



# KEY ISSUES PAPER OF THE FEDERAL MINISTRY OF LABOUR AND SOCIAL AFFAIRS

## Fair work in the platform economy

### Platforms and their significance

Platform-mediated work is an innovation of the digital world of work which has become normality for many workers and is increasingly present in people's day-to-day lives: e.g. in the form of food delivery services, ride-hailing services and household services, but also in the form of online work such as copywriting, programming and creative activities. Platforms have the potential to trigger far-reaching changes to our economy, both among companies and in the labour market.

The figures currently available suggest that, despite the wide range and large number of platforms which exist, platform-mediated work is not yet a mass phenomenon, and represents a secondary source of income for many platform workers. According to the European Commission's 2020 COLLEEM survey, however, in 2018 12 per cent of people capable of work in Germany had engaged in platform work at least once in the past – that is equivalent to around 5.6 million people (projected for the potential labour force). 5.7 per cent of the working age population in Germany either obtained at least half of their income from platform work or worked at least ten hours per week for a platform (or both). Projected for the potential labour force, this is equivalent to 2.7 million people. Other studies arrive at much lower numbers, such as the study by Bonin and Rinne (2017), which concluded that around 0.9 per cent of the adult German-speaking population in Germany had already engaged in platform work. Projected for the potential labour force, this is equivalent to around 423,000 people. Platform work is developing rapidly and becoming more and more important. The general expectation is that platform work will continue to grow and that this could take place very rapidly. Platforms are also regarded as having the potential to fundamentally change the way in which contracts are initiated and concluded.

This is clear not least in the current circumstances (up to May 2020) of the COVID-19 pandemic. The Online Labour Index produced by the University of Oxford provides data allowing initial developments relating to the connection between COVID-19 and the spread of platform work to be followed almost in real time. For example, although demand for online work on the leading US platforms declined in April 2020, it had already largely recovered in May in most fields of activity. The number of registered users on platforms for online work in May was at a similar level to the number in February or had even risen, depending on the field of activity. This trend could be attributable to an increase in the number of unemployed people. As a consequence of the COVID-19 crisis, people might also be more inclined to seek employment in online work, as it enables them to work at a distance from other people. The results of a study produced by the Centre for European Economic Research (ZEW) (Borchert, Hirth, Kummer, Laitenberger, Slivko and Viete, 2018) support the theory that online work increases in periods of higher unemployment.



## Opportunities of platform work

Platform work offers significant opportunities – for companies and consumers, but also for those working in the platform economy. It offers new, low-threshold opportunities for employment and market access: for people seeking to (re-)enter the world of work, for people who – for various reasons – want or need flexibility regarding when and where they carry out their work, or for those who can now offer their creativity on a near-global market and gain new customers. Alongside employees, platform work is carried out primarily by self-employed people who have no employees of their own (known as “own-account workers”).

The Federal Ministry of Labour and Social Affairs (BMAS) is closely observing how the platform economy is developing in Germany. There are reports about positive impacts on employment, but also about precarious working conditions and inadequate remuneration or social security for platform workers, who are usually own-account workers. This key issues paper provides the basis for the development of legal rules, which will be discussed further with the platform economy, trade unions, researchers and the European Commission.

## Need for action to protect own-account platform workers

The opportunity to organise work more flexibly by using own-account workers and to leave spatial limits behind also holds risks for platform workers: it is common for platform operators to unilaterally set the terms of contract for platform workers, especially via general terms and conditions. Certain platform operators also influence the way in which the contract is fulfilled, although the extent of this influence is fluid and varies from platform to platform. In addition, how and the extent to which individual service providers interact with each other is often regulated as well.

Own-account platform workers, while not subject to direct instructions, which is a prerequisite for an employment relationship, nonetheless resemble employees in the sense that they are usually not fully autonomous in their work, with work and mediation processes often being managed by means of technological applications. This lack of autonomy is reinforced by the special nature of the platform economy’s business model: by bringing supply and demand together digitally in certain fields of activity, platform operators create markets and market access. By means of scaling and network effects, they also ensure that many activities in the platform economy are available on an adequate scale for platform workers. At the same time, however, they set the conditions for participating in this market. They organise access and exploit the results of the work. This can lead to platform workers having no access of their own to the relevant market for goods and services outside of platforms, due to a lack of demand.

Platforms have a tendency to establish dominant or monopoly positions in the market. This is an inherent part of the platform economy’s business model and is structural in nature: the more reach the platform has, the better it is at matching supply and demand. Consequently, platform markets are characterised by mergers and acquisitions. Usually only one or two platform providers are left standing in a given business field, with the other providers having withdrawn or been taken over.

All of these issues mean that self-employed platform workers are particularly vulnerable – especially in relation to other groups of own-account workers outside of the platform economy.



## Our proposed solutions

The Federal Ministry of Labour and Social Affairs believes that platform-based business models which mediate work and services are a valuable addition to the market economy. The Ministry wants to ensure fair work in the platform economy and, to this end, combine new opportunities with tried and tested protective mechanisms. The aim is to give own-account workers in the platform economy access to basic protective mechanisms under labour and social law, and to ensure that companies can be certain of a level playing field when it comes to key operating and employment conditions. This will make the digital market economy a digital social market economy.

### 1. Ensuring labour platforms take responsibility

The Federal Ministry of Labour and Social Affairs will take action to ensure platform operators take on more responsibility, specifically platform operators (“labour platforms”) which do not limit themselves to a purely intermediary role, and instead exploit the special structural characteristics of the platform economy to influence the design and implementation of contracts, acting as central actors with an influential role in the triangular relationship between customers/clients, platform workers and platform operators. In this way, the Ministry intends to ensure adequate operating conditions and social protection, including for own-account platform workers. By contrast, operators of online marketplaces and intermediary platforms which do not influence the design and implementation of contracts between the contracting parties will only be subject to reporting and statistical requirements.

### 2. Strengthening social protection

Own-account platform workers must make private provision or arrange for their own safety net for the risks of old age, incapacity for work, illness, need for long-term care, accidents at work, unemployment or a lack of orders. In many cases, however, their influence over their terms of contract and pricing is limited when providing services. In practice, this results in them being unable to make provision for these risks, due to the low fees they usually receive. Labour platforms which derive significant benefits from this trade-off have, to date, not been routinely required to contribute to the social security costs. The Federal Ministry of Labour and Social Affairs wants to change this by involving these platforms in the social security of self-employed workers. Specifically, we are proposing that own-account platform workers who are similarly vulnerable to employees should be included in the statutory pension insurance system and that the platform operators should make a financial contribution to this. The involvement of labour platforms in the retirement provision of self-employed platform workers also reduces distortions of competition in relation to platforms which have employees and bear social and labour costs as a matter of course. The basis for lawmakers’ actions is the fact that own-account platform workers are not fully autonomous and therefore are vulnerable in social terms in a similar way to employees. In addition, the Federal Ministry of Labour and Social Affairs will examine the possibility of having platforms make contributions to other branches of social insurance, such as health insurance.

Platform work performed on location is, if it is performed in public places, particularly hazardous and associated with a heightened risk of accidents, for example in the case of food delivery workers or transport service providers



who are exposed to road traffic. The Federal Ministry of Labour and Social Affairs intends to strengthen protection in the occupational accident insurance system and to examine the option of having platform operators contribute to occupational accident insurance. Alternatively, for sectors where the occupational accident insurance funds (Berufsgenossenschaften) have statutes requiring workers to be insured, we intend to examine the possibility of creating a contingent liability for platform operators in the event that platform workers fail to pay contributions. With the aim of ensuring consistent protection, the Federal Ministry of Labour and Social Affairs will also examine the possibility of including the aforementioned sectors in the statutory occupational safety and health system.

### 3. Facilitating the enforcement of workers' rights

The Federal Ministry of Labour and Social Affairs also wants to ensure that existing rights can be better enforced. Platform workers know the real circumstances of their work; however, there can sometimes be uncertainty regarding the legal classification of their contractual relationship, i.e. regarding the question of whether they are self-employed or an employee. Platforms also often tend to assume, virtually across the board, that those working for them are self-employed. Platform workers can lack the necessary information to be able to reliably judge their own status, in particular due to the different contractual relationships between clients, platform operators and platform workers. This lack of information can also act as a deterrent to clarifying the matter in court. We want to make it easier for platform workers to have their status clarified by the labour courts. The Federal Ministry of Labour and Social Affairs will therefore introduce rules on the burden of proof which favour platform workers: if the platform worker provides indications that an employment relationship exists with the platform operator, the burden of proving that an employment relationship (and employee status) does not exist rests with the platform operator. This offsets the inequality regarding access to information which routinely exists between platform workers and platform operators.

### 4. Securing fair operating conditions

Own-account platform workers cannot collectively negotiate their operating conditions, even though this, in particular, is at the heart of our labour and social system. The Federal Ministry of Labour and Social Affairs believes that an asymmetric power relationship exists in the platform economy between labour platforms and platform workers (with platforms unilaterally determining the working conditions of supposedly self-employed workers). Own-account workers who are similarly vulnerable to employees should also be able to negotiate their working conditions on an equal footing. The Federal Ministry of Labour and Social Affairs therefore wants to find ways to enable own-account platform workers to organise collectively.

Many platforms reserve the right, in their terms of contract, to unilaterally terminate the legal relationship without notice. For own-account platform workers who have been active on a platform for a longer period of time, this represents a major risk that, overnight, they could lose their access to a source of income which could potentially be how they earn their living. As they work more and more on or via a platform, platform workers should be able to have confidence that they will not lose their access to the platform without adequate notice. This is all the more important given that at present it is often not possible for workers to take relevant information with them, such as customer



details. The Federal Ministry of Labour and Social Affairs will therefore stipulate binding minimum notice periods based on the length of time for which a worker has worked on a platform.

In view of the influential role played by labour platforms, which results in platform workers not being fully autonomous in their work and platforms being in a position of responsibility, it makes sense for basic protective regulations in labour law to apply to own-account platform workers. This includes, for example, regulations relating to the continued payment of wages in case of illness, the protection of working mothers, and holiday time.

### **5. Facilitating scrutiny of terms of contract**

Platforms usually set the terms of contract unilaterally by stipulating general terms and conditions. Own-account workers have to accept the platform operators' terms of contract because they often have no alternative to the platform and have too little negotiating power to achieve different terms of contract. Together with the Federal Ministry of Justice and Consumer Protection, the Federal Ministry of Labour and Social Affairs will therefore seek to ensure that more effective action can be taken against invalid terms and conditions of platform operators. Invalid terms and conditions must not be used to deceive platform workers about their rights and obligations. It must be made easier and less complicated to obtain a judicial review of clauses in terms and conditions which are one-sided and detrimental to platform workers.

### **6. More transparency: introduction of reporting and statistical obligations**

Currently, no official statistics exist providing information about the importance and development of platform work. The empirical studies available at present can only offer initial indicative results. The Federal Ministry of Labour and Social Affairs wants to improve the available data on the platform economy and make specific information available about the importance and development of the platform economy as an important business model in the digital transformation. The Federal Ministry of Labour and Social Affairs will therefore press for all platform operators to be subject to transparency and reporting obligations at EU level in relation to a public authority, and will ask the European Commission to take action on this. Given that platforms' business processes are usually fully digitalised, such rules can be designed and implemented with a minimum of bureaucracy.

In view of how common cross-border business models are in the platform economy, we believe that EU rules are both useful and necessary. To support the Commission in this process and, at the same time, to improve the data available at least for Germany until EU rules are in place, the Federal Ministry of Labour and Social Affairs will lead the way by introducing national rules as a first step.