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Working conditions and social protection of platform workers in Belgium: Policy measures and stakeholder initiatives

**Peer Review on "Platform Work"
Germany, 12-14 October 2020**

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1 Introduction

This paper has been prepared for the Peer Review on "Platform Work" within the framework of the Mutual Learning Programme. It provides a comparative assessment of the policy example of the host country and the situation in Belgium. For information on the host country policy example, please refer to the Host Country Discussion Paper.

2 Situation in Belgium

Platform work refers to all forms of paid labour delivered on, or mediated by, an online platform, which involve at least three parties: a platform, a platform worker, and a client (Eurofound, 2019). Online platforms match the supply and demand of services. Services are provided at the customer's request ('on demand') and can include various activities that are carried out on-location or online. Platform work is a relatively new form of work, characterised by the use of digital technology, applications and algorithms to organise, allocate, monitor and evaluate work. Platform work is highly heterogeneous.

In Belgium, platform work first emerged in 2015 when large ride-hailing company launched its services in the country. Since then, there have been rich public and policy debates on the topic, fuelled by significant media attention for platform work, which cover both the opportunities and risks that platform work brings. Both the government and the social partners have taken several initiatives to define, map, and regulate platform work.

To date, there are hardly any studies and data on platform work in Belgium. Belgium is not included in recent large-scale surveys on the topic, e.g. the COLLEEM and COLLEEM II surveys from the Joint Research Centre of the European Commission. Comparative work that does include Belgium, such as Eurofound (2018), is mostly based on literature review and fieldwork. National data collection efforts have been limited or are still in the early stages (e.g. module on platform work for labour force survey is being prepared). Although data are collected by the tax authorities, these are not publicly available.

Despite the limited empirical evidence, it appears that Belgium is not a frontrunner with respect to platform work. In comparison with the EU-27 average, Belgium records fewer platforms, platform workers and clients. According to the Flash Eurobarometer survey 438, in 2016, 61% of Belgian respondents had never heard of collaborative platforms (compared to the EU-average of 46%), whereas 2% (compared to 4% in the EU) had used such platforms and paid for a service once, 4% (compared to 9% in the EU) uses them occasionally and 2% (compared to 4% in the EU) uses them regularly. The follow-up Flash Eurobarometer survey 467 in 2018, similarly, puts Belgium (far) below the EU-average and the leading Member States when it comes to participation in the platform economy as clients and platform workers. In 2018, only 15% of the Belgian respondents who had never offered services through an online platform before would consider doing so in the future (EU-average of 19%); 84% would not consider doing so (78%). Previous research by ING and Idea Consult on the broader concept of the sharing economy attained similar results. Only 2% of the 1,030 respondents to a 2015 ING survey had participated in the sharing economy (ING Internal Survey, 2015). The 2017 Idea Consult survey conducted on 1,000 respondents in Flanders found that 4% had worked as a platform worker in the previous year, while 26% was considering doing so in the future. 87.1% of respondents do not know anyone who works in the platform economy.

In Belgium, platform work is concentrated in the transport, household and professional services sectors, and it is mostly found in the country's capital and its major cities. With regard to the types of platform work, it appears that especially on-location platform work of different skills levels is prevalent in Belgium. Online platform work seems less popular. Related to this, the majority of the platform workers are young high-educated men living in urban areas, or older workers (inactive, retired). Most do platform work as an additional activity.

3 National policies and measures

3.1 Policy measures implemented by the government

Belgium is one of the few EU Member States with dedicated legislation on platform work, and it was one of the first countries to introduce such measures (European Commission, 2020). The legislative framework was established in 2016 and amended in 2018, though this modification was annulled by the Constitutional Court in April 2020. From 1 January 2021 onward, the framework as it was set up in 2016 will thus come back into force. It is important to note here that the legislative framework is centred on the revenues that platform workers earn. It does not contain any provisions related to working conditions or social protection of platform workers. The Belgian approach thus has a different scope than legislation adopted, for example, in France (El Khomri Law, national legislation) or Italy (regional legislation in Piedmont and Lazio) (European Commission, 2020).

In Belgium, a Programme Law¹ was introduced on 1 July 2016, which established a new favourable tax regime for income obtained through platform work. Articles 35-39 and articles 40-43 of this law insert several changes to the Income Tax Code 1992 and the Value Added Tax code, respectively. Under the law, earnings obtained via platform work are classified as 'miscellaneous income' instead of 'income from professional activities' (Art. 90, 1^obis ITC 1992), and exempted from Value Added Tax (VAT), as long as the total income from platform work stays below a maximum level (EUR 5,000 per year in 2016, indexed) and certain other conditions are met. Those conditions are:

- Provision of services exclusively to natural persons ('peer-to-peer') who are not acting in the context of their professional activity.
- Provision of services exclusively related to contracts established by an officially licenced platform or a platform organised by a public authority.
- Fees related to the platform work activities are only paid or granted to the worker by the platform.

The above legislation applies only to platform work intermediated by platforms that have received an official accreditation. The legal framework for the accreditation of platforms is set by a Royal Decree of 12 January 2017.² Both domestic and foreign platforms can apply for and receive accreditation, as long as all criteria listed in Table 1 are met. A list of accredited platforms is held by the Federal Public Service Finance. In July 2020, the list counted about 70 platforms. Although platforms must be accredited for their workers to use the tax regime, this is not a prerequisite to be allowed to operate in Belgium. In fact, several international platforms that are active in Belgium either have never applied for accreditation (e.g. large ride-hailing company) or did so only after some years (e.g. large food delivery company).

Box 1. Recognition conditions for platforms as set in the Royal Decree of 12 January 2017

- The platform is set up within a company or non-profit association established in accordance with the legislation of a Member State of the European Economic Area or a state whose companies must be treated in the same way as Belgian companies in Belgium pursuant to an international agreement.
- The company or non-profit association's registered office, main establishment or seat of management or administration is located in the European Economic Area or in a state whose companies must be treated in the same way as Belgian companies in Belgium pursuant to an international agreement.

¹ Programmawet 1 juli 2016, Belgisch Staatsblad 4 juli 2016, 40.97, also known as the 'Law De Croo'.

² Royal Decree executing article 90, second item, of the Income Tax Code 1992, regarding the conditions for recognition of electronic platforms in the sharing economy, and subjecting the revenues mentioned in article 90, first item, of the Income Tax Code 1992, to the withholding tax on the payroll.

- The company or non-profit association is registered in the Crossroads Bank for Enterprises for that activity as a commercial or craft enterprise, or it is registered in the trade register in accordance with the legislation of the Member State of the European Economic Area or the state whose companies must be treated in the same way as Belgian companies in Belgium pursuant to an international agreement.
- The company or non-profit association has a company number assigned by the Crossroads Bank for Enterprises which counts as a VAT identification number and contains the letters BE, or, in the absence of such a company number, has a VAT identification number in the Member State of the European Economic Area or in the state whose companies must be treated in the same way as Belgian companies in Belgium pursuant to an international agreement.

Source: Authors' own elaboration based on the Royal Decree text.

The Programme Law 2016 (which was amended in 2018 but will be restored from January 2021 onwards) provided that if the platform worker earned less than the threshold and all other conditions were met, the income earned through platform work was taxed at a rate of 20% instead of 33% as is normally the case for miscellaneous income, to which a fixed cost deduction of 50% was applied. In other words, a rate of 10% applied. Platform workers were also exempt from several other obligations (see Table 1).

Table 1. Programme Law 2016 and its application to the income earned through platform work

Income ≤ threshold* and all other conditions are met	Income > threshold* and/or other conditions are not met
<ul style="list-style-type: none"> • Income considered 'miscellaneous income' • Tax rate of 20% with 50% deduction applies • Exempt from VAT and social security contributions • No obligation to register as self-employed (no VAT number, customer listing, etc. required) • No clear employment status 	<ul style="list-style-type: none"> • Income considered 'professional income' • Obligation for platform workers to register as self-employed with the Crossroads Bank for Enterprises • No exemptions from the VAT duties or formalities, legislation on social security, etc.

Source: Authors' own elaboration based on the Programme Law text.

*Note: * EUR 6,340 per year in 2020.*

The motivation behind this legal framework was to stimulate the growth of the platform economy. Platform work was seen as a means to encourage entrepreneurship, ensure access to employment, and combat social fraud and undeclared work (Lenaerts, 2018). The initiative for the legislation came from Alexander De Croo, the Minister for Digital Agenda at the time. Platform work was thus discussed as part of a larger strategy towards the digitalisation of the economy, which also covered e-commerce. The law was intended to minimise administrative burden. For platform workers, this included the exemptions described, as well as the fact that the platforms were responsible to withhold taxes and pass on information to the tax authorities. Revenues from platform work were automatically included in the workers' tax returns. For platforms, it is relatively easy to

obtain accreditation. From the government's perspective, platform work was considered complementary to existing activities, which was ensured by setting an income threshold. Platform work, moreover, was not seen as 'work'. This explains why the legal framework lacks provisions on the status, working conditions and social protection of the workers.

However, the social partners have opposed this legal framework from the start, emphasising in particular the unfair competition it introduces vis-à-vis traditional companies and self-employed workers, the lack of social protection and the unclear employment status. The Council of State was also critical in its advisory opinion on the framework. The case of a large food delivery company presents another key issue: although it received accreditation, the tax authorities have argued that the favourable tax regime does not apply to income earned through the platform because food delivery is not a peer-to-peer service as restaurants are involved in the transaction.

Despite the controversy, the Michel I government set up a revised scheme for platform work as part of a new legislation on 'economic recovery and the strengthening of social cohesion' of 18 July 2018 amending the 2016 law (Lenaerts, 2018). Under this current scheme, individuals can earn up to EUR 6,000 per year (in 2018, indexed), fully exempt from taxes and social security contributions, through platform work via an accredited platform. This scheme thus entails a further relaxation of the conditions set in 2016. Services carried out within the terms of the scheme do not fall within the scope of general labour legislation and do not contribute to the acquisition of social rights. Besides platform work, the legal framework covers the provision of paid services (i) by one natural person to another natural person, provided on an occasional basis ('occasional work') and (ii) for non-profit sociocultural associations, de facto associations, and public authorities. In contrast to platform work, there are limitations as to who is allowed to perform these activities: employees working at least 4/5ths, pensioners and self-employed persons (main profession, as long as they do not carry out the same activity as their main activity).

However, this legislation was recently annulled by the Constitutional Court in Judgment no. 53/2020 of 23 April 2020, following a complaint from several social partners, sector federations, and civil society organisations. These argued that the framework threatens regular jobs, creates unfair competition vis-à-vis the self-employed, is discriminatory in terms of labour legislation and social protection (with individuals doing the same work facing different levels of protection), etc. The Constitutional Court followed this line of reasoning and nullified the legal framework. The current legislation will remain in force until the end of 2020, after which platform work will fall back on the 2016 framework.

3.2 Initiatives from the social partners and other actors

Similar to the German case, in Belgium social partners have been highly engaged in the debate on platform work and they have launched a number of initiatives to improve the working conditions and social protection of platform workers. Besides these efforts, initiatives from platform workers and platforms, to a lesser extent, exist as well.

Soon after the first platforms became active in Belgium, the social partners concluded an interprofessional agreement for period 2017-2018³, which identified digitalisation and the platform economy as societal challenges they wished to address during that period. The social partners further examined in the National Labour Council (NAR/CNT) and the Central Economic Council (CRB/CCE) what measures could be taken to ensure that the platform economy would foster employment, entrepreneurship and economic growth, while also assuring the sustainability of the social security system. Both the trade unions and employers' organisations have a nuanced view on platform work, in contrast to the social partners in other countries (Lenaerts, 2018). Both underlined that platform work brings opportunities as well as risks, and both argued that the challenge is therefore to mitigate the risks while ensuring that the benefits can be reaped. On several occasions, the social partners have formulated recommendations on how to

³ IPA/AIP 2017-2018, published on 2 February 2017.

address platform work to the government, but as explained, not all those have been taken up (Lenaerts, 2018).

Besides these initiatives on the policy level, trade unions have supported platform workers in launching court cases and filing requests to the Federal Public Service Social Security's Administrative Commission for the determination of employment relationships to clarify their employment status. Trade unions have also reached out to platform workers in the field, for example by approaching them in the streets, through dedicated campaigns and promotional materials, by reaching out via the platforms or via social media. The unions actively aim to identify, inform, organise and represent platform workers, on an individual and group basis. The unions are also collaborating closely with the KoeriersKollektief (a collective of food delivery riders), which was started by delivery riders after Take Eat Easy went bankrupt (see below). Supported by the unions, the collective organised a range of protests, strikes and actions (e.g. in July 2017, 30 workers protested against the relocation of one of food delivery company's customer service centre to Madagascar, see Vandaele, 2017). The trade union ACV launched United Freelancers, to organise and represent self-employed without employees, including platform workers.

A much-discussed case is that of Deliveroo and SMart, a collective of artists (Drahokoupil and Piasna, 2019). In 2016, SMart negotiated an agreement with two main food delivery platforms operating in Belgium at the time, to standardise pay structures and worker protection. Food delivery riders had the choice to either work directly for the platform as a self-employed, or to sign an employment contract with SMart. In the latter case, riders were guaranteed a minimum wage and minimum three-hour shifts, were covered by work-related accident insurance and had access to social security and received safety training (Drahokoupil and Piasna, 2019). In July 2016, Take Eat Easy went bankrupt. Deliveroo became the main food delivery platform.

In October 2017, however, Deliveroo announced it would terminate the collaboration with SMart, changing its remuneration system and the algorithms used to allocate work. From February 2018, the food delivery company would only work with self-employed riders who were paid on a per-delivery basis. This coincided with the introduction of the policy measures described above, as well as with negotiations between SMart and the unions, who were close to reaching a collective agreement. Despite significant protests by the unions and riders – of whom 90% worked via SMart – Deliveroo went ahead with the changes. This development caused such controversy that Kris Peeters, the Minister of Employment, Labour and Social Dialogue at the time, ordered the Federal Government Department of Social Security to investigate the platform and also the labour and social affairs inspectorates opened a formal investigation (Vandaele, 2017). The food delivery riders participated in various meetings with the Minister and the Deliveroo management. Drahokoupil and Piasna (2019) show that the riders generally held negative opinions on the agreement with SMart coming to an end and state that conditions have deteriorated.

4 Considerations for future policies and initiatives

4.1 Challenges related to platform work in Belgium

Similar to Germany, attention is being paid in Belgium to improving the availability and quality of data on platform work (as explained above), the applicable labour legislation and potential changes to this existing legislation, enabling collective agreements, and social protection. The issue of cross-border platform work is less discussed, which may be due to the higher prevalence of on-location versus online work. Working conditions, collective agreements and social protection are topics that are emphasised especially by the social partners, and to a lesser extent the federal government.

The uncertainty about platform workers' employment status has been identified as the main challenge facing platform work in the literature (European Commission, 2020), as

a result of its significant impact on the labour and social protection rights and obligations that platform workers have. In Belgium, there has been a lot of discussion about the employment status, as it is increasingly difficult to categorise workers as employees or self-employed on the basis of the degree of subordination. This resulted in several court cases (of which some are yet to be settled), complaints to the Labour Relations Commission, etc. The existing regulatory framework on platform work also does not provide much clarity about the employment status of platform workers: those earning more than the threshold are self-employed; those earning less do not have a status.

Although there has been some discussion on introducing a third status that falls between self-employment and employee, similar to employee-like persons in Germany, this idea was quickly abandoned in Belgium (Lenaerts, 2018). Common arguments against a third status are that this would increase the legal complexity; introduce additional grey areas between statuses and thus new classification issues; crowd out the status of employee and erode employees' rights; give rise to unfair competition between workers; does not account for the rising heterogeneity in platform work; etc. Most stakeholders are instead in favour of refining the existing law and clarifying its application to platform work. There is some discussion on whether or not self-employed can be organised and represented, but this is yet to be settled. The social partners and federal government are also looking into policies that can improve the situation of non-standard workers and self-employed without employees, of which platform workers are a particular subgroup.

4.2 Shaping future policies and initiatives

As the legal framework governing platform work is changing again in 2021, there will be a momentum to give a new direction to the policy on platform work and to address the challenges related to the status, working conditions and social protection of platform workers. The current policy is strongly focused on people who already have a strong position in the labour market, while hardly any attention is paid to people in vulnerable positions and with less strong profiles. Research from the European Commission (2020), however, shows that such vulnerable workers tend to be overrepresented in low-skilled on-location work, which is dominant in Belgium. Furthermore, little account has so far been taken of initiatives or events that developed in parallel, e.g. complaints handled by the Labour Relations Commission of FPS Social Security, lawsuits in Belgium and abroad, EU policy, etc. In doing so, it is key to involve all actors, such as social partners, platforms, platform workers, intermediaries, inspectorates, etc.

5 Questions

- How does the code of conduct ensure that the minimum standards are enforced?
- For social security, one issue is that platform workers may have statutory access but fail to meet the conditions for effective access. How is this being addressed?

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Annex 1 Summary table

The main points covered by the paper are summarised below.

Situation in the peer country

- Platform work is a small but quickly growing phenomenon.
- There is very little data and knowledge available about platform work in Belgium.
- Belgium is not a frontrunner with regard to participation in the platform economy.
- On-location platform work is most prevalent.

National policies and measures

- Belgium is one of the few countries with dedicated legislation on platform work.
- The legal framework introduces a favourable tax regime (modified in 2018) which is available to platform workers meeting specific conditions. This scheme is coupled with a voluntary licencing scheme for platforms.
- The framework does not offer much clarity in terms of status and does not contain any provisions regarding working conditions and social protection.
- Social partners have been very active in Belgium, both on a policy level and in the field, and are supporting platform workers.

Considerations for future policies and initiatives

- Employment status as the main challenge facing platform work, due to its impact on the labour and social protection rights and obligations of workers.
- Idea of introducing a third status was discussed by refuted.
- Debate on collective agreements is currently still ongoing.
- Working conditions and social protection are put on the agenda by social partners and the federal government.
- Momentum to change the legal framework to better account for these issues.

Questions

- How does the code of conduct ensure that the minimum standards are enforced?
- For social security, one issue is that platform workers may have statutory access but fail to meet the conditions for effective access. How is this being addressed?

Annex 2 Example of relevant practice

Name of the practice:	Legal framework governing platform work – Favourable taxation regime
Year of implementation:	2016, with modifications in 2018
Coordinating authority:	Federal government
Objectives:	Encourage the development of platform work
Main activities:	Introduction of a legal framework
Results so far:	Legal framework was extended, but recently annulled



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