



## Meeting with Amazon European VP, Jorrit van der Meulen

29/10/2021 at 10:00 [Luxembourg, 7 Rue du Marché-aux-Herbes]

<b>Briefing coordination:</b>  [Redacted]	<b>Main contributors:</b>  [Redacted]
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## Scene setter

On 29/10/2021 from 10:00 to 10.30, you will meet with Amazon European **VP, Jorrit van der Meulen, in Luxembourg.**

They requested the meeting to discuss their continuing investment in Europe. They also invited you to visit an Amazon Fulfilment Centre, to see their operations at first hand - and to learn about Amazon's job creation and skills programs. But this meeting has been accepted instead.

This meeting could be an occasion to:

- Highlight the need to address algorithmic management,
- Reiterate our commitment to social dialogue,
- Invite Amazon to join the Pact for skills
- Acknowledge the importance of Amazon: workforce of more than 175,000 full-time employees in Europe. In Luxembourg, Amazon has grown from fewer than 300 people in 2011 to more than 3,000 and plans to create some 600 new jobs in Luxembourg this year (grow by 20%).

## Speaking points

### ***[Algorithmic management at Amazon]***

- Algorithms are increasingly used to **manage** workers. We see this happening predominantly in **platform work**, but algorithmic management is also spreading to more 'traditional' sectors, such as **warehousing and logistics**.
- As a global online retail leader, you are well **aware** of such developments.
- New technologies can lead to innovation, boost productivity and support job creation. Still, **algorithmic management** also brings distinct challenges that, unless addressed, could **undermine** existing labour rights and protections.
- **Challenges** include increased psychosocial **stress** (as people feel constantly watched and evaluated) or lack of understanding how one's behaviour influences decisions taken by the algorithm.
- At **European level**, we already have existing and proposed regulations that address certain aspects of the use of artificial intelligence in the work context. These include:
  - **the General Data Protection Regulation** and
  - the proposed **Artificial Intelligence Act**, which address fundamental challenges on the use of AI in the world of work – such as the risk of discrimination and the need to protect personal data.

### ***[Platform work]***

- The upcoming initiative on improving the **working conditions** in platform work will aim to create a level playing field for platforms to support their sustainable growth, but not at expense of people (100+ court cases). It will focus on **three** core issues:

1. employment status,
  2. algorithmic management and
  3. cross-border transparency (i.e. information to administrations/workers).
- Commission envisages adoption on 8 December.

### **[Social dialogue]**

- The rights of workers, including their right to freely organise themselves **in trade unions** are at the core of the European social model. The EU and particularly the European Commission attaches **a great importance** to social dialogue.
- This is also **reflected under Principle 8 of the European Pillar of Social Rights**, our European social agenda.
- **The Commission calls** on the Member States, on social partners and all stakeholders concerned, including employers, to engage into **genuine dialogue and work together**.
- On various occasions, our analysis has underlined **the benefits of strong social dialogue**, including collective bargaining with sound institutions and capable social partners. They are the best placed to discuss and find solutions that work for both workers and employers, as shown by numerous examples.
- We will continue to **monitor** the situation at EU level, including in the context of international relations, while keeping in mind the national competences as well as the principle of autonomy of the social partners.

### **[Skills]**

- The recent **Action Plan on the European Pillar of Social Rights** sets the target that by 2030, 60% of adults should participate in training every year. **But we are not** even at 40%. We need a fresh approach to up- and reskilling in Europe.
- The Commission, as part of its Skills Agenda, has put forward a **Pact for Skills**, where Public and private organisations join forces and take concrete action for up and reskilling.
- The Pact includes **individual commitments**, such as new training opportunities for employees, as well as **large-scale partnerships** in the 14 industrial ecosystems of the EU industry strategy
- I would like to **invite Amazon to join the Pact for Skills**
  - either by committing individually to the charter of the Pact and making specific commitments for up and reskilling
  - or by contributing to the establishment of a skills partnership in the digital ecosystem or, better still, by doing both.
- From the first quarter of 2022 the Commission will provide **support services** to help form and consolidate those large-skills partnerships and to facilitate networking and learning of members of the Pact to deliver on their commitments.

- Later this year, we will present a proposal for **individual learning accounts**, an initiative which places the individuals in the driving seat of their learning pathway.
- This is not simply a question of more money for training. We also need to help learners find the **right** training, as well as access guidance and support, and get recognition for their learning.
- We cannot reach results without **employers**. You know what kind of training is needed in your field and you should be involved in the design and delivery of these new schemes.

## **Defensives**

### ***Why do we need further action, as the proposed AI Act and GDPR solve all identified algorithmic management challenges?***

- Some parts of our social life might remain not covered by the AI Act proposal. It is essentially a product safety legislation, which introduces safeguards before AI systems are placed on the market, put into service and used.
- Its logic cannot take into account the specificities of employment relations. For one, it does not reflect at all the importance of social dialogue in the world of work.
- It also cannot be the basis for specific rights and rules in employment relations, which have been established over decades.
- Regarding the GDPR, it offers some protections, but we see the potential need to build upon those.

### ***Do you intend to focus algorithmic management provisions on platform workers only, or more broadly on the world of work?***

- The President's mandate for this Commission is clear – we need to improve the working conditions of people working through platforms.
- Tackling algorithmic management challenges is an integral part of our work to deliver on this commitment.
- Some stakeholders tell us we should tackle algorithmic challenges more broadly and look beyond platform work.
- I believe this might be premature. It is true that algorithmic management has started to spread, but it is still largely predominant in the platform economy.
- We need to focus our efforts and tackle problems where they have been identified, without stifling the innovation potential of new technologies.

## Background

### Platform work state of play

Second phase of consultation of EU social partners ended on 15 September. Both sides agreed on the challenges, but differ on what should be done. Trade unions favour action at EU level, while employers insist on national action and better enforcement of existing rules.

EP own-initiative report on platform work adopted on 15 September advocates strong action at European level, and in particular a rebuttable presumption of employment status for people working through platforms.

Impact assessment process is ongoing (Regulatory Scrutiny Board meeting 27 October).

## Social dialogue

### Legal basis

- The Treaty on the Functioning of the European Union recognises and promotes the role of social partners at its level [provisions of Article 152].
- **The Charter of Fundamental Rights of the European Union** recognises:
  - the freedom of assembly and association [under Article 12], and
  - the right of collective bargaining and action [at Article 28].
- The Charter applies to Member States **when they implement EU law** [pursuant to Article 51(1) of the Charter].
- Right of association, the **right to strike and the right to impose lockouts fall outside the competence of the EU** in the field of social policy [Article 153 (5) of the Treaty].

### International level

- The freedom of association and the right of workers to organise themselves are enshrined in:
  - **the Freedom of Association and Protection of the Right to Organise Convention**, 1948 (No. 87) and
  - the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) of the **International Labour Organisation (ILO) ratified by all EU Member States**. The standard supervisory system of the ILO may assess compliance by a Member State and other ILO members with these international labour standards, recognised internationally as human rights instrument.

## Amazon

In **Europe**, Amazon has a workforce of more than **175,000 full-time employees**. It has created around 40,000 new permanent roles in Europe in 2021.

In **Luxembourg**, Amazon has grown from fewer than 300 people in 2011 to more than **3,000**. Amazon is planning to create some 600 new jobs in Luxembourg this year (grow by 20%).

The Amazon EU Operations network consists of **69 fulfillment centres** in Germany (31), France (10), Spain (10), Italy (8), Poland (8), Slovakia (1) and Czechia (1).<sup>1</sup>

Since 2010, Amazon has **invested** more than **€78 billion** in Europe.

### **Digital control tools and workers' rights – the Amazon example**

In September 2020, media reported that Amazon was hiring two Intelligence Analysts to work in an Amazon facility located in the Phoenix, Arizona area of the United States. The purported role of these analysts was to monitor (and presumably prevent) various perceived threats to Amazon including organised labour. Another report then followed on how Amazon purportedly monitored their delivery drivers by accessing private Facebook groups. The names of workers and their comments had been purportedly logged by Amazon employees without regard to right to privacy.

The media reports generated much backlash, including in the EU – you received, together with Commissioner Breton, two letters of protest against Amazon by social partners: from the European Transport Workers' Federation and from Uni Europa.

It is important to note that the use of AI systems has not been implicated directly in the above example of Amazon purportedly spying on its workforce. It is nevertheless a fair assumption that automated systems would be implicated if the purported practices were to be applied more broadly across company, given the size of its global workforce (1.3 million as of July 2021) and its leadership position in developing and implementing AI systems.

In fact, Amazon has been at the forefront of developing AI-powered software and digital tools to optimise the organisation of working processes in its warehouses worldwide. For example, in the beginning of 2018, the company was granted two patents for a wristband that can pinpoint the location of warehouse employees and track their hand movements in real time. The proposed system includes ultrasonic devices placed around the warehouse, the wristbands themselves, and a management module that oversees everything. The wristbands also feature an ultrasonic unit used to track where the worker is in relation to any particular inventory bin. If their hands are moving to the wrong item, the bracelet vibrates.

While there are no indications that the wristbands have been put in practice, such developments exemplify the potential of AI-powered digital tools to increasingly monitor and control workers and their environment.

The company (through Amazon Web Services) is also a world market leader in the provision of cloud services worldwide, which has important implications about its access to data to train and develop world-leading AI solutions.

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<sup>1</sup> [Amazon Distribution Network Strategy | MWPVL International](#)

## **GDPR (JUST)**

[Two of the main requirements under the GDPR are lawfulness and transparency. Lawfulness means that employers need to be able to base their processing on one of the grounds listed in Article 6 GDPR. Examples are processing that is required by law (e.g. documentation to be kept for compliance with tax rules) or that is necessary to perform their contract with their employee (e.g. to pay the salary).]

Article **88 GDPR** contains a specification clause allowing Member States to **provide, by law or collective agreement, more specific rules in the employment context**. These rules may cover the performance of the contract of employment, including management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, and protection of employer's or customer's property. These national rules set out in detail what employers can and cannot do.

**Transparency means that employers have to tell their employees how they will process their data** – which data, what for, who gets to see it, for how long will it be kept. Unless there is a specific legal authorisation, e.g. in the national labour rules mentioned, covert processing is not allowed.

**Spain** has not formally notified their national laws implementing GDPR. A new organic Law 3/2018 was adopted on 5 December 2018 on the protection of personal data and safeguarding of digital rights that contains several relevant provisions with to data protection in the context of employment.

## **COMP**

In the first, data-related case, the Commission addressed a **Statement of Objections** to Amazon in November last year. Amazon submitted its response to that Statement of Objections on 31 March 2020. Based on the Commission's preliminary fact-finding, Amazon Retail's automated systems and employees appear to be using competitively sensitive and publicly non-available information about marketplace sellers, their products and transactions on the marketplace, to inform Amazon Retail's own business decisions. Such cross-usage of sensitive information about its retail competitors may distort online retail competition, and lead to the marginalisation of competing online retailers. The Commission (DG Competition) is currently assessing Amazon's response to those preliminary findings.

In the second case, the preliminary investigation is still on-going. It focuses on the preferential settings that may apply to Amazon Retail's offers, and offers of sellers that use Amazon's fulfilment (logistics and delivery) services, in the selection of the winner of the "**Buy Box**", and in the selection of **Prime** eligible sellers and offers.

The **Buy Box** prominently shows on Amazon's website the offer of one single seller for the chosen product, with the possibility for the consumer to directly purchase it. The very same product may be sold by many other sellers, but the offers of those sellers are only visible after further clicks to the listing page. Winning the Buy Box is essential for the marketplace sellers, as a vast majority (around 85%) of transactions are channelled through the Buy Box. Competition on the Amazon platform is thus heavily impacted by the way sellers are selected to win the Buy Box.

**Prime** consumers are also very important to sellers, not only because an ever-increasing number of Amazon consumers subscribe to Amazon's Prime programme, but also because Prime consumers typically spend significantly more money on Amazon than other consumers. The investigation is assessing whether access to Prime consumers is biased in favour of Amazon Retail and sellers that use its logistics and delivery services.

## **CV - Jorrit van der Meulen**



Mr Jorrit Van Der Meulen is currently

- Vice President, Amazon Europe Retail at Amazon Europe
- Vice President, Europe at Amazon International

Jorrit was Vice President for Zillow.com. He served as Vice President, Content Sites and Head of Devices for Amazon.

He has a Bachelor of Arts from University of Washington in 1988 and a Master of Business Administration from Harvard Business School in 1998.