

ITUC PERC

PERC & FES workshop: Workers' Rights in Platform Economy in Europe and Central Asia

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Regulating platform work in the context of international labour standards

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Platform work –regulatory responses

- Diversity of regulatory responses – regulatory uncertainty
- Need for international coordination (standard)
- Not enough to leave platforms to the courts
- Regulatory solutions should reinforce the principle that universal labour standards are applicable to all workers

ILO – decent work in the platform economy

- At its 341st Session (March 21), the Governing Body decided “to convene a tripartite meeting of experts on the issue of ‘decent work in the platform economy’ in the course of 2022”.
The results of this meeting “would subsequently inform a **possible general discussion or standard-setting item** on this subject, should the Governing Body decide to place such an item on the agenda of **the 112th Session (2024) of the Conference**”.
- In this regard, the Director-General proposed the following agenda:
 - **examine the plurality of the realities** the expression “platform economy” encompasses, including: the different types of platforms and sectors in which they are present; the profile of the companies and workers engaged in their activities; the interactions with the labour market; and the competitive relationship between platforms and other undertakings;
 - examine the opportunities and challenges of employment generated by the platform economy, including for people facing difficulties in accessing the labour market and considering recent developments related to the COVID-19 crisis;
 - review **how platforms workers are classified** and the responses given by the public authorities, social partners and other relevant stakeholders to the issue of classification;
 - review **the working conditions and social protection** enjoyed by platforms workers, including protection of workers’ personal data and existing safeguards with regard to the utilization of technologies for organizing and monitoring work (AI);
 - examine **access to freedom of association** and to the effective recognition of the right to collective bargaining for platform workers;

How courts have responded to platform work?

Belgium

- Dossier n°: 187 – FR – 20200707 (**Uber**)

France

- Mr X v. **Uber** France and **Uber BV** Ruling No. 374
- Mr B. v. **Take Eat Easy** (Judgment N 1737)
- Trib de Paris 16.03.22 (**Deliveroo**)

Germany

- Case No. 9 AZR 102/20 (**Roamler**)

Italy

- Cass. n. 1663/2020 (**Foodora**)
- Yiftalem Parigi v. **Just Eat** Italy
- Trib. Palermo 3570/2020, (**Glovo**)

European Union

- B v. **Yodel Delivery Network**

Netherlands

- **Deliveroo** v. Federation of the Dutch Trade Movement (FNV)

Spain

- Rider v. **Glovo App** 23, S.L
- S J SO 2952/2019 (**Deliveroo**)

Switzerland

- Cour d'appel civile du Canton de Vaud. Ruling no. P317.026539-190917/380 of 23 April 2020 [**Uber**]
- Décision du 29 mai 2020 n°ATA/535/2020 [**Uber Eats**]

United Kingdom

- **Uber BV** v. Aslam, [2021] UKSC 5
- IWGB v. RooFoods Ltd. T/A 2018] EWHC 3342 [**Deliveroo**]
- [Addison Lee Ltd v Lange & Ors **UKEAT**/0037/18/BA
- Addison Lee Ltd v Gascoigne **UKEAT**/0289/17/LA

Other countries :

US, South Korea, Uruguay, South Africa, New Zealand, Chile, Canada, Brazil, Australia

How regulators have responded to platform work?1

- Platform-specific regulatory measures

- Granting certain labour protections to (some) platform workers
 - France Act No. 2016-1088 (08.08.2016) : Section L7342-1,2,3,4,5,6 Code du travail (platform to pay insurance against workers; occupational activities; worker's right to vocational training, right to join and form trade unions and engage in concerted refusals to provide services – limited to platforms that determine the services characteristics and set each task's price (e.g. a ride, a delivery, a cleaning task)
 - Italy – regional law in Lazio (2021): OSH, CB to establish levels of basic pay, registration of workers and platforms, Regional Digital Labour Council) – applies to all workers whose work is organized via an app.
 - Portugal “Uber law” Lei n. 45/2018 – presumption of employment; 10h/24h driving time limit; mechanism for complaints; obligation to track driver's working time incl. rest time - limited to platforms providing transport
 - Spain – “Riders law”(2021) – presumption of employment relationship (specific provisions – courts will need to determine applicability of presumption case-by-case) – limited to food delivery riders (TU negotiations)
 - Austria – CBA covering all bicycle delivery services
 - Non-EU examples: Colombia, Argentina,

How regulators have responded to platform work?2

- **Legislation on the employment relationship**
- California, AB5 law – introducing “ABC test:
 - (A) [t]he person is **free from the control and direction** of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
 - (B) The person performs work that is **outside** the usual course of the hiring entity’s business.
 - (C) The person is customarily engaged in an **independently established trade, occupation, or business** of the same nature as that involved in the work performed

Platform work on the ILO agenda

1919 International Labour Charter and Declaration of Philadelphia

The Preamble of the [ILO Constitution](#) calls for an improvement of conditions related to working time, adequate living wages and occupational safety and health, among others, without mentioning any distinction based on employment status.

1998 Decent Work Agenda

2000 MoE on Workers in Situations Needing Protection

“the global phenomenon of transformation in the nature of work has resulted in situations in which the legal scope of the employment relationship (which determines whether or not workers are entitled to be protected by labour legislation) does not accord with the realities of working relationships. This has resulted in a tendency whereby workers who should be protected by labour and employment law are not receiving that protection in fact or in law.” (Joint Statement)

2006 Employment Relationship Recommendation, 2006 (No. 198)

2008 Social Justice Declaration for Fair Globalisation

2015 ILO Report Non-Standard forms of employment

2019 Centenary Declaration

Centenary Declaration specifically calls for “policies and measures that ensure appropriate privacy and personal data protection, and respond to challenges and opportunities in the world of work relating to the digital transformation of work, including platform work”.

All workers should enjoy adequate protection in accordance with the Decent Work Agenda, taking into account:

- (i) respect for their fundamental rights;
- (ii) an adequate minimum wage, statutory or negotiated;
- (iii) maximum limits on working time; and
- (iv) safety and health at work.

2021 ILO Report Platform work and employment relationship

2021 ILO World Employment and Social Outlook (WESO) 2021: The role of digital labour platforms in transforming the world of work

2021: GB decision to call the Meeting of Experts on decent work in the platform economy

R198 Employment Relationship Recommendation, 2006

Protection should be accessible to all, particularly vulnerable workers (R 198, preamble)

*Determination of the existence of such a relationship should be **guided primarily by the facts** relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement... (R198, Para 9)*

*For the purpose of **facilitating the determination of the existence of an employment relationship**, Members should, within the framework of the national policy referred to in this Recommendation, consider the possibility of the following: (...) ((R198, Para 11)*

*(a) allowing a **broad range of means** for determining the existence of an employment relationship;*

*(b) providing for **a legal presumption that an employment relationship exists** where one or more relevant indicators is present;*

*(c) determining, following prior consultations with the most representative organizations of employers and workers, that **workers with certain characteristics**, in general or in a particular sector, **must be deemed** to be either employed or self-employed.*

R198 Employment Relationship Recommendation, 2006

13. Members should consider the possibility of defining in their laws and regulations, or by other means, **specific indicators of the existence of an employment relationship**. Those indicators might include:

- (a) the fact that the work:
 - is carried out according to the **instructions and under the control** of another party;
 - involves the **integration of the worker in the organization** of the enterprise;
 - is performed **solely or mainly** for the benefit of another person;
 - must be carried out **personally** by the worker;
 - is carried out **within specific working hours or at a workplace specified or agreed** by the party requesting the work;
 - is of **a particular duration and has a certain continuity**;
 - requires the **worker's availability**;
 - or involves the **provision of tools, materials and machinery** by the party requesting the work;
- (b)
 - **periodic payment of remuneration** to the worker;
 - the fact that such remuneration constitutes the worker's **sole or principal source of income**;
 - provision of **payment in kind, such as food, lodging or transport**;
 - recognition of entitlements such as **weekly rest and annual holidays**;
 - payment by the party requesting the work for travel undertaken by the worker in order to carry out the work; or
 - **absence of financial risk** for the worker.

- Employment relationship remains an important gateway to protection - it is important to reflect on employment status when considering how to protect platform workers
- R198 is still an important guide
- Principle of primacy of facts (and the need to review multiple elements, not to rely on a single indicator) – remains fundamental
- Most of R198 employment status indicators remain valid – need to reflect on employment status indicators
- Other ILS may prove useful in search for source of protection for platform workers – e.g. standards on PEAs, home work, domestic work.
- Do we need new categories in labour law or we need to better apply the existing categories?