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## The societal impact of the platform economy

### Report<sup>1</sup>

Committee on Social Affairs, Health and Sustainable Development

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### Summary

The platform economy concerns more and more Europeans – as entrepreneurs, workers or consumers. Whilst digital platforms enable a more open marketplace for exchanging goods, services and information, they have grown mostly on the margins of regulations applicable to the mainstream economy, notably as regards consumer protection, social rights of workers and taxation. This phenomenon is set to expand exponentially, with a significant impact on society at large.

Europe's law-makers should seek a balanced approach in this context so that public interests prevail over more narrow commercial considerations, without choking off innovation, entrepreneurship, new work and consumption patterns, and the related development opportunities. If platforms' activities are not properly regulated, there may be a risk of expansion of the informal economy. Moreover, the "platformisation" of work may contribute to the spread of increasingly precarious forms of non-standard work.

Member States should clarify the employment status of platform workers and national legislation applicable to digital platforms and their workers. Legal safeguards should be put in place to protect platform workers in cross-border and international settings, to tackle new psychosocial risks and to ensure adequate controls.

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1. Reference to committee: Doc. [14355](#), Reference 4319 of 13 October 2017.



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## A. Draft resolution<sup>2</sup>

1. The platform economy has emerged as a brand-new facet of the globalised economy, with increasing numbers of Europeans concerned – as entrepreneurs, workers or consumers. Digital platforms enable a more open marketplace where goods, services and information are exchanged between individuals (peer-to-peer) and business actors (professionals and firms) for profit, on a cost-sharing basis, or even for free. However, the platform phenomenon has grown mostly on the margins of regulations applicable to the mainstream economy, which causes various distortions at national and local level. This phenomenon is set to expand further in an exponential manner over the coming years, with a significant impact on society at large.
2. The actors of the platform economy have been accused of breaching the level-playing field and existing laws concerning consumer protection, social rights of workers and taxation, at both national and European level. States are therefore compelled to assess the new challenges and regulatory needs, in order to provide adequate responses to this new economic reality. The Parliamentary Assembly considers that law-makers in Europe should seek a balanced approach in this context so that public interests prevail over more narrow commercial considerations, without choking off innovation, entrepreneurship, new work and consumption patterns, as well as the development opportunities that go with them.
3. The Assembly notes the diversity of views in the European arena in assessing the potential of digital platforms to create or preserve quality jobs, optimise the use of existing resources and increase overall wellbeing in society. It concurs with the Organisation for Economic Cooperation and Development (OECD) viewpoint suggesting that the regulatory policies debate should focus on sector-specific issues (such as in the case of transport and accommodation platforms) and on cross-cutting issues relating to labour rights and social protection, taxation, consumer protection (including data protection) and competition.
4. The Assembly regrets a lack of data on the specific aspects and trends in the development of the platform economy to inform evidence-based policy making and welcomes the efforts of the OECD and the European Commission to consider ways to obtain more accurate data and hence a more comprehensive picture of the rapidly evolving platform economy. While the “platformisation” of work is an opportunity to formalise the informal work of semi-professional service providers and to integrate informal exchanges into the mainstream economy and social systems, there is also a risk of the opposite – an expansion of the informal economy, if platforms’ activities are not properly regulated and not duly accounted for.
5. The Assembly is moreover concerned that the “platformisation” of work may contribute to the spread of increasingly precarious forms of non-standard work, and notes that, in many countries, labour law does not apply or applies only partially to those considered as self-employed. As a result, many such workers are not entitled to a minimum wage, annual leave or sickness allowances. In this context, the Assembly believes that guidance from the European Committee of Social Rights (ECSR) on the application of the European Social Charter (ETS No. 35 and No. 163) in relation to platform workers would be highly relevant. It therefore urges the ECSR to examine the emerging policy and practice issues in relation to the platform economy, in particular as regards labour rights, social security systems and related protection.
6. Currently, the employment status of platform workers — as well as the rights and obligations that go with it — is not quite clear across Europe. The existing regulatory frameworks are applied to digital platform workers, mainly distinguishing between employees and self-employed workers (“free-lancers”); platforms tend to classify their workers as self-employed. Some countries have additional sub-categories of these two statuses, and there is an on-going debate on the need to consider introducing a third type of status specifically for platform workers. In this context, the Assembly notes that legal uncertainty over platform workers’ status has already given rise to multiple cases of litigation, with court judgements varying from country to country and with courts arriving at different conclusions in respect of workers involved with the same platform or in the same sector.
7. In relation to platform-enabled work, the Assembly recommends that national regulators, including parliaments, of member States should:
  - 7.1. review national legislation applicable to the activities of digital platforms and their workers, assess its relevance in the new circumstances and identify areas that require additional regulation with a view to preserving, or strengthening, the supremacy of the public interest, fair competition and the basic level of platform workers’ rights and social protection, as set out in the European Social Charter;

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2. Draft resolution adopted unanimously by the committee on 13 September 2019.

- 7.2. when screening national laws, consider distinguishing between “work on-demand via internet applications” for delivering physical services locally, and “crowdwork online” for outsourcing tasks (such as accounting, designing or translation) to a worldwide pool of virtual workers;
  - 7.3. assess how existing European and national legal standards can be best employed in the global context to settle cross-border issues arising from the operation of multinational platforms, notably as regards taxation and tax collection, consumer protection, and the applicability of foreign legislation in crowdwork;
  - 7.4. based on evidence showing that work for one platform is generally not sufficient to be the main source of income for the workers concerned (akin to “zero-hours” contracts), and considering that for some persons platform work remains the only source of income, prohibit exclusivity clauses of online platforms, so as to enable individuals to also work for other enterprises and earn a complementary revenue;
  - 7.5. tackle new psychosocial risks due to platforms’ on-demand philosophy and rating systems (such as the consequences of constant real-time monitoring and assessment of worker performance, relative isolation, double insecurity of employment and income, short notices and tight deadlines, the non-stop standby position to the detriment of resting time and work-life balance, possible discrimination and pressure to deliver despite falling ill) through national workplace health and safety regulation and policies;
  - 7.6. ensure that adequate registration, certification and control mechanisms are in place with regard to platform services in order to protect consumer rights, personal data, health and safety, as well as to secure public order and safety;
  - 7.7. clarify taxation obligations for platforms, their workers and users, and provide electronic channels for easier income declaration and tax compliance, so that taxes are paid where the economic activity takes place;
  - 7.8. strengthen protections and controls vis-à-vis the risks of possible exploitation online and through illegal sub-contracting of work via platforms, in order to avoid the use of child labour in third countries and of non-registered migrants on their territory;
  - 7.9. seek greater transparency in the operation of platforms and additional regulatory measures — either internal (self-regulation) or external (imposed by law) — if necessary, so as to offset the bias, barriers and discrimination which certain users or service providers may face in the digital context, just as they do in the traditional economy (e.g. gender pay gap, rigid working hours’ constraints);
  - 7.10. study the impact of new working patterns on gender equality and provide State-funded possibilities for platform workers to develop or acquire skills with a view to fostering their employability and equal opportunities.
8. The Assembly also supports the legislative initiatives of the European Commission, the European Parliament and the Council of the European Union aimed at ensuring transparent and predictable working conditions in the European Union. It invites the Council of Europe member States to consider them as guidance towards providing adequate co-ordinated regulatory response to the challenges of the platform economy at national level.

## B. Explanatory memorandum by Mr Luís Leite Ramos, rapporteur

### 1. Introduction

1. Over the last couple of decades digital technologies have become a major feature of our lives. They have profoundly transformed both society and economy, leading to the blurring of boundaries between private and professional life, and new challenges to public policies in several domains, notably for provision and use of services. In fact, digital platforms have enabled new business models and created an open marketplace where goods, services and information are exchanged between individuals (peer-to-peer) and business actors (professionals and firms) — the so-called platform economy<sup>3</sup> — both for profit and on a cost-sharing basis, or even for free. The sprawl of this phenomenon is such that estimated revenues from collaborative platforms across European Union countries were close to €28 billion in 2015 alone, twice the amount of the previous year, and are set to expand further in an exponential manner.<sup>4</sup>

2. Many traditional sectors of national economies have been taken by surprise by the apparent success of these new competitors. The actors of the platform economy have been accused of breaching existing regulations and laws in terms of consumer protection, social rights of workers and taxation at both national and European level. States are therefore compelled to assess the new challenges and provide adequate responses. As the motion for a resolution on the societal impact of the platform economy (Doc. 14355) calls for, this Parliamentary Assembly “should take stock of developments in this field in order to promote good practices” and put forward ideas for a co-ordinated European approach to the platform economy.

3. To this end, our work does not start from scratch: experts, the European Commission and the European Parliament, the OECD (Organisation for Economic Cooperation and Development), consumer and research organisations, trade unions, as well as national governments and parliaments have all studied the phenomenon. However, their views do not concord in assessing the potential of digital platforms to create or preserve quality jobs, optimise the use of existing resources and increase overall wellbeing in society.<sup>5</sup> Many questions are also raised about the role of the platform economy in the context of artificial intelligence applications in real life, as smart robots can replace humans for more and more jobs.

4. This report will therefore seek to help policy makers better understand risks and opportunities inherent in the development of the platform economy by looking at the situation in the main sectors concerned, the existing attempts to regulate the phenomenon, and priority areas that require regulatory action. As a committee, we have looked together at positive examples of latest developments in the platform economy with the help of experts<sup>6</sup> and institutional representatives; as rapporteur, I have also carried out my own research and fact-finding, building on the committee’s deliberations. In this context, I should single out my visit to the European Commission in Brussels on 20-21 March 2019 where I had discussions with officials dealing with regulatory issues, taxation challenges, consumer protection and the “platformisation” of work. My findings have been integrated into the present report.

### 2. Dynamic business platforms transforming the world of work

5. With smart technologies penetrating our lives, the market economy reveals its new facets and opportunities for us all to not only access new services but also become active and creative users or even free-lance entrepreneurs at minimal cost. One in six Europeans is already using these sharing platforms regularly, and nearly a third of them have provided a service themselves at least once. Thus over 5% of the EU population already provides services and assets through such platforms. According to the European Commission, the platform economy is “sowing the seeds of growth”<sup>7</sup> and could add up to €572 billion to the EU economy.

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3. The terms “collaborative economy”, “sharing economy”, “gig economy” and “platform economy” are usually employed interchangeably.

4. See the Communication from the European Commission on “A European agenda for the collaborative economy”, COM(2016) 356 final, Brussels, 2 June 2016.

5. European Parliamentary Technology Assessment (EPTA) study on “The future of labour in the digital era: ubiquitous computing, virtual platforms, and real-time production”, November 2016.

6. I am particularly grateful to Mr Tiago Souza d’Alte who presented an expert memorandum to the Committee during its meeting in Lisbon on 17-18 September 2018.

7. European Commission’s briefing on “The collaborative economy”, Ref. Ares(2016)2558830, 2 June 2016.

6. Whilst in early days digital markets mainly channelled data and services online, modern platforms have stepped into the local delivery of physical services. Companies such as Airbnb, Uber, BlaBlaCar and TaskRabbit have usually hit the headlines for their disruptive effects on established markets and services: while many observers say that such actors of the sharing economy create more choice for consumers, critics see them as unfairly undermining competition. Even a new term has been coined: the “uberisation” of economies. If a few years ago the platform economy concerned mainly five sectors (short-term accommodation rentals, passenger transport, household services, professional services and collaborative finance), the number of areas covered now has nearly tripled with the expansion into healthcare, learning, logistics, energy, municipalities, self-making of goods, etc.

7. For policy reasons, we should distinguish three key actors: providers (platform workers), users and platforms inter-connecting users with providers in real time and facilitating transactions. France and the United Kingdom appear to be leading countries in Europe in creating collaborative platforms; they are closely followed by Germany, Spain and the Netherlands.<sup>8</sup> In 2016, the European Commission issued (through its Communication) non-binding guidance on the application of EU law to the platform economy for market actors and national public authorities towards increased clarity of obligations, rights, liability regimes and applicable taxation whilst recognising that the picture was constantly changing.

8. Moreover, the Court of Justice of the European Union was asked by courts in Belgium, Spain and Germany to rule on Uber’s compliance with EU law. Recently, Uber, Blablacar and Airbnb filed complaints with the European Commission against France, Germany, Spain and Hungary referring to the transport sector, and against Spain, Germany, Belgium and France, regarding the accommodation sector. In May 2017, the Court of Justice advocate general issued an opinion stating that Uber could not benefit from lax rules under the EU services directive which is considered by the European Commission as the legal basis for the platform economy. The Court of Justice ruling for Spain of December 2017 said that Uber should accept stricter regulation and licensing in EU countries as a taxi operator, even though Uber argues that it is a computer services business and intermediary.

9. Various studies note that the platform economy has been growing on the fringes of regulation. Some experts affirm that the whole purpose of digital platforms is to avoid regulations applicable to the traditional model, while others suggest that the sharing economy stirs trouble in the existing regulatory regimes because its business model is effectively new. In many European countries, for instance, platform workers are considered as self-employed, yet questions arise over qualifications, competences and social protection of such workers, as well as in what concerns consumer protection when using platform services. Uber’s main critics have complained over its treatment of drivers as commodities and regarding its exploitation of workers through long hours on low wages, thus putting both passenger and public safety at risk.

### **3. Digital platforms in Europe: from marginal to significant**

10. Whether they are “made in Europe” or outside, digital platforms are gaining ground across Europe in various sectors, notably transport and accommodation. Questions arise at local, regional, national and European levels about the regulatory approach to take as peer-to-peer and business-to-peer transactions involve participants in high legal uncertainty off the beaten path. Public authorities are looking for adapted solutions to labour rights and social issues, taxation and consumer protection as a matter of priority. A series of national and sectoral case studies provide a useful insight on how regulators search for and test pragmatic options.

#### **3.1. The case of transport service platforms**

11. Most digital transport platforms operate via internet portals or smartphone applications that enable data transfer to book a transport service between a passenger and a non-professional driver who uses his or her own vehicle. The platform operator mediates each contact and oversees each transaction, setting the terms of the service to be provided. Those platforms hold lists of available drivers, define the service, ensure the reference quality standards (for drivers and vehicles) and impose the pricing structure; they also filter the participation of parties (service providers and users), cater the e-payment system and charge a fee for each transaction. The reputation of the platform is a crucial element facilitating the potential users’ decisions and involving the potential drivers. A genuinely tripartite relation is thus created, which hardly fits into the conventional legal concept of bilateral relations (provider versus client, employer versus workers).

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8. R. Vaughan and R. Daverio, Assessing the size and presence of the collaborative economy in Europe, PwC Consulting UK, April 2016, a study performed for the European Commission.

12. The Court of Justice decision on the Uber case paved the way for EU countries to articulate the legal framework of such services in line with specific requirements in the field of transport. Bearing in mind the highest public interest, national regulators must weigh and balance the needs of improved mobility, public safety and user convenience with the imperative to preserve the sustainability of all economic actors in the individual passenger transport market. If a transport platform acts as an active and decisive intermediary, it should bear the greater weight of regulatory obligations vis-à-vis drivers, vehicles and passengers.

13. Unharmonised regulatory frameworks across the international field hinder the work of transport platforms by complicating compliance procedures and increasing transaction costs. National regulatory approaches vary significantly. Thus, some countries, such as the United States, Austria and the United Kingdom, have chosen to regulate locally, practically at city level, which renders managing the nationwide operation of transport platforms highly complex. Other countries try to facilitate the transport platforms' work by establishing specific legal frameworks for licensing, or on the contrary resist the new business model *per se*, by insisting on the strict enforcement of standard legal frameworks already in place for hiring and taxi transport services.

14. A heterogenous legal landscape is a weak basis for legislators to rely upon in order to assess the impact of their policies. Legislators should look for the reduction of the overall legal burden by aligning national solutions as far as possible with those of neighbouring jurisdictions and seeking new rules for a new service. They should investigate the specifics of transport platforms' operations and lay out adapted rules (relating to insurance requirements, vehicles, inspections, performance limitations and indicators, driver background checks and possibly on surge pricing), mainly for platform operators as the preeminent party of the tripartite relationship. At the same time, administrative controls should be reduced to a strict minimum, so as not to burden public and private entities with bureaucratic tasks that do not offer additional guarantees to users or the market.

15. The above-mentioned Court of Justice ruling should prompt legislators to consider the introduction of compulsory limits for better protecting the rights of non-professional drivers as non-conventional workers. Conversely, drivers' working conditions (such as duration of working hours and amount of pay) are occasionally below national legal thresholds, which can lead to unrestrained exploitation of drivers' work, put both driver and passenger safety at risk, and unbalance the playing field in the transport services market. As legal experts note, if transport platforms get relief from complying with laws on the working conditions of their drivers or if these conditions differ substantially from those applicable to taxis, this might constitute a mere escape from the existing regulations for taxi services and is therefore not justified.<sup>9</sup> Moreover, as drivers might work for several platforms at the same time, cross-platform controls of working hours must be put in place.

16. In terms of taxation, two major concerns arise. The first one is to determine if revenue from the activity is income for the driver or for the platform, hence ascertaining the drivers' employment status in relation to those platforms. The second question is that of the taxation residence of transport platforms when these are not based in the country where they provide services. A commonplace solution would rely on charging ordinary sales taxes whose title and level may vary from country to country but also locally.<sup>10</sup>

17. My final concerns regarding transport platforms relate to consumer protection in the broadest sense from monopolistic intentions of transport service providers, as well as in terms of public safety needs and personal data protection. I believe it is necessary for platform operators to respect non-discrimination and transparency requirements in developing their activity in accordance with the objectives of public policies. Platform operators should be subject to certain obligations vis-à-vis drivers and vehicles used, notably in terms of registration (so that drivers can be identified by a unique number irrespective of the platforms they work for, thus allowing identity checks and controls of duration of activity on various platforms), driver background verifications and minimum training; vehicles should be safe and fitted for the service, whilst service delivery could be tracked and monitored in real-time to ensure the continuous protection of users. Last but not least, sensitive personal information on passengers and drivers must be securely processed by the platforms, in accordance with relevant regulations.

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9. See an expert memorandum by Mr Tiago Souza d'Alte, *op.cit.*

10. In the USA for instance, the states of Maryland, Massachusetts, Nevada, Pennsylvania and South Carolina charge the existing sales taxes or impose extra taxes as a percentage imposed on each ride; at city level, a fixed amount fee is charged for each ride-sharing trip (e.g. in Chicago). In Europe, platforms have been accused of circumventing the obligation of paying value added tax. Portugal opted for a new overall regulatory framework and charges a 5% tax on all rides.

### 3.2. Home-sharing platforms

18. A major field of activity for digital platforms extends to the “home away from home” — home-sharing services for travellers. Whilst many issues raised in respect to transport platforms also apply to this sector, there are three specific aspects that need to be singled out.

19. Firstly, although home-sharing platforms argue that they merely link individuals by enabling those who have excess living space to share it with those who need it, critics point out that the reality is different. In fact, most short-term rental providers via such platforms are commercial actors that bypass urban, tax and administrative regulations applicable to the traditional hotel business; the very success of these platforms lies in the bypassing of regulatory constraints. The challenge for legislators and regulators is, therefore, to ensure that home-sharing platforms function as an intermediary in the sharing economy and are not abused as instruments of unfair competition. Consumer rights must be adequately protected, notably as regards security, health and fire safety conditions, at all times.

20. Secondly, questions arise about the social costs and effects caused by the activity generated by these platforms. Indeed, as more and more apartments are enrolled for short-term rentals, the availability and affordability of housing for the local population shrinks and the costs of living increase, notably for locals. This may lead to a kind of desertification of the most attractive urban areas. Moreover, life in local neighbourhoods and communities is often disturbed by nuisances such as noise and increased pressure on public or private utilities (for water, sewage, waste, parking space) that were not designed for hotel-type intensity of use. This may entail extra investment in repair and strengthening of capacity by the locals who get no compensation from those who reap obvious commercial benefits by conducting business while paying taxes and fees as common dwellers. At the same time, peer-to-peer home-sharing services can be a significant source of supplementary income: average hosts in many countries where Airbnb operates earn in the order of a monthly salary.

21. Thirdly, signals abound concerning housing platforms’ tendency to foster racial discrimination. In the USA, for example, a field experiment has proven that Airbnb users with African American names were less likely to be accepted as guests than users with identical guest profiles but with distinctly “white” names.<sup>11</sup> The challenge in this area is to find ways of conciliating non-discrimination safeguards with the need for detailed information for a contract. If the introduction of “blind customer” policies might help, it may also increase the asymmetry of information and reduce business opportunities.

22. As with transport platforms, authorities worldwide take very different approaches to regulating home-sharing platforms. Some cities oppose radically this type of activity, while others extend an almost unrestrained acceptance. The first regulatory reaction of local authorities often comes in the form of taxation to answer the contention that platforms are “free riders”. Such a tax is usually paid by the guests staying in properly registered accommodations. Yet some observers argue that these taxes may work as disincentives for legal housing offers and promote illegal offers instead. Some cities are testing different formulas of property taxes as a means to prevent desertification of central areas. This may include increased rates for short-term rental hosts or reclassification of properties from housing to commercial use. Amsterdam, for instance, has opted for quantitative limitations (such as quotas per district) to correct distortions caused by the growth of short-term rentals.

23. From the survey on the national “regulation of short-term lease and rental of apartments” via the European Centre for Parliamentary Research and Documentation (ECPRD)<sup>12</sup> it appears that Denmark, France,<sup>13</sup> Greece and Iceland already have a rather comprehensive legal basis for the use of home sharing arrangements via platforms on a commercial basis. Ireland, Norway and Poland are working on new draft bills, whilst many countries are using the existing laws to regulate short-term rentals, for example on the legal status of accommodation and on the “local housing allowance” (Portugal) or via the Fiscal Code (Romania). There have also been specific legislative initiatives (Slovenia) and multi-stakeholder consultations (Lithuania) that have not yet produced tangible regulatory results.

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11. Edelman, Benjamin, Michael Luca, & Dan Svirsky (2017), *Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment*, American Economic Journal: Applied Economics, 9 (2): 1-22.

12. Request No. 3966 of 8 January 2019.

13. France distinguishes between the use of property which is the principal residence of the owner (for at least 8 months per year) and a secondary residence (where the owner lives less than 8 months a year), whilst many local authorities require owners to declare or register short-term rentals so as to enable controls, in particular in Paris.

24. A rather heterogeneous legal framework exists in Spain on the so-called “housing for tourist use” and “tourist apartments” based on laws at local level, with the recent regulatory proposals having been challenged by the National Competition Authority. In Switzerland, amendments to the federal legislation were introduced and some local authorities (notably the canton of Geneva) have adopted specific new laws. The British Government opted for a “non-regulatory approach by encouraging the Short-Term Accommodation Association (STAA) to improve standards and promote best practice” in this sector, although specific limitations (“planning permissions”)<sup>14</sup> apply in London, and certain certification requirements (fire safety, environmental health clearance) are in place in Northern Ireland.

### 3.3. Selected national experiences of platform work

25. France is one of the leading countries in Europe when it comes to creating or hosting platforms, discussing their impacts in the national context and regulating their operation well ahead of other European countries. The French Government’s involvement has led to the adoption of important changes in labour law and legislation on the transport of passengers, with a series of platform-related issues being debated with a view to adapting “rules of the game”. The country is also home to new forms of representation of platform workers aimed at direct negotiation with large platforms. For instance, an information network (Sharers & Workers) serves both stakeholders and researchers in producing shared cross-sector knowledge, and various social networks facilitate communication among platform workers.

26. Thus, the labour law — *Loi El Khomri* – adopted in 2016 sets requirements for platforms to provide work-accident insurance and on-the-job training. It provides a legal basis for platform workers to undertake collective action and to create a trade union, as is the case for ordinary employees. In terms of social dialogue, it was in France that the first organisation for representing platform workers was created: called SCP VTC (*Syndicat des Chauffeurs Privés*), it mainly defends the interests of drivers working for the transport platform Uber and has enabled negotiations, with the support of government-appointed mediator, on price setting and working conditions vis-à-vis that platform. Moreover, new forms of workers’ organisations (*collectives*) have emerged, such as CLAP (*Collectif des Livreurs Autonomes de Paris*) which groups independent workers of delivery platforms, or one which is just being developed for grouping cleaning workers dealing with platforms.<sup>15</sup>

27. Further legislative initiatives or amendments to existing laws will still be necessary when specific regulatory needs become more apparent. In particular, this concerns areas such as employment status and social protection of platform workers, working conditions, contractual relationships and minimum standards. At the same time, the established traditional channels of social dialogue could better integrate the new reality of platform workers in France by following the example of Germany, where ordinary trade unions also represent independent workers.

28. In a similar vein, countries like Austria use the existing general regulatory framework with respect to platform workers. These for instance, irrespective of their employment status, have access to mandatory social insurance schemes and must pay their contributions directly, depending on the type of work they do and sources of earnings. Legal safeguards are in place against discrimination, on personal data protection and ethical principles. Interestingly, various contractual relations can co-exist between platforms and their workers, with self-employment being the most common among Austrian platform workers. Both workers and employers are represented through statutory bodies (the Federal Economic Chambers (WKÖ) and the Chamber of Labour (AK)) with mandatory membership.<sup>16</sup>

29. Comparative studies show that there is a great variation in the importance attached to the platform economy in different European countries.<sup>17</sup> Some countries (such as Belgium, Denmark, France and Germany) view the platform work as a phenomenon that requires special regulatory attention; others follow the development of the platform economy from a technological viewpoint and are in a “wait and see” position before considering any major adjustments in the existing regulatory frameworks. Some are effectively testing

14. For short-term rentals for more than 90 nights in a calendar year.

15. “Industrial relation and social dialogue in the age of collaborative economy (IRSDACE) – national report on France” by Mehtap Akgüç, the Centre for European Policy Research (CEPS), 21 December 2018.

16. “Platform work in Austria – national context analysis” by Willem Pieter De Groen, Zachary Kilhoffer, Karolien Lenaerts, Elias Felten, CEPS, 2 July 2018.

17. “Industrial relations and social dialogue in the age of collaborative economy: comparative report” by Mehtap Akguc, Miroslav Beblavý, Zachary Kilhoffer, CEPS, 21 December 2018; and “The future of labour in the digital era: ubiquitous computing, virtual platforms, and real-time production”, summary report of national contributions by the European Parliamentary Technology Assessment (EPTA) network, October 2016.

new regulatory approaches at local level (the Netherlands), or seek to improve their current regulatory frameworks, based on trends and needs observed (such as Norway, Spain, Switzerland) due to new business models.

#### 4. Platformisation of work: implications for social rights and their protection

30. The emergence of digital platforms opened a new chapter of digital work. Although still relatively modest in scale, this form of employment has been rapidly developing over the last decade. Experts estimate that in countries such as the United States the so-called contingent workers will count for nearly half of the country's workforce by 2020, with 11% of these expected to be working for online platforms. Europe is increasingly concerned too. In discussing work enabled by digital platforms, we should distinguish between "work on-demand via internet applications" for delivering physical services locally, and "crowdwork online" for outsourcing tasks (such as accounting, designing or translation) to a worldwide pool of virtual workers.

31. Currently, the employment status of platform workers — as well as the rights and obligations that go with it — is not quite clear across Europe as Eurofound<sup>18</sup> studies note. The existing regulatory frameworks are applied to digital platform workers, thus distinguishing between employees and self-employed workers ("free-lancers"). Some countries have additional sub-categories of these two statuses, for example the "auto-entrepreneur" category in France, the "employee-like" status in Austria, a "quasi-subordinate worker" in Italy, a "student-worker" in Belgium and Slovenia, and a "contract-worker for services" in Croatia. There is an on-going debate on the need of introducing a third type of status specifically for platform workers. In reality, platforms determine the terms and conditions in using platform workers and this typically means that workers are considered as self-employed.

32. Whilst a positive argument is that the "platformisation" of work is an opportunity to formalise informal work of semi-professional service providers and to integrate informal exchanges into the mainstream economy, the negative side is that it also contributes to the spread of non-standard work and increased precariousness. In many countries, labour law does not apply or applies only partially to those considered as self-employed, and such a worker is not entitled to minimum wage, annual leave or sickness allowance. Besides, platform workers have to maintain their own equipment and pay social security contributions, yet they often lack cover in case of sickness or work accident, cannot access national unemployment insurance schemes and are subject to unpredictable working time schedules with excessive working hours (conversely for crowd-workers the problem is the lack of minimum hours to earn decent income).<sup>19</sup> Income level of platform workers often determines the level of social protection they can afford.

33. As platforms exert increasing control over their workers in keeping costs as low as possible, thus putting platform workers' status in doubt, this legal uncertainty has already given rise to multiple cases of litigation. Court judgements vary from country to country, with courts arriving at different conclusions with regard to workers involved with the same platform (such as Uber), or in the same sector. Thus, for example, the British Employment Appeal Tribunal judged in 2017 that Uber drivers are workers/employees and should enjoy statutory employment rights (Uber's appeal of this decision is pending); the Spanish labour inspectorate of Valencia community ruled in late 2017 classifying Deliveroo riders as employees and not self-employed as the platform claimed, whereas in April 2018, the Italian Labour Tribunal of Turin rejected the claim by delivery service couriers of Foodora that they should be treated as employees. Finally, California's lawmakers ruled, in September 2019, that Uber and Lyft drivers should be considered as employees.

34. Eurofound surveys show that platform work is not sufficient to be the main source of income for the workers concerned: earnings from platform work are unpredictable as there is no guaranteed volume of work (akin to "zero-hours" contracts). Yet for some persons platform work is the only source of income. From this perspective, it is important for regulators to prohibit exclusivity clauses of online platforms so as to enable employees to also work for other enterprises and earn a decent revenue. Research shows that high-skilled

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18. Eurofound is the European Foundation for the Improvement of Living and Working Conditions, the tripartite EU agency providing knowledge and policy advice for the development of better social, employment and work-related policies.

19. Employee status is more favourable to platform workers because social protection contributions are shared between the platform (as employer) and the employee (platform worker), whereas the self-employed must pay the full rate of such contributions and cannot access full social protection. Where national regimes contain minimum eligibility thresholds, it may be difficult for platform workers to have continuous and comprehensive coverage, especially if they work on a part-time basis. *De facto*, many such workers are not covered by unemployment insurance and the selected aspects of social protection.

providers of physical services locally earn relatively more than those with low to medium skills and those engaged in crowdwork (for which the global competition adds a downward pressure and some work may even not be paid at all).<sup>20</sup>

35. In terms of occupational safety, EU-OSHA (European Agency for Safety and Health at Work) signals that apart from some known risks of online work (stress, eye fatigue and musculoskeletal problems) or delivery of physical services (attacks and harassment by clients, household accidents, urban traffic accidents), platform work gives rise to new psychosocial risks due to platforms' on-demand philosophy and rating systems. Such risks include the consequences of continuous real-time monitoring and assessment of worker performance, relative isolation, double insecurity of employment and income, short notices and tight deadlines, the continuous standby position to the detriment of resting time and work-life balance, and gender discrimination, as well as pressure to deliver despite falling ill.

36. The European Parliament therefore suggested that policy makers at national level should address the following regulatory aspects relating to platform work:<sup>21</sup>

- Minimum earning requirements;
- Information exchange with platforms on workers' income for tax declaration purposes;
- Arbitration-mediation services needed to better protect platform workers;
- Extended coverage of collective agreements beyond the employee category;
- Clarification of employment status of platform workers and social security provisions;
- Redefinition of liability regimes (for damage to third parties) and qualification requirements (such as for health care and electrical services);
- Review of existing labour market legislation, with a view to identifying areas that need to be updated to improve worker protection regardless of their employment status;
- Possibility of creating individual professional activity accounts, so that social benefits would not be tied to specific employers or the nature of contractual arrangements.

37. This list is not exhaustive and may be further extended in light of specific national circumstances. In April 2019, the European Parliament approved a legislative resolution on "Transparent and predictable working conditions in the European Union",<sup>22</sup> setting out minimum rights for workers in on-demand or platform jobs with "no guaranteed working time" and "regardless of the number of hours they actually work". This text cautions against bogus self-employment by referring to the case law of the Court of Justice of the European Union which considers that a worker is a person who performs services for a certain time under the direction of another person in return for remuneration. The text, amongst others, also specifies that platform workers should benefit from a minimum level of predictability (such as predetermined reference hours and reference days) and full information on working conditions (including on the procedure for terminating employment and contesting dismissal), should not be penalised for refusing assignments outside agreed hours and should receive mandatory training free of charge.

38. Moreover, to minimise risks and to maximise benefits for all parties involved, the 2018 study on "Digital labour platforms and the future of work — towards decent work in the online world" by the ILO<sup>23</sup> identified 18 criteria for ensuring decent work for crowdworkers. These include:

- Tackling employment misclassification;
- Ensuring the freedom of association and collective bargaining rights for crowdworkers;
- Applying the minimum wage based on the workers' location and ensuring transparency in payments and fees determined by the platform;

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20. An ILO-commissioned survey has shown that 94% of platform workers had faced situations where they had their work rejected or were refused payment.

21. "The situation of workers in the collaborative economy", in-depth analysis by the European Parliament, October 2016.

22. P8\_TA-PROV(2019)0379), European Parliament legislative resolution of 16 April 2019 on the proposal for a directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union (COM(2017)0797 – C8-0006/2018 – 2017/0355(COD)).

23. ILO Research Department along with the Inclusive Labour Markets, Labour Relations and Working Conditions Branch (INWORK).

- Establishing clear and concise contracts, with fair rules to govern non-payment, to enable workers to decline tasks, and to cover costs of lost work in case of technical problems;
- Informing workers about their customers' identity, the purpose of the work and, where appropriate, the reasons why they receive unfavourable ratings;
- Establishing codes of conduct for all platform users and a system of client review;
- Ensuring that workers can contest non-payment, negative evaluations, qualification test outcomes, accusations of code of conduct violations and account closures;
- Presenting clear task instructions that are validated prior to the posting of any work;
- Enabling workers to view and export their work and reputation history at any time;
- Allowing workers to keep working for a client outside the platform arrangement;
- Ensuring that platform operators adequately respond to worker communications;
- Ensuring that psychologically stressful tasks are clearly marked.

39. The same study also recommended that national social protection systems should be adapted to cover “workers in all forms of employment” regardless of the type of contract, to use “technology to simplify contribution and benefit payments” and to strengthen tax-financed mechanisms of social protection.

40. From the OECD perspective,<sup>24</sup> the regulatory policies debate should focus on sector-specific issues (such as in the case of transport and accommodation platforms) and on cross-cutting issues relating to labour rights and social protection, taxation, consumer protection (including privacy) and competition. My fact-finding as rapporteur concurs with these pointers and also confirms the analysis which shows that cross-cutting issues have so far received too little attention. This may be explained by the fact that there is still a lack of data on the specific aspects and trends in the development of the platform economy to inform evidence-based policy making. I understand, however, that both the OECD and the European Commission are brainstorming on ways to obtain more accurate data and hence a more comprehensive picture of this evolving phenomenon.

41. Whilst the regulatory challenges are increasing at variable speed in national contexts across Europe, our benchmarks for social rights — as enshrined in the European Social Charter — remain the same and should guide national policy makers' efforts to adapt domestic legislation as necessary. It would be useful though if the European Committee of Social Rights could look more closely at the emerging policy and practice issues in relation to the platform economy and how it affects labour rights, social security systems and related protection. As more and more people are concerned as platform workers across the Council and Europe member States, there is a need to review the application of existing social standards in the context of new economic realities.

42. At this stage, it would be premature to talk about the harmonisation of legal frameworks with respect to the platform economy in Europe, but it is important that national legal frameworks leave no platform worker behind and ensure that the public interests prevail over commercial interests. However, it is important to assess how existing European legal standards can be applied in the global context with cross-border issues arising from the operation of multinational platforms (notably with regard to taxation and tax collection, consumer protection, and the applicability of foreign legislation in crowdwork).

43. Moreover, we should be vigilant about the risks of possible exploitation online, in particular involving child labour in the third countries: this danger has been signalled by the OECD, and I should stress the collective responsibility of European actors to devise specific safeguards and checks in this respect. There have also been signals of exploitation of non-registered migrants through illegal sub-contracting of work via platforms in France, the United Kingdom, Spain and probably several other European countries.<sup>25</sup> This points to a risk of growth of the “shadow economy” and the fragmentation of the EU Single Market if law-makers fail to provide adequate co-ordinated regulatory responses to the platform economy at national level in the absence of guidance from the European Union.

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24. See the paper on “New forms of work in the digital economy” of 13 June 2016 by the Working Party on Measurement and Analysis of the Digital Economy, the Directorate for Science, Technology and Innovation, Committee on Digital Economy Policy, OECD.

25. “How food-delivery couriers exploit desperate migrants in France”, The New York Times, 16 June 2019.

## 5. Embracing flexibility and opportunities with the new economic reality

44. The fluidity in platform markets holds a huge potential for more flexible work and thus the inclusion of more people in formal employment — provided that there are digital or institutional structures and procedures in place to register such work officially. Lawmakers at national level should bear this in mind because the absence of registration channels or too complex procedures could have the opposite effect and encourage the informal sector via platform work. The cost of compliance with national tax and social protection obligations for both platforms and platform workers should be lower than the “penalty” for non-compliance. I believe we should therefore encourage national authorities to clarify these obligations for all actors of the platform economy and to facilitate compliance by using digital tools and, if necessary, legislative measures (adaptation of existing regulations or adoption of specific frameworks in response to national circumstances and policy priorities).

45. We should refer to the past work of this Assembly<sup>26</sup> and the ongoing efforts of the OECD and the European Union to ensure adequate taxation of multinational enterprises — including platforms — by securing that taxes are paid where the economic activity takes place and the shifting of the tax base is prevented in the area of corporate taxation. Tax authorities could also put in place the obligation for platforms to file information on their service providers (platform workers) and their earnings so as to facilitate income tax declaration and collection. In March 2018, the European Commission made several proposals to help empower member States in terms of digital taxation for online corporate actors (including platforms and companies “that are global, virtual or have little or no physical presence”) and the value created through digital services (such as for online intermediation activity, or the sale of data generated by users of digital services).<sup>27</sup> At the same time, the OECD launched its “Interim report on the tax challenges arising from digitalisation” seeking to identify long-term solutions by 2020. Discussions on proposals continue (in the European Union and the OECD) as stakeholders cannot yet agree on the optimal formulas.

46. With regard to privacy, we should remind national authorities of their responsibilities to “ensure good use of safeguards for personal data protection, notably the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and its Additional Protocol regarding supervisory authorities and transborder data flows (ETS No. 181), including with their international economic partners”, such as platforms.<sup>28</sup>

47. Reflecting the need for a better protection of consumers in the digital environment, the European Commission proposed, in April 2018, a New Deal for Consumers. It aims to provide more transparency in online market places (notably with regard to the identity of a digital trader, the level of protection it guarantees and the criteria for the ranking of search results), eliminate unfair commercial practices and secure a better balance between platforms’ and users’ interests (via better information of consumers about their rights, enhanced platform liability in the area of “peer-to-peer” transactions and stronger redress mechanisms in favour of consumers, including collective redress through “group action”). On 21 March 2019, the European Parliament and the Council of the European Union reached a provisional partial agreement on the European Commission’s proposals, and on 17 April 2019 the European Parliament endorsed this provisional agreement. Moreover, the Online Dispute Resolution Platform has been put in place by the EU to help mediation and conflict resolution online without resorting to a court.<sup>29</sup>

48. As the OECD notes, it is “uncertain how many [...] independent workers have the skills to thrive in platform service markets”.<sup>30</sup> This raises questions over the qualifications and skills needed to work in certain higher-risk sectors via platforms, such as in financial services and crowdfunding, health and child care, passenger transport or repairs of electrical circuits and plumbing systems, to mention just a few. Clearly, competent national authorities must ensure that certain registration, certification and control mechanisms exist in order to ensure adequate public protection in the context of platform-driven transactions. Arguably, the introduction of artificial intelligence applications in platforms will open a whole new chapter in the digital marketplace and the world of work; the risks and benefits of these innovations will have to be studied separately.

26. [Resolution 1881 \(2012\)](#) on “Promoting an appropriate policy on tax havens” (Rapporteur: Mr Dirk Van der Maelen, Belgium, SOC) and [Doc. 12894](#); [Resolution 1951 \(2013\)](#) on “The activities of the Organisation for Economic Co-operation and Development (OECD) in 2012-2013” (Rapporteur: Mr Dirk Van der Maelen, Belgium, SOC) and [Doc. 13301](#); and [Resolution 2181 \(2017\)](#) on “The activities of the Organisation for Economic Co-operation and Development (OECD) in 2016-2017” (Rapporteur: Mr Alfred Heer, Switzerland, ALDE).

27. [http://europa.eu/rapid/press-release\\_IP-18-2041\\_en.htm](http://europa.eu/rapid/press-release_IP-18-2041_en.htm)

28. See para. 11.6. of [PACE Resolution 1881 \(2012\)](#).

29. See <https://ec.europa.eu/consumers/odr/> for more information.

30. “New forms of work in the digital economy”, 13 June 2016, OECD, op.cit.

49. Flexibility of work via digital platforms (notably crowdwork) can undoubtedly benefit individuals who cannot or do not want to work full time or at fixed time slots, such as family carers (both mothers and fathers), students, pensioners, persons with disabilities and specialists who find no local outlet for their talents. On a global scale, this is particularly useful where digital platforms seek to distribute tasks online across different time zones. By securing a greater degree of anonymity of worker profiles either through their business models or technology, the platform companies may actually help the change that empowers women workers and workers with special needs. However, greater transparency and additional regulatory measures — either internal (self-regulation) or external (imposed by law) — might be needed to offset the bias, barriers and discrimination which certain users or service providers may be facing in the digital context, just as they do in the traditional economy (e.g. gender pay gap, rigid working hours' constraints).

## 6. The way forward

50. The fact that 9 of the world's top 20 largest companies are now digital ones, compared to 1 in 20 just a decade ago, illustrates well the rise of online business and work opportunities. The platform economy has emerged as a brand-new facet of the globalised economy, with increasing numbers of Europeans being concerned — as entrepreneurs, workers or consumers. However, the existing rules and practices in our member States are ill-adapted to deal with this new economic reality. I therefore believe that our countries need to review their existing regulatory frameworks with the risks, opportunities and needs of the platform economy in mind.

51. As the data and measurements of this digital phenomenon are still too scarce to inform evidence-based policy making, our attention should focus on areas where regulatory needs are becoming more obvious, not least in reaction to court judgements that highlight ambiguities and gaps with regard to the employment status of platform workers, their social protection and labour rights, cross-border issues (notably in taxation field and dispute resolution) and consumer protection in a broad sense. The general public interests should prevail over more narrow commercial considerations without choking off innovation, entrepreneurship, new work and consumption patterns, as well as the development opportunities that go with them.

52. From the Council of Europe perspective, our main concern is to ensure that member States gradually integrate the platform phenomenon into mainstream regulation by bearing in mind the requirements of the European Social Charter and by adding regulation or legislation to close *de facto* gaps in social protection, equal opportunities and labour rights as a result of new forms of employment. Specific legislative action may be required at a local level concerning sector-specific issues (such as in the case of transport and accommodation platforms), so as to eliminate any distortions in the level-playing field for all actors and possible nuisance to the public order. The Congress of Local and Regional Authorities of the Council of Europe is working on the matter and will come up with specific recommendations in due course.