





Digital platforms in the ride-hailing industry: control and inspection methodology

Portugal

	<p>Summary</p> <p>Portugal established a legal framework (Law 45/2018) for digital platform servicesⁱ in the ride-hailing industry -. The Law introduced a control and inspection methodology to combat undeclared work in the sector. It involves joint inspections between the labour inspectorate and police or National Republican Guardⁱⁱ, in addition to data exchange with the Institute of Social Security and the Institute for Mobility and Transport.</p>
<p>Title of the practice in original language</p>	<p><i>Controlo inspetivo de motoristas de TVDE</i></p>
<p>Name(s) of authorities/bodies/ organisations involved</p>	<ul style="list-style-type: none"> ▶ ListAuthority for working conditions (ACT) (The Labour Inspectorate) (<i>Autoridade para as Condições do Trabalho</i>)ⁱⁱⁱ ▶ Mobility and Transport Authority (AMT) (<i>Autoridade da Mobilidade e dos Transportes</i>) ▶ Public Security Police (PSP) (<i>Polícia de Segurança Pública</i>) ▶ National Republican Guard (GNR) (<i>Guarda Nacional Republicana</i>) ▶ Institute of Social Security (IP) (<i>Instituto de Segurança Social</i>) ▶ Institute for Mobility and Transport (IMT, IP) (<i>Instituto da Mobilidade e dos Transportes</i>) ▶ Tax Authority (AT) (<i>Autoridade Tributária e Aduaneira</i>) ▶ National Commission Data Protection (CNDP) (<i>Comissão Nacional de Proteção de Dados</i>)
<p>Sectors</p>	<p>Professional services</p>
<p>Target groups</p>	<ul style="list-style-type: none"> ▶ Labour inspectors (directly targeted); ▶ Digital ride-hailing platforms workers (TVDE^{iv} drivers) (directly targeted);



	<ul style="list-style-type: none"> ▶ Digital ride-hailing platform operators (TVDE operators) (directly targeted); ▶ Digital ride-hailing platforms^v (indirectly targeted).
Purpose of measure	Legitimising undeclared work

	<p>Aims and objectives</p> <p>The aim of the practice is to establish a legal framework for services offered by the digital platforms in the ride-hailing industry and to create an effective control and inspection methodology in order to encourage a shift in the sector from undeclared to declared work.</p>
<p>Background context</p>	<ul style="list-style-type: none"> ▶ In 2014 and 2015 taxi drivers demonstrated for regulation of the digital platform ride-hailing industry (taxi sector is strictly regulated) to be introduced; ▶ The District Court of Lisbon^{vi} and the Lisbon Court of Appeal^{vii} ruled that Uber (service provider in the ride-hailing industry) operations in Portugal were illegal; ▶ TVDE drivers were complaining about their precarious working conditions which undermined their minimum working rights; ▶ At the same time labour inspectorates lacked access to reliable data and there was an absence of a legal framework to determine the employment status of TVDE drivers.
<p>Key objectives of the measure</p>	<p>General Objective:</p> <ul style="list-style-type: none"> ▶ To establish a legal framework and define the competences of the eight administrative authorities to inspect digital platforms, TVDE operators, and TVDE drivers; ▶ To legitimise undeclared work by introducing effective control and inspection measures which facilitate a shift from undeclared to declared work. <p>Specific Objectives:</p> <ul style="list-style-type: none"> ▶ To increase the number of joint inspections; ▶ To carry out joint on-site inspections of companies' (TVDE operators) and on roadsides (for the inspection of TVDE drivers);



	<ul style="list-style-type: none"> ▶ To define TVDE drivers' employment status and ensure that they enjoy full protection under social security and labour legislation.
<p>Main activities</p>	<p>According to the Law TVDE operators and drivers can freely choose their contractual employment relationship. TVDE drivers who choose to be employees are subject to equal working time rules as persons performing mobile road transport activities. If TVDE drivers choose to work as self-employed they are subject to the working time organisation regime Decree-Law 117/2012, of 05 June.</p> <p>The Law calls for two methods of intervention to assess the contractual employment relationship:</p> <ul style="list-style-type: none"> i) Inspections at the company's (TVDE Operators) headquarters / workplace; ii) Inspections of TVDE drivers on the roadside. Joint roadside interventions are carried out by the labour inspectorate and the National Republican Guard or police. <p>If a situation of possible inadequate classification of employment relationship is identified, two consecutive control measures apply;</p> <ul style="list-style-type: none"> i) The labour inspectorate assesses the type of employment and whether an employment relationship (contract) has been established based on Article 12 of the Labour Code. If there is no employment relationship, the labour inspectorate notifies the employer (TVDE operator) to establish an employment contract. If the employer does not comply within 10 days, the second control measure applies; <p>Under the second control measure (Article 15-A of the Procedural Regime applicable to labour and social security administrative offences), the labour inspectorate sends a notice to the public prosecutor. The public prosecutor evaluates the notice and has the authority to make the labour inspectorate's decision to establish an employment contract binding i.e., it is mandatory for the TVDE operator to employ the TVDE driver as an employee. Otherwise, the TVDE operator must pay a penalty.</p>
<p>Funding/organisational resources</p>	<p>The work of the labour inspectorate is funded by the Ministry of Labour, Solidarity and Social Security. However, no specific budget has been allocated to implement this practice.</p>

	<p>Outcomes</p> <p>The Law facilitates a shift from undeclared to declared work. This is achieved through successful cooperation between the labour inspectorate and other authorities to detect infringements. The public prosecutor has the power to mandate TVDE operators and TVDE drivers to have a contractual employment relationship.</p>
<p>Achievement of objectives</p>	<p>There are concerns regarding the effective implementation of Law 45/2018. The challenge concerns the criteria for an employment relationship mentioned in Article 12 of the Labour Code and whether it adequately reflects new forms of work. The criteria have been designed on the idea of a standard form of employment, which refers to an open-ended contract, stable income, and fixed working hours. In contrast, digital platform work is an atypical form of employment - unstable working hours, irregular income, working for several employers at the same time. As a result, at the time of writing, the government is currently in negotiation with social partners and economic sector representatives to revise Law 45/2018 on Digital Platform Ride-Hailing Services.</p>
<p>Lessons learnt and success factors</p>	<ul style="list-style-type: none"> ▶ Joint labour inspections and the exchange of data help to identify more infringements; ▶ A clear control and inspection methodology can create easy and effective procedures to tackle problems of undeclared work; ▶ The penalties imposed must be of sufficient size to deter companies from non-compliance; ▶ The mandatory nature of the measure is effective in shifting undeclared work to declared work.
<p>Transferability</p>	<p>Key factors in making the measure transferable to other Member States include establishing cooperation and regular exchanges of information between the labour inspectorate and other key organisations.</p>

<p>Further information</p>	
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Useful sources and resources

Law 45/2018 on Digital Platform Ride-Hailing Services

<https://dre.pt/home/-/dre/115991688/details/maximized>

Labour Code (Article 12) criteria for assessing the employment relationship

[https://www.act.gov.pt/\(pt-PT\)/Legislacao/LegislacaoNacional/Documents/CodigoTrabalho_annotado_abril2021.pdf](https://www.act.gov.pt/(pt-PT)/Legislacao/LegislacaoNacional/Documents/CodigoTrabalho_annotado_abril2021.pdf)

Law 107/2009, of 14/09 - Procedural Regime applicable to Labour and Social Security Offenses (Article 15-A)

https://dre.pt/web/guest/legislacao-consolidada/-/lc/107674790/202111022057/73445992/diploma/indice?p_p_state=maximized

ⁱ There are currently no harmonised definitions of 'the collaborative economy', 'platform work' and 'digital labour platforms' at EU level. For the purposes of this fiche, the concept of 'digital platform' is used, which is understood as services that are carried out by a digital platform user for a consumer /client in exchange of a payment, whereby the matching between the demand and the supply of labour is facilitated by an online application or technologies that are owned by an undertaking. The online application is owned and operated by a business, the digital labour platform, and is often using algorithms and (semi-)automated decision-making.' Definition taken by the European Platform tackling undeclared work, as found in the executive summary of the Thematic review workshop 'Undeclared work in the collaborative economy'. Available at: <https://ec.europa.eu/social/main.jsp?langId=en&catId=1299&eventsId=1892&furtherEvents=yes>

ⁱⁱ The National Republican Guard (GNR) is the national gendarmerie force of Portugal. Members are military personnel, subject to military law and organisation, unlike the agents of the civilian Public Security police (PSP). See <https://www.safecommunitiesportugal.com/find-information/police-in-portugal/gnr/>

ⁱⁱⁱ Article 24 of Law No. 45/2018 mentions eight authorities responsible to control and inspect in the sector, each according with its duties and mandate. Until now, the labour inspectorate has been exchanging data on social security payments and other relevant data with IMT e Segurança Social. The labour inspectorate is also requesting data from the IMT, IP about TVDE operators, such as licensing.

^{iv} TVDE stands for *Transporte Individual e Remunerado de Passageiros em Veículos Descaracterizados a partir de Plataforma Eletrónica* (Individual and Paid Transport of passengers in uncharacterised vehicles from an Electronic Platform e.g. Uber, Bolt etc.).

^v Digital platforms operators are the legal persons (companies) who provide, through their digital platform drivers, a transport service to users (clients) who submit their requests to a digital platform of which the operators are members. Therefore, there is no direct relationship between the digital platforms and the drivers.

^{vi} Decision of the District Court of Lisbon. Available at (in Portuguese): <https://s3.observador.pt/wp-content/uploads/2015/04/decisao-comarca-de-lisboa-uber.pdf>

^{vii} Decision of the Lisbon Court of Appeal. Available at (in Portuguese): <http://www.dgsi.pt/jtrl.nsf/-/0BC185DC4E2275DF802581290054C1D1>