

OCCUPATIONAL SAFETY AND HEALTH IN DIGITAL PLATFORM WORK: LESSONS FROM REGULATIONS, POLICIES, ACTIONS AND INITIATIVES

Responses to the rise of digital platform work

During the last decade, online platforms using digital technologies, including algorithms, to match labour demand and supply have rapidly gained ground in the EU. Given their disruptive nature, rapid growth, high visibility and concentration in sectors that are traditionally strictly regulated, digital labour platforms quickly came on the radar of the policy and stakeholder communities, and they sparked lively debates on issues such as (unfair) competition, taxation, and the employment status and working conditions of platform workers (Lenaerts et al., 2017). In this context, businesses, workers and their representative organisations **called on policymakers to take action** to address these issues.

However, some voices at the time **pleaded to avoid regulating too quickly and too strictly**, arguing that doing so would put a break on innovation and cause the EU to miss the boat on the digital economy (Maselli et al., 2016). The rapid growth and increasing heterogeneity of digital platform work were seen as arguments in favour of waiting to regulate, rather than aiming to hit a 'moving target'. In addition, as the digital platform economy developed at different speeds across countries and sectors, not all policymakers felt an urgency to act or had a good understanding of this 'new' phenomenon and its impact. Local and regional policymakers in particular were at the forefront, as global platforms like Uber entered their cities (Lenaerts et al., 2017). Finally, the lack of knowledge and data on digital platform work further complicated the regulatory response (European Commission, 2020).

As a result, until a few years ago, the responses to digital platform work remained quite limited overall (Eurofound, 2018; Lenaerts et al., 2017). The measures and initiatives in place at the time were narrow in scope and were implemented ad hoc rather than as part of an overarching strategy. In some cases, they did not target digital platform work directly. Digital platform work has indeed challenges the existing regulatory frameworks. **Very few of the early responses** to digital platform work **concerned working conditions and occupational safety and health (OSH)** (Eurofound, 2018; European Commission, 2020; Lenaerts et al., 2017).

More recently, however, the debate shifted to the working and employment conditions and OSH of digital platform workers, following accounts of the harsh conditions that platform workers can experience (Eurofound, 2018; European Agency for Safety and Health at Work (EU-OSHA), 2017; Huws, 2015). This has led to the adoption of measures, initiatives and actions at EU level and in the Member States. Of particular relevance is the **European Commission's upcoming initiative aimed at improving the working conditions in digital platform work**, although **actors in several Member States** have also made efforts to tackle some of the challenges. The EU strategic framework on health and safety at work 2021-2027¹ highlights how changing forms of work, stemming from, among others, digitalisation, will also require new and updated OSH solutions, with platform work mentioned explicitly.

This policy brief highlights key findings and takeaways from regulation, policies, strategies, initiatives, actions and programmes relevant for the OSH of digital platform workers. It builds on four in-depth case studies of selected regulations, policies and practices (EU-OSHA, 2021a; EU-OSHA, 2021b; EU-OSHA, 2021c; EU-OSHA, 2021d), a review of the academic and grey literature², and a consultation with EU-OSHA's national focal points³ by means of a survey.

¹ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0323&from=EN>

² The findings of such literature review are now published in EU-OSHA (2021) "Digital platform work and occupational safety and health: a review", available at <https://osha.europa.eu/en/publications/le-travail-sur-plateformes-numeriques-et-la-sante-et-la-securite-au-travail-analyse> and in the related policy brief "Digital platform work and occupational safety and health: a policy brief", available at <https://osha.europa.eu/en/publications/digital-platform-work-and-occupational-safety-and-health-policy-brief>

³ EU-OSHA has a national focal point in each EU Member State, nominated by the government as EU-OSHA's official representative in the country (see <https://osha.europa.eu/en/about-eu-osha/national-focal-points>). National focal points provide input into EU-OSHA's work, support the planning and implementation of campaigns, help to disseminate products and

Defining digital platform work and its main actors

Digital platform work: all paid labour provided through, on or mediated by a digital labour platform. The main characteristics of platform work are that (i) paid labour is organised/coordinated through a digital labour platform; (ii) with the aim to carry out specific tasks or solve specific problems; (iii) using algorithmic management⁴ to allocate, monitor and evaluate the work performed and the performance and behaviour of platform workers; (iv) involving three parties (platform, client, platform worker); (v) with a prevalence of non-standard working arrangements and a tendency to classify platform workers as self-employed (as stipulated by platforms in their terms and conditions). As a consequence, risks liabilities and responsibilities – including in the area of OSH – are shifted onto workers.

Digital labour platform: an online facility or marketplace operating on digital technologies that are owned and/or operated by an undertaking, facilitating the matching between the demand for and the supply of labour provided by a platform worker.

Digital platform worker: an individual person providing labour intermediated with a greater or lesser extent of control via a digital labour platform, regardless of that person's legal employment status.

The OSH challenges of digital platform work

The OSH risks associated with platform work that **directly relate to the tasks carried out as platform work are similar to those faced by other workers when performing such tasks outside of the platform economy** (Bérestégui, 2021; EU-OSHA, 2017; Huws, 2015). The nature of digital platform work and the specific conditions in which it is carried out, however, may **exacerbate these OSH risks and complicate OSH risk prevention and management**. This relates to the following factors:

- **The determination of digital platform workers' employment status:** two issues arise: first, a correct determination of the employment status of digital platform workers is complex due to the nature and the characteristics of platform work (e.g. three-party work relationships, on-demand contracts, etc.). Second, digital platform workers are typically classified by platforms as self-employed contractors in their terms and conditions, which may be a misclassification. The legal OSH framework at the EU level and in many Member States, however, only applies to employees.
- **The use of algorithmic management:** using algorithms to allocate, monitor and evaluate work and the performance and behaviour of platform workers affects the power balance between platform workers, platforms and clients and undermines the autonomy, job control and flexibility of platform workers, although these features are often presented as a central tenet of platform work by platforms. This can lead to stress, anxiety, exhaustion and depression, and worsens platform workers' physical and mental health, safety and overall well-being (Bérestégui, 2021).
- **Professional isolation, a poor work-life balance and a lack of social support:** platform work is characterised by an individualisation of work, physical and social isolation, work-life conflicts and an overall lack of social support, as workers have limited to no contact with other platform workers, the platform and clients (Bérestégui, 2021; EU-OSHA, 2017; Huws, 2015; Tran and Sokas, 2017). This causes sleeping problems, exhaustion, difficulties in recuperating from work, stress, depression, burnout, loneliness, and an overall dissatisfaction with one's job and personal life (Bérestégui, 2021).

information to national stakeholders, and nominate experts to EU-OSHA's groups and seminars. The overarching aim of the project on OSH and digital platform work is to contribute to the 'OSH overview' on digitalisation and OSH and the EU-wide Healthy Workplaces Campaign.

⁴ Algorithmic management is defined as oversight, governance and control practices conducted by software algorithms over many workers (Möhlmann and Zalmanson, 2017, p.4). This involves a continuous monitoring and a continuous evaluation of workers' behaviour and performance, (semi-)automated decision-making without human intervention, interaction with a system that does not allow to negotiate or ask for feedback instead of interaction with a human, and a lack of transparency on the functioning of the algorithm that causes power and information asymmetries.

- **Work transience and boundaryless careers:** digital platform workers experience chronic job and income insecurity, which results from doing a high number of temporary, short-term tasks, in fierce competition with other workers, and often without being able to control how many tasks they can execute or to determine the pay rate. This also was found to cause anxiety and stress and to affect workers' health (Bérastégui, 2021).

Mapping responses to the rise of digital platform work

In the last five years, there have been several attempts to map measures or initiatives targeting platform work (Codagnone and Martens, 2016; EU-OSHA, 2017; Eurofound, 2018; European Commission, 2020; European Parliament, 2020; Lenaerts et al., 2017). These efforts have been stepped up during the COVID-19 crisis, in order to shed light on the impact of the pandemic on platform workers and how this has been addressed by platforms and policymakers (ILO, 2021; OECD, 2020). In October 2021, Eurofound's platform economy repository database⁵ comprised 170 initiatives and 44 policy documents, such as legislation, collective agreements, actions by social partners, etc.

Based on an expert survey, the **European Commission (2020)** identified 177 responses (for example, actions, legislation, policies) across the EU-27 plus Iceland, Norway and the United Kingdom. Most responses related to the employment status, representation, earnings and social protection of digital platform workers (European Commission, 2020). Responses are divided into **'top-down'** and **'bottom-up'** measures. Top-down measures include *legislation* (laws formalising policies by setting out standards, procedures or principles), *case law* (judicial decisions), and *actions of administrations or inspectorates* (for example, public employment services, social security bodies, inspectorates producing instructions, raising awareness, issuing declarations). Bottom-up measures include *collective agreements and social partner initiatives*, *actions by platforms* and *actions by platform workers*.

The European Commission (2020) study reports that with the exception of France and Italy, no countries had introduced legislation directly targeting working conditions or social protection of platform workers at the time, though most countries had legislation that indirectly addressed their working conditions or social protection, for example by strengthening the rights and protection of non-standard workers or the self-employed. The study also revealed some actions by administrations and inspectorates, for example in Belgium, Denmark, France, the United Kingdom and Sweden, but not all of those had a link with working conditions or OSH. In fact, it appeared that the issue of OSH has been largely overlooked by policymakers. Among the bottom-up responses, some examples were noted of basic safety training and insurance against work-related accidents and occupational diseases offered by platforms, as well as of provisions of basic personal protective equipment by platforms (for example, helmets). OSH was raised as a key concern by trade unions and grassroots organisations representing workers. The 2021 thematic review on platform work of the European Centre of Expertise in the field of labour law, employment and labour market policies (ECE, 2021) updates this exercise and corroborates its main findings.

With the **consultation with EU-OSHA's national focal points**, the aim of this study was to update this overview, from the OSH perspective. The consultation focused on five types of measures, taken by (i) the government or public authorities (for example, legislation, court cases); (ii) OSH authorities or labour inspectorates; (iii) social partners, including social dialogue; (iv) platform or platform workers (or their associations); and (v) any other measure. The consultation confirmed that the levels of awareness about digital platform work and its OSH implications significantly differed across the EU Member States and underlined the differences in approaches taken by different actors within these countries to address them. According to the national focal points, digital platform work is perceived as a relatively new trend and a new form of atypical work, which has spurred debate on issues such as platform workers' employment status and social rights (including OSH) (France, Croatia, Austria, Poland, Finland); however, digital platform work has received only limited attention in some countries (Latvia, Lithuania). Actors involved in the debate are policymakers, administrations, platforms, social partners, experts, etc. In many countries, a lack of evidence on digital platform work has triggered (a call for) further research and data collection, including on OSH issues. In a few countries, like France, dedicated platform work observatories have been set up. While the national focal points recognise the OSH risks in digital platform work, they confirm that platform workers are usually not considered when it comes to OSH measures in their country, pointing to the difficulties with the qualification of the employment relationship (Austria, Finland). Several countries report legislation – either announced / under discussion, or already

⁵ This database can be consulted at <https://www.eurofound.europa.eu/data/platform-economy>

in place – targeting digital platforms or digital platform work (France), but this generally appears to target a specific type of platform or platform work only (transportation). Actions by inspectorates were reported by the focal points for Croatia and Poland, and the Finnish national focal point indicated platform work is a topic of interest. Few initiatives and actions by social partners were identified (again mostly in the transport sector), and even fewer initiatives by platforms in relation to OSH (for example, a working group uniting digital platforms, set up by the Lithuanian Business Confederation, which is discussing the provision of accident insurance for couriers). These inputs and insights from the national focal points fed into the selection of case studies presented in more detail below. Although addressing the challenges of digital platform work is now a priority at EU level and in many of its Member States, from the information available in Eurofound’s platform economy repository, the ECE (2021) and European Commission (2020) studies, and the consultation with EU-OSHA’s focal points, it is clear that **few regulations, policies, strategies, programmes, initiatives and actions are directly related to OSH. A larger number of measures addresses OSH indirectly**, for example by clarifying the nature of the labour relationships or fostering data collection.

Zooming in on selected regulations, policies, initiatives and actions with a focus on OSH

In order to gain further insights into relevant regulation, policies, strategies, initiatives and programmes in the area of OSH and digital platform work, **four in-depth case studies** presenting examples of such measures were developed. These cases were selected based on several criteria, including the type of measure (for example, legislation, inspectorate initiative), the actors involved (for example, government, monitoring and enforcement bodies, social partners), the types of platform work, platforms or platform workers targeted (for example, only transport sector, all digital platform workers), and the thematic scope (for example, employment status, working conditions, characteristics of digital platform work – is OSH addressed directly or indirectly?). The cases of Italy (Bologna Charter) and France (legal framework) were selected bearing in mind that these were the only countries with legislation directly related to working conditions (European Commission, 2020). The case discussing the Spanish Riders’ Law was chosen as it tackles digital platform work at its core by imposing rules on algorithmic management as well as by clarifying the employment status of some platform workers. Finally, one case study zooms in on the actions and initiatives undertaken by labour and social security inspectorates in Belgium, Spain and Poland. All cases focus on measures that fall under the **‘hardest’ or ‘most binding’ types of measures** (see European Commission, 2020), but contextualise them by linking them with relevant bottom-up initiatives and ‘soft law’.

Methodologically, each case study was developed based on a review of the literature and data and on the inputs of EU-OSHA’s national focal points, further completed with stakeholder interviews.

Lessons from the Spanish Riders’ Law⁶

A first case study discusses the **Spanish Riders’ Law** (Royal Decree Law 9/2021, of 11 May 2021, ratified by Law 12/21 of 28 September 2021). This law is the first to establish, at the national level, a right to **algorithmic transparency** (Article 64.4 of the Workers’ Statute) and further introduces a **legal presumption of a dependent employment relationship for digital platform workers working in the delivery sector** (Additional Provision 23 of the Workers’ Statute)^{7,8}. The Riders’ Law is the outcome of tripartite social dialogue between the Spanish Ministry of Labour and Social Economy, trade unions and business associations. While it remains to be seen how some of these provisions will be interpreted in courts, the combination of the legal presumption and algorithmic management is such that the requirement of **legal dependence** may be met whenever the conditions of service and the working conditions are set by algorithms.

⁶ This section builds on the case study on the Riders’ Law introduced in Spain (EU-OSHA, 2021a).

⁷ The new Workers’ Statute was introduced by the *Real Decreto Legislativo 2/2015, de 23 de octubre*.

⁸ Interestingly, the Portuguese Parliament is set to adopt a very similar law, concerning the employment status of platform workers and a right to algorithmic transparency. See: <https://www.reuters.com/technology/portugals-gig-economy-workers-set-become-staff-2021-10-22/>

Legal presumption of a dependent employment relationship

Spanish courts have ruled on several platform work cases, in particular those in the food delivery sector and personal transportation. Here also, one of the main issues regarding platform work is the nature of the labour relation between the digital platform worker and the digital labour platform, which in Spain centres on the criteria for the qualification of a worker as an employee in the Workers' Statute. As in other Member States, court cases have led to different outcomes over the years. In September 2020, this uncertainty was somewhat resolved by an important ruling of the Supreme Court⁹. Nonetheless, the debate around employment status is also critical from an OSH perspective. Article 4 of the Workers' Statute stipulates basic labour rights to *employees*, for example the right to their physical integrity and to an adequate OSH risk prevention policy.

The Riders' Law adds an article to the **Workers' Statute** that stipulates that activities of persons who provide paid services consisting of the delivery or distribution of consumer products or merchandise by employers who exercise business powers of organisation, management and control directly, indirectly or implicitly using algorithmic control to manage the service, or to shape the working conditions, through a digital labour platform fall within the scope of the law. In this way, there is a rebuttable presumption of a dependent employment relationship for such workers. The 'burden of proof' (presumption) falls on the employer to prove that the worker is self-employed and not an employee. As a result, the Law 31/1995 on prevention of occupational risks also applies to platform workers in the delivery sector, obliging platforms to conduct OSH risk assessments, implement risk prevention measures, and consult and inform platform workers on all issues concerning safety and health at work.

Algorithmic management and the importance of algorithmic transparency

Algorithmic management is a key component of digital platform work that presents severe OSH risks, especially for digital platform workers engaged in lower-skilled on-location work such as delivery riders (Bérestégui, 2021; Maatescu and Nguyen, 2019; Samant, 2019). It affects both the physical and mental health and safety of platform workers. In digital platform work, algorithms decide what tasks are allocated to whom and spur competition between workers, while also undermining their job control and autonomy. Digital platform workers, furthermore, have few opportunities for recourse. Despite its far-reaching impact, little is known about how algorithms work or why decisions are made.

The Riders' Law is a critical step forward in that regard, as it **obliges all platforms to inform platform workers' legal representatives about the functioning of the algorithms used that may affect the working conditions and the access to and maintenance of employment, including profiling** (Article 64.4 of the Workers' Statute). It compels digital labour platforms to inform the work council on the inner workings of the platform (for example, parameters, rules, instructions guiding algorithms). Although the organisation and representation of platform workers is a challenge in itself, efforts have been made in this area by multiple parties (including self-organisation by workers, for example, Riders X Derechos, unions).

Conclusions

The Riders' Law addresses some of the most pertinent challenges associated with digital platform work, including issues indirectly related to OSH. By obliging platforms to recognise platform workers active in the delivery sector as employees by presumption and by opening up the 'black box' of algorithmic management to some extent, the Riders' Law constitutes a leap forward in addressing OSH risks specific to platform work. The law also serves as a key example of the continued importance of social dialogue and worker participation in this context. Nevertheless, areas for further improvement could be identified. First, the presumption of employment only applies to platform workers in the delivery sector, which limits its scope and does not reflect the wide heterogeneity of platform work. Second, platforms may seek to circumvent the law by working with subcontractors. Finally, further clarification on the technical and practical scope of the provision on algorithmic management is needed.

⁹ The case involved a digital platform worker active in the delivery sector as a driver, in which the Supreme Court ultimately ruled that the driver should be classified as an employee. Supreme Court 805/2020, of 25 September 2020.

Lessons from the Bologna Charter¹⁰

A second case study analyses the Bologna Charter – Charter of Fundamental Rights of Digital Labour in the Urban Context – in the wider context of the Italian legislative framework targeting digital platform work. This case is of particular interest given its **direct link with OSH**, and since it highlights the **specific urban dimension of policy responses** and documents how local initiatives **help to pave the way for national legislation**.

Court cases and legislative initiatives in Italy

In Italy, the employment status of platform workers in the delivery sector is one of the most contentious issues related to digital platform work, as evidenced by a number of court cases with contradictory results. In 2019, the Italian legislator intervened on the matter by easing the scope of the concept of ‘employer-organised’ work¹¹ for those working through digital platforms, and by introducing specific rights for self-employed workers active in the delivery sector on digital platforms (rights regarding transparency and information, data protection, applicability of OSH provisions, anti-discrimination and fixed hourly wages).

These provisions are to be considered the default rule absent any collective agreements. In September 2020, a collective agreement was announced between Assodelivery (an organisation that represents the majority of platforms active in the delivery sector) and Unione Generale dei Lavoratori (UGL, a minor trade union). This agreement was immediately contested by the major Italian trade unions and the Ministry of Labour. The introduction of piece-work methods of payment in the collective agreement in particular was deemed incompatible with the legal provisions requiring platforms in the delivery sector to pay out hourly wages.

Following an investigation launched after a series of digital platform workers’ accidents, the Milan Public Prosecutor’s Office and the Italian Labour Inspectorate jointly ordered four major food delivery platforms to hire over 60,000 couriers as ‘employer-organised’ workers and to pay a total of €733 million in fines. In a press release, the Milan Public Prosecutor’s Office emphasised that labour relations between the workers and the platforms involved are not qualifiable as ‘autonomous and occasional services’ but are ‘coordinated and continuous services’. The investigation not only revealed several violations of OSH regulations but also discovered that workers are managed by an algorithm that ranked them according to performance and forcing them to accept all orders in order not to be demoted, rendering it impossible in practice to take holidays or sick leave.

Regional legislative frameworks regarding digital platform work in Italy

Particularly interesting are the initiatives at regional and local levels. In 2019, the Lazio region adopted legislation covering all digital platform workers, including access to training, the obligation to provide health and safety equipment and compensation for the maintenance costs thereof, a prohibition of ‘pay per task’ and an obligation to provide OSH insurance. A second example is the legislative proposal introduced in the region of Piedmont in 2019 that aims to codify the criteria regarding the qualification of labour relations of platform workers applied by the Italian courts. Furthermore, the proposal includes a right to be consulted for trade unions regarding the design of managerial algorithms. It prohibits rating mechanisms based on the performance of digital platform workers. Both initiatives seem to be inspired by actions of the municipality of Bologna.

Bologna Charter: Fundamental Digital Labour Rights in an Urban Context

After an episode of heavy snowfall in the city of Bologna in the fall of 2017, a group of delivery riders went on strike and marched to the city hall to demand decent working conditions for platform workers, highlighting the importance of OSH. In response to these demands, the Bologna City Council started negotiations with trade unions and digital labour platforms. The reasoning of the Bologna City Council

¹⁰ This section builds on the case study on the Italian legislative framework, notably the Bologna Charter (EU-OSHA, 2021b).

¹¹ Employer-organised work (*collaborazioni continuative organizzate* or *co.co.org.*) means that work performance is ‘organised’ by the client, including in relation to the time and place of work (Article 2, § 1, Legislative Decree No 81/2015). Workers under this scheme are entitled to (full) labour law protection. It is one of the four labour regimes in place in Italy.

was simple: since the riders' workplace is the streets of the city, the City Council felt that it had the responsibility to take care of the situation. This ultimately led to the adoption of the 'Charter of fundamental rights of digital labour in the urban context' in 2018. The Charter's legal status must be placed within the realm of tripartite social dialogue, with the Bologna city authorities as the state-side stakeholder. As for its scope, the provisions only apply to the territory of Bologna and include all platform workers *irrespective of their employment status*. As such, challenges related to the qualification of the labour relation, for which the local level has no legal competences, are avoided. However, in practice, the main focus lies on platform delivery services.

Since concerns about OSH were one of the main demands of Riders Union Bologna when appealing to the City Council to take action, the Bologna Charter is particularly ambitious regarding OSH matters, requiring platforms to develop an OSH management system and to adopt all appropriate measures to assess, prevent and reduce risks and hazards and to provide insurance for work-related accidents and occupational diseases. Last but not least, the Charter provides that workers have the right to refuse tasks without repercussions when faced with extraordinary weather conditions.

Conclusions

The innovative and proactive approach of the city of Bologna may serve as an inspiration for other cities and regions in Europe facing similar issues with the platform economy. Nevertheless, one should bear in mind the limited scope of the initiative, and not just territorially: only four platforms active in the delivery sector have signed the voluntary agreement so far. The lack of competence to legislate in the field of the Charter's core provisions, combined with its non-binding and voluntary nature, renders hard enforcement impossible. That being said, 'softer' tools such as voluntary (and non-binding) charters are more easily achievable and can produce direct concrete improvements of the working conditions of digital platform workers, including OSH.

Undeniably, the Charter has been a major factor in raising awareness on important issues with platform workers in Italy, which is reflected at both national level, through the adoption of Legislative Decree No 101/2019, and at regional and local levels, where public administrations have implemented similar agreements (for example, Piedmont, Lazio, Milan and Modena). The Charter contains provisions about important issues such as OSH, algorithmic management and its impact on OSH, minimum remuneration and how this is calculated, transparency and worker participation, and it has had a direct positive impact on the working conditions of platform workers in Bologna. Indeed, all the stakeholders consulted in this case study firmly acknowledged the positive difference in working conditions between digital platforms that signed the Charter and the ones that did not.

Lessons from the French legislative framework on digital platforms¹²

Since 2016, a number of legislative initiatives related to digital platform work have been introduced in France:

Law No 2016-1088 of 8 August 2016 on labour, the modernisation of social dialogue and the securing of professional careers (the 'El Khomri law')

Law No 2018-898 of 23 October 2018 on the fight against fraud

Law No 2019-1428 of 24 December 2019 on the orientation of the means of transportation ('LOM')

Ordinance No 2021-487 on the exercise of the activities of digital intermediation platforms in various sectors of public road transport

Ordinance No 2021-484 on the terms of representation of self-employed workers using platforms in the course of their activity, and the conditions for the exercise of this representation

The El Khomri law has especially often been described in research and policy as a major step towards protecting platform workers, which could inspire policymakers in other Member States to act (European Commission, 2020). A more critical assessment, however, points to the limited scope and rights granted to platform workers under this legislative framework. In addition, there are few direct links of these laws and ordinances to OSH. All legislative initiatives under investigation address OSH indirectly. For

¹² This section builds on the case study on the legislative framework introduced in France (EU-OSHA, 2021c).

example, Ordinance No 2021-487 obliges platforms to share data and information with authorities and administrations¹³. Any proof that supports the authority's **control mission** must be provided, and any medium (books, invoices, other professional documents, from whomever may have it in their possession) suitable for **inspections** must be provided on request. Platforms are required to provide the necessary means to carry out inspectors' verifications and they must grant access to stored data or algorithms and to the unencrypted restitution of information suitable to facilitate inspections. The provision of such information and data is critical to perform monitoring and enforcement actions. Similarly, Ordinance No. 2021-484 will provide **collective rights for self-employed platform workers**. Here, too, while the direct link may not be obvious, the relevance and importance of worker participation and collective bargaining in the field of OSH is a well-established fact and is a key component of the EU OSH acquis.

El Khomri law

As one of the first laws specifically aimed at (a part of) the platform economy in an EU Member State, the El Khomri law stipulates that **platforms which determine the characteristics of the goods sold or of the services provided, and set the price thereof**, have a '**social responsibility**' towards workers active on their platforms. However, the personal scope of the El Khomri law is limited: it is only applicable to workers who are **self-employed** and use digital labour platforms in the context of their **professional activities** (Chatzilaou, 2020).

For all digital platform workers who fall within this scope, the El Khomri law provides **the right to form and join a trade union and to defend their collective interests through it** (Chatzilaou, 2020; Grelet-Certenais, 2020). For digital platform workers who meet the conditions and earn at least 13% of the annual social security ceiling of sales revenue through platform work (€5,347.68 in 2021, as set by Decree) (Chatzilaou, 2020), the El Khomri law foresees a right to **continuous professional training** and to be **insured against work-related accidents and occupational diseases**. In both cases, digital labour platforms bear the costs, which in practice comes down to reimbursing platform workers during the following year and when workers are able to prove that their annual turnover met the minimum threshold. Another limitation is that being insured remains voluntary.

Law on the fight against fraud

The law on the fight against fraud aims at the **better detection, understanding and sanctioning** of different sources of fraud. To this end, the law establishes new means of detecting and characterising fraud by harmonising the tools available to administrations and by intensifying data sharing between administrations. The law strengthens the means to sanction fraud, notably by introducing administrative sanctions against parties who did not commit fraud but did facilitate it.

Regarding digital platform work, the law contains several provisions. It uses a broad conceptualisation of platforms: it applies to any platform connecting people remotely by digital means (Article 242 bis of the General Tax Code). The law obliges digital labour platforms to **report amounts paid to digital platform workers to the tax administrations**. The law also obliges platforms to provide its workers, clients and the French fiscal authorities with information on the **identification details** of the platform and its users, the **status of private person or professional** as indicated by users, and **the number and the gross total sum of the transactions performed** during the past year (Article 242 bis of the General Tax Code). If known to the platform, details must be provided of the bank accounts in which the income earned by workers via the platform is deposited.

Digital labour platforms failing to meet the obligations set in the law get a global flat-rate fine of maximum €50,000 and a fine equal to 5% of the undeclared sums. According to the latest available data, about 120 platforms have filed declarations for income received in 2019, covering about 1.2 million natural persons and 0.4 million professionals and legal entities.

¹³ Note the distinctions the French Legislation makes a) between passenger transport and the transport of goods, and b) between digital platforms providing food delivery and taxi services ('opérateur de plateforme d'intermédiation numérique') and online platforms for ride-sharing and car-pooling ('opérateur de bourse numérique'). The obligations for the latter are less severe.

LOM

Although the law on the orientation of the means of transportation was adopted to make the daily means of transportation cleaner, easier and less expensive, the LOM is of particular relevance to digital labour platforms. More specifically, the LOM introduced a 'right to refuse' and a 'right to disconnect' for digital platform workers **driving a 'transport car' or delivering goods using a motorised or non-motorised two- or three-wheeled vehicle**, for example, taxi services. The right to refuse implies that platform workers can refuse tasks without penalty. The right to disconnect ensures that platform workers can freely decide on when to work. Both provisions are also important from an OSH perspective.

Furthermore, the LOM foresees that digital labour platforms can establish a **charter** (but are not obliged to do so), which lays out key aspects related to working via the platform, such as OSH risk prevention, working conditions, price setting, skills development, opportunities for career progression, information sharing and dialogue between platform worker and platforms, changes in the terms and conditions, etc. The idea behind this charter is to **foster transparency and ensure workers' rights**, including on safety and health¹⁴. These elements may all contribute to OSH risk prevention and risk management. Most importantly, and in contrast to the Spanish Riders' Law, the LOM initially provided that the establishment of a charter would entail a legal presumption that the platform workers concerned were not in a relationship of subordination with the platform and thus could not be qualified as employees¹⁵.

Conclusions

The French legislative framework, often applauded as a key example of progress towards improved working conditions of digital platform work, is tainted by some important limitations. This legal framework is **very limited in both material and personal scope**, leaving at least the majority (if not all) of platform workers faced with legal uncertainty. The key issue of the **employment status** of platform workers remains unaddressed, and thus the issue regarding the applicability of the OSH legal framework unresolved. In addition, despite major steps forward in the area of information and data sharing, which indeed is critical to help detect labour relations in the platform economy and to clarify their nature, it is clear that currently there is little monitoring and enforcement of compliance even with basic OSH rules and regulations. Nevertheless, parts of the legislative framework do pay attention to **empowering platform workers and giving them voice** – which is also key for OSH risk prevention and management. The framework further engages platforms and, by doing so, it may foster social dialogue in the platform economy, which in turn could help improve working conditions and OSH. However, in light of the issues discussed above, in practice, the French legal framework may not be very effective.

Lessons from actions and experiences of labour and social security inspectorates, OSH authorities and enforcement agencies¹⁶

The digital platform economy has triggered actions from different enforcement authorities in a large number of EU Member States. In most Member States, these actions have been, and unfortunately in many cases still are, characterised by lack of an efficient and coordinated strategy in dealing with this relatively new phenomenon. This complicates both the monitoring and enforcement of OSH regulations, resulting in a high number of infringements of workers' labour rights, creating risks and hazards to society at large, and disrupting the level playing field for compliant market players. Data on paid activities performed on digital labour platforms are mostly absent, as are data on workers concerned, the number and severity of infringements, and the number and severity of OSH-related infringements and work-related accidents and diseases.

¹⁴ See <https://www.eurofound.europa.eu/data/platform-economy/initiatives/revision-of-the-legal-framework-for-platform-workers>

¹⁵ This provision – and this legal presumption in particular – was subsequently annulled by the French Constitutional Court. In this light, it is important to note that to date no charters have been established. French Constitutional Court, Decision Nr. 2019-794 DC, 20 December 2019. More details can be found at: https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/decisions/2019794dc/2019794dc.pdf

¹⁶ This section builds on the case study on the actions taken by labour and social security inspectorates (EU-OSHA, 2021d).

Disparate actions by different enforcement authorities: many lessons urgently need to be learned

A prime example of the disparity of actions by enforcement authorities can be found in Poland, where the majority of the reported cases involving labour and social security inspectorates were instigated by traffic police and thus confined to the most visible forms of platform work: taxi and delivery services. Investigations by the labour inspectorates revealed a very high number of infringements of various rules and regulations. Around 10% of the workers investigated were found to be illegally residing third-country nationals or legally residing third-country nationals without proper work permits. Such situations typically are precarious, with detrimental effects on fundamental rights of the workers concerned, not in the least with regard to OSH.

Another interesting case is Belgium. Similar to France, Belgium was one of the first and few EU Member States with dedicated legislation on platform work, although primarily in the field of fiscal law (European Commission, 2020). As early as 2016, the government introduced a legislative framework¹⁷ aiming to boost digital platform work. Of key interest in the Belgian case are the joint inspections carried out by the labour and social security inspectorates targeting Deliveroo¹⁸. One hundred and fifteen former and current Deliveroo riders were interviewed about issues relating to their employment status, working conditions and OSH. The investigation led to the initiation of judicial proceedings against Deliveroo, launched by the public prosecutors at the labour court. The outcome of the case is still pending, but it is much anticipated and will shape future regulations on platform work.

Spain: a good example with some room for improvement

The actions and initiatives of the Spanish Labour and Social Security Inspectorate (ITSS, Inspección de Trabajo y Seguridad Social) can be considered a good example of how to tackle challenges related to platform work. As in other EU Member States, prior to 2017, the initial monitoring actions in Spain were initiated mainly after complaints by platform workers, which raised the ITSS's awareness that the digital platform economy needed scrutiny. These initial actions were dispersed and showed that using different approaches led to different outcomes. In this light, in 2017, the ITSS took the firm decision to harmonise the monitoring of the digital platform economy and started aggregating information from different sources (for example, previous cases, or information obtained from workers who filed complaints, from trade unions, from the platforms' websites). The ITSS developed a **guide on the collaborative economy**, aimed explicitly at assisting ITSS inspectors in the monitoring of platform work and the enforcement of applicable legislation, by providing information on the platform economy, specific investigation procedures for inspections of platform work, indicators that focus on aspects such as an analysis of the website or app, the concept of platform or algorithmic management, guidelines, case examples, etc.

As in many other countries, the qualification of the employment relationship between the platform and its workers was, and is, one of the key issues in monitoring and enforcing compliance of applicable regulations. Campaigns targeting bogus self-employment in platform work have been developed as part of the 2018-2020 Labour and Social Security Inspectorate Strategic Plan¹⁹. The plan presents a range of **operational measures directly targeting platform work**, for example, providing the inspectorates with the technical means necessary to facilitate the identification of those involved in digital platforms, issuing an operations manual to assist inspectorate officials and train specialists, and conducting a campaign to inspect platforms.

Conclusions

The Spanish ITSS has been active, adaptive and successful in monitoring the platform economy and enforcing applicable legislation. In 2019 and 2020, the ITSS identified 11,013 false self-employed

¹⁷ Programmawet 1 juli 2016, Belgisch Staatsblad 4 juli 2016, 40.97, also known as the 'Law De Croo'.

¹⁸ Sometime before these inspections took place, the national social security office (NSSO) asked Uber Belgium for data; Uber Belgium claimed not to have any and referred the NSSO to its Dutch counterpart, UBER BV. UBER BV did not provide any data and neither did the Dutch inspection services. The NSSO left it at that. Given the vast competences on data collection bestowed to Belgian inspection services, this is a remarkable decision. Furthermore, the refusal of both UBER BV and the Dutch inspection services to provide data should have raised red flags.

¹⁹ See https://www.mites.gob.es/ficheros/ministerio/plandirector/National_Plan_for_Decent_work.pdf

workers on a single platform alone. Such actions, dating from before the Riders' Law, make clear that inspection services *can* monitor and enforce compliance in spite of issues regarding the qualification of the labour relation between worker and platform. The successes of the ITSS are the result of a predetermined strategy, in which much attention is dedicated to training inspectors to deal with new challenges. Actions by the ITSS were organised in a coordinated manner, unifying investigation procedures. Given that such investigations are difficult and time- and resource-intensive, some actions were coordinated by the Special Unit at the Central Services, for example, when different regional divisions were involved. The guide the ITSS developed is another best practice to be picked up by other Member States' inspection services.

Nevertheless, to monitor and enforce compliance with OSH rules and regulations, the overall monitoring of the platform economy is a precondition. However, the Spanish case clearly shows what is lacking in most other Member States: coordinated actions, and the collection of strategic and operational information on the sector as a whole and on the market players. Depending on the activities monitored and the competences of the enforcement agencies concerned, monitoring of some of the market players will require a multidisciplinary approach and therefore effective and efficient cooperation and information exchange between authorities. Last but not least, the Spanish case clearly illustrates the importance of capacity and resources, of capacity building, and of taking operational decisions.

Key takeaways for policymakers and decisionmakers

Takeaway 1: *In spite of the recent increased attention to working and employment conditions in digital platform work, the OSH risks that digital platform workers encounter are largely overlooked and remain un(der)addressed. This includes all aspects – from prevention to management.*

Although working and employment conditions have recently been on the agenda of policymakers and decision-makers at EU level and in the Member States – in that way overcoming at least in part the initial lack of attention to these core issues affecting workers – OSH, in particular, is still insufficiently addressed. National legislation directly targeting OSH in the context of digital platform work is largely non-existent in the EU. More examples of legislation indirectly targeting OSH were found. The actions of administrators and inspectorates are important and can bring real change, but these are hampered by a range of different obstacles, of which the classification of digital platform workers as self-employed emerges as the main one. An overview of different types of measures – top-down and bottom-up, soft law and hard/binding, initiated by different types of actors and at different levels – clearly shows the important interplay between them, and how one effort can inspire others.

Policy- and decision-makers are required to dedicate significant attention to OSH, introducing binding measures that can be monitored and enforced. Especially in terms of risk prevention and the adoption of overall OSH policies, a lot of work remains to be done. Policymakers and decision-makers should push efforts beyond the mere provision of insurances against work-related accidents and occupational diseases, as well as insist on the provision of basic personal protective equipment and basic 'safety' training. The employment status of platform workers should not be an obstacle to ensuring healthy and safe work in this field. On this note, one recurring issue is the limited scope of legislation, initiatives, actions and other measures identified, for example, only targeting self-employed platform workers or workers in one sector. When legislation is introduced, it should be clearly articulated and comprehensive in scope, and/or considered in concert with other types of wide measures (for example, strengthening enforcement bodies). To the extent possible, all types of digital platform work should be included, so that workers who are less visible are not forgotten, as many of the OSH challenges identified are common across all types of platform work.

Takeaway 2: *Awareness should be raised among digital platform workers and digital labour platforms regarding occupational safety and health.*

Related to the previous point about the lack of attention to OSH issues, and the impact of this on risk prevention and management, it became clear that digital labour platforms themselves have taken very few actions in this area. The consulted national focal points highlighted only a handful of examples, which all linked to the provision of insurance against work-related accidents and occupational diseases, the provision of personal protective equipment, or the provision of basic training and guidance (also in relation to the COVID-19 pandemic), which hardly amounts to a full-fledged OSH policy. Digital labour platforms may argue that they are not responsible for OSH as they are not the employer of the workers using their platform or may not wish to risk being requalified as the employer of the platform by offering OSH protections. Similarly, previous research shows that key groups of digital platform workers –

especially young or less experienced and lower-educated workers – are not aware of the OSH risks they encounter, may underestimate them or cut corners when working, may not have the means to protect themselves appropriately, etc.

Policy- and decision-makers can remove barriers for digital labour platforms to provide guidance and training to their platform workers on OSH. One option is to involve third-party organisations, such as external prevention advisors who are available for consultation. Minimum standards could also be considered, for example, introducing measures so that workers are only allowed to be online for a certain duration or can take up tasks for which they have a qualification or certificate. Providing transparency on what digital platform workers can expect is key (for example, the work itself, how it is organised, what their responsibilities are, etc.). To this end, awareness raising using targeted campaigns for platform workers on OSH risks and on how to prevent or manage those is essential. Such campaigns could be launched by government bodies, but should also involve actors in the field, such as trade unions and grassroots organisations. Digital platform workers should be informed about the measures and actors available to support them. Of crucial importance here is to target all platform workers – both in on-location and online work – with tailored information, and to cover both physical and psychological risks and impacts. The psychological impacts of digital platform work, in particular, are severe but often unknown or even ignored.

Takeaway 3: *Good practices in terms of OSH risk prevention and management should be shared more proactively, both nationally and internationally, to foster learning among stakeholders.*

The research conducted in this study but also by others has uncovered good practices from national, regional and local governments, labour and social security inspectorates, platform workers and their representative organisations (including trade unions and grassroots organisations), and other actors, of which several directly target OSH. As responses to platform work vary considerably across countries, regions and sectors, these practices may not be known within the own country and across the borders. Although the literature and EU-OSHA national focal points reported on several initiatives for knowledge exchange, such as working groups, such efforts appear limited. At the same time, a more coordinated approach across countries is recommended, so that policy- and decision-makers can exercise more influence on global platforms.

Policy- and decision-makers can implement strategies to raise the awareness and exchange of good practices between stakeholders in their own country as well as across countries. This exercise should be as ‘practical’ as possible, moving beyond theoretical considerations. Building networks involving a wide range of actors – including digital labour platforms and digital platform workers themselves – is a prerequisite to ensure that, first, all issues and concerns are brought to the table and, second, there is a broad support for and take-up of the measures agreed upon. Leading EU bodies and organisations, such as the Senior Labour Inspectors’ Committee, and EU social partners could play a central role in this regard.

Takeaway 4: *Efforts to develop knowledge and gather data on OSH challenges and opportunities as well as on OSH risk prevention and management in digital platform work should be reinforced.*

A critical lack of knowledge and data, not only about digital platform work as such, but also on how to detect and categorise labour relations between digital labour platforms and digital platform workers, how to monitor and enforce compliance with OSH rules and regulations, how to carry out inspections, etc., was noticed in most case studies under investigation. This also emerged as a key point of attention from the consultation with EU-OSHA’s national focal points.

Policy- and decision-makers need to reflect on ways to generate, develop and share knowledge and data on digital platform work and its impacts on OSH, in order to facilitate information helpful to address the main OSH issues arising from digital platform work as described above. In this context, lessons should also be drawn from experiences with other relevant forms of atypical work.

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