International Labour Organization

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Protecting Workers in New Forms of Employment

Paper prepared for the BRICS Employment Working Group meeting under China's Presidency

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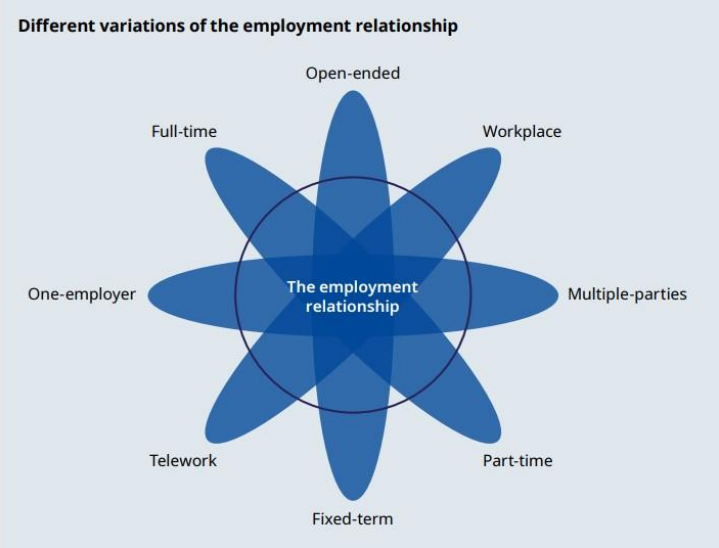
Contents

1. Background

In many parts of the world, the standard employment relationship has been eroded over the past decades, and the overall importance of "new forms of employment", also called "non-standard forms of employment" or "diverse forms of work arrangements", has increased in the labour markets of most countries, including the BRICS countries (ILO, 2016). These include temporary employment, part-time work, multiparty work arrangements, telework and hybrid working, as well as dependent self-employment.



Source: ILO, 2020

New forms of work may generate further opportunities for workers to access to employment and income generating activities, and flexibility to balance work and personal life. However, they can also lead to situations where the employment status of workers is unclear or hidden. In most cases, those who fall outside of the employment relationship do not benefit from labour and social protection. Activities of workers in self-employment tend also to be more often not declared to national authorities. This clearly has an adverse impact on workers and their families, but can also diminish productivity and distort competition, often to the detriment of those enterprises complying with laws and regulations (ILO, 2020).

Work on digital labour platforms present peculiarities stemming from these new forms of employment: some of these workers, particularly those working online, are recruited for very short periods of time and may be seen as casual workers; they may work on a part-time basis, for instance as a secondary source of income; there is a multiparty relationship involving the worker, the platform and the client; online platform work is performed remotely from the client's premises; and many platform workers classified as independent contractors are in dependent self-employment or, according to national court decisions, should be reclassified as employees. Platform work can therefore be used as an illustration of the variety of work arrangements that exist, the situation of workers concerned and actual or potential attempts to address possible decent work deficits.

To a large extent, the manner in which digital platforms engaged in work arrangements with their either users, collaborators or employees has taken place in a blind spot of national legal frameworks. For years, in the absence of specific rules or judicial decisions on the employment status of digital platform workers, platforms often only allowed workers to perform work under the status of self-employed worker.

It is important to note in this regard that there is a wide variety of platforms. The basic division lies between "web-based platforms", on which work is performed online, and "location-based applications (apps)", which allocate work to individuals located in a limited area. The tasks involve may also vary, from ride hailing to micro-tasks such as data encoding, to highly

skilled tasks such as IT development. A one-size-fits-all approach to the regulation of platform work would therefore be inadequate, as it would not allow taking into consideration the situation of workers on different types of platforms. Furthermore, as will be highlighted below, regulatory initiatives and judicial decisions often address the location-based and not the online web-based platform economy.

While the modality of self-employment may be well suited to certain types of digital platforms, the wide variety of digital platforms does not necessarily entail that this is the unique modality under which work can be performed by persons working through these platforms. In numerous cases, national courts or legislations have considered that the characteristics of the relationship between a certain type of platform and the persons using it to perform work corresponds to what national laws and regulations qualify as constitutive of an employment relationship. The risk for such misclassification and resulting re-classification could be greatly reduced should the national legal frameworks establish clear criteria allowing to categorize correctly and with the needed degree of legal certainty the various types for the various types of digital platforms. The categorization of the employment status has considerable consequences from a labour protection perspective but also, of course, from a social protection one as, in order to be able to cover workers in all forms of employment, social protection systems need to be made more open and adapted so as to be more inclusive, notably of independent workers, and facilitate the portability of social security rights whenever self-employed persons switch to employed status (ILO, 2021e, 2021f).

However, some principles apply to all workers regardless of their employment status. This is the case, in particular, of the fundamental principles and rights at work. The ILO Centenary Declaration (2019) calls upon ILO Members to work, on the basis of tripartism and social dialogue, and with the support of the ILO, to further develop its human-centred approach to the future of work by *"strengthening the institutions of work to ensure adequate protection of all workers, and reaffirming the continued relevance of the employment relationship as a means of providing certainty and legal protection to workers"*, and by promoting decent work for all, notably through policies and measures that *"respond to challenges and opportunities in the world of work relating to the digital transformation of work, including platform work"*. The Declaration further called on ILO Members to achieve universal access to comprehensive and sustainable social protection and urged the ILO to support the development and enhancement of social protection systems, which are adequate, sustainable and adapted to developments in the world of work. The Global Call to Action (2021) called for increasing support for the development of policies and approaches that *"harness the fullest potential of technological progress and digitalization, including platform work, to create decent jobs and sustainable enterprises"* (para. 13(a)(v). It also called for *"universal access to comprehensive, adequate and sustainable social protection, including floors, that ensures income security and health protection and enables people, including the self-employed and workers in the informal economy"* (para. 13(c)).

In November 2021, the Governing Body decided to convey a Meeting of Experts on decent work in the platform economy, in line with the resolution concerning the second recurrent discussion on social dialogue and tripartism, adopted by the International Labour Conference on 7 June 2018. The Meeting of Experts will take place in October 2022 and, subject to the approval of its conclusions by the ILO Governing Body, will offer the opportunity to develop the first tripartite guidance to the ILO specific to the topic. The information contained in this note therefore relies on existing ILO standards and factual presentation of legislative developments and court decisions on the labour and social protection of workers in new forms of employment. The last section lists a number of discussion issues that may be of interest to participants to the Meeting.

2. Protecting the rights of workers in new forms of employment

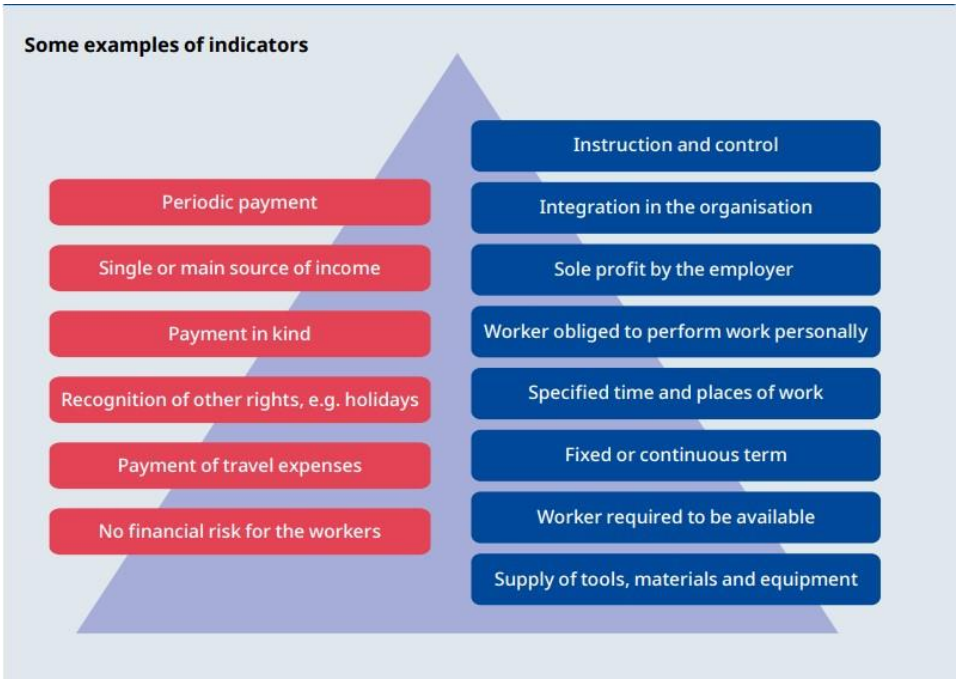
1. Labour protection

A. Regulating the employment relationship

The employment relationship refers to "the relationship between an employee (or worker) and an employer, for whom the employee/worker performs work under specified conditions and in exchange for remuneration. The employment relationship gives rise to reciprocal rights and obligations between the employer and the employee under national legislation. Access to employment-related rights and benefits is secured through the vehicle of the employment relationship" (ILO, 2020).

The establishment of a comprehensive and clear legal framework governing the employment relationship is crucial to promote full, productive and freely chosen employment, while ensuring that workers are adequately protected. The ILO Employment Relationship Recommendation, 2006 (No. 198), provides guidance to ILO Member States in this respect. It advises governments to formulate and apply a national policy to review, clarify and adapt the scope of relevant laws and regulations, and to guarantee effective protection for workers in an employment relationship; establish criteria for the determination of the existence of an employment relationship; and establish an appropriate mechanism for monitoring developments in the labour market and the organization of work. The national policy should notably include measures to combat disguised employment relationships, which occurs "when the employer treats an individual as other than an employee in a manner that hides his or her true legal status as an employee". Particularly relevant for workers in new forms of employment is the provisions calling for national policies to "ensure standards applicable to all forms of contractual arrangements, including those involving multiple parties, so that employed workers have the protection they are due".

The key principle underlying the Recommendation is that the determination of the existence of an employment relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding any contrary contractual provisions between the parties – the primacy of facts principle. The methods suggested by the Recommendation include allowing a broad range of means for determining the existence of an employment relationship and providing for a legal presumption that an employment relationship exists where one or more relevant indicators is present. Possible indicators relate to the benefits received by workers (periodic payment, leave, etc.) or their relation to the employer (control of the work performed, required availability, etc.). They are summarized in the figure below (ILO, 2020).



In a number of countries, initiatives have been launched with a view to adapting labour laws to the development of new forms of employment. In **Canada**, the federal government released in 2019 the report of an independent Expert Panel on Modern Federal Labour Standards, which addresses notably labour standards protections for workers in non-standard work, including work in the platform economy (Canada, 2019). The Expert Panel recommends the adoption of a clear statutory definition of "employee" that encompasses any person who performs labour or supplies services for monetary compensation, as well as a rebuttable presumption of employee status. It also considers that national legislation should include a clear statutory definition of "independent contractor" which would be structured around four cumulative conditions: the person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for performance of the work and in fact; the person performs work that is outside the usual course of the hiring entity's business; the person is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed; and the person has the risk of profit and risk of loss. Finally, it recommends the adoption of a clear statutory definition of "dependent contractor", who should be deemed to be employees.

A similar initiative was taken in the **United Kingdom**, with the commissioning of an independent review of modern working practices in 2016. Following consultations, the Government published in December 2018 the Good Work report, setting out a plan for the implementation of the recommendations arising from the review (United Kingdom, 2018). The report underlines that the opportunities offered by platform work should be protected while ensuring fairness for those who work through these platforms and those who compete with them, and measures should be taken to make it easier for individuals and businesses to distinguish so-called "limb (b) workers" from those who are legitimately self-employed. Limb (b) workers constitute a third legal category between employees and genuinely self-employed workers, who benefit from certain labour rights. The review recommends changing the terminology and referring to this group as "dependent contractors".

At the **EU** level, the Directive on Transparent and Predictable Working Conditions (Directive 2019/1152) adopted in June 2019 seeks to avoid a race to the bottom in standards applying to new forms of work which would lead to inequality in the protection of workers. The Directive applies to on-demand workers, intermittent workers, voucher based-workers, and platform workers, provided they are not genuinely self-employed persons. Member States that allow work on-demand, including zero-hour contracts, must take measures to prevent abusive practices, such as a rebuttable presumption of the

existence of an employment relationship with a guaranteed number of paid hours based on hours worked in a preceding reference period.

In their reports submitted for the 2020 General Survey on employment (ILO, 2020), several ILO Member States indicated that they had recently adapted or clarified their legislation on the scope of the employment relationship as a result of a review. In **Brazil**, the Temporary Work Act was amended in 2017 to clarify the scope of temporary contractual arrangements. The objective was, inter alia, to provide the parties with the necessary legal certainty respecting their relationship. Furthermore, numerous countries indicated that they have established a system providing guidance on effectively establishing the existence of an employment relationship and making a distinction between employed and self-employed workers. This is the case for instance in **South Africa**, with the publication of the South African Labour Guide (https://www.labourguide.co.za/).

The issue of the employment relationship is also particularly relevant for workers on digital labour platforms. These workers are often classified as independent contractors under the terms and conditions unilaterally established by the platforms. Most of these workers nonetheless consider themselves to be dependent workers (Berg et al., 2018). There is a vast amount of court decisions around the world on the classification of platform workers in relation to the existence of an employment relationship. National courts have adopted a variety of approaches and reached different outcomes including within the same jurisdiction. This may be due to the numerous criteria that courts have to apply, all of which are subject to interpretation, and to their overall broad discretion as to weighing the various factual circumstances (de Stefano et, al. 2021).

In **Brazil**, the Superior Labour Court held in 2020 that Uber drivers were self-employed workers as they are not in a relationship of subordination since they provide their services on a casual basis, without pre-established work schedules and do not receive a fixed salary. On the other hand, in **South Africa**, the Commission for Conciliation, Mediation and Arbitration (CCMA) found the existence of an employment relationship between a driver and Uber, pointing out that "even though there is no direct or physical supervision, control is exercised through technology". The decision of the CCMA was reformed by the labour court in Cape Town in 2018, on the ground that the CCMA did not have jurisdiction to hear the dispute. In **China**, the People's Court of Haidian District recognized the existence of a labour relationship between a courier and the digital platform for a number of reasons such as the training provided to couriers by the platform; the issuance of work badges; the high number of working hours and the limited autonomy in terms of working time if the Courier wished to maintain the level of corresponding income (Zhou, 2020).

In **Uruguay**, the Appeal Labour Court held in 2020 that there was an employment relationship between Uber Technologies and the driver, making explicit reference to ILO Recommendation No. 198. The Court of Cassation of **France** also concluded in 2020 that Uber drivers are employees, arguing that they become an integrated part of the platform's services once logged on.

Legislative provisions have been enacted in a number of countries to try and avoid legal insecurity on the rules governing work on digital labour platforms, and other initiatives may lead to future reforms.

In **Portugal**, the so-called "Uber Law" adopted in 2018 regulates digital platforms providing individual and remunerated transport of passengers, including through the establishment of a presumption of employment relationship between the platform and the driver. In **Spain**, the "Riders Law" adopted in 2021 also establishes such a presumption for workers on digital labour platforms in the delivery sector. Campaigns targeting disguised employment in platform work had also been launched in the framework of the Labour and Social Security Inspection Strategic Plan 2018- 2020 (Lane, 2020). In **Brazil**, the Consolidation of Labor Laws was amended in 2011 to include a provision stating that computerized means of command and control are, for legal subordination purposes, equal to the personal and direct means of command and control of others' work. This amendment, initially passed to ensure that teleworkers be considered employees, may also benefit platform workers (de Stefano et. Al., 2021).

In the **European Union**, the Commission launched a set of proposals to improve the working conditions in platform work and support the sustainable growth of digital labour platforms in the EU. These include a proposed Directive on improving working conditions in platform work that would establish a rebuttable presumption of the existence of an employment relationship once certain criteria are met.

B. Freedom of association and the right to collective bargaining

In addition to legal regulation, collective bargaining is an essential tool to improve the working conditions of all workers, including those in new forms of employment, and contributes to compensate unequal bargaining power between the parties to the work relationship.

Workers in new forms of employment, including platform workers, regardless of their classification, enjoy the right to freedom of association and collective bargaining, which are part of the ILO's Fundamental Principles and Rights at Work (FPRW) and are protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The 2020 General Survey on employment recalls in this regard that *"the full range of fundamental principles and rights at work are applicable to platform workers in the same way as to all other workers, irrespective of their employment status"* (ILO, 2020).

Nonetheless, ILO supervisory bodies examined various cases in which workers in new forms of employment faced restrictions in the exercise of the right to freedom of association and the right to collective bargaining. This is particularly true of self-employed workers, including those on digital labour platforms that were not (re)classified as employees (ILO, 2016). In certain jurisdictions, including under EU law, the participation of self-employed workers in collective bargaining would amount to concerned practices that are prohibited under competition law. Workers in the platform economy also face practical obstacles to organising and collective bargaining, including their geographic dispersion, the frequent turnover among them, and possible retaliation measures against those who attempt to unionise.

On the legal side, a few initiatives have sought to ensure the effective recognition of these rights for platform workers. This is the case, for instance, in **France**, where the Labour Code was amended in 2016 to provide that platform operators that determine the characteristics of the service provided or the good sold and set its price have a social responsibility towards their workers, including the recognition of workers' right to unionize and to go on strike. An Order on the representation of self-employed platform workers was enacted in 2021. It applies only to platform providing services for the transportation of passengers or the delivery of goods. The first election at the national level, organized by a newly established independent authority, will be held in May 2022. The organization of collective bargaining should be the subject of a separate Order.

Such developments do not always involve a legislative change: they may also proceed from decisions by public authorities. In **Australia**, the Competition and Consumer Commission has made a class exemption permitting independent businesses with annual turnover below a certain threshold to engage in collective bargaining with their suppliers or customers. This enables platform workers to negotiate with platforms as a group, possibly represented by a trade union, over their pay rates and working conditions.

This movement may be strengthened in the future. In the **European Union**, the proposed Directive on improving working conditions in platform work would require digital labour platforms to establish digital communication channels on which platform workers can exchange with each other and be contacted by their representatives, while refraining from accessing or monitoring these communications. In addition, draft guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons were published in December 2021. It would enable certain categories of solo self-employed workers, including those working through digital labour platforms, to negotiate collectively their working conditions (including remuneration). In the **United States**, the proposed Protecting the Right to Organize Act of 2021 would allow certain workers, including in the platform economy, to join a union and bargain collectively. It has passed House of Representatives and is currently pending in the US Senate. A similar initiative was taken in **Argentina**, with the draft Statute of on-demand platform workers.

Although membership appears to remain low overall, there have been instances where platform workers have established organizations to defend their rights, mainly in the rideshare and food delivery sectors. In **Brazil**, for instance, the Sindicato dos Motoristas de Transporte Individual por Aplicativo (SIMTRAPLI) organizes drivers in the platform economy. In certain States, it collaborates with the traditional trade union Central Única dos Trabalhadores (CUT Brazil). In **India**, the All-India Gig Workers Union (AIGWU) seeks to organize platform workers across sectors, with the support of the Centre of Indian

Trade Unions (CITU). In **China**, the All-China Federation of Trade Unions (ACFTU) has issued an opinion calling for increased unionization of workers in new forms of employment. In 2018, it presented a "Work Plan to Promote the Union Membership" for workers in the platform economy (Zhou, 2020). In **Argentina**, the Platform Personnel Association (Asociación de Personal de Plataformas – APP) is the first union representing platform workers. In **Germany**, the IG Metall union is open to self-employed workers since 2016 and has launched several initiatives for the protection of platform workers. In the **United Kingdom**, the Couriers and Logistics Branch of the Independent Workers of Great Britain is very active in defending platform workers, including those who are self-employed.

Platforms have also sometimes established or joined employers' organizations, including "AssoDelivery" in **Italy** or Sharing in **Spain**.

Collective bargaining is not yet developed in most countries, although certain initiatives were successful. One of the first collective agreements in the platform economy was concluded in **Denmark** between the United Federation of Danish Workers (3F) and the platform Hilfr in 2018. One example of recent collective agreement is the sectoral agreement for food delivery concluded in 2021 in **Austria** between the Austrian Transport and Services Union (VIDA) and the Association for Freight Transport in the Austrian Chamber of Commerce. In **South Africa**, the domestic service platform SweepSouth has committed to engage in collective bargaining with a collective body of their workers. In **Australia**, the platform Menulog and the Transport Workers Union (TWU) applied in 2021 for a new On Demand Delivery Services Industry Award.

C. Working conditions

Research has shown that workers in new forms of employment may be exposed to risks of decent work deficits (ILO, 2016). In the case of platform work, certain aspects of working conditions deserve particular attention, in particular remuneration rates, occupational safety and health, and algorithmic management.

Workers engaged in on-location platform work face various types of occupational safety and health risks. For instance, cleaners may be exposed to chemical products, parcel delivery workers face risks related to operating a vehicle and manual handling of parcels. Those who interact with clients may face psychological or physical violence. Workers on online platforms face ergonomic risks and may suffer from musculo-skeletal disorders, while online content reviewers are regularly exposed to violence and illegal content (European Agency for Safety and Health at Work, 2021). During the Covid-19 pandemic, some workers providing location-based services, such as food delivery riders and drivers, pursued their activities even during lockdown periods, running the risk of being exposed to the virus, and did not always receive personal protective equipment from the platform. Some delivery workers also had to work longer hours due to increased demand.

Algorithmic management may also have an important impact on the working conditions of platform workers. It refers to "the use of algorithms i.e. automated systems for supporting or even replacing managerial functions such as monitoring and evaluating work" (European Commission, 2021). First of all, the use of algorithms may contribute to disguise an employment relationship due to an apparent lack of supervision and control by an employer. Algorithms may also be used to determine the allocation of tasks and, consequently the income of the workers concerned. Poor rating through the algorithm may also lead to the deactivation of the worker's account with the platform, in other terms a termination of the work relationship.

In a number of countries, legislation was adopted or amended to improve the working conditions of those in new forms of employment, including workers in the platform economy and, more generally, self-employed workers. Some of these laws only address specific aspects of working conditions.

In **China**, the Ministry of Human Resources and Social Security and seven other authorities issued in 2021 a Guiding Opinion on Protecting Labor Security Rights and Interests of Gig Workers, which seeks to ensure adequate working conditions for platform workers even when they are not in a labour relation. In particular, they should be remunerated at rates no lower than the local minimum wage rate, have reasonable rest arrangements and have their safety and health protected.

In **France**, a 2016 amendment to the Labour Code aims to provide independent workers on digital labour platforms with minimum social rights. Platform operators that determine the characteristics of the service provided or the good sold and set its price have a social responsibility towards their workers. This includes payment for the workers' insurance against work-related accidents, as well as workers' access to professional training. In 2019, the Act on the orientation of mobility introduced a right to refuse tasks without penalty, and a right to disconnect for delivery riders and workers on ride-hailing platforms. The Act also provides that digital labour platforms can (but are not required to) establish a social charter setting out key provisions on working conditions. **Italy** extended in 2019 existing labour protection to all workers whose work is organised by another party, including platforms, even if they are not classified as employees. Under the applicable law, sectoral collective agreements apply to these workers and, in the absence of such an agreement, they benefit from a minimum set or rights.

In the **United States**, a legislative package aimed at protecting the city's food delivery workers was adopted in New York City in 2021. It includes the promulgation of rules establishing a method of determining minimum payments for delivery workers, no later than January 1, 2023. It also regulates, among others, periodicity of payment (at least weekly), bathroom access, and the possibility to specify the maximum distance per trip. In **Portugal**, the "Uber Law" focuses on the limitation of working time. Regardless of the number of platforms they work for, drivers may not ride for more than ten hours per day, and platform operators must implement mechanisms designed to ensure the limit is respected.

In **Chile**, the Labour Code was amended in March 2022 to regulate digital labour platforms. Some labour rights are guaranteed to platform workers who are not classified as employees, including the prohibition of discrimination, minimum remuneration, safety and health training and provision of personal protection equipment, and the right to disconnect. Platforms must also protect workers' personal data, including through a right of access. In **Spain**, the Riders' Law adopted in 2021 introduced a right to "algorithmic transparency" requiring platforms to inform workers' representatives on the functioning of the algorithms used that may affect working conditions, and access to and maintenance of employment, including profiling. As regards the protection of safety and health, the presumption established by that law entails that the legislation on the prevention of occupational risks applies to the platform workers concerned. Platforms are therefore required to conduct risk assessments and implement prevention measures. In addition, the Labour and Social Security Inspectorate (ITSS) developed a Guide on the collaborative economy, aimed explicitly at assisting ITSS inspectors in the monitoring of platform work and the enforcement of applicable legislation.

New regulation may be adopted in the near future at the **European Union** level. The proposed Directive on improved working conditions in platform work would seek to ensure that workers – including these in self-employment, their representatives and labour inspectorates are better informed about the use of automated monitoring and decision-making systems, and the impact they have on working conditions. It would also enable them to use remedies when significant decisions stemming from the use of such systems, such as termination of account, are taken. Digital labour platforms would also be required to consult workers' representatives on substantial changes in work organisation related to the introduction or use of algorithms.

In **Australia**, the Senate Select Committee on Job Security issued in February 2022 its fourth interim report (Australia, 2022), including a recommendation to expand the scope of the Fair Work Act 2009 to encompass all forms of work, and empower the Fair Work Commission to determine fair rates and conditions for all categories of workers, including contractors. It also recommends that options be investigated to empower federal authorities to request data from platforms that employ and contract workers, including as regards pay rates, hours worked, other conditions governing that work, as well as other relevant information needed to appropriately monitor safety, competition, and labour rights.

2. Social protection

A. Securing adequate social protection for workers on digital platforms

While there is no "one-size-fits-all" solution applicable to all national contexts, social protection can successfully be extended to the various categories of workers, including platform workers, by ascertaining the employment status of

these workers in coordination with existing labour law categories and adapting the social protection policy, legal and administrative frameworks in an inclusive manner (ILO, 2021b). Most recently, the Conclusions of the 2021 Recurrent discussion on social protection (social security) recognized that certain groups of workers such as platform workers are often disproportionately affected by lack of coverage and/or inadequate levels of protection, and called on the ILO to actively, and as a matter of urgency, support Member States in providing access to adequate social protection for workers in all types of employment, including self-employment, and in ensuring the preservation and portability of acquired entitlements, in the light of new developments in the world of work.[1]

Due to the fact that, for an important number of platform workers, their work through the platform represents a source of additional income, they often benefit from certain protection against certain life contingencies such as healthcare or old-age security thanks to coverage through the main job or through their spouses. In G20 countries, for example, about half of such workers get their health insurance via the main job or through their spouses; about 20 per cent of survey respondents on online web-based platforms had access to employment injury, unemployment insurance, disability, old-age pension or retirement benefits (ILO, 2021a). This raises questions about a fair distribution of financing responsibilities of social protection between platforms and conventional employers, and considering that gaps in social insurance coverage also create a higher burden on the current and future expenditure of social assistance and poverty alleviation programmes that may become unsustainable in the long run (ILO, 2021c, 2021d).

For those that remain unprotected or partially protected by social protection systems, there is a conjunction of reasons which explain this situation. An important first reason is the fact that national legal frameworks often still lack the needed clarity as to the criteria allowing the correct categorization of the employment status of the various categories of platform workers which most often results in digital platforms considering their users as self-employed or own-account workers. Ensuring the correct classification of employment relationships is an important element of government policies in this respect (ILO and OECD 2020a, 2020b; ILO, ISSA and OECD, 2021). Second, most social protection systems are significantly less protective of self-employed persons in comparison with employees. Self-employed workers are often only entitled to voluntary as opposed to mandatory coverage; they are required to contribute both employee and employer shares of social security contributions; or entitled only to protection against certain but not all life-course contingencies with more restrictive benefit parameters in terms of qualifying conditions, level or duration. Moreover, the fact that self-employed workers in most cases is liable for the entire cost of social security contributions (both employer and worker shares) also participates to the decision of digital platforms to opt for the status of self-employed rather than employee for their workers. Despite a growing recent trend to legislate in this area as indicated above, the predominant number of national legal frameworks are still to establish clear rules of the game with respect to the categorization of work arrangements concluded by digital platforms. As stated by the ILC in 2021, universal social protection entails actions and measures to realize the human right to social security by progressively building and maintaining nationally appropriate social protection systems, so that everyone has access to comprehensive, adequate and sustainable protection over the life cycle, in line with ILO standards. Work on digital labour platforms represents an important opportunity but at the same time also a challenge to ensure that all workers including those in the new or digital economy, also enjoy the human right to social security. In order to be able to protect workers in all forms of employment, social protection systems need to be made more open and adapted so as to be more inclusive of workers in all types of work arrangements, including self-employed workers (ILO 2021f).

B. Concrete measures taken at the regional and national levels to enhance social protection for digital platform workers

Recent years have witnessed enhanced efforts in strengthening social protection for digital platform workers, including by reinforcing the legal frameworks to bring about more clarity for all stakeholders.

[1] https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_806099.pdf

In **Brazil**, mandatorily insured persons include employees as well as self-employed workers. Those not covered mandatorily, can be voluntarily insured. Between 2015 and June 2021, a total of 126 bills dealing with work on digital platforms were presented at the National Congress. Decree No. 9.792/19 and Decree No. 10410/20, which regulate the Urban Mobility Law and Social Security, respectively, establish the driver's duty to carry out, on their own account, their registration and contributions to the social security system in the category of individual taxpayer, being able to opt for the Individual Micro-entrepreneur (MEI), if the driver meets the necessary requirements (FGV, 2021).

In **India**, the recently adopted Code on Social Security (CoSS), 2020 has had the effect of amalgamating nine previously existing social security legislations. The CoSS takes the first step towards the objective of universalising access and making social protection inclusive, i.e. progressively extending the coverage of social security schemes to ultimately include all kinds of workers regardless of the nature of their relationship with the job creator. It provides for the compulsory registration of both gig workers and platform workers on an online portal to avail benefits under the Code which need to be specified by the Central Government (relevant regulations still to be adopted). Recently, new trade unions such as All India Gig Workers Union and Indian Federation of App-based Transport Workers have been established for the purpose of promoting and safeguarding the rights and interests of gig and platform workers. The Supreme Court was recently seized of a public interest litigation seeking a pronouncement on the social security rights of delivery partners of food delivery apps, Zomato and Swiggy, and drivers of tax aggregator apps, such as Ola and Uber (Chambers and partners, 2021).

In **China**, universal healthcare coverage and nearly universal pension insurance coverage has been achieved through separate programmes for both employees and non-salaried urban and rural residents. In 2021, the General Office of the State Council distributed guidelines calling for social security measures adapted to workers engaged in flexible forms of employment, relaxed control on household registration to facilitate workers' participation in social insurance schemes in places of their employment, and accelerated pilots on work injury insurance to further extend the scope of coverage. The 2021 Guiding Opinions on Safeguarding the Labour and Social Security Rights and Interests of Workers engaged in New Forms of Employment issued by the Ministry of Human Resources and Social Security (MoHRSS) calls on platforms to assume the responsibility for guaranteeing the workers' rights, and put forward the relevant policies on a number of areas in terms of enhancing the workers' rights. (SIC, 2022). Also in 2021, the government issued a Notice promoting work injury insurance for express delivery workers and seeking inter alia to optimize the administration of social insurance and to clarify the applicable principles, scope of application as well as the method of calculation of contributions. Most recently, in January 2022, the National Development and Reform Commission issued Opinion on promoting the healthy and sustainable development of the platform economy which attaches equal importance to the development and regulation of the platform economy and aims at establishing a governance system for the platform economy and to strengthen the labour protection of workers in new forms of employment (ILO, 2022).

In **South Africa**, platforms have reportedly mostly classified their workers as independent contractors instead of employees (Daily Maverick, 2020) resulting their workers not benefiting from labour and social protection equivalent to that enjoyed by employees. The fact that certain platforms are registered internationally has lead them to consider themselves as not directly employing workers locally in the country in which they operate (Naidoo, K. 2020).

Platform work has been growing in the **Americas**, particularly in the **United States**, where the main platform companies are located (ILO, 2021b). In August 2020, a California court ruled in favour of Uber and Lyft drivers that the companies reclassify their drivers as employees with benefits (Allyn, 2020). In **Latin America**, the WorkerTech Initiative developed by the Inter-American Development Bank seeks to put technology at the service of platform workers and help them guarantee access to social protection and basic labour rights. Among the specific developments, **Uruguay** is a pioneering and innovative country in the regulation of social security for digital platform workers. By implementing a strategy planned and organized at the State level, it has succeeded in formalizing these new activities through inter-institutional coordination, modification and updating of legal frameworks, making more flexible the processes involved in the identification of qualified personnel, and the recording and comparison of data for follow-up, control and inspection. The main innovative feature is the use of the IT platforms and advanced technologies of these companies to prevent the evasion of taxes and social security contributions, with the involvement of platforms throughout the process, to enable the social security coverage of the platform workers (ISSA, 2017; ILO 2021e; Behrendt et al., 2019).

In **Asia**, the Asia-Pacific Economic Cooperation published the 2021 Guidelines on Providing Social Protection to Digital Platform Workers, which draw upon good practices, experiences, and innovations across various economies in the region, and aim to address the social protection gap for platform workers. To overcome the main barriers faced by various countries such as legal exclusion, cumbersome administrative procedures, financial burden, limited worker representation and lack of awareness, the guidelines have suggested to classify digital platform workers and their rights, establish flexible protection schemes, collaborate with digital platforms to ease collection of contributions, strengthen representation and collective bargaining, and employ behavioural insights to increase outreach (APEC, 2021). In addition to its Employment Injury Scheme for employees, in 2017 **Malaysia** implemented compulsory work injury insurance for the self-employed under the Self-Employment Social Security Act, which covered initially the self-employed in the "Passenger Transport Sector" (encompassing taxi, e-hailing and bus drivers) and extended coverage to 19 other sectors including online business (Perkeso.gov.my). **Indonesia** has implemented several strategies to extend social protection to digital platform workers, including the encouragement of digital platform workers to apply for non-wage earner scheme to be eligible for work injury and death benefit, extension of mandatory social insurance coverage to the self-employed, and implementation of new unemployment insurance for all workers who have been covered under the existing pension and health insurance schemes.

At the **European level**, securing social protection for platform workers has been part of a series of major policy initiatives over the last decade. Following the adoption of the Recommendation of the Council Recommendation on access to social protection for workers and the self-employed[2] in 2019, the European Commission (EC) proposed in 2021 a Directive that seeks to ensure that people working through digital labour platforms are granted the legal employment status that corresponds to their actual work arrangements by establishing a list of criteria – meeting two of these criteria leads to the classification as "employee" with associated labour and social security rights.

For cross-border situations, the EC seeks to improve enforcement and traceability of platform work by asking platforms to declare the work in the country where it is performed and make available to national authorities the relevant information about the people who work through them as well as their terms and conditions. A first approach is to include platform workers in the social security regime for employees, either through the application of a legal presumption or by assimilation, such as **Spain** for bicycle riders. In **Denmark,** the classification issues are left to the social partners, accepting the risk that the national (or European) competition authorities might intervene to challenge a collective agreement (Daugareilh, 2021). In **France**, the approach is to support access to private schemes providing insurance coverage, notably for employment injuries. In **Belgium**, activities conducted via platforms which do not generate a minimum level of income are not generating social protection entitlements.

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019H1115(01)&from=EN

3. Discussion issues

The examples mentioned above are indicative of possible approaches to the governance of new forms of employment, including platform work, in view of the protection of labour and social rights for the workers concerned. Discussion could address a range of issues and seek to identify relevant solutions for a human-centred approach to the future of work.

1. Improving labour protection for platform workers

i. What measures would be relevant to adequately regulate the employment relationship at the national level and avoid the misclassification of workers in new forms of employment?

ii. What legal and practical measures would enable the effective recognition of freedom of association and the right to collective bargaining for all workers in new forms of employment regardless of their status in employment?

iii. How could working conditions be improved for workers in new forms of employment while ensuring a level playing field for employers? In particular, how to ensure fair remuneration in line with the "equal pay for work of equal value" principle? How can working time limits be set for workers engaged in multiple work arrangements, including those active on several digital labour platforms? What measures can be implemented to prevent physical and psychosocial risks for workers in new forms of employment, including those who are genuinely self-employed? What would be the most efficient way to protect workers' personal data and ensure that algorithms used for the management of workers abide by transparency and fairness standards?

iv. How to address legal challenges deriving from the development of new forms of employment, in particular on web-based digital labour platforms that involve cross-borders transactions? How to solve conflicts of laws, avoid forum shopping and ensure legal compliance when the platform is located in one country, the client in a different country, and workers spread throughout the world?

2. Improving social protection for platform workers

i. What is the social protection situation of digital platform workers? Are they covered for the different risks and contingencies, and if yes, through which mechanisms? Where are the remaining coverage gaps, and what measures could be taken to close them?

ii. To what extent are digital platform workers covered through the general contributory and non-contributory social protection mechanisms that cover also other categories of workers also used for guaranteeing social protection of platform workers, and to what extent are they covered through special rules or mechanisms?? Which barriers represent the most serious obstacles in the extension of social protection to digital platform workers?

iii. Which measures and circumstances have proven determinant in securing access to adequate social protection for workers in the various types of platform work, including self-employed workers?

iv. Do employees and self-employed platform workers enjoy comparable terms as regards access and level to social protection? If not, which are the most notable differences (mandatory versus voluntary protection; affiliation to mainstream public social protection schemes or contracting private insurance companies, etc)? Which could be the lessons learnt for developing effective mechanisms to extend social protection to platform workers?

v. Are digital platforms required to participate in one way or another to the financing of the social protection of digital platform workers regardless of their employment status? For categories of workers other than employees, how, if at

all, do digital platforms participate to the financing of the social protection of their dependent or independent contractors?

vi. What measures allow best ensuring the preservation and portability of acquired social security entitlements as well as the maintenance of rights in course of acquisition of platform workers in case of change of employment status? In the case of workers with multiple employers, or working for different platforms, what are the mechanisms to ensure adequate social protection coverage and a fair sharing of financing responsibilities?

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