

Part I:
National Perspective

Belgium

Yves Jorens

I. Introduction

The legal landscape in Belgium has undergone significant changes since the publication of the book “Social Law 4.0” in early 2021. This essay aims to provide an update to the country report on Belgium, focusing on legislative developments, case law, and the new legal framework concerning platform work which entered into force on 1 January 2023.

II. Legislation and Legal Framework

As we mentioned in our previous report, the Belgian government wanted to strengthen the sharing economy and at the same time remove it from the grey zone in order to combat fraud. Therefore, it was decided to establish a special regulation. With the adoption of the Act on Economic Recovery and the Strengthening of Social Cohesion on 18 July 2018,¹ the legislator foresaw a total tax and social security contribution exemption for income from certain forms of employment (below a certain amount of income). The Constitutional Court has, however, overturned this regulation, not at least as this regulation entails a discrimination and as it considered that the measure – aimed at avoiding undeclared work – on the contrary made it possible to switch from a status subject to social security and tax obligations to a status exempting the person concerned from all those obligations.²

For that reason, a new rule was introduced, where only a separate solution for work performed in the framework of the socio-cultural and sport sector was established.³ Platform work was, however, excluded and

1 Act on Economic Recovery and the Strengthening of Social Cohesion of 18 July 2018, https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2018071803&table_name=wet (accessed on 1 September 2024).

2 See Constitutional Court, Judgement No. 53/2020 of 23 April 2020, <https://www.const-court.be/public/n/2020/2020-053n.pdf> (accessed on 1 September 2024).

3 Law of 24 December 2020 on Associations.

no particular exemption for this economic sector therefore applies. This implies that the income paid or granted as of 1 January 2021 is again taxable at a rate of 20%. However, this rate is only applied after a flat-rate expense deduction of 50%. The final tax burden is therefore 10%, to be increased by the additional municipal tax. From 1 February 2021, approved platforms will again have to withhold withholding tax from this income. There is as such no separate system anymore for platform work, and platform workers are treated like any other workers.

The classification of platform workers in Belgium is based on the binary divide between employees and self-employed individuals. Platform workers do not differ from other categories of workers. But some initiatives have been introduced by the Belgian legislator in attempts to redress issues faced by platform workers. The Belgian Employment Relations Act created a legal framework to establish the legal nature of an employment relationship. According to this Act, the intention of the parties constitutes the essential factor in determining whether or not a relationship of authority exists between the parties.⁴

The Act determines four general criteria to be used for purposes of determining the existence of a relationship based on “authority”:⁵ these are 1) the intention of the parties as per their agreement; 2) the worker’s freedom to organise his/her own working time; 3) the worker’s freedom to organise his/her work as well as 4) the ability to exercise hierarchical control.

III. Case Law

The classification depends on the facts and is determined by the Court. This can lead to diverging results where often platform workers were seen as self-employed. The Commercial Court of Brussels in Belgium rendered e.g., a decision in December 2018 that Uber drivers should be considered as self-employed as they choose when and where they work, choose for how

4 Art. 331 of the Programme Law of 27 December 2006 (Labour Relations Act).

5 *Ibid.*, Art. 328-342.

long they drive, can take or ignore trips, own or rent their own cars and can complete other work or jobs as it suits them.⁶

Some years later in December 2021, there was a ruling pronounced by the Labour Tribunal of Brussels that Deliveroo drivers should not fall within the category of employees, but rather within the self-employed category.⁷ The ruling became the first ruling in terms of the labour relationship qualification of workers in the platform economy by a labour tribunal or court in Belgium.

The ruling took its decision based on the following considerations:

- 1) the will of the parties, according to the contractual terms of their collaboration; the will was to provide independent services and to conclude an agreement in this regard;
- 2) couriers were free to organise their working time;
- 3) couriers were free to disconnect from the platform whenever they wished and they were not obliged to accept deliveries as long as they are not connected;
- 4) based on the declarations of the couriers, there was no evidence that the platform exercised concrete hierarchical control: basically, Deliveroo couriers did not receive definite instructions from Deliveroo, they did not have to justify their absence, nor did Deliveroo have the power to punish the drivers.

However, at the same time some further developments took place where the Labour Prosecutor's Office in Belgium introduced an initiative to conduct some investigations as a starting point to redress issues faced by platform workers. The Belgian Social Security Office and multiple drivers joined the Labour Prosecutor as intervening parties. They encountered a challenge from the onset due to the fact that they had intentions to interview Deliveroo couriers and get to know the experiences of the Deliveroo couriers and the challenges that they would usually come across. The Deliveroo couriers at first were reluctant to open up to the Labour Prosecutor's Office. This is because they feared that they would be suspected of tax evasion.

Two years later, after all investigations and interviews, in an appeal the Labour Court came to another conclusion. In December 2023, the Brussels Labour Court had given a ruling that Deliveroo couriers should be quali-

6 Commercial Court of Brussels, December 2018; also, later the Labour Tribunal of First Instance judged on 21 December 2022 that Uber drivers were to be considered self-employed workers.

7 Labour Tribunal of First Instance, 8 December 2021, 2021/014148.

fied as employees. This is just to emphasise that the case was still based on the general Academy of European Law (ERA) regulations, and not the presumption that Belgium introduced later on in its legislation concerning platform workers.⁸

At the same time, however, also the legislator started an own initiative.

IV. Recent Developments and Outlook

The Belgian legislator introduced a new legal framework for platform workers. This did not really come as a surprise as Belgium was also one of the main instigators of the proposal of the European Commission for platform work. The Belgian government got its inspiration in this proposal and basically copy-and-pasted it. In the Labour Relations Act, a new article was added specifying the above-mentioned general criteria introducing a rebuttable legal presumption of the existence of an employment contract for the platform economy. These criteria deal with the setting of remuneration, binding rules for appearance such as a wearing a uniform or behaviour with respect to the client, the supervising performance through electronic means (e.g., star ratings), the possibility of restricting the freedom to organise one's working hours or the possibility to work for another client. These criteria are more in particular:⁹

- the ability to demand exclusivity;
- the possibility of using a mechanism of geolocation;
- the possibility of restricting freedom indicating the way the work is performed;
- the possibility of limiting the level of income;
- the possibility of requiring compliance with mandatory regulations on appearance and behaviour or performance of work;
- the possibility to control the priority of future offers of work, the amount offered and/or the determination of ranking;
- the possibility to curtail, possibly by means of sanctions among other things, the freedom of organisation of work, in particular the freedom to choose one's working hours or periods of absence, to accept or refuse tasks, or to use subcontractors or substitutes;
- the possibility of preventing a platform worker from building up a client base outside the platform or performing work for a third party.

8 Labour Court of Brussels, 22 December 2023.

9 New criteria added in Art. 337/3, § 2 through the Labour Relations Act (fn. 4).

If three of the eight or two of the last five criteria are met, there is a rebuttable presumption of the existence of an employment contract. This presumption can be rebutted on the basis of the four general criteria this law aims to clarify. This law entered into force as per 1 January 2023.

In addition, a new provision was adopted according to which platform operators have the obligation to provide insurance for self-employed platform workers to cover bodily harm resulting from accidents occurring during the performance of remunerated activities through the digital platform or accidents occurring on the way to and from these activities.¹⁰ The platform must take out a private insurance (through recognised private insurance companies). As a result, the platform operators have a similar obligation for self-employed workers as they have for employees. Indeed, employees of a digital platform are – like other employees – automatically insured against accidents at work. Belgian platform operators who fail to fulfil this obligation will be held civilly liable for damages to the platform workers as well as be subject to criminal penalties.

Further discussions before the courts are certainly not excluded, not at least taking into account some of the vague criteria of the law.

So basically, the Belgian government has already, and well in advance, implemented the foreseen adoption of the EU Platform Work Directive, however, based on the initial proposal of the EU Commission.

V. Conclusion

It is interesting to see how courts will deal with this new legislation. It is worth highlighting that the above-mentioned case law was based on the general criteria of the legislation as the new provisions were not yet applicable at the time of decision. Thus, it has to be seen if this new law will lead to a new classification for platform workers and as such will lead to better protection for platform workers. However, one should keep one element in mind: the Belgian legislator has set up a rebuttal of proof of evidence, but in this respect it is still up to the inspection services to first of all prove that the criteria of the legislator are fulfilled, as there is no automatic recognition of an employee status.

10 Art. 19 Law of 3 October 2022 dealing with different labour provisions (New Labour Deal).

