



# **Mutual Learning Programme**

DG Employment, Social Affairs and Inclusion

**Peer Country Comments Paper - Greece**

## **A new concept of employee or creation of a third intermediate category?**

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

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# **Mutual Learning Programme**

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*Directorate-General for Employment, Social Affairs and Inclusion*  
*Peer Review on "Platform Work"*  
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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 Greece. For information on the host country policy example, please refer to the Host Country Discussion Paper.

## **2 Situation in Greece**

Platform work is defined as work where persons are selected online through the intermediation of a platform to perform personally on-demand tasks in exchange of remuneration. This form of work is not widely debated in the Greek media. However, there is an academic debate on conditions of work of platform workers.

Platform work is not yet widespread in Greece and hence the lack of data on the number of platform workers. As in Germany, even if the future of this form of work is difficult to predict, platform economy is expected to grow.

Even if data on socio-economic characteristics are not available, one may presume that platform workers are rather young and well educated persons, as the data we have from other countries shows<sup>1</sup> and there is no reason to expect that Greece should be any different

### **2.1 Status of platform workers**

Platform workers may be either dependent workers or self-employed depending on their conditions of employment (i.e. if they are subjected to the power of direction of work for another person, the employer). When it comes to employees, labour law provisions are applied while, in the case of self-employed, only civil law provisions are applied. Furthermore, the social security situation of employees and self-employed does not vary as significantly, as it did in the past. Law 4387/2016 closed formal coverage gaps by ensuring that employees and self-employed offering services are treated similarly by the corresponding social security systems. However, this distinction still retains its importance concerning some social security benefits (unemployment benefits).

## **3 National policies and measures**

### **3.1 The dependent employment relationship**

There is neither a legal definition nor case law in Greece concerning platform work. A contract of employment is characterised by a relationship of «personal dependence» or subordination between the parties. In this regard it is crucial to determine whether and to what extent a person is subjected to another person's power to direct and to exercise control over his/her work activity. Pursuant to the established line of judicial decisions, the power of direction may concern work content, the mode of performing work, the working period and the place of work.

The principle of primacy of facts is acknowledged in Greece, meaning that judges can requalify the contract considering the real conditions of its execution. In other words, they can disregard the contractual label when the reality of the work relationship contained legal indices of subordination. Based on this principle, an individual's freedom when it comes to work structure, working hours and place of work becomes a key issue. However, the extent of the necessary power to direct may vary from case to case with respect to location, time and work content. In this context, platform work may result in

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<sup>1</sup> <https://www.feps-europe.eu/attachments/publications/the%20platformisation%20of%20work%20in%20europe%20-%20final%20corrected.pdf> (See figure 10 on page 21).

considerable freedom with regard to working time but people who perform this type of work could still be employees if another person may essentially decide on job content and give orders or control the manner of work performance.

The fact that the person performing the work forms part of the organisational structure of an undertaking constitutes only a secondary indicator. Also, 'economic dependence' is neither required nor in itself sufficient when determining 'employee status'<sup>2</sup>.

Eventually, platform workers will be qualified as self-employed as long as they are able to reject job offers and remain free to design their work performance conditions and working time.

### **3.2 The legal presumption of employment relationship**

Since 2010, a legal presumption concerning the status of the individual exists: in cases where work is provided personally, solely or primarily for the same employer for nine consecutive months, it is presumed that the contract constitutes a dependent employment contract. However, this may pose a rebuttable presumption and the employer may prove that the worker does not work subject to his instructions concerning the place, time and manner of the work performance.

While this presumption could help in some cases platform workers to be qualified as employees, it is not useful for the greatest number of platform workers as they may work for more platforms and for a period of time that is shorter than nine consecutive months. Therefore, the conditions for application of this legal presumption are in most cases not fulfilled.

### **3.3 The economically dependent workers**

In Greece there is a binary divide between employment and self-employment. A category of 'employee-like persons' does not exist and the labour law provisions are not extended to economically dependent workers which leaves dependent workers' without specific protection (even if their working conditions seem often less decent than the conditions of standard employees)<sup>3</sup>. They may be exposed to a range of physical hazards in their workplace and may possibly suffer from work intensity in the working conditions within a worse social environment<sup>4</sup>.

Furthermore, platform workers must claim their rights on their own. Trade unions may support them, but at the moment they are not entitled to face a trial on their name; such a possibility concerns only rights of dependent workers resulting from a collective agreement.

### **3.4 The collective bargaining of economically dependent workers**

The only exception where economic dependency is considered concerns collective agreements. Pursuant to Article 1 of Law 1876/1990 concerning free collective bargaining, this right bargaining shall also apply to persons who, 'while not bound by a dependent employment relationship, perform their work in a situation of dependence and require protection similar to that enjoyed by employees'. Therefore, associations of economically dependent persons or trade unions can conclude collective agreements with associations of persons for whom they perform their work so that they obtain benefits provided to employees by collective bargaining. However, this possibility has never been used in practice. According to our knowledge, such a special collective agreement has never been concluded, nor was a clause concerning specifically economically dependent workers inserted in a collective agreement. Therefore, up to date this option is only of theoretical value.

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<sup>2</sup> See however the economic dependence as an element of the presumption of dependent employment.

<sup>3</sup> ILO (2016), 185 ff. J. Berg, M. Aleksynska, V. de Stefano & M. Humblet (2018), 31 ff. C. Williams, F. Lapeyre, (2017), p.27 ff. Eurofound, (2013), p. 3 ff.

<sup>4</sup> ILO, (2016), p. 185 ff. C. Williams, F. Lapeyre, (2017), p.27 ff.

Furthermore, platform workers are not only hardly able to bargain on their conditions of work, but they are also hardly able to be unionised as they are placed in different places, sometimes even in different countries, and have different socio-economic characteristics. Therefore, optimism concerning the improvement of their working conditions through collective bargaining is not foreseen.

Finally, no non-governmental initiatives have been developed in Greece to improve the working conditions of platform workers.

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

### **4.1 Broadening the concept of employee**

As platforms argue that they are only intermediaries, the concept of employee shall be broadened. In this regard, it is needed to examine who organises the work, who defines the price of services and if it is the platform who controls their quality.

### **4.2 The introduction of a third category**

The introduction of a third category, such as employee-like persons, could have in Greece, as in other countries, advantages for workers who would at least receive some portion of the benefits that are given to employees. Because dependent self-employed persons are regarded as being entitled to specific legal protection, some elements of employment law are extended to them. Therefore, they could enjoy some legal protections, such as minimum wage, annual leave, entitlements in the case of abusive termination, leave for family reasons temporary sickness, accident protection, etc. They should also gain rights to organise collectively, to join trade unions of employees and to be eligible to unionisation.

However, there are some important fears to ensure that all workers benefit from social protection coverage. Trade unions argue that the use of the employees-like persons category is not appropriate because it covers what traditional employment relationships should be. Conversely employers' associations are afraid of the opposite risk, namely that the category would swallow up authentic self-employed workers augmenting business costs.

Overall, an important factor in the success of the creation of the third category is the clarity of the status and the balance of the protection. It is important to determine which of the rights that employees enjoy would be appropriate for workers of the intermediate category.

Some authors<sup>5</sup> mention that building up the third category with limited rights will run the risk of arbitrage with business forcing genuine employees into the third category in order to try to lower costs. Other scholars mention that, by making the third category too generous, we run the risk that very few will even consider this category.

Another problem in Greece is that self-employment is not, certainly, a voluntary choice but only an alternative to the scarcity of standard forms of employment opportunities. However, from the employees' side there might be a desire for entrepreneurship and self-determination as well as the expectation of a higher income even at the price of lower social protection<sup>6</sup>. Some workers demand more autonomy and new opportunities related to information technologies<sup>7</sup>.

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<sup>5</sup> M. Cherry, A. Aloisi(2017), p. 699.

<sup>6</sup> Joint conclusions and recommendations of the European social partners in the construction industry on self-employment and bogus employment, p. 1, no. 5.

<sup>7</sup> C. Williams, F. Lapeyre, (2017), p. 43.



### **4.3 Some minimum rights for platform workers**

Finally, it is absolutely reasonable to provide some minimum rights for platform workers. The creation of some codes of conduct for platforms at a European level can be a reasonable measure. However some questions arise: How is it possible to combine social justice with global competition? Which are the minimum standards having to be respected by all countries and how is possible to guarantee their respect? How foreign platforms will comply with national or European rules?

## **5 Questions**

- Should we extend the notion of the dependent employment relationship to provide more persons with access to the same rights as employees or create a third category including more persons having limited rights?
- To what extent should economically dependent self-employed benefit from social protection rights?
- How is possible to find out ways to organise platform workers in order to defend their rights and conclude collective agreements?
- How are we going to defend a platform worker installed in Germany working for a platform installed in India for a client situated in Australia?

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## Annex 1 Summary table

The main points covered by the paper are summarised below.

### Situation in the peer country

- Platform of work is not yet a widespread phenomenon in Greece.
- Data on the number of platform workers and their socio-economic condition are not available.

### National policies and measures

- A contract of employment is characterised by a relationship of «personal dependence» or subordination between the parties.
- Platform workers will be finally qualified as self-employed if they are able to reject job offers and if they are free to design the conditions of their work performance and their working time.
- A legal presumption concerning the status of the individual exists: in the event that the work is provided personally, solely or primarily for the same employer for nine consecutive months, it is presumed that the contract constitutes a dependent employment contract.
- A category of 'employee-like persons' does not exist in Greece. Provisions of labour law are not extended to economically dependent workers.
- The right to collective bargaining also applies to persons who, 'while not bound by a dependent employment relationship, perform their work in a situation of dependence and require protection similar to that enjoyed by employees'. Though, this right has not been used in practice, it could help platform workers to conclude in the future collective agreements.

### Considerations for future policies and initiatives

- Greek law shall broaden the concept of employee by examining who mainly organises the work, defines the price of services and controls the quality of the work.
- The introduction of a third category, such as employees like persons, could have in Greece, as in other countries, advantages for workers who would at least receive some portion of benefits that are enjoyed by employees.
- It is absolutely reasonable to provide some minimum rights for platform workers.
- The creation of some codes of conduct of platform companies at a European level can be a reasonable measure.

### Questions

- Should we extend the notion of the dependent employment relationship in order to include more persons having all labour law rights or create a third category including more persons having limited rights?
- To what extent economically dependent self-employed should benefit from social protection rights?
- How is possible to find out ways to organise platform workers in order to defend their rights and conclude collective agreements?
- How are we going to defend a platform worker installed in Germany working for a platform installed in India for a client situated in Australia?

