Main messages

General remarks

- Uber, Bolt and FreeNow are all important players in Europe's platform economy, providing job opportunities to tens of thousands of people, as well as a service that is appreciated by consumers.

- The platform economy brings considerable benefits. We want to make sure that these benefits are reaped, spread equally and accessed fairly, while protecting labour rights and ensuring minimum social protection.

- Challenges remain, particularly as regards the correct classification of the employment status of many people working through platforms, as well as the transparency and accountability of algorithmic management and surveillance.

- The Commission is looking into these issues in the context of its forthcoming initiative on platform work, while keeping an eye on the development of courts’ relevant jurisprudence.

- The European Parliament has adopted its own initiative report with a huge majority (500 votes in favour), which goes in the same direction and there are high expectations across the political groups.

On consultations of social partners and stakeholders

- We have consulted extensively relevant stakeholders, not only the formal social partners' consultation but also with platforms and workers. [Between 24 February and 15 September, the Commission held a two-stage consultation of European social partners, on the direction and content of potential EU action.]

- This came after several fact-finding workshops organised throughout 2020 which directly involved platforms, including UBER, BOLT, FREE NOW, and couriers working through them.

- In September 2021, we organised two additional exchanges with platforms and representatives of couriers working through them. UBER and BOLT were again present and contributed to the debate.

On the Commission’s initiative

- The Commission is looking into ways to improve the working conditions in platform work and is planning to adopt a legislative initiative on 8 December 2021.

- Our objective is to ensure that people working through platforms are protected by minimum standards regarding working conditions and thus contribute to a sustainable development of the platform economy.

- We need to address issues, such as access to social rights already available to other workers, but also emerging phenomena such as algorithmic management.

- The cross-border dimension is particularly important if we wish to develop a strong digital single market. Determining the jurisdiction of where the activity takes place will have implications for the access to social rights.

- An EU-level legislation will help reduce the legal uncertainty now faced by platforms operating in different Member States.
**On the re-classification of people from self-employed to workers**

- The employment status of people working through platforms is one of the issues that the Commission is looking into.

- We are observing the courts’ growing jurisprudence on the matter. To date, there have been more than 100 court decisions and 15 administrative decisions in the EU, Switzerland and the UK. Many of these have resulted in a reclassification of the employment status.

- There is an observable trend towards reclassification. We have also noticed that reclassifications take place when evidence points to a misclassification as self-employed, despite a factual relationship of subordination.

- The Commission is aware that different platforms have different business models. In our legislative initiative we will aim to balance flexibility with improved protection for people working through platforms.

**Could the Commission envisage to introduce a European third category status for people working through platforms?**

- We do not intend to create a European definition of what is and what is not a worker.

- We need to take into account that Member States have different sensitivities on social policy.

- Based on the evidence gathered so far, a third category status does not seem to be the best approach to regulate platform work.

**Platforms are keen to provide more social protection and growth opportunities such as insurance and re-skilling programmes to its drivers and riders. However, we fear this may prompt their reclassification from self-employed to workers.**

- The Commission welcomes platforms’ initiatives to improve the working conditions of people on platforms.

- The reclassification of people from self-employed to workers is an empirical exercise, based on evidence and facts.

- So far, the courts have not based their rulings on reclassification on the provision of social protection or growth opportunities provided by platforms, but rather on the finding that the people concerned were in a position of subordination vis-à-vis the platform.

- The key question is how much control does a platform exert over a person’s provision of a service, be it directly or indirectly through the use of algorithms.

**How will the Commission avoid platforms from moving their businesses outside the EU/EEA?**

- The EU has the largest single market in the world, with nearly half a billion consumers.

- It is highly unlikely that platforms will quit the EU’s internal market, given its consumers’ strong purchasing power and the scale of its business opportunities.

- Companies will need to adapt their activities to the existing rules, otherwise they would risk to lose their access to this market.

- Without rules, the digital labour platforms would face legal uncertainty and obstacles to the scaling-up of their business. The sustainable growth of the platform economy with an EU legal framework, is also in the interest of companies.
What lessons can be drawn from the new Spanish law, which introduces an employment presumption for delivery platforms? Are you aware of Deliveroo’s subsequent withdrawal from Spain?

- We are aware that some platforms have reacted strongly to the adoption of the long-fought Spanish law on food-delivery riders in May 2021, which includes a rebuttable presumption and new algorithmic management rights.
- Deliveroo announced it will consider leaving the Spanish market. Glovo said it will hire more of its riders and will attempt to cooperate with others through modified self-employment contracts. UberEats aims to work with riders employed through a temporary work agency.
- The Spanish market represents barely 1% of Deliveroo’s global sales and it faces competition with other players like Glovo and Uber Eats. Deliveroo can exit the Spanish market at essentially no cost, given how small its order volume is compared to its other markets.
- At the same time, there are reports of new platform companies being set up in Spain, which operate with employment contracts, and for which the new law offers protection from unfair competition by those platforms that rely on false self-employment.
- Therefore, the main lesson from the Spanish example is that we are in need of an EU approach to platform work, which can ensure all people working through platforms in the Union have the same minimum rights.

Delivery Platforms Europe (an association representing Bolt, Deliveroo, DeliveryHero, Uber and Wolt) has been circulating a study commissioned to consultancy Copenhagen Economics on the effects of regulating platform work. The main highlight of the study is that flexibility would be lost as a result of employment status reclassification. How do you react to their findings?

- I am aware of this study being widely circulated within the Commission and have looked at its main findings.
- The study is of questionable independence and quality. To start with, it does not look at certain fundamental legal aspects of working conditions and access to social protection, which are key issues in the debate on platform work.
- Second, some parts of the study even contradict its overarching narrative. For instance, the study finds that 45% of couriers would be able to commit the same or a higher number of hours to work through platforms if they were bound by fixed schedules, and yet the main text of the study focuses on the 98% of those who would commit to fewer hours or none at all.
- The average amount of hours worked is very high, in particular for those persons for whom it constitutes a secondary activity – noting that Copenhagen Economics even excluded ‘idling’ hours. This puts into question the sustainability of some of the delivery work.
- The overall focus of the study is on flexibility, building on the assumption that an employment relationship does not allow for flexibility when the status of self-employed would. This is a fundamental misconception, and even the study itself acknowledges that sectors like hospitality and retail are full of people who are classified as workers and yet access shifts on a short-notice basis.
Meeting with Move EU (UBER, BOLT, FREE NOW) Online, 30 November 2021

**Background**

*Detailed platforms’ position on our legislative initiative*

- They oppose the rebuttable presumption and the reversal of the burden of proof.
- They underline that some people working through platforms want to keep their self-employment status.
- Platforms would be willing to offer better conditions, i.e. social protections, insurance, fair compensation within the self-employed model, but without the risk of reclassification.
- They call for more legal certainty and proposed an ethical charter as self-regulation.
- They agree that more transparency is needed for the algorithmic management, notably on processes, key deliverables, allocation of tasks etc. without exposing any business secrets.

*Trade Unions’ position on the platform work initiative*

- Trade Unions strongly object a third status for people working through platforms and any notion of platform work as a separate form of work necessitating specific rules regarding employment or social protection.
- They suggest the rebuttable presumption of an employment status with reversed burden of proof and a set of criteria to verify the status (e.g. ABC test from California), and maintain that such instrument should apply both to online and on-location platforms.
- They support the plan to introduce new rights related to the algorithmic management (e.g. information and consultation rights for workers and workers’ representatives, right to data protection and privacy, portability of data, etc.).
- Existing GDPR rights and the proposed Artificial Intelligence Act have to be made more specific, the proposed Artificial Intelligence Act too.
- They are in favour of the reporting obligations of platforms, clarification of the applicable social legislation of the country where the worker executes his work and underline the role of social partners in collective representation and social dialogue.
- Cross-border challenges: transparency, platform companies should fall under the same rules as other companies in cross-border situations.
- They support the Commission’s initiative on removing EU competition law obstacles to the collective representation of solo self-employed persons in a weak position, including those working through platforms.