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Policy Development Section **POL**

Employment and Social Protection Segment

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A normative gap analysis on decent work in the platform economy

Purpose of the document

This document contains a normative gap analysis on decent work in the platform economy to inform the decision-making on the nature of the item to be placed on the agenda of the Conference in 2025 and, as appropriate, in 2026 (see the draft decision in paragraph 65).

Relevant strategic objective: All.

Main relevant outcome: Outcome 7: Adequate and effective protection at work for all.

Policy implications: See the draft decision in paragraph 65.

Legal implications: Those arising from the application of the Standing Orders of the Conference and the Standing Orders of the Governing Body.

Financial implications: Those arising from the placing of items on the Conference agenda.

Follow-up action required: See the draft decision in paragraph 65.

Author unit: Conditions of Work and Equality Department (WORKQUALITY).

Related documents: GB.347/INS/2/1; GB.346/INS/2; GB.346/INS/PV; GB.346/POL/2; GB.346/POL/PV.

▶ Introduction

1. At its 346th Session (October–November 2022), the Governing Body decided to place on the agenda of the 113th Session (2025) of the Conference an item on decent work in the platform economy and requested the Office to present to its 347th Session (March 2023) a normative gap analysis to inform its decision-making on the nature of the item to be placed on the agenda of the Conference in 2025 and, as appropriate, in 2026. [1]

2. This document examines two types of gaps: gaps in the personal scope of application of international labour standards, and so-called thematic gaps, namely issues that are relevant to the platform economy and do not appear to be fully addressed in existing ILO standards. This analysis seeks to provide a better-informed basis for the Governing Body to decide regarding follow-up action.

3. The Office selected ILO standards addressing a wide range of topics that appear particularly relevant for the platform economy. Standards that only apply to economic sectors or occupations clearly beyond the platform economy (for instance industrial undertakings) were not considered. Recommendations that accompany Conventions were not examined, except if their scope of application is not identical.

4. The scope of application of standards was examined in the light of their express provisions and the views of the ILO supervisory bodies. [2] The main aim was to determine whether these standards apply to employees only or also to the self-employed. Indeed, while some platform workers have the status of employees, many of them are classified as self-employed. Therefore, the areas in which the self-employed are not covered were identified, without prejudging the position of the Governing Body regarding the areas for which it considers that their coverage is relevant. Further, some exclusions concern occupations found in the platform economy and therefore also constitute normative gaps. [3]

5. The standards reviewed are presented by subject, starting with the employment relationship, which remains the foundation of most labour and social rights. For each subject, thematic gaps identified by participants in the Meeting of Experts on Decent Work in the Platform Economy (the Meeting of Experts) [4] and Governing Body members during the discussion on the report

[1] GB.346/INS/PV, para. 92(b).

[2] The Committee of Experts on the Application of Conventions and Recommendations (CEACR) undertakes an impartial and technical analysis of how the Conventions are applied in law and practice by Member States, while cognizant of different national realities and legal systems. In doing so, it must determine the legal scope, content and meaning of the provisions of the Conventions. Its opinions and recommendations are non-binding, being intended to guide the action of national authorities. ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, ILC.110/III(A), 2022, para. 23. While the Committee on Freedom of Association (CFA) must ensure the principles of universality, continuity, predictability, fairness and equal treatment in the area of freedom of association, each case on which it issues conclusions and recommendations is unique and should be considered within its own specific context, see ILO, *Freedom of Association: Compilation of Decisions of the Committee on Freedom of Association*, sixth edition 2018, para. 9.

[3] Certain common exceptions that are not relevant for the platform economy, such as the exclusion of seafarers, are not mentioned in this document. Furthermore, as the objective of this normative gap analysis is to determine the applicability of international labour standards to work in the platform economy, the flexibility clauses included in some standards, which seek to facilitate their implementation, were not considered either.

[4] ILO, *Summary Record of Proceedings: Meeting of Experts on Decent Work in the Platform Economy*, MEDWPE/2022/8, 2022.

of the meeting [5] are addressed, based, in each case, on a brief assessment of the extent to which the issues mentioned are covered in existing standards. Some important issues that were raised and are not addressed in ILO standards, notably algorithmic management, are discussed in separate sections at the end of this document (sections 17 to 20).

▶ 1. The employment relationship

6. The **Employment Relationship Recommendation, 2006 (No. 198),** calls for the adoption of a national policy of protection for "workers who perform work in the context of an employment relationship", with the objective of combating "disguised employment relationships", to ensure that employed workers in such relationships have the protection that they are due.

7. The reference document prepared for the Meeting of Experts [6] points to the numerous court rulings addressing this issue and mentions that, among regulatory initiatives related to the platform economy, many have provisions on the classification of the workers (for instance in Chile, Italy, Spain, California (United States of America) and in the European Union). These refer almost exclusively to in situ platform workers and not to online platform workers. As regards court rulings, the reference document notes the absence of unanimity when it comes to classifying platform workers as either dependent or self-employed.

8. **Possible normative gaps:** Participants in the Meeting of Experts and Governing Body members recognized the need to combat disguised employment. Recommendation No. 198 was considered as fully relevant in the context of the platform economy.

▶ 2. Freedom of association and collective bargaining

9. The **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87),** applies to all "workers", "without distinction whatsoever" (Article 2). [7] The CEACR expressly stated that the Convention covers, among others, workers in the informal economy and self-employed workers. [8] The CFA stressed that the criterion for determining the persons covered by the right to organize is not based on the existence of an employment relationship. [9] Several comments of the CEACR specifically concern the application of Convention No. 87 to platform workers. [10]

10. The **Right to Organise and Collective Bargaining Convention, 1949 (No. 98),** applies to "workers" (Article 1). [11] The CEACR stated that the right to collective bargaining should also

[5] GB.346/POL/PV, paras 35–75.

[6] ILO, *Reference Document for the Meeting of Experts on Decent Work in the Platform Economy*, MEDWPE/2022, 2022, paras 69– 84.

[7] However, the extent to which the guarantees provided for in the Convention shall apply to the armed forces and the police shall be determined by national laws or regulations (Article 9(1)).

[8] ILO, *Giving Globalization a Human Face: General Survey on the Fundamental Conventions concerning Rights at Work in Light of the ILO Declaration on Social Justice for a Fair Globalization, 2008*, ILC.101/III/1B, 2012, para. 53.

[9] ILO, *Compilation*, paras 326 and 330.

[10] CEACR, direct request, Convention No. 87, Greece, adopted 2021. CEACR, direct request, Convention No. 87, Canada, adopted 2020.

[11] However, the extent to which the guarantees provided for in the Convention shall apply to the armed forces and the police shall be determined by national laws or regulations (Article 5(1)) and the Convention does not deal with the position of public

cover organizations representing self-employed workers. [12] In two cases, [13] the Committee on Freedom of Association requested the Governments concerned "to hold consultations … with all the parties involved with the aim of finding a mutually acceptable solution so as to ensure that workers who are self-employed could fully enjoy trade union rights for the purpose of furthering and defending their interest, including by the means of collective bargaining; and … in consultation with the social partners concerned, to identify the particularities of self-employed workers that have a bearing on collective bargaining so as to develop specific collective bargaining mechanisms relevant to self-employed workers, if appropriate". Several comments of the CEACR specifically concern the application of Convention No. 98 to platform workers. [14] The majority of participants in the Meeting of Experts supported the views expressed by the ILO supervisory bodies. The Employers group nonetheless questioned the applicability of Convention No. 98 to all platform workers since, in their view, Article 4 of Convention No. 98 makes the right to collective bargaining conditional on an employment relationship.

11. The reference document notes that the compatibility of the right to collective bargaining for self-employed workers with competition law has been the subject of debate, particularly in member countries of the European Union and the Organisation for Economic Co-operation and Development. [15] It adds that a certain consensus exists that such a compatibility exists in the case of self-employed workers who lack the negotiating power to be able to influence their working conditions. Relevant provisions exist for instance in the legislation of France and Spain, and the European Commission adopted in 2022 Guidelines on that subject matter.

12. **Possible normative gaps:** There does not appear to be any gap in the scope or issues covered by Conventions Nos 87 and 98.

▶ 3. Forced labour

13. The **Forced Labour Convention, 1930 (No. 29),** protects "any person" from whom work or service is exacted (Article 2(1)). The definition of forced or compulsory labour contained in Convention No. 29 was reaffirmed in its **Protocol of 2014** (Article 1(3)). The **Abolition of Forced Labour Convention, 1957 (No. 105),** covers "any form of forced or compulsory labour" in five specific circumstances (Article 1). The CEACR expressly stated that Conventions Nos 29 and 105 contain no provisions limiting the scope of their application by excluding certain categories of workers and that they are designed to protect the entire population of the countries which have ratified them. [16]

14. **Possible normative gaps:** There does not appear to be any gap in the scope or issues covered by Conventions Nos 29 and 105.

servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way (Article 6).

[12] ILO, *Giving Globalization a Human Face*, para. 209.

[13] GB.325/INS/12, para. 351(b); GB.313/INS/9, para. 467(e).

[14] CEACR, direct request, Convention No. 98, Belgium, adopted 2020. CEACR, direct request, Convention No. 98, Canada, adopted 2020.

[15] MEDWPE/2022, para. 110.

[16] ILO, *Giving Globalization a Human Face*, para. 261.

▶ 4. Elimination of child labour

15. The **Minimum Age Convention, 1973 (No. 138),** requires States party to the Convention to raise progressively the minimum age for "admission to employment or work" to a level consistent with the fullest physical and mental development of young persons (Article 1). The CEACR stressed that Convention No. 138 applies to all sectors of economic activity and covers all forms of employment or work, whether or not there is a contractual employment relationship, including unpaid work and work in the informal economy. [17]

16. The **Worst Forms of Child Labour Convention, 1999 (No. 182),** applies to "all persons" under the age of 18 (Article 2). The CEACR expressly stated that the Convention applies equally to employed and self-employed children. [18]

17. **Possible normative gaps:** There does not appear to be any gap in the scope or issues covered by Conventions Nos 138 and 182.

▶ 5. Equality and opportunity of treatment

18. The **Equal Remuneration Convention, 1951 (No. 100),** establishes the principle of equal remuneration for "men and women workers" for work of equal value (Article 1). The **Discrimination (Employment and Occupation) Convention, 1958 (No. 111),** applies to "employment or occupation" (Article 1). For the CEACR, Conventions Nos 100 and 111 apply to all workers, both nationals and non-nationals, in all sectors of activity, in the public and the private sectors, and in the formal and informal economy. [19]

19. The **Workers with Family Responsibilities Convention, 1981 (No. 156),** applies to "all branches of economic activity and all categories of workers" (Article 2). The CEACR stressed that all workers should be covered, whether in full-time, part-time, temporary or other forms of employment, and whether they are in wage or non-wage employment. [20]

20. The **Violence and Harassment Convention, 2019 (No. 190),** applies to "workers and other persons in the world of work, including employees as defined by national law and practice, as well as persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer" (Article 2). It covers specifically violence and harassment in the world of work occurring through "work-related communications, including those enabled by information and communication technologies" (Article 3).

21. **Possible normative gaps:** Having a comprehensive scope of application, Conventions Nos 100, 111, 156 and 190 do apply to all platform economy workers. In terms of possible thematic gaps, the need to prevent discriminatory biases in the use of algorithms in the context

[17] ILO, *Giving Globalization a Human Face*, para. 332.

[18] ILO, *Giving Globalization a Human Face*, para. 433.

[19] ILO, *Giving Globalization a Human Face*, paras 658 and 733.

[20] ILO, *Workers with Family Responsibilities*, International Labour Conference, 80th Session, Report III (Part 4B), 1993, para. 46.

of platform work has been mentioned by some participants in the Meeting of Experts (see below under algorithmic management).

▶ 6. Labour inspection

22. The **Labour Inspection Convention, 1947 (No. 81),** applies to industry (Part I) and commerce (Part II). In these sectors, the system of labour inspection must apply to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors (Articles 2 and 23). Its **Protocol of 1995** applies to all workplaces that do not already fall within the scope of Convention No. 81 (Article 1(3)).

23. **Possible normative gaps:** Taken together, Convention No. 81 and its Protocol of 1995 apply to all workplaces. [21] Their application to the platform economy may raise practical difficulties as work does not always take place in a unique workplace, as in the case of riders or drivers. Some participants in the Meeting of Experts indicated that algorithmic management constituted a barrier to effective labour inspection.

▶ 7. Employment policy and promotion

24. The **Employment Policy Convention, 1964 (No. 122),** requires Members to declare and pursue an active policy aimed at promoting "full, productive and freely chosen employment" (Article 1). The CEACR pointed out that Convention No. 122 applies to all workers, whether they are dependent or self-employed.

25. The **Private Employment Agencies Convention, 1997 (No. 181),** applies to "all categories of workers" and "all branches of the economy" (Article 2(2)). The term "private employment agency" is defined as any natural or legal person, independent of the public authorities, which provides the labour market services listed in the Convention (Article 1(1)). For the CEACR, this definition generally encompasses any recruiter or direct service supplier outside the realm of public employment services. [22]

26. The reference document mentions that the relative similarity between the activities of platforms and those of private employment agencies has led to proposals that the former should be made subject to the same prohibition on charging fees or costs to workers as that imposed on private employment agencies by Article 7 of Convention No. 181. [23]

27. **Possible normative gaps:** There does not appear to be any gap in the scope or issues covered by Convention No. 122. The CEACR has not taken a position regarding whether some digital labour platforms may be considered as private employment agencies within the meaning of Convention No. 181. Several participants in the Meeting of Experts mentioned the existence of

[21] It is to be noted that, pursuant to the Labour Inspection Recommendation, 1947 (No. 81), the functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes. On the prevention and settlement of labour disputes, see section 19 below.

[22] ILO, *General Survey concerning Employment Instruments in Light of the 2008 Declaration on Social Justice for a Fair Globalization*, International Labour Conference, 99th Session, Report III (Part 1B), 2010, para. 296.

[23] MEDWPE/2022, para. 92.

multiparty work relationships in the platform economy among the thematic gaps, either because ILO standards do not fully apply to them, or because compliance and enforcement pose additional challenges.

▶ 8. Employment security

28. The **Termination of Employment Convention, 1982 (No. 158),** applies "to all branches of economic activity and to all employed persons" (Article 2(1)). The CEACR requested information on the safeguards put in place to prevent recourse to fixed-term contracts or involuntary self-employment, with the aim of avoiding the protection resulting from the Convention. [24]

29. **Possible normative gaps:** The scope of Convention No. 158 does not extend to self-employed workers. Some participants in the Meeting of Experts and Governing Body members raised the issue of penalties which may be imposed on platform workers, including for declining a task. In certain cases, such penalties may involve the suspension or termination of a worker's account with a platform and amounts to a unilateral suspension or termination of the work relationship. The issue of penalties, which is broader than that of termination of employment, is not comprehensively addressed in ILO standards. It is also closely related to algorithmic management, discussed below.

▶ 9. Wages

30. The **Protection of Wages Convention, 1949 (No. 95),** applies to "all persons to whom wages are paid or payable" (Article 2(1)). The definition of "wages" refers to remuneration or earnings payable in virtue of a written or unwritten contract of employment by an employer to an employed person (Article 1). **Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173),** applies to "all employees and to all branches of economic activity" (Article 4(1)). **Minimum Wage Fixing Convention, 1970 (No. 131),** covers "all groups of wage earners whose terms of employment are such that coverage would be appropriate" (Article 1(1)).

31. **Possible normative gaps:** Conventions Nos 95, 173 and 131 apply only to wage earners. Some participants in the Meeting of Experts or Governing Body members mentioned as constituting thematic gaps, the lack of transparency of remuneration rates, the irregular payment of the remuneration due, as well as commissions and fees paid by platform workers. Convention No.95 mandates the full and timely payment of wages without unlawful deductions, and the prohibition of any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment but this is limited by definition to wage workers. Transparency in the determination of remuneration rates is not covered by existing ILO standards.

[24] CEACR, observation, Convention No. 158, Finland, adopted 1999.

▶ 10. Working time

32. The **Hours of Work (Commerce and Offices) Convention, 1930 (No. 30),** applies to "persons employed" notably in commercial or trading establishments (Article 1). For the CEACR, the objective of Convention No. 30 is to extend the hours of work standards prescribed by the **Hours of Work (Industry) Convention, 1919 (No. 1)**, to all those persons not covered by that Convention, with limited exceptions that include domestic service. The aim was to place salaried employees on an equal footing with their co-workers in industry. [25]

33. **Possible normative gaps:** Some participants in the Meeting of Experts have questioned the compatibility with Convention No. 30 of existing practices, including the absence of remuneration of workers' cruising time between gigs on transport and delivery applications. There was, however, no consensus on the applicability of that Convention to platform work in terms of sectors covered. As indicated above, the scope of Convention No. 30 is very broad although it applies to employees only and does not cover domestic work in the platform economy.

34. The counting and remuneration for time spent waiting for the allocation of tasks by the platform was mentioned as a thematic gap by several participants in the Meeting of Experts and Governing Body members. Convention No. 30 defines "hours of work" as "the time during which the persons employed are at the disposal of the employer". The CEACR did not address specifically the issue of "waiting time" in platform work but discussed the related notion of time spent "on call" or "on standby". [26] It concluded that the time spent "on call" may or may not be regarded as "hours of work" within the meaning of the Convention, depending on the extent to which the worker is restricted from engaging in personal activities during that time. For the CEACR, when such time is not regarded as "hours of work", the employee should still be entitled to some payment in recognition of the time spent "on call". The issue of waiting periods and their remuneration is therefore not clearly settled by Convention No. 30 and may be considered as a normative gap.

35. Overtime is another issue that was raised during the debates in the Meeting of Experts. Convention No. 30 contains provisions authorizing temporary or permanent exceptions to the daily and weekly limits of working hours it sets, as well as on the increased remuneration due in some of these cases. However, the limitation of total working hours when including overtime appears to constitute a normative gap. In addition, ILO standards do not regulate the total working hours of workers who have more than one job, as in the case of some platform workers. Finally, some participants considered that the right to be disconnected for workers in the platform economy also constitutes a gap in international labour standards. It is indeed not addressed in existing standards. The issue of working time is also closely related to that of algorithmic management, presented below.

[25] ILO, *Hours of Work: From Fixed to Flexible? General Survey of the Reports concerning the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)*, International Labour Conference, .93rd Session, Report III (Part 1B), 2005, para. 10.

[26] ILO, *Hours of Work*, para. 51.

▶ 11. Occupational safety and health

36. The **Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187),** is not limited in its scope of application, and provides for the promotion and advancement, at all relevant levels, of the right of workers to a safe and healthy working environment (Article 3(2)). Convention No. 187 identifies support mechanisms for a progressive improvement of occupational safety and health (OSH) conditions in the informal economy as an important component of a national OSH system (Article 4(3)(h)), and its accompanying **Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197),** expressly provides that the national OSH system should provide appropriate measures "for the protection of all workers, in particular, workers in high-risk sectors, and vulnerable workers such as those in the informal economy and migrant and young workers" (Paragraph 3).

37. The **Occupational Safety and Health Convention, 1981 (No. 155),** has a more limited scope, with the rights and duties of workers in the Convention applying to "all employed persons, including public employees", in accordance with the definition of the term "workers" for the purpose of the Convention (Article 3(b)). In this respect, the **Occupational Safety and Health Recommendation, 1981 (No. 164)**, which supplements Convention No. 155, provides that "provision should be made for such measures as may be necessary and practicable to give self-employed persons protection analogous to that provided for" in Convention No. 155 and Recommendation No. 164 (Paragraph 1(2)).

38. **Possible normative gaps:** Although the fundamental principle and right to a safe and healthy working environment applies to all, the personal scope of application of Convention No. 155 does not extend to self-employed workers. Nonetheless, its accompanying Recommendation calls for the provision to them of protection analogous to that provided for in the Convention.

▶ 12. Social security

39. The **Social Security (Minimum Standards) Convention, 1952 (No. 102),** offers governments a choice of alternatives to define the scope of protection. Depending on the benefit concerned, reference is made to employees, the economically active population, or residents (Articles 9, 15, 21, 27, 33, 41, 48, 55 and 61). As the CEACR noted, the Convention avoids defining protected persons in terms of strictly legal concepts. It largely refers instead to statistical criteria and offers governments a choice of alternatives. [27] A similar approach is followed in the **Medical Care and Sickness Benefits Convention, 1969 (No. 130)** (Articles 10 and 19) and the **Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)** (Articles 9, 16 and 22).

40. The **Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121),** applies to "all employees, including apprentices, in the public and private sectors, including co-operatives" (Article 4 (1)). The accompanying **Employment Injury Benefits Recommendation, 1964 (No. 121),** provides that Members should secure the provision of employment injury or

[27] ILO, *Social Security Protection in Old-Age: General Survey of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 76th Session, Report III (Part 4B), 1989, para. 51.

analogous benefits, if necessary, by stages and/or through voluntary insurance, notably to prescribed categories of self-employed persons (Paragraph 3(1)(b)).

41. Persons protected under the social security provisions of the **Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168),** must comprise prescribed classes of employees, including public employees and apprentices (Article 11(1)). Previously self-employed persons are listed among the categories of persons seeking work who have never been, or have ceased to be, recognized as unemployed or have never been, or have ceased to be, covered by schemes for the protection of the unemployed. At least three of the categories of persons seeking work must receive social benefits (Article 26 (1)).

42. The **Social Protection Floors Recommendation, 2012 (No. 202),** establishes notably the principle of universality of protection, based on social solidarity, and that of social inclusion, including of persons in the informal economy (Paragraph 3(a) and (e)). For the CEACR, workers on digital platforms in the gig economy are among those at risk of exclusion from the coverage of social protection. [28]

43. **Possible normative gaps:** The personal scope of application of most social security standards does not exclude the self-employed. Convention No. 168, however, only applies to employees, although it introduces the possibility to cover previously self-employed persons. While the scope of Convention No. 121 is also limited to employees, its accompanying Recommendation No. 121 calls for the provision of benefits to certain categories of self-employed workers.

▶ 13. Maternity protection

44. The **Maternity Protection Convention, 2000 (No. 183)**, applies to "all employed women, including those in atypical forms of dependent work" (Article 2(1)). For the CEACR, the Convention covers women workers with a contract of employment, whether express or implied, irrespective of their sector of employment or occupation. [29]

45. **Possible normative gaps:** The scope of Convention No. 183 does not include self-employed workers.

▶ 14. Migrant workers

46. The **Migration for Employment Convention (Revised), 1949 (No. 97),** protects migrants for employment, defined as persons who migrate from one country to another with a view to being employed otherwise than on their own account. This term includes any person regularly admitted as a migrant for employment (Article 11(1)).

47. Part I of the **Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)** (on migrations in abusive conditions) applies to "all migrant workers", while Part II of the Convention (on equality of opportunity and treatment) applies to persons who migrate or who have migrated from one country to another with a view to being employed otherwise than on

[28] ILO, *Universal Social Protection for Human Dignity, Social Justice and Sustainable Development: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202)*, ILC.108/III/B, 2019, para. 425.

[29] ILO, *Achieving Gender Equality at Work*, ILC.111/III/B, forthcoming.

their own account, and the term "migrant worker" in Part II includes any person regularly admitted as a migrant worker.

48. **Possible normative gaps:** While Part I of Convention No. 143 applies to all migrant workers, including those in an irregular situation, the scope of Convention No. 97 and Part II of Convention No. 143 excludes self-employed workers and other limited categories of workers, and does not extend to undocumented migrant workers. [30]

▶ 15. Specific categories of workers

49. The **Home Work Convention, 1996 (No. 177),** applies to all persons carrying out home work as defined in the Convention, which excludes work performed by a person who has "the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions" (Articles 1 and 2). The CEACR noted that the broad scope of application of the Convention is important, as the term "home work" covers a wide range of activities, including very modern forms of work, including platform work when it meets certain conditions. [31]

50. The **Domestic Workers Convention, 2011 (No. 189),** applies to all persons engaged in domestic work within an employment relationship (Articles 1 and 2(1)). In its 2022 General Survey, the CEACR noted that a number of workers' organizations denounced situations in which the employment relationship is disguised, observing that this phenomenon is often linked with the rise of "gig" or "on-demand" services, through which domestic work is mediated through online platforms or apps. [32]

51. **Possible normative gaps:** Self-employed workers are not covered by Conventions Nos 177 and 189.

▶ 16. Transition from the informal to the formal economy

52. The **Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204),** applies to all workers and economic units in the informal economy, including own-account workers (Paragraph 4). Certain participants in the Meeting of Experts noted the potential for well-regulated platform work to provide pathways to formalization and the relevance on Recommendation No. 204 in this respect.

53. **Possible normative gaps:** Recommendation No. 204 does not appear to present normative gaps in terms of its scope or the issues it covers.

[30] ILO, *Promoting Fair Migration: General Survey concerning the Migrant Workers Instruments*, ILC.105/III/1B, 2016, paras 103 and 120.

[31] ILO, *Promoting Employment and Decent Work in a Changing Landscape*, ILC109/III(B), 2020, para. 505.

[32] ILO, *Securing Decent Work for Nursing Personnel and Domestic Workers, Key Actors in the Care Economy*, ILC110/III/(B), 2022, para. 572.

▶ 17. The protection of workers' personal data

54. An ILO meeting of experts adopted a **code of practice on the protection of workers' personal data** in 1996. The code of practice, which has no binding force and does not have the status of an international labour standard, provides guidance to address the collection, security and storage of personal data, as well as their use and communication to third parties. It also enumerates workers' individual and collective rights, and regulates the automated processing of data and electronic monitoring. As was highlighted in the reference document, the code of practice could guide the actions of platforms in a number of areas. [33]

55. A few ILO standards contain provisions on the protection of workers' personal data. These provisions are, however, limited in their scope as they apply for instance only in situations involving private employment agencies (Convention No. 181 and the accompanying **Private Employment Agencies Recommendation, 1997 (No. 188)**), or only for domestic workers (Convention No. 189). They may also concern only certain types of data, essentially health data (Occupational Health Services Recommendation, 1985 (No. 171), and HIV and AIDS Recommendation, 2010 (No. 200)).

56. ILO research has identified numerous regulations at the national and international levels on the protection of personal data, including in an employment context.

57. **Possible normative gaps:** No international labour standard regulates in a comprehensive manner the protection of workers' personal data as does the code of practice. Numerous participants in the Meeting of Experts and Governing Body members mentioned data protection as an area not covered by existing standards. Some of the issues mentioned, including digital monitoring and the right of access to personal data, are covered, at least partially, in the code of practice. On the other hand, it does not address data portability from one platform to another.

58. At its 346th Session (October–November 2022), the Governing Body requested the Office to take into account the guidance provided in preparing proposals for a meeting of experts on protection of workers' personal data in the digital era for a decision by the Governing Body in 2023. [34] A proposal to that effect will be submitted to the 349th Session (October–November 2023) of the Governing Body.

▶ 18. Algorithmic management

59. Algorithmic management, which heavily relies on the processing of personal data, is an important feature of the platform economy that progressively came to encompass other workplaces. [35] The reference document noted that, in platform work, "[i]t is an algorithm that offers and grants services or tasks to workers, defines their time slots, calculates the rankings on which their activities and income depend, and decides whether they will continue to provide services for the platform or remain deselected from it". [36] The reference document mentions

[33] MEDWPE/2022, para. 97.

[34] GB.346/INS/PV, para. 92(g).

[35] GB.346/INS/2, para. 52.

[36] MEDWPE/2022, para. 99.

some court decisions concerning the use of algorithms in platform work, as well as legislative developments, in particular in Spain. [37]

60. **Possible normative gaps:** Several participants in the Meeting of Experts and Governing Body members raised the need to address algorithmic management, although there was no consensus as to whether it fell within the ILO's remit. The issues raised include governments' access to the source codes of algorithms in order to regulate them; the need to prevent algorithms from discriminating against workers and trade union representatives; and transparency in algorithmic management to support the proper classification of workers and fairness of automated decisions such as ratings and deactivation from the platform and other penalties and surveillance.

61. International labour standards do not specifically address algorithmic management or, more broadly, the use of artificial intelligence in the world of work, although some standards are also relevant in that context, such as, for instance, Convention No. 111 regarding the prevention of discriminatory biases in the design of algorithms.

▶ 19. Resolution of labour disputes

62. A number of ILO standards contain provisions on the settlement of labour disputes. [38] Nonetheless, as the Office noted, "[t]he preliminary research findings suggest that the existing body of international labour standards could be further strengthened. First, there is no single standard that directly and comprehensively addresses the issue of individual labour dispute resolution. Second, there is a relative lack of detail in the guidance in existing standards." [39] These considerations appear to be particularly relevant for work in the platform economy given its cross-border nature and the multiparty work relationship involved.

63. **Possible normative gaps:** Some participants in the Meeting of Experts and Governing Body members considered that normative gaps exist as regards effective access to remedies and dispute resolution mechanisms for platform workers. The Office also noted that existing standards are set to be reviewed by the Standards Review Mechanism. [40] The Governing Body requested the Office to take into account the guidance provided in preparing proposals for a tripartite technical meeting on access to labour justice for a decision by the Governing Body in 2023. [41]

▶ 20. The cross-border nature of the platform economy

64. **Possible normative gaps:** Some participants in the Meeting of Experts and Governing Body members indicated that existing ILO standards did not adequately cover the cross-border nature of platform work, which complicates compliance and enforcement. The need for

[37] MEDWPE/2022, paras 100–101.

[38] For example, the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), and the Examination of Grievances Recommendation, 1967 (No. 130).

[39] GB.346/INS/2, para. 39.

[40] GB.346/INS/2, para. 40.

[41] GB.346/INS/PV, para. 92(g).

platforms to be legally incorporated in each of the countries in which their workers operate was also mentioned. In the case of web-based platforms, the platform, the clients and the workers may be located in different jurisdictions, which makes the application of local labour laws difficult. [42] Location-based platform work also entails a cross-border relationship when the platform and the worker are not situated in the same country. The principal focus of ILO standards is on implementation and enforcement within national territories, while certain standards have limited cross-jurisdictional elements. [43] However, these provisions are very specific and do not fill the identified normative gap in relation to the cross-border nature of the platform economy.

▶ Draft decision

65. The Governing Body, having taken note of the normative gap analysis contained in document GB.347/POL/1, decided that the item placed on the agenda of the 113th Session (June 2025) of the Conference on decent work in the platform economy will be devoted [to a general discussion] OR [to standard-setting with a double-discussion procedure].

[42] GB.346/INS/2, para. 49.

[43] ILO, *Gap Analysis of ILO Normative and Non-normative Measures to Ensure Decent Work in Supply Chains*, WGDWS/2021, 31– 34.