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The EU social pillar: An answer to the challenge of the social protection of platform workers?

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Abstract

With atypical work gaining popularity, platform work seems to combine all the elements which, by deviating significantly from the standard employment relationship, challenge social security systems. After an overview of the features of the standard employment relationship and the different ways in which non-standard forms of work diverge from them, the article focuses on the nature of platform work. It then analyses how platform work is regulated in five European social security systems (i.e. Germany, France, the United Kingdom, the Netherlands and Belgium), and how this regulation may fare when analysed under the lens of the recent European Commission's proposal for a Council Recommendation on access to social protection for workers and the self-employed. The article concludes by highlighting the need for further adaptation of social security systems to the specific features of platform work, and by noting the risks of a regulatory approach towards

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this new form of work being dominated by the exclusion of low-paid work from the scope of labour-related social insurance schemes.

Keywords
platform work, non-standard work, atypical work, marginal work, social insurance, European Pillar of Social Rights

Introduction

Once again, atypical work is increasing in popularity, due in part to an ever more flexible labour market. Self-employment and part-time work are on the rise.[1] 'Newer' forms of atypical work[2] are also appearing in the ever-growing platform economy, such as app-based work, crowd work, portfolio work, unpaid forms of work (within the phenomenon of the 'sharing economy'[3]) or activities that are not done in accordance with a fixed work pattern but still generate regular income (such as those performed by some owner-manager or by micro-enterprises).

When designing work-related social security schemes, systems were traditionally based on the employee's typical 'default' situation.[4] However, if the work is organised in an atypical form, legal problems arise in the application of social security law. In this contribution, we look at the social protection situation of platform workers, a fast-growing new group of atypical workers. We examine how existing systems deal with the insertion of this group in the social security systems in place, what challenges this new group of atypical workers creates for traditional social security, and whether the applied solutions are in line with the European social pillar that sets standards for the social protection of atypical forms of work. The appearance of platform work is nascent and its expanding use, like the broader phenomenon of the gig-economy[5], is challenging traditional economies in our global world. For social security purposes, the group is of particular interest, as platform work is organised in an extremely flexible manner, combining most of the characteristics of untraditional work due to its autonomous character (i.e. workers may work for several commissioners through one or more platforms and decide when to perform work),[6] irregular time patterns and fixed work terms. Moreover, as some of the platform work generates low income, it challenges the basic idea of an income guarantee that is often attributed to social insurance, and it may even jeopardise the financial sustainability of social security systems that are largely built on contribution flows from stable, full-time work. This article, however, will not deal with all of these enumerated challenges. The focus is on how social security is designed for platform workers, whether it is adapted to their specific working circumstances, and whether all that is being put in place remains in line with the EU's aspirations of decent access to social protection as proclaimed by the European social pillar.

1. International Labour Office, *Non-standard employment around the world: Understanding challenges, shaping prospects*, Geneva: ILO, 2016.
2. Eurofound, New Forms of Employment, Luxembourg: Publications Office of the European Union, 2015.
3. The 'sharing economy' (also referred as 'collaborative economy') may be understood as encompassing the activity of sharing the access to goods, services or knowledge, see Hamari, Sjöklint and Ukkonen (2016).
4. For an (historical) overview regarding this see Vleminckx and Berghman. (2003).
5. Huws, U. (2017) Work in the European Gig Economy, Brussels: FEPS
6. This autonomy may, however, be questioned, as it is heavily dependent on demand, see Barrio and Zekic (2017: 21f).

In the first part of this article, we define the concepts of typical and atypical forms of work and delineate what we understand by platform work, indicating the key elements of this new group of atypical workers. Before we embark upon a description of the system, we introduce the European Pillar of Social Rights, particularly in relation to the standards it sets for the social protection of atypical forms of work. The proposal for a Council Recommendation for access to social protection, recently launched by the European Commission, is paramount for understanding the European standards in the field of social protection for atypical forms of work. The Pillar and its proposal for a Council Recommendation constitutes the evaluation framework for the country descriptions, focusing on the social protection of platform workers. The description focuses on the social security systems of some of the main economies in the EU: France, Germany, the Netherlands, Belgium and the United Kingdom. For each of these countries, we describe how platform workers are socially protected by analysing how this work is being classified for social security purposes (wage-earners, self-employment and/or a category of its own) and, consequently, by indicating into which scheme these workers have been integrated. Furthermore, and regardless of the approach applied by each of the countries, we highlight whether specific rules have been developed for this group of workers. As platform work is often of a marginal kind (generating irregular and low income), specific attention is given to the (minimum) thresholds applied in each of the studied schemes.

In this contribution, we primarily focus on the labour-related schemes (applicable for the contingencies of old age, work incapacity and unemployment), following a similar selection of contingencies to the ones used by the Commission in its proposal.[7] Therefore, we will not be analysing specifically the cost compensation schemes in relation to care, health care and family burdens, as they are traditionally designed in a universal fashion, covering all residents of the country.

Platform work as an atypical form of work

Definition of standard or typical work

Traditionally, labour-related social security schemes have been designed around the default case of the standard worker. In general terms, standard work is understood as subordinated, full-time work of an indefinite duration.[8] More specifically, it may be defined as the 'stable, open-ended and direct arrangement between dependent, full-time employees and their unitary employer.'[9] The 'standard' applied by Eurostat and the International Labour Organization refers both to the regulatory model,[10] which forms the basis for the regulation of the labour market, and to the model that is regarded as the 'standard' in all current employment relationships and that consequently automatically classifies different employment relationships as 'atypical.' This definition not only

7. European Commission, Proposal for a Council Recommendation on access to social protection for workers and the self-employed, COM(2018) 132, Scope Recommendation, Nos. 1-6.
8. As understood by, among others, the European Labour Survey. For a detailed description of standard work and introduction into various possible atypical forms of work see: Schoukens and Barrio (2017).
9. See Walton (2016:111-121) with reference to Stone and Arthurs (2013). This definition is very similar to that of Eurostat and the International Labour Organization: see *European Union Labour Force Survey – Annual Results* en International Labour Organization, *Recommendation 198: Employment Relationship Recommendation* in 95th Session International Labour Conference, Geneva: ILO, 2006.
10. Contrary to the deregulatory model that is now gradually applied as the standard, for example regarding flexicurity. See Deakin (2013: 4).

contains the traditional elements of the employment relationship (i.e. personal subordination, bilateral character of the relationship, wages as a source of income, economic dependence, mutuality of obligations and fixed workplace), but also includes job security and income security – the latter being the main aim of the standard employment relationship.

Atypical forms of work

Initially, atypical forms of work emerged around the absence of legal subordination (e.g. self-employment) and/or due to the absence of a stable employment relationship (e.g. fixed-term work) or income security (e.g. part-time work). It is also true that these atypical forms of work are the most common in Europe. Thus, generally speaking, almost 60 per cent of the working population in the European Union is still in paid employment based on a permanent, full-time contract,[11] and employment in the form of temporary and/or part-time work is limited to 14 per cent and 19 per cent of the working population, respectively (combined or not), while self-employment counts for only a modest 4.5 per cent.[12] Nevertheless, there are interesting trends behind these figures. For instance, these three main forms of atypical work make up one-third of all employment relationships in the OECD countries and they account for half the net growth in employment since the 1990s.[13] In Italy, France and Germany, the percentage of business activities in the 15 to 24 age group organised on the basis of a standard employment relationship has dropped by 30 to 40 per cent in the period 1985-2015.[14] In the Netherlands, half the working population works in one or other form of part-time employment.[15] These figures indicate that atypical forms of employment are on the rise (again). But, perhaps the increasing variety in which atypical work manifests itself is more important than the figures themselves.

New forms of atypical work which deviate from other elements of standard work are coming to the fore, including, for instance, the absence of salary, reciprocity or economic subordination. For example, increasing use is being made of non-paid forms of work such as internships, study agreements or doctoral scholarships in which the PhD student is regarded as a student for the application of employment and social security law. Also on the rise are employment forms in which the employee is increasingly paid on the basis of the return on operating capital and, less frequently, in proportion to the work performed ('reciprocity').[16] For example, businesses are paying 'popular' participants in social network sites more: people with many followers or friends are seen by businesses as (potential) trendsetters and are paid in proportion to their success and, in other words, not in proportion to the work performed.

It is also striking that new forms of work increasingly comprise more atypical employment elements. Atypical work has often evolved into a combination of temporary, part-time *and* self-employed work, possibly supplemented by other atypical elements including, for instance, the

11. Eurostat (2014) *European Union Labour Force Survey – Annual Results 2014*, available at http://www://ec.europa.eu/eurostat/statisticsexplained/index.php/Labour_market_and_Labour_force_survey_(LFS)_statistics
12. Eurostat (2016), *Almost 10 Million Part-Time Workers in the EU Would Have Preferred to Work More: Two-Thirds Were Women,* available at europa.eu/rapid/press-release_STAT-15-4860_en.htm
13. OECD (2015: 137-139).
14. Stone (2013: 374).
15. Eurostat (2016) *Part-time Employment as Percentage of the Total Employment, by Sex and Age*, available at http://appsso.eurostat.ec.europa.eu/nui/show.do?query
16. For example, the Employee Shareholder Status in the UK, or the owner-manager status in Belgium.

absence of reciprocity, bilateral legal relationship or economic subordination.[17] Platform work is a good illustration of this.

Platform work involves work offered by a customer through an online platform and performed by an individual. The work can be performed offline (e.g. *Uber*, *Deliveroo*, *TaskRabbit*, *Amazon Flex*) or online (e.g. *Amazon Mechanical Turk*). Depending on the platform, there are different levels of control over the legal relationship that is created and/or over the delivered result. Thus, it appears that the high degree of control and price-fixing practised by *Uber* is increasingly an element taken into account in case-law in order to treat the 'atypical' employment relationship as paid employment after all.

Platform work defined

Delimitating a working concept of 'platform worker' is a challenging exercise because the concept has been used with very different meanings by scholars, policymakers and the general public. For the purposes of this article, we focus upon platform activities that have a (potential) relation to professional work, leaving out platforms that are based exclusively in the non-profit sharing of property or knowledge. Hence, a platform worker is defined[18] as *a person* ***selected online from a pool of workers*** *through the* ***intermediation of a platform*** *to perform* ***personally***[19] ***on-demand short-term tasks*** *for different persons or companies* ***in exchange for income****.*

The online character of platforms is one of their defining features, facilitating access and reducing transaction costs.[20] Furthermore, the fact that the platform acts as an intermediary between the person who receives the service and the person who performs it means that, in this role, the platform typically (and although to various degrees)[21]:

1. possesses essential information about the relationship (e.g. the nature of the tasks performed, remuneration, the identity of the parties, etc.),
2. has a monopoly over the contact between the two other parties in the relationship (i.e. the person performing the work and the person receiving it may only contact each other through the platform),
3. provides rules concerning the behaviour of both parties,
4. may monitor the compliance with such rules, and
5. may sanction the lack of compliance with such rules by stopping temporarily or permanently an individual from accessing the platform.

Finally, it must be stressed the on-demand[22] nature of platform work, which means that the performance of a task is offered when and if a person requests it, without any obligation by the

17. Schoukens and Barrio (2017)
18. This definition is based, inter alia, on the concept proposed by Jeremias Prassl, see Prassl (2018).
19. This means that the platform worker is required to create a personal profile, to which reviews may be linked. While in some cases this feature is expressly mentioned by the platform in its terms of services. See Prassl, and Risak (2016: 644), in other cases it might be evident from the personal character of the ratings.
20. For some examples on the importance of the online character (which results, among others, in the use of apps), see Valenduc and Vendramin (2016: 20).
21. This amount of control varies greatly between platforms and change often over time, as well as it is the object of significant debate. Nothwithstanding, the following tentative list has been compiled based on caselaw (particularly Yaseen Aslam, James Farrar and Others v Uber B.V., Uber London Ltd, Uber Britannia Ltd, case No. 2202550/2015) and doctrine.
22. Kittur (2013).

platform to ensure that a minimum amount of work is performed by the workers registered in it. Significant periods of unremunerated time, when a worker waits between tasks, often exist.

The european social pillar and minimum requirements regarding the access to social protection

The European Pillar of Social Rights[23] jointly announced by the European Parliament, the Council and the Commission in November 2017, set out 20 principles and rights to support fair and well-functioning labour markets and welfare systems. Principle 12 of the Pillar states that 'regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed have the right to adequate social protection'. In order to have this principle further developed, a proposal for a Council Recommendation was launched by the European Commission on access to social protection for workers and the self-employed.[24] Interestingly, the recommendation addresses all atypical forms of work, and calls for proper social protection for the different types of work, even though they may be organised in a deviant manner compared to traditional standard work that is used as a model for many of our (labour-related) social security schemes. An essential principle in the proposal for a Recommendation is the neutral character of the labour status of the worker: the basic principles shaping social security are equal for all workers, independently of the kind of work or of the eventual status of the work performed. Nevertheless, in the application of these neutral principles, social security schemes should respect as much as possible the specific working circumstances under which the work is carried out.[25]

The proposed Recommendation, which seeks to ensure minimum standards in the field of social protection of workers and the self-employed, applies to all traditional social insurance schemes related to labour (i.e. unemployment benefits, sickness and health care benefits, maternity and equivalent paternity benefits, invalidity benefits, old-age benefits, and benefits in respect of accidents at work and occupational diseases).[26] In that manner, it follows the traditional definition of social security as applied in the EU coordination rules and Directives in relation to equal treatment in the field of social security.

The Recommendation makes a clear distinction between formal and effective coverage. Formal coverage stems from existing legislation or collective agreements setting out that the workers are entitled to participate in a social protection scheme in a specific branch.[27] Effective coverage refers to real protection when the workers have the opportunity to accrue adequate benefits and the ability, in the case of the materialisation of the corresponding risk, to access a given level of benefits.[28] It is possible that workers (such as platform workers) are formally considered to be employees and hence are made subject to the social security schemes of the employees. Yet, notice

23. European Commission, Proposal for a Interinstitutional Proclamation on the European Pillar of Social Rights, COM(2017) 251.
24. European Commission, Proposal for a Council Recommendation on access to social protection for workers and the self-employed, COM(2018) 132.
25. See similarly the theory of labour status neutrality as developed in Schoukens (2000a: 542-543) and Schoukens (2000b).
26. European Commission, Proposal for a Council Recommendation on access to social protection for workers and the self-employed, COM(2018) 132, Scope Recommendation, Nos. 1-6.
27. *Ibid*., Rec. Nos. 8-9.
28. *Ibid*., Rec. No. 10.

has to be made as well to their effective protection, taking the short-term, on-demand character of this form of work into account.

The proposed Recommendation makes it clear that Member States should ensure that the self-employed have access to social protection by extending their formal coverage on a mandatory basis covering all schemes included in the scope of the Recommendation, with the exception of unemployment, for which formal coverage should be ensured at least on a voluntary basis. Workers, in contrast, should be covered on a mandatory basis for all listed risks.

When it comes to effective coverage, the proposal establishes that rules governing contributions and entitlements should not hinder the possibility of accruing and accessing benefits due to the type of employment relationship or labour market status, and that differences in the rules governing the schemes between labour market statuses or types of employment relationship should be proportionate and reflect the specific situation of beneficiaries. In other words, although access to insurance against the main risks should be guaranteed equally, the application rules may be designed and fine-tuned around the specific working circumstances of the respective group of workers. This may create some challenges, especially for unemployment involving self-employed persons. However, as the preparatory works indicate, it is not an impossible task, taking into account that a large number of countries have an unemployment scheme in place for this group. Essential in this regard is to design the unemployment insurance in a manner that suits the typical working environment of the self-employed persons (i.e. not working under authority of the employer). Conditions will have to refer to the stopping of the business rather than to the type of dismissal.

Moreover, the proposal states that Member States should ensure that entitlements are accumulated, preserved and transferable across all types of employment and self-employment statuses and across economic sectors (transferability of entitlements).[29] Furthermore, it establishes that the calculation of social protection contributions and entitlements of the self-employed should reflect their actual earnings (adequacy of benefits).[30]

In summary, we can say that the proposal for a Recommendations asks for mandatory coverage concerning the basic contingencies for all workers although, for self-employed persons, voluntary access to an unemployment scheme may suffice. Furthermore, social security schemes should take into account the specific working conditions of atypical work in order to make sure that social security protection in its basic principles (of income replacement and cost compensation) is guaranteed equally for all workers. Further, social protection should aim for adequate protection, meaning that the standard of living can be maintained when the risk occurs; benefits should be transparent as they have to reflect previous earnings and there should be sufficient guarantees for the transfer of benefits across schemes when workers change their employment or their occupation.

An analysis of the social security protection of platform work through the prism of the European Commission proposal for a Council Recommendation

With the exception of Belgium and France, most social security systems in the European Union do not have yet specific rules addressing platform workers. As a result, platform workers (if it is considered that they are performing a professional activity) need to be included in one of the

29. *Ibid*., Rec. No. 11.
30. *Ibid*., Rec Nos. 16-17.

existing schemes available to those non-standard forms of work regulated by law (e.g. self-employment, part-time or fixed-term employment).

Unfortunately, the discussion of the legal status of platform work for social security purposes in each European Union country is far from settled. Furthermore, the features of platform work are still changing to some degree, with platform companies modifying their practices as the positions of the judiciary, public and policymakers are progressively known. We attempt to overcome this obstacle by analysing the nature of social security protection linked to those legal forms of work which might at some point include platform work. Additionally, we seek to evaluate whether the different legal forms of work under which platform work may be included fulfil the requirements set in the Council recommendation proposed by the European Commission (analysed above), particularly concerning formal access to social security benefits. In this regard, due to some of its essential features, such as its fragmentary and on-demand character, platform work may in occasions be included in the scope of provisions granting formal access to a lesser number of social security schemes than in the case of regular employees.

Germany

In Germany, a person performing work as a platform worker may be classified as an employee or as self-employed. If he/she is considered to be self-employed, he/she may be classified as an employee-like person (*arbeitnehmerähnliche Personen*), a home trader (*Hausgewerbetreibende*), a self-employed trader (G*ewerbetreibender*) or a liberal professional (*Freiberufler*).

The difference between employment and self-employment has been established by case law.[31] A person is generally considered an employee by the social insurance administration if he/she fulfils at least three of the following criteria: does not employ others, has one employer only, performs the same type of work repeatedly, is not personally or economically independent, or performs work similar to the one he/she used to perform before within the same company.[32] This definition of employee for social security purposes is generally broader than for labour law or collective bargaining purposes.[33] Platform workers classified as employees are formally covered by all labour related schemes. Nevertheless, employees with income from work under €450 per month (or more, if they perform only one employment relationship with income under that monthly amount besides their main occupation) are not covered by compulsory contributory unemployment insurance (*Arbeitslosengeld I*).[34] Moreover, those employees in one or more employment relationships, no matter what their salary is, with a total combined duration of a maximum of 70 days of work per year (or three months, if the person works at least five days a week),[35] and which does not amount to a professional activity[36] with earnings exceeding €450,[37] are excluded from the scope of both compulsory contributory unemployment insurance and

31. In fact, the concept of 'employee' is generally understood as to be interpreted holistically, so no one feature (even subordination) leads obligatorily to employee status classification but, instead, the whole relationship must be analyse as a whole, as noted by Eichhorst (2013: 38).
32. See Eichhorst (2013: 38).
33. Pedersini (2002: 6).
34. See Palier and Thelen,(2012: 210).
35. Sozialgesetzbuch, Viertes Buch, §115, §8(1)2.
36. A set of criteria helps determining what amounts to a 'professional activity', being at the core of them whether employment is of primary importance to ensure livelihood, as well as whether it is performed as a secondary activity.
37. Sozialgesetzbuch, Viertes Buch, §8(1)2.

statutory pension insurance (*Rentenversicherung*) (which includes both old-age and disability pension[38]).

A platform worker who does not fulfil the criteria for classification as an employee would be instead classified as a self-employed worker. Nevertheless, platform workers performing work as a self-employed worker but without the aid of employees, and being economically dependent on one client, are classified as employee-like persons (*arbeitnehmerähnliche Personen*).[39] The concept of 'employee-like persons' for social security purposes also includes (irrespective of the number of clients) self-employed teachers, lecturers, fishermen and carers without employees, as well as midwives, ship captains, artists, publicists, home traders (*Hausgewerbetreibende*) and craftsmen (*Handwerker*[40]).[41] Employee-like persons are compulsorily insured in the Statutory Pension Insurance (*Gesetzliche Rentenversicherung*) (although they must cover the contributions of both the employer and the employee themselves), but are not covered by contributory unemployment insurance and labour accidents and professional diseases insurance (*Unfallversicherung*). Home-traders are also obliged to join the labour accidents insurance scheme.[42]

In addition to the cases included within the employee-like category, a platform worker who is regarded as a self-employed would be classified as either a trader (G*ewerbetreibender*)[43] or a liberal professional (*Freiberufler*).[44] Both categories are excluded from all compulsory social insurance schemes (i.e. statutory old-age pension, statutory disability pension, contributory unemployment insurance and accident insurance) except in the case of healthcare insurance, although they may voluntarily join the professional accident insurance scheme (*Unfallversicherung*)[45] and the state pension insurance scheme (*Rentenversicherung*) (which includes both old-age and disability pension).[46] Even in the case of compulsory health insurance, platform workers in either of these employment statuses may choose between joining the statutory health insurance scheme (*Gesetzlichen Krankenversicherung*)[47] and joining a private health insurance scheme (*privaten Krankenversicherung*). Nevertheless, those who have been compulsorily insured for the contributory unemployment insurance scheme at some point and are self-employed for at least 15 hours a week[48] may remain insured in the contributory unemployment insurance scheme on a voluntary

38. Disability pension is covered under German law as reduced earning capacity pension (*Rente wegen verminderter Erwerbsfähigkeit*), see Sozialgesetzbuch, Sechstes Buch, §43.
39. See Tarifvertragsgesetz, artikel 12a; Bundesarbeitsgericht Urt. v. 15.11.2005, Az.: 9 AZR 626/04.
40. More specifically, the concept 'craftsmen' is understood in the Sozialgesetzbuch as tradesmen who are registered personally in the register of skilled qualified craftsmen (*Handwerksrolle*), fulfilling the criteria to register as such.
41. Sozialgesetzbuch, Sechstes Buch, §2.
42. Sozialgesetzbuch, Siebtes Buch, §44.
43. A trader (G*ewerbetreibender*) is a person who performs any permitted commercial activity for profit and in a permanent basis as a self-employed, see BVerwG, NVwZ 1995, 473, 474, st. Rspr (Aufzählungszeichen hinzugesetzt).
44. A free-professional (*Freiberufler*) is a person performing an occupation among those mentioned in article 18 of the Income Tax Act, and which includes self-employed doctors, lawyers, scientists, teachers, dentists, engineers and journalists, among others, see Einkommensteuergesetz, §18.
45. Sozialgesetzbuch, Siebtes Buch, §§2-4.
46. They may opt to do so within the first five years of starting their activity as self-employed. After joining the statutory pension insurance, nevertheless, they would be subjected to the same rights and obligations than those compulsory included in the scheme, see Bäcker (2017: 13).
47. See Sozialgesetzbuch, Fünftes Buch, §44(2)1. Furthermore, persons who are not part of the compulsory health insurance may join the voluntary health insurance (*Freiwillige Versicherung*), see Sozialgesetzbuch, Fünftes Buch, §9.
48. See Bäcker (2017: 14).

basis. When covered by statutory schemes, self-employed traders and free professionals are required to achieve the same assimilated periods of insurance as those classified as employees.

Therefore, and outside the cases of those platform workers classified as employees and with earnings above the minimum threshold, all other platform workers would not receive formal coverage for at least one contingency. Even if the non-contributory unemployment benefit (*Arbeitslosengeld II*),[49] available to all workers irrespective of their employment status, is taken into account, persons performing platform work for less than 70 days per year (and with earnings of less than €450 per month), as well as those classified as traders or liberal professionals would still lack formal access to one or more social security schemes concerning labour-related contingencies.

France

While French legislation does not establish a clear set of criteria to determine employee (*salarié*) status, these have been developed by case law. The main criterion is the existence of a subordination link, characterised by the performance of work under the authority of an employer, who has the power to provide orders and directions, to control the performance and to sanction the faults committed by the employee.[50] The fact that work is performed as part of a service organised by the company, a circumstance which was, for some time, considered sufficient to classify a work arrangement as an employment relationship,[51] is currently considered only as an indication of the existence of an employment relationship (and only if it is combined with the fact that the employer determines unilaterally the way in which work must be executed).[52] Platform workers classified as employees are formally covered by all labour related schemes, irrespective of their earnings.

A person who performs platform work as a professional activity outside the circumstances considered to amount to an employment relationship is deemed to be self-employed. This seems to be the case concerning platform workers who, in the very few judicial decisions released yet on their legal status (those concerning the companies *Uber*[53] and *Deliveroo*[54]), were found to be correctly classified as self-employed for employment and social security purposes.

If, however, the platform worker performs an occupation included among those listed in article L311-3 of the social security code, he/she would be covered by the provisions on social security for employees, although he/she would not be covered by the contributory unemployment benefit scheme, as it is regulated under the labour code.[55] These categories include, among others,[56] self-employed members of a cooperative of activity and employment (*entrepreneur salarié d'une coopérative d'activité et d'emploi*) and landlords of furnished lodgings with earnings between €23,000 and €82,800. In the latter case, the landlord has a choice between being covered by the provisions for employees or for the self-employed, and, if the former is chosen, they are entitled to a reduction in their social security contributions of

49. Sozialgesetzbuch, Zweites Buch, §20.
50. Cour de Cassation, Chambre sociale, du 1 décembre 2005, 05-43.031.
51. Cour de Cassation, Assemblée plénière, du 18 juin 1976, 74-11.210.
52. Cour de Cassation, Chambre sociale, du 1 décembre 2005, 05-43.031.
53. Conseil des Prud'hommes de Paris, Florian Menard v SAS *Uber* France, 29 janvier 2018.
54. Cour d'appel de Paris, Pôle 6, chambre 2, Monsieur Y Z v SAS *Deliveroo* France, n° 16/12875, 9 novembre 2017.
55. See Huteau and Bonnand (2016: 8).
56. Other situations assimilated to employees are those in which there is a relationship of subordination, such as home workers with economic dependency to the provider of orders, see Code de la sécurité sociale, art. L311-3.

60 per cent.[57] A self-employed member of a cooperative of activity and employment,[58] in turn, is a person performing a professional activity through a contract with a cooperative, under which he/she commits himself to produce earnings above a certain threshold and to pay a certain amount to the cooperative in exchange for remuneration (which may be fixed or variable) and access to a set of services (e.g. accounting).[59]

In case the (self-employed) platform worker is not included in the cases mentioned above, he/she may be classified as a self-employed craftsman (*artisan*)[60] or a trader (*commerçant*).[61] This is the case, for example, for *Deliveroo* riders, who must register as traders within the subgroup of 'independent urban courier services' (*Service des Coursiers Urbains Independants*). In any case, a person performing work within any of these two legal statuses is compulsorily covered for maternity benefit, sick pay and disability pension through health insurance, as well as for basic and complementary pension. They may opt to be voluntarily insured against accidents at work and professional diseases through the health insurance as well. If they do so, and they work through a platform (*plateformes de mise en relation par voie électronique*) as defined by the law (i.e. a company which determines the characteristics of the service provided or of the product sold, as well as determining its price), the platform is obliged to cover the cost of the insurance against accidents at work and profession-related diseases.[62] This only applies, however, to workers with annual earnings from the work performed through the platform of over 13 per cent of the annual social security ceiling[63] (i.e. €430 for 2018[64]). Platform workers classified as self-employed craftsmen or traders cannot join the contributory statutory unemployment insurance scheme, although they may opt to join a voluntary private unemployment insurance scheme.

Platform workers classified as self-employed liberal professionals (*professionnels libéraux*), in turn, are insured in a different fund from those classified as craftsmen or traders for all contingencies except maternity/paternity (with different rules for calculating benefits), and, generally, cannot join the statutory sick pay insurance scheme (although, they may opt to join a voluntary private insurance scheme).

Additionally, platform workers with income from self-employment under a certain limit (i.e. less than €170,000 if the activity is trade or craftsmanship; or €70,000 if it involves the provision of services, including accommodation,[65]) may be classified as micro self-employed (*auto-entrepreneurs*).[66] They receive the same treatment concerning social security as self-employed craftsmen,

57. Code de la sécurité sociale, art. L311-3, 35°.
58. See Allard *et al* (2013).
59. Code du Travail, article L7331-2, R7331 -1 – R7331-10.
60. 'Craftsmen' is defined by article 19 of Loi n 96-603 du 5 juillet 1996 as those persons or companies who do not employ more than 10 employees and that perform as a self-employed an activity (of production, transformation, reparation or provision of service) included in the list approved by the Conseil d'Etat.
61. 'Traders' are those persons performing one or more of the activities of the list established at articles L110 -1 and L110-2 of the Code de Commerce, which includes selling movable and immovable goods, as well as renting movable goods.
62. Code du Travail, article L7342 -1.
63. Code du Travail, articles L7342-2, D7342 -1.
64. See the social security ceilings at Arrêté du 5 décembre 2017 portant fixation du plafond de la sécurité sociale pour 2018.
65. This, nevertheless, excludes those liberal professions with a specific retirement fund, such as legal or healthcare professionals, see Deprost, Imbaud and Laffon (2017: 2).
66. Code général des impôts, article 50-0, as modified by Loi n 2017-1837 du 30 décembre 2017 de finances pour 2018, article 22.

traders or liberal professionals (depending on their occupation), except that, unlike regular self-employed persons,[67] micro self-employed do not have an obligation to pay a minimum contribution even if they do not have income[68] (but, instead, only pay a percentage of their income). As a result, if their annual income is under €3,862.80, they are not covered by the sick pay scheme. Nevertheless, since 2017, they may voluntarily opt to pay the minimum contribution in order to ensure accumulation of insurance periods.[69]

France is a special case in that it has created specific obligations for 'platforms of online intermediation' and for 'digital online platforms'. Thus, a person performing work as a self-employed person for platforms of online intermediation (*plateformes de mise en relation par voie électronique*), defined as 'companies, wherever they are established, who link people remotely and online for the sale of goods, the provision of a service or the exchange or sharing of a good or service'[70] which 'determine the characteristics of the service provided or of the product sold, as well as its price,"[71] will be covered by sick pay insurance on the expense of the platform.[72] Moreover, operators of digital online platforms (*operateur de plataforme en ligne*), defined as 'any natural or legal person offering, on a professional basis and either in a remunerated or unremunerated way, an online service based on (. . .) bringing together several parties for the purpose of selling property, providing a service or exchanging or sharing a content, property or a service'[73] will be obliged, from 1 January 2019, to report certain information on the work performed through them.[74]

All persons, irrespective of their employment status, may qualify for the means-tested benefit Active Solidarity Income Support (*Revenu de Solidarité Active*, or *RSA*), the amount of which depends on household earnings and the composition of such a household (with a minimum amount of €545.48[75]), and which is compatible with starting an enterprise. Furthermore, all persons aged 65 years or over and residing in France, who are not receiving any old-age benefits and have annual earnings of less than €9,998.40 (€15,522.54 if applying as a couple), may be entitled to the Solidarity Allowance for the Aged (*l'allocation de solidarité aux personnes âgées*).[76]

In conclusion, while platform workers might be tentatively considered as self-employed workers under French law, the French social security system grants formal coverage for all contingencies except unemployment for those who are classified as traders (as is the case, for example, for *Deliveroo* riders) or craftsmen. This lack of coverage may be overcome in the future, as the current French government is working on an unemployment scheme for the self-employed.[77]

The United Kingdom

In the United Kingdom, the scope of social security schemes is based on employment law or social security law/tax law depending on the scheme at issue. Hence, the formal coverage of *Statutory*

67. See Code de la Sécurité Sociale, article L133-6-8.
68. Code général des impôts, articles 50-0 and 102 ter.
69. Loi n 2015-1702 du 21 décembre 2015 de financement de la sécurité sociale pour 2016.
70. Code général des impôts, article 242 (own translation).
71. Code du travail, article L7342 -1 (own translation).
72. *Ibid.*
73. Code de la consommation, article L111-7 (own translation).
74. Loi n 2016-1918 du 29 décembre 2016 de finances rectificative pour 2016, article 24.
75. Code de l'action sociale et des familles, article R 262-18 – R262-25.
76. CNAVPL, *Guide de l'assurance vieillesse des professions liberals. Edition 2016*, Paris: CNAVPL, 2016, pp. 31-32.
77. Ruello (2018).

Sick Pay, as well as of S*tatutory Maternity and Paternity Leave and Pay*, is determined based on the definitions of 'employed'[78] and 'self-employed' under employment law. The status of self-employed includes its two variants: limb (b) worker (i.e. persons performing work personally and as an integral part of the client's operations through a contract of employment or any other contract[79]) and independent contractor. In contrast, the scope of social security schemes concerning contribution-based unemployment benefit (*contribution-based Jobseeker's Allowance*), labour accidents and professional diseases (*Industrial Injuries Disablement Benefit*), disability pensions (*contribution-based Employment and Support Allowance*) and old-age pensions (*New State Pension*) is linked to the concepts[80] of 'employed earner' and 'self-employed earner' established by tax law. This is due to the fact that the coverage by the latter group of social security schemes depends on whether the claimant has accumulated periods of contributions, and whether he/she did so as an employed earner or a self-employed earner. In turn, the scope of income-based schemes concerning unemployment benefit (*Universal Credit*) and maternity benefit (*Maternity Allowance*) is independent of employment status. While there are many similarities between the concepts of employee (under employment law) and employed earner (under tax law), there are also some disparities.[81] These differences often make the determination of social security rights and obligations a significant challenge.[82]

A platform worker classified as an employed earner under tax law would be covered by all labour-related social insurance schemes linked to social security law. Nevertheless, if the earnings from this employment relationship are under a certain threshold (i.e. £116 per week or £503 per month for 2018/19[83]), he/she would not be covered by social insurance schemes unless he/she opts to pay Class 3 voluntary national insurance contributions (which amount to £14.65 per week in 2018,[84] and serve to accumulate periods of insurance for eligibility to a *New State Pension*, but not for an *Additional State Pension*, *contribution-based Jobseeker's Allowance, or contribution-based Employment and Support Allowance and Maternity Allowance*[85]). Furthermore, if this platform worker is classified as an employee under employment law, he/she may be automatically enrolled in an occupational pension scheme and covered by statutory maternity leave and pay[86] and statutory sick pay,[87] while, if he/she is classified as a limb (b) worker, he/she may still opt into

78. For employment law, an 'employee' is a person performing work under a contract of employment (also called contract of service) which, in turn, may be broadly summarised as been characterised for the existence of control, integration, the economic reality of the situation and mutuality of obligations. See further Pyper (2018).
79. Employment Rights Act 1996, section 230(3)(b); Costworld Developments Construction Ltd v Williams, 2006, IRLR 181.
80. *Ibid*., section 2(1)(b).
81. This is the case, for example, concerning the criteria 'mutuality of obligations' which, for tax law purposes only means the existence of a remuneration in exchange of the worker providing his/her own work, while employment law requires also that the workers is required to accept work. See further HMRC Revenue and Customs (2017), 'Guide to determining status: mutuality of obligation', *HMRC internal manual: Employment Status Manual*, available at www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm0543
82. Office of Tax Simplification (2015) *Employment Status Report*, London: OTS, 2015, 31; Pyper (2018).
83. HM Revenue & Customs (2018), *Guidance: Rates and allowances: National Insurance contributions*, available at www.gov.uk/government/publications/rates-and-allowances-national-insurance-contributions
84. *Ibid*.
85. HM Revenue & Customs (2017), *HMRC internal manual: National Insurance Manual*, available at www.gov.uk/hmrc-internal-manuals/national-insurance-manual/nim25021
86. Craven (2011).
87. Social Security Contributions and Benefits Act 1992, section 151.

occupational pensions but would not be covered by statutory maternity leave and pay, and statutory sick pay.

A platform worker classified as a self-employed earner under social security legislation would be excluded from coverage by a contribution-based unemployment benefit scheme[88] and an occupational pension scheme. Furthermore, if the worker has earnings from his/her activity as a self-employed person of less than the small profits threshold (£6,025 a year in 2018), he/she would also be excluded from coverage by the schemes covering labour accidents and professional diseases,[89] old-age pensions, incapacity pensions and maternity allowances, unless he/she voluntarily pays Class 2 National Insurance Contributions (£2.85 a week). However, Class 2 will be abolished from 6 April 2019,[90] after which those with earnings below the small profits threshold may opt between paying the higher Class 3 voluntary national insurance contributions (that, as explained above, does not provide eligibility for most contributory benefits) or being excluded from coverage.[91] Again, platform workers classified as limb (b) workers for employment law purposes may opt into occupational pensions (or may even be automatically enrolled in certain circumstances), while those classified as independent contractors may not do so. Yet, unlike those classified as employees under employment law, platform workers classified as limb (b) workers may not access statutory maternity leave and statutory sick pay.

Existing judicial decisions seem to point out towards platform workers being classified as limb (b) workers under employment law[92] (and, arguably, given self-employed earner status under social security and tax law[93]). Nevertheless, recent decisions suggest that, at least concerning some platforms (i.e. *Deliveroo*), workers should be classified as independent contractors for employment law purposes.[94]

In summary, platform workers classified as self-employed earners (which seems to be the case, based on available case law) lack formal access to the contributory-based unemployment benefit scheme (as well as to occupational pensions, except if they are also classified as limb (b) workers and not as independent contractors for employment law), although they may be entitled to income-based *Universal Credit*.

The Netherlands

Platform work is mainly carried out as a solo self-employed person (*Zelfstandigen zonder personeel –ZZP-*) or as a part-time employee. The high increase of the group of self-employed persons without employees is a major concern for the European Council as this group has limited access to affordable social security protection.[95]

88. Jobseekers Act 1995, section 2(1)(a).
89. Department for work and Pensions, *Industrial Injuries Disablement Benefits: technical guidance*, London: DWP, 2017.
90. HM Revenue and Customs, *Policy paper: Abolition of Class 2 National Insurance contributions*, London: HMRC, 2017.
91. Jones (2017).
92. Yaseen Aslam, James Farrar and Others v Uber B.V., Uber London Ltd, Uber Britannia Ltd, appeal No. UKEAT/0056/17/DA, 10 November 2017.
93. IWGB (2017: 5).
94. Reuters (2018).
95. Council Recommendation, 12 July 2016 on the 2016 National Reform Programme of the Netherlands, 2016/ C 299/10, nr.2, eur-lex.europa.eu.

Statutory social security offers solo self-employed workers a limited degree of security in the form of the state old age pension (*AOW*) and care insurance and, at the margins, child benefit (*AKW*) and surviving dependents benefit (*ANW*). On the other hand, solo self-employed workers may arrange insurance against the risks of unemployment and work incapacity and organise an occupational pension outside the scope of the statutory system. However, the self-employed seldom take the initiative to organise coverage for these risks on a voluntary basis since the generated income is at a basic level (which is often the case for solo self-employed persons).[96]

Solo self-employed workers acknowledge the need to cover these risks but do not (always) have the means to take out insurance to protect themselves against them.[97] The fact remains that too many (small) solo self-employed workers have very limited social insurance which may disadvantage them in the long-term. Policymakers tend to look beyond social security and think of means of providing additional coverage through employment law and fiscal law. As the solo self-employed are entitled to tax credits (often of considerable size), some argue in favour of using fiscal incentives for social security purposes (e.g. by taking out insurance).

The basic provisions of national insurance also apply to part-timers. And, on a *pro-rata* basis in terms of the number of hours worked, employee insurance schemes also provide protection. The part-time model that has characterised the Dutch labour market for decades and that will continue to do so, consequently ensures the social security protection of a large group of part-timers. But, the new group with small part-time jobs in the form of on-call contracts, zero-hour contracts and platform workers gives cause for concern. In terms of the number of hours worked, these workers have limited income and minimum protection. They sometimes have no protection during illness or unemployment. Furthermore, the fact that platform workers are sometimes not treated as employees increases the need for an urgent review of the traditional classification of employees and self-employed workers in which each group has its own system.[98]

The new Dutch government is working on specific social insurance for the self-employed worker and is considering introducing income thresholds that should help in determining the qualification of professional activities (employee or self-employed worker).[99] To this end, self-employed workers have been categorised into three groups. The first group work (on a long-term basis for a commissioner) for an income below the minimum threshold of 15 to 18 euro/hour or approximately 125 per cent per cent of the minimum wage. These individuals would qualify by law as employees. The second group, who earn €75 per hour (or more) for a short assignment (shorter than a year), would be count as self-employed. The remaining group would have to fill out a declaration describing, on the basis of given parameters, their work assignments and qualifying their activity as a wage-earner or as a self-employed person. This declaration would become the subject of further investigation by the (tax) authorities.

As far as social protection is concerned, plans are being made to design a specific work incapacity scheme for self-employed workers, but it is not yet clear whether the scheme will be

96. IBO (2015: 66-69).
97. www.cbs.nl: see 'factsheet zelfstandig ondernemers zonder personeel' and 'zelfstandigen enquête arbeid 2017'.
98. Montebovi, Barrio and Schoukens (2017: 17).
99. See Coalition Agreement Dutch government, 10 October 2017, pp. 25-26 (Regeerakkoord 2017-2021, 'Vertrouwen in de toekomst').

made mandatory for solo self-employed workers or whether the self-employed as a group will be able to participate on a voluntary basis.

In July 2018 a Deliveroo worker who claimed the employee status, and therefore adequate social security protection, was qualified by the judge as an entrepreneur and not as an employee. Based on all the components of the working situation, the (lower) court decided the agreement between the worker and Deliveroo could not be considered as an employment contract. The judge added also that for the qualification of the new forms of work measures should be taken by the legislator, if society wishes so.

In summary, depending on the situation and the specific assignment at stake platform workers are performing in a self-employment status or an employee status. It's not always clear when which status prevails but a recent judicial decision may accelerate the legislator's initiative.

Belgium

Special schemes have been set up for platform workers in Belgium, in particular for income earned from (recognised) platform work. In essence, under these schemes, self-employed platform workers are exempted from taxation and social security contributions as long as their income does not exceed a specific income threshold. Outside these special schemes, platform workers are treated as 'traditional' employees or self-employed workers (depending on whether or not they work in a subordinate relationship) and they enjoy protection equal to that of employees or self-employed workers.

The programme act (*Programmawet*) of 1 July 2016 (Programme Act 1 July 2016, articles 22-26) sets out the rules for the sharing economy which, in turn, is defined as a system in which people can mutually trade products, services and knowledge through online platforms where demand and supply meet.

A favourable tax system applies for the services that one individual provides to another individual through such a platform. Nevertheless, two major service categories are excluded from this system, specifically the delivery of goods and leases. Thus, simply letting a room does not qualify. If additional services (e.g. cleaning, serving breakfast) are offered, however, the tax treatment would change. For instance, when the service provider charges a general price for the total package, there is a flat rate division; twenty per cent of the total price is considered to represent the additional services.

The following conditions should be met cumulatively:

1. the income should be income earned from the provision of services between individuals;
2. the services may not be provided within the context of the professional activities of the individual providing the service;
3. the services must be provided within the scope of a recognised electronic platform organised by the state;
4. the remuneration should be paid through the platform;
5. the income earned from the activity may not exceed €6,130 a year.

If these conditions are met, the income is treated as diverse income that is subject to a favourable tax rate: half the gross income is treated as flat rate costs and exempted from taxation. The other half is taxed at a rate of 20 per cent. If income exceeds €6,130, all income earned from these services is treated as professional income, unless it can be proved to the contrary. The

providers are not treated as self-employed workers and do not have to be subject to the social security scheme for self-employed persons in respect of the activities to which the tax system of the sharing economy applies. Neither does the vendor have to request a VAT number nor is the vendor required to register with the Central Database for Enterprises. Hence, persons performing work through such arrangements are excluded from the formal coverage of labour-related contributory schemes.

Furthermore, for the sake of completeness, we note the arrangements introduced by a recent act (July 2018) regarding so-called 'spare-time work', 'semi-voluntary work' or 'net work'. Employees employed for at least four-fifths of a full time position, or self-employed people whose activity is performed as main occupation, are now able to earn €6,130 a year additionally, without having to pay taxes or social security contributions on that amount. This includes a list of services provided by citizens to citizens (e.g. work in and on the home, child care, coaching) and duties within an association. The additional activity should be of a different kind than the main activity. The fact that it tackles side-jobs might allow compliance with the Commission's proposal concerning formal coverage. People offering services in the 'sharing economy' through recognised platforms continue to enjoy the specific scheme explained above. Consequently, the exemption applies regardless whether the platform work is done as main or as side activity.

Minimum thresholds in a platform economy

Limiting access to social security benefits based on the amount of work performed is not a new development. Most social security systems have thresholds in place to determine entitlement to a number of social security benefits.[100] Traditionally, they have related to a minimum number of work periods and/or a minimum amount of labour income in labour-related schemes, and minimum residence periods in the universal systems. Nevertheless, in recent policies to promote labour flexibility, other different kinds of thresholds seem to be emerging. As platform work may be considered a leading example of flexible work, with many individuals earning a small fraction of their total income in this way,[101] these existing (or newly introduced) thresholds are of specific relevance for the people working in the platform economy, excluding them from being covered by certain schemes from social protection, or turning compulsory schemes into voluntary social protection.

The reasons invoked may be generally summarised as promoting the creation of (flexible) jobs and reducing administrative complexity concerning non-professional activities. Nevertheless, they should be approached with caution, as there is a risk of creating an imbalance between the minimum protection guaranteed (often through non-contributory universal benefits) and the basis on which contributions are levied, leading to an unsustainable financial situation calling out for public financial support from general taxation.

Thresholds facilitating flexible forms of work consist of exempting or excluding[102] from the scope of social security schemes those persons who perform work of exceedingly low duration or which produces overly limited earnings. These types of thresholds, which can be found in countries like Germany or the United Kingdom, not only affect whether or not a person may access a benefit,

100. See, for a more elaborated review on the use of thresholds, Schoukens, Barrio and Montebovi (2018).
101. Huws (2017: 21). Earnest Blog (2018).
102. While sometimes there is the possibility of joining these schemes voluntarily, this is not always the case. See, for example, the use of Class 3 voluntary national insurance contributions in the United Kingdom (as explained above).

but also if a person is liable to pay social security contributions and to achieve periods of insurance. The exclusion from the scope of work-related social security schemes of very short duration or producing a low income benefits makes these forms of work cheaper, as they are exempt from the extra cost of paying social security contributions. Reduction of costs is an essential element of the business model of many platform providers, which provide cheap and flexible labour to an undefined group of service consumers.

The (partial) exemption from social security coverage becomes interesting when it comes to the treatment of side activities. One of the major justifications for this exemption is the argument that the worker already enjoys protection derived from his/her main activity, and thus does not need any extra social insurance. Especially as this kind of additional insurance often generates financial liabilities (and is therefore costly for the employee and the employer), but does not always result in extra protection due to the application of anti-accumulation rules and maximum benefits. The argument for promoting (flexible) employment is thus amplified with the justification that the side activity would not lead to additional social protection or that the increased protection would only be of a marginal nature. Nevertheless, exempting these activities may undermine the (vertical redistributive) solidarity characteristic of social security. Moreover, these types of threshold may create an unacceptable competition advantage eroding full-time employment.

Other thresholds, in turn, seem to seek to reduce administrative complexity by excluding non-professional activities from the scope of labour-related social security schemes. In this regard, there seems to be a shift towards income as a parameter for deciding on the professional character of activities. This shift may be (at least partially) due to the emerging platform economy and the irregular income patterns of platform workers (the ratio between work performance and gain of income is not always proportional) as a key element for the qualification of professional activity. In other words, income levels are used as the main element for defining whether an activity is to be considered a professional activity or not, with the regularity of the activity and the underlying intentions of the person carrying out the activity (i.e. whether the person intends to earn his/her livelihood on the basis of the activity) becoming less important. As the platform economy further decomposes work into 'gigs' (i.e. mini-activities), leading to minor income or profit per activity, it becomes harder to decide when an activity becomes a 'professional activity'. Often, one gig may produce insufficient income to be taken into consideration as a labour activity, yet a multitude of gigs may lead to an income high enough to earn a living. Moreover, the platform economy is characterised by irregular and unequal patterns of income generation: some gigs may lead to disproportionally high income, whereas others may generate very low income. Because of the difficulty in delineating income levels by professional activity, countries have started to focus on the income as such. When the income is considered to be high enough to earn one's living, the underlying activity is considered to be of a professional kind. These types of thresholds are applied both to work performed under a contract of employment (e.g. in the United Kingdom and Germany) and to self-employment (e.g. in France – with some caveats as discussed above – Belgium and the United Kingdom).

Concerning self-employment, thresholds are very often considered to be the minimum income assumed to be earned by a self-employed person (e.g. in Belgium and France). Consequently, even if the person earns income below this level, contributions are calculated on the basis of the minimum threshold. The latter often reflects the minimum subsistence income in the country (i.e. the level of income that is supposed to keep people out of poverty). Of particular relevance for platform workers is that self-employed schemes use the minimum income level as a new criterion for defining the professional character of the activity performed. Persons earning an

income below this minimum are consequently not considered to be (self-employed) workers and may thus become exempted from the 'work' related schemes. This is, for example, applied in Belgium specifically to self-employed platform workers when their yearly earnings remain below the threshold of €6,130 (see above). Nevertheless, as in Spain, although the legislation does not establish a threshold based on income in order to determine whether an activity may be considered self-employment for social security purposes, a similar practice has been developed through case law. In this regard, Spanish legislation only establishes that a person is self-employed if he/she performs regularly, personally, directly and on his/her own account a professional activity. This definition has produced significant legal discussion on what the term 'regular' (*habitual*) means, with the Spanish Supreme Court establishing yearly earnings over the minimum wage as an indicator of performing a regular activity.[103]

Conclusions: how platform work may challenge social security systems and the EU social pillar

Workers in the platform economy clearly perform labour activities that can be considered atypical, at least if we start from a definition of typical work based on the vision of Fordism: stable employment based upon an open-ended, full time and direct arrangement with a unitary employer leading to the necessary job-security, which allows in its turn the necessary amount of consumerism and economic activities affording the further development of the welfare state. Typical characteristics of standard work are thus the personal subordinate relationship to the employer, the existence of a salary leading to the economic subordination of the employee towards his/her commissioner, the bilateral character of the relation between employer and employee and the related reciprocity of the labour engagements, as well as the (work and income) stability generated by the traditional work relationship. And, although some platform workers may come close to the traditional work relations (e.g. *Uber*), work in the platform economy does have some features that set it apart from the standard. In this regard, platform work is characterised by being composed by gigs (i.e. short-term tasks not sufficient on their own to earn a living and, generally, not leading to economic stability), as well as being performed at a distance (i.e. not on the premises of the client or platform) through a triangular relationship (with the platform as an intermediary, on which the worker depends to obtain work) in an on-demand basis and for a multitude of clients.

Social security, especially labour-related social security schemes, reflect past policy designs. So, if the idea is to provide a proper protection to platform workers, we have to fundamentally rethink the design of labour-related social security schemes, starting from the reality in which these workers function. Thus, the dependence that most social security schemes for employees have on the control exercised by the employer may be challenged by the existence of a multitude of potential 'employers' (platform and/or clients ordering through the platform). The extremely short duration of the tasks, in turn, may mean that they often do not qualify as a professional activity if taken into account individually, but may do so when considered in a combined manner. Furthermore, the existence of minimum contribution payments for those who perform work as a self-employed person, particularly if different activities are taken into account individually, may

103. Tribunal Supremo, Sala de lo Social, *Rec. 406/1997*, de 29 October 1997; Tribunal Supremo, Sala de lo Social, *Rec. 5006/2005*, de 20 March 2007.

become an excessive burden for many platform workers. The fact that work may be performed off the premises, sometimes in other countries or even other continents, does not always fit in easily with social security systems that are often still dependent on the place where work is performed for determining the applicable legislation. Further, the great diversity in the amount of remuneration (and an increasing tendency in not taking into account the time spent waiting for a new task to become available) may challenge the use of the length of work as a measure to determine contributions and accumulated periods of insurance.

Overall, however, the policy of redesigning the existing schemes to the needs of these atypical forms of work does not seem to be the approach followed in the countries studied. Instead, the growing use of all kinds of thresholds is slowly pushing platform workers out of the existing schemes. Moreover, when access is provided, it is often done in an unsustainable manner, granting disproportionately high benefits compared to the low-income levels used as a financing basis. Hence, not only does attention need to be given to the redesign of the benefits, but as much emphasis should be placed on the financial side, looking for alternative sources of financing. If not, the platform worker may, in the end, be considered as not only an atypical worker, but also a marginal worker, depending excessively on subsidies from general taxation.

The challenges that lie ahead may affect labour-related systems (of the Bismarckian type) *prima facie* to a larger scale than more universal systems (of the Beveridgean type). Nevertheless, the latter may also need to adapt to the particularities of platform work if they wish to ensure both an adequate access to second-pillar benefits and a (financially) sustainable system. Overall, we call for a comprehensive strategy, for both kinds of system, in order to look into the future and to rethink the traditional patterns around which our social security systems are designed.

When setting the different approaches off against the proposed Council Recommendation, the analysis becomes salient. Countries seem to incorporate platform workers in their existing systems, but omit to fine-tune the existing schemes around the specific working conditions of platform work, which are, by nature, flexible. The main adaptation so far has been the creation of income thresholds for determining the professional character of activities performed as platform work. However, these rules boil down to the development of income thresholds and exclude platform work from social protection. The need for a specific adaptation of the basic protection principles seems not to have been followed up.

The Recommendation suggests that workers should be covered in a mandatory fashion for the traditional social contingencies. Only for the self-employed is voluntary coverage for the risk of unemployment accepted. From our analysis of selected countries, we notice, however, that in those cases when platform work is not fully excluded from coverage, coverage is often voluntary (see, for example, the case of the United Kingdom and Class 3 contributions). And, when the activity exceeds the thresholds, the issue of employment status classification becomes relevant, as lack of formal coverage of self-employed persons concerning all contingencies still exists in all the countries studied. Nonetheless, certain sub-categories of self-employment targeting very specific occupations (e.g. hometraders in France and Germany) that may grant full coverage might be an avenue for complying with the Commission's proposal.

Furthermore, effective protection is at stake. This is especially the case concerning platform work which, due to its fragmentary and irregular character, may often fall below the required periods of insurance contributions, preventing these workers from becoming entitled to benefits.

Transparency in relation to previously earned income and transferability are also problematic in the national approaches reviewed here, especially in relation to platform work that is performed as a side-activity. Here again, the tendency is to exclude this kind of work from protection, as these

workers are already protected in their main employment. This policy is at odds with what the Recommendation prescribes: make sure that work activities, even if performed in an atypical manner, generate benefits that stand in relation to the previously earned income. Instead of excluding these activities from protection, the goal should be to have them included and combined with the main activity so that some return is made possible. This may be particularly relevant in systems providing very diverse occupation-based schemes, as it is the case of Germany and France.

Nevertheless, the major challenge, to which the Recommendation does not provide an answer is the condition of adequacy. In its strict sense, adequacy refers to a just return, enabling the (platform) workers to maintain their income standards when the risk occurs. However, this may be problematic when these income standards are basically low; either below the minimum subsistence level or too low to earn a living. One cannot expect, at the end of the day, a return to benefits that guarantee a minimum subsistence but do not provide a decent standard of living. Here, we touch upon the sustainability of social insurance schemes, demanding a reasonable return of what has been invested into the system.

The challenges outlined above may very well touch a nerve with the issues generated by the specific characteristics of platform work. A large share of platform work (although data still have to be generated on this issue) is performed in a marginal manner, which explains why some countries decide to have these activities excluded from their labour-related social insurance schemes by not considering such work as professional activity. Except for recommending transparency, the Recommendation does not provide much guidance on how to proceed in this regard. In essence, the question boils down to what extent marginal work is to be included in the scope of social insurance.

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References

Allard, F. et al. (2013) 'L'accompagnement entrepreneurial par les Coopératives d'Activité et d'Emploi: des singularités à questionner', *Management International*, 17(3), 72–85.

Bäcker, G. (2017) *ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Germany*, Brussels: European Commission, 2017, available at: http://ec.europa.eu/social/keyDocuments.jsp?pager.offset=10&&langId=en&mode=advancedSubmit&year=0&country=0&type=0&advSearchKey=ESPNsensw

Barrio, A. and Zekic, N. (2017) *'Connecting Crowd-work with Work-life Balance: Mission Impossible?'* De Groof, S. (ed.), *Work-life Balance in the Modern Workplace*, Alphen aan den Rijn: Wolters Kluwer, 9–25.

Craven, R. et al. (2011) 'UK report', in *Persons without a contract of employment performing work personally*, Utrecht: European Working Group on Employment Law, available at https://www2.le.ac.uk/departments/law/research/ewl/files/EWL-2011-performing-work-without-employment-contract.pdf

Deakin, S. (2013) Addressing labour market segmentation: the role of labour law, *Genève*, ILO: Geneva.

Deprost, P., Imbaud, D. and Laffon, P. (2017) *Évaluation du régime d'auto-entrepreneur*, Annex II, Paris: Gouvernement de la République Francaise.

Earnest Blog (2018) 'How Much Are People Making From the Sharing Economy?', 15 February, available from https://www.earnest.com/blog/sharing-economy-income-data

Eichhorst, W. et al. (2013) *Social protection rights of economically dependent self-employed workers*, Brussels: European Parliament, 2013, available at: http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507449/IPOL-EMPL_ET(2013)507449_EN.pdf

Hamari, J., Sjöklint, M. and Ukkonen, A. (2016) 'The sharing economy: Why people participate in collaborative consumption', *Journal of the Association for Information Science and Technology*, 67(9), 2047–2059.

Huteau, G. and Bonnand, G. (2016) 'France', in *ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts*, Brussels: European Commission, available at: http://ec.europa.eu/social/keyDocuments.jsp?pager.offset=0&&langId=en&mode=advancedSubmit&year=0&country=0&type=0&advSearchKey=ESPNsensw

Huws, U. (2017) *Work in the European Gig Economy*, Brussels: FEPS.

IBO (2015) *Rapport IBO Zelfstandigen zonder personeel*, Den Haag: IBO.

IWGB (2017) 'Dead on Arrival. The IWGB's reply to the Taylor Review on Modern Employment Practices, London, available at https://iwgbunion.files.wordpress.com/2017/07/iwgb-response-to-taylor-review1.pdf

Jones, R. (2017) 'New bombshell for self-employed: pay 400% more NICs . . . or lose state pension', *The Guardian*, 18 March, available at www.theguardian.com/money/2017/mar/18/national-insurance-self-employed-400pc-more-contributions

Kittur, A. et al. (2013) 'The Future of Crowd-Work', *Proceedings of the 2013 Conference on Computer Supported Cooperative Work*, 1301–1318.

Montebovi, S., Barrio, A. and Schoukens, P. (2017), 'De sociale zekerheid en de niet-standaard arbeidsrelaties: ontwikkelingen in Europa en Nederland', *Tijdschrift Recht en Arbeid (TRA)*, 82(10), 12–18.

OECD (2015) *In It Together: Why Less Inequality Benefits All*, Paris: OECD Publishing.

Palier, B. and Thelen, K. (2012) 'Dualization and Institutional Complementarities: Industrial Relations, Labor Market and Welfare State Changes in France and Germany' in Emmenneger, P., Häusermann, S., Palier, B. and Seeleib-Kaiser, M. (eds.), *The Age of Dualization: The Changing Face of Inequality in Deindustrializing Societies*, Oxford: Oxford University Press, 201–225.

Pedersini, R. (2002) *Economically dependent workers', employment law and industrial relations*, Dublin: Eurofound.

Prassl, J. (2018) *Humans as a Service*, Oxford: Oxford University Press.

Prassl, J. and Risak, M. (2016) 'Uber, TaskRabbit, and Co.: Platforms as Employers? Rethinking the Legal Analysis of Crowdwork', *Comparative Labor Law and Policy Journal*, 37(3), 619–651.

Pyper, D. (2018) *Employment status, Briefing Paper Number CBP 8045,* 28 March, London: House of Commons Library.

Reuters (2018) 'UK court rejects union bid to overturn Deliveroo worker rights decision', *Business News*, 2 May, available at www.uk.reuters.com/article/uk-britain-*Deliveroo*/uk-court-rejects-union-bid-to-overturn-*Deliveroo*-worker-rights-decision-idUKKBN1I30YZ

Ruello, A. (2018) *Assurance-chômage: ce qui attend les indépendants*, Les Echos, 2 March, available at www.lesechos.fr/economie-france/social/0301367015517-assurance-chomage-ce-qui-attend-les-independants-2158035.php

Schoukens, P. (2000a) *De sociale zekerheid van de zelfstandige en het Europese Gemeenschapsrecht*, Leuven: Acco.

Schoukens, P. (2000b) 'Comparison of the Social Security Law for Self-Employed Persons in the Member-States of the European Union', in Pieters, D. (ed.), *Changing Work Patterns and Social Security*, Den Haag-Londen-Boston: Kluwer Law International, 63–98.

Schoukens, P. and Barrio, A. (2017) 'The changing concept of work: When does typical work become atypical?', *European Labour Law Journal*, 8(4), 306–332.

Schoukens, P., Barrio, A. and Montebovi, S. (2018) 'Social protection of non-standard workers: the case of platform work' in Devolder, B. and Tilleman, B. (eds.), *The Platform Economy - Legal Status of Online Intermediaries*, Mortsel: Intersentia (forthcoming).

Stone, K.V.W. (2013) 'The Decline in the Standard Employment Contract: A Review of the Evidence', in Stone, K.V.W and Arthurs, H. (eds.), *Rethinking Workplace Regulation: Beyond the Standard Contract of Employment*, New York: Russell Sage Foundation, 58–78.

Stone, K.V.W. and Arthurs, H. (2013) 'The Transformation of Employment Regimes: A Worldwide Challenge', in Stone, K.V.W. and Arthurs, H. (eds.), *Rethinking Workplace Regulation: Beyond the Standard Contract of Employment*, New York: Russell Sage Foundation, 1–20.

Valenduc, G. and Vendramin, P. (2016) *Work in the Digital Economy: Sorting the Old from the New*, Brussels: ETUI.

Vleminckx, K. and Berghman, J. (2003) 'Labour Market Deregulation, Non-Standard Employment and the Reform of Social Security', in Secretaría de Estado de Seguridad Social (ed.), *Social Security and the New Work Patterns: Atypical Insurance Careers*, Madrid: Ministerio de Trabajo y Asuntos Sociales, 31–44.

Walton, M.J. (2016) 'The shifting nature of work and its implications', *Industrial Law Journal*, 45(2), 111–130.