

Industrial relations and social dialogue  
**Regulating minimum wages and  
other forms of pay for the  
self-employed**





# Regulating minimum wages and other forms of pay for the self-employed



*Research described in this report has been carried out in the context of the pilot project 'Role of the minimum wage in establishing the Universal Labour Guarantee'. This project was proposed by the European Parliament and delegated to Eurofound by the European Commission's Directorate-General for Employment, Social Affairs and Inclusion.*



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# Country codes

AT	Austria	ES	Spain	LV	Latvia
BE	Belgium	FI	Finland	MT	Malta
BG	Bulgaria	FR	France	NL	Netherlands
CY	Cyprus	HR	Croatia	PL	Poland
CZ	Czechia	HU	Hungary	PT	Portugal
DE	Germany	IE	Ireland	RO	Romania
DK	Denmark	IT	Italy	SE	Sweden
EE	Estonia	LU	Luxembourg	SI	Slovenia
EL	Greece	LT	Lithuania	SK	Slovakia
NO	Norway				

## Note on the text

The final manuscript was validated by the European Commission upon input from the pilot project's expert group in April 2022. It refers to the draft guidelines as set out by European Commission (2021b), *Communication from the Commission, Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons*, COM(2021)8838 final, Brussels. This draft text was revised and updated by the Communication from the Commission, *Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons* (2022/C 374/02) on 30 September 2022. Due to the finalisation of the manuscript in April 2022, this final Communication is not reflected in the present report.

# Executive summary

## Introduction

Minimum wages for the self-employed are being investigated as part of a pilot project on minimum wages in general that Eurofound is carrying out on behalf of the European Commission between 2021 and 2023. Minimum wages for the self-employed could almost be considered an oxymoron, as one of the main characteristics of being self-employed is negotiating fees with a client or co-contractor independently. However, as Eurofound's research shows, multiple types of self-employment exist, with very different characteristics and powers. Some self-employed people experience vulnerabilities and are at risk of material deprivation, with low incomes and difficulties making ends meet; they have an increased likelihood of falling into poverty and lack social protection. In response to these conditions, some Member States are discussing establishing statutory forms of minimum pay for certain categories of self-employed people (for example, for certain professions or occupations, the economically dependent self-employed and the solo self-employed). In the context of the wider analysis of interest representation and collective bargaining for the self-employed, the main objective of this report is to understand how minimum wages, wage rates, tariffs, fees and/or other forms of pay can be fixed for specific jobs or professions within sectors that have a high level of freelancers/vulnerable and 'concealed' self-employed workers, namely by mapping national and sectoral approaches.

## EU policy context

In June 2020, Margrethe Vestager, Executive Vice-President of the European Commission, with responsibility for competition policy, stated that in today's labour market the concepts of 'worker' and 'self-employed' have become blurred, stressing that 'competition rules are not there to stop workers forming a union' (European Commission, 2020). This acknowledges that – while EU and national anti-trust law can hamper collective bargaining on minimum payments for the self-employed – from a competition law perspective it can make sense to extend collective agreements to some types of self-employed people who find themselves in a situation of imbalance of power in their contractual relationship. In December 2021, a draft proposal for guidelines was tabled by the European Commission, with the aim of clarifying the circumstances in which competition law does not impede collective agreements. The guidelines cover two categories of solo self-employed people: (1) people who are economically dependent or work side by side with other employees in the online and offline world and people who work through digital labour platforms; and (2) people who negotiate their working conditions with counterparties of some economic strength or who participate in collective bargaining agreements in line with the Copyright Directive and national labour law provisions. The objective of the

initiative is to eliminate barriers to collective bargaining for some self-employed people in the most balanced manner possible. At the end of this initiative, more legal certainty regarding the application of the EU competition law will possibly lead to a scenario in which certain categories of self-employed people may enter into collective agreements without incurring the risk of breaching anti-trust law.

## Key findings

### Trade union representation for self-employed people

- Trade union representation for self-employed people is allowed in 16 of the 27 Member States. In some cases, the legal basis is provided by labour law, as in Belgium, Croatia, France, Hungary, Malta, Poland, Spain and Sweden. In other countries, it is a right (also) granted by the constitution, as is the case in Croatia, Denmark, Finland, France and Slovenia. In Austria, Germany, Greece and Ireland, trade union statutes provide the legal basis, whereas competition law provides the legal basis in the Netherlands.
- This interest representation is channelled via general trade unions or their separate branches for the self-employed in nine Member States, that is, Austria, France, Germany, Ireland, Italy, Lithuania, Malta, Poland and Sweden. There are specific trade unions for the self-employed in 14 Member States: Austria, Croatia, Cyprus, Denmark, Finland, France, Hungary, Ireland, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden.
- Only three Member States – Estonia, Romania and Slovakia – do not allow trade union representation for the self-employed, in all cases on the grounds of labour law. The law is silent on this issue in Bulgaria, Cyprus, Czechia, Latvia, Lithuania, Luxembourg and Portugal.

### Collective bargaining for self-employed people

- Only in Poland is collective bargaining for the self-employed allowed – *de jure* – without any restrictions, while Austria, France, Germany, Greece, Ireland, the Netherlands, Portugal, Spain and Sweden allow collective bargaining for the self-employed in exceptional cases.
- Nine Member States do not allow collective bargaining for the self-employed. In some cases, the legal basis is provided by labour law, as in Bulgaria, Hungary, Romania and Slovakia. In others, it is provided by competition law, as in Czechia, Denmark, Estonia, Finland and Latvia. In the remaining eight Member States – Belgium, Croatia, Cyprus, Italy, Lithuania, Luxembourg, Malta and Slovenia – collective

bargaining rights of self-employed people are not regulated.

### Statutory minimum wages or other forms of pay for the self-employed

- There are 13 Member States with statutory minimum wages or other forms of pay for the self-employed. In Belgium, Bulgaria, Croatia, France, Germany, Greece, Italy, Malta, Portugal, Romania and Slovenia, there are minimum wages for specific groups of self-employed people. Usually, these groups relate to a very small number of occupations, most notably the legal or medical professions. In Hungary and Poland, a general statutory minimum wage for workers also applies to the self-employed. The remaining 14 Member States are without any statutory minimum wages or other forms of pay for the self-employed.

### Collectively agreed minimum wages or other forms of pay for the self-employed

- There are only eight Member States with collectively agreed minimum wages and other forms of pay

for the self-employed: Belgium, Denmark, Estonia, Germany, Italy, Malta, the Netherlands and Slovenia. The remaining 19 Member States are without any collectively agreed minimum wages or other forms of pay for the self-employed.

### Overall assessment

- While this report has identified 14 Member States with comparatively extended rights of representation and collective bargaining rights for the self-employed (Belgium, Croatia, Denmark, France, Germany, Greece, Ireland, Italy, the Netherlands, Poland, Portugal, Slovenia, Spain and Sweden), only a small number of Member States tick all the boxes when it comes to trade union representation, rights to collective bargaining, statutory minimum wages and collectively agreed minimum wages or other forms of pay for the self-employed.



# Introduction

Eurofound was asked by the European Commission to carry out a **pilot project on minimum wages** over three years (2021 to 2023). The purpose of this pilot project is to provide evidence that would help to monitor the effects of the proposed directive on the coverage and adequacy of minimum wages in the Member States. The current report addresses module 3 of the project on minimum tariffs in collective agreements.

## Background

Statutory minimum wages do not apply to independent workers. However, there are some examples of ‘minimum fees’ that independent workers could get through statutory regulations or, eventually, agreements. The objective of this work package is to map national/sectoral approaches to regulate minimum wages, tariffs or fees of the self-employed, wherever they exist, in order to gain an understanding of how wages, fees, tariffs or prices can be fixed for specific jobs or professions within sectors that have a high level of freelancers/vulnerable and ‘concealed’ self-employed people.

This issue could almost be considered an oxymoron. Indeed, one of the main characteristics of independent workers/self-employed people is negotiating fees with the client or co-contractor. However, as research shows, multiple types of self-employment exist, with very different characteristics and powers.

A Eurofound (2017a) research report exploring self-employment around Europe highlighted the diversity of the self-employed, which is only partially captured in the established distinction between those self-employed people with employees and those without employees. An empirical estimation based on data from the European Working Conditions Survey 2015 identified five distinct clusters of self-employed people. As an important policy pointer, the report stressed that the

*boundaries between self-employment and paid employment are blurring. Many self-employed workers, especially those who depend on one client, find themselves in a situation that resembles that of employees in terms of economic dependence and autonomy.*

(Eurofound, 2017a, p. 2)

Numerous analyses describe ‘dependent self-employed’ workers through their economic and their organisational dependence (Eurofound, 2009a). These workers have neither the power to organise and decide their work and tasks nor the power to receive wages or fix prices or fees corresponding to the work to be performed for completing the delivery of the goods or services requested. Platform workers are a typical example of this kind of worker.

Furthermore, the analysis of self-employment in Europe highlights that

*one in four gives reason for concern. The situation of two clusters labelled ‘vulnerable’ and ‘concealed’ –*

*comprising a quarter of all self-employed – is characterised by economic dependence, low levels of autonomy and financial vulnerability. So-called ‘economically dependent workers’ and the ‘bogus self-employed’ are likely to be found in these groups. Those classed as ‘vulnerable’ are particularly economically dependent because they rely on a very small number of clients. The ‘concealed’ group is most strongly characterised by low work autonomy.*

(Eurofound, 2017a)

Out of concern for the vulnerability of these workers and the fact that they are at risk of material deprivation, especially regarding their likelihood of falling into poverty due to low incomes, difficulties making ends meet and their lack, most of the time, of social protection, a handful of countries are debating how fees can be fixed on the market or in certain sectors. Discussions relate to establishing statutory ‘minimum tariffs’ or other forms of minimum pay for certain categories of self-employed workers (for example, certain professions or occupations, economically dependent self-employed workers and solo self-employed workers).

The issue of how these fees are or can be collectively agreed is another path to explore. This would require the existence of collective bodies or actors (for example, chambers or social partner organisations) with the competence to represent these self-employed people and to negotiate on fees, tariffs or prices.

## Objectives

In the context of the wider analysis of interest representation and collective bargaining for the self-employed, the main objective of this report is to understand how minimum wages, wage rates, tariffs, fees and/or other forms of pay can be fixed for specific jobs or professions within sectors with a high level of freelancers/vulnerable and concealed self-employed people.

## Main research questions

The main research questions of this report are the following.

- Is it legally possible for self-employed workers to join trade unions or to be represented by other forms of employee representation at national level?
- Are there concrete examples of trade unions or other forms of employee representation for the self-employed at national level?
- Are there collective negotiations and agreements for the self-employed at national level?
- Are there statutes and/or rules and regulations on minimum wages and other forms of pay (for example, wage rates, tariffs, fees or prices) for self-employed workers?

- Are there collective negotiations and/or agreements on minimum wages and other forms of pay for self-employed people (for example, wage rates, tariffs, fees or prices)?

## Specific task description

The single work package of module 3 consists of one main task that was divided into two consecutive steps. Eurofound, with the help of the Network of Eurofound Correspondents, mapped whether these types of agreements exist in each of the EU countries.

Based on the results of the initial step, more detailed research was conducted in 14 selected Member States where evidence of trade union representation, collective

bargaining and minimum wages or other forms of pay was identified.

## Methodology

The methodology of the report consists of a qualitative mapping exercise – in two steps – of national/sectoral approaches to the regulation of the minimum tariffs of the self-employed via qualitative desk research conducted by the Network of Eurofound Correspondents. This mapping exercise was complemented by a literature review and input from the expert group established for the minimum wage project.

The initial timing of the mapping exercise is set out in Table 1. The project came to an end one year ahead of this timing.

**Table 1: Timeline of the mapping exercise**

2022			2023		
Q2	Q3	Q4	Q1	Q2	Q3
Preparatory work: <ul style="list-style-type: none"> <li>○ launch of the first questionnaire and analysis of the results</li> <li>○ validation by the Commission based on input from the expert group</li> <li>○ delivery of the first draft report to the Commission</li> </ul>	Launch of the second questionnaire for selected Member States and analysis of the results	Drafting of the final report	Drafting of the final report	Putting findings together into the final report  Validation by the Commission based on input from the expert group	Publication of the report

**Source:** Authors' own. Unless otherwise indicated, tables and figures are based on findings from the Network of Eurofound Correspondents.

# 1 Self-employed: Collective bargaining at risk of breaching competition law

Article 101 of the Treaty on the Functioning of the European Union (TFEU) prohibits anti-competitive agreements and decisions of associations of undertakings that prevent, restrict or distort competition within the EU's single market. The EU rules on competition in Article 101(1) of the TFEU prohibit restrictions on competition as being incompatible with the common market. Collective agreements between employers and representatives of employees in an enterprise aim, among other things, to eliminate wage competition by determining wages and conditions, thereby fixing the price of labour in a way that may bring them into conflict with competition law. One essential function of European trade unions is to 'take wages and working conditions out of competition'. A fundamental principle of the EU single market – competition – confronts an established practice of collective bargaining, which is constitutionally protected in some Member States and a pillar of the European social model.

On 21 September 1999, the Court of Justice of the European Union (CJEU) gave its ruling on a case brought by a Dutch company, Albany (CJEU, 1999). The textile company Albany was trying to exempt itself from a deal between the textile unions and employers in the Netherlands. This deal established a pension fund system for workers in the industry and had been made compulsory for all companies in that industry by the Dutch Minister of Social Affairs. Albany used the competition rules (now Article 101(1) of the TFEU) as a basis for claiming that mandatory affiliation to the pension scheme compromised its competitiveness.

The Court in its ruling emphasised the social policy objectives of the treaty – which are given equal weight to those on competition; it focused on the provisions of the European Commission treaty (now Articles 151–154 of the TFEU). These provisions explicitly stipulate the objective of social dialogue and collective bargaining between employers and workers, including this objective at EU level.

The Court stated that:

*It is beyond question that certain restrictions of competition are inherent in collective agreements between organisations representing employers and workers. However, the social policy objectives pursued by such agreements would be seriously undermined if management and labour were subject to Article 85(1) of the treaty [now Article 101 of the TFEU] when seeking jointly to adopt measures to improve conditions of work and employment.*

Following the Albany case, some EU legal scholars argued that EU law may thereby have created an 'anti-trust immunity' of collective agreements.<sup>1</sup> In addition, in some Member States, the immunity of collective agreements from competition law has been enshrined in national law (for example, Sweden) or proposals have been made to introduce statutory minimum wages for the self-employed (the Netherlands and the United Kingdom (UK)) (Daskalova, 2018, p. 506; Schmidt-Kessen et al, 2020, p. 3).

## Collective bargaining for the self-employed at international and EU level

Concerns arise, however, when attempts are made to extend collective bargaining to groups of professionals who, at least formally, are not employees, such as the self-employed. According to EU competition law, such professionals are considered 'undertakings' and collective agreements may therefore fall under the scrutiny of EU competition rules. In many national jurisdictions, competition law prohibits the self-employed from exercising their rights of association and organising (for example, joining a trade union) or from collective bargaining on the grounds that this could constitute a cartel infringing upon anti-trust legislation.

At international level, it is, above all, the International Labour Organization (ILO) that is the pacesetter for this question. According to the Freedom of Association and Protection of the Right to Organise Convention (No. 87) of 1948 (Article 2)

*workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.*

According to the Right to Organise and Collective Bargaining Convention (No. 98) of 1949, the right to collective bargaining applies to all workers in both the public and the private sector, the only exceptions being the armed forces and the police, as well as public servants engaged in the administration of the state (Articles 5 and 6).<sup>2</sup> The Collective Bargaining Convention (No. 154) of 1981 further specifies in Article 2 that

1 See the 'Collective bargaining and competition law' entry in Eurofound (undated). In the United States, the Clayton Antitrust Act stated as early as 1914 that 'the labor of a human being is not a commodity or article of commerce'. Therefore, 'labor... organizations, instituted for the purposes of mutual help, [should not] be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws' (§7 Clayton Act, 15 U.S.C. § 18; OECD, 2019, p. 235).

2 For further information on how 'public servants engaged in the administration of the state', are defined, see ILO (2013a).

*the term collective bargaining extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other.*

The ILO has long asserted that the self-employed are entitled to collective bargaining (Freshfields Bruckhaus Deringer, 2020; ETUC, 2021). The Committee of Experts on the Application of Conventions and Recommendations (CEACR) explicitly observed that

*by virtue of Article 2 of Convention No. 87, all workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation. These guarantees apply to all employers and workers in the private and public sectors, including seafarers, agricultural workers, migrant workers, domestic workers, apprentices, subcontracted workers, dependent workers, workers employed in export processing zones and in the informal economy, and self-employed.*

(ILO, 2012)

The CEACR has also observed that

*Convention No. 98 covers all workers and employers, and their respective organisations, in both the private and the public sectors, regardless of whether the service is essential. The only exceptions authorised concern the armed forces and the police, as well as public servants engaged in the administration of the State ... Moreover, the rights and safeguards set out in the Convention apply to all workers irrespective of the type of employment contract, regardless of whether or not their employment relationship is based on a written contract, or on a contract for an indefinite term.*

(ILO, 2012)

The ILO Committee on Freedom of Association further requested

*a Government to take the necessary measures to ensure that workers who are self-employed could fully enjoy trade union rights for the purpose of furthering and defending their interest, including by the means of collective bargaining; and to identify, in consultation with the social partners concerned, the particularities of self-employed workers that have a bearing on collective bargaining so as to develop specific collective bargaining mechanisms relevant to self-employed workers, if appropriate.*

(ILO, 2018)

At EU level, in a case from 2014 (FNV Kunsten Informatie en Media; CJEU, 2014), this issue emerged prominently. The CJEU ruled that a union representing self-employed workers was not representing the interest of workers and, henceforth, was to be considered an association of undertakings. Collective agreements concluded in this context (in this specific case on minimum pay for self-

employed musicians) did not benefit from an automatic anti-trust immunity. However, the CJEU stated that collective agreements involving service providers may be exempt from Article 101 of the TFEU if these are 'in fact "false self-employed", that is to say, service providers in a situation comparable to that of employees'.

Two conclusions can be drawn from the FNV Kunsten case.

*The Court's classification rationale is thus 'worker-centric'. This approach has two main implications. First, immunity only covers agreements between the social partners when they are acting in such capacity and in the interest of workers. ... There is thus a presumption that the social partners are not associations of undertakings when they act in such capacity and in the interest of workers. In contrast, a union, which is representing the interest of other categories of economic actors than workers would be scrutinised under Article 101 TFEU. Second, it follows that only agreements which are directly aimed at the protection of workers (related to pay, including pensions, and working conditions) are covered by the immunity.*

(Schmidt-Kessen et al, 2020, p. 3)

Finally, the Council of Europe also acknowledged that self-employed workers are entitled to interest representation and collective bargaining. The European Court of Human Rights (ECtHR) stressed that the freedom of association (Article 11 of the European Convention on Human Rights (ECHR)) applies to self-employed workers and that Article 11 of the ECHR also encompasses the right to collective bargaining.<sup>3</sup> Furthermore, the Committee of Social Rights stressed that Article 6 §2 of the European Social Charter granted self-employed people the right to collective bargaining (Westregård, 2020c, p. 147; ETUC, 2021; Hiebl, 2021a, p. 59). Some academics extend the personal scope of application only to 'formally self-employed but economically dependent' workers (Ales et al, 2018, p. 289), while others deny self-employed people the right to collective bargaining altogether (Harris and Darcy, 2001, pp. 100–103). In contrast to the ILO Committee on Freedom of Association, the Committee of Social Rights of the Council of Europe weighed 'the purpose for exempting collective agreements from the competition clauses' (Schlachter, 2019, p. 239).

## Complicated task of defining self-employment

Defining the scope of the self-employed workers who need to participate in collective bargaining is not an easy task, as the definition of self-employment is primarily a prerogative at Member State level. Multiple criteria are used in a variety of ways across Member States, and sometimes even within a country depending on the regulation considered, employment or social protection, for instance (Eurofound, 2021a).

A self-employed person very often is defined as an independent worker – in contrast to an employee, who is subordinate to and dependent on an employer. Thus,

<sup>3</sup> See the ECtHR ruling in Demir and Baykara v. Turkey (application no. 34503/97), 12 November 2008.

traditionally, the ‘subordination’ criterion has allowed a distinction to be made between employees (subordinate to their employer) and the self-employed, enjoying autonomy in their activity (Supiot, 2001; ILO, 2003; Muehlberger, 2007, p. 36; Eurofound, 2009a; European Parliament, 2013).

- Employees are dependent on the employer for getting work, the tools and processes to do it, and the organisation of work. In return they get paid for their labour.
- The self-employed provide a service or product, decide on the way they will organise the work and deliver and get paid for the service/product produced.

In the European Union Labour Force Survey, Eurostat follows the ILO’s International Classification of Status in Employment (ICSE-93).

*Self-employed persons with employees are defined as persons who work in their own business, professional practice or farm for the purpose of earning a profit, and who employ at least one other person.*

*Self-employed persons without employees are defined as persons who work in their own business, professional practice or farm for the purpose of earning a profit, and who do not employ any other person.*

(Eurostat, 2018a, p.29)

### Box 1: Definitions for the purpose of this report

**Collective bargaining** refers broadly to collective negotiations leading to collective bargaining agreements aimed at improving working conditions.

A **digital labour platform** is any natural or legal person providing a commercial service mainly at distance through electronic means, at the request of the recipient of the service. It involves the organisation of work performed by individuals, regardless of whether that work is performed on location or online.

**Employee representation** refers to an employee’s right to seek a union or individual to represent them for the purpose of negotiating with management on issues such as wages, hours, benefits and working conditions.

**Employment relationship** refers to the legal link between employers and employees. It exists when a person performs work or services under certain conditions in return for remuneration. It is through the employment relationship, however defined, that reciprocal rights and obligations are created between the employee and the employer.

**Minimum wage** refers to the minimum remuneration that an employer is required to pay to workers for the work performed during a given period, calculated on the basis of time or output. Statutory minimum wages are regulated by formal laws or statutes. Collectively agreed minima are stipulated within collective agreements between trade unions and employers.

**Pay outcomes of collective bargaining** for the self-employed are considered broadly in this report, looking at minimum wages and other forms of pay (for example, wage rates, tariffs, fees and prices).

**Platform work** means any work organised through a digital labour platform and performed in the EU by an individual on the basis of a contractual relationship between the digital labour platform and the individual, irrespective of whether a contractual relationship exists between the individual and the recipient of the service.

**Regulated professions** are a professional activity or group of professional activities, access to which or the pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications. The so-called ‘liberal professions’ are also regulated professions. An EU definition or list of liberal professions does not exist; however, these types of regulated professions, namely those providing intellectual and conceptual services, are generally understood to cover activities of architects, lawyers, doctors, veterinarians and accountants, among others.

The **self-employed** are those who in terms of labour market status work on their own behalf, in contrast to an employee, who works in the framework of an employment relationship.

The **solo self-employed** are self-employed workers who do not employ other individuals for the professional activity they exercise.

Sources: European Commission (2020b, 2021a–d), Eurofound (2021a–c), Eurofound and Cedefop (2020), European industrial relations dictionary (Eurofound, undated), ILO (2021a)

A similar distinction was drawn in Eurofound’s European Working Conditions Survey 2015, mapping the self-employed with employees and the self-employed without employees. In 2015, the group composed of the self-

employed without employees was twice as large as that of the self-employed with employees (10% and 5% of the workforce, respectively; Eurofound, 2017b, p. 28).

## Box 2: Presumption of employment and self-employment

Some Member States rely on a presumption of employment for certain categories of specific professions (for example, journalists and artists in France and certain platform workers in Greece, Portugal and Spain).

The approach taken by Eurofound in the case of these types of workers is that, even when they display certain characteristics of being self-employed, Eurofound classifies them as employees and not as self-employed. Henceforth, as they are considered employees, they are not the focus of this report and, for the analysis and in particular for the clustering, only genuinely self-employed people are taken into account.

A concrete example of self-employment is self-employed shop managers in France. These managers are considered as genuinely self-employed, although they still benefit from certain provisions applicable to employees. The Court of Cassation has long recognised the right of self-employed shop managers to claim the minimum wage and the right to rely on the branch collective agreement applicable to their supplier.

Article 4 of the proposed directive on platform work also contains a presumption of an employment relationship for platform workers.

*The contractual relationship between a digital labour platform that controls, within the meaning of paragraph 2, the performance of work and a person performing platform work through that platform shall be legally presumed to be an employment relationship.*

(European Commission, 2021d)

Another report from Eurofound on self-employment set out different definitions used and presented a comparative overview of the industrial relations and employment and working conditions of self-employed workers in the EU (2009a). It identified five basic categories of self-employment, which are those most often used in the relevant literature:

- entrepreneurs, who run their business with the help of employees
- traditional ‘free professionals’, who, in order to work in their occupation, must meet specific requirements, abide by regulations and duty-bound codes, and often pass examinations to be listed in public registers
- craftworkers, traders and farmers, who represent the traditional forms of self-employment
- self-employed in skilled but unregulated occupations, sometimes referred to as ‘new professionals’
- self-employed in unskilled occupations, who run their business without the help of employees, but can sometimes be assisted by family members<sup>4</sup>

## European Commission initiative on collective bargaining for the self-employed

EU and national anti-trust law can hamper collective bargaining on minimum fees and tariffs for the self-employed. From a competition law perspective, it makes sense to focus on a specific category of self-employed workers when it comes to the extension of collective bargaining, namely those solo self-employed people who are in a situation of imbalance of power in the contractual

relationship between the two parties. Extending collective agreements to this category of self-employed workers would lead to a better balance of conflicting interests by means of collective bargaining, a tool that is embedded in rational choice and horizontal subsidiarity (Eurofound, 2020a; University of Hamburg, 2021). The main rationale for such an approach can very lucidly be summarised as follows.

*Under such preconditions, there is not even a need to invoke competition law against collective bargaining: the purpose of competition rules is prohibiting the stronger party from collectively fixing high prices that the individually weaker party, the consumer, would otherwise have to accept. Collective bargaining represents a mirror image of this tool by hindering the individually stronger party from fixing low prices the individually weaker party, the service provider, would otherwise have to accept. The purpose of eliminating wage competition through collective condition setting is comparable to the purpose of securing price competition between undertakings through forbidding cartels. In both cases, the rules protect the respective weaker party from contract conditions unilaterally determined by the other party.*

(Schlachter, 2019, p. 238)

In June 2020, the Executive Vice-President of the European Commission, who is in charge of competition policy, stated that in today’s labour market the concepts of ‘worker’ and ‘self-employed’ have become blurred, stressing that ‘competition rules are not there to stop workers forming a union’ and that therefore there was a ‘need to provide clarity to those who need to negotiate collectively in order to improve their working conditions’ (European Commission, 2020c).

<sup>4</sup> See the ‘Self-employed person’ entry of Eurofound (undated).

The European Commission has initiated an evaluation and review of the fitness of EU competition rules for the digital age (2020–2023). Among other things, this process aims to ensure that the EU competition rules do not stand in the way of collective bargaining for those who need it. The initiative seeks to ensure that working conditions can be improved through collective agreements not only for employees, but also for those self-employed people who need protection. In December 2020, the Commission published the inception impact assessment (European Commission, 2020g). The European Commission emphasised that the aim of the initiative was to clarify when certain self-employed workers and their counterparts were allowed to enter into collective bargaining without infringing upon EU competition rules. More specifically, this initiative of the European Commission's Directorate-General for Competition seeks to clarify the applicability of EU competition law to collective bargaining by the solo self-employed. A consultation on the road map for this initiative was undertaken from 6 January to 8 February 2021, with a total of 310 comments collected, many of which stemmed from EU and national cross-industry and sectoral social partners. A further public consultation with a questionnaire was undertaken from 5 March to 28 May 2021 and received 264 responses.

A draft proposal for guidelines was tabled by the European Commission on 9 December 2021 (European Commission, 2021b,c). By means of this draft proposal, the Commission aims to clarify the circumstances in which competition law does not impede collective agreements, aiming to improve the working conditions of solo self-employed people when they have little influence over their working conditions. Solo self-employed people are referred to in that proposal as

*persons who do not have an employment contract or who are not in an employment relationship and who rely primarily on their own personal labour for the provision of the services concerned.*

Based on European Court of Justice case-law, the guidelines first describe the circumstances in which solo self-employed workers are comparable to workers and, henceforth, not subject to Article 101 of the TFEU. Second, the draft guidelines clarify that certain agreements would not trigger the Commission's intervention under Article 101 of the TFEU because the solo self-employed face an imbalance in bargaining power.

The draft guidelines cover two categories of solo self-employed people: (1) people who are economically dependent, work side by side with other employees or work through digital labour platforms; and (2) people who negotiate their working conditions with counterparties of some economic strength or who participate in collective bargaining agreements in line with the Copyright Directive and national provisions (European Commission, 2021c).

Ensuring that the self-employed also benefit from collective representation, bargaining and negotiation entails reviewing how competition law should be interpreted and applied. The objective of the initiative is to eliminate barriers to collective bargaining for some self-employed people in the most balanced manner possible. At the end of this initiative, more legal certainty regarding the application of EU competition law will possibly lead to a scenario in which certain categories of self-employed workers may enter into collective agreements without incurring the risk of breaching anti-trust law (European Commission, 2020b–f).





## 2 Trade unions and other forms of employee representation for the self-employed

The European Court of Human Rights (ECtHR) has stressed that the **freedom of association** (Article 11 of the European Convention on Human Rights (ECHR)) applies to self-employed workers and that Article 11 of the ECHR also encompasses the **right to collective bargaining**.<sup>5</sup>

In June 2021, there were only three EU Member States that did not allow trade union representation for the self-employed (Estonia, Romania and Slovakia; Table 2). In all cases, this is on the grounds of labour law only.

The vast majority of Member States (16 in total) do allow trade union representation for the self-employed. In the majority of these cases (eight Member States), trade union representation is in place on the grounds of labour law (Belgium, Croatia, Finland, France, Hungary, Poland, Spain and Sweden). In six Member States, the right to associate is enshrined in the constitution (Croatia, Denmark, Finland, France, Italy and Slovenia). Trade union statutes are the legal basis in four Member States (Austria, Germany, Greece and Ireland).

One Member State (the Netherlands) relies on competition law, while in Austria it is the ECHR and in Denmark it is the Confederal Agreement that serve as a recognised legal source for self-employed workers having their interest represented by trade union organisations.

Finally, in eight Member States (Bulgaria, Cyprus, Czechia, Latvia, Lithuania, Luxembourg, Malta and Portugal), the laws are silent on trade union representation for the self-employed.

### Member States where trade unions and other forms of employee representation for the self-employed are prohibited

#### Estonia

The Trade Unions Act specifies that the aim of a trade union is to protect the rights and interests of employees.

While the act states that an employee is any employed person, regardless of the nature of the work performed, it specifically emphasises that ‘employees’ are subordinate to and dependent on an employer, as opposed to autonomous self-employed people as defined by the Employment Contracts Act, §1 (‘on the basis of an employment contract a natural person (employee) works for another person (employer) in subordination to the management and control of the employer’). Other grounds for work are covered in the Law of Obligations Act, part 8 (‘Contracts for provision of services’), which all refer to undertaking service provision and not employment. Despite the limitation, self-employed people can form an association with other professional organisations (for example, taxi drivers, who are usually solo self-employed, have the Taxi Drivers Association). Other forms of employee representation include employees’ trustees, who have the right to conclude collective agreements at the workplace in the absence of a trade union, and working environment representatives, who are representatives in occupational health and safety issues. However, both assume that the employees represented are subordinate to and dependent on an employer (Employees’ Trustee Act, §2, and Occupational Health and Safety Act, §17).

#### Romania

Article 3 of the Social Dialogue Act (Law 62/2011) defines the categories of workers able to form or join a trade union. These categories are limited to people with an individual employment contract, public servants or members of cooperatives, and agricultural workers (falling under the provisions of the labour law). The definition in the Social Dialogue Act follows the Labour Code (Law 53/2001), which defines the conditions for a type of activity to be considered as labour, which in turn generates some individual and collective rights. Under the Labour Code, a labour relationship is a standard labour contract, understood as a contract that creates a dependency relationship and sets out the authority of the employer and its responsibility for all of the risks linked to the activity. Self-employed

Table 2: Trade union representation for the self-employed

Status	Member States
Prohibited	Estonia, Romania, Slovakia
Allowed	Austria, Belgium, Croatia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Poland, Slovenia, Spain, Sweden
Not regulated	Bulgaria, Cyprus, Czechia, Latvia, Lithuania, Luxembourg, Malta, Portugal

<sup>5</sup> See the ECtHR ruling in *Demir and Baykara v. Turkey* (Application No. 34503/97), 12 November 2008.

activities do not fall under the labour law. Therefore, none of the individual or collective rights stemming from the Social Dialogue Act applies to self-employed workers. The self-employed are considered service providers, concluding service contracts instead of labour contracts.

### Slovakia

According to Article 1(1) of Act No. 83/1990 on Associations of Citizens, each citizen, including self-employed people, has the right to associate freely. According to Article 2(1), citizens can establish societies, associations and other civic organisations, as well as trade unions, and can associate in them. Trade unions are voluntary organisations established independently of employers and the state and their main aim is to support and protect the interests of employees. Since 1 March 2021, according to Article 230(2) of the amended Labour Code, members of local trade unions at enterprise level must be employees being employed by an employer. Trade unions represent employees in their relationship with employers. According to the available information from trade unions, self-employed workers are not organised in trade unions. The self-employed are considered as employers and in terms of the Act on Associations of Citizens, they are associated to employer organisations, especially in the Slovak Craft Association (SZZ). The activities of self-employed people are regulated by the Trades Licensing Act No. 455/1991.

## Member States where trade unions and other forms of employee representation for the self-employed are allowed

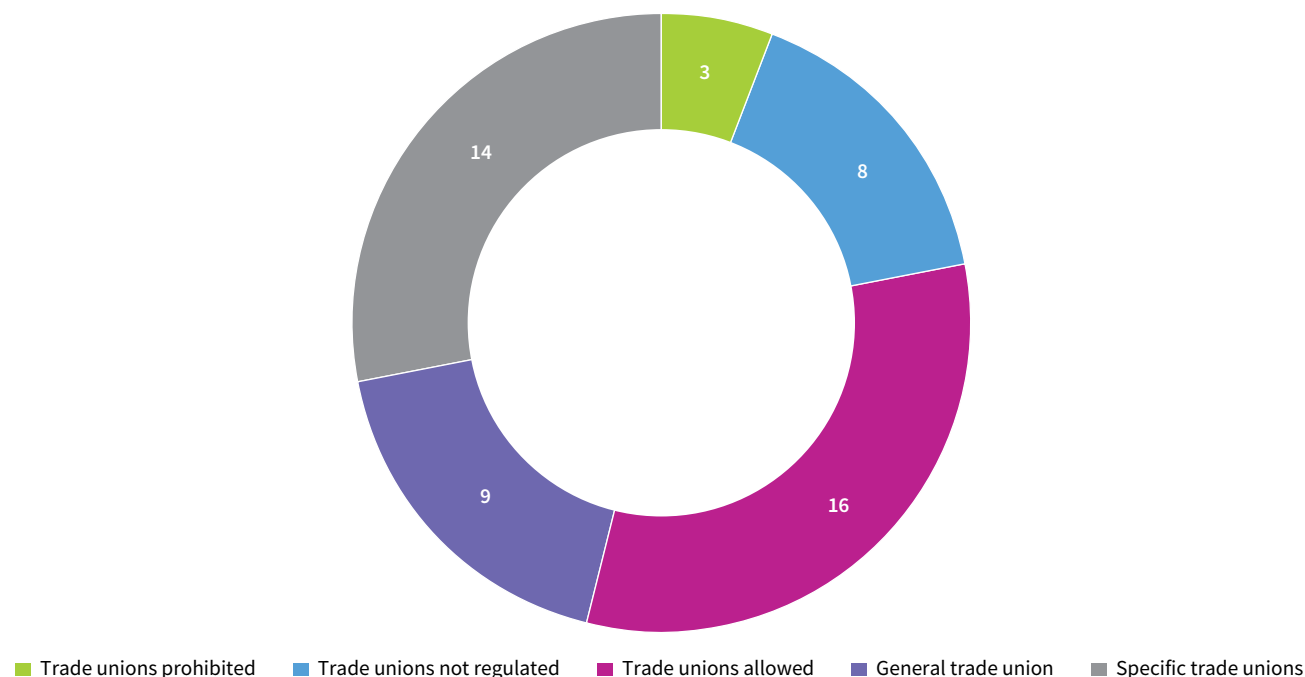
As Figure 1 shows, the vast majority of Member States (16 in total) do allow trade union representation for

the self-employed. In the majority of these cases (eight Member States), trade union representation is in place on the grounds of labour law (Belgium, Croatia, Finland, France, Hungary, Poland, Spain and Sweden). In six Member States, the right to associate is enshrined in the constitution (Croatia, Denmark, Finland, France, Italy and Slovenia). Trade union statutes are the legal basis in four Member States (Austria, Germany, Greece and Ireland). One Member State (the Netherlands) relies on competition law and the ECHR also serves as a recognised legal source for self-employed workers having their interest represented by trade union organisations.

In nine Member States (Austria, France, Germany, Ireland, Italy, Lithuania, Malta, Poland and Sweden), this interest representation for the self-employed is channelled via general trade unions or their separate branches. In 14 Member States (Austria, Croatia, Cyprus, Denmark, Finland, France, Hungary, Ireland, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden), this task is taken up by specific trade unions for the self-employed (for example, Virksom in Denmark and the Building and Allied Trades' Union (BATU) in Ireland).

In a number of Member States, there are also associations, professional organisations or other forums representing the interests of the self-employed (for example, the Croatian national coworking community (Coworking Croatia), the Taxi Drivers Association in Estonia, Allianz deutscher Designer (ADG) for self-employed designers in Germany, the Association of Self-employed Musicians in Latvia and the various associations of self-employed workers in Portugal). As will be seen in the next chapter, these organisations do not have the right to enter into collective bargaining on behalf of self-employed workers, as they are not recognised as genuine and representative trade unions.

Figure 1: Trade union representation for the self-employed



## Austria

According to Article 11 of the ECHR, which has the status of a constitutional law, the right of all people to form and join trade unions for the protection of their interests is constitutionally enshrined.

In the statutes of the Austrian Trade Union Federation (ÖGB), Austria's only union confederation, it is stated in Section I, §1, that freelancers, atypical employees and precarious employees are included among potential members, provided that their activities are comparable to those of employees.

The ÖGB consists of seven unions, of which three cater for a specific group (freelancers, precarious employees and 'bogus' self-employed workers<sup>6</sup>).

- The Union of Salaried Employees, Graphical Workers and Journalists (GPA), along with its interest community Flex (IG Flex), specifically addresses atypically employed people, people affected by precarious employment and (involuntary) solo self-employed workers. This includes platform workers and newly self-employed workers (holders of a 'contract for work' (*Werkvertrag*) without a trade licence (*Gewerbeschein*)).
- The services union *vida* has founded the association *vidaflex*, a trade union initiative for one-person enterprises. The membership includes a comprehensive service and protection package, as well as training opportunities in addition to representation of interests.
- *Younion* represents (besides municipal workers, their largest group) the interests of employed or freelance people working in artistic, journalistic, programming, technical, commercial, administrative or pedagogical areas in the arts, media, education, training and sports sectors.

## Belgium

In Belgium, trade union membership is possible for the self-employed on the basis of labour law and judicial case-law. It is, however, allowed only in the sense that it is not legally prohibited. Self-employed workers usually join trade associations (on the employers' side in collective negotiations) rather than trade unions.

More recently, self-employed workers (called 'autonomous workers') have had the opportunity to be represented by newly created branches of Belgian established trade unions. *United Freelancers* was created in 2019 and is a section of the Confederation of Christian Trade Unions of Belgium (ACV/CSC). *United Freelancers* represents autonomous workers whatever their status (including self-employed) as long as they do not employ any workers. *United Freelancers* represents autonomous workers' interests against companies such as *Deliveroo* or *Uber*. *United Freelancers'* mission has been to advocate for the recognition of those workers as salaried employees and

not as self-employed. In both cases (*Deliveroo* and *Uber*) such recognition has been granted by the administrative commission for the regulation of the employment relationship.<sup>7</sup>

The General Labour Federation of Belgium (ABVV/FGTB), a socialist trade union, also recently created a section dedicated to autonomous workers. This platform focuses on people working for digital platforms and advocates for their recognition as employees. There are sectoral cases in which self-employed people may join a corporatist union such as in the medical sector. Doctors can be affiliated with the Belgian Association of Medical Unions (ABSYM/BVAS), which represents their interests in the National Institute for Sickness and Invalidity (INAMI/RIZIV). However, these associations are not recognised as representative workers' organisations and are not allowed to negotiate collective agreements.

Finally, at workplace level, the self-employed are excluded from being represented by shop stewards, works councils or Committees for Prevention and Protection at Work (Franquet and Maisin, 2021, pp. 90–95). While there have been recent cases in which the self-employed were represented by trade unions, they remain marginal. Self-employed workers have been assimilated to salaried workers in some collective negotiations at company level. However, this kind of representation is based on legal voids and is limited: in the current legal framework, the self-employed cannot elect or be elected in bodies in which collective negotiation unfolds. Elections of workers' representatives to works councils are regulated by the law of 20 September 1948, while the elections of workers' representatives to Committees for Prevention and Safety at Work are regulated by the law of 4 August 1996. Both laws base the definition of a worker on the existence of an employment contract.

## Croatia

In Croatia, it is not prohibited for self-employed workers to join trade unions. As stated in the Constitution (Article 43), everyone is guaranteed the right to and freedom of association to protect their interests or to pursue social, economic, political, national, cultural or other beliefs and goals. Everyone has the freedom to establish trade unions and other associations and to join them or withdraw from them in accordance with the law. The Labour Code (Article 165) allows all workers to join trade unions in accordance with the conditions determined by the statute or rules of that particular union.

There was a union of the self-employed, temporarily employed and occasionally employed in Croatia, which was registered at the Ministry of Labour, Pension System, Family and Social Policy until 30 July 2017: this trade union is not active any more. Although there is no active trade union for the self-employed, there is a Croatian national coworking community: *Coworking Croatia* (Box 3).

<sup>6</sup> False or 'bogus' self-employed 'refers to individuals who, objectively speaking, are employees but who, for reasons connected to the evasion of regulatory legislation, are described as self-employed by the workers themselves and/or by their employer' (Eurofound, 2009a)

<sup>7</sup> Commission administrative de règlement de la relation de travail/De administratieve commissie ter regeling van de arbeidsrelatie. See the resolutions of 23 February 2018 (*Deliveroo*) and of 26 October 2020 (*Uber*).

### Box 3: Coworking association – Croatia

Coworking Croatia is a programme set up by the Croatian Independent Professionals Association (CIPA). The initiative was started in the spring of 2012 and its members have claimed that they have significantly contributed to the promotion of coworking and the self-employed movement in Croatia. The goal of this association is to participate in the opening of a non-governmental organisation-based 'freelance coworking centre' in Zagreb, while it also encourages and endorses all new coworking spaces in Croatia. The mission of Coworking Croatia is to position self-employed work as an entrepreneurial choice and to advocate for the rights of independent professionals. The organisation encourages the opening of coworking spaces across Croatia, where independent professionals can find their own professional place. Coworking Croatia provides support, information, knowledge and training in the skills required for opening and managing a coworking space and granting access to its community.

### Denmark

The main confederal agreement between the Danish Employers' Confederation (DA) and the Danish Federation of Trade Unions (LO) (September Compromise of 1899), as well as the Danish Constitution, give all workers the right to organise and join a union. Therefore, all individuals have the right to join a union. Some unions may have specific rules and regulations that prohibit self-employed workers from being members of their organisation, as they consider these groups as small employers and not workers.

In recent years, Danish trade unions have shifted from trying to reduce non-standard work to trying to improve the wages and working conditions of non-standard workers (Larsen and Mailand, 2018b). Today, over 120 trade unions exist in Denmark, of which at least 48 include

memberships for self-employed workers. The monthly fees range from DKK 50 to 1,670 (€7 to 224), of which medical associations make up three out of five and have the highest membership fees among the trade unions for self-employed workers.

A sectoral example of trade union representation is in the graphic design industry, where trade unions (the Union of Commercial and Clerical Employees in Denmark (HK) and the Danish Association of Professional Technicians (TL)) increasingly offer services to freelancers and solo self-employed workers. The services, such as legal and business advice, share certain traits with services offered by employer and business organisations, blurring the lines between union and employer/business interests and moving away from the traditional union-employer association split (Larsen et al, 2018).

### Box 4: Trade union membership for the self-employed – Denmark

The union Virksom stands out in Denmark, as it is solely for self-employed workers. Some trade unions require certain degrees, whereas other trade unions accept all types of occupations. A common feature of all unions in Denmark is that they provide services for the self-employed and assist in matters that differ from those of classic wage earners; examples include business management, legal advice, patent guidance and finances. Self-employed workers will often have a lower subscription fee because the services they receive do not include collective bargaining. Moreover, the full subscription amount can be deducted from tax, in contrast to the maximum ceiling of DKK 3,000 for wage earners.

Two trade unions have established independent non-profit freelancer companies, one in 1992 by TL and one in 2018 by HK. Both union-led companies offer similar services, dealing with the social coverage of non-wage earners and administrative tasks. There are no restrictions, as the companies include both union and non-union members. Registration is free, and fees are charged only when the companies act as mediators for business (Ilsøe and Larsen, 2021).

HK has an agency (servicebureau) for freelancers. The agency is non-profit and costs 8% in fees when being used. HK states that it is a 'solution when a customer wants to use you to solve a task according to an invoice, and you want to perform it as a wage earner' (translated).

The agency arranges all of the paperwork, invoices the customer from HK's central business register number and hire the self-employed worker for the task, so they get a contractual salary while they work. Additionally the agency settles holiday pay and insurance, and the hours can be used to earn unemployment benefit entitlements. The freelancers have to arrange everything and find work themselves before turning to the agency to be a mediator/ employer. The salary is set by the standards of the collective agreements in the specific field, but the work is not under an actual collective agreement. If a customer does not pay, the agency is responsible for collecting the money and, if they are unsuccessful, the self-employed worker will still receive the salary for the task.<sup>8</sup>

<sup>8</sup> More information on the HK agency servicebureau is available at <https://www.hk.dk/raadogstoette/freelancer/bureau>. TL has a similar agency (<https://tl.dk/arbejdsliv/teknik-og-design/>).

## Finland

In Finland, it is legally possible for self-employed workers to join a trade union. During the past 20 years, several trade unions have opened their doors to the self-employed. Narrower forms of employee representation for self-employed workers have been available since the 1970s. The legal basis of this is the Constitution (731/1999) and the Associations Act (503/1989), as they establish the right to organise, covering trade unions. Thus, it is up to the trade unions to decide who can become a member.

When it comes to member benefits, there are no major differences between employed and self-employed workers (for example, members of the Union of Private Sector Professionals (ERTO) benefit from travel insurance and advocacy services and can participate in training and other events organised by the trade union. Certain trade unions also provide additional services for the self-employed. One example is guidance on the pricing of their services (provided by ERTO and the Union of Journalists

in Finland). In sum, self-employed workers can join trade unions,<sup>9</sup> but trade unions do not have a mandate to represent them in collective bargaining agreements.

## France

In France, the right to join a trade union of one's choice is a universal constitutional right that appears in paragraph 6 of the preamble to the 1946 Constitution, to which the 1958 Constitution refers: 'Everyone may defend their rights and interests through trade union action and join the trade union of their choice'. The freedom to create a trade union is recognised in the law of 21 March 1884 on the creation of professional trade unions (the so-called Waldeck Rousseau law). By virtue of this constitutional right, self-employed people have the right to join a professional union. Labour law establishes the principle of trade union freedom in Article L.2141-1 of the Labour Code only for employees and pensioners. Therefore, the Labour Code does not cover the self-employed as regards benefiting from trade union freedom.

### Box 5: Trade union for platform workers – France

In 2016, the legislator in France opened up the right to trade union representation to self-employed workers using a platform. Article L.7342-6 of the Labour Code provides that 'The workers mentioned in Article L.7341-1 benefit from the right to form a trade union organisation, to join it and to assert their collective interests through it'. The workers referred to in Article L.7341-1 of the Labour Code are 'self-employed workers who use one or more electronic contact platforms defined in Article 242 bis of the General Tax Code to carry out their professional activity'. In 2019, the legislator planned to organise by ordinance the modalities of representation of self-employed workers (Article 48 of Law No. 2019-1428 of 24 December 2019 on the orientation of mobility). A task force tasked with framing work in platforms by the Minister of Labour delivered its work in March 2021, providing recommendations and a draft ordinance (European Commission, 2021e, pp. 20/21; Planet Labor, 2021a). This draft ordinance was adopted by the Council of Ministers on 21 April 2021, namely as Ordinance No. 2021-484 of 21 April 2021 on the representation of self-employed workers using platforms for their activity and the conditions for exercising this representation. However, the provisions of this order concern only self-employed workers using a vehicle driver platform (chauffeur-driven cars that are authorised, alongside taxis, to transport passengers) and delivery drivers. A draft bill to endorse the ordinance was adopted by the Council of Ministers on 13 July 2021. The draft bill was adopted by the National Assembly on 28 September 2021 and by the Senate in November 2021. The text is currently being discussed in the mixed bipartite commission composed of representatives from the Senate and National Assembly to agree on a common text.

According to Article 1 of the ordinance, the provisions of this order concern self-employed people using a platform that offers one of the following two activities: 'activities of driving a transport vehicle with driver' or 'activities of delivery of goods by means of a two- or three-wheeled vehicle, whether motorised or not'.

In total, the ordinance covers almost 100,000 self-employed worker categories (a total of 2.8 million self-employed workers, excluding the 400,000 farmers, in 2017, according to the National Institute of Statistics and Economic Studies (INSEE)).

The minutes of the Council of Ministers of 21 April 2021 stated the following in relation to this ordinance.

*For each of these sectors of activity, a national election, in a single round and by electronic voting, will be organised to allow the self-employed to designate the organisations that will represent them. In the first election, organisations (trade unions and associations under the 1901 law) that receive at least 5% of the votes cast may be recognised as representative. This threshold will then be raised to 8% from the second election, which will take place two years later. Subsequent elections will be held every four years. The representatives appointed by the representative organisations will benefit from special guarantees to protect them from any risk of discrimination as a result of their mandate. In particular, the termination of their contract with a platform will be subject to prior administrative authorisation. These representatives will also benefit from a right to training in social dialogue, in order to have the tools and knowledge necessary to establish a balanced dialogue.*

<sup>9</sup> For example, the following unions accept the self-employed: Trade Union Pro, the Union of Private Sector Professionals (ERTO), the Trade Union for Theatre and Media Finland (Teme), the Union of Journalists in Finland (Journalisti), the Trade Union for Art and Culture Professionals (TAKU), Service Union United (PAM) and the Musicians' Union.

The ordinance also provides for the creation of the Authority for Social Relations of Employment Platforms (ARPE), a public institution dedicated to the regulation of social relations between platforms and self-employed workers who use platforms for the dissemination of information and for consultation. The ordinance states that the ARPE

*will organise the national election of representatives of self-employed platform workers, will finance their training and compensation, and will protect them against the risks of discrimination. It will support the development of social dialogue and play the role of observatory of the activity of digital employment platforms. It will ensure the payment of indemnities to self-employed to compensate for the loss of turnover linked to the exercise of their mandate.*

A decree of 8 November 2021<sup>10</sup> sets out the organisational and operational procedures of this public administrative establishment and specifies its missions. It establishes a Council of Platform Actors within the ARPE, responsible for making proposals to the Chairman of the Board of Directors on the working conditions of platform workers and the means of developing social dialogue and collective bargaining within the sectors concerned. This council will be made up of representatives of organisations representing platforms and platform workers, as well as representatives of consumer protection associations, representatives of associations of local elected representatives and various qualified individuals.

While the constitutional right allows all employees to join a trade union, the possibility of membership by self-employed workers in one of the five representative trade union confederations in France depends on the wording of the statutes of the trade union organisations and the conditions of membership. The statutes of the five national representative trade union confederations offer membership to employees, pensioners and the unemployed in their capacity as former employees. Membership for the self-employed is not specifically mentioned in the statutes. This is the case for the French Confederation of Management – General Confederation of Executives (CFE-CGC). The French trade union confederation Force Ouvrière (FO) has not adapted its constitution to the specific issue of the self-employed. However, FO stresses that Article 1 of its statutes currently in force clearly define that

*All those who live from their work without exploiting others, whatever their function, as well as those who have ceased to exercise their function or profession (unemployed, early retirees, pensioners), are considered as employees.*

However, some of the federations affiliated with these five confederations do open their doors to self-employed workers. For example, in the live performance sector, membership of the General Confederation of Labour (CGT) Spectacle union is open to non-salaried artists: ‘visual artists, authors, composers, graphic artists, etc. in the field of live performance, production, audio-visual or film broadcasting, cultural action, technical services or leisure parks’. Similarly, the statutes of the Union Nationale des Syndicats des Artistes Musiciens open membership to artists who earn their income from the exercise of their profession, provide proof of the exercise of their profession or pursue professional training and/or provide proof of student status.

Faced with the emergence of new services provided by self-employed workers, the five trade union organisations representing employees have taken various initiatives.

- The creation of unions for ‘new forms of employment’: the CGT has created the bicycle delivery workers’ union, FO-CAPA VTC, which has established itself in major cities. Since 2017, the union has aimed to defend the interests of delivery drivers who have chosen to join it. Workers on digital passenger transport platforms also have the opportunity to join.
- The creation of generalist national organisations: at national level, the French Democratic Confederation of Labour (CFDT) created UNION in 2016, which presents itself as a platform for services and social demands for the solo self-employed and ‘slashers’.<sup>11</sup> On 16 March 2021, the CFDT, the Union des Auto-Entrepreneurs (UAE) and UNION formed an alliance to defend the interests of the self-employed, to build common demands and to create an association representing all self-employed workers.
- The creation of free professionals: there are also trade unions that bring together self-employed workers and salaried workers, such as the National Union of Mountain Guides (SNAM), a trade union created in 1979 by the first qualified mountain leaders. It brings together 2,500 qualified mountain leaders, spread throughout France, in 22 local sections. SNAM is the most representative body of the profession and a partner of the institutions. Its statutes (Article 3) state that ‘the purpose of the union is to group mountain leaders in order to defend their professional interests, whether they are self-employed or salaried workers’. Other professions have organised themselves in a similar way: lifeguards (National Professional Union of Lifeguards, SNPMNS), independent sophrologists (Union of Independent Sophrologists, SSI) and conference interpreters (French Tourist Guide Federation, FNGIC), with the latter bringing together workers whose status is employee, casual entertainment worker or micro entrepreneur.

<sup>10</sup> The full text of the decree (in French) is available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044310784>

<sup>11</sup> The word ‘slasher’ has its origin in the slash sign, as in ‘/’, and refers to people who combine more than one role or occupational identity.

Self-employed workers also organise themselves in the form of associations under the 1901 law or more informally in the form of collectives or platforms, sometimes using the name ‘trade union’.

## Germany

In Germany, it is legally possible for self-employed workers to join a trade union on the grounds of the trade union statutes. Several affiliates of the German Trade Union

Confederation (DGB) changed their statutes for organising economically dependent self-employed workers.

For the Education and Science Workers’ Union (GEW), self-employment is a long-standing issue, as, since the 1990s, public and private employers in the adult education sector have contracted language and other classes out to self-employed teachers. GEW offers membership to self-employed teachers and academics and provides guidance and support. A collective agreement has not been reached.

### Box 6: Organising economically dependent self-employed workers – Germany

The United Services Union (ver.di) in Germany has organised self-employed workers since the early 2000s. As of 2021, some 30,000 economically dependent self-employed workers were members – the audio-visual and the newspaper sectors are strongholds for this union, while organising the self-employed in the transport sector is considerably more difficult. A special trade union unit (Mediafon/Selbstständigenreferat) offers individual guidance (online, by phone and in writing) on tax, insurance and contract issues.<sup>12</sup> The union also cooperates with the metalworkers’ union IG Metall in running the online platform Fair Crowd Work for reaching out to platform workers.

The construction and agriculture workers union IG Bauern-Agrar-Umwelt (IG BAU) changed its statutes in 2007 to offer membership to all non-standard workers, including self-employed workers. For IG BAU, bogus self-employment is an issue of great concern and the trade union has boosted its campaigning against outsourcing of tasks to self-employed workers and its monitoring of bogus self-employment, focusing on this more than organising self-employed workers.

The metalworkers’ union IG Metall changed its statutes in 2016 after works council members from large information technology (IT) companies raised concerns about the growing number of platform workers in the IT sector. The Fair Crowd Work initiative was set up to organise platform workers by providing online support and guidance.<sup>12</sup> IG Metall additionally offers financial support in the case of lawsuits and accident insurance for leisure time.

Since 2018, the Food, Beverages and Catering Union (NGG) has supported the initiative ‘Lieferrn am Limit’, an initiative developed by platform workers (riders for food delivery companies) aimed at raising wages and improving working conditions. Most NGG members are on fixed-term contracts but NGG is also open to self-employed workers.

An interesting association is the ADG, which according to its statutes has the purpose of improving the working and economic conditions of its members – economically self-employed designers – via collective bargaining (Article 12a of the Collective Agreements Act). The association was founded in 1977 and currently has about 3,000 members. The ADG does not define itself as a trade union and also provides some services to the other collective bargaining party.

## Greece

The trade union legislation in Greece (Law 1264/1982, Article 7) provides exclusively for the participation of dependent employees in the unions without any reference to the participation of the self-employed. Specifically, the law states that

*Every employee who has completed two months in the last year in his company or undertaking or sector of its employment, has the right to become a member of a trade union in the company or undertaking holding and also in the union of the professional sector or occupational profession, according to the conditions of the trade union statutes.*

In practice, there are several unions whose statutes accept self-employed people as full members on the condition that their employment involves a dependent employment relationship. In this sense, the organisation of the self-employed in unions is left to the unions’ statutes. The general rule, however, is that only employees with a dependent employment contract can become members of unions.

## Hungary

In Hungary, the conditions of self-employment are regulated in Act CXV of 2009 on sole proprietors and sole proprietorship. According to this law, a self-employed person can form a one-person limited liability company but, in this company, no other person may participate.

The right of association provides the right for self-employed people to create a trade union (Act CLXXV of 2011 on the right of association, public benefit status and the operation and support of non-governmental organisations). This law was amended by Act XCIII of

<sup>12</sup> The website [faircrowd.work](https://www.faircrowd.work) supports fair working conditions for platform work. It was launched by the German union IG Metall, ÖGB, the Austrian Chamber of Labour and the Swedish trade union Unionen (European Commission, 2021e, p. 20–21).

2018, but the amendments do not affect the possibility of creating a trade union.

Self-employment is typical in live performance professions (artists and musicians), in household services, in transport (taxi drivers and emergency breakdown service providers – who have recently created their own trade union and joined the Democratic League of Independent Trade Unions (LIGA)) and in intellectual professions. Self-employment is not rare in the health sector either: many doctors work as self-employed, either entirely or part time, even in the public health sector. However, the legal environment is not conducive to these unions, as unions formed by the self-employed are unable to exercise most of the rights granted to unions in the Labour Code. The Labour Code is only about employers and employees and does not deal with the self-employed.

Self-employed trade unions have in some cases successfully represented the interests of their members. The National Trade Union of Taxi Drivers (MTSZ) held successful negotiations with the city administration on the regulation of competition and headcount, tariff setting and the regulation of working conditions. The Federation of Art Unions, which includes six art unions (among others, the Trade Union of Artists, the Trade Union of Hungarian Musicians and Dancers (MZTSZ), the Trade Union of Theatre Workers and the Performing Arts Advocacy Office), acted for artists who lost their revenue during the coronavirus disease 2019 (COVID-19) and thus contributed to the decision of the Performing Arts Advocacy Office to support the artists (with a modest amount). A group of musicians, typically solo self-employed people, joined the MZTSZ forming a chapter for freelancers during 2021 (Jazzma.hu, 2021).

## Ireland

In Ireland, a number of unions organise self-employed workers.

- Services Industrial Professional and Technical Union (SIPTU), Ireland's largest union, represents workers in the construction sector classified as self-employed or economically dependent workers.
- The Musicians' Union of Ireland (MUI) – an affiliate of SIPTU – represents self-employed musicians.
- Irish Equity – an affiliate of SIPTU – represents self-employed professionals in the live performance and theatre sector, including voice-over actors.
- The National Union of Journalists represents a number of self-employed journalists.
- Connect represents some self-employed workers in the construction, electrical and technical sectors.
- BATU represents a number of workers classified as self-employed in the construction sector.
- The Irish Medical Organisation (IMO) represents self-employed doctors in general practice.
- The Irish Dental Association (IDA) represents self-employed dentists.

## Italy

According to the Italian legislative framework, self-employed workers fully enjoy the right to join a trade union (Fulton, 2018). In particular, the Constitutional Charter, in Article 39, sets out the freedom to join a trade union for all the workers, regardless of their status as either employed or self-employed.

The three main union confederations created ad hoc categories to collectively represent self-employed workers, regardless of the economic sector in which they work.

The Italian General Confederation of Labour (CGIL), the largest union confederation in Italy, in 1998 established a new platform – New Identities of Work (NIDIL) – to represent temporary agency and atypical workers, including semi-subordinate workers. The NIDIL organisational strategy is focused on limiting the improper use of semi-subordinate contracts (an intermediate category between self-employment and employment) as a cheaper alternative to subordinated contracts and tackling the increasing precariousness and flexibility in the labour market. NIDIL had 94,000 members in 2016 (Fulton, 2018). NIDIL is currently also organising a category for food delivery riders.

The Italian Workers' Trade Union Confederation (CISL), the second largest union confederation in Italy, in 1989 established a body for the Coordination of Autonomous Workers in Retail and Services (CLACS) to coordinate the various traditional categories in which self-employed people are found. In 1998, the Association of Atypical and Temporary Workers (ALAI) was launched to extend the collective representation of new forms of work: like NIDIL, this union primarily targeted semi-subordinated and atypical workers. ALAI and CLACS were merged in 2009 to form the Federation of Temporary Autonomous and Atypical Workers (FELSA), which represents self-employed workers in low-skilled sectors, such as gas station attendants and newsagents. FELSA had 42,000 members in 2016 (Fulton, 2018). More recently, CISL established vIVAce!, a community devoted to self-employed workers in both traditional and new professions. By building a collective voice, the community acts as a lobbyist for the trade union to get a fairer social security system, a cheaper taxation system and more employment rights for the members, as also reported during an interview with the spokesperson of the organisation.

In 1998, the Italian Labour Union (UIL), the third largest union confederation in terms of organisational density, created the Coordination for Occupation, which was then renamed UILTemp, to collectively represent all kinds of new contractual arrangements, including self-employment. UILTemp had 69,000 members in 2016 (Fulton, 2018).

## Netherlands

The right of association is recognised as a fundamental right in Article 8 of the Dutch Constitution. This includes the formation of trade unions and the right to join one. Dutch competition law (*Mededingingswet*) prohibits cartels and, therefore, self-employed people who are considered to be undertakings cannot benefit from



any form of employee representation. An association representing these self-employed people would instead be seen as a business organisation, which cannot engage in collective bargaining with clients or other price-setting activities. However, solo self-employed workers who are

not considered an undertaking are allowed to join a union and can be represented by a union in collective bargaining, within the framework of a collective labour agreement.

### Box 7: Self-employed union – The Netherlands

As a branch of the Netherlands Trade Union Confederation (FNV), the largest trade union in the Netherlands, FNV Zelfstandigen is open to all types of self-employed workers. The services of FNV Zelfstandigen include representation in national and European policy debates and practical and legal advice for its members.

There is still discussion within FNV Zelfstandigen about the desirability of collective bargaining, as some self-employed workers see it as opposing the essence of being self-employed, that is, being independent. In addition, legal possibilities for collective bargaining are still limited. If collective bargaining for the self-employed takes place, it must be in the context of a collective labour agreement.

The Christian Trade Union Federation (CNV) is the second largest (cross-sectoral) trade union in the Netherlands. CNV Zelfstandigen is part of this union, but few self-employed workers are members of CNV Zelfstandigen. Therefore, CNV Zelfstandigen does not operate as a separate branch representing self-employed workers in collective bargaining, but serves as support for CNV's sectoral branches in sectoral collective bargaining. In addition, CNV Zelfstandigen provides information and advice to its members and represents the interests of self-employed workers in political discussions.

### Poland

On 1 January 2019, new legislation (an amendment to the Act on Trade Unions) entered into force, giving all people performing paid work (including the self-employed) the full right to establish and join trade unions.

In 2015, the Constitutional Tribunal analysed the compatibility of the Act on Trade Unions with the Constitution of Poland and ILO Convention No. 87. The tribunal ruled that the act was unconstitutional, as it restricted the freedom to establish and join trade unions for people who performed work but were not included in the provision. The judgement of the Constitutional Tribunal was implemented through the introduction of the 2018 amendment to the Act on Trade Unions (Mitrus, 2021, p. 212).

According to information from Poland's two largest trade unions, the All-Poland Alliance of Trade Unions (OPZZ) and the Independent Self-Governing Trade Union 'Solidarity' (NSZZ 'Solidarność'), these unions do not represent a substantial number of self-employed workers. No other trade unions or forms of employee representation dedicated to the self-employed have been identified.

### Slovenia

The term 'worker' is used in laws that regulate trade union membership and collective bargaining (for example, the Representativeness of Trade Unions Act, the Collective Agreements Act and the Strike Act). The Employment Relationships Act defines a worker as a natural person working for an employer on the basis of an employment contract. Consequently, in principle, only workers with employment contracts are allowed to join trade unions and to enter into collective agreements.

However, the Constitution confers on all individuals the right to freedom of association and the freedom of trade unions. Article 42 (on the right of assembly

and association) states that 'everyone has the right to freedom of association with others'. Article 76 (on the freedom of trade unions) guarantees the 'freedom to establish, operate, and join trade unions'. In fact, self-employed people associate in trade unions (for example, the Slovenian Union of Journalists (SNS)) and business organisations (for instance, the Chamber of Craft and Small Business (OZS)) alike.

Although self-employed people have the constitutional right to the freedom of trade unions, there are two barriers that prevent them from exercising their (full) rights. First, competition law prohibits agreements between undertakings. Any attempt to fix 'selling prices' or 'limit or control production' by undertakings is considered a prevention, restriction or distortion of competition. The notion of an undertaking also includes self-employed people, with or without employees. According to the Slovenian Competition Protection Agency, undertakings should not discuss the minimum tariffs for their work between themselves.

A worker is defined in the Employment Relationships Act as a natural person working for an employer on the basis of an employment contract and so it follows that contract workers (that is, those working on civil law contracts) are not entitled to the rights arising from these laws. There is an exception: the Health and Safety at Work Act covers all workers working on any legal basis (Kresal Šoltes, 2020).

However, contract workers can join existing trade unions if the trade unions accept them. If trade unions want to address pay and working conditions of contract workers via collective bargaining and if employers' organisations agree to negotiate, they may become the subject of collective agreements. Only once has a trade union managed to bring contract workers into a collective agreement (the collective agreement for professional journalists). At the outset of the negotiations, the social

partners disagreed about the rights of self-employed journalists under the signed collective agreement. Not satisfied with the recommendations, most employers' organisations withdrew from the collective agreement. It is now valid for one employer only, the public broadcasting organisation Radio-Television Slovenia.

Many trade unions accept and represent self-employed people. The SNS accepts freelance journalists as full members of the trade union. At one point, one in three registered journalists was a member of the trade union. According to the trade union statute, self-employed people have the same rights and obligations as employees. In the statute, the union set the goal of 'equalising the labour rights between employees and freelancers, doing the same job'. As the trade union was not successful in securing the same labour rights for self-employed workers through collective bargaining, it filed many lawsuits on the employment status of its bogus self-employed members and won many of them. In 2010, Radio-Television Slovenia, under the pressure of lost cases, signed the first agreement with the SNS about the gradual employment of bogus self-employed journalists. The second agreement was signed in 2012, after the Court of Auditors recognised in a decision the employment of bogus self-employed journalists by Radio-Television Slovenia.

There are also other trade unions representing self-employed workers in Slovenia. Several members of the Association of Free Trade Unions of Slovenia (ZSSS) organise and represent precarious workers, the Trade Union of Culture and Nature of Slovenia (Glosa) represents self-employed workers and students in the field of culture, Youth Plus represents precarious workers under 35 years of age and the Free Trade Union represents all precarious workers. The statute of the Confederation of Trade Unions of Slovenia PERGAM (KSS PERGAM) gives people working on civil law contracts the right to become trade union members.

In a nutshell, self-employed people are allowed to join trade unions in Slovenia, but at the same time cannot exercise the rights stemming from trade union membership.

## Spain

Self-employed workers in Spain can join trade unions on the grounds of Article 19 of Law 20/2007, the self-employed code.

1. Self-employed workers are holders of the rights to:
  - (a) join a trade union or business association of their choice, under the terms established in the corresponding legislation
  - (b) join and create specific professional associations of self-employed workers without prior authorisation
  - (c) exercise the collective activity of defence of their professional interests
2. The associations of self-employed workers are holders of the rights of a collective nature to:
  - (a) establish federations, confederations or unions, after meeting the requirements for the constitution

of associations, with the express agreement of their competent bodies; likewise, they may establish the links they deem appropriate with trade union organisations and business associations

- (b) enter into professional interest agreements for affiliated economically dependent self-employed workers in the terms provided in Article 13 of this law
  - (c) exercise the collective defence and protection of the professional interests of self-employed workers
  - (d) participate in non-jurisdictional systems for solving collective disputes of self-employed workers when provided for in professional interest agreements
3. The representative associations of self-employed workers will also represent the self-employed before the government according to the powers established in Article 21.3 of this law.

There are several organisations of self-employed workers at cross-sectoral, sectoral (occupational) and regional levels. Many of the sectoral (occupational) organisations are members of cross-sectoral associations. The cross-sectoral/general associations representing the most self-employed workers are (in descending order):

- Federación Nacional Asociaciones de Trabajadores Autónomos (ATA)
- Unión de Profesionales y Trabajadores Autónomos (UPTA)
- Unión de Asociaciones de Trabajadores Autónomos y Emprendedores (UATAE)
- Confederación Española de Autónomos (CEAT)
- Organización Nacional de Profesionales y Autónomos (OPA)

Other relevant occupational or sectoral unions are the Asociación de Transportistas Autónomos (ATA: transport), Asociación Agraria Jóvenes Agricultores (ASAJA: agriculture) and Asociación Española de Riders Mensajeros (ASORIDERS: food delivery).

## Sweden

Competition law does not prevent self-employed people from becoming members of trade unions. It is up to the trade unions to decide who can become a member. Trade union membership by the self-employed is thus allowed on the grounds of labour law (the Employment (Co-Determination in the Workplace) Act, Law 1976:580). It seems to be more common for white-collar unions (affiliated to the Swedish Confederation for Professional Employees (TCO) or the Swedish Confederation for Professional Associations (SACO)) to allow self-employed people as members than for blue-collar unions (affiliated to the Swedish Trade Union Confederation (LO)) to do so.

A tentative finding is that most SACO unions allow self-employed workers as members. The following are examples of non-SACO unions also representing self-employed persons, although this list is probably not exhaustive.

- Unionen (a TCO union): This trade union organises white-collar workers in the private sector, primarily employees, but under certain circumstances also registered self-employed people.
  - Self-employed people who are employed by their own company may choose to become members of the union as employees or under the specific membership for self-employed people.
  - Self-employed people with a sole proprietorship only qualify for the specific membership for self-employed people (when they are not employed).
  - Even people who are in the start-up phase can apply for the specific membership for self-employed people to ensure that they can receive, for example, legal support regarding agreements before they sign agreements with customers and suppliers.
  - Self-employed people who grow and become/are employers can join the regular membership of the union provided that they are employed themselves.
  - Membership also works for combiners (that is, for those who both run their own business and are employed by another employer). The first local union club for self-employed people was recently founded in Gothenburg.
- The Musicians' Union (an LO union) allows self-employed people with sole proprietorship to be members.
- The Union of Journalists (SJF) (a TCO union) allows freelance journalists to be members, and has concluded a collective agreement specifically for this group (see Chapter 3, section 'Collective bargaining allowed in exceptional cases for the self-employed' (p. 37) for more information).
- Ledarna (unaffiliated union for managers) organises managers, some of whom are self-employed (while others are employed).

Most of the time, trade unions only provide advisory services to self-employed people and they are not covered by collective agreements.

## Member States where trade unions for the self-employed are not regulated

Finally, in eight Member States (Bulgaria, Cyprus, Czechia, Latvia, Lithuania, Luxembourg, Malta and Portugal) the laws are silent on trade union representation for the self-employed, that is, the expression of their collective voice is neither prohibited nor allowed.

### Bulgaria

There is no official definition of self-employed in Bulgaria. The national legislation provides terms and conditions for the registration and insurance of the self-employed.

The professionals who can be defined as self-employed include freelancers (for example, lawyers, architects, journalists, accountants and auditors), crafts people, sole entrepreneurs, owners or partners in commercial companies and natural people as members of unincorporated associations.

There are no legal provisions on the right of self-employed workers to join or form unions. The national legislation neither prohibits the organising of the self-employed nor defines their right to form unions. Article 33 of the Labour Code provides that trade unions can create their own statutes. The statutes of the national representative trade union confederations (the Confederation of Independent Trade Unions in Bulgaria (KNSB) and the Confederation of Labour 'Podkrepa') allow organisations, representing self-employed people, to become confederation members. Thus, national trade union confederations can represent the interests of the self-employed through their organisations.

Self-employed workers may join different organisations and seek representation at sectoral level. There are sector-specific organisations, such as for craft workers, accountants and journalists, and some of these are members of the national representative social partners. There is, however, only one organisation that represents various groups of self-employed workers and vulnerable home-based workers: the Trade Union of Self-employed and Informal Workers (UNITY). UNITY represents 42,000 home-based workers, 1,500 street vendors, 3,000 domestic workers, 1,500 disabled workers, 800 health workers, 1,200 teachers and translators, and 2,500 retirees.

### Cyprus

Cypriot legislation does not mention specifically whether self-employed people have the right or not to join a trade union. The Trade Unions Law of 1965–1996 (Law 71(I)/1965), which is the law governing the establishment, registration and operation of trade unions, does not refer to any restrictions of the right of self-employed people to join a trade union. On the other hand, it is not the common practice of long-established trade unions to organise self-employed people. There is, however, a growing demand for trade unions to also cover the self-employed. The trade union Isotita (meaning equality), which was established in December 2017 with the intention of representing employees of the broader public sector working with multiple contractual arrangements, has listed in its constitution as one of the employee groups that the union targets self-employed people providing (labour) services. As Isotita is a registered trade union under the Trade Unions Law, one can conclude that the Trade Unions Registrar does not object to the trade union representing the interests of self-employed people in the broader public sector.

There is also recent relevant case-law addressing whether or not self-employed people can be represented by a trade union. In case 1368/2014, the Administrative Court was asked by a trade union and four teachers (members of the trade union) to rule against the decision of the Director of Social Insurance Services that considered the teachers as self-employed for the purpose of social insurance

contributions. The lawyers of the defendants raised a preliminary objection against the involvement of the trade union, which was grounded on the lack of ‘vested interest’, as the disputed decision of the director did not affect all, or at least a significant number, of its members. The court rejected this objection, arguing that the

*vested interest of the trade union could only be disputed if the decision of the court would in any way affect the interests of any other group of members of the trade union.*

## Czechia

In Czechia, it is legally possible for self-employed people to join trade unions. No act explicitly states who can or cannot join a trade union. Membership in a trade union is based on Act No. 2/1993 Coll. of the Charter of Fundamental Rights and Freedoms, Article 27 of which states that ‘Everyone has the right to associate freely with others for the protection of her economic and social interests’. Other acts that describe the rights and obligations of trade unions and the process of collective bargaining do not explicitly state who can or cannot be a member of trade unions. Thus, it is up to the particular trade union whether or not it accepts self-employed workers as members. In general, Czech trade unions are open organisations and – facing the decreasing number of members – usually do not have a problem with accepting members from new sectors and professions. The third largest top-tier trade union in Czechia, the Confederation of Arts and Culture (KUK), has extensive experience of trade union membership for the self-employed. This group even dominates in some of its member unions. KUK mainly covers workers from the cultural and arts sectors, in which many self-employed workers and freelancers operate. The other major trade union federation (the Czech-Moravian Confederation of Trade Unions (ČMKOS)) also has self-employed workers among its members; however, there are no reliable data from this confederation.

## Latvia

The Constitution of the Republic of Latvia states that ‘Employed persons have the right to a collective labour agreement, and the right to strike. The State shall protect the freedom of trade unions.’ The law on trade unions sets out the notion of a trade union: ‘A trade union is a voluntary association of persons that has been established to represent and protect labour, economic, social and professional rights and interests of employees.’ The same law describes the right to establish a trade union and join a trade union:

*Everyone has the right to freely, without any direct or indirect discrimination establish a trade union and, in compliance with the articles of association of a trade union, to join a trade union and also not to join a trade union.*

Although the self-employed are not prohibited from joining or establishing trade unions, this option seems to be used in very rare cases. There are also alternative ways in which the self-employed can become members of trade unions. The Latvian Building Sector Trade Union (LBNA) recalls one self-employed person who previously

had been an employee but remained with the trade union. The Trade Union of the Culture Sector of Latvia also does not exclude such situations. It seems that self-employed workers more frequently organise based on their professional interests. Around 100 musicians have founded the Association of Self-employed Musicians. One of the tasks of the association, defined in statutes, is ‘to protect the professional and social rights and interests of creative people’. However, this association is not a trade union. The Union of Professional Actors of Latvia unites and represents actors, both those in employment and the self-employed.

In 2018, a report entitled *Self-employment in Latvia and improvement of the legal framework for improving the working conditions of self-employed* was published (commissioned by the state labour inspectorate). The research analyses included a specific chapter on the collective representation of the self-employed. The report reveals that the representation of self-employed interests in Latvia is weak. The self-employed have not established their own trade union, and existing trade unions and professional organisations represent mainly employers or employees.

## Lithuania

There is no reliable information on trade unions uniting self-employed people in Lithuania, but some examples are available from publicly available information, as follows.

Both of the main national trade union confederations – the Lithuanian Trade Union Confederation (LPSK) and the Lithuanian Trade Union (LPS) ‘Solidarumas’ – have sectoral affiliates uniting self-employed workers. In the case of the LPSK, this is the Lithuanian Union of Journalists (LŽS) and, in the case of LPS ‘Solidarumas’, it is the Tour Guides’ Trade Union ‘Solidarumas’. Some self-employed people are also members of other sectoral affiliates of national confederations (in cultural, transport and other sectors).

One of the affiliates of the May 1 Trade Union is the Couriers Association, which unites self-employed platform workers, while one of the affiliates of the Lithuanian Labour Federation (LDF) is the Journalists’ Association, which unites, among others, self-employed journalists.

There are also several independent (not affiliated to confederations) trade unions, uniting mainly self-employed people (for example, the Lithuanian Actors Guild, the Trade Union of Lithuanian Ride-hail Drivers and the Lithuanian Professional Footballers’ Association (PFA Lithuania)), and other independent unions, uniting both employees and self-employed people (for example, the Trade Union of Taxi Drivers).

## Luxembourg

In practice in Luxembourg, unions are open to anyone wishing to join in defence of their interests (not only in the workplace, but also in matters of labour law and social security law). However, the self-employed who unionise are rather rare (there are obviously cases of this, but they are scattered among the different professions); instead, the self-employed prefer to organise themselves into their own associations (as has recently been seen because of

the pandemic for people managing restaurants and pubs independently).

## Malta

In Malta, it is legally possible for self-employed people to join trade unions. However, in theory, they cannot form their own exclusive unions. Malta's labour law, the Employment and Industrial Relations Act (EIRA) of 2002, does not bar self-employed people from joining trade unions, but states that a trade union is an 'organisation consisting wholly or mainly of workers and of which the principal purpose is by its rules the regulation of relations between workers and employers or employers' associations'. In the EIRA, the term worker has the same meaning as employee.

Several trade unions include members who are self-employed. Official statistics on how many self-employed members are unionised do not exist. However, the following unions are known to include some members who are self-employed: the General Workers' Union (GWU), the Union of United Workers (UHM), the Malta Chamber of Pharmacists, the Malta Union of Tourist Guides (MUTG), the Malta Dockers' Union (MDU), the Malta Association for the Counselling Profession (MACP), the Malta Association of Family Therapy and Systematic Practice, the Malta Chamber of Psychologists (MCP), and the Lotto Receivers' Union (LRU). The last union stands apart, as it is composed almost entirely of self-employed people (including some who employ others).

One should also note that there are several professional associations (most of which are not registered as trade unions) that include self-employed members.<sup>13</sup> The Malta Chamber of Small and Medium Enterprises is one of the largest associations of self-employed people. However, it is registered (with the Registrar of Trade Unions) as an employers' association rather than as a trade union. It is interesting to note that its original name was the General Retailers and Traders Union, and is still known by the acronym GRTU. Other employers' associations, such as the Meat Sellers Association (MEA), also include self-employed members. There are also other associations of self-employed people that are not registered with the Registrar of Trade Unions, such as the White Taxi Association.

## Portugal

In Portugal, according to the Constitution, all workers have the freedom to create and join unions (Article 55). The legislation is not explicit about the right of self-employed people to join trade unions.

The Labour Code applies to workers in employment contracts. An employment contract is defined as an

agreement contract 'in which a natural person undertakes, upon remuneration, to provide its activity to another or others, within an organisation and under their authority' (Labour Code Articles 11 and 12). Accordingly, workers have the right to create the following structures of collective representation: trade unions, works councils, representatives for safety and health at work, and other structures such as European works councils (Article 404).

The Labour Code establishes a specific set of legal norms that applies to self-employed workers, whenever they are considered in the economic dependence of the beneficiary of the activity (Article 10): personal rights, equality and non-discrimination, and safety and health at work. At present (Decree-Law 2/2018), the self-employed are considered to be in a situation of economic dependence when 50% or more of their yearly income is paid by the same entity (Campos Lima and Perista, 2020).

Trade unions' internal statutes often state that, to be a member of the union, an activity must be performed under an employment contract in the sector in question. The openness of trade unions to self-employed workers is a very recent and rare practice. The self-employed have created and joined voluntary associations. These associations have the purpose of combating bogus self-employment, campaigning for the recognition of employment contracts and improving labour and social protection rights. These associations often cooperate with the unions: the National Federation of Teachers (FENPROF) has been cooperating with the Association of Scientific Research Fellows (ABIC) and the National Union of Higher Education (SNESUP) includes among its members researchers hired by universities through fellowships who have a status equivalent to self-employed.

The Hotels, Tourism and Restaurant Workers' Union/North has undertaken initiatives to organise self-employed platform workers/riders linked to Deliveroo and Glovo, among others, to protect their rights and campaign for their integration in employment contracts. The Union Federation of Transport and Communications (FECTRANS) and, in particular, the Union of Road and Urban Transport Workers of Portugal (STRUP) have been organising employees and self-employed workers linked to Uber and similar platforms connected to the individual transport of passengers (Campos Lima and Perista, 2020). The Association for Combating Precariousness - Inflexible Precarious (PI) is one of the most relevant associations for dealing with temporary work and self-employment and is involved in many other associations and movements (Campos Lima and Perista, 2020), an interesting example being the Architecture Workers' Movement (MTA).

<sup>13</sup> For example, the Malta Federation of Professional Associations (MFPA) comprises the following 17 professional associations that probably include a considerable proportion of self-employed members: the Association of Podiatrists of Malta (APM), the Association of Speech-Language Pathologists (ASLP), the Chamber of Engineers (COE), the Dental Association of Malta (DAM), the Chamber of Architects (Kamra tal-Periti), the MACP, the Malta Association of Occupational Therapists (MAOT), the Malta Association of Physiotherapists (MAP), the Malta Association of Professional Conservator-Restorers (MAPCo-Re), the Malta Chamber of Pharmacists, the Malta Chamber of Psychologists (MCP), the Malta Institute of Accountants (MIA), the Malta Veterinary Association (MVA), the Medical Association of Malta (MAM), the Society of Medical Radiographers (SRM), the Maltese Association of Social Workers (MASW) and the Maltese Association of Youth Workers (MAY).



# 3 Collective bargaining for the self-employed

The scope and application of the **right to collective bargaining** in the 27 EU Member States is much more limited for self-employed workers than for employees due to the shadow of EU and national competition law. However, some Member States have introduced specific exceptions and provided some room for collective bargaining for certain categories of self-employed workers (European Commission, 2021e, pp. 20–21).<sup>14</sup>

There is only one Member State (Poland) in which collective bargaining for the self-employed is – *de jure* – allowed without any restrictions. However, in Polish industrial relations, no practical cases of either trade union representation or collective bargaining for the self-employed have been reported to date.

As of January 2022, nine EU Member States did not allow collective bargaining for the self-employed. In four of these

Member States (Bulgaria, Hungary, Romania and Slovakia), it is labour law that impedes collective bargaining for the self-employed, whereas in the remaining five countries, it is impeded by competition law (Czechia, Denmark, Estonia, Finland and Latvia). In Czechia, for example, this prohibition is rooted in recommendations of the Office for Protection of Competition and, in Romania, the interdiction is implicit.

A total of nine Member States (Austria, France, Germany, Greece, Ireland, the Netherlands, Portugal, Spain and Sweden) allow collective bargaining for the self-employed in exceptional cases. Finally, in another eight Member States (Belgium, Croatia, Cyprus, Italy, Lithuania, Luxembourg, Malta and Slovenia), the collective bargaining rights of self-employed people are not regulated (Table 3).

**Table 3: Collective bargaining for the self-employed**

Status	Member States
Prohibited	Bulgaria, Czechia, Denmark, Estonia, Finland, Hungary, Latvia, Romania, Slovakia
Allowed	Poland
Allowed in exceptional cases	Austria, France, Germany, Greece, Ireland, Netherlands, Portugal, Spain, Sweden
Not regulated	Belgium, Croatia, Cyprus, Italy, Lithuania, Luxembourg, Malta, Slovenia

## Member States where collective bargaining for the self-employed is prohibited

### Bulgaria

Collective bargaining is regulated in the Labour Code and is carried out only between trade unions and employers. Collective bargaining under the Labour Code does not cover the self-employed. The Labour Code regulates labour relations between employers and employees. Relations between freelancers (the self-employed) and employers are governed by the general rules of civil law. Since self-employed people are not in an employment

relationship, they are excluded by law from collective bargaining. Under Article 51 of the Labour Code, collective agreements can be concluded at enterprise, industry, branch or municipal level. Only trade unions representing employees and workers in an employment relationship can negotiate and sign collective agreements. Since the self-employed are neither in employment relationships nor organised in trade unions, it not possible for them to negotiate collective agreements with an employer.

### Czechia

In Czechia, even though it is not stated explicitly, it is legally impossible for self-employed people to enter into collective negotiations and conclude collective agreements. This applies even if they are members of

<sup>14</sup> Some examples of such exceptions beyond the EU27 are Australia, where the Competition and Consumer Commission undertook a public consultation on the creation of a class exemption for collective bargaining by small businesses with an aggregated annual turnover of less than AUD 10 million (MBIE, 2019, p. 48; OECD, 2019, p. 240); New Zealand, where the Commerce Commission can authorise collective bargaining outside employment relationships, but applications are few, and it undertook a consultation on a system to allow collective bargaining to set minimum terms across entire sectors or occupations (MBIE, 2019, p. 48); Norway, where a collective agreement was signed between Foodora (bicycle food delivery) and the United Federation of Trade Unions (Fellesforbundet), which included a mileage rate of NOK 2.2 (€0.2) on deliveries up to 2.49km and NOK 3 (€0.3) on those of 2.5km or more (for more information, see <https://www.eurofound.europa.eu/data/platform-economy/initiatives/collective-agreement-between-foodora-and-the-united-federation-of-trade-unions-fellesforbundet>); the UK, where GMB Union and the delivery company Hermes signed a collective agreement for self-employed couriers in the platform economy, which included a minimum pay rate of GBP 8.55 (for more information, see <https://www.eurofound.europa.eu/de/data/platform-economy/initiatives/gmb-union-and-hermes>); and New York City, where, in 2018, the New York City Council decided to guarantee a minimum wage of USD 17.22 an hour (after expenses) for drivers of Uber, Lyft and similar services (Rapier, 2019; Eurofound, 2021a).

a trade union, which are the only form of employee representation with the capacity to conclude collective agreements. The self-employed cannot collectively negotiate the price of their work, as they are entrepreneurs rather than employees, and any agreement on prices would violate competition law. However, no act explicitly states that the self-employed are not allowed to enter into collective bargaining. This is based on the recommendations of the Office for the Protection of Competition. No official decision was taken, but based on information from KUK informal consultations on the issue took place. Some federations of KUK with self-employed members used to publish their tariffs on their website (for example, the Czech Society of Cinematographers). However, the Office for Protection of Competition highlighted that such activities were illegal and violated competitive law. According to KUK, agreements on prices between groups of self-employed people (typically those self-employed workers in a particular profession) and their ‘employers’ still exist in practice, but they are not published any longer. According to KUK, the current legislation does not allow the self-employed to conduct collective bargaining.<sup>15</sup> According to trade unions, change is not possible without changes in legislation, which requires the active approach of trade unions. KUK has been very active in this field, trying to introduce new legislation to enable at least some groups of self-employed workers (that is, freelancers and the solo self-employed) to be included in collective bargaining, but with little success. In addition, the Czech-Moravian Confederation of Trade Unions supports the extension of collective bargaining to self-employed workers and those working on digital platforms. Changes are, however, not expected in the short term.

## Denmark

In Denmark, collective agreements generally do not cover self-employed workers owing to competition law and their status as non-employees. Genuine self-employed workers cannot be covered by collective bargaining owing to the competition law, but there are some exceptions to this rule.

First, those who are self-employed and in wage-earning or similar positions are allowed to enter into framework agreements (but not agreements with specific wage rates) on the grounds of the autonomy of the social partners to engage in free collective bargaining. This area is a grey zone, with the final ruling still pending due to a lack of case-law, and no clear definitions have been established on where the boundaries are to be drawn.

Second, the Danish union of Journalists (DJ) is part of 25 collective agreements for freelancers, as well as media agreements with employers, covering different aspects such as broad guidelines on general minimum wages based on various wage statistics, night work rates, holiday pay and minimum rates for certain products. The

content of these agreements covers fewer aspects than traditional collective agreements, and they apply only to self-employed people who work under the instruction of an employer (Larsen and Mailand, 2018a). The DJ provides a yearly guideline on freelance wages based on calculations of average salaries for permanent employees’ hourly wages and accounting for a number of expenses that an employee-freelancer must bear.<sup>16</sup> About half of the DJ’s independent freelancers are ‘combiners’ (in Danish *kombinatører*) who carry out independent contracts on the basis of invoices and perform employee work with tax deductions and holiday pay as a temporary employee or as an hourly paid substitute.

The DJ states that, according to competition law, it is not permitted for self-employed workers to enter binding agreements or price agreements. These will be seen as illegal cartels infringing upon free competition. The penalty for illegal cartel formation can, in the most serious cases, be up to six years in prison and it can also result in substantial fines. The DJ therefore works on three fronts that differ from genuinely self-employed workers.

- **On-call substitute agreements:** These link hourly paid freelancers to the collective agreement and ensure that they are not paid less than a comparable permanent employee.
- **Non-subversion agreements:** These oblige the employer not to use freelancers and subcontractors in a way that violates the collective agreement in the field.
- **Freelance agreements:** These regulate delivery terms for employee-freelancers, and often also ensure freelancers’ rights in connection with illness, maternity and continuing education.

Thus, freelancers can be covered by collective agreements only if they are in a position of being a wage earner or similar – but, again, the definitions are not yet clear due to a lack of case-law.

The majority of digital platform workers are considered self-employed, leaving them with limited coverage by Danish labour law or collective agreements. Recently, some platform workers have secured rights through collective agreements when their work is carried out as wage earners and not as self-employed workers. The work carried out under a collective agreement is similar in status to that of a wage earner, but these workers are still considered as self-employed. The platform is not an employer in the traditional sense. The platform is an intermediate step between the self-employed worker and the job that they actively choose themselves. In this way, the relationship has elements of ‘reverse recruitment’.

Hilfr (a private household cleaning platform) and the United Federation of Danish Workers signed a company agreement that came into force in April 2018 and is

<sup>15</sup> However, there are similar decision of Office for Protection of Competition. For example, in 2018, the office published the decision that the Union of Interpreters and Translators, which represents mostly self-employed workers, violated competition law when it published its minimum tariffs in a professional bulletin from 2007 to 2017. The organisation was fined a total of CZK 144,000 (approximately €5,400). For further information, see <https://www.uohs.cz/cs/informacni-centrum/tiskove-zpravy/hospodarska-soutez/2446-sdruzeni-prekladatel-u-a-tlumocniku-porusovala-soutezni-pravo.html>

<sup>16</sup> For a more detailed description and links to the agreements, see <https://journalistforbundet.dk/sites/default/files/inline-files/DJ-in-english.pdf>



currently being renegotiated. The agreement regards the performing party as an employee of the platform Hilfr; however, the cleaners on this platform select their own contracts and assignments and have no duty beyond these. Furthermore, it is optional for individual platform workers to be covered by the agreement (super Hilfrs) or not (freelance Hilfrs) (Ilsøe et al, 2020).

Following on from this initiative, other platforms have entered bargaining processes and agreements, including Voocali (translation services) and Just Eat (food delivery). Chabber (waiting services, etc.) and Meploy (logistics, etc.) use existing national and European regulations on temporary agency work to hire platform workers as employees and pay them in line with existing sector-level agreements (Ilsøe et al, 2020).

Just Eat was the first to sign a nationwide collective agreement concluded between the United Federation of Danish Workers and the Danish Chamber of Commerce for improving the working conditions of food delivery couriers, including a regulated wage, a pension and sick pay. This is a collective agreement open to other companies as well. The agreement established that, as of 1 March 2021, an hourly wage of DKK 124.20 (€16.7) would apply. This rate increased to DKK 127.35 (€17.1) from 1 March 2022.

In sum, self-employed workers can enter into collective bargaining when working as wage earners or in similar positions, but not when they are self-employed in the most genuine sense.

## Estonia

In Estonia, collective bargaining of the self-employed is prohibited by law. The Competition Act stipulates that sole proprietors or any other person engaged in economic or professional activities are considered undertakings, and it is prohibited for agreements to be concluded between undertakings that might lead to a restriction of competition.

However, in practice, two collective agreements have been concluded in the live performance sector that included self-employed workers. The Collective Agreements Act states that a collective agreement can be concluded between employees or associations of employees and employers or associations of employers, thus again emphasising the term employees. The term is defined in the Employment Contracts Act, §1: 'On the basis of an employment contract a natural person (employee) does work for another person (employer) in subordination to the management and control of the employer'.

In the live performance sector, the social partners of theatres have concluded collective agreements that, in principle, include self-employed workers (for example, actors and producers who work not on the basis of an employment contract but as freelancers on the basis of other (service) contracts).

The Estonian Actors' Union and the Estonian Association of Performing Arts Institutions (EETEAL, representing employers) concluded a collective agreement in 2014 that regulates working time, pay and work organisation.

It is stated in the agreement that the actors can choose themselves on which contractual basis they work (for example, an employment contract or service contract) and, in principle, the agreement is valid for all actors. However, the representative of the trade union said that, *de jure*, the agreement is no longer valid, because the parties have not renewed the pay agreement. The main disagreement between the parties relates specifically to self-employed workers and their pay – the employers' side does not agree to concluding an agreement that covers the self-employed. *De facto*, however, the agreement is generally followed.

In addition, the Estonian Theatre Union and EETEAL concluded an agreement in 2014 and, according to the representative of the union, the agreement is still valid. This agreement defines 'theatre workers/employees' as those working on the basis of an employment contract and on the basis of other contracts, for example service contracts. It also defines a worker/an employee as a person whose work characteristics allow them to choose their own working time and whose contract specifically states this (in the agreement this is referred to as 'an employee with independent decision-making power'). The agreement covers work organisation, working time and pay conditions. However, the union representative did not know how many self-employed were covered by the agreement, but stated that there were indeed some self-employed workers covered (those not working on the basis of an employment contract).

Neither of these agreements has been subject to scrutiny by the Estonian competition authorities to date.

## Finland

In Finland, competition law excludes self-employed workers from collective bargaining (section 2 of the Competition Act (948/2011)), as it has a particularly narrow interpretation of competition law. According to section 2 of the Competition Act (948/2011), the act 'shall not be applied to agreements or arrangements which concern the labour market'. Consequently, the self-employed cannot enter into collective negotiations or conclude collective agreements. Similarly, the trade unions representing them cannot do this either. One example of this narrower interpretation is from 2019. Finnish top-tier trade union Akava and its member the Union of Journalists in Finland (Journalisti) argued for the inclusion of self-employed translators in the collective agreement that covers audiovisual translators. They also gave a strike warning that – for the first time in Finland – also covered self-employed workers (Kieliasiantuntijat, 2019). The National Conciliator did not make a conciliation proposal in this matter because the Conciliator argued that 'the matter would require legislative changes and is a matter that the legislators can solve within the framework of EU competition law' (National Conciliator's Office Finland, 2019).

In addition to the interpretation of competition law, the Finnish legislation on collective agreements does not have sections that could be used to extend collective agreements to supply contracts (Lamponen, 2019).

## Box 8: The Yhtyneet agreement – Finland

A collective agreement called ‘Yhtyneet’ seems to be the closest thing to a collective agreement of self-employed workers.<sup>18</sup> It is a company-level collective agreement that covers freelancers working for Yleisradio Oy, a public broadcasting company. The freelancers covered by this agreement are considered to be in an employment relationship with Yleisradio Oy, although this is not a traditional employment relationship, in the sense that freelancers do not receive a salary but instead receive compensation for work. The employer is also not responsible for monitoring working hours, as would be the case in a regular employment relationship, and the employer does not pay social security fees, etc., for the employee. Therefore, it is not a collective agreement in a strict sense.

## Hungary

The Labour Code, which regulates the terms of collective bargaining and collective agreements, does not contain any reference to the self-employed, resulting in an implicit ban on collective agreements for the self-employed. For example, Articles 230 and 231 of the Labour Code refer to employees only. Article 230 of the Labour Code states the following.

*With a view to protecting the social and economic interests of employees and to maintaining peace in labour relations, this Act shall govern the relations between trade unions, works councils and employers, and their interest representation organizations. Accordingly, it shall guarantee the freedom of organizations and the employees’ participation in the formation of working conditions; furthermore, it shall regulate collective bargaining negotiations, as well as the procedures for the prevention and settlement of employment-related conflicts.*

## Latvia

In Latvia, to date there are no cases of the self-employed having entered into collective negotiations.

The legal aspects of collective bargaining for the self-employed have not yet been discussed. Labour law does not regulate the self-employed. The term ‘self-employed’ is defined by the law on state social insurance, whereas other tax laws use the term ‘performer of economic activity’. Self-employment is viewed more as a form of entrepreneurship than as a form of employment. Self-employed people are responsible for, among other things, their own taxes, labour protection, working time and conditions.

Part B of the labour law describes collective agreements. Section 18 describes the parties of a collective agreement.

*A collective agreement in an undertaking shall be entered into by the employer and an employee trade union or authorised representatives of employees if the employees have not formed a trade union.*

Section 20 of the law describes the effect of a collective agreement with respect to people.

*A collective agreement shall be binding on the parties and its provisions shall apply to all employees who are employed by the respective employer or in the respective undertaking of the employer, unless otherwise provided for in the collective agreement.*

None of these norms includes self-employed workers as a party to collective agreement. There are three sector-level collective agreements in place. The agreement in the construction sector is accompanied by guidelines for the practical application of the general agreement of the construction sector. Section 7.2 of the guidelines sets out that

*the general agreement applies to all employers, including also self-employed persons who, on the basis of an employment contract, employ at least one employee in construction. The legal framework for the self-employed remains unchanged.*

This implies that self-employed workers in relation to this agreement are considered as legal people (performers of economic activity) not operating under the provisions of labour law. The other two sectoral collective agreements do not mention the self-employed.

Competition law is binding upon self-employed workers. Section 11 of the Latvian anti-trust legislation describes the limits of agreements:

*Agreements between market participants, which have as their objective or effect the hindrance, restriction or distortion of competition in the territory of Latvia, are prohibited and null and void from the moment of their conclusion, including agreements regarding: the direct or indirect fixing of prices and tariffs in any manner, or provisions for their formation, as well as regarding such exchange of information as relates to prices or conditions of sale.*

Given the legal status of the self-employed, any agreement among them must be assessed in the light of these provisions.

## Romania

Under the Labour Code (Article 229(1) of Law 53/2001), a collective labour agreement is an agreement concluded in writing between an employer or employers’ organisation and employees represented by unions, or otherwise provided by law laying down clauses concerning working conditions, pay, and other rights and obligations arising from labour relations. The Social Dialogue Act (Law 62/2011) defines a collective agreement as an agreement concluded in written form between an employer or employers’ organisation and a trade union or employees’ representatives concerning the rights and obligations deriving from the labour relationship. Both laws (the Labour

<sup>17</sup> The agreement is available at <https://journalistiliitto.fi/wp-content/uploads/2020/10/Yhtyneet-sopimus-28.2.2020-28.2.2022-Versio-9-10-2020.pdf>

Code and the Social Dialogue Act) limit the conclusion and coverage of collective agreements to employees falling under the definition of labour relations (as defined by the Labour Code). Since the self-employed are considered service providers and their contractual relations do not fall under the definition of labour relations, the provisions on collective bargaining do not apply to them.

### Slovakia

According to Articles 229(6) and 231(1) of Act No. 311/2001 on the Labour Code and Articles 1(1) and 2(2) of Act No. 2/1991 on collective bargaining, only trade unions can bargain collectively for the conclusion of collective agreements regulating wages and working conditions of employees. According to the trade unions, the self-employed cannot be members, and trade unions do not bargain collectively on behalf of the self-employed.

## Member States where collective bargaining for the self-employed is allowed

There is only one Member State, Poland, in which collective bargaining for the self-employed is – *de jure* – allowed without any restrictions. However, in practice, no cases of either trade union representation or collective bargaining for the self-employed have been reported to date.

### Poland

The legal framework in Poland since 2019 has been such that the self-employed can join trade unions and form their own trade union dedicated to the self-employed or other civil-law contractors. It means that the self-employed can, through their union organisations,

formulate demands related to their collective interests, engage in collective negotiations and conclude collective agreements (Act on Trade Unions of 23 May 1991; Duraj, 2020). In Poland,

*collective labour agreements can regulate on an equal basis the rights and duties of employees, as well as civil law contractors and self-employed workers. In practice, however, collective bargaining should cover those self-employed whose situation is comparable to the situation of employees. Therefore, it can be expected that collective labour agreements will apply to dependent self-employed workers and civil law contractor who perform work for a specific employer.*

(Mitrus, 2021, p. 214)

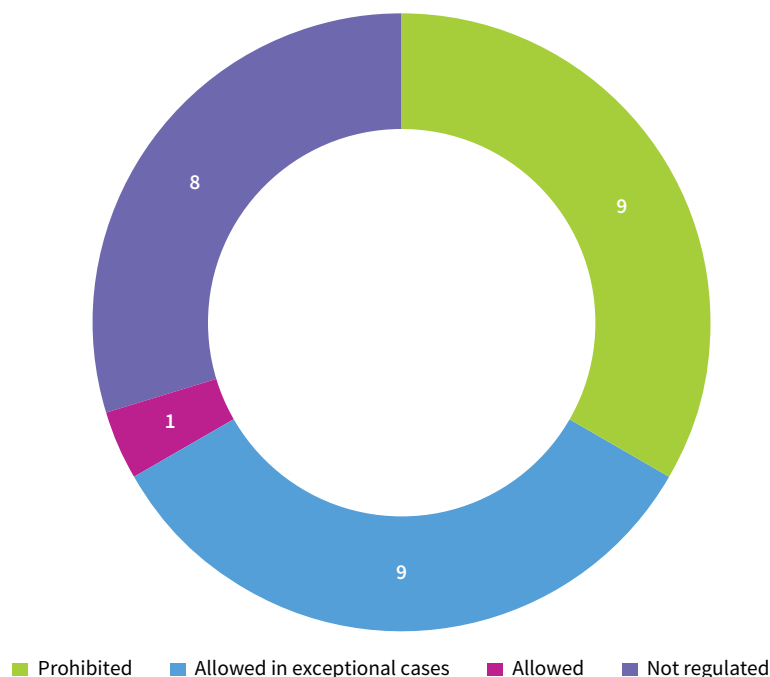
To date, however, self-employed workers in Poland have not exercised their right to form coalitions in practice. Thus, they have not yet been part of collective bargaining processes.

## Member States where collective bargaining for the self-employed is exceptionally allowed

As Figure 2 shows, nine Member States (Austria, France, Germany, Greece, Ireland, the Netherlands, Portugal, Spain and Sweden) allow collective bargaining for the self-employed in exceptional cases.

The categories of exceptions identified in this report are based on either labour law or competition law. In seven of these Member States, these exceptions are based on national labour law (Austria, France, Germany, Greece, Portugal, Spain and Sweden), whereas in the other two countries (Ireland and the Netherlands), it is competition law opening this door.

Figure 2: Collective bargaining for the self-employed



Exceptions based on labour law apply to the following groups of workers:

- certain categories of self-employed workers:
  - **Austria:** homeworkers and certain categories of journalists (*ständige freie DienstnehmerInnen*)
  - **France:** shop managers and platform workers
  - **Greece:** platform workers under certain conditions
- economically dependent self-employed workers:
  - **Germany:** homeworkers and self-employed workers gaining more than 50% of their income from a contract with one employer (for self-employed workers in creative and journalist professions, this figure is 33.3% of income)
  - **Greece:** people in dependent situations and requiring protection similar to employees<sup>18</sup>
  - **Portugal:** homeworkers and handicraft workers
  - **Spain:** economically dependent self-employed workers may sign professional agreements
  - **Sweden:** dependent contractors

Exceptions based on competition law apply to the following groups of workers:

- certain categories of self-employed workers:
  - **Ireland:** voice-over actors, session musicians and freelance journalists
- economically dependent self-employed workers:
  - **Ireland:** false or dependent economically self-employed workers, upon application
- solo self-employed workers:
  - **Netherlands:** workers providing services or working side by side with employees

## Austria

According to the Austrian Labour Constitution Act (ArbVG), Part I, §1, the regulations on collective agreements apply to ‘employment relationships of any kind based on a contract under private law’ (with some exemptions). This specific reference to the concept of individual employment contracts is interpreted as ‘resulting in the exclusion of (even economically dependent) self-employed’ (Hießl, 2021a, p. 60) from the scope of workers benefiting from the right to collective bargaining.

This approach includes freelance employment relationships (also called free service contracts, *freier Dienstvertrag*). Such relationships are of a somewhat hybrid nature; according to social security law, they are considered employment relationships, but in terms of tax laws, they are considered self-employment.

According to the ÖGB, it is not possible on the basis of the ArbVG to include groups that are not considered

employees under labour law. This is why the ÖGB’s proposed solution is the legal presumption of an employee status in precarious areas – the employer then has to prove that it was not a genuine employment relationship. Freelance employees are covered by health, industrial injuries and pension insurance and, since 2008, also by unemployment insurance. Basically all collective agreements cater specifically to white-collar employees (*Angestellte*) or blue-collar employees (*ArbeiterInnen*). There are, however, two groups of self-employed workers to which the right to collective bargaining was granted: homeworkers (section 43 and following Homework Law) and journalists (sections 17 and following of the Journalist Act) (Hießl, 2021a, p. 60). For both groups, fees are collectively negotiated. Freelance employees (‘permanent freelance employees’, *ständige freie DienstnehmerInnen*) are included only in the journalism collective agreements. There are, however, two main differences when it comes to collective agreements concluded for homeworkers and journalists. The first is purely semantic, as these collective agreements are called *Gesamtverträge* instead of *Kollektivverträge*. The second relates to the fact that these agreements may not be extended to other parts of the workforce (Hießl, 2021a, pp. 61–62).

## France

According to Article L2211-1 of the Labour Code, the provisions of the Labour Code on collective agreements ‘are applicable to employers under private law and to their employees’. According to Article L2221-1, the Labour Code

*concerns the determination of collective relations between employers and employees. It defines the rules according to which the right of employees to collective bargaining on all their conditions of employment, vocational training and work as well as their social guarantees is exercised.*

Furthermore, Article L2231-1 specifies that the collective agreement is concluded between

*on the one hand, one or more trade union organisations representing employees in the field of application of the agreement; on the other hand, one or more employers’ trade union organisations, or any other employers’ association, or one or more individual employers.*

There is therefore no doubt that collective bargaining is only for employers and their employees.

It is mainly due to competition law that self-employed workers are prohibited from negotiating and concluding collective agreements. The competition rules contained in Article L.420-1 and in line with the Commercial Code seem to exclude collective agreements by organisations of the self-employed.

This analysis is confirmed in the report by Jean-Yves Frouin, former president of the Social Chamber of the Court of Cassation, submitted to the Prime Minister in December 2020 (Box 9).

<sup>18</sup> This is, however, more of a theoretical case.

## Box 9: Protecting the self-employed: Frouin report – France

‘Domestic competition law is quite close’ to the European rules ‘in the sense that economic actors that are companies must adopt an independent behaviour on the market, i.e. not coordinated’.

Consequently, all concerted practices are scrutinised even if they are not prohibited. Cartels are prohibited if they result in a restriction of competition sufficiently strong to justify their termination. The principle is codified in Article L.420-1 of the Commercial Code in terms similar to those of Article 101 of the TFEU. In both cases, it is possible to be exempted from EU or national anti-trust law, but the conditions (Article 101, §3, of the TFEU and Article L.420-4 of the Commercial Code) are very restrictive.

Source: Frouin report, issued on 1 December 2020.

The French Competition Authority pointed out that the principles of non-competition in French domestic law are identical to the European rules in an opinion issued in 2019.

The Court of Cassation also held that, as the main purpose of collective agreements is to set working conditions (for example, pay) between employers and employees, they are not applicable to a self-employed people without employees (Kessler, 2021, p. 109):

*a collective labour agreement laying down working conditions for self-employed service providers in line with CJEU case FNV Kunsten would not be excluded, by reason of its nature, from the scope of Article 101(1) TFEU: it would not fall under the ‘Albany immunity’ as long as these self-employed are not requalified as employees.*

(Kessler, 2021, p. 121)

A decision of the Court of Cassation of 21 March 2007 confirmed the inapplicability of a collective agreement to the self-employed.<sup>19</sup> The agreement in question was the national collective agreement for car experts’ firms, which provided for the payment by employers of a contribution to social and cultural actions and to the management of parity and institutions in the branch. This contribution needed to be paid by all employers. However, there are also car experts who are self-employed and do not have employees. The question arose regarding whether or not they would be subject to contributions provided for in the collective agreement. The Court of Cassation decided they would not be subject to these contributions. The Court of Appeal held that

*these contributions are due from any legal or natural person, including self-employed persons, carrying out the activity of car expert, whatever the legal status under which the expert activity is carried out.*

However, the Court of Cassation rejected this argument and clearly stated that ‘the purpose of any collective agreement is to regulate the general conditions of employment and the relationship between employers and employees’. The Court of Cassation then stated that the ‘self-employed worker did not employ an employee’.

Therefore, the Court of Appeal had violated the Labour Code.

The situation with regard to specific groups of self-employed people is rather diverse: volume 7 of the Labour Code provides some exceptions. In this part of the Labour Code, different situations exist for different groups.

- **Platform workers:** Platform workers are defined as self-employed and have access to some labour rights and to collective bargaining as self-employed workers. There is no presumption of employment and it is not because they are considered as employees that they will have access to collective bargaining.
- **Self-employed managers of a shop:** Shop managers are considered self-employed but have access to some labour rights and can participate in collective bargaining. Self-employed managers of a shop are therefore not employees (no presumption of salaried status) but are self-employed and benefit from certain provisions applicable to employees. The Court of Cassation has long recognised the right of self-employed managers to claim the minimum wage, and following this has recognised the right to rely on the branch collective agreement applicable to their supplier.
- **Journalists or artists:** Journalists and artists are presumed to be salaried workers (not self-employed) and therefore all of the Labour Code is applicable to them and they can participate in collective bargaining. It is not possible to consider them as self-employed; they are employees. This is the reason they are covered by a collective agreement and that they can participate in collective bargaining.

In practice, platform workers, although considered self-employed, are not yet able to improve working conditions through collective bargaining despite this being theoretically possible.<sup>20</sup> In May 2022, there were elections to elect platform workers’ representatives and, following this, negotiations could possibly start with platforms to conclude collective agreements that will also apply to self-employed workers. This is not the case yet, and this approach also presupposes that platform workers will participate in the electoral process.

<sup>19</sup> The full text of the decision is available at <https://www.legifrance.gouv.fr/juri/id/JURITEXT000017779535>

<sup>20</sup> See Articles L7341-1 to L7345-6 of the French Labour Code relating to the methods of representation of the self-employed using platforms.

In conclusion, there are only two cases in France in which genuine self-employed workers are allowed to participate in collective bargaining, that is, self-employed shop managers and platform workers. Consequently, the vast majority of self-employed are not, in a strict sense, allowed to conclude collective agreements in France, yet collective bargaining is possible in these exceptional cases.

## Germany

In Germany, collective bargaining for the self-employed is admissible under strict conditions: on the grounds of labour law and for those in a situation of economic dependency, that is, those self-employed workers gaining more than 50% of their income from a contract with one employer (for self-employed people in creative and journalist professions, this figure is 33.3% of income), in accordance with Article 12a of the Collective Agreement Act (TVG). Employers are defined as individual companies or corporations comprising different subsidiaries. Holding service or work contracts with different subsidiaries of the same corporation is defined as economic dependence on one employer.

In addition, under Article 17 of the Homeworkers Act (HAG), trade unions and contracting parties or their associations ('employers') may conclude collective agreements covering the wages and conditions of economically dependent self-employed homeworkers employing up to two employees. Economically dependent self-employed homeworkers are defined as self-employed people working by themselves, with family members or with workers/auxiliary workers in their own premises and delivering contracted work to a gangmaster<sup>21</sup> or employer. If they gain most of their income from working for one employer and/or deliver all of their products/services to one gangmaster or contractor, they are considered to be in need of social protection and can be represented by a trade union. If they themselves have market access and sell some of their services/products on the market, they are defined as a business.

## Greece

Collective bargaining rights are not extended to the self-employed in general. There are, however, two exceptions.

First, Article 1 of Law 1876/1990 concerning free collective bargaining states that the right to conclude collective agreements also applies to people who 'while not bound by a dependent employment relationship, perform their work in a situation of dependence and require protection similar to that enjoyed by employees'. Therefore, theoretically, trade unions are permitted to conclude collective agreements that cover dependent self-employed workers. However, to date, this has never been done. Consequently, collective labour agreements (national, sectoral, professional or company based) cover only dependent employees and not self-employed workers or union members.

Second, Law 4808/2021 (Article 69), adopted on 19 June 2021, provides that workers on digital platforms may conclude either dependent employment contracts

or independent service or work contracts. Before the adoption of this law, a considerable number of employees on digital food distribution platforms were employed under independent service contracts (on a work-on-demand basis).

Four criteria must apply cumulatively to presume that a (natural) person is employed under an independent services contract.

- They should be able to outsource the work undertaken to subcontractors/third parties, that is, it is not necessary to provide the work in person.
- They should be able to refuse to carry out a project (transportation job) requested by the platform.
- They should be able to connect and disconnect from the platform whenever they want and for as long as they wish.
- They should be able to also provide services to a competing platform.

If all four criteria are not met, the presumption in favour of independent services does not apply. It follows that, when all four criteria are not met, employees may ask to be associated to the platform through a dependent employment contract.

The same law (Law 4808/2021 (Article 70)) provides that, if a person meets the criteria mentioned above, as workers under an independent service or work contract on a digital platform, they are entitled to:

- set up trade unions to promote their professional interests
- enter into collective bargaining and conclude collective agreements (for example, to set minimum levels of remuneration)
- go on strike
- require the platforms with which they cooperate to respect health and safety rules and cover costs related to the provision of the project (for example, motorcycle acquisition and maintenance costs, fuel costs and cost of a helmet)

Through this approach, Greece either applies a presumption of employment to this category of self-employed workers or considers platform workers as independent service contractors if certain criteria are met. As independent service contractors, they have the right to collective bargaining.

## Ireland

The Competition (Amendment) Act (7 June 2017) provides collective bargaining rights for three categories of non-standard workers: voice-over actors, session musicians and freelance journalists. In addition to these three categories, the Minister for Enterprise, Trade and Employment may also exempt from competition law collective bargaining of trade unions representing 'false self-employed' or 'fully dependent self-employed' workers

<sup>21</sup> The term gangmaster refers to a person who organises and oversees work of casual manual labourers.

(Johnston and Land-Kazlauskas, 2019; OECD, 2019, pp. 239–240). To date, no collective agreements have been concluded and no applications have been received from trade unions representing false or fully dependent self-employed workers for an exemption from Irish anti-trust law (Kerr, 2021, p. 154).

## Netherlands

Dutch competition law (*Mededingingswet*) prohibits collective agreements for self-employed workers, as they

would be considered a cartel. However, within the law there are three cases on the grounds of which it is legally possible to conclude collective agreements for a specific category of genuinely self-employed workers, that is, for solo self-employed workers.

The guidelines of the Dutch Authority for Consumers and Markets (ACM) clarify how existing Dutch competition law applies to solo-self-employed workers and set out possible exemptions (ACM, 2020; Box 10).

### Box 10: Guidelines for solo self-employed workers – The Netherlands

The guidelines of the ACM state that, for solo self-employed workers who are not seen as an undertaking, collective bargaining and collective agreements are possible within the framework of a collective bargaining agreement.

They also state that the prohibition on cartels does not hold for agreements of minor significance, meaning either:

- agreements on behalf of a group of a maximum of eight solo self-employed workers with a combined turnover from services of no more than €1.1 million
- agreements on behalf of a group of solo self-employed workers whose combined market share is less than 10% of the market

However, the rules regarding agreements of minor significance do not apply when the agreement falls within the scope of EU competition law.

The guidelines also state that, if a collective agreement is exclusively aimed at improving the social protection of solo self-employed workers and it improves customer welfare, it is legally possible to conclude such an agreement.

Self-employed workers who are not considered to be an undertaking can be represented by a union in collective bargaining. Article 16 of Dutch competition law explicitly exempts collective bargaining agreements between employer organisations and employee organisations from the prohibition on cartels. Self-employed people who are not considered undertakings can therefore enter into collective negotiations and be part of collective agreements. Independence is an essential part of being an undertaking; to determine whether a self-employed person is truly independent, one should check if they are in a position comparable to an employee. If this is the case, the self-employed person should not be seen as an undertaking. The guidelines of the ACM state that, when self-employed workers work side by side with employees and cannot be distinguished from employees in daily activities, the self-employed workers should not be seen as undertakings in the context of competition law (ACM, 2020). This can be the case only when the self-employed worker is providing services, and not when the self-employed worker provides goods or intermediation for providing goods or services. If a collective bargaining agreement contains provisions regarding self-employed workers, those provisions can apply only to those self-employed workers in the sector to whom the ‘side by side’ principle applies. Finally, the guidelines of the ACM state that it will not impose any fines if arrangements about rates are made between and with solo self-employed workers that are aimed at safeguarding a minimum subsistence level.

The ACM notes that the concerns of society primarily focus on the ‘lower end of the labour market’ and on the dire situations that some workers are in. The ACM will therefore

exercise restraint when it comes to taking action against arrangements that solely aim to guarantee the subsistence level and do not go beyond that objective. With regard to such minimum rates, the ACM uses the following basic principles.

- The subsistence level is based on the level of social security assistance (or welfare assistance) for a single person.
- The minimum rate will ensure that self-employed workers are able to support themselves and can take out insurance or save some money in case they get sick or are unable to work, coupled with a loss of income.
- Self-employed workers who work full time (meaning 40 hours a week, 46 weeks a year) may be able to earn at least the subsistence level, considering the average share of billable hours (67% in 2012).
- The rate applies to all hours directly related to the assignment, while any costs directly related to the assignment must be charged on top of that.
- A surcharge of 15% for indirect costs may be considered.

The collective labour agreement for architectural firms for 2015–2017 was the first collective labour agreement with provisions regarding minimum tariffs for the self-employed. However, this provision was not accepted by the ACM. One of the reasons for this was that the collective labour agreement did not differentiate between different types of self-employed workers, so there was no

distinction between self-employed workers considered as undertakings and those who were in practice working in the same situation as employees. The collective labour agreement for architectural firms did make this distinction in 2019 and was declared generally binding.

In the performing arts sector, a collective agreement was concluded in 2020 with provisions on minimum tariffs for the self-employed. Employer organisations and trade unions in the sector of public broadcasting have agreed on a Fair Practice Code that sets standards for the relationship between self-employed workers and public broadcasting organisations. The Fair Practice Code includes minimum rates and provisions that can further shape the relationship between broadcasters and contractors, including producers of broadcasting productions. The minimum rate for self-employed people is derived from the collective labour agreement scales.

## Portugal

The Portuguese legislation on collective bargaining (the Labour Code for the private sector and state-owned companies and the General Labour Law in Public Functions for public administration) does not give self-employed workers the prerogative to enter into collective negotiations and conclude legally binding collective agreements. However, the Labour Code (Article 10) establishes that legal norms concerning personality rights, equality and non-discrimination, and occupational health and safety are also applicable to service providers, without legal subordination, whenever they are economically dependent on the beneficiary of the activity.

In addition, independent platform workers who are genuinely self-employed do not benefit from collective bargaining under Law 45-2018.

Nevertheless, the only case in which legislation explicitly addresses the extension of mandatory minimum wages and collective agreements to economically dependent workers is the case of homeworking or handicrafts (*regime de trabalho no domicílio*), as set out by Law No. 101 of 8 September 2009. These economically dependent workers benefit from legal rules identical to those in employment contracts as regards several matters: privacy and rest periods, safety and health, remuneration, the right of annual allowance, rules on suspension and the reduction or termination of contracts, and integration in the general social security regime. This legal framework establishes that the determination of remuneration of the worker (Article 7) must take into account the average time for performing the activity and the remuneration established by the collective agreement applicable to identical work in an establishment in which the production process is inserted, or failing that, the mandatory minimum monthly wage.

The Green paper on the future of work (*Livro verde sobre o futuro do trabalho*), presented for public consultation on 2 June 2021, explicitly mentions the aim of extending the coverage of collective bargaining to new categories of workers, including self-employed economically

dependent workers, as well as reducing inequalities, reinforcing labour market inclusiveness and discouraging less transparent competition strategies (Portuguese government, 2021, p. 184).

On 29 October 2021, the Portuguese government presented a Bill amending labour legislation within the scope of the decent work agenda (*Proposta de lei que procede à alteração da legislação laboral, no âmbito da agenda do trabalho digno*), taking steps in this direction. However, the bill was not voted on due to the dissolution of Portuguese Parliament ahead of early legislative elections, called on 30 January 2022. This bill proposes that economically dependent self-employed workers are entitled to be represented by trade unions and works councils, although they cannot be members thereof; have the right to negotiate specific collective agreements for self-employed workers through trade unions; are entitled to benefit from existing standard collective agreements under conditions still to be defined; and can benefit from the extension of collective agreements, arbitration and administrative decisions on minimal working conditions. The bill proposes that specific collective agreements for self-employed workers will require prior consultation of associations of self-employed workers and professional associations.

## Spain

In Spain, self-employed workers cannot sign collective agreements. However, economically dependent self-employed workers can sign professional interest agreements. These agreements are regulated under Article 13 of Law 20/2007 (the Self-employed Workers' Code). Professional interest agreements do not mean that collective bargaining is available to self-employed workers; instead, they simply recognise the possibility of an agreement being made that transcends mere individual contracts. However, these agreements have limited personal effectiveness, as they bind only the signatories. Professional interest agreements fall under the provisions of the Civil Code, not the Labour Code. The coverage of these agreements is limited to the signatory parties and, where appropriate, to the members of the self-employed associations or signatory unions that have expressly given their consent to do so. These agreements can set, among other things, the conditions, mode, time and place of execution of the activity, as well as other general contracting conditions.<sup>22</sup>

This situation is summarised as follows:

*most legal scholars, as well as the courts, understand that the self-employed are not entitled to the right of collective bargaining in the Spanish legal order, or at least not as it is understood and regulated in the Workers' Statute for employees. Their capacity to bargain collectively is restricted, therefore, to the sui generis system of agreements of professional interest that the Autonomous Work's Statute provides for economically dependent self-employed workers.*

(García-Muñoz Alhambra, 2021, p. 239)

<sup>22</sup> Examples of professional interest agreements are those signed by FS TRADE-CCOO and Panrico in 2009, Agrupación Sindical de Transportistas Autónomos de Cataluña (ASTAC) and DSV Road Spain SAU in 2011, UPTA and marketing companies in 2016, ASORIDERS and Deliveroo in 2018, and Asociación Autónoma de Riders (AAR) and Deliveroo in 2019.



## Sweden

Under some circumstances, it is possible for self-employed workers to enter into collective bargaining in Sweden. The Swedish extension in the Co-Determination Act

also provides an opportunity for the social partners to include dependent contractors in the scope of a collective agreement. This would then imply that dependent contractors are exempt from competition law.

### Box 11: Concept of dependent contractors – Sweden

The 1976 Co-Determination Act regulates conditions between employers and employees. Employees include ‘dependent contractors’, according to the 1976 Co-Determination Act. According to Westregård (2021, pp. 250–251):

*these solo self-employed are called ‘dependent contractors’ and a ‘dependent contractor’ is defined in Section 1(2) of the 1976 Co-Determination Act as someone ‘who works for another and at that time is not employed by them, but has a position that in essentials is the same as an employee’s’.*

However, the approach of extending collective agreements to dependent contractors is hardly used. Nevertheless, it is precisely this concept of ‘dependent contractors’ that distinguishes the Swedish system of employment relations from all the others in the Nordic cluster, as ‘genuinely solo self-employed people are included in the statutorily regulated bargaining system without this getting into conflict with the statutory competition legislation’ (Westregård, 2021, p. 260).

The Swedish Union of Journalists’ agreement for freelance journalists with the Media Industries Employer Association is the only concrete example to date. This agreement does not contain any regulation on fees or minimum remuneration levels. It primarily contains rules on delivery terms. It also sets out the rule that, if a freelance journalist is on a permanent assignment and it is subsequently suspended, they are entitled to a certain period of paid notice. Furthermore, the agreement clarifies that the client, in addition to the fee, must reimburse the freelancer for other expenses in connection with the assignment.

Unionen was previously involved in the Fair Crowd Work initiative. This seems to no longer be Unionen’s primary tool for promoting fair working conditions for platform workers. Rather, the union is now trying to have an impact on ‘employers’ and platforms operating in the sector by concluding collective agreements. In March 2019, the union had concluded collective agreements with three such platform companies: Instajobbs, JustArrived and Gigstr. These agreements also seem to cover dependent contractors. Concluding a collective agreement with a platform company requires – to a certain extent – that the company views itself as an employer, and that is far from always the case. According to Westregård (2020b, p. 148):

*the problem at the moment in Sweden is that most of the digitalised platforms do not see themselves as employers, as they regard the crowd workers as self-employed. If they do not recognise themselves as employers, they do not join an employer’s organisation.*

In a similar vein, the Transport Workers’ Union concluded a collective agreement with the food delivery service Foodora. However, the company ‘employs’ both employees and self-employed couriers, of which only the former are covered by the collective agreement.

## Member States where collective bargaining for the self-employed is not regulated

Finally, in eight Member States (Belgium, Croatia, Cyprus, Italy, Lithuania, Luxembourg, Malta and Slovenia), statutes, rules and/or regulations are silent on collective bargaining for the self-employed.

### Belgium

In Belgium, collective bargaining is neither prohibited nor explicitly allowed, because the self-employed are largely excluded from labour law related to collective bargaining (the focus is on salaried workers). As a consequence, there is no recognition of collective labour rights for the self-employed in Belgium. However, recent cases of collective negotiations at workplace level have demonstrated possibilities for associating workers who are self-employed.

The law of 5 December 1968 established the legal framework in which collective agreements are concluded. Employees’ representation is ensured by the three trade unions representing the most workers in Belgium, but these represent only salaried workers and negotiate on their behalf. The law of 5 December 1968 (Article 2, §1) states that this law, and collective agreements organised in this way, apply to ‘workers’. The definition of workers is quite broad in this law, as it refers to every person who provides labour services under the authority of another person, whether under a contract of employment or not.

However, it is not clear whether the self-employed fall under the scope of this law or not. The 1968 legislator did not have this issue in mind, and there is no consensus in the Belgian doctrine on the matter to date. Recent but limited examples have shown that self-employed workers can be considered as similar to salaried workers for collective negotiations undertaken at company level. Scholars describe the way that self-employed workers have created their own way of negotiating collectively in a framework that is primarily organised for salaried workers as ‘collective negotiations strategies’.

Such strategies have been seen in relation to the food delivery service Deliveroo and in the labour market

intermediary company Smart. They have also been seen in relation to Sanoma, a media group. In the case of Sanoma, the trade union assumed the right to represent self-employed workers (in addition to employees) and this has been recognised by the employers (since 1997). In this case, agreements are negotiated as if they were regular collective agreements (but they are referred to as memoranda of understanding). They are concluded by organisations authorised to conclude collective agreements (under the law of 1968), and sometimes third-party organisations are added, such as the Association of Professional Journalists (AVBB/AGJPB). In 2016, a specific representative body dedicated to the arrangement between Sanoma and self-employed workers in the company was established. Since 2016, the union premium has also been granted to self-employed workers that dedicate more than 50% of their working time to Sanoma.. As an additional example of collective negotiation for self-employed workers, on 1 April 2020, a collective agreement was concluded between Taxis Verts Company, a collective of self-employed taxi workers represented by United Freelancers, and CSC Transcom.

In February 2022, the Comité Ministériel Restreint, consisting of the Prime Minister and the Vice Prime Minister, agreed on the general principles of a comprehensive labour law reform. The revamp of the Belgian labour law will also tackle the issue of whether a platform worker is considered as self-employed or employed by introducing eight criteria of distinction.<sup>23</sup>

## Croatia

In Croatia, legal rights relating to representation in negotiations are regulated by the law on the representativeness of employers' associations and trade unions (OG 93/2014, 26/2015). Collective bargaining for the self-employed in Croatia is not regulated, and there are no examples of collective agreements for the self-employed. However, according to the announcement of the Ministry of Labour and Pension System, Family and Social Policy in 2022, there will potentially be a new Labour Act, which will possibly regulate this issue.

## Cyprus

For Cyprus, no statutes or other forms of regulation exist on the right or prohibition of self-employed workers to conclude collective agreements. No collective agreements covering the self-employed are in place.

## Italy

In Italy, there is neither a legislative reference to nor an explicit denial of the possibility of collective bargaining regulating the working conditions of the self-employed. Collective bargaining represents the most important mechanism for defining the terms and conditions of employment in Italy, which generally applies to subordinated workers.

According to the Civil Code (Title V), which sets the legislative framework for self-employment, the contractual relations between self-employed workers and clients (employers) is established through a bilateral contract between the parties. Furthermore, Article 2225 of the Civil Code, which relates to payments to be made to self-employed workers, states that, if not agreed by the parties and if they cannot be determined through professional rates or habits, payment issues will be established by a judge. There are sectors in which national collective agreements that apply to the self-employed are signed as a result of their prevalence in those industries. They specifically refer to semi-subordinated contractual forms of self-employment.

In addition, a telecommunication national collective agreement was signed in 2013 by the three most representative trade unions in the sector (SLC (part of the CGIL), FISTEL (part of the CISL) and UILCOM (part of the UIL)) and by two employers' associations (Assocontact and Assotelecomunicazioni-Asstel). These applied to semi-subordinate workers contractualised with the so-called 'project contract' (*contratto a progetto*) working in call centres. These workers represent an intermediate contractual category particular to the Italian labour market, combining employment conditions typical of subordinated work with other characteristics featuring self-employment. 'Project workers' are, in fact, formally autonomous, given that there is no formal subordination to the employer, but they are functionally assimilated within the company's organisational chart and their contractual relationship is linked to a specific project or service that they have to accomplish for the employer. This national collective agreement aimed to prevent the misidentification of project workers in call centres, namely as a way of hiding a condition of subordination. It also aimed to introduce some common protections to this specific category of semi-subordinated workers and to set more adequate wage levels. The Jobs Act reform of the labour market in 2015 abolished project contracts.

Similarly, at the end of 2015, several national collective agreements were signed covering semi-subordinated workers in a continuous and coordinated contractual relationship in private schools and universities, credit recovery institutions and organisations providing occupational training. In the logistic sector, a national collective agreement was signed in 2018 by the three most representative trade unions in the sector (FILT (part of the CGIL), FIT (part of the CISL) and UILTRASPORTI); a large number of employers' organisations formally recognised the professional position of food delivery riders as subordinated workers, instead of as self-employed, which entitled them to benefits under the same employment conditions and protections as those ensured for other employees in the sector.

Labour law scholars and practitioners in the field currently have opposing views on this topic. Whereas the former promote collective bargaining as the most effective

<sup>23</sup> More information on this update to the law is available at <https://www.lesoir.be/424171/article/2022-02-15/reforme-de-lemploi-huit-criteres-pour-determiner-si-un-travailleur-de-plateforme> and <https://www.lesoir.be/424148/article/2022-02-15/accord-sur-la-reforme-du-marche-du-travail-un-temps-plein-pourra-etre-preste-sur>, accessed 20 February 2022.

mechanism for improving social protection and minimum income levels for the self-employed, the latter, including the associations representing these workers, appear to view collective bargaining less favourably. According to vIVAVE!, ACTA and Confprofessioni (all part of the CISL), the extension of national collective agreements to the self-employed might damage free market competition and their choice to be genuinely autonomous workers.

Finally, Law Decree No. 101 of 2019, amended by Law No. 128 of 2019, introduced a framework to ensure minimum levels of protection for platform riders and assured, to a limited extent, collective bargaining rights.

## Lithuania

Collective bargaining for the self-employed is not prohibited in Lithuania; however, according to current legislation, it would be legally impossible for the self-employed to enter into collective bargaining and to conclude collective agreements. The Labour Code, which sets forth the procedure for collective bargaining and collective agreements, applies only to those in employment relationships (working under employment contracts), that is, to employees.

## Luxembourg

In theory, the negotiation of collective bargaining for the self-employed is possible in Luxembourg, provided that there is a representative counterpart with which a representative trade union would be able to negotiate.<sup>24</sup> This is the main obstacle to such negotiations. The second obstacle is the low unionisation rate of the self-employed. The issue of establishing a collective agreement for intermittent entertainment workers, for example, arose 10 years ago, but failed because the self-employed workers in question did not want to be represented by unions. It all depends on whether self-employed workers see themselves as employers or employees. Similarly, if a union were to initiate collective bargaining for a certain type of self-employed worker, it would need to be representative of the profession concerned (that is, it would need to represent a certain percentage of the self-employed). In this regard, the reality is no different from that of employees. Without representation, negotiation is practically impossible.

## Malta

The 2002 Employment and Industrial Relations Act defines a 'collective agreement' as follows:

*an agreement entered into between an employer, or one or more organisations of employers, and one or more organisations of employees regarding conditions of employment in accordance with the provisions of any law in force in Malta.*

Therefore, a trade union of self-employed people that carries out collective bargaining cannot exist in Malta. Whether or not a recognised trade union can in theory carry out collective bargaining for a section of its members

who are self-employed in line with the above definition is a moot point. The Department of Industrial and Employment Relations, which archives Malta's collective agreements, is not aware of any such agreements.

Collective bargaining in the private sector in Malta is carried out only at enterprise level – no sectoral or cross-sectoral agreements exist. In addition, there exists a law, the Employment Status National Standard Order (2012), that is intended to curb bogus self-employment. When workers are nominally self-employed but, in practice, fulfil certain criteria in their relationship with the employer, the law automatically considers them as employees. Thus, they would then benefit from any existing collective agreements for employees. Trade unions, employer associations and other organisations representing self-employed people put pressure on and carry out negotiations with the government (in its role as either regulator or employer) as regards the working conditions of the self-employed. Representatives of self-employed workers may also have discussions and negotiate with private firms that provide self-employed people with work; however, the outcomes of these processes are not considered collective agreements.

## Slovenia

Collective bargaining is regulated by the Collective Agreements Act of 2006. According to Article 2, collective agreements are concluded by trade union(s) and employer(s) or association(s) of employers. Article 3 stipulates that collective agreements regulate the rights and obligations of workers and employers when concluding contracts of employment; however, the concept of a 'worker' is not defined in this statute. It is argued that this term should be considered in a broad sense, that is, to also include the self-employed (Kresal, 2021, p. 224).

Article 214 of the Employment Relationship Act stipulates that the payment of the economically dependent self-employed must be in line with existing collective agreements. This gives the economically dependent self-employed the right to payment that corresponds to agreed payments set out in collective agreements for work of the same type, scope and quality. However, this provision does not mean that the economically dependent self-employed have the right to collective bargaining. The effectiveness of this provision has been called into question, as the self-employed rarely claim the status of economically dependent self-employed.

The collective agreement for professional journalists was concluded in 1991 between the Slovenian Union of Journalists (Sindikat novinarjev Slovenije, SNS) and three employer organisations (Republic of Slovenia, 1991). Article 2 specifies that the collective agreement covers employed journalists, freelancers and trainees. The contracting parties of the collective agreement agreed to conclude a subsequent collective agreement for freelancers. However, social partners agreed that

24 Loi du 30 juin 2004 concernant les relations collectives de travail, le règlement des conflits de travail ainsi que l'Office national de conciliation et modifiant... (Law of 30 June 2004 concerning collective labor relations, the settlement of collective labour disputes and the National Conciliation Office and modifying previous laws).

payment for freelance work 'cannot be lower than salary for regularly employed' (Article 79). The second paragraph of the same article also stipulates that freelancers are entitled to 'compensation for material costs'.

In 2005, the Commission for the Interpretation of the Collective Agreement decided who to include in the notion of 'freelance journalists' and to what rights they are entitled to on the basis of the 1991 collective agreement.<sup>25</sup> First, the Commission decided that the notion encompassed both professionals enrolled in the register of professional journalists and unregistered journalists. However, unregistered journalists need to meet some additional requirements. Second, the Commission confirmed that the social partners must conclude a special agreement whereby the working conditions of self-employed journalists cannot be worse than those of employed journalists.

According to the Commission for the Interpretation of the Collective Agreement, the obligation to pay freelancers compensation for material costs had already entered into force with the 1991 collective agreement. The employers' organisation that signed the collective agreement in 1991 challenged the regulation of freelancers' labour rights by collective agreement. For this reason, the Chamber of Commerce and Industry of Slovenia and the SNS established a working group. The trade union prepared an internal document in which it claimed that there were no legal obstacles for including freelancers in collective agreements (Nahtigal, 2006, pp. 5 and 12). The social partners arrived at opposite conclusions. While the employers' organisation and the Ministry of Labour claimed that the regulation of freelancers' labour rights via collective agreements was prohibited, the trade

union argued that it was allowed if the Constitution and international and European legally binding norms were taken into account. According to legal expert Professor Zvone Vodovnik, the limitation of rights to labour representation and the freedom of association by law was not possible (Nahtigal, 2006, p. 15).

At the time of the debate, almost a third of freelance journalists were experiencing poor working conditions. In 2007, apart from one employer (Radio-Television Slovenia), all employers withdrew from the 1991 collective agreement. As the trade union could not improve freelance journalists' situation through collective bargaining, it started filing lawsuits on the determination of bogus self-employment. The SNS subsequently tried to reach an agreement on tariffs for self-employed journalists. The union's surveys among journalists showed that self-employed journalists were paid 20–60% less than employed journalists in the same jobs.<sup>26</sup> At present, employers' organisations, by and large, are not interested in engaging in collective bargaining.

In 2017, the trade union Glosa prepared the draft collective agreement for self-employed workers in the culture sector. It was sent to the Ministry of Culture, inviting it to negotiate the collective agreement on behalf of public cultural institutions as employers. The ministry refused to enter into collective bargaining on the grounds that the present regulation (the Collective Agreements Act) allowed for the signing of collective agreements only with workers on employment contracts. In the absence of mandatory tariffs, Glosa issued a recommendation for minimum tariffs for self-employed cultural workers. Minimum tariffs are hourly, daily and monthly.

25 'Commission for the Interpretation of the Collective Agreement, interpretation of the collective agreement for professional journalists', *Official Gazette*, No. 100/2005, 10 November 2005.

26 Jurančič, phone interview, 22 April 2021.

# 4 Statutory minimum wages and other forms of pay for the self-employed

At the outset of this chapter, it is important to recall that most EU Member States have a statutory **national minimum wage**, although its level, adjustment mechanisms and coverage vary. Austria, Denmark, Finland, Italy and Sweden have minimum wages only set within collective agreements, while Cyprus has statutory rates for different occupations (Eurofound, 2020a).

## No statutory minimum wages for the self-employed

There are 14 Member States without any statutory minimum wages or other forms of pay for the self-employed: Austria, Cyprus, Czechia, Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Slovakia, Spain and Sweden. There are, however, some rare examples in very few of these Member States of, if not statutory, unilateral wage-setting mechanisms for the self-employed. In Estonia, fees for actors in theatres, TV, radio and films are mostly set unilaterally by the Actors' Union; however, the fees are also partly a result of a bilateral agreement between the union and Estonian National Broadcasting. In addition, since 2020, the Dutch decree on tariffs in criminal cases of 2003 has prescribed a minimum hourly rate of €43.89 for the services of interpreters and translators in criminal cases.

Recent discussions on the subject have been reported in the Netherlands and Spain. In the Netherlands, a proposition to establish a statutory minimum wage for the self-employed was cancelled in 2020 due to the high expected administrative burden. In Spain, cross-sectoral self-employed associations (ATA and UPTA, among others) are proposing that social security contributions be separated from statutory minimum wages, allowing

the self-employed who bill below the minimum wage to contribute to social security at a lower level.

## Statutory minimum wages for the self-employed

There are 13 Member States with statutory minimum wages or other forms of pay for the self-employed: Belgium, Bulgaria, Croatia, France, Germany, Greece, Hungary, Italy, Malta, Poland, Portugal, Romania and Slovenia. In two of these Member States, this is enacted via a general statutory minimum wage for workers, which also applies to the self-employed: Hungary and Poland. In the remaining 11 Member States, there are statutory minimum wages or other forms of pay for specific groups of self-employed workers: Belgium, Bulgaria, Croatia, France, Germany, Greece, Italy, Malta, Portugal, Romania and Slovenia (Table 4). In many of these countries, these exceptions cover very few occupations, most notably notaries or other legal professions and medical professions. This is the case, for example, in Belgium, Bulgaria, Croatia, Greece, Romania and Slovenia.

In France and Portugal, some self-employed workers are covered by the legal minimum wage, as they are considered by law to be employees (France) or economically dependent (Portugal). In France, workers who benefit from significant autonomy, such as journalists, artists and some salespeople ('*Voyageurs, représentants, placiers - VRP*' in Article L7311-2 of the Labour Code), are covered by the legal minimum wage, as they are considered by law to be employees covered by the Labour Code. In Portugal, some provisions of the Labour Code and of collective agreements are extended to the self-employed, for example the case of homeworking (*trabalho no domicílio*) as set out by Law 101/2009. In

Table 4: Statutory minimum wages or other forms of pay for the self-employed

Type of pay	Member States
General statutory minimum wage	Hungary, Poland
Statutory minimum wage or other form of pay for specific occupations	Belgium, Bulgaria, Croatia, France, Germany, Greece, Italy, Malta, Portugal, Romania, Slovenia
Minimum wages	Belgium, France, Greece, Portugal, Slovenia
Other forms of pay	Belgium, Bulgaria, Croatia, France, Germany, Italy, Malta, Portugal, Romania, Slovenia

Portugal, these non-legally subordinated economically dependent workers benefit from legal rules identical to those in employment contracts as regards several matters: privacy and rest periods (Article 4), safety and health (Article 6), remuneration (Article 7), the right of annual allowance (Article 8), rules on the suspension, reduction or termination of contracts (Articles 9–11), and integration in the general social security regime (Article 15) (Abrantes and Canas da Silva, 2016).

In Germany and Malta, statutes are established for several occupations that include self-employed workers. In Italy, food delivery riders are classified as semi-subordinated workers, and there is a specific legislative framework that defines compensation levels based on a mix of piecework and hourly pay. In addition, as well as setting statutory tariffs for lawyers and court interpreters, Slovenia also sets minimum statutory wages for two of the eight types of work undertaken without employees: (1) student work and (2) the temporary and casual work of pensioners.

## Belgium

Statutory minimum wages exist for professional occupations that (partially) fulfil a public service mission. Notaries' fees are imposed by a decree dating to 16 December 1950 and were modified in 1971, 1978, 1980 and 2000. The INAMI/RIZIV sets tariffs for specific medical treatments for social security-approved doctors.

There are three possible systems with regards to tariffs set for self-employed medical professionals.

- **Conventional medical professionals:** These care providers accept the agreement with the health insurance funds. They charge the official rates and are not allowed to ask for additional fees.
- **Partially conventional medical professionals:** These care providers accept the agreement with the health insurance funds, but charge the official rate only at certain places or times.
- **Non-conventional caregivers:** These care providers do not accept the agreement with the health insurance funds and are free to determine their tariffs.

Liberal professions are not clearly defined in Belgium. Some professions are undoubtedly regarded as liberal professions, but there is no clearly defined list or way of identifying them. Consequently, there are no general rules for other statutory forms of pay. Some groups of professions have their own methods of regulation (for example, medical professionals and notaries); however, these are limited to specific jobs and (in the case of notaries) cases.

Additionally, guidelines or recommendations on price/tariff setting can be found in some sectors. For example, the Association of Professional Journalists (AVBB/AGJPB) has non-compulsory recommended tariffs. On the other hand, the Belgian Lawyers Association sets the minimum wage for trainee lawyers as outlined in the Lawyers' Code of Ethics (Article 3.12).

## Bulgaria

National regulations set tariffs applicable to lawyers and notaries.

## Croatia

Pay for advocacy occupations is determined by tariffs for the remuneration and reimbursement of attorneys' fees (OG 142/2012, 103/2014, 118/2014 and 107/2015) and by the Law on Advocacy (OG 9/1994, 117/2008, 50/2009, 75/2009 and 18/2011).

The latest Act on Minimum Wage was published in OG 118/18,<sup>27</sup> with amendments to this act passed in Parliament on 29 October 2021.

The Labour Act defines the 'salary' paid to an employee as the basic salary and all additional contributions of any kind that are paid by the employer directly or indirectly, in money or in kind, to an employee for performed work. The Labour Act does not precisely enumerate the items of basic salary. This issue is regulated by collective agreements or individual employment agreements, and if these are missing, the employer regulates this issue through internal regulation. Owing to the extensive interpretation of an already widely set legal norm, bonuses and other supplements to the basic salary are regularly calculated as a part of an average salary.

Bonuses and other supplements that do not form part of an employee's regular income but are variable and related to achieving specific and predefined goals are not included in the basic salary. The abovementioned rules on wages do not apply to liberal professions (such as notaries and lawyers) or other types of self-employment.

## France

There are no laws or regulations setting minimum wages for the self-employed in France. Some self-employed workers are covered by the legal minimum wage, as they are considered by law to be employees covered by the Labour Code. These include journalists, some salespeople and artists (Article L7311-2 of the Labour Code). On the other hand, self-employed shop managers, while not under the presumption of employment, are independent traders who benefit from certain provisions applicable to employees ('*gérants non-salariés de succursales*' in Article L7322-1 of the Labour Code). The Court of Cassation has long recognised the right of self-employed managers to claim the minimum wage, as well as the right to rely on the branch collective agreements applicable to their suppliers.

According to Article L410-2 of the Commercial Code, tariffs, prices and fees are freely determined by the principles of free competition, except in certain cases or circumstances precisely determined by the legislator. Among these exceptions (Article L441-1 of the Commercial Code) are tariffs of judicial auctioneers, commercial court clerks, bailiffs, court administrators, judicial agents and notaries. The same applies to lawyers' fees in matters of seizure of property, partition and legal securities.

<sup>27</sup> Available in Croatian at <https://www.obracun-placa.com/index.php/obracun-placa/najava-izmjena-zakona-o-minimalnoj-placi-obaveza-ugovaranja-place-u-bruto-iznosu-izuzimanje-uvjeta-rada-iz-minimalne-place/> and at [https://narodne-novine.nn.hr/clanci/sluzbeni/2021\\_11\\_120\\_2068.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2021_11_120_2068.html)

Some services, such as taxi fares, are subject to tariffs set by the public authorities in order to protect consumers.

Articles L162-5, L162-14-1 and L162-15 of the Social Security Code and Article L1434-7 of the Public Health Code set out fees for consultation and the share paid to liberal doctors. Agreements are negotiated between the Ministry of Health and the liberal doctors' unions.

### Box 12: Specific legislation for platform workers – France

A specific framework has been set for self-employed workers (Article L7341-1 of the Labour Code) using a vehicle driver platform and for delivery drivers. According to Article L7342-9 of the Labour Code:

*As part of its social responsibility towards the workers mentioned in Article L7342-8, the platform may draw up a charter determining the terms and conditions for exercising its social responsibility, defining its rights and obligations as well as those of the workers with whom it is in contact. This charter, which recalls the provisions of this chapter, shall specify in particular:*

...

*2° The arrangements for enabling workers to obtain a decent price for their services.*

Therefore, employers must offer a 'decent price' for their services (but not a minimum wage in a strict sense). These platform workers are also covered by the Transport Code (Article L1326-1), which uses the term 'minimum guaranteed price', instead of the term 'decent price' used in the Labour Code. According to Article L1326-2 of the Transport Code, the platforms concerned

*shall inform workers, when they offer them a service, of the distance covered by this service and the minimum guaranteed price they will benefit from, minus the commission costs, under conditions specified by decree.*

The same article adds that

*workers may refuse a proposal for a transport service without being subject to any penalty. In particular, the platform may not terminate the contractual relationship between it and the workers on the grounds that they have refused one or more proposals.*

The trade union confederation FO has declared that 'the minimum price guaranteed to the worker (referred to in Article L1326-2 of the Transport Code) should guarantee a level of remuneration equivalent to the hourly SMIC [salaire minimum de croissance]'. FO is 'in favour of the public authorities setting a minimum remuneration, re-evaluated regularly'. In this case, 'collective bargaining at sectoral and platform level could always improve pay conditions, while respecting the principle of favourability'.

Finally, for platform workers, while there is no presumption of employment for this group, they do have access to some labour rights, such as collective bargaining, as self-employed workers.

### Germany

There is a need to differentiate between regulations for economically dependent workers and those for self-employed workers and professionals. The HAG and the TVG leave the minimum pay of economically dependent workers to the statutory Minimum Wage Act or to sectoral collective agreements reached by trade unions and single employers or employer organisations. There are no regulations on the minimum incomes of self-employed workers who are not defined as economically dependent.

Existing occupation-related ordinances regulate income by specifying the prices that self-employed workers are permitted to charge. For instance, there are ordinances on the rates that taxi drivers or midwives

are allowed to charge for their services (*Verordnung über Beförderungsentgelte im Taxenverkehr* and *Landesrechtliche Hebammengebührenverordnungen*), as well as for the fees that medical doctors, lawyers, psychotherapists and other professions may charge.

For liberal professions (for example, medical professions, veterinarians, lawyers, tax consultants, architects and engineers), fee schedules form the economic basis for the provision of their services. These are issued on a legal basis. The abovementioned liberal professions should therefore maintain their independence in performing their services vis-à-vis the client. Furthermore, special national goals of the common good should be considered – for example, maintaining healthcare, guaranteeing animal welfare, legal peace and building security, as well as building culture. On the one hand, appropriate statutory remuneration ensures that the freelancer can meet this special quality requirement. On the other hand, it should ensure transparency regarding the creation and

### Box 13: Fee schedule for architects and engineers – Germany

The HOAI (Honorarordnung für Architekten und Ingenieure) is a federal ordinance regulating the fees for architectural and engineering services in Germany. The intention is to contribute to quality and safety and to building culture by ensuring that engineers and architects work with adequate fees in a competition scenario that achieves the best possible planning solutions on the market. Above all, the minimum and maximum rates stipulated in the HOAI are intended to protect planners and consumers from ruinous price competition that would jeopardise quality and safety. Owing to the judgement of the European Court of Justice on 4 July 2019, the federal government had to repeal the binding force of the minimum and maximum rates. The implementation process has been completed, and the HOAI 2021 came into force on 1 January 2021. With the HOAI 2021, the binding price range no longer applies. Instead, the HOAI now offers an orientation framework for which fees are appropriate from the legislature's point of view.

composition of the total fee and thus protect the consumer from being overreached. Those who pursue a freelance profession must adhere to the fee regulations – regardless of whether they are self-employed or employed.

#### Greece

In Greece, there are no regulations concerning minimum wages or other types of financial benefits for the self-employed. However, lawyers may conclude a contract of employment to offer permanent legal services to a specific client (company or in the public sector) and to be remunerated with a fixed wage. In this case, the lower monthly salary corresponds to the basic monthly salary of civil servants with a university education (Code of Lawyers).

#### Hungary

Since 1 February 2021, the minimum wage in Hungary has been HUF 167,400 (€465) per month gross and the guaranteed minimum wage has been HUF 219,000 (€608) per month. However, for self-employed workers, there is a much more favourable tax option that is not tied to the minimum wage. This is the *kisadózó vállalkozások tételes adója* (KATA), or itemised tax for low-tax enterprises. KATA is a lump sum tax, which is HUF 50,000/month for a full-time taxpayer and HUF 25,000/month for a part-time taxpayer (if you work at least 36 hours a week in your main job).<sup>28</sup> Additionally, there are some sectoral recommendations for price or tariff setting; architects, for instance, follow this practice.

#### Italy

The Civic Code distinguishes between registered and non-regulated professions: the practice of registered professions is reliant on a state examination and registration in a professional register. Until Decree Law No. 1, issued on 24 January 2012, the regulations defined professional fees by sector and by affiliation with the professional register. Currently, remuneration is determined through a contract between the self-employed professional and the client. The Minister of Justice, in agreement with the Minister of Economy and Finance,

establishes the social contributions that the self-employed must pay to their professional fund of affiliation.

In September 2019, specific legislation (Law No. 101/2019, then converted into Law No. 128/2019) was introduced to define compensation for food delivery riders, who are classified as semi-subordinated workers with a continuous and coordinated contractual relationship contract. The compensation is a mix of piecework (payment per task) and hourly pay.

Additionally, statutory forms of pay for the self-employed are established in a few sectors. For instance, the autonomous work of trade agents and representatives originally had a legislative source, being primarily regulated by Articles 1742 to 1753 of the Italian Civil Code and by Law No. 204 issued on 3 May 1985. Following on from these legislative provisions, an economic collective agreement to regulate the autonomous work of trade agents and representatives in the commercial trade sector was collectively negotiated. Beyond this provision, no other statutory forms of pay are present in Italy.

Semi-subordinated workers – workers under specific contractual arrangements that can be considered as non-pure forms of self-employment in the grey zone between subordinated and independent employment – have their pay regulated through collective agreements, but there are no further legislative provisions, with the exception of food delivery riders (mentioned above).

#### Malta

There are regulations in Malta specifying tariffs/fees for groups of self-employed workers. The Port Workers Regulations (1993) specify the tariff of fees payable to port workers. The Code of Organisation and Civil Procedure (1855) specifies the fees payable to advocates, legal procurators, official curators and architects in relation to judicial procedure. The Notarial Profession and Notarial Archives Act (1927) lists the services provided by notaries and the corresponding fees. The Chamber of Architects Regulations (1920) regulate the tariff of fees that can be charged by architects. The Taxi Service Regulations (2010) regulate the fees that can be charged by taxi drivers. The Water Taxi Services Regulations (2009) regulate the fees that can be charged by the providers of water taxi services.

<sup>28</sup> The 2012 CXLVII law defines the itemised tax on small businesses (KATA) and the small business tax (kisvállalati adó, KIVA): <https://net.jogtar.hu/jogszabaly?docid=a1200147.tv>



## Poland

In 2017, legislation was modified to include the self-employed in the statutory minimum wage set yearly by the Social Dialogue Council (a tripartite body of social dialogue in Poland). The hourly minimum remuneration applies to people working under a contract of mandate (*umowa zlecenie*, a type of civil-law contract) and to individuals who provide services and do not employ staff or civil law contractors. The notion of the self-employed does not appear in the act in explicit terms, but ‘the legislator’s intention was to ensure minimum remuneration for so-called self-employed people (*osoby samozatrudnione*), i.e., individuals who perform one-man activities and who personally execute tasks stipulated in the contract’ (Mitrus, 2021, p. 206). The gross statutory hourly rate in 2021 was PLN 18.30.

## Portugal

Workers under the homeworking regime (*trabalho no domicílio*) in Portugal who are not legally subordinated but are considered economically dependent are covered by the mandatory minimum wage.

The Labour Code (Article 478b) does not allow collective agreements to regulate economic activities, including price formation.

While taxi tariffs are regulated by law, the tariffs for passenger transportation based on an electronic platform are not. These self-employed drivers (as defined by Law 45/2018) are demanding the definition of a minimum tariff for all digital platforms, the definition of contingents and the improvement of worker’s remuneration. The transport union organisations FECTRANS and STRUP support these demands.

## Romania

There are regulations regarding minimum forms of pay for some occupations, which are decided in consultation with the corresponding professional associations. Minimal or reference honoraria existed in the past for architects and accountants.

The minimal fees for attorneys are decided by the National Union of Romanian Bars (UNBR), as allowed by the Professional Statute of Attorneys. The minimal fees are recommendations: attorneys and clients may agree on higher fees.

Orders from the Ministry of Justice set the honoraria for public notaries following the consultation of the Council of the National Union of Public Notaries (UNNPR) and the minimal and maximal honoraria for judiciary executors following the proposal of the National Union of Judiciary Executors (UNEJ).

## Slovenia

Since 2003, the Slovene Bar Association has determined attorney tariffs, which are mandatory upon approval of the Minister for Justice, as authorised by the Bar Act.

Chambers of professional workers issue recommended tariffs. Examples include the Chamber of Architecture and Spatial Planning of Slovenia (ZAPS) and associations of translators and interpreters. However, court interpreters’ tariffs are determined by the rule on court experts, certified appraisers and court interpreters. The trade union Glosa recommends minimum tariffs for self-employed cultural workers. The OZS has informative prices for certain professions.

### Box 14: Curbing the growth of atypical work – Slovenia

In Slovenia, there are eight forms of contract work: solo entrepreneurs, self-employed workers, economically dependent people, student work, personal supplementary work, copyright contracts, work contracts, and temporary and casual work of pensioners. For the first three groups, it is presumed that they earn at least the equivalent to the minimum wage, as set out in the Minimum Wage Act and adjusted once a year. Self-employed workers are obliged to pay minimum social security contributions (€424.34 in 2021), covering pension and disability insurance, health insurance, parental leave and unemployment insurance.

Reforms in the mid-2010s, aimed at curbing the increase of atypical work, imposed the payment of social security contributions on the remaining five types of contract work. The payment is proportional to fees and, varying from case to case, includes pension and disability insurance, contributions for injuries at work and occupational diseases, health insurance, concession fees and taxes. All contributions and taxes deducted may amount to 50% of the fee. Moreover, the legislator adopted the statutory hourly rates for student work and for the temporary and casual work of pensioners (gross payment of €5.50 and €5.89, respectively). It was expected that higher contributions and statutory hourly rates would hinder the increase of contract work.

Apart from bogus self-employment, the most common form of ‘disguised employment’ is among student workers (Franca, 2019). The legislator expected that ‘higher labour costs’, the statutory minimum hourly rate and mandatory social insurance would deter employers from hiring students, but this was not the case. Since the measure was implemented in 2014, student work has continued to increase, as the cost of student work remained lower than expenses for formal employment. This measure also did not mitigate the underpayment of student workers. Although one-third of student workers work full time, only 10% earn more than the minimum wage of employees (Breznik and Čehovin Zajc, 2021, pp. 39–40).

The Bar Act authorises the Slovene Bar Association to prepare attorney tariffs. They become mandatory when the Minister for Justice approves proposed tariffs and these are published in the *Official Gazette*. The presently valid lawyers' tariff entered into force in 2015. Tariffs are mandatory for all attorneys in the territory of the Republic of Slovenia, as well as courts and other bodies. The lawyers' tariff determines the prices that clients are obliged to pay to lawyers for various types of legal services. The law provides a list of services, each scored by a number of points. As of April 2019, the value of one point is €0.60.

The *Rule on court experts, certified appraisers, and court interpreters* determines qualification requirements and tests for court experts, certified appraisers and court interpreters. The rule also includes tariffs for various tasks and compensation of costs incurred during the performance of work.

The amended Fiscal Balance Act stipulates the minimum gross hourly pay for students. The minimum payment is adjusted to changes in the growth in the average salary in the previous year, and the Minister of Labour must issue a decision on new minimum payments for student work until 1 April of the following year. The most recent *Order on the adjustment of the minimum gross hourly pay for temporary and occasional work* set the gross hourly rate of €5.89 (net payment of €4.98). The gross payment includes pension and disability insurance, contributions for injuries at work and occupational diseases, and a concession fee. The minimum hourly pay for students is comparable to

the minimum wage for employees. However, it does not include holiday allowance, sick leave or other bonuses (Jenič et al, 2018, p. 124).

The Amended Labour Market Regulation Act introduced a minimum hourly rate for 'temporary and occasional work of pensioners'. The minimum hourly rate is adjusted to changes in the growth of minimum wage. The Minister of Labour decides on a new minimum payment until the end of February each year at the latest. The most recent *Order on the harmonisation of the minimum hourly rate and maximum income for temporary or occasional work* determined the minimum rate for March 2021 to February 2022. It is currently €5.50. According to the law, the total annual income cannot exceed the threshold of €8,235.53. The employer must also pay a tax, a special pension and disability insurance and contributions for injuries at work and occupational diseases. The pensioner must pay for health insurance.

There are no other statutory or collectively agreed minimum rates for contract workers. Concerning self-employed workers, it is presumed that they earn at least the equivalent to the minimum wage and are obliged to pay minimum social security contributions equivalent to contributions paid by employed minimum wage recipients, as mentioned in Box 14. It is up to each individual person to declare if they have a higher monthly salary and to pay higher social security contributions. The main benefit of this is a higher pension when they retire. There is a maximum threshold for social security contributions: €2,481.75 a month in 2021.

# 5 Collectively agreed minimum wages and other forms of pay for the self-employed

When it comes to the **pay outcomes** of collective bargaining for the self-employed, if they exist, this report takes a broad approach: it considers minimum wages, wage rates, tariffs, prices, fees and/or other forms of pay. In platforms, for example, usually wage rates are set. Wages typically include piece rates, that is, when people are paid per task completed or per item produced (rather than for their working time), or they are based on distance-based payments (for example, a mileage rate for bicycle couriers) (D'Arcy, 2017, p. 10; Johnston et al, 2021, p. 21).

## No collectively agreed minimum wages for the self-employed

According to the ILO's Right to Organise and Collective Bargaining Convention of 1949 (No. 98), the right to collective bargaining applies to all workers in both the public and the private sectors; the only exceptions are the armed forces, the police and public servants engaged in the administration of the state (Articles 5 and 6). However, there are 19 Member States without any collectively agreed minimum wages or other forms of pay for the self-employed (Austria, Bulgaria, Croatia, Cyprus, Czechia, Finland, France, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia, Spain and Sweden). Some of these are discussed in more detail below.

### Cyprus

In Cyprus, neither collective negotiations nor agreements on minimum wages or other forms of pay for the self-employed have been identified.

### Czechia

The self-employed can join trade unions but they cannot benefit from collective bargaining and collective agreements, as agreements on payments violate competition legislation. However, according to KUK (a confederation of unions in the cultural sector), agreements on prices exist in some professions. Similarly, the Union of Professional Actors of Latvia has developed recommended minimum tariffs for actors. Trade unions have called for changes in legislation but large differences in priorities make changes unlikely in the short run.

### France

Currently, collective agreements on minimum wages for the self-employed do not yet exist, other than the two exceptional cases mentioned in Chapter 3, in the section 'Collective bargaining allowed in exceptional cases for the self-employed'. However, Order No. 2021-484 of 21 April 2021 laid the first foundations for the organisation of social

dialogue at platform level in the delivery sector by means of motorised or non-motorised two- or three-wheeled vehicles, and in the sector of vehicles for transport with drivers. It set out the arrangements for employee representation at sectoral level with the organisation of a national ballot, which was set by an order of 10 January 2022 to run from 9 to 16 May 2022.

In addition, a bill adopted by the Council of Ministers on 13 July 2021, which was adopted by Parliament on 7 February 2022 (Law 2022-139), specifies the representation of platforms themselves and the conditions for collective bargaining between platforms and representatives of self-employed workers in order to conclude agreements applicable to a platform. This bill 'empowers the government to complete by the rules organising social dialogue with platforms'. Once this law is adopted and after the results of the elections of the platform workers' representatives, the first collective negotiations to reach sectoral agreements can start.

A new step was made towards establishing the representation of platform workers with Decree 2021-1791 of 23 December 2021, which sets out the procedures for the ballot to determine the list of their representative organisations. This text defines the procedures for declaring candidate organisations, the establishment of the electoral list and the organisation of the vote. The first election took place in May 2022. Once the representatives are elected, the first negotiations can start on several issues, including pricing of services (the term 'minimum wage' is intentionally not used in order to emphasise the self-employed status).

### Greece

In Greece, there are no collective agreements regarding pay for self-employed workers yet. The possibility for self-employed workers to unionise to represent their collective interest and to conclude collective agreements was recently adopted for delivery and courier workers (Greek Ministry of Labour and social affairs, 2021) and, in June 2021, this possibility was extended to people employed on digital platforms under independent service contracts provided that certain criteria were met as stipulated by Law 4808.

### Ireland

Since signing a framework agreement with the Minister for Health in 2014, the IMO can represent its self-employed members in discussions on resources and fees for publicly funded contracts.

The Competition (Amendment) Act 2017 currently allows three types of self-employed occupations to conclude

collective agreements: voice-over actors, session musicians and freelance journalists. It also permits two types of self-employed workers to engage in collective bargaining: fully dependent self-employed and false self-employed workers.

As of December 2021, there was no evidence of collective agreements signed in respect of the three self-employed grades listed above, nor for the fully dependent or false self-employed categories. Screen Producers Ireland has confirmed that, in all new agreements in the film and television industry that it has concluded, the scope of the terms negotiated apply only to PAYE (pay as you earn) workers (that is, employees, not the self-employed).

For the fully dependent self-employed category, it may be the case that this type of worker is already covered by established norms or a sectoral agreement, such as in the construction industry, which has a sectoral employment order. The same applies to the false self-employed category, but, for this category of worker, the focus in Ireland has been on remedying the status of the worker involved, that is, making sure they are treated as employees by the Revenue Commissioners, rather than seeking to maintain their self-employed status and then engage in collective bargaining.

It is also the case that recent collective bargaining-related legislation in Ireland has not been used as might have earlier been envisaged. The 2015 amendment to the 2001 Industrial Relations Act, which reactivated the ability of trade unions to establish collectively bargained standards of pay and other conditions at non-union firms, has been little used and now appears to have been effectively abandoned by trade unions themselves.

## Poland

The hourly minimum wage is set by the Social Dialogue Council (a tripartite body of social dialogue in Poland). In practice, it is currently the only means and basis for collective bargaining regarding the minimum wage for the self-employed. However, in recent years, there have been major legislative changes of the status of dependent self-employed people, especially with regard to minimum remuneration for work (Mitrus, 2021, p. 200).

As stated above, there are two main reasons why there have been no negotiations in this respect. First, trade unions do not represent a substantial number of self-employed workers, as the latter do not sign up to them, so trade unions are not very interested in formulating demands related to collective interests of the self-employed. However, this could change if self-employed workers' involvement in unions increased and therefore the pressure to bring self-employed interests to the union agenda increased. Second, until September 2021, no trade unions of the self-employed existed, so the self-employed themselves did not formulate such demands and were not party to collective bargaining. Perhaps this will change upon the initiative of the new trade union for the self-employed.

## Portugal

The self-employed are not allowed to enter collective negotiations or conclude legally binding collective agreements. However, some provisions are extended to the self-employed in the case of homeworking (*trabalho no domicílio*): these non-legally subordinated economically dependent workers benefit from legal rules identical to those in employment contracts in matters of remuneration.

## Spain

Since 2009, an amendment to Article 14 of Law 2/1974 has prohibited professional associations from setting tariffs, the so-called *colegios* used to establish minimum fees and tariffs for professions such as attorneys and doctors, among others. The introduction to Law 17/2009 states that its aim is to adapt Spanish regulations in relation to service provision to Directive 2006/123/CE on services in the internal market. According to Ruiz (2010), this amendment was controversial, as the directive did not establish any prohibition in this regard. She identifies two reports issued by the National Commission of Markets and Competition (CNMC), one in 1992 and another in 2008, as the reason for the regulator introducing this prohibition. These reports establish that the practices developed by professional associations as regards tariffs were a measure indirectly impeding free competition.

## Sweden

In Sweden, the status of the self-employed affiliated with platform companies and platform/umbrella companies is unclear. There are two parts to this debate on the status of the self-employed. First, there are platform companies in Sweden that say that the gig workers working for them are not employed by them (one example being the food delivery company Wolt (SvD, 2021a)). In addition, the food delivery company Foodora, which signed a collective agreement, says that certain gig workers are employed whereas others are not (Transportarbetaren, 2021).

Second, umbrella companies for the self-employed (in Swedish *egenanställningsföretag*) are companies that carry out billing, etc., on behalf of the self-employed, but the self-employed workers themselves are the ones who secure assignments, and the assignments often come from various clients. The largest umbrella company in Sweden, Frilans Finans, argues on its website that the self-employed people working through this platform are employed by them (Frilans Finans, 2021). However, Frilans Finans is also used by platform companies such as Wolt, which makes the situation even more complex (SvD, 2021b).

This has caused debate in Sweden regarding the status of self-employed workers. According to top-tier trade union LO, from a labour right perspective, umbrella companies such as Frilans Finans do not manage and control the work carried out by the self-employed workers; therefore, they cannot be considered as employed. LO argues that the Swedish courts have decided in some cases that a self-employed worker has the right to unemployment allowance while, in other cases, that the self-employed worker has no right to unemployment allowance. In the

cases in which they have been considered as employed, the employer has not been the umbrella company but the company that has bought their services (LO, 2019). Another example is from 2019, when the Appeal Court argued that the umbrella company Cool Company was not an employer and was thus not responsible for the working environment of the self-employed workers (Appeal Court of Stockholm, 2019).

However, in August 2021, a collective agreement between the umbrella company Frilans Finans and Säljarna, a federation representing employees in the sales industry, was signed. Frilans Finans is the largest umbrella company for self-employed workers in Sweden. Säljarnas is not affiliated to any of the top-tier trade unions and, on its website, it does not call itself a trade union but ‘a national federation with trade union rights’ (Säljarna, 2021a). This independency from the cross-sectoral partners could explain why this particular trade union has concluded an agreement while other Swedish trade unions have not.

According to Säljarna (2021b), the collective agreement covers 20,000 self-employed workers. In 2019, there were 30,000 self-employed people affiliated to platform companies (*egenanställda*) in Sweden, according to Statistics Sweden (cited in Säljarna, 2021b). This collective agreement thus covers around two-thirds of this type of self-employed worker in Sweden.

The details of this agreement are unfortunately still unclear, and access to the agreement was not possible. Based on information gathered from media sources, the self-employed workers covered by this agreement have an unlimited contract with varying working time. There is no notice period or other form of employee protection. The agreement sets a minimum wage (around €12.50/hour) for self-employed workers over 20 years of age. Working hours must be 40 hours per week and should not exceed 48 hours a week without the parties’ consent. There is no information available regarding how compliance will be monitored (Dagens Arena, 2021).

There is also a significant limitation in terms of the coverage of this agreement. As pointed out by SvD (2021b), the collective agreement covers only self-employed workers who themselves secure their assignments. It does not cover those working for a specific platform from which they get their assignments (for example, people working for food delivery companies such as Wolt). A representative of Säljarnas argues that its ambition is to increase the coverage of collective agreements to these workers (SvD, 2021b).

As pointed out in a blog post written by a lawyer of the Swedish Union of Journalists (SJF), the recent steps taken

in Sweden have led to a situation in which Frilans Finans, a company that argues that it is an employer for the self-employed, has entered into a collective agreement, but the legal cases so far have not confirmed its status as an employer. Simultaneously, Foodora’s self-employed workers are excluded from the collective agreement signed between Transport and Foodora in 2021 (Lif, 2021). However, it can be argued that these self-employed workers are more dependent on Foodora and that Foodora monitors their work to a much higher degree than Frilans Finans, which provides a strong basis for assuming that their status is that of employees.

## Collectively agreed minimum wages for the self-employed

There are only eight Member States with collectively agreed minimum wages and other forms of pay for the self-employed: Belgium, Denmark, Estonia, Germany, Italy, Malta, the Netherlands and Slovenia. Table 5 summarises the types of pay in these countries.

It is worthwhile noting that, considering the information in both Chapters 4 and 5, there are 10 Member States that have neither statutory nor collectively agreed minimum wages or other forms of pay for the self-employed.

### Belgium

A labour market intermediary, Smart, has ensured social protection and working conditions for self-employed workers for 20 years. It formally takes the employer’s role by providing a work contract to freelancers, who are then covered by legal entitlements from which the self-employed are usually excluded, such as the minimum wage. More than 24,000 freelancers signed a contract with Smart in 2019 in Belgium. Despite its success among freelancers, Smart remains a case of ‘institutional experimentation’.

As there is no clear regulation on how wages, tariffs, fees and prices are arranged in Belgium, the situation differs quite significantly depending on the type of job.

In principle, it is forbidden for companies/organisations to coordinate prices with competing companies/organisations. However, there are a few instances in which there is a certain degree of general price coordination. Another complicating factor is the fact that there is no single legal definition or list that stipulates which jobs are liberal professions.

Doctors and medical specialists are probably the most prominent example of this. A significant number of them

**Table 5: Collectively agreed minimum wages or other forms of pay for the self-employed**

Type of pay	Member States
For specific sectors	Denmark, Germany, Italy, Malta, Netherlands
For specific occupations	Denmark, Estonia, Germany, Italy, Slovenia
Minimum wages	Belgium, Denmark, Germany, Italy, Netherlands, Slovenia
Other forms of pay	Denmark (fees), Estonia (fees), Malta (basic rates), Netherlands (rates)

(for example, 88% of general practitioners and 81% of specialists in 2016) adhere to price conventions that are arranged between the health/sickness funds and the medical professionals. The intention of these conventions is to keep medical care affordable and accessible for all, while maintaining some liberty for medical professionals to choose their own tariffs. Each (certified) medical professional has the right and ability to adhere to these conventions or choose not to do so. They are also allowed to adhere partially to these price conventions. For example, it is not uncommon for certain medical professionals to work in accordance with these price conventions when they are working in a hospital but to choose not to adhere to them when they work within their private practice elsewhere. The patient or potential patient always has the right to ask the medical professional if they adhere to these conventions or not, and this information is also publicly available.

Another category of liberal professions that has its tariffs somewhat regulated and coordinated is notaries. Tariffs for some of their tasks are regulated and fixed in a way that they are not able to separate from (there is no opt-in basis, like with medical professions). Other tasks are not regulated and fixed in this way and can be determined by the notaries themselves.

Other sectors sometimes have a system of exemplary tariffs. These can play a coordinating role but are not legally binding.

## Denmark

The United Federation of Danish Workers (3F) has signed agreements regarding wages with Hilfr for private household cleaning workers and with the Danish Chamber of Commerce for food delivery couriers. The latter collective agreement is open to companies, and the first to enter it was Just Eat. Another agreement

regarding minimum wages exists between HK and Voocali (translation services).

The DJ is part of 25 collective agreements for freelancers and media agreements with employers. While the agreements cover fewer aspects than traditional collective agreements and apply only to self-employed people who work under the instruction of an employer, they cover broad guidelines on general minimum wages, night work rates, holiday pay and minimum rates for certain products. The DJ provides yearly freelance wages based on average permanent employees' hourly wages and defines the expenses that an employee/freelancer must bear.

One of the largest freelance agreements is between the Danish Broadcasting Corporation (DR) and the DJ. The agreement is used for the remuneration of individual tasks: a written agreement is made based on a programme contract and the remuneration fee is determined based on the estimate made in the agreement of the necessary time needed to complete the task. As of 1 June 2021, the minimum hourly remuneration is DKK 289.68.<sup>29</sup>

## Estonia

The Estonian Actors Union and EETEAL (employers) concluded a collective agreement in 2014 that regulates working time, pay and work organisation. This agreement includes self-employed workers.

## Germany

The first example of a collective agreement for self-employed remuneration, *Vergütungsvertrag Design*, was concluded in 1977 and is regularly updated. It concerns self-employed designers who are economically dependent on employers (design studios).

Another agreement exists between the German Union of Journalists (DJU, part of ver.di) and the Federal Association of Newspaper Publishers (BDZV).

### Box 15: Feste Freie and the audio-visual sector – Germany

The public broadcasting company Westdeutscher Rundfunk (WDR) and the audio-visual sector are at the forefront of developing collective agreements for economically dependent self-employed workers (in German *Feste Freie*).

The German trade union ver.di has settled collective agreements on Feste Freie with each of the regional affiliates of the public broadcaster ARD, including WDR, RBB (Berlin), SWR (Südwestfunk) and Deutsche Welle, among others. The outcomes of the agreements vary depending on the power relations.

WDR has several collective agreements for dependent self-employed workers and permanent economically dependent self-employed workers (the Feste Freie). The Feste Freie, many of whom are former standard workers and trade union members, have considerable negotiating power, which has led to several collective agreements and to representation in WDR's staff council, a situation not foreseen in the Staff Constitution (nor in the Works Constitution).

<sup>29</sup> More information is available at [https://journalistforbundet.dk/sites/default/files/inline-files/DR%202020%20DR%20OG%20DJ%20Freelanceopgaver%20i%20fb.%20produktion%20af%20TV-%20og%20radioudsendelser\\_1.pdf](https://journalistforbundet.dk/sites/default/files/inline-files/DR%202020%20DR%20OG%20DJ%20Freelanceopgaver%20i%20fb.%20produktion%20af%20TV-%20og%20radioudsendelser_1.pdf)

## Italy

Semi-subordinated workers, that is, workers under specific contractual arrangements that can be considered as non-pure forms of self-employment in the grey zone between subordinated and independent employment, have their pay regulated through collective agreements if the social partners in the economic sector voluntarily opt for negotiating national sectorial collective agreements.

This is the case for the national collective agreements signed that cover a specific subgroup of semi-subordinated workers, that is, the continuous and coordinated contractual relationship (introduced in 1997 by Law No. 196/1997), in private schools and universities, credit recovery institutions, organisations providing occupational training and call centres.

On 15 September 2020, a national collective agreement setting a minimum compensation of €10 gross per hour was signed between the platform AssoDelivery and the autonomous General Labour Union (UGL). However, on 30 June 2021, the Labour Court of Bologna established the unlawfulness of this national collective agreement, motivated by the fact that the signatory party on the union side, the UGL Riders, could not be considered as a representative union in the sector, a statutory requirement of a national collective agreement. This judgement followed the judicial appeal raised by the largest Italian union confederation, the CGIL, claiming the illegality, and accordingly the inapplicability, of such agreements.

While labour law scholars promote collective bargaining as the most effective mechanism to improve social protection and minimum income levels for self-employed workers, representative associations of workers consider the law a more suitable tool than collective agreements.

## Malta

The law prohibits agreements and practices between competitors that may prevent, restrict or distort competition; exceptions are defensible under the concept of equal pay for equal work due to the vulnerability of self-employed workers. Two agreements establish basic rates for specific groups of self-employed workers between the Malta Chamber of Small and Medium-sized Enterprises and:

- Benna (a processing dairy plant), regarding self-employed distributors
- GO p.l.c. (a telecommunications provider), regarding self-employed technical workers

## Netherlands

The first collective labour agreement with provisions on minimum rates for self-employed workers became effective in 2019 and was signed between the Royal Association of Dutch Architects (BNA) and trade unions; it was then declared generally binding by the Ministry of Social Affairs. However, the initial version was not accepted by the Competition Authority because the collective labour

agreement did not differentiate between different types of self-employment; there was no distinction between self-employed workers who are considered undertakings and self-employed workers who are, in practice, working in the same situation as employees. Since then, another collective labour agreement defining remuneration for self-employed workers has been agreed between the Dutch Association of Performing Arts (NAPK) and the trade union for artists (De Kunstenbond) in 2020. Both the collective agreement for architects and that for the performing arts seem to be the only collective agreements to date containing clauses on minimum rates for the self-employed: they have been declared universally applicable (Laagland, 2021, p. 177).

Another agreement (the Fair Practice Code (*Goed Odrachtgeverschap Publieke Omroep*)) was reached in 2020 by the organisations of national and regional public broadcasters and trade unions to set standards for the relationship between contractors (the self-employed) and clients (broadcasters) in public broadcasting organisations.

Self-employed interpreters and translators effectively campaigned for a minimum rate for services provided to the government, for example as translators in court cases. Recently, interpreters have been campaigning for higher rates, as they consider the current rates to be far too low.<sup>30</sup> The current minimum rate of €43.89 per hour was introduced in 2020; before 2020, a fixed rate applied for services provided to the government. That fixed rate was also €43.89 per hour (and had been for many years, which is one of the arguments for translators demanding at least an adjustment for inflation). Therefore, although interpreters and translators effectively campaigned for the introduction of a minimum rate, this does not imply that they agreed with the decision on the level of this minimum rate.

## Slovenia

The only collective agreement that covers freelance journalists and trainees lost its general validity in 2017. It is now valid for only one organisation, Radio-Television Slovenia. At present, employers are not interested in entering into collective bargaining.

While the agreement does not specify which rights correspond to employees or the self-employed, it stipulates that wages for self-employed workers cannot be lower than the total annual salary of employees if the self-employed workers and employees conduct the same type of job (requiring the same education, job experience and responsibility). Self-employed journalists are entitled to the reimbursement of all material costs incurred in their work, including travel expenses, meals and holiday allowances. However, surveys by the SNS have shown that self-employed journalists are paid 20–60% less than employed journalists in the same jobs.

In 2017, the trade union Glosa prepared the draft collective agreement for self-employed workers in the culture sector. It was sent to the Ministry of Culture, inviting it to

30 See, for example, <https://nos.nl/artikel/2402313-rechtbanktolken-leggen-werk-neer-eisen-betere-vergoeding-er-blijft-niet-veel-over> (in Dutch)

negotiate the collective agreement on behalf of public cultural institutions as employers. The ministry refused to enter into collective bargaining on the grounds that the present regulation (the Collective Agreements Act) allowed for the signing of collective agreements only with workers on employment contracts. In the absence of mandatory tariffs, Glosa issued a recommendation for minimum tariffs for self-employed cultural workers. Minimum tariffs are hourly, daily and monthly.

The Slovenian Competition Protection Agency (AVK) has issued warnings about price fixing regarding minimum tariffs for translators. Furthermore, the agency found the recommended tariffs, issued by various professional associations, to be 'inappropriate'.



# 6 | Summary and conclusions

Eurofound was asked by the European Commission to carry out a **pilot project on minimum wages** over three years (2021 to 2023). The purpose of this pilot project is to provide evidence that would help monitor the effects of the proposed directive on the coverage and adequacy of minimum wages in the Member States. The report addresses module 3 of the project on regulating minimum wages and other forms of pay for the self-employed.

In the context of the wider analysis of interest representation and collective bargaining for the self-employed, the main objective of this report was to understand how minimum wages, wage rates, tariffs, fees and/or other forms of pay can be fixed for specific jobs or professions within sectors with a high level of freelancers/vulnerable and concealed self-employed people.

The main **research questions** of this draft report were the following:

- Is it legally possible for self-employed workers to join trade unions or to be represented by other forms of employee representation at national level?
- Are there concrete examples of trade unions or other forms of employee representation for the self-employed at national level?
- Are there collective negotiations and agreements for the self-employed at national level?
- Are there statutes and/or rules and regulations on minimum wages and other forms of pay (for example, wage rates, tariffs, fees or prices) for self-employed workers?
- Are there collective negotiations and/or agreements on minimum wages and other forms of pay for self-employed people (for example, wage rates, tariffs, fees or prices)?

The methodology of this draft report consisted of a qualitative mapping exercise of national approaches to the regulation of the minimum tariffs of the self-employed via qualitative desk research conducted by the Network of Eurofound Correspondents. This mapping exercise was complemented by a literature review and the first, succinct, input from the expert group established for the minimum wage project.

## Trade union representation

In January 2022, there were only three EU Member States that did not allow trade union representation for the self-employed (Estonia, Romania and Slovakia; see Table 2). In all cases, this was on the grounds of labour law only.

The vast majority of Member States (16 in total) do allow trade union representation for the self-employed. In

most of these cases (eight Member States), trade union representation is in place on the grounds of labour law (Belgium, Croatia, France, Hungary, Malta, Poland, Spain and Sweden). In six Member States, the right to associate is enshrined in the constitution (Croatia, Denmark, Finland, France, Italy and Slovenia). Trade union statutes are the legal basis in four Member States (Austria, Germany, Greece and Ireland).

One Member State (the Netherlands) relies on competition law, while in Austria it is the ECHR and in Denmark it is the Confederal Agreement that serve as recognised legal sources for self-employed workers having their interest represented by trade union organisations. In nine Member States (Austria, France, Germany, Ireland, Italy, Lithuania, Malta, Poland and Sweden), this interest representation is channelled via general trade unions or their separate branches for the self-employed. In 14 Member States (Austria, Croatia, Cyprus, Denmark, Finland, France, Hungary, Ireland, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden), this task is taken up by specific trade unions for the self-employed (for example, Virksom in Denmark and BATU in Ireland).

In a number of Member States, there are also associations, professional organisations or other forums representing the interests of the self-employed (for example, the Croatian national coworking community (Coworking Croatia), the Taxi Drivers Association in Estonia, ADG for self-employed designers in Germany, the Association of Self-employed Musicians in Latvia and the Association of Self-employed Workers in Portugal). These organisations do not have the right to enter into collective bargaining on behalf of self-employed workers, as they are not recognised as genuine and representative trade unions.

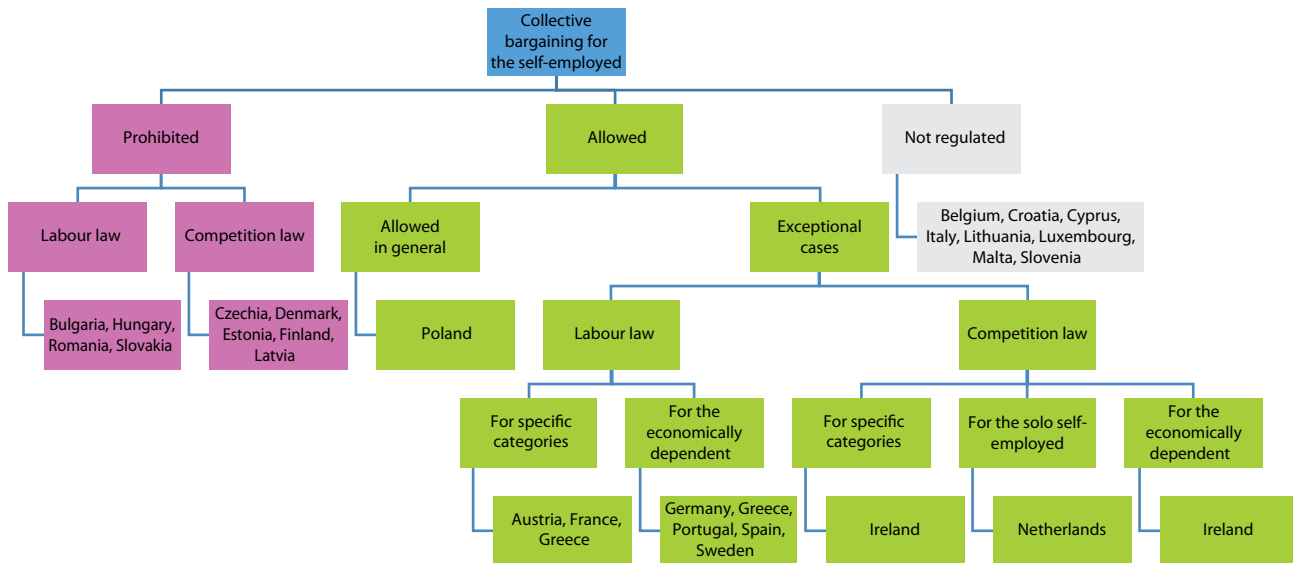
Finally, in eight Member States (Bulgaria, Cyprus, Czechia, Latvia, Lithuania, Luxembourg, Malta and Portugal), the laws are silent on trade union representation for the self-employed.

## Collective bargaining

When it comes to the right to collective bargaining in the 27 EU Member States, the scope and application of this process for self-employed workers is much more limited than for employees due to the shadow of EU and national competition law.

There is only one Member State (Poland) in which collective bargaining for the self-employed is – *de jure* – allowed without any restrictions (Figure 3). However, in Polish industrial relations, no practical cases of either trade union representation or collective bargaining for the self-employed have been reported to date.

Figure 3: Clusters of collective bargaining for the self-employed<sup>31</sup>



As of January 2022, nine EU Member States did not allow collective bargaining for the self-employed. In four of these Member States (Bulgaria, Hungary, Romania and Slovakia), it is labour law that impedes collective bargaining for the self-employed; in the remaining five countries it is impeded by competition law (Czechia, Denmark, Estonia, Finland and Latvia). In Czechia, for example, this prohibition is rooted in recommendations of the Office for Protection of Competition, and in Romania the interdiction is implicit.

A total of nine Member States (Austria, France, Germany, Greece, Ireland, the Netherlands, Portugal, Spain and Sweden) allow collective bargaining for the self-employed in exceptional cases (Figure 3). The categories of exceptions identified in this report are based on either labour law or competition law. In seven of these Member States, these exceptions are based on national labour law (Austria, France, Germany, Greece, Portugal, Spain and Sweden), whereas in the other two countries (Ireland and the Netherlands) it is competition law opening this door.

Exceptions based on labour law apply to the following groups of workers:

- certain categories of self-employed workers:
  - Austria: homeworkers and certain categories of journalists (*ständige freie DienstnehmerInnen*)
  - France: shop managers and platform workers
  - Greece: platform workers if certain criteria are met
- economically dependent self-employed workers:
  - Germany: homeworkers and self-employed workers gaining more than 50% of their income from a contract with one employer (for self-

employed workers in creative and journalist professions, this figure is 33.3% of income)

- Greece: people in dependent situations and requiring protection similar to employees
- Portugal: homeworkers and handicraft workers
- Spain: economically dependent self-employed workers may sign professional agreements
- Sweden: dependent contractors

Exceptions based on competition law apply to the following groups of workers:

- certain categories of self-employed workers:
  - Ireland: voice-over actors, session musicians and freelance journalists
- economically dependent self-employed workers:
  - Ireland: false or dependent economically self-employed workers upon application
- solo-self-employed workers:
  - Netherlands: workers providing services or working side by side with employees

Finally, in eight Member States (Belgium, Croatia, Cyprus, Italy, Lithuania, Luxembourg, Malta and Slovenia), statutes, rules and/or regulations are silent on trade union collective bargaining for the self-employed.

## Statutory minimum wages

As regards statutory minimum wages or other forms of pay for the self-employed, there are 14 Member States without any such forms of pay: Austria, Cyprus, Czechia, Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, Luxembourg,

<sup>31</sup> It is important to note that there is a caveat to putting Spain in the cluster of collective bargaining allowed for specific categories under labour law: this is applicable only to people employed on digital platforms under independent services contracts if four cumulative criteria are met as stipulated by Law 4808 of June 2021.

**Table 6: Statutory minimum wages or other forms of pay for the self-employed**

Status	Member States
Do not exist	Austria, Cyprus, Czechia, Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Slovakia, Spain and Sweden
Exist	Belgium, Bulgaria, Croatia, France, Germany, Greece, Hungary, Italy, Malta, Poland, Portugal, Romania, Slovenia

the Netherlands, Slovakia, Spain and Sweden (Table 6). There are, however, some rare examples in very few of these Member States of, if not statutory, unilateral wage-setting mechanisms for the self-employed.

On the other hand, there are 13 Member States with statutory minimum wages or other forms of pay for the self-employed (Table 6). In two of these Member States, Hungary and Poland, this is enacted via a general statutory minimum wages ruling for workers that also applies to the self-employed. In the remaining 11 Member States, there are statutory minimum wages for specific groups of self-employed workers: Belgium, Bulgaria, Croatia, France, Germany, Greece, Italy, Malta, Portugal, Romania and Slovenia. In many of these countries, these exceptions cover very few occupations, most notably notaries or other legal professions and medical professions. This is the case, for example, in Belgium, Bulgaria, Croatia, Greece, Romania and Slovenia.

## Collectively agreed minimum wages

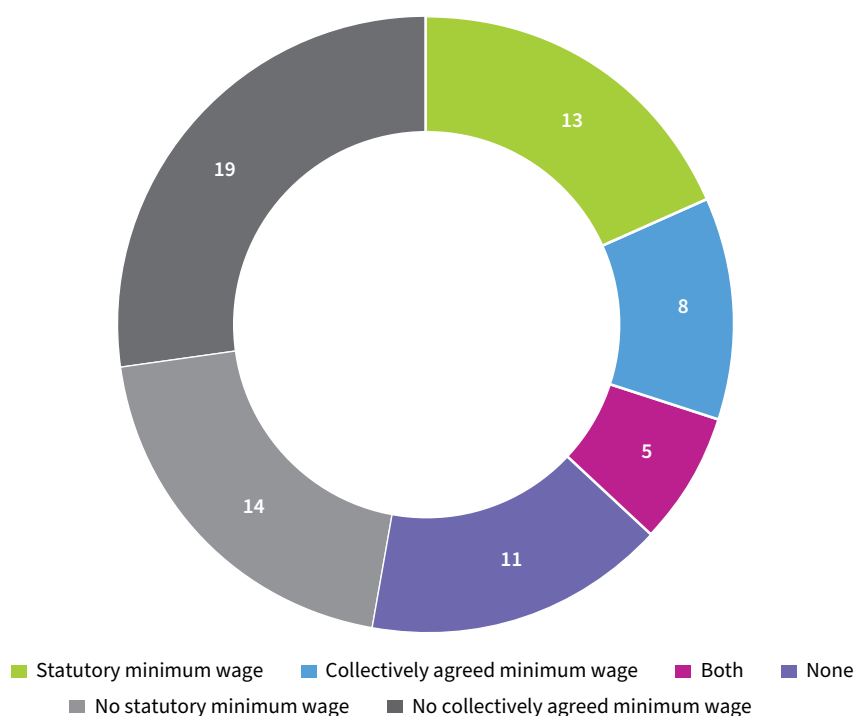
According to the ILO's Right to Organise and Collective Bargaining Convention of 1949 (No. 98), the right to collective bargaining applies to all workers in both the public and the private sectors; the only exceptions are the armed forces, the police and public servants engaged in the administration of the state (Articles 5 and 6). However, there are 19 Member States without any collectively agreed minimum wages or other forms of pay for the self-employed (Table 7).

There are only eight Member States with collectively agreed minimum wages and other forms of pay for self-employed (Table 7 and Figure 4).

There are 11 Member States that have neither statutory nor collectively agreed minimum wages or other forms of payment for the self-employed, and only five EU countries have both forms (Figure 4).

**Table 7: Collectively agreed minimum wages or other forms of pay for the self-employed**

Status	Member States
Do not exist	Austria, Bulgaria, Croatia, Cyprus, Czechia, Finland, France, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia, Spain and Sweden
Exist	Belgium, Denmark, Estonia, Germany, Italy, Malta, Netherlands, Slovenia
Exist in certain sectors	Denmark, Germany, Italy, Malta, Netherlands

**Figure 4: Statutory or collectively agreed minimum wages or other forms of payment for the self-employed, number of Member States**

In a nutshell, only a small number of Member States tick all or most of the important boxes when it comes to main research questions addressed in this report: trade union representation, collective bargaining, statutory minimum wages and collectively agreed minimum wages or other forms of pay for the self-employed.

The 14 Member States with comparatively extended rights of representation and collective bargaining rights for the self-employed are Belgium, Croatia, Denmark, France, Germany, Greece, Ireland, Italy, the Netherlands, Poland, Portugal, Slovenia, Spain and Sweden (Table 8).

**Table 8: Trade union representation, collective bargaining and minimum wages (or other forms of pay) for the self-employed**

Member State	Trade union representation	Collective bargaining rights	Statutory minimum wage/ other pay <sup>32</sup>	Collectively agreed minimum wage/other pay
<b>Belgium</b>	x	x/o	x	x
<b>Croatia</b>	x	x/o	x	o
<b>Denmark</b>	x	o	o	x
<b>France</b>	x	x-	x	o
<b>Germany</b>	x	x-	x	x
<b>Greece</b>	x	x-	x	o
<b>Ireland</b>	x	x-	o	o
<b>Italy</b>	x	x/o	x	x
<b>Netherlands</b>	x	x-	o	x
<b>Poland</b>	x	x	x	o <sup>33</sup>
<b>Portugal</b>	x/o	x-	x	o
<b>Slovenia</b>	x	x/o	x	x
<b>Spain</b>	x	x-	o	o
<b>Sweden</b>	x	x-	o	o

Note: x, allowed (exist); o, prohibited (do not exist); x-, allowed in exceptional cases; x/o, not regulated.

<sup>32</sup> Member States without a general statutory minimum wage (for example, Denmark and Sweden) evidently do not have a statutory minimum wage for the self-employed either.

<sup>33</sup> Mitrus (2021, p. 200) argues that, in Poland in recent years, there have been major legislative changes to the status of dependent self-employed people, especially regarding minimum remuneration for work.

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# Annex 1: Supplementary tables

**Table A1: Interest representation of the self-employed**

Status	Member States
<b>Legal grounds</b>	
<i>Prohibited</i>	
Labour law	EE (Trade Union Act), RO (Labour Code and Social Dialogue Act), SK
<i>Allowed</i>	
Constitution	<b>DK, FI</b> (731/1999), <b>FR</b> (paragraph 6 of the preamble), <b>HR</b> (Article 43), <b>IT</b> (Article 39), <b>SI</b> (Articles 42 and 76)
Labour law	<b>BE, ES</b> (Article 19 of Law 20/2007 – Self-Employment Code), <b>FI</b> (Associations Act 503/1989), <b>FR</b> (Labour Code (L7342-6) for the self-employed using a platform), <b>HR</b> (Article 165 of the Labour Code), <b>HU</b> (right of association), <b>PL</b> (Trade Unions Act), <b>SE</b> (Labour Code)
Competition law	<b>NL</b> (allowed for the solo self-employed only)
Judicial case-law	<b>BE</b>
Other	<b>AT</b> (ECHR and Statutes of Trade Union Federation (I.§1)), <b>DE</b> (union statutes), <b>DK</b> (Confederal Agreement of 1899), <b>EL</b> (union statutes), <b>IE</b> (union statutes)
<b>Not regulated</b>	<b>BG, CY, CZ, LT, LU, LV, MT, PT</b>
<b>Forms of interest representation</b>	
General trade union	<b>AT, DE, FR, IE, IT</b> (branches), <b>LT, MT, PL, SE</b>
Specific trade union	<b>AT, CY, DK, ES, FI, FR, HR, HU, IE, MT, NL, PT, SE, SI</b>
Other	<b>DE</b> (ADG for self-employed designers), <b>EE</b> (professional organisations, for example the Taxi Drivers Association), <b>HR</b> (Coworking Croatia), <b>LV</b> (Association of Self-employed Musicians), <b>PT</b> (various associations of self-employed workers)

**Table A2: Concrete cases of interest representation of the self-employed**

Member States	Examples
Austria	ÖGB (GPA, vidaflex, Younion)
Belgium	United Freelancers (section of the ACV/CSC), FGTB platform (section of the ABVV/FGTB)
Bulgaria	UNITY
Croatia	Union of the Self-employed (ceased to exist in 2017), Coworking Croatia (programme of CIPA)
Cyprus	Isotita (broader public sector)
Czechia	KUK, ČMKOS
Denmark	Virksom (the self-employed only), graphic design (HK and TL)
Finland	ERTO, Trade Union Pro, ERTO, Teme, Journalisti, TAKU, Service Union United PAM, the Musician's Union
France	CGT Spectacle union, CGT (Union Nationale des Syndicats d'Artistes Musiciens de France), CGT (FO-CAPA VTC), CFDT (UAE), SNAM, lifeguards (SNPMNS), independent sophrologists (SSI), conference interpreters (FNGIC)
Germany	GEW, ver.di, IG BAU, IG Metall, NCG (all offer membership to the self-employed)
Greece	Several unions accept self-employed workers who are in a dependent employment relationship
Hungary	National Union of Taxi Drivers, Federation of Art Unions (artists, musicians, dancers, theatre workers), Performing Arts Advocacy Office
Ireland	SIPTU (workers in the construction sector classified as self-employed or economically dependent workers), MUI, Irish Equity (self-employed professionals in the live performance and theatre sector, including voice-over actors), National Union of Journalists (represents a number of self-employed journalists), Connect (represents some self-employed workers in the construction, electrical and technical sectors), BATU (represents a number of workers classified as self-employed), IMO (represents self-employed doctors in general practice), IDA (represents self-employed dentists), Irish Postmasters' Union (solely self-employed)
Italy	CGIL (NIDIL), CISL (CLACS and ALAI; FELSA), UIL (UILTemp)
Lithuania	LPSK and LPS (affiliates with self-employed workers as members), the Lithuanian Actor Guild, the Trade Union of Lithuanian Ride-hail Drivers, PFA Lithuania and other independent unions uniting both employees and self-employed people (for example, the Trade Union of Taxi Drivers)
Malta	Trade unions that include self-employed workers: GWU, UHM, Malta Chamber of Pharmacists, MUTG, MDU, MACP, Malta Association of Family Therapy and Systematic Practice, MCP, LRU
Netherlands	FNV Zelfstandigen, CNV Zelfstandigen

Member States	Examples
Poland	OPZZ and NSZZ ‘Solidarność’ (no substantial numbers, no other cases)
Portugal	FENPROF in cooperation with ABIC, SNESUP, the Hotels, Tourism and Restaurant Workers’ Union/North, FECTRANS and STRUP
Slovakia	In practice, not organised in trade unions
Slovenia	SNS
Spain	ATA, UPTA, UATAE, CEAT, OPA, Asociación de Transportistas Autónomos (transport), ASAJA (agriculture), ASORIDERS (food delivery)
Sweden	Most SACO unions, Unionen, Musicians’ Union, Union of Journalists (SJF), Lederna

Table A3: Collective bargaining for the self-employed

Status	Member States
<b>Legal grounds</b>	
<i>Prohibited</i>	
Labour law	BG (Article 51 of the Labour Code), HU (implicit ban under the Law on the Right of Association (2011/18)), RO (Labour Code and Social Dialogue Act), SK (Articles 229(6) and 231(1) of Act No. 311/2001 on the Labour Code and Articles 1(1) and 2(2) of Act No. 2/1991 on collective bargaining)
Competition law	CZ (recommendations of the Office for Protection of Competition), DK, EE, FI (Competition Act 948/2011), LV (section 11 of the Anti-trust Law)
<i>Allowed</i>	PL (Trade Unions Act)
<i>Allowed in exceptional cases</i>	
Labour law	<b>AT</b> (Labour Constitution Act), <b>DE</b> (Labour Law in relation to the economically dependent self-employed only), <b>EL</b> (Law 1876/1990 in relation to the economically dependent self-employed only), <b>ES</b> (Self-employment Code, with an exception for the economically dependent self-employed), <b>FR</b> (labour law, i.e. Articles L7341-1 to L7345-6 of the French Labour Code relating to the methods of representation of the self-employed using platforms and case-law of the Court of Cassation), <b>PT</b> (Labour Code), <b>SE</b> (Co-determination Act, with an exception for dependent contractors)
Competition law	<b>IE</b> (Competition Amendment Act 2017: limited to voice-over actors, session musicians and freelance journalists), <b>NL</b> (allowed for the solo self-employed under certain conditions – Article 16 of Dutch competition law)
<i>Not regulated</i>	<b>BE, CY, HR, IT, LU, LT, MT, SI</b>

Table A4: Concrete cases of collective bargaining for the self-employed

Member States	Examples
Austria	Homeworkers, journalists
Belgium	Sanoma, Deliveroo, Smart
Denmark	Media and graphics industries, (Super)Hilfr, Voocali, Chabber, Meploy
Estonia	Live performance sector (two collective agreements in 2014: working time/work organisation)
Finland	‘Yhtyneet’ (company-level ‘collective agreement’ covering freelancers working for Yleisradio Oy, the public broadcast company, but not a collective agreement in a strict sense)
France	Self-employed shop managers, platform workers
Germany	For those with a status of economic dependency (i.e. for the self-employed who receive more than 50% of their income from a contract with one employer (for self-employed workers in creative and journalist professions, this figure is 33.3% of income))
Italy	National collective agreements applying to the self-employed (telecommunications, continuous and coordinated contractual relationship, logistics)
Netherlands	Collective labour agreement for architectural firms (2015–2017 and 2019). Collective labour agreement for performing arts (2020)
Slovenia	Collective agreement for professional journalists
Spain	Professional interest agreements for economically dependent workers – no collective agreements in a strict sense
Sweden	Swedish Union of Journalists’ agreement for freelance journalists

Table A5: Statutes on minimum wages or other forms of pay for the self-employed

Status	Member States
<b>Not existing</b>	AT, CY, CZ, DK, EE, ES, FI, IE, LT, LU, LV, NL, SK, SE
<b>Existing</b>	BE, BG, DE, EL, FR, HR, HU, IT, MT, PL, PT, RO, SI
For specific occupations	BE, BG, CY, DE, EL, FR, HR, IT, MT, PT, RO, SI
Minimum wage	BE, EL, FR, HU, PL, PT (economically dependent homeworkers), SI
Other forms of pay <sup>34</sup>	BE, BG, DE, FR, HR, IT, MT, PT, RO, SI

Table A6: Concrete cases of statutes on minimum wages or other forms of pay for the self-employed

Member States	Examples
Belgium	Notaries' fees imposed by decree. The INAMI/RIZIV sets tariffs for certain medical treatments
Bulgaria	Lawyers, notaries
Croatia	Attorneys
Cyprus	Formerly tourist guides and sworn translators (now revised)
France	Some self-employed workers covered by the legal minimum wage (salespeople, shop managers). Tariffs for judicial auctioneers, commercial court clerks, bailiffs, court administrators, judicial agents, notaries, lawyers and taxi fares
Germany	Differences between economically dependent workers and the self-employed, on the one hand, and professionals, on the other. Ordinances define tariffs for taxi drivers, midwives, medical doctors, lawyers, psychotherapists and other professions
Greece	Lawyers
Hungary	Minimum wage for skilled labour applied
Italy	Food delivery riders: compensation a mix of piecework and hourly pay
Malta	Port workers, advocates, legal procurators, official curators, architects, (water) taxi drivers
Netherlands	Discussions underway about a minimum rate of €16 per hour for the self-employed; decree of 2003 on tariffs in criminal cases prescribes a minimum hourly rate €43.89 for interpreters and translators in criminal cases
Poland	Statutory minimum wage: PLN 18.30 (hourly) (2021) and 19.70 (hourly) (2022)
Portugal	Economically dependent homeworkers ( <i>trabalho no domicílio</i> ). Discussions underway about operators of vehicles operating through electronic platforms as regards minimum tariffs, contingents and the improvement of working conditions
Romania	Attorneys, public notaries and judiciary executors
Slovenia	Attorneys. Chambers of professional workers issue recommended tariffs for architects, translators and interpreters, cultural workers and craft workers. Minimum wage for two of the eight forms of personal work: student work and the temporary and casual work of pensioners
Spain	Cross-sectoral self-employed associations (ATA and UPTA, among others) proposing to separate social security contributions from statutory minimum wages, allowing the self-employed who bill below the minimum wage to contribute at a lower level to social security

Table A7: Collectively agreed minimum wages or other forms of pay for the self-employed

Status	Member States
<b>Not existing</b>	AT, BG, CY, CZ, EL, ES, FI, FR, HR, HU, IE, LT, LU, LV, PL, PT, RO, SK, SE
<b>Existing</b>	BE, DE, DK, EE, IT, MT, NL, SI
Sectors	DE, DK, IT, MT, NL
Occupations	DE, DK, EE, FR, IT, SI
Minimum wages	BE, DE, DK, IT, NL, SI
Other forms of pay	DK (fees), EE (fees), MT (basic rates), NL (rates)

34 These include wage rates, tariffs, fees, prices and other forms.

**Table A8: Concrete cases of collectively agreed minimum wages or other forms of pay for the self-employed**

<b>Member States</b>	<b>Examples</b>
Belgium	The self-employed enter collective negotiations because they are considered in the same way as traditional workers' representation
Denmark	Hilfr (private household cleaning), Voocali (translation), Just Eat (food delivery)
Estonia	Fees for actors set by the Actors Union and Estonian National Broadcasting
France	Envisaged for vehicle drivers and delivery platforms
Germany	Collective agreement on remuneration of the self-employed in the design sector ( <i>Vergütungstarifvertrag Design</i> ). Collective agreements covering Feste Freie working for public broadcasting companies
Italy	Continuous and coordinated contractual relationship (introduced in 1997 by Law No. 196/1997) engaged in private schools and universities, credit recovery institutions and organisations providing occupational training
Malta	Two agreements establish basic rates for specific groups of self-employed: Malta Chamber of Small and Medium-sized Enterprises with Benna (Malta Diary Products Limited) and GO p.l.c. (telecommunications)
Netherlands	Collective agreement for architectural firms (2019), collective agreement for performing arts (2020), and Fair Practice Code for the relationship between contractors (self-employed) and clients (broadcasters) in public broadcasting organisations
Slovenia	Collective agreement for professional journalists

# Annex 2: Network of Eurofound Correspondents

Country	National correspondent	Organisation
<b>Austria</b>	Bernadette Allinger	Working Life Research Centre (FORBA)
<b>Belgium</b>	Dries Van Herreweghe	HIVA Research Institute for Work and Society, KU Leuven
<b>Bulgaria</b>	Rositsa Makelova	Institute for Social and Trade Union Research (ISTUR)
<b>Croatia</b>	Irena Klemenčič	Faculty of Law, University of Zagreb
	Predrag Bejaković	Institute of Public Finance
<b>Cyprus</b>	Pavlos Kalosinatos	Cyprus Labour Institute of the Pancyprian Federation of Labour (INEK-PEO)
<b>Czechia</b>	Ales Kroupa and Soňa Veverková	Research Institute for Labour and Social Affairs (RILSA)
<b>Denmark</b>	Maria Hansen and Mikkel Mailand	Oxford Research
<b>Estonia</b>	Mart Masso and Ingel Kadarik	Praxis Centre for Policy Studies
<b>Finland</b>	Amanda Kinnunen	Oxford Research
<b>France</b>	Frédéric Turlan and Pascale Turlan	IR Share
<b>Germany</b>	Axel Hauser-Ditz, Birgit Kraemer, Vanessa Lewitzki and Sandra Vogel	Institute for Economic and Social Research, Hans Böckler Foundation
<b>Greece</b>	Elena Kousta and Penny Georgiadou	Labour Institute of General Confederation of Labour of Greece (INE/GSEE)
<b>Hungary</b>	Nóra Krokovay and Éva Palócz	Kopint-Tárki Institute for Economic Research
<b>Ireland</b>	Andy Prendergast	IRN Publishing
<b>Italy</b>	Anna Mori	University of Milan
<b>Latvia</b>	Kriss Karnitis and Raita Karnite	Economic Prognosis Centre (EPC Ltd)
<b>Lithuania</b>	Inga Blaziene and Ramune Guobaite	Labour Market Research Institute (DRTI)
<b>Luxembourg</b>	Thomas Lisser and Franz Clément	Luxembourg Institute of Socio-Economic Research
<b>Malta</b>	Manwel Debono	Centre for Labour Studies, University of Malta
<b>Netherlands</b>	Thomas de Winter, Jacqueline A.H. Snijders and Paulus Johannes Martinus Vroonhof	Panteia BV
<b>Poland</b>	Jan Czarzasty and Masiej Pankow	Foundation Institute of Public Affairs (ISP)
<b>Portugal</b>	Maria da Paz Ventura Campos Lima	Centre for Studies for Social Intervention (CESIS)
<b>Romania</b>	Livia Mirescu and Oana Mocanu	European Institute of Romania (EIR)
<b>Slovakia</b>	Ludovit Cziria	Institute for Labour and Family Research
<b>Slovenia</b>	Maja Breznik, Aleksandra Kanjuo-Mrčela and Barbara Lužar	Faculty of Social Sciences, University of Ljubljana
<b>Spain</b>	Oscar Molina Romo	University of Barcelona
<b>Sweden</b>	Anna-Karin Gustafsson and Nils Brandsma	Oxford Research









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This report is carried out in the context of the three-year pilot project (2021–2023), ‘Role of the minimum wage in establishing the Universal Labour Guarantee’, mandated to Eurofound by the European Commission. Its focus is module 3 of the project, investigating minimum wages and other forms of pay for the self-employed. Out of concern for the challenging conditions faced by certain groups of self-employed workers, some Member States have established or are in discussions about proposing some statutory forms of minimum pay for selected categories of the self-employed. The main objective of the report is to understand how minimum wages, wage rates, tariffs, fees and other forms of pay could be fixed for specific jobs or professions in sectors having a high level of ‘vulnerable’ workers, as well as ‘concealed’ self-employed. While the majority of Member States allow trade union representation, the right to collective bargaining for the self-employed is much more limited. Only a small number of Member States provide examples of collectively agreed minimum wages or other forms of pay for the self-employed.

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