



European Platform
tackling undeclared work

Tools and approaches to tackle undeclared work in the collaborative economy

Harald Hauben

Eftheia bvba, in cooperation with ICF

Learning resource paper from the thematic review workshop on
undeclared work in the collaborative economy

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1 INTRODUCTION

This report describes the outcomes of the online thematic review workshop on undeclared work in the collaborative economy, which took place on 19 and 20 May 2021. It complements several reports and events on undeclared work in the collaborative economy, which have been undertaken by the Platform in recent years, including the background paper that was prepared for the workshop.¹

The workshop was hosted online and brought together 37 participants from 17 countries, representing labour and social security inspectorates, ministries of labour as well as European level social partners, and representatives from Eurofound, the ILO, the European Commission and the European Labour Authority.

The two main objectives of the thematic review workshop were:

- **To explore the state of play and the main challenges in defining undeclared work in the collaborative economy:** to review the experiences of participating organisations on the prevalence, scale and key features of undeclared work in the collaborative economy;
- **To identify tools and approaches to tackle undeclared work in the collaborative economy at national level:** to explore existing solutions for preventing, identifying, deterring and sanctioning undeclared work in the collaborative economy in an efficient and effective way.

Undeclared work in the collaborative economy in a **cross-border context was not part of the agenda** and was raised only marginally by the participants during the workshop proceedings. This learning resource paper will hence only briefly touch upon this specific dimension.

2 UNDECLARED WORK IN THE COLLABORATIVE ECONOMY: CONCEPTS AND SCOPE

2.1 Defining the 'collaborative economy', platform work and digital labour platforms

There are currently **no harmonised definitions** on 'the collaborative economy', on 'platform work' and on 'digital labour platforms' (European Commission, 2020).²

The 'collaborative economy' concept typically refers to that part of the economy in which digital platforms or 'apps' facilitate the matching between the demand and supply (and hence the 'sharing') of unused (or under-used) goods and services. The concept has a not-for-profit connotation (e.g., when goods and services are shared between individuals in a private, non-professional capacity in return for a mere cost compensation) but global businesses (especially in the personal transportation and food delivery services) have based their commercial for-profit business models on the use of these digital technologies, challenging thereby the incumbents in traditional markets.

¹ European Platform Tackling Undeclared Work (2017) *Third plenary meeting of the European Platform tackling undeclared work: Report of the plenary and workshops relating to the collaborative economy*, European Platform Undeclared Work, Brussels; Heyes, J. and Newsome, K. (2018), *New Developments and Trends in Undeclared Work within the Sharing/Collaborative Economy*, European Platform Undeclared Work, Brussels; Williams, C.C. and Puts, E. (2019) *European Platform tackling undeclared work – 2019 Annual Platform Survey: tackling undeclared work in the collaborative economy and bogus self-employment, data exchange and data protection, and cross-border sanctions*, European Platform tackling undeclared work, Brussels; Williams, C.C., Llobera, M. and Horodnic, A. (2020) *Tackling undeclared work in the collaborative economy and bogus self-employment*, European Commission, Brussels; European Platform tackling undeclared work (2021) *Ninth plenary meeting of the European Platform tackling undeclared work: draft report on tackling undeclared work in the collaborative economy and related to new forms of work*, European Platform tackling undeclared work, Brussels; Hauben, H. (2021) *Input paper for the thematic review workshop on tackling undeclared work in the collaborative economy* European Platform Undeclared Work, Brussels.

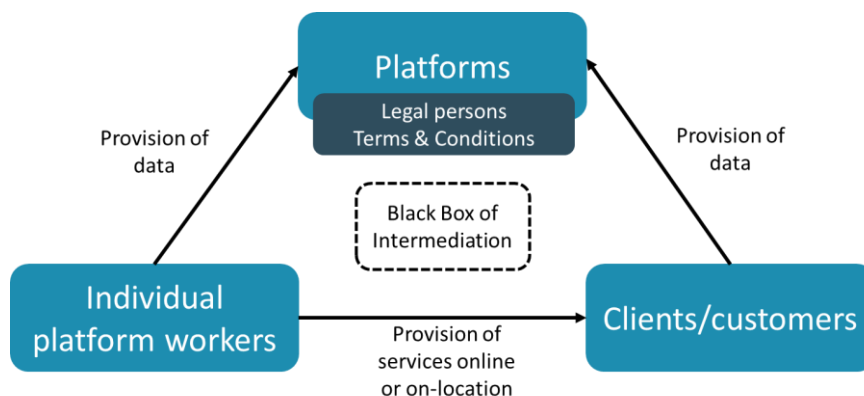
² European Commission (2020), *Study to gather evidence on the working conditions of platform workers*, available at: <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8280>.

The concept of 'platform work' used for the purposes of the thematic review workshop is referring to **services that are carried out by an individual for a user in exchange for payment. The matching between the demand and the supply of labour is facilitated by an online application or by technologies that are owned and operated by a business, the digital labour platform³, and these technologies often use algorithms and/or (semi-)automated decision-making.**

Most recent studies and policy papers identify the key characteristics of platform work as follows:⁴

- **triangular relationship: (at least) three parties are involved:** the digital platform, the user/client and the individual service provider or worker⁵; both the platform worker and the user/client share (personal) data and information with the platform; the user/client can either be a consumer or an undertaking;
- The work is (often) broken down **into small-scale tasks while work/services are provided on demand;**
- **Online apps and technologies facilitate, often through the use of algorithms and by means of (semi-)automated decisions:**
 - The **matching between demand and supply or the assignment of the tasks/work to individual persons;**
 - The **organisation of the tasks/work** in terms of the work division, ways of execution, timing and location; and/or
 - The **assessment and evaluation of the task/work performance** including through client ratings and feedback.

Figure 1. Platform work in a triangular relationship



Source: European Parliament (2020)⁶

³ In a recent May 2021 study from the European Commission, digital labour platforms are defined as 'private internet-based companies that act as intermediaries, with greater or lesser extent of control, for on-demand services requested by individual or corporate consumers' (European Commission, 2021)

⁴ Author's adaptation based on Fabo et al. (2017), Eurofound (2018), CEPS and IZA (2018), European Commission (2020), Hauben et.al. (2020) and Urzı Brancati (2020).

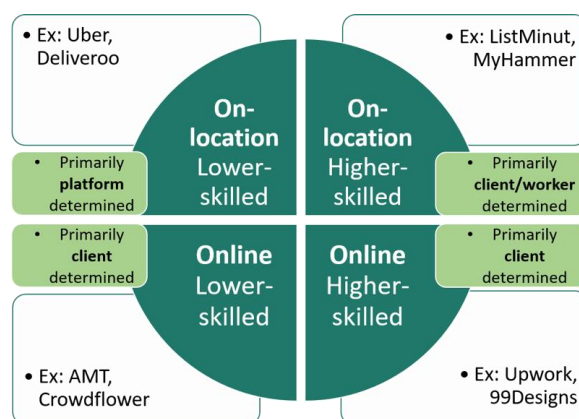
⁵ Worker' is used as a generic concept and is referring to the active labour market participants regardless of their employment status.

⁶ Hauben (ed.), H., Lenaerts K. and Waeyaert W., *The platform economy and precarious work*, Publication for the committee on Employment and Social Affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652734/IPOL_STU\(2020\)652734_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652734/IPOL_STU(2020)652734_EN.pdf)

When examining the types of platform work, **a basic distinction can be made between (1) on-location platform work** (platform work that is executed at the premises of the client, at home, 'on the road' or in public spaces e.g., passenger transport, deliveries of food and goods, personal and household services and domestic work) and **(2) online or web-based platform work** (e.g., work where tasks are not location-dependent and can be carried out via teleworking, including microwork tasks, translations, research assistance, data encoding, tagging pictures, IT or graphic design projects). Similarly, the most recent ILO study refers to location-based platforms and online web-based platforms (ILO, 2021).

In line with the approach taken in recent policy papers by Eurofound⁷, the European Commission⁸ and the European Parliament⁹, the following **four general types of platform work can be considered, distinguishing between online and on-location and between the need for higher or lower skilled labour**.

Figure 2. Platform work typology¹⁰



Source: European Commission (2020)¹¹

Whereas the policy and public debate and research have **mainly focused on the food delivery and passenger transport sectors, platform work concerns a much wider and growing variety of sectors and services** such as domestic and household services, (child-)care services, cleaning, repair work, translation, graphic design, software development, clerical work or online content review. Trade unions claim that there is no clear distinction in the operation of the platforms in different areas and that there is a need for a framework reassuring compliance across sectors.

The thematic review workshop revealed that, currently, **the food/parcel delivery and personal transportation sectors are the priority sectors of concern** for national enforcement agencies, in terms of undeclared work in the collaborative economy. In some Member States (e.g., Belgium and Spain) undeclared work in other economic sectors (e.g., cleaning services and care services) have recently come increasingly under focus.

Undeclared work in online platform work is currently not high on the agenda in Member States. However, participants from Eurofound and the ILO pointed out a growing trend of

⁷ Eurofound, *Employment and working conditions of selected types of platform work*, European Union, 2018. Available at:

https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef18001en.pdf.

⁸ European Commission, *ibid*.

⁹ Hauben (ed.), H., Lenaerts K. and Waeyaert W., *ibid*.

¹⁰ Examples are: on-location lower-skilled tasks: Uber, Lyft and BlaBlaCar (personal transport services), and Deliveroo, Foodora and Glovo (delivery services); on-location higher-skilled tasks: ListMinut, Book a Tiger and Helping (professional and household services), Care (care services) or Hilfr (cleaning services); online lower-skilled tasks: Amazon Mechanical Turk (AMT) and Clickworker (microwork platforms); online higher-skilled tasks: 99designs (graphic design), Gengo (translation services), GigNow (marketing, finance and cyber security), and TaskRabbit and Upwork (freelance work).

¹¹ European Commission, (2020), *ibid*.

(platform-driven) small-scale online microwork and unreported income from these small-scale activities.

The thematic review workshop revealed that at present a possible classification of **digital labour platforms as temporary work agencies is currently not perceived as a main challenge** in Member States (e.g., in Slovakia, Portugal, Denmark). However, participants believe that such a possible classification for some digital labour platforms as temporary work agencies and hence of people working through platforms as temporary agency workers **may become increasingly important** e.g. when the conditions of temporary agency work are being met in practice and a person working through a digital platform is employed by that digital platform (e.g. the temporary work agency) and assigned to a user undertaking. This would trigger the application of EU and national legislation on temporary work agencies including licensing requirements for temporary work agencies and may provide an additional entry point for enforcement agencies to conduct inspections.

2.2 Types of undeclared work noticeable in the collaborative economy and the extent of the problem

Undeclared work in the collaborative economy can take various forms, including:

- Illegal employment of persons who have no right to reside/work in the country;
- (Intentional and unintentional) bogus self-employment;
- Unregistered and unpaid working hours and incorrect classification of waiting or stand-by time (performed by employees);
- Fraudulent temporary agency work facilitated by digital labour platforms;
- Unreported income from small-scale own-account services or activities performed in the collaborative economy;
- (Intentional and unintentional) undeclared work carried out by genuine self-employed platform workers.

Illegal employment is a form of undeclared work that occurs in some Member States specifically in the food and parcel delivery sector. It typically concerns tasks that are facilitated by global digital labour platforms operating from abroad and require low-skilled labour. There are reports in some Member States which observe that food delivery and personal transportation services are locally increasingly being assigned by platforms to persons who have no right to work and/or to reside in the country : in **Finland**, the labour inspectorate identified food delivery riders in the Helsinki area who had no right to reside and work in Finland (Nordic Baltic Undeclared Work Project, 2021) whereas in **Spain**, the Labour and Social Security Inspectorate (ITSS) also reports cases of undeclared work performed by individuals who have no work permits or use fake identities.

Bogus self-employment in platform work is a much debated and contested phenomenon in several Member States. Bogus self-employment refers to situations involving persons/workers registered as self-employed whose conditions of employment are de facto dependent employment.¹² Depending on the specific situation, the platform worker can be employed by the platform (e.g. a ride hailing app) but also by the end-user, especially - but not only - when the latter is a company (e.g. clerical services, online content review but also cleaning services in private households) and when the platform worker is mainly or exclusively working for a single user. 'Crowdwork' or 'microwork' on the other hand is online platform work, often broken down into very small-scale tasks, which are commissioned by companies through platforms to a multitude of platform workers (the 'crowd'), who are often based around the globe.

¹² European Platform tackling undeclared work (2018), *Glossary of Terms*. Available at: <https://ec.europa.eu/social/main.jsp?catId=1323&langId=en>

Participants of the thematic review workshop almost unanimously considered bogus self-employment as the key challenge and principal form of undeclared work in the (national) collaborative economy. The labour and social security inspectorates of some Member States (e.g., Belgium, Italy, Spain and Sweden) have been very active in inspecting the employment status of people working through platforms and investigations have led in many instances to court cases. In a significant number of cases this has led to a re-classification of people working through platforms as employees.

Other forms of undeclared work in the collaborative economy such as unreported income from small-scale activities or intentional or unintentional undeclared work by genuine self-employed, which is facilitated by platforms, **have not yet been the main focus of enforcement agencies** in most Member States. This may be because the mandate of labour, working environment and social security enforcement agencies is often limited to the traditional 'employment' relationships, impeding or restricting investigations aimed at inspecting self-employed persons or persons that earn income under special taxation regimes outside of their labour market status. However, some enforcement agencies such as the Work Environment Authority in Sweden and the Belgian Social Investigation and Information Service report on **inspections of self-employed companies** (Sweden) and of **platforms that are intermediating services through which individuals earn income under a special taxation regime outside of the labour market** (Belgium).

2.3 Extent of undeclared work in the platform economy

The 2019 Special Eurobarometer survey 498 on undeclared work¹³ finds that **11% of Europeans who report working undeclared, have done so via collaborative platforms for at least part of their activities** (Williams, C.C., 2020). Only 10% of these (0.6% of all Europeans) state that providing services via collaborative platforms represents their main source of income. Based on this, the proportion of EU citizens engaged in **bogus self-employment on collaborative platforms is estimated at 1%, at the very highest** (if all persons offering services regularly are indeed misclassified as self-employed) (Williams, C.C., 2020).

There is **currently no evidence on the number of digital labour platforms that qualify as private employment agencies or temporary work agencies** under national legislation in Member States but it occurs that in some Member States (e.g. the Netherlands), some digital labour platforms are functioning as temporary work agencies (Hauben, H. et al. 2021). The temporary agency industry is heterogeneously regulated and market structures vary across the EU, with several global private recruitment agency brands, alongside a multitude of smaller, local or regional agencies (with at least 80 000 TWAs existing in Europe, according to the World Employment Confederation Europe (Pavlovaite, I. 2020). There is evidence that points to the use of temporary work agencies when posting workers in a cross-border context e.g., for France 27% of the posted workers in 2017 went through TWAs (Pavlovaite, I., 2020). As has been mentioned above, temporary agency work has growing relevance for platform work in certain economic sectors. Non-compliance with national or European regulations on TWAs and undeclared work, nationally and in a cross-border context, may hence become an issue of growing concern for enforcement agencies.

The prevalence and extent of online platform work, which by definition can be carried out from anywhere, including from one's home, **is particularly unaccounted for in national statistics and in research**. Online platform work for platforms that are based in other Member States and/or in third countries point at the cross-border dimension of the phenomenon revealing questions on compliance with labour, social and taxation legislation for the persons engaged in platform work, the platforms and end-users.

¹³ European Commission (2019), Special Eurobarometer 498: Undeclared work in the European Union, available at: [Special Eurobarometer 498](#)

The platform economy may have **an impact on undeclared (genuine-) self-employment**. By breaking down previously larger tasks into multiple small-scale jobs, platforms appear to make it easier for those genuine self-employed who would anyway be intentionally non-compliant, to find markets for their services. There is also empirical evidence of unintentional non-compliance among genuine self-employed engaged by platforms. The 2018 Flash Barometer 467 survey on the use of the collaborative economy¹⁴ reveals that the most common problems witnessed by service providers operating in the platform economy include (Williams, C.C., 2020):

- lack of clarity on how to perform the services legally (22% of service providers);
- the complexities of the tax system (19%);
- the perception that it is complicated or difficult to provide the services legally (13%);
- lack of clarity about their employment status (9%).

The representative of **the Belgian Social Investigation and Information Service (SIIS/SIOD)**, reported on the challenges around providing a detailed picture on the prevalence and extent of undeclared work in the collaborative economy, as the available data are scattered between different public institutions. Based on the information available and experiences of the SIIS, the challenge is primarily centred in the hospitality and hotels, restaurants and catering (HORECA) sector, the personal transportation and food/parcel delivery sectors, financial services and services rendered at private homes such as gardening and small-scale repair works. The main forms of undeclared work are related to the absence of social security declarations, provision of services while receiving unemployment benefit or during periods of sickness, and bogus self-employment.

The **Swedish Work Environment Authority** noted a steady annual growth of the collaborative economy between 1% and 1.5% (prior to the pandemic) and points to challenges related to risk assessments and to the problem of the ex-post registration of assignments, e.g., work that is notified only after it has been completed. This has led to situations of work accidents of individuals engaged by a platform, not aware that the individual was working for/through the platform.

The **Spanish Labour and Social Security Inspectorate** observed a wide variety of platforms operating in Spain in a growing range of economic sectors. Recent actions have been targeting the cleaning sector and personal care services. New forms of undeclared work have arisen, such as fraudulent use of identities by asylum seekers, subcontracting and fraudulent 'co-operatives' and different types of abuses on labour, social security and OSH regulations.

During the working group discussions, several participants mentioned several **obstacles enforcement agencies are confronted with when tackling undeclared work in the collaborative economy**, especially when service providers carry out small gigs for different users. These characteristics pose very particular challenges for enforcement agencies and on-site inspections. Small-scale jobs that are performed on-location, imply **fast changing physical 'workplaces'** where the platform workers often spend little time. The **absence of data on the identity of platform workers** and on **the exact time and location where** the services will be provided, makes the planning of inspections very challenging. Enforcement agencies may furthermore **not have physical access to the workplaces** (e.g., when these are private homes or when work is performed in public places) and are **often prevented to be directly in touch with individual persons**. In this perspective, the Danish representative observed difficulties in locating the individual workers and inspecting the working environments of individuals who are working through platforms.

¹⁴ European Commission (2018), *Flash Eurobarometer 467: The use of the collaborative economy*, available at: [Eurobarometer 467](#)

3 RECENT NATIONAL LEGISLATIVE ACTIONS AIMED AT TACKLING UNDECLARED WORK IN THE COLLABORATIVE ECONOMY

Several Member States have **taken legislative initiatives** to tackle the challenge of undeclared work in the platform economy:

- Tax legislation addressing the **income of individuals for non-professional small-scale activities and/or for services** performed in the collaborative economy;
- Legislation **addressing and/or clarifying the employment status of people working through platforms**;
- Legislation **imposing the mandatory registration** of digital platforms;
- Legislation requiring **platforms to report on income** generated and/or paid to **people working through platforms**;
- Legislation imposing the **mandatory use of written contracts** in platform work;
- Legislation on **the working time definition which includes stand-by or on-duty time or on obligatory working time registration**;
- Legislation concerned with **specific sectors such as the individual passenger transportation sector**, often with a view to create a level playing field between traditional companies and digital platforms.

Examples of recent legislative developments for tackling undeclared work in the collaborative economy are presented below.

Box 1. Relevant legislative developments concerned with taxation of income generated through the collaborative economy and on mandatory registration and reporting

In Belgium, in 2016, the government introduced **specific tax legislation** with the main objective to **fight undeclared work for small-scale activities** that are performed occasionally in a non-professional capacity for another natural person in the 'collaborative economy'¹⁵. Individuals can carry out work that is intermediated by an authorized digital platform and the income is subject to lower income taxation rates. Income from occasional work in specific sectors of the regulated collaborative economy and which is performed by people working through platforms outside of their main profession, is subject to lower taxation rates as long as the income remains under an annual threshold of EUR 6 340 (fiscal year 2020), while this income is generally not subject to VAT.

According to the Social Investigation and Information Service, 108 platforms are currently authorised by the government to operate in the 'collaborative economy'. Some food delivery platforms have such an authorization and some of their riders make use of this system, while other platforms have not applied for the authorization. These other platforms engage their collaborators as self-employed or through interim agencies. For the year 2019, fiscal authorities report on about 18 458 individuals who made use of this system and who on average earned EUR 102 per month working through digital labour platforms. Since not all digital platforms rely on this tax benefit mechanism, the total number of digital platforms that are operational in Belgium is higher, estimated at about 150.

¹⁵ In Belgium, the collaborative economy is regulated by tax law and refers to a public measure allowing individuals to perform occasional 'on-location' work when performed for another natural person and hence not as their main professional occupation. The scope of the Belgian collaborative economy is hence narrower than the scope envisaged under the present thematic review.

The introduction in Belgium of the legislation obliging platforms to obtain an authorization and to report on the transactions and income that they have paid to individuals, has improved data collection on the identity, addresses and income of the individuals who have performed services through the facilitation of the registered platforms. However, since not all platforms and not all people working through platforms make use of this special income taxation system (as it is only applicable to secondary and occasional activities), the most important group of platform workers (those who perform platform work professionally and/or as their main profession) is not covered in the data collection and remains 'out of sight' for the enforcement agencies. The representative of the Belgian Social Investigation and Information Service furthermore observes that the collected data remain within the tax administration and that they are not necessarily shared or accessible for the labour and social security inspection agencies.

In France, a similar reporting obligation for platform businesses exists under the national taxation regime. The 2018 law against fraud¹⁶ obliges digital (labour) platforms¹⁷ (including those that are not registered in France) to notify the tax authorities when payments to people working through platforms exceed EUR 3 000 per year when the person concerned is resident in France and/or engaged in a taxable activity. The reporting obligation concerns the total number of transactions and the gross amount in a given calendar year and the information has to be provided to the tax authorities annually.

Furthermore, France has adjusted its Labour code in 2016 and installed a rebuttable presumption of the self-employed status for people working through platforms. In addition, France adopted statutory legislation which assigned social protection and labour rights to self-employed platform workers (such as mandatory work accidents insurance, access to training, right to take collective action and to representation).¹⁸

Bogus self-employment in platform work has primarily been the subject of the debate, research and interpretation by courts in the sectors of food/parcel delivery and personal transportation and to a far lesser extent in other economic sectors (Hauben H. et al. 2021): the employment status for services that are provided by individuals through platforms in areas such as graphic design, software development, legal or financial advice, translation (online platform work) or plumbing, repair works or gardening (on-location platform work) has received far less attention. In what regards other types of services, e.g. cleaning in private households, care services and domestic services, bogus self-employment might be a challenge in particular Member States but not necessarily systematically in all Member States. In the **Netherlands** domestic work services fall under a special regime and workers can be contracted for a maximum of three days a week by the client/household. Moreover, many Member States' taxation systems allow individuals to do occasional work and apply preferential tax rates on the income received. Many people working through platforms rely on these mechanisms mainly because the income from platform work remains additional income to top up their main professional earnings.

In addition to the above-mentioned delivery and personal transportation sectors, **bogus self-employment appears to be particularly relevant (1) in online crowdwork (microwork) and (2) when platform workers are exclusively providing services through only one platform and/or for a single user.** In those specific circumstances there may be an employment relationship between the individual person engaged in platform work and either the platform or the user.

¹⁶ Loi n° 2018-898 of 23 October 2018 on the fight against fraud.

¹⁷ The regime also applies to other platforms, e.g., those operating in the e-commerce business.

¹⁸ Law 2016-1088 of 8 august 2016 ('El-Khomri Law')

Some countries have adopted specific legislation addressing the employment status of people working through platforms, either generally or for specific sectors of the economy (e.g., for personal transportation or for delivery riders).

- The labour legislation of several Member States (e.g., Belgium, Spain, Croatia, Netherlands, Malta, Portugal, Slovenia) contains a **general legal presumption of the status of employee when certain criteria are met**, with the main aim to bring further clarity and reduce possible misclassification. This general legal presumption applies to all workers and is not specifically concerned with platform work (Hauben et. al., 2021).
- **France** has adjusted its Labour code in 2016 and installed a **rebuttable presumption of the self-employed status for people working through platforms** (see Box 1).
- **Spain** took a different path and adopted the Rider's law (see Box 2) amending the Workers' Statute and introducing a **rebuttable presumption of an employment relationship for riders in the food and parcel delivery sector**.
- Several Member States (e.g., Belgium, Spain, Portugal) established **criteria in their labour legislation or in administrative instructions in order to assess the existence of an employment relationship**. In several other countries, such assessment criteria are primarily developed by national courts.
- Some Member States have a **sort of third or intermediate category** (apart from the categories of employees and self-employed; e.g., Germany, Austria, UK) or a **subcategory of self-employed** (e.g., Italy and Spain) to which widened labour and social protection rights are assigned when compared to the genuine self-employed. Italy adjusted its labour legislation in 2019 with the specific aim to clarify the employment status of people working through platforms in the food delivery sector. They are now classified under the 'co-org'-status ('employer-organised worker'), which is different from the status of employee or the status of self-employed and which refers to a quasi-subordinated self-employed person whose work is fully determined by the client. Unlike what is the case for the genuine self-employed, the 'co-org' workers fall within the scope of the Italian labour legislation.

Box 2. Relevant legislative developments in Spain

Spain adopted the Rider's law in spring 2021¹⁹ amending the Workers' Statute and introducing a **rebuttable presumption of an employment relationship for riders in the food and parcel delivery sector**. Riders are presumed to be employees and it is the platforms which have to prove the opposite in cases of doubt on the employment status. Additionally, the law also introduces a right to algorithmic transparency.

Some Member States have installed (out-of-court) administrative procedures and commissions allowing platform (and other) workers to file a formal request for clarification on their employment status. In **Belgium**, the Administrative Commission on Labour Relations is established within the federal services for social security and issues administrative rulings on the employment status. These rulings are binding for the public administration but not for the courts, that ultimately decide. Several platform workers in the food delivery and personal transportation sectors have initiated proceedings before the Administrative Commission in the past years which have resulted in decisions on their (re-)classification as employees.

Bogus self-employment in the personal transportation and food delivery sectors has been the subject of **a series of court cases in Belgium, Germany, France, Italy, Spain and the Netherlands**. Many of these court proceedings were initiated by national trade unions and/or based on investigations conducted by enforcement agencies or inspectorates. The

¹⁹ Royal Decree-Law 9/2021 of 11 May 2021

outcome of these court cases has been varying, but a clear trend can be discerned that people working through personal transportation and to a lesser extent also through food/parcel delivery platforms are not being considered as self-employed by national judges but instead are reclassified as employees (or a third category) (Hauben, H. et. al 2021).

The **personal transportation including taxi services** has in many Member States been subject to specific legislation that aims at creating a level playing field between the traditional taxi companies and ride hailing apps.

Box 3. Relevant legislative developments in Portugal

In **Portugal**, new legislation was adopted in 2018 for ride-hailing apps in the personal transportation sector. Individual drivers cannot be contracted directly by digital platforms. Instead, intermediate legal persons (TVDE) conclude business contracts with the digital platform business while individual drivers are then contracted by these third intermediate parties as self-employed or as employees. The law obliges the TVDE to **conclude contracts in writing with the drivers and sets maximum daily and weekly working hours regardless of the employment status** while also requiring that instruments are applied in order to ensure compliance with working time regulation.

In several countries (e.g., Estonia, Poland), **legislation on personal transportation or taxi services** was amended to allow or sometimes ban) ride-hailing apps to enter the local markets. So e.g. in Estonia the requirement to have a taximeter or to have professional training were abolished in 2017, whereas e.g. in Poland, drivers of ride-hailing apps must have the same licence as drivers of traditional companies, while cars must have a sign and a taximeter (Hauben, H. et. al 2021).

Several workshop participants emphasised **the importance of increased or improved enforcement of existing EU and national legislation**. The Employers' representative from the World Employment Confederation-Europe (WEC) observed that platform businesses and platform work is very diverse and that there is no single solution to tackle undeclared work that fits all types of platform work. The legal instruments should be efficient and aimed at turning undeclared work into declared work, while new legislation should not hinder the job creation potential and innovative practices of digital companies. The enforcement of the existing national labour legislation and concepts of workers should be prioritised and applied to the individual cases and circumstances of people working through platforms.

ETUC expressed the need for **new legislation at EU level by means of a Directive establishing a rebuttable legal presumption of an employment** relationship where the burden of proof should be borne by the digital platform. The personal scope should encompass all workers, including non-standard workers and not only people who are working through digital platforms. ETUC furthermore calls on effective protection of labour and social protection rights of people working through platforms and on compliance by the digital platforms with prevailing labour, social security and tax legislation, including sectorial agreements negotiated in collective bargaining by social partners. The need for EU action was generally shared by the participants representing the national enforcement agencies, especially from those countries where thus far no specific legislation on platform work has been adopted (e.g., Czechia, Luxembourg, Portugal).

The need for **more legal clarity on the employment status of people working through platforms was considered by all participants to be of the highest priority**. Enforcement agencies from several Member States pointed out the critical role of legislation in out-of-court assessments on the employment status in platform work and for on-site investigations in preparation of court proceedings. Participants confirmed that the national concepts of 'employee' in national labour and social protection legislation is defined in rather broad terms and that platform work practices are challenging these definitions and concepts, shifting the interpretation responsibility to enforcement agencies.

In this regard, the ILO representative pointed at the **global dimension of the digital platform businesses** and the need for international dialogue and for common guidelines to support authorities to tackle undeclared work, among other issues.

4 TOOLS AND APPROACHES TO TACKLE UNDECLARED WORK IN THE COLLABORATIVE ECONOMY AT NATIONAL LEVEL

4.1 Main tools and approaches adopted at national level *to detect and deter undeclared work in the platform economy*

Participants to the workshop identified the detection and identification of platform businesses established in other countries than those where their services are offered to residents of the latter Member State as one of the key challenges for enforcement agencies. Global businesses operating simultaneously in several countries, may take advantage of the differences between the national taxation systems and shift their profits to jurisdictions with a more attractive tax treatment of the taxable events or transactions.

At the same time, there was consensus among the participants that the **detection and identification of the individuals engaged in platform work, who have agreed to accept a job or have opened an account online also posed a challenge for enforcement agencies.** The way work agreements are concluded, a process which in platform work, is typically done online and through automated procedures, may not comply with the legal notification requirements that are established in traditional labour markets when employment contracts are concerned. The commencement of the work, the duration and end date as well as working time in platform work, are not reported to the authorities entrusted with tax and social contribution collection and to labour and social protection enforcement agencies. Such notification is however key to the data collection and basis for control on compliance.

In order to **collect data** on the number and type of platform businesses, the income generated by these platforms and the payments made to individual service providers **national authorities in some Member States (e.g., Belgium, France) have initiated mandatory authorisation systems or mandatory reporting on income. A registration or licensing obligation of digital labour platforms combined with the mandatory reporting on income paid, was viewed by the participants as an appropriate and effective measure with a view to detect and tackle undeclared work in the collaborative economy and improve the data collection on platform work and as an adequate basis for various inspection actions such as data mining and on-site inspections.**

Data on platform companies and on individuals working through digital labour platforms are **often collected and/or maintained by the national tax authorities**, but the data are not always accessible to labour and social security enforcement agencies. GDPR rules are often considered as an impediment to effective data sharing between national agencies.

Enhancing the capacities of inspectors and the **quality of inspections** targeting undeclared work in the collaborative economy has been a priority for enforcement agencies. In **Spain** a Unit at the Central Services specialized in social security issues coordinates and supports the Regional Inspectorates when an investigation affects more than one region. A specific internal guide for inspectors was developed and specific training on collaborative economy provided. In **Belgium** a common methodology has been developed for inspecting companies that are active in the collaborative economy (see Box 4).

Box 4. The common methodology for the Federal Inspectorates in Belgium

The Federal Inspectorates in Belgium have developed a common methodology for investigating cases of undeclared work in the collaborative economy. The social inspectors verify the professional status of the provider and the recipient acting within the framework and the conditions of the authorised platform. In Belgium, individual

service providers are not allowed to offer via collaborative platforms the same services they are performing in their professional activity (i.e., a professional plumber cannot offer plumbing services via an authorised platform). This condition was introduced to avoid unfair competition between the collaborative economy and the traditional one.

The Social Inspectorate also verifies the nature of the platforms to determine if they are so-called mixed platforms, where both professional and non-professional providers can offer their services.

Based on the findings, the inspectors then determine if the employment relationship between the platforms and the workers is in accordance with national regulations.

Increased co-operation and procedures between the tax administrations and the labour, working environment and social security enforcement agencies is widely considered to be critical in tackling undeclared work in the collaborative economy. **National statistical offices and research institutes are increasingly applying common definitions on platform work and implementing targeted surveys which reveal more accurate estimates on the scope and volume of platform work.** In the Netherlands, joint research by key national research institutes in 2020 applied innovative methodologies (such as web scraping) in order to measure the extent of platform work through digital labour platforms revealing quite accurate findings: about 125 digital labour platforms were active in the Netherlands, out of which 75% intermediated on-location platform work and 25% on online platform work, for an estimated total number of 84 000 platform workers.²⁰

A **particular challenge** in platform work is **that many platform workers have no written contract with the platform business** as the co-operation agreement is most often concluded by means of accepting the terms and conditions online through a simple 'click and agree' button. National authorities have tackled this matter through legislative measures such as **Portugal**, which in 2018 introduced by law the obligation that drivers of ride hailing apps should have a written contract (regardless of their employment status). At EU level, the 2019 Directive on transparent and predictable working conditions²¹ addresses the need for **an extended written information obligation on the part of employers** and has improved the rights of (platform) workers in cases of contract termination. However, the Directive only applies to **platform workers who are in an employment relationship** with the platform or client and does not cover self-employed platform workers (Hauben, H. et al, 2020)

Stand-by time and waiting time in-between gigs, while remaining connected online with the digital application, has systematically been reported as a **key challenge** in platform work as it is systematically not being remunerated for by the platform businesses. This raises questions on the application of working time registration in platform work and the compliance with the working time related provisions in European and national labour legislation, including those on maximum daily and weekly working hours, rest time, night work and holidays.

Platform businesses increasingly apply piece-rate payments (e.g., per parcel, per delivery, per task) instead of hour-based remuneration systems while these payments may be below the minimum wages established at national or sectoral level. Compliance with national regulatory frameworks on working time and minimum pay rates is closely connected with the employment status of the platform worker. Working time and remuneration of employees is subject to European and national labour legislation, often complemented by national or sectoral collective agreements. Self-employed on the other

²⁰ SEO Economisch Onderzoek (<https://www.seo.nl/>), an independent research institute at the University of Amsterdam, conducted two targeted surveys in 2017 and 2020; *Statistics Netherlands (CBS)* conducted in 2020 a survey on the activities of 179 identified platforms, which are operational and have a legal establishment in the Netherlands; The *Dutch Social and Economic Council (SER)*, which is advising government and the parliament, published late 2020 an extensive study on the functioning of the platform economy in the Netherlands, with particular attention to the digital labour platforms.

²¹ Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L186/105 11.07.2019).

hand are bound by contract or civil law and by the will of the contracting parties. Member States have **regulatory frameworks that make working time registration obligatory for employers**. There is currently however no evidence on the extent to which this obligation has been specifically applied to employing digital labour platforms, which by definition and through the use of digital technologies have the means to accurately measure working time (and online connection time) spent by their platform workers. However, in **Finland** the labour inspectorate recently requested food delivery platforms to install a working time register following a reclassification decision by the Labour Council. In what regards minimum pay rates to self-employed platform workers, some Member States have started legislative initiatives. For example, in **France**, the Transportation Code was amended in 2019 determining that minimum payments per ride have to be ensured for the self-employed drivers of digital platforms.

On-site inspections by the enforcement agencies are another means to detect undeclared work in the platform economy. **Platform work prompting undeclared work is increasingly being considered as a priority area for enforcement agencies in several Member States**. Whereas in some Member States (e.g., Italy, Poland, Spain) the focus of the inspections was mainly laid on the employment status of workers in the food and personal transport sectors in connection with several national court cases, the scope of the investigations is increasingly widened in several Member States and includes compliance with working time registration legislation in platform work (Finland, the Netherlands), underpayments (the Netherlands), compliance by companies engaging self-employed persons (Sweden) and compliance with the legislation on temporary work agencies (the Netherlands).

Box 5. Examples of practices detecting undeclared work in the collaborative economy

In **Sweden**, the Work Environment Authority carried out 25 inspections under a pilot programme that was commissioned by the government and is aiming at assessing whether the existing working environment legislation is fit for purpose in the context of digital platform work and on the operations of self-employment companies.

- In **Finland**, the labour inspection carried out on-site inspections in the food delivery sector and asked for an opinion of the Labour Council which in late 2020, ruled in favour of an employment relationship. The Inspectorate subsequently provided the inspection reports to the companies concerned requiring that, by the end of May 2021, they **establish a working hour register** for workers in accordance with the Working Hours Act which is applicable to employment relationships. As the decision is not legally binding, it remains to be seen whether the food delivery platforms will comply or whether they will challenge the decision before the administrative courts (Nordic Baltic Undeclared Work Project, 2021).
- In **Italy**, the 2020 annual programme document released by the labour inspectorate (INL) (*Documento di programmazione della vigilanza per il 2020*), identifies platform work as a priority area of intervention. A first inspection campaign by INL in the Milan area was launched during one of the pandemic peaks (early May 2020). The first national inspection campaign in the food-delivery sector was also implemented in the days immediately following the decision of the Tribunal of Milan on a food delivery case. On the basis of investigations by the labour inspectorates, criminal proceedings against four food delivery platform businesses in Italy resulted in early 2021 in a fine totalling EUR 733 million. About 60 000 riders who worked during 2017-2020 as self-employed for the platforms were 'reclassified'.
- The Inspection Social Affairs and Employment of **the Netherlands**, reported late 2019 on its **ongoing inspections in the platform economy focussing on undeclared/illegal work and underpayment**, compliance with equal treatment legislation concerning pay applicable to **temporary agency work** in

the sectors of food delivery, cleaning and hospitality, the growing use of service contracts instead of employment contracts, and the deployment of child labour by platforms disregarding nightwork and working time legislation (Hauben H. et al., 2021). In its annual plan for 2021, the Inspection announced specific investigations in the food and parcel delivery sectors and the distribution centres focusing on compliance with **working time regulations, fair payment** and legislation concerned with working conditions, and additional quantitative research in the cleaning and temporary agency work sectors.

- In **Poland**, the National Labour Inspectorate conducted two inspections of Uber in 2019 as well as 27 inspections of entities cooperating with the Uber group and in other companies active in the sector of passenger transport and food delivery via an electronic service platform. These inspections were carried out by labour inspectors from 11 Regional Labour Inspectorates.
- In **Spain**, the Plan for Decent Work launched in 2018, includes specific measures to combat bogus self-employment in digital platforms and e-commerce. The Labour and Social Security Inspectorate and the Social Security Office are working closely together to identify and re-classify bogus self-employed in digital platforms. By the end of 2021, about 650 investigations of digital platforms will have been conducted since the launch of the campaign in 2018, affecting about 20 000 workers who will have been re-classified as employees. The total amount of social security contributions that is being reclaimed from the platforms by the Inspectorate is currently exceeding EUR 31 000 000.

Most of the services in the platform economy are physically not carried out in a traditional workplace but instead in public places or in private households. During the workshop questions were raised to what extent enforcement agencies can inspect individuals in public places and/or whether private premises are accessible to the labour and social security enforcement agencies. In many countries, only the police can enter private homes or other restrictions apply such as the need to have an authorisation by a judge. In **Slovakia**, the labour inspectorate has agreements with the police allowing them to stop riders in the streets in the presence of the police, whereas in Denmark, the labour inspectorates do not have the mandate to stop individuals in public streets. New and enforced **multi-agency approaches between the national inspection agencies and other public bodies including the police and public prosecutors are of critical importance in tackling undeclared work in the collaborative economy.**

There are reports of **finances and penalties** that were imposed on digital labour platforms in cases of bogus self-employment of riders and drivers in some Member States. In **Italy** and **Spain**, heavy fines have been applied on top of the collection of social security contributions from platform businesses in cases of bogus self-employment. In **Belgium**, the absence of fines as a deterrence measure when inspecting platforms in the collaborative economy is regretted by the inspection services.

Less information is available on other measures aiming at the deterrence of undeclared work in the platform economy. Such measures could include the **temporary suspension of operations** of the digital labour platform or **permanent closure**. In Spain, labour inspectorates challenged the legality of a 'temporary work agency' and 'cooperative' for self-employed workers (European Commission, 2020).

4.2 Main tools and approaches adopted at national level to *prevent* undeclared work in the collaborative economy

Preventative measures aimed at tackling undeclared and underdeclared work among geographically spread and dispersed platform workers **are considered critical to address undeclared work in the collaborative economy.** The range of preventative approaches, spans from information provision by the platforms to enabling legislation, to the role of the social partners. However, the available information regarding such

preventative measures that are currently used in the Member States is very limited or fragmented.

The **role of social partners** in adopting and/or supporting preventative measures is considered crucial.

Traditional trade unions face difficulties reaching out to people working through digital platforms, often because of their very individualised work situation. They are **often not organised** in representative bodies. In situations of genuine self-employment an additional impediment is caused by the perceived restrictions on the right of self-employed to associate or join trade unions due to prevailing competition rules.

There are nevertheless several **preventative measures** aimed at tackling undeclared work in the collaborative economy initiated **by the traditional trade unions but also by new associations of self-employed platform workers**. In some Member States, traditional workers' organisations have opened up membership to solo self-employed (including to people working through platforms), especially in the food delivery sectors, or set up specific information services for self-employed individuals working through digital platforms since the demands are very similar to workers in other sectors. (Self-employed) individuals who are working through digital platforms have also set up their own associations in several Member States.

On the other hand, **platforms are also often not represented in the employers' associations** and not participating in the established social dialogue mechanisms. There are, however, exceptions such as a certain platform in Norway²², which joined the employer's organisation in 2019 and concluded a collective agreement with the Transport Union and a platform facilitating cleaning services in Denmark.

National and regional authorities are also involved in specific actions that aim at **awareness raising and information provision**: the city of Bologna adopted a voluntary Charter on the fundamental rights of digital workers in an urban area whereas the region of Lazio in Italy maintains an online register of platform workers and platforms and provides additional online information on the rights of platform workers.

Preventative measures aimed at tackling undeclared work in the collaborative economy also include the **simplification of administrative procedures** for (solo) self-employed persons who work through platforms. An example of such measure is presented in Box 6.

Box 6. Cooperation between the tax authority and digital platforms in Estonia

Estonia introduced new regulations facilitating persons who are working through platforms **to pay their taxes in a simplified way**.

Based on an agreement between the tax authorities and the platform business, the latter transfers data on transactions and income paid to the platform workers on to the tax authorities after explicit agreement of the individual concerned. Based on the received information, the tax authorities issue **pre-filled income tax declarations** for the individual platform worker.

During the workshop discussions, participants pointed out that legislation that clarifies the employment relationship and puts the burden of proof that a person working through digital platforms can be treated as a self-employed on the platform, can reduce undeclared work in the collaborative economy.

Another issue discussed around preventative activities is whether such actions are voluntary or mandatory. In examples where platforms must report lists of their service

²² Foodora in Norway employs its riders as employees or as self-employed.

providers, and their income, the question arises whether this should be voluntary or mandatory.

5 CROSS-BORDER DIMENSION OF UNDECLARED WORK IN COLLABORATIVE ECONOMY

Cross-border platform work has not yet received much attention in the policy debate at EU level and in individual Member States and has not been subject to in-depth research.

'Borders' do not necessarily matter for platforms, which can basically be operated from anywhere without having a legal establishment in the EU. On-location platform work can be performed for a foreign platform while the individual services can also be performed across borders. On-line platform work is by definition boundless and can be performed from anywhere, from home, in public places but also by digital nomads or highly mobile workers who move regularly/constantly across the EU while the end-user may be a company or private individual based in the same or yet another third country inside or outside the EU.

While already pure national forms of platform work are associated with substantial risk for un and under-declared work, this risk increases further with cross-border situations coming into play as **cross-border (online and on-location) platform work raises many questions in terms of the applicable legislation in several areas such as applicable contract law, labour legislation, social security rights and taxation.** Whereas these matters are in part regulated by international and EU legislation, they require some updating and fine-tuning to take account of highly mobile (including platform) workers. The previous is revealing: (1) the high complexity of the legal framework that is applicable in cross-border situations but equally (2) the high probability of (intentional or unintentional) undeclared work and (3) the challenges for enforcement agencies to detect, prevent and deter undeclared work in these specific cases of cross-border platform work.

At the moment, there is little evidence of cross-border co-operation in view of tackling undeclared work in the platform economy.

6 KEY LEARNING OUTCOMES AND PRACTICAL RECOMMENDATIONS

6.1 Knowledge base needs further development

Individual **cases and examples of undeclared work in the collaborative economy have been identified** in some Member States during the workshop, but they concern primarily cases of bogus self-employment in the food delivery and personal transportation sectors.

Bogus self-employment is considered by the workshop participants to be the key challenge and this has led several Member states to national legislative and administrative actions focused on the national concepts of 'workers' or 'employees'. In Member States where undeclared work in the collaborative economy - including bogus self-employment- has not been on the agenda, this may change in the foreseeable future due to the expected steady increase and spread of platform work.

More **robust evidence is needed on the scale and features of other forms of undeclared work in the collaborative economy** in the national context such as on:

- Undeclared work in other economic sectors than in the food delivery and personal transportation sectors (parcel delivery, household services, personal care services, content review services, ..);
- Other forms of undeclared work than bogus self-employment such as intentional and unintentional undeclared work carried out by genuine self-employed, fraudulent temporary agency work facilitated by digital labour platforms and unreported

income from small-scale services or activities performed in the collaborative economy;

- Online platform work;

The **detection and identification of both the individual service providers** (people working through platforms) and **of the platform businesses** poses particular challenges for enforcement agencies, which requires new and innovative approaches which are different than those applied in the traditional economy. Atypical workplaces, dispersed workforce and the low representation of people working through platforms and of the platform business may further impede the identification processes.

There is currently **little or fragmented evidence on preventative measures** aimed at tackling undeclared and underdeclared work in the collaborative economy, while this is considered a critical priority by the participants to the workshop. The role and involvement of the social partners in preventative approaches needs to be enhanced.

(Undeclared work in) **cross-border platform work** has thus far not received sufficient attention in research and by national policy makers and enforcement agencies.

6.2 Successful national tools

Several Member States have taken **legislative action to tackle the challenge of bogus self-employment** in the collaborative economy by further defining the concept of (platform) worker or by establishing a legal presumption of employment status, whereas national judiciaries in some Member States have extensively assessed the factual circumstances in which people working through platforms in the food delivery and personal transportation are working in order to determine the employment relationship. Some Member States have adopted legislation regarding the working conditions of people working through platforms including on OSH and on collective representation.

Mandatory registration of digital platforms and reporting on income has worked in Belgium and France as mechanisms to identify platform businesses and people working through platforms including on their income. National tax authorities are entrusted with the data collection and management of these databases.

On-site inspections by enforcement agencies with a view to detect undeclared work in the collaborative economy are increasingly carried out in several Member States (e.g., in Belgium, Finland, Italy, Spain, Poland, Sweden, the Netherlands) in diverse economic sectors and using inspection guides and procedures. **Fines and penalties** have proved to be most effective deterrence measures in some Member States (e.g. Italy and Spain).

Pro-active direct **co-operation between national (tax) authorities and platform businesses** (e.g., Estonia) with a view to produce standardised income tax declarations of people working through platforms appears to be a successful model of practice in view of tackling undeclared work in the collaborative economy.

6.3 Recommendations

At **national level**, support with addressing undeclared work in the collaborative economy could consist of:

- Expanding the *knowledge base and exchange of information* on the nature, extent and size of the issue and more in particular on undeclared work in the collaborative economy: (1) in other economic sectors than the food delivery and personal transportation sector, (2) concerning other forms of undeclared work than bogus self-employment and (3) regarding online platform work;
- Mutual *learning on the concept of 'worker'* applied at EU level and in the Member States with a focus on interpretations by CJEU, national judges and enforcement agencies, may help to streamline common approaches in tackling undeclared work in the collaborative economy by national enforcement agencies

- *Sharing practical experiences* especially on preventative approaches, on inspection procedures and on multi-agency approaches (involving police forces) aimed at tackling undeclared work in the collaborative economy;
- *Expanding the knowledge and exchange information* on approaches, practices and tools relating to the detecting of undeclared work in a teleworking / home-working dimension, which in terms of the relatively unknown online platform work, is becoming a key area of focus for enforcement agencies;

To take forward the learning from this workshop, at **the European Level**, focus could be on increasing knowledge and exchange of information about the problem of undeclared work in the collaborative economy:

- *Research on the scale and characteristics of cross-border platform work* (on-location and online) and the legislative challenges it is triggering at EU and national level;
- Explore *bilateral cooperation* in the area of undeclared work in the collaborative economy in a cross-border context.
- Maintaining and updating a *database on digital labour platforms* operating in the EU as a unique source of information (provision).²³
- *A study on solo self-employed who are dependent on digital labour platforms in the Member States* and on the specific challenges in terms of undeclared work this is bringing about. The study may also examine the cross-border dimension into its remit including the role of cross-border temporary agency work in the collaborative economy and possible interactions between the cross-border provision of services and of labour, where solo self-employed are concerned.
- The development and conclusion of specific MoUs and procedures for data exchanges and the preparation and execution of joint inspections between the different labour and social protection enforcement agencies on the one hand, and tax authorities on the other, may be a specific area of focus for additional actions by the Platform such as the sharing of practical examples of MoUs and peer learning on multi-agency approaches (both horizontally and vertically) between these agencies operating at different levels of the administration
- Anticipate on the *projected increased administrative co-operation between the national tax administrations on the exchange of data* relevant for the collaborative economy (single registration of platforms and exchange of information on income).²⁴

²³ European Commission (2021), *Digital Labour Platforms in the EU: mapping and business models*, Luxembourg: Publications Office of the European Union available at: <https://www.ceps.eu/ceps-publications/digital-labour-platforms-in-the-eu/>

²⁴ <https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:52020PC0314>

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