Meeting with Deliveroo Online, 15 November 2021

Platform workers

Scene setter

Results of the second stage consultation of social partners

Position of 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. (Classification is necessary.)

- Suggest that 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.

- 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 need to be made more specific, the proposed AI Act too.

- 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.

Position of platform companies

- There are issues regarding working conditions, misclassification of employment status or access to information that should be tackled.

- However, it should happen at the national level, on a case-by-case basis and within the framework of the different national social and industrial relations systems.

- Opposition against a rebuttable presumption of employment coupled with a reversal of the burden of proof.

- Any possible action at EU level should be in line with two main principles
  - **Allowing genuine self-employed** to be able to fully benefit from the autonomy and freedom associated with their status;
  - **Support sustainable growth of platforms.**

- Recognise the need to improve the information and transparency of algorithmic decisions and data privacy of people working through platforms.

- The focus should lie on efficient implementation and enforcement of the legal regulations designed for the purpose (i.e. existing P2B Regulation, GDPR; and upcoming Artificial Intelligence Act) at the national level.

- Improve knowledge and clarity on the applicable rules for cross-border platform work.
Initiatives undertaken by Deliveroo

- In January 2020, some of the major digital labour platforms, including Uber, Deliveroo and Grab, signed the World Economic Forum Charter of Principles for Good Platform Work. Through this initiative, the platforms committed themselves to 8 key principles such as “Diversity and inclusion” and “Safety and wellbeing”.

- Since 2018, Deliveroo and Uber offer accident insurance as well as maternity benefits to its delivery riders worldwide. All workers are covered, subject to having recently been active on the App. The insurance programme is free for workers. It is not clear how well informed workers are about these schemes.

- Both, Uber and Deliveroo, recently started offering free online courses to their workers in France, UK in the EU. Uber has restricted this offer to loyal drivers with good ratings, and the access to the programme has to be renewed every 3 months. Alongside the offer of free online courses for all riders, Deliveroo is creating scholarships to give away a hundred bachelor's degrees that only riders can apply for (article). In France, they will also support riders in their entrepreneurial endeavours (article). The idea behind these offers is the recognition that workers do not see Uber or Deliveroo as long-run career options.

- In November 2019, Deliveroo announced the launch of an initiative to promote dialogue with riders in France, the so-called “Forum des Livreurs” involving elected representatives of Deliveroo riders as well as members of the company management. In addition, Deliveroo launched a consultation, which will run until February 2020 to get ideas for a Code of Conduct (article).

Lines to take

On the consultation of stakeholders

- Everyone concerned by our upcoming legislation needs to be heard.

- The Commission has had extensive exchanges with stakeholders, to help us define the details of the EU legislation to be presented by the end of this year.

- Beyond the mandatory social partners’ consultation, we held two consultation meetings with platform companies, including Deliveroo, and platform workers’ associations, on 20 - 21 September.

On working conditions

- An increasing number of judges in many countries concluded that an employment relationship exists between platform workers and platforms, based in particular on the degree of control, notwithstanding the choice of contractual terms.

- The objective of our upcoming legislation proposal is to ensure that people working through platforms are protected by minimum standards regarding working conditions.

- Greater clarity on what employment and self-employment entails in a platform work context would be beneficial for workers as well as for platform companies and their sustainable development.

- Self-employment model has its place in platform work, as it may be the preferred option for some people.

- But, the self-employed should be able to enjoy all the autonomy and entrepreneurial opportunities that such a status should be associated with.
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**On algorithms**
- We are looking at ways to ensure that algorithms are deployed in a way that is understandable and respectful of labour rights.
- This transparency obligation should not mean revealing any data that contains commercial secrets or is protected by intellectual property rights that could put a platform in a disadvantaged position vis-à-vis its competitors.

**On collective bargaining of self-employed from the perspective of competition law**
- The role of a competition policy is not to address social challenges faced by self-employed individuals.
- However, the EU competition rules should not prevent self-employed in a weak position from engaging in collective negotiations to improve their working conditions.
- At the same time, any action in this field must ensure that consumers and small and medium-sized enterprises keep on benefitting from competitive prices and innovative business models, including in the digital economy.

**Defensive**

**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 and workers. The companies need to adapt their activities to the existing rules, otherwise they would risk to lose their access to this market.
- Platforms, as other companies, know that **Europe is a place of innovation as well as a Union of values, where our strong social model is cherished** as much as the benefits of new technologies and cross-border freedoms.
- The key issue here is **finding a balance** between reaping the opportunities of the platform economy and ensuring that the social rights of people working in it are the same as in the traditional economy.
- Without rules, the digital labour platforms would face **legal uncertainty** and obstacles to the scaling-up of their business. Sustainable growth of platform economy (through the legal framework) is also in the interest of the various companies.
- The initiative will be looking into ensuring **dignified, transparent and predictable working conditions** and adequate social protection for people working through platforms.

**Does the Commission have enough competence as regards platform work?**
- The **Treaties give EU to power to set minimum standards** by way of directives in defined areas, such as working conditions and information and consultation of workers (Article 153 TFEU). These competences are very relevant for the area of platform work.
- Should the our legislative proposal also cover genuine self-employed workers, other legal bases in the area of internal market will need to be considered.
- Whether work is delivered online (digitally) or offline (on-location), many digital labour platforms have a **cross-border dimension**.
- Rules applying offline – **from single market rules, consumer protection, to intellectual property, taxation and workers’ rights** – also have to apply online
- **EU action can support Member States** to ensure fair conditions and opportunities in platform work. It can also bring clarity on applicable rules to help explore the full potential of digital labour platforms in innovation and employment.
Background

Example of engagement with platform workers

Platforms in Germany, Sweden and Austria, with the assistance of social partners, have started a particularly interesting self-regulation effort collectively known as the German Crowdsourcing Association. The platforms voluntarily abide by the Crowdsourcing Code of Conduct. If people working through platforms feel their platforms have violated the Code, an ombudsman office, which is composed of platform representatives, people working through platforms representatives, and a labour judge serving as neutral arbiter, handles disputes, so far often due to non-payment for services rendered.¹

National court cases regarded the status of platform workers

Member States differ in their legal definition of employees and self-employed.

As a result, cases at the national or regional level, in particular targeting on-location services, resulted in mixed rulings, and courts have not brought much clarity into the debate surrounding people working through platforms’ employment status.

Currently, more than 100 judgments and administrative decisions on the employment status of people working through platforms have been identified in ten Member States, as well as in the United Kingdom and Switzerland.

Even though European case law has often resulted in mixed rulings, some general observations can still be made:

- There has been a trend towards the reclassification of drivers and riders/couriers, although conclusions for other types of platform work is premature.
- All five cases that have reached the highest-instance courts in Member States have resulted in the reclassification of the employment status.

The Deliveroo company

- London-based food delivery company, founded in 2013 by William Shu (current CEO) and Greg Orlowski.
- The biggest shareholder is Amazon with a stake.
- Deliveroo operates in over towns and cities across markets, including
- It has over worldwide and Deliveroo users.
- Deliveroo generated revenue in 2020, a increase year-on-year.
- Deliveroo also reduced its net loss in 2020, from in 2019 to million in 2020.
- Deliveroo owns and operates an online food delivery platforms which allows users to order food from local restaurants.
- Deliveroo partnered with supermarket brands including Waitrose, Sainsbury’s, Morrisons, Aldi, and Carrefour to grow its on-demand grocery offering amid the pandemic.
- Its subsidiary operation, Deliveroo Editions, focuses on growing a network of ghost kitchens—kitchens located off-site from restaurants for the preparation of delivery-only meals.

¹ IG Metall (2019)
• In April 2021, Deliveroo was listed in London and lost of its value on the first day of its IPO Bloomberg due to various reasons including, workers’ exploitation, dual-class share structure, uncertainty, and more.

• Delivery Hero, the German food delivery giant, purchased a stake in Deliveroo in August 2021, worth about in Deliveroo in August 2021, worth about

Withdrawal from Spain and Germany

• On 31 July 2021 Deliveroo announced to end its operations in Spain two months after Spain passed a new law forcing delivery companies to classify their riders as employees. Deliveroo had said that these new rules would threaten their viability. Deliveroo is facing a fierce competition in the Spanish market by Glovo and Just Eat. Spain accounted for less than of its overall transaction values of Deliveroo in the first half of 2021.

• Deliveroo pulled out of Germany in August 2019 as a result of cut-throat competition from Dutch rival Takeaway.

Most recent court cases

• The Amsterdam Appeals Court, in a decision of February 2021, upheld the Amsterdam Civil Court’s assessment of January 2019 that Deliveroo riders need to be qualified as employees:
  - The decision gives much space to elements which basically indicate self-employed work performance and the circumstances that put them into perspective.
  - Riders are not obliged to work and freely choose their working hours. However, this freedom is significantly restrained by an incentive system with low basic rate and a complex bonus system to steer riders’ activity in terms of time, location etc.;
  - There is a genuine substitution option with demonstrated practical use. However, this subject to Deliveroo’s permission and a proof of the replacement’s identity and work permit.
  - There is no obligation to work with material provided by Deliveroo. However, there is a strong incentive to do so.

• In January 2021, the Court of Bologna ruled that the algorithm used by delivery platform Deliveroo to rank riders and allocate deliveries is discriminatory. According to the court, the algorithm’s failure to take into account the reasons behind a cancellation amounts to discrimination and unjustly penalizes riders with legally legitimate reasons for not working. Deliveroo was ordered to pay EUR 50,000 to the suing parties.

• In January 2020, a case concerning Deliveroo was brought before the Brussels Labour Court by the Belgian Public Prosecutor. This comes after a lengthy investigation launched in 2017 with more than 100 testimonies of Deliveroo couriers into Deliveroo’s decision to employ its riders as independent contractors in 2017. The company will also face the accusation of having missed payments to the national social security office.

• A UK court in June 2021 found that Deliveroo employees should be classified as self-employed. Earlier this year the UK Supreme Court ruled that Uber drivers should be treated as employees.