



NEW EMPLOYMENT FORMS AND CHALLENGES TO INDUSTRIAL RELATIONS – NEWEFIN

Policy brief Belgium

Prof. Alexander De Becker

Ghent University

Marlies De Coninck

Ghent University

Amsterdam, June 2020

This report was written for the NEW EMPLOYMENT FORMS AND CHALLENGES TO INDUSTRIAL RELATIONS - NEWEFIN project, financed by the European Commission, (DG Employment, Social Affairs and Inclusion, Employment and Social Governance - Social Dialogue - Agreement number VS/2018/0046)

This paper reflects only the author's view. The Commission is not responsible for any use that may be made of the information it contains.



1. Introduction, legal framework and legislative initiatives on new forms of employment

Belgium has a relatively complex state structure within which the new forms of employment need to be addressed.

This policy report provides an overview of the most important new forms of employment in Belgium.

1.1. Labour Relations Act and rulings of Administrative Commission

Belgium has experienced an increase in the best-known new forms of employment, such as platform workers. The classification of this group of professionals remains a very difficult issue given that the Labour Relations Act of 27 December 2006 only recognises two distinct types of employed persons: employees and self-employed persons. An intermediate third category, which exists in e.g. Germany and the UK, is unknown in the Belgian legal system. This leads to uncertainty about the legal status of these professionals. With regard to the case of Deliveroo, the Administrative Commission on labour relations judged that the Deliveroo riders had to be classified as employees. However, Deliveroo modified its original classification that their couriers were employees due to this decision and ended all contracts of employment to substitute them with self-employed persons. Currently, an appeal procedure is still pending. With regard to Uber, the company made a similar classification of their drivers as self-employed persons. The Uber drivers are considered to be self-employed persons. However, this classification has altered the existing balance in the sector of cab driving. The same debate still continues in relation to bicycle couriers in general.

1.2. Act on agile and workable work of 5 March 2017

Other important modifications were introduced by the Act of 5 March 2017 on agile and workable work. It included an easier option for increasing the weekly working hours from 38 to 48 as long as an average of 38 hours is reached after a period of 4 months instead of on a weekly basis. Furthermore, occasional tele-working was introduced by this Act. This occasional tele-work includes the possibility for people to work at home with a digital network in cases of force majeure or for personal reasons. Occasional tele-work can also be used as a solution in case of bad weather conditions. The authority can install in such a condition a so-called tele-work alarm. Occasional tele-work needs to be organised on the basis of an agreement between the employer and the worker. Occasional tele-work is in addition to the possibility for structural and regular tele-work, which is organised by the collective bargaining agreement no. 85 of 9 October 2005.

1.3. Posting of workers: Act of 31 July 1987

Posting of workers, even if the regulatory framework is rather old, remains an important issue in the Belgian transport and construction sectors. It has been seen that companies in the transport sector

indicated that a lot of companies relocated their registered offices to Eastern countries in order to avoid to have to observe the Belgian labour and social security standards. It perfectly shows up one of the major problems of the Belgian transport industry at this moment.

1.4. Act of 16 November 2015: flexi-jobs

Belgian new forms of employment also include a brand new form of employment. "Flexi-jobs" were introduced by the Act of 16 November 2015. A flexi-job includes the possibility to do a second job as well as your main job. You need to have an 4/5ths employment in a job other than the flexi-job. The Act of 25 December 2017 extended the scope of the flexi-jobs to retired people. Flexi-jobs offer the possibility for this group of employees or retired persons to earn some money without being taxed for it. The wage costs equal the earning of the flexi-job worker. Furthermore, there is no need to declare your income and you build up social security rights with regard to pension, annual leave and unemployment benefits. The use of flexi-jobs is limited to certain sectors, namely: bakeries; food trade; employees in the retail food trade sector; employees in groceries; hotels, pubs and restaurants; retail; supermarkets; hairdressers; and temporary workers in these sectors.

1.5. Act of 18 July 2018 – EUR 6000 a year second job (tax free)

Finally, the Act of 18 July 2018 introduced the opportunity for persons with the status of employee, public servant, self-employed or pensioner to earn up to EUR 6000 a year without being taxed for it. The focus was on work in associations (e.g. sports clubs, amateur dramatics, etc.), occasional services between citizens and services (e.g. child care, tutoring) through recognised electronic platforms. Specifically for this last group, the legislature indicated that the aim was to keep those people whose classification as an employee or as a self-employed person remained difficult out of the debate if their earnings were limited.

These are the major modifications in the period studied with regard to new forms of employment.

2. Social partners' responses to new forms of employment

2.1. Social Dialogue and platform work

With regard to the classification of the employment and labour relations in the cab drivers' sector, social dialogue suffers from the lack of clarity of the existing regulations with regard to Uber. Social partners indicate the absence of any legal regulatory framework on this topic. It is leading to uncertainty for the sector, given that the costs for employees are much higher than the costs for self-employed persons. The lack of a regulatory framework is considered to be a big issue with regard to the taxi drivers. It becomes even more complicated since the regions have jurisdiction as regards transport while the federal government has jurisdiction over fiscal and social inspections.

With regard to Deliveroo couriers, trade unions indicate that they want to extend their scope to include these groups to self-employed persons working under control. It seems that the trade unions want to mobilise the couriers although their current status remains self-employed. Furthermore, the mobilisation of this group is complex due to the fact that the self-employed persons are only hired on a very short-term basis.

The lack of regulation with regard to bicycle couriers makes the situation extremely complicated for employers that use “conventional” contracts of employment to hire their bicycle couriers. It is clear that bicycle couriers in a normal firm are suffering from the competition with Deliveroo but also from the fact that many internet companies do not charge any costs for delivering parcels.

2.2. Act on agile and workable work

With regard to the introduction of this Act, it has to be borne in mind that the authorities and the social partners indicate that the mechanisms for increasing working hours on a weekly basis are not often used, as is the case for the possibilities of refusing and/or transferring days of leave. The use of occasional tele-working might be important in the near future due to the consequences of the Covid-19 pandemic. The potential for extending working hours to 48 hours a week as long as the average working time per week remains limited to 38 hours over a period of four months remains as the written law and does not seem to be having much influence on the social dialogue.

2.3. Posting of workers: Act of 31 July 1987

Trade unions indicate that posting of workers remains a significant problem in the transport and the construction sector. This is partly due to the fact that many Eastern European workers have different labour and social security regulations. The new Directive 2018/957 of the European Parliament and the Council does not completely help, as many companies are moving their registered offices to Eastern European countries in order to organise their transport from there. In the construction sector, social partners indicate that they are telling a similar story to the authorities.

This implies that, with regard to the transportation sector, trade unions indicate that they are keen to educate trade unions in Eastern countries in order to improve the labour and employment conditions in the different countries where transport companies are moving to.

2.4. Act of 16 November 2015: flexi-jobs

The number of flexi-jobs or second jobs where people earn money without being taxed, has not been made subject to the existing Act on Contracts of Employment. Employers pay a contribution of 25% on the wages of flexi-job workers, who in turn do not pay any contributions. However, the flexi-job worker receives social security protection. However, the social security system budget might suffer from this construction. Furthermore, social partners were not involved in the legislation with regard to the flexi-job worker, which may lead to lower incomes. Social partners consider this problematic.

2.5. Act of 18 July 2018 – EUR 6000 a year second job (tax free)

The tax free second job was introduced to allow sports associations and leisure associations to pay persons for certain jobs they do. However, the Constitutional Court quashed this Act on 23 April 2020 (no. 53/2020) because it violated the principle of equality with regard to normal workers. Again, for these elements, social partners were not included in the preparation.

3. Recommendations

- i) To evaluate recent the Labour Relations Act of 27 December 2006, combined with the regional regulatory framework, in order to get more certainty about the legal status of Uber drivers.
- ii) To evaluate the legislation regarding the platform linked couriers business, going beyond framing this form of employment as a competition problem with Deliveroo and bearing in mind the responsibilities of the platforms in terms of labour rights and social protection of the drivers.
- iii) To call for the legislature's attention to analyse the impact on smaller companies and their employees (bicycle couriers) of Deliveroo and the fact that deliveries are often free.
- iv) To ensure good collective negotiation procedures at international (or EU) level with regard to posting of workers.
- v) To foster the role of social partners with regard to flexi-jobs.
- vi) To foster the role of social partners in the debate about labour law, social protection reforms and tax cutting reforms.