



## Platform work

### Key points

- The Covid-19 pandemic has turned the spotlight on the social significance and economic potential of the platform economy, but it has also highlighted the disadvantages of this hyperflexible form of intermediation and employment. Despite their promises of autonomy, platform-based modes of organising labour reinforce social inequalities, gender segregation, and economic dependencies. They may also lead to precarious working conditions where it is difficult to enforce existing protections under employment and social law.
- The problem of poor working conditions in some segments of platform work is now both well-known and empirically proven. Regulation at EU level is a logical consequence of the cross-border nature of the digital business models that constitute the platform economy. This is demonstrated by the P2B Regulation ((EU) 2019/1150) and the Digital Services Act that is currently being negotiated. However, these do not address working conditions relating to services that are organised via platforms. Improving these working conditions at EU level requires the creation of a specific Platform Work Directive as part of the Commission's current legislative initiative "Improving working conditions of platform workers".

### Background

Platform work is a digital model for organising work that functions independently of stationary markets for labour, goods, and services. (Alleged) self-employed persons provide particular services to frequently changing contractual partners on demand and within the framework of a decentralised, just-in-time system. In the form of crowdsourcing, paid activities that were originally performed by individual contractual partners, usually employees, are broken down into tasks and outsourced by offering them via an online platform to the "crowd", who then performs the individual tasks (Prassl/Risak 2016). However, the service recipients and platform workers do not come into direct contact with each other. The relationship between them is handled indirectly via an intermediary – the platform (Eurofound 2018; Kilhoffer et al. 2019, 25).

According to Fabo et al. (2017), 173 labour platforms are operating in Europe. According to Pesole et al. (2018), approximately 2% of the adult working population (16–74 years) in 14 Member States perform platform work as their main occupation. About 6% earn a significant part of their income from platform work (at least 25% of their average income for a 40-hour week), and nearly 8% do work via digital platforms at least once a month.

The potential of online work platforms to stimulate the creation of new businesses and jobs is generally viewed positively. They allow people to organise their work flexibly to suit their particular needs in terms of location and volume. The recipients of the service are offered good quality at low prices. On the other hand, trade unions in particular are extremely concerned about how these platforms are circumventing social protections, tax laws and, above all, employment law, because the platforms make a blanket

assumption that all platform workers are self-employed. More specifically, this means that minimum wage provisions and collective agreements do not apply, and in fact wages are often extremely low (Eurofound 2018; Kilhoffer et al. 2019, 73). The use of algorithmic (rating) systems also harbours the potential for discrimination. This can only be countered to a limited extent by the equality laws currently in place (Berger/Schögl 2019; Risak/Gogola 2018). There is also a cross-border dimension (platforms often operate in many countries at the same time), which can severely hamper law enforcement (Lutz/Risak 2017, 304).

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## Main Findings

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In the past, the public has generally taken a positive view of the disruptive business models of the platform economy. They were symbolic of digital innovation. Increasingly, however, the focus is turning to the downsides of this new trend. When the platforms started out, they were subject to little or no regulation, but now a more proactive trend can be observed throughout Europe. New laws are being passed or existing legal instruments are being applied to these new circumstances by the courts.

In the last few years, the EU has also been turning its attention to platform work. Major studies have been commissioned to explore both the volume of this economic sector and its working conditions (most recently Kilhoffer et al. 2019). EU institutions are, therefore, aware of the problems associated with platform work and understand the need to find a way of resolving them. The latest labour law directive (Directive (EU) 2019/1152) on transparent and predictable working conditions in the EU, at least contains an indication that platform workers should be regarded as employees if the relevant criteria are met (recital no. 8). Regulation (EU) 2019/1150 to promote fairness and transparency for business users of online intermediation services (known as the Platform-to-Business (P2B) Regulation) directly addresses the platform economy. However, it does not cover employees, but only self-employed persons who provide services to consumers (Art. 1(2)). The fundamental problem of poor working conditions in the platform economy thus remains unresolved in EU law (Kilhoffer et al. 2019, 204).

However, change could be on the cards, as this issue was included in President von der Leyen's **Political Guidelines for the Next European Commission 2019–2024**: "Digital transformation brings fast change that affects our labour markets. I will look at ways of improving the labour conditions of platform workers, notably by focusing on skills and education." And the

Mission Letter to Nicolas Schmit, the Commissioner for Jobs and Social Rights, also contains such a passage, though it focuses more on working conditions: "Dignified, transparent and predictable working conditions are essential to our economic model. I want you to closely monitor and enforce existing EU law in this area and to look at ways to improve the labour conditions of platform workers." Over the next few years, it seems that we can, therefore, expect to see the emergence of legislative initiatives at EU level, and this is also where the assertion of workers' interests will have to be carried out.

However, the **Digital Services Act** that is currently being drafted (Proposal dated 15.12.2020, COM(2020) 825 final), has no specific content regarding the provision of services and guaranteeing good working conditions for platform workers. A corresponding regulation is, therefore, still pending. Under the heading of "**Improving working conditions of platform workers**", the EU Commission has undertaken to create a legislative initiative to this effect in 2021. This initiative is currently pointing in the direction of creating exceptions from EU competition law for a group of platform self-employed workers that has yet to be defined, so that they can collectively bargain their working conditions. This solution would do justice to the interests of the actual self-employed, who can act and contract economically independently, but not to the economically dependent platform workers.

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## Demands

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The platform economy increases the grey areas between employees and the self-employed, and people in need of protection are increasingly falling outside the scope of labour law. There is, therefore, a need for a general solution for the **growing group of self-employed persons in need of protection**. This could be found by either redefining the concept of employee to take economic elements into account, or through extending the scope of application that should apply to people with quasi-employee status (Risak/Dullinger 2018).

A second issue, and one that is also not restricted to platform work, is the question of the **algorithmic management of employees**. These are (semi-)automated decision-making systems in which programs make relevant decisions for employees based on collected data. The platform economy is essentially built on these methods of organising work, but they are not limited to this industry. That is why there is a need for a universal solution to the associated problems

(potential for surveillance and discrimination, attribution and liability issues). This should ideally be done at EU level, along the lines of the General Data Protection Regulation (GDPR). Other **legal problems**, on the other hand, are platform-specific and therefore justify a special regulation at EU level similar to the existing one relating to different forms of atypical work (most recently the Temporary Agency Work Directive 2008/104/EC), in the form of a **Platform Work Directive** (Risak 2018).

- A core provision here should be the (rebuttable) presumption of an employment relationship with the platform. Ultimately, this is the contracting party where all the threads come together, making it the only party with the real potential to determine specific contractual structures with regard to the parties and contents of the contract, along with the practical implementation of the contract. There is also much to be said for the creation of a catalogue of indicators that sets out clear criteria governing the existence of employment relationships in the platform segment. These legal measures would also – at least for the time being – make it possible to establish the applicable labour law and jurisdiction based on the habitual place of work, i.e. the country where the work is physically carried out (Art. 8 Rome I Regulation; Art. 22 EU Jurisdiction and Enforcement Regulation).
- The following points should also be included in a Platform Work Directive, which should also broadly include people with quasi-employee status:
  - **Information obligations** analogous to Directive 91/533/EEC on the employer's obligation to inform (from 2022 Directive (EU) 2019/1152 on transparent and predictable working conditions), irrespective of the duration of the contractual relationship at least with regard to the contractual partners and their address (as soon as a user account is opened), otherwise the platform shall in any case be liable for outstanding claims by platform workers.
  - Clarification that the **place of work** is the place where the platform workers physically work.
  - Establishment of an **equal pay obligation** similar to Art. 5 of the Temporary Agency Work Directive 2008/104/EC (principle of equal treatment).
  - Clarification that **search times** for virtual platform work constitute **working time**, as do **standby times** in platform models that provide for an immediate (de facto)

obligation to accept when the app is switched on, or whose business model presupposes this.

- **Prohibition of certain contractual clauses** such as the prohibition of intermediation activities where wages lower than those of applicable collective agreements are paid; the prohibition of restrictions on competition during and after the activity on a platform; the unjustified exclusion of workers from being allocated jobs; and the unjustified deactivation of a user's account.
- Disclosure to platform employees and service recipients of how **ratings** are calculated and how they may be weighted; possibility of challenging and correcting "false" and discriminatory ratings; possibility of transferring ratings to other platforms (portability).
- Obligation to establish an arbitration procedure for the settlement of disputes, which should be provided free of charge to platform workers.
- Clarification of **responsibilities** for compliance with employee protection, minimum wage laws and the payment of income tax and social security contributions, whereby service recipients should also be held jointly responsible if an employment relationship exists with the platform.
- **Information obligations** of the platforms vis-à-vis authorities and social insurance agencies even if the employment relationship is not with them but with the service recipients.

Some, but by no means all, of these issues are also addressed in the P2B Regulation, which only applies to self-employed platform workers. This mainly relates to the restriction, suspension, and termination of platform access (Art. 4), restrictions of competition (Art. 10), and internal complaint handling (Art. 11). The provisions on ranking (Art. 5), on the other hand, concern the appearance of platform workers on the platform and not customer ratings. A mere extension of the scope of the P2B Regulation to include platform workers who qualify as employees would, therefore, not do sufficient justice to their interests. For this reason, a separate and specific Platform Work Directive as outlined above is preferable if one does not wish to massively expand the content of the P2B Regulation.

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## Literature

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January 2021

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