

Platform Reps

# NETHERLANDS: Country report 2022



# 1. Context: Social dialogue and work in platforms

According to Eurofound, the Netherlands is one of the countries with the highest-quality social dialogue (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 population, more Dutch workers engaged in digital labour platforms (hereafter referred

to as “platforms”) than the EU average (**Figure 2**).

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



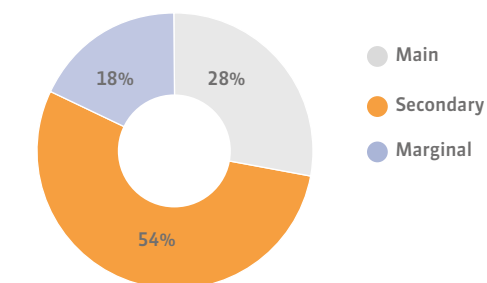
Source: EC (2021); Eurostat.

According to 2021 estimates, up to around 1.38 million people might have worked in platforms more than sporadically, i.e., at least

10 hours a week or contributing to more than 25% of their income (**Figure 3**).

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

Number of workers in platforms: 1.38m



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.

## 2. Current legal framework

### 2.1. LABOUR LAW

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Dutch employment law is not consolidated into a single code. It is governed by, for example, the Constitution, the Civil Code, legislative Acts, collective labour law, collective bargaining agreements, individual contracts, and jurisprudence. The Dutch Civil Code provides a definition of a contract of employment (Title 7.10, Article 7:610):

• A contract of employment is a contract whereby one party – the employee – undertakes to perform work in the service of the other party – the employer – for remuneration during a given period.

According to this definition, **three components are of significance in determining whether an employment relationship exists: (1) performance of work, (2) a relationship of “being in the service” of an employer, and (3) wage.**<sup>4</sup> Two alternative contracts concerning the performance of work exist in the Dutch legal framework, namely:

- **Contract for works** (*overeenkomst tot aanneeming van werk*) involves an agreement whereby one party (an independent contractor) agrees to produce particular work of a tangible na-

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4. Van Voss, G. H. (2017). The concept of ‘employee’: The position in the Netherlands. *Restatement of Labour Law in Europe. Volume I: The Concept of Employee*, pp. 477-503.

5. Ibid.; L&E Global (2022). [Legal framework differentiating employees from independent contractors](#).

6. The Netherlands Enterprise Agency notes that “the DBA act was implemented to bring more clarity in client-contractor relations. This change in law has not proved effective enough. New legislation is pending, but it is not yet known when these rules will come into effect.” See: Business.gov.nl (n.d.). [Assessing work relationship between client and contractor \(Wet DBA\)](#).

7. However, this power to enforce the DBA law has been suspended right from the start (in 2016)

ture for a sum of money to be paid by the other party. This is equivalent to self-employment (outside the labour law), whereby neither of the three criteria for employment relationship must be met.

- **Contract for services** (*vereenkomst van opdracht*) constitutes an agreement in which one party (independent contractor) undertakes vis-à-vis the other party, the client, to perform work, not on the basis of an employment contract, that consists of services instead of the creation of material work. The contract covers work performed personally and for remuneration, but instead of the relationship of authority, an “instruction right” applies, i.e., the contractor is obliged to give effect to timely and responsible instructions provided by the client regarding the performance of the services.<sup>5</sup>

Based on the [Employment Relationships Deregulation Act \(Wet Dereguleren Beoordeling Arbeidsrelaties, or “wet DBA”\)](#), enacted in 2016, the parties of a work relationship have to establish that their contract conforms with the legal framework.<sup>6</sup> The Act comes with several tools that aim to guide contractors and clients in identifying their relationships, including [model agreements](#), an [online employment relationship](#)

[evaluation tool](#), and an [“is it paid employment?”](#) guide. Furthermore, although not explicitly stated in any written act, the primacy of facts over contractual arrangements is applied when determining the status based on case law. The Dutch legal framework also provides a legal presumption of employment if, for at least three consecutive months, work is performed for remuneration, either for at least 20 hours per month or on a weekly basis. However, the presumption does not apply automatically, and one has to invoke it individually in court. Finally, besides the courts, the Dutch [Tax and Customs Administration](#) has statutory power to reclassify worker status regarding the tax law (but not labour law).<sup>7</sup> It can perform checks to establish if there is an employer-employee relationship or not and impose corrective fines or taxes where they establish malicious intent concerning fictitious self-employment or (obvious or deliberate) false self-employment constructions. On the other hand, the [Netherlands Labour Authority’s](#) mandate is limited in this respect – it is responsible for monitoring working conditions (including legal minimum wage) but has no authority to enforce employment classification (although its opinion on the matter has been used in court – see section 3).

## 2.2. PLATFORM-SPECIFIC LEGISLATION

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No dedicated legislation has been passed in the Netherlands concerning work in platforms. Nevertheless, the issue has been recognised at the policy level. A “Platform Economy and Work” committee has been set up involving

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8. SER (2020). [How does the platform economy work?](#)

government authorities, experts, and employee and employer representatives. In 2020, the Social Economic Council (SER) published a report, “How does the platform economy work?”, which acknowledged the platform economy’s potential to facilitate job creation and business activity. However, it emphasised **the risk of precari-**

**sation, including the exclusion of workers from social protection and labour rights.** It called for legislative action on regulating the employment status of workers in platforms and for increased supervision by the Tax and Customs Administration and Labour Inspectorate concerning the existing legal framework.<sup>8</sup>

# 3. State-of-play of workers’ rights

Workers enjoy different access to labour rights, depending on their status, as summarised in **Table 1** below.

**Table 1: Worker statuses and corresponding labour rights**

Worker status	Legal basis	Social security	Union representation	Collective bargaining
Employment agreement	Labour law	✓	✓	✓
Contract for services	Civil law	✓ (self-paid, voluntary)	✓	✓*
Contract of work		✓ (self-paid, voluntary)	✓	✗

Source: Visionary Analytics.

Note: \*Although collective bargaining can also apply to the contract for services, in practice, the bargaining power is not as strong as for employees because of the limited coverage of the labour law (e.g., no protection against dismissals or unpaid wages).

The landscape of employment conditions in platforms in the Netherlands is complex. A 2018 study estimated that approximately 60% of workers in platforms were contractors, work-

ing under contracts for services and registered as entrepreneurs. Only about 15% of workers signed an employment contract with the platform company. Another 15% worked under the

specific Care and Support at Home Regulation in the domestic sector, where an employment contract is concluded between the household and the worker. Finally, approx. 10% worked as contractors without being an entrepreneur subject to income tax rules (instead, they are supposed to declare their incomes as resulting from “other activities”). Nevertheless, **employment conditions have since deteriorated:** for example, delivery platforms that used to employ their riders left the market (Foodora) or switched to contracts for services (Deliveroo). As a result, no platforms directly hire employees anymore.<sup>9</sup> Additionally, some platforms use alternative employment constructs; for example, some Uber drivers work through “fleet partners” (which then hire workers based on zero-hour contracts of services), while Takeaway riders are hired through temporary work agencies on short-term contracts.

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Therefore, **the misclassification of worker status remains by far the biggest obstacle for workers to access employment rights.** For example, FNV estimated in 2019 that due to their bogus contractor status, workers in meal delivery plat-

forms are being underpaid by a total of about €29.5 million each year, while platforms are saving about €55.5 million in labour costs, depriving not only their employees from their rights but also the society from income tax, social in-

surance contributions, and pension accrual.<sup>10</sup> However, an optimistic shift can be noted as the Dutch courts have ruled on several occasions granting workers employee status and creating strong case law.

### Judicial rulings on work in platforms

Several courts have ruled on the employment status of workers in platforms:

- In February 2021, the Amsterdam Court of Appeal ruled that Deliveroo riders are employees, entitled to all labour rights according to the haulage-sector collective bargaining agreement.
- In September 2021, the Amsterdam Court of Appeal found that house cleaners hired via the app Helpling have the status of temporary agency workers.

- In September 2021, the Amsterdam District Court ruled that Uber drivers are employees, not contractors, and should be covered by the collective labour agreement for taxi transport (CAO Taxivervoer).
- A court case against Temper – a digital labour platform for the hospitality industry, is still ongoing. In February 2021, the Labour Inspectorate held that Temper is not an intermediary for the self-employed but an employment agency. Although this statement will not have a direct effect on the status of Temper workers, the decision can be used in court as evidence.

All cases have been brought to the courts by the FNV. Deliveroo and Uber are appealing against the judgements and have, so far, refused to adhere to the legal verdicts.

Source: Visionary Analytics, based on interview results; ITF (2021). [Deliveroo riders win employment status case in Dutch court](#); Social Europe (2021). [Another win for workers: Uber drivers are employees](#); De Rechtspraak (2021). [Schoonmakers Helpling zijn uitzendkrachten](#); IOEWEC (2021). [Dutch Courts ruled on the classification of platform workers and government advisory group view](#).

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

Union action on behalf of workers in platforms in the Netherlands can be analysed at three levels, as summarised in **Table 2** below.

**Table 2: Action taken on behalf of workers in platforms**

Level	Actions
<b>Established trade unions</b>	The statutory trade unions engage in policy debates, pursue legal actions against platforms, and organise workers on the ground.
<b>Emerging movements</b>	New entities are being formed which try to facilitate grass-roots organisation and collective action, such as the Riders' Union and the Radical Riders.
<b>Anti-union action</b>	Platforms establish pseudo-unions of self-employed, spread misinformation about the union movement, and retaliate against activist workers, undermining organisation efforts.

Source: Visionary Analytics, based on interview results and sources indicated in the hyperlinks.

First, FNV is the statutory union mostly involved in the area of work in platforms. It leads the judicial cases, which have been the priority for the class action. It also engages in on-the-ground organising efforts, mostly through [FNV Young & United](#) – the youth division. It has managed to organise **small but visible groups of drivers and riders** but, despite its organising efforts, larger shares of the workforce are yet to be covered. This is because of the diversity of the

population; workers live in different cities, come from different backgrounds, work in different sectors, and have various demands – this heterogeneity makes it difficult to create a broad united movement.<sup>11</sup> Furthermore, a dedicated campaign [FNV Platform Work](#) concentrates on all other platforms (e.g., Uber, Temper, Helping, or Youngones) and oversees the overall political strategy.

FNV also supports some of the initiatives set

up by the workers, such as the [Riders' Union](#). It can be a puzzle for the unions how to approach these emerging movements – FNV is trying to support them rather than incorporating them into its own structures or competing with them for membership. Some of the other emerging movements (especially among Uber drivers) have imploded before reaching significant momentum.<sup>12</sup> Nevertheless, FNV managed to sustain several stable and visible groups of Uber drivers and organise visible actions or strikes periodically, especially surrounding important court cases or political debates.

Finally, FNV tries to tackle the anti-union responses that include misinformation spreading by platforms and retaliation against workers (deactivation of accounts, intimidation, etc.). At the collective level, **platforms have established bogus representation bodies of self-employed workers**, which were initially discredited by the unions as sham organisations. However, they were accepted into the court proceedings in the Uber and Temper cases as “extra parties” and got involved in lobbying with politicians, which is seen as deeply worrying.<sup>13</sup>

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11. Interview results

12. Interview results

13. Interview results

The key obstacles to more effective unionisation of workers in platforms are presented in **Table 3** below.

**Table 3: Obstacles to unionisation for workers in platforms**

Legal	Social and cultural	Related to platforms' business model
<ul style="list-style-type: none"> <li>- Independent contractors have insufficient safeguards, which makes them vulnerable and unlikely to pursue judicial action.</li> <li>- The Dutch government has been promoting self-employment through tax advantages and exceptions in social security contributions.</li> <li>- Platforms do not comply with court rulings.</li> </ul>	<ul style="list-style-type: none"> <li>- Most riders are third-country nationals, which requires organisers who are familiar with their context, speak languages, etc.</li> <li>- (Mis)perceptions of entrepreneurship are prevalent among some workers.</li> <li>- For young workers, working in platforms is often the only job they ever had – they do not know the conditions of “normal” employment.</li> <li>- Some workers have misconceptions about unions and are unlikely to join unless they were previously engaged in union activities.</li> </ul>	<ul style="list-style-type: none"> <li>- There are no common spaces where workers can meet.</li> <li>- Workers are isolated and forced to compete with one another.</li> <li>- Platforms guard all the information (including contact data); they use it for lobbying and publishing biased data but do not share it with workers or unions.</li> </ul>

Source: Visionary Analytics, based on interview results.

## 5. Action checklist

### Potential application of the proposal for a Directive of the EC and/or the ETUC policy proposal

The Directive could have a positive effect as long as it is strong enough to provide a clear delineation between employees and the self-employed and actually lead to status reclassification. However, there are some elements in the EC proposal that would prevent the change of the status quo, including the triggering of the reclassification procedure by workers or the narrow criteria that, in practice, provide a toolkit for platforms on how to

tweak their business model to circumvent the new legal provisions. This could paradoxically lead to aiding the platforms in evading their responsibilities as employers.

Furthermore, although there are probably no evident clashes between the Directive proposal of the EC and the existing Dutch legal framework, the five strict criteria included in the EC proposal could interfere with the generic three-element definition of an employee in Dutch law, which is much more comprehensive and fluid. In this respect, the ETUC proposal is better designed to ensure the proper application of the national legal frameworks.

Finally, in its current form, the EC proposal for a Directive may draw political attention to the platform issue, but it needs to be enforceable to make a difference on the ground. However, the enforcement mechanisms of the Directive is unclear. The capacity of the (understaffed and underresourced) Dutch labour inspectorate poses further implementation challenges.

Source: Visionary Analytics, based on interview results.

Preliminary suggestions for actions are summarised in **Table 4** below.

**Table 4: Action checklist in two main areas**

Policy	On-the-ground action
<ul style="list-style-type: none"><li>- Keep pursuing legal cases, building on the strong emerging case law and good momentum.</li><li>- Using this momentum, work on influencing the government to modify the labour law in favour of workers (e.g., by reversing the burden of proof).</li><li>- Put pressure on the government and public authorities (e.g., Tax and Customs Administration) to increase efforts to enforce the existing legal framework.</li><li>- Keep on calling on the government to end the suspension of collective bargaining agreement enforcement, beginning with the platforms where there have been legal verdicts.</li><li>- Support to the labour inspectorate and force non-compliant platforms to respect court rulings.</li></ul>	<ul style="list-style-type: none"><li>- Collaborate with emerging movements and organisations that have an on-the-ground presence.</li><li>- Explore opportunities to expand the actions into other sectors with platform presence.</li><li>- Consider public campaigns as a means to influence platforms' behaviour via customers' preferences for ethical conduct.</li></ul>

Source: Visionary Analytics.