

Maija Mattila:

Work and Workers' Rights in the Platform Economy – From Problems to Solutions

English summary

The report is about working in the platform economy. It offers a new, strict definition for platform work, summons quantitative and qualitative data of the extent of platform-mediated work and workers, outlines problems related to working via platforms, and proposes (regulatory) solutions to these problems, particularly in the Finnish context.

Definitions

Platform economy is understood as comprising of digital platforms that connect third parties (e.g. Facebook, Airbnb). In the world of work, platforms facilitate supply and demand of workforce. The third parties are clients (individuals or firms) and workers. Within these very broad frames, there is a wide variety of platforms, ways of working and business models.

The report suggests a distinction between platform-mediated work (*alustavälitteinen työ* in Finnish) and platform work (*alustatyö*). The term platform-mediated work is used for work that is usually referred to as simply platform work. Platform-mediated work is understood as "a form of employment that uses an online platform to enable organisations or individuals to access other organisations or individuals to solve problems or to provide services in exchange for payment" (Eurofound 2018a, 9; Eurofound's definition for platform work is here used for platform-mediated work). The definition encompasses participation of three parties: platform, client and worker/service-provider. Platform-mediated work is about doing individual tasks or solving particular problems, the work is outsourced, and done on-demand. This definition is about work, and thus does not entail selling goods on online platforms, renting out rooms or apartments, nor financial services. Activities that are done for free (charity work, networking, social media, couch surfing) are also excluded. (Eurofound 2018a, 9.)

The term platform work is here used in a narrower sense than elsewhere. Here it refers to a new kind of working environment where a platform company (1) splits jobs into tasks, (2) controls the work performance (through technology), and (3) outsources the work to individuals who are not employees. It is argued that this strict definition of platform work reveals the logic in which

platform work changes the world of work: despite the control, job/tasks are outsourced to individuals. Platform workers have neither worker's rights nor the freedom of entrepreneurs.

To clarify, platform-mediated work can be almost any kind of work that is *found* through a platform and in which the platform somehow organizes the relationship between a client and a service-provider, usually by transferring the payment and creating trust between the third parties through rating systems. Platform-mediated work can be done as an employee or as a genuine freelancer, the definition implies neither. Platform work, on the contrary, is a sub-type of platform-mediated work. Platform work is mediated through a platform, but also controlled by it, and despite this control, the work is not done as an employee.

The difference between platform-mediated work and platform work is implied in the branch of business in which each platform firm operates. For example, the Finnish firm Treamer mediates workforce for gig work in various branches. Taking care of employer responsibilities is a part of its service: workers are either employed by clients or by Treamer. As such, Treamer is an employment agency and the service it provides is human resources service. Treamer mediates platform-mediated work rather than platform work. Unlike in the case of platform-mediated work, those companies that provide platform work are not human resources companies. Instead, they provide food delivery, cleaning, house work, etc. service(s). In the core of these platform companies' business model is splitting work into individual tasks and outsourcing them to individuals.

Platform-mediated work: extent and workers

The report combines information on the extent of platform-mediated work from various sources (see Eurofound 2018a & 2018b; Fabo et al. 2016; Flash Eurobarometer 438 2016; Garben 2017; Goudin 2017; Pesole et al. 2018; Huws et al. 2017; Huws et al. 2019, Farrell & Greig 2016; Farrell et al. 2018; Statistics Finland 2018a). It is noted that definitions for platform work (here: platform-mediated work) vary, as well as the wordings of survey questions. People using apps either as customers or service-providers might not recognize the difference between a traditional work-mediating website from an online platform mediating workforce. Some surveys list examples of platforms and ask respondents to identify whether they have used "such" platforms to search job opportunities. Depending on how respondents understand these examples impacts the outcomes of the research. This makes the results of survey researches difficult to compare.

Moreover, even if the possibility of misunderstanding is minimized, surveys use different definitions for platform(-mediated) work. E.g. Pesole et al. (2018) define platform(-mediated) work as work in which a platform brings the client and worker together and payment is mediated through the platform. On the contrary, Huws et al. (2017 & 2019) do not have a similar restriction concerning the mediating of the payment. Table 1. illustrates the varying results from these survey researches.

Table 1. The extent of platform-mediated work in 16 European countries, comparison of two survey researches.

	Percentage of adults who have ever done platform-mediated work		Percentage of adults who have done platform work at least monthly		Percentage of adults who have done platform-mediated work at least 10 hours per week	Percentage of adults who have earned at least one fourth of their income through platforms	Percentage of adults who have earned at least half of their income through platforms		Percentage of those who have earned at least half of their income through platforms of those ever done platform-mediated work
	Pesole*	Huws**	Pesole* Percentage of adults	Huws** Percentage of respondents	Pesole*	Pesole*	Pesole*	Huws**	Huws**
UK	12,0	19	9,9	6	6,7	8,5	4,3	2,7	27
Spain	11,6	(-)	9,4	(-)	6,6	6,1	2,0	(-)	(-)
Germany	10,4	12	8,1	8	6,6	6,5	2,5	2,5	30
The Netherlands	9,7	9	8,7	6	5,4	6,5	2,9	1,6	14
Portugal	10,6	(-)	7,1	(-)	6,0	4,2	1,6	(-)	(-)
Italy	8,9	22	7,1	15	5,4	5,4	1,8	5,1	20
Lithuania	9,1	(-)	5,9	(-)	5,6	5,6	1,6	(-)	(-)
Romania	8,1	(-)	6,4	(-)	4,5	3,8	0,8	(-)	(-)
France	7,0	(-)	5,9	(-)	4,2	4,8	1,8	(-)	(-)
Croatia	8,1	(-)	5,2	(-)	5,2	3,0	1,0	(-)	(-)
Sweden	7,2	10	5,3	6	3,5	4,6	1,6	2,7	22
Hungary	6,7	(-)	5,0	(-)	4,1	3,5	1,3	(-)	(-)
Slovakia	6,9	(-)	5,1	(-)	2,7	3,7	0,9	(-)	(-)
Finland	6,0	15,0	4,1	9,5	2,9	3,3	0,6	2,8	25,5
Switzerland	(-)	18	(-)	13	(-)	(-)	(-)	3,5	12
Austria	(-)	19	(-)	13	(-)	(-)	(-)	2,3	11
All	9,7	(-)	7,7	(-)	5,6	6,0	2,3	(-)	(-)

*Pesole et al. 2018

**Huws et al. 2017; Huws et al. 2019

In order to acquire information not only about the use of technology but about the structural change in the world of work, the report suggests that a strict definition of platform work to be applied in the future researches. The definition entails five elements, defining platform work (not simply platform-mediated work) as work

1. that comprises of three parties: platform, client and worker;
2. that requires logging into an electronical system on a computer or a mobile device;
3. in which payment is mediated through the platform;
4. in which the platform company controls the work performance or allows the client to do so; and
5. which is done as independent contractors rather than employees.

If all these criteria are not met, it is suggested that research is more about the use of technology than about the changing nature of how work is organized, particularly from the workers' rights perspective.

As for the workers in the platform economy, the report indicates based on various researches that people who work through platforms (platform-mediated work) are more likely to be younger than older, male than female, and more educated than less educated (Flash Eurobarometer 438 2016; Huws et al. 2017; Berg 2016; Farrell & Greig 2016; Pajarinen et al. 2018; Eurofound 2018b; Hall & Krueger 2016; Alsos et al. 2017). The median overall income of those who have worked through platforms is lower than for those who have not done platform-mediated work, Spain excluded (DG IPOL 2017, 49).

In categorizing those who have done platform-mediated work, the report refers to a research done for the European Parliament's Committee on Employment and Social Affairs (EMPL

Committee). In the report, platform-mediated workers were divided into three clusters based on the number of jobs, earlier unemployment, the share of income earned through platforms compared to the overall income, and the difficulties in paying bills. Based on these four dimensions, platform-mediated workers were categorized into three clusters: moderate beneficiaries, random surfers, and platform-dependent workers. (DG IPOL 2017, 60.) The moderate beneficiaries and random surfers typically did not have difficulties in paying bills, and 95 percent of random surfers and 75 percent of moderate beneficiaries had another job. Platform-dependent workers, who constituted one fourth of all platform-mediated workers, were a considerably different group compared to the other two groups. For platform-dependent workers, the main income came from working through platforms and they typically did not have another job. They had not been unemployed, but they had difficulties in paying bills. Their overall income was lower than for moderate beneficiaries and random surfers. (Ibid, 60–62.) The report suggests that, while platform companies tend to highlight the 'extra money' that can be earned through platforms, regulation of platform-mediated work and platform work should be planned so that the platform-dependent workers will not fall through the safety net of the society.

Challenges for the workers' rights

Companies that mediate work through their platforms often advertise themselves to workers by alluding to freedom and flexibility. Indeed, some in the "future of work" (*työn murros* in Finnish) discourse claim that the world of work is inevitably moving away from nine-to-five work and towards freelancing. A crucial question in relation to platform-mediated work is whether work done as a freelancer (independent contractor) is truly free and flexible.

The level of freedom and flexibility is relevant in determining the employee status of workers. In the Finnish legislation, direction and supervision are relevant features of an employment contract. An employee status guarantees workers sufficient social protection such as paid sick leave, holidays, earnings-related social benefits, and social insurances paid for by the employer. Employees also have the right to collectively negotiate the terms of work. If work is not done as an employee, it is done (in Finland) as an entrepreneur and hence without the right to the standard social protection of workers and collective bargaining. Therefore it is relevant to ask whether "freelancers" really are free and categorized correctly from a legal perspective.

Drawing a line between a status as an employee and an entrepreneur might not be that simple. It is easiest in cases where platform-mediated work is done as an employee. Supposedly, in these cases neither of the parties, the client nor the worker, has an incentive to contest this categorization.

The most court cases around the world have been filed for platform work that is done on-demand via apps without an employment contract (see Beltran de Heredia Ruiz 2018). The report suggests that platform work is by definition not free and flexible, as the platform exercises control over its non-employee workers. Hence these workers are falsely categorized, bogus freelancers.

Between these quite clear cases there is a wide variety of platform-mediated work that is not necessarily easily categorized. E.g. Upwork is a platform for freelancers doing creative or expert work. In principle, it looks like genuinely free and flexible, but the platform does have means to control the workers through periodical screenshots.

The overarching question, then, is as to which criteria to use when categorizing platform-mediated workers. European Commission has proposed that each case should be decided on individual basis. The evaluation would particularly focus on the existence of direction by the platform over the workers, on which party decides working terms and conditions, including remuneration, and on the nature of work. More closely, according to the European Commission, three criteria are essential in determining the employee status:

1. The platform decides the price of the service;
2. The platform sets other criteria for the service in addition to the price; and
3. The platform owns key assets used for providing the service. (European Commission 2016c.)

The first two criteria seem clear-cut, but the third is rather circular. The fact that a bicycle courier owns the bicycle s/he uses for delivering meals is hardly an evidence of the free nature of work, but rather a sign of outsourcing risks to workers.

The British Association of Independent Professionals and the Self Employed (IPSE) has proposed a matrix for assessing whether work should be done as an employee or as a self-employed person. The matrix helps in assessing four dimensions: autonomy, control of process and working environment, business risk, and level of integration in client business. Each dimension is weighed to reflect the nature of work. Under each dimension questions are asked and scored according to answers. The overall score points toward employment or genuine self-employment, or their likelihood. (IPSE 2017.)

While the matrix might seem like a useful tool at first sight, some of the questions are difficult to answer unambiguously. Do Upwork's screenshots prove lack of autonomy for the service-provider? If there is only one working method available (which is the case in click work), does it mean that the platform controls the way work is performed? What if the service-provider has in principle the possibility to work via several platforms but her or his other accounts have been deactivated and the service-provider de facto only has access to this one platform?

Many issues regarding freelancers' social protection are similar regardless of whether work has been found online or otherwise. However, there are problems that are confined to working via or on platforms. Many of these problems have to do with alternating freedom and control, and manifested in the way technology is used. To illustrate, while the platform(-mediated) worker might be freer than before to choose his or her working hours, the work is very closely monitored with the help of technology. Workers might also be instructed to the smallest detail as to how to perform tasks. Rating systems, which are emblematic to the platform economy, might have a crucial impact on a worker's career but there are few ways to control that they are fair and free of prejudice. If a worker is prohibited from accessing the platform, there might not be many ways for

the worker to contradict the decision. Platform(-mediated) work sometimes also includes "invisible work" which consists of waiting for gigs that pay well. (Eurofound 2018a; Lehdonvirta 2018; Miller 2015; Pringle 2018.)

Proposed solutions from a regulatory perspective

The report suggests that a single most effective way to improve platform workers' (strict definition, see above) social protection would be to categorize them as employees. Rather than to list detailed criteria for employment status in legislation, it is better to have a general description and do case-by-case assessments. The Finnish legislation does not need to be revised, as the current definition of an employment status – work done "under the direction and supervision" of the would-be-employer – is sufficient enough a description for determining the employment status of platform workers. Nonetheless, the problem is that there is no efficient enforcement of this stipulation, as individual cases have to be taken into court. This is costly and decisions are made only afterwards. So far there has not been court cases in Finland regarding platform workers' employment status. Therefore, it is suggested that there should be a body that would give binding decisions about employment status upon request.

Ensuring the correct employment status helps platform workers but brings no alleviation for those who are genuine freelancers in the platform economy. Hence, in order to enhance the social protection of all platform-mediated workers, the overall situation of the self-employed should be ameliorated. The self-employed should be allowed to collectively bargain their terms of work. Being able to negotiate or join existing collective agreements would allow the self-employed to enjoy paid holidays, sick leaves, and minimum wages. However, it is acknowledged that in the times of global competition, even the right to collective bargaining might not help workers in the global market.

While many problems individuals face in the platform economy can be solved, the funding of the welfare state remains a big issue. In Finland, the social security system is collectively funded by employers and employees and through taxation. In 2016, 47.9 percent came from taxation, the employers paid for 33.8 percent, and the employees for 13.3 percent. In the research report for the European Parliament's EMPL Committee it is suggested that social protection systems should move from contribution-based systems to tax-based systems (DG IPOL 2017, 104). Nevertheless, it is hard to see how this could be done in Finland, as it would mean either higher taxes or cuts to social security, or both. Raising taxes is always difficult in the environment of global competition. Hence, not only from an individual's perspective but also from the perspective of the welfare state's funding, enforcing the employment status of platform workers is important.

As for the social protection of freelancers, getting earnings-related benefits should be easier than today. Any work should cause to accumulate social security, regardless of whether work is done as an employee or not. All benefits should be portable and underinsuring oneself should be made impossible. Many problems would be solved also simply by providing better information and guidance for freelancers about their right to social protection.

The research report for the EMPL Committee also suggests that benefits should be universal. This suggestion can be supported if it means that benefits are accessible to all under reasonable terms. Universal basic income (UBI) is a much-discussed proposal in Finland at the moment. The report takes a critical stance toward the UBI, because it might lead to workers not claiming living wages. In this case, the increase in productivity would not manifest in wages, which would ultimately lead to diminishing income tax revenues. This would further lead to dismantling of the welfare state.

To conclude, freedom in the world of work might be increasing, at least mildly. However, the fact that more jobs are being done as self-employed than 20 years ago is not in itself a proof of increased freedom. It might also be a proof of increased insecurity of workers. It is therefore essential not to use the discourse of the future of work as a pretext to create more insecurity in a situation where the subordinate position of a worker vis-à-vis employer has not changed. Increasing freedom in the world of work is desirable but seems unlikely at the moment.

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