



Commissioner Schmit
Jobs and Social Rights

Bilateral with William Shu, CEO of Deliveroo

30 September 2021, 14:00 – 14:30
Room: CAB room (VTC)

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Scene-setter

- On 30 September you will meet with Mr William Shu, CEO of Deliveroo to discuss the upcoming initiative on platform work.
- Deliveroo has expressed on several occasions its disagreement with the Commission's plans to introduce rebuttable presumption of employment relationship.
- Last time you met with Deliveroo during the Meeting with digital labour platforms on 20 September.

Line to take

[On the Commission's initiative]

- As you know, the Commission is working on an **initiative to improve the working conditions in platform work**.
- We have concluded the **two-stage social partners' consultation** on platform work and we just submitted the Impact Assessment to the Regulatory Scrutiny Board.
- We strongly believe that everyone concerned by the initiative needs to be heard.
- Therefore the Commission has embarked upon extensive exchanges with different stakeholders, to help us define the details of the EU initiative to be presented by the end of the year.
- On 20 & 21 September, we held two consultation meetings with platform companies and platform workers' associations where we collected their views on the direction of EU action.
- Deliveroo was also present to the discussions (represented by Ronan Breen), so thank you for your insights and contributions.
- Our objective is to ensure that those working through platforms are protected by minimum standards regarding working conditions and thus contribute to a sustainable development of the platform economy.
- It is not our intention to deny people access to genuine self-employment opportunities. At the same time, many court rulings in the last few years have shown that there are certain instances, in which the contractual description of the working relationship in platform work might not represent the factual relationship. This has an impact on platform workers working conditions and can lead to uncertainty, hindering the development of the platform economy in the EU.

- The initiative also looks at phenomena that are totally new such as algorithmic management. The fact that a platform workers' management is operated by an algorithm or a human being should not impact his or her level of rights.
- 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 access to the access to social rights.

Defensives

How will the Commission avoid platforms from moving their businesses outside the EU/EEA as they will be asked to take more responsibility for their workers?

- One thing is clear: the EU has the largest single market in the world, with nearly half a billion consumers and workers.
- 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.
- As Commission President von der Leyen said: new forms of work must come with equal rights. 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?

- Whether work is delivered online (digitally) or offline (on-location), many digital labour platforms have a cross-border dimension.
- The digital age opens up great opportunities for businesses, consumers and citizens. Platforms can make it possible for people to find new jobs and explore new business ideas, and support working across borders.
- But we need to make sure that these new forms of work organisation are sustainable and fair. 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.

What was the result of the second stage consultation of social partners?

Trade Unions

- Trade unions generally agree with the objectives identified by the European Commission to ensure decent working conditions for people working in platform companies. More specifically, trade unions call on the Commission to propose a Directive based on Article 153(2) TFEU that provides for the rebuttable presumption of an employment status with reversed burden of proof and a set of criteria to verify the status, and maintain that such instrument should apply both to online and on-location platforms. With regard to the criteria to verify the employment status, ETUC has suggested own set of criteria based on ECJ decisions; the ABC test from California was also proposed as a possible example (ETF).
- Additionally, trade unions support the plan to introduce new rights related to the algorithmic management, notably information and consultation rights for workers and workers' representatives, exclusion of automated firing, right to data protection and privacy and portability of data. They consider existing GDPR rights need to be made more specific in the context of platform work, and that the proposed AI Act does not address the specificity of AI uses in employment (ETUC). Finally, trade unions are also 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.
- Trade unions strongly oppose a third status for people working through platforms. For some (ETUC, Eurocadres and ETF), the recognition of platforms as employers with sector-specific obligations is equally important and necessary as the clarification of the employment status of people working through platforms. ETUC and Eurocadres would like to see the upcoming initiative extended to all non-standard forms of work.

Employers' organisations

- Employers' organisations agree with the overall objective of the Commission. They agree that there are issues e.g. regarding working conditions, misclassification of employment status or access to information that should be tackled. However, they prefer that this is done at the national level, on a case-by-case basis and within the framework of the different national social and industrial relations systems. More specifically, employers' organisations expressed concerns about the rebuttable presumption of an employment relationship, as well as specific criteria to verify the employment status established at EU level. They maintained that a self-regulatory approach by platforms themselves, combined with a dedicated forum of key

actors developing guidance on determining employment status, would be the right approach.

- Employers' organisations recognize the need to improve the information and transparency of algorithmic decisions and data privacy of people working through platforms. They however consider that the existing (P2B Regulation, GDPR) or upcoming (AI Act) legal instruments are designed for the purpose. The focus should therefore lie on efficient implementation and enforcement of these regulations at the national level. The need to improve knowledge and clarity on the applicable rules when it comes to cross-border platform work was also recognized by employers' organisations. Apart from enforcement of existing rules, a register or reporting obligations by platforms was proposed as a possible solution by some (SGI Europe).
- Employers' organisations further highlighted that any possible action at EU level should be in line with two main objectives: allowing genuine self-employed to be able to fully benefit from the autonomy and freedom associated with their status and support sustainable growth of platforms; it should not hamper the development of innovative business models.

Background

Deliveroo views on the EU initiative

At the meeting with digital labour platforms on 20/9 attended by Deliveroo representative Ronan Breen (Head of EU Public Affairs) the following views were expressed by the participants:

- Platform companies said that they share the overall goal of the Commission, which is to ensure decent working conditions of people working through platforms.
- They were however opposing the proposed means to achieve this objective, notably the rebuttable presumption and the reversal of the burden of proof.
- They pointed to the variety of business models and a general desire of people working through platforms to keep their self-employment status.
- They argued that the platforms would be willing to offer better conditions, i.e. social protections, insurance, fair compensation within the self-employed model, without the risk of reclassification.
- The participants called for more legal certainty, some of them proposed an ethical charter as a self-regulation tool.

- Regarding the algorithmic management, they agreed that more transparency is need, notably on processes, key deliverables, allocation of tasks etc. without exposing any business secrets.

Company

London-based food delivery company, founded in 2013 by William Shu (current CEO) and Greg Orlowski.

Deliveroo operates in over 500 towns and cities across 12 markets, including Australia, Belgium, France, Hong Kong, Italy, Ireland, Netherlands, Singapore, Spain, United Arab Emirates, Kuwait, and the UK.

It has over 2,000 'employees' worldwide and there are six million Deliveroo users, mostly in the UK. Deliveroo owns and operates an online food delivery platforms which allows users to order food from local restaurants.

Furthermore, the company 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.

Key statistics

Deliveroo generated £1.2 billion revenue in 2020, a 54 percent increase year-on-year.

Deliveroo also reduced its net loss in 2020, from £317 million in 2019 to £223 million in 2020.

In April 2021, Deliveroo was **listed in London** and lost 31% 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. The biggest shareholder is Amazon with a 16% stake.

Delivery Hero, the German food delivery giant, purchased a stake of 5.09% in Deliveroo in August 2021, worth about £342mn (\$474mn).

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 made no mention of that in its statement but the company has previously said the new rules threaten their viability. Deliveroo is facing a fierce competition in the Spanish market by Glovo and Just Eat. Deliveroo said its decision to withdraw from Spain is subject to a full consultation with affected employees and riders, which began in September and will take about a month. It added that Spain accounted for less than 2% its overall transaction values 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.

Recent court cases

A **UK court** in June 2021 found that Deliveroo employees should be classified as self-employed. However, UK supreme court earlier this year ruled Uber drivers should be treated as employees.

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 €50,000 (~\$61,400) to the suing parties.

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](#)).

CV of Mr William Shu



William Shu is a businessman and the co-ounder and CEO of Deliveroo.

Before founding Deliveroo, Shu worked as an analyst for S.A.C. Advisors and ESO Capital, and as an investment banker at Morgan Stanley.

He founded Deliveroo in 2013 with childhood friend and SW engineer Greg Orlowski. Shu had the idea to start Deliveroo while working in Morgan Stanley's London office and seeing the lack of delivery options while working late hours. Shu worked as the company's first delivery person, delivering food every day for the first eight months in order to understand the customers experience.

Deliveroo operated in London for the first two years, growing via word of mouth. In 2015 the company expanded internationally to Paris, Berlin, and Dublin.

Shu famously continues to work shifts as a Deliveroo driver, delivering food around London every few weeks.

Annex

Summary of court cases with Deliveroo

Date	Court/administrative body	Platform	Classification	Consequences	Instance	Appeal	Case No./link
Belgium							
23/2/2018	Commission Administrative de règlement de la relation de travail (CRT) [Administrative Commission for the Regulation of Labour Relations]	Deliveroo	employee	reclassification for social security purposes required	1st	overruled for procedural reasons by the the Labour Court on 3/7/2019	116 – FR – 20180209
9/3/2018	Commission Administrative de règlement de la relation de travail (CRT) [Administrative Commission for the Regulation of Labour Relations]	Deliveroo	employee	reclassification for social security purposes required	1st	-	113 – FR – 20180123
3/7/2019	Tribunal du travail francophone de Bruxelles [Brussels Labour Court]	Deliveroo	-	invalidation of the CRT's decision of 9/3/2018	2nd	final decision pending	R.G. no 18/2076/A
Spain							
1/2018	Inspección de trabajo [Labour Inspection]	Deliveroo	employee	retroactive imposition of social security contributions	1st		non-published decision
1/6/2018	Juzgado de lo Social de Valencia [Valencia Social Court]	Deliveroo	employee	retroactive entitlements in line with contract for indeterminate duration	1st		244/2018
10/6/2019	Juzgado de lo Social de Valencia [Valencia Social Court]	Deliveroo	employee	retroactive imposition of social security contributions	1st		197/2019

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11/6/2019	Juzgado de lo Social de Barcelona [Barcelona Social Court]	Deliveroo	employee	-	1st		193/2019
22/7/2019	Juzgado de lo Social de Madrid [Madrid Social Court]	Deliveroo	employee	retroactive entitlements in line with contract for indeterminate duration	1st		188/2019
30/7/2019	Juzgado de lo Social de Barcelona [Barcelona Social Court]	Deliveroo	employee	-	1st		213/2019
17/1/2020	Tribunal Superior de Justicia de Madrid [Madrid Appeals Court]	Deliveroo	employee	-	2nd	pending appeal brought by Deliveroo before the Supreme Court	40/2020
27/4/2020	Juzgado de lo Social de Zaragoza [Zaragoza Social Court]	Deliveroo	employee	retroactive imposition of social security contributions	1st		123/2020
16/6/2020	Tribunal Superior de Justicia de Cataluña [Catalonia Appeals Court]	Deliveroo	employee	-	2nd		2557/2020
7/9/2020	Juzgado de lo Social de Barcelona [Barcelona Social Court]	Deliveroo	employee	reinstatement and retroactive entitlements in line with contract for indeterminate duration	1st		723/2020
18/11/2020	Juzgado de lo Social de Barcelona [Barcelona Social Court]	Deliveroo	employee	retroactive imposition of social security contributions	1st		259/2020
12/1/2021	Juzgado de lo Social de	Deliveroo	employee	retroactive imposition	1st		not yet

1	Barcelona [Barcelona Social Court]			of social security contributions			published
France							
5/9/2016	Conseil de Prud'hommes de Paris [Paris Labour Court]	Deliveroo	self-employed	-	1st	upheld by the Paris Appeals Court on 9/11/2017	RG n° F15/0164
9/11/2017	Cour d'appel de Paris [Paris Appeals Court]	Deliveroo	self-employed	-	2nd	-	RG n° 16/12875
4/2/2020	Conseil de Prud'hommes de Paris [Paris Labour Court]	Deliveroo	employee	entitlements in line with employment contract of indeterminate duration; indemnity for wrongful dismissal	1st	pending appeal brought by Deliveroo	RG n° 19/07738
31/12/2021	Tribunale di Bologna [Bologna Civil Court]	Deliveroo	employee or third category (lavoro etero-organizzato)	applicability of OSH standards	1st		RG n. 2949/2019
10/1/2021	Tribunale di Firenze [Florence Civil Court]	Deliveroo	self-employed or third category (lavoro etero-organizzato)	non-applicability of prohibition of anti-union behaviour	1st		RG n. 2425/2020
The Netherlands							
23/7/2018	Rechtbank Amsterdam [Amsterdam Civil Court]	Deliveroo	self-employed	-	1st	-	CV EXPL 18-2673
15/1/2019	Rechtbank Amsterdam [Amsterdam Civil Court]	Deliveroo	employee	applicability of the collective agreement for the road transport and haulage sector	1st	upheld by the Appeals Court on 16/2/2021	CV EXPL 18-14763

				(separate judgment: CV EXPL 18-14762)			
16/2/2021	Gerechtshof Amsterdam [Amsterdam Appeals Court]	Deliveroo	employee	-	2nd	pending appeal brought by Deliveroo before the Hoge Raad [Supreme Court]	200.261.051 /01