

## Collective agreements for platform workers? Examples from the Nordic countries

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Collective bargaining plays a crucial role in regulating the Nordic labour markets, and about 70% or more of the workers in the Nordic countries are covered by collective agreements.<sup>1</sup> Platform companies tend to designate their workers as self-employed or freelancers, who, due to competition law, do not necessarily have the same access to collective bargaining as employees.<sup>2</sup> At the same time, there seem to be some developments in European case law concerning the right of freelancers and self-employed to negotiate collectively. In addition, there are examples of collective agreements emerging in the Nordic platform economy. In this brief, we explore the new cases suggesting that freelancers have more latitude for negotiating collectively than previously assumed, and the emerging agreements and negotiations in the Nordic platform economies. We ask:

- What latitude is there for platform workers to negotiate collectively?
- What are the characteristics of the platform companies negotiating agreements, and what are the characteristics of the agreements arising?

The brief is based on interviews with platform workers, the platform companies and the social partners, as well as desk studies of collective agreements and case law.

The term 'platform worker' is here used to refer to those that work via platforms, regardless of the contractual relations they have with the platform. Eurofound (2018) defines platform work as follows: 'Platform work is an employment form in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services in exchange for payment.[...] The main features of platform work are: paid work is organised through online platforms, three parties are involved: the online platform, the worker and the client, work is contracted out, jobs are broken down into tasks, services are provided on demand.'

### Collective bargaining in the Nordic countries

Collective bargaining plays a significant role in regulating the Nordic labour markets. While industry-level bargaining is important in serving as a basis for bipartite and tripartite collaboration, industry and workplace level bargaining both play an important role in wage formation and in establishing decent working conditions.<sup>3</sup> Platform workers do not necessarily have a workplace to relate to, and are often only in touch with the platform company through the app or the software, which obviously complicates the opportunities for bargaining at the workplace level.<sup>4</sup>

The trade union density and collective bargaining coverage in the Nordic countries remain high compared to other European countries when the effect of generally applicable collective agreements is not included. However, there are important sector and industry variations. Industries such as cleaning, transport and construction experience low levels of organisation and collective bargaining.<sup>5</sup> So far, platform companies have emerged in sectors with low trade union density where there is less pressure to comply with regulations, or in sectors with high shares of self-employed or freelancers.<sup>6</sup>

Furthermore, the advanced Nordic welfare states and labour rights are built up around the binary relationship between an employer and an employee.<sup>7</sup> So far, the standard employment relationship – with open-ended full-time contracts – is the norm in the Nordic countries. However, workers with non-standard forms of employment are not uncommon in parts of the Nordic labour markets and these workers are usually more patchily covered by collective agreements.<sup>8</sup> Since many platform workers are self-employed or freelancers, or have other atypical contractual arrangements such as marginal part-time, growth in platform work might pose a challenge to the norm of collective bargaining in some Nordic industries.

### Collective bargaining for self-employed and freelancers?

Self-employed persons and freelancers do not have the same access to collective bargaining as employees, due to both national systems for collective bargaining and European competition law. In the Albany case, the European Court of Justice (CJEU) found that agreements concluded between organisations representing employers and workers to improve conditions of work and employment fall outside the scope of competition law, due to the social policy objectives pursued in such agreements. Collective bargaining on behalf of employees is therefore accepted, while collective bargaining for freelancers or self-employed is problematic from the perspective of competition law.<sup>9</sup> New interpretations in case law, however, show that the distinction between employees and self-employed is not solely based on formal status.

In a recent case, the FNV Kunsten case from 2014,<sup>10</sup> the CJEU developed its reasoning and expanded on the Albany exemption. The case concerned a collective agreement with minimum rates of pay for self-employed musicians substituting for employed orchestra musicians. The Court

held that collective bargaining for certain self-employed workers – the ‘false self-employed’ – was also exempt from competition law. The ‘false self-employed’ are formally self-employed, but in a situation comparable to that of an employee. Hence, the Court ruled in favour of collective bargaining for certain groups of freelancers and self-employed. In a Nordic context, where the concept of employee is interpreted broadly, workers considered to be ‘false self-employed’ might therefore be considered as employees in national law, also regarding the right to collective bargaining.

There is also an interesting development in the interpretations of the right to collective bargaining in human rights instruments. In late 2018, the European Committee of Social Rights considered a case, the Irish Congress of Trade Unions (ICTU) vs Ireland, concerning the right to collective bargaining in the European Social Charter.<sup>11</sup> More precisely, the case concerned a complaint to the ESCR on the Competition (Amendment) Act passed into law in Ireland in 2016, which sought to delimit the application of the competition law so that certain freelancers/self-employed could negotiate collectively. The Committee held that when determining the scope of the right, it is not sufficient to rely on the distinction between workers and self-employed. The decisive criterion, according to the Committee, is rather whether there is an imbalance of power between the parties. If the self-employed have ‘no substantial influence’ on their contractual conditions, such as pay, they ‘must be given the possibility of improving the power imbalance through collective bargaining’.

Again, due to the broad – and flexible – interpretation of the concept of employee in a Nordic context, it can be argued that platform workers who lack influence on their contractual conditions, in reality can be regarded as employees.<sup>12</sup> In line with this, the Norwegian sharing economy committee suggested in 2017 that ‘service providers in the sharing economy who do not set selling prices directly, and have to comply with prices set by the platform that is used, should have the opportunity to negotiate collective agreements with platform operators, even if they cannot be deemed to be employees’.<sup>13</sup>

The right to collective action for freelancers and self-employed without substantial influence on their working terms and conditions is, as demonstrated, currently an issue of discussion in academic, legal and political communities around Europe. As shown, there is case law suggesting that platform workers might negotiate collectively, which potentially may have a substantial effect on the pay levels and working conditions of these workers.

### Collective agreements in the Nordic platform economy

The collective agreements emerging in the Nordic platform economy are of a different nature, see Table 1. First, some platform companies hire workers on marginal part-time employment contracts, which makes it possible for the workers to be covered by existing collective agreements without this being in conflict with competition law. The case of Bzzt in Sweden is an example of this, and Foodora in Norway might be another example of a collective agreement for platform workers if the demands of the workers are met in the coming months (see below). Therefore, platform companies that hire workers on marginal part-time contracts seem more likely than other platforms to negotiate collective agreements. Second, some platform companies register as temporary employment agencies, and the workers are then covered by collective regulations on temporary agency work. This might therefore be another way for the workers to improve pay and working conditions. The cases of Chabber in Denmark and Instajobs and Gigstr in Sweden are examples of this.

The agreement between Hilfr and 3F in Denmark stands out as it allows platform workers that have worked more than 100 hours to decide themselves if they want to be self-employed or employees covered by the terms of the agreement, see Box 1.<sup>14</sup> This can be regarded as a novelty in Nordic collective bargaining, as individual workers traditionally cannot choose between these two tracks. On this issue, there might be variations between the Nordic countries that we recommend labour lawyers to explore further.

Table 1. Collective agreements in the Nordic platform economy

Platform	Status & nature of the agreement
Hilfr (cleaning), Denmark	Cleaning platform Hilfr and 3F Private Service, Hotel and Restaurant signed an agreement in April 2018. <sup>15</sup> This is a trial agreement whereby the providers of work can decide themselves, when they have worked more than 100 hours, if they want to be employees or self-employed.
Chabber (waiters, bartenders and kitchen assistants), Denmark	Chabber operates as a temporary employment agency covered by the Act on Temporary Agency Work.
Voocali (translation services), Denmark	Voocali has signed the HK Agreement for Salaried Employees and a special agreement that covers work performed via the platform by those that are not employees. <sup>16</sup>
Bzzt (personal transport by moped), Sweden	The agreement between Bzzt and the Swedish Transport Workers’ Union allows Bzzt drivers to be covered by the Taxi Agreement, which gives the workers access to the same standards as traditional taxi drivers. Unlike many platform companies, the drivers in Bzzt are offered marginal part-time contracts.
Instajobs (platform for students, different categories of highly skilled), Sweden	Agreement with the white-collar trade union Unionen for the workers to be covered by the collective agreement for temporary agency workers.
Gigstr (low-skilled gigs), Sweden	Agreement with the white-collar trade union Unionen for the workers to be covered by the collective agreement for temporary agency workers.
Foodora (food delivery company), currently operates in Austria, Canada, Finland, Germany, Norway and Sweden.	The Norwegian Transport Workers’ Union and Foodora are currently in negotiation about entering a collective agreement.

Another interesting development in a Nordic context is that the German food delivery company Foodora and the Norwegian couriers, organised in the Norwegian Transport Workers' Union, are currently negotiating for a collective agreement, see Box 2. So far, this is the only example of collective bargaining in the Norwegian platform economy, and it is particularly interesting as it is a foreign-owned company with no collective agreements in the other countries where it operates. The other agreements in the platform economy mentioned above are concluded with companies originating in the Nordic countries.

### Box 1: Agreement between Hilfr and 3F

Hilfr is a Danish-owned digital platform for cleaning work, founded in 2017. It facilitates cleaning tasks between approximately 1700 customers and 450 workers and operates in all major Danish cities. In April 2018, Hilfr signed a company agreement with the union The United Federation of Danish Workers (3F), which represents workers within the cleaning sector. The agreement came into force on 1 August 2018, and is a pilot scheme that the negotiating parties have agreed to evaluate after a year.<sup>17</sup>

The collective agreement introduces a new category of worker – the so-called Super Hilfrs – in parallel with the existing freelance workers. Super Hilfrs are workers that opt for the status of employee rather than freelancer after meeting the eligibility criteria and will thus be covered by the company collective agreement. After working 100 hours, a worker automatically becomes a Super Hilfr (unless he or she objects). Super Hilfrs receive a minimum hourly wage of DKK 141.21 (€ 19) and accrue rights to pensions, holiday entitlements and sick pay. Freelance workers' hourly wage is DKK 130 (€ 17) and they also receive a so-called 'welfare supplement' of DKK 20 (€ 3) per hour.<sup>18</sup> Both freelance workers and Super Hilfrs can set their hourly wage higher than the minimum wage on their individual profile on the platform. They are also covered by an insurance via the private insurance company Tryg. Tryg offers insurance solutions to six Danish-owned labour platforms, which include coverage for liability and accidents.

Recent figures indicate that Super Hilfrs do more than one-third of the cleaning jobs undertaken via the platform, indicating that a significant group of cleaners registered with the platform chose to change their status to regular employee. Most workers registered with Hilfr are students, followed by migrant workers looking for a job with low entry requirements, according to the company. The agreement is relatively new and has not been finally evaluated by the negotiating parties, which means that we probably have not yet seen the full effect of the agreement.

### Box 2: Foodora couriers in Norway negotiating for a collective agreement

Foodora is a German-based food delivery company established in 2014 and owned by DeliveryHero. Through the app, customers can browse local restaurants, place an order, and track the food as it is being prepared and delivered by a bike courier or delivery driver (in a few cities). In Norway, the company has expanded rapidly and currently operates in Oslo, Bergen, Trondheim, Stavanger, and in some smaller cities and counties. The couriers are organised in the Norwegian Transport Workers' Union in Oslo, Trondheim and Bergen (about 100 out of 400 couriers), and they are currently negotiating with Foodora for a collective agreement.<sup>19</sup> The couriers started organising in the trade union in late 2017 on their own initiative, but after several rounds of dialogue with the trade union on the demand for better working conditions. Important to note in this context is that in Norway Foodora has accepted that the couriers are employees.

The couriers in Norway have marginal part-time employment contracts (10 hours per week), but with a possibility of working extra hours. Section 14-3-1 of the Norwegian Working Environment Act states that, when working part-time with extra hours, workers can demand extra hours in the contract if they work more over a longer period of time than what is stated in the contract. Some of the couriers have used this regulation to claim extra hours in their contract. Further, the couriers have an hourly pay rate with extra payment per order. The couriers explain that the number of deliveries per hour might vary from one to four – and being highest in the evenings and at weekends. This might pressure the couriers to work unsocial hours.

In the negotiations for a collective agreement, the workers' main demands include reimbursement for equipment (repair of bike, clothing, winter tyres<sup>20</sup> etc.) and getting paid for actual working time. Several of the interviewees explain that they often receive late orders (almost systematically), meaning that they have to work overtime. If the orders are far away, the couriers get paid until the delivery is dropped off at the customer, and then they have to cycle back, while wearing the company uniform, which some of the couriers identify as being unpaid labour. The couriers are eagerly awaiting conclusion of the collective agreement, which they hope will improve their working conditions.

### Summary

Recent European case law suggests that certain self-employed and freelancers are entitled to negotiate collectively. The CJEU has accepted collective bargaining for the 'false self-employed', who are in a situation comparable to that of an employee. Determinant in the case of the Irish Congress of Trade Unions (ICTU) vs Ireland was the imbalance of power between the parties. This might imply that if a platform worker does not have the ability to influence pay and working conditions on an individual level, these workers might have the right to bargain collectively, regardless of the formal contractual arrangement.

The collective agreements emerging in the Nordic platform economies are different in nature and their effects are not yet clear. Platform companies that hire their workforce on marginal part-time contracts seem to be more inclined to negotiate a collective agreement than platform companies using self-employed and freelancers.

It remains to be seen whether the agreements are examples of deviant cases or if they mark the beginning of a trend where increasing numbers of platform workers, at least in the Nordic countries, are covered by agreements.

## Notes

<sup>1</sup> The effect of generally applicable collective agreements not included. Source: Alsos, K. and Trygstad, S.C. (2018) Workplace democracy: Representation and participation gaps in the Norwegian labour market model. In Engelstad, F., Holst, C. & Aakvaag, G.C. (eds.) Democratic State and Democratic. Institutional Change in the Nordic Model Society. De Gruyter.

<sup>2</sup> Treaty of the Functioning of the EU (TFEU) art. 101 (1)

<sup>3</sup> Larsen, T.P. & Ilsøe, A. (2016). Flexibility through stability - The institutionalization of company-level bargaining on working time in Danish industry. Contribution to the book: The Danish Model - inside out

<sup>4</sup> Alsos et al. (2017). Når sjefen er en app. Fafo report 2017:41

<sup>5</sup> Alsos, K. and Trygstad, S.C. (2018)

<sup>6</sup> Alsos et al. 2017

<sup>7</sup> Munkholm, N.V. & Schjøler, C. H. (2018). Platform Work and the Danish Model – Legal Perspectives. Nordic Journal of Commercial Law 1(2018)

<sup>8</sup> Rasmussen (2019 forthcoming). Nonstandard Employment in the Nordics – Toward Precarious Work. Nordic Journal of Working Life Studies

<sup>9</sup> Case C-67/96 Albany, ECLI:EU:C:1999:430

<sup>10</sup> Case C-413/13 FNV Kunsten Informatie en Media, ECLI:EU:C:2014:2411.

<sup>11</sup> ESCR decision 12 December 2018, Complaint No. 123/2016.

<sup>12</sup> Hotvedt, M.J. (2018). The contract of employment test renewed. A Scandinavian approach to platform work, Spanish Labour Law and Employment Relations Journal. EISSN 2255-2081 Vol. 7 2018, p. 56–74

<sup>13</sup> NOU 2017:4: Delingsøkonomien – muligheter og utfordringer. Report from the committee appointed by Royal Decree March 4, 2016. Issued to the Ministry of Finance, 6 February 2017. Factsheet in English

<sup>14</sup> Munkholm, N.V. & Schjøler, C. H. (2018)

<sup>15</sup> An English translation of the agreement text is available: [https://www.3f.dk/fagforening/fag/rengoeringsassistent-\(privatansat\)/overenskomsten-hilfr](https://www.3f.dk/fagforening/fag/rengoeringsassistent-(privatansat)/overenskomsten-hilfr)

<sup>16</sup> <https://www.hk.dk/-/media/dokumenter/raad-og-stoette-v2/fre-elancer/erklringvoocalihkprivatendelig.pdf?la=da&hash=F220F50F58285F3F4681F9AE6A81E2E716EF953C>

<sup>17</sup> We have examined the bargaining and implementation processes based on desk research supplemented with interviews with the involved social partners and selected workers on the platform. Interviews were conducted with two platform workers, two interviews with the CEOs of the platform and two interviews with 3F.

<sup>18</sup> In comparison, the minimum hourly wage for industrial cleaning in Denmark in 2018 is DKK 127 (€ 17).

<sup>19</sup> We have conducted four focus group discussions with 11 couriers and four interviews with social partners related to the company. Foodora is not a member of an employer organisation in Norway, and we were not able to conduct an interview with the company (the argument was that they are in the midst of negotiating a collective agreement)

<sup>20</sup> In Sweden, the couriers get reimbursements for winter tyres



## The future of work: Opportunities and challenges for the Nordic models

In this collaborative project funded by the Nordic Council of Ministers, more than 30 researchers from the five Nordic countries study:

- What are the main drivers and consequences of the changing future of work in the Nordic countries?
- In what ways will digitalisation, new forms of employment, and platform work influence the Nordic models?
- What kind of renewal in the regulation of labour rights, health and safety, and collective bargaining is warranted to make the Nordic model fit for the future?

Through action and policy oriented studies and dialogue with stakeholders, the objective is to enhance research-based knowledge dissemination, experience exchange and mutual learning across the Nordic boundaries. The project runs from 2017 to 2020, and is organised by Fafo Institute for Labour and Social Research, Oslo. [www.fafo.no](http://www.fafo.no)

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