Digital Age

Employment and working conditions of selected types of platform work

National context analysis
Poland
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Introduction
A recent development on European labour markets, platform work, has attracted significant attention in academic and policy circles (Eurofound, 2015). Still, much of the available evidence is anecdotal, and there is limited understanding of the implications of platform work for the labour market and for the workers.

There is no uniform definition for platform work or related concepts in Poland. For this report, platform work takes its definition from Eurofound (2018) as follows:

Platform work refers to an employment form that uses an online platform to enable organisations or individuals (workers) to access other organisations or individuals (clients) to solve specific problems or to provide specific services in exchange for payment.

Thus, the research focus is on online platforms matching supply and demand for paid labour. The main features of platform work, as understood in this report, are: Paid work organised through online platforms; three parties involved, including the online platform, client and worker; aim is to conduct specific tasks or solve specific problems; form of outsourcing/contracting out; break-down of ‘jobs’ into ‘tasks’; on-demand services.

This working paper is the country contribution for Poland for Eurofound’s research project ‘Digital age: Employment and working conditions of selected types of platform work’. It explores the context of platform work in Poland in terms of the applicable regulatory frameworks as well as the organisation and representation of platform workers in the country. The analysis is based on desk research and five semi-structured interviews with experts from academia (1), policymakers (1) and representatives of employee and employer organisations (3) between December 2017 and January 2018.

Overview
The concept of platform work is not well known in Poland, and it is not clear when it became a force in the labour market. Platform work in Poland is commonly associated or rather confused with work performed remotely. As a result, platform work is perceived as a new form of organising the outsourcing of tasks which would normally be delegated to a single employee to a large pool of ‘virtual workers’ (Eurofound, 2015). Although not widely researched, platform work may become an important issue for the national economy, as the labour market is undergoing changes in relation to digitalisation and automation, and Poland is emerging as a leading market for outsourcing information systems and technologies.

No official or formal definition exists for platform work in Poland. There is some discussion on crowdsourcing, which is understood as online intermediation of paid or unpaid services. Generally, relevant literature discusses broader trends including ‘freelancing’ and ‘independent work’, often used as a synonym for platform work. In the Polish context, independent work is characterised by three main features. First, independent work entails a high degree of autonomy; independent workers have a high degree of control and flexibility in determining their workload and in their choice of assignments. They can decide which assignments to accept based on criteria such as the fee, the desirability of the client, or the timing. Second, independent work implies payment by task, assignment, or sale. Unlike salaried employees, independent workers are not covered for time not spent working in case of for example sickness or leave. Third, independent work involves short-term relationships between worker and customer. Independent earners perform short-term assignments, such as

Disclaimer: This working paper has not been subject to the full Eurofound evaluation, editorial and publication process.
giving someone a ride, designing a website, treating a patient, or working on a legal case (McKinsey Global Institute, 2016).

**Variety of platforms**

Polish platform work mostly takes place through ‘freelancing’ platforms. One of the largest platforms for freelancers is Freelanceria. It offers a number of opportunities for freelance assignments, including tasks in marketing, graphic design, photography, programming, web design, translation, writing and editing, and training and coaching. Freelancer.pl is another example of a freelance platform offering intermediation for a large variety of services. Other examples include Oferia, which offers various online and offline manual and conceptual tasks, and Sir Local, which focuses on offline manual tasks. However, none of these platforms publishes user statistics, so it is difficult to estimate the scale of their work. Furthermore, there are more specialised, country-specific platforms. These represent different segments of platform work, focused either on so-called complex, experience-based platform work, or open-ended, idea generating crowdsourcing (Malinowski, 2014). Examples of such platforms include MillionYou, TakeTask, and UniCloud. MillionYou appears to be the first labour platform in Poland. According to Ernst & Young, which has recently taken over this platform, it is aimed at engaging communities in generating innovative ideas, co-creating content, and conducting campaigns with consumer participation. It is the only existing platform in Poland that could be classified as an ‘innovation’ platform. TakeTask is a business tool for performing a variety of tasks (for example, surveys, audits, sales) anywhere in the world by employees or external communities, customers, business partners. The most common tasks include in-store audits, mystery shopping, and customer experience checks. WP Zlecenia intermediates micro tasks for WordPress specialists. NapiszePrace focuses on writing final and diploma papers for students.

There are also several transportation (both taxi services and small parcel delivery) platforms including JadeZabiore, BlaBlaCar, MyTaxi, Taxify, BananaCar. Lastly, Uber is also active in Poland. In fact, Poland is Uber’s third largest EU market (The Krakow Post, 2017). The platform is mostly active in the urban centres of Poland such as Krakow and Warsaw.

**Spread of platform work**

According to Flash Eurobarometer (2016) 15% of surveyed Poles have used ‘collaborative platforms’ (as clients or workers), including 4% of one-time users, 7% of occasional users (once every few months) and 4% of regular users (at least once a month). Apart from this survey, no reliable national level data on platform work in Poland are available as of early 2018. However, a few noteworthy sources provide some indication of the level of platform work. According to published data of the Central Statistical Office, 1,087,000 Poles (6.9% of the total number of employed people) carried out jobs considered to be ‘atypical employment’ in 2014 (Central Statistical Office, 2016). Out of the total number of employees carrying out such jobs, 700,000 people (4.4% of the total number of employed people) performed such work as their main work. According to Eurostat data, at the end of 2016 there were some 2,809,000 self-employed people in Poland. It is likely that a share of these self-employed people as well as people in ‘atypical employment’ situations do perform platform work.

One study reported the number of freelance, remote and portfolio-based work (work based on free choice of assignments) in a total number of job openings posted by major work intermediaries (Gumtree and DeLab, 2017). This may entail some work classified as platform work. In any case, the study seems to indicate that most Poles are not interested in such work. Only 6% of a representative sample of adult Poles would consider performing such ‘task-based work’ (not connected to any given vocation) (Gumtree and DeLab, 2017). The same study, however, found that 35% of Polish students would be interested in performing task-
based work, which indicates that younger Poles may be significantly more likely to consider platform work.

A 2016 study (Społeczność Ekonomia Współpracy, 2016) revealed that platforms (such as TakeTask, Freelancer.com) are known by 26.7% of surveyed Poles. This modest figure is probably overestimated, as the 1,294 surveyed individuals were more likely to be internet users than the average Pole. Only 7.1% of interviewees indicated having used such services, as either clients or workers. This lags much behind services like car sharing – of which 80.6% of interviewees have heard of and 20.1% have used it. In the case of Uber, 45.0% have heard of the platform and 4.3% have used it as a client. The discrepancy between usage of Uber and car sharing indicates that other transportation platforms are active in Poland.

**Debate on the labour market impact of platform work**

Generally, there is very little evidence of a discussion (political or academic) on the advantages and disadvantages of platform work. Notable academic discussions focus on the negative perspective – stating that the platforms use legal gaps to treat workers as independent contractors rather than employees, merely providing intermediation for services (DELab UW, 2016). However, the views on the prevalence of advantages and disadvantages of platform work are differentiated according to stakeholders. Interviewees representing employers and public administration indicated platform work as something between ‘opportunity and necessity’, rather than exclusively a threat undermining the labour market relations and stability. Some discussions of platform work as a threat to working conditions do appear in newspapers. These articles mainly concern Uber’s operations. However, these discussions are infrequent and do not seem to spark much interest in the media or among the public. For these reasons, discussions about platform work in public media are virtually non-existent in Poland. At the same time, it does not mean that the phenomenon is non-existent. Rather, it shows that stakeholders perceive more pressing issues regarding the labour market and employment area, which are more prominent topics of public interest. It also shows that, for the general public, the threats and opportunities of platform work are not widely recognised.

There are various explanations for the low salience of platform work in Poland. A few reasons include the recent emergence of platform work in Poland, and the generally limited knowledge of platform work issues among Poles. Still, the phenomenon of platform work will likely gain momentum in the years to come, as the structure of the economy is converging with more developed countries. As of early 2018, the issue of platform work is neither well researched, nor a major phenomenon. The reason for that is the different starting point and labour relations context, making the discussions about platform work less prevalent for most national-level stakeholders. Other issues in relation to working conditions and labour relations, like limiting the scale of flexible (mostly civil law) contracts or minimum (monthly and hourly) wage, dominate the discussions. As confirmed by the interviewees representing employer organisations, trade unions, public administration, and academia, the phenomenon of platform work has been noted by the stakeholders, but it does not constitute a major focus as of early 2018.

**Regulatory frameworks**

Poland has a civil law system. Thus, its regulatory framework is based on written law including the federal constitution, individual law articles, ratified international agreements, special regulations, and regional and local law. There are no specific regulations for platform work. This has been confirmed by the interviewees as well as desk research (Klimaszewska and Brzozowski, 2017). As a result, existing frameworks must be applied. The following
discussion will focus on employment and work related issues. While other legal areas (such as data protection, intellectual property rights or consumer protection and liability issues, for example) are of relevance for platform work, too, their analysis would go beyond the scope of this working paper.

**Employment law**

The Polish labour law system consists of the rules and principles defined in the Constitution of 1997, the Labour Code of 26 June 1974 (with amendments), as well as a number of other national legal acts regulating specific aspects of employment. The labour code, as the main act regulating the area of employment relationships, contains the overarching principles which regulate relations between employer and employee. Certain regulations are also governed by ordinances, such as the minimum wage regulation applying to a specific calendar year.

Minimum wage depends on whether work is performed on the basis of an employment or civil law contract. For the employment contracts (under the labour code), the minimum wage is set by government ordinance. The monthly minimum gross wage for an employee working under an employment contract in Poland is PLN 2,100 (€490 as of 14 June 2018) as of 1 January 2018. For the civil law contracts, the minimum hourly wage mechanism was recently introduced. From 1 January 2018, remuneration for contractors providing services on the basis of mandate contracts and service contracts is not less than PLN 13.7 (€3) per working hour, which slightly exceeds the level of the minimum wage for employees. In the contract, parties should determine the method for confirming the number of hours of the services provided. Any breach of this is punishable by a fine of PLN 1,000 to PLN 30,000 (€233–€7,009). Thus, work performed in Poland on the basis of civil law or employment contracts is subject to minimum wage, which would include respective platform workers.

Employees are subject to additional laws, as discussed below. All of these laws can be applicable to platform work, depending on the employment relationship between platform and its workers. However, no examples of Polish platform workers with an employment contract have been found.

An employment contract can be signed for a trial period, an indefinite period, or fixed term. In general, all labour law rules apply to open-ended employment contracts. In addition, specific regulations apply to fixed-term employment contracts and trial period contracts. An employment contract for a trial period can be entered into for no more than three months in order to check the employee’s qualifications and whether they can be employed to carry out a specific type of work. Concluding another trial period contract with the same employee can only be done in two cases, namely the employee is to be employed in order to carry out a different type of work, or at least three years after termination or expiry of a previous employment contract if the employee is to be employed to carry out the same type of work.

The labour code limits the number of fixed-term employment contracts. One employer may hire an employee with a maximum of three fixed-term contracts, which cannot exceed 33 months combined. The limit concerns the whole time of professional work and does not reset, even after a long break between subsequent periods of employment by the same company. After exceeding this number of contracts, or time allowed, the contract automatically
becomes an indefinite employment contract.¹ These restrictions do not apply to employment contracts concluded for a fixed term in four cases: first, in order to replace an employee during justified absence from work; second, in order to carry out casual or seasonal work; third, in order to carry out work for a term of office; and fourth, if the employer gives objective reasons attributable to the employee.

In case of dismissal, employees are entitled to a notice period, and in some cases also to severance pay². The length of the notice period depends on the type of contract and the position held by the employee. For example, the notice period for a trial employment contract is three days if the contract is concluded for two weeks or less, or one week if the contract is concluded for a period between two weeks and three months. Longer notice periods are required for fixed-term and open-ended employment contracts, ranging from two weeks to three months, depending on the duration of employment.

In addition to the standard employment contract discussed above, there are also contracts for temporary agency workers. Temporary agency workers conclude a contract with a temporary employment agency, which are fixed-term employment contracts subject to the labour code. The contracts can also be civil law contracts, however only if work is performed without an official employment relationship.³ The activity of a temporary employment agency is defined by the Act of 9 July 2013 on the employment of temporary employees.⁴ Employment contracts for seasonal or casual work are also subject to all regulations concerning regular employment contracts. For short-term tasks – like for example some manual tasks offered by platforms - it would also be possible to employ temporary agency workers. This would ensure that they are covered by the labour code provisions and have an employee status. There are, however, no data to verify the use of such working relationship in the context of platform work.

Labour law provisions relate to all employment-type relationships in Poland, but do not specifically cover platform work. If the incidence of platform work increases in the future, further developments to cover the specific elements of platform work in the field of labour law would be necessary.

**Social protection**

Until recently, the Polish labour market was characterised by a relatively high level of flexibility, especially in relation to the wide use of flexible and short-term employment forms, with no or only partial social security coverage. Recent changes aimed to increase the social security of workers, oblige contractors under some civil law contracts to pay social security contributions, and impose a minimum hourly wage for civil law contractors. Contributions for social protection depend on the employment status, and are thus different for employees, self-

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² Severance pay depends on the size of the employer, as it applies to entities employing at least 20 employees, and the scale of the dismissal (in case of collective dismissals).

³ According to article 22 of the labour code.

⁴ Journal of Laws of 2013, No. 166, item 1608 with further amendments.
employed, and contractors. As under the current legal framework platform workers could be employed in all of these forms, their social protection provisions depend on their actual status. For employment contracts, employer contributions and social security coverage is based on the percentage premium system. Employers and employees are each responsible for a contribution of 9.76% of gross income towards pension insurance. Disability insurance is covered by the employer at a rate of 6.5%, and a rate of 1.5% for employees. Accident insurance, labour fund contributions5, and guaranteed employee benefit funds6 are exclusively covered by the employer. The employee is exclusively responsible for sickness insurance.

For the self-employed, the social contributions are based on quota premiums, defined annually by the Social Security Institution (ZUS). This quota is calculated as 60% of the forecasted average wage in the economy. Due to the quota approach, the elements of the social security contributions are not calculated as a percentage of the income, but they are defined for each specific strand (pension, disability, sickness, accident, health and labour fund). Currently (from 1 April 2018 to 31 December 2018) the fixed contribution amounts to PLN 1,228.70 (€287). This defined contribution approach means that for the low-earning self-employed (with earnings above the minimum wage and below the average wage) the social contribution paid is higher than for employed individuals. In the case of self-employed, the worker alone is responsible for paying social insurance contributions. This lowers the cost of employment on the client’s side, which makes self-employed attractive platform workers.

Contractors working with civil law agreements have specific social security obligations. Those working with an umowa zlecenia (mandate contract) and umowa o dzieło (specific-task contract) are distinct, and a few factors must be considered. If a person who works under a civil law contract is simultaneously employed under an employment contract by the same entity, the employer has an absolute obligation to pay contributions for both contracts. However, if such a person has already paid contributions through another employer, or if he or she is a student (up to 26 years old), there is no obligation for the employer to pay contributions for a specific-task contract. Such a contractor can voluntarily opt to pay retirement and pension contributions. If a mandate contract was signed with an employer’s own employee, such a contract obligatorily requires full insurance, irrespective of any other entitlements to insurance7. If a contractor is covered by obligatory retirement and pension insurance from other sources, and the mandate contract is not signed with his or her employer, the person is subject to obligatory accident and health insurance, as well as paying labour fund and Guaranteed Employee Benefits Fund contributions (with the rates due as described above for an employment contract). Otherwise health insurance is voluntary. It is therefore highly dependent on the actual status of the worker – including platform worker – if the

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5 The Labour Fund is a state special purpose fund administered by the Minister of Family, Labour and Social Policy. The funds accumulated through it are used particularly for the activation of the unemployed.

6 The Guaranteed Employee Benefit Fund (FGŚP) is a special purpose fund that was created to protect employees against loss of remuneration if the employer became insolvent. This means that if an employer loses financial liquidity and is unable to pay wages to employees, their claims will be met by funds from this fund.

7 Only employees on maternity and parental leave – who can voluntarily pay health contributions - are exempt from the obligation.
Contributions paid in the context of civil-law contracts are equal or lower than those paid in the context of regular employment contracts.

In Poland, platform work can be undertaken under employment (labour law) contracts, civil law contracts or as a self-employed person. Labour law, as well as self-employment have always been covered with adequate social protection provisions. Recent changes in the labour law resulted in narrowing the previous gap between labour law and civil law employment contracts, allowing for a better social protection of the latter. Due to these changes the social protection coverage for the majority of platform work performed under the various types of contracts can be assessed to be adequate.

**Health and safety**

Health and safety law at work in Poland is guaranteed by the Constitution and implemented by the labour code. Because of its implementation by the labour code, mostly employees are subject to health and safety laws, although limited health and safety provisions also apply to the self-employed and contractors. Article 304 of the labour code imposes on the self-employed and contractors the need to know the regulations and principles of occupational health and safety, to take part in training and instruction in this field, as well as the obligation to pass initial, periodic and control medical examinations. Health and safety training and medical examinations should be provided by a client cooperating with such a person (self-employed or employed on the basis of a civil law contract, as described above). The client/employer has the obligation to check whether the people entrusted with the work and designated by the client/employer have undergone medical examinations and have received necessary health and safety training.

Section X of the labour code covers general requirements, section VII covers protection for women at work, and section IX covers protection for young people at work. Implementation is assured by a number of different actors, including the National Labour Inspectorate, the National Health Inspectorate, and others that operate at the national level or in a cross-workplace system. No literature has specifically discussed health and safety for Polish platform workers.

Generally, health and safety provisions in Poland impose requirements on enterprises regardless of the form of the employment relationship. In this respect also platform work, whether undertaken under labour law contract, civil law contract or self-employment, is not exempt from these regulations. However, it should be noted that the control mechanisms for platform work are rather weak and would need to be significantly improved to ensure the implementation of existing regulations to platform work.

**Special taxation rules**

Natural persons in Poland are subject to personal income tax calculated, as a rule, according to a progressive tax scale. Tax rates vary depending on the income earned, defined as the total revenue minus tax deductible costs, earned in a given taxable year. There are two major income thresholds of 18% for an annual income base of PLN 85,528 (€19,978), and 32% for income exceeding this amount. Generally, all the forms of personal income from civil law contracts are taxed the same, with the two tax thresholds. In the case of fixed-term or part-
time contracts, tax burdens are identical to those concerning contracts for an indefinite period or full-time contracts.8

In terms of self-employment, there is a general rule that taxes can be paid on the basis of general thresholds defined by the Social Security Institution (Zakład Ubezpieczeń Społecznych - ZUS), or on the basis of the 19% corporate income tax. The act of 20 November 1998 on flat rate income tax on some physical persons’ income defines the rates of flat rate tax on registered income. Rates on registered income tax that may be more relevant for popular platform work models are as follows: 20% of revenue acquired from free professions, including contracts of mandate; 17% of revenue from some non-material services, among others wholesale agency, hotels, car rentals; and 8.5% of revenue from services, revenue from rental, sublet, tenancy, or similar agreements.9

Some platform work tasks entail intellectual property, which means special tax rules could apply. In the case of a copyright transfer contract for specific work, there are 50% tax deductibles, which decreases the amount for taxation and personal income tax. However, there is an annual deductible limit of PLN 42,764 (€9,989).

The taxation system in Poland is unified for all natural persons, regardless of the source of income. As such, current regulations are transparent also in relation to platform work, as long as it is declared work.

**Litigation on platform work**

No litigation on platform work has been found for Poland during desk research. Interviewed experts, too, could not point to relevant litigation.

**Discussion on new or updated regulatory frameworks**

Except for the discussion of an ‘anti-Uber’ law in 2016, no new or updated regulatory frameworks have been explicitly brought up for Poland. The ‘anti-Uber’ law was eventually not passed, and it is no longer under consideration. In the opinion of an interviewed public administration representative, the current regulatory framework for self-employment is sufficient.

Interviewees representing employer organisations did not indicate any regulatory barriers to the development of platform work. As of early 2018, the phenomenon is not well recognised by businesses, and employer organisations are simply waiting for platform work to develop. An interviewed trade union representative voiced a need for more regulation, saying that platform work threatens to undermine the wages and security of workers. The trade union representative further noted that these regulations should be at the EU or even broader level, as any national-level regulation will not be suitable for the cross-border nature of platform work.

One regulatory framework could have implications for platform work in Poland: the framework contract for permanent cooperation with a freelancer (Szczudło, 2017). In the Polish regulatory framework, the framework contract is an unnamed contract, which is not described in the Civil Code, as the contract of mandate or contract for a specific task. It is regulated by the general provisions of the Civil Code and in accordance with the principle of

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8 The regulations of the Act on Personal Income Tax apply (Journal of Laws 1991 nr 80, item 350).

9 With the exception of cases indicated in art. 20.1c of the act of 20 November 1998.
contract freedom in Polish legislation. The framework contract can be concluded with the entrepreneur (self-employed) or another individual. They are often concluded with graphic designers, programmers, consultants or lawyers. They are used whenever a company works with someone repeatedly and for a long time, and each subsequent contract has the same content. The framework contract ensures that once a specific order has been processed by the freelancer, the freelancer can issue an invoice or a bill (depending on their legal status). In such a document, other variable order details are determined, such as indicating the works on which property rights are transferred. However, no discussion on this framework explicitly being used for platform workers has occurred.

Wrap-up: legal frameworks of platform work in Poland

There is no specific regulatory framework for the functioning of platforms or work performed through them. As there is no specific status for the ‘platform worker’ in Poland, this kind of work has to be performed under the general legal framework relating to employment (most notably – labour law and civil law agreements) or through self-employment. Historically, especially civil law contracts in Poland offered significantly less social protection coverage and a notable level of functional flexibility (as they were easy to conclude and terminate). As such, these contracts were often preferred by employers for short-term assignments, and as a way to reduce labour costs. This led to an excessive use of civil law contracts in the past. However, recent reforms significantly strengthened the social coverage provisions and regulated minimum wages. Due to this, these forms might still be attractive in relation to platform work, but also offer security to potential workers employed under these contracts.

Formal relationships

The scope of this section is the formal relationships between clients, platform workers, and platforms. No literature was found specifically discussing the formal relationships in platform work in Poland. However, formal relationships as determined by labour law or civil law generally apply.

Potential employment statuses under Polish law

Under the current legal framework in Poland, an individual working as a platform worker could have three employment statuses: employee, self-employed, or contractor. Employees have employment contracts falling under the scope of the labour code. Self-employment refers to people running their own economic activity (registered as self-employed). Contractor refers to workers operating on the basis of a civil law agreement, who do not have to register as self-employed, but work on either a contract for a specified work or a contract of mandate. Employees in Poland are defined by the labour code, which states that an employee is a person employed on the basis of an employment contract, an appointment, an election, a nomination or a cooperative employment contract. The employment contract itself is also

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subject to the labour code.\textsuperscript{11} Compared to other types of workers, employees generally benefit from the most comprehensive legal protection.

A specific employment form that could be used in platform work is temporary agency work. Temporary agency employees conclude a contract with a temporary employment agency. These are fixed-term employment contracts (regulated by the labour code). The activity of a temporary employment agency is defined by the Act of 9 July 2013 on the employment of temporary employees.\textsuperscript{12} However, no literature discusses platform workers under temporary work agency frameworks.

If platform workers are working remotely as an employee, they must be employed in the telework framework.\textsuperscript{13} Teleworking is a flexible form of work falling under the employer-employee relationship as defined by the labour code. In such a form, it is difficult to determine precisely the degree of employee subordination, as telework is closer to the system of performing tasks within a specified time frame. The general rule of teleworking is that it entails work outside of a prescribed workplace, and the transfer of completed works by telecommunication tools. The labour code does not regulate the use of electronic means of communication. However, the provisions of the act on providing services by electronic means is the legal basis for this form of work. Telework requires the employer and employee to conclude an appropriate employment agreement. This may take place when entering into an employment relationship or later during employment.

However, teleworking is subject to a strict regulatory framework, which may make it less attractive to use for platform work. Teleworkers are by definition employees, and the labour code imposes additional obligations on the employer.\textsuperscript{14} The employer must provide the employee with the equipment necessary to perform the job, insure the equipment, and cover the costs related to its use. It is further required that the employer provides the employee with appropriate training and technical assistance. The employer also has a duty to ensure the protection of the employee’s data and to inform him or her of the rules related to collecting, storing and using their data.

A self-employed person conducts a one-person economic activity. In the Polish legal system, the status of a self-employed person does not differ in any way from other economic entities (companies). The rules and basis of starting economic activity and formal requirements related with starting self-employment are identical to those obligatory for other enterprises. Although Polish law has no explicit definition of self-employment, the term is used in the context of activities for economic entities based on other forms than the employment contract. In Poland, self-employment, as a proportion of the employed labour force equalled 18\% in 2015 (Eurofound, 2017).

Contractors conduct work through civil law contracts, mainly a contract for a specified work or a contract of mandate. As these contracts are not covered by the labour code, people working under these types of contract do not have the employee rights stemming from the

\textsuperscript{11} Labour code of 23 December 1997 (Journal of Laws 1998, No. 21, item 94), chapter 2, article 25-29.

\textsuperscript{12} JoL 2013 no 166, item 1608 with further modifications.

\textsuperscript{13} Article 675 of the labour code.

\textsuperscript{14} Article 6710 of the labour code.
employment relationship. In such contracts, there is no element of subordination that is typical in employment relations, thus the person carrying out the work under such contract has the freedom to decide how the work should be performed. It is not admissible for an employment contract to be replaced with a civil law contract if the same conditions regulating the work relationship are retained. Based on existing evidence and the statements of the experts interviewed, civil law contracts are most likely to be used for platform work.

Due to the strict employment regulations, in Poland, platform workers would hardly be employed on employment agreements of any sort. Rather, they would likely be either self-employed or contractors.

**Relationships among the three parties involved**

No literature has discussed the formal relationships of platform workers, platforms, and clients as of early 2018. However, it seems civil law contracts are most likely to determine the relationship between platform worker and platform, platform worker and client as well as between platform and client. In principle, platform workers could conclude civil law contracts with either party.

The two most relevant types of civil law contracts are the mandate contract and the specific-task contract. The mandate contract gives the worker significantly more freedom in time and manner of work, and allows subcontracting. The specific-task contract is common in seasonal work and specifies a relationship that ends after the completion of a task, duties intended to complete a task (even if unsuccessful), or a termination date (Sulej and Wójcik, no date).

**Other contractual relationships**

Aside from the employment contract, and the afore-mentioned civil law contracts for self-employed work, no other contractual relationships have been noted as relevant for platform work in Poland.

**Discussion on formal relationships**

There is no debate on formal relationships. During the desk research, no evidence of ‘platforms as employers’ was found. In most platforms, the relationships with workers are rather flexible. Some platform use ‘reputation’ or ‘points’ statistics as part of ongoing or long-term relationships. In all identified cases of platforms operating in Poland, the assignments are short-term and based on civil law contracts.

One of the biggest problems on the Polish labour market, as noted by interviewees, is the excessive use of civil law contracts. Employers often sign civil law contracts in situations appropriate for employment contracts. This is an offence against employee rights protected by the labour code and dealt with by the National Labour Inspectorate. In such cases, the labour inspector needs to thoroughly analyse the relationship between the employer and the worker. In case of a breach of labour law, the inspector can issue a fine, or refer the case to the magistrate court. The inspector can also send a formal statement to the employer stating all the irregularities and calling on the employer to take remedial action. The employer has 30 days to react and respond to the inspector’s comments. However, the statement is not an enforceable administrative act, so the inspector cannot issue a decision on the change of the work relationship to the employment contract. The labour inspector can apply to court in order to establish the existence of the employment relation. However, in order for that initiative to be effective, it is important to define whether the employee has an interest to replace a civil law agreement with an employment contract.
The labour code is seen as outdated in relation to new or emerging forms of employment. Therefore, the government of Poland on 15 September 2016 established a Codification Commission to prepare a proposal for a new labour code. The Codification Commission was expected to focus on the introduction of mini-jobs. Similar to UK labour law, another planned development is the ‘zero-hours’ contract, limited to certain categories of workers (such as youth, older workers, or students). The proposals from the Commission have been published on 14 March 2018, without any significant references to platform work. However, the proposals of the Commission have not been accepted as the formal governmental proposal, and therefore the future development of legislation regarding platform work is to date still unknown.

**Organisation and representation in platform work**

The autonomous labour law provisions consist of all acts created and agreed by social partners. These refer mostly to collective agreements. Collective agreements in Poland are normative agreements and are the result of collective bargaining conducted by the social partners. They are legally binding, constitute an independent source of labour law, and are recognised as separate and distinct sources of labour law. Issues related to their conclusion are governed by the provisions of chapter XI of the labour code. The specific procedures and registration of agreements are defined by implementing regulations. The provisions of chapter XI of the labour code provide for the possibility of entering into two types of arrangements: first, single-establishment agreements between the employer and the trade union(s); and second, multi-establishment agreements between a specific statutory authority of employer organisations and the competent statutory authority of the trade union (according to the definition included in the labour code).

The provisions of collective agreements in Poland cannot be less favourable to employees than the provisions of the labour code and other laws and regulations. The parties of collective agreements cannot regulate the content of the matters that are dealt with in the law in a mandatory manner, and cannot infringe on the rights of third parties.

Unfortunately, there are no systematic data on the coverage rate and the content of collective agreements in Poland. However, Poland has relatively low collective agreement coverage and trade union membership. Only 12% of employed people in Poland (including retired people) are trade union members. Still, Poland’s general framework of industrial relations applies to all employment relationships, so they could theoretically also cover platform work. The condition is that the work is performed under an employment contract (covered by the labour code). As noted, it is doubtful that many Polish platform workers perform their activities under an employment contract.

The relatively low trade union membership, combined with the limited presence of platform work, means that no organisation specifically for platform workers or for platforms has yet been set-up. According to the interviewees, there is no discussion on platform work at the Social Dialogue Council (Rada Dialogu Społecznego - RDS), which is the main body for social dialogue in Poland.

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15 Article 9 of the labour code.
Organisation of platform workers

No evidence has been found on the organisation or representation of platform workers in Poland. Moreover, the situation of platform workers in relation to representation – considering their possible employment forms and the corresponding legal protection – is not favourable. Also, the situation of people employed on the basis of civil law contracts, although presented in the media from time to time, has not sparked discussion in terms of collective bargaining, or more broadly speaking, labour relations in Poland. The reason for that is not only the lack of articulated status differentiation, but also the acceptance of the state of affairs as something common and normal (Zalewski, 2012).

In Poland, self-employed (or those working under civil law contracts) cannot be a member of trade unions. However, amendments may be forthcoming, based on the Constitutional Tribunal’s judgement, following a complaint by the NSZZ Solidarność (Independent Self-governing Labour Union ‘Solidarity’) from August 2011. The judgement of 2 June 2015 stated that the limitation of trade union membership to employees is unconstitutional. The Constitutional Tribunal recommended that any person who works professionally, but is not an employer, can be a trade union member. This would be in compliance with International Labour Organization (ILO) Conventions 87, 98 and 135.

The judgement means that people employed under civil law contracts can be trade union members. However, the amendment of the act on trade unions has not yet been introduced as of early 2018.

Widening the possibility of trade union membership has also the effect of providing protection via concluded and existing labour agreements. For example, the Employee Initiative Polish Trade Union (Ogólnopolski Związek Zawodowy Inicjatywa Pracownicza) gathers members irrespective of the kind of work performed and labour agreement (employment contract, cooperative agreement, temporary agency employment contract, civil law contracts or self-employment). These initiatives are not, however, specifically focused on platform work, although they may serve to include platform workers.

For these reasons, the organisation and representation of platform workers in Poland can rather be considered from the perspective of self-employment and freelancer representation. Self-employed persons and freelancers tend to organise themselves through worker-initiated efforts, such as internet forums and various associations. The Self-Employed Association (Stowarzyszenie Samozatrudnieni) was for example created in 2013. Its aim is to improve the socio-economic situation of both self-employed, independent professionals, and freelancers. They want to be the voice of the self-employed, take part in legislative initiatives, participate in social dialogue, and help self-employed and freelancers in running their businesses. The Self-Employed Association is part of the European Forum of Independent Professionals (EFIP). However, the review of their (and other organisations of self-employed persons/freelancers) statutory documents revealed that they do not recognise platform work as a specific issue or area of activity.

From the perspective of the interviewed trade union representative, unions must also make rational decisions, in the sense that the allocation of funds for organising employees must be

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reasonable. With low unionisation rates, and large numbers of unorganised employees at companies (people in one place doing subordinate work), trade unions have indicated that their priority is to reach out to employees. An interviewed trade union representative indicated that it is simpler, and probably more resource efficient, to target the unionisation of employees rather than to focus on platform workers.

**Organisation of platforms**

Desk research and expert interviewees did not indicate that platforms have made any attempt to organise. Similarly, no employer organisations indicated that platforms are a focus as of early 2018.
References

All Eurofound publications are available at www.eurofound.europa.eu


Eurobarometer (2016), The use of collaborative platforms, Flash Eurobarometer 438, TNS Political & Social, June 2016.


Disclaimer: This working paper has not been subject to the full Eurofound evaluation, editorial and publication process.
**Annex: Platforms mentioned in text**

<table>
<thead>
<tr>
<th>Platform</th>
<th>Platform work type</th>
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<tbody>
<tr>
<td>BananaCar</td>
<td>On-location platform-determined routine work</td>
</tr>
<tr>
<td>BlaBlaCar</td>
<td>On-location platform-determined routine work</td>
</tr>
<tr>
<td>Freelancer</td>
<td>Online client-determined specialist work</td>
</tr>
<tr>
<td>Freelanceria</td>
<td>Online moderately skilled click-work</td>
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<tr>
<td>JadeZabiore</td>
<td>On-location platform-determined routine work</td>
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<tr>
<td>Million You</td>
<td>Online contestant specialist work</td>
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<tr>
<td>Napiszeprace</td>
<td>Other*</td>
</tr>
<tr>
<td>Oferia</td>
<td>On-location client-determined moderately skilled work</td>
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<tr>
<td>Sirlocal</td>
<td>On-location platform-determined routine work</td>
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<tr>
<td>TakeTask</td>
<td>On-location platform-determined routine work</td>
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<tr>
<td>Taxify</td>
<td>On-location platform-determined routine work</td>
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<tr>
<td>Uber</td>
<td>On-location platform-determined routine work</td>
</tr>
<tr>
<td>WP Zlecenia</td>
<td>Online moderately skilled click-work</td>
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* On this platform, workers offer to write diploma papers or final papers for students.

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