ETUC Resolution on the protection of the rights of non-standard workers and workers in platform companies (including the self-employed)

Adopted at the Executive Committee Meeting of 28-29 October 2020

This resolution addresses digital labour platforms, but not digital marketplaces, search engines or social media. Labour platforms are online platforms that provide for individuals, organisations or companies to get in touch with other individuals who provide services in exchange for remuneration. Labour platforms are in fact companies that can be classified as employers, (temporary work) agencies or intermediaries, all too often trying to avoid such a classification and by that the applicability of regular employment law. The term 'platform companies' does not cover sales platforms (such as eBay) or platforms providing access to accommodation (such as Airbnb) or financial services which fall outside the scope of this resolution.

The ETUC has been following developments and supporting the work of its affiliates on the growth of platform work since it appeared. Although platform work represents only a small but increasing part of the working population, it is still a disruptive business model that can have consequences on various sectors. Indeed, the digitalisation of work impacts all sectors[1].

The business model of the platform companies is based on the competitive advantage obtained by putting pressure on labour costs. Platform work is increasingly impacting industry and services by externalising social costs and risks. The use of bogus or genuine self-employed workers allows platform companies to offer a lower price for service by remunerating work below the minimum wage or collective agreements applicable to workers in the sectors in question. This business model is gradually penetrating a growing number of commercial, engineering and service sectors. The new potential negative consequences of lack of regulation on digitalisation and employment, such as tracking or rating systems, are addressed in the ETUC resolution on European Strategies on artificial intelligence and data (July 2020).

Since the President of the European Commission, Ursula Von der Leyen, has mandated the Commissioner for Employment and Social Rights Nicolas Schmit to move forward on an initiative to "improve the working conditions of platform workers", the ETUC decided

[1] *ETUC resolution on digitalisation: "towards fair digital work". ETUC. Brussels, June 2016. Available at: https://www.etuc.org/documents/etuc-resolution-digitalisation-towards-fair-digital-work#.WusirYiFOUk*

ETUC Resolution on tackling new digital challenges to the world of labour, in particular crowdwork. ETUC. Brussels, October 2017. Available at: https://www.etuc.org/en/document/etuc-resolution-tackling-new-digital-challenges-world-labour-particular-crowdwork

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Digital Platform Observatory: Establishing workers representation and social dialogue in the platform and app economy. ETUC, IRES and ASTRESS, https://digitalplatformobservatory.org

** * At its Congress in Vienna in May 2019, the ETUC called for "an EU initiative ensuring standards for platform workers such as employer/employee relationship when applicable, adequate wages/remuneration and social rights. Dependent self-employed and freelancers providing services on platforms should also benefit from social and trade union rights".*

to have a closer look in order to agree on a position well in advance of the Commission's legal initiative.

Before the COVID-19 crisis, the Commission's timetable envisaged a legislative initiative in the first half of 2021, during the Portuguese Presidency of the Council of the European Union (January-June 2021).

Limited or non-existent protection (whether social protection or occupational safety and health protection) is one of the elements that has been denounced by trade unions. The ETUC calls for this agenda to be maintained because the COVID-19 crisis has highlighted how the lack, or insufficiency, of rights for non-standard workers and workers in platform companies (including the bogus or genuine self-employed) put them in a vulnerable situation on the labour market, having to choose between a loss of income or the risk of working with diminished protection during the pandemic.

It is premature for the ETUC to consider what is the appropriate legislative instrument on this subject. We first need to define what we want to achieve in trade union terms on the subject in question.

Companies that use digital tools such as apps and websites to serve potential customers present themselves as a new and modern form of work, "platform", to which employment law would not apply. These companies are lobbying at all levels for a separate status that would legitimise foregoing employer risks. Currently such platforms make lucrative returns at the expense of the workers involved. However, platforms are digital tools, this is why we should speak of platform companies. A digital platform is an employer, a (temporary work) agency or an intermediary. Any platform can be assigned to one of these categories. A separate status is unnecessary and undesirable. This should be laid down in a regulation on platform work. The platform companies regularly attract vulnerable groups in the labour market and often exploit people with lower levels of incomes, students and migrants: audiences towards whom it is easy for the platforms to offer low remuneration, otherwise another will take the job.

The ETUC is not against the use of technology in labour relations as such (like the use of a platform), if it is carried out in full compliance with international and European instruments on human, trade union, social rights and occupational safety and health (International Covenant on Civil and Political Rights, ILO Conventions, European Social Charter of the Council of Europe, EU Charter of Fundamental Rights, European Pillar of Social Rights, etc.). Digitalisation offers both opportunities and risks. It is important to shape fair digitalisation democratically. It is also important that internal market does not bring about transforming minimum standards into maximum standards.

The ETUC considers that workers in platform companies are not a new category of workers *per se*. The progression of platform work can be linked to the development of self-employment and non-standard employment relationships. A European initiative should therefore focus on the protection of all non-standard workers and workers in platform companies (including the self-employed), because a musician, a delivery man, a journalist or a cleaner are in the same situation. They are similar vis-à-vis: their "order giver"; the absence of or incomplete social protection; the difficulties to organise themselves and bargain collectively; and the inability to enforce their right to a decent income. Whether one is an employee, an autonomous or a (bogus) self-employed worker, one does not set the rules of the game, neither with a traditional employer nor with the market. They are workers who have no real possibility of claiming their rights, otherwise they will not be called back the next day.

Platform work falls within the realm of non-standard forms of employment which are used by firms to adjust to fluctuations in demand and to save on costs*, this leads to the increase in precariousness for the workers and a race to the bottom. It should be added

that the business of some platform companies operates in sectors where undeclared work, low wages and abuses are frequent. Regulating platforms companies should not be a pretext to wrongly categorise all platform workers as self-employed, or to create a third category of workers[2].

In this resolution, we will therefore focus on two aspects: the rights for workers (A), and the obligations of platform companies (B).

(A) The ETUC wants to impose the rights to organise, to be represented by a trade union and to collective bargaining, access to minimum wages, social protection and respect for working conditions for all workers, in this case for all non-standard workers and workers in platform companies (including the self-employed).

(B) Two other aspects specific to platform companies need also to be addressed. Firstly, platforms must be recognised as employers, with all the legal obligations that this entails in terms of payment of income tax, financing of social protection, responsibility for health and safety, due diligence and corporate social responsibility and their workers should be acknowledged as workers. Secondly, democratic control of the operation of the algorithm applications must be at the heart of the public debate and must be discussed through information, consultation and participation of workers.

(A) Rights for workers

The ETUC will have to make its proposals on the following topics until the European legislative initiative is launched: the employment statute; working conditions, including health and safety; access to social protection; and access to representation and collective bargaining.

Article 40 of the General Data Protection Regulation calls on Member States; supervisory authorities; the European Data Protection Board [(EDPB), an independent European body, which contributes to the consistent application of data protection rules throughout the European Union, and promotes cooperation between the EU's data protection authorities]; and the Commission, to "encourage the drawing up of codes of conduct intended to contribute to the proper application of this Regulation". Bearing in mind that codes of conduct should not replace binding legislation and collective agreements to protect workers, ETUC will make use of this regulation as leverage, to put forward codes of conduct for improving working conditions in platform companies, as it is currently being done in regular companies.

Status and employment relationship

The answer to the question about employment status, i.e. whether the worker is an employee with an employment contract or a self-employed person offering his services, often determines their access to other rights in EU Member States.

The ETUC wants to put an end to the misclassification of workers, which deprives them of their rights. The Confederation wants to extend the coverage of the applicable wage to all the workers (here non-standard workers and workers in platform companies – including the self-employed), either statutory or to be negotiated by social partners. Regarding the employment status, the ETUC opposes creating a 'third employment status categories' that would fall in between a 'worker' and a 'self-employed'. The essential feature of an employment relationship is that, for a certain period of time, a person performs services for, and under, the direction of another person, in return for

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[2] *De Stefano V. and Aloisi A., European Legal framework for digital labour platforms, European Commission, Luxembourg, 2018, ISBN 978-92-79-94131-3, doi:10.2760/78590, JRC112243. Available at : https://ec.europa.eu/jrc/en/publication/european-legal-framework-digital-labour-platforms*

which s/he receives remuneration. The direction exercised by a platform company may differ from the traditional way as it is mediated via a digital tool, the platform. What matters is not the intention of the company, but the actual design of the employment relationship. A presumption of an employment status should be the starting point. A worker who performs work under the same conditions as "normal" workers should be classified as such according to the definitions used in the respective industrial relation systems.

Several legal decisions have clarified that a person who is classified as a worker has also the right to be protected as such, independently of where or how the work is carried out. This development in case law is important and needs to continue in this trend so as to put an end to the misclassification of workers. It is high time to turn legal victories into political ones through changes in the law.

The presumption of an employment relationship is closely linked to the definition of worker, which is essential for the application of national labour legislation and for the national social partners to conclude collective agreements on employment and working conditions, while taking into account the general principles of the union legislation and case law established by the Court of Justice of the European Union. Based on this assumption a reversal of burden of proof is needed. Criteria should be based on ECJ decisions, or the California test or ILO conventions[3].

The presumption of an employee relationship is not sufficient if there is no level playing field preventing the employer from using a self-employed person cheaper than an employee. This is the only way to ensure that the choice to be self-employed is that of the worker and not the employer in order to save on labour costs*. This implies taking action in relation to minimum wages and minimum tariffs. It should not be possible to pay a self-employed person less than an employee's wage under existing minimum wages or sectoral collective agreements, including the cost of social protection, taxes and other costs (such as holidays and professional costs) that the self-employed person will have to finance him/herself. In those cases the self-employed cannot be regarded as economically independent. For those cases in which a platform is covering more than one economic sector, the collective agreement to be used will be the most favourable one for the worker[4]. Equally, Tax incentives to promote bogus self-employment should be prevented.

With regard to the coverage of statutory minimum wages or agreed in collective agreements, where they exist, social partners and/or national and/or European action in this area is necessary to ensure that exemptions from application of statutory minimum wages for certain categories of workers such as non-standard workers and workers in platform companies (including the self-employed) should not be allowed. In tender procurement clear rules should be established for bidding labour platform companies

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[3] *One possibility would be taking into account the subordinate relationship criteria defined by the ECJ: – to use subcontractors or substitutes to perform the service which he has undertaken to provide; – to accept or not accept the various tasks offered by his putative employer, or unilaterally set the maximum number of those tasks; – to provide his services to any third party, including direct competitors of the putative employer, and – to fix his own hours of 'work' within certain parameters and to tailor his time to suit his personal convenience rather than solely the interests of the putative employer. – Another possibility would be the "California Test" which represents a very holistic approach to employment status presumption. The so-called ABC test basically states that: • A: requires that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; and • B: requires that the worker performs work that is outside the usual course of the hiring entity's business; and • C: requires that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed*

[4] *The ETUC has also considered the concept of personal work relationship which calls for the application of labour rights to every worker who provides work or services in a predominantly personal capacity excluding those who earn a living through the labour of others (employers) or/and the use of capital they own (entrepreneurs) [COUNTOURIS, N., DE STEFANO, V. (2019) New trade union strategies for new forms of employment. ETUC. Brussels]. Available at: https://www.etuc.org/sites/default/files/document/file/2019-04/2019_new%20trade%20union%20strategies%20for%20new%20forms%20of%20employment_0.pdf*

concerning the payment conditions of tender procedures and non-reuse of unsuccessful bids.

The observation of digital platforms of the applicable labour legislation and/or collective agreement should be followed by targeted enforcement campaigns of the labour inspectorate.

The ETUC supports the regulation of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation services, which since its entry into force in 2020 will provide more transparency and fairness in the digital market. Whereas many true self-employed workers operate as business users in the digital market in a business to business relation, as stated below, many digital platforms exert the prerogatives of employers. For these cases, the application of this regulation should make it clear that if a platform acts as an employer, then national jurisdiction should be able to reclassify the relationship between a worker and a platform, and that this piece of legislation would not shield them against their obligations under labour legislation and/or collective agreements.

The triangular relationship

Platform work is generally presented as a triangular employment relationship, which is very different from an employment relationship. Workers have no choice but to register as self-employed or as an independent contractor. However, in fact these workers are employees and instead of triangular the relationship is bilateral, because there is an employment relationship between the platform company and the worker. To combat bogus self-employment, the assumption that a platform worker is a worker should be the starting point and a reversal of the burden of proof should make it more difficult for platform companies to have workers been classified as self-employed.

An online platform seems to involve (at least) three parties in each transaction: (i) the person/entity who wants work to be done for them, (ii) the worker who provides that work and (iii) the platform that coordinates these two elements. In this framework, triangularity in itself does not exclude the possible existence of an employment relationship between the platform company and the worker, otherwise "traditional" temporary agency work (TAW) would not exist either. A triangular relationship in which there is in fact an employment relationship between the worker and the platform company can be considered as a bilateral relationship.

It can be argued that the work done through mediation on digital work platforms could be considered in some cases as a particular form of temporary agency work. Even if the worker is not bound by a standard employment contract, it cannot be denied that, for a certain period of time, the worker provides services for and under the direction of another person in return for remuneration. The platform company and the end user effectively exercise direction and control over the worker because, when accessing the platform, the worker accepts that the platform company exercises general control over the provision of work and dictates the terms and conditions of employment[5]. Therefore, in principal, the relationship between platform company and worker/ customer has to be considered as a standard employment contract. A broader interpretation, in which the reference point is taken to other workers in the sector should be considered.

[5] *OECD: 'It is not clear to what extent the TWA experience might be a useful example for regulating platform work, although the TWA model seems to have been accepted by many platforms in Sweden and several platforms worldwide have taken the initiative to treat their workers as employees' (OECD).*

Right to organise and collective bargaining

In many countries, non-standard workers and workers in platform companies (including the self-employed) cannot legally organise themselves in trade unions. The precarious status of these workers is the main cause of the fear of organising themselves collectively. The right to organise is thus concretely violated by precarious conditions of employment, subordination to one employer, economic dependence on low income and lack of trade union protection or protection against "dismissal"* (which can be effected by simple log off from the platform). In recent years, the ETUC and its member organisations have been working towards attracting such workers in order to organise them.

In accordance with the International Labour Organisation's (ILO) Convention on Freedom of Association and Protection of the Right to Organise (Convention 87), in most European states, trade unions have the right to recruit and represent non-standard workers and workers in platform companies (including the self-employed). However, there are at least five European or candidate countries where national legislation prevents most non-standard workers and workers in platform companies (including the self-employed) from joining trade unions, or at least does not clearly give them the right to join[6]. In a number of countries, these limitations on trade union membership have been actively opposed by trade unions, which have argued that a large part of the workforce is excluded. The right of information, consultation and participation and the freedom of association must not be impeded under any circumstances. Being a member of a trade union should not lead to discriminatory practices.

The misclassification of workers in platform companies as "independent contractors" limits their collective representation, as this status is generally considered incompatible with trade union membership. Collective representation should be possible regardless of the employment status. Although most digital work platform companies are unsurprisingly hostile to any effort to organise workers representation, some models of collective representation of platform workers are emerging.

The alleged absence of the right to organise has not prevented local trade union initiatives from trying to enter into negotiations with platform companies, which the latter have often refused, but accepted in a few cases. Despite potential retaliation by platform companies, mass communication networks provide a tool for platform workers' associations.

TU shall be given digital access rights to communication channels between the app and the platform workers and to get directly in contact with platform workers. As real meetings become more challenging, virtual communication and mobilisation networks become more important.

The right to collective bargaining is a fundamental right and recognised as such by the EU. All workers in non-standard forms of work must be enabled to exercise these rights and enjoy the protection of applicable collective agreements. The ETUC appreciates that the European Commission launched "a process to ensure that the EU competition rules do not stand in the way of collective bargaining" (https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1237), while completely disagreeing that collective bargaining is only "for those who need it". It is unacceptable that competition rules are seen as prevailing over fundamental rights, whereby

[6] *FULTON L. (2018) Trade unions protecting self-employed workers. ETUC. Brussels.*

exceptions to competition law would have to be used to allow workers, who are considered sufficiently vulnerable or dependent and therefore in “need”, to exercise a fundamental right. Fundamental rights are rules, not exceptions to other rules! With regard to public interest, the societal benefits collective agreements bring in terms of fairness, level-playing field and social progress, such agreements covering non-standard workers and workers in platform companies (including the self-employed) should be considered to fall completely outside the scope of Article 101 TFEU and national competition rules.

EU competition law and national competition rules must be interpreted in the light of fundamental rights, recognising the right to collective bargaining for all workers, here non-standard workers and workers in platform companies (including the self-employed). The proliferation of contractual agreements in the labour market shed light on the discrepancy between labour law and competition law in relation to collective agreements. The EU ban under Article 101 TFEU on horizontal cooperation agreements such as cartels has in some circumstances been interpreted by National Competition Authorities in an overly extensive manner, resulting in a ban on the right to collective bargaining for non-standard workers and workers in platform companies (including the self-employed). Such policy incoherence ignores underlying power imbalances and deprives vulnerable persons in the labour market from accessing decent terms and conditions through collective agreements.

Non-standard workers and workers in platform companies (including the self-employed) represented by a trade union when bargaining collectively must not be considered undertakings for the purpose of competition law. Trade unions are not cartels and collective agreements are not agreements between undertakings resulting in anti-competitive business practices. Wage setting should never be seen as price-fixing. Collective agreements are a result of social dialogue, collective bargaining and negotiations between trade union organisations and employers’ associations/single employers for the purpose of improving working conditions through minimum standards. In order to be able to join a trade union and engage in collective bargaining, the decisive criterion is not whether the non-standard workers and workers in platform companies (including the self-employed) are in a vulnerable position, but rather whether there is a counter-part with whom their trade union effectively can bargain a collective agreement as part of a genuine social dialogue.

Recently, some digital transport platform companies have been trying to launch internal channels of communication and dialogue between the platform company and its riders/drivers. Some platform companies have also promoted unilaterally charters of “decent work” for delivery couriers. In this false social dialogue, the protection of trade union rights is non-existent. We are well aware that even in countries where there are trade union protections against the dismissal of staff representatives, this protection is incomplete. So how can we imagine that a delivery courier without a contract, without social rights, without an obligation for the platform to provide him with work, can be protected in the exercise of his trade union rights? Without the means to coordinate, how could the "representatives" develop common demands? Concerning the charters, it is clearly not up to companies that do everything possible to avoid having to respect labour and social laws to define what decent work is. It is already defined by international organisations such as the ILO, and it can only be respected with the recognition of the trade union rights of the workers concerned and their involvement in sectoral social dialogue at national and European level. The rights to information, consultation and participation must not be impeded. In relation to the move towards the use of platforms

in the economy, it is important that companies inform workers' representatives well in advance on plans to externalise tasks through platforms. The rights to information, consultation and participation must not be impeded. In general, the relationship between these digital transport platform companies and their riders/drivers is an employment relationship.

Access to social protection

In the past, ETUC has already underlined that "Self-employed workers lack adequate social protection throughout the EU, with notable disparities from one country to another. Full social protection rights such as health assistance, sick leave, unemployment or parental/maternity leave are usually the sole responsibility of the self-employed workers themselves."[7]

Platform companies transfer the costs of the social protection that they are not granting to their workers to society as a whole. The present situation implies that companies that use the ordinary and proper employment relationship are subsidising the platform companies; if this becomes more mainstream it would put enormous pressure on the sustainability of the redistributive institutions that characterise the welfare state.

We cannot ignore the fact that labour protection legislation is a necessary precondition for access to social protection, and non-standard workers and workers in platform companies (including the self-employed) are mainly prevented from being covered by this legislation. We cannot ignore the legislative loopholes that do not provide *de facto* social protection for non-standard workers.

As regards to the scope of social protection for non-standard workers and workers in platform companies (including the self-employed), a comprehensive approach should be taken in which non-standard workers enjoy the same protection as ordinary workers. An "à la carte solution" would ultimately lead to discriminatory practices against specific groups in society. Non-standard workers should have access to the following social protection benefits: unemployment; sickness; accidents at work and occupational diseases; pensions and assistance related to old-age; maternity and paternity; bankruptcy and company closure protection; vocational guidance, counselling and placement; training and updating of knowledge; and measures for rehabilitation and reintegration into the labour market[8]*. In March 2018, the European Commission published a proposal for a Council Recommendation on access to social protection for employed and self-employed workers. The recommendation aims to support all persons who, because of their status or the duration of their employment, are not sufficiently covered by social security schemes. ETUC welcomed the Council Recommendation. However, ETUC regrets that it is not very ambitious as regards the principles of upward convergence set out in the European Pillar of Social Rights. This is why ETUC, in coordination with its member organisations, is monitoring the implementation of the European Pillar of Social Rights closely. ETUC is developing a project to follow up from

[7] *ETUC resolution, Towards new protection for self-employed workers in Europe, December 2016*

[8] *For further information about the ETUC position on access to social protection for non-standard workers and workers in platform companies (including the self-employed), see ETUC Position on a Second stage consultation of the social partners on possible action addressing the challenges of access to social protection for people in all forms of employment (in the framework of the European Social Pillar Rights). December 2017.*

a trade union perspective the implementation at national level of this Council Recommendation[9].

Working conditions

The new Directive 2019/1152 on transparent and predictable working conditions followed from the proclamation of the European Pillar of Social rights. Once the Directive will be transposed in EU member states, all workers will have the right to more comprehensive information on essential aspects of work, which they will receive promptly in writing. This includes a limitation of the duration of probationary periods at the beginning of employment; the right to seeking additional employment, with a prohibition of exclusivity clauses and a limitation of incompatibility clauses; the right to knowing a reasonable period in advance when work is taking place, for workers whose working schedules are very unpredictable, such as in the case of on-demand work; the right to anti-abuse legislation for zero hour contract work; the right to receive a written reply to a request to transfer to another more secure job; and the right to receive free mandatory training that the employer has a duty to provide.

There is an overlap between platform and undeclared work, with an unclear employment relationship and non-transparent conditions, in particular in the construction and renovation sectors. In some cases, the laws enacted allow that workers in platform companies have no status. The potential of a social partners agreement in one of these sectors should be explored. ETUC believes that social partners at sectoral and cross-sectoral level can play a critical role in tackling undeclared work in platform companies. Undeclared work constitutes a large part of platform work – especially in the CEE countries – and touches vulnerable groups such as undocumented migrants.

The Directive has a wide personal scope. It aims to ensure that these rights cover all workers in all forms of work, including work in platform companies. ETUC calls on the EU Member States to transpose the Directive quickly and correctly with a personal scope of application as wide as possible. It is neither necessary nor justified to wait years before granting workers these much-needed rights.

Work in digital platform companies involves risks such as exposure to electromagnetic fields, visual fatigue, musculoskeletal problems and other health risks related to specific sectors and to Covid-19. Psychosocial risks include isolation, stress, technostress, technology dependency, information overload, burnout, posture disorders, online harassment, and overall precarious working conditions. Finally, job insecurity, which is known to contribute to the overall poor health of non-standard workers and workers in platform companies (including the self-employed), is characteristic of working on an online platform.

These risks would make the enforcement of OSH regulations for work carried out through online platform companies of the highest importance. The application of OSH rules and labour law in general is contested by the platform companies, as the involvement of online platforms in work organisation tends to complicate the classification and regulation of responsibilities for the work in question. Rules and practices of the host country where the platform work is performed should apply. National labour inspectorates shall develop tools and strategies to effectively enforce

[9] *For further information about the ETUC position on access to social protection for non-standard workers and workers in platform companies (including the self-employed), see ETUC Position on a Second stage consultation of the social partners on possible action addressing the challenges of access to social protection for people in all forms of employment (in the framework of the European Social Pillar Rights). December 2017.*

existing OHS rules and labour law at the place of work. In connection to this the cross-border cooperation between the labour inspectorates will be of utmost importance.

Workers in platform companies are also vulnerable in terms of civil liability and insurance. For example, in the specific case of platform companies in the transport and delivery sectors, platform companies should be liable in the event of accidents involving their workers. There is no legal ground to make any difference between these platform companies and other companies in their respective sectors.

(B) Obligations for employers

A fundamental issue in guaranteeing rights to non-standard workers and workers in platform companies (including the self-employed) is to recognise the platform as an employer. The current business model of platform companies is partly based on the doing away with workers' rights and not respecting the legal obligations of employers, thus creating unfair competition. Some platform companies tend to identify themselves as a provider of a digital service and the person or company that wants work as a customer rather than an employer. How the parties identify themselves is of less importance. If an employment relationship is determined, the employer cannot evade legal obligations. Whether there is an employment relationship or self-employment and when someone can be categorised as a worker or employer should be determined based on the actual conditions. In some cases, it might be the platform, in others it might be the actual user of the work, the service buyer.

As stated by Daugareilh, Degryse and Pochet (2019)[10], some of today's platform companies have taken over the functions of a traditional company: they coordinate production, match supply and demand, organise, control and appraise the workforce, where necessary even making them "redundant" by disconnecting them. Countouris and Di Stefano propose to define the employing entity that would impose labour law obligations on the party that in practice largely determines the terms and conditions. The employer should be the party that largely determines the terms and conditions of engagement or employment of a worker.[11] Where more than one party is so responsible, the worker may turn to either or both of the alleged employers for the tasks carried out for that or those employer(s).

It is the obligation of online platform companies to ensure the safety and health of workers in every aspect related to work and they should not impose financial costs to the workers to achieve this aim. Otherwise this would be in contradiction with the provisions of the European Directive 89/391 (OSH Framework Directive) which applies to all companies, also online platform companies.

In clarifying the liability of online platform companies, it should be recognised that platform companies exercising significant control and influence over users in their capacity as individual providers of labour should in fact be held liable not only as sellers of services, but also as employers in relation to platform workers performing the physical services. This is in particular the case when the information society service provided by the platform is inherently linked to the provision of a physical service, as held by the CJEU in C-434/15 Uber. The duty to initiate negotiations in order to conclude a collective agreement should be included among the obligations of employers.

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[10] *DAUGAREILH, I. et al. (2019) The platform economy and social law: Key issues in comparative perspective. Working Paper 2019.10. ETUI. Brussels.*

[11] *COUNTOURIS, N., DE STEFANO, V. (2019) New trade union strategies for new forms of employment. ETUC. Brussels*

The identification of the role and responsibilities of the employing entity, and indeed the identification of the employing entity itself, has become an important and sensitive issue for labour law in relation to the process of fragmentation affecting the employment relationship. More and more workers are faced with situations where they provide work for several employers.

The use of rating and reviews may result in locking effects since they cannot be transferred from one platform to another. Bad ratings or reviews can also result in the suspension of a platform worker based on arbitrary grounds. Platform companies should be obliged to discuss the transparency of the rating system with the workers' representatives and to enable a redress mechanism to those workers who do not agree with their ratings.

Longstanding labour concepts such as workplace and work duration also apply to digital labour platforms. Since the moment the worker is available for a task on the platform, the worker should be considered at its workplace with all the obligations it means for platform companies. Work duration should be considered as the period spent by a worker in connection with a platform from which s/he has been receiving assignments or searching for jobs.

The democratic control and transparency of the operation of the algorithm of intermediate work applications (including rating of workers) and platforms, the right to disconnect, and the protection of the data of workers must be at the heart of the public debate on digitalisation as well as being discussed through information, consultation and participation of workers[12] in full compliance with principles of non-discrimination. The European Commission and the Member States should promote the creation of a public register that displays a complete list of online platforms companies. The general employers' obligations of a company should be a requisite for their operation in an EU member state.

Information, consultation and participation rights at EU level must be respected, thus granting workers and trade unions access to the algorithms of digital platforms. This access should be permitted in the country where the services of the platform are provided.

[12] https://www.etuc.org/en/document/etuc-calls-eu-digital-strategy-europe-delivers-workers ; https://www.etuc.org/en/document/ai-humans-must-be-command ; https://www.etuc.org/en/publication/artificial-intelligence-will-it-make-bias-against-women-worse