



Director-General Joost Korte

Platform Work

Exchange with Social Partners

17 November 2020, 9.30 - 12.30

Online exchange via Web-Ex

Briefing coordination: [REDACTED]	Main contributors: [REDACTED]
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Scene setter

You will be opening an exchange with social partners on platform work.

The Commission services (EMPL) are organising this exchange as part of a series of virtual meetings, replacing the initially scheduled “Platform Work Summit”. The exchange, to be distinguished from any type of consultation, takes the form of a half-day online meeting via Web-Ex (link to be provided by A2). Participation is 2x20 people from both sides of industry. The participant list is expected by 12/11

You will be opening the proceedings (9.30-9.45), which Employment Director Stefan Olsson will chair and close.

A short Commission services (EMPL) background note to the exchange preliminarily identifies some key challenges with regard to improving working conditions in platform work.

Objectives:

- *Encouraging early debate on a complex topic in the Commission’s mandate and next year’s work programme.*

Key messages to convey:

- *Both its digital transformation priority and its recovery agenda make that this Commission is set to address the digitalisation of the economy and platforms from different policy angles;*
- *In order for digital platforms to operate and grow sustainably within EU labour markets, it is necessary to consider the working conditions and social protection of people working through platforms;*

The last interaction with actors (i.e. ETUC) and main outcome:

- *ETUC requested a meeting with the highest political Commission level to protest against platform work being tackled in the Digital Services Act public consultation, as well as in an announced Competition initiative concerning collective bargaining. In the meeting held end-July, the Commission (Commissioner Schmit and EVP Vestager) clarified that both initiatives did not substitute for a platform initiative on working conditions, which would fully respect social partners’ rights under TFEU Articles 153-155. And that preparations for other policy initiatives were necessary, complementary and did not interfere with an initiative on working conditions.*

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Opening address

- Dear Social partners, colleagues,
- Thank you for having accepted our invitation, and let me welcome you for an exchange on platform work.
- I am glad to meet you all in what has now become a new virtual normal.
- This morning's discussions are meant to be informal, but they are also bound to be, dare I say, timely and important. Why is this?
- Well, from the Commission side, we believe that with platform work, we are tackling a complex phenomenon.
- Over the past months, we have been engaged in fact-finding discussions on digital labour platforms with academics, platform experts, platforms, platform workers...
- We have learned a lot, but at the same time the evidence base is often incomplete, wide, and fluid, if I may say so. And there truly is a data issue.
- We organised this exchange, interested in your ways of seeing, and believing that your knowledge can help us identify or discard options for an EU policy response to the challenges platform work in the employment and social field.
- It is also an occasion for us to share some of the preliminary outcomes from these informal fact-finding discussions we have embarked on since the summer.

- We have put some preliminary identified challenges in the short platform background note to this exchange.
- Last month, the Commission adopted its Work Programme for 2021, which confirms that we will be presenting an EU initiative on the working conditions and social protection in platform work in the 4th quarter of next year.
- It is of course something that was in the political mandate of this Commission, and in Executive Vice President Vestager's and Commissioner Schmit's mission letters.
- But if, back at the start of this Commission, I could have said that the world of work is being profoundly affected by digitalisation and new business models, and that the incoming Commission would address digital platforms and platform work from a number of angles ...
- ... I could never have foreseen that we would also be discussing platform work within a global pandemic and an unprecedented economic shock.
- Still, this is where we are.
- The Autumn forecast expects the EU economy to contract by 7.8% this year, before growing 4.2% next year and 3% in 2022.
- Unemployment, contained compared to the drop in economic activity, is expected to rise to 7.7% this year and to 8.6% next year, before declining to 8.0% in 2022.
- Output in both the euro area and the EU is not expected to recover its pre-pandemic level before 2023.

- Policy measures such as short-time work and other job retention schemes have so far played an important role in keeping unemployment low. But it is clear that the economic and social disruptions of covid-19 threaten the long-term well-being and livelihoods of millions.
- The digitalisation of the economy is anticipated to accelerate, both to mitigate the impacts of the crisis and to support a productive and sustainable recovery.
- Digital platforms, through innovative business strategies and a flexible operating have contributed to prop up the economy in a moment of crisis.
- Throughout the pandemic, businesses, consumers, administrations and workers have been able to count on online services, deliveries of goods, and incomes that would not have continued had platforms not been there.
- Platform workers have proved to be amongst the most vulnerable labour market participants. Platform workers were already operating under precarious working conditions, and the pandemic has only reinforced, and especially laid bare their situation.
- Evidence shows they were amongst the worst hit by the crisis. Vulnerabilities regarding for example access to social protection became more visible than ever.
- During this crisis, many platform workers have had difficulties with social protection coverage, because of systems' eligibility requirements, their employment status, or the nature of platform work as a supplementary income.

- The pandemic has also resulted in increased health and safety risks for on-location platform workers, such as food delivery riders, as work implied the proximity of people - that is, an epidemiological risk without necessarily all relevant protection in this domain either.
- We thought we would invite you to consider all of this - and possibly more - and have this discussion on digital labour platforms, and how to make working conditions for people working through them sustainable.
- The Commission is addressing digital platforms and platform work challenges from different angles, from taxation, to artificial intelligence, to digital services in the single market, to competition.
- But as social partners, you are in the forefront of shaping the digitalisation of workplaces and ways of working, and thus also platform work as it develops and what it will, or may entail in the European Union.
- So without much further ado, I am ready to hand over the floor to Stefan, who will moderate your discussion this morning.
- I wish you a most productive morning, with excellent debate and insights, and not the slightest of digital hiccups.

Defensive points

[No Q&A scheduled]

Collective bargaining is a universal right for all (workers and self-employed). It is not subject to competition law. The Commission should simply issue guidance confirming this.

- We have to deal with legal reality. The Court has created a limited exemption from the anti-cartel provisions of Article 101 TFEU for collective agreements. However, this exemption is limited to collective agreements between employees and employers, aiming at improving working conditions.
- We know about the arguments that the legal landscape¹ has changed since that judgment. Nevertheless, there is no sign that the Court will revise its position, and it would be imprudent to rely on their doing so. Hence, we need to address the “freezing” effect of leaving dependent self-employed uncertain whether they can enter into collective agreements.
- Guidance binds the Commission but not the Court or national competition authorities. Therefore, Commission guidance does not seem enough to remove this obstacle.

Collective bargaining falls solely under Article 153 TFEU.

- Article 153 applies solely to “representation and collective defence of the interests of workers and employers” (Art 153(1)(f)). The Court has consistently interpreted “worker” in the context of this Treaty article as excluding the genuinely self-employed. Hence, collective bargaining under this Article is limited to those with worker status.

What is the link between the COMP initiative, the DSA package and the EMPL initiative on working conditions of platform workers?

- Platform work is a complex phenomenon and it cuts through different areas of EU law: labour law but also internal market, taxation, consumer protection etc. For example, we see provisions that are very relevant for working conditions in the platform economy in recent legislation outside the EMPL domain, as the GDPR or the Platforms to Business Regulation.
- This is why, while looking at what we could address within EMPL’s policy domain, we are also closely following initiatives led by other Commission services, which may be of relevance for people working through platforms, and we raise awareness of the issues faced by platform workers.

¹ Lisbon Treaty (from 01.12.2009) provides a new legal context for another balance between internal market and national social regulation. The Treaty now explicitly states that the Union shall work for a highly competitive ‘**social market economy**’ (Article 3.3 TEU). The European Charter of Fundamental Rights became legally binding at Treaty level. The Charter explicitly recognizes the freedom of assembly and of association in political, trade union and civic matters, ‘**which implies the right of everyone to form and to join trade unions for the protection of his or her interests**’ (Article 12.1 Charter).

- The Digital Single Act, which is to frame the responsibilities of digital services to address the risks faced by their users and to protect their rights, is among upcoming initiatives which may, even if indirectly, impact on people working through platforms. Other relevant initiatives include for example the work on Artificial Intelligence and Data Strategy.
- In the same vein, the COMP project, while broader in scope, is also very relevant for those platform workers who may be genuinely self-employed and face limitations in their access to collective bargaining. How to square this with antitrust rules needs to be examined, and this can only be done by COMP. This is why we are cooperating with and supporting COMP in their efforts to pave the way for action in this field.

What is the relevance of the DSA open public consultation for EMPL's platform work initiative?

- Platform work is still quite a new and diverse area and in preparation of the initiative, we need as broad background information as possible to understand the diversity of challenges.
- EMPL is organising in the autumn a series of events with different audiences to collect such background information. In the current fact-finding phase, the material from the DSA consultation can also be useful.
- (For COMP the section on self-employed in platform economy is also just one element of the broader effort to map the challenges related to possible limitations in collective bargaining deriving from competition law.)
- (At the same time, the section on self-employed in platform economy would inform the preparatory work for DSA on any issues of relevance for this instrument.)

Background

Action Plan to implement the European Pillar of Social Rights

- **ETUC** has welcomed the Action Plan, “looking forward to working with the European Commission for ‘full implementation’ of the 20 principles of the European Pillar of Social Rights and on other positive proposals. Of course the substance remains to be seen but the intention appears to be good.”²
- **ETUC** has conditionally qualified as a positive proposal “legislation to improve working conditions of platform workers (but not including other ‘non-standard’ workers?)”
- **BusinessEurope** has stated that forthcoming EU social initiatives “must be adapted to the new realities and challenges we face due to COVID-19. And initiatives need to be taken at the right level”.
- **BusinessEurope** believes the “European Semester process is the key tool to implement the European Pillar of Social Rights. We need to ensure that the resources available are used effectively to implement employment-enhancing reforms at national level.”
- **SMEUnited** has emphasised that restarting the economy is the first step to ensure a bold social dimension.
- **SMEUnited** considers that a well-functioning social dialogue is the best way to implement the European Pillar of Social Rights. “This means taking into account the absorption capacity of national social partners, already implementing current EU initiatives.”
- **CEEP** has argued for a full and effective implementation of the principle on access to services: “that would be the only way to create coherence between the Action Plan, the revised MFF and the Next Generation EU.”
- **CEEP** feels that the Pillar should be “less about new EU legislation, but more about fostering national ownership and implementation of its principles via the European Semester.”

² ETUI is organising an academic and policy-makers online conference **New beginnings? The EPSR and the new Commission**; EPSR and its contextualisation in the economic realm; EPSR - political quo vadis?; EPSR and the way forward for social Europe, on **16.11.2020**.

1. ETUC position on a Commission initiative on working conditions and social protection of people working through platforms

ETUC situates **platform work within the broader context of increasing and larger non-standard work**³ with negative impacts on the quality of work and pressure for a level playing field.

ETUC has voiced **objections about platform work being tackled in the Digital Services Act (DSA) open public consultation**, as European social partners have not been consulted in accordance to Articles 153 – 155 TFEU. Online digital platforms enable web-based jobs or digital labour that has a negative impact on labour conditions, social security and worker protection; the DSA package cannot overlook the responsibilities platforms have towards the people they employ.

ETUC has also argued that **it is not for competition law to define what a collective agreement is or who can engage in collective bargaining** and enjoy protection under such agreements. Any attempt to rectify this situation within the framework of EU competition law disregards the respect for social partner autonomy, national labour market models, traditions and practices⁴. Instead, the Commission should issue guidance confirming the correct interpretation of competition law, fully excluding collective agreements from the remit of Article 101 TFEU and national competition rules.

In support of the **full exclusion of collective bargaining from the scope of competition law**, the ETUC reiterates the following points:

- Access to collective bargaining is a fundamental right of workers, including self-employed and other non-standard workers, as recognised under European as well as international human rights instruments. Fundamental rights cannot be treated as exceptions or made conditional upon competition rules.
- The fundamental values, principles and objectives of the Union as set out by Articles 3 TEU and 9 TFEU, including the Charter of Fundamental Rights, are binding on competition policy in the same way as on any other EU policy area.
- The purpose of competition law is not to regulate working conditions and wages negotiated by trade unions, but anti-competitive business practices alone. Wage-setting is not price-fixing, labour is not a commodity.
- Self-employed and other non-standard workers should not be considered undertakings for the purpose of competition law. Individuals engaged in personal work must not be precluded from concluding collective agreements when acting as economic units within an undertaking rather than as undertakings in themselves.

³ **Non-standard work** is an umbrella term for different employment arrangements that deviate from standard employment. They include temporary employment; part-time and on-call work; temporary agency work and other multiparty employment relationships; as well as disguised employment and dependent self-employment. The most relevant of possible future developments of non-standard work, whatever their contractual form, are related to digitalisation.

⁴ BusinessEurope has similarly argued in its position paper on the Digital Services Package (cf. annexes)

- Collective agreements are not horizontal agreements between undertakings. Collective agreements derive from social dialogue and are the result of negotiations between organisations representing management and labour for the purpose of improving working conditions. Collective bargaining aims to strike a fair balance by setting minimum standards, thus also creating a level playing field in the market.

ETUC focuses on the **rights for workers and the obligations of platform companies:**

- The **right to organise, to be represented by a trade union and to collective bargaining, access to minimum wages, social protection and respect for working conditions for all workers**, in this case for all non-standard workers and workers through labour platforms (including the self-employed).
- **Labour platforms must be recognised as employers, with all the legal obligations that this entails** in terms of payment of income tax, financing of social protection, responsibility for health and safety, due diligence and corporate social responsibility and their workers should be acknowledged as workers. Democratic control of the operation of the algorithm applications must be part of the public debate and discussed through information, communication and participation of workers.

2. BusinessEurope position on an initiative on working conditions and social protection of people working through platforms

BusinessEurope feels **platform work must be dealt with within the context of national legislation**. The labour markets and social security systems across the EU are equipped differently in each Member State when it comes to new forms of work. The EU has already established legal instruments to ensure that those people working in new forms of work, for example on platforms, can be protected. It is now a matter of proper implementation and enforcement at national level.

To support the argument that an **EU legislative initiative on platform work is neither necessary nor appropriate**, BusinessEurope puts forward that:

- The recently agreed EU legislation on transparent and predictable working conditions already has minimum provisions targeted at people working on platforms who are categorised as employees, i.e. related to the provisions on 'on demand work'.
- Member States should implement, where necessary the Council Recommendation on access to social protection, including relating to self-employed.
- The recently agreed regulation on promoting fairness and transparency for business users of online intermediation services, the so-called "Platform to Business (P2B) Regulation", already places obligations on platforms to be more transparent about their terms and conditions towards the business users of the platforms. This including obligations regarding ranking systems (for those platforms that have them), and to provide an internal complaint handling system.
- With the increased transparency on terms and conditions and other measures provided by the P2B regulation, self-employed individuals working through

platforms will have more information to enable them to choose which one to use.

BusinessEurope considers that it is **solely up to Member States and social partners at national level to decide if and how** to tackle the issue of representation of workers in new forms of work. This includes whether and how they need to adapt to carry on fulfilling their mission **to represent collectively employers and workers' interests**.

There is **no need to change existing EU competition rules** to allow self-employed persons, including those working through platforms, to engage in collective bargaining or agreements concerning wages.

Annexes

1. Agenda



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR EMPLOYMENT, SOCIAL AFFAIRS AND INCLUSION

Platform Work

Exchange with Social Partners

Virtual meeting 17 November 2020, 9.30 - 12.30

Agenda

9.30 Welcome and introduction

Joost Korte, Director-General, DG Employment, Social Affairs and Inclusion, European Commission

9.45 First session: Challenges and opportunities of platform work

Commission (Stefan Olsson) chairing, interventions by

- Employers
- Trade Unions

11.00 – 11.15 Pause

11.15 Second session: Improving the labour conditions of platform work

Commission (Stefan Olsson) chairing, interventions by

- Trade Unions
- Employers' representations

12.25 Concluding remarks

Stefan Olsson, Director Employment, DG Employment, Social Affairs and Inclusion, European Commission

12.30 End of the meeting

2. Background note to the meeting



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR EMPLOYMENT, SOCIAL AFFAIRS AND INCLUSION

Platform Work

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Virtual meeting 17 November 2020, 9.30- 12.30

Background

New technologies are creating immense opportunities for businesses and workers, while posing equally immense challenges to the world of work as we know it. The rise of platform work⁵ exemplifies this conundrum well. While it provides greater flexibility and efficiency gains, lowers entry-barriers to labour markets and allows for additional income, it is also frequently associated with precariousness, low earnings, limited access to social protection, the opaqueness of algorithmic management, and uncertain jurisdiction for policy-makers wanting to address cross-border workflows.

– Platform work is on the rise everywhere in the world, including the EU. Around 11% of EU workers have provided services via platforms at least once. 1.4% do it as their main job.⁶ Overall, the online labour market has grown by 30% in the last 2 years⁷, while one third of EU platform work is estimated to be cross-border.

The growth of the phenomenon raises important questions on platform workers' employment status, their access to social protection, their right to collective representation and bargaining, their earnings, and their often unstable or poor working conditions.

The Covid-19 crisis sheds light on the instrumental role played by platform workers in ensuring business continuity for thousands of SMEs and consumers across the EU. Platform workers, notably those active in delivery, cleaning and household services, have been a very visible segment in this new economy.

⁵ All labour provided through, on or mediated by digital labour platforms in a wide range of sectors.

⁶ JRC report on the Colleem 2nd wave survey, based on 16 surveyed Member States.

⁷ Online Labour Index based on the five largest EN-language platforms worldwide, representing 70% of the market by traffic (Oxford University).

Executive Vice-President Vestager and Commissioner Schmit have been mandated to look at **ways to improve the working conditions of platform workers** and related EU-level initiatives are currently being prepared by the various Commission services.

More generally, the EU is tackling platforms and platform work challenges from different angles, from artificial intelligence, taxation, digital services in the single market, employment and social rights, to competition.

From an employment and social perspective, DG EMPL is preliminarily exploring six issues, of which one (collective bargaining) also touches upon EU competition law.

- **Employment status, including the notion of work dependency**

While some platforms opt for the worker status for their workforce, a majority of platform workers in the EU is classified as self-employed. A blurred distinction between worker and self-employed, often seen in platform work, causes uncertainty over rights, entitlements and applicable rules and has led to a number of court cases at national and European level.

- **Precariousness and working conditions, including health and safety**

There are challenges around the working conditions of platform workers in terms of e.g. transparency and predictability, protection of health and safety, working time, earnings, access to training, and transferability of rights. Addressing those challenges is complicated by the fact that working conditions vary significantly depending on the platform's business model (e.g. pay per task vs pay per hour; clients' ratings-led job-allocation vs platforms' algorithm-led job-allocation) and the type of work performed (e.g. on-location vs online; lower-skilled vs higher-skilled). For instance, lower-skilled on-location platform workers tend to face greater health and safety risks, as seen during the Covid-19 crisis.

- **Access to social protection**

Platform workers may have limited access to social protection as a result of their status of self-employed, eligibility requirements and the nature of platform work as a supplementary income. Some platform workers may secure access to social protection through other economic activity (main employment).

- **Cross-border issues, including the jurisdiction for policy action**

The cross-border character of some platforms has implications for the collection of taxes and social contributions, and potentially poses challenges to the application of EU law relating to freedom of movement, choice of jurisdiction and applicable law and social security coordination.

- **The transparency of algorithmic management**

Algorithmic management raises new challenges as 'black boxes' are used to manage workers. The decisions taken by the algorithms might lack transparency, human oversight and lead to unaccountable and potentially

discriminatory decisions. There are also potential issues with responsibilities for algorithmic outcomes.

- **Access to collective bargaining and representation**

Self-employed working through platforms may not have access to collective bargaining to improve their working conditions, since, from a competition law perspective, genuine self-employed are “undertakings” and therefore subject to the prohibition of Article 101(1) of the Treaty on the Functioning of the European Union. Beyond competition law issue, which is a subject of a separate Commission initiative and not covered in this exchange, there are practical difficulties in terms of representation of platform workers, such as ensuring smooth communications between them, as well as opportunities to meet (online or in person) to discuss issues related to representation and social dialogue.

In replacement of a High-Level Conference, DG EMPL has been organising (virtual) fact-finding discussions and exchanges with platform experts, academics, platform executives, platform workers and various stakeholders throughout 2020.

The 2021 Commission Work Programme⁸ indicates that a legislative proposal to improve the working conditions of people providing services through platforms will be presented with a view to ensuring fair working conditions and adequate social protection.

Social partners are in the forefront of shaping the digitalisation of workplaces and ways of working, and this includes platform work as it develops in the European Union.

The Commission intends to formally consult EU social partners on aspects of the Initiative falling under Article 153 of the Treaty, following the procedure foreseen in Article 154 of the Treaty early next year.

Possible questions for discussion:

- What is the assessment of challenges and opportunities related to platform work by social partners? Do social partners agree with the platform work challenges identified by the Commission?
- How do social partners see labour platforms’ business models and platform work evolve across the European Union?

⁸ COM (2020) 690 final, 19.10.2020

- What are the considerations of social partners with regard to the algorithmic management of platform work?
- How do social partners further envisage covering platform work in their social dialogue processes? What would be the interest for social partners at different levels to reach out to platforms and platform workers?

3. Participant list

[To be provided on 12/11]