

# Regulating platform work in the digital age



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## ***Regulating platform work in the digital age***

Evolving use of digital technologies and new business models, among other drivers, have given rise to online platforms that facilitate the emergence of platform-mediated work, such as “crowd work”, “gig work”, and other forms of often on-demand labour. Workers in platform markets often benefit from low entry barriers and flexibility, which can facilitate the labour market integration of underrepresented groups. However, policymakers have raised concerns about working conditions in platform work, in particular how to ensure job and income security, access to social protection, overall career development, and rights to collective bargaining. This Going Digital Toolkit policy note describes the policy issues related to platform work and identifies innovative policy initiatives to improve the quality of these jobs and enable workers to take advantage of new opportunities in the changing world of work.

The development of digital technologies and new business models has contributed to the rise of online platforms and the emergence of platform-mediated work in the digital age, such as “crowd work”, “gig work”, and other forms of on-demand labour (see Box 1). Most of this work is carried out as some form of non-standard work, notably by independent self-employed or “own-account” workers and in many cases only as a part-time job. The Covid-19 crisis has highlighted some of the vulnerabilities associated with platform work generally (see Box 2) while certain platform workers performing services on location (e.g. delivery drivers) have been particularly visible at the forefront of the crisis.

The OECD has highlighted the opportunities and challenges associated with platform work in recent publications such as the *Employment Outlook 2019: The Future of Work* (2019<sup>[6]</sup>), *Policy Responses to New Forms of Work* (2019<sup>[5]</sup>), *An Introduction to Online Platforms and Their Role in the Digital Transformation* (2019<sup>[7]</sup>) and *Going Digital: Shaping Policies, Improving Lives* (2019<sup>[8]</sup>). One positive aspect of platform work is the increased efficiency of the matching process, which may help to alleviate problems such as frictional unemployment (i.e. which occurs as people switch from one job to another, or as they enter the workforce) and skills mismatches. Platform work may offer new work opportunities to graduates and immigrants and act as an income supplement for individuals transitioning into periods associated with low earning potential (e.g. the recently laid-off and new retirees). Another advantage often cited by workers is greater flexibility to choose when and where to work (Biagi et al., 2018<sup>[2]</sup>).

### **Box 1. Defining platform work and assessing its prevalence**

Platform work encompasses a broad range of activities that have in common the use of online platforms to connect the demand and supply of particular services. The services provided by digital labour platforms can be broadly distinguished as services performed digitally (i.e. clerical and data entry, translation or design services, etc.) or services performed on location (i.e. transport, delivery, housekeeping, etc.), as outlined in OECD work (OECD, 2016<sup>[1]</sup>) and a recent report by the Joint Research Centre of the European Commission (Biagi et al., 2018<sup>[2]</sup>). In some cases, the function of the platform goes beyond its mediating role and includes providing workers with an online environment and with the necessary tools to conduct their work.

The 2019 OECD Employment Outlook describes platform work as a “limited phenomenon”, but one that throws a spotlight on the impact of technological progress on job quality. While existing evidence on the size of the platform economy is still scant and imprecise, most surveys covering a range of countries have produced estimates between 0.5% and 3% of the labour force (see Chapter 9 of (OECD, 2018<sup>[3]</sup>) for a survey of the literature). While the platform economy may

have grown fast, there were some signs before the Covid-19 crisis that its growth had started to slow down.

Initiatives to better measure platform work (OECD, 2019<sup>[4]</sup>) and improve data collection in relation to platform work could help inform policy, including adding platform-related questions to labour force and/or household surveys (as in Canada, Estonia, Sweden, Switzerland and the United States) and potentially gathering data directly from platforms themselves (although such a request from the French Inspectorate General of Social Affairs (IGAS) was denied (OECD, 2019<sup>[5]</sup>)). Analysis of existing administrative data may also deliver insights on the prevalence of platform work.

However, policymakers in many OECD countries have raised concerns about working conditions for platform workers, in particular how to ensure job and income security, access to social protection, overall career development and access to training, and rights to collective bargaining. Some platform workers may face an increased risk of accident or job strain. To the extent that platform work opens up work and income opportunities to particular segments of society, the disadvantages would disproportionately affect these groups.

Ensuring good outcomes for platform workers requires a mix of reviewing labour market regulation; making social protection more sustainable, inclusive, effective and adaptable; and promoting workers' voice. In some cases, new platform business models may have spurred growth in "false" self-employment (see Section 1), which needs to be addressed. There is evidence that policymakers are already taking action to address some of these concerns (OECD, 2019<sup>[5]</sup>)

This Going Digital Toolkit policy note presents different policy options with the aim of taking advantage of the opportunities offered by platform work while at the same time ensuring good outcomes for platform workers. While platform work is still a relatively small part of the labour market (see Box 1), its emergence has thrown a spotlight on other transformations in the labour market such as the growth in some other non-standard forms of work. Thus, some of the policy options described in this note may have broader application and benefit (e.g. improving the working conditions of own-account workers).

### Box 2. Platform work and the Covid-19 crisis

As countries have implemented confinement and social distancing policies to manage the spread of Covid-19, individuals have turned to platforms for the delivery of prepared meals, groceries and other household items. These services have enabled some economic activity to continue (e.g. restaurants that cannot welcome customers on their premises) while allowing individuals to limit their time outside. Some essential travel has also been facilitated by rideshare drivers.

In response to concerns about the health and safety of the workers carrying out these activities and the customers using the platform, some platform operators have put measures in place such as offering contactless delivery, providing personal protective equipment or paying for medical teleconsultations (ETUC, 2020<sup>[9]</sup>). However, such measures vary by platform operator and by country, and workers who do not feel sufficiently protected may be unable to raise these concerns due to lack of access to collective bargaining (see Section 2). Moreover, platform workers may have limited scope to take measures to protect themselves due to restrictions over how the work must be carried out or concerns about maintaining their customer rating, among others.

At the same time, some platform workers performing services such as cleaning are experiencing a severe loss in income due to reduced demand and safety concerns (AppJobs Institute, 2020<sup>[10]</sup>) and any platform worker may find themselves unable to carry out work due to illness (of themselves or someone in their households) or caring duties. However, self-employed platform workers will have more limited access to unemployment benefits, health insurance or sick leave than employees (as discussed in Section 1). Since they are not formally employees, they are also unlikely to be eligible for partial redundancy schemes.

Realising that many self-employed workers, including platform workers, are not covered by traditional social protection, many governments have taken unprecedented action to extend protections to these workers. Many of these are temporary solutions, but this momentum should be taken advantage of to think about how some of these measures could be extended to these workers in a more sustainable fashion going forward.

## Section 1: Classifying platform workers

One issue which has received considerable public policy and legal attention in recent years is the correct classification of platform workers. Platform work is one type of work that blurs the line between dependent and self-employment<sup>1</sup>. Platform workers are typically classified as own-account

<sup>1</sup> The problem, however, is not limited to the platform economy – many hairdressers, plumbers, and gardeners have faced similar challenges in the past. In some cases, the issue may be that these

workers. However, like employees, they often have limited control over their work (for instance, in some cases they cannot set prices, they are required to wear uniforms, they cannot choose the order of their tasks, etc.) and/or are dependent on their clients/employers in other ways (e.g. financially). Control may be exerted via technology-enabled monitoring, with the algorithm taking the place of a traditional manager.

Self-employed status has the effect of excluding platform workers from rights, benefits and protections available to employees. One particular concern is that some workers are falsely classified as self-employed in order for platform operators to avoid regulation and taxation, giving them a competitive advantage over compliant firms (and at the workers' expense).

### ***Enforcing existing regulations***

Countries will want to ensure that existing regulations regarding worker classification are being properly implemented and enforced, including helping firms and workers to identify their employment relationships, strengthening enforcement and increasing penalties for non-compliant firms. Public information campaigns or online tools may increase awareness among platform workers of their status, and their rights and responsibilities. For instance, the Canadian Labour Program has attempted to improve its internet presence and use of social media tools to reach workers employed in traditional and non-traditional workplaces (OECD, 2019<sup>[5]</sup>).

With new technologies blurring the lines between employment and self-employment, countries will likely want to strengthen the capacity of labour inspectorates to monitor and detect new breaches of labour regulations. For example, Spain has developed campaigns targeted at false self-employment in platform work, including developing a dedicated operative procedure, providing specialised training to inspectors and implementing regional pilot programmes.

If there is evidence of platform operators continuously breaching the law, countries may want to strengthen penalties in order to encourage compliance, including uplifts in compensation for repeated breaches in similar cases (as in the United Kingdom (UK)), naming and shaming (as in the UK) or imprisonment.

### ***Making it easier to challenge employment status***

For an individual, filing a complaint with a court can be daunting. It can be costly<sup>2</sup>, bureaucratically complicated, and the outcome is often uncertain. In

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workers are falsely classified as self-employed in order to avoid regulation, or to access preferential tax treatment.

<sup>2</sup> In the United Kingdom, for example, the introduction in July 2013 of launch and hearing fees of GBP 1 200 for an individual bringing a claim to the employment tribunal led to a drop in claims

addition, workers may worry about retaliation whereby the platform operator removes access to the platform. Where these barriers exist and where the consequences of abuse are minimal, platform operators may have little incentive to correctly classify workers. Governments may consider making it easier/less costly for platform workers to challenge their employment status, for example by reducing court fees, simplifying procedures (as in Portugal), and/or protecting workers against potential retaliation.

In some jurisdictions, there is a presumption of an employment relationship meaning that the burden of proof is placed on the employer (rather than the employee) in disputes about employment status. The AB 5 Bill in California, in effect as of 1 January 2020, is an example of recent legislation that puts the burden on the hiring entity to establish that the worker is an independent contractor by satisfying a three-pronged test. Otherwise, the worker is deemed an employee. The ruling was expected to have major implications for platform operators and platform workers, as platform operators would be obliged to offer health insurance and paid time off. Uber and Lyft applied for an exemption but were denied. Following this, they have not reclassified their drivers as employees but have changed pricing and other policies (Bhuiyan, 2020<sup>[11]</sup>).

### ***Identifying the employer and assigning responsibility***

Platforms usually argue that they are not employers but rather mere intermediaries providing the infrastructure for a worker to find clients. However, it is sometimes hard to argue that clients themselves should be considered the employer. Platform work typically involves a multiplicity of clients and tasks of a very short duration, even if these tasks are sometimes carried out on the premises of the client.

In some cases, where clear responsibilities cannot be assigned, there may be an argument for platforms and clients to bear joint and several liability for worker rights, so that a worker can claim against both or either. In other cases, the client might be argued to bear subsidiary liability – i.e. the worker can claim against the client in those cases where the platform does not comply with the regulation.

Along similar lines, some have argued that the question of who is responsible for worker rights and protections should be analysed from the perspective of what are the key employer functions (i.e. – from hiring workers to setting their rates of pay) (Adams-Prassl and Risak, 2016<sup>[12]</sup>). The outcome of such an approach would equally be that employment law obligations are spread across

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of over 70%, which affected disproportionately the bottom end of the claim distribution (Adams and Prassl, 2018<sup>[38]</sup>).

multiple legal entities, rather than ascribed to a single employer in the classical sense of the term.

There has been some discussion about whether the regulation of temporary work agency (TWA) work, which also feature multi-party (or triangular) employment relationships, could serve as a model for the regulation of platform work (OECD, 2019<sup>[6]</sup>). In TWA work, the employment relationship is generally assumed to be between the worker and the agency, and the latter is therefore responsible for ensuring labour law is complied with. It is not clear to what extent the TWA experience might be a useful example for regulating platform work (Lenaerts et al., 2018<sup>[13]</sup>), although the TWA model seems to have been accepted by many platforms in Sweden (Söderqvist, 2018<sup>[14]</sup>) and several platforms worldwide have taken the initiative to treat their workers as employees (Cherry and Aloisi, 2017<sup>[15]</sup>).

## Section 2: Improving working conditions for platform workers

Many countries have sought to improve working conditions for the most vulnerable platform workers. Even though formally classified as self-employed, some platform workers share some characteristics of employees (e.g. they cannot set their own rates of pay, have to wear a uniform or cannot send a replacement to execute their tasks). This means that they experience some elements of dependence and/or subordination in their working relationship and, therefore, some vulnerabilities. Moreover, some platform workers who may have few or no outside options find themselves facing a power imbalance *vis-à-vis* the platform operator, which could result in pay and working conditions being lower than would be the case under perfect market conditions.<sup>3</sup> Yet, because they are classified as self-employed, vulnerable platform workers will generally not benefit from the same labour law protections, collective bargaining rights (which may itself increase the power imbalance), social protection, and access to training as employees.

Governments should ensure that all workers in the labour market have access to an adequate set of rights and protections, regardless of their employment status or contract type, and guarantee a level playing field among firms by preventing platform operators from gaining a competitive advantage by avoiding their obligations and responsibilities. This may be particularly challenging for platform work performed digitally and potentially connecting workers and clients across multiple jurisdictions, and may require an international approach. Some attempts to extend labour law protections to

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<sup>3</sup> For example, in cases in which the platform operator's monopsony-like power enables them to withhold demand for labour, thereby reducing employment and pay below the competitive level and worsening workers' employment terms and conditions.

platform workers and to improve their working conditions generally are discussed below.

### ***Extending collective bargaining rights to platform workers***

While there are several possible solutions (including government regulation, labour law enforcement and efforts to address the sources of monopsony power), collective bargaining can be a flexible and complementary tool for giving platform workers more say on their working conditions (while tailoring solutions to the sector or occupation), and countering power imbalances between platform operators and platform workers (OECD, 2019<sup>[6]</sup>). However, the standard approach in antitrust enforcement has often been to consider all self-employed workers as undertakings (i.e. essentially as businesses) and therefore any collective agreement reached by platform workers as a cartel.

Indeed, the recent situation faced by rideshare workers in Seattle illustrates this point. In order to increase the wages and improve the working conditions of drivers on ridesharing platforms, the city introduced an ordinance to allow the workers to collectively bargain with ridesharing companies. However, the law faced a series of legal challenges on the basis that it violated anti-trust laws, and has not been implemented (Remaly, 2020<sup>[16]</sup>).

There are some countries forging different paths for granting collective bargaining rights to the self-employed. In some cases, regulators and enforcement authorities have taken a case-by-case approach to avoid a strictly procedural analysis of cases involving those workers with little or no bargaining power and exit options. In several countries (e.g. in France, Italy and Spain, among others), independent unions of platform workers are already *de facto* negotiating working conditions for their members even if they are classified as self-employed without any intervention from national antitrust authorities (OECD, 2019<sup>[5]</sup>). The risk associated with this route is that it potentially creates uncertainty since it could be reversed without any legislative reform.

However, this type of approach may receive further support from the European Commission in the future. In March 2020, the European Commissioner for Competition said that she is examining whether the EU could help “people who work in a weak negotiating position [by giving some] sort of European level guidance as to how to allow people to organise” without it being seen as a cartel (White and Turner, 2020<sup>[17]</sup>).

Other jurisdictions have followed the approach of establishing an intermediate employment status that grants access to collective bargaining and in some cases, other labour protections, to platform workers. In February 2020, the Ontario Labour Relations Board ruled that Foodora couriers were dependent contractors of the food-delivery company, on the basis that they more closely resembled employees rather than independent contractors. Dependent contractors fall under the definition of “employee” under Part I of the Canadian

Labour Code, which applies to collective bargaining in the federally regulated private sector. This decision therefore has cleared a hurdle towards potential unionisation and collective bargaining, and has set a major precedent in the jurisdiction for other platform workers.

Unions and platforms themselves also have a role to play. Some independent unions have been created (e.g. in Italy and the UK), especially in the private hire and food delivery sectors. Unions' engagement with platform operators on behalf of non-standard workers has paid off in some cases, with the signature of collective agreements in Sweden and Denmark. In Italy, following a government threat of worker reclassification by decree in summer of 2018, food delivery platform operators started negotiating with rider associations over working conditions.

Social dialogue, if not formal bargaining, has also emerged as the outcome of governments' engagement with platform operators to address some of the issues related to platform work. The "social responsibility charters" discussed below are one such example. Along the same lines, but based on the initiative of a crowd-working platform, a code of conduct has been established in Germany and signed in 2017 by eight Germany-based platform operators.

Beyond formal bargaining, platform operators can take initiatives aimed at giving workers the possibility to express their concerns – although this is not a sufficient substitute for legally binding agreements. Uber, for example, embraced the creation of the New York City Independent Drivers' Guild (IDG). The IDG cannot negotiate on behalf of drivers, but it allows channelling their concerns through monthly meetings with the company's management.

### ***Introducing a minimum wage***

Given concerns about imbalances of power and some evidence that some platform workers earn below the minimum wage (ILO, 2018<sup>[18]</sup>), it is worth considering how mechanisms to achieve fair pay could be extended. For salaried employees, a legally binding minimum wage can help to prevent exploitation and address in-work poverty. Many studies of minimum wage impacts find that small increases in the minimum wage from a moderate level have no negative employment effects (Manning, 2011<sup>[19]</sup>). This is contrary to standard theory, but consistent with monopsony power and could suggest that there is some scope to set a minimum wage that exceeds the wage that would otherwise prevail in the labour market without harming employment levels (Card and Krueger, 2016<sup>[20]</sup>).

However, there are significant practical difficulties to extending minimum wage legislation to platform workers (for a fuller discussion, see OECD Employment Outlook 2019 (2019<sup>[6]</sup>)). Two such challenges include: 1) determining what counts as work (i.e. should platform workers be paid for the time that they have an app open and/or the time they spend waiting/searching

for tasks?) and 2) how to deal with work carried out across national borders. For instance, where a worker in a low-wage country is carrying out work for a client in a high-wage country over an online platform in a third country, which country's national minimum wage should apply? In such cases, an international approach, discussed further below, may be required.

However, it is not impossible to overcome these difficulties. Since January 2018, for example, New York City has imposed a minimum wage for Uber and Lyft drivers. In response, Uber and Lyft filed legal challenges (which have been unsuccessful) and raised prices for passengers as a result (Campbell, 2018<sup>[21]</sup>; Nickelsburg, 2019<sup>[22]</sup>). They also started restricting access to the app when a driver is in an area of low demand, thereby reducing the number of working hours.

Some voluntary initiatives have already been taken by a number of platforms to put a minimum floor under wages. For example, Favor, an on-demand delivery service in the United States, guarantees its drivers a minimum hourly wage. While its "runners" are paid by task, Favor will make up the difference if they do not meet the pay guarantee (Kessler, 2016<sup>[23]</sup>). Upwork has a global minimum wage of USD 3 per hour for tasks that pay by the hour. In the United Kingdom, Prolific also has a minimum wage per hour of GBP 5.

### **Regulating working time**

Traditional concerns around working time have centred on the issues of excessive working hours. This is why labour legislation usually contains rules limiting working hours and requiring periods for rest and recuperation, including weekly rest and paid annual leave. Moreover, in the case of certain micro-task online platforms, workers spend as much time searching for tasks as they do in performing them (Kingsley, Gray and Suri, 2015<sup>[24]</sup>). Some platforms have also introduced their own working hour limits<sup>4</sup> (e.g. Uber requiring drivers to rest for 6 hours after driving for 10 hours continuously in the UK) and workers have adopted their own informal practices such as daily routines and quota setting to manage their time (Lehdonvirta, 2018<sup>[25]</sup>).

Data collected through platforms can help in monitoring working time. However, there are many complications with extending working time protections to such workers, including the fact that many of them have several clients/employers at any particular point in time, and therefore monitoring overall working time (and allocating responsibility) may be very difficult if not impossible.

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<sup>4</sup> However, such measures may have limited efficacy where workers use multiple platforms to find work.

### ***Facilitating dispute resolution***

When workers have “employee” status, employment protection legislation usually protects them against unjustified breaches of contract obligations on the part of employers, including remedies for unfair dismissal and wage theft. Moreover, in some cases, wage and working conditions are set unilaterally by platform operators (or the intermediary) or the requester (i.e. individual or company who posts tasks), with no scope for individual workers to negotiate any of the items in the terms and conditions that must be accepted in order to begin or continue working. For example, on certain micro-task online platforms, requesters can refuse completed tasks without providing a reason, in which case the worker receives no pay (Kingsley, Gray and Suri, 2015<sup>[24]</sup>). Similarly, terms and conditions of digital intermediation services often establish that platform operators can deactivate a worker’s account without providing a justification, sometimes even without previous warning.

The absence of adequate, simplified mechanisms of dispute resolution reinforces the asymmetry in the control of the relationship. Filing complaints with courts is expensive and time-consuming, and usually not attractive for workers in the case of small claims. In the case of micro-task platforms, these barriers are largely prohibitive, since the value of each task corresponds to very small amounts of money. Building in some kind of simplified dispute resolution system for platform workers is therefore desirable. For example, platform operators could be required to provide a dispute resolution process that places the burden on the client to demonstrate that the work has not been completed to the required standard and allows workers a reasonable time to re-do rejected tasks (Silberman, 2018<sup>[26]</sup>).

Similarly, platform operators could be required to communicate swiftly the reason for account deactivation to the worker. The statement of reasons should identify the objective grounds for the deactivation decision, based on the grounds set out in advance in the platform’s terms and conditions, and reasonably refer to the relevant specific circumstances that led to that decision. That statement could also be set to define the limits of the potential legal dispute in the sense that no additional griefs could be raised by the platform operator in the case of a lawsuit. A regulation of this type has been adopted by the European Parliament (2019<sup>[27]</sup>) and, in one court case involving a ridesharing service, the settlement included an agreement that in the future, workers would receive a hearing before an arbitrator prior to any dismissal (Kovács, 2017<sup>[28]</sup>).

Social partners can also play a role in establishing simplified dispute resolution systems for the platform industry. Indeed, in 2015 three German platform operators and the German Crowdsourcing Association drafted a Crowdsourcing Code of Conduct and established, in 2017, in conjunction with five other platforms and IG Metall, an “Ombuds office” to enforce the Code of Conduct

and resolve disputes between platform workers and signatory platform operators (ILO, 2018<sup>[18]</sup>).

### **Improving occupational safety and health (OSH)**

Self-employed platform workers typically take responsibility for ensuring their own safety and health. Characteristics of platform work which may increase psychosocial risks and work-related stress include potentially high levels of competition (encouraging long hours and risk-taking), the presence of algorithmic management, and the informal and multilateral nature of working arrangements.

Generally, the risks associated with platform work vary as much as the work itself. Many platform activities are in the transport sector, where the risk of accidents is elevated. Recent evidence suggests that the arrival of ridesharing is associated with an increase of 2-3% in the number of motor vehicle fatalities and fatal accidents as a result of increased congestion and road utilisation (Barrios et al., 2018<sup>[29]</sup>). Risk of injury may also be higher among platform workers without a regular workplace and/or in an environment or with tools over which they have little control. Platform workers offering domestic services may experience sexual harassment (Ravenelle, 2019<sup>[30]</sup>).

There are also risks associated with online work – both physical and psychosocial – such as eye strain; musculoskeletal problems; work-related stress; chronic job and income insecurity; and isolation. Platform workers providing online services such as video and social media content editing may be exposed to hate speech, violence and pornographic content, which may pose psychological harm. Again, the question of employment status is critical here as OSH regulation often only applies to employees.

Self-employed individuals are generally expected to insure themselves against occupational accidents. However, some countries have taken measures to improve protection in this regard for platform workers. In France, the legislator has granted certain rights to platform workers through the August 2016 *El Khomri law* (or *loi Travail*) on labour, modernisation of social dialogue and securing of professional careers. Specifically, where the platform operator determines the characteristics of the service provided and the worker earns more than EUR 5 100 per year through the platform, the platform operator must provide reimbursement for insurance against occupational accident or illness.

### **Strengthening social protection**

Platform workers classified as self-employed will generally be treated the same as self-employed entrepreneurs in the social protection system, with lower access to benefits compared to employees. There are few examples of special

social protection schemes targeted directly at platform workers (OECD, 2019<sup>[5]</sup>).

However, some countries are increasing access to unemployment, paternity and other benefits among the self-employed more broadly, which will make social protection systems more inclusive and adaptable and strengthen social protection for self-employed platform workers. For example, in Canada, the Quebec Parental Insurance Program (QPIP) is mandatory for self-employed workers (including those participating in the “gig” economy), providing better access to maternity and parental benefits. In November 2019, Ireland introduced unemployment benefit for self-employed workers.

While there is little difference in the treatment for self-employed platform workers, one feature that distinguishes online labour platforms from conventional markets is that all transactions are digital and hence traceable (OECD, 2018<sup>[31]</sup>). This raises the potential for increasing social protection coverage and tax compliance by shifting activities from the informal to the formal economy (see Section 3).

### **Tackling discrimination**

The emergence of the platform economy has an ambiguous effect on the ability to protect workers from discrimination. To the extent that platforms promote anonymity, they might help address discrimination. However, where such anonymity is not guaranteed, discrimination may be worse because of the lack of regulation and enforcement – see (Galperin and Greppi, 2017<sup>[32]</sup>) for geographical discrimination on Nubelo (one of the largest Spanish-language online labour platforms) and (Galperin, Cruces and Greppi, 2017<sup>[33]</sup>) for evidence of gender discrimination, also on Nubelo. This emerging evidence suggests that governments should think carefully about how non-discrimination laws might be extended to online platforms and independent workers more generally. Calls for labour platforms to collect (and publish) data on outcomes for various groups could be one step in the right direction. In most European countries, anti-discrimination laws already cover the self-employed; exceptions include Lithuania and the United Kingdom, where they are not fully covered (European Commission, 2017<sup>[34]</sup>).

### **Encouraging platforms to exercise social responsibility**

In France, the 2019 *Orientation des mobilités* law introduced the possibility for platform operators to draw up a social responsibility charter with a certain number of guarantees for workers. The administration may also approve the platform operator’s charter, provided that workers using the platform have been consulted in advance. The idea is that platform operators can make commitments to improve working conditions, with the understanding that

their compliance with these commitments cannot be used to presume an employment relationship.

### **Matching jobseekers with opportunities in platform work**

Governments may want to find ways to inform job seekers of new opportunities in the platform economy while at the same time ensuring the quality and sustainability of the work. For instance, the Finnish Public Employment Service has integrated a pilot called “New Forms of Work and Entrepreneurship” into their digital job-market platform (*Työmarkkinatori*) to offer opportunities in new forms of work and entrepreneurship to jobseekers by linking them to invoicing companies and digital job mediation platforms. Saudi Arabian government agencies have launched their own platforms: 1) *Maroof*, which allows individuals to set up online stores, and 2) *Bahr*, an online market for professional services.

### **Training jobseekers for opportunities in platform work**

The Israeli Ministry of Labour and Social Affairs offers training in digital skills in order to allow workers to take advantage of opportunities in the platform economy. It operates a few small pilot programmes targeted at workers in new forms of work. One of these offers training to particular groups (e.g. people with disabilities, Arab women, ultra-Orthodox) on using online trading platforms and making a living on the global online market.

### **Adopting an international approach**

Many countries share the twin goals of ensuring good outcomes for platform workers while at the same time wanting to take advantage of the opportunities that it offers. Where countries are facing similar issues and have common goals, peer learning can contribute to better policies. A number of countries are involved in international policy discussions and research streams on platform work and other new forms of work via the OECD and ILO (OECD, 2019<sup>[5]</sup>).

An international approach to regulations and guidelines may be particularly apt for platform work performed digitally (and potentially connecting workers and clients across the world) for issues such as how to ensure an adequate wage and working conditions. It may simultaneously reduce the burden for global platform operators to comply with different regulations across all of the countries where they operate while reducing the risk of *a race to the bottom* as countries compete to relax regulation in order to grow platform work.

One example is the Platform-to-Business regulation adopted by the European Parliament (2019<sup>[27]</sup>), which sets transparency and predictability obligations for online platforms. More generally, countries should build on the recent G20 commitment to promote decent work in the platform economy and consider ways of improving the working conditions of workers with little say over their

remuneration and working conditions who provide services globally – including best practice principles or guidelines, to which countries and/or platform operators could sign up. Countries could also agree rules on remuneration, taxation, social protection and employment protection for workers performing work digitally.

### **Section 3: Other measures to regulate platform work**

Measures targeted at improving the working conditions of platform workers should not be assessed in isolation, but rather should be part of a broader package of measures that also cover wider regulation and taxation, as well as measures to address monopsony power.

#### ***Regulating the operation of platforms***

Some countries have clamped down on platform operators with effective or partial bans on operation or restrictions on who can carry out the work. These regulations appear to be motivated less by concerns about labour market issues, and more by concerns about public safety and unfair competition with traditional and potentially more highly regulated services, particularly in the passenger transport sector. Examples include mandating taximeters for ridesharing services (as in Denmark) or restricting rideshare services to licensed taxi drivers only (as in Ireland).

#### ***Addressing monopsony power***

Many workers, including many self-employed workers and platform workers, face an unbalanced power relationship vis-à-vis their employer/client, which makes them vulnerable and potentially in need of the protections that are normally granted to employees only (see Section 2). Unbalanced power relationships tend to emerge because employers/clients often have a higher degree of control over the relationship than workers and because the latter may have few or no outside options, giving rise to a degree of labour market monopsony. In many situations, employers' power is not compensated by sufficient bargaining power on the side of the workers and may, therefore, lead to lower employment and pay as well as poor working conditions. This is a particular challenge for self-employed and platform workers who are often banned from collective bargaining by antitrust regulation.

There are some actions that countries can take to address monopsony power among platform operators and to prevent various abuses of this power. For instance, countries may want to tackle the use of non-compete agreements that have the effect of reducing platform workers' outside options<sup>5</sup>, such as

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<sup>5</sup> Some commentators also see ridesharing companies' pay policies which incentivise loyalty to one platform (and dis-incentivise multi-homing) as another type of vertical restraint (i.e. agreements

terms and conditions which impose a disproportionately high fee for platform workers that seek to continue a direct relationship with their client off the platform (ILO, 2018<sup>[18]</sup>). Governments could consider establishing a rebuttable presumption of abusive use in such cases (or even banning all such cases).

Similarly, personal ratings are usually lost when switching platforms (ILO, 2018<sup>[18]</sup>). Given that platforms *de facto* favour workers with good ratings, the loss of individual ratings represents a strong barrier to worker mobility, and may limit competition for workers across online platforms. Governments could therefore consider further interventions to enhance worker mobility across platforms such as regulating moneyless payments and facilitating data portability.

Lack of pay transparency may also reduce platform workers' ability to change jobs or leverage outside opportunities to negotiate for higher pay (and better working conditions) (Harris, 2018<sup>[35]</sup>). While digital technologies have the potential to improve this type of information asymmetry, in many platforms workers have few tools to search for available alternatives and have to spend much time searching for them (Kingsley, Gray and Suri, 2015<sup>[24]</sup>; ILO, 2018<sup>[18]</sup>). To improve pay transparency in the platform economy, employers and platforms could be required to publish information about the average pay per task, as well as on the average time taken to complete a task, which would help workers make more informed decisions about which tasks to accept.

### **Bringing work into the tax system**

As many platforms capture information about the payment exchanged for services (in addition to acting as an intermediary for these payments, in some cases), some countries have attempted to take advantage of this feature in order to tackle the underreporting of income for services carried out through platforms and to bring work traditionally performed informally into the formal economy.

In order to tackle the underreporting of income, countries could mandate platform operators to report earnings to tax authorities, or could even mandate platform operators to collect personal income taxes and social security contributions on behalf of the workers.<sup>6</sup> For example, in Estonia passenger transport platforms share information on the financial transactions between customers and drivers with tax authorities so that the tax authorities can prefill drivers' tax forms. Since 2016, in Belgium there have been favourable tax

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between a supplier and buyer which restrict competition), and one which merits assessment by competition authorities (while ridesharing platform operators might argue that these incentives improve the consistency and quality of service for customers) (OECD, 2020<sup>[37]</sup>).

<sup>6</sup> An added advantage is that such records could be a useful data source for understanding the prevalence and working conditions of platform workers.

measures (i.e. 10% income tax instead of 33%) for workers who earn under EUR 5 000 annually through officially recognised platforms that withhold taxes at source and report earnings to tax authorities. As well as ensuring taxes are paid, this preferential tax treatment is designed to incentivise side work in the platform economy.

In emerging economies with a high incidence of informal employment, the platform economy may constitute an opportunity for many workers to formalise, since it can reduce the costs of formalisation and improve monitoring of economic activity through the digitalisation of transactions (Alonso Soto, 2020<sup>[36]</sup>). However, to capitalise on these opportunities, emerging economies will need to ensure that adequate tax and social protection mechanisms are put in place. Platform operators can play a role in facilitating access to social protection for their workers. For example, in Indonesia GoJek offers help to its motorcycle taxi drivers to subscribe to the government health insurance programme, while Grab Bike motorcycle taxi workers are automatically enrolled in the government's professional insurance programme.

## Annex. A selection of initiatives to regulate platform work

### Classifying platform workers

#### *Enforcing existing regulations*

**Responsible entity:** Spanish Labour and Social Security Inspectorate

**Description:** Spain has developed campaigns targeted at false self-employment in platform work as part of the Labour and Social Security Inspection Strategic Plan 2018-2020, including developing a dedicated operative procedure, providing specialised training to inspectors and implementing regional pilot programmes.

**Read more:** <http://www.mitramiss.gob.es/ficheros/ministerio/plandirector/National Plan for Decent work.pdf>.

#### *Making it easier to challenge employment status*

**Responsible entity:** State of California (United States)

**Description:** The AB 5 Bill in California, in effect as of 1 January 2020, is an example of recent legislation that puts the burden on the hiring entity to establish that the worker is an independent contractor by satisfying a three-pronged test. Otherwise, the worker is deemed an employee. The ruling was expected to have major implications for platform operators and platform workers, as platform operators would be obliged to offer health insurance and paid time off. Uber and Lyft applied for an exemption but were denied. Following this, they have not reclassified their drivers as employees but have changed pricing and other policies (Bhuiyan, 2020<sub>[11]</sub>).

**Read more:** [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB5](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB5).

**Responsible entity:** Portuguese Government

**Description:** Portugal introduced a new, simplified judicial procedure to target the growth of false self-employment through changes in 2013 and 2017 (Law n.º 63/2013, August 27 and Law n.º 55/2017, July 17). It provides workers with a speedier court decision recognising the existence of an employment relationship. In addition, employers may receive a pre-notification from the labour inspection authority to regularise a bogus self-employment relationship where one has been detected.

**Read more:** <https://www.lexology.com/library/detail.aspx?g=da11d99f-8dc3-4a6f-8262-52affa8986e5>.

## Improving working conditions in platform work

### *Extending collective bargaining rights to platform workers*

**Responsible entity:** Hilfr.dk and 3F (private sector and trade union)

**Description:** In Denmark, Hilfr.dk, a platform for private home cleaning services, signed a collective agreement in April 2018 with the trade union 3F. The agreement grants platform workers sick pay, holiday allowance and a contribution to their pension.

**Read more:** <https://www2.3f.dk/~media/files/mainsite/forside/fagforening/privat%20service/overenskomster/hilfr%20collective%20agreement%202018.pdf>.

### *Introducing a minimum wage*

**Responsible entity:** New York City Council and the NY Taxi and Limousine Commission

**Description:** Since January 2018, New York City has imposed a minimum wage for Uber and Lyft drivers. In response, Uber and Lyft filed legal challenges (which have been unsuccessful) and raised prices for passengers as a result. They also started restricting access to the app when a driver is in an area of low demand, thereby reducing the number of working hours.

**Read more:** <https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5b3a3aaa0e2e72ca74079142/1530542764109/Parrott-Reich+NYC+App+Drivers+TLC+Jul+2018jul1.pdf>.

### *Facilitating dispute resolution*

**Responsible entity:** European Parliament

**Description:** A regulation to facilitate dispute resolution for business users of online intermediation services has been adopted by the European Parliament. Disconnected business users will need to be provided a statement of reasons for the decision and will be given an opportunity within the internal complaint-handling process to clarify facts.

**Read more:** <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1150>.

### *Occupational safety and health*

**Responsible entity:** French Government

**Description:** In France, the legislator has granted certain rights to platform workers through the August 2016 *El Khomri law* (or *loi Travail*) on labour, modernisation of social dialogue and securing of professional careers. Specifically, where platform operators determine the characteristics of the

service provided and the worker earns more than 13% of the annual social security ceiling (EUR 5 100 in its first year) per year through the platform, the platform operator must provide reimbursement for insurance against occupational accident or illness. Platform operators must also contribute to professional training of those workers. Moreover, the law gives platform workers the right to form and join a trade union, and thereby assert their collective interests.

**Read more:** <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032983213&categorieLien=id>.

### **Encouraging platforms to exercise social responsibility**

**Responsible entity:** French Government

**Description:** The 2019 *Orientation des mobilités* law or *Mobility law* introduced the possibility for platform operators to draw up a social responsibility charter with a certain number of guarantees for workers. The administration may also approve the platform operator's charter, provided that workers using the platform have been consulted in advance. The idea is that platform operators can make commitments to improve working conditions, with the understanding that their compliance with these commitments cannot be used to presume an employment relationship.

**Read more:** [http://www.assemblee-nationale.fr/dyn/15/dossiers/loi\\_orientation\\_mobilites](http://www.assemblee-nationale.fr/dyn/15/dossiers/loi_orientation_mobilites),  
<http://www.oecd.org/employment/policy-responses-to-new-forms-of-work-0763f1b7-en.htm>.

### **Adopting an international approach**

**Responsible entity:** G20

**Description:** The G20 has committed to promoting decent work in the platform economy and consider ways of improving the working conditions of workers with little say over their remuneration and working conditions who provide services globally – including best practice principles or guidelines, which countries and/or platforms could sign up to.

**Read more:** <http://www.g20.utoronto.ca/2018/2018-09-07-employment.html>.

## Other measures to regulate platform work

### *Matching jobseekers with opportunities in platform work*

**Responsible entity:** The Finnish Public Employment Service

**Description:** The Finnish Public Employment Service has integrated a pilot called “New Forms of Work and Entrepreneurship” into their digital job-market platform (*Työmarkkinatori*), to offer opportunities in new forms of work and entrepreneurship to jobseekers, by linking them to invoicing companies and digital job mediation platforms. Another aim of the pilot was to give those working in the Public Employment Service experience in these new forms of work.

**Read more:** <https://kokeile.tyomarkkinatori.fi/en/Etusivu/Henkiloasiakkaat/Itsensa-tyollistaminen> (see “light entrepreneur”).

**Responsible entity:** The Saudi Arabian Ministry of Commerce

**Description:** Saudi Arabian government agencies have launched their own platforms: 1) *Maroof*, which allows individuals to set up online stores, and 2) *Bahr*, an online market for professional services.

**Read more:** <https://mlsd.gov.sa/en/news/ministry-hrdf-support-independent-business-owners-involved-78-occupations-and-sectors>.

### *Training jobseekers for opportunities in platform work*

**Responsible entity:** Israeli Ministry of Labour and Social Affairs

**Description:** The Israeli Ministry of Labour and Social Affairs offers training in digital skills in order to allow workers to take advantage of opportunities in the platform economy. It operates a few small pilot programmes targeted at workers in new forms of work. One of these offers training to particular groups (people with disabilities, Arab women, ultra-Orthodox) on using online trading platforms and making a living on the global online market.

**Read more:** <http://www.oecd.org/employment/policy-responses-to-new-forms-of-work-0763f1b7-en.htm>.

### *Tackling underreporting of income in the platform economy*

**Responsible entity:** Estonian Tax and Customs Board

**Description:** In Estonia, passenger transport platforms share information on the financial transactions between customers and drivers with tax authorities so that the tax authorities can prefill drivers’ tax forms.

**Read more:** <http://www2.senat.fr/rap/r16-481-2/r16-481-225.html>.

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### ***Using platforms to formalise work***

**Responsible entity:** GoJek and Grab Bike (private sector)

**Description:** GoJek offers help to its motorcycle taxi drivers to subscribe to the government health insurance programme, while Grab Bike motorcycle taxi workers are automatically enrolled in the government's professional insurance programme.

**Read more:** [https://www.justjobsnetwork.org/wp-content/pubs/reports/transformations\\_in\\_technology\\_report.pdf](https://www.justjobsnetwork.org/wp-content/pubs/reports/transformations_in_technology_report.pdf).

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