



POLICY BRIEF 19-07

WORKING GROUP ON YOUTH EMPLOYMENT

SOCIAL PROTECTION OF PLATFORM WORKERS IN THE EUROPEAN UNION

KEY POINTS

- PLATFORM WORKERS ARE RATHER YOUNG IN GENERAL AND THEIR WORKING CONDITIONS DEPEND ON THE NATURE OF WORK, A PLATFORM'S MODEL AS WELL AS THEIR RELIANCE ON THESE EARNINGS.
- THE INSECURITY EXPERIENCED IN CERTAIN PARTS OF THE PLATFORM LABOUR MARKET CREATES IMPORTANT CHALLENGES FOR EXISTING NATIONAL SYSTEMS OF EMPLOYMENT LAW AND SOCIAL PROTECTION.
- TO IMPLEMENT MEANINGFUL REFORM IN EMPLOYMENT CLASSIFICATION AND SOCIAL SECURITY, POLICY MAKERS SHOULD LOOK TO REDRESS THE IMBALANCE OF POWER IN SOME SECTORS OF THE PLATFORM ECONOMY.

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Over the last few years, developments in digital technology have fuelled the emergence of online platforms that facilitate the matching of supply and demand for labour through the means of an app or a website. While terms such as the ‘sharing’, ‘collaborative’ or ‘gig’ economy have been used to describe this new form of organising and mediating paid work, the European Parliament’s Committee on Employment and Social Affairs considers the term ‘platform economy’ and ‘platform work’ as the most neutral to discuss these activities¹. While it opens up new opportunities for employment, the platform economy has repeatedly come into the spotlight in the European Union over the working conditions of those who perform the tasks. This brief exposes the main characteristics of these new sectors and describes some of the challenges they bring in terms of employment regulation and access to social protection for workers. Recommendations for reform across EU member states are drawn to try and help policy-makers move towards reconciling the promise of higher flexibility in platform work, as well as decent jobs for the youth, with the need to guarantee adequate levels of security for those who undertake it.

THE PLATFORM ECONOMY

Generally, there are three types of actors involved in platform work: the client who requests a task, the worker who performs it, and the platform which provides the infrastructure for the transaction. These exchanges can be done locally for tasks that require human contact, or anywhere in the world in the case of online tasks. Moreover, the platform economy can be captured through three main sectors: namely peer-to-peer transportation (Uber), on-demand household services (TaskRabbit) and on-demand professional tasks (Amazon Mechanical Turk). Scaling skills from low to high, the JRC found for 200 platforms operational in the EU28 that 54% of platforms required low skills, 20% low to medium skills, 4% medium skills, 6% medium to high skills. A further 16% of platforms required high skills².

Unfortunately, many of these firms do not indicate their number of transactions, which makes it difficult to estimate the size of the platform economy in the European Union and arrive at a full picture of the characteristics of their workforces. Nevertheless, research in general highlights that platform workers are rather young (mainly below 30)³. The potential to create employment opportunities of high job quality for young people in the labour market seems obvious; in theory, it is up to the workers to decide the tasks they want to do as well as when, where and how to realise them. In prac-

tice however, this sense of flexibility and autonomy is very much related to the nature of work, a platform’s terms and conditions and whether it represents one’s main source of income. Reliance on platform earnings varies much across countries and some workers can work even longer hours than regular employees to reach their financial commitments. In certain occupations, the variability and unpredictability of demand can create high levels of insecurity among them. EU-OSHA notes that the similarities between these groups and temporary and agency workers may mean they are exposed to the same psychosocial and physical risks⁴, and studies have shown that these are significant. Such risks can even be higher for platform workers, in particular because they are often younger and may have less experience or knowledge of how to manage and counteract them.

PROTECTION AND REGULATION IN THE EUROPEAN UNION

Traditionally, the legal concepts of ‘employer’, ‘employee’ and ‘the employment relationship’ have been used to define the scope of labour law, differentiating between employees (subordinate and dependent workers) and independent contractors. The different forms of platform work and the different legal interpretations of employment relationships across national contexts make it difficult for regulators to determine where platform workers fit in established labour market concepts. In many cases, they are categorised as self-employed and there are concerns that this legal designation does not match the factual reality of workers’ relationship with, and dependence on, a given platform or client⁵. These platform workers are at risk of lacking both the flexibility of traditional autonomous work and the security of an employment relationship.

Indeed, the issue of worker classification is crucial because it fundamentally determines a person’s access to rights, benefits and entitlements. In other words, it forms a gateway to social protection. Although there is significant variety in the details of provision across member states, on average, self-employed workers EU-wide run a 55% risk of not being entitled to unemployment benefits, and a 38% risk of not being entitled to sickness benefits⁶. While there is clearly a need to manage the distribution of risks and costs related to the market-making process by platforms, the challenge for policy makers lies in approaching the platform economy in such a way that the downsides can be tackled while at the same time the opportunities that it brings can be pursued.

Different legal and institutional arrangements across individual member states have influenced, and continue to influence, the way in which the platform economy has developed. Still, it is often up to workers themselves to challenge the classification of their employment as a first step to accessing forms

of social protection. In the last few years, there have been a number of cases in the EU where workers have sued firms for classifying them as contractors even though they do not enjoy the amount of freedom that the label is supposed to entail. There are three criteria used across European countries and jurisprudence to determine on a case-by-case basis the employment relationship of a worker with a platform: the existence of a subordination link, the nature of work and the presence of remuneration.

Some have called for discarding the binary divide between employee and self-employed and establishing a third legal classification of economically dependent worker that could provide more social protection without unduly harming the potential of the platform work economy. Member states using this option today include Portugal, Slovakia, Slovenia and Spain⁷. Critics against another employment status suggest that if neither of the two existing categories apply well, a third is unlikely to solve the problem⁸. For instance, in Spain the employment status of 'TRADE' gives self-employed platform workers access to certain employee rights such as annual leave; however, this system makes these benefits directly depend on people's capacity to make high periodical contributions, which can help further strain their financial security.

The Court of Justice of the EU has not actually focused on differentiating between employees and self-employed, but rather has concerned itself with the scope of EU labour law and the question of who falls within the purview of its protection. Although few rulings have escalated to that level, those have offered a broad interpretation of the legal concept of 'worker' so that it is possible platform workers may be included within that definition. In terms of directives for regulation, the European Parliament in 2019 approved new minimum rights for workers in the platform economy, based on increased transparency, better protection for new forms of employment, as well as new rules for probationary period and training. However, this law will only apply to platform workers that are classified as employees, which means that self-employed workers will be excluded. This has raised questions about whether or not this directive has any chance of substantially impacting the platform economy. More interestingly, the European Council has recently proposed a recommendation which aims to encourage the member states to: close formal coverage gaps by allowing all workers and the self-employed to adhere to social protection schemes; foster adequate effective coverage by taking measures allowing all workers and the self-employed to build up and take up social benefits as members of a scheme, and facilitate the transfer of benefits between schemes. The recommendation still has to be adopted formally, which could happen end of 2019.

REFORMING PLATFORM WORK



The EU's proposal to design and reform social security in a way that would extend rights to a growing population of non-standard workers is a welcome move towards improving social protection in the platform economy across member states. However, as emphasised here through-

out, there are other issues with these new types of work which also have to be addressed in order to make this sector more sustainable and ensure it can bring decent jobs for the youth as well as the general population. To eliminate concerns related to insecurity in these new forms of work, policy-makers must find ways to reduce the imbalance of power between firm and worker in certain markets.

First, employment law could be reformed to shift classification towards a recognition of vulnerability. In markets dominated by a single platform where the pay is low and the demand inconsistent, platform-dependent workers are much more vulnerable in terms of their health and financial security. These persons should be treated as employees but with special minimum wages set according to their sector of occupation. This would help reduce some workers' uncertainty over their number of hours and incentivise more sensible work organisation from platforms while leaving enough space for flexibility in their model.

Secondly, tax reforms could be envisaged in order to help relieve the burden on self-employed workers in the platform economy to access their benefits. For instance, it may be possible to adopt multi-employer plans for persons who choose to work for different platforms to reduce their dependence on any single one. Firms would contribute into forms of pooled insurance and workers would have the ability to retain their benefits from platform to platform, thereby increasing their own leverage vis-à-vis each of them. Indeed, if the platform economy is to achieve its potential to create better working lives, it is crucial to ensure competition in these sectors acts as a driver for better conditions and doesn't promote incentives to reduce costs associated with decent social protection.

References

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- ⁵ DG IPOL, *The social protection of workers in the platform economy*.
- ⁶ European Parliament (2017). *The Social Protection of Workers in the Platform Economy* (Study for the EMPL Committee). Brussels: European Parliament.
- ⁷ Eurofound (2017). *Exploring self-employment in the European Union*. Luxembourg: Publications Office of the European Union.
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