International Labour Organization

Report on non-standard forms of employment under Moldovan legislation

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Executive summary

Definition of non-standard forms of employment:

There is no definition of non-standard forms of employment (NSFE) in law. In legal doctrine, a non-standard or atypical employment relationship is defined simply by negation, as one that is not considered a standard or typical employment relationship. The ILO understands the latter as employment that is full-time and indefinite in duration, as well as part of a subordinate relationship between an employee and an employer. Thus, the ILO definition of non-standard forms of employment as "an umbrella for different employment arrangements wherein the employment contract duration, working programme, place of work, and other features deviate from standard employment" is appropriate.[1]

The status of "employee" is crucial as labour protection is associated with it. There is no clear distinction between "employees" and "workers", which may lead to the confusion that non-standard forms of employment require an employment relationship as regulated by the Labour Code.

NSFE classification

Using the ILO typology for the classification of non-standard forms of employment, the current legislation in Moldova recognizes the following forms[2]:

ILO typology	Non-standard forms of employment in Moldovan law
Temporary work	Fixed-term contracts, seasonal work contracts and the work of day workers in agriculture
Part-time and on-call work	Part-time work
Multi-party employment	N/A

In addition to the above, Moldovan law regulates the following non-standard forms of employment: remote (including telework) and home-based work.

Moldovan law does not regulate multi-party employment (temporary agency work, subcontracting, outsourcing), platform jobs, employee- and job-sharing arrangements. No specific legal definitions exist like those for self-employment and dependent self-employment.

[1] ILO: Non-standard forms of employment. Available at: https://www.ilo.org/global/topics/non-standard-employment/lang--en/index.htm
[2] ILO: Non-Standard Employment Around the World: Understanding Challenges, Shaping Prospects. Available at: wcms_534326.pdf (ilo.org) (Geneva, 2016).

Self-employed and dependent self-employed

The definition of a "self-employed individual" is not expressly provided for in Moldovan legislation. From a legal perspective, self-employment is regulated by the Civil Code[3] and the Law on Entrepreneurial Activity.[4] The regulation in the Civil Code is limited to a general principle, allowing individual persons to perform business or professional activities in their own name and on their own account. Within the existing legal framework, a self-employed person may pursue the following legal forms of activity:

a. individual entrepreneur, which requires registration;

b. one of the so-called "liberal professions". Currently, the legal status of the following liberal professionals is defined in tax legislation[5] for tax purposes:

- independent activity in trade (mainly retail) – commercial activities carried out by a Moldova resident on an individual basis only, not taking a legal organizational form;
- professional activity in the justice sector – a permanent activity carried in the forms regulated by law for attorneys-at-law, trainee attorneys-at-law, notaries, bailiffs, authorized administrators, mediators, and legal experts;
- health professional activity – independent exercise of medical professional work in one of the forms of organization of professional activity provided for by the Law on Health Protection No. 411/1995.

c. under a civil law contract for performance of work or rendering of services.

Self-employed persons working transparently under a written contract benefit from the same tax treatment as individual persons working under an employment agreement. Self-employed individuals do not benefit from the protection provided by the Labour Code in terms of minimum wage, working time, health and safety at work, the right to information and consultation, the right to training, or protection against arbitrary dismissal. They cannot form trade unions and cannot exercise the right to collective bargaining and collective action. They are also not entitled to sick leave, maternity or childcare leave (except for liberal professionals, such as lawyers, notaries and bailiffs).

Moldovan legislation does not provide for dependent self-employment as a non-standard form of employment. Dependent self-employed individuals are categorized somewhere between subordinate employment, which is fully covered by the Labour Code, and self-employed individuals, who are fully covered by the Civil Code and company legislation. Individuals working under civil-law agreements (including freelancers) who do not register as individual entrepreneurs or liberal professionals may be included in this category of dependent self-employees.

Dependent self-employed persons working under civil law contracts have the same tax, social security and health insurance status as employees working under employment contracts governed by the Labour Code, as long as their work is formalized and reported by their employers.

Individuals who provide services in Moldova for foreign residents that have no registered presence in Moldova might not be traced by the tax and social security system. A foreign resident without any registration in Moldova is not identified by the Moldovan Tax Code and the social security legislation. Therefore Moldovan individuals working on Moldovan territory for non-registered foreigners based on employment or civil service/work contracts must independently report and pay their individual income tax and contributions to the state budget. This increases the risk that they will remain informal.

[3] Civil Code No. 1107 of 06.06.2002.
[4] Law on Entrepreneu rial Activity No. 845 of 03.01.1992.
[5] Tax Code No. 1163 of 24.04.1997.

Social protection gaps related to non-standard forms of employment

Our analysis shows that:

a. Non-standard forms of employment based on an individual employment agreement, duly formalized by employer and employee, confer on the employee the full range of rights under the Labour Code, including employment rights, social security and health insurance coverage. There is an exemption for employed taxi drivers who do not benefit from most social security allowances.

b. Non-standard forms of employment involving the self-employed/dependent self-employed based on civil service/work agreements that are duly formalized and reported by the employer to the tax authorities, with the payment of social and health insurance contributions as a percentage of remuneration received grant workers the full range of rights under social security and health insurance coverage. Self-employed and dependent self-employed persons do not benefit from the rights granted by the Labour Code.

c. Non-standard forms of employment involving self-employed/dependent self-employed workers that are duly formalized and reported independently by the workers, with payment of social security and health insurance contributions at a fixed rate grant said workers a limited range of security coverage. They will not benefit from most social security allowances, including maternity protection. An exception is made for legal professionals and independent family doctors.

d. Non-standard forms of employment with employees/self-employed/dependent self-employed workers who work in Moldova for foreign residents with no registered presence in Moldova must independently pay social security and health insurance contributions at a fixed rate. They will not benefit from most social security allowances, including maternity protection.

Continuum between non-standard forms of employment and undeclared work

Undeclared work is defined at European level as "any paid activities that are lawful as regards their nature, but not declared to public authorities”. The three broad types of undeclared work are: unregistered employment; underdeclared employment, including envelope wages; and undeclared self-employment.

In Moldova, the legal definition of undeclared work is contained in Article 7^1 para (2) Labour Code, namely “any work performed by an individual for and under the authority of an employer without complying with the provisions of the Labour Code relating to the conclusion of an individual employment contract”. The legal definition is narrower in scope than the definition at EU level and does not cover underdeclared work and underdeclared self-employment.

The narrow scope of the definition leaves the room for the risk that persons in non-standard forms of employment who do not fit standard or regulated non-standard forms of employment will not leave the informal economy. Moreover, such a narrow definition creates difficulties for the State Labour Inspection to effectively tackle all forms of undeclared work in the Moldovan economy.

Content

▶ Introduction

1. Non-standard forms of employment ("**NSFE**") have become a contemporary feature of labour markets around the world. Their overall importance has increased over the past few decades in both developed and developing countries, and their use has been extended to new sectors and new occupations.

2. According to the ILO (2016), non-standard forms of employment comprise four different employment arrangements (as reflected in Table 1) that deviate from the "standard employment relationship", understood as work that is full-time, indefinite, as well as part of a subordinate relationship between an employee and an employer.

▶ Table 1 – Typology of non-standard forms of employment

Category	Common forms	Characteristics
Temporary employment	Fixed-term contracts, including project- or task-based	Not open-ended (permanent)
Part-time and on-call work	Normal working hours fewer than full-time equivalents; marginal part-time employment, on-call work, including zero-hours contracts	Not full time
Multi-party employment relationship	Also known 'dispatch', 'brokerage' and 'labour hire', temporary agency work, subcontracted labour	Not direct, subordinate relationship with end use
Disguised employment/ dependent self-employment	Disguised employment, dependent self-employment, sham misclassified self-employment	Not part of employment relationship

3. The different types of non-standard forms of employment reflected in Table 1 appear in different legislative forms, such as employment contracts and civil/service contracts. Some fall under other legislation (such as company or tax legislation), and can be both formal (written, in the form of a contract) and informal (verbal agreements). There are also important overlaps between the terms "non-standard forms of employment" and informal employment. Many forms of non-standard forms of employment, such as disguised employment, dependent self-employment and multi-party employment relationships, do not provide adequate legal protection either in law or in practice, which makes them part of informal employment.[6]

4. The Moldovan Labour Code entered into force in 2003 and is based on the standard form of employment of full-time contracts of permanent duration. It has been amended over time, gradually incorporating non-standard forms of employment. Currently, the Labour Code contains provisions on fixed-term, part-time, remote and home-based employment arrangements, which may be agreed by the parties to the employment agreement in specific situations.

5. The shortage of workers, digitization of business processes, lockdown effects during the Covid-19

[6] See note 1.

pandemic, and employees' need for a balance between work and family life created the need for more work flexibility for both employees and employers in Moldova, although in many instances employees may not have any other choice than accepting a non-standard form of employment. The new flexible employment arrangements that already exist in other countries (for example, on-call, job sharing and employee-sharing contracts) do not always fit into the standard or non-standard employment regulated by the Labour Code. As a general principle, freedom of contract governs employment relationships because labour law is part of the private law system. The parties are allowed to freely design the details of employment if contract provisions do not contradict the requirements of the Labour Code and other relevant labour legislation. The use of non-standard, unregulated arrangements is not, in itself, prohibited by law, subject to employees being granted the legal protection to which they are entitled under the law. The absence of detailed regulation of some non-standard forms of employment may give rise to ambiguous interpretations and create uncertainties, even regarding whether or not a labour relationship exists.

6. Another trend currently observable in the Moldovan economy is the preference of professional individuals, known colloquially as "freelancers", to operate independently rather than working under subordination to a limited number of employers and directed by others. According to recent statistics from the National Bureau of Statistics ("**NBS**"), the proportion of self-employed workers has increased since 2014, standing at 35 per cent in 2018 and maintaining the trend in 2021.[7]

7. Moldova's labour market is changing, although at a slower pace. The unemployment rate has decreased during the past decade (from 6 per cent in 2009 to 2.9 per cent in 2018), and there has been a transition from an excess supply of workers to a tight labour market with a worker shortage, in particular in the ITC sector.[8] Informal employment has also declined from the average rate of 37 per cent in 2014–2018 to 22.8 per cent in 2021.[9] While the world of work has changed in Moldova, as elsewhere, labour legislation and collective bargaining have not. This has left some non-standard forms of employment (such as temporary agency work), and new types of jobs (such as platform work) unregulated.

8. This Report explores non-standard forms of employment in the Republic of Moldova and the social security granted to individuals working under different arrangements, or who are self-employed. The aim is to determine any gaps and discrepancies in the Moldovan regulations that allow discrimination among individuals working under different types of arrangements, or that encourage informal employment. The Report contains a legal analysis of non-standard forms of employment and other relevant issues as regulated by the Moldovan legislation, collective agreements (at national and sectoral levels) in force as of the date of the Report. It also makes reference to publicly available research and studies performed by national and international organizations.

▶ 1. Labor market developments in Moldova with a focus on non-standard forms of employment

9. According to the results of the 2022 Labour Force Survey carried out by the National Bureau of Statistics, the labour force (active population aged 15+) of the Republic of Moldova, which includes the employed and unemployed population, was 890,000, an increase of 2.1 per cent compared with 2021. The share of the employed population aged 15+ increased by 2.2 per cent. The unemployment rate (share of ILO unemployment in the labour force) at the national level was 3.1 per cent, just

[7] National Employment Programme for 2022–2026.
[8] Strategy for Digital Transformation for 2023-2030.
[9] See note 6

below the 2021 level (3.2 per cent).[10] Statistics also show a high rate of inactivity, which increased between 2019 and 2021 among persons aged 15+ from 57.7 to 58.9 per cent, with men's inactivity levels increasing by 0.5 per cent, compared with a 1.8 per cent increase in women's inactivity. Within the same period, young people's (15–24) inactivity increased from 78.8 to 81.9 per cent.[11]

10. The labour force statistics capture some non-standard forms of employment, such as temporary employment (mainly fixed-term contracts), part-time work, self-employment, informal work and home-based work. Findings for 2020 show a high rate of standard forms of employment: 98.3 per cent of employment is for an indefinite term, while 94.5 per cent are full-time jobs (Table 2).

▶ Table 2 – Structure of Labour Force (age 15+), 2020[12]

Occupational Status	All (%)	Men (%)	Women (%)
Employed	78.1	72.5	84.2
Self-employed	17.2	24.8	8.9
Type of contract			
Full-time	94.5	95.4	93.5
Part-time	5.5	4.6	6.5
Term of employment			
Permanent	98.3	88.2	89.2
Temporary	10.7	11.8	10.8

conform contractelor de drept civil de executare a lucrărilor sau de prestare a serviciilor

11. From the Table 2, and based on the National Bureau of Statistics, it follows that:

- Fixed-term employment affects less than 11 per cent of all employees, with small differences between men and women. The share of young workers (15–24 years old) in temporary employment (7.4 per cent) is also well below the average for EU countries (46.3 per cent). But for more than four out of ten temporary workers (41.4 per cent), contract duration is less than six months.
- In 2020 part-time work among workers aged over 15 was 5.5 per cent. Young workers and women are more likely to work part-time (8.1 per cent and 6.5 per cent, respectively, in 2020). Involuntary part-time work (people working part-time because they could not find a full-time job) affects 23 per cent of all part-time workers, and has been on a downward trend since 2014, when around 43 per cent of part-time workers were involuntary.
- The share of employed workers in total employment decreased between 2014 and 2018, from 66.3 to 59.6 per cent, while the share of self-employed increased progressively (to over 35 per cent in 2018). In 2020, employed workers accounted for 78.1 per cent, while the share of self-employed was 17.2 per cent, with no major change compared with 2019. Statistics show that women are more likely than men to be employed (84.2 per cent compared with 72.5 per cent), while men are three times more likely than women to be self-employed.

12. Official statistics do not capture any data on temporary agency work, platform jobs or non-regulated non-standard forms of employment.

[10] National Bureau of Statistics of Moldova: Labour Force in the Republic of Moldova: Employment and unemployment in 2022, https://statistica.gov.md/en/labour-force-in-the-republic-of-moldova-employment-and-unemployment-in-2022-9430_60383.html (Chisinau, 2023)
[11] See note 6.
[12] National Employment Programme for 2022–2026 based on statistical data of the National Bureau of Statistics.

▶ 2. Standard employment relationship: scope and concept under Moldovan labour legislation

13. Moldovan law does not contain a definition of non-standard employment forms. The words “standard” or “non-standard” employment do not appear in any legal texts governing employment. In legal doctrine, the non-standard or atypical employment relationship is defined as the negation of what is considered a standard or typical employment relationship.

14. National legal doctrine defines the legal employment relationship as a a social relation governed by labour law, which is established, as a rule, for an indefinite period between an individual (employee), on one hand, and a legal entity or individual (employer), on the other hand, as a result of the performance of certain work by the employee for the benefit and under the authority of the employer, who, in turn, must ensure to the employee safe and fair working conditions, respect their right to dignity at work, and pay their salary on time and in full.[13] This definition corresponds to the elements of the employment relationship regulated by different clauses of the Moldovan Labour Code.

15. From the above definition, the following features of a standard employment relationship can be identified:

(1) An employment relationship is regulated by the Labour Code.

(2) An indefinite period of employment is the default rule: the work is performed continuously; it is successive and of prolonged duration.

(3) The employment relationship is bilateral, that is, it is established between two parties – the employee, who is always an individual, and the employer – a legal entity or individual. The employment relationship does not provide for the possibility of multiple parties on either side.

(4) The employment relationship is personal by nature (intuitu personae). The work is performed by the employee, in accordance with their knowledge, qualifications and experience. The employer is liable for all employment guarantees. The parties may not delegate their rights and duties under the employment agreement to other persons.

(5) The work is performed for the benefit and under the authority of the employer. The employee is subordinate to the employer. This subordination involves the following aspects:

(a) employee is part of the employer’s staff;

(b) employee must comply with work discipline, the employer’s internal regulations and policies, and orders of the employer’s administrator;

(c) employee may be held liable in the disciplinary procedure for a breach of work discipline.

(6) The employer must respect the employee's rights, including safe working conditions. The employment relationship brings with it certain benefits that may not necessarily apply to self-employed workers, including income security, clear access to dispute resolution proce-

[13] E. Boisteanu and N. Romandas: Dreptul muncii (manual) (Chisinau, 2015).

dures, and access to vocational training and skills development, which enhances their productivity and provides opportunities for advancement. It is often more difficult for self-employed workers to access protection for fundamental labour rights, such as the right to freedom of association and collective bargaining, and protection against discrimination, child labour and forced labour.

16. The Labour Code applies the narrow sense of the term "employee", including only workers employed under an employment agreement regulated by the Code. The majority of individual and collective labour rights are regulated by the Labour Code and are applicable to employees working under employment contracts only.

17. In practical terms, in terms of the default legal provisions in the Labour Code, standard work is usually regarded as work performed from 9:00 to 17:00, Monday to Friday, at a set workplace, based on a contract of indefinite duration, where the beneficiary of the work is the direct employer.

18. The status of "employee" is crucial as labour protection is associated with it. The rights and obligations of self-employed workers who pursue work autonomously and are not in a subordinate position, are subject to civil law (mainly the Civil Code) and are not regulated by the Labour Code. The newly emerging labour situation often contributes to false, unlawful or ambiguous applications of substantive law, leading to disguised employment, ambiguous working relationships and triangular employment relationships, making it difficult to determine a worker's actual employer.

19. In the absence of a legal definition, local usage defines "non-standard" or "atypical" employment as "relationships that could be formally considered anomalies from the regular [employment] relationship, which is typical, promoted and supported at the normative (regulatory) level"14. The author holds that "atypical legal employment relationships are relationships arising from the performance of work by individuals, in which one or more essential features of the typical, standardized legal employment relationship, with regard to personal, organizational, or property considerations, are missing or modified".

20. Thus, the term "non-standard form of employment" may serve as an umbrella for different employment arrangements wherein the employment contract duration, work programme, place of work and other features deviate from standard employment.

▶ Non-standard forms of employment identified in Moldova legislation

21. Using the ILO typology for the classification of non-standard forms of employment, current Moldovan legislation recognizes the following forms: temporary work (fixed-term contracts, seasonal work contracts and day workers in agriculture); part-time work and on-call work (part-time employment contracts); and work outside the home (remote work and home-based work). No non-standard form of employment is regulated that would be classified in the category of multi-party employment.

22. As Table 2 shows, apart from standard permanent employment contracts, the non-standard forms of employment most often used in practice are: time-limited (fixed-term) employment and a broader category of service contracts, which includes civil contracts for the self-employed. Fixed-term, project- or task-based contracts are contractual employment arrangements between

[14] Nicolae Sadovei, Institutia simbiotica a raporturilor de munca, Chisinau 2013.

3.1. Temporary Employment

3.1.1. Fixed-term employment

23. one employer and one employee characterized by a limited duration or a pre-specified event to end the contract. Fixed-term contracts ("FTCs") have always existed in labour markets and serve specific purposes. They provide flexibility to enterprises to respond to changes in demand, for example, because of seasonal fluctuations, to replace temporarily absent workers or to evaluate newly hired employees, although legally, probation periods should be used for the latter purpose before offering people an open-ended contract. But beyond these traditional reasons, some enterprises have come to rely heavily on fixed-term contracts, hiring workers recurrently on this basis to carry out ongoing tasks for the company. For these enterprises, temporary employment may pose certain challenges to a firm, including the management of workers in different types of arrangements but performing similar tasks. It also harbours a temptation to underinvest in training and innovation and hence lower productivity. Some workers choose temporary employment, for example, if they need to combine work with education or have other responsibilities that keep them from committing to work of indefinite duration. For most workers on fixed-term contracts, however, it is not an explicit choice. When fixed-term employment is involuntary, the arrangement is often inferior to an indefinite-term contract, especially if transitions to open-ended employment are compromised. It is thus important to prevent abuses in the use of fixed-term contracts by, for example, limiting their renewal or overall duration or prohibiting fixed-term work for ongoing tasks. It is also essential to provide the same working conditions to workers in temporary employment as to workers in standard employment[15].

24. Under the Moldovan Labour Code, an employment relationship of permanent duration is usually treated as the default, while relationships with fixed duration are the exception. The parties to the employment agreement are entitled to enter into a fixed-term contract subject to the following conditions, regulated by Article 54 of the Labour Code:

(1) Fixed-term contracts may not exceed the maximum term established by the Labour Code, which as a rule is five years, including extensions;

(2) the temporary character of the relevant work must be justified;

(3) the grounds for entering into a fixed-term contract are listed in the Labour Code and must be specified in the individual employment agreement.

25. The special legal reasons and duration when FTCs are allowed are contained in Article 55 of the LC, which are as indicated in the Table 3 below:

▶ Table 3 – Legal grounds for fixed-term contracts under the Labour Code

No.	Reason	Maximum number of successive fixed-term contracts	Maximum cumulative duration of successive fixed-term contracts
1.	For a period during which an employee is absent from work because their employment contract has been suspended, or due to leave or other reasons	Not regulated	Until the absent employee returns to work

[15] ILO, What is temporary employment? (ND). Available at: https://www.ilo.org/global/topics/non-standard-employment/WCMS_534826/lang--en/index.htm)

2.	For the performance of temporary work for up to 2 months	Not regulated	May not exceed 2 months
3.	For the duration of seasonal work that, by virtue of climatic conditions, can be carried out only during a specific period of the year	3	60 months
4.	With employees posted outside of the Republic of Moldova	Not regulated	2 (two) years
5.	With foreigners employed in Moldova, except for foreigners with the right of permanent or temporary residence for family reunification	Not regulated	Not regulated
6.	For a period of employee training at another employer	3	60 months
7.	With employees who are full-time students at educational institutions, if employment for an indefinite duration is not possible for objective reasons	3	60 months
8.	With employees who have retired on rounds of age or length of service (or who have obtained the right to a pension on grounds of age or length of service)	Not regulated	2 years, with the right of extension
9.	With scientific researchers, teachers and rectors of higher education institutions, heads of institutions in pre-school, primary, general secondary, special complementary, artistic, sports, secondary vocational, and secondary specialized education, on a competitive basis in accordance with the law, if employment for an indefinite duration is not possible for objective reasons	3	60 months
10.	Upon the election, for a fixed term, of employees to elective office in central and local public authorities or in the administration of trade unions, employers' organizations, other non-commercial organizations and companies	Not regulated	For the term of elected office
11.	With executive officers, their deputies and chief accountants if employment for an indefinite duration is not possible for objective reasons	3	60 months
12.	During the performance of certain work	3	60 months
13.	During the implementation period of an investment project under a technical and financial assistance programme	3	60 months
14.	For the performance of work arising due to an increase in the volume of production or services provided, the temporary nature of which (up to one year) can be justified by the employer	Not regulated	1 year
15.	With persons employed by employers set up for a limited duration	3	60 months
16.	With creative workers in the arts and cultural domain if employment for an indefinite duration is not possible for objective reasons	3	60 months
17.	With employees of religious organizations if employment for an indefinite duration is not possible for objective reasons	3	60 months
18.	With employees operating in the IT sector	3	60 months

26. Article 55[1] of the Labour Code prohibits less favourable treatment of fixed-term employees. Fixed-term employees must be treated similarly to permanent employees performing equivalent work for the employer with regard to (i) the length of service required for certain job positions; (ii) training opportunities; and (iii) the option of obtaining an undefined employment contract at the employer. Article 54 para (4) Labour Code prohibits the use of fixed-term agreements for the purpose of evading the rights and guarantees provided for employees with permanent contracts.

27. Thus workers, regardless of their particular employment relationship (permanent or fixed term), usually gain full rights from the first day of employment. There are cases in which the exercise of a specific right is conditional on a minimum legal qualifying period (length of service), such as the right to full annual leave for which a qualifying period of at least six months is required (Article 115 Labour Code). In the context of social security–related rights, a qualifying period of at least three years applies for the right to maternity and parental leave or in the event of temporary incapacity to work due to illness. Workers who have accumulated qualifying periods less than three years must provide evidence of a nine-month qualifying period within the past 24 months preceding the event to which social insurance applies.

28. According to the ILO,[16] fixed-term contracts typically offer workers a lower level of protection in terms of termination of employment compared with contracts of permanent duration. Under fixed-term contracts employers generally do not need to provide a justification for ending the employment relationship upon expiration, as by their nature such contracts include a set end date. ILO Convention No. 158 on Termination of Employment specifies that Member States may exclude workers engaged under "a contract of employment for a specified period of time or a specified task" from all or some of the provisions of the Convention (Article 2(2)). However, it also provides that "adequate safeguards" must be provided against recourse to such contracts that might aim at avoiding the protection afforded by the Convention (Article 2(3)). The ILO Termination of Employment Recommendation, 1982 (No. 166) provides guidance on adequate safeguards that can be implemented. It provides, for example, that "provision may be made for one or more of the following: (a) limiting recourse to contracts for a specified period of time to cases in which, owing either to the nature of the work to be effected or to the circumstances under which it is to be effected or to the interests of the worker, the employment relationship cannot be of indeterminate duration; (b) deeming contracts for a specified period of time, other than in the cases referred to in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration; (c) deeming contracts for a specified period of time, when renewed on one or more occasions, other than in the cases mentioned in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration" (para. 3). The Moldovan Labour Code contains all these safeguards. Thus if the State Labour Inspectorate identifies a fixed-term agreement executed in the absence of legal grounds justifying the temporary character of the employment said agreement shall be treated as one for permanent employment (Article 54 para (5) Labour Code). Furthermore, the same parties may not enter into more than three consecutive fixed-term agreements and the overall term shall not exceed 60 months. Fixed-term employment is deemed to have been concluded consecutively if there is an interval of less than three months between the contracts (Article 55 para (3) and (4) Labour Code).

29. The termination of a fixed-term contract upon expiration is regulated by Article 82 of the Labour Code, which specifies that such expiration represents a ground for the termination of the employment agreement. Early termination of a fixed-term contract upon one party's initiative (employee or employer) is subject to the same procedure as provided for permanent contracts. Thus an employee may resign any time subject to two weeks' prior notice (Article 85 Labour Code), while the employer is bound to follow a complex legal procedure in case of employee dismissal, which is allowed only in the cases expressly regulated by the Labour Code (Article 86 Labour Code).

30. We did not identify any conditions for fixed-term employment in the collective conventions that

[16] ILO, Fixed-term contracts (ND). Available at: https://eplex.ilo.org/fixed-term-contracts-ftcs/

would differ from the provisions of the Labour Code, except for the Collective Convention in Construction[17]. Under Article 3.8 of the Convention, to protect the local labour force, foreigners may be employed only if the following cumulative conditions are met:

- the employer does not have specialists to carry out certain work;
- Moldovan educational institutions are not able to train local employees through continuous vocational and technical training;
- employment of foreigners is for temporary work only.

3.1.2. Seasonal employment

31. The ILO defines "seasonal workers" as "workers who hold explicit or implicit contracts of employment where the timing and duration of the contract is significantly influenced by seasonal factors such as the climatic cycle, public holidays and/or agricultural harvests" (ILO, 1993, para 14(g)).

32. Under the Moldovan Labour Code, seasonal employment is governed by a type of fixed-term agreement under which employees are employed to perform seasonal work. Seasonal work is defined by Article 279 para (1) of the Labour Code as work which, by virtue of climatic and other natural conditions, is carried out during a specific period of the calendar year, not exceeding six months. The list of types of seasonal work is laid down in Government Resolution No. 1273 of 19.11.2004 on approval of the Seasonal Work Nomenclature and includes mainly agricultural work.

33. Seasonal workers are employed on the basis of written employment contracts, which shall specify the seasonal character of the employment. The Labour Code lays down specific rules related to probation periods and contract termination in the case of seasonal work, namely:

    (a) the probation period shall not exceed 2 weeks;
    (b) upon contract termination, employees are entitled to an indemnity for unused annual leave, calculated as established by the Government;
    (c) an employee may resign subject to prior notice of at least seven calendar days;
    (d) the employer must inform the employee on expiry of the term of employment at least seven calendar days in advance.

34. We did not identify any conditions for seasonal employment in the collective conventions that would differ from the provisions of the Labour Code.

35. From a legislative viewpoint, the treatment of seasonal workers is the same as for fixed-term contracts, and they enjoy the same rights and obligations under the Labour Code.

36. We could not find more recent statistics on seasonal work in Moldova. According to the ILO (2021)[18] seasonal work in Moldova is predominantly informal (81 per cent).

3.1.3. Casual work

37. Casual work is the engagement of workers on a very short-term or on an occasional and intermittent basis, often for a specific number of hours, days or weeks, in return for a wage set by the terms of the daily or periodic work agreement.

38. Casual work is not explicitly defined in the Labour Code. However, there are two non-standard forms of employment that fall under this definition, namely: (1) a fixed-term contract for the performance of temporary work for a period not exceeding two months, and (2) the employment of day workers in agriculture.

[17] Collective Convention in Construction No. 231 of 18.12.2018 for 2018–2022.
[18] ILO, Decent Work Country Programme 2021–2024. Republic of Moldova (ND),
https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/genericdocument/wcms_821880.pdf

(1) Fixed-term contracts for the performance of temporary work for a period not exceeding two months

39. Fixed-term contracts for periods not exceeding two months represent a form of employment and shall be formalized in accordance with the Labour Code, similar to other fixed-term contracts. From the legislative viewpoint, the treatment of workers employed under fixed-term contracts of up to two months is the same as for fixed-term contracts in general, and they enjoy the same rights and obligations under the Labour Code. Such workers benefit from an allowance for unused annual leave upon termination of employment, which will be calculated based on the term of the contract and the salary paid. For workers employed for occasional work with a duration of up to two weeks, the salary is paid immediately after the work has been performed.

40. Workers under fixed-term contracts of up to two months shall notify the employer of their resignation at least three days in advance (compared with two weeks prior notice applicable in other fixed-term contracts or in the case of permanent employment). Employers must notify the employee of contract termination with at least three days' prior notice.

41. We were unable to identify any official statistics on the proportion of fixed-term contracts of up to two months in the Moldovan economy.

(2) Work of agricultural day workers

42. Day workers are defined as persons able to work who perform unqualified and occasional work for a beneficiary for remuneration. Unqualified and occasional activity is activity that does not require special knowledge and qualifications, and is performed sporadically and occasionally. Unqualified and occasional activities may be performed exclusively in agriculture.

43. The activity of day workers is not covered by the Labour Code and they benefit from minimal labour rights and guarantees, regulated in the Law on Day Labourers.[19] Moreover, the Tax Code explicitly lays down that day workers are not considered employees. The contracts of day workers are not qualified as employment contracts. Day workers are covered by the social security system, but they benefit from only a limited range of benefits and allowances. Therefore the position of these workers is precarious. In addition to their exclusion from the scope of labour legislation (including individual and collective employment rights), they are also exempt from the social security regime.

44. The work of day labourers may be performed in the absence of a written employment contract, and shall not exceed the following working time:

- 8/7[20]/5 hours per day;
- 40/35/25 hours per week;
- 120 hours accumulated during one calendar year per single employer.

45. The employer (beneficiary of day workers) must register and declare day workers to the territorial Labour Inspectorate on a monthly basis.

46. For the work performed, a day labourer receives remuneration that may not be lower than the minimum salary calculated for one 8-hour working day. The employer must withhold and pay to the state budget the correspondent withholding tax from the paid remuneration, which in 2023 was 12 per cent. No social security or health insurance contributions are withheld by the employer from a day labourer's remuneration.

47. We could not find more recent statistics on day labourer work in Moldova.

[19] Law on performance of certain unqualified and occasional activities performed by day labourers, No. 22 of 23.02.2018.
[20] Reduced periods of 7 and 5 hours per day and week are established for minors aged 16–18 or 15–16 years.

3.2. Part-time employment

48. ILO Part-Time Work Convention, 1994 (No. 175) defines a "part-time worker" as an employed person whose normal hours of work are fewer than those of comparable full-time workers. For statistical purposes, part-time work is usually considered as below 35 hours, or 30 hours, per week.

49. Part-time work is one of the more traditional non-standard forms of employment. Globally, the incidence of this type of work has grown over recent decades. It has also undergone diversification, including: "substantial part-time" (21–34 hours per week); "short part-time" (20 hours or less); and marginal part-time (fewer than 15 hours per week). In some instances, working arrangements may involve very short hours or no predictable fixed hours, and the employer has no obligation to provide a set number of hours of work. This is known as "on-call work" and may include so-called "zero-hours contracts". Part-time employment is more common among women and can help some workers, especially those with children or other care responsibilities, to enter or remain in the labour market. It can also provide opportunities for workers who want to combine work with education or professional training. However, it is considered to be beneficial only if it is a voluntary choice of the workers concerned and equal treatment is guaranteed to them.

50. The Moldovan Labour Code does not provide for a specific definition of part-time employment. The ILO definition of a part-time worker as "an employed person whose normal hours of work are less than those of comparable full-time workers"[21] is a common legal definition that corresponds to the legal characteristics of part-time employment regulated by Moldovan law.

51. Normal working hours for full-time workers are 40 hours per week, as specified by Article 95 para (2) of the Labour Code. An employee who works for fewer than 40 hours a week is a part-time employee. The Labour Code does not provide a specific threshold that would divide workers into full-time and part-time.

▶ **Reduced standard working hours:**

For certain categories of employees, the law establishes reduced working hours, as a derogation from a maximum 40 hours per week threshold, as follows:

- 24 Hours — for employees 15 or 16 years of age;
- 35 Hours — for employees operating in harmful working conditions, or whose work involves significant intellectual and psycho-emotional effort, as established by the Government;
- 35 Hours — for employees between 16 and 18 years of age;
- 30 Hours — for employees with severe disabilities.

52. Thus, any employee working fewer than 40 hours a week or less than the reduced normal working hours specified under Article 95 of the Labour Code, should be regarded a part-time employee.

53. A part-time employment contract may be concluded at the beginning of employment or during employment, as an amendment to the existing contract. The part-time regime may be applied for an indefinite or definite period, at the request of the employee or the employer.

[21] ILO Part-Time Convention, 1994 (No. 175).

54. When the part-time regime is requested by the employee, the Labour Code makes a distinction between (a) mandatory part-time, when the employer is not allowed to refuse the employee's request, and (b) voluntary part-time.

55. The employer must accept the employee's part-time request if the employee falls under any of the following categories (Article 97 para (2) Labour Code):

- pregnant women;
- employees who have children up to the age of 10 or disabled children (including those under their guardianship);
- employees who are caring for a sick family member, according to a medical certificate.

56. Part-time requests by other employees are not mandatory for the employer. However, an employer's refusal of part-time working must be justified in writing.

57. Changing a full-time contract to a part-time one may be requested also by the employer. The employee has no legal obligation to accept the employer's proposal, however, and such a refusal may not serve as a ground for negative consequences for the employee, such as termination of the full-time contract. The employer may unilaterally reduce the working hours within the company for at least 25 per cent of the company' employees, in an emergency, for periods of up to three consecutive months, but not exceeding five months per year. In such cases, the work duration of an employee may be reduced by up to 50 per cent and the salary paid proportionally to time worked. This exceptional working regime of reduced working hours may not apply to part-time workers (Article 97^2 Labour Code).

58. Part-time work shall be remunerated in proportion to the time worked or according to the volume of work performed. Work outside part-time duration is not prohibited, subject to the employee's consent. Work performed outside the part-time duration is not considered overtime, as defined by Article 104 para (1) of the Labour Code. Consequently, such work does not entitle the employee to receive the overtime indemnity of 1.5 basic salaries per hour for the first two hours or double the basic salary per hour for the following hours, as regulated by Article 157 of the Labour Code. An exception applies if the work performed outside the part-time regime exceeds 40 hours per week.

59. We did not identify any conditions for part-time employment in the collective conventions that would differ from the provisions of the Labour Code.

60. From a legislative viewpoint, part-time workers have the same contractual and other rights and obligations arising from employment, as well as the same working conditions as comparable full-time workers.

3.3. Self-employment

3.3.1. Self-employment and determination of the employment status of self-employed persons

61. A self-employed person is a natural person who performs particular work personally or mostly personally. This person, independently (without receiving any instructions from and working under the supervision, control and disciplinary authority of an employer) pursues an economic activity or provides professional or other intellectual services for remuneration, on his or her own account (and not on behalf of and for the account of an employer). A self-employed person pursues an economic activity or provides a professional and other intellectual service professionally, that is, as an occupation. The economic activity of a self-employed person is pursued for the purpose of acquiring income (rather than earning a salary).

62. A definition of "self-employed individual" is not expressly provided for in Moldovan legislation. From a legal perspective, self-employment is regulated by the Civil Code22 and the Law on Entrepreneurial Activity.23 The regulation in the Civil Code is limited to a general principle, allowing individuals to perform business or professional activities in their own name and account. In the existing legal framework, a self-employed person may pursue the following legal forms of activity:

a) Registered individual entrepreneur. Article 34 para (1) of the Civil Code specifies that an individual is entitled to perform business activity from the date of their registration in the corresponding register. As a rule, to perform a business activity, individuals must be registered as individual entrepreneurs in the Register of Legal Entities maintained by the Agency of Public Services, as regulated by the Law on Registration of Legal Entities and Individual Entrepreneurs.[24]

b) Liberal professional. Currently, the legal status of the following liberal professionals is defined in the tax legislation[25] for tax purposes:

- Independent activity in trade (mainly retail) – commercial activities carried out by a Moldova resident on an individual basis only, without constituting a legal organizational form.
- Professional activity in the justice sector – a permanent activity carried in the forms regulated by law for attorneys-at-law, trainee attorneys-at-law, notaries, bailiffs, authorized administrators, mediators, and legal experts.
- Health professional activity – independent exercise of the medical profession in one of the forms of organization of professional activity provided for by the Law on Health Protection No. 411/1995.

c) Activity under a civil law contract for performance of work or rendering of services. Other persons, who do not perform business activities as an independent entrepreneur or as a liberal professional, may carry out work and provide services to other legal entities or individuals only by entering into an employment relationship. In the absence of a clear difference between civil work/services agreements and employment arrangements, parties may misuse civil contracts to avoid employment law requirements.

63. Self-employed people working transparently under written contracts benefit from the same tax treatment as people working under an employment agreement. Self-employed people do not benefit from the protection provided by the Labour Code in terms of minimum wages, working time, health and safety at work, the right to information and consultation, the right to training, or protection against arbitrary dismissal. They cannot form trade unions and cannot exercise the right to collective bargaining and collective action. They are also not entitled to sick leave, maternity or childcare leave (except for liberal professionals, namely lawyers, notaries, bailiffs).

64. The analysis performed for this Report shows that there is an inconsistency between legal and statistical terminology when defining self-employment. For statistical purposes, self-employed workers are qualified as "own account workers" (lucrători pe cont propriu), defined as individuals who perform an independent activity or as an individual business, without permanent employees, whether assisted or not by unpaid family members, and include individual entrepreneurs, liberal professionals, casual workers or individual farmers. The statistical definition does not cover persons working on the basis of civil contracts (including freelancers), without being registered as individual entrepreneurs, liberal professionals, day workers in agriculture, individual farmers, or patent holders.

[22] Civil Code No. 1107 of 06.06.2002.
[23] Law on Entrepreneurial Activity No. 845 of 03.01.1992.
[24] Law on State Registration of Legal Entities and Individual Entrepreneurs No. 220 of 19.102007.
[25] Tax Code No. 1163 of 24.04.1997.

3.3.2. Dependent self-employment

65. Dependent self-employment is a working relationship in which a self-employed person performs services for another contractual party under a contract different from an employment contract but depends on one or a small number of clients for their income and receives direct guidance on how the work is to be done.[26] Dependent self-employment is defined using the following main criteria: primarily personal work, continuity over time and a single or mostly a single client, that is, employer.[27]

66. Moldovan legislation does not provide for dependent self-employed persons as a non-standard form of employment. In Moldova, dependent self-employed persons are categorised somewhere between subordinate employment, which is fully covered by the Labour Code, and self-employed persons, who are fully covered by the Civil Code and specific legislation. Individuals working under civil-law agreements (including freelancers), without being registered as individual entrepreneurs or liberal professionals may be included in this category of dependent self-employees. Such persons have precarious social protection status if they work for foreign residents who do not have a registered presence in Moldova. Thus dependent self-employed Moldovan residents, if properly declared by their employers, have the same tax, social security and health insurance status as employees working under employment contracts governed by the Labour Code. Dependent self-employed individuals who provide services in Moldova for foreign residents that have no registered presence in Moldova might not be captured by the tax and social security system. A foreign resident without any registration in Moldova is not identified by the Moldovan Tax Code and the social security legislation. Therefore dependent self-employees working for foreigners must independently report and pay their individual income tax and contributions to the state budget, which increases the risk that they are likely to remain in the informal economy.

3.3.3. Disguised self-employment

67. Disguised employment describes a state of affairs in which a worker is hired as an independent contractor (through a civil contract) but whose working conditions – for example, the fact that they are monitored by a supervisor – suggest that in fact they are an employee. The real nature of the work relationship is hidden in order to bypass labour regulations.

68. Moldovan labour law, as part of private law, is based on freedom of contract, whereby the parties basically can choose the type of contract governing the performance of work for other people. The parties, however, must take the criteria of the employment relationship into due consideration. If work is performed in line with the essence of labour law provisions and has the attributes of an employment relationship, the parties must conclude an employment agreement and the correspondent norms of the Labour Code shall apply.

69. A disguised employment relationship is situated in the grey area of non-standard forms of employment as "an employer treats an individual as other than an employee in a manner that hides his or her true legal status as an employee" (ILO, 2016). To denote the employment relationship in this grey area, various terms have been used, including "bogus", "fake", "false", "sham", "involuntary", "misclassified" self-employment, or "disguised" employment. Disguised employment may be treated as a simulated relationship for the purpose of avoiding or reducing employers' costs that would arise from proper application of the regulations, primarily within the framework of labour and social protection law. In practice, the contractual parties enter into various titled or untitled contracts, written or verbal, although predominantly in the form of civil (service) contracts or agreements.

[26] ILO, Non-Standard Employment Around the World: Understanding Challenges, Shaping Prospects (Geneva, 2016).
[27] Adalberto Perulli: Study on economically dependent/parasubordinate (quasi-subordinate) work (European Parliament, 2003), (https://www.europarl.europa.eu/meetdocs/committees/empl/20030619/study_en.pdf).

70. The subject of the employment relationship had been on the ILO agenda for a long time. The Employment Relationship Recommendation No. 198 adopted by the Conference in 2006 specifies various indicators of an employment relationship, including the following:

a) The fact that the work: is carried out according to the instructions and under the control of another party; involves the integration of the worker in the organization of the enterprise; is performed solely or mainly for the benefit of another person; must be carried out personally by the worker; is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work; is of a particular duration and has a certain continuity; requires the worker's availability; or involves the provision of tools, materials and machinery by the party requesting the work.

b) Periodic payment of remuneration to the worker; the fact that such remuneration constitutes the worker's sole or principal source of income; provision of payment in kind, such as food, lodging or transport; recognition of entitlements such as weekly rest and annual holidays; payment by the party requesting the work for travel undertaken by the worker in order to carry out the work; or absence of financial risk for the worker.[28]

71. According to Article 2 para (3) of the Labour Code, if the court determines that a civil contract in fact governs the employment relationship between the employee and the employer, the provisions of labour law shall apply to such a relationship. Thus, the Moldovan Labour Code contains the principle of "primacy of facts" and the legal presumption that an employment relationship exists. However, the law does not establish criteria to be considered when determining whether the civil contract in fact represents employment. As stated by Boisteanu and Romandas (2015), "the Labour Code contains some omissions as the legislator did not expressly regulate the institution of a legal employment relationship. Such a regulation would have been of primary necessity, as it could effectively contribute to the perception of the essence of the other legal institutions of labour law. In addition, it should be mentioned that the legislator did not attempt to resolve the problem of disguised legal relationships when difficulties arise in establishing the existence of an employment relationship".[29]

72. Some criteria for differentiating between employment and civil law contracts have been produced by the Supreme Court of Justice as a recommendation for lower courts when handling employment law litigation. The Supreme Court of Justice recommended to consider as employment rather than as civil law contracts agreements that contain clauses that are specific to an employment relationship, such as salary payment, compliance with labour discipline or provisions on working conditions.[30] These criteria might be useful for parties when construing their contractual relationship but are not sufficient for the controlling authorities to argue the existence of disguised employment. Only the courts are authorized to change a contract's legal basis based on a complaint from one of the contracting parties.

73. It is very difficult to ascertain the prevalence of disguised self-employment because relevant data are lacking. Entering into a civil law agreement with a person who is not registered as an entrepreneur or liberal professional is not prohibited by law. Thus a disguised employment relationship may be discovered only if a self-employed individual claims that they have been forced to enter into a civil law agreement to avoid employment law requirements.

[28] ILO Employment Relationship Recommendation, 2006 (No. 198), https://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R198
[29] Eduard Boisteanu and Nicolae Romandas: Dreptul muncii (manual) (Chisinau, 2015).
[30] Decision of the Plenum of Supreme Court of Justice of 03.10.2005, No. 12 – Regarding the case law on litigation related to the conclusion, amendment and termination of individual employment contracts, Buletinul Curții Supreme de Justiție 6/4 din 2006.

3.4. Other non-standard forms of employment in Moldova

3.4.1. Remote Work (including telework)

74. Remote work can be regarded as work that is fully or partly carried out at an alternative worksite different from the default place of work. Remote work can be performed in a variety of possible locations, all of which can be viewed as an alternative to the location where the work would typically be expected to be carried out, taking into account the profession and employment status.

75. Remote work and telework are currently not covered by any international statistical standards. Countries have used slightly different operational definitions to differentiate telework as a subcategory of re mote work: (1) telework is fully or partly carried out at an alternative location other than the default place of work (a criterion based on the definition of remote work); and (2) telework implies the use of personal electronic devices, such as a computer, tablet or telephone (mobile or landline) to perform work. The use of personal electronic devices needs to be an essential part of carrying out such work.

76. Under the Moldovan Labour Code, the place of work represents one of the main conditions to be included in the employment agreement, according to Article 49 para (1) letter k). The place of work represents the place or location where the work would typically be expected to be carried out, taking into consideration the profession and status of employment. It does not necessarily imply that most of the work would take place in a single location. As a rule, work is performed on the premises of the employer.

77. Remote work is defined by Article 292^1 para (1) of the Labour Code as a form of employment arrangement in fields of activity in which employees perform duties corresponding to their occupation, function and profession from an alternative location other than the place organized by the employer, by any means, including by means of information and communication technology. From the legal definition, it may be concluded that "telework" represents a separate subcategory of remote work.

78. Remote work may be performed at any location of the employee's choosing, including the employee's home. In this regard, remote work overlaps with home-based work, regulated by Article 290 of the Labour Code.

79. The regulation of remote work is a response to the Covid-19 pandemic, which resulted in a massive increase in the number of employees working from home.

80. A remote work regime may be applied upon mutual agreement of both parties. In certain cases, remote work may be imposed by the employer without consulting the employees, and without amending the individual employment agreement. This is the case regulated in Article 73 of the Labour Code, allowing the employer to declare remote work in cases in which it is impossible for the employee to work at the place of work organized by the employer and in order to protect the safety and health of the employee during exceptional situations related to a declaration of a state of emergency, siege or and war, or the declaration of a public health emergency.

81. An employee working remotely enjoys all the rights and guarantees provided by the law, the collective labour contract, the individual labour contract, or other regulatory acts at the unit level applicable to employees whose workplace is organized by the employer. The particularities regarding remote work can be stipulated in the individual labour contract, in the collective labour contract or the internal regulations of the unit, or in another normative act at the unit level.

82. Remote work agreements must contain clauses specifying:

a) the conditions for engaging in remote work;
b) the software by means of which the employer is entitled to check the employee's activity and the method of carrying out the control;
c) the method of recording hours worked by the remote worker;
d) the conditions regarding responsibility for the payment of expenses related to remote working;
e) other conditions agreed upon by the parties.

83. The employer organizes the safety and health at work of employees working remotely in accordance with the legal provisions pertaining to occupational safety and health at work.

84. We did not identify any conditions for remote work in the collective conventions that would differ from the provisions of the Labour Code.

3.4.2. Home-based work

85. Home-based work is another form of employment arrangement in which the location for carrying out working activities is not a place of work organized by the employer. According to ILO estimates, in 2019 about 7.9 per cent of the employed population around the world belonged to the broader category of "home-based work", which also includes work carried out by independent, self-employed workers in their own homes (or adjacent grounds or premises). The incidence of home-based work globally is higher among women (amounting to 11.5 per cent of women's employment share and 5.6 per cent of employment for men).

86. Home-based work is defined by Article 290 para (1) of the Labour Code as work performed at the employee's home/residence using materials, instruments and mechanisms provided by the employer or procured by the employee. In case of the use of the employee's own tools and devices, the employee must be paid compensation for their wear and tear. Payment of such compensation, as well as compensation for other expenses related to home-based work, must be made by the employer in the manner stipulated in the individual employment contract.

87. The difference between home-based work and remote work is limited and lies mostly in the use of information and communications technology (ICT) and the fact that remote work can be performed in any alternative location agreed to by the employer and employee, not just at home. Therefore, remote work and home-based work as regulated by the Labour Code overlap. Telework, for example, can be performed in the worker's home, and a home-based worker can also telework. These overlaps can be viewed as additional concepts that can either add to the understanding of the two core concepts or can be measured separately.

88. According to the ILO (2020), a key aspect in relation to remote work, telework and work at home is the frequency with which the worker carries out this type of work. The literature makes a distinction between regular home-based work (defined as work carried out by persons who work remotely at least several times a month) and occasional work at home. The distinction in the frequency of remote work, telework and/or work at home is essential to reflect the incidence of the remote work. Such a differentiation or categorization could be based on whether the home is the usual place of work or whether work at home is a regular or occasional occurrence. Operationally, these boundaries could be set by distinguishing between mainly (understood as usually or most frequently), regularly (at least once a week in the past four weeks) and occasionally (at least once in the past four weeks).[31]

[31] ILO: COVID-19: Guidance for labour statistics data collection. Defining and measuring remote work, telework, work at home and home-based work (2020), (https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/publication/wcms_747075.pdf).

89. We did not identify any conditions for home-based work employment in the collective conventions that would differ from the provisions of the Labour Code.

90. Starting from 2020, the NBS has included remote work in its quarterly and annual analyses. Remote work and home-based work are presented together in NBS sources. Remote work does not exist as a separate indicator, which may create difficulties in separating remote work from work at home.

91. According to the NBS, 24,500 individuals were remote or work-at-home employees in 2020, 16,800 of whom were women and 7,700 men; 18,600 are employed workers and 5,900 self-employed.[32]

3.4.3. Digital platform work

92. The "gig economy" (also called the "on-demand economy") is a term that has gained widespread use in the media to designate work that is mediated through online web platforms. Forms of work in the gig economy are very heterogeneous, although the main ones are crowd work and "work-on-demand via app". These two forms of work have some points in common, just as they do with other non-standard forms of employment, especially casual work and ambiguous or disguised employment relationships. They also raise important questions concerning labour protection, as workers in the gig economy are almost invariably classified as "independent contractors" and thus do not have access to the rights of workers in a recognized employment relationship. The result is that businesses and customers are, in most instances, not bearing costs such as social security contributions, sickness and maternity pay and statutory minimum wages. Moreover, workers in many cases risk being excluded from fundamental principles and rights at work, such as freedom of association and collective bargaining or protection against discrimination, because many jurisdictions restrict these fundamental rights to employees.[33]

93. Online platform work, and freelancing in general, is not regulated in the Republic of Moldova.

94. In 2021, the European Training Foundation carried out a study on the new forms of employment in the Eastern Partnership Countries, with an emphasis on platform work in the Republic of Moldova. The study noted that relatively few Moldovans – especially those residing outside Chisinau – use the internet for economically productive purposes. Nonetheless, there are signs that this situation is gradually changing. According to analyticsHelp.io, in the EaP context, Moldova has an average share of online freelancers per capita (0.66).[34] Additional information providing some insights into the prevalence of platform work comes mainly from specific platforms identified as operating in the country.

95. The study also shows that Moldovans are noticeably active on international Russian and English language platforms, such as Upwork, iFreelance, Toptal, Freelancer.com, Upwork, Weblancer, FreelanceHunt, and others. Estimates in 2012 pointed to over 1,000 Moldovans working on just one of these platforms. Several local platforms exist, such as Freelancing.md and Rabota.md, and these are used by workers to advertise their services and to find clients. However, these should be treated as specialized job advertisement websites rather than digital labour platforms, as they do not intermediate between freelancers and clients (which is also part of the definition of platform work).

96. The study pointed out that the rise in popularity of remote IT work is a more general trend in Moldova. The financial turnover in the Moldovan IT industry grew by more than 250 per cent between 2018 and 2020. Almost 80 per cent of the IT products created in the country are designated for export, primarily to Western Europe, and the outsourcing of Moldovan IT workers is

[32] See https://statistica.gov.md/public/files/publicatii_electronice/Forta_de_munca/AFM_2021.pdf
[33] ILO: Non-Standard Employment Around the World: Understanding Challenges, Shaping Prospects (2016).
[34] European Training Foundation: New Forms of Employment in the Eastern Partnership Countries: Platform Work – Moldova (2021), available at https://www.etf.europa.eu/sites/default/files/2021-06/platform_work_moldova_0.pdf

being increasingly promoted. Meanwhile, the main services in the on-location segment of platform work in Moldova are taxi and delivery services, organized using apps such as Yandex-.Taxi (www.taxi.yandex.md), iTaxi (www.itaxi.md), and AlfaTaxi (http://alfataxi.md/). Secondly, there are several platforms for food delivery services in the country, including the Moldovan companies StrausMD and iFood, as well as the international food delivery platform Glovo. Platforms intermediating other on-location services (for example, cleaning, handyman, pet care) have not been identified.

97. Neither platform work nor freelancing activities in general are regulated in the Republic of Moldova. In the absence of specific legal provisions on freelance activities, platform employees have the following options to formalize their economic activity: (i) standard or non-standard forms of employment contract; (ii) registration as an individual entrepreneur; or (iii) civil law service contract.

98. In October 2019, following consultations with a series of professional associations, SMEs and freelancers, Members of the Moldovan Parliament elaborated a draft law designed, among other things, to formalize freelance activities in the Republic of Moldova. Under the draft law, it was proposed to define freelancers as "independent professionals" with a tax regime applicable to their activities being assimilated into the tax regime of other existing professional activities in the Republic of Moldova (for example, lawyers and notaries).[35] The draft law, however, was withdrawn.

3.5. Not regulated non-standard forms of employment

3.5.1. Contractual arrangements involving multiple parties

99. According to Article 1 of ILO Convention No. 181, private employment agencies are any enterprises or persons, independent of the public authorities, which provide one or more of the following labour market services: (a) services for matching offers and applications for employment; (b) services for employing workers with a view to making them available to a third party ("user enterprise"); or (c) other services related to job seeking, such as the provision of information, that do not aim to match specific employment offers and applications. A similar definition is contained in EC Directive 2008/104/EC, defining a temporary work agency as any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction.

100. Temporary agency employment refers to the employment of a worker by a temporary work agency, which then hires them out to perform their work at (and under the supervision of) the user company. There is no employment relationship between the temporary agency worker and the user company, although there may be legal obligations on the part of the user company towards the temporary agency worker, especially with regard to health and safety. The relevant labour contract is of limited or unspecified duration with no guarantee of continuation. The user company pays fees to the agency, and the agency pays the wages (even if the user company has not yet paid the agency). Flexibility for both worker and employer is a key feature of agency work.

101. Besides temporary agency work, there are also other forms of work involving multiple parties. They usually take the form of "subcontracting", within the framework of which the economic operator who has been awarded the contract to provide certain work or services entrusts another entity (subcontractor) with the execution of part of the work or services that fall within the scope of the awarded contract and are provided to a specific client. The work or services provided by the subcontractor may include the manufacture of goods or the rendering of services for the

[35] See: https://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/4792/language/ro-RO/Default.aspx

client. Another form similar to subcontracting is so-called "externalization", perhaps better known as "outsourcing", which may be defined as the assignment of regular business activities (functions and processes) of a firm to external service providers on the basis of a civil law or commercial contract.

102. Moldova ratified ILO Convention No. 181 in 2001.[36] The Law on Employment Promotion and Unemployment Insurance[37] only partially transposes the concept of private employment agency. Such agencies are limited to employment intermediation services and may not act as the employer of workers hired out to a user enterprise. The Moldovan Labour Code also does not regulate temporary agency employment, subcontracting or outsourcing, or other forms of work involving multiple parties. In the absence of specific regulations, parties still may create contractual constructions along similar lines by using existing Labour Code regulations. For instance, an employee may be seconded to another entity (user enterprise) for a period not exceeding one year, based on a separate fixed-term employment agreement (Article 71 Labour Code). However, such secondment may be precarious for an employee, in particular when it comes to identifying their principal employer for the purpose of determining occupational safety and health obligations and establishing liability in cases of occupational injury and accident.

103. The Government tried to amend the Labour Code by including temporary agency forms back in 2020, but this reform has not been implemented up to date. The need to introduce coverage of temporary agencies in the Labour Code remains on the Government agenda.[38] To this end, a law has been drafted to amend the Labour Code, as well as other labour legislation, to regulate the activities of temporary agencies. The draft law, which is still subject to public discussions, aims to create a protective framework for temporary agency workers so that they benefit from equal treatment with other employees of the user enterprise. The main rules on temporary agencies intended for inclusion in the Labour Code by the draft law are as follows:

- The relationship between the temporary employment agency and employees will be governed by the temporary employment contract, which is an individual employment contract concluded in writing between the temporary employment agency and the temporary employee, as a rule for the duration of an assignment. The temporary employment contract will specify the conditions under which the assignment is to be carried out, its duration, the identity and location of the user enterprise, and the amount and terms of the temporary employee's remuneration.

- The party responsible for payment of salary is the temporary employment agent, who also calculates and withholds all contributions and taxes due. If, within 15 calendar days of the due date, the temporary employment agency fails to pay a temporary employee's salary, the user enterprise must do so, unless said user enterprise has already transferred the salary to the temporary employment agency.

- Temporary agency workers may perform specific tasks of a temporary nature at a user enterprise, and during such assignments they are under the latter's supervision and direction.

- Temporary assignment to the same user enterprise shall not exceed 24 months, with the possibility of successive extensions, which may not exceed 36 months in total. The basic conditions to be laid down in the temporary employment contract concluded between the temporary employment agency and the user enterprise include the duration of the assignment; the specific job characteristics, and in particular the qualifications required; place of work and working hours; working conditions; personal protective and work equipment to be used by a temporary employee; any other services and facilities to the benefit of the temporary employee; the

[36] Law No. 482 dated 28.09.2001 on ratification of ILO Convention No. 181 on private employment agencies.
[37] Law No. 105 dated 14.06.2018 on Employment Promotion and Unemployment Insurance.
[38] Legislative changes are being drafted to make the Moldovan labour market more attractive – Economic Council (gov.md)

amount of the commission to be paid to the temporary employment agency and the remuneration to which the employee is entitled.

3.5.2. On-call work

104. On-call work (or zero-hours contracts) can be defined as a contractual relationship or arrangement under which an employer agrees to pay for work done but makes no commitment to provide a set number of hours of work per day, week, or month.[39] Such employment is characterized by extremely short periods of prior notice, envisages a high fluctuation of working hours (from zero to full time), and employees have no certainty regarding the income they will earn or the organization and scheduling of working hours because their employment depends on whether the employer calls them or does not call them in to work. And if that wasn't enough, employees undertake to make themselves available to the employer at all times. In this regard, on-call work usually puts employees in an extremely precarious position, with no income security (minimum amount of work and salary) or time security (minimum number of working hours), and no control over scheduling or notification for upcoming work.

105. This form is not regulated in Moldova, and we did not identify any cases of such contractual agreements in practice.

3.5.3. Job sharing and employee sharing

106. According to the ILO, work sharing involves a reduction of working time intended to spread a given volume of work over a larger number of workers to avoid layoffs or increase employment. Job sharing refers to a voluntary arrangement whereby two persons take joint responsibility for one full-time job and divide the time they spend on it according to arrangements made with the employer. Under such a scheme, an employer may conclude one employment contract with several employees for carrying out the functions of a single job. Where one of the employees to the contract is unavailable, another contracted employee shall fill in and perform the functions of the job as required.

107. In the absence of specific regulations, Moldovan employers might construe job sharing using the existing rules in the Labour Code. However, one employment agreement covering multiple employees is not possible. The employer would have to enter into separate employment agreements with each employee and subsequently formalize the conditions governing teamwork.

108. Sharing of employees means that several employers may conclude one employment contract with one employee for carrying out the tasks of a job. Employee sharing can be useful, in three scenarios in particular. First, in cases in which work is physically performed in one place but on behalf of several organizations (for example, a receptionist in an office building where multiple employers are located). Second, in the case of a group of companies connected by ownership or by close business relationships that want to exchange their workforce for various reasons. Third, in the case of a group of micro-enterprises, each of which on its own cannot afford to employ a part-time or full-time worker but is able to share employees who work for several of them at once.

109. In the absence of specific regulations, Moldovan employers might construe sharing of employees using the existing Labour Code rules. However, one problem with this form of employment is that the employer designated to pay the employee's wages must be clearly indicated, along with the employer or employers who will be liable with regard to employment-related claims, not to mention the issue of the termination of employment if the number of employers is reduced.

[39] Simon Deakin: New Forms of Employment: Implications for EU Law – the Law as It Stands (New Forms of Employment in Europe series) (Wolter Kluwer, 2016), https://docentes.fd.unl.pt/docentes_docs/ma/jja_MA_24419.pdf

4. Impact of non-standard forms of employment on different categories of person and the continuum between non-standard employment and undeclared workorms

4.1. Social protection of persons working under different non-standard forms of employment

110. As a general rule, if an employment relationship is duly formalized by employer and employees, the latter will benefit from all rights granted by the Labour Code, including employment rights, social security and health insurance coverage. For certain categories of employees and the self-employed, the law establishes specific taxation rules, social security and health insurance coverage, as well as different social security benefits, as specified in the following subsections of this Report.

(1) Taxation

111. The individual personal income tax of 12 per cent applies to any individual (whether employed under an employment or a civil law contract). Personal income tax is withheld at source by the employer from the remuneration to be paid to the employee or self-employed person under a civil law contract (except for individual entrepreneurs and liberal professionals). For tax purposes, remuneration paid to individuals under civil law contracts is treated as salary (Article 88 para (5) of the Tax Code). Specific taxation rules apply to persons working under employment law agreements as taxi drivers or as employees of IT parks, and for self-employed persons, as follows:

(1) Under Article 88^1 of the Tax Code, taxi companies that employ taxi drivers under employment contracts on salaries up to MDL 10,000 per month must pay a fixed individual income tax for each employee of MDL 500 per month.

(2) Under Article 15 para (1) of the Law on Information Technology Parks No. 77/2017, IT park residents benefit from a single tax of 7 per cent from the revenues from company sales. The single tax applies exclusively to residents of IT parks and replaces several other taxes. The single tax is defined as the amount paid monthly to the tax authorities by residents of IT parks. The single tax has a fixed rate of 7 per cent of sales revenue, but not less than the established minimum amount per employee (30 per cent of the forecast national average monthly salary). The single tax includes the taxes related to residents' ordinary operations (corporate income tax, local taxes, property tax, road tax), as well as the taxes and contributions paid by IT park residents to their workers working under employment agreements, namely personal income tax; social security contributions and health insurance contributions. IT park residents who are self-employed workers, employed under a civil law contract, are not covered by the single tax benefit. For such workers, the IT park resident must withhold the individual income tax at a 12 per cent rate according to the general rules.

(3) For self-employed individual entrepreneurs and liberal professionals, personal income tax is 12 per cent and is paid directly by the person in question.

(4) For self-employed persons who are not entrepreneurs or liberal professionals and perform activities based on civil or work contracts, personal income tax is 12 per cent and is withheld by the employer. If the employer is a foreign resident and does not have any registered presence in Moldova, the self-employed person must him- or herself report and pay their individual income tax.

(2) Mandatory social security and mandatory health insurance

112. The Law on the Public Social Security System No. 489 of 08.07.1999 and the Law on Amount and Payment Conditions of Mandatory Health Insurance Contributions No. 1593 of 26.12.2002 provide for different social security ("SSC") and health insurance contributions ("HIC") to be paid by:

- persons who are employed under employment or civil work/service agreements;
- persons working as taxi drivers with taxi companies;
- persons who are employed by IT park residents;
- individual entrepreneurs and liberal professionals;
- other persons who do not fall under any of the above categories (for instance, employed and self-employed persons working for foreign residents).

113. As a rule, employers must pay social security and health insurance contributions at a monthly rate established annually on remuneration paid for all their workers contracted under an employment or civil law contract, and the workers shall be granted social security benefits. Thus workers performing work and services based on civil law contracts, whose work is declared by the employer in accordance with the relevant tax, social security and health insurance legislation, benefit from the same coverage as workers operating under individual employment contracts. Employees of certain industries (IT park residents' employees and taxi drivers employed by taxi companies), individual entrepreneurs, and liberal professionals are subject to special or fixed-rate social security and health insurance contributions.

114. Social security and health insurance contributions applicable for 2023 are shown in Table 4.

Table 4 – Social security and health insurance contributions for employees and self-employed workers

Contribution payer	Social security contribution rate	Health insurance contribution rate*
Employers for their declared workers under employment or civil contracts	24%	9%
IT park residents for workers under employment contracts	Covered by 7% single tax	Covered by 7% single tax
Taxi companies for their employed drivers under employment contracts	MDL 14,700 per year	MDL 1.053 per month (12,636 per year)
Independent doctors	24% of the doctor's revenue per month	MDL 4,056 per year
Founders of individual enterprises	MDL 14,700 per year	MDL 2,028 per year
Self-employed in retail trade	MDL 14,700 per year	MDL 1,622 per year

Persons engaged in the purchase of plant products and/or horticultural products and/or objects of plant origin	MDL 14,700 per year	MDL 2,028 per year
Attorneys-at-law, notaries, bailiffs, and other self-employed persons operating in the justice system	MDL 27,772 per year	MDL 4,056 per year
Patent holders	MDL 14,700 per year	MDL 2,028 per year
Beneficiaries' daily labourers (Romanian: "zilieri")	6% per month	MDL 2,028 per year
Other persons who do not fall under any of the above categories	MDL 14,700 per year	MDL 2,028 per year

Note: * The fixed health insurance contribution rate stipulated above applies only if paid by 30 March of the reporting year. If paid after that date, the fixed 2023 rate is MDL 12,636.

115. Self-employed workers who are not declared by their employers benefit from social protection only if they independently enter into social insurance contracts with the National Social Security Commission on an annual basis and pay social security contributions at a fixed amount determined by law. Similarly, they may individually pay the annual fixed health insurance contribution to benefit from health insurance. This may apply to employees, self-employed or dependent self-employed, including freelancers working under employment or civil contracts where the employer is a foreign resident, with no registered presence in Moldova.

116. The main social security benefits granted under the law to insured individuals are distributed as shown in Table 5.

▶ Table 5 Types of social security benefits for employees and self-employed workers

No.	Type of social security benefit	Individuals who do not benefit
1.	Allowance for temporary incapacity for work caused by ordinary illnesses or accidents unrelated to work	Not available to: ▶ taxi drivers; ▶ individual entrepreneurs; ▶ self-employed in retail trade; ▶ persons engaged in the purchase of plant products and/or horticultural products and/or objects of plant origin; ▶ patent holders; ▶ day labourers (Romanian: "zilieri"); ▶ Persons (employees, self-employed or dependent self-employed) who are independently secured by social security contracts
2.	Disease prevention allowance (quarantine)	
3.	Benefit for the recovery of working capacity	
4.	Maternity allowance	
5.	Child-raising allowance until the age of 3	
6.	Sick child care allowance	
7.	Compensation for temporary incapacity for work caused by accidents at work or occupational diseases, when the conditions for granting it are met	
8.	Old age pension	Available to all insured individuals
9.	Death grant	Available to all insured individuals

117. All individuals covered by medical insurance system are granted the same mandatory benefits.

4.2. Impact of non-standard forms of employment on women's labour rights

118. Part-time and temporary workers, home workers and domestic workers are categories in which women predominate.[40] According to the ILO, part-time work is the most widespread non-standard form of employment identified among women. The main reason women are overrepresented in part-time work is their traditional role as caregivers. Most female part-timers accept this type of work because of the need to look after children or adults who may need it. This reason also echoes the unequal distribution of unpaid work that women undertake in the home and the consequences of this inequality for the likelihood of obtaining standard jobs in general, given the hours and availability that some standard employment requires, as well as the reluctance of some employers to hire women because of other demands on them outside work.[41] Another set of reasons reflect different cultural and institutional settings, as well as occupational segregation. While manufacturing is generally characterized by full-time hours, the service sector, in which most women work, relies heavily on part-time work.

119. The Moldovan regulatory framework contains guarantees in the field of gender equality. Article 7 of the Law on Equality Insurance No. 121/2012 prohibits any form of discrimination at work.

120. According to the NBS, in 2021 women's labour force participation was 36.4 per cent compared with 46.5 per cent for men, while the employment rate for women was just 34.4 per cent compared with 44.7 per cent for men. The employment rate for women aged 25–49 with at least 1 child (16 years of age and under) was 47.3 per cent in 2020, while for women without children, the employment rate reached 60.5 per cent. The gender pay gap for 2020 is 13.7 per cent, with women being more disadvantaged from this perspective. Also, there is a significant gender gap in terms of pensions, equivalent to 20.7 per cent.[42]

121. The distribution by economic sectors shows that a higher proportion of women are employed in the service sector (57.4 per cent women and 42.6 per cent men in 2020). Women are less likely to be found in agriculture (37.2 per cent), industry (47.5 per cent), construction (5.5 per cent), transport and storage (25.6 per cent), and information and communications (38.7 per cent), but predominate in such economic activities as hotels and restaurants (70.8 per cent), financial intermediation and insurance (67.2 per cent), education (82.3 per cent), health and social work (79.4 per cent), and cultural and leisure activities (63.9 per cent).

122. As regards the distribution among different non-standard forms of employment captured by official statistics, the results for 2020 show that: there is a small difference between men and women in fixed-term employment (10.8 per cent for women, 11.8 per cent for men); women are more likely to work part-time than men (6.5 per cent for women, and 4.6 per cent for men); women are more likely than men to be employees (84.2 per cent compared with 72.5 per cent), while men are three times more likely than women to be self-employed.

123. Gaps still exist in Moldovan legislation as regards women's social security protection under different non-standard forms of employment, as follows:

(1) Most social security benefits are not accessible for self-employed women, as indicated in Table 5. This may be a serious issue for occupations in which women tend to be the majority of workers, such as child care. Under the Law on Alternative Childcare Services,43 child-care

[40] OECD: Labour Standards and Equality between Women and Men (1988), https://www.oecd.org/dac/gender-development/1849216.pdf
[41] ILO, Women in Non-standard Employment. INWORK Issue Brief No. 9, wcms_556160.pdf (ilo.org)
[42] See: https://statistica.gov.md/ro/portretul-statistic-al-femeilor-si-barbatilor-in-republica-moldova-9617_3542.html
[43] Law No. 367 dated 29.12.2022 on childcare alternative services.

workers (nannies) who take care of employers' children perform their activity as self-employed based on a license. As a license holder, childcare workers do not benefit from social security benefits (including maternity protection).

(2) Women working as day workers in agriculture are not considered employees, and therefore are not granted maternity or childcare leave. They also do not benefit from most social benefits (including maternity protection), as specified in Table 5.

(3) Women working under employment or civil work/service contracts, in cases in which their employer is a foreign resident with no registered presence in Moldova, may be in a precarious situation. In the absence of such registration, a foreign employer may not be traced by the tax authorities and such employers may not pay the withholding tax, social security contributions or health insurance contributions for working women, as required by law. Such women may pay these taxes and contributions independently, at a fixed rate, but most social security benefits (including maternity protection) are not accessible for such women, as indicated in Table 5.

4.3. Undeclared work

124. Undeclared work is a persistent challenge that negatively affects workers, businesses and governments across Europe. Beyond national variations, at European level undeclared work involves "any paid activities that are lawful as regards their nature but not declared to public authorities". Common types include work carried out in a formal undertaking, but which is partly or fully undeclared, and undeclared "own account" or self-employed work.[44]

125. New trends in the labour market, including the increasing flexibility of employment relationships and technological development, have led to a rise in new forms of employment, such as casual work or platform work. Eurofound research highlights the challenges these forms of contracting work bring to labour law, labour rights, social protection and benefits, and tax regulations. Some of these new forms have been developed to help formalize undeclared work practices. However, the links between new forms of contracting work and undeclared work are not straightforward and have to be closely monitored.[45]

126. Moldovan statistics for 2021 shows that 22.8 per cent of the employed population had an undeclared job, notably in agriculture, construction and trade. Moreover, 6.9 per cent of employees received so-called "envelope wages". Unreported wages are estimated at 15 billion Moldovan lei or more than 6 per cent of GDP, resulting in a social security fund deficit of almost 5 billion Moldovan lei. The prevalence of undeclared work entails significant losses of state revenues and leaves the workers affected outside the health and social protection system. There is also a serious economic cost to law-abiding businesses.[46]

127. The legal definition of undeclared work in Moldova is contained in Article 7^1 para (2) of the Labour Code. Undeclared work is defined as "any work performed by an individual for and under the authority of an employer without complying with the provisions of the Labour Code relating to the conclusion of an individual employment contract". Undeclared work is prohibited and represents a contravention subject to a fine according to Article 55^1 of the Code of Contraventions No. 218-XVI of 24.10.2008. Persons engaged in undeclared work (without a written agreement) do not benefit from any tax, social security or health insurance benefits, and are not protected by labour or civil legislation.

[44] See: https://www.eurofound.europa.eu/topic/undeclared-work
[45] See: https://www.eurofound.europa.eu/topic/undeclared-work
[46] Undeclared work: Turning Moldova "white" – The Moldovan government takes bold steps to encourage the formalization of employment (ilo.org) with reference to Labour Force in the Republic of Moldova: Employment and unemployment in 2021 (gov.md)

128. The definition contained by the Labour Code is restrictive and does not cover the following forms of undeclared work:

(i) Unregistered work performed by day workers. Because the Law on Day Workers explicitly excludes day workers from the Labour Code, Article 7^1para (2) of the Labour Code does not cover cases in which day workers in agriculture are not duly reported, or their remuneration is not duly recorded, as required by Article 5 of the Law on Day Workers.

(ii) Disguised employment. Because the Labour Code determines the courts' exclusive power to identify disguised employment, the State Labour Inspectorate will not be able to qualify disguised employed as undeclared work under Article 551 of the Code on Contraventions.

(iii) Underdeclared work. Because the definition of undeclared work refers to conditions related to the formalization of employment agreements, it does not cover envelope wages.

129. Another confusion created by the legal definition is between contravention of the rules on liability for undeclared work (Art. 55^1 of the Contravention Code) and those related to the performance of work by a person in the absence of a written employment contract (Art. 55, para. (3) (a) Contravention Code). The legal definition of undeclared work does not allow for a clear distinction between these two contraventions. At the same time, the law provides for different kinds of liability and procedures for them.

130. The risks identified above may create difficulties for the State Labour Inspectorate when monitoring the various forms of undeclared work. Moreover, it creates additional incentives for people working in unregulated non-standard forms of employment, as well as for self-employed and dependent self-employed persons not to declare their employment and to continue working in the informal economy.

131. One of the objectives laid down in the National Employment Market Programme for 2022–2026 is to reduce informal employment from 22.9 per cent in 2021 to 19 per cent (–3.9 percentage points) by 2026. Among measures that might help to achieve the said objective, the Government identified the need to regulate non-standard forms of employment, including occasional employment of day labourers; to incentivise employers to transition from the informal to the formal economy; and to review the tax burden on low-income workers to encourage employment and reduce incentives to work informally.

132. The Programme also emphasises that a relatively high tax burden on workers, especially those on lower incomes, increases individual incentives to accept "envelope wages". The available evidence suggests that reducing the tax burden for low income workers earning below the minimum threshold would reduce individual incentives to accept "envelope wages" and thus reduce the share of informally employed workers. To this end, the Ministry of Labour and Social Protection intends to implement a mechanism to subsidise the cost of payroll taxes for employers who increase employees' wages. Another area that needs to be examined is the second earner tax system with a view to developing tax policy options that favour employment among married women. The implementation of the electronic register of employees will also help reduce informal recruitment practices and help guide the State Labour Inspectorate. It is assumed that reform of the tax system for low-wage and second income earners, in combination with policy action on the sanction system, the electronic register of employees and strengthening the role and mandate of the State Labour Inspectorate, will reduce informal employment.

5. Recent and planned reform with regard to non-standard forms of employment

5.1. Recent reforms

(a) Flexible working arrangements were included in the Labour Code

133. Following the Covid-19 pandemic lockdown, the Labour Code was amended to provide all employees with access to flexible working arrangements. Under the new rules, flexible working arrangements allow employees to adapt their working hours, including using remote work, home-based work, part-time working, or compressed working weeks.

134. Flexible working arrangements represent one of the measures aimed at stimulating and helping employees to balance work and family life more efficiently. To encourage workers who are also parents and carers to stay in the labour market, workers should be able to adapt their work schedule in accordance with their personal needs and preferences, while taking into account the needs of their employer. For this purpose and considering workers' needs, employers are supposed to provide flexible working hours (including staggered shifts) to adapt working schedules, including, where possible, using certain remote work formulas, flexible working schedules, or reduced working hours for care activities.

135. Flexible working arrangements may be applied at the request of employee or employer. The factors to be considered by the employer when deciding on reasonable adaptation of the working schedule in accordance with flexible employment arrangements are as follows: (i) the cost of the reasonable adjustment of the working schedule and workplace according to the flexibility arrangement and the entity's characteristics (dimension, financial characteristics, nature of work); (ii) the impact on the entity's performance and on the quality of work provided by the applicant; (iii) the possibility of engaging other workers; (iv) effects on client satisfaction; and (v) consequences for the employer if the request for flexible working arrangements is not met.

136. The benchmarks mentioned above aim to ensure a balance between employees' right to flexibility and employers' right to come up with optimal solutions that do not impact negatively on their activities.

137. The period for reviewing an employee's request for flexible employment arrangements is 30 days. An employer must give reasons for any refusal.

(b) Child-care services to employees

138. In March 2022 the Moldovan Parliament approved the Law on Alternative Child-care Services No. 367/2022, as well as amendments to the Labour Code, allowing employers to offer alternative childcare solutions to employees with children under the age of three, and therefore to facilitate parents' access to the labour market. The legislative reform is aimed at reducing the gender gap. One of the main obstacles preventing women from entering the labour market, getting a job or advancing their careers is the lack of childcare across the country. Creating alternative childcare solutions among employers, in addition to those offered by the state, is seen as one of the best solutions, with numerous benefits for all parties involved.
In May 2023, the Parliament approved the Law on the Amendment of Certain Legal Acts

(c) Remote work of foreigners

139. (Development of Remote Business in Moldova) No. 126/2023. Among other amendments, the Law allows foreign persons to be employed remotely in Moldova, without a permit for work purposes, if the foreigner meets the following conditions: (i) they have obtained a temporary identity number and electronic identity according to law; (ii) they are not resident in Moldova for a period exceeding 90 days during six months; (iii) they are not tax resident according to the Moldovan Tax Code; and (iv) they are employed under an employment agreement.

5.2. Planned reform

140. The need to regulate temporary agency work in the Labour Code is on the Government agenda[47]. No draft law has yet been brought forward for public consultation.

141. We did not identify any other current legislative initiatives in the public domain in relation to non-standard forms of employment.

5.3. Case law

142. We did not identify consistent case law pertaining to non-standard forms of employment and undeclared work in the information publicly available on the Moldovan courts' website (instante.justice.md).

143. According to the statistical report on court activity in 2022, employment-related litigation that had been finally settled represented 0.13 per cent of total civil litigation in court. Most employment litigation initiated by employees concerns illegal dismissal or nonpayment of wages and other payments.

5.4. Academic literature

144. Academic literature on labour law is poorly developed in Moldova. It consists mainly of the following recent monographs, covering general aspects of labour law. No special literature has been identified dedicated to non-standard forms of employment and undeclared work:

- Eduard Boisteanu and Nicolae Romandas: Dreptul muncii (manual) (Chisinau, 2015);
- Nicolae Romandas, Ludmila Proca and Ina Odinokaia Negura: Dreptul protectiei sociale (Chisinau, 2011);
- Eduard Boisteanu, Nicolae Romandas and Felicia Pascaluta: Ghidul specialistului in resurse umane (Chisinau, 2021);
- Nicolae Sadovei, Dihotonomia raportului juridic de munca (Chisinau, 2011);
- Nicolae Sadovei, Institutia simbiotica a raporturilor de munca (Chisinau, 2013).

[47] Legislative changes are being drafted to make the Moldovan labour market more attractive – Economic council (gov.md)

6. Conclusions and recommendations

6.1. Conclusions

145. The non-standard forms of employment on the Moldovan labour market allow more flexibility for employees and employers. This is an umbrella term used for employment arrangements that diverge from standard employment relationships. In many instances, employees would prefer to be in a standard employment relationship.

146. The non-standard forms of employment regulated by the Labour Code are limited to fixed-term, part-time, seasonal work, remote and home-based work. The Labour Code does not regulate such non-standard forms of employment as casual employment (on-call or zero hours), temporary agency work or other multi-party employment arrangements, digital platform work, job sharing, or employment sharing.

147. Persons employed in non-standard forms of employment with an employment agreement regulated by the Labour Code benefit from all labour law guarantees.

148. Moldovan law does not contain a definition of self-employment. People are allowed to perform individual activities if they are registered as an individual enterprise or a liberal professional, or have a civil law agreement. Self-employed persons do not benefit from guarantees regulated by the Labour Code, including minimum wage, paid or unpaid leave, and labour rights.

149. The tax treatment of employees under standard and non-standard forms of employment is the same. The tax treatment of workers contracted under an employment (both standard and non-standard forms) or a civil law contract is the same. For certain employees, the law establishes special tax treatment, namely for taxi drivers employed under employment agreements (standard or non-standard) and IT park workers employed under employment contracts (standard or non-standard).

150. Social security and health insurance regulations provide for different treatment for certain employed or self-employed persons. In particular, the following differences have been identified:

(a) Taxi drivers working under employment agreements (standard or non-standard) do not benefit from the full range of social security incentives granted by law. Their social package is limited to the old age pension and death grant. They do not benefit from allowances for temporary incapacity for work caused by ordinary illnesses or accidents unrelated to work, disease prevention allowance (quarantine), benefit for the recovery of working capacity, maternity allowance, child-raising allowance until the age of three years, sick childcare allowance, compensation for temporary incapacity for work caused by accidents at work or occupational diseases, when the conditions for granting it are met.

(b) Day labourers do not benefit from the full range of labour rights and social security benefits granted by law. Their social package is limited to the old age pension and death grant. They do not benefit from allowances for temporary incapacity for work caused by ordinary illnesses or accidents unrelated to work, disease prevention allowance (quarantine), benefit for the recovery of working capacity, maternity allowance, child-raising allowance until the age of three years, sick childcare allowance, compensation for temporary incapacity for work caused by accidents at work or occupational diseases, when the conditions for granting it are met.

(c) Employees, self-employed and dependent self-employed workers working under contract with foreign employers who do not have a registered presence in Moldova are not entitled to social security and health insurance benefits granted by law. Such workers may benefit from social protection and health insurance benefits only if they individually pay the fixed rate annual social security and health insurance contributions. However, even in the latter case, such employees will benefit only from minimum social protection. They do not benefit from allowances for temporary incapacity for work caused by ordinary illnesses or accidents unrelated to work, disease prevention allowance (quarantine), benefit for the recovery of working capacity, maternity allowance, child-raising allowance until the age of three years, sick childcare allowance, compensation for temporary incapacity for work caused by accidents at work or occupational diseases, when the conditions for granting it are met.

151. Disguised self-employment is used to avoid requirements regulated by the Labour Code and tax legislation. The legal definition of undeclared work creates uncertainties as to whether it includes disguised self-employment, disguised fixed-term or part-time work. There are no clear criteria that would make it possible to differentiate between employment and civil law agreements.

153. The definition of undeclared work does not include underdeclared work (“envelope wages”). Payment of wages and other remuneration “off the books” represents a separate violation. Disguised self-employment and disguised dependent self-employment are also not covered by the legal definition of undeclared work.

6.2. Recommendations

152. Based on the findings of the Report, we have the following recommendations:

(1) Eliminate discrimination in relation to the social security treatment of taxi drivers and day workers compared with other persons working under standard or non-standard forms of employment. A solution should be found to confer all social benefits on such workers.

(2) Extend the personal scope of protection of the Labour Code. Protection of workers in non-standard forms of employment, especially those involved in disguised employment and dependent self-employment, and generally workers in precarious jobs, requires clearer criteria on the existence of an employment relationship. The subordination criteria, necessary for establishing an employment relationship, should also be complemented by economic dependency criteria. In this context it is recommended that a legal presumption be included according to which an employment relationship exists where one or more relevant indicators are present, in line with ILO Recommendation No. 198.

(3) Extend the non-standard forms of employment regulated in the Labour Code by including temporary work agencies. The absence of clear regulations on multi-party employment arrangements in the Labour Code creates the risk of uncertainties for all parties in temporary agency relationships with regard to the primary employer responsible for the employee. Legislative intervention in the Labour Code should be well balanced between the protection of workers and the need to ensure flexibility for employers.

(4) Consider the regulation of on-call work in the Labour Code in a balanced way to ensure some security for workers (a minimum amount of work and income, and minimum notice

of hours of work), as well as flexibility for employers related to the nature of the work performed.

(5) Consider the regulation of digital platform work where workers are almost entirely engaged as independent contractors through freelance service contracts. A distinction should be made between crowdworkers (online workers, mainly more qualified, working for foreign companies) and workers on apps (offline workers, serving the domestic market, usually less qualified). Any policy tools implemented in this area need to have a strong self-enforcing component, so that the platform workers are more likely register formally and pay taxes and contributions. In both options (crowdworkers and workers on apps) workers (freelancers) should have the opportunity to access social protection and other employment rights.

(6) Consider the regulation of work carried out by Moldovans for foreign residents to perform work on Moldovan territory under employment contracts or civil law contracts governed by foreign or Moldovan law.

(7) Clarify the definition of undeclared work in the Labour Code so that this phenomenon includes underdeclared work, work with no employment contract, disguised self-employment, disguised fixed-term or part-time employment. It is also recommended to clarify the distinction between undeclared work, sanctioned according to Article 55^1 of the Contravention Code, and work without a written employment agreement sanctioned according to Article 55^2 of the Contravention Code.

(8) Improve data collection on non-standard forms of employment within the Labour Force Survey performed by the NBS. The Labour Force Survey is the only available instrument which collects employment data with the potential to identify and capture different non-standard forms of employment. The ILO (2018), for instance, shows that some countries can capture non-standard forms of employment in greater detail and differentiate even disguised employment and dependent self-employment among individual contractors (such as Australia and Mexico).

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