delivery platforms often assign shifts to platform workers based on their performance in terms of speed, number of deliveries, client ratings, and similar factors (Juntunen, 2017; Ivanova et al., 2018). Platform workers using Foodora and Deliveroo have explained that they are sometimes assigned more shifts than expected, sometimes fewer or no shifts, without an explanation from the platform (Eurofound, 2018a).
    - On platforms where there is considerable competition between workers, platform workers may be unable to perform as many tasks as they wish. Examples include contest-based work, online click-work where platforms often assign tasks on a 'first come first served' basis, and on-location professional tasks where clients choose the platform worker. In such cases, platform workers may feel that they have to be available for work at all times, which causes stress (Garben, 2017).
- Platforms use **rating and review systems**, which can have a significant impact on the tasks a platform worker can take on.
    - The use of rating and review systems is almost universal in the platform economy (Eurofound, 2019b; Narciso, 2019; European Commission, 2019b). Platform workers depend heavily on positive ratings for future work opportunities, especially on platforms where the platform or the client allocate tasks, but often have limited or no means to react to or invalidate (dishonest/incorrect) negative feedback (Aloisi, 2015; Cockayne, 2016; Eurofound, 2018a; Eurofound, 2019b; Lenaerts et al., 2018). This implies that it is very difficult for new platform workers, without ratings or a track record, to compete for tasks (Martin, 2016).
- Platforms and/or clients may **withhold payment** without options for recourse by the platform workers.
    - Upwork, for example, takes screenshots of a platform worker's computer, counts the keystrokes and records work completed when the platform workers are doing an hourly-paid job, to check whether the platform worker is active (Prassl, 2018a; Prassl, 2018b). In case of an issue, the platform or client can decide to not pay the worker or can withhold part of the payment. Other examples are platforms intermediating household or

professional tasks (such as cleaning or handymen platforms), where the platform can withhold (part of the) payment if the client is not fully satisfied with the service.

Issues related to income insecurity, instability and unpredictability may **affect all types of platform work**, but appear most prevalent in those cases where the **platform or client allocate tasks**, where there is **severe competition between the platform workers (e.g. contest-based work or for low-skilled tasks that can be done be anyone)** and when **platforms are global players** and there is little opportunity for recourse (e.g. because the platform is not physically located in the country itself and all communication occurs online). The risk of precariousness **may increase further** in the near future, as wage inequalities between high-skilled and low-skilled platform workers are likely to heighten, with digital technologies mostly skill-based, leading to rising relative demand for high-skilled workers (European Commission, 2020a).

Box 6: National approaches to tackle the risk of income precariousness in platform work

Some Member States have introduced **minimum standards** to tackle the risks of income precariousness among platform workers, for example by concluding **collective agreements** with the platform or at sector level. In Italy, the food delivery platform *Laconsegna* concluded a collective agreement with three trade unions in May 2019 (Eurofound, 2019b). The platform workers are recognised as employees and are protected by the national collective agreement for the logistics sector. Similarly, the Danish cleaning platform, *Hilfr*, concluded a collective agreement with the 3F trade union (European Commission, 2020a). Platform workers can choose to work as freelancers (not covered by the collective agreement) or as employees (covered by the collective agreement). In the latter case, *Hilfr* sets a minimum salary of DKK 141.21 per hour, but platform workers can choose to charge more (see *Hilfr* website).

Source: Authors' own elaboration.

3.4.3. Working conditions

The literature on the risk of precariousness of platform work in respect of working conditions considers: **working time**, **work intensity**, **speed pressure**, **access to training**, and **opportunities for career development**. Previous research on platform work has highlighted these factors, pointing to the risks and challenges they pose (Garben, 2017; Eurofound, 2018a; Eurofound, 201b9; Huws et al., 2017). All may lead to platform work being unstable, insecure and uncertain and thus contribute to precariousness:

- **Not all types of platform work may offer flexibility in the working times of platform workers** (Berg, 2016; Eurofound, 2018a; Eurofound, 2019b; Huws et al., 2016; Huws et al., 2017; Huws et al., 2019; Wilde, 2016). While platform workers may be able to choose when, where and how long to work in some cases, in others they have to stick to a schedule, struggle to find work, or work very long hours. Those in low-skilled online or on-location work may experience less flexibility than platforms promise;
- **Platform work may come with high work intensity and speed pressure** due to its on-demand nature, the small scale of the tasks to be executed, competition between platform workers, low levels of pay, and related factors (Eurofound, 2018a; Eurofound, 2019b; Huws et al., 2017; Wilde, 2016). This chiefly applies to low-skilled work executed on-location or online, as well as to cases where the work is allocated via contests (typically online work in the creative industry);

- One of the principle **concerns of online platform workers is having insufficient work** and a majority of platform workers expressed a desire for more hours, either in crowdwork or non-crowdwork activities (Berg et al., 2018) This kind of underemployment and intermittence of work requires daily or even hourly job searches, with the added stress and excess unpaid working time that ensues (Garben, 2019a). ILO research reveals that, on average, workers on microtask platforms spend 20 minutes on unpaid activities for every hour of paid work, searching for tasks, taking unpaid qualification tests, researching clients to mitigate fraud and writing reviews (Berg et al., 2018); and
- **Platform workers have little or no access to training and opportunities for career development** (Graham et al., 2017; ETUI, 2019; Eurofound, 2018a; Eurofound, 2019b; European Commission, 2020a). This is problematic, as it affects workers' current and future employability (European Parliament, 2016). These issues are not specific to platform work but are also found in other forms of non-standard work, such as part-time work, temporary work and agency work (European Parliament, 2016). Freelancers and the self-employed are themselves responsible for training and career development. The limited availability of training applies to all types of platform work. Career opportunities are notably absent for platform workers engaged in low-skilled on-location or online work.

Platform workers who are **genuinely self-employed and involved in medium to high-skilled tasks allocated by the client or sought out themselves** can often choose or agree with the client when and where to work and thus benefit from working time flexibility. These workers are generally satisfied with their work-life balance (Eurofound, 2019b). In other cases, platform workers have little control and **depend on the platform to allocate tasks to them**. This often results in platform workers having to **work during dedicated times or in shifts**, having **very few or very long working hours**, and facing **significant challenges regarding their work-life balance** (Berg, 2016; Eurofound, 2018a; Eurofound, 2019b; Huws et al., 2016; Huws et al., 2017; Huws et al., 2019; Wilde, 2016). These platform workers often have to be on stand-by (unpaid) or ready for work at very short notice (Eurofound, 2019b). Work schedules tend to be unstable and unpredictable (Lenaerts et al., 2018). Long working times result from the low levels of pay, competition between platform workers, workers' reluctance to refuse work out of fear of receiving a poor rating, or their inability to stop (Eurofound, 2018a; Eurofound, 2019b; Huws et al., 2017; Wilde, 2016). This can cause severe mental and physical health issues among platform workers (Eurofound, 2018a; Huws et al., 2017). Berg (2016) reported that online workers may feel pressure to be available at all times, which causes stress and fatigue. Wilde (2016) makes a similar claim for platform workers in transport, such as food delivery riders or taxi drivers.

Turning to **work intensity** and **speed pressure**, platform work often comes with tight deadlines and increased speed pressure (Eurofound, 2018a; Eurofound, 2019b; Huws et al., 2017; Wilde, 2016). This can lead to anxiety and stress among some platform workers, while others are less affected (Eurofound, 2018a; Eurofound, 2019b). Content-based online work, in particular, can have very short deadlines and it is uncertain that the effort will actually result in paid work (notably when the tasks are medium to high-skilled and time intensive, e.g. drawings or animations) (Eurofound, 2018a). The more competition there is between platform workers, the higher the work intensity and speed pressure (Berg, 2016; Huws et al., 2017). This is the case with low-skilled online work, where tasks are allocated on a 'first-come-first-served' basis, or low-skilled on-location work, where workers may want to execute as many tasks as possible in order to make a living (e.g. food delivery or transport work).

There is a consensus in the literature that platform workers generally have **little or no access to training** (Schmidt, 2017; Eurofound, 2018a; Eurofound, 2019b; European Commission, 2020a; Lehdonvirta et al., 2019). Most platforms do not have any infrastructure or system to support the development and learning of platform workers. As a result, this responsibility appears to fall on platform workers in most cases (Lehdonvirta et al., 2019). This issue arises for **all types of platform work and all platform workers**, although self-employed workers bear the responsibility of seeking out and planning their own training.

Where platforms do offer training, it is typically limited to a short (online) tutorial on how to use the app or platform, basic safety training or training that is intended to improve platform workers' chances to get work (Eurofound, 2018a; Eurofound, 2019b). Lyft, for example, has a mandatory safety training programme that consists of short videos (2-4 minutes) covering subjects such as communication strategies, sexual misconduct, aggressive behaviour, etc. (see Lyft website). Other examples include Takeaway or UberEats, where new food delivery riders are accompanied by a more experienced rider to learn how the tasks are to be done (see platform websites). In addition, some platforms intermediating professional on-location tasks invite more experienced platform workers to give tutorials (e.g. ListMinut, see Lenaerts et al., 2018). An interesting example of a more developed training programme is Upwork, which provides a variety of self-study, social learning and development resources on its website (e.g. e-book, readiness test, forum) (Lehdonvirta et al., 2019). Some platforms, such as Frizbiz, partner with third parties to provide training, indicating their preference for this training or indeed ignoring training entirely in order to avoid being seen as an employer (Eurofound, 2019b).

Platform workers further have **no or little opportunity for career progression** (Eurofound, 2018a; Eurofound, 2019b; European Commission, 2020a; Lehdonvirta et al., 2019; Schmidt, 2017). Differences are evident between platform workers and platform work types. While platform work appears to be a dead-end for **platform workers in low-skilled tasks that can be done by anyone and that are allocated by the platform or client**, it can serve as a stepping stone for those who are **genuinely self-employed and who carry out medium to high-skilled activities for which they can set their own price, choose themselves or that are allocated by the client**. In the latter case, platform workers can develop a portfolio, build up their clientele, practice their skills, etc. (Lenaerts et al., 2018). In the former case, platform work brings few opportunities for occupational development (Eurofound, 2018a; Eurofound, 2019b).

Box 7: National approaches to tackling the risks related to working conditions

France adopted the El Khomri Act of 8 August 2016 on work, modernisation of social dialogue and securing of career paths[45], specifically aimed at independent workers in an economically and technically dependent relationship with an online platform. Among other things, the Act ensures the right to continuing professional training, for which the online platform is responsible. Platform workers should be provided - at their request - with a validation of their working experience with the platform, by the online platform (European Commission, 2020a; Garben, 2019a).

Source: Authors' own elaboration.

3.4.4. Health and safety

The first result that emerges from the literature is that many of the tasks performed in platform work are **highly similar to those carried out in traditional settings** (Garben, 2017; Eurofound, 2018a;

[45] *Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels.*

Eurofound, 2019a; Eurofound, 2019b; Tran and Sokas, 2017; Wilde, 2016; Ropponen et al., 2019). The mental and physical health and safety risks experienced by platform workers are not that different from those faced by other workers, i.e. they are, largely, **traditional risks**. For example, platform workers doing online work such as graphic design or programming can suffer from musculoskeletal problems or eye strain, similar to their counterparts in the regular economy.

However, **the traditional health and safety risks are aggravated in the case of platform work** (Garben, 2017; Eurofound, 2018a). This is due to several reasons, some of which are related to the nature of platform work and some to the platform workers themselves:

Platform work is a **non-standard form of work**. Compared to standard forms of work, it has lower levels of job quality, poorer working conditions, the workers involved have worse health and well-being (European Parliament, 2016; Eurofound, 2018a; Eurofound, 2019a; Eurofound, 2019b) and face higher injury rates. In the case of platform work, this is related to the lack of job security, rapid pace of work, tight deadlines, high level of competition between platform workers, continuous performance monitoring through digital technologies, isolated nature of the work and lack of protective effect of working in a public workplace (Huws et al., 2016; Huws et al., 2017; Garben, 2017; Tran and Sokas, 2017).

- Platforms typically provide **little or no training on health and safety** (Garben, 2017; Eurofound, 2018a; Eurofound, 2019b).
- Platform workers tend to be **young and have less experience in the labour market** (Garben, 2017; Eurofound, 2019b).
    - Platform workers are generally less experienced and may be less aware of health and safety risks and how to manage them, or less interested in doing so.
    - Platform workers tend to be isolated when performing the work, without supervision or support from a more experienced colleague or supervisor.
- Platform workers may be particularly **vulnerable to discrimination and (sexual) harassment**.
    - There is anecdotal evidence of platform workers experiencing racism, bullying, unwanted sexual attention, and other forms of misconduct by clients (Miller, 2015; Huws et al., 2016; Huws et al.2017; Huws et al., 2019; Eurofound, 2018a; Eurofound, 2019b, Carbone et al., 2019).

In addition, platform work gives rise to **new health and safety risks** (European Commission, 2020a; Garben, 2019a, Eurofound, 2018a; Eurofound, 2019b), such as mental and psycho-social risks, and can lead to antisocial and/or health-threatening habits as a means of coping with stress (Huws et al., 2019). These risks follow from certain characteristics of platform work:

- Platform work is performed **outside of the boundaries of the traditional work environment and monitored workplace and is not under an employment relationship**. The employment status of platform workers is often ambiguous and the relationships unclear (Eurofound, 2018a; Eurofound, 2019b; Pesole et al., 2018, Tran and Sokas, 2017). This makes it difficult to determine and enforce the labour and occupational health and safety regulations applicable (Garben, 2017; Samant, n.d.). Low-skilled online platform work, for example, can be carried out anywhere, anytime and by anyone (e.g. low-skilled click-work);
- One of the principle **concerns of online platform workers is having insufficient work**, with a majority expressing their desire for more hours, either in crowdwork or non-crowdwork activities (Berg et al., 2018). Underemployment and intermittent work requires daily or even hourly job searches, adding stress and excess unpaid working time (Garben, 2019a, Garben,

2019b). ILO research reveals that, on average, workers on microtasking platforms spend 20 minutes on unpaid activities for every hour of paid work, searching for tasks, taking unpaid qualification tests, researching clients to mitigate fraud and writing reviews (Berg et al., 2018); and

- **Responsibility for health and safety tends to be unclear** (Garben, 2017; Eurofound, 2018a; Eurofound, 2019b; Pesole et al., 2018). The unclear division of responsibilities facilitates platforms and/or clients to push costs or risks onto platform workers.
    - Significant differences arise between platform workers as a result. Those who are employed by the platform fall under national legislation on occupational health and safety, with the platform or client (serving as the employer) responsible for health and safety. Platform workers who are genuinely self-employed are responsible for their own occupational health and safety.
    - Previous research shows that platform workers involved in medium to high-skilled work where tasks are allocated by the client or selected themselves are typically well aware of the risks and take appropriate measures (Garben, 2017; Eurofound, 2019b). These platform workers explain that quality of the work and safety when executing tasks matter more than speed (Eurofound, 2019b).
    - By contrast, platform workers who are engaged in low-skilled work allocated by the platform and where there is strong competition between platform workers, tend to be less aware of risks (in the short and long-term) and take fewer precautions (Garben, 2017; Eurofound, 2018a; Eurofound, 2019b). This may lead workers to take big risks, for example ignoring a red light when crossing a street (Lenaerts et al., 2018) in order to speed up and complete more tasks.

Box 8: Platform work and COVID-19

In spring 2020, media reports from the US[46] and EU[47] confirmed growing concerns among the riders from Uber, Lyft, Deliveroo and other platforms about the lack of personal protective equipment and gear, and of compensation in case of illness following the outbreak and spread of COVID-19. Concerns were raised that the platforms may only be willing to pay compensation for up to 14 days and only in cases where the riders were diagnosed with COVID-19, excluding those who stay away from work without medical diagnosis[48]. The European Trade Union Confederation (ETUC) reported on similar concerns[49]. Some platforms have taken measures such as Hermes, a UK-based platform, which has set up a support fund for its 15,000 platform workers who are in self-isolation and Deliveroo in Belgium, who announced that it would (exceptionally) offer paid sick leave to its workers in self-isolation or diagnosed with the virus[50].

Source: Authors' own elaboration.

[46] Article available at: https://www.cnet.com/news/uber-and-lyft-drivers-give-us-safety-gear-to-protect-us-from-covid-19/.

[47] Articles available at: https://www.theguardian.com/world/2020/mar/06/coronavirus-outbreak-gig-workers-risk-sick-leave and at https://www.knack.be/nieuws/belgie/de-reden-dat-fietskoeriers-blijven-leveren-is-simpel-ze-hebben-net-als-vele-andere-werknemers-geen-vangnet/article-opinion-1583383.html?cookie_check=1587362153.

[48] Article available at: https://www.cnbc.com/2020/03/09/uber-lyft-doordash-react-to-coronavirus-workers-say-its-not-enough.html.

[49] Report available at: https://www.etuc.org/en/document/red-card-platform-abuses-covid-19-crisis.

[50] For more information on the initiative in Belgium, see: https://www.eurofound.europa.eu/publications/article/2020/coronavirus-highlights-sick-pay-void-for-platform-workers.

Box 9: National approaches to tackling health and safety risks in platform work

Although some actions addressing the health and safety of platform workers can be observed in **EU Member States** (Garben, 2017), initiatives in the area of health and safety are generally fragmented and are not widespread. Several bottom-up initiatives are evident, for example from **social partners or the platforms themselves**. In Belgium, trade unions hand out helmets and lights to food delivery riders, while in Spain, the National Institute for Safety, Health and Well-being at Work ran a campaign to improve road safety for platform workers (Eurofound, 2019b). Platforms have focused on raising awareness through safety training (see above) and, in some cases, insuring their workers (e.g. Uber, Deliveroo).

Source: Authors' own elaboration.

3.4.5. Representation

'Representation' concerns the **rights of platform workers to freely associate**, **to be represented at the company or sector level**, **to be informed and consulted**, **to bargain collectively and conclude collective agreements** with the platform (or end-user company) on their working conditions, including pay rates and social protection. Representation and collective bargaining rights of platform workers have consistently been flagged in literature (Schmidt, 2017; Erickson, 2018; European Commission, 2020a; Eurofound 2018a, Eurofound, 2019b; Prassl, 2018a; Johnston and Land-Kazlauskas, 2019; Aloisi, 2019; Joyce et al., 2020) as **a highly important challenge** at EU and national level for **all types of platform workers**, calling for determined policy action and/or regulation.

Platform workers, irrespective of their labour market status (employee or self-employed) or type of platform work (online or on-location), are **significantly more deprived of their collective rights by the existing legislative frameworks at EU and national level and absence of collective agreements** than their peers in traditional sectors of the economy (Kilhoffer et al., 2017; Vandaele, 2018; Lenaerts et al., 2018; European Commission, 2020a). Platform work is executed in isolation, at dispersed locations and the task/work allocation, organisation and evaluation is based on purely digital interaction with (often) powerful platforms that seem to occupy increasingly dominant market positions. The platform economy has emerged as a largely non-unionised sector (Johnston and Land-Kazlauskas, 2019), while new working arrangements shift the balance of power away from platform workers to the platforms (European Commission, 2020a).

In practice, most platform workers are **not organised or represented**, **nor structurally informed** or **consulted**, and nor generally **covered by collective agreements** (Kilhoffer et al., 2017; Lenaerts et al., 2018; European Commission, 2019b; Johnston and Land-Kazlauskas, 2019).

The rather **recent emergence** of the platform economy and its current **relatively low importance** in the general labour market are considered to have **hindered collective action** by platform workers throughout the EU, with other facts being **resistance by the platforms** and **prevailing anti-trust legislation** (Johnston and Land-Kazlauskas, 2019; European Commission, 2020a). The very **nature of platform work** constitutes another major barrier, due to the solitary and sometimes anonymous work provision, online interaction and depersonalised relationship with the platform, high workforce turnover rates, and absence of a common work place or direct contact with colleagues (European Commission, 2020a; Prassl, 2018b; Vandaele, 2018; Johnston and Land-Kazlauskas, 2019). The unequal power between platforms and platform workers does not create a level playing field and impedes effective collective action.

Lenaerts et al. (2018) found that platform workers are generally **unaware** of their collective rights. Platform workers are also **not structurally informed or consulted at company or inter-company level on the business performance or employment forecasts** of the platforms, nor on transnational issues, which are subject to specific EU legislation and particularly relevant in the context of globalised platform businesses (Eurofound, 2018a; European Commission, 2020a). This has created substantial controversy in cases of sudden market withdrawal (Foodora in the Netherlands in 2018; Deliveroo in Germany in 2019) or bankruptcies (Take it Easy, Belgium in 2016; Maple N.Y. in the US in 2017, Foodora in Australia in 2018).

Grassroots organisations and **joint actions** (local strikes, social media campaigns) initiated by platform workers have popped up very recently in almost half of the EU Member States, with or without the support of trade unions. These, however, remain fragmented, very local and often concerned with advocacy and awareness-raising (Valenduc et al., 2016; European Commission, 2020a; Aloisi, 2019; Joyce et al., 2020). **Online forums** have been set up to provide information to platform workers but these are loosely structured and face challenges fostering collective action (Degryse, 2017; Johnston and Land-Kazlauskas, 2019). ILO notes that most of these initiatives face significant obstacles related to their sustainability (Johnston and Land-Kazlauskas, 2019). The High-level Expert Group on the impact of the digital transformation on EU labour markets reported the existence of informal networks of platform workers and the use of social media to support each other and formulate collective responses to workplace issues (European Commission, 2019b).

The Coworker.org platform, hosted by a US-based non-profit association, allows platform workers working for a given company to form a network, which has led to successful interactions between the workers and the platforms on matters such as corporation-wide pay policies or improvements to local break rooms in large multinational corporations and in local companies (European Commission, 2019b). Union-affiliated guilds[51] have not yet been set up in the EU, where traditional trade union action to encompass workers in non-standard forms of work have primarily focused on other strategies, such as the unionisation of workers in non-standard forms of work and combating the misclassification of those in non-standard forms of work (Johnston and Land-Kazlauskas, 2019). Worker-owned platform cooperatives[52] are still at an early stage of emergence in the EU, unlike the US (Scholz, 2016; Johnston and Land-Kazlauskas, 2019).

[51] Reference is made to the New York-based Independent Drivers Guild, which represents thousands of Uber drivers.

[52] Sutton (2016) defines platform cooperatives as 'digital platforms that are designed to provide a service or sell a product and that are collectively owned and governed by those who depend on and participate in it'.

Box 10: Representation of platform workers in EU Member States and the UK

Platform workers and **(multinational) platform businesses are generally not or insufficiently represented**, by workers' or employers' organisations in **the national social dialogue structures** in Member States.

In practice, most **platform workers** work as freelancers (self-employed) and they are not structurally involved in collective bargaining systems, which are traditionally reserved for employers' and workers' representative organisations. National trade unions have increasingly embraced platform workers' interests, however, while associations of the self-employed have been set up in Member States. In some Member States platform workers created their own grassroots organisations, especially in on-location platform work services (personal transport, delivery services, cleaning services).

Transnational or multinational **platform businesses**, on the other hand, do not consider themselves employers. They are not represented in the traditional employers' representative bodies in EU Member States and do not take part in the national social dialogue structures and mechanisms. Transnational platform businesses facilitating on-location work engage with their workers most often at the level of their operations in the country on matters of pay and working conditions. Platforms intermediating online work are often based in countries other than those in which online workers are working, which makes direct engagement more of a challenge. National employers' organisations often represent the incumbents in the traditional business markets and may have different views on matters such as fair competition and taxation. Some platform businesses however have joined forces and created representative bodies or associations in national contexts (e.g. in Spain, Uber, Glovo, Amazon, Deliveroo and Homeaway created Adigital, representing large companies in the digital economy).

As a consequence, there are very **few examples** of **effective collective negotiations** and **agreements** that have been concluded between platform businesses and platform workers in EU Member States and the UK. Examples include food delivery workers[53] in Austria and Germany, Italy, Spain and the UK, platform workers in the cleaning industry, and those providing interpretation services in Denmark (European Commission, 2020a). One example of collective bargaining emerged in Sweden, where a transport network called Bzzt was set up using environmentally friendly electric vehicles to provide on-demand, app-facilitated transport services. All workers have a written contract and are covered by an industry-wide collective agreement covering the traditional incumbents as well as the new platform business (Johnston and Land-Kazlauskas, 2019).

Source: Authors' own elaboration.

Collective agreements (and the related collective labour rights) are typically **limited to employees ('workers')** and result from bilateral negotiations between employers (or their representative bodies) and workers' organisations. This **bilateral approach is being challenged by the triangular relationship** that characterises platform work. As platform workers are often, lawfully or not, classified as self-employed, the vast majority currently have no effective access to their collective rights. While international labour legislation adopted by the ILO and Council of Europe[54] includes the self-employed within the remit of the right to association and the connected right to collective bargaining (a position which is shared by the European Parliament insofar as the collaborative economy is concerned[55]), **anti-trust legislation at EU and/or national level** has limited these collective labour rights for the self-employed (including platform workers) (see infra).

Kilhoffer et al. (2017) noted that collective bargaining in the platform economy primarily took place at **company level**, but recent studies (Lenaerts et al., 2018, European Commission, 2020a) point to a rise in formal **sectoral collective agreements** in some EU countries (e.g. Denmark, Germany, Italy, Spain, Norway), facilitated by trade unions, national authorities or non-governmental organisations. Some of these agreements extend their scope to (employed and/or self-employed) platform workers but others specifically concern platform work, sometimes irrespective of platform workers' labour market status. The latter cover primarily on-location platform work, such as food delivery, cleaning services and personal transport, which suggests better organisation of on-location platform workers compared to their online peers. However, online platform work (e.g. interpretation) has also been subject to recent collective agreements (e.g. Denmark).

Box 11: National legislation tackling low representation in platform work

Several **EU countries** (e.g. Germany, Ireland, Italy, Spain, Sweden) have taken legislative measures to allow certain categories of the self-employed (including platform workers) to conclude collective agreements, sometimes under certain conditions, with a view to adhering to competition legislation. France was the first EU country to introduce **specific legislation addressing the collective rights of self-employed platform workers**, with some Italian regions adopting similar legislation.

Source: Authors' own elaboration based on European Commission (2020a).

Part of the challenge is rooted in **the labour market classification** of platform workers as either employees or self-employed (depriving the latter category, *de jure* or *de facto*, of access to similar collective rights as employees) and this is deepened by the **parallel development of labour law and competition law** within the EU and national legislative contexts. Under EU competition law, any agreement between undertakings or decisions by associations of undertakings are considered an illicit cartel when they prevent, restrict or distort free trade and fair competition (Article 101 TFEU)[56].

EU competition legislation considers self-employed people 'undertakings' and price-fixing or market-sharing on the basis of agreements between these undertakings is considered unlawful.

The CJEU has ruled that collective agreements concluded between trade unions and employers concerning the working conditions (including pay or social protection) do not contravene EU anti-trust legislation and has extended this reasoning to false self-employment (European Commission, 2020a). Many platform workers are likely to be in the latter situation and consequently have *de jure* access to these collective rights **when effectively applied by national courts in litigation on employment classification**.

[53] Foodora app-based delivery workers have set up a Works Council, with the support of Vida, the Austrian union representing workers in the transport and services sector (Johnston and Land-Kazlauskas, 2019); In Germany the trade union, NGG, organised the Cologne-based workers of Foodora into a Works Council, leading to the adoption of a collective agreement that provides for better working conditions and remuneration for the riders operating in the city (European Commission, 2019b).

[54] Article 11 of the European Convention on Human Rights concerns the freedom of association, whose application has been extended to the self-employed in *Vörður Ólafsson v Iceland*, Case No. 20161/06 (17 July 2010). The freedom of association includes the right to bargain collectively and to enter into collective agreements.

[55] Resolution of the European Parliament on a European Agenda for the collaborative economy, June 2017.

[56] Judgment of the CJEU, Case C-67/96, Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie (21 September 1999) ECR I-5751.

Box 12: Relevant CJEU case-law on collective rights and competition law

In the landmark case C-67/96, Albany[57], the CJEU sought to strike a balance between two fundamental objectives enshrined in the EU treaties, e.g. fair competition in the internal market and social policies. The CJEU ruled that collective agreements concluded between **employers' organisations and employees' representatives** do not contravene EU anti-trust rules[58], provided two cumulative conditions are met: (1) the agreements are concluded by management (employer) and labour (workers' representative bodies); and (2) they aim to improve work and employment conditions (European Commission, 2020a). In another case, C-413/13, FNV Kunsten Informatie[59], the CJEU extended this reasoning to service providers who are in fact '**false self-employed**' or service providers in 'a situation comparable to that of employees'. The CJEU noted that agreements concluded on behalf of the self-employed cannot be regarded as the result of a collective negotiation between employers and employees, and must therefore respect EU competition rules, while reconfirming its settled case-law regarding the concept of worker as enshrined in EU labour law. The CJEU, however, considered that a service provider (self-employed) cannot be considered an undertaking and 'lose' its undertaking status 'if he **does not determine independently his own conduct on the market**, but is entirely dependent on his principal, because he does not bear any of the **financial or commercial risks arising out of the latter's activity and operates as an auxiliary within the principal's undertaking**'[60]. This consideration focuses on the dependency between undertakings (which includes a single self-employed person) in a context of anti-trust legislation, but bears great similarities with a situation in which a worker or self-employed person is providing services under the direction or subordination of an employer under labour legislation. The CJEU considered such service providers as 'false self-employed', who are in a similar position as workers and should be treated equally when accessing collective rights targeting the protection of working conditions, while maintaining its position that the self-employed are undertakings and that agreements concluded on their behalf with employers are not to be considered as collective agreements and are not allowed when they affect fair trade in the EU internal market. The dependency on another undertaking and reference to the financial and commercial risk-sharing and auxiliary capacity is considered under EU competition law, contrary to EU labour law, which does not consider the '(economic) dependency criterion' in determining the existence of an employment relationship (European Commission, 2020a; Lianos et al., 2019; Risak and Dullinger, 2018).

Source: Authors' own elaboration based on European Commission (2020a).

The European Commission study (2020a) observes that while EU legislation and CJEU case-law still exclude the genuinely self-employed from collective bargaining where free and fair trade is prevented or distorted, it does not seem to object to collective action from self-employed platform workers on other matters of high concern, such as the terms and conditions of their contractual relationship, the provisions on contract termination, or the use of algorithms and client feedback based on digital technologies that affect work allocation, organisation and evaluation. Agreements concluded between representative bodies of self-employed platform workers and the platforms on these particular aspects governing the working arrangements does not, therefore, contravene anti-cartel legislation (Hauben and Giacumacatos, 2019). Lianos et al. (2019) have pleaded for a reconciliation between competition and labour law, aiming at providing (some) self-employed platform workers with similar collective rights as employees.

3.4.6. Social protection

International research reveals that **platform workers tend to have less access**[61] **to social protection** schemes in their respective Member States (De Stefano, 2016; Forde et al., 2017, Eurofound, 2018a; Berg et al., 2018; OECD, 2018; Sapic, 2020). For example, a survey of 1,200 platform workers (doing online low-skilled work)[62] (Forde et al., 2017) found that nearly 70% of all platform workers do not have access to schemes that cover maternity benefits. Likewise, 63% do not have access to unemployment benefits, despite the fact that a significant portion had been unemployed for some period in the past five years. At the same time, around half of the platform workers do not have access to old-age benefits (56%), invalidity benefits (60%) and sickness benefits (47%). Similarly, an ILO study found that 56% of workers stated that platform work is their main job, only 55% reported having access to health coverage (24% make contributions to their health insurance). These numbers reduce still further with respect to pensions: only 25% of platform workers have access to a pension scheme, and only 15% make contributions towards a pension (Berg et al., 2018).

For the most part, these concerns are in line with the general literature on access to social protection among non-standard and self-employed workers (Matsaganis et al., 2015; Spasova et al., 2017). Historically, **the key reference point for social protection legal and policy frameworks was based on open-ended**, **full-time**, **dependent employment relationships** (Spasova et al., 2017; OECD, 2018; Behrendt et al., 2019, Schoukens et al., 2019). In general, most platform workers (online/offline, high-skilled/low-skilled) do not fit with this default situation (De Stefano, 2016; De Stefano and Aloisi, 2018; Berg et al., 2018; European Commission, 2020a; Sapic, 2020).

The available research shows that almost **no platform workers are formally employed** (Pesole et al., 2018; Eurofound, 2019b; OECD, 2019b; OECD, 2019c). This is problematic, as **the self-employed have considerably less access to social protection schemes** in a number of Member States (Spasova et al., 2017; European Commission, 2018c), notably regarding unemployment benefits (e.g. Cyprus, Germany, France, Ireland, Italy), accidents at work and occupational injuries (e.g. Belgium, Bulgaria, Cyprus, Latvia, Netherlands), as well as sickness benefits (e.g. Greece, Ireland, Italy). In several Member States, access to social protection for the self-employed is only available on a voluntary basis[63] (European Commission, 2018c). Generally, however, a low rate of enrolment can be observed in Member States where voluntary schemes exist for the self-employed (Spasova et al., 2017; European Commission, 2018c). This analysis is confirmed by a recent survey of European freelancers, in which 89% of participants felt that their social security should be improved (European Forum of Independent Professionals and Malt, 2019).

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57 Judgment of the CJEU, Case C-67/96, Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie (21 September 1999) ECR I-5751.

58 The key anti-cartel provisions concern Article 101 (TFEU), which prohibits under (1) 'all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market and in particular those which (a) directly or indirectly fix purchase or selling prices or any other trading conditions' […] and which declares under (2) 'all such agreements or decisions automatically void'.

59 Judgment of the CJEU, Case C-413/13, FNV Kunsten Informatie en Media v Staat der Nederlanden (2015) 4 CMLR 1.

60 Case C-413/13, op. cit., para 33.

61 Here, the term 'access' encompasses both formal coverage and effective coverage. Formal coverage delineates whether platform workers are entitled to participate in a scheme covering a specific branch. Effective coverage determines whether platform workers have, in case of materialisation of the social risk of a specific branch, access to a given level of benefits.

62 The survey was conducted across four platforms: AMT, Clickworker, CrowdFlower and Microworkers.

63 For example, opt-in for the self-employed in the unemployment benefit scheme in Latvia, Portugal, Sweden, Denmark and Finland (European Commission, 2018c).

Member States' social protection schemes usually contain **thresholds** – related to either a minimum number of work periods/hours or a minimum labour income for work performed – to determine **formal and/or effective access** to a given scheme (Spasova et al., 2017). The most frequent criteria used by Member States are waiting periods[64], minimum qualifying periods[65], duration of benefits, minimum working periods[66] and the role of the income assessment base in determining the level of entitlements (European Commission, 2018c; Schoukens et al., 2019). The available research on working time and income reveals that many platform workers will not meet these thresholds in practice (Pesole et al., 2018; Daugareilh et al., 2019).

Table 1a: Time thresholds limiting (effective) social protection coverage of non-standard workers

Social protection schemes/type of threshold	Waiting period	Minimum qualifying period	Minimum working period
Unemployment benefits		SK, CZ, PL, EE, HU, ES	EL, PT, SE, HU
Sickness benefits	BE, EE	IT, PL, AT, CZ, BG	PT
Maternity benefits	AT, CZ, HU, MT, HR, IT	BG	PT
Accident and occupational injuries			
Old age/survivors' pensions		IT, NL, PT	NL, IT
Invalidity		CZ, PT	CZ

Source: European Commission (2018c).

Table 1b: Time thresholds limiting (effective) social protection coverage for the self-employed

Social protection schemes/type of threshold	Waiting period	Minimum qualifying period	Minimum working period
Unemployment benefits	PL	EL, FI, LU, SK	EE, PT, SE
Sickness benefits	PT, SI, BE, EE, FR, HR, PL, SE		
Maternity benefits			DK
Accident and occupational injuries			EL
Old age/survivors' pensions		RO, UK	RO, UK
Invalidity		DE	DE

Source: European Commission (2018c).

Indeed, the often highly fragmented and unpredictable nature of work, systemic job intermittency and the possibility to work in parallel for different platforms/clients means that platform workers are likely to be confronted with **increased challenges in terms of social protection coverage** compared to workers engaged under both standard employment and under the 'regulated types of non-standard

[64] In some Member States, the claimant must wait for a fixed period after the occurrence of a social risk before receiving a social protection benefit.

[65] A qualifying period means the period of membership of a scheme in order to trigger entitlements to the accumulated social protection rights.

[66] A minimum working period means that the person is required to have worked a minimum amount of time before being eligible to receive the social protection benefit.

work' (part-time, fixed-term or temporary agency work), especially when social protection schemes are based on the employment relationship and funded by social contributions (as opposed to universal schemes funded by taxes). Contribution-based social insurance schemes continue to dominate in many EU Member States and benefits are often employer-funded (European Commission 2020a), particularly for **income replacement benefits for short term 'out-of-work' periods, such as unemployment, sickness or maternity**. Platform work challenges the very architecture of social protection schemes, which are built on the employment status of the worker.

Of particular concern for platform workers are protection against **work accidents and professional diseases** (European Commission, 2020a) and **short-term income replacement benefit schemes** in case of **unemployment and sickness and in case of maternity**. While protection against the risks of work accidents is particularly relevant for on-location platform workers, income replacement schemes for short-term periods primarily concern online platform workers, irrespective of their labour market status. The applicability of schemes targeting a better work-life balance **(parental, maternity, paternity or carer's leave schemes)** to platform workers may also need due consideration, especially in terms of their enforcement. Due to the (often) long qualification periods and entitlement conditions – which benefit insured persons with longer contribution or insurance periods - access and benefit levels of income replacement benefit schemes in cases of **invalidity and old age** are likely to be lower for platform workers. National social protection schemes concerned with **long-term care, family and child benefits and medical insurance schemes covering the costs of healthcare** vary substantially between Member States and may not be a specific challenge for platform workers as such (provided their labour status is correctly classified), as these schemes are more universal and/or non-contributory by design. More research is needed in this regard, however.

Moreover, **social protection rights and benefit levels** are often based on contribution or insurance periods (or records), which, in standard work and in the 'regulated' non-standard forms of work, are ultimately based on actual time worked (as the basis or reference for remuneration). Apart from the continuous intermittence in service provision, platform workers spend a significant time that is not counted as working time, is not remunerated and is *de facto* outside any possible insurance record or calculation basis for social benefits. The benefit levels are often calculated on the basis of 'previous' or 'reference' earnings, which are generally lower in platform work. Platform workers thus have **lower income replacement benefits**.

Other specific challenges for platform workers concern **the preservation** and **transferability** of social rights in job transition, when working in parallel for different platforms/clients, or when working under different employment statuses, as is often the case in practice.

When it comes **to financing social protection**, large platforms externalise the costs related to social protection coverage onto their platform workers, who - as self-employed - have to pay the contributions or taxes for their social protection.

Income support measures aim to provide an adequate income to individuals and their dependents and can be shaped in various ways (through unemployment, family, disability, old age benefits), but mainly by means of **minimum income schemes** that ensure an adequate income when people have no other sources of income or financial support. All EU Member States have minimum income schemes but their accessibility, adequacy and take-up levels vary significantly, with some negative trends recently observed in about nine EU Member States (Van Lancker and Farrell, 2018). Some countries have income support schemes ensuring protection against large income fluctuations, often for the self-employed. Minimum income support schemes are **highly relevant for platform workers** for several reasons: the fragmented and unpredictable nature of the work, intermittency in service

provision, the (very) low payments (Berg, 2016; De Stefano, 2016; Leimester at al., 2016), and unstable and insecure income (Eurofound, 2018a; Eurofound, 2019b).

Box 13: National approaches to tackling the risk of social protection in platform work

Belgium and **France** are the only two Member States that specifically target **self-employed platform workers** in their social protection legislative frameworks (ESIP, 2019) but the underlying policy considerations are very different.

In **Belgium**, legislation was initiated to boost the collaborative economy[67]. Income received for certain types of platform work (e.g. household and cleaning services, gardening, small construction works) performed by individuals in a non-professional capacity are **exempt from social contributions** and are thus not subject to the social protection schemes for the self-employed. Platform work is allowed where it is facilitated by a recognised platform and annual earnings do not exceed a certain threshold (EUR 6,130 for fiscal year 2019). However, in April 2020, the Constitutional Court declared the legislation unconstitutional because it did not respect the principles of equality and fair competition between service providers facilitated by registered online platforms (on-location platform workers) in the collaborative economy and their peers in the traditional business sectors, such as cleaning services and repair works.

In **France**, the El Khomri Law (2016) targets self-employed platform workers, which is defined as independent workers who are in an economically and technically dependent relationship with an online platform. Platforms have a corporate social responsibility to pay the contribution of the platform workers where they decide to take out **insurance covering the risk of industrial accidents** or join the voluntary insurance scheme for accidents at work (Articles L. 7342-2).

Source: Authors' own elaboration.

The argument put forward against policy proposals to include more platform workers in the social protection framework is the so-called pin-money argument (Berg, 2016). This argues that platform workers do not need additional social protection entitlement from their jobs in the platform economy, as, in practice, they have another job, which will secure sufficient (formal and effective) social protection coverage (Eurofound, 2019b). Recent research challenges this assumption in two respects (Huws et al., 2016; Huws et al., 2017; Huws et al., 2019; Forde et al., 2017; Joyce et al., 2019).

1. Firstly, figures show that **some platform workers are (almost) fully dependent on platform work**. The argument that they would have another job from which they can derive social protection entitlements thus falls short and effectively means that the platform workers who most need social protection are the least covered (Huws et al., 2017; Joyce et al., 2019; European Commission, 2020a).
2. Secondly, the assumption underlying the pin-money argument is that **the 'other job' will lead to sufficient social protection coverage**. However, research has suggested those 'other jobs' are most likely other insecure and precarious forms of non-standard employment or self-employment, which gives rise to the same lack of social protection coverage (Huws et al., 2016; Forde et al., 2017; Joyce et al., 2019; Hoang, 2020). In that vein, the survey conducted by Forde et al. (2017) showed that platform workers who have another source of income remained significantly at risk of not having access to either unemployment benefits or sickness benefits.

[67] Programmawet 1 July 2016, Articles 22-26, available at: https://www.ejustice.just.fgov.be/mopdf/2016/07/04_2.pdf#Page2.

To conclude, platform work arrangements are profoundly challenging the national, public and private social protection systems and mechanisms in terms of access, coverage and ensuring decent income protection. Unless appropriate policy responses are introduced to reduce these different concerns, the rise of the platform economy may exacerbate current gaps in social protection coverage, leading to **growing precariousness among the workforce** (Forde et al., 2017; Spasova et al., 2017, OECD, 2019b; OECD, 2019d).

3.5. Summary of challenges and risks in platform work

International and European policy makers and researchers increasingly point to **the wider context and challenges of digital labour platforms and platform work** in globalised economic and labour markets. The challenges stem from: the **unlevel playing field** for (and unfair competition between) globalised and national players, digital platforms and traditional businesses, and traditional temporary work agencies and online labour platforms; **tax evasion and inadequate taxation regimes** for globalised businesses; **undeclared platform work**; and the **exploitation and monetisation of the data obtained by digital platforms without adequate compensation**. These challenges concern the wider context in which online labour platforms are operating. Globalised platforms operating in the EU challenge existing regulatory frameworks in policy domains such as competition, internal market, free movement of services and of data, consumer protection, taxation, data protection and labour and social protection of the platform workers.

When examining the **protection of working conditions and of social risks** of platform workers in the EU, there is general consensus among policy makers and researchers that the key challenge relates to the **unclear employment status of platform workers** (being either worker/employee or self-employed). The recent European Commission study (2020a) observes that there is **no uniform definition or concept of 'worker' or 'employee' in the EU**, with platform work blurring the boundaries between the traditional concepts used in EU and national labour and social protection law. The study reaffirms the findings from earlier studies (e.g. Eurofound, 2019b), i.e. that platforms' **terms and conditions typically unilaterally determine that platform workers are self-employed**, regardless of the actual conditions in which they work. In doing so, platforms shift risks, costs and liabilities onto platform workers. This may be a misclassification (bogus self-employment) and particularly affects low-skilled on-location and online platform workers. As a consequence, many platform workers find themselves in a legal grey zone and are uncertain about their employment status. As **labour and social rights are generally significantly different between employees/workers and the self-employed at EU level and in the Member States**, this **unclear employment status** is a **key challenge**.

The Eurofound (2019b) and European Commission (2020a) studies reveal that platform workers, **regardless of their employment status**, face a number of risks related to their **contractual terms and working conditions**. The authors of the present study consider the **digital contracting** and **unilateral enforcement of terms and conditions governing the contractual relationship between the platforms and the platform worker** (regardless of their employment status) to be a critical challenge. The contractual terms, and changes thereof, are most often enforced with little or no consent or consultation and without pre-established notification periods. They are designed solely from the perspective of the platform business and often disregard labour, social and other contractual rights that are relevant for platform workers, such as the right to explanation and to effective legal redress, including informal dispute resolution mechanisms and mediation, protection against unfair contract interruption or termination, and protection against the non-transparent use of algorithmic management in work allocation, organisation and evaluation.

The Eurofound (2019) and European Commission (2020a) studies also find that platform workers, **irrespective of their employment status**, **are subject to higher risks of precariousness** compared to workers in standard employment and workers in non-standard work arrangements, who have a clear labour market status (e.g. the genuinely self-employed and employees working under a fixed-term, part-time of temporary agency work contract), reaffirming the results of the 2016 European Parliament study.

The main risks of precariousness for platform workers can be summarised as follows:

1. **low**, **fragmented and unstable income**, with **insufficient fall-back options during intermittence periods**;
2. **low protection of their working conditions**, **including little or no access to training and career development**;
3. exposure to particular **health and safety risks characteristic of platform work**;
4. **low social protection coverage for those risks that are particularly relevant for platform work** (work accidents, income replacement benefits in case of unemployment and sickness, and income support schemes); and
5. **very low level of collective labour rights and representation**.

Based on studies by Eurofound (2019), the European Parliament (2016) and the European Commission (2020a) and on the available literature examined for the purposes of the present study, **differences in risk exposure and relative importance of the risks of precariousness** cannot only be discerned **between the different types of employment relationship that platform workers have with the platform and/or clients**, **but also between the different types of platform work and platform businesses**.

Low-skilled online and on-location platform work is subject to **high risks of precariousness** when performed for **global profit-seeking platform businesses** by individuals who have **little or no choice** in their contractual terms and labour market status and ***little or no opportunity for recourse and representation***. The highest risks of precariousness are noted in platforms facilitating **online crowdwork**. This type of platform work is typically boundless, thus all services are provided 'cross-border', with challenges related to free movement of workers, social security coordination, taxation and undeclared work. It is also among the least researched types of platform work.

Higher-skilled platform workers also face **considerable risks of precariousness**, especially in **online platform work**. They are more likely to be (genuine) non-dependent self-employed and their risks of precariousness are connected with their employment status as self-employed, who generally have lower access and levels of protection, depending on the country.

Platform workers engaged by more **locally based or operating platforms** or by **worker-owned platform cooperatives are better protected**, as the latter can more easily ensure fair working conditions, including decent pay and income security, access to social protection, and protection against arbitrary behaviour or excessive surveillance (Scholz, 2016).

Figure 50 presents the identified **risks of precariousness and their level of importance for the four types of platform work**: *(1) low-skilled on-location, (2) high-skilled on-location, (3) low-skilled online and (4) high-skilled online.*

Figure 5: Risks of precariousness and their importance, by type of platform worker

Challenges and risks of precariousness in platform work			Type of platform worker			
			Low-skilled on-location	High-skilled on-location	Low-skilled online	High-skilled online
Unclear employment status			HIGH	MEDIUM	HIGH	MEDIUM-HIGH
Unilateral enforcement of terms and conditions and absent or unclear written contracts *Timely provision of written information on terms and conditions and on their changes; right to explanation; legal redress, including informal dispute settlement and mediation; contract interruption and termination; algorithmic management and automated decision-making*			HIGH	MEDIUM-HIGH	HIGH	MEDIUM-HIGH
Risks of precariousness						
(i)	**Income (out of work)** *Wages (employees or workers) – earnings/fees (self-employed)*		HIGH	MEDIUM	HIGH	MEDIUM
(ii)	**Working conditions**					
	Working time, work intensity, speed pressure		HIGH	MEDIUM-HIGH	HIGH	MEDIUM-HIGH
	Training and career development		HIGH	MEDIUM-HIGH	HIGH	MEDIUM-HIGH
(iii)	**Health and safety** *Information, protective gear, equipment, risk assessments, training and enforcement*		HIGH	MEDIUM	MEDIUM-HIGH	MEDIUM
(iv)	**Social protection**					
	Work accidents and professional diseases		HIGH	MEDIUM-HIGH	MEDIUM-HIGH	MEDIUM
	Short term risks *Income replacement in case of unemployment, sickness*		HIGH	MEDIUM-HIGH	HIGH	MEDIUM-HIGH
	Long term risks *Income replacement in case of invalidity, old age, long term care*		HIGH	MEDIUM	HIGH	MEDIUM
	Family and child benefits *Cost-covering schemes*		MEDIUM-HIGH	MEDIUM	HIGH	MEDIUM
	Minimum income schemes *Protection in case of no sufficient financial resources*		HIGH	MEDIUM-HIGH	HIGH	MEDIUM-HIGH
	Work-life balance *Maternity, paternity, parental and carer's leave schemes and benefits*		LOW-MEDIUM	LOW	MEDIUM	LOW-MEDIUM
(v)	**Representation - collective rights**		MEDIUM-HIGH	MEDIUM	HIGH	MEDIUM-HIGH

Source: Authors' own elaboration.

Low-skilled online platform workers are exposed to **high risks of precariousness across all dimensions**, in particular low-income security and protection, working conditions including training and career prospects, low access and levels of social protection, particularly for the (short-term social) risks of illness and unemployment, and with very low access to collective rights and representation. **Low-skilled on-location platform workers** face similarly **high risks of precariousness** across **almost all dimensions** except health and safety. Protection against work accidents is of particular concern for this type of platform worker, who in practice have already benefited from collective actions, and had their employment status clarified by law or through litigation in some Member States. The importance of the risks of precariousness for the **high-skilled on-location and high-skilled online platform workers** is slightly lower and more varied compared to their low-skilled peers. Low income and income protection in general, but also short-term unemployment and sickness periods, and working conditions, such as access to training and career development, remain of considerable concern, while for the high-skilled on-location platform workers, protection against work accidents and professional diseases is particularly relevant. **All types of platform workers** are prone to exploitation, due to the general terms and conditions used in platform work practice, which most often unilaterally enforce freelance status, while remaining vague on key conditions, and also due to management practices that allocate, organise and evaluate work assignments based on algorithms and automated decisions.

4. CURRENT EU POLICY FRAMEWORK

4.1. Overview of recent EU actions

Various initiatives were launched at EU level in recent years[68] that are of relevance for the **platform economy in general** and for **platform work in particular**, with links to both the **Digital Market Strategy** and the **European Pillar of Social Rights**.

In response to **digital transformation**, several **legislative initiatives** at EU level in recent years have **relevance for the wider platform economy**, such as the General Data Protection Regulation (GDPR)[69], the Regulation on the free flow of non-personal data[70], and the Directives on contracts for the supply of digital content and digital services (such as streaming or social media)[71] and on contracts for the sale of goods (e-commerce)[72], protecting the rights of online consumers.

Of particular interest is the **P2B Regulation** on promoting fairness and transparency for business users of online intermediation services, which was adopted in summer 2019, and which aims to regulate the online intermediation services provided by platforms, with a view to facilitating transactions between business users and consumers (see infra).

On 19 February 2020, the Commission launched its European Digital Strategy, including the **EU Data Strategy**[73] and its **White paper on Artificial Intelligence** (AI)[74] as part of its strategic ambition to become a global leader in digital transformation. The Commission confirmed the adoption of a **Digital Services Act** that will strengthen the responsibility of online platforms and clarify the rules for online services (European Commission, 2020b).

The **European Pillar of Social Rights** was launched in 2017 as an inter-institutional initiative, with the aim of delivering new and more effective rights to EU citizens. It is built on 20 principles, including the right to secure employment and fair wages, access to minimum income, right to social protection and to adequate unemployment benefits, work-life balance, social dialogue and life-long learning. The European Pillar of Social Rights builds on actions in the social policy field that were initiated since the **Recommendation on active inclusion**[75] was adopted in 2008, which called on Member States to adopt integrated strategies based on three social policy pillars: adequate income support, inclusive

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[68] European institutions pointed at the need for action on platform work as early as 2016, with the adoption of the European Agenda for the Collaborative Economy, which aimed to clarify uncertainties in the rights and obligations of those participating in the collaborative economy (Cauffman and Smits, 2016; Aloisi, 2018; European Commission, 2020a) and which noted five key priorities for action: (1) market access requirement and the underlying services; (2) liability regimes; (3) protection of users; (4) labour law and worker classification and (5) taxation. The European Parliament adopted three resolutions relevant to platform work in 2017: the Resolution on a European Pillar of Social Rights of 19 January 2017; the Resolution on online platforms and the digital single market of 15 June 2017; and the Resolution on working conditions and precarious employment of 4 July 2017, drawing attention to 'the need to modernise existing labour legislation specifically for those non-standard forms of work that are at risk of precariousness', while noting that 'some parts of the collaborative economy may fall into regulatory grey areas as it is not always clear which EU regulations apply […]'.

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

[70] Regulation (EU) 2018/1807 of the European Parliament and of the Council of 14 November 2018 on a framework for the free flow of non-personal data in the European Union.

[71] Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services.

[72] Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC.

[73] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European data strategy of 19 February 2020, COM(2020) 66 final.

[74] White Paper on Artificial Intelligence, COM(2020) 65 final.

[75] Commission Recommendation of 3 October 2008 on the active inclusion of people excluded from the labour market. OJ L 307, 18.11.2008, pp. 11–14.

labour markets, and access to quality services. The **Social Investment Package** (SIP) recalled that the level of minimum income should be high enough for a decent life and identified the adequacy, coverage and non-take up of minimum income schemes as key challenges. Minimum income support, with a view to providing an adequate income via different benefit schemes (unemployment benefits, family and child benefits, pensions, disability benefits and minimum income schemes), is of particular relevance for platform work and other forms on non-standard work. In the context of the European Pillar of Social Rights, two important measures have been initiated by the European Commission that have particular relevance for platform workers' social and employment rights: the revision of the Written Statement Directive and **adoption of the Directive on transparent and predictable working conditions** (TPWC Directive) in summer 2019, and the adoption of the **Council Recommendation on access to Social Protection** in November 2019 (see infra).

In its January 2020 communication, 'A strong social Europe for just transitions', the European Commission announced the commencement of stakeholder consultation, with a view to adopting an **Action Plan for the European Pillar of Social Rights** by the beginning of 2021, the start of **consultations with Social Partners on a proposal for an EU minimum wage framework**, and the organisation of a **Platform Summit** in the second half of 2020. The Commission also confirmed the adoption of a reinforced **Skills Agenda** and **Youth Guarantee** and an **Initiative to improve labour conditions of platform workers** in the course of 2020 (European Commission, 2020b).

4.2. EU labour legislation and platform work

Employment and social policies are primarily a Member State competence, subject to the principles of subsidiarity and proportionality. The EU has, over the years, taken **legislative action**, primarily by means of a series of directives in the **field of employment** on matters such as the equal treatment between non-standard workers and standard workers in respect of working conditions, minimum standards on the written information obligation of employers, working time, work-life balance, health and safety, collective labour rights and on equal treatment on the basis of different grounds of discrimination in matters of employment (European Commission, 2020a). Some directives concern **social protection** and install minimum standards relating to maternity, paternity, parental and carer's leave or concern equal treatment on grounds of gender.

EU labour and social protection legislation generally apply only to workers (employees) and not to the self-employed, **implying that most platform workers cannot**, **in practice**, **rely on the protection provided by the EU legislation**. **Most EU labour legislation is not adapted to cope with the challenges of platform work**.

The section below presents a brief overview of the main EU legal instruments and their relevance and adequacy for platform work. The summary is based on a European Commission study (2020a), which contains a detailed analysis of the legislation concerned.

4.2.1. EU legislation on unclear contractual terms in platform work

Two very recent EU legal instruments are particularly relevant to the challenges posed by digital contracting and the unilateral enforcement of unclear/incomplete contractual terms and conditions prevalent in platform work practices.

The 2019 TPWC Directive[76], replacing the Written Statement Directive, addresses the need for **an extended written information obligation on the part of employers** and has improved the rights of (platform) workers in cases of contract termination. However, its personal scope means that it **only applies to platform workers who are in an employment relationship** with the platform or client and does not cover self-employed platform workers. Based on CJEU rulings, the TPWC Directive equally applies to bogus self-employed (platform workers) (see supra).

The Regulation on promoting fairness and transparency for business users of online intermediation services - the 'Platform to Business (P2B) Regulation'[77] – was also adopted in mid-2019 but from a very different policy angle. It introduces **transparency and prior notification of written general terms of conditions** but it is **limited to a very specific type of platform**, including purely online intermediation services, which self-employed platform workers (as 'business users') can rely on when delivering services to consumers. Platforms such as Uber, Deliveroo and others, which provide not only a mere online intermediation service but also an underlying service (e.g. personal transport, delivery services), fall outside the scope of the Regulation. Platforms facilitating self-employed (such as Upwork or AMT) are similarly outside the remit of the Regulation where they provide services to clients that are businesses (as opposed to private consumers).

While the TPWC Directive addresses the need for an extended written information obligation (Article 5) on the essential aspects of the employment relationship (Articles 3 and 4) within certain time delays (Article 6), and improves workers' rights in cases of contract modification and termination (Article 18), it only applies to platform workers with an employment contract or relationship, not to the self-employed. The P2B Regulation on the other hand introduces transparency and prior notification of the written terms and conditions during all stages of the contractual relationship (Article 3), even before actual commencement of services, while modifications have to be notified allowing for a 15-day delay (Article 3(2) and Article 8(a) P2B Regulation). The Regulation also requires prior notification in cases of suspensions or termination (Article 3(1)(c), Article 4 and Article 8), and it foresees internal complaint-handling mechanisms, mediation and judicial proceedings (Articles 11-14). However, the P2B Regulation only applies to very specific platforms that provide purely online intermediation services (information society services) for business users, requiring a professional status such as a self-employed capacity or legal personality. The Regulation does not apply to platform workers under an employment contract (e.g. Uber drivers, Deliveroo riders) or to platform workers who deliver their services to businesses, such as in crowdwork (see European Commission, 2020a for detailed analysis).

Box 14: The TPWC Directive and P2B Regulation in the context of platform work

In reality, therefore, in spite of the legislative progress, **most platform workers lack protection when it comes to transparent and mutually pre-agreed or timely notified contractual conditions (including later amendments), as well as lacking access to adequate administrative or legal redress and fast out-of-court dispute resolution mechanisms in cases of unilateral decisions enforced by the platforms, as they cannot rely on either the TPWC Directive or the P2B Regulation**.

Source: Authors' own elaboration based on European Commission (2020a).

[76] Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L186/105 11.07.2019).

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

4.2.2. EU legislation and the employment status of platform workers

As noted, the EU labour directives do not contain a definition of the concept of worker or employee and most often refer to national legislation for that definition, while the CJEU has, through its case-law, gradually developed a European concept of 'worker'. Most recent EU labour directives[78] now explicitly refer to the CJEU case-law concerned with the concept of 'worker' in defining their personal scope of application. The CJEU has clearly ruled that bogus self-employment should be considered within the personal scope of the directives concerned. While the latter requires actual enforcement to ensure that platform workers wrongly contracted as freelancers are effectively reclassified and can enjoy their labour rights, **dependent self-employed platform workers and the genuinely self-employed** have **no similar labour or social protection guaranteed by EU legislation**.

Even if **platform workers who have an employment relationship** with the platforms or clients fall within the personal scope of the EU labour directives, compared to standard full-time permanent workers, they are **insufficiently protected** in many ways. The **current concepts**, **material provisions and enforcement modalities of EU non-standard work directives on part-time**, **fixed-term and temporary agency work and other key EU labour legislation are insufficiently adapted to the working environment and platform work practices and do not ensure adequate protection for platform workers** (European Commission, 2020a; Garben, 2019a).

The recent **TPWC Directive**, which has to be transposed by Member States by August 2022 and which applies to workers who have an employment contract or relationship, is a first step towards bringing workers in precarious work situations within the scope of EU labour law by drastically **reducing the possibility of Member States to exclude certain categories of workers** (e.g. casual work or work of very short duration) and by ensuring that **workers who have no guaranteed working time or hours**, such as zero-hour contracts and some on-demand contracts **are covered by the provisions of the Directive**, regardless of the number of hours actually worked (Piasna, 2019; Bednarowicz, 2019a; Bednarowicz, 2019b; European Commission, 2020a). Both dimensions (the limitation of possible derogations for casual work and the inclusion of workers with unpredictable working time within the personal scope) are important considerations when labour legislation is being updated in order to take account of the newest types of work arrangements contained in an employment relationship.

4.2.3. EU legislation on working conditions and health and safety in platform work

Several EU Directives ensure **equal treatment in terms of working conditions** (including remuneration) between **certain categories of non-standard workers** (fixed-term, part-time and temporary agency work) **and workers in full-time permanent employment**[79]. The European Commission study (2020a) reveals, however, that in spite of their potential relevance (prohibition of unfair dismissal, access to training and career development, prevention of abusive practices), their practical use for platform workers is very limited. They apply solely to workers and not to the self-employed, use legal concepts such as part-time and fixed-term work that do not fit with platform work practices (which often resemble open-ended (framework) contracts with no explicitly agreed permanent character and no obligation to allocate or accept work) and allow for substantial

[78] Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L186/105 11.07.2019); Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 188, 12.7.2019, pp. 79–93).

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

derogations by Member States under the Part-time and Temporary Agency Work Directives. The Temporary Agency Work Directive is only relevant where the client is a potential employer (such as in crowdwork) and not a private consumer, as is often the case in platform work (European Commission, 2020a).

The **Working Time Directive**[80] is highly relevant to platform work but only applies to workers in an employment relationship and uses legal concepts that do not match well with platform work practices. Again, Member States can easily derogate from its provisions (European Commission, 2020a). **EU Health and Safety Directives**[81] apply only to workers in an employment relationship and not to self-employed platform workers, while their provisions on information obligations, risks assessments and training are not fit for platform work practices (European Commission, 2020a).

The recent **TPWC Directive** clarified - to some extent - the concept of worker, ensuring the inclusion of platform workers who have an employment contract or relationship. It also advanced the **labour protection of workers** in terms of the **documented and timely information obligation of an enlarged list of essential aspects of the employment relationship** by employers, while incorporating specific **provisions that are relevant for platform workers**, **such as those that are applicable when work is entirely or mainly unpredictable**, including a minimum notice period for the allocation of tasks, the right to refuse and to compensation. The Directive equally installs the right **to parallel employment**, contains **provisions preventing abusive practices** relating to on-demand contracts, and provides **protection in cases of dismissal or equivalent** (European Commission, 2020a). However, the TPWC Directive does not apply to self-employed platform workers, and some conditions or dimensions that are specifically **relevant for all platform workers were not included in the material scope of the Directive**, such as the information obligation on certain aspects of the employment relationship, access to out-of-court mediation, or the application of the concept of dismissal (or equivalent) to specific platform approaches (European Commission, 2020a).

EU non-discrimination legislation ensures equal treatment on the grounds of gender, race, religion, age, disability and sexual orientation in matters of pay (which sometimes includes social benefits) for workers. The legislation applies solely to workers in an employment relationship and is not adapted to the triangular platform work relationships, thus has little practical relevance here (European Commission, 2020a).

4.2.4. EU legislation on collective rights in platform work

The **EU Directives** concerned with collective labour rights[82] (information and structured consultation of workers in larger companies or in companies that operate on an EU-wide scale, protection against collective redundancies and in cases of employer insolvency) apply to platform workers under an employment contract only. They all have high relevance for platform workers of all types, irrespective

[80] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, pp. 9–19).

[81] Examples are Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (OJ L 206/19 of 29.07.1991) and Council Directive 92/85/EEC of 19 October 1992 (OJ L 348/1 of 28.11.1992) on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

[82] Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 080, 23/03/2002, pp. 29-34); Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast) (OJ L 122, 16.5.2009, pp. 28-44); Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ L 225, 12.8.1998, pp.16-21); Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (Codified version) (OJ L 283, 28.10.2008, pp. 36-42).

of their employment status, especially when platforms operate globally but their provisions appear **insufficiently**, **or not at all**, **adapted to the platform work's digital business environment** and face **enforcement challenges** (European Commission, 2020a)

4.2.5. EU legislation on the risk of social protection in platform work

EU legislation on social protection remains very limited, as social protection is considered a shared competence between the EU and Member States, subject to the subsidiarity and proportionality principles.

The recently adopted **Council Recommendation**[83] on access to social protection for workers and the self-employed established minimum standards for the coverage, adequacy and transparency of some branches of social protection. Although it takes account of the growing diversity of employment relationships (including platform work) and introduces provisions that have relevance in terms of the preservation and transferability of social protection rights for atypical professional careers, the Recommendation remains a soft instrument, with **limited practical or direct impact** on the advancement of social protection rights of (mainly self-employed) platform workers, as a primarily Member State competence (European Commission, 2020a).

The 2019 **Work-life Balance Directive**[84], which must be transposed by Member States by August 2020, strengthens and/or introduces minimum requirements for parental leave, paternity leave and carer's leave, while introducing flexible working arrangements for workers who are parents and carers. Maternity leave is guaranteed by the (older) Pregnant Workers Directive[85] (and some non-discrimination directives)[86]. The Work-life Balance and Pregnant Workers Directives apply to workers with an employment contract and not to the self-employed, and pose **many enforcement challenges** when applied to platform working arrangements and practices, such as allowing Member States to make access to parental leave subject to long **minimum qualifying periods** that are difficult to attain for small-scale or fragmented platform work. In reality, most platform workers cannot rely on the protection provided by the EU legislation concerned, due to their self-employed status.

[83] Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019/C 387/01 of 15.11.2019).

[84] Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 188, 12.7.2019, pp. 79-93).

[85] Directive 92/85/EEC on safety and health at work for pregnant workers (OJ L 348/1 of 28.11.1992).

[86] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ L 204, 26.7.2006, pp. 23-36) and Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (OJ L 180, 15.7.2010, pp. 1-6).

5. VIEWS OF EU SOCIAL PARTNERS, PLATFORM WORKERS AND PLATFORMS

At EU level, **social partners** and **multinational platform businesses** have become actively involved in the public policy debate on the platform economy and on platform work, through policy papers and statements, research, and participation in EU public consultation processes.

Platforms workers' interests at EU level are increasingly taken care of by workers' representative organisations, which have actively tried to broaden their membership and representation base to workers in non-standard forms of work. ETUC's action programme 2019-2023 calls for a major trade union renewal, specifically aiming to include 'those who are now excluded from rights and protection, such as young and precarious workers, self-employed and platform workers, workers in the informal economy, women, migrants and mobile workers and [….] people affected by any form of discrimination […]'[87]. Other recent initiatives at international level also aimed to provide a collective voice to workers in non-standard work, such as the UNI Global Union, which was set up in 2018 and represents platform and temporary agency workers in the skills and services sectors (among others) at global level. UNI Global Union strives for decent jobs and the protection of workers' rights, including the right to join a union and collective bargaining. UNI concluded about 50 global agreements with multinational companies, which include fair work standards. Among these companies, some are operating in the temporary work business sector (e.g. Randstad and Manpower), with considerable similarity with the operations of online work intermediation platforms.

Very few **global platforms** joined employers' representative bodies at EU level. The exception is Uber, which joined BusinessEurope and the International Association of Public Transport (UITP)[88]. Multinational platform businesses have, however, issued many position papers on relevant topics, including the working conditions of platform workers, in their own names, through affiliated think tanks, and trade associations, and more recently, under the umbrella of the World Economic Forum, which has adopted a Charter of principles for good platform work, that was signed by Cabify, Postmates, Grab, Deliveroo, MBO Partners and Uber Technologies, Inc.

5.1. Workers' representation - ETUC

On several occasions, ETUC voiced its concerns about the practices of globalised platform businesses, which are affecting negatively the working conditions of workers in the traditional economy. ETUC pointed to the consequences of increasing low-cost labour competition between digital and traditional businesses and pleaded for **a level playing field**, **respecting minimum protection of all workers regardless of their employment status**. ETUC is also concerned about the **growing shadow economy**, **illicit work and digital precariousness** due to the rapid increase of **crowdwork and cloud working**[89].

[87] See ETUC action programme 2019-2023, available at: https://www.etuc.org/sites/default/files/page/file/2019-05/Action%20Programme%20portrait%20EN%20Finale.pdf.

[88] EDiMA was set up by 15 online platforms, including Airbnb, Amazon, Google, Apple, Facebook and others, as a European Trade Association.

[89] For more on ETUC's position, see: https://www.etuc.org/en/document/etuc-resolution-digitalisation-towards-fair-digital-work.

ETUC is in favour of **more regulation at EU level** on the **functioning of online platforms** and on **workers' rights**, specifically addressing crowd and platform employment[90]. ETUC observes that a small number of countries host the majority of platform businesses (employers), requiring reinforcement of the existing regulatory framework or new rules where necessary. ETUC has repeatedly requested to check the applicability of the Temporary Agency Work Directive and other EU labour legislation to the platform economy.

ETUC **favours new inclusive definitions of the concepts of 'worker' and 'employer'** at EU level and believes the non-recognition of economic subordination to be problematic[91]. It has called for action to **end the misclassification** of platform workers and for the extension of **collective agreements** and **(statutory) minimum wage coverage** to precarious, non-standard, platform and self-employed workers.

ETUC proposes the adoption of an EU framework on crowdworking, preventing **minimum pay rates** from being undermined or circumvented by platform businesses. Advertising or facilitating work at rates lower than minimum wage and the practice of platforms taking percentage of platform workers' pay should by outlawed, as they are grossly unfair and contrary to decent work principles[92]. The framework should regulate **working time**, **access to occupational training programmes** and **social protection**, including pensions. The ETUI policy brief points to the growing need for laws and **regulations that would limit** the incidence, magnitude and consequences of working **unpredictable and irregular working hours** (Piasna, 2019).

In its Resolution on digitalisation ('towards fair digital work'), ETUC observes 'the increasing use of new technologies and means of electronic communication in the relation between employers and workers, which is raising many questions concerning **workers' privacy** and the risks lying in new possibilities of **monitoring and surveillance**'. ETUC believes that the use, processing and storage of data in the employment relationship needs to be underpinned by principles that avoid infringements of workers' fundamental rights, in particular the right to a private life. It is essential that data processing at work is necessary, proportionate, transparent and non-discriminatory, and the worker must have a right to access their data. ETUC holds that the GDPR at European level does not sufficiently cover the details of data protection in the field of employment and proposes a specific **Directive on privacy at work** at European level, based on respect for human dignity, privacy and the protection of personal data[93]. In its statement ahead of the Commission proposal for an EU Industrial Strategy, ETUC indicated that 'the Commission's proposal should also make sure that workers are protected from the potential **risks brought by artificial intelligence and automation processes**. Ensuring the effective consultation of workers and guaranteeing the 'human in command principle' will be necessary to prevent the rise of health and safety risks, alienating tasks and abuses in management and HR processes. The use of AI (artificial intelligence) applications in relation to employment issues and impacting workers lives should be regulated by law to guarantee the protection of fundamental rights such as equality,

[90] For ETUC's position on the European Commission public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy, see: https://www.etuc.org/en/document/etuc-resolution-tackling-new-digital-challenges-world-labour-particular-crowdwork.

[91] ETUC press release, available at: https://www.etuc.org/en/pressrelease/protect-platform-workers-well-businesses-says-etuc.

[92] ETUC's position on the European Commission's public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy, available at: https://www.etuc.org/en/document/etuc-resolution-digitalisation-towards-fair-digital-work.

[93] ETUC, 'Towards Fair Digital Work', available at: https://www.etuc.org/en/document/etuc-resolution-digitalisation-towards-fair-digital-work.

non-discrimination, privacy and protection against intrusive surveillance technologies'[94].

According to ETUC, **health and safety** at work is a fundamental right for all workers, irrespective of their employment relationship or the kind of business model they work within (including digital platforms, e-commerce and crowdwork). ETUC favours the **adoption of EU directives on musculoskeletal disorders and psycho-social risks** and the further implementation of the European Social Partner Agreements on the Prevention of Work-Related Stress and Violence and Harassment at Work at national and European level, as well as at cross-sectoral and sectoral level[95].

On representation and collective voice of platform workers, ETUC strongly supports **the collective organisation of self-employed** workers and is in favour of 'pushing for competition laws to allow self-employed and freelance workers the right to bargain collectively as guaranteed by the Charter of the Fundamental Rights of the EU, the European Social Charter, the European Convention of Human Rights and the ILO Conventions'[96].

ETUC advises **strengthening information and consultation** in the shaping of digitalisation strategies within companies. New digital business practices and the introduction of new information and communications technology (ICT) at work must be monitored in consultation with employees' representatives.

ETUC is in favour of **extending the existing EU regulatory frameworks on the information and consultation** of workers' representatives to platform businesses. It has also called on its members to actively explore ways to conclude **transnational company agreements** (TCAs) **in the different fields of digitalisation**, 'to ensure that common rules are established and respected throughout the whole company and value chain, covering, for example, the involvement of workers' representatives in the introduction of new information and communications technology (ICT), adequate rules on data protection, Big Data, excluding performance or behavioural checks or remote controls, private and operational use of internet (voluntary 'mail on holiday', out-of-office or holiday replacement, mobile device management, the right to disconnect), use of social media, as is already the case in many national company agreements'[97].

ETUC pleads for effective, adequate and sustainable **social protection systems** for all workers and the self-employed. These should take account of the millions of workers who suffer from low-paid, atypical work or lack of employment, and ensure compensation for contribution gaps arising from involuntary unemployment, discontinued careers and periods of care and training. Statutory redistributive mechanisms must be promoted based on public co-financing, solidarity and risk-sharing, while adequate minimum benefits must be provided[98]. ETUC similarly asks for a reassessment of unemployment benefit schemes and for common minimum standards in the field of unemployment insurance.

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94 See full ETUC statement at: https://www.etuc.org/en/document/etuc-statement-ahead-commission-proposal-eu-industrial-strategy, quotation: p. 5.

95 ETUC action programme 2019-2023, available at: https://www.etuc.org/sites/default/files/page/file/2019-05/Action%20Programme%20portrait%20EN%20Finale.pdf.

96 *ibid.*, p. 74.

97 ETUC, 'Towards Fair Digital Work', available at: https://www.etuc.org/en/document/etuc-resolution-digitalisation-towards-fair-digital-work, p. 10.

98 ETUC action programme 2019-2023, available at: https://www.etuc.org/sites/default/files/page/file/2019-05/Action%20Programme%20portrait%20EN%20Finale.pdf.

5.2. Employers' representation - BusinessEurope

BusinessEurope has pointed to the new opportunities that the collaborative economy has created for innovative business models, but asks for a **level playing field** for traditional and new business models. Existing EU regulation is often outdated and a consistent European approach is needed, particularly in the context of the **application of taxes**, **health and safety**, **social security** and **employment**[99]. BusinessEurope observes that 'the EU role is particularly important to avoid divergent approaches at national level, which are already creating fragmentation within the Single Market. In order to achieve a level-playing field and allow companies to scale-up, innovate and bring growth to the EU digital economy, it is essential to minimise divergent national (and local) regulatory approaches. At the same time, national practices and legislation which are currently well-functioning and established in Member States should not be undermined'[100]. BusinessEurope is of the opinion that EU regulatory approaches and policy action on the platform economy should address the changes without stifling innovation and the development of new business models, and take an approach that is sufficiently flexible to reflect the differences between business models and respect fair competition[101]. The adoption of codes of conduct (though collaboration between industry, governments and civil society) could, in many instances, be an effective way to address concerns in fast-moving markets[102].

On various occasions, BusinessEurope, SMEUnited, and national employers' organisations (such as the Dutch employers' organisation, VNO-CNW[103] and the German employers' organisation, BDA[104] strongly **opposed the adoption of an EU-wide definition of 'worker' or 'employee'**[105], as it would not be able to capture different situations in business practices and in Member States' definitions, and would lead to more rigidity. 'Introducing an EU definition would lead to legal uncertainty, as the interpretations developed in national case law could become irrelevant. Any EU definition would necessarily create clarification issues, triggering EU jurisprudence over the coming years'[106]. BusinessEurope believes that in some cases it may be unclear whether people working through sharing economy platforms should be considered employees of that platform or self-employed, but is in favour of the national definitions adapted over the years in law, collective agreements and jurisprudence taking into account new forms of work and changes in national labour law and social security. There is no one-size-fits-all solution and Member States have their own respective criteria to differentiate between employees and self-employment, which may differ between sectors and collective agreements, due to the way they are organised[107].

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99 BusinessEurope's position on the European Commission's public consultation on regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy, available at: http://ec.europa.eu/information_society/newsroom/image/document/2016-6/businesseurope_2016-01-05_final_businesseurope_position_on_sharing_economy-platforms-cloud_13839.pdf.

100 BusinessEurope's position on the European Commission's public consultation on regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy, see footnote 96, quotation: p. 12.

101 Business Europe position at: https://www.businesseurope.eu/sites/buseur/files/media/reports_and_studies/final_social_affairs_brochure_2019_0.pdf.

102 BusinessEurope, 'Our digital ambition: priorities for 2019-2024', available at: https://www.businesseurope.eu/publications/our-digital-ambition-priorities-2019-2024.

103 VNO-NCW news: https://www.vno-ncw.nl/news-europa/het-omvangrijke-pakket-aan-voorstellen-van-de-europese-commissie-op-sociaal-terrein-de.

104 BDA, EU-Nachweisrichtlinie: Vorschlag zur Neufassung erschüttert Grundfesten nationaler Systeme, 19 April 2018. Available at: https://www.schulewirtschaft.de/www/arbeitgeber.nsf/id/AXYBKG-de_eu-nachweisrichtlinie.

105 BusinessEurope, Position Paper on the Commission Proposal of a Directive on Transparent and Predictable Working Conditions, available at: https://www.businesseurope.eu/sites/buseur/files/media/position_papers/social/2017-12-08_pp_written_statement.pdf.

106 *Ibid.*, p. 4.

107 *ibid.*

BusinessEurope is **opposed to EU legislation on minimum wages** and considers that wage-setting is best taken care of by social partners at national level[108]. In its position paper on the proposal for a Directive on TPWC, BusinessEurope stated that **minimum labour rights** of workers - such as on probation periods, working time schedules, parallel employment or training - should not be regulated at EU level but are best dealt with at national, sectoral or company levels, including in collective agreements[109].

BusinessEurope believes that it is **up to the social partners**, respecting the different industrial relations systems, to decide if and how **to tackle the issue of representation of workers** engaging in new forms of work, and whether and how they need to adapt to carry on fulfilling their mission to collectively represent employers' and workers' interests and to remain relevant[110].

On **social protection**, BusinessEurope notes the need to ensure that adequate social protection systems effectively accompany changes in labour markets and take account of the existence of more diverse business models and work relationships[111]. Access to social protection needs to be improved in a sustainable way, either by extending coverage under existing schemes or creating new schemes. BusinessEurope emphasises that this must be done in full respect of national systems and the role of social partners, and taking account of the situation in terms of coverage and gaps, which varies substantially between Member States and types of work. More work is needed both at European level and in the Member States to increase the transparency, portability and/or transferability of social entitlements nationally and cross-border[112]. It believes in the importance of ensuring access for freelance workers to pension, unemployment, sickness and disability benefits[113].

5.3. Platform businesses and affiliated bodies

Global platform businesses are generally **opposed to specific or new EU legislation concerned with online platforms** and hold the view that they are not posing any additional or distinct problems to the economy compared to traditional businesses[114]. Any new EU policy or regulation should not create new barriers for trade among or between Member States and international markets[115]. Platforms strongly advocate **self-regulation or co-regulation**[116]. The global platforms generally consider existing national regulatory frameworks and labour legislation outdated and an unnecessary burden on the

[108] BusinessEurope statement available at: https://www.businesseurope.eu/publications/eu-can-only-deliver-people-if-economy-works-well.

[109] BusinessEurope Position Paper on the Commission Proposal of a Directive on Transparent and Predictable Working Conditions, avaiable at: https://www.businesseurope.eu/publications/commission-proposal-directive-transparent-and-predictable-working-conditions.

[110] See BusinessEurope position at: https://www.businesseurope.eu/sites/buseur/files/media/reports_and_studies/final_social_affairs_brochure_2019_0.pdf.

[111] BusinessEurope's response to Second phase consultation of social partners under Article 154 TFEU on a possible action addressing the challenges of access to social protection for people in all forms of employment in the framework of the European Pillar of Social Rights, available at: https://www.businesseurope.eu/publications/second-phase-consultation-social-partners-under-article-154-tfeu-possible-action.

[112] See BusinessEurope position at: https://www.businesseurope.eu/sites/buseur/files/media/reports_and_studies/final_social_affairs_brochure_2019_0.pdf.

[113] BusinessEurope's position on the European Commission's public consultation on regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy, available at: http://ec.europa.eu/information_society/newsroom/image/document/2016-6/businesseurope_2016-01-05_final_businesseurope_position_on_sharing_economy-platforms-cloud_13839.pdf.

[114] Information Technology & Innovation Foundation (ITIF), Gig Economy: Changes We Need And Changes We Don't Need, available at: https://itif.org/publications/2016/05/02/gig-economy-changes-we-need-and-changes-we-dont-need.

[115] AMChamEU views on the digital single market, available at: http://www.amchameu.eu/system/files/position_papers/views_on_the_digital_single_market_strategy_-_27_july_2015.pdf.

[116] DigitalEurope, Guidance on fairness and transparency for business users of online intermediation services and online search engines, 29 Mar 2018, available at: https://www.digitaleurope.org/resources/guidance-on-fairness-and-transparency-for-business-users-of-online-intermediation-services-and-online-search-engines/.

economy, and point to the role of the EU in clarifying how EU law should apply to the collaborative economy services[117]. AppJobber's founder, for example, states that 'We would be happy if, especially the labour laws would harmonise. For us at the moment it's a challenge to enter a new country because labour laws are national laws. It's very expensive to analyse that and to adapt our business model to that. This is of course a competitive disadvantage to the US start-ups'[118].

Global platform businesses such as Uber and Deliveroo have consistently held that their drivers and riders are **independent contractors** and not employees, as they can choose whether, when, and where to provide services on the platform, are free to provide services on competitors' platforms, and themselves provide the vehicle to perform services. Self-employment is the only labour market status that allow riders and driver of the platforms to qualify for the flexibility to organise the work and combine it with studies, other occupations, personal projects and even when providing services for other platforms[119]. Following numerous legal proceedings globally, Uber stated that 'a reclassification would imply significant additional expenses for compensating drivers, potentially including expenses associated with the application of wage and hour laws (including minimum wage, overtime, and meal and rest period requirements), employee benefits, social security contributions, taxes, and penalties' and would 'require [us] to fundamentally change the business model, and consequently have an adverse effect on the business and financial condition'[120]. In its 2018 white paper on work and social protection in Europe, Uber points to the 'perverse incentive' in national employment legislation of many EU Member States, meaning that the more a platform is doing to protect those using its app to find clients and work, the more it is likely that they are seen as employee, putting at risk the very flexibility and independence that the model is providing to its drivers and riders'[121]. This view is shared by Deliveroo[122].

In the already mentioned 2018 white paper on work and social protection in Europe, Uber confirmed its belief that all workers have **the right to fair working conditions** and its opposition to precarious and exploitative forms of work. Uber states that 'the best tool to combat these forms of work is by empowering individuals to take control of their work. While many forms of so-called flexible work can in fact leave little control and flexibility for the workers, services like Uber empower self-employed drivers and couriers to find clients, and choose if, when and where to work. And because there is no exclusivity or minimum commitment, if they are not satisfied with what we provide, the app allows partners to leave at any time without penalty'.

On **rating systems**, online platforms consider 'the user-generated reviews and ratings as having an important role in helping consumers to make informed decisions when consumers are looking to purchase services online as well as offline. They ensure that consumers can make quicker and confident decision which further boosts competition between businesses offering services, and allows for new enterprises and small businesses to enter, compete, expand and build their reputation within a

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117 Uber's position on the European Commission's public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy, available at: http://ec.europa.eu/information_society/newsroom/image/document/2016-7/uber_14043.pdf.

118 AppJobber statement available at: https://www.youtube.com/watch?v=Zommqy90A18&list=PLGI5zHT2w7jA5nK_qafDJ6sP9FmdXsWxU&index=7.

119 ADigital: https://www.adigital.org/media/propuesta-regulatoria-plataformas-digitales.pdf.

120 'Uber claims new California law still won't force it to classify drivers as its employees', online article in NBC Palm Springs, 11 September 2019 available at: https://nbcpalmsprings.com/2019/09/11/uber-claims-new-california-law-still-wont-force-it-to-classify-drivers-as-employees/.

121 See Uber's white paper at: https://ubernewsroomapi.10upcdn.com/wp-content/uploads/2018/02/Uber-White-Paper-on-Work-and-Social-Protections-in-Europe.pdf, p. 6, 27.

122 Deliveroo's written contribution to the European Commission's public consultation on access to social protection, available at: https://ec.europa.eu/social/BlobServlet?docId=19094&langId=en.

market'[123].

Uber has expressed its belief that independent workers can benefit from **collective organisations** such as IPSE in the UK 'who advocate on behalf of independent workers (e.g. for tax reforms), provide advice and support (e.g. on how to set up a business) and can negotiate preferential rates for their members (e.g. for insurance)'[124].

In its 2018 white paper on work and social protection in Europe, Uber pleads for **accessible, affordable and reliable social protection that is more neutral on employment status** and for an extension of **social protection to all those engaged in independent work**. Everybody should have access to basic levels of social protection, while the portability of entitlements and protection will become increasingly important. Contributions should be proportional to the work and earnings[125]. Deliveroo calls for voluntary schemes for independent contractors or for Member States to 'create a wholly new category of employment which would provide a level of security while at the same time allowing companies to calculate entitlements based on service delivered. This could provide those who fall into this new category with both security and a highly flexible relationship'[126] (p. 6).

[123] EDiMA (online platforms trade association) response to the European Commission's public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy, available at: http://ec.europa.eu/information_society/newsroom/image/document/2016-7/edima_13916.pdf, p. 9.

[124] Uber's white paper on work and social protection in Europe is available at: https://ubernewsroomapi.10upcdn.com/wp-content/uploads/2018/02/Uber-White-Paper-on-Work-and-Social-Protections-in-Europe.pdf.

[125] *ibid.*

[126] Deliveroo's written contribution to the European Commission's public consultation on access to social protection.

6. MITIGATION POLICIES AND RECOMMENDATIONS[127]

6.1. Mitigation policies suggested by OECD and ILO

Both **OECD** and **ILO** have promoted global strategies aimed at tackling the various challenges of the platform economy. Each approaches platform work as part of a **broader global trend towards digitalisation in the economic and labour markets**, in which multinational digital businesses are increasingly prevalent. Both emphasise the need to ensure adequate social protection, labour and collective rights, and access to training for all workers, regardless of their employment status. While ILO primarily considers working conditions and social protection, OECD looks more broadly at economic and taxation policies as well.

In the broader context of the platform economy in a globalised context, the work on **new international corporate taxation rules for the digital economy** becomes fundamentally important. This work was conducted in the frame of the **OECD/G20** (Inclusive Framework on Base Erosion and Profit Shifting - BEPS), in which the **EU** has played a prominent role. At the end of January 2020, an outline for the architecture of such a new taxation regime was adopted, with a view to addressing tax avoidance by multinational enterprises. By the end of 2020, global consensus is envisaged on the technicalities for a unified approach that will establish **new taxation rights for national jurisdictions** in cases where companies (including digital labour platforms) are not physically but virtually present and rely on local consumers for their business. The new rules will clarify where and on what basis corporate taxes will have to be paid in transnational situations, while simultaneously establishing profit allocation rules among the different jurisdictions to avoid double taxation. **The EU has been at the forefront of this major international reform**, which largely aligns with the European Commission's 2018 proposal for a long-term solution to corporate taxation (based on the concept of a digital permanent establishment or presence). Reaching consensus by the end of 2020 is imperative in order to avoid Member States introducing varying national taxation solutions that could create obstacles in the internal market. At the same time, the **OECD** is preparing Model Rules for Reporting by platform operators on their transactions and income, as well as a framework for automatic exchange of information between national tax administrations.

Under the global Future of Work Initiative, the OECD calls for the adoption of a '**whole-of-government transition agenda for a Future that Works for all**', pointing to the need to overhaul existing policies and institutions that are inadequate in improving conditions for non-standard workers, including platform workers and those who need it most. In its **2019 Employment Outlook**, the OECD emphasises that 'such an agenda would need to adopt a life course approach, covering education and skills, public employment services and social protection, but also labour market regulation, taxation and even housing, transport, competition law and industrial policy' (OECD, 2019a, p.16). Such a holistic approach requires a combination of coping mechanisms and preventive measures. The OECD proposes a multi-layered approach, with the following components:

- **Address the key challenge of unclear employment status**, ensure correct classification of workers and reduce the grey zone between dependent employment and self-employment by adopting clearer and more harmonised definitions of employment status and increasing law enforcement to tackle abuse by firms or workers;

[127] A separate policy briefing on mitigating risks has been published beforehand. It summarises selected results: Hauben, H., Lenaerts, K and Kraatz, S., Platform economy and precarious work: Mitigating risks, Briefing for the committee on Employment and Social Affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020, available at: http://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652721/IPOL_BRI(2020)652721_EN.pdf.

- **Extend certain labour rights and protections** to non-standard workers - including the self-employed - in particular in the areas of fair pay, working time, occupational health and safety, anti-discrimination and some forms of employment protection;
- **Rebalance the bargaining power** between employers/clients and workers (including the self-employed);
- **Adopt a comprehensive adult learning strategy**, paying specific attention to non-standard workers;
- **Reshape social protection provisions**, with a focus on boosting the portability of entitlements, making means-testing more responsive to workers' needs and changing situations, and introducing more universal support complementing targeted measures; and
- **Address abuses of monopsony power in labour markets** and situations where few companies are in a position to fix prices for purchases and work, by means of better regulation and enforcement.

The **ILO's Global Commission** calls for a **human-centred agenda for the Future of Work**. This requires a strong commitment from governments and social partners, together with more systemic working relations with the World Trade Organisation (WTO) and Bretton Woods Institutions, with emphasis on fair fiscal policy and the need to reinforce international cooperation to fight tax evasion and increase transparency. To address the challenges posed by the platform economy, the ILO proposes **several pathways for action** (ILO 2019a):

- Establishing a **Universal Labour Guarantee** for all workers, regardless of their contractual arrangement and employment status, ensuring minimum workers' rights, an adequate living wage, limits on maximum working hours and protection of health and safety at work;
- Adoption of an **international governance system for digital labour platforms**, requiring platforms (and clients) to respect certain minimum rights and protections for all of their workers. The governance system could contain the infrastructure to facilitate payments of social security across borders and establish a system of dispute resolution;
- Adopting a **human-in-command approach** to AI, ensuring that final decisions affecting work are taken by human beings and adopting rules on the use of data and algorithmic accountability in the world of work;
- Ensuring **freedom of association** for all workers, including the self-employed and those in the informal economy, and collective representation of platform workers;
- Universal entitlement for **lifelong learning** that enables people to acquire skills, re-skill and upskill; and
- Provision of **universal social protection schemes** for life, based on social protection floors that guarantee a basic level of protection to everybody in need, complemented by contributory social insurance schemes providing increased levels of protection.

Some of these initiatives are echoed in the 2019 report by the European Commission's **High-Level Expert Group on the Impact of the Digital Transformation on EU Labour Markets** (European Commission, 2019a):

- Digital single window for employment contributions and taxes for self-employed people working for online platforms, with automated standardised reports on income and earnings to be produced by platforms for national tax authorities;

- Redistribution of the value of digital ownership by treating data shared by platform workers as either capital, labour or intellectual property and thus compensable. Development of an adequate system of compensation (in the form of a digital tax, remuneration or payment for the use of intellectual property rights), creation of an EU market for data and design of an adequate system of taxation or compensation for the use of data provided by individual platform workers and consumers;
- Digital labour platforms to provide their workers with the necessary documentation, such as certificates of experience and income;
- Prevention of occupational health and safety risks, such as mental health and stress-related issues, through employee assistance programmes and awareness-raising;
- New forms of more direct, real-time social dialogue at the level of individual companies and labour market intermediaries, involving platforms and online forums as a complementary mechanism to more formal institutionalised social dialogue;
- Equalising administrative treatment of workers with different work arrangements;
- Scaling-up of career counselling and the creation of innovative learning environments, such as communities of practice; and
- Neutral social protection that is independent of employment status, ensure the portability of social benefits and create an under-employment insurance or social insurance that addresses fluctuating and episodic income and universal benefits for platform workers.

6.2. Recommendations to mitigate risks from selected research

This literature study is focused on **precariousness in platform work facilitated by online work-platform businesses**, which are part of the larger, complex and fast-changing platform economy (including, for example, e-commerce businesses, search engines). Regulating the platform economy is complex, as it touches on **many policy domains** (Lobel, 2016; Garben, 2017; Devolder, 2019; European Commission, 2020a) and therefore requires **aggregated and co-ordinated interventions in the different policy domains**.

Policy responses and initiatives that focus on the labour and social protection rights of platform workers are necessarily **interlinked with these other policy domains**[128]. In platform work, this interlinkage is caused by the fact that various data are shared with the platform by both workers and clients, which then become assets of the platform businesses (affecting the free movement of data, EU data space, fair competition, personal data protection). When individuals perform work or buy services and provide their data in their capacity as a self-employed or legal person, they are considered undertakings (affecting fair competition, consumer protection, contract liability).

When considering policy action aimed at **regulating platform businesses and platform work**, consideration must be given to the very different business models that exist (Eurofound, 2018a; Eurofound, 2019b; European Commission, 2020a). One important distinction is between **profit-**

[128] A typical example of the interconnectedness between the various policy domains is the Platform to Business or P2B Regulation on promoting fairness and transparency for business users of online intermediation services, adopted in summer 2019. This new EU Regulation does not concern working conditions or social protection as such, and is thus not part of the EU labour and social *acquis*. However, its material provisions aim to regulate the online intermediation services provided by platforms between a business user (who is not a worker or employee of the platform, but an independent professional or legal person who could possibly be a self-employed platform worker) and the end consumer acting in a private capacity (not as a professional) and bears considerable similarity to the TWPC Directive applicable to an employment relationship in respect of the terms and conditions that must be respected by the platform in its contractual relationship with platform workers (European Commission, 2020a).

oriented (globalised) business models and **platform businesses that are part of the local 'sharing economy'**, such as not-for-profit platforms, platforms that aim to connect private individuals (peers), and platform cooperatives. Local online platforms matching low-skilled workers with local companies in need of workers are different from global online platforms that have acquired strong market positions, often in an expanding number of traditional (national) markets. Globalised platform businesses have **a workforce that may work in multiple national jurisdictions simultaneously and workers may move across jurisdictional boundaries** while on the job. These facets, taken together with the short-term, task-based on-demand nature of platform work often imply that online platform workers are in direct competition with each other (Johnston and Land-Kazlauskas, 2019), creating a **real 'EU wide job space' for (online) on-demand work**, where platform workers based in different Member States compete with each other for job assignments facilitated by the online platform and/or commissioned by an agent or company that is operating from any location in or outside of the EU.

The digital transformation is affecting labour markets, not only through the **growing role of platforms as intermediaries** in matching supply and demand of services but also through the increasing **digitalisation and online provision of jobs** and the **increased flexibility and diversity of working arrangements**, which require **adequate education and labour market policies and legislation**.

There is a **need for concerted policy responses**, **not only between the policy domains but also vertically between the EU and the Member States**. Policy actions can take various shapes and depend on the specific policy domain, with exclusive competence for the EU in the areas of competition, shared competence between EU and Member States in domains such as internal market, consumer protection and social policies, while in other areas the EU can only support, coordinate or complement Member States' competence such as in education and vocational training. The transnational platform economy and platform work challenges the division of powers requiring concerted action. Depending on the existence of a legal base in the Treaties, the EU can act by means of legislation or take other measures in accordance with the proportionality principle.

Table 2 presents recommendations **identified in selected research** for **possible risk mitigation pathways or strategies aimed at addressing the challenges of platform work**. These recommendations vary in terms of their scope (e.g. working conditions, internal market, competition), key initiators (EU or national governments, social partners, platforms), proposed instrument (e.g. legislative versus non legislative measures), feasibility (short versus longer term) and support among stakeholders. Most are not intended as standalone recommendations, and can - at least partially - be combined.

There is widespread consensus among stakeholders and in research that national and EU **regulatory instruments** are **inadequate**, in view of the transnational nature of platform work and outdated concept bases. The European Commission study (2020a) affirms that (older) **EU labour legislation needs to updated** for platform work practices in an employment context. The study also observes **similarities in increasing transparency and improved contractual rights** for platform workers, based on a comparative analysis of the TPWC Directive (adopted under Article 153 TFEU, applicable to workers) and the Platform to Business Regulation (adopted under Article 114 TFEU, applicable to some self-employed platform workers who provide services to consumers).

Researchers have proposed **the adoption of new EU legislation on platform work** (based on Article 153(2)(b) and Article 153(1)(b)). Options include a **specific directive on (fair working conditions in) platform work**; a **single directive on non-standard work ensuring equal treatment in working conditions with standard work**; or **an adjustment of the Temporary Agency Work Directive specifically for online platform work**.

Although targeted legislative action at EU level is necessary to tackle the risks of platform work, it may not be feasible in the short-term. **Other recommendations** have been formulated in research, such as strengthening national enforcement capacity and agencies, adoption of codes of conduct, new forms of social dialogue, targeted information and awareness-raising, and improved data collection and research. These are presented in Table 2, together with the main legislative recommendations.

Table 2: Mitigation policies proposed in selected research

Source/type of platform work/field of recommendation	Potential mitigation policies identified
Risak (2018) **All types of platform work** Unclear employment status of platform workers New directive on fair working conditions in the platform economy	Introduce a **directive** on fair working conditions in the platform economy, based on the employment chapter and Article 153(2)(b), in connection with Article 153(1)(b) TFEU, with a **broader notion of worker/employee** that considers **economic dependency** and with **a rebuttable legal assumption** that the underlying contractual relationship is an employment contract between platform worker and platform. The directive should contain provisions on (i) minimum information obligations of platforms, (ii) the establishment of the place of work as the place where the platform worker is physically performing their work, (iii) in cases where the client is not a consumer but a business, equal treatment in terms of working conditions with the workers employed by the client (similar to the Temporary Agency Work Directive), (iv) adjusted definition of working time, which includes stand-by time, (v) minimum pay rates, (vi) collective rights and (vii) other rights specific to platform work, such as the use of rating systems and the portability of social protection rights. **Guide enforcement** by expanding the indicators of employment relationship to include: controlled access to the platform, fixed prices, platform branding, platform processes payments, platform takes up quality control/provides ratings. Identify **the employer** using the **concept of a functional employer** (proposed by Prassl, 2018a; Prassl, 2018b), recognising that the function of employer can be simultaneously shared by the platform and the client (abundance of principle of one single employer) in a triangular relationship. Avoid the introduction of **an intermediate category** other than worker or self-employed in EU law.
Schuster and Rinke (2018) **All types of platform work** Unclear employment status of platform workers and working conditions New directive on platform work	Adopt a directive based on Article 153 TFEU with a view to guaranteeing basic social and legal protection of all platform workers, regardless of their employment status, and establishing a level playing field between the traditional economy and the platform economy. The draft contains the following key elements: **Rebuttable legal presumption**: The core of the directive is the legal presumption that if platform-based-work involves the provision of services, an employment relationship exists between the platform and the platform worker. This legal presumption can be rebutted by the platform. **Assessment criteria**: It must be ensured that the assessment of the rebuttable legal presumption of an employment relationship is based on the actual nature of the economic activity and not the arrangements for its performance. A list of criteria to determine the existence of an employment

Source/type of platform work/field of recommendation	Potential mitigation policies identified
	relationship is proposed, such as (i) setting remuneration levels, (ii) exercising quality control on work outcomes, (iii) use of ratings and (iv) handling communication between platform workers and clients. **Admissibility of contractual agreements**: The unequal negotiating position and power disparity between platforms and their workers, combined with the legal grey zones in the digital labour market, have led to contractual practices and working conditions that are not acceptable (e.g. remuneration below minimum standards, forms of non-monetary remuneration, unjustified incompatibility clauses, mechanisms prohibiting workers from contacting one another, arbitrary exclusion of workers from the assignment of tasks or arbitrary deactivation of a user account). **Functional distinction** between the 'place of work' and the 'place of receipt of service'. Labour and social legislation shall be the legislation of the country where the platform worker is located when providing the services, even where this is different to the place where the service is made available to the recipient. Introduction of **basic rights for platform workers** in respect of remuneration, worker protection, certificates, ratings and proof of performance, strikes and lockouts, legal redress, and protection against adverse treatment.
Countouris and De Stefano (2019) **All types of platform work** Unclear employment status of platform workers Adjustment of the concept of worker	Propose a **new legal conceptual framework** based on the idea of **personal work relationship**, which suggests that a person is a worker if they mainly provide personal labour and are not genuinely operating a business on their own account. This would better reflect the worker's position as it captures market position more precisely Dthan other indicators, such as autonomy or economic dependency.
De Stefano and Aloisi (2018) **All types of platform work** Unclear employment status of platform workers Enforcement and adjustment of the concept of worker in existing legislation	Ensure **effective enforcement** and close legal loopholes that facilitate abuse and **reinforce the binary divide between employees and the self-employed** in EU labour and social protection law. Avoid the creation of **intermediate categories** for platform work. **Use and fine-tune existing concepts of 'worker'** and **existing EU and national labour legislation** as the starting point to regulate working conditions in platform work so as to take account of the diversity of digital labour platforms (rather than adopting a single instrument for all such platforms).
Forde et al. (2017) (study for the European Parliament) Employment classification	Ensure a shift from an exclusionary approach to **employment classification** and **social protection** towards an inclusive approach that recognises emergent sources of vulnerability (such as economic dependency) alongside subordination.

Source/type of platform work/field of recommendation	Potential mitigation policies identified
	Reverse the burden of proof in determining employee status so that in cases where platform workers challenge misclassification, it is incumbent on employing entities to prove that persons carrying out paid work are not employees (rebuttable assumption).
Garben (2019a; 2019b) **All types of platform work** Unclear employment status of platform workers and non-standard work A single directive applicable to all non-standard workers who are 'workers'/employees, ensuring equal treatment with standard work	Take a **holistic approach** to combating poor-quality work and **non-standard work in general** (including platform work). Draw together the **existing EU measures in the field** (part-time and fixed term, temporary agency work) into a **single directive** based on Article 153(2)(b) TFEU in connection with Article 153(1)(b), **upgrade them** and **enlarge their scope**. Such a directive should have the specific aim of providing a solid minimum floor of all workers' rights at EU level and ensuring **equal treatment in terms of working conditions between non-standard and standard work**. This could be limited to employees or include single dependent self-employed (similar to Risak and De Stefano et.al. mentioned above).
Ratti (2017) **Online platform work and crowdwork/microtasking** Unclear employment status of platform workers and temporary agency work A single directive that is also applicable to digital labour platforms facilitating online platform work	**Extend the Temporary Agency Work Directive** to digital labour platforms intermediating **online crowdwork by interpreting and/or adjusting the concepts and definitions**. Platforms can be considered temporary work agencies 'employing the platform worker' and clients as the user firms, while the current definition of a comparable worker is sufficiently broad to include any potential or hypothetical worker occupying the same job at the client company, in order to ensure **equal treatment of the platform worker** with workers employed by the client.
Eurofound (2019b) **All types of platform work** Unclear employment status and working conditions	**Challenge the misclassification of platform workers** in cases of bogus-self-employment (thus bringing them under the umbrella of existing statuses governing the employment relationship and providing the accompanying protections and benefits) through **enforcement agencies**, such as national labour and social inspections.
European Commission study (2020a) **All types of platform work** Poor working conditions Revision of all EU labour legislation, working conditions for employees	Adjust **concepts**, **material provisions**, **enforcement modalities of the EU Directives** on **non-standard work**, **working time**, **health and safety**, **work-life balance**, **information and consultation of workers** so as to take account of platform work practices. Further **adjust the material provisions of the TPWC Directive** (recognising the right to have access to work histories, right to have access to data based on algorithmic management and automated decision-making concerning the work allocation, organisation and evaluation, extending the information obligation on certain aspects of the employment relationship that have great relevance for platform work) **and take account**

Source/type of platform work/field of recommendation	Potential mitigation policies identified
	of the more advanced rights guaranteed to some self-employed platform workers under the P2B Regulation (e.g. grounds of contract termination to be included in list of essential aspects, minimum notification period in contract termination, internal complaint handling and out-of-court dispute resolution system).
Eurofound (2020) **All types of platform work** Low income of platform workers	**Adopt national minimum wage policies** to rule out exploitative low pay and possibly limit wage inequalities (particularly among workers on the lower end of wage distribution) and to ensure a level playing field between companies.
Cherry (2019) **Online platform work: microtasking** Poor working conditions, collective rights	Treat **online crowdwork as a separate sector** similar to seafarers and take the International Maritime Convention as the inspiration to adopt a similar **international convention on crowdwork**.
Lianos et al. (2019) **All types of platform work** Collective representation and competition law	Four different scenarios are proposed, with a view to **aligning competition and labour law**. They all concern an adjustment of (the personal or material scope of) existing competition rules: (1) legislate the false self-employed exception and/or introduce in law the concept of economic dependence for a case-by-case interpretation by courts; (2) exclusion of a broader range of false self-employed from EU competition law in order to avoid social dumping, with the additional inclusion of genuinely self-employed with poor negotiation powers who are at risk of social dumping or substitution; (3) expand the definition of 'worker' under competition law; (4) introduction of the explicit possibility that collective agreements concluded by the self-employed fall outside the remit of EU competition law on the same grounds as collective agreements concluded on behalf of employees and on the condition that the self-employed are not genuine undertakings operating a business on their own account. Adoption of a guidance document on the interpretation and application of competition law to collective agreements whose terms are applicable to self-employed workers. Competition law enforcement agencies to increasingly focus on labour markets rather than just on product markets to tackle labour market power.
Johnston and Land-Kazlauskas (2019) **All types of platform work** Collective representation	**Collective agreements** are well suited and appropriate to ensure adequate working conditions and social protection for platform workers, including self-employed platform workers who work in economic dependency or under some sort of authority. Bargaining collectively to obtain fundamental labour rights complementing those that are guaranteed by EU and national labour legislation is all the more relevant for platform workers. Collective bargaining allows them to adapt working conditions to their needs in a more flexible and pragmatic and fair manner than that entailed by changing labour law.

Source/type of platform work/field of recommendation	Potential mitigation policies identified
	Develop '**tripartite agreements**'[129] **for on-demand services with a large user base**, in which the platform worker, the platform and the client (being a company) are involved, especially when larger user groups are governments, academic institutions or corporations of platform services. In cases of crowdwork, such agreements may partially resolve the current lack of clarity about the identification of the employer(s), as this role is often shared between the platform and the user company. **Multi-employer agreements** between traditional incumbents and new digital platform businesses, as a means of delivering a level playing field (in terms of competition between incumbents and digital platforms) and as a mechanism that is well-suited to the platform economy. The geographically dispersed nature of platform and on-demand work, the rapidity with which new start-ups can enter the market, and the tendency for workers to move in and out of work under one or more platforms could all benefit from set regulations applying across industries where platform work prevails.
Eurofound (2019b) **All types of platform work** Collective representation	Foster **cooperation between traditional representative bodies and new actors**, such as the platforms and associations of self-employed.
Allaire et al. (2019) **All types of platform work** Social protection	Three **possible ways to provide better social protection** coverage for platform workers: (1) introduce a universal basic income scheme for platform workers, (2) create a specific labour market category for self-employed platform workers (in countries where social protection is organised on the basis of employment status), and (3) create coverage for all workers using the flexicurity model, with universally guaranteed access to some services and social benefits, regardless of employment status.
ILO (2019a) **All types of platform work** Codes of conduct	Use the ILO 2017 **Tripartite Declaration of Principles concerning multinational enterprises and social policy** (MNE Declaration) as a starting point and guidance for global digital labour platforms to adopt **codes of conduct** and **complaint handling procedures**.
Cherry (2019) **Online platform work: microtasking** Codes of conduct	Boost corporate **social responsibility among global platforms** and adopt **codes of conduct**.
Berg et al. (2018) **Online platform work and crowdwork**	In the absence of collective bargaining agreements, **codes of conduct** could be adopted for microtasking platforms. A framework is proposed, containing 18 criteria for decent and fair microwork, and three additional criteria to adapt social protection for crowdwork. The criteria include (i)

[129] Tripartite agreements usually refer to collective agreements in which the government is involved separately to the social partners. The term has a specific meaning in this context.

Source/type of platform work/field of recommendation	Potential mitigation policies identified
Codes of conduct	clear contractual conditions, (ii) representation, (iii) fair payment, (iv) use of rating systems, (v) dispute resolution mechanisms and (vi) access to personal data.
European Commission (2020a) **All types of platform work** Other	Assess the adequacy of **EU non-discrimination legislation** in matters of employment and in access to goods and services in relation to platform work practices.
Eurofound (2019b) **All types of platform work** Other	Targeted **information provision** and **awareness-raising** on the rights of platform workers.
Pesole et al. (2019) **All types of platform work** Lack of data and methodological issue	Two strategies to tackle data collection: (i) **measuring platform work as a form of employment** (e.g. using labour force surveys) and (ii) **measuring platform work as a labour input** (e.g. by means of business statistics surveys).
OECD (2019c) **All types of platform work** Lack of data and methodological issues	Strategies to gather more and better data on platform work(ers): • Include questions about platform work in official labour force surveys, ICT usage surveys, time use surveys, income surveys; and • Combine surveys with other sources, including administrative data (e.g. from tax authorities).
Riso (2019) **All types of platform work** Lack of data and methodological issues	Strategies to gather more and better data on platform work(ers): • Enhance cooperation between national statistical offices (possibly under the leadership of Eurostat or another relevant European or international body) to establish a common approach to measurement of the platform economy and ensure better comparability of estimates; • Ad hoc online surveys should use the same wording as questions developed for official statistics, allowing comparison; • Gather information on platforms from various sources, such as administrative data, business registers or business surveys; • Make the sharing of data with public authorities mandatory, at least for the larger platform companies, but give an incentive to do so; and • Explore the use of administrative data to supplement current statistics and address shortcomings of survey-based measures.

Source: Authors' own elaboration based on European Parliament (2020).

6.3. Recommendations from the present study

This section presents recommendations from this study's authors on possible EU mitigation pathways and actions. They are structured according to two main categories: legislative measures, and softer types of policy action, some of which rely on the active involvement of the main stakeholders in the platform work economy. Although EU legislative action is undoubtedly needed to tackle the challenges and risks posed by platform work and to address Member States' variable – and sometimes contradictory - policy actions, they may not (all) be feasible in the short-term. Alternative approaches in which key stakeholders take a leading role may prove to be a more realistic option.

Any effective **European mitigating strategy will be multi-pronged and well-coordinated between the various levels of authority and across different policy fields**. More **uniform concepts** of platform work and online work intermediation platforms are required as the basis for more **adequate data collection** and monitoring and targeted policy action.

6.3.1. Legislative measures

a. Digital Services Act

The introduction of a new **international corporate taxation** regime for multinational enterprises proposed under the OECD/BEPS umbrella is based on (1) a common methodology to define where and on what basis company profits of digital businesses should be taxed in jurisdictions where clients and users are based, and (2) a system designed to ensure that multinational companies pay minimum levels of tax in order to avoid tax evasion and profit shifting to low tax countries. In addition, further consideration could be given to a type of **digital services tax** in cases where digital labour platforms are using and valorising users' data, as proposed by the European Commission's High-Level Expert Group on the impact of the digital transformation on EU labour markets. This takes the view that users of digital labour platforms are data content generators who create value for the digital business. While some Member States are considering the introduction of a national taxation regime levied on digital services [130], a harmonised approach throughout the EU would avoid internal obstacles to the free movement of services. The High-Level Expert Group notes, however, that this approach relies on supranational public institutions such as the EU to create the market for data and design of an adequate system of taxation or compensation for the use of data provided by individual platform workers and consumers (European Commission, 2019b).

The adoption of the **Digital Services Act** in 2020 aims to strengthen the responsibility of online platforms and clarify the rules for online services. This initiative may primarily target other types of digital businesses (such as e-commerce and targeted advertising intermediaries, much like the P2B Regulation) but due consideration should be given to the inclusion of digital labour platforms and an enlarge scope that encompasses professional clients and companies (not only consumers).

Currently, there is much discussion about the possible creation of a **Common European Space on data concerned with online platform work**. In its Communication on the European strategy for data, the European Commission has announced its support for the establishment of nine common European data spaces (including a Common European health data space, data spaces for public administration and a European skills data space). It also notes that it may consider launching additional common spaces in other sectors. A Common European Space on data concerned with **online platform work** provided across borders may be worth considering and could encompass data on online platform work histories and certificates, qualifications of platform workers, data on type and volume of assignments performed for individual platforms, data on income generated through platform work, data on contributions and taxes paid, data on performance, data on customers or commissioning agents, etc.

b. Legislation related to the unclear employment status of platform workers

Many researchers have proposed extending the **definition of** '**worker**' to include the economic dependency criterion or dependent single self-employed (or maintaining the definition but extending the scope of the relevant legal instruments to include dependent self-employed). This is undoubtedly a solution that could immediately **contribute to a more harmonised approach** among Member States and resolve the practical and time lag implications related to the reclassification of bogus self-employed (platform) workers, while extending protection to genuine self-employed people who work in an economic dependency comparable to that of workers. Expanding the personal scope of (some) EU labour directives to the dependent self-employed **may increase their effectiveness** in the context of a growing proliferation of atypical work arrangements, particularly in those sectors of the platform economy where a small number of globalised platforms have acquired dominant market positions.

However, such proposals **may not be feasible in the short-term** and **may receive opposition** from employers' organisations and (some) Member States. Nor is it at all clearcut whether Title X on Social Policy of the TFEU provides an adequate legal basis to extend the scope of the relevant EU labour directives to (dependent) self-employed activities. Article 153 TFEU commonly refers to 'workers', which by the current CJEU definition does not refer to dependent self-employed (although in practice there is a fine line between dependent self-employed and bogus self-employed who would require reclassification into 'workers'). This consideration changes if the EU definition of 'worker' includes dependent self-employed. Until then, Article 352 TFEU could provide an alternative legal basis for an extension of the relevant legal instruments to include dependent self-employed. It was used, for example, as the legal basis for the recently adopted Council Recommendation on access to social protection and the self-employed to include people in different forms of self-employment within its scope. However, the Article requires unanimity by the Council.

Article 153 TFEU allows only for the adoption of minimum standards by means of Directives, limiting the effectiveness of EU legislative action. Extending current legislation or adopting new legislation to include self-employed (platform workers) that envisages the introduction of (new) rights or material provisions protecting the working conditions of platform workers regardless of their status may therefore seem somewhat unlikely.

c. Legislation tackling contractual insecurity for platform workers

The European Commission study (2020a) reveals that the absence of **written contracts** containing obligatory information on key aspects of the contractual relationship and the unilateral enforcement of (sometimes unclear or incomplete) terms and conditions have been only partially addressed by the TPWC Directive and the P2B Regulation. In spite of legislative progress, in practice the **large majority of platform workers have no recourse to adequate contractual protection as they can rely on neither the TPWC Directive nor the P2B Regulation**. The former applies to the small number of platform workers who have an employment contract, while the latter applies to a limited number of self-employed platform workers and types of platform businesses.

When comparing the provisions of the P2B Regulation with those of the TPWC Directive, the former appears to provide more advanced protection (use of plain language, notification delays, out-of-court dispute resolution), while the latter details the information a written contract should contain. **Both legislative instruments need further improvements** in their material provisions if they are to

[130] In 2019, France introduced a 3% digital services tax on the gross income from digital services for large companies with local revenues above EUR 25 million euro. Italy will launch a similar digital services tax on 1 January 2021.

advance the protection of platform workers. Equally, the scope of the P2B Regulation could be expanded to cover digital labour platforms as well as professional clients/companies. **Improving the two existing legislative instruments in parallel** may not be feasible in the short-term but it has the **substantial longer term advantage of legal certainty**. The legal basis for amendments to the TPWC Directive need to be based on Article 153(2)b TFEU, which provides for the adoption of directives setting minimum requirements for working conditions (as set out in Article 153(1)(b) TFEU). The legal basis for the revision of the P2B Regulation is Article114 TFEU. The parallel revision of these two instruments has an **additional advantage in that the current EU concepts and definitions of 'worker' would not require any adjustment**.

Alternatively, the challenges could be tackled by **EU legislation targeting online (platform) services intermediating work** applicable to **all users regardless of their employment status**, establishing **minimum standards** on the material scope of the general terms and conditions, written information obligation and minimum time delays for notification, mechanisms of informal and legal redress, and rights concerning the use of data provided by the users of the digital services. Such legislation would aim to ensure that: (1) every single platform worker (irrespective of status) is at least notified by the online platform about the general terms and conditions prior to the activation of the account and commencement of the services (in line with the P2B Regulation) and has to give consent; (2) the general terms and conditions are accessible and written in plain language (in line with the P2B Regulation); (3) the general terms and conditions contain obligatory information (in line with the TPWC Directive); (4) changes to the general terms and conditions are notified in advance (in line with the P2B Regulation); (5) suspensions and termination have to be notified in advance and in writing, stating the grounds; (6) platform workers have easy and enforceable access to out-of-court complaint handling, dispute resolution mechanisms and mediation (in line with the P2B Regulation). The legislation primarily aims to govern the relationship between the platform and the platform worker but could equally be extended to the relationship between the platform and the client, expanding it so as to include both professional and private clients.

The authors recommend the adoption of **a Digital Services Act** (based on Article 114 TFEU) setting **minimum standards** that online **(labour) platforms** must respect when engaging with their users (e.g. platform workers, regardless of their employment status) and which could **either apply solely to digital labour platforms** or **to all digital platforms** (e.g. e-commerce, sharing apps, etc.). Much like the adoption of the P2B Regulation, Article 114 TFEU could be used as the legal basis for this horizontal legal instrument. Article 114 TFEU allows for measures to approximate provisions in Member States and to ensure that coherent, non-discriminatory rules are applicable throughout the EU, avoiding divergence between Member States and contributing to the establishment and good functioning of the internal market. Careful consideration must be given to the exact objective or area of any such horizontal legal instrument, as paragraph 2 of Article 114 TFEU makes it clear that measures may not relate to the rights and interests of employed persons. Instead, a directive could be considered, with both Article114 TFEU and Article 153 TFEU serving as the legal basis.

d. Legislation on working conditions and income precariousness in platform work

There is widespread consensus about the need to revisit EU labour legislation, including the most recent TPWC and Work-life Balance Directives, in order to account for the growth of atypical work arrangements and platform work. Given the resemblance between platform form and open-ended framework contracts, on demand or zero-hour contracts, priority may need to be given to the **revision of the non-standard work Directives on part-time**, **fixed-term and temporary agency work**. Even though the latter concern workers with an employment contract and not the self-employed, an adjustment of the concepts, limitation of derogations and improved enforcement modalities could

contribute to ensuring equal treatment of platform and those in standard employment, in matters of working conditions and pay.

In examining precariousness, a distinction needs to be drawn between **income in return for the work or services** provided and **income protection** more generally, as a sort of safety net in situations of need. **(Minimum) wages**[131] **and (minimum) income protection schemes**[132] are typically a Member State competence. Income from, or payment for, the services delivered by the platform worker is connected with their labour market status and is either a wage as defined under national labour legislation, or a fee for services under contract law. The EU has only legislated in view of ensuring equal treatment regarding the remuneration ('pay') between some types of atypical work and standard work, and to ensure equal treatment on the grounds of gender, race, religion, age, disability and sexual orientation in matters of pay (which sometimes includes social benefits). The legislation applies to workers only and not to the self-employed and is generally not adapted to platform work relationships and practices. In order to address possible discrimination of platform workers based on the grounds mentioned above, the non-discrimination directives need to be revisited.

In its recent study, Eurofound observes that national minimum wage policies have multiple functions. From the worker's perspective, they can rule out exploitative low pay and possibly limit wage inequality, particularly among the workers in the lower part of wage distribution. From the company's perspective, they can ensure a level playing field between companies (Eurofound, 2020). Most Member States have minimum wages established by statutory legislation, while others have (minimum) wages determined through collective bargaining. However, large disparities are evident and many workers are not protected by adequate minimum wages in the EU. The European Commission study found that workers under non-standard forms of employment such as temporary and on-call work, workers with low bargaining power and workers with low levels of education or in elementary occupations are particularly affected (European Commission, 2020c), pointing to the importance of **minimum wage protection for platform workers**, **especially for low-skilled online and on-location platform work**.

To address the challenges related to fair minimum wages, the European Commission launched a first phase consultation with social partners in January 2020, looking at possible action at EU level to address the challenges related to **fair minimum wages**, notably to protect low-wage workers and prevent in-work poverty. This has particular relevance for workers under non-standard forms of employment, such as temporary employment and on-call work (European Commission, 2020c)[133]. The perspectives of platform workers and platform businesses - which are often excluded or insufficiently represented in the established collective bargaining systems and representative bodies at national and EU level - may **require specific attention during this consultation**.

Pay rates and payment conditions for service contracts between undertakings (including self-employed platform workers) fall under the contractual freedom of the parties but are also indirectly affected by legislation on competition and the free movement of services. Prices are often set by the platforms or clients and not by the platform workers themselves, due to the unequal bargaining power between the contracting parties. Fair and decent pay for platform work can be tackled through a

[131] Minimum wages ensure minimum levels of income or remuneration paid by employers to their employees in return for their services. 21 Member States have statutory minimum wages, while all other Member States have established collective bargaining systems whereby social partners determine (minimum) wages per sector.

[132] Minimum income schemes are part of the national social protection schemes, ensuring an adequate income when people have no other source of income or financial support. Minimum income schemes aim to ensure a minimum standard of living for persons with no other means of financial support and are a type of income support scheme aimed at providing adequate income to an individual and their dependents.

[133] Consultation Document 'First phase consultation of social partners under Article 154 TFEU on a possible action addressing the challenges related to fair minimum wages' of 14 January 2020, European Commission, C(2020) 81 final.

combination of measures, such as the **strengthening collective organisation and bargaining power of platform workers regardless of their employment status** (including dependent and non-dependent self-employed platform workers without employees), the **promotion of (voluntary) codes of conduct** applicable to platform work businesses, and **provisions applicable to digital services**, **whose general conditions and terms of service may contain minimum standards** on pay conditions and rates (see below).

6.3.2. Non-legislative measures

a. Promote social dialogue

The primary alternative to legislative action is social dialogue, which may provide a way forward to address many of the challenges and risks related to platform work. This, however, requires effective engagement from the platforms, adequate representation of platform workers (including the self-employed), and a change in the bilateral approach characterising traditional social dialogue mechanisms in Member States. As platforms operate across national borders in the EU, **some initiative could be taken at EU level by the EU representative bodies of the traditional social partners** and **include individual/some global platforms**, **as well as other stakeholders such as associations of the self-employed or UNI Global**, representing numerous (on-location) platform workers.

At the same time, the **global agreements on fair working conditions** concluded between multinational platforms in the traditional economy and UNI Global could serve as good practices and provide a model for similar initiatives by global digital business and work intermediation platforms. A similar approach could be considered for crowdwork and microtasking, which would also require the involvement of the clients' representative bodies, leading to tripartite or multi-party global agreements.

b. Enforcement

There is general consensus among international agencies that **challenging the possible misclassification** of platform workers in cases of bogus self-employment is one of the most effective ways to bring them under the umbrella of existing employment statutes and protection (Eurofound, 2019b; ILO, 2019a; ILO, 2019b; OECD, 2019b; OECD, 2019d). Combating abuse and bogus self-employment necessarily includes enforcement agencies, such as national labour and social inspections and the judiciary. More intensive exchange of data and information, as well as sharing of good practices between the national inspections, could be envisaged to tackle the common and cross-border challenges posed by platform work. At EU level, such action is undertaken by the **EU Platform tackling undeclared work**, which was recently integrated into the comprehensive remit of the **European Labour Authority** (ELA). Given the expected growth of platform work in the coming years and the increasing importance of online (and borderless) platform work, specific attention could be devoted to taking this up in the ELA work programme.

c. Registration and reporting

The European Commission study (2020a) concludes that one of the primary options to alleviate the lack of data and aid the fight against the prevalence of general tax evasion by platforms and undeclared work is to impose **registration and reporting obligations on the platforms**. Some Member States have already introduced such registration obligations for digital platforms. A **common EU-wide registration could be considered for digital platforms**, **or information on national registrations could be shared between Member States (which could form proof of their digital presence)**. As platforms already collect data on transactions, clients and platform workers, they are ideally placed to formalise work by sharing data with the government. Recently, a number of Member States have

introduced these kinds of reporting measures on platforms, mostly for tax considerations[134]. However, given the global nature of many platforms, the OECD observes that there is an intrinsic limitation on the effectiveness of national reporting rules (OECD, 2020b). On the one hand, strict enforcement will undoubtedly be complicated by the fact that many platforms are not located in the respective jurisdictions. On the other hand, globalised platforms may face a multitude of reporting rules across different Member States, which ultimately hampers the further development of the platform economy. The OECD has recently developed 'Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy'. This would allow Member States to have a uniform framework to collect information on transactions and income by platform workers (OECD, 2020b). Reporting on income and/or on transactions (as envisaged under the Model Rules for Reporting) is largely motivated by taxation considerations. For online work intermediation platforms that are facilitating the supply and demand for labour, this could logically be extend to requiring platforms to report on individual job assignments prior to their start, especially but not exclusively, for platform workers engaged under an employment contract. Such reporting mechanisms would necessarily be integrated with existing national systems governing employers' notification of new employment contracts to public authorities.

d. Observatory on platform work

The P2B Regulation established the **Observatory on the Online Platform Economy**, whose main objectives are to monitor implementation of the Regulation and analyse developments in the online platform economy to enable informed and flexible policy-making in the EU. The Commission Decision[135] details the functioning of the Observatory and the expert group, which is comprised of 15 independent academic experts. Considerable emphasis is placed on issues related to algorithmic decision-making, access to and use of personal data, remuneration for material displayed online, transparency and accountability, and favourable treatment by online intermediaries of their own goods and services (Article 2b Commission Decision). The expert group of the Observatory is also tasked with monitoring the evolution of regulation, self-regulation or other policy measures related to the online platform economy in the Member States or, where relevant for the online platform economy in the EU, in third countries (Article 2c Commission Decision). To provide the Observatory with robust evidence and tools to carry out its work, a **support study** has to be undertaken by independent contractors, focusing on the same key emerging issues such as algorithmic decision-making, transparency and the access to and use of personal data. Finally, any business or user can help the Observatory by submitting their experiences on its website.

The mandate of the Observatory is heavily focused on one dimension of the platform economy, specifically platforms providing online intermediation services and online search engines facilitating commercial transactions between businesses and consumers (in line with the scope of the P2B Regulation). **The mandate of the Observatory could usefully be expanded to cover the various**

[134] For example, in **France**, a new law took effect on 1 January 2020, obliging platforms to report on the income they have paid to each platform worker residing in France **or** where the worker is engaged in sales/services that are taxable in France for VAT purposes (*LOI n° 2018-898 du 23 Octobre 2018 relative à la lutte contre la fraude*, available at: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000037518803&categorieLien=id).
Similarly, **Slovakia** adopted new tax legislation obliging platforms providing personal transport to report earned remuneration to the tax authorities (Amendment to Act No. 595/2003 (Income Tax Act), available at: https://www.mfsr.sk/en/taxes-customs-accounting/direct-taxes/income-tax/legislation-force/income-tax-act/).
Belgium also introduced a special taxation (and social contribution) regime for platform workers. Where income is below a certain ceiling, the favourable tax regime will apply. Registration is required for platforms in the sharing economy, covering those platforms that aim to intermediate the provision of services but also of goods. Only officially registered (and government-approved) platforms that report the income paid to the platform workers will benefit from the provisions (*Programmawet* of 1 July 2016, Article 22-26, available at: https://economie.fgov.be/fr/themes/entreprises/economie-durable/economie-collaborative/les-plateformes-actives-en). However, in spring 2020, the legislation was declared unconstitutional by the Belgian Constitutional Court and its future is now uncertain.

[135] Commission Decision of 26 April 2018 on setting up the group of experts for the Observatory on the Online Platform Economy (C(2018) 2393 final).

types of platform work, **to create such a mandate under the European Commission High-Level Expert Group on the impact of digital transformation on EU labour markets**, **or to create a new Observatory specifically devoted to digital labour platforms**.

e. Voluntary codes of conduct

Ahead of hard legislative action, an appropriate policy response is to promote different forms of self-regulation, especially **voluntary codes of conduct** in which platforms agree to abide by certain principles and decent work standards. 'Softer' recommendations such as these may have concrete effects on improving the working conditions of platforms workers, as well as being more quickly easily achievable than 'hard' law.

The promotion of self-regulation measures in the platform economy is echoed by the European institutions. The European Commission Communication on Online Platforms and the Digital Single Market – Opportunities and Challenges for Europe emphasised the role of such measures in the platform economy by encouraging '**coordinated EU-wide self-regulatory efforts** by online platforms'. The European Parliament Resolution on Online Platforms and the Digital Single Market similarly stressed 'the need for online platforms to combat illegal goods and content and unfair practices (e.g. the reselling of entertainment tickets at extortionate prices) through regulatory measures **complemented by effective self-regulatory measures** […]'. This approach is mirrored in the recently adopted P2B Regulation, in which platforms are strongly encouraged to **draw up of codes of conduct**, in cooperation with (representative organisations of) business users/self-employed platform workers. As Strowel and Vergote (2019) and Garben (2019a; 2019b) point out, this raises the question of whether and how globalised platforms will be ready and willing to become involved in monitoring their own economic and legally disruptive behaviour, and thus whether codes of conduct are really an effective means to address the challenges related to the working conditions of platform workers engaged by the global players.

Some platforms have already signed on to codes of conduct addressing working conditions and social protection. The Frankfurt Declaration[136], Crowdsourcing Code of Conduct[137], the *Carta dei diritti fondamentali del lavoro digitale nel contesto urbano*[138] (Charter of Fundamental Rights of digital work in the urban context) and the 2020 Charter of Principles for Good Platform Work[139] are all self-regulatory measures covering various forms of platform work. The **Crowdsourcing Code of Conduct** and the **Charter of Principles for good platform work** are particularly good examples.

The **Crowdsourcing Code of Conduct** was drafted by eight platforms in Germany, Austria and Sweden, and covers 10 issues that are highly relevant for the working conditions of platform workers (e.g. fair pay, 'motivating and good' work, clear task definitions, appropriate time planning, data privacy). The Code of Conduct was further formalised by the introduction of a dispute settlement mechanism allowing platform workers to bring their grievances to an ombudsperson where they believe the platform has violated the principles set out in the Code. The Crowdsourcing Code of Conduct is one of the most advanced such codes and can serve as a best practice example for all types of crowdwork or as the reference point for **a voluntary code of conduct adopted at EU level**.

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[136] Fair Crowd Work, *Frankfurter* Erklärung *zu plattformbasierter Arbeit | Vorschläge für Plattformbetreiber, Kunden, politische Entscheidungsträger, Beschäftigte und Arbeitnehmerorganisationen*, Declaration, Frankfurt, December, 2016.

[137] IG Metall, *Report of the activities of the Ombuds Office of the Code of Conduct for Paid* Crowdsourcing, *2017-2018*, January 2019, available at https://ombudsstelle.crowdwork-igmetall.de/pdf/Ombuds_Office_for_paid_Crowdsourcing_Report_2017_2018_EN.pdf.

[138] *Comune di Bologna, Carta dei diritti fondamentali del lavoro digitale nel contesto urbano*, May 2018, available at: http://www.comune.bologna.it/sites/default/files/documenti/CartaDiritti3105_web.pdf.

[139] World Economic Forum, Charter of principle for good platform work, January, 2020, available at: http://www3.weforum.org/docs/WEF_Charter_of_Principles_for_Good_Platform_Work.pdf.

The **Charter of Principles for Good Platform Work** is a recent initiative taken by some leading platforms[140], as part of the World Economic Forum's Platform for Shaping the Future of the New Economy and Society. The envisaged principles concern striving for an inclusive workforce, protection against health and safety risks, the use of transparent, accessible terms and conditions with the option to challenge decisions and mechanisms for dispute resolution, reasonable pay and fees with respect to local minimum wages for equivalent employee workers, the portability of benefits, and right to view the complete history of platform use. Although undoubtedly a major step forward, there are nevertheless some areas for improvement. The Charter is currently signed by platforms that primarily facilitate (or 'provide') on-location platform work and not online platform work. It calls for governments and platforms to collaborate to ensure that working conditions are dignified and that workers have access to a comprehensive set of social protections, while opening the possibility to share data on the number and practices of workers in order to increase transparency and understanding of the platform economy. The commitments remain rather loosely defined, however, not least because they take the current (inadequate and unclear) regulatory frameworks as the reference point.

f. Decent work framework for platform work

The adoption of **a voluntary decent work framework for platform work** could be considered at EU level, similar to the Fairwork framework developed by Oxford University with UK and German public funding[141]. The Fairwork framework is an independent assessment tool, based on five principles (fair pay, fair conditions, fair contracts, fair management, fair representation) and 10 measurable standards with which digital labour platforms must comply. Its assessment methodology involves both platforms and platform workers and leads to a comparable scoring result, promoting transparency and reporting of compliance by platforms with decent work standards.

g. Data collection and research

Although there is ample research on platform work, the evidence is quite scattered and relies on a variety of definition and conceptualisations, methodologies and data sources, making it difficult to conduct comparative research that can yield conclusions or generalisations. Some of the available findings or survey results are contested because of their use of unclear or very narrow concepts, measurement issues or small sample sizes. Further efforts are needed to gather different types of data, under the guidance of Eurostat. There is an urgent need to adopt **more uniform concepts and definitions of platform work and of online/digital work intermediation platforms**.

Some dimensions of platform work have received less attention in the current body of research, such as the prevalence and characteristics of online platform work, un(der)-declared work, cross-border platform work, the coordination of social security for platform workers working across borders, the role of private digital intermediaries in the functioning of the EU labour market, etc. A notable example is hybrid platforms or platform work, such as temporary work agencies launching their own platform (and vice versa) and their interaction with actors already operating in the market. In addition, some groups of platform workers, such as cross-border workers, remain altogether overlooked. The impact of changes in the legislative framework of the Member States or at EU level are not yet fully understood and **knowledge gaps** persist.

[140] The signatory partners are Cabify, Deliveroo, Grab, MBO Partners, Postmates and Uber Technologies, Inc.

[141] Fairwork is a project based at the Oxford Internet Institute, University of Oxford, and undertaken in collaboration with the universities of Cape Town, the Western Cape, Manchester and the International Institute of Information technology Bangalore. It is financed by the German Federal Ministry for Economic Cooperation and Development and the UK's Economic and Social Research Council.

Table 3: Summary of mitigation pathways and actions

Source and coverage	Suggested mitigation pathways and actions
Present study based on European Commission study (2020a) **All types of platform work** Unclear employment status of platform workers and poor contractual terms and conditions A single regulation governing basic terms of the contractual relationships between platforms, platform workers and clients (consumers and undertakings)	A single regulation based on the internal market chapter and Article 114 TFEU governing **the basic terms of the contractual relationships** between (digital labour) platforms, platform workers (regardless of their employment status) and clients (regardless of their status as consumer or undertaking). This could either be an extension of the P2B Regulation to all types of digital intermediation and all types of platform work, or a new regulation specific to digital labour platforms. Basic rights could include: (i) obligatory and timely provision of information on the terms and conditions of collaboration and changes to those terms; (ii) advance notification and the right to an explanation in case of refusal to open an account, temporary suspension and permanent termination of the collaboration; (iii) access to effective and timely dispute resolution mechanisms; (iv) specific rights on personal data protection and use of algorithmic management; (v) collective representation; and (vi) access to and portability of work histories and ratings. Revise the non-standard work Directives (adjust concepts, limit derogations and improve enforcement modalities) to ensure equal treatment of all platform workers who have an employment contract with standard employment (permanent, full-time work for one single employer) in matters **related to the protection of working conditions**, **including remuneration**.
Present study **All types of platform work** Other	Adopt **uniform concepts and definitions** of platform work and online work intermediation platforms. Promote **global agreements on fair working conditions** with multinational platforms, similar to those adopted by UNI Global and multinationals in the traditional economy. Promote the adoption of **codes of conduct and share good practices** from stakeholders, such as the Crowdsourcing Code of Conduct and the Charter of Principles for Good Platform Work adopted under the auspices of the 2020 World Economic Forum. Adopt uniform minimum standards for **reporting by platforms** to Member States on the individual services provided by platform workers who are working in the EU and on clients. Enhance the role of the **ELA** in cross-border platform work and online platform work. Expand the **mandate of the Observatory** on the Online Platform Economy established under the P2B Regulation to all types of platform work or create an equivalent observatory devoted to platform work/digital labour platforms. The adoption of **a voluntary decent work framework for platform work** similar to the Fairwork framework initiative, which aims to certify platforms that meet measurable minimum standards of decent platform work.

	Conduct **research** on areas that have been largely disregarded, such as cross-border and online platform work.

Source: Authors' own elaboration based on European Parliament (2020).

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Platform work is non-standard work facilitated by online platforms which use digital technologies to 'intermediate' between individual suppliers (platform workers) and buyers of labour. Platform work has rapidly developed since it first emerged in the EU, though concerns have been raised about the working conditions of platform work and the risk of precariousness it entails. Platform work has, therefore, been identified as a policy priority by European policy-makers. This study presents a literature review that focuses on the challenges and risks of precariousness of platform work and explores possible pathways for EU action.

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