



# **Mutual Learning Programme**

DG Employment, Social Affairs and Inclusion

**Peer Country Comments Paper - Finland**

## **Platform workers' rights in Finland: Good intentions, too little progress**

**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 Finland. For information on the host country policy example, please refer to the Host Country Discussion Paper.

## **2 Situation in Finland**

### **2.1 Size**

There are different estimates on the size of the platform work in Finland. At the upper end, Huws et al (2019, 2) found that as much as 15% of adults had ever done platform work, and 8.2% had done it at least weekly in Finland in 2018. At the lower end, Statistics Finland (2018) found that in 2017 only 0.3% of adults had earned at least one fourth of their income through platforms. A third study by Pesole et al. (2018, 18) found that 3.3% had done so (corresponding to 54.4% of all platform workers in Finland).

However, even when relying on higher estimates, working through platforms is a rather small phenomenon in Finland.

### **2.2 Types of platform work and characteristics of platform workers**

Similar to other European countries, Huws et al. (2019, 4–5) found that many platform workers worked through various platforms in Finland in 2018. Keeping in mind the very broad definition of platform work used by Huws et al., 40.8% of platform workers told that they had done office work, short tasks or clickwork online, 32.6% had done high skilled online work, 19.7% had driven taxi, 21.8% had delivered meals by car or van, and 22.8% had delivered meals by bicycle, moped or scooter. It was possible for respondents to choose all options that applied.

Platform workers in Finland can be either employees or self-employed (entrepreneurs). So far, there are no court cases on the status of platform workers. In 2018 46,7% of platform workers said they were in full-time employed, 9,6% part-time employed, 7,1% self-employed, 1,3% full-time parents, 6,7% retired and 17,0% students (Huws et al. 2019, 9). These figures have to be read with caution, because we do not know whether full-time employment was from platform work or other job (see Pesole et al. 2018, 31–33).

The characteristics of platform workers in Finland are similar to those of other countries. Platform workers can be found in all age groups, but more likely among the young. Younger age groups are also more likely to work more intensively, that is, at least once a week. Of those who are dependent on income from platform work, 59% were in the age group 18-24 years in 2018 (Huws et al. 2019, 8). The women to men ratio among those who do significant amount of platform work, but not as main job is low in Finland: 0.18 (one woman for every six men) (Pesole et a. 2018, 22).

### **2.3 Growth prospects**

There are signs that platform-type working is spreading to more traditional areas. For example, a major Finnish publishing house started using a platform which hires independent contractors for newspaper delivery. This is work that previously was done by employees. Overall, having people work as independent contractors is not confined to the realm of platform economy. For example, audio visual translators were made to work as independent contractors well before the emergence of platform economy.

However, it is not easy to estimate the growth prospects of platform work in Finland. So far, there has been no massive increase in the number of platform companies. It is probable that clickwork will not spread in Finland, because earnings from micro tasks are so low in comparison with the Finnish price level. High skilled online work might have better growth prospects, but on the other hand highly skilled individuals often have

other options too. Workers living in Finland cannot meaningfully compete with international price levels, so the growth prospects in online platform work are confined to those areas that require special skills (such as Finnish language skills).

Arguably, the growth prospects will be determined by a second question. One aspect that might push companies to adopt platform-type work arrangements is the fact that there are so far no court cases on the employment status of platform workers. Traditional companies might be tempted to benefit from this loophole and outsource work to individuals.

## **2.4 Public debate**

The most visible type of platform work in Finland is food delivery, and to a certain degree cleaning. Perhaps for this reason, policy debate on workers' rights in the platform economy has for the most part revolved around this type of on-location platform work. Another reason might be that, as Pajarinen et al's (2018, 13) research suggests, high skilled online workers are relatively content with their situation.

The public debate focusses on two main concerns. First, the employee status, or more precisely lack of it, of on-location platform workers. Second, the rights of the self-employed. The second concern touches upon platform workers, but it is by far not limited to them. This debate has been going on in Finland for years if not for decades, and it mainly concerns social protection of the self-employed.

## **3 National policies and measures**

### **3.1 Legal status of platform workers**

#### **3.1.1 Current status**

From both labour law and social protection perspectives, people working in Finland are either employees or entrepreneurs (TEM 2019, 25). In the Finnish labour law, the employee status is determined based on five elements:

- 1) There is an employment contract (either written or oral).
- 2) Work is performed personally 3) for remuneration and 4) for the employer.
- 5) Work is performed under employer's direction and supervision.

The employment status is determined based on these elements, and parties involved cannot freely choose the status.

An employee status guarantees that labour laws and collective agreements apply. It is also directly linked to the type and level of social security, although basic level social security is available for all legally residing in Finland. Through these instruments, workers are entitled to dismissal protection, safe working environment and sufficient social protection such as paid sick leave, holidays and (earnings-related) unemployment benefits. Employers also pay into the employee's social insurance. Finland does not have minimum wage in the legislation, but generally binding collective agreements (which importantly include provisions on wages) cover almost 90% of wage earners, including both private and public sector workers.

If work is not done as an employee, it is done as an entrepreneur and hence without the right to employees' standard protection arising from labour law, social protection and collective bargaining. Self-employed is not a legal term in Finland (TEM 2019, 28). Entrepreneurs can insure themselves in the entrepreneurs' insurance system. Under competition laws self-employed cannot collectively bargain their terms of work.

The key issue for realising platform workers' rights is whether they are classified correctly as employees or entrepreneurs. At the moment, platforms in Finland work with both, employees and independent contractors. So far, there is no case law on the issue (ibid, 25), but a recent decision by the Finnish Labour Council (see Labour Council 2020)

defined food couriers as employees (contrary to the platform company's policy). The tripartite Labour Council operates under the Ministry of Economic Affairs and Employment. The decision was not unanimous: the result of the vote was 6–3 as the three employers' representatives had a dissenting opinion. The council's decisions are not binding, but the decision is significant from the viewpoint that this was the first time an authority took a position on the question of food couriers' employment status in Finland.

### **3.1.2 Debates on the third category**

As explained in the previous section, Finnish labour and social security legislation differentiates only between an employee and entrepreneur. The issue of a possible third category was on the agenda of a tri-partite working group chaired by the Ministry of Economic Affairs and Employment between 2011-2015, but there was agreement among all parties that a third category would only complicate the present situation (TEM 2015, 22). This position was reiterated in a report by Ministry of Economic Affairs and Employment in 2019 (TEM 2019, 26).

## **3.2 Government initiatives**

### **3.2.1 Initiatives in the Government Programme**

The current government of Finland is expected to stay in office until 2023. The government programme was agreed upon by the five participating political parties in 2019 and it reflects the twofold debate of platform workers' rights: it seeks to improve the situation of the self-employed as well as tackle bogus self-employment.

Firstly, combined unemployment insurance is mentioned as a means to improve social protection of the self-employed (see Finnish Government 2019, 130). The notion refers to the differentiated system where workers (in a non-legal meaning) are insured for unemployment either as employees or entrepreneurs. When seeking unemployment benefits, their prior working history can be taken into account only for either part. This has been difficult particularly for freelancers who gather their income from various sources, sometimes as wage earners and sometimes as entrepreneurs. It has led to under-insurance. Given the fact that platform work is often part-time (Huws et al. 2019, 2) and done as independent contractors, the combined unemployment insurance would improve platform workers' social protection when facing unemployment. The government initiative is by no means novel (see Löfgren & Hellstén 2016), but practical difficulties seem to have prevented it from being realized so far.

Secondly, and more specifically vis-à-vis platform work, the government programme states:

"The need for changes in legislation will be studied from the perspective of the transformation of work (entrepreneurs and self-employed persons, the sharing and platform economy, new forms of commissioning work and cooperatives). To reduce the uncertainty of working life, the concept of an employment contract in the Employment Contracts Act will be clarified to prevent employment from arising under the guise of other contractual relationships." (Finnish Government 2019, 137)

The latter part of the citation quite directly draws from and seeks to end bogus freelancing. Necessary policy actions based on the government programme are being prepared in the Ministry of Economic Affairs and Employment, but so far there are no concrete proposals as to how to realise this in practice (based on the interview with Finnish government expert).

### **3.2.2 Government website on the sharing economy**

The Ministry of Economic Affairs and Employment administers a website that can be freely translated into "[Sharing Economy Info](#)". Despite the name, some of its content applies to platform workers. The website offers basic information about employee and entrepreneur statuses and advises workers on their responsibilities in each role. It also gives advice on taxation and urges platform workers to make sure that they are



sufficiently insured.<sup>1</sup> The site was launched in 2018 and other agencies involved are Ministry of Social Affairs and Health, Finnish Tax Administration, Finnish Competition and Consumer Authority, Finnish Transport and Communications Agency Traficom, and Finnish Centre for Pensions. It does not seem to be very actively updated, and the information is on a quite general level. The name of the site might also make it difficult for platform workers to find their way to this source of information.

### **3.3 Other initiatives**

#### **3.3.1 Trade unions**

Platform workers are not organised as a group in any trade union, but individuals might join different trade unions (depending on their statutes). However, joining is suboptimal for those platform workers who work as entrepreneurs, because they in most cases would have to pay into the unemployment fund without being entitled to earnings-related unemployment benefits. To make membership more appealing, trade unions should adjust their statutes and services. Service Union United (PAM) has been fairly active in keeping platform work from a workers' rights perspective on the public agenda. Together with Foundation for European Progressive Studies, UNI Europa, University of Hertfordshire and Kalevi Sorsa Foundation PAM participated in executing a survey on the extent of platform work in Finland in 2019 (for the final report, see Huws et al. 2019). This was the first detailed survey on the subject in Finland. PAM has also published articles on the rights of platform workers (particularly food couriers) in its member magazine and on its website, as well as had meetings and training for food couriers. PAM has taken a stance that platform workers should be regarded as employees (if they are not genuine entrepreneurs), and that labour law should be specified accordingly. According to PAM, a third category is not necessary, as current legislation is already equipped to recognise platform work (see Service Union United PAM 2019). A similar stance has been taken by the Central Organisation of Finnish Trade Unions SAK.

A number of Finnish trade unions, including PAM and SAK, have established a collaboration group to improve the situation of the self-employed. This "ITSET" group has pointed out that the self-employed is a diverse group consisting of solo entrepreneurs (less farmers), practitioners, freelancers and people on scholarships. Prior to the parliamentary election in April 2019, the "ITSET" group published its demands for the government programme. It e.g. demanded a change in the competition law so that a trade union could represent the self-employed. According to the group, those working in an "employee-like" manner should be regarded as employees. This "employee-like manner" would include situations where work is being done for only one or utmost a few clients, which makes the self-employed person dependent of the client. Also, the definition of employment in the labour law should be widened, according to the statement given by the "ITSET" group. According to the group, social protection would be improved if these reforms would be implemented. Apart from that, the group suggested reforming the social security, unemployment and pensions system so as to include people from moving from one working type to another (See ITSET 2018).

#### **3.3.2 Justice4couriers campaign**

Food couriers are organised under the label "Justice4couriers". The campaign is set to "improve the working conditions of couriers and drivers working for platform companies in Finland". More precisely, Justice4couriers demands: 1) Repeal of pay cuts by two online food delivery platforms; 2) Transparent shift allocation; 3) Break spaces for couriers and drivers; 4) Equipment compensations and insurances against illness and accidents; and 5) The possibility for an employment contract.

While small, this grassroots campaign has been very active in the public debate, and also had direct negotiations at least with some platforms. But because they have no

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<sup>1</sup> See <https://tem.fi/web/jakamistalousinfo/tyosuorituksen-tarjoaminen>.

formal role as representatives of couriers or other platform workers, it has so far been up to the good will of the platform companies to implement suggestions of the campaign.

### **3.3.3 Collaboration between one online food delivery company and entrepreneurs' organisation**

In November 2019, one Finnish online food delivery platform started collaboration with Suomen Yrittäjät (SY, freely translated "Entrepreneurs of Finland") to ensure right information for couriers about their rights and responsibilities as entrepreneurs. On the SY helpline couriers can ask questions relating to their social security, insurances and taxation as entrepreneurs. The service is free of charge for the couriers and it is provided in Finnish and in English. The helpline, which is not confined to couriers but all entrepreneurs, is open daily from Monday to Friday at 8-18.

## **4 Considerations for future policies and initiatives**

An expert group at the Ministry of Economic Affairs and Employment sketched possible avenues for regulating work in the platform economy in its report in 2019. The main issue arises from the ambiguous status of platform workers. The report outlines four options. The first option would be to wait for case law on the status of platform workers to emerge. According to the Ministry, this option would unnecessarily prolong the present unclear situation. There has not been and there are no open court cases, and it is uncertain whether the Supreme Court would even accept such a case. The second option would be to clarify the definition of the employment relationship in labour law. The report notes that the definition has a long history, and it has prevailed despite changes in types of work throughout years. Now that platform work and other new types of work challenge the definition, it might be justifiable to adjust the definition. Thirdly, the report notes that a third category might be an option, but at the same time points to the problems in that option and argues that it would not be a feasible. The fourth option would be to proceed within the limits of current legislation, and make necessary changes not only to labour law but also to e.g. legislation on social protection (TEM 2019, 24-26).

There is no "employee-like" category in the Finnish labour law like in the German law. In the Finnish context, such category would in effect be a third category. Given the fact that all three labour market partners have rejected the idea, it does not seem like a feasible option for Finland. Nor is it justifiable from the viewpoint of platform workers - why would we want to accept lesser regulation and protection for some workers?

Similarly than proposed in the Host Country Discussion Paper, broadening the definition of an employee is recommendable. It would allow taking into consideration workers' subordinate position either to the platform or a client. Reversal of burden of proof should also be included in the labour law.

It is clear that even after reviewing the definition of an employment relationship, there will be platform workers who will be (correctly) classified as entrepreneurs. In order to improve their social protection, the combined unemployment insurance should be advanced. One point to take into consideration is preventing (solo) entrepreneurs from under declaring their income when making social insurance contributions. Given the fact that both the question of bogus freelancing and combined unemployment insurance are mentioned in the Government Programme, the key is effective execution of these already taken political decisions.

It is evident that one aspect hampering the situation of the self-employed is the lack of right to collectively bargain. Even though the European competition law does recognise "seemingly independent practitioners" and allows them to organize collectively, from the viewpoint of a self-employed it is too risky to trust on this exception. Moreover, revising competition law is not possible on the national level without revising it first on the EU level.

## **5 Questions**

- How, in practice, could a broader definition of an employee in labour law look like?
- What are the aspects in platform work that need to be carefully scrutinised when labour law is revised?
- Is there a European country where social protection of the self-employed is satisfactory?

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## Annex 1 Summary table

### Situation in the peer country

- Estimates about the number of platform workers vary, but it is safe to say that platform working is for the time being a very small phenomenon in Finland.
- It is common to do more than one platform work at the same time.
- Platform workers in Finland are predominantly young, male and urban.
- Growth prospects depend on whether traditional branches will adopt platform-type working arrangements.
- Public debate has concentrated on issues related to on-location platform work such as food delivery.

### National policies and measures

- There is no third category in the Finnish labour law. Workers are either employees or entrepreneurs.
- The Finnish Government has agreed to introduce combined unemployment insurance and prevent bogus freelancing. So far, these initiatives lack concreteness.
- Some trade unions have been somewhat active in speaking for platform workers, but platform workers are not formally represented.
- One online food delivery company has initiated collaboration with entrepreneurs' organisation to provide couriers accurate information about their rights and responsibilities.

### Considerations for future policies and initiatives

- It is widely agreed that a third category would only confuse the situation more.
- Assessing the need to broaden the definition of an employee in labour law is necessary.
- Combined unemployment insurance is needed to ensure satisfactory social protection for the self-employed.
- Competition law cannot be reformed on the national level before revising the EU competition legislation.

### Questions

- How, in practice, could a broader definition of an employee in labour law look like?
- What are the aspects in platform work that need to be carefully scrutinised when labour law is revised?
- Is there a European country where social protection of the self-employed is satisfactory?

**Annex 2 Example of relevant practice**

Name of the practice:	Government initiative for combined unemployment benefit
Year of implementation:	-
Coordinating authority:	Ministry of Social Affairs and Health
Objectives:	To ensure better access to unemployment benefits for those who work both as entrepreneurs and employees
Main activities:	Expert report in 2016, Government Programme in 2019
Results so far:	-

Name of the practice:	Government initiative to prevent bogus freelancing
Year of implementation:	-
Coordinating authority:	Ministry of Economic Affairs and Employment
Objectives:	To find ways to make it legally difficult to have people work as independent contractors when in fact they should be employees
Main activities:	Government Programme in 2019
Results so far:	-

