

Platform Reps

# BELGIUM: Country report 2022



# 1. Context: Social dialogue and work in platforms

According to Eurofound, the overall quality of social dialogue in Belgium is well above the EU average (see **Figure 1** below).

**Figure 1: Industrial Relations Index (2013-2017)<sup>1</sup>**



Source: [Eurofound Industrial Relations Index](#)

At the same time, measured as a share of the adult population, work in digital labour platforms (hereafter referred to as “platforms”)

in Belgium is just one percentage point lower than the EU average (**Figure 2**).

**Figure 2: The share of workers in platforms in the adult population (2021)<sup>2</sup>**



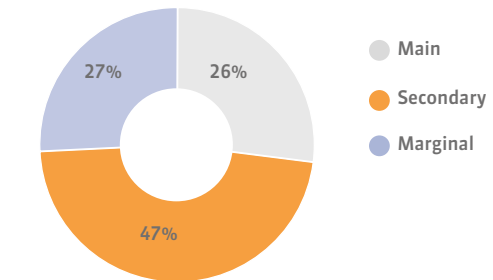
Source: EC (2021); Eurostat.

An estimated 607,000 people worked in platforms in 2021 more than sporadically, i.e., at least 10 hours a week or contributing to more than 25% of their income.

Roughly a quarter of workers earned most of their income in platforms (**Figure 3**).

**Figure 3: Number and categories of workers in platforms (2021)<sup>3</sup>**

Number of workers in platforms: 607k



Source: EC (2021)

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1. The index measures the overall quality of the “collective and individual governance of work and employment” across four categories, based on 47 indicators. See: Eurofound (2018). *Measuring varieties of industrial relations in Europe: A quantitative analysis*. Publications Office of the European Union, Luxembourg, p. 1.

2. The numbers cited are an upper-bound estimation based on 2021 survey results. They cover all types of work in platforms from low- to high-skill and from on-location (e.g., transport, delivery) to online work (e.g., ICT, data entry, creative work). See: EC (2021). [Study to support the impact assessment of an EU initiative to improve the working conditions in platform work](#)

3. Main workers work through platforms for at least 20 hours a week or receive at least 50% of their income therein. Secondary workers spend between 10 and 19 hours per week or receive between 25% and 50% of their income from work in platforms. Marginal workers spend less than 10 hours a week working via platforms and get less than 25% of their income via platforms.

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## 2. Current legal framework

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### 2.1. LABOUR LAW

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According to the Belgian labour law framework, workers can be either employees or contractors (self-employed). The Labour Relations Act of 2006 provides a generic definition of an employee:

- Employees [are] persons who provide labour services for remuneration and under the authority of another person.

The classification of workers as employees or self-employed is based on the existence of a relationship of authority and legal subordination.<sup>4</sup> The Labour Relations Act specifies four areas of such a relationship:

1. The will of the parties, as expressed in their agreement (which, however, must be in accordance with the factual nature of the relationship)

2. The individual's freedom to organise their working time (e.g., free choice of working hours)
3. The individual's freedom to organise work (e.g., free choice and refusal of assignments)
4. The employer's possibility (regardless of whether it is exercised or not) of exercising hierarchical control (e.g., established means of control).

Although there is no universal presumption of employment, some sectors enjoy a mechanism of a rebuttable presumption (including the transport sector). For example, in the "freight transport" sector (where delivery services fall in), there are eight criteria, that determine the employment presumption.<sup>5</sup> Nevertheless, the classification of employment status is always based on the criteria invoked by the Labour Relations Act and can be assessed by the courts (judicial procedure) or the **Administrative Commission** (administrative procedure).

The Administrative Commission for the Regula-

tion of Employment Relationships (*Commission administrative de règlement de la relation de travail*) forms a part of the Social Security body (SPF Sécurité Sociale). It includes members from the SPF Social Security, SPF Employment, Labour and Social Dialogue, the National Institute of Social Insurance for Self-Employed Workers, and the National Social Security Office.<sup>6</sup>

Finally, some regional initiatives can shape the legal framework. For example, the current regional Flemish government has adopted measures to push low-wage workers, jobseekers, and economically inactive people towards self-employment. The effects of these new policies are yet to be evaluated, but trade unions have signalled the worrying tendency to push already vulnerable groups towards possible precarious employment conditions.<sup>7</sup>

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4. Interview results

5. Interview results

6. The Commission can issue joint decisions, i.e., if two individuals filed similar petitions, the Commission can issue one decision applicable to both cases. When it joins two or more cases, the Commission must notify the National Labour Council (i.e., social partners). However, trade unions see it as an inferior solution and would rather see a possibility of a "real" collective procedure, where procedures apply to all workers in a given platform (based on interview results).

7. Interview results. See also: [Transitiepremie](#) and [Jobbonus plus voor zelfstandigen](#).

## 2.2. PLATFORM-SPECIFIC LEGISLATION

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The legal framework of work in platforms comprises of several acts, as summarised in **Table 1** below.

**Table 1: Legislative Framework in Belgium**

Legislation	Year	Key provisions
<a href="#">De Croo's Law (Loi De Croo)</a>	2016	The Law introduced a favourable tax regime for new forms of work, including work in platforms, up to an established income threshold (applicable only to recognised platforms).
<a href="#">Royal Decree of 12 January 2017</a>	2017	The Decree accompanied De Croo's Law, providing official accreditation criteria platforms need to meet for their workers to use the favourable tax regime.
<a href="#">The "Belgian Labour Deal"</a>	2022	<a href="#">A new piece of legislation ("Law on Various Labour-Related Provisions") has been adopted.</a> It includes proposals such as a mechanism for establishing the status of workers in platforms, following some of the provisions of the EC's <a href="#">Directive proposal</a> , according to the assessment of the Belgium government. <sup>8</sup>

Source: Visionary Analytics, based on the sources in the hyperlinks.

In 2016, Belgium introduced a dedicated piece of legislation, focusing specifically on the tax regime for the participants of the "sharing economy" (but (ab)used later largely by platforms).<sup>9</sup> De Croo's Law sets an indexed annual income threshold (currently standing at €6,540), up to which income from platforms is classified as "miscellaneous income" instead of "income from professional activities".

Workers are also exempt from VAT and enjoy a

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favourable income tax rate (an effective tax rate of 10%<sup>10</sup> instead of 33%) as long as they meet certain conditions.<sup>11</sup>

This Law aimed to encourage the proliferation of the platform economy by minimising the administrative burden for (secondary or marginal) workers in platforms.<sup>12</sup> However, its impact on work relations and working conditions was regrettable. Even though discussing establishing a third category for workers

was denounced quickly in Belgium (including by social partners),<sup>13</sup> workers not exceeding the threshold have no obligation to register as self-employed, and their employment status is unclear. Thus, **De Croo's Law provided a separate regime for some workers in platforms (a so-called "peer-to-peer" or "P2P" regime).**<sup>14</sup> This P2P regime has allowed platforms to bypass any provisions of the labour law when employing workers. In 2021, according to the administrative data, 42,618 people worked under this regime (including over 20,000 in the transport sector and almost 12,000 in "miscellaneous services to persons", such as care services).<sup>15</sup> De Croo's Law is limited to platforms that have received official accreditation as established in the Royal Decree of 12 January 2017. Platforms generally are not obliged to apply for accreditation to operate in Belgium – they only do so for their workers to be able to use the favourable tax regime. Therefore, the list of accredited platforms is not exhaustive (127 platforms accredited as of 2020).<sup>16</sup> Uber is a notable example of a non-accredited platform.

Further legal developments for work in platforms are currently underway. **The 2022 legislation proposal (the "Law on Various Labour-Related Provisions") has been presented by the**

8. The Deal also involves a broad array of provisions in response to the progressing digitalisation such as flexible working schemes, the right to disconnect, or the right to training.

9. EC (2020). [Working conditions and social protection of platform workers in Belgium: Policy measures and stakeholder initiatives.](#)

10. A 20% tax rate with a fixed cost deduction of 50%

11. These conditions are; their annual income was below the set threshold; services are provided exclusively by natural persons who are not acting in the context of their professional activity; services are provided through platforms that are recognised by a public authority or have received an official accreditation; fees related to platform work are only paid or granted to the worker by the platform.

12. Eurofound (2021). [Loi De Croo \(Belgie programmawet 2016021055\).](#)

13 Interview results; Lenaerts, K. (2018). [Industrial relations and social dialogue in the age of the collaborative economy: National report Belgium.](#)

14. Fairwork (2022). [Fairwork Belgium Ratings 2022: Labour standards in the platform economy.](#)

15. Based on data provided by interviewees

16. Eurofound (2021)

**government as an early transposition of the EU Directive proposal, and aligns with its key provisions.** One important modification is the provision of additional three criteria (on top of the EC’s five), these being:

- The platform operator may require exclusivity in relation to its field of activity.
- The platform operator may use geolocation for purposes other than the proper function-

ing of its basic services.

- The platform operator may restrict the platform worker’s freedom to perform the work.

Additionally, the use of the word “may” in all criteria is a crucial detail – the possibility of an employer exercising control is enough to establish the existence of a relationship of authority. The presumption of employment will apply if

two of the five criteria (common for the EC’s and Belgian proposals) are met or if three out of the (total) eight criteria are met. **This presumption would be rebuttable based on the four general criteria outlined in the Labour Relations Act** or “by all legal means” (i.e., according to the provisions of the Labour Relations Act, any other evidence can be submitted before the court and examined as well).

### 3. State-of-play of workers’ rights

Workers enjoy different access to labour rights, depending on their status or regime, as summarised in **Table 2** below.

**Table 2: Worker statuses and corresponding labour rights**

Worker status	Legal basis	Social security	Union representation	Collective bargaining
Employee	Labour law*	✓	✓	✓
Self-employed	Civil law	✓ (self-paid)	✗	✗
P2P regime	-	✓ (self-paid)	✓	✗

Source: Visionary Analytics.

Note: \*The coverage varies depending on the contract type (e.g., interim contracts or flexi-jobs provide fewer rights and protections).

The employment status/regime depends on the sector and platform. Takeaway is a rare example of a platform that employs its riders, whereas Uber relies almost exclusively on the self-employed. Workers in the P2P regime account for about 85% of workers in Deliveroo, 90% in Uber Eats, 80% in Ring Twice. According to the 2022 Fairwork report, **the working conditions in plat-**

**forms were highly unsatisfactory.** On a scale of zero to ten (zero meaning completely unfair, while ten meaning perfectly fair), only two platforms scored mid-range (Takeaway – six and Ring Twice – four), while three failed to meet even the basic standards (scoring zero or one point).<sup>17</sup> Key obstacles in ensuring fairer working conditions include the following:

- There is no guaranteed minimum wage for self-employed workers and P2P regime workers, resulting in underpaid and unpaid labour.
- Work in platforms falls outside the scope of collective sectoral agreements, resulting in the lack of job protection and collective voice.
- The P2P regime grants benefits to platforms at the expense of taxpayers and worker welfare.
- The regime is also often abused – for example, the law provides loopholes in such a way that a worker can declare income in someone else’s name to go beyond the regulated threshold. Some platforms disconnect workers when they reach the indicated income threshold to avoid granting them a legal status.<sup>18</sup>
- The rulings of the Administrative Commission for the regulation of employment relationships are oftentimes ineffective and easily bypassed.
- Workers fear retaliation from platforms (e.g., disconnection) if they fight for their rights either individually or collectively.<sup>19</sup>

17. Fairwork (2022)

18. Interview results

19. Ibid.; Interview results

Most problems regarding workers' access to rights stem from their (lack of) employment status. Although the 2006 law clearly defines the employment relationship, several obstacles prevent its effective enforcement:

- **Ineffective platform-specific legislation:** The new legal act transposing the original EC Directive proposal entered into force on January 1<sup>st</sup>, 2023. However, it has not led to any reclassifications and has been largely ignored by platform companies, showing the need for a stronger legal provision, a general employment presumption, as well as law enforcement and action against non-compliance. Trade unions have called on the government

to discuss the ineffectiveness of the implemented solution.<sup>20</sup>

- **The lack of a “real” employment presumption:** Workers need to go to court to fight for their rights and status recognition.
- **Cost and duration of court proceedings:** Workers cannot afford the cost and time it takes to pursue legal action. For instance, CSC and UBT-FGTB went to court challenging the status of 30 workers in platforms. So far, the judicial process has lasted six years and cost €24,000 (with an estimated €50,000 by the end of the process).<sup>21</sup>
- **The Administrative Commission’s mandate not properly communicated to workers:** Despite the relative efficiency and lower cost of the

administrative process,<sup>22</sup> only two decisions have been issued, so far, regarding the status reclassification of workers in platforms.<sup>23</sup>

- **Limited application of the court decision:** The courts’ or the Administrative Commission’s decisions apply only to the litigants, rather than all workers in the same platforms.
- **No enforcement mechanisms:** Even in case of a court or Commission decision that recognises workers’ *de facto* employment status, platforms have no obligation to hire these workers as employees. In several instances of the Commission’s conclusions about the employment status of a worker, the platform simply made workers redundant.

### The Deliveroo court case

Due to the significant barriers mentioned above, few cases have been pursued by workers and decided by Belgian courts so far.

One instance is the decision of the Brussels Labour Tribunal from December 2021. The case was filed by the Labour Auditorate (*Auditorat du travail* – a body responsible for carrying out labour-related assignments on behalf of the Public Prosecutor’s Office) and joined by several Deliveroo couriers.

Despite previous rulings by the Administrative Commission, which recognised the Deliveroo

couriers as employees, the Tribunal decided the couriers should be treated as self-employed. Against the four criteria established in the Labour Relations Act, the court decided that:

- It was the will of the parties (according to the contractual terms) for the courier to provide independent services.
- The freedom of couriers to organise their working time seems not to be limited. More specifically, the system of pre-booked time slots was not a restriction on the couriers’ freedom to organise their working time.
- The couriers’ freedom to organise their work seems not to be limited. Couriers were free to

disconnect from the platform whenever they wish, and they were not obliged to accept deliveries as long as they were not connected.

- The couriers’ declarations did not show that the platform exercised concrete hierarchical control.

Nonetheless, the Tribunal also ruled that the favourable tax regime (P2P regime) should not apply to courier services, i.e., they should be classified as self-employed. The Labour Auditorate and the unions have appealed against the court’s judgement.

Source: Visionary Analytics, based on Ius Laboris (2021). [Deliveroo in Belgium: Brussels court rules couriers not employees](#)<sup>24</sup>

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20. Interview results

21. Interview results

22. The Administrative Commission’s procedure involves no financial cost for the worker, and the decision is generally made within the legal time limit of three months (with possible delays if additional information is requested).

23. Interview results

24. See also OM-MP (n.d.) [Auditorats du travail](#) for the details of the Labour Auditorate’s mandate.

## 4. State-of-play of union action

Union action on behalf of workers in platforms in Belgium can be analysed at three levels, as summarised in **Table 3** below.

**Table 3: Action taken on behalf of workers in platforms**

Level	Actions
<b>Established trade unions</b>	The established trade unions provide individual workers with legal support and consultations, and financial support (financing legal proceedings). They also create branches that focus on workers in platforms specifically, such as CSC's <a href="#">United Freelancers</a> or FGTB-UBT's "Eigenrijders". Finally, they lobby at the policymaking levels for a more favourable legal framework.
<b>Emerging movements</b>	Workers organise themselves, usually with the organisational support from established unions, to pursue collective action such as negotiations with platforms and strikes, and create new collectives and non-profits (such as Couriers Collective or the Belgian Platform Rider Association).
<b>Anti-union action</b>	Representatives of workers are appointed by the platforms rather than elected by workers, undermining the collective representation efforts.

Source: Visionary Analytics, based on interview results.

### Platform cooperatives

Besides workers' actions organised through trade unions or networks and non-profits, new inclusive business models of platforms have been emerging in Belgium. Platform Coop Brussels is a project, which actively supports the establishment of platform cooperatives and the creation of networks among cooperatives. The initiative involves different stakeholders (academics, political decision-makers, unionists and entrepreneurs), and supports individuals

(workers, entrepreneurs, other stakeholders) to self-organise. It is a part of the international movement of 'Platform Cooperativism' established in 2015 in New York.

Several platform cooperatives have emerged in Belgium, including Molenbike – a Brussels bicycle courier cooperative founded in 2017. It specialises in bicycle transportation of local and eco-friendly products, but also collecting food waste and leftovers for their reintroduction in the supply chain. All couriers are employees and can participate in decision-making processes

There are several good examples of trade union action in Belgium, although the unionisation process for workers through digital labour platforms is difficult and much remains to be achieved.<sup>25</sup> Some independent bottom-up movements have emerged, but these are seen more as company-level union representatives than emerging independent unions. They typically lack the organisational capacity and reach out to the established unions for support.

within the organisation.

Nevertheless, while cooperatives provide alternative and fairer business model, they are not the ultimate solution for improving working conditions and proper classification of workers. Furthermore, the impact of cooperatives is limited because they face difficulties to compete with other (venture capital-backed) digital labour platforms in the market.

Source: Visionary Analytics, based on Eurofound (2021). [Platform Coop Brussels](#), and Eurofound (2021). [Courier cooperative Molenbike](#).

The key obstacles to more effective unionisation of workers in platforms are presented in **Table 4** below.

**Table 4: Obstacles to unionisation for workers in platforms**

Legal	Social and cultural	Related to platforms' business model
<ul style="list-style-type: none"> <li>- The legal framework is unsupportive of social dialogue in different sectors where platforms operate. For example, the existing criteria are unable to correctly determine the (self-)employment relationship.</li> <li>- Platforms lobby aggressively at the policy level.</li> <li>- The P2P regime strips workers of all rights, including to collective bargaining.</li> <li>- Some regional employment policies may push workers into precarious forms of employment.</li> <li>- The new legislation proposed does not provide for a general presumption of employment relationship and has had no effect on <i>status quo</i>.</li> </ul>	<ul style="list-style-type: none"> <li>- There is a language barrier and general difficulty in contacting migrant workers who constitute a large share of workers in platforms.</li> <li>- The jobs are very precarious, and workers often come from disadvantaged backgrounds – thus, workers are reluctant to incite change out of fear of retaliation (e.g., losing income), or even deportation.</li> </ul>	<ul style="list-style-type: none"> <li>- The worker turnover is extremely high.</li> <li>- Work is based on competition rather than collaboration between workers.</li> <li>- Workers are isolated due to the nature of tasks performed.</li> <li>- There is no fixed working place and working schedule, which makes it difficult to meet and reach out to workers.</li> <li>- Platforms are reluctant to speak or unwilling to cooperate with trade unions and often openly hostile to unionisation, including disconnecting leading activists and spreading anti-union narratives among workers.</li> </ul>

Source: Visionary Analytics, based on interview results and FRA (2017). [Protecting migrant workers from exploitation in the EU: workers' perspectives. Country report: Belgium.](#)

## 5. Action checklist

### Application of the EC Directive and/or the ETUC policy proposal

There do not seem to be legal impediments to the application of either policy proposal. In particular, the Belgian law assumes different criteria for different economic sectors that determine the employment presumption (e.g., in the “freight transport” sector, where delivery services fall in, there are eight criteria). Only then do the courts assess the factual employment relationship, based on the four general criteria stipulated in the Labour Relations Act.

**However, based on the proposed EC Directive, the new legislative proposal is unlikely to change the status quo significantly.** It will

require platforms to extend insurance against occupational accidents to all workers regardless of employment. However, the principles of determining the workers’ employment will likely remain unchanged. Workers will still have to pursue legal action to enforce their rights, and the P2P, guaranteed by the De Croo’s Law, will continue to apply.

On the other hand, **should the regulation be implemented according to the ETUC guidelines (including the automatic and unconditional presumption of employment), it would significantly shift the balance of power in workers’ favour.**

Workers would be automatically granted the employee, while both the burden of proof and the need to trigger the legal or administrative

procedure would lie on the platforms. The process, in this case, could be handled by the Administrative Commission rather than the courts. According to the interviewees’ assessment, the Commission is well-equipped to deliver efficient and swift rulings on platforms’ rebuttal claims. Additionally, trade unions are currently working on a proposal modifying the four general criteria to make them more precise and stricter, which would facilitate the reclassification processes (including adapting the criterion on the possibility of exercising hierarchical power to take account of technological developments). They also advocate for eliminating the possibility of rebuttal “by all legal means” (i.e., evidence not related directly to the criteria).



Preliminary suggestions for actions to be taken by the national unions are summarised in **Table 5** below.

**Table 5: Action checklist in two main areas**

Policy	On-the-ground action
<ul style="list-style-type: none"> <li>- Put pressure to adjust the recently implemented legislation to better align with ETUC priorities (including the “real” employment presumption).</li> <li>- Campaign to abolish De Croo’s Law and the P2P regime. If this is not feasible, then address the overuse (misuse) of the P2P regime.</li> <li>- Put pressure to strengthen the Administrative Commission’s role in deciding the employment status to decrease the cost and time of proceedings (administrative rather than legal process).</li> <li>- Put pressure to increase the capacity of inspectorates (including human resources and training).</li> <li>- Work to integrate workers in platforms into social dialogue and collective bargaining.</li> <li>- Campaign for clearer and easier procedures for (undocumented) migrant workers to obtain a residence and a work permit.</li> </ul>	<ul style="list-style-type: none"> <li>- Continue action to increase union density and establish social dialogue structures in platforms.</li> <li>- Continue strengthening the emerging representation movements and integrating their activities into the official social dialogue structures.</li> <li>- Consider designing a place (online or offline) for workers to meet each other and trade unions.</li> <li>- Enhance efforts aimed at the most vulnerable workers, especially migrant workers. This can include information and consultation or legal advice, but also broader support schemes such as language courses, civic integration, etc. Collaboration with civil society organisations representing and defending the rights of migrants could also be explored.</li> <li>- Counteract any union-busting and anti-union activities.</li> </ul>

Source: Visionary Analytics, based on interview results.