issa | INTERNATIONAL SOCIAL SECURITY ASSOCIATION

WORLD SOCIAL SECURITY FORUM
BRUSSELS 2019

World Social Security Forum
33rd ISSA General Assembly
Brussels, Belgium, 14–18 October 2019

The platform economy

Alexandre Defossez
Consultant
National Employment Office (ONEM)
Brussels
Technical Commission on Employment Polices and Unemployment Insurance

The platform economy

Alexandre Defossez
Consultant
National Employment Office (ONEM)
Brussels

Technical Commission on Employment Polices
and Unemployment Insurance,
International Social Security Association
Geneva

1. Context of the study: the ISSA

The International Social Security Association (ISSA) promotes excellence in social security administration through professional guidelines, expert knowledge, services and support to enable its members throughout the world to develop dynamic social security systems and policy.

The ISSA has identified "Labour markets and the digital economy" as among the ten biggest global challenges for social security and as one of its priority areas for 2017–2019.

In May 2018, the ISSA's Technical Commission on Old-Age, Invalidity and Survivors' Insurance (TC Pensions) launched an investigation into platform work. Inspired by this initiative, the Technical Commission on Employment Policies and Unemployment Insurance (TC Employment) embarked on a parallel survey questionnaire (henceforth referred to as the "ISSA survey").

2. Introduction to the issue of platform work

New ways of working are the focus of much public and legal debate as well as having a high profile in contemporary literature. They call into question the established labour categories, with work traditionally being divided down the lines of employed versus self-employed. Platform work[1] partially transcends such a classification.[2] A kind of grey zone, halfway

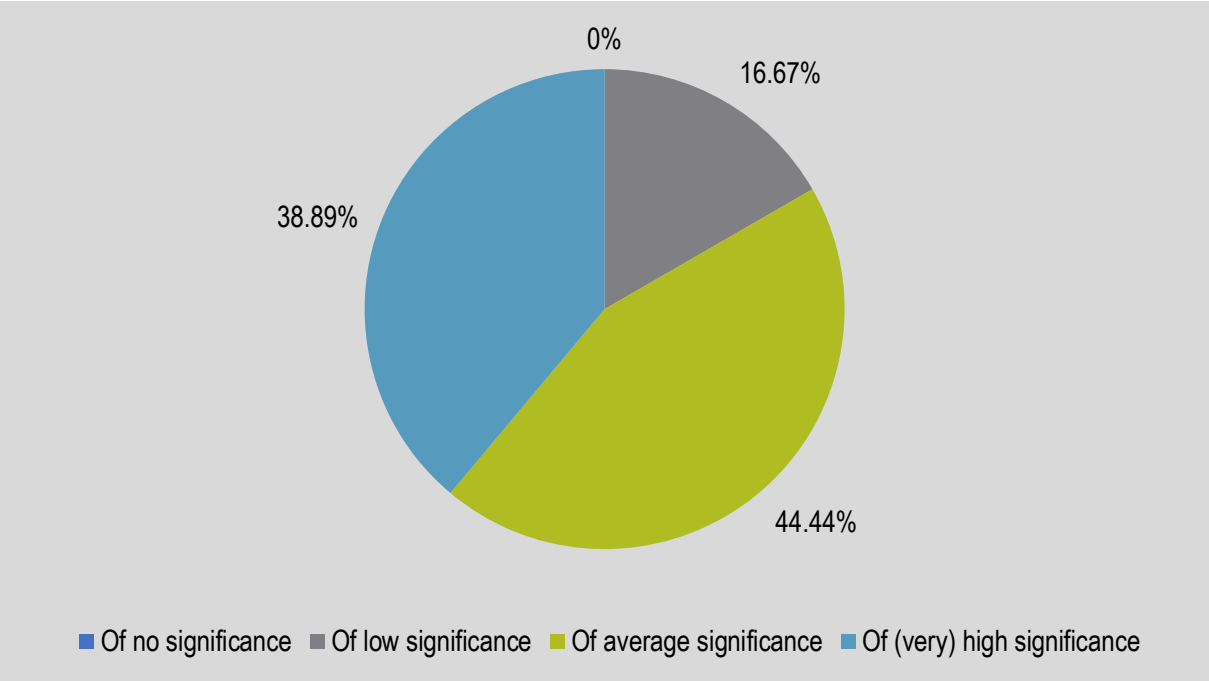
1. The literature employs a multitude of terms: sharing economy, platform economy, crowdwork, gig economy, etc. Within the framework of the ISSA survey, the term "platform work" is intended to encompass all paid services carried out via online markets or platforms, such as Uber or Upwork. It does not include activities linked to the sale of goods or rental of property via platforms (such as Etsy or Ebay). Neither does it cover online networks, such as LinkedIn, that do not offer paid services.
2. See Pichault, F.; Naedenoen, F. 2018. *Vers l'autonomie? Enjeux RH liés aux nouveaux arrangements de travail* [Towards autonomy? HR challenges linked to the new working arrangements] (Proceedings of the 'Biennale de Droit Social'). Brussels, Larcier.

between self-employment and employment, is emerging and, while such a grey zone is not entirely unprecedented (working for a temping agency already constitutes a kind of "triangular" relationship), it does challenge – given its scale and the speed with which it has developed – national social systems.[3]

The aim of this report is to provide a succinct assessment of the debate (principally in terms of its social aspect) surrounding the relationship between workers and the so-called "collaborative" economic platforms, and this at three levels: at a global level, through the International Labour Organization (ILO) (I); at a European level, through the main European institutions (II); and at a national level, with a particular focus on Belgium, Sweden and Ireland (III). To this analysis will be added the results of the ISSA survey, to which 26 countries – the majority of which are European[4] – responded.

The ISSA Survey 2018 reveals the scale of the problem: just 16.67 per cent of respondents consider the issue to be of "no" or "low" significance.

Figure 1. *Scale of the problem (ISSA Survey 2018)*



3. For a more global perspective on the impact of platform development on the business world, refer to the works of Orly Lobel (inter alia "The Law of the Platform", *Minnesota Law Review*, 2016).
4. Europe (17), South America (2), Oceania (2), Asia (4) and North America (1).

3. At a global level: the ILO and the OECD

The ILO[5] launched in 2015 its Global Initiative on the Future of Work. This initiative led notably[6] to the creation of a commission tasked with producing a range of reports on the evolution of the labour market (its challenges and the ways in which social justice can be maintained and promoted). In its briefing on the subject of job quality in the platform economy,[7] it distinguishes between two types of activity related to this theme:

- "Crowdwork",[8] which refers to those activities related to the digital economy that are exclusively carried out online.

  Examples: the activity of a "YouTuber" or a moderator, Amazon Mechanical Turk.

- "Work on demand via apps",[9] which refers to "physical" activities carried out locally, with the platform serving simply as an intermediary (putting people in contact and/or charging commission).

  Examples: transportation and delivery services (Uber, Deliveroo, etc.) or home services (Listminut, etc.).

According to a 2018 ILO study that profiles some 3,500 workers across 75 countries,[10] platform workers are generally young (33 years old on average), male (2/3)[11] and educated (to secondary level and beyond), and 29 per cent of them have been doing this work for more than three years. This constitutes the main source of income for 32 per cent of the workers surveyed.

The ILO reflects on the *real economic scale* of these activities. It suggests that some 0.5 to 5 per cent of the US or European workforce will have worked for a platform on at least one occasion. As for income, the average hourly rate is 4.43 US dollars (3.31 when unpaid time is accounted for).[12]

In Europe, estimates suggest that an average of 2 per cent of adults, a figure that varies from one country to another, carry out a "significant" amount of activity (equating to more than 50 per cent of their income or more than 20 hours per week) on these platforms.[13] More generally, it is estimated that 10 per cent of the adult population will have used such platforms on at least one occasion to provide some form of work.

5. A particular focus is placed on the ILO, but a number of other international organizations are also looking at this issue. See the OECD and its recent *Employment Outlook* report, published in April 2019.
6. Also dubbed the "initiative of the century"; see the ILO web page.
7. ILO. 2018. *Job quality in the platform economy* (Issue brief no. 5).
8. Wattecamps, C. 2018. *Travailler par l'intermédiaire d'une plateforme numérique – de quoi parle-t-on?* [Working through a digital platform – what's it all about?] (conference proceedings of 18.04.2018). Anthémis.
9. Id.
10. Berg, J. et al. 2018. *Digital labour platforms and the future of work: Towards decent work in the online world.* Geneva, International Labour Office.
11. In developing countries, the proportion rises to 4/5.
12. Id.
13. Pesole, A. et al. 2018. *Platform Workers in Europe: Evidence from the COLLEEM Survey*. Luxembourg, Publications Office of the European Union.

Box 1. Number of platform workers (ISSA Survey 2018)

The study carried out among ISSA members confirms an absence of data.

Only three institutions were able to provide data on the number of active platform workers. The most precise estimates resulting from the figures supplied suggest that this is less than 1 per cent of all workers (of a total of 2,003 individuals surveyed, 18 per cent had worked via a platform at least once during the previous year).

Only two institutions could provide estimates of the income generated by these activities. According to one, less than 2 per cent of platform workers earned all of their income in this way, with 11 per cent earning more than half, 59 per cent less than half and the remainder providing no details.

The ILO is chiefly concerned with the "quality" of these new ways of working.[14] In terms of their advantages, the ILO highlights the following points:

- For workers, flexibility and ease of delivery open up new opportunities for those who are excluded from the traditional labour market including those in developing countries. This benefit is also highlighted by the OECD in its 2019 report.
- For businesses, access to a pool of workers is easier, including those with significant family responsibilities or a debilitating condition.

The ILO and the OECD also raise a number of concerns:

4

- The resultant lack of legal status and social rights – The OECD, in its 2019 report on the labour market, confirms that non-standard workers (in particular platform workers) on average are 50 per cent less likely than other workers to be covered by unemployment benefit in the event of job loss.
- The lack of visibility of these workers, who often deal "alone" with a foreign-based platform – Such platforms can impose extremely harsh working conditions (exclusion, evaluation, monitoring).[15]
- The risk of "false self-employment" – This refers to a worker's adoption of a self-employed status who are de facto employees.
- The paucity of work and the associated poor remuneration.

  Example: According to the ILO, 80 per cent of crowdworkers feel they do not have enough work.

The ISSA survey supports these observations.

14. Generally speaking: ILO. 2019. *World employment and social outlook*. Geneva.
15. OECD. 2019, pp. 55–56.

Box 2. Social security benefits (ISSA Survey 2018)

First of all, is there specific legislation that applies to platform workers? The majority of participating institutions (84 per cent) indicated that there was not.

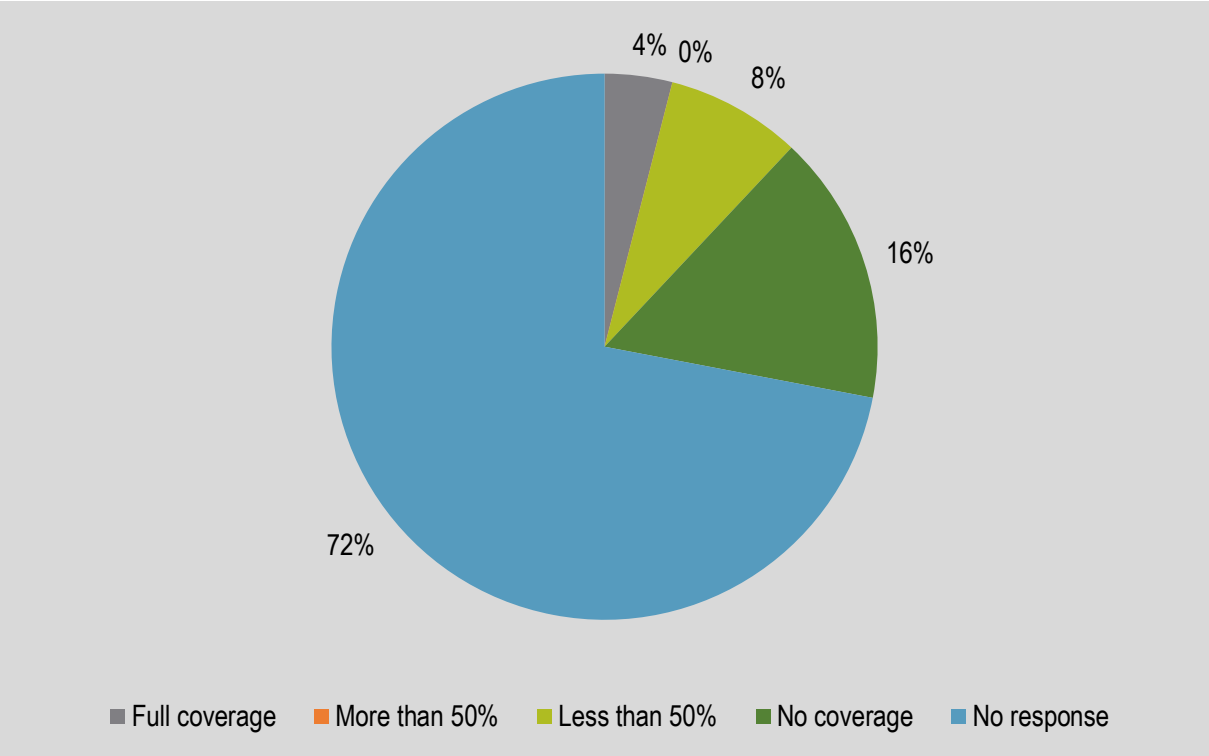
Secondly, what is the difference between a platform's employees and the freelance contractors working for it? The employees are, in the main, covered (72.4 per cent are either completely or partially covered), while the same cannot be said for the freelancers (of whom only 28.56 per cent are either completely or partially covered).

The latter figure is *lower* than that of self-employed workers in general (35.71 per cent), doubtless because the platform workers do not meet the qualifying conditions (notably those relating to income).

However, it is important to qualify this conclusion: 1) platform work is not the primary source of income for many of those undertaking such activities (which may constitute a supplementary job) and 2) if it is a sideline/small-scale activity, many institutions permit the overlapping of benefits (62.5 per cent).

The majority of institutions responding to the 2018 ISSA Survey was unable to assess the number of platform workers in receipt of benefits or otherwise (Figure 2).

Figure 2. *Extent of unemployment coverage (ISSA Survey 2018)*



The ILO shares several ways of thinking with its members, in particular on the question of status (employee, freelance contractor, temp, intermediary?).[16] In its 2018 report,[17] for example, the ILO sets out 18 criteria for guaranteeing platform workers a decent standard of work and three criteria for adapting national social systems to the new labour realities. Such a discussion in turn prompts a reflection on the future of social security systems and their financing.[18]

There are two schools of thought: try to alter the traditional self-employed/employed divide (the standard approach), either globally or on a sector-by-sector basis, or separate social protection from worker status (the fundamental-rights approach). The ILO recommends extending the social-protection system to cover all forms of work regardless of contract type, extending the universal models (funded through taxes) and using technology to facilitate the payment and receipt of benefits.

The OECD also issues several recommendations in its latest report:[19]

- Clarify, where required, guidelines or indicators concerning the distinction between employed and self-employed workers. The goal is to keep the so-called "grey zone" to a minimum. Moreover, the report also advises to apply certain basic rights for any residual grey zone (fair pay, working time protection, occupational health and safety, etc.).
- Reduce the incentives that lead to incorrect classification. For short-term fiscal reasons, workers may select a status that is in fact not socially beneficial to them in the medium or longer term. The same can be said for employers who, mistakenly or wilfully, choose a status for their employees that reduces their own obligations (in terms of tax, contributions, etc.).
- Ensure that all workers (including self-employed workers) are able to use their collective-bargaining rights and that, more generally, workers are fully aware of their rights.
- In general, prevent any employers from completely controlling the labour market ("monopsony"), which allows them to impose lower salaries and other detrimental conditions.

The ILO and the OECD do not have the authority to impose legally binding standards. The European Union, on the other hand, does possess such powers.

16. Notably: Gomes, B. 2017. *Le statut juridique des travailleurs économiquement dépendants* [The legal status of economically dependent workers]. Geneva, International Labour Office. Les entretiens France-BIT. 2016. *Transformation and diversity of enterprises: What are the consequences for work and employment in the world?* ILO.
17. ILO. 2018. *Digital labour platforms and the future of work: Towards decent work in the online world.*
18. C. Behrendt; Q. Anh Nguyen. 2018. *Innovative approaches for ensuring universal social protection for the future of work*. ILO (Future of work – research paper).
19. OECD. 2019. "The future of work", *Employment Outlook*.

4. At a European level: the institutions

Before analysing the initiatives taken at a European level, it is worth remembering that, in the social sphere, the European Union possesses minimal powers of harmonization. The founding premise of European social policy resided in the approximation of laws by virtue of market convergence.[20] It was only later through the Single European Act (1986) that the Union (then the EEC) was accorded regulatory powers in this field.

The key initiative adopted thus far by the European Commission in the field of the platform economy concerns the protection of *consumers* of platform-based services and not that of *workers*.[21] The "labour law" aspect is certainly touched upon but only in passing[22] (1). However, alongside this regulatory activity, the Union also plays a more indirect role (2).

4.1. Regulation: the "hard law" component of European law

In 2016, the European Commission published two communications.[23] Note that the Commission defines this sector as one in which "collaborative" platforms create an open market for the temporary use of goods and services, which are often produced or provided by private individuals facilitating such activities.

In 2018, the Internal Market Committee tabled a proposal[24] for a regulation promoting fairness and transparency for business users of online intermediation services. This aspect of EU legislative intervention is not, primarily, directed at the social aspect of the problem.

Example: In its COM(2016)356 communication, the Commission notes that this type of economy opens up new "opportunities" but that it also poses various "issues", particularly social ones, for which member States hold most of the powers. The Commission offers its interpretation of certain concepts (such as that of the "worker", which relies heavily on the complex notion of "subordination") and urges member States to "provide guidance on the applicability of their national employment rules in light of labour patterns in the collaborative economy".[25]

The Directorate-General for Employment, Social Affairs and Equal Opportunities has tabled a *Proposal for a directive on transparent working conditions* for which the field of application includes workers in precarious jobs, such as platform workers.[26] An employer would thus be obliged to provide more detailed information, in writing, on the content of the work as well as advance notice of the working hours. This proposal falls within the more general scope of the

20. Article 151 TFEU.
21. Proposal for a regulation promoting fairness and transparency for business users of online intermediation services. COM(2018)238 final, 26/04/2018.
22. Report of the Committee on the Internal Market and Consumer Protection. 2017/2003.
23. *Online platforms and the digital single market – opportunities and challenges for Europe.* COM(2016)288. *A European agenda for the collaborative economy.* COM(2016)356.
24. In the EU system, the Commission *proposes* regulations which are *voted on* by the Parliament and the Council.
25. The Observatory on the Online Platform Economy set up by the Commission studies and supports the fight against unfair trading practices. C(2018)2393.
26. COM(2017)797.

Directive 91/533 review and looks to extend to non-standard workers the rights accorded to "classic" workers. It was the subject of a political agreement between the Parliament, the Council and the Commission in February 2019 and was formally adopted by the Parliament on 16.04.2019[27] and the Council on 13.06.2019.[28]

4.2. The indirect approach: "soft law" and judicial interpretation

In addition to hard law, the European Union also issues reports, studies and recommendations that are more political than legal in their scope. Moreover, the Court de Justice also has an important role to play in the interpretation of standards.

4.2.1. Reports, studies and recommendations

A lack of legislative competence to harmonize the status of platform workers does not mean that the European institutions ignore the issue. On the contrary, numerous studies have been commissioned on the subject. This method of legal approximation through "soft law" is, in fact, an officially recognized device in the framework of European social policy ("open method of coordination"), which complements more traditional methods of regulatory harmonization.

In its study entitled *The social protection of workers in the platform economy*, the Parliament's Employment and Social Affairs Committee[29] provides an overview of the existing literature as well as interviews with experts from several member States.

Like the ILO, the EU concludes that the chief problem facing national legislators is that of social benefits for these new workers. The social rights of self-employed contractors are generally more limited than those of employees and, even where such rights exist for the self-employed, "in many cases, relatively low levels of hours or income mean that in practice they may not reach the necessary income or hours thresholds to access social protection".

One of the study's key proposals involves reversing the presumption of subordination so that it falls to the employer to prove that there is no subordination link.

Example: Belgian law puts forward a set of "indicators" to distinguish the employed from the self-employed.[30] As such, an ad hoc administrative committee can be called upon to offer its views on the categorization of a particular group of workers as employees or self-employed. This committee judged that Deliveroo workers could not be considered self-employed workers[31]. Nonetheless, its judgements are not binding.

In another in-depth study into the access to social protection[32] of self-employed and "non-standard" workers, the Commission underscores that despite the efforts of some States to adjust

27. European Parliament. 2019. *Transparent and predictable working conditions in the European Union.*
28. European Council. 2019. *Directive on transparent and predictable working conditions in the European Union*.
29. C. FORDE et al. 2017. *The social protection of workers in the platform economy* (study for the Employment Committee, EMPL 614.184).
30. Programme law of 27.12.2006, *Moniteur Belge* of 28.12.2006, p. 75178.
31. Notice of 23.02.2018, available at commissionrelationstravail.belgium.be/fr.
32. European Commission. 2017. *Access to social protection for people working on non-standard contracts and as self-employed in Europe: A study of national policies*.

their systems, there are significant discrepancies between countries when it comes to these workers' social protection access. The report distinguishes between four types of access:

- High, where self-employed workers are required to be insured under all social protection schemes.
- Medium, where self-employed workers have the right to opt into insurance-based schemes.
- Low, where self-employed workers have no right to access certain insurance-based schemes.
- Patchwork, which combines exclusion and *à la carte* insurance coverage.

In 2018, these initiatives led to the formulation of a proposal for a recommendation on access to social protection for workers and the self-employed.[33] This recommendation urges member States to ensure that all workers, both employed and self-employed, have access to the same level of social protection – be this mandatory or voluntary[34] – for an equivalent type of work. It places particular emphasis on "non-standard" workers.

4.2.2. Court of Justice ruling: the "incidental" component of EU intervention

It is important to note that the European Court of Justice has the ultimate say when it comes to interpreting European law. This role of authoritative interpretation means that a Court ruling is binding: a member State cannot choose to disregard a decision taken by the Court. A Court of Justice ruling therefore carries equal legal weight to the law that it interprets; it is not simply an opinion or a recommendation.

Example: In the Criminal Proceedings/UBER case adjudicated in 2018, the Court of Justice ruled that the services provided by UBER did not constitute information society services, but transport services.[35] UBER had contested a number of measures imposed by France on the grounds that these had not been notified in advance, as required by the Directive on information society services.[36] In ruling that Uber's services did not fall within this sector, the Court indirectly approved the measures taken by France.

This example, which is not strictly related to social law, illustrates the Court of Justice's potential influence in its role of "authoritative" interpreter of European law. For instance, in its conclusions under judgement C-434/15, the Advocate-General lists the obligations falling to Uber drivers (working time, appraisals, legal requirements, fares, etc.), which does not fail to evoke a relationship of subordination.[37]

33. COM(2018)132.
34. For instance: unemployment benefits for self-employed workers are available on a voluntary basis.
35. C-320/16, 10/04/2018, ECLI 2018:221.
36. The French law that "lays down criminal penalties for the organisation of a system for putting customers in contact with persons carrying passengers by road for remuneration using vehicles with fewer than 10 seats, without being authorised to do so, concerns a 'service in the field of transport' in so far as it applies to an intermediation service that is provided by means of a smartphone application and forms an integral part of an overall service the principal element of which is the transport service. Such a service is excluded from the scope of application of those directives."
37. Conclusions under C-434/15, 20.12.2017, ECLI:EU:C:2017:981, pts. 44 and s.

5. At a national level

This study will cast a spotlight on the specific cases of Belgium, Ireland and Sweden, including the emerging jurisprudence in the different countries and trade union reactions. Finally, some examples of national good practice will be showcased, drawn from the ISSA Survey 2018.

5.1. Specific cases: Belgium, Sweden, Ireland

5.1.1. Belgium

Belgium has adopted specific tax legislation but the general principles of self-employed versus employed status apply elsewhere. Fiscal aspects are governed in Belgium by the programme law of 01.07.2016, which was amended by the economic growth and social cohesion law of 18.07.2018.[38] The unemployment insurance component is covered by article 48 of the Royal Decree of 25.11.1991, which has been amended numerous times, most notably by the Royal Decree of 11.09.2016, which introduced the *tremplin independent* (self-employed springboard).[39]

In Belgium, platform workers do not benefit from any social cover if their activity does not meet the requisite level to classify for cover as a self-employed worker. In principle, the self-employed has no right to unemployment benefit, but instead to a kind of bankruptcy insurance: the "bridging right". This said, the regulations governing the unemployment of employed workers contain provisions that enable unemployed or employed people who declare self-employment to retain their right to unemployment benefit for a period of fifteen years (they can thus discontinue their self-employed activity and once again claim benefits if they have been entitled to receive them during the preceding fifteen years). Furthermore, unemployed people in receipt of benefits can combine, under certain conditions, their unemployment benefits with a platform activity (under the "self-employed springboard" or "casual occupation" regimes, or other such arrangements).

Belgium's Federal Minister for Employment, Economy and Consumer Affairs, Kris Peeters, spoke out on this subject on numerous occasions, stressing the importance of supporting this economy by regulating it at both a fiscal and a social level.[40] On social status in particular, the minister's office indicated that it was not in favour of creating a new status halfway between those of employee and self-employed worker.[41] Kris Peeters suggested that an EU solution would be preferable in this field so as to avoid any distortion of competition.[42] However,

38. *Moniteur belge* of 04.07.2016, p. 40970 and of 26.07.2018, p. 59203.
39. These texts can be consulted, in their consolidated version, on the *Moniteur Belge* website. Helpful and comprehensive explanations can also be found on the *Economie collaborative* (collaborative economy) page of the SPF Finances website, as well as in ONEM's T46 and T158 information sheets.
40. *DH*. 2017. "Kris Peeters: '*Je ne suis pas pour l'interdiction d'AirBnb*' [I am not in favour of banning AirBnB]", 28 February.
41. In response to a proposal by Flemish business network VOKA (press release from the office of K. PEETERS, 19.10.2017) and *Sudpresse*. "*Kris Peeters enquête sur le système Deliveroo* [Kris Peeters investigates Deliveroo system]". 16.01.2018.
42. *Belga*, 2018. "*Kris Peeters wil overleggen met Europese collega's over Ryanair* [Kris Peeters consults EU colleagues over Ryanair]", 10 August.

Maggie De Block, the current Federal Minister for Social Affairs, Public Health and Asylum and Migration, came out in favour of a single status at a conference on "the social security of the future" held on 28.02.2019,[43] "The current differences between the social protection of employees, civil servants and the self-employed are outdated".

Box 3. The Belgian programme law of 2016

The programme law of 1 July 2016 and its implementing royal decrees regulate the collaborative economy with a view to preventing its revenue from escaping taxation, but also to fostering entrepreneurship by enabling service providers to carry out small-scale activities with a minimum of formalities.

Platform work is considered a taxable activity. It is the responsibility of workers to declare their income. 25 per cent of the tax generated is used to fund the social security system, with the remainder destined for the general tax coffers.

The new tax regime put in place for the collaborative economy offers electronic platforms the possibility of requesting accreditation. This system enables private individuals providing collaborative-economy services outside the framework of their professional activity favourable tax arrangements via an accredited platform. To date, there are around fifty accredited platforms.

The tax relates to payments made by companies that host accredited platforms to their service providers under the new tax regime. These arrangements solely concern payments made by platforms following the date of their accreditation. Up to a ceiling of 5,100 euros (EUR) (indexed figure for 2017), income from the collaborative economy is taxed at 20 per cent, following deductions of flat-rate professional expenses of 50 per cent. If this ceiling is exceeded, the entirety of the income is treated as regular professional income, unless and until there is evidence to the contrary.

5.1.2. Sweden

In Sweden, how labour law is applied depends in part on collective bargaining between employers and employees. Depending on the sector in question, employed workers will not necessarily be subject to exactly the same rules, even if minimum standards are laid down by law.

Sweden has no specific rules on unemployment benefits for platform workers. They must fulfil the conditions stipulated for employees or self-employed workers, depending on the status that has been accorded to them.

Indeed, there are distinct qualifying conditions in place for claiming unemployment benefits in Sweden depending on whether one is employed or self-employed. Employed workers qualify for benefits if they have been in work for a given period.[44] The self-employed, on the other hand, must prove that they are really "without work", which in practice means closing down

43. www.healthcare-executive.be
44. For more on these conditions, see *Sweden – Unemployment benefits*. See also M. Lindskog. 2005. *The Swedish social insurance system for the self-employed* (Discussion Papers). Wissenschaftszentrum Berlin für Sozialforschung.

their business. Note that this status cannot be acquired twice in succession; a certain delay must be respected: if a self-employed person has resumed a business activity within five years of being out of work, he or she can no longer be recognized as "unemployed".

Box 4. The Swedish social system

Labour law is applicable wherever the relationship between a service provider and a service procurer can be deemed a working relationship. Yet, in Sweden, public labour law only covers certain basic requirements. For the majority of the labour market, contractual employer–employee relationships are governed by collective agreements. Thus, the specific working conditions will differ according to the agreement in force and, in particular, whether or not there exists a collective agreement.

The same can be said for unemployment benefits: there is a generic system in place that grants the right to a basic allowance and then a system of voluntary insurance (of which there are around thirty according to the field of activity) that enables a higher level of benefits to be claimed, based on salary. To benefit from the latter, a minimum period of scheme membership must be met (12 months).

5.1.3. Ireland

Similarly, Ireland has no specific legislation to cover platform workers. Platform workers are therefore considered as either employees or self-employed contractors, depending on whether they are covered by a *contract of service* (employees) or a *contract for services* (self-employed).

Platform workers must consequently be assessed on a case-by-case basis.

Box 5. Ireland's social legislation: employee or self-employed?

The key factors or criteria that differentiate between a *contract of service* and a *contract for services* are laid down by case law. Notably, there is the criterion of mutual obligation (carrying out/providing the work), that of control (which is linked to the notion of "subordination"), that of company integration, that of replacement, etc.

The list of factors is far from exhaustive and does not constitute a checklist for deciding if an individual is an employee or not.

Unemployment benefits vary according to an individual's classification within the Pay Related Social Insurance (PRSI) system. Private individuals are obliged to pay PRSI contributions in line with the source and amount of their income. However, unlike tax, PRSI contributions open up the right to a variety of social insurance benefits, such as sickness benefit, maternity benefit, state pension (contributory), etc.

For employees, there are several categories available (A, B, C, D, E, H, J, K and M). The specific class determines the rate of contributions payable and the level of the resulting rights. The vast majority of employees fall within class A: they have (notably) access to jobseeker's allowance.

Self-employed people (class S), on the other hand, do not qualify for unemployment benefit. There is a proposal on the table to develop this area of legislation and there is an existing form

of aid available to self-employed workers within the jobseeker's allowance regime, based on a financial assessment. There are currently around 7,000 self-employed contractors benefitting from this regime.

Self-employed contractors in active work can only claim benefits in a restricted number of cases.[45]

5.2. A proliferation of legal cases involving platforms

National courts have been inundated with cases involving the relationships between platforms, workers and the authorities. While it is clearly impossible to go into details here, several types of dispute can be broadly distinguished.

First of all, there are disputes between platforms and States regarding the very ways in which the former function. For example, the Commercial Court of Brussels deemed Uber's activities in Brussels illegal. In 2015, following another ruling, Uber suspended its UberPop service, which connected up customers with non-professional (unlicensed) drivers.[46] In the other direction, platforms challenge restrictive legislation (as per the previously cited *Uber/France* case). Similar examples exist in the USA (against the City of New York),[47] in Canada (Vancouver)[48] and in the United Kingdom (London).[49]

Other cases more directly concern the issue of worker status. We have previously cited the case of *Deliveroo* in Belgium. There are other such examples around the globe, including *Berwick* vs. *Uber Technologies* (California, USA; which concluded that Uber should not classify the plaintiff as a freelance contractor, but instead as an employee), *Aslam, Farrar and Others* vs. *Uber London Ltd* (which concluded that the plaintiffs were "workers", with a right to the minimum wage and paid holidays), which was upheld on appeal;[50] and the *LeCab* and *Uber* cases in France (in which the classification of employee was upheld).[51]

5.3. Trade union reactions

Workers' unions also have a role to play.[52]

The European Trade Union Confederation (ETUC)[53] points out that such complications are nothing new in nature, "In response to employers' attempts to misclassify their workforce as independent entrepreneurs, legal systems all over the world have over a long time developed a

45. See Citizens Information. 2019. *Jobseeker's benefit and work.*
46. *Le Soir*, 3.01.2019.
47. *Competition Policy International*, 18.02.2019. We have previously referred to the case of Uber versus France that was "adjudicated", in part, by the Court of Justice.
48. *globalnews.ca*. 2018. "Ride-Hailing not coming to British Columbia until fall 2019", 20 July.
49. *The Independent*. 2018. "Uber wins court appeal over London ban", 26 June.
50. Uber B.V. (UBV) & Ors v Aslam & Ors [2018] EWCA Civ 2748.
51. *ITespresso.* 2017. "LeCab ira en cassation contre le salariat de ses chauffeurs [LeCab to appeal salaried status of its drivers]" and *Le Monde*. 2019. "Le lien unissant un chauffeur et Uber reconnu contrat de travail [Link between a driver and Uber recognized as employment contract]", 11 January.
52. At a European level, the debate is still ongoing over the social protection of non-standard workers. This has led to the adoption of the abovementioned recommendation. See MEMO/18/1623 of 13.03.2018.
53. ETUC. 2018. *Collective voice in the platform economy*.

variety of doctrines to ensure that the law classifies a relationship according to the realities of the situation rather than the labels which one party might have foisted on the other". This said, the study underscores that "subordination" is demonstrated in an "original", and occasionally very "crude", way in this field – a phenomenon that the OECD dubs "digital Taylorism".[54]

Example: There are certain characteristics of online work that could make a worker particularly heavily dependent on a platform. Consider, for example, user-rating methodologies or obscure classification algorithms that could see a worker relegated in an application's search results.

Belgium's main trade unions have spoken out in favour of extending employee status to workers in these sectors.[55]

One of the difficulties raised by the unions is that of the organization and representation of workers in these very fragmented sectors[56]. The OECD, in its aforementioned 2019 report on the labour market, concluded that non-standard workers (including platform workers) are 50 per cent less likely to belong to a trade union. Of course, counterexamples do exist:

Examples:

- Strike action against Deliveroo was "supported" by the traditional unions[57].
- Since 2015, Swedish and German trade unions have supported action taken by platform workers.
- Trade union–platform collective bargaining has even been seen in some countries, such as Denmark.[58]

Such organizational difficulties do not always stem from the platform but also from the workers themselves, who do not necessarily see the point in collective action: "The interests and needs of students occasionally dipping into the platform economy might differ substantially from a worker seeking to make a full-time living".[59]

54. OECD. 2019. *Employment Outlook*.
55. For instance, for the FGTB (General Federation of Belgian Labour), see the December 2017 issue of *Syndicats* magazine. Or CNE (National Employee Centre). 2016. "L'économie collaborative: un modèle pour demain? [The collaborative economy: a model for tomorrow?]" See also the views of the CSC, CGSLB and FGTB as collected by M. Balthasar, 2017. *Comment le droit du travail belge pourrait-il s'adapter face à une entreprise d'économie collaborative disruptive? Analyse de cas: Uber* [How could Belgian labour law adapt in the face of a disruptive collaborative-economy company? Case study: Uber] (Master's thesis, ULg), p. 71.
56. H. Jonhston, C. Land-Kazlauskas. 2018. *Organizing on-demand: Representation, voice, and collective bargaining in the gig economy*.
57. *La Libre,* 20.01.2018 and *Le Soir*, 13.01.2018.
58. See also K. Vandaele. 2018. *Will trade unions survive in the platform economy?* (WP 2018/05).
59. ETUC. 2018. *Collective voice in the platform economy* (p. 17).

5.4. Best practice drawn from the ISSA Survey 2018

A number of initiatives can be identified.

5.4.1. Specific status

In one country surveyed, platform workers have been accorded their own specific category of self-employment by law – a category to which the legislator has granted certain corporate social responsibility rights. As such, these workers benefit from specific provisions on occupational accident and illness insurance, professional development and collective rights. In terms of occupational accident and illness cover, a pioneering mechanism has been put in place regarding payment of contributions: so long as a self-employed worker voluntarily takes out insurance against occupational accident and illness, the contributions are reimbursed by the platform. There is one condition: that the worker sees a minimum annual turnover of 5,100 euros from his or her work with one or more platforms.

Box 6. Legislative action (ISSA Survey 2018)

Three States mention specific pieces of legislation: the first describes an updating of legislation in 2016 that brought into force a self-employed regime with no tax liabilities as long as certain cumulative conditions are met. The second describes a specific regulation covering certain categories of platform workers (who are taxable as self-employed) following a declaration from their platform. The third talks of tax liability as a self-employed person (with no further detail provided).

Beyond these three scenarios, eleven States mention ongoing – and varied – deliberations.

A French draft bill set out to define a responsible framework for relations between platforms and the workers that rely on them, notably through the establishment of a charter to attach to service contracts. While this innovation does not appear in the final version of the text, platform workers have been given access to a learning-account system to support them in their professional transition.[60]

Finally, under France's LOM mobility law, which is soon to be published, the French legislation expedites the payment of ad hoc transportation costs. This law introduces a new chapter in the transport code, setting out the obligations and status of workers employed in these fields of activity.[61]

60. See, on the French Ministry of Labour website, *Loi pour la liberté de choisir son avenir professionnel* [Law for the freedom to choose one's professional future].
61. See the French National Assembly's *Projet de loi d'orientation des mobilités* [Draft mobility bill], in particular article 20.

5.4.2. Compulsory registration linked to an existing status

Another country surveyed, which has been commended by the ISSA for best practice in software implementation,[62] has taken an innovative approach. This country compels drivers wishing to provide services via a platform to register on a state application. Only with prior registration are drivers able to sign up with service platforms to offer their services. In exchange, they are granted a socially and fiscally beneficial self-employed status.

5.4.3. Separation of status and protection

One State suggests that entitlement to benefits in that State is non-contributory, being funded instead by the general taxation system.

5.4.4. Specific research projects

One State surveyed mentions the existence of a consortium (universities/private institutions) that undertakes research in this area, notably on platform work.[63]

6. Conclusions and recommendations

This study shows that social security is not well-adapted to newer forms of labour and, more broadly, to non-standard occupations. The need for reform, for adaptation, is clear throughout this report. It is evident that, to date, platform work is either not or hardly regulated. There are multiple reasons for this. The economic and, above all, technological spheres are often one step ahead of the social one. The extremely wide range of platforms out there (trading, non-trading, proposing existing or new services, etc.) also complicates matters. Finally, governments are reluctant to regulate a system that can stimulate the emergence of new activities and create new jobs and one that is, in turn, valued by workers, employers and users alike. Platforms take advantage of this situation to evade their social and fiscal obligations.

The absence of regulation poses, among other issues, problems related to:

- social security funding;
- worker protection.

When it comes to unemployment insurance, the challenge is to ensure an adequate level of social protection without fostering unstable employment. It is crucial not to encourage prolonged situations in which work income overlaps with substitute wages as these are precarious for workers and costly for social security.

Several recommendations emerge from this study:

- *Develop more accurate statistical monitoring.* There is some degree of ambiguity surrounding the scale of this phenomenon. The number of workers who rely for the most part on income stemming from this economy remains subject to extremely variable

62. See the best-practice guide *Shared software and collaborative work*.
63. SWiPE (Smart Work in Platform Economy).

assessment from one country to another. The involvement of all national bodies (social, fiscal, consumer, etc.) in this monitoring exercise is vital, not only to garner a precise picture of the situation, but also to prevent fraud.

- *Clarify the conditions of coverage of platform workers.* All stakeholders agree that the status of these workers needs to be better defined, yet there is no clear view on how to achieve this, with each State reacting according to its own habitus. There are myriad ways of achieving this objective: Modification of the categories? Separating protection from status? Ad hoc status?
- *Monitor potential breaches of workers' collective rights.* Owing to the limited capacity of workers in this sector to organize, it is difficult to establish classic collective-bargaining mechanisms. States must take steps to monitor their own legislation in this field, particularly legislation that could risk impeding the chances of organization/negotiation.
- *Increase the exchange of best practice between States*. This can take place within the ISSA, but also elsewhere – notably at a European level. The European example demonstrates that a mixture of approaches (hard law/soft law) is possible: the fact that a given body does not have strict legislative powers does not mean that it cannot play a useful role. Reports, studies and overviews all feed into the debate that will ultimately lead to a coordinated legislative approach.