EUROPEAN PARLIAMENT

Dr. Joachim Schuster

Member of the European Parliament

Dear Madam or Sir,

The platform economy is already an integral part of the European economy, and its economic and social importance will continue to increase significantly in the future.

The provision of services by workers through the intermediary of a platform facilitate considerable efficiency and productivity improvements and offer great opportunities for the European market. However, the increased competitiveness is in many cases also achieved through shifting social costs to workers and the public by circumventing taxes, labour laws and other commercial standards.

Already today, not only the Member States, but also regional and local public authorities and the European Court of Justice are seeking to cope with the challenges of disruptive business models of online platforms in many different ways. This leads to a regulatory fragmentation between and within the Member States.

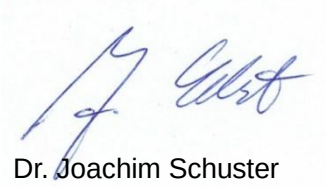
Due to the reputed complexity of the platform economy, the European Commission have thus far been content to observe or even promote further deregulation in regards to labour regulations in the European single market.

The complexity of the different types of platforms are no excuse to remain inactive. In the traditional economy, there are also highly differentiated models of employment. Nevertheless the same social and labour rights and obligations apply to all actors in the same way. Therefore we need an **EU directive to protect workers on online platforms**, to ensure fair working and wage conditions and legal certainty in the digital world of work. It must be clear that business models, which, for the profit, undermine minimum standards others apply to, are politically unacceptable. We need the same rights for everyone − no matter if online or offline!

To open the debate and show how existing rules can be applied to the platform economy, I introduce a proposal for an EU directive on platform work.

I am looking forward to enter into discussions with you.

Kind regards,



Dr. Joachim Schuster

European Parliament
ASP 12G317
Rue Wiertz 60
B-1047 Bruxelles

Tel.: 0032-2-284-5413
Fax: 0032-2-284-9413
E-Mail: joachim.schuster@europarl.europa.eu
Internet: www.joachim-schuster.eu

DRAFT

EU Directive on Platform Work

June 2018

CONTEXT OF THE PROPOSAL

The platform economy is already an integral part of the European economy, and its economic and social importance will continue to increase significantly in the future. Its exponential growth offers great opportunities for the European market, and it has outstanding development prospects: it is young, innovative, resource efficient, user-friendly, and facilitates considerable efficiency and productivity improvements. However, the increased competitiveness is not only achieved through higher flexibility, new forms of digital interconnectivity and low transaction costs. In many cases, it is achieved through shifting social costs to workers and the public by circumventing taxes, labour laws and other commercial standards.

It must be clear that competitive advantages of the platform economy over the traditional economy based on social dumping and tax evasion are politically unacceptable! The same collective, labour and social rights and obligations must apply to all those employed and self-employed in the platform economy, in the same way as they apply to those employed and self-employed in the traditional economy.

The advent of digitisation and the platform economy is rightly perceived as radical transformation- a digital and technological revolution that has fundamentally changed (and will continue to change) the world of work.

But not everything is new. The digitisation of different forms of companies and tasks should not deceive us that most platforms represent well-known business models. This is especially apparent in cases where platforms provide local services. However, digital services that are organised or provided through platforms simply undertake specific parts of a more complex value chain which could be (or in some cases, are) fulfilled by traditional companies. Also, the various forms of work in the platform economy reflect those in the traditional economy (physical and digital services). Nevertheless, platform workers are often in a worse situation than their colleagues elsewhere. They often do not enjoy protection against dismissal, have no leave entitlement nor entitlement for sick pay, are not covered by public social security systems, and are paid neither scale-pay nor minimum wages. Massive disparities have been created through the lack of trade unions or other organisational forms, the market power of a few platforms in certain sectors, as well as the constant economic and legal insecurity of the workers. Their limited bargaining power is manifested in low wages and in general terms and conditions created by the platforms which shift all responsibilities to the workers.

The complexity of the different types of platforms are no excuse to remain inactive. In the traditional economy, there are also highly differentiated models of employment; every sector, every company, even every employer is different- nevertheless the same basic rules apply to all actors in the same way. Thus, it is necessary to transfer fundamental labour and social regulations to the platform economy and their workers.

Without doubt, there are more regulatory questions arising. However, these should be solved for the economy as a whole, and not exclusively for the platform economy: There are chances for a readjustment of the work-life-balance which possibly also requires a modification of the current European working time regulations. Digital work arrangements also give a new dimension to on-call and on-demand work, however this issue is also not unique to the digital world of work. Through technical developments and new means of communication, these topics already found their way in the traditional companies and therefore need to be solved holistically. Similarly, the social coverage of self-employed is raising the same challenges in the platform economy as well as in the traditional economy.

ACTION AT EU LEVEL

Already today, not only the Member States, but also regional and local public authorities and the European Court of Justice are seeking to cope with the challenges of disruptive business models of online platforms in many different ways. This leads to a regulatory fragmentation between and within the Member States, with negative consequences for the European internal market.

The social questions in the digital single market should not be decided by the national judiciaries or the European Court of Justice; politics must take a leading role. A common European initiative for the regulation of platform work provides a coordinated answer by the Member States towards the legal challenges arising from technological change in the future labour market. It is important to regulate the platform economy at an early stage and define a European framework, to promote the innovative potential of this economic segment while counteracting harmful and abusive business practices.

The European Commission declares the creation of a digital single market to be one the key priorities of its current legislature, even while the social dimension of the digital economy and its influence on the work and live of millions of Europeans is largely neglected. The European Commission and the many forces in the European Parliament have thus far been content to observe, and to pursue a 'laissez-faire' approach (or even an approach of further deregulation) towards the social dimension of digitisation. This is a dangerous approach. The Commission must become active to shape the development of the digital single market in a socially just manner, and to set the lead in terms of European standards. A coherent framework is also favourable for businesses in the platform economy. The example of Uber shows how disadvantageous the lack of a coherent framework might be: based on several court decisions and multiple regulations, the company is obliged to deal with various different provisions concerning licensing, remuneration and safety provisions. The business model has to be adopted in every country, or even in every region. A legal clarification at EU level will eventually be needed for reasons of competition, because the services which are provided or intermediated by platforms must be treated in the same manner as services from the traditional economy.

The main feature of the digital labour market is that it breaks down spatial and temporal limitations, and creates a need for action on European level. There is no way that a single Member States' initiative can offer the same level of protection. It instead runs the risk of increasing the divergences between the Member States.

Minimum standards for the protection of platform workers across the EU are necessary to ensure workers and employers legal certainty and to avoid a vicious race to the bottom between the platform and the traditional economy as well as between the Member States. Additionally, EU-wide rules will mean better the legal certainty for workers and businesses and create a level playing field within which the labour market can evolve and reach its full potential. The promotion of social justice and social security, in line with Article 3 TEU and Article 9 TFEU, are goals of the EU internal market. Article 153 TFEU explicitly foresees directives as adequate instruments to ensure minimum standards in the area of labour conditions, social security and social protection of workers. Similarly to the EU directives on part-time work, temporary agency work as well as on fixed-term contracts, a directive on platform work could provide a framework within which a minimum level of social and legal protection could be better guaranteed for all workers.

CONTENT OF THE PROPOSAL

The aim of this directive is to guarantee workers in the platform economy basic social and legal protection, and to establish a level playing field between the traditional economy and the platform economy. This should be achieved in particular through the following measures:

- **Rebuttable legal presumption**: The core of the directive is the legal presumption that, if platform-based-work involves the provision of services, an employment relationship with the platform exists (employer-employee relation). This legal presumption can be rebutted by the platform. The common practice of many platforms is recently based on the general classification of its workers as self-employed which means that all responsibilities are shifted from the platforms to the workers. Nevertheless, at the moment, the burden of proof of possible misclassification remains with the workers. But only the platform has all the relevant information as well of the workers as of the recipients of the provided services for such a proof. Therefore, the burden of proof must lie with the platform or the platform operator, which is ensured by this directive.
- **Assessment criteria**: It must be ensured that the assessment of the rebuttable legal presumption of an employment relationship is based on the actual nature of the economic activity and not the arrangements for its performance e.g. right now, it is common practice that platforms decline any employment relationship in their terms and conditions. As a counter-measure, this directive lists functions of the platform which are criteria for platform-based work such as setting remuneration levels, quality controls as regards to work outcomes, drawing up ratings, handling the communication between recipients and workers etc. If at least three of the listed criteria are fulfilled, one must assume an employment relationship between the platform and the worker. The list of criteria may be extended through other criteria as defined by the Member States.
- **Admissibility of contractual agreements**: The unequal negotiating position and power disparities between platforms and their workers, combined with the legal grey zones in the digital labour market, have led to contractual practices and working conditions that are not acceptable. This includes conditions or agreements which provide for the organisation of work below the minimum standards on remuneration applicable in the Member States, forms of non-monetary remuneration of workers, unjustified incompatibility clauses, prohibition mechanisms to prevent the workers to get in contact with each other, the arbitrary exclusion of workers from the assignment of tasks or the arbitrary deactivation of a user account. The prohibition of this contractual agreements goes along with the legal determination in this directive that periods during which the worker is connected to the platform count as working time.
- **The functional distinction between the 'place of work' and the 'place of receipt of service'**: The current social legislation is based on the principle that workers are subject to the labour and social legislation of the country where worker is actually located while providing the service. This legal determination is necessary and important. It ensures workers' entitlements to the labour and social rights in the Member State concerned, and is also laid down in this directive to protect workers on platforms. For platforms which solely organise or provide digital services, it is much more difficult to determine the place of work. Therefore, this directive proposes a functional distinction between the 'place of work' and the 'place of receipt of service' - the latter meaning the place where the physical or digital service is made available to the recipient. Accordingly, if a worker carries out platform-based work and the place of

receipt of the service is in a Member State other than that on whose territory the worker's normal place of work is situated, the provisions of the Member State shall apply for the period during which the service in question is provided at the place of receipt. This construction takes into account the possibility of a digital border crossing and against this backdrop, allows the applicability of the Posting of Workers Directive as well as the Directive on the Provision of Services in the Internal Market in these cases.

The Posting of Workers Directive as well as the Directive on the Provision of Services follow the 'country of destination' principle, meaning that the minimum requirements of the destination country have to be fulfilled. By determining that the rights have to be applied where the service is received, this directive would consequently realise the 'country of destination' principle also in the digital single market. The logic behind this application of law, which this directive proposes, can be also found in the recent Commission proposal on the taxation of large digital companies in the European Union. This proposal aims to levy taxes on Google and Co. in the Member States territory where digital profits are made. In the current tax law it has been customary to tax corporate profits where the company has its 'physical presence'. Due to the new digital challenges, the Commission now focusses on the place where the value is created instead of concentrating on the often blurred place of establishment.

- Moreover, this directive introduces additional **basic rights for platform workers** concerning remuneration; worker protection; certificates, ratings and proof of performance; strikes and lock-outs; legal redress as well as protection against adverse treatment.

Chapter I - General provisions

Article 1

Aim, subject matter and scope

(1) The aim of this Directive is to guarantee workers in the platform economy basic social and legal protection and establish a level playing field between the traditional economy and the platform economy.

(2) This Directive shall apply to all contracts for platform-based work concluded under private law.

(3) This Directive shall lay down minimum standards for the platform economy, with a view to creating legal certainty for all stakeholders on the European internal market and taking proper account of the cross-border nature of the platform economy. Implementation shall be a matter for the Member States.

(4) Member States shall be free to determine which natural or legal persons shall be responsible for meeting the obligations for employers laid down by this Directive, provided that all these obligations are met.

Article 2

Definitions

(1) For the purposes of this Directive, the following definitions shall apply:

1. 'platform-based work' means the provision of services by workers to recipients through the intermediary of a platform;
2. 'worker' means an employee or a self-employed person with no employees;
3. 'platform' means a natural or legal person who, in their own economic interest, organises online the provision of services by workers to recipients. Depending on the nature of the service provided, the platform shall either be the worker's employer or act as his or her contractor;
4. 'recipient' means a natural or legal person who uses workers to provide services through the intermediary of a platform;
5. 'place of work' means the place where the worker is actually located while providing the service;
6. 'place of receipt of service' means the place where the physical or digital service provided by the worker is made available to the recipient.

(2) As regards terms used in this Directive which are not specifically defined therein, Member States shall be free to define them in accordance with national law and/or practice, as is the case for similar terms used in other social policy directives, provided that those definitions are consistent with the substance of this Directive.

Article 3

Assessment criteria

(1) With a view to establishing whether platform-based work is being carried out, or determining the nature of the contractual relationship in any given case, the key criterion shall be the actual nature of the economic activity performed, and not the arrangements for its performance.

(2) Work shall be deemed to be platform-based if workers provide services through the intermediary of a platform which, in particular, fulfils one or more of the following functions:

1. regulating worker access to the platform and/or the services offered to recipients on the platform;
2. maintaining a uniform market presence involving the provision of one or more services;
3. setting remuneration levels or the relevant maximum and/or minimum levels;
4. processing payments between recipients and workers;
5. carrying out quality control, in particular as regards work outcomes and/or the provision of services;
6. drawing up worker and recipient ratings;
7. handling communication between recipients and workers;
8. exercising the power to exclude workers/recipients from involvement with the platform.

Chapter II - Employment rights

Article 4

Existence of an employment relationship - rebuttable legal presumption

(1) If platform-based work involves the provision of services, a rebuttable employment relationship with the platform shall be deemed to exist. This legal presumption may be rebutted by the platform.

(2) The legal presumption shall not be rebuttable if at least three of the criteria listed in Article 3(2) have been met.

Article 5

Admissibility of contractual agreements

(1) The following contractual conditions and agreements in particular shall be prohibited:

1. conditions or agreements which provide for the organisation of work below the provisions on remuneration applicable in the Member State in question which have been rendered mandatory by law or collective agreement;
2. which provide for non-monetary remuneration of workers;
3. which prohibit workers from making direct contact with recipients;
4. which provide for the arbitrary exclusion of workers from the assignment of tasks or the arbitrary deactivation of a user account;
5. which ban or make impossible in practice contact between individual workers;

6. which require workers to make a payment in return for receiving work assignments;
7. which provide for shorter forfeiture and limitation periods;
8. which arbitrarily ban workers from taking on other employment, in particular with other platforms, and/or impose unjustified incompatibility clauses;
9. rule out and/or weaken restrictions on liability vis-à-vis the platform;
10. deny workers access to ratings of their performance and the criteria on which those ratings are based.

Article 6

Entitlement to equal remuneration

Workers shall be entitled to the remuneration in accordance with the provisions in the Member State concerned, including all the elements of remuneration rendered mandatory by law or collective agreement.

Article 7

Worker protection

(1) Responsibility for ensuring compliance with the rules on worker protection shall lie with the platform's external representative.

(2) Periods during which the worker is connected to the platform shall count as working time.

(3) The person responsible pursuant to paragraph 1 shall ensure that

1. the periods referred to in paragraph 2 are automatically recorded;
2. the worker submits details of additional working periods;
3. the relevant data can be consulted at any time;
4. further use of the platform is not possible if the rules on maximum working periods, daily and weekly rest periods and breaks have been breached.

Article 8

Certificates, ratings and proof of performance

(1) When the contractual relationship between a platform and a worker comes to an end, within [two weeks] the worker concerned must be issued, at his or her request, with a written certificate specifying the nature and duration of the work performed on behalf of the platform. The certificate shall also give details of any rating of the worker concerned awarded by the platform. This document may be provided and transmitted in electronic form, provided that it is issued with a confirmation of receipt and can be saved and printed.

(2) When a worker registers with a platform, the latter must take due account of any relevant rating awarded by another platform which is substantiated by a certificate as referred to in paragraph 1.

Article 9

Agreements detrimental to workers

(1) Under their contract, workers may not be denied entitlements conferred on them by this Directive or by other binding legal provisions.

(2) Agreements between a platform and a recipient which are intended to circumvent legal provisions on the protection of workers shall be prohibited.

Article 10

Strikes and lock-outs

Platforms shall be banned from assigning workers to perform duties on the premises of recipients affected by strikes or lock-outs.

Chapter III - Applicable law and enforcement

Article 11

Application of the law and relationship with other directives

(1) Workers shall be subject to the labour and social laws of the Member State on whose territory their place of work is situated.

(2) If an employee carries out platform-based work and the place of receipt of the service is in a Member State other than that on whose territory the employee's normal place of work is situated, the provisions of the Posting of Workers Directive shall apply for the period during which the service in question is provided.

(3) If a self-employed person carries out platform-based work and the place of receipt of the service is in a Member State other than that on whose territory the self-employed person's normal place of work is situated, the provisions of Directive 2006/123/EC on the Provision of Services in the Internal Market shall apply for the period during which the service in question is provided.

(4) If the place of receipt of the service is situated in a Member State and the worker's place of work is situated in a third country, the relevant trade provisions concluded between the EU and the third country in question shall apply.

(5) If the pattern of relations between the platform, the recipient and the worker corresponds to that laid down in Directive 2008/104/EC on Temporary Agency Work, the provisions of that directive shall apply, without prejudice to any stricter and/or more specific provisions of this Directive.

Article 12

Entitlement to legal redress

Member States shall ensure that workers, including those whose contract has come to an end, have access to effective and impartial dispute settlement procedures and are entitled to legal redress, including appropriate compensation, if their rights under this Directive are infringed.

Article 13

Protection against adverse treatment or adverse consequences

Member States shall introduce the measures needed to protect workers and workers' representatives against adverse treatment by the platform and/or the recipient and ensure that they do not face adverse consequences as a result of lodging a complaint against the platform or recipient or initiating legal proceedings with the aim of enforcing compliance with the rights provided for in this Directive.

CHAPTER IV: Final Provisions

Article 14

More favourable provisions

(1) This Directive shall not be used to justify a lowering of the general level of protection already afforded the workers concerned in the Member States.

(2) This Directive shall be without prejudice to the right of Member States to apply or adopt more favourable legal or administrative provisions on the protection of workers.

(3) This Directive shall be without prejudice to other rights conferred on workers by other Union legal acts.

Article 15

Transposition

(1) Member States shall adopt and publish the legal and administrative provisions needed to implement this Directive at the latest on [date of entry into force + two years], or shall ensure that the social partners introduce the provisions required by means of an agreement; at the same time, Member States must take all the steps required to ensure that they can achieve the results laid down by this Directive at any time.

(2) Member States shall inform the Commission immediately of the steps they have taken.

(3) When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 16

Transitional provisions

The rights and obligations laid down in this Directive shall be applicable to existing contractual and employment relationships as from [date of entry into force + two years].

Article 17

Review by the Commission

In cooperation with the Member States and the social partners at Union level, and taking account of the impact on small and medium-sized enterprises, at the latest on [date of entry into force + two years] the Commission shall review the application of this Directive and propose any changes required.

Article 18

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 19

Addressees

This Directive is addressed to the Member States.