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Regulating platform work through collective agreements and law

**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 Denmark.

2 Situation in the peer country

Platform work¹ is growing in Denmark. There is an increase in terms of 1) the share of workers involved in platform work and 2) companies providing platform work. However, similarly to Germany, the share of workers on platforms is still (for now) rather low in Denmark. The latest quantitative data indicate a share of 1% of the working population performing platform work in Denmark (Ilsøe & Madsen 2017). More recent research indicate a share between 1-2.5% (Jesnes et. al. 2019). However, as Riso (2019) shows, there is a lack of adequate data on the precise share of platform workers, which is a general problem, worldwide. The same issue is raised in the host country discussion paper. With the rise in the share of companies providing platform work, it seems that, currently in the Nordic countries, the demand for platform workers is actually higher than the supply (The Nordic Council of Ministers 2020).

In terms of regulating platform work and securing social protection in Denmark it is important to distinguish between the different types of platform companies:

- online platform work where both the work and its organisation are carried out digitally, and
- local platform work which, generally, involves physical tasks, such as food delivery, household services like cleaning provided in a given location².

The latter appear to be dominated by local, domestic, Danish platform companies while the first includes more international based companies. The national origin of the platform company seems important, as noted in the following section, since local, Danish platform companies to some degree have concluded collective agreements with trade unions – this is (for now) not the case with international platform companies.

Most platform workers in Denmark are young, low-paid, male and often with an ethnic minority background. The platform work that they perform most commonly requires low skills and often serves as an occasional source of income (Ilsøe & Madsen 2017).

In Denmark the discussions and issues related to platform work is roughly speaking two-folded: First, platform companies and solo-employed workers have been accused of not paying sufficient tax and thereby undermining the Danish welfare state. Second, workers on platforms are lacking social protection and are subjected to precarious working conditions.

Both themes are connected to an overall and well-known discussion about the (legal) status and definition of platform companies and platform workers which are not clear-cut (Doherty & Franca 2020). It is also important to note that in Denmark the notion 'platform economy' and 'sharing economy' is often used as synonyms in spite of the different definitions found in the academic literature.

¹ The same definition of platform work as found in the host country discussion paper.

² This distinction is similar to the one used by Howcroft and Bergvall-Kåreborn (2019) looking at 'online task crowdwork', and 'asset-based services', where the drivers and couriers use their own cars or bikes for transportation.

3 National policies and measures

Overall, workers on platforms receive good statutory social protection in Denmark, compared to other countries, due to the nature of the universal welfare state. Health care is free for all and therefore not dependent on labour market participation and employer paid social insurance. In terms of unemployment benefits the Danish government revised the unemployment insurance scheme in 2018 specifically to ease the access to unemployment insurance benefits for solo-employed, including platform workers and freelancers. In the new unemployment insurance scheme, from 2018, the rights depend on activities rather than on contractual arrangements. Hereby, solo-employers (including platform workers) can obtain the right to unemployment insurance funds by earning an income from different sources even though they are solo-employers. In terms of pensions, platform workers are entitled to state-pension but will not receive supplementing labour market pensions, since this pension scheme is provided by collective agreements reserved for workers. However, as described below, some platform companies have concluded agreements providing pensions or a welfare 'supplement' to its users.

3.1 The Danish model of employment relations and platform work

To understand the Danish approach to platform work it is important to briefly introduce the Danish model of employment relations. In Denmark, wages and working conditions are regulated through collective agreements negotiated voluntarily by the trade unions and multi-employer associations at sectorial and local level. In Denmark no statutory minimum wage set by law exists. In Norway and Finland different legal extension mechanisms supplement the collective bargaining in order to ensure that collective agreements also apply to companies without any. However, in Denmark (and Sweden) no legal extension mechanism exists. Here a high bargaining coverage and social rights for employees solely relies on the existence of broad-based bargaining parties. Hence, coverage of both trade unions and employers' associations are crucial preconditions for the functioning of the Danish model of labour market regulations, securing social protection of all workers, including those working on platforms (Høgedahl 2020).

The state only plays a minor role in labour market regulation in Denmark and will, in most cases, not legislate unless urged to do so by the social partners. However, some areas are regulated and complemented by law, e.g.: working environment (the Holiday Act, *Ferieloven*), employment protection and working conditions for a few specific professions, including the Danish Salaried Employees Act (*Funktionærloven*) aimed at white-collar workers and the Seamen's Act (*Sømandsloven*) (Scheuer 2012). Of course EU law also plays a significant role in the Danish labour market (see Kristiansen 2013), the same as in Germany.

Wage and working conditions are therefore mainly secured by trade unions demanding collective agreements (*tiltrædelsesoverenskomster*) with employers that are not members of an employer association. Since platform companies rarely see themselves as employers, they are not members of any employer associations and thereby not automatically involved in collective bargaining (Rasmussen & Madsen 2017). Danish employers' organisations have also expressed concern that considering platform workers as self-employed may distort competition, fuel social dumping and expand the black market (Oppegaard et al., 2019). The trade unions in Denmark have criticized platform companies for being reluctant to assume employer responsibility. In this vein, the unions are concerned that the way these companies make use of bogus self-employment allows businesses to bypass demands for collective agreements.

Nevertheless, in Denmark (like the rest of the Nordic countries) trade unions have still been able to conclude collective agreements with certain platform companies (see table 1).

Table 1. Collective agreements with the Danish platform companies

Platform	Status and nature of the agreement
Hilfr (cleaning)	Cleaning platform signed an agreement in April 2018. ¹⁵ This is a trial agreement whereby the providers of work can decide themselves, when they have worked more than 100 hours, if they want to be employees or self-employed.
Voocali (translation services)	Translation services platform has signed the agreement with trade union HK. The agreement covers 1) salaried Employees and 2) work performed via the platform by those that are not employees. The agreement was concluded in 2018.
Worksome (freelance and consulting)	Freelance and consulting platform company has signed an agreement with a number of trade unions (IDA, DM, Djøf) representing workers with a higher education. It is not a written agreement but a binding cooperation were trade unions are involved in checking and securing the standard terms used by the platform.

Source: Jenes et al. (2019) and own additions.

The most famous company agreement was signed in April 2018 by Hilfr and the United Federation of Danish Workers (3F) (union representing workers in the cleaning sector). This agreement stands out as it allows platform workers that have worked more than 100 hours on the platform to decide for themselves if they want to be self-employed or employees (so-called Super-Hilfrs). This can be regarded as a novelty in Nordic collective bargaining, as individual workers normally cannot choose between these two forms, since collective agreements cover all workers within a given sector or company (Høgedahl & Jørgensen 2017). Super-Hilfrs receive a minimum hourly wage of DKK 141.21 (EUR 19) and accrue social rights to pension, holiday entitlements and sick pay. Super Hilfrs also receive a so-called 'welfare supplement' of DKK 20 (EUR 3) per hour.

The Hilfr agreement was evaluated in November 2019, after being in effect for one year. The evaluation showed that (only) one out of seven of its users are Super-Hilfrs and thus covered by the agreement. Critics often point out that the Hilfr agreement is very weak in terms of social rights when compared to the general collective agreement within the cleaning sector. Nevertheless, the Hilfr agreement got a lot of attention internationally since it was the first collective agreement signed with a platform company. The agreement proves it is possible to conclude collective agreements with a platform company in spite of the difficulties connected to platform work – the fact that platform companies does not see themselves as employers thus are not obligated to sign collective agreements.

Since the Hilfr agreement, a number of other agreements have been concluded with platform companies in Denmark (see table 1). Voocali (providing interpreters) have concluded a collective agreement with the Danish trade union HK organising white-collar workers in both private and public sector. The agreement does not have specific wage levels but states that Voocali must not undercut the general salary level for interpreters in Denmark. HK and Voocali are currently negotiating labour market pensions to be a part of the agreement.

The Worksome agreement is also interesting since it concluded by a number of trade unions (IDA, DM, Djøf) representing workers with a higher education. The agreement is not a conventional agreement but more of a partnership where the three trade unions are involved in checking the standard terms used by Worksome in order to create transparency. This initiative is very similar to the FairCrowdwork.org and Crowdsourcing Code of Conduct presented in the host country discussion paper. The

trade unions are also offered wage statistics which enable them to advise their members working as solo-employed freelancers.

These examples show that the Danish model of employment relations is capable of adapting and securing social protection for platform workers through agreements and cooperation. Although it is difficult and the agreements concluded with platform companies differ from regular collective agreements. The social partners are trying to find new creative ways of regulating platform work, in line with the historical tradition found in Denmark.

However, not all platform companies have had a smooth entrance to the Danish economy and cooperated with trade unions. Like in most other countries the American based taxi-service found its way to the Danish market in November 2014. Studies show its very successful entrance in terms of a rapid growth in the number of drivers and customers. The taxi-service platform was also in the early stage well regarded among Danes, especially among youth. However, a strong alliance between political parties supported by trade unions and taxi hauliers launched a massive campaign against the platform company focusing mainly on alleged tax evasion from both the company and its drivers. The campaign included adverts and videos portraying the taxi-service platform company as threat to the Danish welfare state. Subsequently, a majority of the Danish parliament passed a bill without the support of the bourgeois minority government (Løkke Rasmussen III Government). The bill adjusted the existing taxi legislation making taxi-service platform company operation in Denmark very difficult. It left the Danish market March 2017 as a consequence and has not operated in Denmark since.

3.2 National policies and measures

Taxi-service and other cases of platform companies made the Danish government conclude an agreement in May 2018 on 'Better conditions for growth and correct tax payment in the sharing and platform economy'. The agreement includes 10 initiatives in order to take the first step towards a well-functioning regulation of the sharing and platform economy:

1. Urge companies and citizens to be more active in the sharing economy
2. New basic tax deductions for sharing economy income
3. Campaign aimed at getting more Danes to rent out their holiday home
4. Digital reporting of certain sharing economy revenues to the tax authorities
5. Strengthened tax control and guidance as well as stricter sanctions
6. Clear framework for short-term rental housing
7. Cooperation on efforts against illegal rental of housing
8. Establishment of a sharing economy council
9. Better access to capital from the Danish Growth Fund via online lending platforms
10. Easier for the unemployed to be active in the sharing economy

In terms of platform economy, the government launched (initiative 8) a sharing economy council with representatives of sharing economy companies, social partners, experts and consumers. The Danish government has, like in Germany, initiated expert support in order to foster a strong platform and sharing economy. The aim is to enable companies to create growth, whilst at the same time ensuring that good working conditions and access to social security. The Ministry of Industry, Business and Financial Affairs, the Ministry of Employment and Ministry of Taxation are jointly involved with the work of the commission, and its recommendations will be presented during the fall of 2020. For the time being no policy initiatives from the Danish government have been launched aimed at improving the social protection of platform workers apart from the revision of the unemployment insurance scheme in 2018 as described above.

4 Considerations for future policies and initiatives

It is important to note that the Danish tradition of labour market relations is much less formalised compared to many other European country (Jørgensen 2002), including Germany as presented in the host country discussion paper. Securing social protection and rights for platform workers is mainly done by collective agreements conducted by the social partners in line with the Danish tradition of labour market regulations as described above. If the platform economy as expected grows and a larger proportion of the working-age population are considered self-employed, this will have implications for the collectively organised Danish labour market (Dølvik & Jesnes, 2018). The right to negotiate collective agreements is obviously of concern to the Danish trade unions. However, the Danish labour movement has been able to do new types of agreements with platform companies although they cannot be considered as classic collective agreements. Self-employed persons and freelancers do not have the same access to collective bargaining as employees. This is due to both national systems for collective bargaining and European competition law as described in the host country discussion paper. In Denmark a future discussion will be based around when and how platform workers and trade unions are able to (legally) do collective industrial actions such as strikes. In Denmark collective industrial actions are well regulated by the social partners in their own general agreements and not by national law. However, since platform companies rarely see themselves as employers they are not part of the classic employer notion and can therefore not legally be subjected to strikes. The agreements that the Danish trade unions have been able to conclude with platform companies in Denmark has been made voluntarily without the use of strikes or other collective actions. The question is how this will play out in the future?

There is obviously no easy policy fix to secure social protection for workers on platforms. In Denmark, the government has been reluctant to initiate policies aimed at platform workers out of respect for the Danish model of employment based on collective bargaining and cooperation. However, the 'Better conditions for growth and correct tax payment in the sharing and platform economy' agreement from May 2018 launched a number of new initiatives aimed at platform work. Mostly within the sphere of taxation including soft policy measures in terms of new instructions e.g. tax payments. However, new and easier ways of reporting earnings to the taxation authorities are needed as also noted in the host country discussion paper. Seen from an EU perspective more mutual learning on best-cases in terms of taxation reporting might prove fruitful.

5 Questions

- Are there any cases of strikes or other collective action conducted by platform workers in Germany?
- Are platform companies in Germany by any way organised collectively?
- How is the new mandatory pension insurance for self-employed persons managed in Germany?

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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 growing in Denmark albeit only a small share of the working population (around 1-2.5%) is taking part in platform work. It is expected that COVID-19 pandemic will accelerate platform work.
- Most platform workers in Denmark are young, low-paid, male and often with an ethnic minority background, performing low-skill work like cleaning and transportation.

National policies and measures

- Platform workers are generally well covered in terms of social protection due to the Danish universal welfare state.
- Danish government revised unemployment insurance scheme in 2018 in order to ease the access for self-employed, including platform workers.
- In line with Danish traditions of labour market regulations the trade unions are trying to conclude (collective) agreements with platform companies with some success. Hilfr (cleaning service) being the most famous.
- The government launched a ten initiative policy plan aimed at platform and sharing economy. One of the initiatives is a sharing economy council expected to put forward recommendation during the fall of 2020.

Considerations for future policies and initiatives

- Solutions connected to regulating platform work in Denmark is based on both collective agreements and to some degree national policies.
- Collective representation and right in terms of industrial actions are the main concerns in Denmark.
- Effective and easy tax payment for platform workers needs to be upgraded.

Questions

- Are there any cases of strikes or other collective action conducted by platform workers in Germany?
- Are platform companies in Germany by any way organised collectively?
- How is the new mandatory pension insurance for self-employed persons managed in Germany?

Annex 2 Example of relevant practice

Name of the practice:	Commission of sharing economy
Year of implementation:	2018
Coordinating authority:	The Ministry of Industry, Business and Financial Affairs, the Ministry of Employment and Ministry of Taxation
Objectives:	The aim is to enable companies to create growth, whilst at the same time ensuring that good working conditions and access to social security.
Main activities:	Meetings and seminars.
Results so far:	Results will be presented during fall of 2020.

Name of the practice:	Revision of the Unemployment Insurance Scheme
Year of implementation:	2018
Coordinating authority:	The Ministry of Industry, Business and Financial Affairs
Objectives:	Ease the access to Unemployment Insurance Fund for self-employed by changing the eligibility criteria.
Main activities:	Adjustment of existing legislation.
Results so far:	More self-employed are today entitled to Unemployment Insurance Fund.

