

# Employment status of gig companies working force in EU/EEA member states



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## INTRODUCTION

The present analysis has been conducted to analyse the various approaches towards regulation of gig economy workers across EU/EEA area and provide conclusions on the possible developments in the field in the nearest future. The experts have summarized the existing information in the respective jurisdictions based on the questions in the template. The template has been developed based on the study conducted by PWC Global in 2019. The resources used for the composition of the research are given in the Annex I.

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1. Are the workers in the gig economy in Austria classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

In Austria, workers in the gig economy are classified as:

1. freelance contractors;
2. new self-employed workers;
3. "traditional" self-employed workers (i. e. one-person company).

It is a common feature of these categories of 'atypical' workers that they do not employ other people and mostly work for only one (main) client. In reality, their working situation largely resembles that of 'dependent' employees, although they are – at least in certain respects – legally treated as self-employed workers.

There is no uniform and clear-cut legal definition of 'self-employed workers' in Austria. Rather, there are several distinct forms of employment relationships, which come close to the concept of 'self-employed workers'.

The drivers of the ride-sharing apps usually are employees of the fleet companies and the food delivery riders, although not being employees in the traditional sense, have reached a collective bargaining agreement with the employers.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

Employee: people who have a commitment to their employer to perform work due to an employment contract. Essential characteristics of an employment relationship are the following:

- Personal dependence on the part of the employee (placement in the organization of the company;
- being subject to directives of the employer,
- control,
- disciplinary responsibility,
- personal service obligation),
- economic dependence on the part of the employee,
- right of salary (not an obligatory criterion).

Freelance contractors/ Free service contract' workers: In a free labour contract the "employee" is not personally dependent on the "employer" (e.g., he can set his working time by himself, he works with his own equipment etc.). Only a few labour laws apply to free labour contracts. Freelancers are responsible for payment of taxes and social security contributions themselves. Freelancers have little or no personal dependency, can usually be represented, are not integrated into the organization of the company, can use their own work equipment, do not guarantee success and are usually paid by the hour.

New self-employed worker: the category comprises all commercial activities for which a trade license (Gewerbeschein) is not required (e.g. writers, consultants, translators, lecturers, psychotherapists). Typical features of new self-employed worker: personal and economic independence from the commissioning party, the activity does not have to be carried out personally (right of representation by third parties), the contractor uses his own work equipment and is not involved in the organization of the person ordering the work. The contract for work and services is fulfilled when the work has been performed. The completion of the agreed work or the occurrence of success means the automatic termination of the contractual obligation.

'Traditional' self-employed worker (i. e. one-person company): persons (i.e. 'one-person companies') holding a trade license which can be assigned to the category of 'economically dependent self-employed workers'. "Traditional" self-employed worker has similar features as "new self-employed worker".

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

Employers often expect cost savings when concluding service contracts (Werkvertrag) or freelance contracts (Freier Dienstvertrag) instead of "regular" employment contracts (Dienstvertrag). Among other things, freelancers and independent contractors are not subject to minimum wages, special payments, paid vacation leave or overtime pay, statutory termination periods or working time restrictions. Furthermore, no payroll tax or social security contributions need to be paid for independent contractors.

The conclusion of a service or freelance contract with a person who is actually working as a regular employee may therefore result in severe financial exposure for the employer, as the employee is likely to claim subsequently additional payments. In addition, social security contributions and taxes (including financial penalties) would be due and payable. Penalty fees under the Austrian Law against Wage and Social Dumping of up to EUR 50,000 may be imposed.

The Supreme Court has ruled that an employee may invoke his or her "true" employment status, even if he or she agreed to false labelling of the work relationship (Supreme Court, OGH 11 October 2007, 8 ObA 58 49/07z). The court argued that the employer's behaviour violated the principle of bona fide or 'good faith'. As a consequence, the employee was able to invoke the true employment status of the work relationship at any time within the limitation period, and the employer was obliged to bear the cost of retrospectively paying wages in accordance with the collective agreement and compensating the worker for other entitlements such, as leave, sick pay, etc.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

It is not common to hire drivers and riders via employment companies in Austria.

In Austria, agency workers can be both employees and persons having the characteristics of an employee. In the case of employees, a contract of employment is concluded between the employee and the employer company (which hires out the employee). In contrast, persons having the characteristics of an employee are not covered by a contract of employment but work by order and for account of the quasi-employer, either as 'free service contract' workers (freie DienstnehmerInnen) or as holders of a 'contract for work' (Werkvertrag), whose common feature is being economically dependent despite their formal status as self-employed persons.

The agency is obliged to register the temporary agency worker with the relevant social insurance institution.

The employment of agency workers is, by international standards, highly regulated, by both a specific Temporary Employment Act (AÜG) and a sector-specific collective agreement.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

No, it is not common for the delivery riders and drivers to establish own personal services companies.

Independent contractors with their own personal services companies are called self – employed workers. There is no difference in the social security regime of genuine self-employed persons with no employees and self-employed persons with employees. With regard to employees, they are all insured under the terms of the ASVG. The end user has no employment responsibilities/obligations. Self-employed persons are responsible for paying income tax on their own. Tax liability depends on the taxable annual income. If this amounts to more than 11,000 euros, the income must be taxed.

When starting self-employment for the first time, a tax number must be applied for at the relevant tax office. There are no additional obligations for the end user.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

Austrian study which was carried out by the University of Hertfordshire and Ipsos MORI, in association with the Foundation for European Progressive Studies (FEPS), UNI Europa and AK Wien shows that gig economy is on the rise. A substantial Austrian minority (18%) earns today a significant part of its income through sharing economy platforms such as Upwork, Uber or Handy, although this income is often modest.

Austria is a heavily unionised country and it became the first country worldwide where the collective bargaining of bicycle delivery riders was concluded, with the riders getting minimum wage of €1,506 and compensation for the use of their vehicles and mobile phones since January 2020.

1. Are the workers in the gig economy in Belgium classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

The relevant legal practice in Belgian jurisdiction is quite discrepant. From one hand, in 2019 Brussels Labour Court has cancelled an earlier decision of the Administrative Commission for Employment Regulation on the relationship between Deliveroo couriers, which had defined it as rather an employment than something less stable. From the other hand, the legal reasoning behind the decision was the social inspection of the app to be still in progress while the decision was carried out, thus the procedure was breached. Most importantly, according to the Belgian Court of Cassation of 2007, 'the fact that the parties have purported to classify their agreement as one between independent contractors does not establish a legal presumption that the contract concerned is not an employment contract'.

The employment status of ride-sharing drivers in Belgium has been examined in 2015 by the National Social Security Office and the authority has concluded that they are independent contractors. Local digital platforms have introduced 2 types of contracts - peer-to-peer (P2P) and self-employed. Subsequently, the government has raised the taxation rates for P2P, and self-employed status is prevailing, implying that workers paying their social benefits themselves, which still doesn't get access to healthcare, overtime pay and vacations (around 20% of income, according to Deliveroo).

According to the judgement in the latest case against the UberX in 2019, the company has managed to prove that their drivers are self-employed as well.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

Pursuant to Art. 333 of the Labour Relations Act, the employment status depends on:

- the will of the parties as expressed in their agreement [...];
- the freedom to organize working time;
- freedom to organize work itself;
- the possibility of exercising hierarchical control.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

According to the Belgian Social Criminal Code, a 'social fraud' is a complex set of infringements which have an impact on the social security system and includes inter alia non-declared or partial declaration to the Social Security Fund. The employer may be demanded to pay full social benefits and compensations. The size of administrative fine for the employer can reach from 80 to 24 000 euros, which depends on the level of the infringement.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

The 'SMart' agency used to be a popular intermediary to hire students for ride-sharing apps and secure their income. Anyhow, according to the study by European Trade Union Institute, Deliveroo has terminated the cooperation as soon as the government has introduced a new tax incentive for self-employed workers.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

No, it is not.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

The gig economy workers' status has been highlighted in the political agenda after the public scandal over the story of a Deliveroo driver who became homeless after a collar bone injury in 2020. There is no consensus yet on the issue since the parties are waiting for the final court decision on the legality of Administrative Commission for Employment Regulation ruling.

The ride-sharing app business is also under heavy pressure from the perspectives of new licensing rules and zero-emission ride goals of the communities.



## BULGARIA

1. Are the workers in the gig economy in Bulgaria classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

The workers in the gig economy in Bulgaria are not categorized strictly, depending on the nature of the work or the contracts which they utilize; they could be categorized as either employees, self-employed or entrepreneurs (sole proprietors). In practice, the basic forms of employment for workers in the gig economy are self-employment and entrepreneurship.

Standard forms of employment and labour legislation in Bulgaria for the gig economy has not been developed. In addition, there is as of yet, no organized social protection of workers in the platform economy in Bulgaria.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

The Bulgarian labour law governs only the provision of employees' labour to an employer. One of the characteristics of this relationship is that the employer is the economically stronger party, with the employees being in a state of dependence on the employer. Employees must have an employment contract with the employer. The contents of the employment contract may vary.

Other individuals who provide services to an employer (in its capacity as a contractor, not an employee) are in a civil, and not an employment relationship with the employer. These individuals, who can include the self-employed, freelancers, independent contractors, registered executives of the company, and so on, provide their services for a specific matter, and do not form part of the employer's labour force.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

To secure the protection of dependent employees, Bulgarian labour law provides that if a contract with an independent service provider conceals an actual employment relationship, the contract will be classified as an employment relationship with all legal consequences for the parties in this regard.

These legal consequences could mean administrative sanctions and fines, mainly only to the employer, given the asymmetrical contractual power of the two parties but unpaid taxes could be claimed from both sides.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

Under Bulgarian law, an agency worker is an employee hired by a temporary work agency and sent to a user undertaking to either:

- Execute a specific work.
- Temporarily replace an employee.

The employment relation arises between the agency worker and the temporary work agency. An agreement for the lease of personnel is executed between the agency and the user undertaking.

Agency workers enjoy the same rights and benefits as permanent employees. In this respect, a number of restrictive mandatory provisions and requirements apply to the employment relations with agency workers, the activity of the temporary work agencies and the rights and obligations of the user undertakings.

In short, the agency workers do not have rights against the end user directly.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

Many platform economy workers in Bulgaria are considered to be self-employed or entrepreneurs. The shareholders and registered managers of a Bulgarian legal entity are not employees and are therefore governed by the provisions of civil and commercial law instead of labour law. Social and health insurance legislation in Bulgaria uses the term “self-insured” to refer to all persons who pay their own contributions and do not have an employer: this would include most self-employed, even those who provide their services through their own companies. In this sense there is little difference in Bulgaria between self-employed contractors and those working under their own personal service companies.

Tax responsibilities remain the same from the perspective of the end user.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers’ employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

There seem to be no big changes in de lege lata or de lege ferenda in terms of gig economy workers’ employment status.

The Bulgarian CPC (Commission for Protection of Competition) banned Uber in 2015, citing unfair competition, due to complaints from the Taxi Union, the largest taxi service union in Bulgaria. This ban was confirmed the same year by the Supreme Administrative Court the same year and has not been lifted. According to a 2016 Gallup International Survey, 77% of Bulgarian respondents said that the ban did not benefit consumers.

The CPC has banned the operation of the Russian mobile application “Maxim”, also known as the Russian Uber. The decision was made following a complaint filed by several taxi associations, the Taxi Union, the National Union of Carriers, the Branch Chamber of Taxi Drivers and Carriers, the Association of Taxi Syndicates in Bulgaria and the Union “Sila”.

As it currently stands, ride sharing platforms do not find much success in Bulgaria and are quickly shut down due to the intense lobbying of the taxi unions. While there is public interest in allowing such services, it has yet to lead to changes in the legislation which would allow for ride sharing platforms to flourish.

1. Are the workers in the gig economy in Croatia classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

There is no single answer to this question, as the gig economy encompasses such a broad spectrum of work sectors but in general gig economy workers are considered self-employed, usually as a sole proprietor. However, platform workers can also work under a contract for services in which case they are not considered self-employed and pay pension contributions at half the rate set for self-employed workers. In the end it comes down to the specific platform's terms and conditions which determine the classification of the workers.

In practice, ride sharing platforms in Croatia such as Uber will not let you become a driver unless you register yourself as either a sole proprietor or you register a limited liability company under which you can then offer your service.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

The Croatian Labour Act defines an employee as an employed natural person performing certain works for an employer. An employment relationship can be defined as one where an employee performs certain tasks for an employer under the employer's instructions in return for a salary. The existence of an employment contract is not necessary for determining whether a person is considered an employee or self-employed, rather it is based purely on the factual characteristics of the work done.

The distinction between work performed within an employment relationship and that performed on the basis of a work or service contract is important for deciding whether employment law applies. A person will generally be considered to be an employee and the Labour Act will apply if they:

- work for the employer under a work or service agreement;
- perform the job in the employer's premises;
- under the employer's instruction;
- within a strict time-frame;
- using the employer's tools and assets;
- receive remuneration for the work.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

In Croatia, wrongly classifying workers would be categorized as deliberately misreporting work. Consequences for that can vary in degree of severity depending on the scale of misreporting and the damage that was caused due to that. Fines are the most common punishment with extreme cases leading to companies having to cease their operations in the country. According to a 2015 study, roughly 7% of companies found misreporting work were forced to stop their activities, 2% reported as "nothing serious" happening to them, with the remaining 91% being subjected to varying degrees of fines. It is important to point out here that this study did not differentiate between wrongly classifying workers and not reporting work at all.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

The Labour Act Art. 46, Par. 5 prescribes that the working conditions and salary of agency workers need to be the same or better as those of other workers employed in that particular company, who are doing the same job. If these conditions are not met, then charges could be brought directly against the end user. It is possible to conduct collective agreements with the agency workers to prescribe lower wages or different job conditions as of 2014, but this is not used in practice. Agencies have to be officially licensed by the Ministry of Labour and officially the agency workers are considered the employees of the agency. So, if the goal for the user company is to show lesser employment then this could be of use.

However, agency workers are not widely used in Croatia due to an interesting loophole, specifically, employers can form business cooperation agreements between each other instead of official user-agency relations. This allows them to share the workforce so to speak. This way the companies can bypass the equal conditions stipulation and the “agency workers” can be treated according different standards. While this practice is frowned upon, it is not illegal as of yet.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

Yes, this is common and even required in certain fields of gig economy, ride sharing included. In Croatia this means that the independent contractors are responsible for their own tax payments, health and accident insurance.

There have been no recorded cases of those responsibilities extending to the end user.

It is worth mentioning that should the courts find that these service companies are disguising what is in practicality an employment relationship, based on the above-mentioned employment criteria.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

Croatian trade unions perceive the absence of legal regulation (not only related to labour and employment law but also to business law) as problematic, as it might result in unfair competition and a deterioration of working conditions. The social protection of platform workers is also a topic of discussion. Equal social protection for all, irrespective of employment status, is being contemplated.

The public is generally very supportive of the gig/platform economy. While the legislation is still in somewhat of a grey zone and the government found Uber to be operating illegally in Croatia in 2017, it is still operational as of now along with other ride-sharing platforms. Also, in Croatia the licensing procedure was simplified in 2018, and mandatory tests for drivers for the area where they are operating were abolished.

1. Are the workers in the gig economy in Cyprus classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

There is no specific regulation covering ride-sharing app drivers and delivery riders in Cyprus. Ride-sharing platforms can be used by natural persons or companies. The individuals are usually signing an independent contractor agreement without any employment status arising from such relationship.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

Under Cyprus law an employee is any person who works for another person under a contract of employment or apprenticeship or under conditions where an employment relationship between employer and employee can be inferred. The criteria for determining whether an individual is considered to be an employee not only includes the payment of a salary for services rendered and the way that the parties choose to label their relationship, the courts will also take into account:

- Whether the employer exercises control over the work of the employee;
- Whether remuneration is dependent on the performance of the employee;
- The employee's role in the employer's business.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

If a self-employed person has not declared his/her labour, the fine will amount to 200 euro per month, and the labour inspector will presume that such activity has been in place for at least 6 months. For the employer, the fine for each non-declared (i.e. not registered in the social security fund) employee is 500 euros per month, with the same presumption of the previous 6 months employment. Maximum fine for the employers who have been using up to 10 workers is 10 000 euros.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

It is not common to use employment agencies for ride-sharing and delivery services. The rules and regulations related to agency workers are laid out by Temporary Agency Work Law of 2012 (N.174/2012) and Regulations of 2012 (K.Δ.Π 517/2012). The agency workers are entitled to at least the same level of compensation, working conditions, period of rest, etc. as the permanent employees of the end user assigned to the same tasks.

Agency workers cannot be posted at the user undertaking for more than 4 months at a time, and no longer than 12 months in total.

Both the agency and the end user can be held liable to meet the wage rights for the agency workers. Tax and social security payments do not extend to this joint liability, as those are the sole responsibility of the agency.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

No, food delivery riders usually sign up directly, and drivers can operate also either individually or while being employed by a local company.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

No landmark or ongoing court cases with gig economy giants are going. However, there are heated debates on the impact of unregulated gig economy on the national social welfare and unemployment rate. Some opinion leaders perceive the digital platforms as exploiting services.

1. Are the workers in the ride-sharing and food delivery apps in Czech Republic (country) classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

According to Czech legislation, there is no specific regulation of 'gig economy', 'collaborative economy', 'digital platforms' or 'crowd workers'. When assessing if any legal relationship between two parties is classified as employment relationship or commercial relationship established based on any contract under civil or commercial law, it is necessary to follow the Labour Code definition of depend work. In case the relationship fulfils the criteria of depending work (see Q 2.), the relationship is classified as employment relationship and must be governed by Czech labour law.

Based on practice, provision of services through the digital platforms are allowed. Workers of such digital platforms usually provide services as self-employed persons or through their companies or fleet companies. However, such relationships often fulfil the criteria of dependent work and therefore the workers should classify as employees.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

As was already stated above, according to the Czech Labour Code, the employment status is determined by the term depend work: "Dependent work, which is performed in a relationship between the superiority of the employer and the subordination of the employee, is considered exclusively the personal performance of the employee's work for the employer, according to the instructions of employer, on his behalf. Dependant is performed for salary or remuneration for work, during working hours or otherwise specified or agreed time at the employer's workplace, or at another agreed place, at the employer's expense and responsibility."

The main criteria for dependent work (employment):

- superiority of the employer and the subordination of the employee;
- personal performance of work by the employee;
- performance of work according to the employer's instructions;
- the employee does not perform the work on his own behalf, but on his own behalf employer.

Conditions for performance of dependent work:

- the employer must provide the employee with a wage or salary or remuneration for the work performed;
- the work must take place during (i) working hours, (ii) otherwise specified hours, (iii) otherwise agreed hours;
- performance of work on behalf of the employer;
- the work takes place at the employer's workplace or another place agreed with the employee and place authorized by the employer;
- the work is carried out at the expense and responsibility of the employer.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

Pursuant to Section 3 of the Labour Code, dependent work may be performed exclusively within a basic employment relationship. If the activity performed in this way fulfils the characteristics of dependent work, the parties have no choice but to subject their relationship to the Labour Code. If the parties do not respect this rule, this fact has no meaning from the point of view of private law, because according to § 555 par. 1 of the Civil Code it applies that legal behaviour is assessed according to its content (material aspect) and it is irrelevant how is the contract formally titled or determined by the parties. At the same time, the application of private law is independent of the application of public law (§ 1 para. 1 of the Civil Code).

From the point of view of public law, Act No. 435/2004 Coll., 'On employment', addresses the situation of performing dependent work outside an employment relationship. According to this Act, the described situation is qualified in the provision of § 5 letter e) as illegal work. The performance of illegal work is qualified by law as an offense for which there is a risk of a fine imposed by law (both for employers and employees).

Illegal work is dependent work performed by a natural person outside an employment relationship.

Employment Act establishes that a legal person who allows the performance of illegal work commits an offense for which it is possible to impose a fine of up to CZK 10,000,000, (381 730€) but at least in the amount of CZK 50,000 (1900€).

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

When a temporary assignment occurs, the following contracts are concluded:

1. an employment contract between the agency and the employee;
2. a written temporary assignment agreement between the agency and the employee;
3. a written temporary assignment agreement between the agency and the user employer.

It is specific for employment agency work that the rights and obligations of the employer towards the employee are divided between the employment agency and the user employer. The user employer primarily assigns work tasks to the employee, organizes, manages, and controls the work performed by him. In terms of salary and travel expenses, these are paid to the employee by the employment agency and not by the user employer. However, the so-called system of joint and several liability applies. It means that, if the salary is not paid to the employee by the agency, the user employer is obliged to pay it within 15 days from the payment deadline.

Regarding taxes, the employment agency is obliged to fulfil the tax obligation as the employer under the employment contract. In the temporary assignment agreement between agency and the user employer, the contractual parties agree on the total price of work which also includes taxes and contributions to Social Insurance Agency and health care contributions.

Agency workers as any other employees in employment relationship does not have any direct relationship with end user (consumer or client). The private company in which name the employee works enters contract with end user.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

The workers in the gig economy are entrepreneurs who are either self-employed persons or have the legal form of a limited liability company or a joint stock company.

Yes, the end user (consumer) in such case does not have any employment responsibilities nor tax responsibilities.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?



In the Czech Republic, there is currently no expected legislative work or political debates regarding the gig economy.

In the past, there was a long proceeding in the case Lido Taxi Radio against Uber. The Regional Court in Brno fully granted the motion for a preliminary measure, which prohibited the provision of services by Uber in Brno. However, this decision was overturned by a decision of the High Court in Olomouc, thus enabling Uber to re-operate its services in Brno. After that, in 2018 the Constitutional Court ruled that the last preliminary measure of the Brno court was in force, which states that the service conflicts with the law and that its operation is therefore prohibited in Brno. The entry of Uber into Brno's market was ensured by the amendment to the law, which created uniform and clear rules for so-called alternative taxi services. Each car must be marked with a sticker and the driver must be a licensed driver. The price of the ride must be fixed (the company must set a price for each kilometre, waiting, etc.).

According to the Strategic framework Czech Republic 2030 issued by the Czech Government: Employment in a platform economy should still be dignified. Economy of platforms (frequently also called sharing economy, collaborative economy) intermediating jobs (on-demand economy, gigeconomy), a sector that also emerged thanks to the digitalisation process and development in the field of ICT brings new possibilities for all parties. At the same time, it erases boundaries between actual service providers, consumers, workers and the self-employed, and potentially leads to an increase in atypical forms of employment. Precarisation should not impact on these new types of employment either. The state must lead this new type of economic activity into the formal economy. Furthermore, it must provide a declaration and compliance of labour laws, including work safety rules even in activities performed in the platform economy and other new atypical forms of employment in an effort to fulfil the principle of work with dignity. Work with dignity is defined as productive work enjoying the conditions of freedom, equality, safety and human dignity, during which the rights of workers are respected and the worker is paid an appropriate reward along with social security. The state will also turn its attention to the issue of consumer protection in this sector.

The state will enforce its contemporary rules consistently, since economic activity performed through certain platforms (at least the local platforms) is within their legal competence. The activity carried out through them will be considered as employment if it is performed in a subordinate relationship, its content is considered as work and if it provides a salary. The state will generally attempt to penalise bogus selfemployment. The Czech Republic will, however, distinguish between professional services and peer-to-peer services (without any inferiority or superiority), taking into account the potential benefits of the so-called sharing economy, by setting so-called limit values (depending on the level of income or regularity of service provision) to reimburse the costs to service providers and are not motivated by the gain of financial compensation.

1. Are the workers in the gig economy in Denmark classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

The classification is contingent on the type of work and the general circumstances of the gig worker's work relationship with the contractor. Hence, there is no general rule to determine whether all gig-workers would qualify as an employee or self-employed. It is contract law which determines the classification of a worker. In most cases, gig-workers have been treated as self-employed.

It is worth bearing in mind that Denmark has no codified labour statute which accrues certain minimum rights to all types of employees. There is no universal definition of an employee or self-employed. However, the most common definition of a worker is 'a person, receiving remuneration for personal work performed in a contract of service'.

Danish labour regulations are fragmented and focused on specific types of employment relationships (e.g. Danish Salaried Employees Act only applies to salaried workers, others acts apply specifically to vocational trainees etc.).

It is mainly Danish Labour Courts and industrial arbitration who shape the classification of workers. Labour Courts take recourse to collective agreements, which cover 75-80% of the Danish Labour market. Ordinary courts can decide on individual claims and protect the substantial and procedural rights of independent contractors since their status is not regulated under specific labour acts but under general civil, commercial and corporate laws.

The Danish Disruption Council acknowledges, that many platform workers do not have access to the 'employment rights usually awarded to workers covered by a collective agreement' and equals it to the conditions of 'regular' self-employed workers in Denmark. As such, the Council presupposes that most platform workers are self-employed.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

A worker who has an employment contract falls within the category of an employee.

Three essential elements can be listed which define an employment contract:

Personal work,

remuneration and

"relationship of authority".

Court decisions mainly concentrate on the third element.

An independent contractor is considered a person (or a company) who performs professional activities in respect of which she/he is not bound by an employment contract; this means that she/he does not work under the authority of an employer. Therefore, lack of subordination is a key factor distinguishing an independent contractor/self-employed from an employee.

In more detail, Danish courts would consider the following factors:

- if the person carrying out work is in a subordinate position and takes instructions and works under supervision/control from a manager;
- which party is responsible for the result of the work performed;
- if the person carries out work for only one contractor or if she/he has other customers;

- does the person fulfil her/his work obligations regularly and using the same methods of work as ordinary employees employed by the contractor, including if the person has fixed working hours, makes use of working tools owned or facilitated by the contractor, makes use of the contractor's canteen facilities, participates in social activities available to the contractor's employees, etc.?
- if the person must personally perform the work or if she/he can designate the work to another person;
- if the person runs a personal financial risk when carrying out work for the contractor;
- if the person has established her/his own independent business registered with the Danish Business Authority.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

The main risk in the case of misclassifying an employee is that both salaried employees and workers are subject to certain protections under statutory law (the Holiday Act, Consolidated Act No. 60 of 30 January 2018 and, for salaried employees, the Salaried Employees Act). These statutory rights are not granted to self-employed workers.

In the case of misclassification, the employer would be thus required to pay a fine for improper salary reporting and the withholding of taxes; would have an obligation to pay holiday allowance; would have to make a notice period/severance pay in case of termination or other compensation rights for employees; could run the risk for a secondary liability for unpaid/non-withheld taxes; would have a duty to pay compensation to trade unions. Also the employee might have to pay fines for tax avoidance.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

Workers can be employed by temporary work agencies in Denmark. This relationship is governed by the Act on Temporary Agency Work (Act no. 595 of 12 June 2013). The interpretation of the Act is narrow.

The leased workers have a different status than traditional employees as they are not considered as employees of the end user. For example they cannot enforce certain rights against the end-user directly as it is the practise in a traditional employment relationship. However, based on the principle of equal treatment, the Act on Temporary Agency Work obliges the end-user to provide similar basic work environment and employment conditions (such as social benefits) as if being

directly employed by the end-user. Equal treatment is thus a guiding principle governing the relationship of the temporary agency worker vis a vis the agency and the end-user.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

There are two ways how independent contractors provide services: 1. Either through their own personal services company; 2. Or as a fee recipient. It is difficult to say which of the two options contractors do use more often.

Choosing either the first or the second option does not alter the responsibilities/obligations of the end user. The end user however runs the risk of being obliged to pay higher taxes if Danish tax authorities deemed the set-up of the contract to resemble an employment relationship. Additionally, the independent contractor might be taxed twice, once directly on salary and, secondly, on corporate cash flow.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issues?

Throughout the EU, a pattern is discernable that most case law on the gig economy has focused on the taxi sector, particularly on the Uber Pop App service. The Copenhagen District Court and the Danish Supreme Court have played a significant role in clarifying the licence requirements and the illegality of Uber Pop in Denmark. (p. 29)

In 2018, the Danish Supreme Court ruled against four Danish Uber drivers who used the UberPop App in breach of a previously amended taxi Act. The individuals faced monetary fines for driving without a license which equaled earnings made while driving for Uber. This set a precedent for around 1500 Uber drivers providing services without proper licensing in Denmark.

No cases on employment misclassification have been initiated yet. It is worth bearing in mind that the Danish tax authorities in a report submitted to the parliament's Tax Committee in January 2018, considered that the Uber drivers, who were active in Denmark in 2014 and 2015, were self-employed and had run either commercial or non-commercial businesses in relation to the rules on taxation.

The Danish government initiated a 'Disruption Council' in 2017. The goal of the Council was maintaining the balance of power, as well as the high standards of wages and working conditions on the labour market.

The first collective agreement ever between a trade union and a platform provider (Hilfr) was signed in Denmark.

Some experts argue that in the long term future the relationship between the end user and the self-employed service providers would be rather classified as an employment relationship. The classification of individual platform businesses would be contingent on the setup and context, such as:

the degree of influence on setting the prices;

the degree of instructions as to how to carry out the work or on personal conduct when providing services;

the degree of managerial powers delegated to the platform provider or its algorithm or;

the degree of elements of the algorithm influencing the economic foundation for the earnings.

1. Are the workers in the gig economy in Estonia classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

Employment relationships in Estonia are governed by contract law. Generally, the binary distinction between employees and self-employed workers applies. There is no special category for gig workers. However, the Estonian tax system has been partially changed to adapt to new forms of entrepreneurship, such as platform work. As stipulated in the Simplified Business Income Taxation Act, gig workers in Estonia could now be considered natural persons with an entrepreneur account (ettevõtlikonto). These are (part-time) self-employed workers.

The employer's obligations are traditionally set forth in the Employment Contracts Act, Working Conditions of Employees Posted to Estonia Act, Collective Agreements Act, Public and National Holidays Act, Occupational Health and Safety Act, Individual Labour Dispute Resolution Act, Collective Labour Dispute Resolution Act, Trade Unions Act, Employees' Representatives Act, Community-scale Involvement of Employees Act and Funded Pensions Act and Parental Benefit Act.

Services provided by self-employed workers are mainly regulated by the Law of Obligations Act. The Law of Obligations Act (Võlaõiguseadus) stipulates five different contracts for provision of services in Estonia: authorisation agreement, contract for services, brokerage contract, agency contract and contract of commission. Any person, including self-employed persons, can enter into these types of contracts, which should indicate that the parties are tied only on the basis of law of obligations.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

The employment status is determined by the nature of the contract and the following criteria listed below:

- The employee undertakes to work in subordination to the management and control of the employer
- The employer undertakes to pay the employee remuneration and to ensure the working conditions provided for by the employment contract, collective agreement or law

Verifying the correspondence between the legal relationship and employment relationship the courts have relied on the following:

- who organises and manages the working process pursuant to the agreement;
- who determines the time, place and method of work;
- who pays for the work equipment;
- who takes the work-related risks;
- who gets the income or profit;
- whether the person doing the work is a member of the staff
- whether he/she is in subordination to the management and control of the employer

All these criteria should be regarded and treated as a whole.

The extent of dependency relationship between the employee and employer is the most important indicator that differentiates an employment contract from other civil law contracts.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

The employment registration procedure is mandatory. Tax administrator may give a warning or establish a penalty for the failure to perform the registration obligation or the obligation to end a registration.

In the case of first offence, the penalty may be up to €1300 and in the case of the second offence €2000.

Additionally, a misdemeanour penalty up to €3,200 can be imposed in the event of failure to register.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

According to the latest amendments to the Estonian Aliens Act, the Income Tax Act, the Taxation Act, salaries paid out to temporary agency workers in Estonia are taxable in Estonia.

Temporary agency workers have to pay taxes on the wages earned themselves.

End users are obliged to uphold the work environment regulations in the country of destination and treat temporary agency workers on par with other employees.

According to Art. 12, Estonian Occupational Health and Safety Act, “the user undertaking shall guarantee the conformity with occupational health and safety requirements in the user undertaking.” The temporary agency worker can thus enforce rights, which fall within the Occupational Health and Safety Act, against the user directly.

Generally, statutory rights under national law will apply to all individuals physically working in Estonia.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

An online survey conducted by the Estonian Foresight Centre, the Foundation for European Progressive Studies (FEPS), University of Hertfordshire, identified platform work to account for 8% of employment in the Estonian labour market. 9% of platform workers in Estonia are said to work as self-employed. 10,4% work on temporary contracts. The majority of gig workers have another full-time job.

Income tax (VAT) and social security contributions are paid by the (part-time) self-employed platform worker her-/himself. As of 2019, these can be natural persons with an entrepreneur account (ettevõtlikonto) (see question no. 1). This is especially relevant for workers providing taxi services over ride-sharing service platforms.

The Simplified Business Income Taxation Act applies to new forms of employment as it includes on-request services such as transport, accommodation and food delivery. For individuals, income of up to €25,000 per year for services provided to other people are taxed at a rate of 20%, which includes both income and social taxes (compared to the regular tax rate of around 50%).

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing

court cases with gig economy giants involved? Are there any political debates / consensus on the issues?

No case law has emerged yet which could help determine the employment status of platform workers in Estonia. In contrast to most other European countries, where ride-sharing service platforms came under significant legal pressure, Estonia was the first European country to legalize ride-sharing activities.

Trade unions (MTÜ Eesti Jagamismajanduse Liit) have requested legal clarification on the employment status or employment relationship of platform workers.

Employer organisations acknowledge the potential risks associated with platform work, although they are generally open to new forms of employment.

The employment status of platform workers in Estonia has been discussed as part of the project 'Labour Market 2035' initiated by the Foresight Centre, a think tank at the Estonian parliament. This project plays out scenarios according to the following criteria: "employment-friendly technology development", "technology development hostile towards employment", "a more open EU towards labour migration" and "a more closed EU towards labour migration". No specific legislative proposals have emerged yet from the elaborated labour market scenarios.



1. Are the workers in the gig economy in Finland classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

Finnish labour regulations follow a binary logic. Either a worker is considered an employee or runs her/his own business as an independent entrepreneur. A self-employed worker would thus fall within the latter category.

The Finish Employment Contracts Act excludes the possibility of a third category. Hence, platform workers operating in Finland platform economy (alustatyö) are mainly classified as self-employed.

This is reflected in the taxi sector in Helsinki, where Uber X drivers are solo-self-employed/independent contractors. Couriers working for platforms have the same status.

It is worth bearing in mind that Finnish labour legislation and employment contracts tend to be interpreted in practice in favour of the employee.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

According to the Finish Employment Contracts Act the following criteria help to determine the employment status of workers:

(a) contract element

Work is performed on the basis of a specific contract jointly entered into by an employer and an employee, or at least on the mutual understanding that an employee works for an employer. The employee is bound by the employment contract to perform the work personally.

(b) the work element

In an employment relationship, work is performed for gain.

(c) the remuneration element

Remuneration for work can be paid in, for example, money, goods, fringe benefits or gaining of experience, and it has to have financial value.

(d) the element of direction and supervision

In an employment relationship, an employee agrees to work under the direction and supervision of an employer and to follow the orders which the employer, within his competence, gives for the work.

On the basis of the right to direct and supervise, the employer may determine

(i) how,

(ii) when and

(iii) where the work is performed.

The employer also has the right to supervise both the performance of the work and the quality of the result.

In an employment relationship, the employee is dependent on the employer.

These criteria are constituent elements of an employment relationship. Overall discretion is applied in each individual case. The Finish Employment Contracts Act is of an peremptory/obligatory nature.

Since the Employment Contracts Act does not define the concept of a self-employed person, entrepreneurs' working status is mainly regulated by commercial contracts. It is thus relevant to note that most Finish statutory rights do not extend to self-employed workers, unless they are classified as employee by the relevant labour inspection authorities (Occupational Safety and Health (OSH) authorities).

In addition to the above listed factors, Labour courts make an overall assessment of the relationship between the contractor and end user based on the following criteria:

(i) Salary payment praxis,

- (ii) compensation of expenses,
- (iii) practice of the work
- (iv) possibility to choose the time and place of work and the person who actually does the work, the freedom to accept commissions or not
- (v) whether the work is done for several different companies

According to well-established praxis, an employer does not have to control the work de facto, general supervision and the possibility for control are considered sufficient. This is partly why working in a place chosen by the employee does not exclude the work from the scope of the Act.

The use of employee's implements or machinery can be significant only when also other circumstances show that the person performing the work is actually self-employed or an entrepreneur.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

The employer might face the following consequences which derive from statutory obligations:

All statutory benefits/rights are extended to the employee (such as pensions, holiday pay and possible wage differences or other relevant claims) if they had been treated as regular employees from the beginning. The applicable documents are:

Employment Contracts Act, Working Hours Act, Annual Holidays Act, Collective Agreements Act, Act on Job Alternation Leave, Study Leave Act, Pay Security Act.

The financial consequences may be significant and are decided on a case by case base.

Generally, any agreement reducing the rights of and benefits due to employees under the Employment Contracts Act will be declared void.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

The employment contract between the hiring enterprise and its worker is usually made on a fixed-term basis for each assignment. The Cooperation Within Undertakings Act applies.

The Employment Contracts Act defines the concept of hiring out labour, including the duties both of the employment agencies (hiring enterprise: employer) and the user enterprise towards the temporary agency worker (employee). Workers of temporary employment firms are covered by the definition of employment contract set out in Chapter 1 Sec. 1 of the Act. Thus, specific rights contained therein can be potentially extended to temporary agency workers (social benefits, pensions etc.).

However, there are only a few statutory rules regulating the operation of private temporary work agencies. Such firms need not be licensed, but only reported to the labour inspectorate. They must report regularly to labour inspection authorities about its activities.

Pursuant to Finnish Law, temporary agency workers are obligated to pay income-taxes in Finland for themselves. It is thus not mandatory for the hiring enterprise (employer) to withhold income taxes.

E.g. Estonian employers who mediate temporary agency workers from Estonia to Finland are free from the duty to pay income tax in Finland on wages of the temporary agency workers in Finland.

According to Sec. 9, Chapter 2 of the Employment Contracts Act, workers hired to work for another employer (user enterprise) under its authority enjoy certain basic protection even if neither their own employer (hiring enterprise) nor the end user (user enterprise) is bound by any collective agreement. If the user enterprise breached any such obligations the user enterprise may have to pay compensation for the employee and could be made liable for severe breaches under the Finnish Criminal Code. The workers can thus enforce rights pertaining to i.a. salary, working hours, annual leave against the end-user (user enterprise) directly.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

In an online survey conducted with 2000 Finns between the ages of 18 and 65, 8,2% claimed to have provided services by means of a platform. Of 300 intensive platform workers (those who provide services at least once a week), 49,7% were employed full-time, 9,7% part-time, 7,8% were self-employed.

While it is not yet a common that independent contractors have their own personal services companies, the amount of self-employed people providing services through their own personal services companies is expected to rise.

The end-user pays for a service through an invoice. Income tax (VAT) and social security contributions are paid by the self-employed service provider her-/himself.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issues?

No case law has emerged yet that would help clarify the status of platform workers in Finland.

Court cases have primarily resolved around the interpretation of taxi regulations, particularly licensing. A new Act on Transport Services came into force in July 2018.

Finland differs from many countries in which driving a taxi is an entry-level job for immigrants, as the strict language requirement now excludes immigrants with poor language skills from the taxi market.

Uber launched two services in Helsinki in November 2014: Uber Black and Uber Pop. In 2016, 77 Uber drivers were fined for providing passenger transportation without a licence.

In June 2017, a Helsinki court ordered to confiscate EUR 250,000 from then General Manager of Uber Finland, now General Manager of Uber Nordics, Joel Järvinen. The verdict was appealed and later overruled.

In July 2017, Uber “paused” Uber Pop in Finland, although the operation of Uber Black was continued.

A new taxi regulation was implemented in Finland in July 2018, providing Uber with the legal conditions for re-launching its operations in Finland. The deregulation removed the numerical restrictions on taxi licences, the maximum price regulation and the obligation to be organized by a dispatch centre.

In a cross-country report ‘Work and Workers’ Rights in the Platform Economy’ it is suggested to categorize ‘platform-mediated workers’ as employees in Finland without the need to amend Finnish labour regulations.

## FRANCE

1. Are the workers in the gig economy in France classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

In 2016, French parliament has adopted a law with a legal definition of 'electronic platforms' which extends certain employment rights to platform workers, i.e. to unionize and participate in strikes which may not be grounds to stop collaboration with them. Since 2018, for those workers who have generated over 5,099 euro of revenue, the platform must bear the costs of accident insurance coverage and compensate for their professional certification, if needed.

Gig economy workers in France are classified as 'employees' and the 'independent worker' status has been recognized as a 'fictitious' one by the Court of Cassation of France in 2018. Before that, the status of ride-sharing apps has not been regulated separately in the legal doctrine of France and delivery riders as well as taxi drivers were classified as 'self-employed'.

The French legal practice is unanimous in recognizing taxi drivers and food delivery riders as employees.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

The employment relations features have not been defined precisely by the French law, but the aforementioned court decision against Uber of 4 March 2020 has referred to the company's authority to:

- send instructions;
- supervise the performance;
- exercise the power to sanction.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

It is not known yet whether the former driver who has been 'wrongly classified as an independent contractor' will receive a financial remuneration from the labour court. The restrictions against illegal work in France are quite strict and illegal or underdeclared work can be sanctioned by:

- the Labour Code with a maximum of three years imprisonment and a EUR 45,000 fine for individuals, EUR 225,000 for enterprises;
- by the Trade code with an additional penalty of interdiction of managing companies for five years;
- and by the Social Security Code requiring extrasocial contributions and penalties to be paid.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

None, such agencies are not used yet in France, but maybe it will be the only option after adopting final rulings in landmark cases on employment status.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

No, such cases have not been reported in the jurisdiction.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

Yes, the employment status of the drivers is a subject of heated debates in the national legislature. The first amendments to the national legislation were made in 2016, mainly with respect to collective bargaining of workers.

A new bill on the rights of digital platform users (Loi LOM) has been developed in order to fix their status as 'salaried employees', as the idea of an intermediate category has been rejected during the negotiations. The goal of the bill was to establish maximum working hours, a collective bargaining agreement, and give the gig workers access to unemployment insurance and state health insurance system.

Currently the bill was returned from the Senate to the National Assembly for further edits.

## GERMANY

1. Are the workers in the gig economy in Germany classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

Most workers in the gig economy (main term used in Germany: Plattformökonomie) would be classified as self-employed. There is no third legal category beyond the traditional legal categories of employees (Employment Protection Act) and self-employed. Taxi drivers are usually regular employees of licensed companies.

The German Temporary Employment Act (AÜG) provides for the possibility to hire freelancers and temporary workers for a maximum amount of 18 months. Freelancers and temporary workers provide services as stipulated in the conditions of the work contract negotiated between the agency and the temporary employee.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

The Commercial Code in Germany stipulates that an independent contractor has the discretion to freely decide the time and nature of her/his work. Consequently, an employee is considered a natural person who cannot determine her/his own time and nature of work to the same degree as an independent contractor. She/He is thus dependent on the instructions and conditions set out in the employment contract.

Given the rather vague criteria, the German Federal Labour Court (Bundesarbeitsgericht), the competent Court in these decisions, makes the distinction between a "dependent" employee and an independent contractor by considering the scale of personal dependence.

Thus, the status of an independent contractor is determined by her/his relationship between the principal, or in other terms, by the scope of instructions by the principal. These are the criteria that the Court takes into account:

the principal may decide on:

- the content of the performance
- the kind of performance,
- the time, duration and place of performance.

If the contractor is strictly bound by these instructions, she/he will most likely be regarded as an employee.

Labour courts will therefore decide on the legal status of a contractor by an overall assessment of various criteria such as:

- how sophisticated are the working tasks given to the contractor (i.e. how to perform the assigned tasks)?
- how is the working time determined?
- how is the workplace determined?
- to what extent does the contractor's work depend on the principals' business organization (e.g. use of equipment and resources, team work with other employees)?
- in a valuing reflection, which of the two parties gains more directly from the performed services?

In Germany, labour courts and social security authorities work closely together to establish the legal status of a contractor. While labour courts' assessment centres on the degree of personal dependence, the social security authorities scrutinize the relationship by looking at the economic dependence of a contractor. Both established similar but independent criteria to assess whether an independent contractor qualifies as an employee and is thus entitled to various social benefits.

Social security authorities have established the following criteria:

- does the contractor have to provide his services in person, or may he engage an employee / subcontractor himself?
- who bears the economic risk of no performance or poor performance?
- is the contractor integrated into the business organization of the principal?
  - is the contractor named in duty rosters?
- who provides the equipment for the work performance?
- does the contractor have a regular workplace at the principal's location? Does he have an e-mail address or a telephone number? Is he registered in the principal's telephone book? Does he have branded business cards of the principal?
- does the contractor attend internal team meetings? Does he attend training sessions? Does he attend internal events like Christmas parties?
- is the contractor obliged to notify about holidays or other leave?
- does the contractor receive a fixed monthly remuneration or is he paid only for the services he actually provided?
- does he have to write invoices?
- is he covered for sick leave or for holiday?
- is there a fixed monthly payment?
- does the contractor have his own trade license / registered business?
- does the contractor announce / advertise his services in the market?
- does he work for other principals or is he at least free to choose other principals?
- how much payment does he receive overall by only one principal (more than 5/6 of his overall income)?
- how much time does he work for one principal?

It is worth mentioning that these criteria are to be read against the backdrop of two main factors:

- (1) degree of independence and
- (2) subordination.

These two criteria are assessed in terms of the contractual relationship in each particular case. The most determining factor for the distinction between an employee and an independent contractor is how the contract is exercised in everyday practice. The design of the contract is thus less relevant for the Court than the practice of the conditions established in the contract.

Hence, even if both parties, the contractor and the principal, agreed to classify the nature of the contract as a service agreement, the Court has the discretion to characterize the relationship as an employment contract or vice versa.

The more the principal may determine the work performance of the contractor, the more likely the contractor is an employee.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?



Consequences for a wrong classification are regulated by:

§42,1 Fiscal Code of Germany (EStG)

These consequences are twofold:

1. Tax liabilities: employer might have to pay back higher taxes
2. Social security contributions: employer might have to pay back social security contributions

In few cases of wrongful classification, specifically in the context of labour leasing, the employer might be rendered liable pursuant to

§16(1),1 and 1a German Act on Employee Leasing (AÜG) and has to pay a fine.

Sanctions for breaches of the AÜG range between EUR 1,000 and EUR 500,000 (approximately USD 1,148 to USD 573,905).

In addition, the employer can be fined for trade law breaches on grounds of §149(3) GewO.

In severe cases, such as withholding and defalcation of remuneration, §266a of the German Criminal Code applies. In terms of tax evasion, §370 German Tax Code can be applicable.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

Under German law, it is possible to lease employees to another employer. To operate legally, the lessor (temporary employment agency) must hold an administrative permission, and the deployment of temporary agency workers must always comply with the requirements set forth in the German Act on Employee Leasing (Arbeitnehmerüberlassungsgesetz - AÜG) and other applicable law. Where a lessor does not hold said permission, any temporary agency worker deployed by him may claim full employment with the corresponding lessee.

As a general rule, the lessor is obligated to grant his employees (the temporary agency workers) the same fundamental conditions of employment that apply to comparable regular employees at the lessee's. This fundamental principle of German and EU legislation can be deviated from if the lessor applies a collective bargaining agreement for his employees. In the vast majority of cases, such collective bargaining agreements apply.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

There are various ways to establish a personal service company in Germany (e.g. a German Limited Company).

Such a person would require a licence to lend himself out, provided the contract has been not been signed directly between the personal service company and the end client (this does not apply if an Agency or a Management Company is in the chain).

The Limited Company route could be utilised over a maximum 6-month period but only if the work in Germany was very intermittent (i.e. working one week in Germany and three weeks outside).

It is important to bear in mind, that a one man personal service company may well be viewed as having moved its centre of economic activity to Germany and as such the personal service company

could then be considered liable for corporate tax and the employee liable for personal tax/social security.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issues?

The German Social Accident Insurance (DGUV) teamed up with the TCO (Swedish Confederation of Professional Employees) to develop services that allow them and their members to analyse the social and legal status of the plethora of actors in the platform economy, particularly scrutinizing the status of platform owners.

Additionally, platform workers can now join the traditional German trade union for a fee which renders them eligible to collective legal aid and other social services.

No case law exists yet which specifically determines the criteria for gig workers to be granted employment status in Germany.

The most prominent cases in the area of the gig economy resolve around other aspects irrelevant for determining the criteria for gig workers to fall within the definition of an employee or self-employed.

E.g. the District Court of Frankfurt am Main ruled that Uber's practice in Germany was in breach of § 2(1)4 Passenger Transport Act (PBefG) since none of the drivers had a permission to use rental cars for commercial purposes while using the UberApp. Uber has contested this decision and gradually adapted its working practise updating the UberApp. However, the court has not addressed the employment status of gig workers in this regard as the German taxi association submitted the claim on other legal grounds (see above).

One of the food delivery giants, the UK-based Deliveroo, had to leave Germany, and one of the discussed reasons was the massive strike of Deliveroo riders who have been demanding a collective bargaining agreement, compensations and social insurance instead of being self-employed.

1. Are the workers in the gig economy in Greece classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

Greek law does not provide for the exact definition of employment and self-employment, so it depends on the case law. Anyhow, according to the Law no. 3846 of 2010 on Guarantees related to Occupational Safety, there is a presumption in favour of employment relationship, and 'in cases where work is provided personally, solely or primarily for the same employer for nine consecutive months, it is presumed that the contract is a dependent employment contract'.

From the other hand, as follows from the legislation, the labour inspectorate does not have a mandate to investigate the bogus self-employment cases and there are no landmark cases against digital platforms for employment status recognition.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

The main criteria of the de facto employment relationship is, as quoted above, providing the services personally, primarily for the same employer for nine consecutive months.

The employer may try to prove in court not having control over 'place, time and manner in which work is performed'.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

According to the 2017 amendments to the Social Security Law, the unpaid social security contributions will be offset against any debts owed to the national social security fund or third parties, and the remaining amount will be refunded without interest to the beneficiaries (salaried employees, self-employed persons etc).

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

Employment agencies are not used, however, due to the fact that Greece is heavily unionized, the taxi booking apps do not offer 'pop-up' service, but rather act as a connector with the licensed taxi operators.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

No, such cases have not been reported in the jurisdiction (taxi licenses are probably too expensive for individual users).

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

The Greek government is reluctant to completely ban taxi booking apps since the country is home to Beat app (available to licensed local drivers only). The Prime Minister had promised to protect the industry from unfair competition and introduce a new law on digital platforms. There has been an announcement in 2017 from the Ministry of Transport that a new regulation is coming, but there have been no updates since then and the petition to protect the Beat app raised thousands of votes.

## HUNGARY

1. Are the workers in the gig economy in Hungary (country) classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

In Hungary, there is also no commonly accepted and commonly used definition for workers in gig economy. In the perspective of the national regulation, platform workers have either an "employee status" entitled to complete labour law protection guaranteed by the Hungarian Labour Code (LC), or have the status of "self-employed" working without any legal protection under the scope of the Hungarian Civil Code (CC).

Hungarian LC does not regulate the third type of employment status: economically dependent worker or dependent contractor or worker. There is no special legal regulation on this third category of workers in the LC, because legal regulations covering the standard (typical) and non-standard (atypical) employment relationships in the LC do not apply to these workers.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

1. employee: factors that determines who is employee are utilized by Hungarian courts. Primary factors:

- specifics of the activity,
- tasks defined as a job description;
- personal working obligation;
- regular availability of the employee;
- hierarchy between the parties.

Secondary factors:

- defined daily working hours;
- place of work;
- salary or fee;
- use of the employer's equipment, resources;
- workplace safety;
- written agreement.

2. self-employed: worker who is not in dependent employment, who organizes his/her own work independently, and is a natural or legal person living off that activity.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

Hungarian authorities and the courts are entitled to re-classify contracts. It is a general rule in Hungary, that the contract should be defined based on its content, instead of its name. If there is a sham contract, (contract is not named "employment contract", but relationship includes primary and secondary factors defining employment contract), labour authority is entitled to re-classified contract.

If the authority or the court re-classifies the civil law contract as an employment contract, the independent contractor shall pay all contributions and taxes that should be paid, plus default interest and any penalty. The employer must pay the following: social security contributions (health and pension); labour market contributions; personal income tax; reimbursement of amount unduly paid (e.g. VAT); default interest; and penalties for engaging in a sham contract.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

Temporary agency worker is a worker with a contract of employment or an employment relationship with a temporary-work agency with a view to being assigned to a user enterprise to work temporarily, where employer's rights are exercised jointly by the temporary-work agency and the user enterprise (worker).

Temporary staffing, or employee leasing, is a form of employment where a temp agency (Leasing company) makes a contract with the employee instead of the employer (User enterprise) and takes over the employer's administrative duties for that employee (resignation, employment, notice in Hungarian Uniform Labour Database, paying of wages, etc.). But the actual work of the employed person is overseen by the employer (User enterprise). This means the employer (User enterprise) manages things such as scheduling work plans, lunchtime, detailed tasks, etc.

The agreement between the temporary-work agency and the user enterprise shall specify the material conditions of placement, and the sharing of employer's rights. Employment relationship may only be terminated by the temporary-work agency.

Unless otherwise agreed, the temporary-work agency shall be required to check immigration status, residence permit validity, work permit validity, or similar, to pay for personal tax liability, pay social payments (such as national health, unemployment, pension, or other social security contributions, etc.) and to pay of wage.

For the duration of placement the user enterprise shall be deemed employer in terms of the regulations on (a) occupational safety, (b) the employment of women, young people and workers with any degree of incapacity, (c) non-discrimination, (d) working conditions, (e) working time and resting time, and for the records of these.

Temporary work agency and user enterprise have joint and several liability for any damages caused to the employee, or for any violation of the employee's rights relating to personality.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

Independent contractors owning personal services companies are self-employed. They are not considered to be employees. The self-employed basically pay the same social security contributions as employees and entrepreneurs (8.5%-21% of gross income as pension contribution, 7-8% health insurance contribution, 1.5% vocational training contribution). The only difference is that while the employer deducts a 1.5% employee contribution from the employee and pays a 3% employer contribution after the employee, self-employed and entrepreneurs pay a 4% entrepreneurial contribution. From the monetary point of view there is no difference between a company or a self-employed provider for the end user since there are no additional obligations.

Additional note: "Employment via temporary agencies is an atypical and flexible form of employment. It is based on a triangular relationship, in which an employee signs an employment contract with a temp agency, but (s)he is then leased to a user company, where the actual site of work is located. In Hungary, the use of temp agency employment arrangements has radically increased since 2002. Nevertheless, although its significance is clearly visible, its social implications are not discussed sufficiently in public. There is no autonomous social dialogue involving employer organizations and trade unions about this issue (yet), and no public attention (or at least no sufficiently- informed public discussion) about it. Moreover, a characteristic feature of the Hungarian situation is that the hiring of immigrant workers is occurring in a period of government-induced hostility towards foreigners. In a situation with a very 'tight' labour market

and the sort of flexible, employer-friendly regulations which characterise Hungary, temporary work agencies and informal networks have increasingly begun to play a more important role in attracting, screening and 'supplying' workers from economically depressed regions of Hungary, as well as from non-EU countries, especially from Ukraine and Serbia, to user companies in manufacturing. The Hungarian Labour Code of 2012 and subsequent legal practices offered more autonomy and space to temporary work agencies (TWA) and user companies to agree on a division and distribution of employer rights and responsibilities. In Hungary, TWAs have encouraged migration processes, including the immigration of temporary workers from neighbouring non-EU countries.

6. Are there any major developments ongoing or expected in *de lege lata* or *de lege ferenda* law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

The most high-profile issue is "fake self-employment", namely that employers tend to prefer civil law contracts to employment contracts in order to avoid paying wage levies; however, the term "economically dependent worker" is practically unknown in Hungary.

Before 1 July 2006 "bogus self-employment" was a common practice, which meant that employers preferred concluding civil law contracts with workers instead of employment contracts in order to avoid paying high taxes and contributions. Such bogus contracts have been illegal for many years in Hungary. If the employer regulated the legal status of its 'self-employed' workers (i.e. by terminating bogus contracts and concluding employment contracts) after 1 July 2006, the company could be exempted from sanctions related to previous law infringement. A large number of employers made use of this opportunity. However, bogus contracts did not entirely cease to exist; instead, the parties concerned attempted to modify agreements in a way that they cannot be identified as such by authorities. The conversion of such contract types into employment contracts is precisely indicated in the data provided in the first release of the Hungarian Central Statistical Office (Központi Statisztikai Hivatal, KSH) on economic organisations (including self-employed), as it demonstrates a 8.4 per cent decrease in the number of "sole entrepreneurs" from the first half of 2007 compared to the same period in 2006.

In 2006 also Uber suspended operations in Hungary because of the new legislation.

The Shared Economy Association was established in March 2017 with the aim of supporting the development of a community economy in Hungary.

## ICELAND

1. Are the workers in the gig economy in Iceland classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

Gig economy in general is very underdeveloped in Iceland and no major gig platforms offer their services in Iceland. Due to this there is very little practice in classifying the workers who could be considered a part of the gig economy. The worker classification is also somewhat muddled in Iceland, as explained in the answer below. On top of that, Iceland is a very unionized economy, with roughly 80% of wage earners belonging to a union and nearly 90% receiving payments based on a union contract.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

Determining employment status in Iceland is somewhat of a unique task as no specific rules regarding employee/contractor classification exist. One thing to note is that an employee can only be a physical person, not a legal one. Different pieces of legislation can define an employee in different ways. The tax authorities will assess an individual's status as an employee or self-employed contractor in relation to the implementation of income tax legislation. The tax authorities assess each case based on:

- the individual's responsibility and independence;
- whether it is a primary occupation;
- work facilities;
- whether a personal contribution is required;
- how payment is arranged;
- whether the person can work for other employers.

Employment contracts can be made orally but written ones are strongly recommended and become mandatory after 2 months of employment.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

Whether there is a wrongful classification of an employee is usually decided by the Supreme Court of Iceland, where it will have to be brought by either the potential employee or the employer. The court has discretion in terms of the penalties issued and as such, decides on a case by case basis the extent of the penalties. The employer would have to pay the employee for civil damages, re-categorize the working relationship to one of employment, with all its benefits. There is no case law for criminal proceedings being started from wrongful classification of employees in Iceland.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

Employment agencies are highly regulated in Iceland, with Act no. 75/2018 establishing the requirement of equal pay and working conditions, among other things, applicable to agency workers when compared to permanent employees of the end user. The act also established subcontracting liability for the end user. The subcontracting liability covers unpaid minimum wages and other payment that the employee would have received if he or she had been a direct employee of the user company.

This means that agency workers do have certain rights against the end user directly.



5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

Independent contractors in Iceland are usually categorized as either own-account workers/contractors or sole proprietors. From the perspective of the end user there is no difference when it comes to employment or tax obligations between those classifications. In both cases, the independent contractor is responsible for their own tax and social security payments. Public or private LLC's are rarely used for such cases as corporate tax applies to those entities.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

Iceland is very determined to ensure a very high level of social and economic security for their employees, this extends to the gig/platform economy. Icelandic Confederation of Labour has stated in their policy:

- The legal status of wage earners must be ensured and support provided to those who lose their jobs due to technological innovations and changes in work organisation
- ASI demands a fair platform/gig economy, respecting the right of all working people to decent wages and terms of employment.

Iceland can be expected to keep in line with this sentiment and continue to offer a high level of protection and social guarantees for employees in all parts of the economy, gig/platform economy included.

There are no landmark or ongoing court cases with gig economy giants in Iceland.

## IRELAND

1. Are the workers in the gig economy in Ireland classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

Irish legislation does not provide for a third category of workers, there are only employees and self-employed. In practice, taxi drivers operate as self-employed or fleet company employees, but should a relevant case arise in court, the legal practice will side with the driver's claims, according to experts. In a case against Domino's pizza in 2020, the High Court has ruled that delivery riders of the company are 'employees for taxing purposes', thus there can be more decisions on the employment status in the future.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

Based on labour law doctrine and case practice, the Irish experts propose to consider the following core tests to define whether the person is in fact an employee:

- Control test,
- Enterprise test (own business account to make profit) from *Market Investigations V Minister for Social Welfare* [1969].
- Mutuality of obligations – *Minister for Agriculture and Food v Barry* [2008] IEHC 216; [2009] 1 I.R. 215.
- Integration test (how deeply the individual is integrated into a workforce) - *Stevenson Jordan and Harrison Limited v MacDonald and Evans* [1952].

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

Since 2019 the social welfare authorities of Ireland have launched a strategy on preventing the false self-employment claims and fines of minimum 50 thousand euro were imposed.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

Employment agencies are regulated by the respective Act of 1971, and the amendments to it are a subject of heated debate for the country's trade unions. The agency worker's rights are protected and it is not common to use these firms to lure digital platforms contractors.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

Self-employed people in Ireland can register as a sole trader, solo entrepreneur, freelancer or a contractor. However, public or private LLC's are rarely used for digital platform freelancers.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

The Competition (Amendment) Act 2017 introduces two novel categories of worker : the "false self-employed worker" and the "fully dependent self-employed worker", which has not been applied yet to digital platform users but may bring more developments in the future.

The pressure of trade unions has a big impact on all the sectors of gig economy - taxi, delivery, freelance etc. In order to secure contractor's status of the workers in court the platform in question should have minimum control over the execution of task and allow substitution.

## ITALY

1. Are the workers in the gig economy in Italy classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

Italian legislation provides for three possible legal statuses - employee, self-employed and a commercial agent. Pursuant to Art. 2094 of the Civil Code, employees are persons who, in consideration of a certain salary, bind themselves to perform their intellectual or manual work activity within the company, under the management and the control of their employer. Self-employed workers are workers who, in consideration of a certain remuneration, undertake to perform a piece of work or to provide a service, primarily by their own effort and without a relationship of subordination with respect to the principal.

While taxi drivers are considered to be employees and ride-sharing apps only cooperate with the licensed taxi companies, food delivery couriers are considered in practice as self-employed workers, who deliver goods on the behalf of third parties, using bikes or motorbikes, through digital platforms (riders).

In Italy, businesses used the presence of the third category of *parasubordinato* to evade regulations applicable to employees, such as social security contributions. In essence the quasi-subordinate category created an opportunity for arbitrage that resulted in less worker protection. The end result was confusion and, since 2015, the third category is extremely limited and Italian workers are presumed to be employees.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

The Italian case law has developed a number of criteria, namely:

- the inclusion of the person in the business organisation,
- time constraints,
- exercise of disciplinary authority by one of the parties,
- exclusivity of the relationship,
- work intensity,
- relevance of the performance to the production cycle,
- fixed salary.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

Paying full social security benefits, and even being charged with a criminal prosecution for the 'exploitation of workers'.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

No, it is not possible in the jurisdiction.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

No, such cases have not been reported in the jurisdiction.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

In 2019, the Italian Parliament converted into law the Decree no. 101/2019 to introduce new provisions for social protection of self-employed delivery platform workers. The reform is addressed to self-employed platform workers of delivery platforms, who use bicycles and motorised vehicles for delivery. The reform intends to guarantee for these workers the same working conditions as those of permanent employment contracts (remunerations for night work, the right to unionize, social protection package).

There is a case against Uber Eats currently in Milan, as the court has suspected that the company is exploiting its workers, pursuant to anti-mafia regulations on the prohibition of 'capolarato', i.e. the exploitive conditions of labour.

The trade unions are promoting initiatives aimed at raising awareness about working conditions in platform work.

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1. Are the workers in the gig economy in Latvia classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

Employment relationships in Latvia are regulated on the basis of contract law. The Latvian Labour Act (Darba likums) defines the notion of "employee" and the duties of employees. Services provided by self-employed workers are governed by Civil law. There is no special category for platform workers.

An employee is a natural person who, on the basis of an employment contract and for agreed work remuneration performs specific work under the guidance of an employer.

An independent contractor or a service provider is a person who under a service agreement performs for another party an order or produces a product or conducts and completes an activity by using its own tools and equipment and for certain remuneration.

Independent contractors can be legal and natural persons, the latter of which is a self-employed worker or a performer of a specific job, such as a shoemaker, hairdresser, etc. Latvian Labour Law does not apply to independent contractors.

Article 2179 of Section 15 (first subsection) of the Civil Law states that if the purpose of the relationship between two parties is not work, but a result of the work, then these relationships may be organised on the basis of so called "company contract" (better known as a "service contract") or some other legal basis (for example an author's contract). The general provisions of the Civil Law regulate civil contracts, and Articles 2212-2229 of the same Section 15 (third subsection "Company contract"), regulates service contracts more specifically.

Gig workers would be rather classified as self-employed, which run a micro-enterprise

In terms of services provided through the ride-sharing app, this is difficult to say.

Most drivers providing services over the ride-sharing app work as individual entrepreneurs and would thus be classified as self-employed.

If they are directly employed by partner companies of ride-sharing service providers, then these drivers would be rather classified as employees.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

The State Revenue Service of Latvia (tax authorities) determine the employment status on the basis of the following criteria:

- Economic dependence of the service provider on the contracting party
- Financial risks, liability of the service provider
- Degree of integration of the service provider into the enterprise of the contracting party (e.g. does the service provider have duties to observe internal rules of the company?)
- Availability of holiday and paid leave in accordance with schedules of the company
- Degree of management and control of the contracting party over the contractor
- The service provider is not the owner of the assets while rendering service to the company

When a self-employed worker is in fact working in a relationship subordinate to his or her employer, such individual may be recognized as an employee even if parties have agreed on an independent contract relationship. Tax laws establish a number of criteria that are indicative of an employment relationship despite the presence of an agreement to an independent contract relationship.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

Latvian Labour Law provides for the possibility to enter limited duration employment contracts only in specified cases. If the employment contract has been entered for limited duration despite the fact that it does not fall under any of the categories specified in the law, it shall be considered that the contract is entered for an unlimited term.

If an employee is mistakenly classified as an independent contractor, such an individual would be entitled to request entering into an employment contract with the employer.

If the employer does not agree to conclude the employment contract, the individual may turn to the State Labour Inspectorate with a complaint. The employer may be fined with an administrative fine for failure to comply with employment legislation and ordered to enter into the employment contract.

If the employer does not agree with the decision of the State Labour Inspectorate and refuses to conclude the employment contract, the individual is entitled to file a respective claim with the court. Misclassification of an employee as an independent contractor may also have taxation consequences.

The State Revenue Service can requalify the legal relationship as an employment relationship and require payment of any overdue taxes along with the penalties and late payment interest (however, for not more than three preceding years).

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

There is no specific definition of temporary workers included in the Labour Law. However, it is provided that an employer is entitled to conclude a fixed-term (temporary) employment contracts only in certain situations.

The term of fixed-term employment contract cannot exceed three years. There is an exception for seasonal work, in which case the contract can be limited to ten months.

A definition of agency workers has not been provided in the Labour Law. However, a number of specific provisions have been included setting forth the rights of the agency workers and obligations of the employer/agency with respect to the agency workers.

Section 7, paragraphs 4 and 5 of Latvian Labour law ensures the equal treatment of regular workers and agency workers providing that:

It is the duty of the temporary work agency to ensure the same working conditions and apply the same employment regulations to an employee who has been appointed for a specified time to perform work in the undertaking of the recipient of the work placement service as would be ensured and applied to an employee if the employment legal relationships between the employee and the recipient of the work placement service had been established directly and the employee was to perform the same work.

Section 96, paragraph 2 provides that an employee posted by a work placement service provider has the right to use the facilities, common premises or other opportunities of the undertaking of the recipient of the work placement services, as well as transport services with the same conditions as the employees with which the work placement service provider has established an employment legal relationships directly, except where differential treatment may be justified by objective reasons.

Consequently, neither tax nor employment rights issues can be avoided. Temporary agency workers can enforce rights against the end user directly, as stipulated in section 96, para. 2, Latvian Labour Law.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

Gig workers tend to be self-employed utilizing the micro-enterprise scheme. The micro-enterprises are subject to a 15% tax rate.

In this setting, the end user has no employment/tax responsibilities towards the service provider. The contractor is liable to withhold e.g. income tax her-/himself, based on the micro-enterprise scheme above.

Gig workers who provide services as part of a service contract tend to be self-employed. The micro-enterprise scheme can be utilized. Micro-enterprises are subject to a 15% tax rate.

In this setting, the end user has no employment/tax responsibilities towards the service provider. The contractor is liable to withhold e.g. income tax her-/himself, based on the micro-enterprise scheme above.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issues?

No case law has emerged yet which would help determine the employment status of gig workers in Latvia.

At the end of the year 2019, the State Labour Inspectorate of Latvia in cooperation with private stakeholders released a report which investigated the impact of new forms of employment in the Latvian labour market context.

The Latvian government plans to continue the discussions to identify areas for future improvement. For example, while currently only professional service providers (legal persons or firms) can provide passenger transport services, including via platforms, the Ministry of Economics was considering the idea of also allowing non-professional service providers (peers) to register for the special permit and provide passenger transport services via platforms. They were also considering the idea of blocking platforms in the case of non-compliance and obligating platforms to provide transaction data to the tax authorities.

On 2 February 2019, the Civil Cases Department of the Latvian Supreme Court published a judgment (case No. C29688412, SKC-1818/2014) to the effect that recording summarised working time under Section 140(1) of the Labour Law refers only to full-time employees. The Civil Cases Department came to the same conclusion also in a judgment of 4 December 2015, (case No. C284900012, SKC-2735/2015). This means that, in the Court's now well-established view, the Labour Law does not permit aggregated working time for part-time employees.

Although opinions differ among lawyers about the Court's finding, it is still worthwhile paying attention to it, so that employers who hire part-time personnel should assess whether to introduce certain changes to their present working time organisation.



## LITHUANIA

1. Are the workers in the gig economy in Lithuania classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

Gig workers in Lithuania fall within the notion of a self-employed with an individual activity certificate/certificate of self-employment. There is no special category of employment for platform workers in Lithuania.

The Law on State Social Insurance (LSSI) provides the following definition of self-employed persons: "Self-employed persons mean owners of individual enterprises, members of general partnerships, members of limited partnerships; the persons who are engaged in individual activities as defined in the Law on Personal Income Tax (PIT) - lawyers, assistant lawyers, notaries, bailiffs, the persons holding business certificates and other persons".

To qualify as individual activities, an individual's transactions should be of a continuous nature and involve the pursuit of economic benefits.

According to Art. 21, Labour Code Of The Republic Of Lithuania, "the employer is a person for whose benefit and under subordination of whom, by an employment contract, a natural person has undertaken to perform a job function for remuneration".

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

Art. 32 of the Labour Code of the Republic of Lithuania lists the main criteria for determining the employment status of employees:

- The employee undertakes to perform a job function for the benefit and under the subordination of the employer
- The employee receives remuneration
- The employer has the right to control or manage either the entire work process or part thereof
- The employee obeys the instructions of the employer and the procedures in force at the workplace
- In carrying out a job function, the commercial, financial or industrial threat that arises falls to the employer

Additionally, independence of activities is demonstrated by the business relations of an individual who performs individual activities with another party to the transaction, which must be materially different from those that are characteristic of employer-employee relations, i.e. they should not feature characteristics typical to normal employment relationships, such as

- agreements on remuneration,
- workplace
- job functions
- working time
- holidays, etc.

An individual shall independently deal with activity-related issues and cover his or her operating expenses.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

In compliance with Article 413 of the Code of Administrative Violations of Law of the Republic of Lithuania (ATPK), for undeclared (illegal) work the employers or their representatives shall be subject to a penalty ranging from EUR 868 to EUR 2,896 for each undeclared (illegal) worker.

As stipulated in Art. 56, Law on Employment, the employee has to transmit to the State Tax Inspectorate and the territorial office of the State Social Insurance Fund Board data required for the calculation and recovery of the unpaid natural person's income tax, state social insurance contributions, fines and penalties payable under the legal acts governing the tax and the contributions on the earnings that the illegal worker received or had to receive.

If the employer has already been punished for the same violation during the past 3 years, he shall be liable to pay a fine between EUR 2 896 and EUR 5 792 for each illegal worker.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

A temporary agency must ensure that a temporary worker's remuneration for work done for a user enterprise be at least as much as the remuneration that would be paid if the user enterprise had hired the temporary worker under an employment contract at the same workplace, except in cases where temporary workers employed under open-ended temporary agency employment contracts receive remuneration from the temporary agency between assignments to work and the size of this remuneration between assignments to work is the same as during assignments to work.

Temporary workers shall be entitled to use the infrastructure that the user enterprise has to satisfy employee work and rest needs as well as their interests (rest areas, dining room, child care and transportation services, etc.) under the same conditions as the employees of the user enterprise, except in cases where the application of different conditions is justified by objective reasons.

The user enterprise shall bear liability for damage caused by the user enterprise to a temporary worker. Agency workers can thus enforce rights against the end user directly.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

No, gig workers/independent contractors in Lithuania would mostly opt for the individual activity certificate /certificate of self-employment.

An income tax rate of 5% applies to income from manufacturing (including agriculture), trade and provision of the majority of services.

Gig workers under this scheme must be covered (on a compulsory basis) by social pension insurance to receive the basic and the supplementary part of a pension, also by sickness and maternity social insurance to receive only maternity, paternity and parental benefits.

The total rate of State Social Insurance contributions is 28.5% (26.3% for the basic and the supplementary part of a pension and 2.2% for sickness and maternity social insurance).

The basis for social insurance contributions of persons engaged in individual activities is 50% of taxable income from individual activities (inclusive of compulsory health insurance and state social insurance contributions).

The end user has neither employment nor tax responsibilities towards the service provider holding an individual activity certificate.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issues?

No case law can be cited yet which would help better determine the employment status of gig workers in Lithuania.

The Lithuanian government has been generally welcoming new innovative business models, such as those provided by ride-sharing apps. A few platform economy couriers have recently staged a strike in Vilnius. The gathering was attended by a grassroots union 'May 1st Labour Union', which i. a. advocates for platform workers' rights.

## LUXEMBOURG

1. Are the workers in the gig economy in Luxembourg classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

There is no single answer to this question as types of work and ways how they are carried out can differ greatly within the gig or platform economy sector.

In Luxembourg the gig/sharing economy is regulated by the legislation applicable to the conventional sector. The sharing economy has not been included as a specific sector in the national framework and there are no definitions for sharing economy activities in the national legislation.

The only reliable way to ascertain whether the particular worker can be considered an employee would be to go by the criteria pointed out in the answer to question 2.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

In order to decide whether there is an employment contract, along with the fact that under an employment relationship, work is performed in exchange for monetary remuneration, a relationship of subordination must exist, meaning that the employee must be placed under the authority of the employer, who will:

- Give orders.
- Control the performance of the duties of the employee.
- Control the due execution of such duties.

If one of these elements is not present, the relationship to be a self-employed agreement.

A written employment contract is mandatory under Luxembourg law.

Self-employed persons are not subject to specific employment law provisions and are instead covered by the civil and commercial code.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

Any infringement of labour law obligations may be punished with a fine from €251 to €25,000. In the event of a recurrence of the offence within two years, the provided penalties can be carried out to twice their maximum.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

Agency workers are entitled to the equivalent remuneration of the company's own employees with the same or equivalent qualifications. Agency workers are also entitled to annual leave on a proportional basis. Regarding the working conditions, the Labour Code does not provide for a principle of equality. However, the Labour Code expressly mentions that agency workers should have access to the user company's facilities and common areas such as the company restaurant, the means of transport, library, showers, changing rooms and toilets.

The duration of an agency assignment/placement must not exceed 12 months, (including a maximum of two renewals). If the contract exceeds 12 months, the worker will be deemed to be a permanent employee. In addition, the temporary agency and the user company may be fined EUR 500 to EUR 10,000 for violations of the Labour Code.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

No, it is not common in Luxembourg for independent contractors to have their own personal service companies. Independent contractors in Luxembourg are usually registered as sole proprietors. This allows them to avoid the corporate tax in most cases, there is also less bureaucracy involved when registering as a sole proprietor than there is when registering a company.

From the end user's perspective there is no difference between under which kind of a legal entity the independent contractors are registered. End users have no employment/tax obligations to the contractor.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

There is a lot of uncertainty in the gig economy workers' employment status in Luxembourg as different categories of work are all governed by different regulations. Suggestions have been made for the government to better regulate this market but as of yet nothing substantial has been rolled out.

It is interesting to note that ride sharing platforms essentially do not exist in Luxembourg, due to the taxi laws under which these services would fall in Luxembourg. Taxiapp.lu is a government backed app which, from the customers' perspective works similarly, but in essence it is a national taxi drivers' platform where each driver has to be licensed as a taxi driver, employed, etc. While the government has been positive in their communications about companies such as Uber wanting to start their operations in Luxembourg, it has not been possible as of yet.

There appear to be no ongoing/landmark court cases concerning gig economy giants.

## MALTA

1. Are the workers in the gig economy in Malta classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

Workers in the gig economy are classified as self-employed, unless they satisfy at least 5 of the 8 requirements pointed out in the answer to question 2. In practice, taxi drivers are usually self-employed.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

For the purposes of Maltese law, workers are classified either as "employed" or "self-employed": Employees are individuals who are formally engaged by their employer, typically governed by an employment contract or a letter of engagement setting out the terms of employment. Self-employed workers are those individuals whose principal source of income is derived from work generated on their own account, and not on the basis of any contractual arrangement with an employer. Such workers typically contract with their customers on the basis of a contract, engagement or arrangement governed by the general civil law, but are not granted the protection of employment law given the absence of any employer-employee relationship. However, in 2012, a law enacted provided a test to weigh whether there is a hidden employment contract.

If the relationship between the individual contractor and the recipient of the service meets five or more of the following eight criteria, then the relationship is presumed to be one of employment for the purpose of Maltese law:

- The contractor depends on one single person for whom the service is provided for at least 75% of his income over a period of one year;
- The contractor depends on the person for whom the service is provided to determine what work is to be done and where and how the assigned work is to be carried out;
- The contractor performs the work using equipment, tools or materials provided by the person for whom the service is provided;
- The contractor is subject to a working time schedule or minimum work periods established by the person for whom the service is provided;
- The contractor cannot sub-contract his/her work to other individuals;
- The contractor is integrated in the structure of the production process, the work organisation or the company's or other organisation's hierarchy;
- the person's activity is a core element in the organization and pursuit of the objectives of the person for whom the service is provided; and
- The contractor carries out similar tasks to existing employees, or, in the case when work is outsourced, he performs tasks similar to those formerly undertaken by employees.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

The Employment Status National Standard Order provides that any person performing services as a self-employed person for another person, and which are found to fall within the employer-employee relationship result in the contractor being treated as an employee on an indefinite contract of employment, with all the rights and protections that such a status brings. This means that the contractor would be considered an employee retroactively, from the moment he started providing his/her services. All the requirements and benefits applicable to an employee would also apply retroactively. Civil procedures for damages may be initiated by both parties.

This can also bring about fines for the company, no less than €1 000 per employee affected.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

According to the Maltese Temporary Agency Workers Regulations, agency workers are considered employees of the agency and the agency is considered the employer. Therefore any legal issues in employment are directed to the agency and settled between the employee and employer. End user, in this case is not held liable.

What has to be noted though, is that the workers are entitled to at least the same level of conditions as those awarded to the actual employees of the company they are assigned to. This includes pay, working conditions, rest, working time, annual leave, public holidays etc. The agency workers are also entitled to representation equal to those of the actual employees, if such a representational body exists.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

In order to be considered self-employed in Malta you have to be a sole proprietor, and these are by far the most common when it comes to independent contractors. It is not common for individuals to register as an LLC or anything more substantial than that, as this comes with extra regulations, capital requirements and paperwork for the individual.

But as a sole proprietor is considered a legal entity, the obligations and responsibilities of the service they provide fall unto themselves.

End user has no employment or tax responsibilities to the independent contractor unless the relation can be considered an employment relationship based on the criteria set out in the answer to question 2.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

While there are no landmark or ongoing court cases in regards to the gig economy giants, there was the Case 29 / 2014 / 1 - Falzon Albert Vs Melita Mobile Limited, which confirmed the requirement of satisfying at least 5 of the 8 points of contention pointed out in question 2, when it comes to employee status.

There do not seem to be any expected changes to the gig economy workers' employment status aside from those arising from EU legislation.

1. Are the workers in the gig economy in Netherlands (country) classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

An Amsterdam court ruled in two separate cases, that riders working for a food delivery firm Deliveroo are not self-employed and are entitled to the same pay and benefits as an employee. In 2017, Deliveroo announced that it would gradually replace all of its employed couriers in the Netherlands with freelancers. According to Court: "The nature of the work and the legal relationship between the parties has not changed since the beginning of 2018 in such a way that it is no longer possible to perform work on the basis of an employment contract," the judge stated. The judge added that "there is admittedly a great deal of freedom with regard to the availability of labour, but it still fits within the character of the employment contract, even if the times to be chosen by the employee are used. The dependence on Deliveroo is still considered by the sub-district Court to be more important than the independence of the deliveryman."

Workers in the gig or sharing economy in the Netherlands can be classified as employees or as self-employed workers - depending on the particular circumstances. Employees are generally defined as individuals working under an employment contract. Self-employed workers are individuals who work under a contract for services. The primary difference between self-employed workers and employees is that self-employed workers are not subject to any relationship of authority. Self-employed workers do not have the same level of rights and protection as employees.

A self-employed worker is a natural person who, according to the definition of the Dutch tax authority, earns an income by profit from a company that does not employ any other employees. Also the director/main shareholder, employed in his or her business as the only employee is considered as a self-employed worker. Drivers in Netherlands usually drive as self-employed or in fleet as employees. However, to drive there is a need for taxi license also.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

In the Netherlands, an employment relationship needs to have three elements: labour (services provided), pay and a relationship of authority (between the employee and the employer). If these criteria are met, the contract of services between an entity and the self-employed worker qualifies as an employment agreement. Whether this will be the case will be determined based on the intention of both parties as well as considering all facts and circumstances.

Self-employed workers with no employees differ from employees on the following social security issues:

- (a) There is no agreement to perform labour for a certain period of time;
- (b) There is no employer obliged to pay a salary;
- (c) There is not a dependency relationship.

This includes situations where self-employed workers are not automatically registered by an employer for payment of income taxes and social security contributions. Self-employed workers are solely responsible for the financial risks related to the loss of income when ill and/or unemployed and for old age pension insurance. However, the border between being self-employed and an employee is not always sharp. Self-employed workers, working for one main customer are regarded as employees.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

There is no official legal classification for someone who is working in the gig economy in the Netherlands. As a result, many digital companies classify workers as 'self-employed', even when they work full time and for only one or a small number of companies, thereby reducing the tax



bill. In turn, this places a greater strain on the Dutch social security system. The new Act - Balanced Employment Market Act ("WAB") shall help to clearly distinguish between an employee and a self-employed person. Fines according to the severeness of breach of law. The civil consequences for organisations that wrongly classify someone as self-employed instead of employee are (among others) applicability of Dutch labour law to the contract (with retroactive effect). This leads to a liability regarding payment of wages and (wage) tax, possibly fines and application of Dutch dismissal law (including a statutory severance payment).

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

Agency worker: an employee with a temporary agency work contract. The Civil Code (art. 7:690) defines the temporary agency work contract. The temporary employment contract is the employment contract, by means of which one party, the employer, places the other party, the employee, at the disposal of a third party, within the scope of operating the employer's profession or business, to perform work under the third party's supervision and management, pursuant to a contract for professional services, which the third party has concluded with the employer.

There are only direct rights against the agency, however, the main principles of law as e.g. wage equality are applicable also for the user employer. Also, the user employer does have certain obligations towards the agency workers such as liability with respect to work related accidents. There are no direct rights towards end user.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

According to statistic data it is more common to perform as self-employed person than to have a personal service company. If a person is providing services through their own company (no self-employment but e.g. limited companies) it is a civil contract between two parties without any additional employment responsibilities. It is common for independent contractors to be assigned/posted to a client via their own or management companies. Despite using such management companies, it is nonetheless important that the (model) contract between the management company and the client states that no relationship of authority towards the independent contractor is exercised and that the contract should not be considered as an employment contract. As for the end user, there are no additional obligations, neither while using services of a self-employed person, nor those of a company.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

There was a proposal for minimum rate for self-employed persons performing in gig economy, however, it did not pass. The government remains concerned about the growing group of vulnerable self-employed people at the bottom of the labour market. In particular, the cabinet wants to strengthen the position of people working in the platform economy. The Dutch Government aims to introduce new legislation regarding self-employed workers in 2021. The proposed legislation aims to (1) offer protection for the lower levels of the labour market, (2) create space for self-employed persons at the top end of the labour market and (3) offer more clarity to clients and independent contractors. The proposed minimum hourly rate shall be 16€, but there are still ongoing negotiations.

Uber drivers have recently launched a legal case in the Netherlands to force the release of the computer algorithms used to manage their work in a test case that could lead to greater transparency for millions of gig economy workers. The case has been brought by UK-based App Drivers and Couriers Union (ADCU) at the district court in Amsterdam, where Uber's headquarters are located.

## NORWAY

1. Are the workers in the gig economy in Norway classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

There is one legal category of workers, namely the notion of "employee", and two undefined categories, self-employed worker (mainly running her/his own business) and "non-employed employee" (freelancer/ kontraktør) in Norway.

The definition of an employee is laid down in Section 1-8, Working Environment Act. An employee is 'anyone who performs work in the service of another'.

There is no legal definition of a self-employed or a freelancer/economically dependent employee (kontraktør).

According to Norwegian tax law self-employed are mainly running their own business and might have employees while independent contractors do not have their own employees.

Access to social benefits (sick pay, holiday pay, occupational pensions, and insurance) varies depending on whether one is a self-employed or a freelancer/independent contractor. Full statutory protection/occupational benefits are granted to employees.

In terms of services provided through the ride-sharing app, this is difficult to say.

Most drivers providing services over the ride-sharing app work as individual entrepreneurs and would thus be classified as self-employed.

If they are directly employed by partner companies of ride-sharing service providers, then these drivers would be rather classified as.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

Norwegian labour inspection authorities/labour courts employ the following criteria to determine the employment status of a worker in Norway:

- the duty to perform the work personally and not use substitutes
- the duty to subordinate and follow the employers instructions and control
- the employer holds the work premises, equipment etc.
- the employer is responsible for the result of the work performed
- the payment is executed by some kind of salary
- the contractual relationship is stable, with an agreed period of notice
- the work is mainly performed for 1 single principal

An overall assessment of the criteria applies. Recent case law by the Norwegian Supreme Court suggests, that the criteria subordination to be most decisive criteria. Additionally, the Supreme Court assesses the practical circumstances in each case.

Other guiding questions are:

- Does the worker work under the control and instruction of a principal?
- Is the worker entitled to undertake further tasks?
- Has the worker several principals at the same time or in succession? If there is only one principal, this could be an indicator that an employment relationship exists.
- Is the worker obliged to fulfil the tasks himself/herself or can she/he hire other people?
- Are the worker's tasks restricted in time?
- Has the worker her/his own office?
- Does the worker hold her/his own material and production equipment?
- Is the worker entitled to pay if the job is not carried out?
- How free is the worker to decide how much work to carry out?

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

An employer, regardless of whether Norwegian or foreign, has a monthly reporting obligation as well as withholding obligations related to income earned while performing work in Norway.

Employees challenging their employment status might be entitled to monetary compensation as regards economic losses related to social benefits (holiday pay) for the last three years, from the date of commencement of the working relationship.

The Working Environment Act, Social Benefits Act, Holiday Act (pensions, holiday pay) all then all applicable from the date of the commencement of their working relationship between the contractor and themselves. In case of multiple contractual relationships for the provision of services, each individual case is assessed based on the criteria outline in question 2.

If the re-characterization is done by the tax authorities related to tax questions, both the employer and the person performing the work tasks may be liable for extra tax payments and punitive tax payments. Such tax obligations may be claimed for work performed during the last 10 years.

In severe cases of tax fraud, the Norwegian Penal Code Part II. Criminal acts Chapter 30. Fraud, tax fraud and similar financial crime, applies, specifically section 378 ('Tax fraud'): "A penalty of a fine or imprisonment for a term not exceeding two years shall be applied to any person who provides incorrect or incomplete information to a public authority, or fails to provide obligatory information, when he/she realizes or ought to realize that it may lead to tax advantages").

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

Norwegian labour regulations are fairly strict in this regard. Temporary agency workers are entitled to primarily the same salary and working conditions (also anchored in collective agreements) as if they were employed directly with the company hiring them in.

The principle of equal treatment governs the relationship of the temporary agency worker vis-à-vis the temporary work agency and the end user. The principle of equal treatment also applies to workers posted to Norway from other countries.

Temporary agency workers are protected by the Working Environment Act, Section 14-9. Permanent and temporary appointment:

Temporary agency workers can be hired for a maximum period of twelve months. Such agreements may apply to a maximum of 15 per cent of the employees of the undertaking, rounded off upwards, but temporary appointment may be agreed upon with at least one employee.

Pursuant to the Working Environment Act, temporary agency workers have the right to equal treatment in terms of

- (i) working hours
- (ii) overtime
- (iii) breaks and rest periods
- (iv) holiday, days off
- (v) pay and coverage of expenses

It is the temporary work agency that shall ensure that temporary agency workers receive the equal treatment to which they are entitled, at least the conditions that would have applied if the worker had been recruited directly by the user undertaking to perform the same work.

User undertakings are obliged to provide the temporary work agency with the necessary information about her/his pay and working conditions. The temporary worker can thus enforce her/his rights directly against the end user.

When deciding this, the consequences of statutes and regulations, collective agreements, company guidelines and standard practice applying at the user undertaking shall be taken into account.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

The “enkeltperson-foretak” option has become the most common type among platform workers in Norway (see e.g. BrainBase). In this business setting, the independent contractor is responsible for her/his own social security benefits and is fully liable for her/his own company, including debts. VAT and other taxes have to be paid by her/himself. There are thus no employment/tax responsibilities of the end user towards the independent contractor.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issues?

No legal proceedings have been initiated yet to assess the employment status of gig workers in Norway.

The Norwegian Supreme Court ruled that traveling allowance constitutes “salary and cost coverage” and is part of the basic working and employment conditions of a temporary agency worker due to the principle of equal treatment. The employee from the temporary staff recruiting agency did not receive such allowance. The Norwegian Supreme Court concluded that this was a breach of the principle of equal treatment, as the salary allowance was to be considered as “salary and cost coverage”.

As in all other Nordic countries, Norway has been following suit in deregulating the national taxi market.

In 2016 and 2017, 138 Uber Pop drivers were fined for providing taxi services without the required licence, 94 drivers lost their driver's licence and 67 had their earnings confiscated by the authorities.

In September 2017, Uber Norway and the Dutch subsidiary Uber BV received and accepted a shared fine of NOK 5 million (EUR 514,000).

The Norwegian Tax Authorities sent an invoice for additional tax to 600 Uber Pop drivers in 2017 for not paying VAT while earning more than NOK 50,000.

Uber Pop was “put on pause” on 30 October 2017, according to Carl Edvard Endresen, the then head of Uber Norway, because the “legislation is unclear”. However, Uber could still offer Uber Black, and two additional services launched in 2017: Uber XXL and Uber Lux.

In November 2020, new amendments on taxi licencing to the Act on Professional Transport by Motor Vehicle and Vessel (yrkestransportforskriften) will come into force.



1. Are the workers in the gig economy in Poland classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

According to Polish legislation, there is no specific regulation of 'gig economy', 'collaborative economy', 'digital platforms' or 'crowd workers'. When assessing if any legal relationship between two parties is classified as employment relationship, it is necessary to follow the Labour Code characteristics of employment relationship. In case the relationship fulfils the criteria (see Q 2.), the relationship is classified as employment relationship and must be performed under the written employment contract in accordance with the Polish labour law.

In practice, regulatory framework in Poland is behind the technological change and that app-based work does not fit into the existing categories. According to the available information, some of workers in the gig economy are registered as self-employed, some of them work on the basis of contracts under the Civil Code or the Commercial Code (such as bailment agreement also known as lending for use agreement or driver account management agreement with the fleet partner), others have just verbal agreement. However, based on recent statistics, minimum of them has employment contracts.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

Article 22 § 1 of the Polish Labour Code: "By establishing an employment relationship, an employee undertakes to perform work of a specified type for the benefit of an employer and under his supervision, in a place and at the times specified by the employer; the employer undertakes to employ the employee in return for remuneration."

According to the provisions of the Polish Labour Code, a contract fulfils the characteristics of an employment contract if the employee undertakes to perform work of a certain type:

- for the employer benefit;
- under employer's supervision;
- at the place and time specified by the employer;
- the employer undertakes to pay the employee a salary for the work performed.

To understand the specifics of the Polish labour market the differences between labour law and civil law have to be indicated. For two decades Polish labour market is struggling with the problem of moving away from labour law employment towards civil law employment. This phenomenon should be considered as unlawful, aimed at minimizing employment costs related mainly to the social rights of employees. Those rights are not granted to persons employed under civil law contracts. The table below presents the most vivid, selected equations between labour law and civil law, showing the differences are between employment based on employment law and employment based on civil law. The legal axiology requires person who is self-employed to be an entrepreneur. Person who is self-employed can be an employer for other workers. There is no legal definition of self-employment, however to gain such a status a person should be self-independent. Self-employed persons should work on their own behalf and on their own account.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

Employment contracts cannot be replaced with a civil law contract where the conditions of the performance of work remain intact.

An employer, or anyone acting in his name, who concludes a civil-law contract where an employment contract should be concluded, under conditions specified in Article 22 is liable to a fine of between 1,000 zlotys (228€) and 30,000 zlotys (6830€).

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

A temporary employment agency is an entity who employs a citizen in an employment relationship for the purpose of his temporary assignment to a user employer. Temporary employment agency operates on the basis of a standard tripartite relationship: between a agency, an employee and a user-employer. The temporary employee remains the employee of the temporary work agency at all time. But it is the user-undertaking who instructs the temporary employee and subsequently supervises his performance. It shall be noted that unless regulated otherwise, the provisions of labour law concerning the employer and the employee apply accordingly to temporary work agency.

When a temporary assignment occurs, the following contracts are concluded:

1. an employment contract between the agency and the employee;
2. a temporary assignment agreement between the agency and the user employer.

Remuneration is paid to the employee by the employment agency and not by the user employer.

Agency workers as any other employees in employment relationship does not have any direct relationship with end user (consumer or client). The private company in which name the employee works enters contract with end user.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

The workers in the gig economy are entrepreneurs who are either self-employed persons or have the legal form of a limited liability company or a joint stock company.

Yes, the end user (consumer) in such case does not have any employment responsibilities nor tax responsibilities.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

From January 1<sup>st</sup>, 2020 the amended Act on Road Transport, referred to as "lex Uber", became effective. The adoption of the law was preceded by protests of the Polish taxi drivers demanding equal rules for themselves and drivers of app-based car firms such as Uber. The new legislation changed the conditions of provision of taxi services. The law assumes that ride-services companies will be required to hire only licensed drivers. To implement the regulation a duty to verify drivers has been imposed. According to new conditions, taxi drivers are not required to pass city topography tests and can replace taximeters with applications.

In 2019 a Parliamentary Group for the Future of Work was established. Currently it analyses, among others, issues related to employment via online platforms, a model that is spreading into new economic relations (e.g. taxi corporations are starting to use ride-sharing solutions). Representatives of employees, employers and the Ministry of Family, Labour and Social Policy take part in the Groups meetings. During one of the meetings two ways of work development via platforms were discussed. Accordingly, it was proposed:

- 1) to regulate employment relations arising through platforms under a classic employment relationship;
- 2) to prepare a series of regulations that would cover the most sensitive areas of employment through platforms that require the intervention of the legislator to protect the rights of employees.

## PORTUGAL

1. Are the workers in the gig economy in Portugal classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

Gig workers in general could be either employees or self-employed under Portuguese labour law but when it comes to ride-sharing workers, they are considered to be employees based on the applicable law. Since 2018, the ride-sharing workers must apply for a license and go through specialized training which would allow them to work using the digital ride-sharing platforms.

The drivers must have a written employment contract, based on the Labour Code, with the platform they will be providing their services on, the contract will have to include start and end times, and regular payments for work done.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

According to the Portuguese Labour Code, employment comprises the commitment of an individual to provide manual or intellectual activity to an employer (company, organization or individual), against payment of an agreed salary and under the employer's supervision and direction. In independent contracting, the provider undertakes to render a certain result through his or her manual or intellectual work and is not subject to the counterparty's power to give orders that is found in the employment type relationships.

Legal subordination is pointed out as being the decisive criterion to draw the line between employment relationships and independent contracting (self-employment).

In practicality, a number of things are considered when deciding whether there is a superior-subordinate relationship, the most important of which are:

- working time fixed by the beneficiary of the activity (the presumed employer);
- work being provided in a specific place determined by the presumed employer;
- the use of working tools provided by same presumed employer;
- payments being made on a periodical or regular basis (particularly fixed amount payments);
- the shaping of the work performance being based on regular orders and instructions from the presumed employer; and
- integration of the presumed employee/independent contractor in the presumed employer's organization (or production) structure.

If two of the abovementioned points are met, then the relationship is considered to be that of an employer-employee.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?



When wrongful classification of employees is decided by the court, social security proceedings are usually initiated to obtain retroactive pay of social security contributions from the employer. As a rule, the employer will have to pay the employee's part of the contribution to the social security services (and deal with the right to claim the amount directly from the employee).

Additionally, the company may have to adhere to the Work Compensation Fund and to the Work Guarantee Compensation Fund (and be subject to pay an additional 1%), which may be due retroactively and the employer will have to contract a work accidents insurance and comply, in general terms, with existing obligations in terms of health and safety at work.

The employee is also entitled to all credits arising from a subordinated relationship, such as paid holidays, Christmas and holidays allowances, meal allowance (if this payment is set forth in an applicable collective bargaining agreement), and others that may be foreseen in an applicable collective bargaining agreement.

Companies resorting to independent contractor agreements in conditions that justify re-characterization, qualify as a very serious misdemeanour, punishable with the payment of a fine, varying between € 2 040 and € 9 690. Companies in a relation of reciprocal ownership, control or group, as well as the company directors may be jointly liable for the payment of the fine.

In case of repeat offenses, the company may be deprived from the right to receive benefits or allowances granted by public service or entities, for a period up to 2 years.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

Temporary agency work in Portugal is regulated by the Labour Code (Código do Trabalho).

In Portugal agency workers are the employees of the agency and not the end user. The pay, training, social security and tax payments are to be carried out by the agency. The end user is responsible for the health and safety of the workers while they are posted at their company; they are also responsible for the direction and supervision of the agency worker. The end user does not have the disciplinary power or the right of dismissal of the agency workers, that has to be done by the agency. The agency workers are entitled to the same pay, working conditions, rest time, maximum working hours as regular employees of the end user doing the same tasks.

Due to these reasons, using agency workers is not a suitable way of avoiding employment rights issues in Portugal.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

This is not common in Portugal, especially for ride-sharing platforms since the legislation requires for an employer-employee relationship when providing ride-sharing services using platforms such as Bolt or Uber.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

There seem to be no major developments in the gig economy workers' employment status since the 2018 ride-sharing platform regulation changes.

Taxi unions are fighting to improve their position in the transport services landscape and there have been numerous taxi driver strikes in the past 5 years.

## ROMANIA

1. Are the workers in the gig economy in Romania classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

Gig economy workers in Romania are generally considered self-employed, this is especially true in cases of ride-sharing work. Drivers offering their services on platforms such as Uber or Bolt are required to register as legal entities who offer their services on the platform or as an employee to a company providing these services (not an employee of the digital platform). This was laid out by Ordonanța de urgență nr. 49/2019, which regulates alternative transport services and the platforms through which they are provided.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

Employment status is acquired by individuals only by entering into an individual employment contract that must be concluded in writing in order to be valid. The individual employment contract must be registered in the electronic records of regional institutions that monitor and control the correct application of employment law, prior to the beginning of the dependent activity. The existence of an individual employment contract validly concluded is what distinguishes the legal status of employees to the legal status of individual contractors.

The employees are conducting their activity in a subordinated relationship with the employer, while the individual contractor is engaged in a civil legal relationship with the beneficiary of the activity, which is characterized by the equality of the parties.

A separate category of individuals that provide independent activities for a beneficiary is those of the liberal professions' representatives or freelancers. Usually these professions have independent regulations and they are organized according to their own statutes. The people of liberal professions provide their activity on the basis of a collaboration contract regulated by the same statutes.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

Wrongly classifying someone as self-employed or an independent contractor will be categorized as unlawfully receiving individuals for work. A court ruling is required for each individual case to ascertain whether unlawfully receiving individuals for work really did take place, a supervisory body's decision on this matter is not enough.

If the court finds a company unlawfully receiving individuals for work a fine is issued from Lei 1,500 to Lei 2,000 for each identified person, without exceeding a total amount of Lei 100,000. Criminal charges can be brought upon the management of the company if more than 5 such persons are identified at one time.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

Agency workers are employees of the agency and do not have an employee-employer relationship with the end user. They are entitled to equal or better working conditions, wages, and periods of rests etc. as regular employees. Collective agreements are mandatory for companies employing more than 20 people. If the company does not exceed this amount of employees, collective agreements are optional.

Employment rights issues fall to the employment agency to solve, end user is not affected.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

Independent contractors have to be registered either as a self-employed or establish an LLC and are responsible for their own tax payments, VAT and social security included. There is no difference from the end user's perspective in regard to taxes or employment responsibilities whether the contractor is registered as a self-employed or a LLC.

End user does not have employment or tax responsibilities on the behalf of the independent contractors utilizing personal service companies.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

There do not appear to be any national legislation changes on the horizon when it comes to the gig economy workers' employment status. EU is pushing for more social security for gig workers and that will also affect member states such as Romania but nothing that is specific to Romania sticks out. Uber was sued and found to be operating illegally in Cluj in 2018 but after the alternative transport services legislation changes in 2019, this is no longer relevant and they, along with other platforms are allowed to operate legally in Romania.

Taxy unions and companies have protested the legislation changes which took place in 2019, citing illegal discrimination but have not made a lasting impact.

1. Are the workers in the gig economy in Slovakia (country) classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

According to Slovak legislation, there is no specific regulation of 'gig economy', 'collaborative economy', 'digital platforms' or 'crowd workers'. When assessing whether any legal relationship between two parties is classified as employment relationship, it is necessary to follow the Labour Code definition of dependent work. In case the relationship fulfils the criteria of dependent work (see Q 2.), the relationship is classified as employment relationship and must be governed by Slovak labour law. Provision of services through the digital platforms are not prohibited in Slovakia. Based on practice, workers of such digital platforms usually provide services as freelancers (self-employed based on trade license) or through fleet companies. However, such relationships often fulfil the criteria of dependent work and therefore the workers should classify as employees. According to some authors digital platforms force natural persons to operate as self-employed persons and thus practicing so-called 'schwarz system'.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

As was already stated above, according to the Slovak Labour Code, the employment status is determined by the term dependent work. The criteria for dependent work results from its legal definition as follows:

- superiority of the employer and the subordination of the employee;
- personal performance of work by the employee;
- performance of work according to the employer's instructions,
- performance of work on behalf of the employer;
- performance of work during working hours determined by the employer.

The Slovak courts judge, based on the characteristics of the work performed, whether it is an employment relationship (dependent work) or a self-employed activity (self-employed person, entrepreneurship). In such an assessment, the presence or absence of a single feature of dependent work does not play a role, since all of the criteria are assessed together and the courts decide case by case depending on the individual circumstances.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

In case legal entity or a natural person (a company or self-employed person) uses the dependent work of a natural person and does not have established an employment is considered as an illegal employment. Again, it depends whether the person performing gainful activity meets the criteria of dependent work.

The sanctions for illegal employment may result in a ban on drawing public subsidies, ban on engaging in public procurement and financial sanctions. For breaching the prohibition of illegal employment, the labour inspectorate imposes a fine of between EUR 2 000 and EUR 200 000 and, in the case of illegal employment of two or more natural persons at the same time, at least EUR 5 000.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

When a temporary assignment occurs, the following contracts are concluded:

1. an employment contract between the agency and the employee;
2. a written temporary assignment agreement between the agency and the employee;
3. a written temporary assignment agreement between the agency and the user employer.

It is specific for agency work that the rights and obligations of the employer towards the employee are divided between the temporary employment agency and the user employer. The user employer primarily assigns work tasks to the employee, organizes, manages, and controls the work performed by him. He is also obliged to ensure access to education or social services and equal treatment. However, in terms of salary and travel expenses, these are paid to the employee by the agency and not by the user employer. However, the so-called system of joint and severe liability applies. It means that, if the salary is not paid to the employee by the agency, the user employer is obliged to pay it within 15 days from the payment deadline.

Regarding taxes, the agency is obliged to fulfil the tax obligation as the ordinary employer under the employment contract. However, in the temporary assignment agreement between agency and the user employer, the contractual parties agree on the total price of work which also includes taxes and contributions to Social Insurance Agency and health care contributions.

Agency workers as any other employees in employment relationship does not have any direct relationship with end user (consumer or client). The private company in which name the employee works enters contract with end user.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

The workers in the gig economy are entrepreneurs who are either a self-employed person or have the legal form of a limited liability company or a joint stock company.

Yes, the end user (consumer) in such case does not have any employment responsibilities nor tax responsibilities.

6. Are there any major developments ongoing or expected in *de lege lata* or *de lege ferenda* law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

In Slovakia, there is currently no legislative work or political debates regarding the issue of gig economy employment issues.

In 2018 the Regional Court in Bratislava in case of Civil Association of Taxi Drivers against Uber B.V., imposed Uber an obligation to refrain from operating and arranging taxi services in the Slovak Republic by means of vehicles and drivers who did not meet the requirements of Act No. 56/2012 Coll. on Road Transport. The court stated that it is necessary that the Uber, who operates a taxi services in the Slovak Republic, in the performance of this business activity, as well as other taxi operators operating on the market, comply with all legal conditions and preconditions for proper and legal operation of this activity in accordance with the provisions of Act No. 56/2012 Coll., on Road Transport and related regulation in accordance with other relevant legal regulations of the Slovak Republic.

1. Are the workers in the gig economy in Slovenia classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

Slovenia has a category of an 'economically dependent person' who relies on one particular client for at least 80% of his or her annual income. Such a person does not qualify for full employment rights but does enjoy a more limited set of protections, including against discrimination. Therefore, this is a mixed category of self-employment and dependant work. The category of economically dependent workers is not explicitly defined in Slovenian legislation. Workers falling within this category are in general working as a self-employed person, which means that they work independently of an employer; this contrasts with the situation of an employee, who is subordinate to and dependent on an employer. Economically dependent workers can be found among some groups of self-employed persons.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

Slovenia emphasizes the extent to which the contractor is integrated with the employer's business. If a person is dependent on a certain client less than 80% of his profits, it is not considered as an economically dependent person, but only as a self-employed person providing services. The gig economy has not had a major impact in every country. It was not regarded as a significant issue in Slovenia.

The essential criterion to identify 'employees' is included in Article 5 of the Law on labour relations (LLR): The worker (the same meaning as employee) is any natural person who has entered into an employment relationship on the basis of a regular employment contract. The LLR defines the employment relationship as: a relationship between the worker and the employer, whereby the worker is voluntarily included in the employer's organized working process, in which he in return for remuneration continuously carries out work in person according to the instructions and under the control of the employer. The Law on Health and Safety at Work provides a broader definition, by stating that 'an employee means a person employed under an employment contract'. Under this law, an employee also means 'a person employed on any other legal basis, or performing independent or self-employed occupational, agricultural or other activity; or performing work at a workplace as part of a training scheme'.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

As for the penalties, they are regulated in the Prevention of Undeclared Work and Employment Act. The fines for undeclared work are from EUR 2,000 to EUR 26,000 for legal persons and sole traders and from EUR 1,000 to EUR 7,000 for individuals. Undeclared employment shall be fined from EUR 5,000 to EUR 26,000 for employers, who are not individuals, when they employ illegally. The fine from EUR 500 to EUR 2,500 is also prescribed for individuals, to whom employers enable work without conclusion of employment contracts or other civil-law contracts, on the basis of which work may be performed. If the work is performed on the basis of the civil-law contract, the fine 6 prescribed for individuals is from EUR 100 to EUR 2,500 in cases when they don't have contracts on the spot where they perform the work all the time.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

The legal relationship between the agency (employer) and the worker is an employment relationship based on the employment contract. The Law on Labour Relations (LLR, 2007) regulates the use of agency work in Articles 59 (temporary limitation of work at the user), and in Article 57 (reasons when workers may not be posted to other employer). During the employment

relation, agency workers have the same rights as other employees (social security contributions, insurance contributions, payments on account of income tax). Article 60, paragraphs (2 and 3), of the LLR state that in the employment contract, the employer and the worker shall agree on the level of the wage and the level of wage compensation for the period of a premature cessation of work at the user or for the time when the employer does not provide the work at the user, which may not be lower than 70% of the minimum wage. Agency workers are, according to representatives of trade unions, in practice differently treated than permanent workers in terms of wage, health and working conditions and working time. They work longer hours and are more exposed to risks and unhealthy conditions. They receive only what is defined under the law; wage without any bonuses, recourse (holiday bonuses) and have a right for annual leave.

As for the end user, there are no direct rights.

Slovenian labour legislation contains a number of provisions that regulate relationships in relation to the provision of temporary agency work. The legislation aims to ensure the reliability of agencies that provide workers, to more appropriately regulate labour law status of agency workers and to improve workers' status with a user (also through stricter liability of a user), as well as to prevent temporary agency work from replacing employment contracts.

LLR considers the fact, that in case of temporary agency work a part of employer's jurisdictions (instructions, supervision) is transferred to the user, when dividing the obligations and responsibilities of the agency and the user towards the worker. Article 62 therefore states, that the user is obliged to respect provisions on working time, rests and breaks and ensuring safety and health at work to agency workers; he is also subsidiary responsible for payment and other benefits from the employment for the time when the worker was carrying out the work for him. Primarily, the payment of wages is the responsibility of the agency, which considers the data forwarded to it by the user (and is also responsible for their correctness). If the agency does not pay the worker his wage or other benefits, the worker can demand them from the user.

LLR also emphasizes equal treatment of agency workers, who must be granted the same work and employment conditions as workers of the user. According to 3<sup>rd</sup> paragraph of Article 63 this also applies to the benefits, which user ensures to his workers (for example the use of cafeteria).

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

There is no research and relatively little statistical information on the different situations of self-employed persons (from individual entrepreneurs to farmers and own account workers), their working conditions, pay levels and similar (especially in the case of the self-employed without employees). Self-employed workers without employees are organised in different associations (according to occupation/profession or area of activity). However, for the end user, there are no additional obligations. Additional obligations could be imposed on the entrepreneur if he/she does not follow all the legal regulations.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

There is, as yet, little awareness of the issue of economically dependent work in Slovenia. Thus, no significant labour disputes, grievances or case law have addressed the demarcation between 'employee' and 'non-employee' status with a view to granting to the latter the protections and rights granted to the former.

First attempt to regulate Uber/Lyft was in 2016. Another push for Uber in Slovenia came in 2018 before the fall of Mr. Cerar's government. The Slovenian bill, which was supposed to allow the arrival of Uber in Slovenia, was not welcomed neither by local taxi companies, either by Uber. In their opinion, the proposed law which should regulate shared transport and digital platforms, such as Uber and Lyft, would in fact completely disrupt the functioning of these in Slovenia. Currently there is no political will to pass the bill about share-rides.





## SPAIN

1. Are the workers in the gig economy in Spain classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

There is no clear definition of employment relationship in the national labour law (Worker's Statute) yet, thus each court has to consider the case on the individual basis, whether it is an employee or a self-employed contractor.

The employment status of the domestic digital platform Glovo workers has been questioned in Madrid in 2019 and in the final decision has claimed that the couriers are employees according to the case law criteria. Taxi drivers can use the digital platforms if they are self-employed and have an individual VTC license.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

In the aforementioned decisions, the court has made references to the following facts on Glovo riders:

- their invoices are drafted by Glovo, which reveals riders' lack of infrastructure to organise themselves with their own means;
- their remuneration for each service is unilaterally fixed by Glovo - riders cannot negotiate it;
- they are unable to decide the price that clients should pay for the service;
- Glovo benefits from the result of the riders' work;
- the main means of production (the app) is owned by Glovo and without it riders cannot provide services as such. Mobile phones and bicycles, which are owned by the riders, are secondary means of production;
- they must deliver products to clients following Glovo's instructions within 60 minutes;
- they are geolocated and thus their activity is controlled; and
- they are subject to Glovo's disciplinary power because, if they reject orders, the algorithm automatically excludes them from the most advantageous timeframes. Likewise, their contracts include termination clauses which are, in practice, disciplinary offences.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

The company can be obliged to pay a fine, as well as social security contributions with a surcharge.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

None, such agencies are not used widely in Spain.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

No, such cases have not been reported in the jurisdiction.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

Yes, the rights of delivery riders are actively discussed by all the key stakeholders and the 'Stop Fake Autonomous' bill has been introduced in 2020 following the landmark court decision against Glovo. The new regulation, promoted by the Minister of Labour, will introduce minimum wage, maximum working hours, minimum rest hours, health insurance and safety compensations, as well as the right to unionize.

## SWEDEN

1. Are the workers in the gig economy in Sweden classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

The practice in Sweden is that most gig workers are classified as employees. However, there have been cases where even within the same platform firms, different employment forms are used. The practice is flux but there is a tendency that most platform workers would fall within the traditional category of employees.

In general, the Work Environmental Act and the Employment Protection Act are applicable. The scope of the legal term 'employee' is interpreted broadly. The Work Environment Authority collaborates closely with the Swedish Tax Authority. The latter has the discretion to decide whether even individuals who voluntarily declared themselves as self-employed/independent contractors, rather qualified as an employee.

Platform companies which enter into a consultancy agreement with an independent contractor run the risk that the Work Environment Authority might classify the relationship between the limited liability company and the independent contractor as an employment relationship.

If an individual is not considered as an "employee", the relationship is regulated by general civil law.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

Generally, the degree of independence from the hiring company is the most decisive factor from which rights of the worker are deduced.

The meaning of the legal concept of "employee" is determined by case law. The courts in the Nordic countries use the contract-of-employment test in each case to determine the employment relationship. In the individual assessment of the circumstances, usually, the following factors are taken into account by Swedish Labour Courts to determine the employer-employee relationship:

- the work is performed by a single person; the person is not entitled to independently hire helpers
- the company is responsible for providing the work equipment
- the person is bound by specific directives and instructions issued by the company
- the person is obliged to perform work when the company requires
- the remuneration for the work performed consists of a guaranteed salary (at least partly)
- the company compensates the person for direct expenses (e.g. business journeys, entertainment)
- the relationship can be described as a long-lasting legal relationship
- the person is prevented from performing similar work for someone else
- the person is equal to an employee, both socially and economically.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

The Swedish labour regulations are based on the civil law framework. Disputes between different parties are mainly settled by negotiations and consultations before cases reach the first instance Court, the Swedish Labour Court.

Wrongful classification can hence result in administrative sanction fees. The employer might have to pay an administrative fee and pay back all social taxes, including all applicable security contributions. Serious cases might also trigger the application of criminal law and hence lead to fines. Primarily, these are cases related to tax avoidance with the possible result of up to two years of imprisonments. In this regard, the intention and serious negligence have to be proven.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

The use of temporary work agencies is regulated by the Hiring out of Temporary Staff Act (Sw: lagen om uthyrning av arbetstagare”).

Generally, the agency is responsible for the individual. However, the rights of the agency workers are limited in comparison to traditional employment contracts. Any claims related to labour rights have to be resolved between the agency workers and the agency directly. Exceptions apply in cases of discrimination. In this case, the individual can file a claim against the end-user on the base of the Swedish Prohibition of Discrimination Act.

Furthermore, it should be noted that the temporary work agency as well as the client company can be held liable for damages to the employee for violations of the the Hiring out of Temporary Staff Act. An agreement that violates the employee’s rights according to this act is invalid. However, it is possible to deviate from certain parts of the act by a central collective bargaining agreement.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

There have been cases where UberEats used intermediaries as proxy-employers. Some platforms act as intermediaries for self-employed freelancers/independent contractors.

Swedish Labour regulations allow to opt for consultancy agreements instead of traditional employment contracts.

It is worth stressing that if the consultancy agreement is entered into by a legal person with the company, the agreement might be classified as an employment contract. On the contrary, if an individual established a limited liability company (“aktiebolag”) and provided a service to a company through a consultancy agreement, the relationship between the contractor and the limited liability company would not be governed by applicable labour regulations. The end user would be free of employment responsibilities/obligations and tax duties towards the consultant, provided that the consultant registered for F tax in Sweden and the relationship between the consultant and the company receiving the service does not resemble an employment relationship based on the criteria, set out in question no.2.

6. Are there any major developments ongoing or expected in de lege lata or de lege ferenda law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issues?

The public and political debate on the platform economy in Sweden has so far mainly focused on taxation and consumer protection issues. No specific case law exists yet which addresses the employment status of gig workers.

It worth bearing in mind that the Swedish Prime Minister is among the co-chairs of the ILO's global commission on the future of work, which argues that '(a)ll workers, regardless of their contractual arrangement or employment status, should enjoy fundamental workers' rights, an "adequate living wage", maximum limits on working hours and protection of safety and health at work'. The Swedish Trade Unions collabourate with German Metalworker's Union in the framework of the Frankfurt Declaration on Platform-based Work.

Uber Pop was temporarily banned in Sweden in May 2016, after 21 Uber drivers were sentenced for providing services over the Uber Pop App without taxi licences or taximeters. UberX and other Uber services are still operative.

The Swedish parliament created a new category of taxis in June 2018 (Sveriges Riksdag, 2018), which do not have to abide by the taximeter requirement. The new amendments to taxi regulations will be put in force in September 2020 and January 2021.

## SWITZERLAND

1. Are the workers in the gig economy in Switzerland classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

The Swiss labour law in the private sector is not centralized, and it depends on each canton's criteria for the enterprise to be recognized as a service provider for recognizing its workers as employees. Uber defines its business model as staff brokerage under Art. 412 of the Federal Code of Obligations, i.e. 'contract whereby the broker is instructed to alert the principal to an opportunity to conclude a contract or to facilitate the conclusion of a contract in exchange for a fee'.

However, based on the recent legal practice, gig economy independent contractors (e.g. Uber drivers who use the app without any additional social benefits agreements) are viewed as de facto employees in court decisions. In 2019, a court in Lausanne left in force the first Swiss ruling in favour of an ex-driver of Uber's subsidiary company and recognized the plaintiff as an employee whose rights should be the same of the contracted driver.

In May 2020, the Chamber of Administrative Justice of the Court of Geneva upheld the previous ruling in favour of the biggest trade union *Unia* on Uber's status as of an employer, and its obligations to obey the federal labour legislation, collective labour conventions and the law applicable to hotel and restaurant industry.

Becoming self-employed in Switzerland also puts a significant burden on the potential platform user, i.e.:

- Proof that the company has been correctly registered;
- Proof of a professional domicile in Switzerland (a rental contract for business premises);
- Proof of contributions to the Old-Age and Survivors' Insurance Fund (OASI) or the Swiss Accident Insurance Fund (SUVA);
- Proof of a regular income showing that there is no risk of needing welfare assistance;
- Bookkeeping data (interim balance, etc.);
- Business plan.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

According to the Swiss federal labour law, the indicators of the employment are:

- limited freedom to organize the work;
- defined working hours; a set workplace;
- not bearing business risk;
- whether materials are provided or must be self-resourced;
- whether holidays can be claimed;
- subordination in the workplace;
- prohibitions on competition;
- regular salary payments;
- probationary periods.

In the case of Suva vs Uber, the national Swiss insurance fund has examined the Uber relationship with drivers based on the two indicators from legal practice:

- lack of organisational independence;
- lack of business risk.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

According to the legal practice, the company can face an ultimatum - either to hire the drivers and pay the social benefits, or to stop operating. In case of an individual complaint from an ex-driver, the company can be obliged to compensate two months' salary, as well as non-pecuniary damage and the vacation to which the worker would have been entitled.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

Yes, there is a company for hiring freelance workers, *Accurity*, which has a required permit for personnel leasing.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

No, such cases have not been reported in the legal practice (perhaps because of the high taxation rates).

6. Are there any major developments ongoing or expected in *de lege lata* or *de lege ferenda* law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

Ride-sharing apps are a subject of heated debate in Swiss society. In early 2020, following the legal battle of Uber in Geneva, Zurich has initiated the referendum on additional Uber restrictions and voters have approved the ban, which allows supposing that soon employment restrictions for the ride-sharing apps will be adopted in most cantons.

The Transport Committee of the legislature of Geneva has initiated the discussions on the effective implementation of the laws on taxis and transport vehicles with respect to the social conditions of drivers. One of the core public administration issues is whether the local self-government has to wait for the upcoming federal court's decision in Uber case.



## THE UK

1. Are the workers in the gig economy in the UK classified as either 'employees', 'self-employed', or another category of workers (based both on legislative framework and practice)?

Currently ride-sharing app drivers are classed as workers according to the decision of the Court of Appeal in *Uber vs Aslam et al* case. In the review of the employment tribunal decision the court has held that 'we agree with the ET's finding at paragraph 92 that "it is not real to regard Uber as working "for" the drivers and that the only sensible interpretation is that the relationship is the other way round. Uber runs a transportation business. The drivers provide the skilled labour through which the organisation delivers its services and earns its profits.'

It's also important to notice that food delivery riders are self-employed, pursuant to the High Court's decision of 2018 in the case of *IWGB vs CAC*.

2. What are the main criteria for determining the employment status (employee, self-employed, other)?

There is no single list of employment criteria in the UK statutory law. In the aforementioned decision against Uber the court has quoted 13 indicators of employment:

- The contradiction in the Rider Terms between the fact that ULL purports to be the driver's agent and its assertion of "sole and absolute discretion" to accept or decline bookings.
- The fact that Uber interviews and recruits drivers.
- The fact that Uber controls the key information (in particular the passenger's surname, contact details and intended destination) and excludes the driver from it.
- The fact that Uber requires drivers to accept trips and/or not to cancel trips, and enforces the requirement by logging off drivers who breach those requirements.
- The fact that Uber sets the (default) route and the driver departs from it at his peril.
- The fact that UBV fixes the fare and the driver cannot agree a higher sum with the passenger. (The supposed freedom to agree a lower fare is obviously nugatory).
- The fact that Uber imposes numerous conditions on drivers (such as the limited choice of acceptable vehicles) instructs drivers on how to do their work, and in numerous ways, controls them in the performance of their duties.
- The fact that Uber subjects drivers through the rating system to what amounts to a performance management/disciplinary procedure.
- The fact that Uber determines issues about rebates, sometimes without even involving the driver whose remuneration is liable to be affected.
- The guaranteed earning schemes (albeit now discontinued).
- The fact that Uber accepts the risk of loss which, if the drivers were genuinely in business on their own account, would fall upon them.
- The fact that Uber handles complaints by passengers, including complaints about the driver.
- The fact that Uber reserves the power to amend the driver's terms unilaterally.

However, in the Deliveroo case, the High Court has outlined that 'if a Rider accepts a particular delivery, their undertaking is to either do it themselves in accordance with the contractual standard or get someone else to do it. They can even abandon the job part way having only to telephone Rider Support to let them know. A Rider will not be penalised by Deliveroo for not personally doing the delivery her or himself, provided the substitute complies with the contractual terms that apply to the Rider', thus, the ability of the rider to pass his work to another person makes the situation completely different than with Uber and other apps.

3. What are the possible penalties or civil consequences for wrongly classifying someone as a self-employed?

The employer will have to pay underpaid taxes and social security contributions. There can be criminal penalties as well.

4. Is it possible to avoid employment rights issues by hiring individuals from an employment agency or do agency workers have rights against the end user directly?

Yes, there are many employment agencies in the UK, but they are not used to hire taxi drivers or food delivery riders.

5. Is it common for independent contractors to have their own personal services companies through which they supply services? If such companies are used, does this mean that the end user has no employment responsibilities/obligations?

Yes, it is possible to register a personal service company, but the end user will still have to pay social security payments.

6. Are there any major developments ongoing or expected in *de lege lata* or *de lege ferenda* law on the gig economy workers' employment status? Are there any landmark or ongoing court cases with gig economy giants involved? Are there any political debates / consensus on the issue?

Yes, the most important ongoing court case can be a gamechanger for Uber and other platforms in the country, if the Supreme Court declares Uber drivers self-employed, however it is highly unlikely. In December 2018, a gig economy labour reform has been discussed, but the government has agreed that the 'zero-hour' contracts should not be banned completely in order to provide some level of flexibility.

*Context and current trends*

There is a clear sign that the EU is pushing towards the minimum standards for gig economy work. Although the EU/EEA countries may resist towards unification of labour law, the need to establish clearer rules in the field is evident. The reasons are various - while some countries try to boost their economies with innovative solutions, others tend to be more protectionist, cautious and prioritize social welfare. The COVID-19 pandemic put the employment rights and social benefits of the crowd workers into spotlight, as the trade unions in some countries demanded health insurance guarantees and compensations for 'frontline workers'.

One of the core problems is the definition of the 'employee' across jurisdictions, as it is the decisive factor for balancing social benefits and taxes. When gig economy giants started to expand in the EU/EEA market ten years ago, the response from the national authorities came quickly, particularly the laws that do not allow any taxi operators except from national licensed companies. Since 2015, food delivery apps boomed too, but the legislature is more reluctant to take quick action, as there is no licensing applicable to bicycle riders and their employment rights protection depends mostly on the strength of the respective trade union in each jurisdiction.

It is possible to say that the countries can be divided into two large categories based on their regulatory approach. Some want to accommodate the new types of workers to the traditional labour law division into 'employees' and/or 'self-employed', but the reasoning behind can be diametrically diverse (from reluctance to amend the legislation to guaranteeing the minimum social welfare of such workers). E.g., in *Germany*, there are only 'employees' and 'self-employed' categories in the labour law and there is an elaborated system of over 17 criteria applied by the social security authorities to define if a worker is *de facto* an employee. Others recognize the essential need to amend the labour law with a 3<sup>rd</sup> category of workers, as the freelancers and digital platforms workers often do not meet the outdated criteria of employment status and it's more flexible variables due to lacking strong strength of their link with the employer, physical presence in the office etc. These jurisdictions also face problems with the legal positions of the courts that often refuse to accept deviations from the national labour law standards. E.g., in *France* the legislator has established the category of an 'independent contractor, whose working conditions are defined exclusively by himself or in a contract, in conjunction with his customer'. However, if a subordination occurs in the relationship of such a contractor, the former will be classified as an employee. The process of labour reforms is quite complex, especially in more prosperous countries, as there is a plethora of competing stakeholders to consider.

Impact factors that vary across jurisdictions:

- Legislation and legal culture in the field of gig economy, particularly licensing passenger transportation;
- The vagueness/clarity of national and/or regional legislation;
- Openness to innovations and willingness to cooperate with foreign start-ups;
- Taxing policies;
- Unemployment rate and regulations on using 3<sup>rd</sup> country nationals' workforce;
- The strength of trade unions and 'collective bargaining agreements';
- The approach to differentiating between the legal statuses of delivery riders and taxi drivers;
- The level of regional autonomy to decide on the employment status.