Protection of Users in the Platform Economy: A European Perspective

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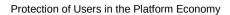**Protection of Users in the Platform Economy: A European Perspective**

Policy Brief

2019

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"Platformization" has introduced a paradigm shift in the global economy, having an impact that has been defined as "disruptive". As the label suggests this trend has been driven by peculiar digital agents, namely platforms, which have now become crucial players in the digital market. These agents are impacting traditional markets thanks to their increasing economies of scale and their increasing reach, by offering new services or new ways of enjoying the existing ones. This has indeed challenged the current economic and social understanding of the world, and generated much frictions for the application of the existing legislative arsenal.

The European Commission has made the development of the digital economy one of its top ten priorities for the period 2014-2019. The Commission has thus developed a set of regulatory tools to facilitate exchanges across the single market. Against this background, our research team has investigated how effectively the existing legal framework was grasping with digital inequalities (understood as information asymmetries affecting the weak party) and unfair practices experienced by end-users (consumers) and suppliers (workers) of online platforms, as well as the quality of the relationship between the platform and the workers operating online (on-demand and crowd-work).

To this end, we performed a survey during the summer of 2018 (July-September) and selected interviews with consumers based in Belgium, France and Italy. We also conducted interviews with Belgian representatives of a trade union organizations and inspections services.

The survey and the interview allowed our team to identify the practical hurdles that users are currently facing. On this basis, we identified potential solutions, which we detail in this policy brief.

1. Keep platforms as tools for building social interactions; do not consider them merely as a management objective. While platforms offer cost cuts which increase the attractiveness of digital business models these cuts cannot take place at the expense of social cohesion. Lawmakers should thus maintain platform governance on the human scale, supporting participation and emancipation. Platform-centered policies should focus on the individuals using the architecture and their possible interactions with each other.

Policymakers shall avoid developing strategies giving platforms (even) more power, as if the overall economy should become entirely digitalized. While policymakers should not prevent corporations to develop new business models or new initiatives in the digital, they should also ease the creation of platforms that build trust amongst the individual, and thus which are community building.

2. Use technology as a complementary tool to regulation. Technology is not just an object that the law has to regulate. Technology can also support the implementation of given policy goals. In several situations technology provides for the structural framework to monitor and enforce legal principles. This is the case for the principle of transparency, embedded in the GDPR. Smart disclosure systems can provide information to data subjects in a timely and meaningful way. Similarly, structured feedback systems can help enforce legal and social norms against non-compliant actors by sanctioning them firstly through reputation and secondly by reporting them to platform operators who have some duty to act (under negligence laws or others). Such instruments can really transform privacy policies and terms of services from a bureaucratic and "defensive" task done by data controllers and lawyers to a tool for empowering consumers.

3. Do not apply a one-size-fits-all-approach when allocating liability. For intermediation platforms, we recommend differentiating liability principles based on additional criteria beyond the mere online/offline nature of the intermediary. Some platforms operate markets where workers are subject to specific regulations themselves and consequently risks are mitigated thereby, while others allow non-professionals subject to vague standards. Some platforms do also extensively process stored data. On this occasion, they prove their ability to detect violations of existing provisions requiring no offline verification and no margin

of legal interpretation (notably the existence or not of valid certificates, of the required minimum age, etc). Others have fewer human and technical resources (notably associations operated by volunteers) and, accordingly, existing waivers reflect their effective ability to monitor activities, especially those services for which not much is specified online (notably when there is no payment and minimum identification on the platform).

Policy makers should first clearly establish the policy goals and test whether a techno-neutral regulation is possible. This means that an impact assessment of the regulation on both brick-and-mortar business and digital platform should be conducted. The impact assessment should include the different forms of corporate governance issues as well as an analysis of the community-building and prosocial platform ecosystems and examine whether their business is threatened by the proposed rules.

4. Implement platform transparency by design. Many platforms exploit the biases and heuristics of users in the way they design their interface and online architecture. Small prints, illegible color contrasts, framing and anchoring are only some strategies currently implemented for distracting potential clients and forcing them to accept conditions that otherwise they would not have agreed to. Several behavioral studies have identified the "tricks" by which consumers may be trapped: therefore, there is sufficient material and literature to create a list of bad practices (dark patterns) and best practices (light patterns). It would be desirable to collect them into a Code of Ethical User Design or an International Standard (ISO norm), inviting the platforms to sign the principles therein contained and implement the best practices.

5. Enforce the existing legal framework in labor and social security law. Worker protection in Europe is already well advanced, at both the EU level and at the national levels of regulation. However, as they consider platform workers as self-employed workers, platforms do not always comply with the existing framework in labor and social security law. When applicable, it is necessary to recognize the appropriate social status to platform workers, i.e. the status of salaried workers, as enforced in several cases around the world, including the US, France, England and Spain. Indeed, this status allows the application of worker protections. In any case, continuing to reflect on the right to collective bargaining for the self-employed workers and the harmonization of the status of salaried and self-employed workers appears necessary.

6. Taxation must not be the only focus for future regulation of platform work. Taxation seems like an easy go-to instrument to regulate the platform economy with sticks (tax penalties) and carrots (tax reductions). In many EU countries, it has been the first and foremost area of intervention in the field of platforms. However, policy makers cannot articulate policies in the European social market only around taxation. Social policies should be left with social law tools, which are more inclusive and enable the participation of trade unions, organization of employers and involvement of the government. Governments should thus avoid ring-fencing the platform economy and propose new legislations applicable only to the digital world. Rather, they should think about contemporary issues (for instance, the development of non-standard forms of employment) without specific regards for the platform economy and bear in mind that inclusion is a core value, which can be found in several national social and labor legislations.