



**European Committee
of the Regions**

SEDEC-VI/051

137th plenary session, 4-5 December 2019

OPINION

Platform work – local and regional regulatory challenges

THE EUROPEAN COMMITTEE OF THE REGIONS

- recognises that the rise of digital platform working can be explained by the fact that it offers a range of advantages for both employers and workers given the need for a flexible labour market;
- recognises, however, that the rapid proliferation of digital labour platforms in recent years has raised a number of questions about the functioning and the benefit deriving from the reorganisation of work brought about by these platforms, together with the associated risks;
- calls for fundamental labour and social provisions to be extended to the platform economy and its workers, highlighting the need to address the social effects of the Digital Single Market at European level;
- maintains that a comprehensive framework is needed to ensure the social protection and social rights of all workers (from health and safety to access to lifelong learning), in order to create a level playing field for the platform economy and the "traditional" offline economy, based on the same rights and obligations for all interested parties.

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Reference document

Opinion of the European Committee of the Regions – Platform work – local and regional regulatory challenges

I. POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS

Introductory comments

1. emphasises that the digital platform economy is an integral part of the European economy and its economic and social importance will continue to grow significantly in the future;
2. points out that the platform economy is described by the European Commission as "business models where activities are facilitated by collaborative platforms"¹. According to the same source, collaborative platforms create an open marketplace for the temporary usage of goods or services often provided by private individuals. The collaborative economy involves three categories of actors: (i) service providers, who share assets, resources, time and/or skills and may be private individuals providing services occasionally or service providers operating in a professional capacity; (ii) users of such services; and (iii) intermediaries that, via an online platform, connect service providers with final users and facilitate trade between them ("collaborative platforms");
3. also points out that the OECD defines the platform as a "digital service that facilitates interactions between two or more distinct but interdependent sets of users (whether firms or individuals) who interact through the service via the Internet"²;
4. points out that the use of digital platforms to coordinate all types of economic activity is growing with the exponential spread of internet use;
5. recognises that the rise of digital platform working can be explained by the fact that it offers a range of advantages for both employers and workers given the need for a flexible labour market. According to Eurofound³, platform work also brings a number of opportunities to the labour market, such as easy labour market access, source of additional income, stimulant for self-employment, working time flexibility and preventing discrimination of workers based on ethnicity, disability but also geographic situation. Furthermore, as highlighted by the JRC⁴, since many platform workers are from vulnerable groups of jobseekers (young people, women, people from remote regions), platform work can positively influence labour market integration

¹ Commission Communication *A European Agenda for the Collaborative Economy* (COM(2016) 356 final)

² *OECD Employment Outlook 2019*

³ Eurofound, 2019, Platform work: Maximising the potential while safeguarding standards? https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef19045en.pdf

⁴ JRC, 2018, Platform Workers in Europe https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157_pubsy_platform_workers_in_europe_science_for_policy.pdf

of such groups and "facilitate transitions to more stable forms of employment", provided that appropriate measures are put in place to ensure decent working conditions;

6. recognises that the rapid proliferation of digital labour platforms in recent years has raised a number of questions about the functioning and the benefit deriving from the reorganisation of work brought about by these platforms, together with the associated risks;
7. notes that, according to Eurofound⁵, due to the specific working arrangement for platform workers, based on tasks performed on an ad hoc basis, there is a higher uncertainty regarding the rights and level of social protection, working conditions, or stability of employment;
8. maintains that a comprehensive framework is needed to ensure the social protection and social rights of all workers (from health and safety to access to lifelong learning), in order to create a level playing field for the platform economy and the "traditional" offline economy, based on the same rights and obligations for all interested parties;
9. stresses that false self-employment (also sometimes referred to as disguised or bogus self-employment) refers to cases where individuals are classified as self-employed but, to all intents and purposes, work as employees. The deliberate misclassification of workers by employers seeking to avoid employment regulations, fiscal obligations and workers' representation, as well as to shift risks onto workers and/or gain a competitive advantage, should be stamped out;
10. reaffirms that the right of all workers to fair and equal treatment regarding working conditions, access to social protection and training – regardless of the type and duration of the employment relationship – together with the right to fair wages that provide for a decent standard of living, is laid down in the European Pillar of Social Rights⁶, supported unanimously by all the EU Member States;
11. notes the difficulties faced by the so-called "own-account workers" to have collective representation and draws attention to the fact that the biggest challenge facing social partners is to reach workers in the informal sector and in the newly emerging forms of employment such as the platform workers⁷; calls therefore for measures to foster and facilitate social dialogue for this segment of the labour market;

⁵ Eurofound, 2018, Employment and working conditions of selected types of platform work, <https://www.eurofound.europa.eu/publications/report/2018/employment-and-working-conditions-of-selected-types-of-platform-work>

⁶ Chapter II: Fair working conditions, points 5 and 6 https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles_en

⁷ European Parliament study on "EU and ILO: Shaping the Future of Work", 2019 (http://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/EMPL/DV/2019/09-03/IPOL_STU2019638407_EN.pdf)

12. argues that a joint European initiative to regulate work on digital platforms should ensure a coordinated response by the Member States to the legal challenges arising from ongoing technological changes on the labour market; is mindful of the opportunities for professional support, knowledge capture and learning to which the new technologies, such as artificial intelligence, provide access; further underlines the need to properly manage the negative impacts of new technologies on platform workers, given that the increasing incidence of such technologies, including artificial intelligence, subjects those workers to decisions determined to a great extent by artificial intelligence algorithms;
13. joins the ILO's call for the establishment of an international governance system requiring platform holders to respect certain minimum rights and protections and regulating the use of data and algorithmic accountability in the world of work. This would address issues of collective representation of platform workers as well as issues linked to artificial intelligence, by requiring the application of a human-in-command approach, ensuring that final decisions affecting work are taken by humans⁸; welcomes at the same time national and subnational initiatives⁹, as well as platform-based initiatives launching code of conducts for crowd sourcing and crowd working;
14. shares the view expressed in the EPSCO Council conclusions of 24 October 2019 on the need to "strengthen the institutions of work, in particular labour administration and inspection, and promote the effective implementation of international labour standards for the protection of all workers, including in the new forms of work, and the transition from informal to formal economy"¹⁰. Further agrees on the need to "ensure appropriate privacy and personal data protection, and respond, where appropriate, to challenges and opportunities, especially in the context of the digital transformation of work, including platform work"¹¹;
15. welcomes the intention of the new president of the European Commission, Ursula von der Leyen, as voiced at the opening session of the European Parliament on 16 July 2019, to improve the labour conditions of platform workers, notably by focusing on skills and education¹²; expects, however, that the improvements to these conditions will go beyond the aforementioned policy areas and include a proposal by the new Commission "to address the labour conditions of platform workers and actively address new forms of precariousness"¹³;

8 "Work for a brighter future", ILO Global Commission on the Future of Work, 2019. http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_662410.pdf

9 An interesting example is the initiative of the city of Milan, which launched in 2018 the "Riders' Municipal Information Counter", the first office in Italy dedicated to listening, information and advice for workers of food delivery platforms. http://www.ansa.it/lombardia/notizie/2018/07/18/a-milano-primo-sportello-per-i-rider_111a55ca-fc7b-4c16-91f7-60b1b22a3c96.html

10 The Future of Work: the European Union promoting the ILO Centenary Declaration – Council Conclusions (24 October 2019)

11 Idem

12 Political Guidelines for the next European Commission 2019-2024 <https://www.europarl.europa.eu/resources/library/media/20190716RES57231/20190716RES57231.pdf>.

13 Introductory speech by Nicolas Schmit, Commissioner-designate for Jobs, during his hearing before the European Parliament https://multimedia.europarl.europa.eu/en/-hearing-of-nicolas-schmit-commissioner-designate-jobs-opening-statement-by-nicolas-schmit_1178011-V_v

16. points to the overall need to bring up to date the current legal frameworks at EU level (i.e. E-Commerce Directive, Services Directive) to respond to the rapid expansion of the collaborative economy and to the challenges posed by globally operating platforms. Exploring the effectiveness of existing EU legislation that can apply also to platform work, such as the Directive on Transparent and Predictable Working Conditions, and accurately mapping existing forms of platform work constitute a key prerequisite for any update of the legal framework;

Classification of workers and contracts

17. refers to a previous opinion in which it emphasised that "some collaborative economy business models have produced strong negative social and employment-related externalities, in particular by abusing the concept of 'self-employment', and rely on social disparities between workers"¹⁴;
18. also refers to a previous position of the CoR, pointing out that "many forms of work in the collaborative economy lie mid-way between salaried employment and freelance work", which "raises important questions as regards working conditions, health and safety, health insurance, sick pay, unemployment benefits and pensions"¹⁵;
19. notes that in the Reflection Paper on the Social Dimension of Europe¹⁶, the European Commission points out that deepening this dimension requires the EU to "agree on common rules determining the employment status of digital platform workers. This enables businesses to tap fully the potential of a single European digital market";
20. emphasises that, given that young people are more familiar with the digital transformation and technological developments, they see work on digital platforms and the flexibility it often offers as an attractive employment opportunity, despite the lack of clearly defined labour rights. It should be noted that platform workers today are on average 10 years younger than those who work offline¹⁷, and that the absence of a clear framework defining those rights therefore increases precarious employment among young people;
21. recognises the complexity of contractual relations on digital platforms, but points out that the highly diverse employment models of the traditional economy are governed by common basic rules that apply in the same way to all operators. The Committee of the Regions therefore calls for fundamental labour and social provisions to be extended to the platform economy and its workers, highlighting the need to address the social effects of the Digital Single Market at European level. A proportionate national and where necessary – given the transnational nature of the digital economy – European framework to address the regulatory challenges of work on

¹⁴ CoR opinion on the *Collaborative economy and online platforms: a shared view of cities and regions* (COR-2016-04163)

¹⁵ CoR opinion on *Transparent and predictable working conditions in the European Union* (COR 1129/2018)

¹⁶ COM(2017) 206, 26 April 2017

¹⁷ http://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157_pubsy_platform_workers_in_europe_science_for_policy.pdf, p. 23

digital platforms will create a level playing field between the traditional economy and the digital platform economy and tackle social dumping. Such a regulatory framework should also envisage prohibiting exclusivity clauses that prevent workers cooperating with other platforms;

22. stresses that such regulation should address important regulatory issues such as the burden of documentary proof of an employment relationship (and consequently of any misclassification), the evaluation of the rebuttable presumption of the existence of an employment relationship, the organisation of work through contractual relationships containing unfair clauses as well as the question of ownership and portability of data on a platform worker's profile and performance. Furthermore, it could address the issue of employers' social security contributions, in relation to the overall workforce involved and regardless of the status of employment, taking into account the quality of working arrangements. In order to take into account the possibility of cross-border digital activity and to enable the Posting of Workers Directive¹⁸ to apply, it should be possible to make a distinction between the "place of employment" and the "place of service delivery" as a minimum guarantee of labour rights;
23. notes that determining the existence of an employment relationship should be based on definitions in the prevailing law, collective agreements or practice in each Member State, taking into account the case law of the CJEU¹⁹. Case law establishes that platform workers may also be covered if they meet the relevant criteria. Shares the view of the European Parliament that "the determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of the work and not by the parties' description of the relationship"²⁰. Also agrees that "the abuse of the status of self-employed persons, as defined in national law, either at national level or in cross-border situations, is a form of falsely declared work that is frequently associated with undeclared work [...] in order to avoid certain legal or fiscal obligations"²¹. Agrees, therefore, with the need for guidelines at European level to combat this phenomenon;
24. welcomes the fact that most EU Member States have minimum wage regimes which are either established by law or agreed through collective bargaining. Authority and responsibility for matters relating to wage-setting rest with the Member States and/or national social partners. The autonomy of the social partners and their right to conclude collective wage agreements must therefore be fully respected²²;
25. supports the creation of a special working group to look into and monitor employment relationships and the classification of workers on digital platforms, as part of the work of the EU

18 <https://data.consilium.europa.eu/doc/document/PE-18-2018-INIT/en/pdf>

19 <https://data.consilium.europa.eu/doc/document/PE-43-2019-INIT/en/pdf>

20 European Parliament legislative resolution of 16 April 2019 on the proposal for a directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union. https://www.europarl.europa.eu/doceo/document/TA-8-2019-0379_EN.html

21 Idem

22 CoR opinion on *Standards of remuneration in employment in the EU* (COR-2015-01689).

Observatory on the Online Platform Economy, set up by a Commission decision²³. The observatory, which is made up of a group of independent experts on the online platform economy and a dedicated team of Commission officials, has already started work and provides the Commission with advice and expertise on developments in the online platform economy. The Committee of the Regions can contribute to the group's work with best practices at local, regional and cross-border level, which reinforce, inter alia, skills development for staff of local and regional authorities; calls, therefore, for an observer status within the Observatory;

The regional and local dimension

26. notes that the continuous development and expansion of economic activities where digital platforms are making inroads have an impact at local and regional level, and therefore also have to be regulated at the level of local and regional authorities, within the bounds of their powers, notably with regard to taxation and urban planning;
27. calls on local and regional authorities to provide solutions to the social and employment challenges arising from platform work, by responding with social support measures for non-standard forms of employment, as well as measures to prevent irregular and sometimes illegal forms of employment (such as bogus self-employment) on these platforms, in order to ensure the rights of platform workers individually and collectively;
28. urges local and regional authorities, as providers and recipients of a wide range of online services, often through digital platforms, to incorporate positive discrimination towards socially-responsible platforms, as well as social criteria regarding platform working conditions into their criteria for awarding public contracts;
29. urges local and regional authorities, as service providers, to formulate employment contracts that could serve as a model for other local employers;
30. urges local and regional authorities to frame employment, lifelong learning and social policies that will keep pace with and reflect the digitalisation of labour markets;

²³ Commission Decision of 26.4.2018 on setting up the group of experts for the Observatory on the Online Platform Economy (C(2018) 2393 final)

31. urges local and regional administrations, within the scope of their powers, to root out the fraudulent classification of workers by means of the labour inspectorate or comparable bodies or institutions.

Brussels, 5 December 2019

The President
of the European Committee of the Regions

Karl-Heinz Lambertz

The Secretary-General ad interim
of the European Committee of the Regions

Pedro Cervilla

II. PROCEDURE

Title	Platform work – local and regional regulatory challenges
Reference	
Legal basis	Article 307 of the Treaty on the Functioning of the European Union
Procedural basis	Rule 41(b)(ii) of the Rules of Procedure
Date of Council/EP referral/Date of Commission letter	n/a
Date of Bureau/President's decision	9 April 2019
Commission responsible	SEDEC
Rapporteur	Dimitrios Birmpas (EL/PES)
Analysis	11 July 2019
Discussed in commission	30 September 2019
Date adopted by commission	30 September 2019
Result of the vote in commission (majority, unanimity)	majority
Date adopted in plenary	5 December 2019
Previous Committee opinions	Standards of remuneration in employment in the EU ²⁴ The Revision of the Posting of Workers Directive ²⁵ Collaborative economy and on-line platforms: a shared view of cities and regions ²⁶ Coordination of Social Security Systems ²⁷ The European Pillar of Social Rights and Reflection Paper on the social dimension of Europe ²⁸ Transparent and predictable working conditions in the European Union ²⁹ A European framework for regulatory responses to the collaborative economy ³⁰
Date of subsidiarity monitoring consultation	

²⁴ COR-2015-01689

²⁵ COR-2016-02881

²⁶ COR-2016-04163

²⁷ COR-2017-00849

²⁸ COR-2017-03141

²⁹ COR-2018-01129

³⁰ COR-2019-01951