



Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Peer Country Comments Paper - Sweden

Platform work in Sweden: How to improve working conditions and social protection

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

*Written by Associate professor Annamaria Westregård
September 2020*



EUROPEAN COMMISSION

Directorate-General for Employment, Social Affairs and Inclusion

Unit A1

Contact: Kathrin Jewert

E-mail: EMPL-A1-UNIT@ec.europa.eu

Web site: <http://ec.europa.eu/social/mlp>

European Commission

B-1049 Brussels

Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Directorate-General for Employment, Social Affairs and Inclusion

Peer Review on "Platform Work"

Germany, 12-14 October 2020

**Europe Direct is a service to help you find answers
to your questions about the European Union.**

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

LEGAL NOTICE

The information contained in this publication does not necessarily reflect the official position of the European Commission

This document has received financial support from the European Union Programme for Employment and Social Innovation "EaSI" (2014-2020). For further information please consult:
<http://ec.europa.eu/social/easi>

© European Union, **2020**

Reproduction is authorised provided the source is acknowledged.

Table of Contents

1	Introduction	1
2	Situation in the peer country	1
2.1	Definition of platform work	1
2.2	Size of platform work.....	1
2.3	Impact of platform work.....	1
3	National policies and measures	1
3.1	Coverage of platform work in labour law	1
3.2	Collective agreements for platform workers	2
3.3	Coverage of platform work in social security legislation	2
3.4	Legislative initiative	3
4	Considerations for future policies and initiatives.....	4
4.1	The discussion in Germany and Sweden	4
4.2	Improvements for platform workers.....	5
5	Questions	5
6	List of references	6
	Annex 1 Summary table	8

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 Sweden.

2 Situation in the peer country

2.1 Definition of platform work

There is no legal definition of platform work in statutory labour legislation in Sweden. Sweden has a binary system in which someone is either employed or self-employed (Westregård, 2016). There is no intermediate category, e.g. platform workers, and nothing that indicates that the government is planning to legislate for one (Legislative Inquiry Ds. 2002:56, 133). How the concept of employment will be applied to platform workers in Sweden depends on the business model the platform uses and which legislation (labour law or social security legislation) is applied. It is very difficult to make any precise predictions (Westregård, 2017). Sections 3.1-3.3 below describe how the concept of employment is defined in statutory labour law and social security legislation. Statutory labour law only applies to platform workers defined as employees, while the social security legislation applies to both employees and self-employed platform workers (although in slightly different ways).

2.2 Size of platform work

International studies (Urzi Brancati et al., 2020) report an increase in platform work in Sweden from 8% 2017 to 10% 2018. According to a national inquiry for new legislation 4% of the workforce in Sweden perform work via a digital platform at least once a month (SOU 2017:24).

2.3 Impact of platform work

So far, platform work has not had any particular impact on the working conditions in Sweden. There has been more focus on precarious employees and how to create social security parity between employees and self-employed. Section 3.4 contains an overview of recent legislative initiatives in the area. Surprisingly few of them take the particular situation of platform workers into consideration. Some of the suggested legal changes even deliberately exclude workers who are difficult to classify, like platform workers, from the statutory social security legislation for employees and automatically adapt the statutory legislation for self-employed to them.

3 National policies and measures

3.1 Coverage of platform work in labour law

The Swedish labour legislation does not apply to self-employed and how the social security legislation is applied differs between employees and self-employed. In Sweden, the most important thing therefore is to classify platform workers as employees or self-employed. The employment concept is wide and inclusive, according to the 1982 Employment Protection Act, and covers both the concept of 'workers' and that of 'employees' referred to in other countries. Unfortunately, there have not yet been any cases in the Swedish Labour Court about platform workers. Based on the current legislation it is likely that the Labour Court would decide that the relation between a platform worker and a platform company is one of employment, probably in the form of a short fixed-term contract for each assignment or a zero-hour contract. The classification will depend on the Labour Court's overall assessment of the relevant criteria in each individual case (Westregård, 2019a).

The 1982 Employment Protection Act, the 1977 Work Environment Act, the 1977 Annual Leave Act, the 1982 Working Hours Act and the 2008 Discrimination Act are all more or less non-applicable to genuinely self-employed (Westregård, 2020a).

Contrary to other parts of the labour statutory legislation, the 1976 Co-determination Act also includes solo self-employed persons classed as 'dependent contractors'. A dependent contractor is defined as someone 'who works for another and at that time is not employed by them but has a position that in essentials is the same as an employee's' (Section 1 (2) of the 1976 Co-determination Act.). In the binary system a 'dependent contractor' is solo self-employed, but in the context of the 1976 Co-determination Act 'dependent contractors' are treated as employees with the same right to organise, negotiate and strike. The social partners can also bargain and conclude collective agreements for 'dependent contractors' (Sections 7–9, 10, 26–7, 41 of the 1976 Co-determination Act). Even if platform workers are not classified as employees they can still be regarded as 'dependent contractors', which is a far wider concept (Swedish Labour Court AD 1987 no 21, AD 1994 no 104 and AD 1998 no 138). Most platform workers are therefore covered by the collective rights.

3.2 Collective agreements for platform workers

The possibility to conclude collective agreements is important in Sweden as most working conditions are regulated through collective agreements, and not in the statutory legislation. There are thus no statutory regulations on minimum wages, overtime pay, guaranteed minimum working hours, and so on (Westregård, 2019b).

Some unions for white-collar workers and academic professionals offer membership for both employees and solo self-employed. They have special departments for the solo self-employed, and offer legal aid and advice (<http://www.unionen.se/in-english>; <http://www.unionen.se/medlemskapet/egenforetagare/>; <http://www.jusek.se/For-dig-som-ar/Egenforetagare/>; Unionen's report (2016), 55). The unions wish to attract platform workers as members and have already started recruiting. In 2016, the largest union for white-collar workers in Sweden, Unionen, concluded a strategic partnership agreement with Germany's IG Metall regarding online collaborative platforms (Declaration between IG Metall and Unionen). The purpose was to allow unions to cooperate and create transparency in work performed in the collaborative economy, to cooperate in regulatory and policy matters for work in the field, and to share experiences in union recruitment of platform workers. Unionen has also presented a concept for the social partners' role in the Swedish model and Engblom's three-pillar strategy (Unionen's report 2016, 97 and Engblom 2017, 219-226).

In Sweden, Unionen has concluded collective agreements with some platform companies directly (Söderqvist/Bernhardt, 2019, 4). Those collective agreements are not written specifically for platform workers and do not deal with the specific problems they face. Instead, the sectorial collective agreement for temporary work agencies and the sectorial collective agreement for media sector are applied.

In time, the social parties will probably be able to find solutions for the working conditions in the traditional Swedish way, through an industry-wide collective agreement, just as they did for the temporary agency workers. The problem at present is that platform company representatives claim that platform employees are self-employed. The platform companies argue they are not employers and thus have no employer responsibilities. The platform companies therefore have no interest in joining employers' associations or regulating working conditions in collective agreements. The employers' associations do not act until they have members that demand negotiation and collective agreements and they have not yet made up their minds on how to handle platform work.

3.3 Coverage of platform work in social security legislation

The concept of employment is narrower in social security legislation than in labour law as it is connected to the concept in tax law. As seen in some cases from the

Administrative Court of Appeal, it is the degree of independence that determines the classification (Judgement from the Administrative Court of Appeal in Gothenburg 11 May 2010 (case no. 3059–09), Judgement from the Administrative Court of Appeal in Gothenburg 17 February 2015 (case no. 911–15) and IAF 2016:3, 15-16). A person may very well be regarded as an employee in labour law but as self-employed in the social security regulation.

One of the most significant and important aspects of the Swedish social security system is that self-employed are covered by sickness benefits, occupational injury insurance and parental allowance and pensions are all mandatory (Social Insurance Code (2010:110) chapter 25 and 27, chapter 39-42, chapter 12, chapter 59). Only the unemployment insurance is voluntary for both employees and self-employed according to the Unemployment Insurance Act (1997:238). The total mandatory employer contribution (social security fee) is 31.42% of paid gross salary. It is the same for employees and for self-employed.

The entry to and calculation of benefits are however not the same for employees and self-employed. The conditions are generally more favorable for traditional full-time employees than for other groups. When it comes to platform workers there are areas that still leave platform workers in a disadvantaged position.¹

The problem of entry to and calculation of benefits at the basic level in the social security insurance for a new business model in Sweden is for the legislator to solve. Over the last few years, a number of inquiries have been undertaken into new and improved legislation for vulnerable groups of employees and self-employed, see section 3.4.1. However, the legislator has so far not showed any particular interest in the situation of platform workers and they therefore risk falling outside the scope of future legislation.

3.4 Legislative initiative

3.4.1 Labour law

In the Government White Paper (SOU 2019:5) an investigating committee presented a legislative proposal with the intention of improving the conditions for employees with short fixed-term employments to reduce the qualification period for re-employment and conversion to permanent employment. The Committee of Inquiry did not say anything in particular about platform workers and if the suggested legislation is realised there will be application difficulties in respect to the platform companies' special business model. If employed, platform workers have numerous short fixed-term contracts or zero-hour contracts and determining for instance what a permanent employment should be converted into and what value a permanent position with a zero-hour contract has for an employee can be difficult.

Another problem for platform workers is the lack of guarantees of a minimum number of actual working hours in the Swedish statutory labour legislation. The Committee of Inquiry declared that legislating about minimum hours of work in total per employment contract (SOU 2019:5, 376) is currently not on the agenda.

In Government White Paper (SOU 2017:24) the Committee of Inquiry took into consideration that something similar to the concept of the 'dependent contractor' in the 1976 Co-determination Act might in future be suggested to clarify that the 1977 Work Environment Act could apply to more than traditional employees (SOU 2017:24, 239). With this construction platform workers would definitively be included in the scope of the 1977 Work Environment Act, regardless of whether they are regarded as self-employed or not. So far, there have been no further legislative actions in this area.

3.4.2 Social security legislation

In Government White paper (SOU 2020:26) improvements in sickness benefits for persons engaging in on-demand work, or short fixed-term employment are proposed.

¹ For a more general description of the Swedish social security system for employees, self-employed and precarious workers, like platform workers and others with untraditional employment contracts, see Westregård, 2020a chapter 4, Westregård, 2020b, and Johansson 2019, 89-102.

If members of this group become ill and do not have work scheduled during their time of illness, they are treated as unemployed and not ill. The Committee of Inquiry has suggested a solution (SOU 2020:26, 62-64). Unfortunately, only workers whose assignments are ended by the employer are included in the proposal and that excludes both solo self-employed and platform workers from the reform (SOU 2020:26 p. 71 reference 9).

In Government White paper (SOU 2020:37) a new Unemployment Insurance Act has recently been suggested by the Committee of Inquiry. However, it does not propose any solution to the problem of how to assess the degree of independence for platform workers. As such, the uncertainty regarding whether they will receive unemployment benefits between assignments, like employees do, will remain (SOU 2020:37, 209-10).

3.4.3 Tax law

In Government White Paper (SOU 2019:31) statutory regulations in tax law were introduced in 2009 to make it easier for individuals to obtain approval for Swedish Business Tax Certificate (chapter 13 section 1 in the 1999 Income Tax Law (1999:1229)). The problem is that the rules for Business Tax Certificate approval can result in more people being hired as sole traders, even though they are actually employed – so-called 'false self-employed'. This will impact platform workers' entry to and calculation of social security benefits as the concept of employment in social security legislation is based on the concept in tax law. The Committee of Inquiry decided not to change the concept of employment but to improve and facilitate the Swedish Tax Agency's ability to follow up and ensure that those approved for a Business Tax Certificate fulfill the business criteria to avoid classification as false self-employed in tax law (and social security legislation) (SOU 2019:31, 31 and 200).

In Government White Paper (SOU 2017:26) the Committee of Inquiry noted that an assumption for all social security insurances is that employers are 'in the system', and that all taxes and social security contributions are reported and paid correctly (SOU 2017:26, 62). The Swedish Tax Agency has identified a number of tax issues in the new collaborative economy (Skatteverket 2016, chapter 8) and suggested that platform companies should be involved in the process of paying taxes, social security fees and sending in statements of earnings and tax deductions for platform workers to the Swedish Tax Agency. They have also suggested and implemented improvements in the information about platform work on the Swedish Tax Agency website.

4 Considerations for future policies and initiatives

4.1 The discussion in Germany and Sweden

Sweden has social security insurance protection for self-employed. The aim of the legislator is to create parity between employees and self-employed, but there are a number of stumbling blocks. Even small differences can yield unexpected results. The administrative burden of administrating taxes and social fees is on the employer or on the principal when hiring independent, solo self-employed person (Platform work in Germany, 1, 17, 19).

Employee-like persons (*Arbeitnehmerähnliche*) do enjoy more labour law rights than the Swedish 'dependent contractors', who are only guaranteed collective labour law rights. On the other hand, the Swedish concept of employment is wide and inclusive which means that a lot of platform workers will probably be classified as employees (Platform work in Germany, 7). In Sweden, collective agreements can be concluded also for solo self-employed if they are 'dependent contractors'. In Sweden, there is a discussion about collective agreements for self-employed and how to interpret the *FNV Kunsten Informatie en Media*, C-413/13, EU:C:2014:2411 in a Swedish context (Westregård 2020a), 17 and Platform work in Germany, 18).

Platform workers in Sweden face the same problems as German platform workers when it comes to the burden of proving that there is an employment at hand (Platform work

in Germany, 7). It has become very clear in some Labour Court rulings that the unions, even in cases they win, have difficulties applying the results on other employees even in the same workplace. The allocation of the burden of proof makes it difficult for the unions to act in cases where companies use a system of 'false self-employment' (Labour Court ruling 2013 no 92 and Westregård 2019, 12).

4.2 Improvements for platform workers

The way Sweden tries to create social security parity between employees and self-employed provides a good example also of how to protect platform workers. There are certainly problems in terms of determining when the statutory legislation is applicable to platform workers and there are doubtlessly cases where self-employed are at a disadvantage compared to employees. Still, the Swedish approach is much better at protecting platform workers (if they are regarded as self-employed) than the alternative, where self-employed are excluded from social security.

One problem in Sweden is that the concept of 'dependent contractors' seems to be wider than the EU concept of 'false self-employed' as the Court of Justice of the European Union has defined it in the FNV Kunsten case (FNV Kunsten case, C-413/13, EU:2014:2411). If a union concludes a collective agreement for solo self-employed, that might be in conflict with Article 101(1) of the Treaty on Functioning of the European Union.

The European Commission's move on the EU competition legislation of 30 June 2020 (European Commission – Press release-Brussels, 30 June 2020) where the Commission states that a process has been launched to ensure that EU competition rules do not stand in the way of a collective agreement for self-employed in need of protection, is therefore very important from a Swedish perspective.

Another problem in Sweden is the uncertain classification of platform workers in the binary system. This is a key factor when it comes to how and for whom the existing legislation applies. A legislative inquiry about the concept of employment with a focus on platform work may be able to offer some clarification on this matter. As the concept of employment is defined in national legislation, action at the EU level will probably not be considered.

At the moment there is no reconciliation in the Swedish Parliament about legislation for platform workers on the EU level.

5 Questions

- How are platform workers classified according to different platform companies' business models?
- Are there any solo self-employed persons among the employee-like persons (*Arbeitnehmerähnliche*)? Can the social parties conclude collective agreements for any solo self-employed persons?
- What impact does the EU concept of 'false self-employed' as the Court of Justice of the European Union has defined it in the FNV Kunsten case have? Will collective agreements for platform workers come into conflict with EU competition legislation if platform workers, owing to the business model of their platform company, are considered as solo self-employed?

6 List of references

Engblom, S., 2017, Atypical work in the digital age – outline of a trade union strategy for the gig economy, M. Rönmar and J. Julén Votinius (eds.) Festskrift till Ann Numhauser-Henning, Juristförlaget i Lund, 218-226.

Johansson, C., 2019, Autonomous workers and social security – a Swedish example, *Revista del Ministerio de Trabajo Migraciones y Seguridad Social*, 144, 2019, 89-102.

Söderqvist, C.F./Bernhardt V., 2019, Labor Platforms with Unions Discussing the Law and Economics of a Swedish collective bargaining framework used to regulate gig work, *Union Working Paper* 2019:57.

Westregård, A., 2016, The Notion of "employee" in Swedish and European Union Law: An Exercise in Harmony or Disharmony? L. Carson, Ö. Edström and B. Nyström (eds.) *Globalisation, Fragmentation, Labour and Employment Law—A Swedish perspective*, *Iustus*, 185-204.

Westregård, A., 2017, Delningsplattformar och crowdworkers i den digitaliserade ekonomin – En utmaning för kollektivavtalsmodellen, B. Nyström, N. Arvidsson and B. Flodgren (eds.) *Modern affärsrätt*, Wolters Kluwer, 427-438.

Westregård, A., 2018, Digital collaborative platforms: A challenge for social partners in the Nordic model, *Nordic Journal of Commercial Law NJCL* 1/2018 Special Issue, 89-112.

Westregård, A., 2019a, Key concepts and changing labour relations 1 Country report from Sweden, *The future of work: Opportunities and Challenges for Nordic models*, in: *Labour Law & regulations – Needs, hurdles and pathways for legal reform*, <https://www.fafo.no/pillar-vi>.

Westregård, A., 2019b, Sweden, *Collective Bargaining in Labour Law Regimes*, U. Liukkunen (ed.) *A Global Perspective Ius Comparatum – Global Studies in Comparative Law*, Volume 32, Springer.

Westregård, A., 2020a, Protection of platform workers, Part 2 Country report from Sweden, *The future of work: Opportunities and Challenges for Nordic models. Pillar VI: Labour Law & regulations – needs, hurdles and pathways for legal reform*, <https://www.fafo.no/pillar-vi>.

Westregård, A., 2020b, Looking for the (fictitious) Employer – Umbrella companies: The Swedish Example, U. Becker, O. Chesalina (eds.) *Social Law 4.0: New Approaches for Ensuring and Financing Social Security for the Digital Age*, *Nomos (Baden-Baden)* (forthcoming).

Westregård, A., 2020c, *Collective Bargaining for Self-Employed in Sweden* B.Waas/C. Hiessl, (eds.) *Collective Bargaining for Self-employed Workers in Europe*, Kluwer, (forthcoming).

Urzi Brancati, C./Pesole, A./Fernandez-Macias, E., 2020, *New evidence on platform workers in Europe – Results from the second COLLEEM survey*, European Commission Study, Luxembourg.

Acts of parliament

Legislative Inquiry Ds. 2002:56 Förslag om lag om ändring i anställningsskyddslagen.

Government White Paper SOU 2017:26 Delningsekonomi På användarnas villkor.

Government White paper SOU 2017:24 Ett arbetsliv i förändring – hur påverkas ansvaret för arbetsmiljön?

Government White Paper SOU 2019:5 Tid för trygghet.

Government White Paper SOU 2019:31 F-skattesystemet – en översyn.

Government White Paper SOU 2020:26 En sjukförsäkring anpassad efter individen.

Government White Paper SOU 2020:37 Ett nytt regelverk för arbetslöshetsförsäkringen.

Swedish court rulings

Labour Court ruling AD 1987 no 21.

Labour Court ruling AD 1994 no 104.

Labour Court ruling AD 1998 no 138.

Judgement from the Administrative Court of Appeal in Gothenburg 11 May 2010 (case no. 3059-09).

Judgement from the Administrative Court of Appeal in Gothenburg 17 February 2015 (case no. 911-15).

Court of Justice of the European Union

FNV Kunsten case, C-413/13, EU:2014:2411.

Collective agreements

The white collar agreement for Temporary Work Agencies (Tjänstemannaavtalet) between unions Unionen and Akademikerförbunden, and the employers' association Almega Kompetensföretagen (The Competence Agencies of Sweden), Bemanningsavtalet between LO (The Swedish Trade Union Confederation) and Almega Kompetensföretagen.

Tjänstemannaavtalet between Unionen and Almega Medieföretagen (The Media Industries Employer Association).

Electronic sources

<http://www.unionen.se/in-english>

<http://www.unionen.se/medlemskapet/egenforetagare>

<http://www.jusek.se/For-dig-som-ar/Egenforetagare/>

<https://www.skatteverket.se/privat/skatter/arbeteochinkomst/inkomster/delningsekonomi/saljatjansterochgigga>

Other reports

The Swedish Tax Agency (Skatteverkets) Report Dnr 1 31 129651-16/113

Kartläggning och analys av delningsekonomin påverkan på skattesystemet 2016

Unemployment Insurance Board (IAF) Uppdragstagare i arbetslöshetsförsäkringen, 2016:3.

Unionen's report: Unionen om plattformsekonomin och den svenska partsmodellen. Unionen (2016).

Joint declaration between IG Metall, Germany, and Unionen, Sweden, signed 8 June 2016.

The European Commission launches a process to address the issue of collective bargaining for the self-employed, European Commission – Press release-Brussels, 30 June 2020.

Annex 1 Summary table

The main points covered by the paper are summarised below.

Situation in the peer country

- There is no legal definition of platform work and it is currently unclear how platform workers should be categorised in the binary system – as employees or self-employed. This depends on the business model of the platform company.
- There is no intermediate category for platform work in the binary system.
- There is no clear picture of how many platform workers there are in Sweden. Platform workers could make up as much as 10% of the work force.
- So far, platform work has not had much impact on the general working conditions and legislation in Sweden.

National policies and measures

- The most crucial question is whether platform workers should be defined as employees or self-employed. Labour law and collective agreements only apply to employees. Social security legislation covers both employees and self-employed but is applied differently to the two groups in respect to entry and the calculation of benefits.
- The status of platform workers in labour law is unclear due to the lack of: cases from the Labour Court, definitions in collective agreements and authoritative statements from the legislator. Most platform workers will probably be classified as employees.
- In social security legislation the status of platform workers is also unclear because the administrative courts interpret the degree of dependency differently in each individual situation. A business model where the platform worker himself decides when to work is ill-suited to the Swedish social security model.
- Some solo self-employed are classified as 'dependent contractors' in the Co-determination Act. They have collective rights and the unions can conclude collective agreements for them.
- The white-collar unions are actively recruiting self-employed (including platform workers with an unclear status). The employers' side has not yet organised platform companies, probably due to the fact that most platform companies do not regard themselves as employers, but rather as mediators of the platform's services.
- There are as of yet no industry-wide collective agreements for platform work. Employers' organisations and unions at industry level do not yet consider platform work as an industry of its own in accordance with the Swedish model.
- In recent years there have been a lot of legislative initiatives about precarious employees and how to improve social security for the self-employed. Very few of these initiatives take the situation of platform workers into account. Depending on the business model, platform workers are sometimes excluded from the scope of the suggested legislation.

Considerations for future policies and initiatives

- Clarify classification of platform workers as either employees or self-employed.
- Secure the social partners' possibilities of concluding collective agreements for platform workers, also those that are classified as solo self-employed. Make an exemption in EU competition legislation for collective agreements for solo self-employed in need of protection.

- Secure social security for both employed and self-employed platform workers.

Questions

- How are platform workers classified according to different platform companies' business models?
- Are there any solo self-employed persons among the employee-like persons (*Arbeitnehmerähnliche*)? Can the social parties conclude collective agreements for any solo self-employed persons?
- What impact does the EU concept of 'false self-employed' as the Court of Justice of the European Union has defined it in the FNV Kunsten case have? Will collective agreements for platform workers come into conflict with EU competition legislation if platform workers, owing to the business model of their platform company, are considered as solo self-employed?

