



Platform economy case

Summary of lessons learned from the Platform Economy case

1. Trade union freedom is an important issue within socially responsible investment and is particularly topical as a part of the rise of the platform economy.
2. Cooperation with trade unions and experts on trade union freedom helps cultivate informed engagement efforts on this issue. Precisely because companies frequently provide reports on their policies, but not on whether they also respect trade union freedom in actual practice in the various countries where they are active.
3. Pension funds must give consideration to linking voting policy with engagement efforts and submitting resolutions on their own initiative. Especially in the case of companies that are not responsive and where pressure is needed.

Introduction

This document is the consequence of the work of the Working Group Platform Economy of the Dutch Pension Funds Agreement on Responsible Investment- a case on which pension funds, trade unions and the government worked together. In this document, we share lessons and insights on this case in which engagement was pursued with a large platform economy company on malpractices affecting trade union freedom.



Context of the case

Platform Economy: opportunities and risks

The online sale of products has undergone turbulent development over the past few years. This method of selling, including retail through platforms, offers a host of opportunities and options but also carries certain inherent risks with it.

It appears, for instance, that some platforms choose to pass risks (e.g., spikes and downturns in employment opportunities) and costs (such as social security contributions) on to workers. These are risks that generally fall under business risks (the risk of the employer). Also, regarding safety and health requirements at the workplace and working hours, in the case of platform work, the responsibility for these often lies entirely with the worker. This is what makes platform workers especially vulnerable and the protection of their labour rights all the more important.

Trade unions play an important role in safeguarding labour rights. However, research shows that only a very small percentage of platform workers have organised themselves collectively.[ILO 2021, p. 215: from reports on countries and global surveys. The ILO estimated in 2021 that worldwide, only 5% of microtask platform workers and 1% of freelance platform workers have organised themselves collectively.¹ A commonly cited reason is that platform workers face obstacles in exercising their rights to freedom of association and collective bargaining.

Trade union ; plural: trade unions)

1. an association of workers organized to protect and promote their common interests.

¹ ILO 2021, p. 215: from reports on countries and global surveys. The ILO estimated in 2021 that worldwide, only 5% of microtask platform workers and 1% of freelance platform workers have organised themselves collectively.

The importance of trade union freedom

From practically 'underground' workers' organisations at the time of the Industrial Revolution to internationally recognised workers' representative bodies, trade unions have over the past 200 years established themselves as widely recognised interlocutors and negotiating partners in dealings with employers and governments. The right to freedom of association and collective bargaining (with the right to take action) was successively ratified by the ILO (1948), the European Declaration of Human Rights (1950) and the European Social Charter (1960).

That right to freedom of association and collective bargaining consequently would appear to have become a matter of course. Nonetheless, this is by no means always the case as anno 2022, trade union work is still discouraged or even actively opposed in many countries. Not only does this stifle trade union freedom, but it also undermines agreements resulting from consultations between employers and employees. Agreements that are crucial for a decent package of working conditions, a living wage and a safe work environment.

Labour relations come under pressure if trade union freedom is not guaranteed, no matter in which economy, sector or company people work. This therefore also applies to the platform economy, where such relationships are under pressure due to rampant growth and the blurring of national and sector boundaries.

More information on this issue can be found in the exploratory document "[Trade union freedom](#)" (in Dutch).

Case approach

Selection of the company

After making an inventory among the parties that form part of the Agreement, it became clear that there was a great deal of interest in the issue of the platform economy. The issue of labour rights is an important thematic area for many pension funds, and research has shown that severe labour rights violations are taking place at platform companies or the risk of such violations is significant. Moreover, the complexity of the issue dictates that cooperation is crucial. Therefore, an important goal of this case was to increase and share knowledge regarding the (potential) adverse impact of the platform economy on labour rights. In compliance with the UNGPs and OECD guidelines, a company where serious malpractices were identified was selected for the engagement. [Institutional investors often hold large numbers of companies in their portfolios, whereby it may not be possible to address the entire range of adverse impacts all at once. Therefore, it is important to set priorities based on the severity of the adverse impact, its scope and its irreversible character, as outlined in the OECD Guidelines (and the OECD Guidance for Institutional Investors) and the UNGPs.²

Following this selection, a further inventory of ESG risks and impacts at the selected company was drawn up. A major (potential) adverse impact that was identified concerns the lack of safe working conditions, both at the company's distribution centres and in its transport activities. There are many indications that the number of accidents at platform companies in general, and also at the selected company specifically, is comparatively high. The workload and working conditions are cited as the main causes for this. There are also indications that the selected company restricts employees' freedom to choose to unionise themselves. For instance, the company seems to actively oppose union freedom and encourages employees not to form or join a union.

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Freedom of association and collective bargaining were chosen for the focus of the engagement in this case within a context that is close to home: Germany, where leverage was sought at the head office level. That is to say, where insights from the local context were used in an effort to put malpractices on the agenda at the head office level.

Objectives of the case

One of the main objectives of the case is to learn how investors can exert influence on a large international company that may be difficult to sway. In addition, seeking cooperation with other stakeholders (both within and outside of the Agreement) is an important objective in order to strengthen any potential influence on the company. This includes seeking other ways of effecting engagement and using escalation tools, such as voting at the general shareholders' meeting. Lastly, the sub-working group seeks to broaden knowledge on the application of the OECD guidelines concerning the platform economy and sub-contracting.

The engagement trajectory

Engagement objectives

Prior to starting the engagement trajectory, the sub-working group drafted a number of objectives, i.e., the 'engagement asks'. These focused mainly on trade union freedom, and are as follows:

- The company respects trade union freedoms (to a greater extent).
- The company observes the standards that are valid in Europe.
- The company enshrines trade union freedom in its own policies.
- The company ceases activities that restrict freedom of association.

The information from German and Dutch trade unions and concrete practical examples helped in specifying the engagement asks.

Courses of action and results

A first step was to establish contact with the company so that our message would reach the right places. This proved challenging because Investor Relations³ [Most listed companies have an investor relations department that responds to questions raised by investors. And often serves as the entry point to the company for investors as well.]

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there acted as a gatekeeper. That is to say, they blocked off any further contact with others within the company. Eventually, two meetings were held with the company, and three letters were sent.

At the outset of the case, the parties knew that it might be difficult to actually engage in an effective dialogue with the selected company and bring about a change in the way it conducts its business. That is why there was a focus in the early stages on exploring possible means of escalation. Specifically, the following escalation tools were either utilised or explored:

- use was made of voting rights and the submission of shareholder resolutions (to this end, cooperation was sought with submitters of related shareholder resolutions, a webinar was organised to raise the level of knowledge on voting and shareholder resolutions, and information was exchanged on voting proposals at the company.
- influence was expanded through contacts with other investors

Although engaging in an effective dialogue – in line with prior expectations – turned out to be challenging, the selected company has made progress on the engagement objectives. Notably, a shift can be seen in the area of transparency. Also, during the course of the engagement efforts, the company published a position paper on the subject of trade union freedom, which we provided feedback on from the framework of this case.



Lessons learned

The cooperation between the various parties within the platform economy sub-working group was perceived as very valuable. The various sub-working group parties mainly strengthen each other's informational position. Key insights at the cooperation level are as follows:

- Knowledge exchange in the working group involving pension funds and trade unions provided more insight into the case and the local situation. There was a discrepancy between the policy the company claims that it pursues and actual practice: whereas the policy seemed to be in order, indications from civil society raised suspicions that this policy was not being implemented in practice. For pension funds, information from trade unions was helpful in clarifying the indicated discrepancy in discussions with the company. Strengthening the informational position also helped pension funds make the engagement asks (more) specific. Pension funds, for their part, provided information on the engagement trajectory and the work methods surrounding the shareholders' meeting. This yielded new insights for the trade unions concerned.
- Exerting influence: In order to put the issues on the agenda at a company that is difficult to mobilise, pressure from a range of organisations needs to be exerted. This could include involving other investors in the engagement efforts or the help of proxy voting advisors.
- The different work methods and positions of the various sub-working group parties can lead to differences in the use of language and approach to the company. It is prudent to take this into account in the cooperation between the various sub-working group parties.

Specific to the Platform Economy case

- UniGlobalUnion is the GUF (Global Union Federation) for the service sector which comprises 20 million members; Ver.di is a German trade union in the service sector and provides representation for the service sector (2 million members). Both organisations are authorities on trade union freedom and rights and can furnish investors with information. Which is what they have also done in this particular case.
- Cooperation can help contribute to a favourable outcome to the engagement efforts.
- The success of an engagement trajectory is dependent on several factors. On the investor's side, such factors include the legitimacy of the investor (including specific knowledge about the issue), the urgency of the issue, and the amount of influence that can be wielded. Apart from that, the type of company is also relevant. If a company is unresponsive to engagement efforts or its corporate culture is not geared towards doing so, it also affects the success rate of an engagement trajectory.
- The shareholders' meeting can be used to strengthen the engagement trajectory. In this case, the interactions sought amid the shareholder's meeting and engagement efforts produced the following insights:
 - If a company is difficult to mobilise/engage, submitting a shareholder resolution or announcing the intention to do so to the management board of a company can act as a first foot in the door;
 - Voting and submitting shareholder resolutions to put issues on the agenda of the management board and to boost engagement efforts is still a subject that is not given enough attention at present. Opportunities can still be utilised here.

Using the general shareholder's meeting to bolster the engagement trajectory

The general shareholder's meeting (GSM) can be used to bolster an engagement trajectory. During the general shareholder's meeting, a company is held accountable to its shareholders. Shareholders have different roles during a shareholder's meeting. N.B. Rules regarding the GSM may vary by country and region.

1. Supporting shareholder proposals

Pension funds can shape their voting policies to take ESG risks into account. A voting policy is implemented at three levels:

- Voting principles: Standards and values that the pension fund considers important in order to be considered a good shareholder. This forms the basis of the voting policy.
- Voting guidelines: Comprehensive translation of the principles into guidelines on all GSM subjects, e.g., guidelines for supporting shareholder proposals for more diversity and transparency where these are properly drawn up and are in line with the policy.
- Voting instructions: Option to outsource this to a voting advisor/external voting service provider. Voting instructions are then recommended by a voting provider on the basis of the voting policy. For specific companies that are of significant importance to a pension fund, it is possible to seek consultation with the voting provider.

2. Asking questions

Pension funds are allowed to ask questions at the general shareholder's meeting by submitting questions in advance or attending the shareholder's meeting. Whether companies are obliged to respond and publish their response will depend on the country in which the company is based. In Europe, companies are often required to respond more fully than in America. Asking questions can be used as a way to question the management board directly.

3. Submitting a shareholder resolution

In some countries, the possibility exists to put ESG issues on the agenda of a GSM and put these to a vote for all shareholders. The requirements and process that underpin this vary from country to country. One example is the amount of capital invested in the company that is required to submit a proposal. In some countries, companies that are presented with a shareholder resolution can lodge an objection to it, for example with the US Security and Exchange Commission. The majority of successful shareholder resolutions frequently focus on transparency, and request, for example, the publication of a report or an investigation regarding a particular ESG issue.

4. Voting against other agenda points.

A pension fund, as part of the engagement trajectory and subject to the terms of the voting policy, can also vote against the appointment of a board member, against the discharge of the management board, the adoption of the annual report or the remuneration proposal if the engagement efforts do not lead to the desired results. In doing so, it is important to inform the company of the rationale for that dissenting vote. The effectiveness of such a vote may be limited in practice, as in practice, most agenda items are overwhelmingly adopted by shareholders.

What to do next: a glimpse into the future

In a world where boundaries between 'traditional' sectors are becoming increasingly blurred, and both digitisation and internationalisation of online trade are on the rise, labour relations and trade union freedom are likely subjected to mounting pressure. Against the backdrop of (international) responsible business conduct and investment, this engagement effort has not only shown that malpractices do exist, but also that constant attention is needed in order to resolve them. It is therefore recommended that this particular engagement effort should be followed up on.



Background information about the Agreement (SER)

About the Agreement: The Dutch Pension Funds Agreement on Responsible Investment was signed on 20 December 2018 by 73 pension funds, the Federation of the Dutch Pension Funds, six NGOs, three trade unions and three government ministries. The objective of the Agreement is for the Parties to prevent and tackle the adverse social and environmental impact of investments by pension funds. The number of signatory pension funds is 84 with EUR 1600 BLM AUM. This is 94% percent of the total assets invested by Dutch pension funds.

In this agreement, the signatory pension funds have chosen an approach to identifying, prioritising and addressing risks for society and the environment based on the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights (UNGPs).

Under the agreement, the funds cooperate with the Dutch government, NGOs and trade unions, which in turn share their knowledge and experience and the knowledge and experience of the parties' local partners. This gives the pension funds a better understanding of where risks may occur – for example, human rights violations or environmental damage – and enables them to use their leverage to solve problems and mitigate risks. The ultimate aim is to have a positive impact on the practices of the

companies in which they invest. For more information on the Agreement, please visit the website.

Collaboration in cases

The agreement has a 'Wide Track' and a 'Deep Track'. The Wide Track concerns all signatories. Its aim is for all the Dutch pension funds to adopt an approach that will speed up implementation of the OECD Guidelines and the UNGPs in their investment policy and practice.

In the Deep Track, the pension funds work with the Dutch government, trade unions and NGOs on specific cases. They select cases on the basis of the selection criteria specified in advance in the Agreement:

- The adverse impact of the case must be severe.
- The joint investigation should provide added value for the case and allow different parties to contribute their specific expertise.
- The case must address actual and potential adverse impacts on fundamental labour rights and human rights, such as freedom of association, forced labour and children's rights. Cases must act as examples and be instructive, so that the investigation has a broader relevance for the entire pension sector and other Delegations.



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