



Working conditions and sustainable work
**Identifying 'vulnerable' self-employed:
Ad hoc request to Eurofound
from the Directorate-General for
Competition (DG COMP)**

[Exploring self-employment in the European Union](#)

Authors: Mathijn Wilkens, Isabella Biletta and Barbara Gerstenberger (Eurofound)

Research managers: Mathijn Wilkens and Isabella Biletta

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European Foundation for the Improvement of Living and Working Conditions

Telephone: (+353 1) 204 31 00

Email: information@eurofound.europa.eu

Web: www.eurofound.europa.eu

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Introduction

DG COMP request

In the context of work on the issue of collective bargaining for platform workers, and more broadly for vulnerable self-employed service providers (vulnerable self-employed), following Commissioner Vestager's Mission Letter, DG COMP requested Eurofound expertise in spring 2020. The objective was to help better define categories of self-employed who are in a situation similar to that of an employee and therefore would benefit from access to collective bargaining.

At this point in time, DG COMP was at the beginning of reflections, mainly gathering information to have a clearer picture that would allow to better scope the problem. The intention of the initiative is to ensure that the application of competition law does not stand in the way for collective bargaining of vulnerable self-employed. In order to scope the measures, DG COMP wanted to examine whether and how the notion of vulnerable genuine self-employed can be defined.

"Many studies already deal with the problems that platform workers and other vulnerable self-employed face. However, these studies either come from one side of the problem (and therefore need to be filtered through a more objective sieve) or address our concerns only partially.

DG COMP needs to make an impact assessment support study that would, in particular, help to assess the impacts of the policy options to be identified. Namely, an objective analysis of the impacts of the different policy options, in particular the impacts of broader or more narrow options, is needed. This analysis would refer to the potential effects in working and social conditions, but also the potential effects in other aspects of the economic activities concerned, such as potential effects on innovation, on the competitive situation in specific markets, etc."

Building on earlier Eurofound work on the self-employed (research report *Exploring self-employment in the European Union*) and more specifically on platform workers (for example the research report *Digital age - Employment and working conditions of selected types of platform work* or the policy brief *Digital age – Platform work: Maximising the potential while safeguarding standards?*) an ad-hoc report could enable DG COMP to have a better understanding of how to categorise the different types of work provided under the broader category of 'vulnerable self-employed service providers'.

Eurofound proposal

Building on the analysis and research done on the self-employed in Europe, Eurofound proposed to present quantitative and qualitative data to provide information on the concept of 'vulnerable self-employed' across Member States.

For the quantitative analysis, this paper relies on data from the 6th EWCS and from the Labour Force Survey -including the 2017 (LFS) ad-hoc module on self-employment. Analysis is done for the EU27, unless otherwise specified. The main objective of the analysis is to identify pertinent variables that will help to construct meaningful groups of self-employed and allow to narrow down the group of 'vulnerable self-employed'. The first chapter of the current report delivers this analysis from a European perspective using data from the European Labour Force Survey and the European Working Conditions Survey.

The second chapter presents the national perspectives. The qualitative part is dedicated to a mapping exercise of criteria used by Member States to characterise the 'self-employed-without-employees', and within it, the group of 'vulnerable' self-employed. This research uses previous and current Eurofound work on national policies and measures.

1 Quantitative analysis

Regarding the quantitative assessment of the self-employed across Europe, Eurofound has suggested to develop options for sets of criteria to distinguish between the various types of self-employed without employees. The main objective is to identify those who can be considered 'the most vulnerable' and would thus need access to collective bargaining to improve their working conditions.

The starting point are the indicators used in the 2015 European Working Conditions Survey (EWCS), focusing on economic independence, organisational independence and financial security. These indicators aim to estimate the existence and level of what are considered the main features of genuine self-employed: a high degree of economic and organisational autonomy, in contrast to employees, mainly defined by their degree of subordination and dependence vis à vis an employer in terms of work allocation, work organisation and pay.

Indicators from the Labour Force Survey, including the 2017 (LFS) ad-hoc module on self-employment, will also be studied, assessing how they could usefully complement the analysis.

The aim is to develop a 'sliding scale' moving from a set of general criteria leading to identifying a broader group of self-employed without employees, to a set including additional criteria that would lead to a more clearly defined, smaller group which could be considered 'vulnerable' and would benefit from access to collective bargaining. The study will present the characteristics of each group, including the sectoral distribution of the groups identified.

This document outlines the variables in the EWCS and LFS that could be used to construct the groups and outlines why these variables have been selected. As mentioned, the variables are mainly indicators of economic and organisational dependency. The former refers to the situation in which workers' earnings (from their business) are derived from one or a limited number of sources (for example clients). The latter refers to the situation in which the self-employed has little discretion over how the business is run.

The variables mentioned in this report are suggestions for the construction of the groups. Other variables can be used to describe the groups but will not define them. These include demographic variables such as sex, age and country but also economic sector (NACE) and occupation (ISCO).

1.1 Labour Force Survey (LFS)

Criteria

Every year Eurostat focusses its attention to specific issues, adding a set of variables to supplement the core EU-LFS. In 2017, the added set of questions (module) allowed for a specific analysis on self-employment.

Considering the data for self-employed without employees, the LFS in 2017 has 53,511 respondents in that category (large number for a survey). This results in a relatively small margin of error as represented in the confidence intervals shown in the figures below.

It is important to underline that the LFS collect data from national statistics and national bodies. Each Member State runs its own survey, with the discretion to adapt the wording of the questionnaire, the exact timing (which quarter) and survey mode, thus diminishing the full comparability of the collection.

Among the questions of the LFS 2017 ad hoc module, the following have been considered in view to better classify self-employed workers without employees:

1. the number of clients self-employed without employees had in the last 12 months and the dominance of any client
2. lack of influence over the price setting as main difficulty as self-employed during the last 12 months
3. the degree of influence one has over the working hours
4. the level of influence over content and order of tasks

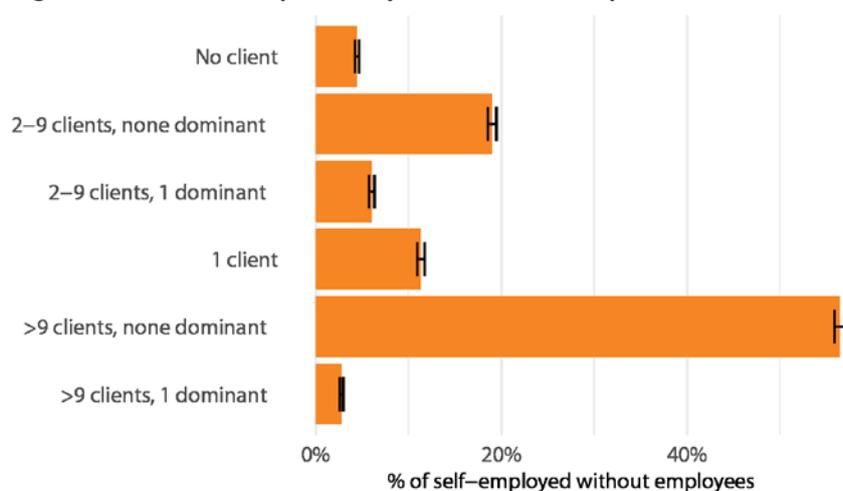
Economic (in)dependence

Figure 1 shows the number of clients self-employed without employees had in the 12 months prior to the survey. This is meant as a proxy for economic dependency: the fewer clients the more dependency. In addition, Eurostat asks the respondents whether any clients were dominant. A strong reliance on one dominant client could arguably be a situation of economic dependency despite having multiple clients.

In the questionnaire, 'dominant' has been operationalised as receiving more than 75% of income from one client (Eurostat, 2018). A 'client' is defined as the person or organisation the respondent provided goods and/ or services to. For self-employed who are in a type of business where it would be odd to refer to 'clients', for instance farmers, the meaning of the concept can also be explained as 'customers' (Eurostat, 2018).

Some Member States report that the concept of 'client' was difficult to understand for some self-employed which could be an explanation for answering 'no client'. Another explanation given was subsistence farming, a situation in which there is no client (Eurostat, 2018).

Figure 1: Economic dependency - number and importance of clients in the last 12 months

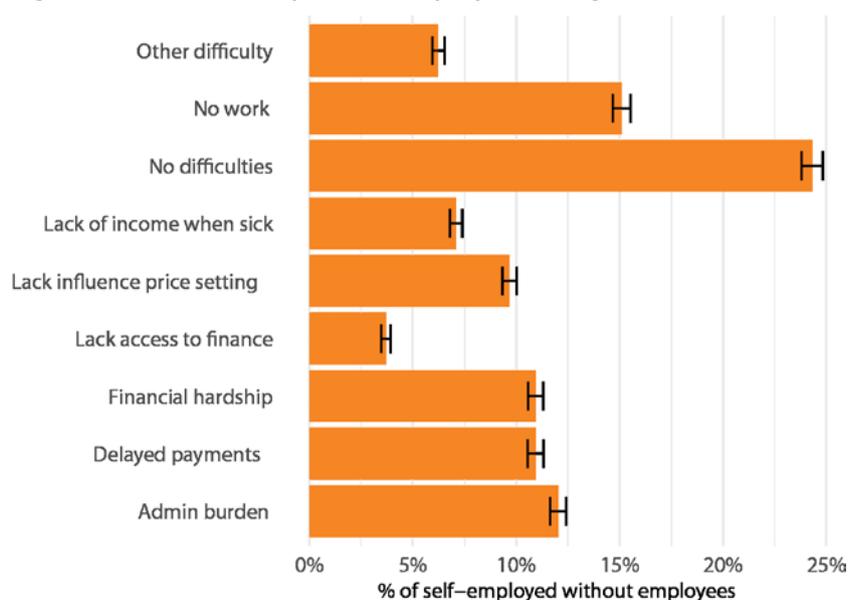


Note: Self-employed without employees, 2017, EU27. Error bars are 95% confidence intervals.

Source: Eurostat - LFS 2017 ad-hoc module self-employment

Figure 2 shows the main difficulty of being self-employed in the 12 months prior to the survey. Specifically, the answer 'lack of influence on the price setting' could be an interesting indicator for economic dependency or a lack of market power in general. Note that the question asks about the *main* difficulty. There may be self-employed who have difficulties setting the price but do not consider this their main difficulty. It should also be noted that several Member States have reported that the 'lack of influence on setting the price of own work' was difficult to understand for the respondents.

Figure 1: Main difficulty as self-employed during the last 12 months



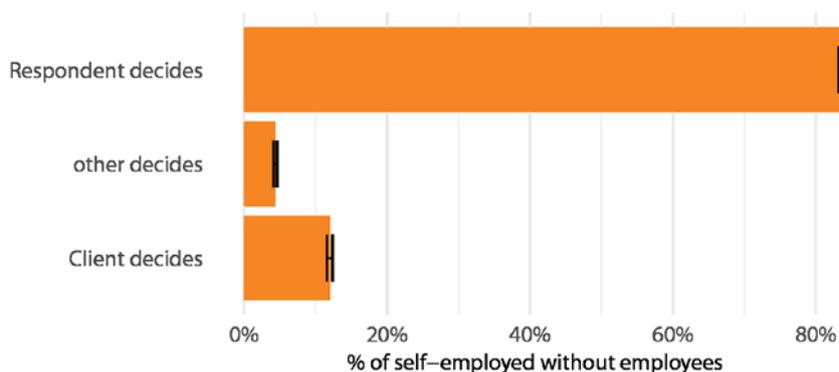
Note: Self-employed without employees, 2017, EU27. Error bars are 95% confidence intervals.

Source: Eurostat - LFS 2017 ad-hoc module self-employment

Organisational (in)dependence

Figure 3 shows the degree of influence one has over the working hours. The main purpose is to find out if the respondent controls his/her own working time, which is a main element in being self-employed. This is not about the volume of work but flexibility in the scheduling of work.

Figure 2: Organisational dependency - Influence over deciding working hours

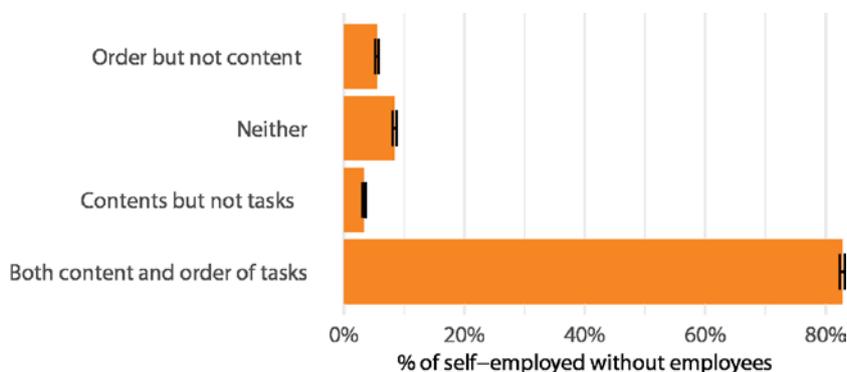


Note: Self-employed without employees, 2017, EU27. Error bars are 95% confidence intervals.

Source: Eurostat - LFS 2017 ad-hoc module self-employment

Figure 4 shows the level of influence over content and order of tasks. This is an indicator of job autonomy or arguably another indicator of organisational dependency. One would expect genuine self-employed to have high levels of job autonomy.

Figure 3: Job autonomy - the level of influence over content and order of tasks in the main job



Note: Self-employed without employees, 2017, EU27. Error bars are 95% confidence intervals.

Source: Eurostat - LFS 2017 ad-hoc module self-employment

For the purposes of the analysis, these four questions have been recoded into four binary criteria:

1. Economic independency: having more than one client and no 'dominant' clients. (75.4%)
2. Influence over the price setting: not having reported a lack of influence over the price setting as main difficulty as self-employed during the last 12 months (88%)
3. Working time autonomy: client does not decide over the working hours (90.3%)
4. Job autonomy: autonomy over content and / or order of tasks. (91.6%)

Systems of criteria

Table 1 shows the proportion of self-employed without employees who do not meet the criteria, by the number of criteria. Nearly two thirds (61.7%) of self-employed without employees meets all criteria. These could be assumed to be “genuine self-employed”, even if this classification does not strictly prevent them to be ‘vulnerable’. For the rest of the self-employed without employees, characterisation is more complex. About 27.8% do not meet exactly one out of four criteria and 38.3% do not meet at least one out of four criteria (cumulative percentage). The proportion of self-employed without employees that do not meet at least three out of four criteria is small: 2.1%; and four out of four is virtually non-existent: 0.14%.

Table 1: Proportion of self-employed without employees by number of criteria not met

Number of criteria not met	Percentage	Cumulative percentage
0	61.73	100
1	27.81	38.27
2	8.36	10.46
3	1.95	2.10
4	0.14	0.14

Note: Self-employed without employees, 2017, EU27.

Source: Eurostat - LFS 2017 ad-hoc module self-employment

The colours of the flows in Figure 5 represent the different groups: the percentage column in the table above. The group that meets all criteria is excluded from the figure. For example, the red flow starting in the left bottom corner of the figure represents those who have economic independency, as well as influence over the price setting. Then the group splits up into those that do not have job autonomy but have working time autonomy and those who have job autonomy, but not working time autonomy.

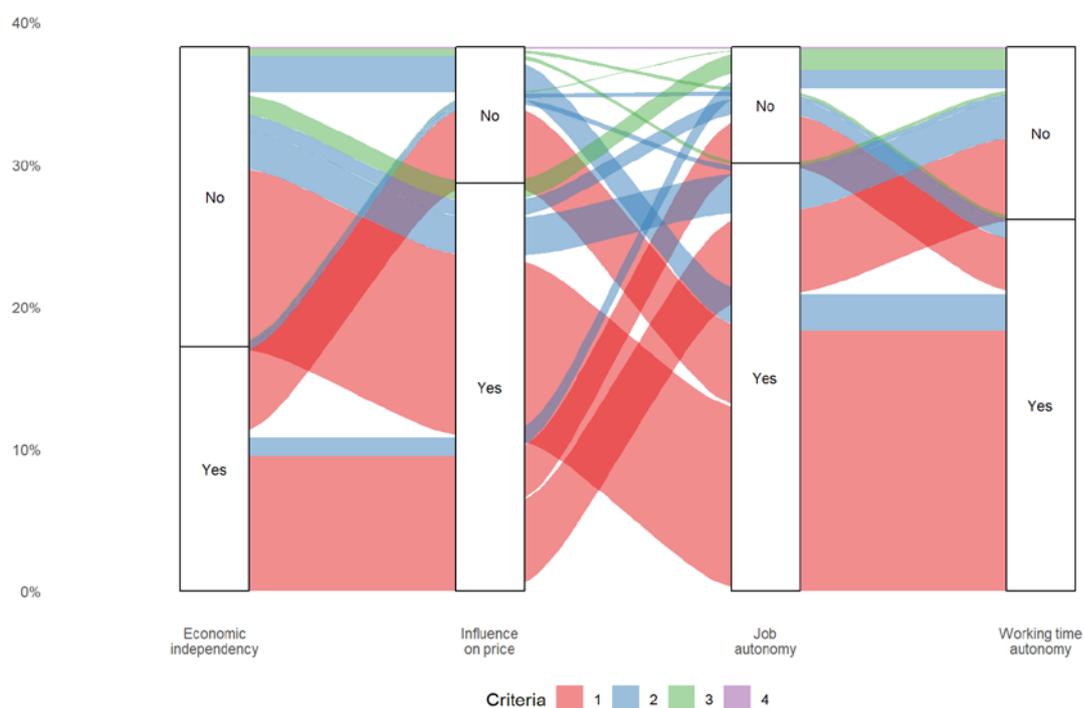
Economic independency does not seem to be linked to having influence on the price setting. As the plot shows, the majority of those who are economically dependent (economic independency: ‘no’) say they have influence on the price setting. Note that ‘influence on the price setting’ is just one category in the question about which is the most important difficulty the self-employed are facing. So ‘no’ here means that influence on the price setting was not mentioned as the most important difficulty.

Similarly, there is also no strong link between job autonomy (methods and tasks) and working time autonomy.

There is a large group that is economically dependent, but has influence on the price setting, job autonomy and working time autonomy. This would imply that economic dependency does not imply organisational dependency. About a third of this group is represented by agriculture and another third by ‘other services’. The latter includes a diverse group: ‘information and communication’ and ‘professional, scientific and technical activities’, but also ‘arts, entertainment and recreation’ and

'activities of households as employers'. Domestic cleaners would be an example of 'activities of households as employers'.

Figure 4: Link between the criteria



Note: Self-employed without employees, 2017, EU27.

Source: Eurostat - LFS 2017 ad-hoc module self-employment

Until now, we have looked at a system which would consider a self-employed without employees as a potentially vulnerable self-employed in case a certain number of criteria are not met. We could develop this further by expanding Table 1 with additional conditions about which criteria should be included (Table 2).

For example, system 2a will consider a self-employed without employees as potentially vulnerable in case at least two out of four criteria are not met, of which both job autonomy and working time autonomy. This implies that all the self-employed in this group do not meet the job autonomy and working time autonomy criteria, but some may meet economic independency and influence on the price. Others in this group may also not meet economic independency or influence on the price.

The 2c group could also be relevant for the analysis in the context of bargaining power given the focus on the financial autonomy.

Table 2: Proportion of self-employed without employees by system

Number	Description	Percentage
0	All criteria met	61.73%
1	At least 1 criterion not met (any criterion)	38.3%
1a	At least 1 criterion not met (one of job autonomy or working time autonomy not met)	16.8%

Disclaimer: This working paper has not been subject to the full Eurofound evaluation, editorial and publication process.

1b	At least 1 criterion not met (one of economic independency or influence on the price not met)	27.3%
2	At least 2 criteria not met (any)	10.5%
2a	At least 2 criteria not met (both job autonomy and working time autonomy not met)	2.7%
2b	At least 2 criteria not met (both economic independency and influence on the price setting not met)	3.0%
2c	At least 2 criteria not met (one of economic dependency or influence on the price setting and one of job autonomy and working time autonomy not met)	6.4%
3	At least 3 criteria not met (any)	2.1%
4	4 criteria not met (any)	0.1%

Comparing systems

The remainder of this section shows the composition of who would be considered vulnerable self-employed under each of these systems. A criteria system that targets well a reasonable proportion of self-employed that are vulnerable is what we are looking for. However, the objective of this analysis is establishing a sliding scale so we will not conclude what would be the most appropriate system.

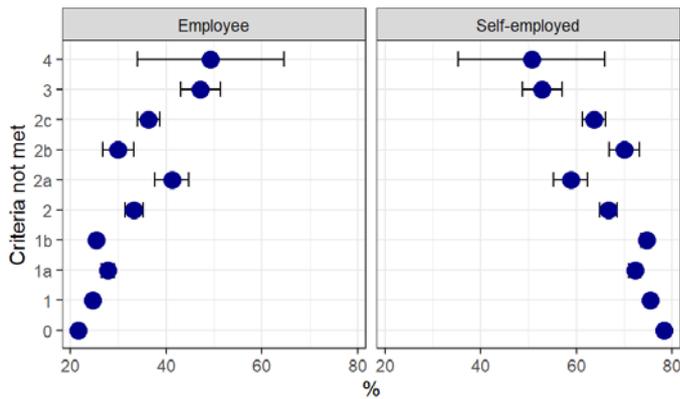
For some of the variables, a regression has been performed of the variable on the criteria and a number of control variables. This is to find out whether the individual criteria have an effect at all on the variable under consideration. References to these regressions are occasionally made in the text and more detailed results are available from Eurofound.

One indication of 'vulnerable' self-employment might be a preference to be employee while being self-employed without employees. The LFS includes a question on the preferred professional status and regression analysis shows that economic independency, working time autonomy, and having influence on the price setting are positively related to preferring to be self-employed. Job autonomy is not.

Looking at the criteria combined, Figure 6 shows that among those who meet all four criteria nearly 80% want to be self-employed (bottom right). This is only about 50% for those who do not meet any of the criteria (top right), though the margin of error is large due to the small size of this group. More generally: the more criteria are not met, the higher the percentage of those who prefer to be an employee. Consistent with the regression this suggests that most criteria are indeed relevant for identifying vulnerable self-employment insofar as the preferred professional status is an indicator of vulnerable self-employment.

System 2a seems to stand out: in case self-employed without employees are considered if they do not meet at least two out of four criteria of which both job autonomy and working time autonomy are not met, just over 40% of those want to be an employee. This is about 20% in case system 2b is used. The dominant effect must come from working time autonomy because the regression shows that job autonomy is not related to the preferred professional status.

Figure 5: Preferred professional status, by system of criteria



In a similar way, the reason for not hiring any employees is displayed in Figure 7. Especially 'not having enough work' may be an indicator of what could be considered 'vulnerable' self-employment. It shows that the more criteria are not met, the larger the proportion among this group of self-employed that do 'not have enough work' and therefore did not hire employees.

Of particular interest is system 2b: under system 2b there are substantially more who have 'not enough work' as a main reason for not hiring employees. This makes sense because 2b requires that at least economic independency and influence on the price setting are not met. In a situation where a self-employed does not have enough work, it is likely that the number of clients is limited as well.

Figure 6: Reason for not hiring employees, by system of criteria

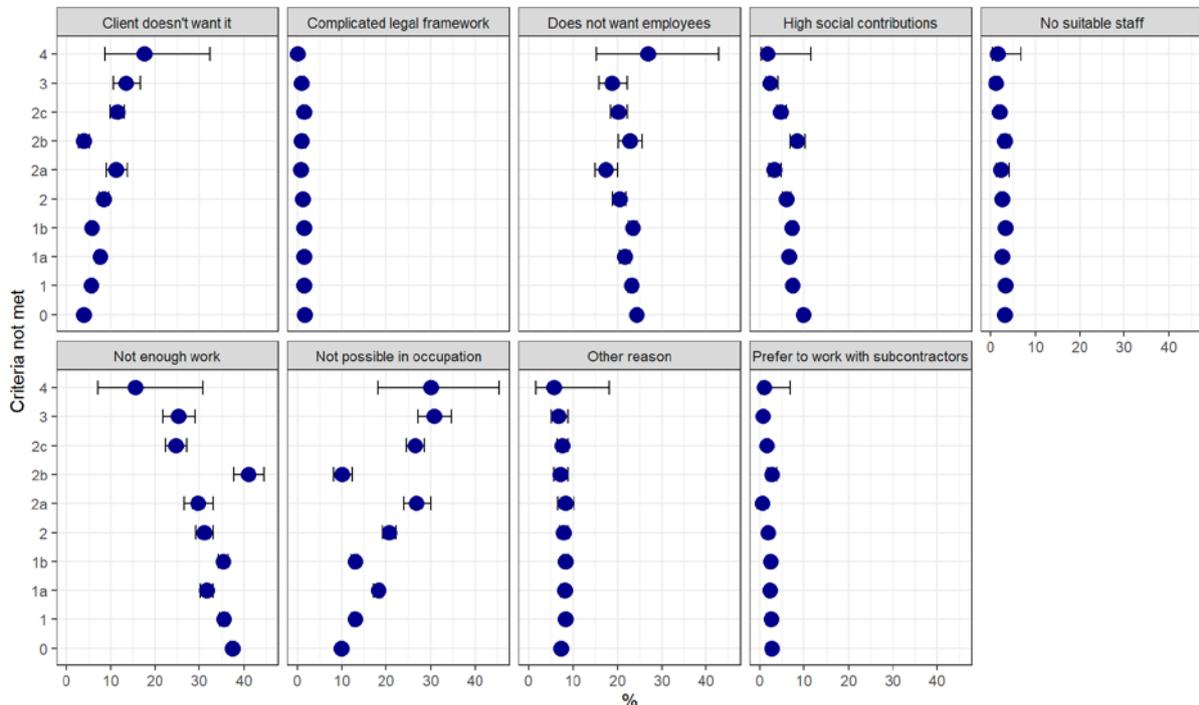
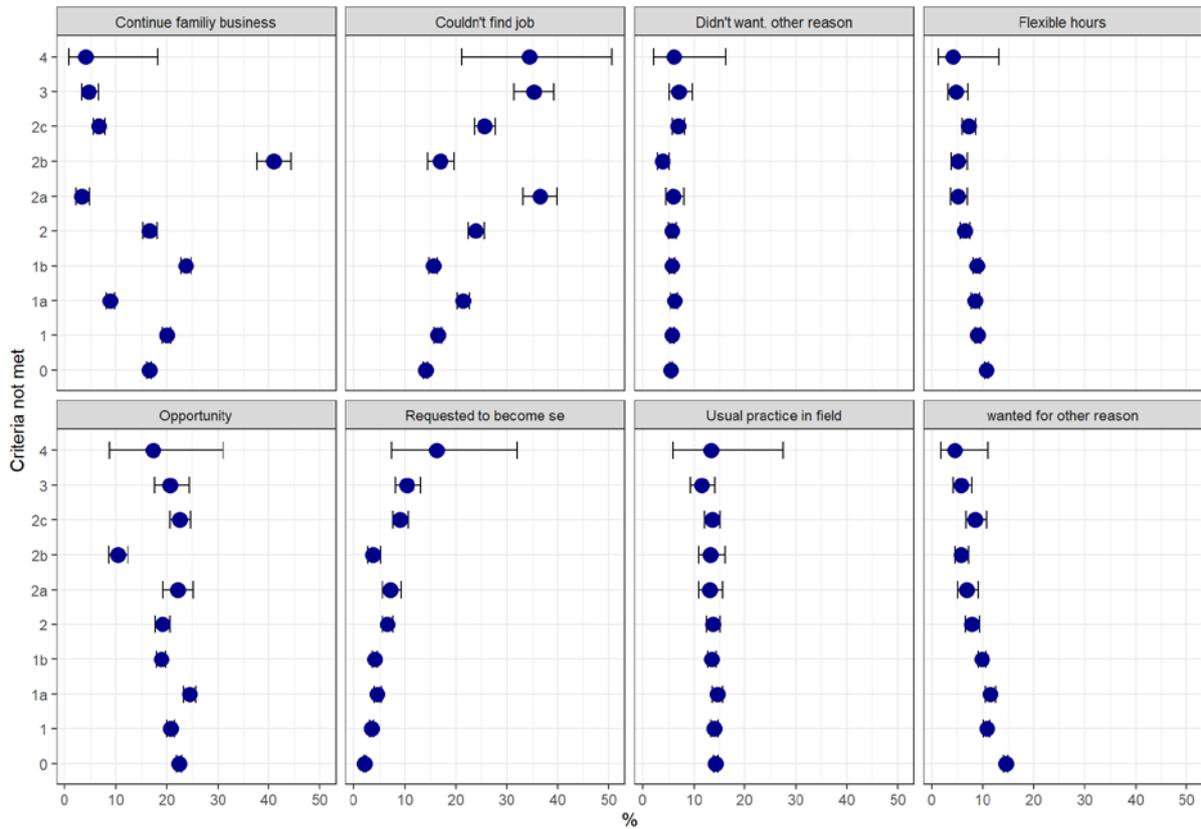


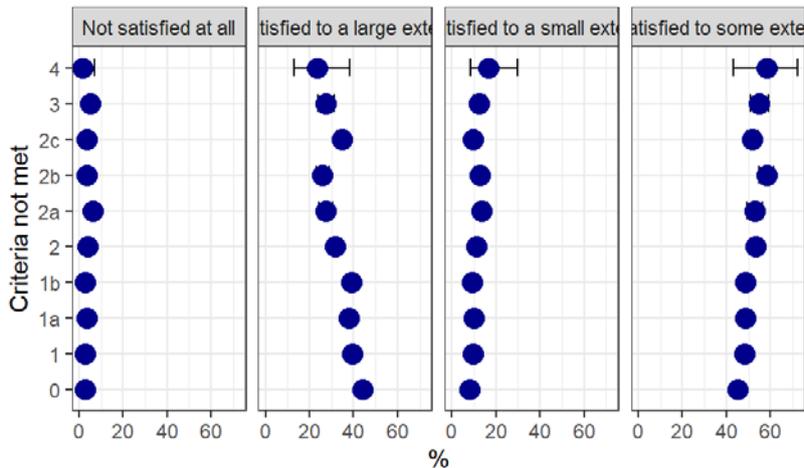
Figure 8 shows the main reason for becoming self-employed. It shows that the more criteria are not met, the higher the proportion of those that became self-employed because they 'could not find a job' or 'had been requested to become self-employed'. Conversely, as expected, opportunity-driven reasons such as 'opportunity' and 'flexible hours' decrease the more criteria are not met.

Figure 7: Reason for becoming self-employed, by system of criteria



Job satisfaction is positively related to job autonomy, working time autonomy and having influence over the price setting. Regression analysis does not show a connection with economic dependency. Because several criteria are positively related to job satisfaction, we can see that job satisfaction goes down the more criteria are not met (Figure 9). There are no specific systems that seem to stand out.

Figure 8: Job satisfaction by system of criteria



What follows next are several figures showing demographics. The more criteria are not met the higher the proportion of:

- Women
- Younger people (15-29)
- Blue-collar workers, particularly elementary occupations
- Self-employed in transport
- Self-employed in Romania, Poland and Italy.

Figure 9: Gender, by system of criteria

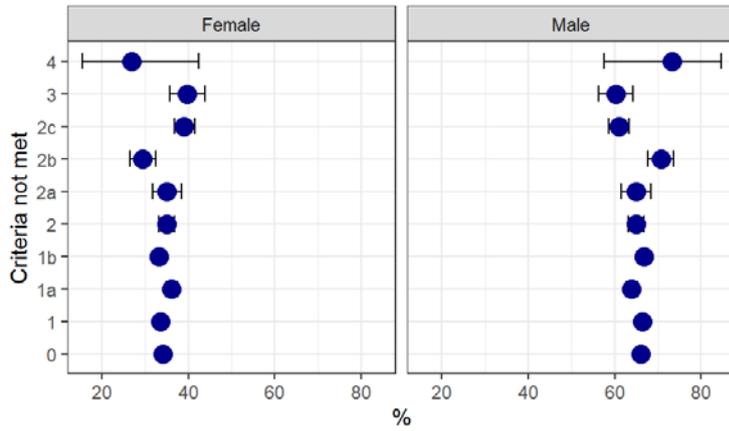


Figure 10: Age group, by system of criteria

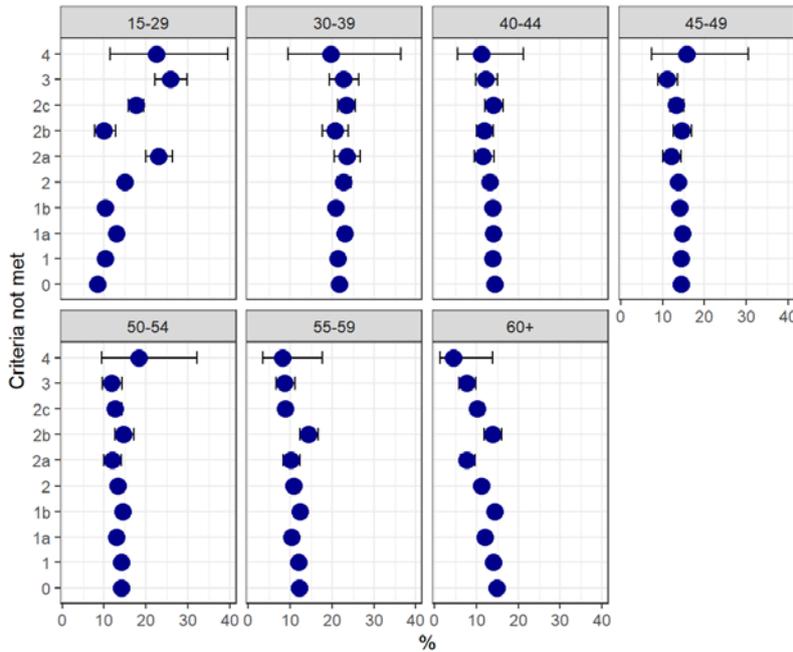


Figure 11: Occupation, by system of criteria

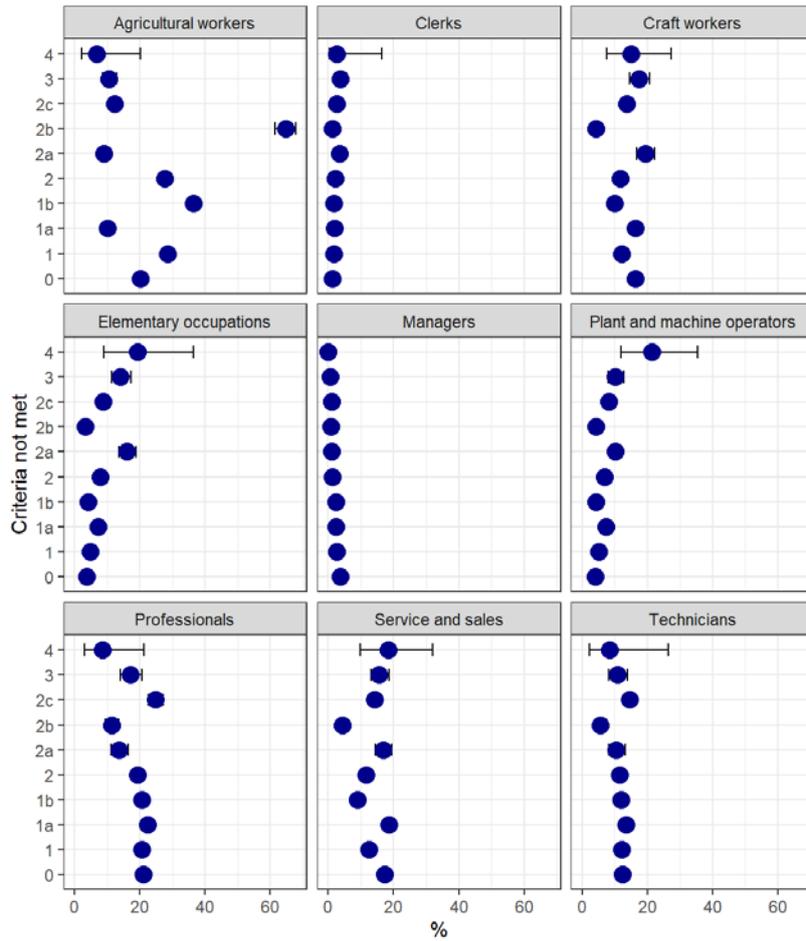


Figure 12: Sector, by system of criteria

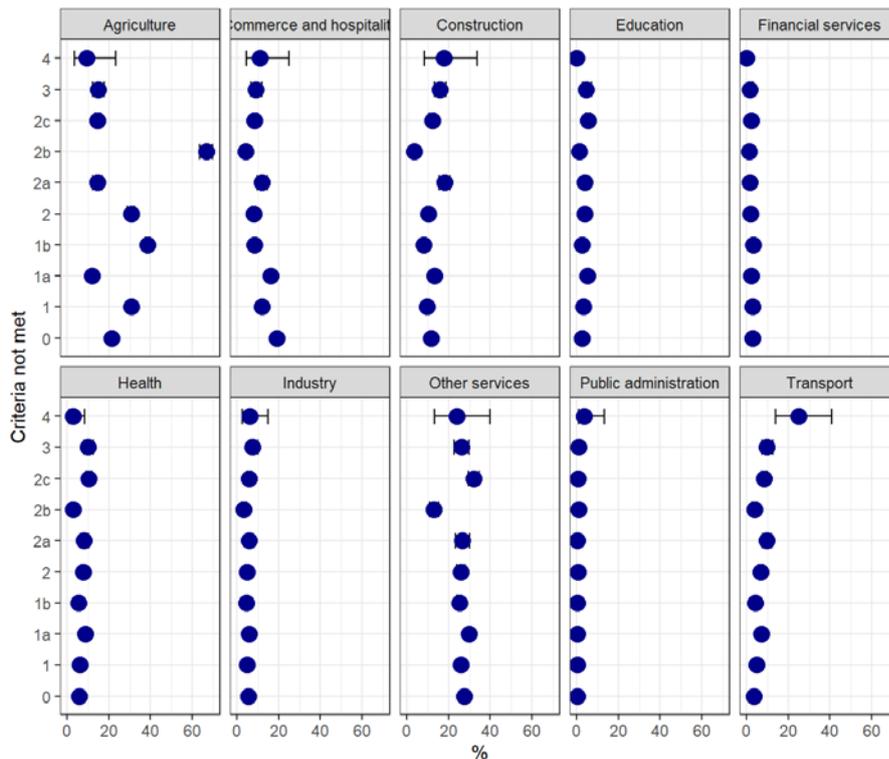
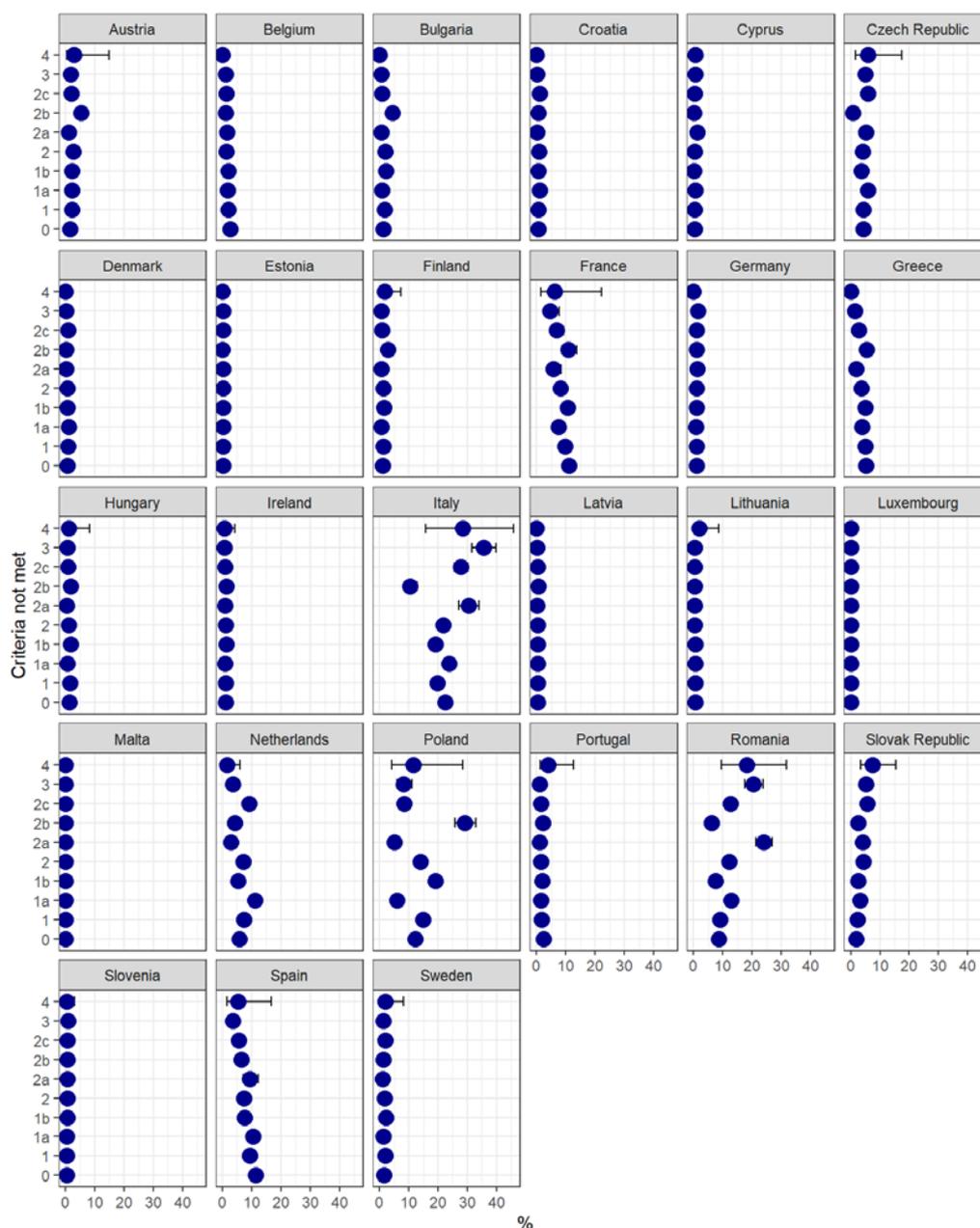


Figure 13: Country, by system of criteria



LFS - conclusion

The LFS shows that there is a large diversity in self-employment, though most self-employed seem to exhibit attributes that are associated with genuine self-employment. Attributes that could be associated with vulnerable self-employment, such as the four listed in this section, seem to indeed be linked to for example a preference for being employee, necessity driven self-employment and lower levels of job satisfaction. This suggests that the four criteria - Economic independency; Influence over the price setting (not having reported a lack of influence over the price setting); Working time autonomy; and Job autonomy - could be indicators for determining who is genuine and who is not genuinely self-employed, though not all criteria matter for each outcome indicator and not to the same degree. It is a priori unclear what kind of system should be adopted but generally the stricter the system, the smaller the group that would be considered vulnerable self-employed.

1.2 European Working Conditions Survey (EWCS)

Criteria

The second source of quantitative information is the European Working Conditions Survey (EWCS); a survey of employees and self-employed that runs every five years. The last wave of the survey is from 2015. The aim of the survey is to

- Assess and quantify working conditions of both employees and the self-employed across Europe on a harmonised basis
- Analyse relationships between different aspects of working conditions
- Identify groups at risk and issues of concern as well as of progress
- Monitor trends by providing homogeneous indicators on these issues
- Contribute to European policy development in particular on quality of work and employment issues.

With regards to this analysis, the EWCS differs from the LFS in the following ways:

- The number of questions that could be relevant for distinguishing groups of self-employed is larger.
- The number of questions on working conditions is much larger in the EWCS. This allows us to provide more information about the characteristics of the groups of self-employed.
- The questionnaire is the same in each Member State, albeit translated (significant quality insurance process on translations), also timing of the survey and mode are the same.
- The number of respondents in the EU27 that are self-employed without employee is substantially smaller: 3657 in 2015. This increases the statistical margin of error relative to the LFS substantially, which is reflected in the confidence intervals in the charts below. Therefore, the 2010 and 2015 wave of the survey have been combined, totalling to 7069 respondents.¹

The questions available in 2010 and 2015 and to be retained for defining the groups of self-employed are the following:

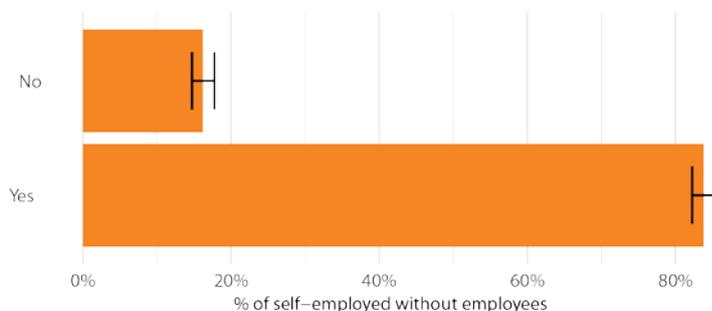
1. Do you generally have more than one client or customer?
2. What proportion of revenue do you receive from your most important client?
3. You can influence decisions that are important for your work.
4. How are your working time arrangements set?
5. Would you say that for you arranging to take an hour or two off during working hours to take care of personal or family matters is... (very easy, fairly easy, fairly difficult, very difficult)?
6. Are you able to choose or change your order of tasks?
7. Are you able to choose or change your methods of work?
8. Are you able to choose or change your speed or rate of work?

¹ The 7th European Working Conditions Survey, for which fieldwork started in February 2020, had to be stopped as a result of the COVID-19 pandemic. An extraordinary edition of the EWCS is in the field in spring 2021, using computer assisted telephone interviewing. First results will only be available at the end of 2021 and the situation of the self-employed will be examined in a report in 2022/23.

Economic (in)dependency

A first set of questions in the EWCS can be considered indicators for economic dependency. Figure 15 shows the proportion of self-employed without employees that generally has more than one client or customer.

Figure 14: Do you generally have more than one client or customer?

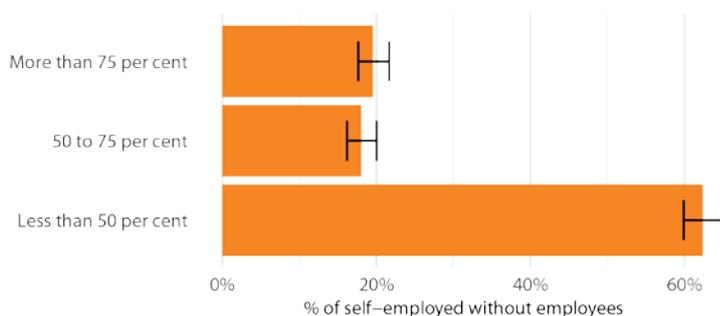


Note: Self-employed without employees, 2010 - 2015, EU27. Error bars are 95% confidence intervals.

Source: EWCS

Figure 16 shows the proportion of revenue from the most important client. This is close to the LFS approach of the 'dominant client'.

Figure 15: What proportion of revenue do you receive from your most important client?



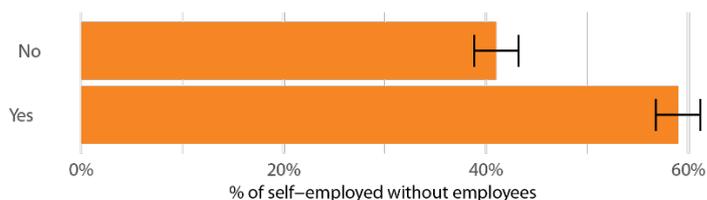
Note: Self-employed without employees, 2010 - 2015, EU27. Error bars are 95% confidence intervals.

Source: EWCS

Organisational (in)dependency.

By definition, all self-employed should have the authority to hire or dismiss employees, but Figure 17 shows that nearly 40% of the self-employed without employees report not to have this authority. Note that this figure might be skewed as some self-employed may answer negatively because they currently have no employees or have no need for them.

Figure 16: Do you have the authority to hire or dismiss employees?

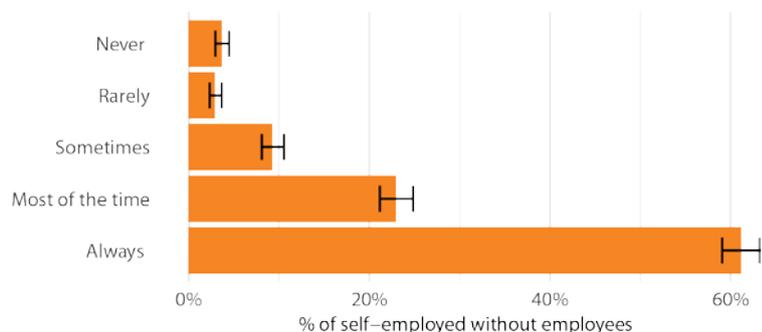


Note: Self-employed without employees, 2010 - 2015, EU27. Error bars are 95% confidence intervals.

Source: EWCS

A self-employed person should be expected to influence the decisions that are important for the work. Indeed, most of the self-employed report that they can influence decisions important for their work, but some of them cannot (Figure 18).

Figure 17: You can influence decisions that are important for your work

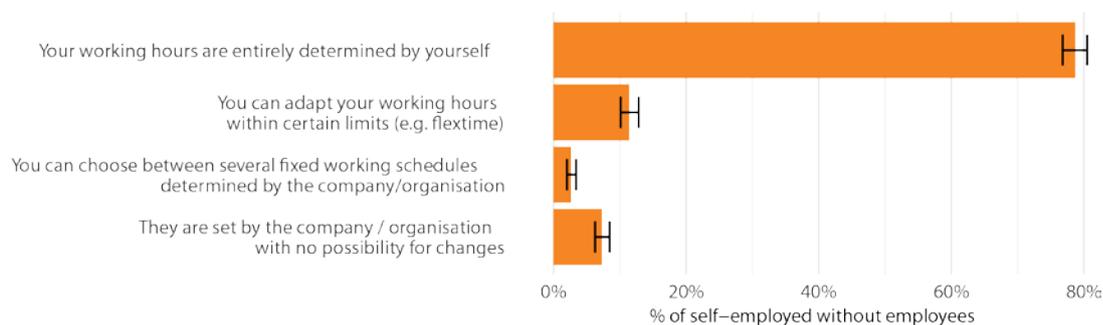


Note: Self-employed without employees, 2010 - 2015, EU27. Error bars are 95% confidence intervals.

Source: EWCS

The next two figures are about autonomy on working time. A self-employed is expected to have discretion over how working time is arranged. A minority of self-employed reports this is not the case (Figure 19).

Figure 18: How are your working time arrangements set?

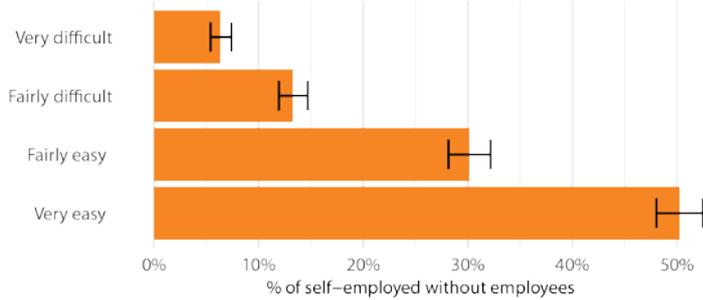


Note: Self-employed without employees, 2010 - 2015, EU27. Error bars are 95% confidence intervals.

Source: EWCS

Some self-employed find it also very difficult to arrange an hour or two off during working hours to take care of personal or family matters (Figure 20). Note however that this may also be because of the nature of their work.

Figure 19: Would you say that for you arranging to take an hour or two off during working hours to take care of personal or family matters is...

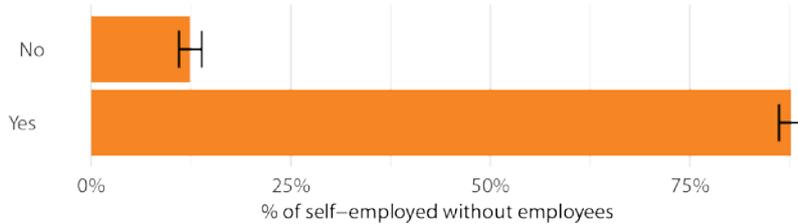


Note: Self-employed without employees, 2010 - 2015, EU27. Error bars are 95% confidence intervals.

Source: EWCS

The final three figures refer to job autonomy more generally: being able to choose or change the order of tasks, the methods of work, and the speed or rate of work. Self-employed are expected to have a high degree of job autonomy.

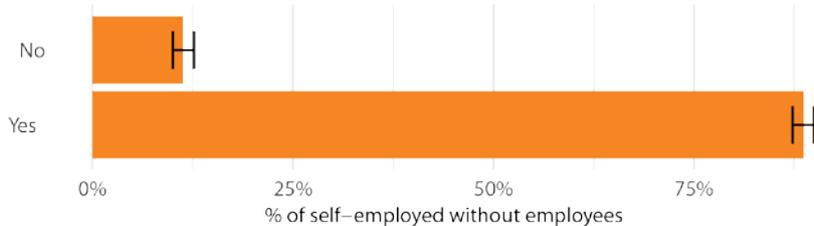
Figure 20: Are you able to choose or change your order of tasks?



Note: Self-employed without employees, 2015, EU27. Error bars are 95% confidence intervals.

Source: EWCS

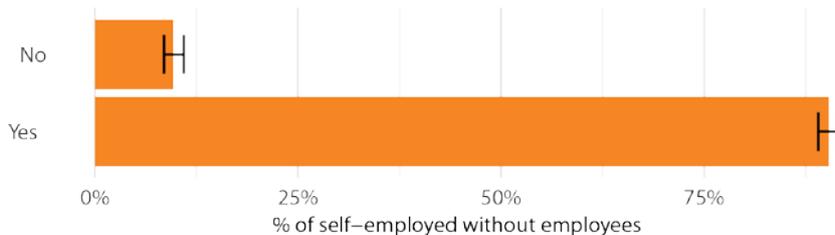
Figure 21: Are you able to choose or change your methods of work?



Note: Self-employed without employees, 2015, EU27. Error bars are 95% confidence intervals.

Source: EWCS

Figure 22: Are you able to choose or change your speed or rate of work?



Note: Self-employed without employees, 2015, EU27. Error bars are 95% confidence intervals.

Source: EWCS

Systems of criteria

The EWCS includes a series of questions that could be considered as criteria for determining which self-employed without employees are in a situation more similar to that of an employee and could therefore be vulnerable. These questions can be organised in four groups each reflecting a different dimension genuine self-employment.

Economic dependency

1. Do you generally have more than one client or customer?
2. What proportion of revenue do you receive from your most important client?

Organisational dependency

3. You can influence decisions that are important for your work.

Working time autonomy

4. How are your working time arrangements set?
5. Would you say that for you arranging to take an hour or two off during working hours to take care of personal or family matters is (very easy, fairly easy, fairly difficult, very difficult)?

Job autonomy

6. Are you able to choose or change your order of tasks?
7. Are you able to choose or change your methods of work?
8. Are you able to choose or change your speed or rate of work?

'Having the authority to hire and dismiss employees' has been excluded from the analysis because it is not specific enough: 39.9% of self-employed without employees say they do not have the authority to hire and dismiss employees. This figure is probably inflated by self-employed who answer 'no' because they currently do not have any employees on the payroll. Strictly speaking all self-employed should answer 'yes' to this question unless there is some specific legal reason which would prohibit them from doing so. This may exist for self-employed in very specific situations, but for most of the self-employed this situation is probably hard to imagine.

For the purposes of the analysis, the questions above have been recoded into six binary criteria:

1. Having more than one client (84.1%)
2. Proportion of revenue received from most important client is less than 75% (79.9%)
3. Influencing decisions important for work 'most of the time' or 'always' (84.7%)
4. Working hours not entirely determined by the company / organisation (79%)
5. Very easy or fairly easy to take an hour or two off during working hours to take care of personal or family matters (80.8%)
6. Job autonomy score higher than the average of employees. The score is an average of the three job autonomy questions (7,8 and 9) above. (89.1%)

More than half (58.2%) of the self-employed without employees in 2010 and 2015 (EU27) do not meet at least one of six criteria. Less than a third (27.2) does not meet at least two of the six criteria and this is 11% for three out of six, 4% for four out of six, 1% for five out of six and less than a half percent for not meeting all six criteria.

Table 3: Proportion of self-employed without employees by number of criteria not met

Number of criteria not met	Percentage	Cumulative percentage
0	41.9	100
1	31.0	58.2
2	16.3	27.2
3	6.5	10.9
4	3.0	4.4
5	0.9	1.3
6	0.4	0.4

Note: Self-employed without employees, 2010 and 2015, EU27.

Source: EWCS

We can extend this system by adding requirements (Table 4).

Table 4: Proportion of self-employed without employees by system

Number	Description	Percentage
0	All criteria met	41.9
1	At least 1 criterion not met (any criterion)	58.2
1a	At least 1 criterion not met (one of economic dependency not met)	26.2
1b	At least 1 criterion not met (one of organisational dependency not met)	15.3
1c	At least 1 criterion not met (one of working time or job autonomy not met)	38.9
2	At least 2 criteria not met (any)	27.2
2a	At least 2 criteria not met (at least one of both economic dependency and organisational dependency)	5.3
2b	At least 2 criteria not met (at least one of both economic dependency and working time or job autonomy)	11.0
2c	At least 2 criteria not met (at least one of both organisational dependency and working time or job autonomy)	9.4
3	At least 3 criteria not met (any)	10.9
3a	At least 3 criteria not met (at least one of economic dependency, one of organisational dependency and one of working time or job autonomy)	3.6
4	At least 4 criteria not met (any)	4.4

5	At least 5 criteria not met (any)	1.3
6	At least 6 criteria not met (any)	0.4

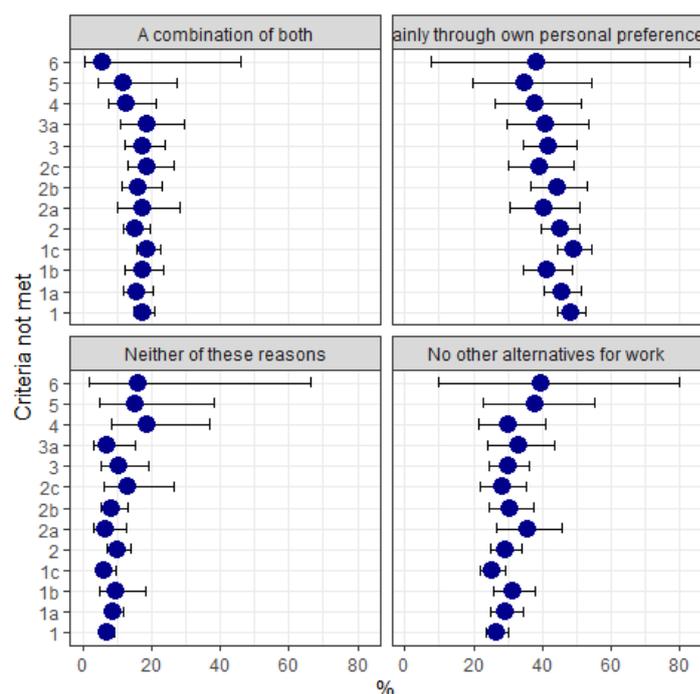
Note: Self-employed without employees, 2010 and 2015, EU27.

Source: EWCS

Comparing systems

The remainder of this section shows the composition of who would be considered vulnerable self-employed under each of the systems outlined in Table 4.

Figure 23: Reason for becoming self-employed, by system of criteria



Note: Self-employed without employees, 2015, EU27.

Source: EWCS

The more criteria are not met, the higher the percentage of those reporting they became self-employed because there were no other alternatives for work (Figure 24). Note that the difference is not enormous: in a system where one out of six criteria is enough for being considered vulnerable self-employment, we see that the percentage of self-employed who became self-employed because there were no other alternatives for work is about 23%. In a system of three out of six criteria this percentage is about 26%.

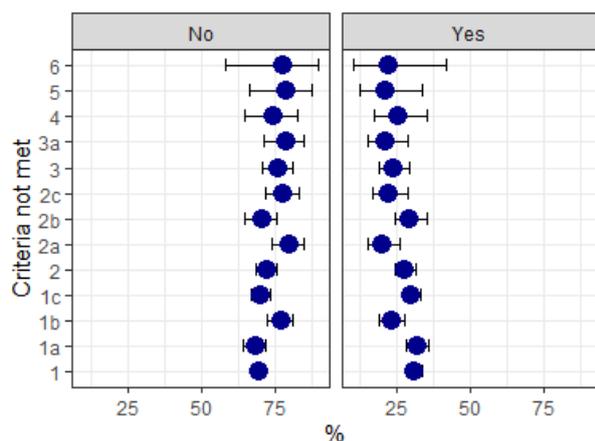
System 2a (at least one of economic and organisational dependency each) seems to stand out a bit more, indicating that these dimensions are more important than autonomy.

Turning to financial security, regression analysis shows that those who have no influence over the price setting and who cannot take an hour or two off are more likely to report not having financial security in case of illness. Having only one client or one dominant client is not related to financial

security and neither is working time or job autonomy. So overall the regression points out that only some of the criteria matter for financial security.

Financial security in case of long-term illness seems to go down the more criteria apply, though the differences are not big (Figure 25), which is consistent with the findings in the regression analysis. System 2a seems to stand out: the percentage of self-employed who report not having financial security is about as big as that under system 5 (five out of six criteria). Note that self-employed without employees in general often report not having financial security in case of a long-term illness - this is not unique to those whose situation is more similar to that of employees.

Figure 24: Financial security in case of long-term illness, by system of criteria



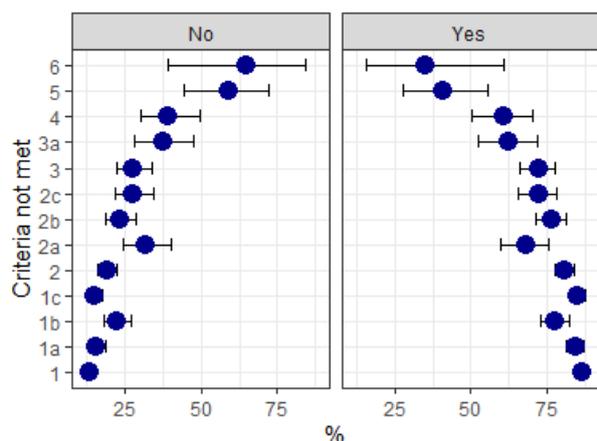
Note: Self-employed without employees, 2010 and 2015, EU27.

Source: EWCS

A strong difference becomes clear when looking at how self-employed without employees respond to the statement 'I enjoy being my own boss'. Regression analysis shows that having one client, not having influence over the price setting, not having working time autonomy and having low job autonomy is strongly negatively related to enjoying being one's own boss.

Consistent with these findings, we see in Figure 26 that the more criteria are not met, the lower the proportion of self-employment who report to enjoy being their own boss. The difference is quite large: in a system where not meeting one out of six criteria would label a self-employed without employees as 'vulnerable', we see that 20% report not to enjoy being their own boss, and this is around 60% in case five out of six criteria or six out of six criteria are applied. Again, system 2a seems to stand out with a relatively high proportion of self-employed under that system reporting they do not enjoy being their own boss.

Figure 25: Enjoy being 'own boss', by system of criteria



Note: Self-employed without employees, 2010 and 2015, EU27.

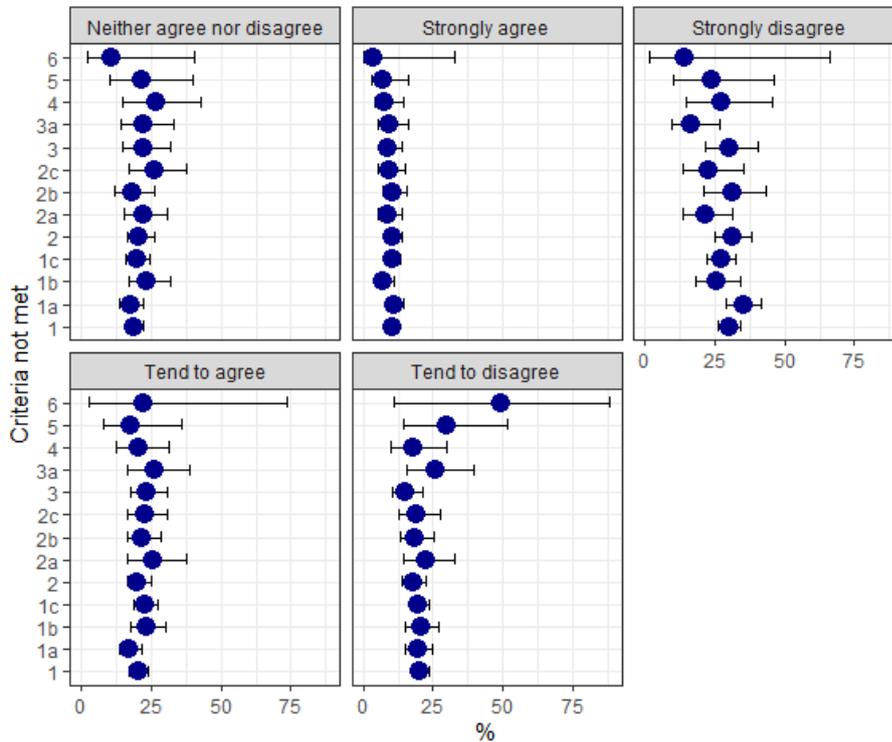
Source: EWCS

Responses to the statement 'finding it hard bearing the responsibility of being one's own boss' show a paradoxical pattern: the more stringent the system (that is, the more criteria are not met), the higher the percentage that finds it hard to bear the responsibility of being the own boss ('strongly agree') but also the higher the percentage that do not find it hard ('strongly disagree').

It is unclear what this suggests. One interpretation might be that some self-employed without employees find it hard to bear the responsibility of being their own boss because their situation is closer to that of employees and they lack autonomy and independence, while others might find it easier as responsibility for important decisions lies de facto with someone else. The reasons why self-employed may or may not find it hard to bear the responsibility of being their own boss, can be many.

Regression analysis of this variable shows that none of the criteria are related to 'finding it hard bearing the responsibility of being own boss', which is consistent with the unexpected patterns in Figure 27.

Figure 26: Finding it hard to bear the responsibility of being own boss, by system



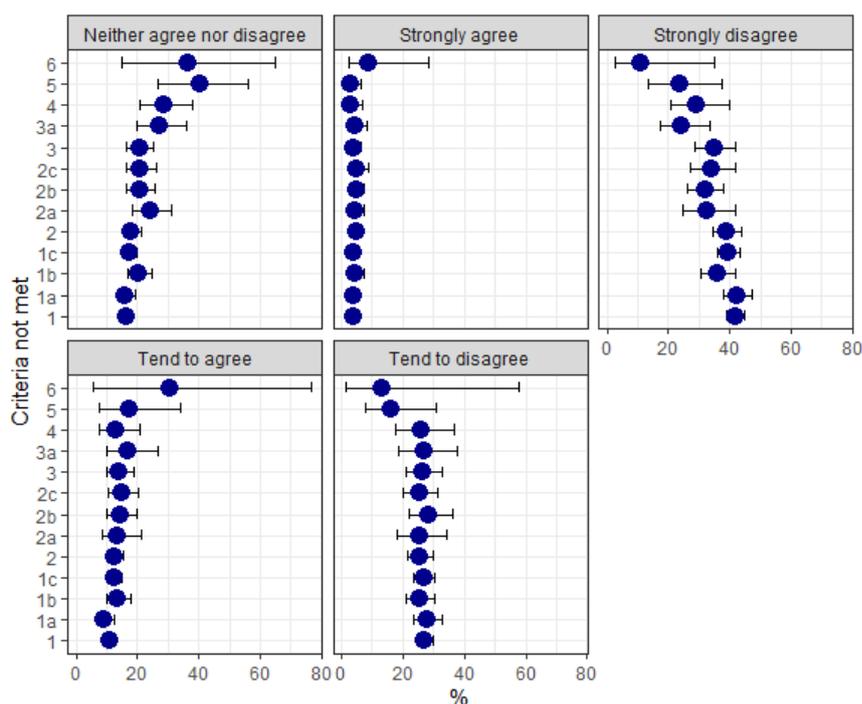
Note: Self-employed without employees, 2010 and 2015, EU27.

Source: EWCS

The percentage of self-employed without employees that strongly disagrees to the statement 'I might lose my job in the six months' goes down the more criteria are not met (Figure 28). If you disagree to this statement you think you will not lose your job in the next six months so the lower the proportion that disagrees, the higher the proportion of those who think they will lose their job. The more criteria not met, the higher the proportion of self-employed who think they will lose their job which implies that the criteria are linked to job insecurity as expected.

This is consistent with regression analysis that shows evidence that having one client only, not having influence over decisions and a lack of working time autonomy is associated with higher levels of job insecurity. However, the associations are weak, and the other criteria do not show any association.

Figure 27: I might lose my job in the next six months, by system



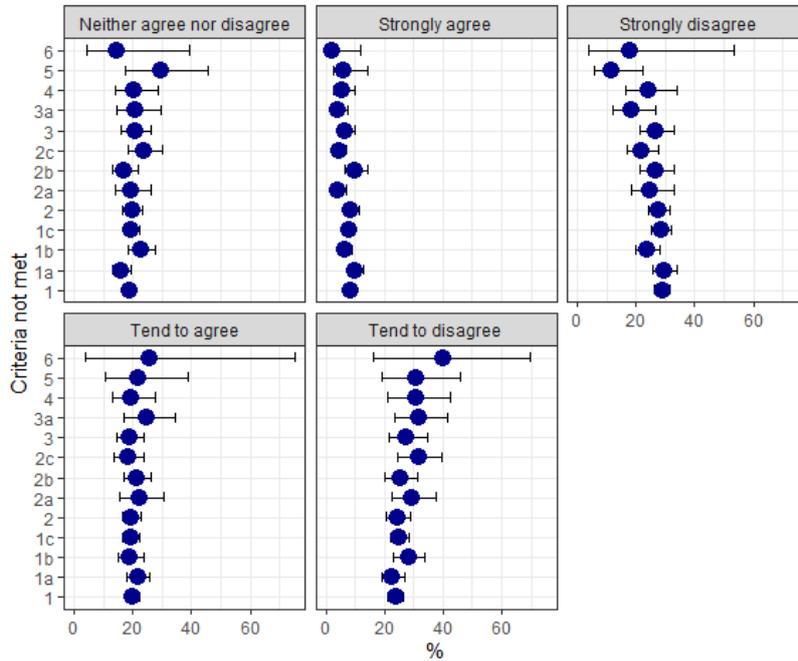
Note: Self-employed without employees, 2010 and 2015, EU27.

Source: EWCS

The EWCS' question on employability seems to be consistent with job insecurity: the more criteria not met, the lower the proportion of self-employed who strongly disagree with the statement 'If I were to lose or quit my current job, it would be easy for me to find a job of similar salary'. In other words: self-employed whose situation is more similar to that of employees are less likely to find another job that could replace their current activity and the stricter we are in determining who falls into this category, the stronger the link between vulnerable self-employment and employability.

Somewhat paradoxically, the regression analysis shows that none of the criteria on their own are significantly associated with employability. This may suggest that it is not so much the individual criteria on their own, but the combination of those criteria that matter.

Figure 28: If I were to lose or quit my current job, it would be easy for me to find a job of similar salary, by system

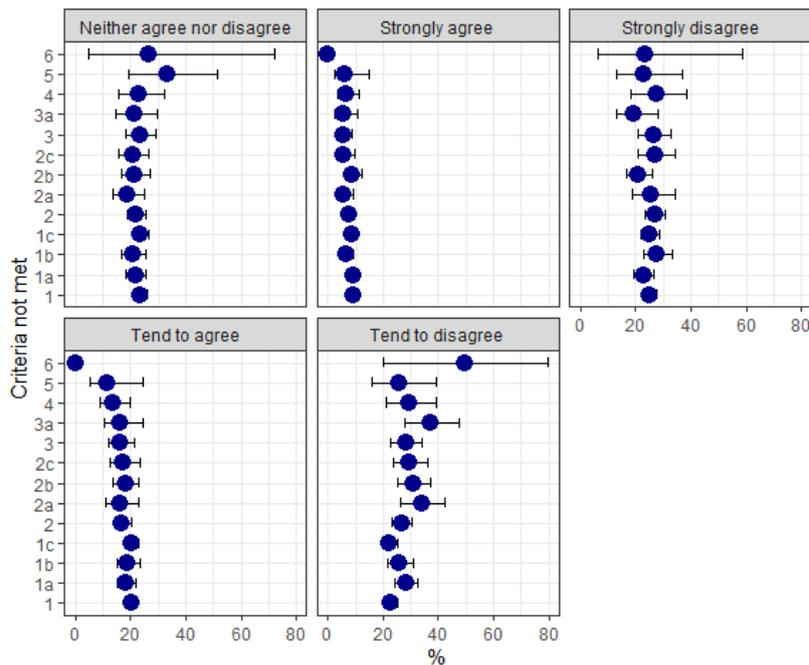


Note: Self-employed without employees, 2010 and 2015, EU27.

Source: EWCS

Though the differences are not large, job prospects seem to go down among self-employed the more criteria are not met (Figure 30).

Figure 29: My job offers good prospects for career advancement, by system



Note: Self-employed without employees, 2010 and 2015, EU27.

Source: EWCS

The EWCS includes the question: 'how much are your net monthly earnings from your main paid job'. It should be noted that this question is generally difficult to answer for self-employed as it is not straightforward what 'earnings' mean for self-employed and their earnings can vary substantially. Finally, earnings are only available for the 2015 EWCS data.

Regression results of the log of monthly earnings on each of the six criteria (Table 5, controlled for sex, age, sector, country and education) show that - with the exception of having only one client - none has a substantial impact on monthly earnings. Monthly earnings are 44% lower for those who generally only have one client compared to those who generally have multiple.

Having a dominant client (>75% of revenue) is positively related to income, although this effect has a large margin of error. The effect of having only one client, which would also be a dominant client, is already captured in the first parameter so it should be noted that the effect of having a dominant client is among those who have more than one client. An explanation for its positive effect, though merely a hypothesis, is that having a dominant client can be both positive and negative. On the one hand, being dependent on the revenue from a single client could create economic dependency and a lack of bargaining power could drive down prices and revenue, suggesting that the self-employed might be in a vulnerable position. On the other hand, the situation might also be one that is exactly the opposite: having multiple clients and among them one that generates a lot of revenue is not suggesting a precarious position.

Table 5: Regression coefficients of (log) monthly earnings by criteria

	Estimate
One client	-0.44***
Dominant client (>75% of revenue)	0.13*
Lack of influence over decisions that are important for work	0.08
Lack of working time autonomy	-0.00
Not able to take an hour or two off	0.05
Low job autonomy	0.02

*p<0.05, **p<0.01, ***p<0.001

Note: OLS with the log of monthly earnings as dependent variable.

Figure 31 shows 10 income deciles which have been constructed based on all workers including employees. This means that if a self-employed is in the first income decile, he or she is among the 10% of lowest earning workers (employees and self-employed) of the EU27 in 2015 (income deciles are only available for 2015) corrected for price level differences between countries.

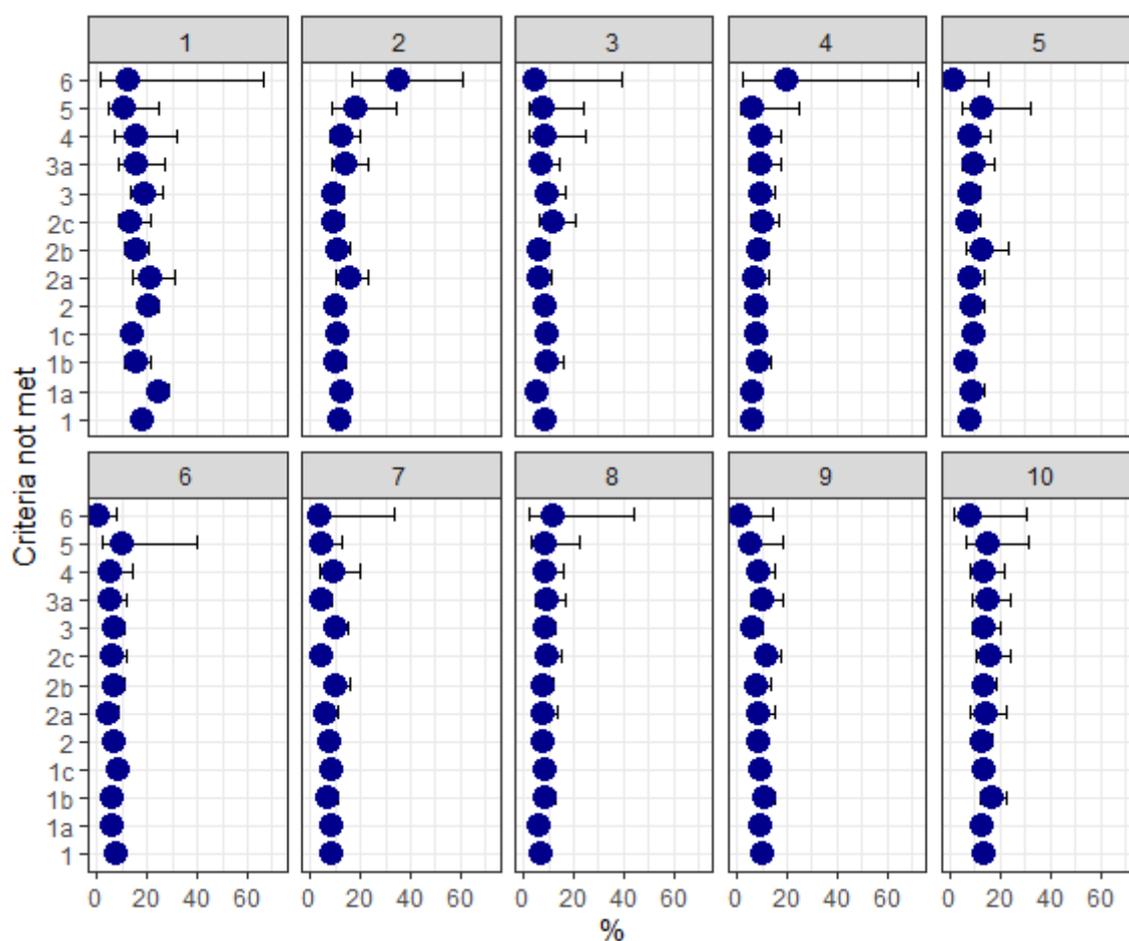
There is an overrepresentation of self-employed without employees both in the lowest income deciles as well as in the highest income deciles. For example, the proportion of self-employed in the lowest income decile is 18% (so 8% more than the overall workforce) and 16% in the highest income decile. This implies that income levels of self-employed without employees are generally a lot more dispersed than the income of employees.

In Figure 31 we can see that there is no strong relationship with the number of unmet criteria and the income of self-employed under each system. There seems to be a slightly lower proportion of

self-employed without employees in the two highest income deciles under a system of five or six out of six criteria not met, but the difference is small and statistically not significant.

These findings are consistent with the regression results in Table 5 because most of the criteria are not associated to income at all. System 1a seems to reflect the negative effect of having one client only as this system requires at least one criterion not met and one of economic dependency should be among them. This makes it more likely that this group covers those who have one client only.

Figure 30: Income deciles, by system



Note: Self-employed without employees, 2015, EU27.

Source: EWCS

The EWCS also has a question on the ability of the household of the respondent to make ends meet. Table 6 shows the results of a regression analysis of being able to make ends meet on each of the criteria. Contrary to the results of the monthly earnings regression above, having one client only does not seem to be associated with not being able to make ends meet after controlling for sex, age, sector, education and country.

It also shows that not being able to take an hour or two off has the opposite effect: while it is not associated with monthly earnings, it is associated with less difficulty in making ends meet. Similarly, those with dominant clients report less difficulty making ends meet.

Table 6: Regression of difficulty of being able to make ends meet on criteria

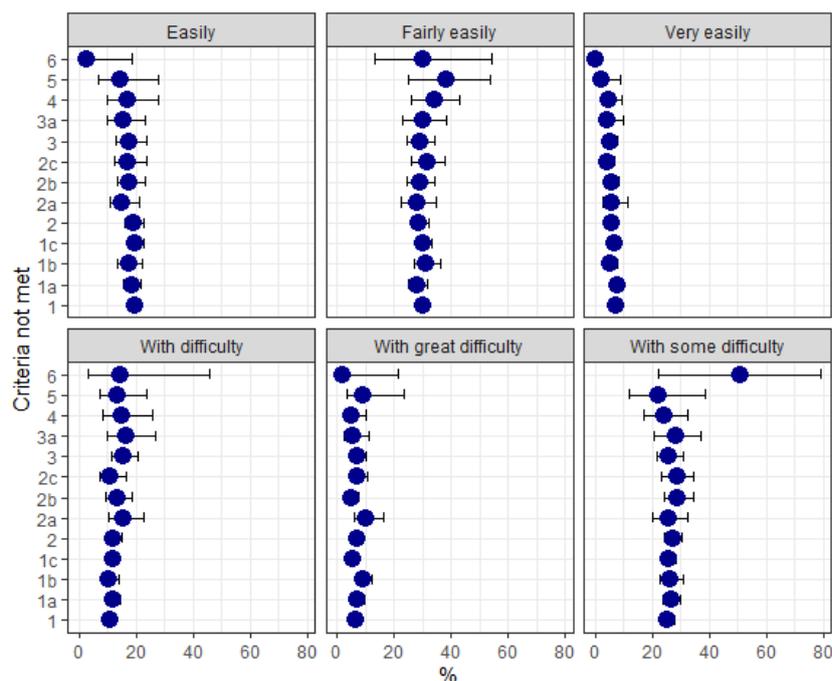
	Estimate
One client	0.15
Dominant client (>75% of revenue)	-0.24*
Lack of influence over decisions that are important for work	0.15
Lack of working time autonomy	-0.13
Not able to take an hour or two off	0.34***
Low job autonomy	-0.05

*p<0.05, **p<0.01, ***p<0.001

Note: ordered logit with being able to make ends meet (easily, fairly easily, with some difficulty, with difficulty, with great difficulty) as dependent variable.

When comparing the systems (Figure 32) we see that the more criteria are not met, the more likely it is that self-employed report making ends meet to be difficult, though the differences are not large. This is likely the result of the opposite effects of some of the indicators.

Figure 31: Is your household able to make ends meet? By system



Note: Self-employed without employees, 2010 and 2015, EU27.

Source: EWCS

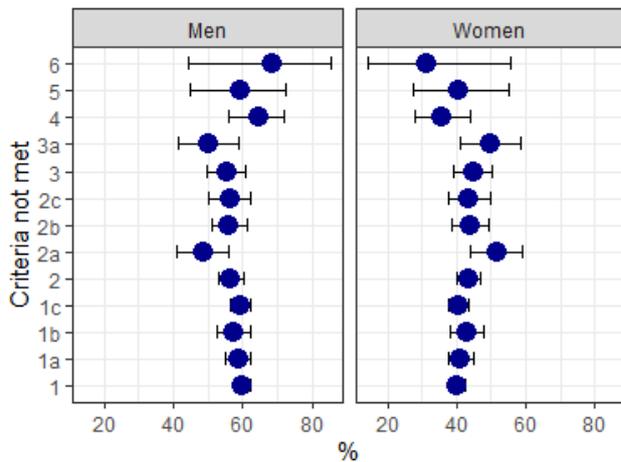
It should be noted that the earnings question is about monthly earnings from the main paid job of the individual, while the 'making ends meet' question refers to the household. This could explain some of the differences. For example, it might be the case that self-employed who have one client only are more likely to have a partner with significant income. This would explain why having one client is associated with lower earnings but does not affect the ability to make ends meet. Though

merely a hypothesis, it could be the case that having a partner with sufficient income to make ends meet creates the opportunity to engage in a self-employed activity that is not well paid.

What follows next are several figures showing demographics. The more criteria are not met the:

- Lower the proportion of 55+
- Lower the proportion of professionals
- Lower the proportion of agricultural workers and workers in commerce
- Lower the proportion with a tertiary education

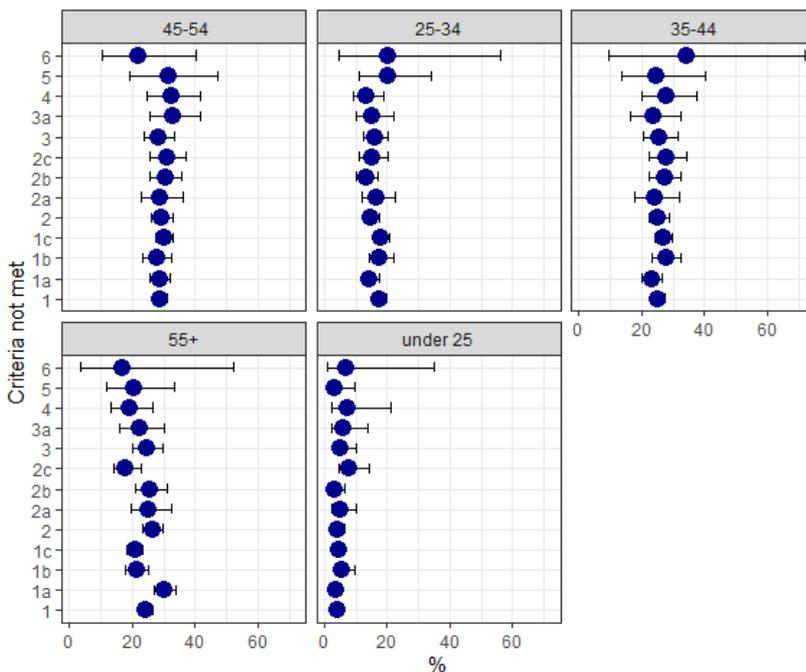
Figure 32: Gender by system



Note: Self-employed without employees, 2010 and 2015, EU27.

Source: EWCS

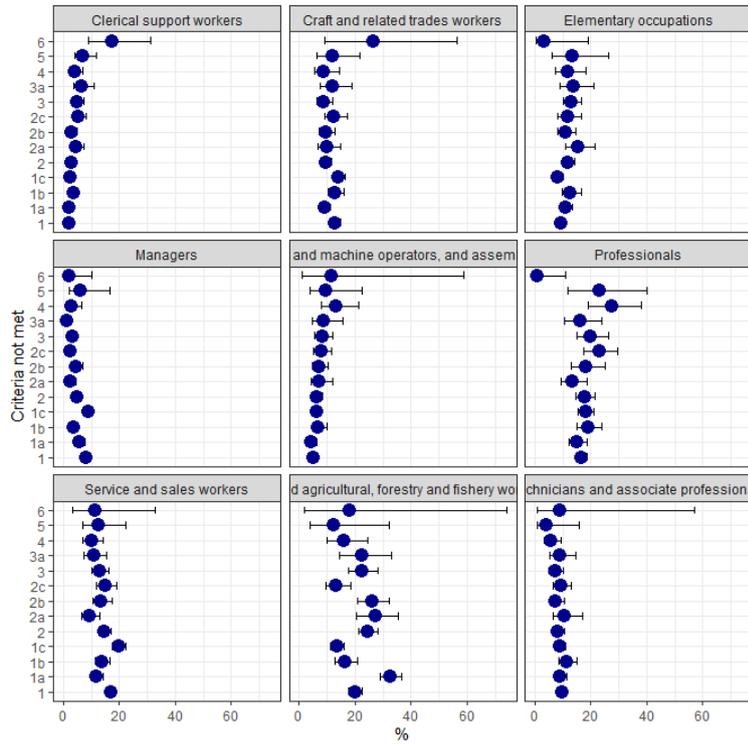
Figure 33: Age group by system



Note: Self-employed without employees, 2010 and 2015, EU27.

Source: EWCS

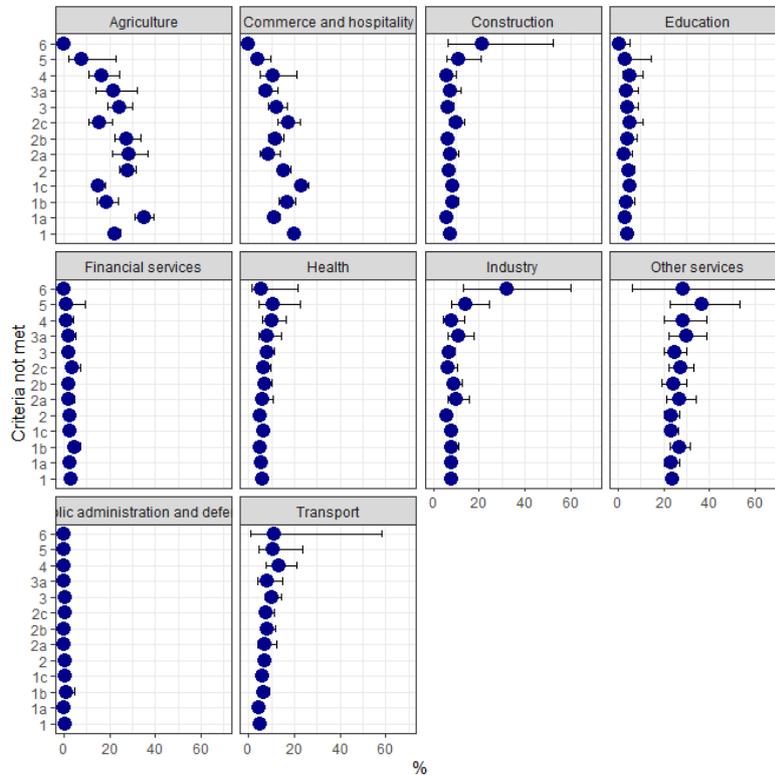
Figure 34: Occupation by system



Note: Self-employed without employees, 2010 and 2015, EU27.

Source: EWCS

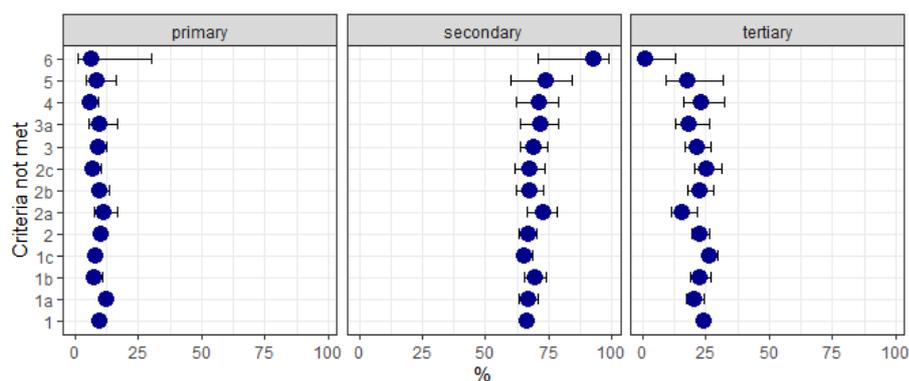
Figure 35: Sector by system



Note: Self-employed without employees, 2010 and 2015, EU27.

Source: EWCS

Figure 36: Education by system



Note: Self-employed without employees, 2010 and 2015, EU27.

Source: EWCS

EWCS – conclusion

The EWCS contains a larger number of questions that could be considered as indicators for criteria to establish who among the self-employed without employees is in a situation similar to that of employees and could consequently help to determine vulnerable self-employed. Six binary criteria have been applied in the analysis: More than one client; Proportion of revenue from the most important client; Influencing decisions important for work; Working hours determination; Easy to take an hour off to take care of personal matters; Job autonomy.

Generally, the more criteria used, the higher the proportion of self-employed without employees who became self-employed out of necessity, and the lower the proportion who 'enjoys being their own boss'. The data also seems to suggest that the more criteria applied the lower perceived job security, employability and career prospects, though the effect is not strong.

Earnings are strongly negatively related to having one client only, but not to the other indicators. This provides some evidence that economic dependency indeed lowers earnings from the job. Financial security in case of long-term illness, however, is not strongly related to the indicators and the same applies to the households' ability to make ends meet. This suggests that vulnerable self-employment may occur more often in a situation where the partner in the household provides sufficient earnings for the household to ensure financial security in the short and long-term.

1.3 Preliminary conclusion

The main objective of this analysis is to explore which criteria will allow to identify among the self-employed without employees those who can be considered 'the most vulnerable' and would thus benefit from access to collective bargaining to improve their working conditions. This can be done by developing a 'sliding scale' moving from a set of general criteria to identify a broader group of self-employed, to a set including additional criteria that would lead to a more clearly defined, smaller group. Both the analysis of data from the EWCS and the LFS shows that this is feasible to some extent, but also reveals that it is not straightforward.

Two sets of questions are crucial in this regard:

1. What are appropriate criteria to distinguish genuine self-employed from those whose situation is more like that of employees – assuming that these are more likely to be vulnerable and therefore would benefit from access to collective bargaining to improve their working conditions? This primarily depends on how the second type of self-employment (non-genuine) would be defined in the context of collective bargaining and remains primarily a question for the policy maker. However, it also strongly depends on the measurement of such criteria in practice, which is not straightforward. Finally, what also seems important is the number of criteria (is one criterion enough to clearly distinguish different groups? two? all?) and what system is implemented for deciding which weight to give to each criterion. Generally, however, both analyses seem to suggest that the more criteria applied, the more we come to a group of self-employed which show characteristics that could be expected to be seen in 'vulnerable' self-employed.
2. What are these characteristics that give the clearest indication of 'vulnerable self-employed who would need access to collective bargaining to improve their working conditions'? This refers to the 'outcome' indicators, for example income, being able to make ends meet, financial security in case of illness etc. Also here, the answer is not straightforward and cannot be decided based on data analysis alone. For example, 'Enjoy being one's own boss' is clearly less often the case the more of the criteria used to distinguish genuine self-employed from those in a situation more like that of employees are fulfilled. But is this a good indication of vulnerability? On the other hand, 'Financial security in the case of long-term illness' could be considered a good indicator for vulnerability. However, even though it seems to go down the more criteria apply, the differences are not big – raising the question whether also genuine self-employed with full financial and organisational independence could be suffering from this type of vulnerability.

2 Qualitative analysis

This chapter discusses the criteria Member States retain to define self-employment. The purpose of the analysis is to identify whether and how regulations allow to distinguish between categories of self-employed and identify 'the vulnerable' among them.

Defining self-employed and employees is primarily a country prerogative.

Accordingly, multiple criteria are used in a variety of ways across Member States, and sometimes even within a country depending on the regulation considered, employment, social protection or taxation for instance. Moreover, Member States identify different types of self-employed when considering the vulnerability features.

The main assumption, as expressed by DG COMP, is that the position of at least certain self-employed should be strengthened by giving them the possibility to improve their working conditions through collective negotiations. In order to identify which self-employed would be in need of such protection, it is useful to analyse which categories of self-employed have been considered as "vulnerable" self-employed at national level.

Crucial in this regard is the establishment of the remuneration for the individual self-employed service provider. Can this remuneration secure a relatively decent income, or is the self-employed person likely to face poverty, as a result of weak negotiation power to discuss fee levels? Is it possible to mitigate this outcome through defining a category of "vulnerable self-employed" and giving individuals belonging to this category the power to negotiate collectively?

These questions cover a broad area, touching upon the definition of 'self-employed', the notion of vulnerability, but also the definition of collective negotiations, in terms of how to implement collective bargaining, who the parties are, and what their mandate is.

As previous research showed (Eurofound 2017a, 2017c), the binary distinction between employed and self-employed workers has become increasingly difficult to implement, as forms of employment and of self-employment have become more varied.

Box 1: The 'sliding scale' of employment status in platform work

Platform work not only is a new form of employment, but also a new business model. As such, platforms are generally considered as a hybrid organisation form between markets (that is, places where supply and demand meet) and hierarchy (that is, structures of command). Depending on the specific characteristics of the mechanisms applied by the platform, often strongly linked to the type of service that is mediated through them, an individual platform can be rather on the 'market end' of the spectrum (if it focuses on the matching of supply and demand), on the 'hierarchy end' of the spectrum (if it also engages in the management of the service provision through the platform worker) or someone in between.

While not widely and systematically researched, first indications hint towards the location of platforms' business model in this 'hierarchy versus market dichotomy' being a potential proxy for the appropriate employment status of platform workers. While those workers conducting those types of platform work mediated through platforms that resemble more the 'market model' are likely to act as genuine self-employed, there is high likelihood that those affiliated to hierarchy-like models are misclassified if considered self-employed. This emphasises the need to differentiate by types of

platform work – for example, like the typology established by Eurofound considering five criteria: the skill level required to perform the tasks, the format of service provision (on-location versus online), the scale of the tasks, who decides upon task assignment and the form of matching between supply and demand – when discussing the employment status of platform workers.

Figure 38: Hierarchy-versus-market dichotomy applied to five types of platform work



Source: Eurofound, 2019

The self-employed category is diverse, as Eurofound research highlighted (Eurofound 2017b). This diversity manifests itself in the working conditions the different categories of self-employed face and is influenced by the variety of regulations used across Europe to define the status and ensure associated rights.

The debate on self-employment seems to have shifted from the search of the 'genuine' self-employed to the identification of 'vulnerable' self-employed (European Commission 2010, Eurofound 2017b). However, the shift is less dramatic than it seems. The initial focus on the status (genuine versus bogus) also uses economic features to determine the level of 'dependency' of the individual. This level becomes a proxy for comparing the self-employed to employees who benefit from subordinated workers' rights and protections. Beyond the economic perspective, the organisational one is considered across national regulations to characterise the dependency level of self-employed.

The difficulty is to precisely define and assess the degree of vulnerability. What is the level of vulnerability required that would push self-employed individuals into 'the vulnerable' category?

2.1 National regulations defining the self-employed

Traditionally, the 'subordination' criterion allows to distinguish between employees - subordinated to their employer - and self-employed, enjoying autonomy in their activity (OECD, 2000, Soupiot, 2001, EIRO, 2002, ILO, 2003, Eurofound, 2010, 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 (effort).
- Self-employed provide a service or good, deciding the way they organise the work and deliver and get paid for the service/good produced (result).

Self-employed are assumed to have the capacity to bear the risks of the economic activity, in return of the autonomy in performing it, choosing the modalities of intervention on the markets and fixing the price of the service/good provided. These elements of trade-off are presented as the reason why self-employed choose this status: enjoying being their own boss.

While the binary distinction around subordination is not directly linked to 'vulnerability', the differences in labour and social rights it creates between the statuses can bring in elements of vulnerability.

Labour legislation does not apply to self-employed. For example, working time and minimum wage regulations do not apply. Long working hours and low fees not only put self-employed at risk of insufficient revenue but can also impact negatively on their health, creating vulnerability and endangering their work capacity in the long run.

Social protection for the self-employed is less comprehensive than for employees and more costly as the division of costs between employer and employee is missing. The variety of social security regulations among European countries, "not only between schemes but equally across categories of self-employed people within the same country" (Spasova et al, 2017), creates additional challenges for the self-employed.

The complexity is patent when considering the mode of financing of social protection schemes; two groups can be distinguished: non-insurance-based schemes (tax-financed) and insurance-based (contributory) schemes².

Overall, the self-employed have access:

- statutorily to '*non-insurance-based*' schemes, that is, universal schemes (e.g. family benefits and certain healthcare benefits) as well as certain means-tested schemes (e.g. social assistance, some long-term care services, some maternity benefits and basic old-age pensions);
- to some '*insurance-based*' (contributory) benefits: they typically have statutory access to healthcare, maternity/paternity/parental benefits, old-age and survivors' schemes, long-term care and invalidity schemes.
- "Crucially, however, they may be excluded from some major insurance-based schemes such as sickness, unemployment and/or occupational injury benefits" (Spasova et al, 2017).

We can conclude that the self-employed are not systematically and automatically protected vis à vis work risks (illness, poverty and lack of work). While many national social protection schemes offer voluntary opt in/upgrade schemes for self-employed, practice shows that these are rarely used. Not all self-employed can afford paying and face difficulties because low earnings do not allow them to insure themselves against work risks. Degree of access to social protection scheme is considered a vulnerability criterion.

² Spasova (2017) underlines the complexity of the matter: "Certain benefits may be 'non insurance-based' in some countries while being 'insurance-based' in others. Moreover, in some cases both possibilities — insurance-based and 'non insurance-based benefits' — may co-exist for the same social benefit".

Distinguishing self-employed with and without employees

The self-employed group is a heterogeneous category, encompassing those considered 'employers' - the self-employed with employees - and those belonging to an - also rather diverse - second group, the self-employed without employees, as per the ILO 1993 definition³.

Both types of self-employed cover individuals who are their own boss and manage their own business. However, the characteristics attributed to each group are different. The 'employers' (self-employed with employees) are considered to be in a position to deal with the economic risks the activity generates, as they expect to reap the gains their business creates. Conversely, the 'self-employed without employees' are potentially more at risk, as among them there are individuals in a '(quasi)-dependent' situation. Workers in this situation have to shoulder the economic risks of the economic activity (since they are formally self-employed), but without the possibility to mitigate the risks, as they lack the autonomy to take decisions on strategic aspects of the activity, because in reality they are dependent on and subordinated to a client's decision.

While economic circumstances and specific situations (including health pandemics as COVID-19 for instance) can put all kinds of businesses at risk, being 'self-employed without employees' (own account, solo-entrepreneur, freelancer) increases the likelihood of experiencing adverse consequences with less resources to address them.

It is important to note that while the share of self-employed in the EU was rather stable between 2008 and 2018 (about 18-19%), the group of 'self-employed without employees' has increased since the early 2000s, and especially the part-timers among them (Eurofound, 2020a).

While some of the developments related to self-employment are to be attributed to the structural change in the labour market (for example, servitisation) and societal developments (such as the increasing preference of some population group for higher flexibilisation of work, including part-time work or strive for autonomy), some part of the trend is also caused by the emergence and increasing importance of alternative ways of engaging in work, including working part-time or full-time through platforms providing either online or on-location services (Eurofound, 2020b).

Criteria for identifying 'genuine' self employed

The traditional binary division of employment status - employee/self-employed - has become increasingly difficult to implement.

Of particular relevance in this context, is the situation of "sham" ("bogus", "false", ...) self-employment, where a high extent of economic dependency or even a de facto employment relationship exists between a formally self-employed worker and one or a few clients. This notion of "dependency" involves different sub-dimensions: (1) an (almost) exclusive relationship with one client; (2) low discretion over one's own work, the general work processes and/or strategic decision-making;

³ ILO 1993 : "Employers are those workers who, working on their own account or with one or a few partners, hold the type of jobs defined as "self-employment jobs" (i.e. jobs where the remuneration is directly dependent upon the profits derived from the goods and services produced), and, in this capacity, have engaged, on a continuous basis, one or more persons to work for them as employee(s). Own-account workers are those workers who, working on their own account or with one or more partners, hold the type of jobs defined as "self-employment jobs", and have not engaged on a continuous basis any employees to work for them."

(3) or a weak relation between the economic activity and the nature or level of income". (Eurofound, 2017d)

Workers who fall into an 'in-between' category experience conditions that are more like those of employees in some respects, while in other respects their situation is similar to that of the self-employed. Workers who are described formally as self-employed but mainly depend on one client are of particular concern. This economic dependence can constitute a situation of subordination similar to that of an employee, while the protection usually associated with being an employee – for instance, in the application of working time, wage standards, health and safety regulations and social protection – is lacking.

Box 2: Is there really a need for legal clarity on employment status? – Experience from future scenarios on platform work

Against the background of the above-described increasing blurring of boundaries between the binary employment statuses of employee and self-employed in a continuously changing world of work, and the therewith related growing complexity of defining criteria to clearly differentiate between employment status, the question arises whether legal clarity on employment status is actually key to ensuring good employment and working conditions in Europe, or other factors might be more influential.

In a qualitative foresight exercise exploring the economic, labour market and social developments related to two specific types of platform work in Europe by 2030, Eurofound clearly found that irrespective of what the future development pathway of this employment form is, regulatory clarity as regards employment status, but also for example sector affiliation, taxation, consumer protection etc., is expected to result in more positive outcomes for the economy, labour market and society. This, however, is based on the assumption that the regulatory frameworks are 'fit for purpose' and find a good balance between providing protection (for platform workers, actors in the traditional economy, consumers etc.) and incentivising innovative businesses to start-up and grow. Too relaxed or not well-designed regulations can create advantages for platforms at the expense of workers, clients and competitors. Too rigid regulation can cause platform providers to refrain from offering their services, hampering innovation and competitiveness of the European economy.

Another finding of this study is that irrespective of the regulatory intensity assumed in the different future scenarios, ensuring enforceability is essential. In the context of employment status, this for example pinpoints the necessity for clear demarcation criteria, but also awareness raising and capacity building among labour market actors (such as labour inspectorates, trade unions, labour courts) to enable them to assess what the appropriate employment status of platform workers is.

That said, while regulatory clarity is found essential, it is also to be noted that on its own, it cannot solve all potential challenges emerging in the field of employment and working conditions of platform workers. Other elements, including for example ensuring transparency and fairness of the algorithm underlying the platforms' business model, portability of ratings across platforms or access to objective redress bodies, are also to be considered.

Source: Eurofound, 2020c

As outlined in Eurofound research, different paths have been followed by Member States. Two main approaches can be distinguished: creating a third status for 'in-between' workers or improving

existing criteria to identify bogus self-employment and make the distinction between self-employed and employee status easier.

It should be noted that legal classifications may exist for different purposes – for tax legislation, social security law, labour law or commercial law – and can vary accordingly even within a Member State. The criteria retained to define 'genuine' self-employment can vary accordingly.

Table 7: Approaches for differentiating between employment statuses used by country

Creating a third status		Improving criteria	
Hybrid status	Economically dependent worker status	Using criteria of economic dependence to combat and identify bogus self-employment	Establishing criteria to clearly distinguish employment from self-employment
Austria, Italy	Portugal, Slovakia, Slovenia, Spain	Germany, Latvia, Malta	Belgium, Ireland, Norway, Poland

Source: Eurofound, 2017b

Creating a third status

Positioned in between the two principal statuses, the third status category displays features linked to the self-employment status (such as tax regime) and others linked to the employee category (such as some social protection elements) (Eurofound, 2017b).

Creating a full new status. In the mid/end of the 1990s, in Austria and Italy a third hybrid status was developed, stressing the need for flexibility in employment and the willingness to 'legalising' fraudulent uses of self-employed, while increasing social protection for the workers in these situations.

Both the Austrian 'free service contracts'⁴ and the Italian 'coordinated and ongoing collaboration' contracts (co.co.co)⁵ identified workers as self-employed, while assimilating them to employees for social protection purposes. This assimilation is done either directly, including the free service contractors in the employees' regime, or indirectly, via a special fund extending social protection to the co.co.co.

The complexity in implementing these third statuses increases along the evolutions regarding their fiscal regime; until 2001, both the Austrian and the Italian workers in these contracts were assimilated to the self-employed for tax purposes. However, since 2001, the Italian employees' fiscal regime applies to the co.co.co; furthermore, it is specified that the 'employee assimilation' is limited to the fiscal purpose and does not open benefits to connected rights.

In attempting to address concrete situations of misuse of self-employment, the Italian third status is a perfect example of complexity, using the organisational criteria to recognise the autonomy of the workers, while giving the coordination power to the 'client'.

The Italian co.co.co presents the following characteristics:

⁴The free service contracts (freie Dienstnehmer) have been created in 1997 in Austria.

⁵Contratto di collaborazione coordinata e continuative, abbreviated as 'co.co.co'

- **Worker's autonomy:** The worker decides on when and how to perform the work requested, using however, the tools of the clients.
- **Client's coordination power:** Linked to the needs of the business and work organisation; however, this coordination power should not block the operational autonomy of the worker.
- **Direct and personal execution** of the activity.
- **Permanent link** with the client: contrasting these collaborations against the occasional ones (lavoro autonomo occasionale).
- **Periodic and pre-established remuneration.**

Multiple reforms intervened along the way, cancelling the reference to certain artistic professions, opening the usage to manual activity. Moreover, several types have been devised to address some abuses, such as (briefly) the Coordinated collaboration on Projects (Co. Co. Pro), and the 'Coordinated collaboration', organised by the client (Collaborazione organizzata), highly criticised as not responding to the main fraud challenges.

A 2020 law (Decreto-legge "Salva Imprese"), extended the definition of the 'Coordinated collaboration' (applying rules of subordination work) to platform workers; in the meantime, the use of co.co.co. is restricted. A recent decision of the Italian supreme court⁶ established that riders, delivery workers providing services through the platform Foodora, are to be considered to belong to the 'third category' (lavoro etero-organizzato).

Concerns have been raised about the risks of assisting to parallel developing trends, reducing the use of co.co.co and increasing the use of even more precarious forms, such as the 'occasional autonomous' work (autonomo occasionale) or bogus self-employed (finte partite IVA).

Defining "economic dependency". In the 2000s, the need for social protection covering workers - independently of their employment status - led other countries to regulate the 'economically dependent workers' status. These are situations recognised as vulnerable due to their differences from the main statuses; countries define the 'economic dependency' in contrast with principally one status, as for instance self-employment for Spain and employment for Portugal and Slovenia.

Table 8: Economically Dependent Status

MS	Type	Creation date	Definition	Criteria	Rights
ES	Dependant autonomous workers (TRADES - trabajadores autónomos económicamente dependientes)	2007	Workers who in return for remuneration carry out an economic activity or a profession, personally, directly and predominantly for an individual or an organisation — known as the client — on whom they are financially dependent	<i>Financial dependency: 75% income from one client</i>	As employees: - 15 days holiday - indemnity for interruption of work for no legitimate reason - employment tribunals - mandatory unemployment insurance (only voluntary for other self-employed)
SI	Economically dependent worker	2004	Self-employed who performs the work in	Applies to self-employed in the	guarantee of payment for the

⁶ Corte di Cassazione, RG n. 11629/2019 of 24 January 2020

			person, in line with a civil law contract	following sectors: cultural/journalism/ sports/cleaning	contractually agreed work
	Special status as 'independent cultural workers'		Applies to artists and journalists	registered with the ministry of culture	the ministry of culture pays social and health insurance contributions
PT	Economically dependent worker		This status is defined in respect of the 'amount of the total value of the worker's yearly activity one collective entity benefits from'	A collective entity benefits of at least 80% of the worker's yearly activity.	- 2011, the employer/collective entity to pay a contribution to the worker's social security scheme if benefiting from 80% or more of the worker's yearly activity. - 2012, unemployment benefits extended to cover economically dependent workers (only in 2013 for other self-employed)

Source: Eurofound 2017b

Vulnerability: The main features of vulnerability considered in these regulations were: financial dependency on mainly one client/organisation and lack of (or inadequate) social protection.

Clarifying the criteria of the main statuses

Some Member States have established criteria to distinguish employment from self-employment more clearly. Among them, some focus on identifying 'economically dependent workers', others concentrate on clarifying the original binary distinction between self-employed and employees.

Clarifying existing criteria. Some countries have proceeded to clarify the criteria allowing to better distinguish employment from self-employment, such as Belgium and Poland.

Table 9: criteria to distinguish employment from self-employment

MS	Source	Definition	Criteria	Main statutory distinction
BE	The Act on Employment Relations (27 December 2006)	Nature of employment relationship	characterising the employment status: - the intention of the parties as expressed in the agreement - freedom to organise the working time, freedom to organise the work - the possibility of exercising supervision - financial risk bearing	dichotomy of dependence versus autonomy
PL	The Personal Income Tax Act (1999 with amendments)	Defines what does NOT constitute an 'economic activity'*	Activities which meet jointly the three conditions mentioned	Organisational criteria / general economic risks

		(not lead to self-employment)	below do not constitute an economic activity: 1. Third-party responsibility for the effects of the said activities and their performance is borne by the one who commissions them. 2. The activities are performed under the management and on the site and during the time set by the one who commissions them. 3. The person performing the activities does not bear the economic risk related to the conducted activity.	
	The Labour Code	Employee	corresponding criteria to assess work performance that may lead to the conclusion that the work is subject to a standard job contract instead of subcontracting	

**The Polish Act on Freedom of Economic Activity 2004 defined an "economic activity" as formally undertaken by obtaining an entry in the Economic Activities Register. This applies in the following sectors: 'profit-making activity related to manufacturing, construction, trading, provision of services and prospecting, identifying and mining of minerals in deposits, as well as professional activity conducted in an organised and continuous manner'*
Source: Eurofound 2017b

Box 3: Representing the interests of self-employed in Belgium

The blurring of the traditional binary division of employment status - employee/self-employed – can also lead to ambiguity when it comes to interest representation. United Freelancers is a service provided by Belgian trade union ACV-CSC that targets three groups of workers: freelancers (i.e. self-employed without any employees), those who are self-employed in their secondary occupation, and platform workers. United Freelancers was launched as ACV-CSC received an increasing number of questions and requests for support from self-employed who were often working side-by-side with employees, performing similar tasks under similar conditions, especially in the transport sector and the services sector. Traditionally, the self-employed were not among the target groups of Belgian trade unions but rather represented by the employers' associations for small- and medium-sized companies (UNIZO, UCM). ACV-CSC noticed that many of the self-employed who approached them with questions thought of themselves as dependent workers' rather than 'self-employed' or 'employers'. On its website, United Freelancers presents itself as 'the trade union for self-employed without employees'.

Source: Eurofound, Background material collected for Eurofound (2022, forthcoming), Platform work: Mechanisms and effectiveness of initiatives to tackle issues around work and employment, <https://www.eurofound.europa.eu/publications/policy-brief/2022/platform-work-mechanisms-and-effectiveness-of-initiatives-to-tackle-issues-around-work-and-employment>

In Norway, the category of 'non-employed employee/freelancer' exists for tax purposes.

“According to tax authority guidelines, the following features apply to the non-employed employees: they normally work on a fee basis (i.e. they do a specified job for a specified fee), and might have several employers; as the self-employed, they work at their own behalf/expense and own risk, and are paid when the assignment is completed. But while self-employed run their own company, 'non-employed employees' do not.”

In this case, the criteria apply to workers considered as “employees” while displaying several features of self-employment: working on fee basis, paid at completion, working on their own behalf and risk. However, they do not run their own company and might have several 'employers'.

Box 4: Clarifying criteria to differentiate between employment status: EU level guidance related to platform workers

The employment status of platform workers is among the most discussed issues related to this employment form and business model. The European Commission's 'Agenda for the Collaborative Economy' suggests three criteria to determine the employment relationship between a platform and their affiliated workers:

- Existence of a subordination link: Degree of control exercised over the worker by the platform or client (for example, setting of pay, working hours, instructions, monitoring and surveillance)
- Nature of work: scope of the economic activity ('more than purely marginal and accessory')
- Presence of remuneration, to differentiate compensated from voluntary operations

Source: Eurofound, 2018b

Clarifying “economically dependence” criteria. The assumption is that economically dependent workers can be mistaken for self-employed autonomous workers, even though they rely on decisions taken by one or very few clients in organisational and financial terms. The examples of Germany, Malta and Italy illustrate the criteria used to detect this dependence which, if detected, will lead to reclassification as employee.

Table 10: Criteria used for identifying and reclassifying economically dependent self-employed

MS	Source	Status	Criteria	<Column heading>
DE	Tax regulation	Self-employment	3 types - traders (owners of commercial businesses) - liberal professions - Solo self-employed	
	Act to promote self-employment	bogus self-employment = economically dependent worker	- existence of 'similarities between the work carried out by the self-employed and the employees in the company' (not sufficient proof, but evidence to be used	

			to change employment status)	
	Federal Court Decision	bogus self-employment	Subordination vis à vis the client : - the client defines working conditions (place of work, time of work, content of work) - worker fully incorporated in the company ('inclusion in the organisational structure' and the use of 'production equipment of the client')	
MT	Legislation (devised based on a working definition of bogus self-employment used by the Maltese Department for Industrial and Employment Relations), (includes the notion of economically dependent worker):	A nominally self-employment relationship is one of employment if at least one out of five criteria are satisfied	- the economic dependence is quantified: 'the self-employed depends on one single person for whom the service is provided for at least 75% of his income over a period of one year' - workers are in bogus self-employment if at least one out of five criteria met: 1. receive a salary 2. is subordinate to, or controlled by, the employer (follows a schedule organised by the employer, uses tools provided by the employer, is obliged to follow work as set by the employer) 3. is integrated into the employing organisation (is subject to discipline) 4. is economically dependent on the employer (does not take financial risks to make profit or suffer losses, cannot subcontract the work allotted to him) 5. is obliged to accept work given by the employer, who in turn is obliged to	

			provide the employee with work	
IT	Legislation 2012	Legality of self-employment (Contratto a partita IVA)	Unlawful when two out of three conditions met: - relationship with the same client/principal lasted in total more than eight months within a period of two consecutive years; - the compensation paid to the worker >80% of the income earned by the worker within a period of two consecutive years; - the worker had a fixed workspace/station within one of the client/principal's business units	

Source: Eurofound, 2017b

Box 5: Varying preferences as regards employment status among platform workers

The need to differentiate between different types of platform work (see box 1) is also reflected in different preferences among platform workers as regards their employment status. The example of the Spanish Asoriders initiative demonstrates this. Asoriders is a non-profit association, formed by platform workers in Spain, and has the goal to support other platform workers in issues related to economic, contractual and legal challenges. It reached a Professional Interest Agreement (AIP) with the food delivery platform Deliveroo in 2018. The main motivation for the Asoriders initiative was to defend the right of riders working for platforms to maintain their self-employment status. This was to counteract other initiatives from riders, supported by trade unions, which aimed at recognising riders as dependent employees working for platforms. Those riders favourable to maintain their self-employed status see the flexibility to work for any platform or to devote the time they choose according to their availability as the main advantage of remaining self-employed. In their words, 'being (self-employed) "riders" allows them to work when they want, where they want and for the platform they want'. The tripartite agreement reached between the government and social partners in Spain in March 2021 on the regulation of rights of workers in the field of delivery platforms recognises a dependent employment relationship between the worker and the platform.

Source: Background material collected for Eurofound (2022, forthcoming), *Platform work: Mechanisms and effectiveness of initiatives to tackle issues around work and employment*, <https://www.eurofound.europa.eu/publications/policy-brief/2022/platform-work-mechanisms-and-effectiveness-of-initiatives-to-tackle-issues-around-work-and-employment>

2.2 Recent developments

National level initiatives and regulatory discussions

The main topics addressed by various stakeholders in the debates on self-employment at national level have been bogus self-employment and fair pay (Table 5).

- Reforming social protection to protect independent workers (e.g. DK, LT, PT) and platform workers (e.g. ES, FR, IT).
- Pay levels of self-employed have been considered through legislation (Italy 'fair pay' principle regulation) and in government discussions (UK Low Pay Commission).

Table 11: Examples of Governmental Actions and Regulations protecting self-employed at country level

MS	Type	Initiator	Content	Comments
BG	Third category of employment status	Government	A third category of workers ('contractors') falls under the general social insurance legislation.	
DK	2018, social protection	Government	New unemployment insurance scheme linking the rights to the activities rather than on contractual arrangement	
EL	2017, dependent self-employment status	Government Act	As of 2017, dependent self-employed are covered by the common social contribution requirements and benefits; if they have max. two clients per year, from social insurance perspective they are treated as employees	
ES	2021, classifying food delivery riders working for digital platforms as employees	Government	The 'Riders' Law' was approved on 9 March 2021. The royal decree recognises food-delivery riders working for digital platforms as employees rather than independent contractors. The law only concerns food-delivery riders and not other platform workers. The law requires businesses to disclose relevant information to their riders, which includes how algorithms and artificial intelligence affect their working	

			conditions, hiring decisions and layoffs.	
	2018, social protection	Government	Alignment of the self-employed social insurance scheme to that of employees (unemployment, occupational risks, disability, maternity)	
FR	2018 social protection for self-employed on 'on-demand platforms'	Ministry of Labour Study	2017, Study on 'on-demand platforms' Government to propose a new regulatory framework to <u>prevent abuses</u> Law 2016-1088 obliging platforms to pay social protection for their self-employed workers, from January 2018	Objective: preventing abuses of platforms Tool: social protection paid by platforms for self-employed
	2021, Ordinance No. 2021-484 of 21 April 2021 – representation of platform workers	Government	Sets the terms and conditions for the representation of self-employed workers using platforms for their activity and the conditions for exercising this representation and engaging in collective bargaining. The ordinance creates the National Authority for Social Relations of Employment Platforms (Autorité des relations sociales des plateformes d'emploi, ARPE).	
HR	Third category of employment status	Government	'Contract for services' employment status, which, for example, can be used by platform workers who then are not considered self-employed and pay pension contributions at half of the rate set for self-employed.	
IT	2017, introduction of the Principle of fair pay' for self-employed workers	Government Act	public administrations, banks, insurance companies and large companies have to comply with	Objective: 'fair pay'

Disclaimer: This working paper has not been subject to the full Eurofound evaluation, editorial and publication process.

			minimum pay levels, set through a decree, in terms of quantity and quality of work, to be <u>applied to all self-employed professionals</u>	Tool: compliance with minimum pay level in specific sectors and large companies
	2019, social protection for self-employed delivery platform workers	Government Act	Decree no. 101/2019 introduced social protection provisions (including daily indemnity for illness, hospital stay, guarantee of maternity and parental leave) for self-employed platform workers who use bikes or motorised vehicles for delivery	Objective: guaranteeing platform workers the same working conditions as those on permanent employment contracts
LT	2017, social protection	Government	Additional social protection to self-employed (unemployment insurance, maternity benefits, sickness insurance)	
PT	2018, social protection for SE	Government: Decree-law No. 2/2018.	New <u>social security regime for independent</u> workers.	Objective: social protection Tool: new regime for independents
UK	2019, consultations in response to Taylor review Issue of 'one-side flexibility'	Government consultations	Issue of 'one-side flexibility': -Government commissioned the Low Pay Commission (LPC) to provide advice on phenomenon. Evidence that in 49% of self-employed workers, income changes from one month to the next with many workers fearing losing hours. -consultation on proposals to give workers a right to a reasonable notice of work schedules and compensation for shifts that are cancelled without reasonable notice.	Objective: guaranteeing fair flexibility for workers Tool: visibility about workload and therefore income level

Source: Eurofound, country updates; Eurofound, 2018c; [Eurofound's web repository on the platform economy](#)

Among the discussions reported across the EU Member States, recent debates in the Netherlands and in Ireland display several interesting features.

Netherlands: Solo self-employment discussions⁷

Regulating solo self-employment has been at the core of Dutch regulatory debates for some years. Given the steady increase of the number of self-employed without employees, concerns have risen about their treatment by taxation and social protection regulations.

Social protection has been identified as the main point of vulnerability of the solo self-employed. According to the Council Recommendation on the 2016 National Reform Programme for the Netherlands, “self-employed people without employees are more often under-insured against disability, unemployment and old age” and only one in five solo-entrepreneurs is insured against incapacity for work (Council Recommendation C299/41, 2016).

However, integrating solo self-employed in a social security scheme designed for dependent workers is not straightforward and several obstacles have to be overcome; financing the scheme is one of them; and individuals’ myth of the independent worker fighting for himself and covering his own needs remains also a barrier. Indeed, “while there is political will to improve the coverage, solo-entrepreneurs themselves appear ambivalent about paying for further social security coverage (ZipEconomy, 2017)” (OECD, 2018).

Among the measures announced to deal with the situation, the Dutch government presented three convergent approaches: combating false/bogus self-employment, making the employee status more attractive for employers and providing accessible protection to the self-employed.

Decreasing the difference in terms of social security/insurances and employment protection, while a major structural change, may be the only way to remove incentives for false self-employed, as advised by a ministerial working group (Rijksoverheid, 2015) (OECD, 2018).

Among the policy pointers underlined in the OECD report in 2018, there is:

The pursuit of “reducing the difference between employees and self-employed regarding social security, insurances and pensions” (OECD, 2018) is seen as necessary to address the negative implications of the situation: Currently, the situation is such that the system provides a possible incentive for false self-employment, especially in sectors or occupations where workers have little negotiation power. The current efforts to improve this situation create uncertainty about costs for potential clients and administrative procedures required, potentially hampering doing business for all solo self-employed.

In 2019, a joint draft law on ‘solo self-employed entrepreneurs’, was in discussion within the ministries of Social Affairs and Employment and of Finances. The objective was to address the situation of ‘solo self-employed’, under three main aspects:

- clarifying the nature of the relationship between solo self-employed and the organisation employing them
- protecting solo self-employed and allow them to build social security rights
- allowing them to have time to run the administration related to their enterprise.

⁷ Eurofound 2019, [Dutch country update](#)

The proposal aimed at better defining the employment status, defining a path towards social protection and supporting entrepreneur's obligations solo self-employed face.

Among the measures proposed, the following were foreseen:

- the obligation for solo self-employed earning more than €75/hour to sign a 'self-employed declaration' with their temporary employer, specifying the nature of the employment relationship and which income taxation the solo self-employed will fall under.
- a minimum wage of €16/hour from January 2021.

These two elements underline the importance of the economic dependence as vulnerability criteria:

-over €75/hour, solo self-employed are considered as freelancers with full negotiating power allowing them to choose their employment status in agreement with their 'temporary employer';

-others vulnerable solo self-employed (not defined as such) should be protected by a minimum wage regulation, guaranteeing them a floor income per day.

These two poles however leave room for an impressive range of intermediary situations, with no clear characterisation.

At the end of 2019, the proposal was declared "too complex" and was withdrawn.

The Irish 2019 Bill on bogus self-employment⁸

In Ireland the definition of self-employment depends on the legislation field - social protection, taxation, employment - considered. The 'Code of practice in determining employment status' contained the guidelines produced by the Revenue Commissioners and Irish Courts to determine whether a person is deemed self-employed or an employee (Eurofound 2017b).

Increasing concerns regarding the use of bogus self-employment in some sectors, such as construction, in recent years, have led to discussions on better defining the employment statuses, to enable sanctioning the employers resorting to bogus self-employment.

The Irish Bill n°40 2019 on "Organisation of Working Time (Workers' Rights and Bogus Self-Employment)" introduces an amendment of section 8 of Principal Act 3, stating that "employers cannot avoid an employer/employee relationship by drafting contracts, explicitly or implicitly, that do not accord with the reality of the relationship" (Art 8A.(1)).

⁸ Irish Bill n°40 2019 on "Organisation of Working Time (Workers' Rights and Bogus Self-Employment)" (Amendment) Act 2019.

Table 12: Ireland - Criteria of employment statuses: Irish Bill n°40 2019, Art 8A. (1)

Determination of a person as an employee	Determination of a person as a self-employed
<p>(2) A contract of employment can be said to exist if:</p> <ul style="list-style-type: none"> (a) an individual agrees that in consideration of a wage or other remuneration he or she will provide their own work and skill in the performance of some service for another; (b) that individual agrees, explicitly or implicitly, that in the performance of that service he or she will be subject to the other's control in a sufficient degree to make that other the employer; (c) the other provisions of the contract are consistent with its being a contract of employment. 	<p>(4) For the purpose of this Act, a contract for service applies in the case of a self-employed individual and can be said to exist where:</p> <ul style="list-style-type: none"> (a) an individual agrees personally to execute any work or service; (b) for a person whose status by virtue of the contract is that of a client or customer of a profession or business undertaking being carried on by the individual on his or her own account.
<p>(3) Without prejudice to the generality of subsection (2), and while all of the following factors may not apply in each case, when determining the existence of a contract of employment, regard may be had for the following:</p> <ul style="list-style-type: none"> (a) the degree of autonomy and control that the individual performing the work has over the tasks to be performed and how and when they are to be performed; (b) the relative bargaining power of the parties; (c) that the individual executes for another person under a contract (whether express or implied and if express, whether orally or in writing), the same work or service as an employee of the other person would do; (d) that the individual has a relationship of subordination in relation to the other person for the duration of the contractual relationship; (e) that the individual is required to follow the instructions of the other person regarding the time, place and content of his or her work; (f) that the individual does not share in the other person's commercial risk; (g) that the individual has no independence as regards the determination of the time schedule, place and manner of performing the tasks assigned to him or her; (h) that the individual receives a wage or other remuneration. 	<p>(5) Without prejudice to the generality of subsection (1), and while all of the following factors may not apply in each case, when determining the existence of a contract for service, regard may be had for the following with the regard the status of self-employed, namely that the individual—</p> <ul style="list-style-type: none"> (a) owns their own business; (b) is exposed to financial risk, (c) assumes responsibility for investment and management in the business, (d) can profit from the management, scheduling or performance of the work, (e) has control over what, how, when and where the work is done and whether they do it personally; (f) is free to hire other people, on their terms, to do the work which has been agreed upon; (g) can provide the same services to more than one person or business at the same time; (h) provide the materials for the job; (i) provide equipment and machinery necessary for the job; (j) has a fixed place of business where materials or equipment can be stored; (k) can cost and agree a price for a service; (l) can control the hours of work in fulfilling the job obligations.

Source: Bill before Dáil Éireann, Second Stage, accessed on 7 October 2020 at <https://data.oireachtas.ie/ie/oireachtas/bill/2019/40/eng/initiated/b4019d.pdf>

Clearly, the criteria of economic and personal dependence are central in the list of factors to be considered when analysing an employment status. Receiving wages and not being exposed to commercial risks are determinants of employment as a dependent worker, such as the absence of control on several work organisation aspects and the similarity of work with the one provided by an employee. On the other hand, self-employed are in power and control on when, how and where to work; they also choose their customers, as they “can provide the same services to more than one person or business” simultaneously.

Interestingly, the text has changed between the initial proposal and the second stage for discussion in the Dáil. Some factors have disappeared: for employees, specifications around remuneration (fixed hourly/weekly/monthly wage; entitlement to extra pay or time off for overtime; expense payments to cover subsistence and/or travel expenses) and the mention of one employer only (works for one person or for one business); for self-employed the mention of providing “his or her own insurance cover e.g. public liability cover, etc.”.

2.3 Judicial statements

Several recent court cases have addressed the employment status of self-employed workers.

European courts decisions

In Europe, platform-based businesses have been at the core of judicial statements on how to assess the status of employment and workers' rights. In their decisions, courts take into considerations the national framework (legislation, previous decisions, characteristics of the economy and the labour market) and the specific characteristics of the individual case, thereby focusing on the factual elements next to (or, in practice often: rather than) the contractual arrangements.

Respective cases have been brought to court in about a third of the EU Member States (and a number of known court cases is available in the UK). It is interesting to note that all of the known court cases related to on-location platform work, that is no case dealing with online services could be identified as of early 2021. The vast majority of cases are linked to platforms mediating transport services, mainly the delivery of goods (food), but also taxi-like services. A few examples of platforms mediating on-location micro-tasks or household services exist, too.

Interestingly, a large number of the court rulings, notably the most recent ones, decide that the worker should be considered as an employee of the platform. This might be attributed to the dominance of cases of platforms mediating transport services: Eurofound (2019b) suggests that in this type of platform work ('on-location platform-determined routine work') there is a high likelihood that workers are misclassified if considered self-employed, while this is not necessarily the case for other types of platform work. That said, there are also some decisions where the court confirmed the self-employment status of the platform worker (showing that – not at least due to the heterogeneity within platform work – a single employment status valid for all platform workers might not be the most suitable approach), as well as instances where courts of higher instance overruled previous decisions of lower-instance courts, and rulings of lower-instance courts not following the guidance of higher-instance courts. The latter shows the complexity of establishing the employment status of platform workers, considering the unclear legal framework and the discretion of courts to decide on a case-by-case basis.

While there is variety as regards the arguments/criteria considered by the various courts when deciding on the employment status of platform workers, the following gives a high-level overview of the most common elements applied:

- Workers' integration in the platform organisation; this includes considerations on subordination, autonomy (for example as regards time and place of work), participation in meetings, provision of training, control and monitoring/surveillance, sanctions and disciplinary measures, the obligation of the platform to offer work and of the worker to accept assigned tasks, relative bargaining powers of platform and worker regarding the working/employment conditions
- Whether it is the platform or the worker who establishes market relationships, for example branding, selecting clients, price setting and invoicing, control over the clients' data, whether there is a 'business model' of the worker, whether workers are registered as self-employed and have the discretion to offer their services to others, who bears the risk of loss
- Workers' obligation to provide the services personally or could engage a substitute
- Whether the means for service provision stem from the platform or the worker

This overview shows that courts are going beyond the consideration of a subordination relationship, and even beyond the criteria used in similar cases on establishing the employment status in the 'traditional economy', by considering the particularities of platform work at least partly. That said, it is also striking that although similar criteria are used for argumentation, the courts come to different rulings; this, again, shows the heterogeneity of individual relationships in platform work as well as in the national legal and economic/labour market frameworks. This supports the generally made conclusion that it is by no means straightforward to indicate the appropriate employment status of platform workers, and that there most likely is no 'one-size-fits-all' solution.

Some other aspects linked to the status of employment have also been considered in recent judgements, such as:

- Criminal charges for labour exploitation

A recent Italian court decision⁹ stated against Uber Italy Srl, as "the delivery riders were being subjected to 'caporalato' conditions: "a criminal offence consisting of excessive recourse to labour (directly or through an intermediary) to exploit it and take advantage of workers' weak positions to impose abusive working and remuneration conditions".

The absence of autonomy and decision power on work organisation are here part of the labour exploitation definition.

"Workers were required to continuously accept deliveries from 11am to midnight for a gross payment of €3 per delivery, or had specific time slots imposed on them, the intermediary withheld tips and workers suffered financial penalties if they refused to accept all the delivery orders"¹⁰.

- Implementing equal opportunity

Interestingly, the Equal treatment Directive allows to compare salaries (of permanent journalist employees) and fees (of freelancer journalist): this can offer opportunity to estimate 'fair pay' for self-employed.

In June 2020, Germany's Federal Labour Court (BAG) ruled in favour of freelance political journalist Birte Meier, when she demanded the right to know the salary levels of her male colleagues on permanent contracts (case Az. 8 AZR 145/19).

The court considered that since the German law on wage transparency is a transposition of the European directive on equal opportunities and equal treatment of men and women (2006/54/EC), "it was necessary to align with the concepts of this directive, which does not differentiate between

⁹ Milan Court (30 May 2020)

¹⁰ Planet Labour Post n. 11982, 4 June 2020, Italy: Milan court places Uber Italy Srl under judicial administration due to the working conditions of Uber Eats delivery riders

permanent employees and self-employed individuals working under similar conditions to those with a permanent contract¹¹.

Points to retain

- Multiple criteria are simultaneously considered in legislation and court rulings for identifying self-employment across Europe; similar criteria are used in different ways across European countries;
- The self-employed category definition depends on policy objectives (combatting unemployment, combatting bogus self-employment) and on the regulations considered (labour, fiscal, social), resulting in a situation where also within a Member State different definitions are applied in parallel;
- Autonomy and power to make strategic decisions remain key determinants distinguishing self-employed from employees.

Vulnerability criteria are advanced in several instances to devise measures protecting workers formally self-employed while displaying several 'employees' characteristics.

The first factor is the absence of employees. Individuals performing as solo self-employed are considered potentially more vulnerable to commercial pressure and lacking negotiating power vis à vis the client. They are also considered to be more likely to lack resources to address imbalanced situations. This said, it is clear that sector, occupation and skills level play an important role, as well as the general situation of supply and demand and the associated balance of power.

National regulations mainly use lists of criteria to determine individuals' employment status. In case of suspected misclassification of the employment status, clarification/validation can only be done a posteriori when the employment relationship has been active under the respective employment status, through a lengthy, complex and case by case process. Moreover, different jurisdictions assessing the criteria differently can deliver opposite judicial statements, increasing the uncertainty for workers and companies.

Recent court cases addressing employment status have largely been linked to the platform economy, and essentially "on location platform determined routine work" such as UBER, Deliveroo and similar platforms.

The main vulnerability criteria discussed are linked to the individual power and autonomy to decide on what should be done, how, when and where to provide the service/good requested.

The dependence on one client (only) providing a substantial share of the income, remains based on the ideal type of a standard employment relationship, describing a permanent full-time, but also one to one relationship between a worker and an employer. This feature however, does not allow to fully encompass workers in the platform economy in which workers usually perform activities on different platforms and for a multitude of clients. In the platform economy, dependency is influenced by the low number of dominant platforms and them defining the terms and conditions in the absence of legal frameworks specific to the platform economy.

¹¹ Planet Labour, *Post n. 12030, 29 June 2020* Germany: self-employed woman granted right to know the wages of male colleagues on permanent contracts

3 Solo self-employed in the pandemic

As in most crises situations, when COVID-19 hit Europe and affected the economy and the labour market, people in non-standard employment were the first to be affected, and it is likely that they are hit harder and suffer longer from the negative developments (Eurofound, 2021). Available data for Q2/2020 show that those on temporary contracts and multiple job holders experienced the largest employment contraction compared to the same quarter of 2019. However, also self-employment decreased (-2.1%), interestingly with a sharper decline among those with employees (-5%) compared to those without (<1%). It is to be noted that this might be an indication of some of those who lost their job turned to self-employment as a means for income generation.

The COVID-19 health pandemic and the subsequent economic lockdowns decided across Europe in 2020 have pushed most countries to adopt emergency measures and programmes, supporting businesses and workers, during the obligatory closure period¹².

National pandemic and economic situations have been evolving and governments have also tried to keep up with developments on the ground, better adapting measures to the dynamic situations. Adjustments intervened along the way, as “after adopting the first emergency measures, many governments realised that several groups of workers would not be covered by the income guarantees. These included workers who are not paid a salary, such as the self-employed, and those without regular working hours, such as workers who work on demand or have zero-hours contracts” (Eurofound 2020d). Progressively public authorities, attempting to address the economic consequences of the crisis for a majority of people, have revised the initial measures, especially considering the self-employed.

“While some countries took more casual forms of work into consideration – Czechia and Italy included the self-employed, for instance, while Poland covered civil contract workers – very few opened their schemes to other categories of workers” (Eurofound 2020d)

Most businesses' aids and supports devised in these special circumstances follow well-known paths, such as offering loans, lowering interest rates, allowing special grants and deferring debts. These are common measures also used in previous crises, to support entrepreneurs and businesses. The real challenge is to assess whether these supporting measures apply to 'vulnerable' self-employed, and mainly the solo self-employed.

3.1 National emergency measures and (solo) self-employment

General observations

The analysis of measures reported in the Eurofound (2020) COVID-19 EU PolicyWatch database, leads to the following general observations:

- Most measures have been taken for the self-employed in general.

¹² This chapter consider the measures reported from March to May, in the Eurofound (2020) COVID-19 EU PolicyWatch database. A more comprehensive analysis is available in Eurofound 2021, which was published after finalisation of this paper.

The lockdown situation having created **economic vulnerability** for all businesses requested to close. Some of the most affected sectors are characterised by a high share of self-employed without employees (for example, creative industries).

- However, some countries tackle specific situations, such as the solo self-employed, freelancers, SMEs including micro enterprises, based on a recognised **specific vulnerability** due to the limited size of the business or the potential isolation individuals face when working solo and lack of resources.
- In almost all countries, two types of measures have been simultaneously devised: financial and social measures. For the financial measures, the self-employed are mainly considered as companies; the importance of social measures relies on considering the self-employed as individual workers, opening some employee benefits to them also.

Measures and eligibility criteria

Measures have been mainly devised to help businesses survive the lockdown and restart as soon as the closure period is over (Table 7). Loans, grants, interest reductions, debt moratorium are all common instruments used in crisis periods to help businesses. The self-employed are considered as companies in this context, getting the means to keep the business afloat and the activity running.

Some countries propose a “replacement income” to specific self-employed, assimilating them to individual workers who have lost their income: The wording differs: ‘entrepreneur wage’ in Austria, ‘basic income’ in Germany and Slovenia, ‘replacement income’ in others (which could also be compared to the unemployment benefit); however, the main purpose is to compensate income losses and prevent poverty.

Table 13: Covid-19 National measures 2020 for the ‘Solo self-employed’

Type	Freelancer	Solo self-employed
Guarantee Credit/ free loan		AT/DE/IE/NL/PL/PT
Debt moratorium	DE	NL/HR MT (tax deferral)
Replacement income	NO (replacement income)	AT (entrepreneur wage) DE (basic income support) LT (compensation)
Aid to self-employed	DE (one off payment) /PL GR (special rate €800)	FR/DE/IT/LU (solo self-employed affiliated to social security/PL CY (special scheme) PT extraordinary support/possible suspension service provision cancelled) CZ (one -time bonus CZK 25,000) GR (special rate €800)

Source: Eurofound (2020) COVID-19 EU PolicyWatch

Specific considerations apply for solo self-employed and freelancers regarding social protection benefits; given their specific vulnerability, no income but need to guarantee protection rights; countries either postpone or cancel payment of social contributions (Table 8).

Table 14: Covid-19 Social protection measures 2020- for 'self-employed'

Type	Freelancer	Solo self-employed
Deferral of social security contributions	GR (state payment of social security contributions) IT (suspension of payment until May 2020) MT (deferral until August 2020)	EE (social security payments eased/sectors) GR (special rate/ contributions paid by state) IT (suspension of payment until May 2020) MT (deferral until August 2020) PL (temporary exemption) SI (postponing)
Sick leave		SI (no sick leave payment)
Pension		SE (no payment of pension contributions)

Source: Eurofound (2020) COVID-19 EU PolicyWatch

Very few countries consider paying sickness leave to solo self-employed and lifting their obligations of paying pensions contributions.

Across the financial measures implemented, a variety of criteria have been used to identify the self-employed eligible to state financial support. These criteria give an idea of governmental views on the self-employed groups in need of help, and therefore on their degree of vulnerability.

Table 15: Replacement income

MS	Measure	Criteria (description)	Criteria (type)
AT	Entrepreneur wage	- included in company subsidy for fixed costs - companies that suffer substantial sales loss of at least 40% due to the consequences of the corona crisis	Economic criteria: loss in sales
BE	Replacement income for self-employed	- Corona 'bridging right' - self-employed as main profession (including helpers, assisting spouses in the maxi-status and (primo-starters); or self-employed as secondary profession with provisional social security contributions that are at least equal to the minimum contributions for self-employed persons in their main profession	Social protection criteria: minimum contributions, paid in Belgium

		- self-employed and pay social security contributions in Belgium; the person must not receive a replacement income (as employee)	
DE	Basic income support for solo self employed	- extension of the existing 'basic income for solo employed' usually provided to persons looking for work; - new category created: " <u>solo self-employed persons temporarily out of orders/work</u> "	Economic criteria: no activity

Source: Eurofound (2020) COVID-19 EU PolicyWatch

The economic criteria in terms of turnover and losses remains the main eligibility criteria to identify the vulnerable (solo) self-employed during COVID-19 times.

Table 16: Solo self-employed (and micro enterprises) support

MS	Measure	Criteria (description)	Criteria (type)
FI	Municipalities apply for a governmental grant to be redistributed to solo-self-employed	- solo-self-employed who are either registered - or whose entrepreneurial income is no less than €20,000 per year - solo-self-employed with a financial situation and business activity that have suffered from the outbreak of COVID-19 - those with reasonable possibilities to continue business activities	Previous registration Economic criteria
FR	Solidarity fund for very small companies, the self-employed and micro-entrepreneurs	businesses that have been subject to administrative closure or have suffered a loss of turnover of more than 70% in March 2020 compared with March 2019 Direct financial assistance granted to: - very small enterprises, the self-employed, micro-entrepreneurs and the liberal professions - which have no more than 10 employees, - an annual turnover of less than €1 million and an annual taxable profit of less than €60,000	Economic criteria

LU	Emergency fund for very small businesses and self-employed persons	Grant Size: maximum of nine full-time employees Administrative closure following COVID-19 Turnover: at least €15,000	'Importance to the LU economy and very vulnerable to unforeseen crisis'
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Source: Eurofound (2020) COVID-19 EU PolicyWatch

Sectors initially targeted¹³

Specific sectors have also been targeted initially. Because they are considered particularly hit such as tourism/transport/entertainment; there are also sectors in which there could be high numbers of self-employed. The cultural sector, given the sector characteristics and the way work is organised along gigs, performances/exhibitions, benefits in a few countries of specific treatment.

Table 17: Sectors badly hit by the Covid-19 pandemic consequences

MS	Sector	Measure	Criteria (description)	Criteria (type)
BE	1) Events, with many freelancers 2) Para medical professions (physiotherapists, dentists, psychologists, etc.) Urgent interventions 3) Specialised food and drink shops 4) Painters, plumbers, electricians (only urgent repairs)	Regional compensation premium (Flemish)	- companies and their suppliers allowed to continue working - or shops remaining open but have a large loss of turnover due to the restrictive measures - a loss of sales of -60% in the period between 15 March 2020 and 30 April compared to the same period last year - For start-ups, a decrease in turnover of -60% compared to the financial plan laid down will be taken into account. - NPOs are also eligible, provided that at least one person is employed full-time	Economic criteria
HR	Tourism	Interest free loans	Entrepreneurs in the sector whose activities suffered because of COVID-19	Economic criteria
	Arts and entertainment	Emergency aid payments per month (up to three months)	freelancers artists: - whose social contributions are paid from the budget of the Republic of Croatia	Social protection criteria/registration of the activity Economic criteria

¹³ As the pandemic develops, governments have adapted responses, especially targeting more businesses and sectors.

			- proof that COVID-19 prevented or significantly impeded them from performing	
DK	Arts	Support scheme for artists, having different contracts/statuses over the year (extension of support for self-employed and freelancer with B-income)	Full-time and short-term contracts are so-called A-income, which in the optic of Danish Tax Authorities refer to employment in an employer/employee relationship while freelance work is B-income and taxed a different way. The support scheme aims to support both income/tax types due to the variation of both in the working year of the artists.	Economic criteria
NL	Cultural	Extra package of support measures Specific for different groups within the sector	The measure applies to enterprises as well as institutes. Most cultural institutes are not enterprises in fact, but the sector has many self-employed and freelancers.	Impacts of lockdown on exhibitions and projects Not only economic criteria
BE	1) Events, with many freelancers 2) Para medical professions (physiotherapists, dentists, psychologists etc.) Urgent interventions 3) Specialised food and drink shops 4) Painters, plumbers, electricians (only urgent repairs)	Regional compensation premium (Flemish)	- companies and their suppliers allowed to continue working - or shops remaining open but have a large loss of turnover due to the restrictive measures - a loss of sales of -60% in the period between 15 March 2020 and 30 April compared to the same period last year - For start-ups, a decrease in turnover of -60% compared to the financial plan laid down will be taken into account.	Economic criteria

			- NPOs are also eligible, provided that at least one person is employed full-time	
HR	Tourism	Interest free loans	Entrepreneurs in the sector whose activities suffered because of COVID-19	Economic criteria

Source: Eurofound (2020) COVID-19 EU PolicyWatch (June 2020)

Points to retain

The main criterion used to define eligibility to aid measures remains the economic situation.

A few nuances appear in the usage of this criterion, illustrating what each country considers as the characteristics of vulnerability:

- As illustration of the negative impact of the COVID-19 crisis, the economic situation is used to visualise the losses businesses experience in performing their activity, either quantified (Austria: at least 40% less than previous year) or in general terms (Germany: no activity) (Table 9);
The direct loss of income is the vulnerability these measures aim to mitigate.
- It is worth noting that in some cases, the support measures take into consideration the 'future potential' of the activity: as Finland considering self-employed 'with reasonable possibilities to continue business activities' (Table 10);
In this regard, the notion of vulnerability taken into consideration seems to be temporary or moderate enough to allow the business to recover.
- Interesting distinction between self-employed as "main profession" and as "secondary profession" (Belgium) (Table 9).
- Some sectors are commonly considered as 'vulnerable' across Europe (Table 11).
This is based on their characteristics: seasonality, and the forms of employment relations used: freelancers, self-employed.

3.2 Recent discussions and steps taken

As the COVID-19 pandemic unfolded, concerns increased about solo self-employed not able to afford not to work and how to protect them. Not only did these workers put their own health at risk, they also contributed to an increased risk of spreading the virus in the community.

The COVID-19 pandemic, in a sense, acted as a magnifying glass, highlighting issues that had been apparent for much longer. Discussions about making solo self-employment sustainable have been going on for a while.

However, issues around lack of social protection and labour rights of self-employed, their limited negotiating power to set prices and work organisation processes being imposed on them, have

become even more significant during the pandemic. Several paths have been pursued to address these issues.

Examples of actions taken

Self-employed workers, if viewed as independent entrepreneurs, are principally barred from engaging in collective bargaining about their remuneration under EU competition law (Article 101 TFEU). According to the case law of the Court of Justice of the EU¹⁴, an association representing self-employed workers – or both employees and self-employed workers – does not act as a trade union and therefore as a social partner, but acts as an association of undertakings.

An exception to that rule is only possible if the service providers in the name and on behalf of whom the trade union negotiated are in fact false self-employed, that is, service providers in a situation comparable (not “identical”) to that of employees.

Several moves across Europe attempt addressing the self-employed labour and collective rights.

Collective bargaining rights for self-employed in Poland

The Polish law

On 1 January 2019, the revision of the Polish collective labour law entered into force, extending the application of the whole Trade Union Act to both, own-account non-employees and their employers¹⁵

While Poland follows the binary distinction of employment statuses, between dependent employees and independent self-employed, in practice, the Polish law offers numerous possibilities to engage dependent work based on a civil contract (Eurofound, 2019).

Among others are the task-specific contract (*umowa o dzieło*) or the contract for the provision of unspecified tasks (contract of service, *umowa zlecenia*). These contracts can be offered both to persons without registered business activity as well as the “self-employed.”

“(..) the Polish labor market is characterized by a high incidence of non-standard forms of work. It is estimated that at least 1 million workers without a registered business activity are employed solely on civil contracts and around 3 million workers operate as one-person businesses, but the numbers may be much higher”. (Muskat-Gorska, 2020)

The criteria examined by courts to assess the employment status remain unclear.

The will and the right of the parties to freely chose the legal base of employment is stressed. Nevertheless, no criterion seems determinant as such, since according to the courts, each of the criteria used to define an employment relationship ‘can be found in a relationship governed by a service contract’:

“(...) judicial criteria of classification remain unclear, overlapping and somewhat circular – on the one hand, the employment relationship is defined by criteria such as personal, continuous character of work, remaining at the disposal of the employer in specified time and place under the employer’s supervision and management, on the other – none of these criteria, individually or cumulatively, are decisive for employment classification”. (Muskat-Gorska, 2020)

Moreover, the law does not prevent a service provider to work only for one contractor. The remuneration of service providers can be hour-based, even if such arrangement precludes service provider’s control over working time or possibility to work for multiple contractors. The Polish tax

¹⁴ Case C-413/13, FNV Kunsten Informatie en Media v. Staat der Nederlanden, 2014 E.C.R.

¹⁵ Labour Code of 26 June 1974 (Dziennik Ustaw., 1974 Nr 24 poz. 141), as amended by the Law of 5 July 2018 (entered into force on 1 January 2019).

authorities currently estimate that at least 0.5 million of solo firms are dependent on one contractor, as regards at least 75% of income.

The 2018 legislation states that “own-account non-employees – who “have rights and interests related to performing work that can be represented and defended by a trade union” – can now join enterprise-level trade union organisations and be represented by them both in individual as well as in collective matters”.

It is worth noting that the law is of general application (“The law does not expressly exclude any types of contractual arrangements from its scope”); it also does not refer to “more typical criteria” used for granting collective bargaining rights to self-employed: “such as an element of personal subordination (dependency) combined with a quantitative threshold of income depending on a limited number of principals”.

Critical analysis

The new Polish law has been considered as a significant step recognising self-employed collective bargaining rights, as ‘it goes far beyond giving trade unions the right to represent non-standard workers’. (Muskat-Gorska, 2020)

First of all, the law did not refer to any of the ‘typical criteria’ used to grant collective bargaining rights to self-employed workers, such as subordination or even economic dependency.

It also opens the opportunity for those hired outside of an employment relationship, to form a mixed or even a purely non-employee enterprise-level trade union organisation, with the same collective rights as an employee trade union (right to initiate and to take part in negotiations of a collective agreement, a collective dispute, or a strike). Moreover, purely non-employee trade unions can also represent non-members who are employees. However, matters such as negotiation and conclusion of an agreement over enterprise-level rules concerning salary, working time or work organisation, remain reserved to unions that represent at least 5% of employees.

At this stage, the way to implementing the amended Trade Union Law to own-account workers, is still not clear. “The worst scenario would be that each such worker would have to demonstrate that they may be covered by terms of a collective agreement or take part in collective action, a procedure requiring time and effort” (Muskat-Gorska, 2020).

Freelancers minimum fees agreement in Denmark

The 2020 DCCA decision

The Danish Competition and Consumer Authority (DCCA) has decided on 26 August 2020¹⁶, on the Hilfr ApS (“Hilfr”) case, concerning the use of a minimum hourly fee between providers of regular cleaning services on Hilfr’s digital platform www.hilfr.dk. As a result of a collective agreement between Hilfr and the trade union 3F (Fagligt Fælles Forbund – United Federation of Danish Workers) of 2018, platform workers could choose to provide their services as self-employed ‘Freelance Hilfr’ or employed ‘Super Hilfr’, with the latter covered by the collective agreement which guaranteed a minimum hourly wage and other employment entitlements. That said, a minimum hourly wage was applied to all providers on the platform, that is also the self-employed.

The DCCA argued that “On the digital platform, a minimum hourly fee was fixed regarding the services of the two types of providers of cleaning services. The minimum hourly fee for the Freelance Hilfrs has been advertised directly on Hilfrs platform. As for the Super Hilfrs, the minimum hourly fee is stated in the collective agreement with 3F. Furthermore, Hilfr has set up a technical restriction, which limits the two types of providers to set lower fees than the minimum set fees”.

¹⁶ Danish Competition and Consumer Authority (DCCA) (26 August 2020)

<https://www.en.kfst.dk/nyheder/kfst/english/decisions/20200826-commitment-decision-on-the-use-of-a-minimum-hourly-fee-hilfr/>

The DCCA assessed the situation of the platform as being in breach of competition law, for the following reasons:

- both Hilfr and Freelance Hilfrs/Super Hilfrs are undertakings
- Freelance Hilfrs/SuperHilfrs, most likely, are not employees of Hilfr from a competition law point of view
- Freelance Hilfrs/Super Hilfrs cannot be characterised as subcontractors or agents to Hilfr, primarily because Hilfr does not carry the financial risk for the Freelance Hilfrs/Super Hilfrs work
- the minimum hourly fee may create a “price floor”, which may limit the competition between the Freelance Hilfrs
- Hilfr and the Freelance Hilfrs have entered into a concerted practice for the sale of the Freelance Hilfr’s services on the platform

The DCCA sees agreeing on minimum fees for freelance domestic workers as a breach of competition law and has ordered Hilfr to stop paying those fees.

In order to respond to the DCCA concerns, Hilfr has offered to commit to the following:

- remove the minimum hourly fee for Freelance Hilfrs from the platform (while it still applies to Super Hilfrs)
- continue to ensure and support that no terms nor conditions regarding the minimum hourly fee are stated or that they are otherwise used with regard to Freelance Hilfrs, on the platform or in Hilfr’s communication

The DCCA finds that the offered commitments will fully meet its concerns:

- the Freelance Hilfrs will be free to set their own prices
- Hilfr commits to ensure that the Super Hilfrs are employees in relation to competition law,
 - ensuring that there is legal subordination between Hilfr and Super Hilfrs,
 - and that it will bear the financial risk for Super Hilfr’s cleaning work through the platform.

Critical analysis

In October 2020, the analysis of the DCCA decision published by Countouris and De Stefano regretted what they consider a step back on self-employed rights.

“This conclusion descends from a narrow regulatory vision, which considers any form of self-employed work as an independent undertaking on the market, such that concerted action with ‘competitors’ to establish minimum fees would constitute a ‘cartel’ violating antitrust laws.”

The 2018 collective agreement signed between the platform Hilfr.dk and the union 3F has been welcomed as the first Danish collective agreement for platform workers. It was also significant given the content agreed.

“Hilfr.dk and the union had agreed to introduce within the company a new category of worker, with employment status, in parallel with the existing freelance arrangements. All freelances could apply to become employees of the platform and be covered by the collective agreement. After 100 hours of work, workers would be considered to be employees covered by the agreement, unless they actively chose to opt out. Minimum fees were also established for the domestic workers classified as freelances”.

The decision of the Danish antitrust authority applies competition law to self-employed domestic workers as if they were undertakings, “something that is hardly realistic under any meaningful definition of this concept”.

“This vision neglects fundamental trends long affecting our labour markets, where more and more workers are constrained in a bogus freelance status, their independence merely notional. These workers are normally excluded from the vast bulk of labour protection and, at the same time, do not

enjoy the bargaining power and organisational autonomy associated with real, suitably capitalised, undertakings”.

Moreover, they consider that “In the case of domestic work, current EU antitrust standards are not only incompatible with the European Social Charter and ILO convention 98 but also clash with the ILO Domestic Workers Convention (189) of 2011”.

Only domestic work carried out occasionally and not on an occupational basis, can be excluded from the scope of the convention. All other types of domestic worker are otherwise protected, regardless of employment status, including in their right to bargain collectively.

It is to be noted that in February 2021, 3F and the Danish Chamber of Commerce established a nationwide collective agreement for food delivery riders (valid until March 2023). When a platform signs the agreement, riders become employees. It will give riders a regulated wage (hourly wage, guarantee of a minimum of two times four working hours per week), pension and sickness pay, sets working time limits etc. The lessons learnt from the 3F/Hilfr experience fed into this broader collective agreement. As of May 2021, only JustEat has signed the agreement (resulting in about 600 riders being covered) in spite of 3F’s efforts to make other platforms join, too. Nevertheless, the agreement is considered as a proof that while platforms have a specific business model, they can – if they are willing to do so – take responsibility for the workers.

Two specific definitions

The ‘personal work’ approach

Following earlier studies (Freedland, 2007) on ‘personal work relation’, Contouris and De Stefano, in a 2019 report for the European Trade Union Confederation proposed “adopting a ‘personal work’ approach to labour protection, to resolve the paradoxical application of competition law to vulnerable workers” (Contouris and De Stefano, 2019).

The “personal work approach” allows to consider the labour law as “applicable to any person that is engaged by another to provide labour, unless that person is genuinely operating a business on her or his own account”.

The main idea addresses the evolution of labour markets and the many different ways of contracting work.

“These can range from the classic subordinate, bilateral, and continuous provision of employment, to more nuanced and complex forms of work, involving multiple parties and economic entities, and ultimately developing in the realm of autonomy and, in terms of their legal characterisation, self-employment”.

Moreover, the notion of self-employment covers a variety of situations.

“jumbling individual personal work profiles as diverse as that of the Deliveroo cyclist and the owner of the dental practice specialising in prosthetic dentures (both ‘owning’ their own ‘tools’). The category can go as far as including self-employed persons that hire their own employees, and that would be better understood as performing genuine entrepreneurial activities in an employer capacity”.

Implementing the personal work approach to collective rights, leads to distinguish between:

- self-employed workers who actually run a genuine business: they would be subject to antitrust law, ensuring no undue restriction of competition
- all other self-employed workers, including platform workers, who earn their living mainly or exclusively through their personal work — as opposed to the work of others, or the ownership and exploitation of substantial assets domestic workers clearly do not possess —

would thus enjoy their fundamental right to bargain collectively without undue interference from competition authorities

Observation

- The criterion here is the personal performance of the work, considered almost independently of economic dependence as such.

The International employment classification

To be able to study the various statuses increasingly developing, in between employment and the self-employment, a new international classification of status in employment has been discussed and adopted by the ICLS in 2018 (ICSE 18)¹⁷.

The main objectives were to be more accurate in studying employment statuses:

- Early statistical development measuring the dependent self-employed focused on self-employed who are dependent on one or a small number of economic units (clients) for their income.
- This approach excludes many workers, such as those in the digital economy, who have multiple clients but whose access to the market or access to raw materials is controlled by another entity.
- A broader notion of economic dependence whereby the person's access to the market is dependent on another entity.

Therefore, the proposal was a new statistical concept: the 'dependent contractor'.

'Dependent contractors' are defined as "workers who have contractual arrangements of a commercial nature (but not a contract of employment) to provide goods or services for or through another economic unit"¹⁸.

- They are not employees of that economic unit but are dependent on that unit for organisation and execution of the work, income, or for access to the market".
- They are workers employed for profit, who are dependent on another entity that exercises control over their productive activities and directly benefits from the work performed by them."

Overall:

- Their dependency may be of an operational nature or an economic nature such as through control over access to the market, the price for the goods produced or services provided, etc.
- The economic units on which they depend may be market or non-market units which benefit from a share in the proceeds of sales of goods or services produced by the dependent contractor.
- The activity of the dependent contractor would potentially be at risk in the event of termination of the contractual relationship with that economic unit.

Observations

- The ILO underlines that it is primarily a "statistical concept" and not a binding legal category;

¹⁷ ILO ICLS/20/2018/Room document 4: Data collection guidelines for ICSE-18

¹⁸ Id.

- This new category is not yet used in national statistics or collection of data, meaning that it is still difficult to identify this category of workers;
- Especially as in several aspects the 'dependent contractors' display characteristics similar to both, self-employed and employees;
 - "The unique difference in characteristics between dependent contractors and own-account workers in household market enterprises without employees is that dependent contractors are operationally and/or economically dependent on another entity that controls their activities. The following characteristics may be relevant for identifying the boundary between dependent contractors and own-account workers in household market enterprises without employees. a) their work is organized or supervised by another economic unit as a client, or as an entity that mediates access to clients b) the price paid for the goods produced or services provided is determined by the client or an intermediary c) access to raw materials, equipment or capital items is controlled by the client or an intermediary"* (ILO, 2018)
- In the classification of status in employment according to type of economic risk (ISCE-18-R), dependent contractors are considered as "workers in employment for profit" (such as: independent workers in household market enterprises, own-account workers in household market enterprises without employees) and not as "workers in employment for pay" (such as: owner-operators of corporations, Employees).
However, considering the type of remuneration, *"the situation of a dependent contractor can also be very similar to that of an employee: A dependent contractor could work exclusively for one business that is organising and supervising the work, in the same way as for an employee"*.

4 Concluding remarks

Importance to cover all forms of contracting work

- The current labour market situation in Europe reveals increasing variety of employment statuses and forms of contracting work, leading to several categories of workers not covered by social protection and labour rights traditionally related to the employee status.
- Labour rights and social protection have proved to be significant in mitigating the consequences of the crisis, economic and financial ones (as in 2008), but also broader ones, as the 2020 impacts of the COVID-19 pandemic on public health, economy and society in general illustrated.
- There is a widespread recognition of the need to guarantee an income and a voice to some workers who found themselves in self-employed 'formal' relationships. However, Member States willing to address the issue face the challenge to balance guaranteeing these rights and maintaining fair competition.

Complexity of identifying criteria

- Economic and organisational dependency criteria remain significant to allow for identifying vulnerable self-employed.
- Proposals of new categories allow for discussing the issues, but at this stage, remain short of implementation:
 - Genuine self-employment is not defined in the 'personal work approach';
 - The "rights and interests related to performing work that can be represented and defended by a trade union" remain to be defined, as the implementation of the Polish 2018 collective labour law is yet to come.
- The main complexity in finding the appropriate criteria for identifying the group of 'vulnerable self-employed' is linked to the multiplicity of factors that endanger the sustainability of self-employment and the livelihood of vulnerable self-employed.

Involvement of key stakeholders

- Regulatory decisions (and political willingness) are key to guarantee the move towards finding a way to protect workers in vulnerable self-employment relationships.
- The important protagonists are the local workplace actors - businesses and workers. They should be on board, discussing and agreeing the way regulation applies.
- However, it is worth noting in this regard, that some business models relying essentially on self-employed and freelance workers (platforms among them), when faced with workers' protective regulations implementation, could exit the market where the regulation applies.

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