

European Agency for Safety and Health at Work

Protecting Workers in the Online Platform Economy: An overview of regulatory and policy developments in the EU

European Risk Observatory
Executive summary



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Executive summary

In the digitalised economy, a crucial role is played by online platforms. These platforms — dynamic websites that constitute digital public squares or marketplaces — can impact the economic process in various ways: in production, in terms of products or services themselves, and in (the organisation of) their delivery/provision.

Sometimes, this has an impact on the provision of labour. In particular, online platforms can play a role in:

- the organisation of work in the ‘production process’, for instance by constituting the method of dividing tasks on a project between a team of workers within a company, or by matching a demand for a (digital or manual) work project with a worker who is willing to perform it; as well as in the (organisation of the) delivery/provision/sale of a good or service, for instance by allowing consumers to book and pay a car driver via a smartphone application.

This has given rise to what is widely referred to as ‘online platform work’, which refers to all labour provided through, on or mediated by online platforms, and features a wide array of working arrangements/relationships, such as (versions of) casual work, dependent self-employment, informal work, piecework, home work and crowdwork, in a wide range of sectors. The actual work provided can be digital or manual, in-house or outsourced, high-skilled or low-skilled, on-site or off-site, large- or small-scale, permanent or temporary, all depending on the specific situation. In order to constitute work and to be part of the online platform economy, it must, however, be provided for remuneration, thus excluding genuine ‘sharing’ activities.

This report sets out to describe the potential occupational safety and health (OSH) risks that have been identified in relation to online platform work, to highlight the challenges for current regulatory approaches on OSH and to present examples of different approaches that are under way or being developed to meet these challenges. Given this, this report does not pretend to give a verdict on whether online platform work is ‘good’ or ‘bad’ and indeed it mentions, as well as the potential risks, the potential benefits, such as reducing the extent of undeclared work.

▪ Regulatory challenges posed by online platform work and OSH implications thereof

While there is evidence that some online platform work has transferred transactions that were otherwise conducted in the shadow economy to the formal sector, and consequently within the regulator’s purview, the regulation of the activities of online platforms has generally not been straightforward. This is because of dynamics of the sector, the apparent rule-avoiding behaviour of many online platforms, and the perception — encouraged by some of the online platforms — that, because their activities represent an entirely new business model resulting from rapid technological change, they should not be treated in the same way as any existing economic activities. Furthermore, this difficulty results in no small part from the fact that some aspects of online platform working do not fit easily into pre-established regulatory categories.

This latter consideration applies particularly to employment law: not only specific OSH legislation, but also legislation that has an impact on OSH, such as that which defines the concepts of ‘employee’, ‘employer’ and ‘self-employed’. Online platform work may give rise to a range of both pre-existing and new OSH risks, both physical and psycho-social. The fact that online platform workers have many similarities with both temporary workers and agency workers means that they are probably exposed to the same OSH risks, with studies consistently showing higher injury rates among workers in these categories. Furthermore, preventive measures for OSH tend to be more comprehensive and more effective in workplaces with more workers; lone workers or home workers are generally recognised as being more exposed to OSH risks. Furthermore, online platform workers tend to be younger, which is a recognised independent risk factor for occupational injury, and are less likely to undergo OSH training. In addition, platform work, through the use of inter-worker competition and rating mechanisms, encourages a rapid pace of work without breaks, which may induce accidents. Pay being not continuous but per assignment adds such time pressure. The lack of appropriate training further increases the risk of accidents, and several key activities typically carried out by online platform workers are in occupations

that are considered particularly dangerous, such as construction and transport. Digital online platform work carries risks such as permanent exposure to electromagnetic fields, visual fatigue and musculoskeletal problems. Psycho-social risks include isolation, stress, technostress, technology addiction, information overload, burn-out, postural disorders and cyber-bullying. All online platform work can increase the risk of stress through continuous evaluation and rating of performance, competitive mechanisms for allocating work, uncertain payment and blurring of work–life boundaries. Finally, job insecurity, known to contribute to poor overall health among atypical workers, is characteristic of online platform work.

These risks would make it all the more important for OSH regulations to apply to online platform work, but this application is highly uncertain. The application of OSH rules and employment law in general is challenged, as the involvement of online platforms in the organisation and provision of (digital and manual) labour tends to complicate the classification and regulation of the responsibilities as regards the work in question. The almost inevitably triangular (or multilateral) nature of the arrangements, their often temporary nature, the sometimes relatively high measure of autonomy of the worker in terms of working place and time, the at times informal (citizen-to-citizen) nature of some of the activities and the absence of a common workplace all challenge the application of the concept of the standard, permanent, binary employment relationship. These challenges, however, do not seem to be unique to the online platform economy. The past few decades have seen an increase in the use of ‘non-standard’ forms of work, such as casual work, on-call work, temporary agency work, informal work and dependent self-employment. Many of the working arrangements set up by the online platforms coincide with, or closely resemble, these forms of atypical work or a mixture thereof, sometimes with the only difference that they make use of a digital tool.

The often precarious position of online platform workers, allied with the specific features of online platform work, tends to hamper the collective organisation of workers, and thus the defence of their rights and interest, as well as the development of social dialogue. Most workers on online platforms do not know each other, there is a high turn-over of workers, set working patterns may be lacking, workers may not consider that the work they provide for/on/via the online platform is their primary professional activity, and putting workers in direct competition with each other — through individual ratings and competitive methods of work allocation — is an operational feature of many online platforms. These factors are not conducive to the solidarity and collaboration needed for effective unionisation — and the fact that they may be considered ‘self-employed’ might legally even exclude such unionisation.

▪ National regulatory/policy options in relation to online platform work

In response to these challenges, several policy/regulatory approaches have been identified from a review of the current developments in the Member States.

A first approach is to ‘simply’ apply existing regulations to online platform work. In many countries, this would entail a case-by-case determination of whether the online platform worker is an employee or self-employed, or in some countries falls in a third category in between. Depending on the (flexibility of the) test applicable to determine labour status, this may already include many online platform workers in the category of employee, or in an intermediate category, meaning that (most) employment and OSH rules would apply — at least in legal terms. This would seem to be the case in several EU Member States, such as Ireland, the Netherlands, Sweden and the United Kingdom. Active enforcement by the competent authorities (including OSH inspections at home) and access to courts for workers are necessary for this approach to be effective, however, not least considering the systematic rule-avoiding behaviour of some online platforms. On the other hand, in other Member States such as Belgium and Denmark, the approach of applying the current legal provisions will usually lead to online platform workers being classified as ‘self-employed’, leaving most employment law inapplicable.

A second approach is to take specific action to narrow the group of persons that will be considered ‘self-employed’, through the addition of an intermediate ‘(independent) worker’ category or a rebuttable presumption of employment. The United Kingdom already has such an intermediate category of ‘worker’, and Belgium and the Netherlands feature a rebuttable presumption of employment. The reports and analyses concerning the status of online platform workers in these countries, however, show that these mechanisms do not necessarily resolve the categorisation difficulties, and that, in the end, a case-by-

case assessment (by courts) is still necessary, with the legal uncertainty that this entails. None of the studied countries has yet adopted any of these mechanisms specifically in response/relation to online platform work. It should be noted that this approach could also be adopted organically, most notably by courts, as they can adapt the tests of (self-) employment — which they have often themselves developed — to the specific features of online platform work, for instance by placing less emphasis on ownership of key assets of the business (such as cars in the context of passenger transport) and more emphasis on *de facto* control mechanisms (such as rating and pricing systems operated by the platforms).

A third approach is to decouple the application of existing regulations from the status of employment, thus potentially making employment (for instance concerning minimum wages and social security) and OSH rules applicable also to the self-employed. Here again the United Kingdom's 1974 Health and Safety at Work Act provides an example of 'decoupling' where the OSH provisions extend to the protection of third parties, and not only employers and their employees.

Finally, a fourth approach is to provide specific (OSH and/or other employment) protection for online platform workers, regardless of their employment status. This has been the approach in France, with the Act of 8 August 2016 on work, modernisation of social dialogue and securing of career paths, which provides (i) that independent workers in an economically and technically dependent relationship with an online platform can benefit from insurance for accidents at work which is the responsibility of the online platform in question, (ii) that these workers equally have a right to continuing professional training, for which the online platform is responsible, and should at their request be provided with a validation of their working experience with the platform, by the online platform, (iii) that these workers have the right to constitute a trade union, to be a member of a union and to have a union represent their interests and (iv) that they have the right to take collective action in defence of their interests.

▪ EU approaches to online platform work

Considering the transnational nature of the online platform economy and its regulatory challenges, it is natural that the EU Institutions have also become engaged in the discussion.

The European Commission has set out the conditions under which it considers that an employment relationship exists in line with EU labour law, for the purposes of applying EU labour law. It considers that the Court of Justice of the European Union's (CJEU's) definition of 'worker' as applied in the context of the free movement of workers also guides the application of EU labour law, entailing that 'the essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration'. Whether an employment relationship exists or not has to be established on the basis of a case-by-case assessment, considering the reality of the relationship, looking cumulatively at the existence of a subordination link, the nature of work and the presence of remuneration.

The Commission is furthermore considering proposing two legislative measures in the context of the European Pillar of Social Rights that may affect online platform workers' social and employment rights. Firstly, the Access to Social Security initiative may entail a new EU Directive ensuring (i) similar social protection rights for similar work regardless of employment status and (ii) the transferability of acquired social protection rights. Secondly, the Written Statement Directive may be revised to reinforce the rights already contained in that Directive about the information the worker is entitled to receive in their employment contract by applying them to all workers irrespective of their employment status. In addition, the revised Directive may define core labour standards for all workers, particularly for the protection of atypical, casual forms of employment, such as the right to a maximum duration of probation where a probation period is laid down, the right to reference hours within which working hours may vary under very flexible contracts to allow some predictability of working time, the right to a contract with a minimum number of hours set at the average level of hours worked during a preceding period of a certain duration for very flexible contracts, the right to request a new form of employment (and the employer's obligation to reply), the right to training, the right to a reasonable notice period in case of dismissal/early termination of contract, the right to adequate redress in case of unfair dismissal or unlawful termination of contract and, finally, the right to access to effective and impartial dispute resolution in case of dismissal and unfair treatment.

The European Parliament's position, in general terms, has been that fair working conditions and adequate legal and social protection should be ensured for all workers in the collaborative economy, regardless of their status. Specifically in response to the European Pillar of Social Rights, the Parliament has called on the Commission to broaden the Written Statement Directive to cover all forms of employment, and for this new Framework Directive on decent working conditions also to include relevant existing minimum standards to be ensured in certain specific relationships, including 'for work intermediated by digital platforms and other instances of dependent self-employment, a clear distinction — for the purpose of EU law and without prejudice to national law — between those genuinely self-employed and those in an employment relationship, taking into account ILO Recommendation No 198, according to which the fulfilment of several indicators is sufficient to determine an employment relationship; the status and basic responsibilities of the platform, the client and the person performing the work should thus be clarified; minimum standards of collaboration rules should also be introduced with full and comprehensive information to the service provider on their rights and obligations, entitlements, associated level of social protection and the identity of employer; those employed as well as those genuinely self-employed who are engaged through online platforms should have analogous rights as in the rest of the economy and be protected through participation in social security and health insurance schemes; Member States should ensure proper surveillance of the terms and conditions of the employment relationship or service contract, preventing abuses of dominant positions by the platforms'.

The Parliament has furthermore pointed out that the right to healthy and safe working conditions also involves protection against workplace risks as well as limitations on working time and provisions on minimum rest periods and annual leave. It has urged the Member States to fully implement the relevant legislation, to apply their national law on (self-)employment based on the primacy of facts and to enforce it accordingly, to invest in labour inspections and to consider updating the regulatory framework to stay abreast of technological developments. It has also requested the Commission to examine how far the Directive on Temporary Agency Work is applicable to specific online platforms, considering that many intermediating online platforms are structurally similar to temporary work agencies.

Finally, in an important case pending at the CJEU, the nature of the activities of the online platform company Uber are being examined. The central question is whether Uber's activities can be classified as 'information society services' under EU law, in which case market access should be granted and restrictions on its operation should have been notified and can be accepted only in limited circumstances, or they instead constitute 'transport services', which fall outside the scope of the EU rules in question and can therefore in principle be freely regulated by the Member States. The Advocate General, Maciej Szpunar, has advised the CJEU to hold that Uber is engaged in transport services. While the opinion (and the case) is not directly relevant to the question of employment status, it contains many interesting observations in this regard, particularly concerning the measure of control exercised by the online platform. The highly anticipated ruling will certainly shed more light on these issues, not only in relation to one of the online platform economy's most contested companies. Even this judgment will not settle all issues, however, with both the EU and most of its Member States only starting to develop specific regulation and policy in relation to the many employment questions connected to the online platform economy.

The European Agency for Safety and Health at Work (EU-OSHA) contributes to making Europe a safer, healthier and more productive place to work. The Agency researches, develops, and distributes reliable, balanced, and impartial safety and health information and organises pan-European awareness raising campaigns. Set up by the European Union in 1994 and based in Bilbao, Spain, the Agency brings together representatives from the European Commission, Member State governments, employers' and workers' organisations, as well as leading experts in each of the EU Member States and beyond.

