



Department of *Political Science*

Master's Degree in Policies and Governance in Europe, *major*
Economic Governance and Market Regulation

Chair of Social and Labour Market Regulation

**Platform work across the EU Member States:
The Foodora case**

SUPERVISOR:
Prof. Edoardo Ales

CO-SUPERVISOR:
Prof.ssa Marta Simoncini

CANDIDATE:
Valeria Marzano
646371

Academic Year: 2021/2022

CONTENTS

Introduction	3
1. The ‘Gig Economy’	5
1.1 "Gig economy" "Platform work" "Platform economy": not a straightforward meaning ...	5
1.2 How many platform workers are there in Europe?	9
1.3 Why working on a platform?	11
1.4 The employment status of platform workers	13
2. The structure of the EU platform economy	15
2.1 The International Labour Organization’s effort	16
2.2 The Digital Single Market Strategy	18
2.3 The European Pillar of Social Rights	21
2.4 Directive (EU) 2019/1152	23
2.5 The Von der Leyen European Commission	24
3. National responses: the Foodora case	28
3.1 Employment relationship and regulatory issues	28
3.2 Food delivery and the case of Foodora	31
3.3 Foodora riders’ protests	33
3.4 The algorithmic management	37
4. The Directive proposal and the future of the ‘Gig Economy’	39
4.1 The Directive on improving the working conditions on platform work	39
4.2 Weighting advantages and disadvantages	41
4.3 What is next?	44
Conclusion	46

INTRODUCTION

Platform work, understood as the matching between supply and demand through an online platform, has been developing across the EU Member States in the last few years. This dynamism, the broad scope of platform activities and its related economic opportunities are a highly debated topic among scholars, policymakers, legislators, social partners, workers, and the society as a whole. Indeed, while rapidly developing, it is still a source of litigation.

This study examines how the existing EU labour law provisions improve the labour conditions of platform workers. Its overarching goal is to address possible policy gaps and the implications of the EU law on national legislations, taking into consideration the lessons that can be drawn from the Foodora example. Considering how the Covid-19 pandemic boosted the spread of online labour platforms and, consequently, made some weaknesses in terms of employment relationship and algorithmic management evident, the aim of this study is trying to understand whether the proposed Directive on improving working conditions on platform work is enough to close the loopholes of the system.

This dissertation is structured as follows: the first chapter tries to make clarity on what is meant by platform work and the proportion of this sector in Europe. It deepens the debate around the several labels that have been given to this new phenomenon describing its main characteristics and weighting the advantages and disadvantages of working through a platform. Furthermore, joining this new economy can represent an employment opportunity for students, unemployed and underemployed people for several reasons, like the flexible schedules, which is particularly appealing for those with other responsibilities, autonomy, and the low entry barriers to the labour market. However, working for a platform has also many shortcomings. Specifically, they are unpredictability of working hours, and being exposed to economic risks.

The second chapter deals with the policymaking initiatives at international and European level. In particular, platform work has always been a point of concern for the International Labour Organization (ILO), which provided many recommendations on this issue. At EU level, in 2015 platform work has been examined on Commission Communication of 6 May 2015 on a Digital Single Market Strategy for Europe. In addition, this Chapter will analyse the European Pillar of Social Rights (EPSR), which is a promising step in providing guidance to EU institutions on how they should understand social rights and principles, even in case of non-standard employment. Finally, the Directive (EU) 2019/1152

on transparent and predictable working conditions and the effort of the current Von der Leyen Commission are examined.

It is argued that the current regulatory framework is incapable to guarantee basic social rights for people performing platform work.

The third chapter takes into consideration national level and what the situation of platform work is like in European Member States. In order to do so, the example of Foodora is considered. Looking at Foodora riders, it emerges that riders are very often classified as self-employment, meaning that they run risks in terms of poor social and labour protection and minimum wage. Furthermore, while they struggle with underregulated working conditions, they are highly dependent on the algorithmic management of platforms and increased competition.

Consequently, because of some deficiencies in the European legislative framework, platform work has been reason of demonstrations and litigations at domestic level. In other words, courts have been asked to determine the legal status of riders.

Finally, the fourth chapter deals with the recent Directive proposal by the European Commission to address the existing deficiencies in platform work, such as employment status, algorithmic management, and collective bargaining. Moreover, it concludes by analysing advantages and disadvantages of this proposal, in terms of employment status, algorithmic management and collective bargaining, trying to answer to the research question of this study.

It is argued that, since it covers everyone in the EU who has or may be deemed to have an employment relationship with a digital labour platform, its scope is very broad and could lead to difficulties in the implementation stage. Moreover, the criteria to determine whether a worker should be classified as employed or not could collide with national legislations and it does not include any improvement in the protection of the self-employed. Finally, as far as the algorithmic management is concerned, while the Directive tries to include some level of human presence, policymakers should be careful not to introduce excessive administrative burdens for platforms.

CHAPTER 1 THE 'GIG ECONOMY'

1.1 'GIG ECONOMY' 'PLATFORM WORK' 'PLATFORM ECONOMY': NOT A STRAIGHTFORWARD MEANING

Since the introduction of mobile technology and the usage of smartphones, tablets and computers, the daily life of consumers started changing. Markets changed too because they are given the possibility to sell their products through mobile technology. Therefore, the labour market is experiencing radical changes during the last decades. These changes have been strongly influenced by many factors, such as digitalization, flexibilization, tertiarization, demographic transformations and, more recently, the Covid-19 pandemic. This means that everyday more and more people are involved in a new world of work, characterized by millions of people, employers and employees that do not meet each other and, frequently, by scarce stability, control, or security.

Reasonably, these dynamics influence the organization of work, the relationship between the employer and the employee and between the worker and the client.

Therefore, the so-called “gig economy” is transforming the labour market and it is creating more and more new job opportunities. This means that a proper and well-suited legislative framework is required, in order to avoid shortcomings.

Platform work as a new form of employment emerged in the last decade and it entered in our everyday usage. Digital infrastructures facilitate the matching between the demand and supply of specific services and organizes their performance by means of guidelines, customer reviews, algorithmic governance, and other mechanisms.

To begin with, defining what platform work is is not as straightforward as it may appear. Around the world there is a long list of labels to express this concept, such as “platform economy”, “collaborative economy”, “on-demand economy” and “gig economy”. It exists a great variety of terminology and a lack of agreement on the scope, the classification, and the taxonomy of the phenomenon. This leads to a difficulty in defining it, largely due to wide definitions that such a nomenclature offers¹. There is not a common vocabulary among the EU member states. Moreover, what emerges is a lack of a shared understanding on the topic of platform work since it covers a large variety of economic actors that can

¹ Hamari, L., Sjöklint, M. and Ukkonen, A. (2016) The sharing economy: why people participate in collaborative consumption, *Journal of the Association for Information Science and Technology*, Vol. 67 No. 9, pp. 2047-2059.

have widely different normative and social implications, while sharing a significant number of features². Indeed, in 2018, the Dublin Foundation³ made an attempt to sort out the different definitions, the use and the meaning of the same term in different national contexts⁴.

It emerged that, generally speaking, the terms "sharing economy" and "platform economy" refer to those platforms that provide goods and services without any monetary exchange, whereas the term "platform work" includes also financial services. In particular, in Italy and in many other EU countries - such as Germany, Finland and Austria - "gig economy" is characterized by a negative connotation because it is associated to precariousness and discontinuity.

All of them are well-suited to represent this specific economic sector. As a matter of fact, the platform economy can be defined in different ways. Botsman defined the platform economy as "an economic system based on sharing underused assets of services, for free or for a fee, directly from individuals"⁵. They cover different kinds of economic actors that might have widely different normative and social implications, while sharing a significant number of features. Therefore, referring to them as a monolithic category causes many commentators and practitioners to be confused about what exactly is being described or studied⁶.

An encompassing characterization of the phenomenon is the one given by Hamari et al. (2015) which regards the sharing economy as a "peer-to-peer based activity of obtaining, giving, or sharing the access to goods and services, coordinated through community-based on sharing, swapping, trading, or renting products and services, enabling access over ownership"⁷.

Despite the several definitions provided by different scholars, the European Parliament's Directorate-General for Internal Policies expressed its preference for the term "platform economy" because of its neutrality.

Even if there are different classifications of platforms and different shades of meaning, there is a general convergence on the meaning of platform. Platforms are dynamic websites that constitutes

² De Stefano, V., Aloisi, A. (2018) *European Legal Framework for digital labour platforms*, European Commission, Luxembourg.

³ De Groen, W. P., Kilhoffer, Z., Lenaertsm, K., Mandl (2018) *Employment and working conditions of selected types of platform work*, Eurofound.

⁴ Dazzi, D., (2020) Paper on the European Union co-funded project VS/2019/0040 "Gig economy and processes of information, consultation, participation and collective bargaining".

⁵ Botsman, R. (2015) *Defining the sharing economy: what is collaborative consumption and what isn't?* Fast Company.

⁶ De Stefano, V., Aloisi, A. op. cit., p. 7.

⁷ Hamari, J., Sjöklint, M. and Ukkonen, A. (2016), *The sharing economy: why people participate in collaborative consumption*, Journal of the Association for Information System Research, Vol. 31 No. 2, pp. 2047-2059.

digital public squares or marketplaces; of course, they have an impact on economic processes in a number of ways, such as in production, in terms of products or services themselves, and in the organization of the delivery⁸. Platforms can be defined as digital environments that permit to integrate production processes in new forms, to organize management processes. Such digital environments give the possibility to integrate production processes in new forms. In other words, they are virtual spaces governed by algorithms - the so-called invisible engines, in which transaction costs - the economic presupposition of the existence of a company - are practically reduced to zero⁹.

In this sense, online platform work is labour provided through, or mediated by online platforms, and features a wide array of working relationships, such as casual work, dependent self-employment, informal work, place work, home work and crowd work, in a wide array of sectors. The work provided can be digital or manual, in-house or outsourced, high skilled or low skilled, on site or off-site, large- or small-scale, permanent, or temporary, all depending on the specific situation¹⁰. However, in order to be classified as work and to be part of the online platform economy, it must be provided for remuneration.

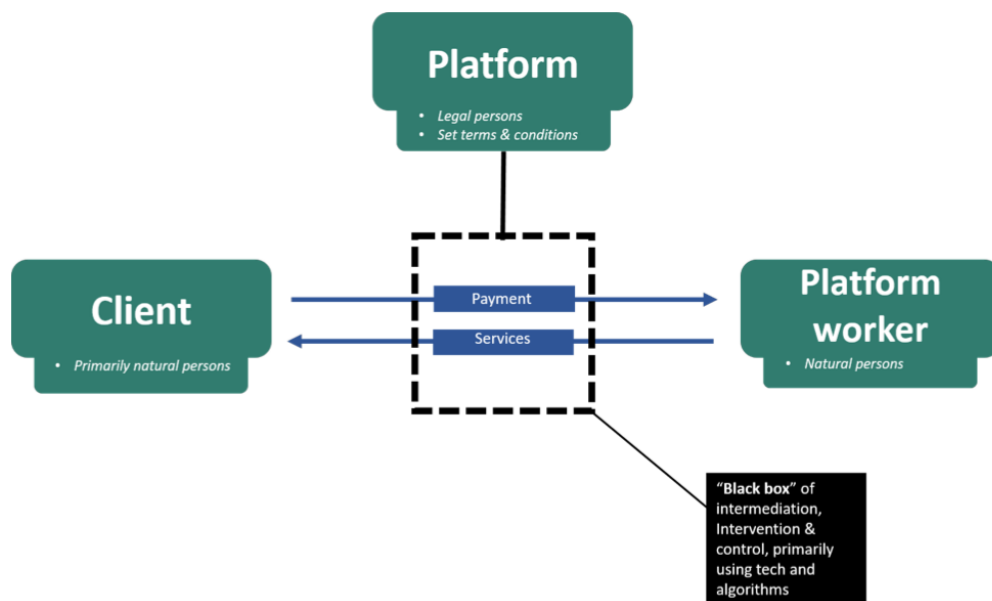
To sum up, there is a lack of shared understanding on the topic of platform work. Consequently, various terms are used to express the same concept. The most common ones are “sharing economy”, “platform economy” and “platform work”. In general, platform economy has a broader meaning compared to platform work.

Regardless the debate around the most suitable label, the main characteristics of work performed through platforms are that paid work is organised through an online platform; as shown in the figure below, three parties are involved (the online platform, the client, and the worker); the aim is to carry out specific tasks or solve specific problems and jobs are broken down into tasks and services are provided on demand. In addition, online intermediation is crucial: technology is responsible for work organisation.

⁸ Garben, S. (2017) *Protecting Workers in the Online Platform Economy: An overview of regulatory and policy developments in the EU*, European Risk Observatory Discussion paper, European Agency for Safety and Health at Work

⁹ Del Prato, F., Stagnaro, C., (2018) *Take it easy, rider! Perché la flessibilità dei lavoretti è un valore e non un limite*, Istituto Bruno Leoni, Torino.

¹⁰ Aloisi, A. (2019) *Negotiating the digital transformation of work: non-standard workers' voice, collective rights and mobilisation practices in the platform economy*, European University Institute.



Source: Research Institute for Work and Society.

Moreover, it is also possible to distinguish between on-location labour platform, such as passenger transport, deliveries and domestic work, and online labour platforms, when tasks are carried out from home.

“Platform work”, in our everyday usage, has a broad and generic meaning since it refers to all those employment contracts entered into using an online (digital) platform or an application on a smartphone (or some other similar device) thanks to which people carry out their tasks either completely online (crowdwork or cloudwork) or in the physical world (gig work; on-demand work). Evidently, employment relationships can be widely different from each other depending on the role of the platform. In fact, it can act as a mere intermediary, limiting itself to bringing the parties to the employment contract into contact with each other – that is the case of subordinate or self-employed person. In other cases, the platform can act as a staff leaser, meaning that it arranges for a worker to go to a user, who manages and coordinates that person’s activities for their personal benefit. Finally, the platform can act as an employer, making the employee working directly for it, thus making the employee part of the user’s organization, in order to provide a service to third parties¹¹ – “work via platforms”.

¹¹ Countoutis, N., *Platform Work: Regulatory and Jurisprudential Perspectives. The UK Case*, Cambridge University Press.

1.2 PLATFORM WORKERS IN EUROPE

Measuring the actual proportions of this ecosystem is quite problematic because different methodologies result in different assessments. Moreover, it seems quite unrealistic to count the exact number of people working through platforms because it is not possible to distinguish between active and inactive accounts, and someone could work for more than one platform. However, many studies tend to agree on the fact that the gig economy is constantly growing, particularly in the light of the Covid-19 pandemic, which profoundly changed labour markets and the livelihood of millions of people. Indeed, due to the pandemic, some businesses have been restricted, while many others played an important role in ensuring access to services during lockdowns.

This economic segment seems to be growing by 25 per cent a year¹². According to more generous estimates, its value in Europe exceeds € 20 billion. A very detailed document finds that the platform economy amounts to nearly €4 billion in revenues and has intermediated €28 billions of transactions (85% of this value being gained by the providers/workers)¹³. According to a recent Eurobarometer survey, 52% of all EU citizens are aware of the services offered by the sharing economy¹⁴. In addition to that, it should be said that participation in the collaborative economy is “relatively small – but growing”: between 5% and 9% of European citizens have already participated in this framework, making no more than €1000 (the median of earning stands at around €300). According to a report commissioned by the European Commission, there would be approximately 100,000 active workers in the European platform economy, representing 0.05% of the total workforce¹⁵.

Answering to the question "how many platform workers are there in Europe?" is crucial for policies since the already-existing legislative framework does not always apply to such jobs.

As far as workers are concerned, the last data at our disposal are the ones provided by the ETUI Internet and Platform Work Survey in 2022¹⁶. They conducted a survey in 14 EU countries.

Findings show that 30 per cent of the respondents declared to have ever tried to earn money by finding a job on an online platform. Among the surveyed people, 4.3 per cent performed a platform work in the last 12 months.

¹² De Stefano, V., Aloisi, A. op. cit., p. 7.

¹³ Ibid., p. 8.

¹⁴ Ibid., p. 8.

¹⁵ Ibid., p. 8.

¹⁶ Piasna, A., Zwysen, W., Drahokoupil, J. (2022) *The platform economy in Europe. Results from the second ETUI Internet and Platform Work Survey*, ETUI aisbl, Brussel.

Moreover, as the table below shows, the prevalence of platform workers is quite similar across the analysed countries and there is not a clear geographical pattern.

Country	Done in the past 12 months
Austria	5.1
Bulgaria	3.8
Czechia	4.6
Estonia	4.5
France	5.6
Germany	4.4
Greece	4.4
Hungary	2.5
Ireland	6.5
Italy	3.8
Poland	2.9
Romania	2.2
Slovakia	5.7
Spain	4.8

Source: ETUI IPWS.

Even if a geographical pattern is missing, there is a considerable cross-national variation. It is most frequently reported in Austria, France, Ireland, and Slovakia and least commonly in Hungary and Romania.

If we compare these results with the ones provided by the COLLEEM survey¹⁷ in 2017, it is possible to underline the fact that online income generation is growing with similar patterns almost everywhere in Europe, with the highest levels in Central and Eastern Europe (Czechia, Slovenia and Estonia) and in Southern Europe (Italy and Spain) and the lowest levels in Northern and Western Europe (France, Germany, Sweden the Netherlands and the UK).

¹⁷ Implemented by the Joint Research Centre of the European Commission.

Even though measuring the actual size of platform work in Europe is a challenging task, pointing out the main characteristics of such workers is easier. Platform workers, especially in the case of delivery platforms, tend to be men. 71 per cent of them are aged between 18 and 44. Even older age categories are well represented. Indeed, 29 per cent of platform workers are aged between 45 and 65. If we look at each country it is possible to outline the fact that the situation is quite similar among the surveyed countries, with Poland being the one with the youngest platform workers.

The last remarkable aspect is that migrants are generally more likely to work on a platform than those born in the country of residence. In particular, among migrants, regardless their country of origin, 6 per cent are platform workers, compared to 4 per cent for those born in the country of residence. This pattern holds in most the surveyed countries, even in the case of countries with low levels of migrants, such as Romania, Bulgaria, Poland, and Slovakia. Surprisingly, this picture is reversed in the case of Estonia, Italy, and Greece. To conclude, in France there seems not to be a remarkable difference in the share of foreign-born and native people performing platform work.

To conclude, in the vast majority of cases, platform work represents a supplement to other earnings rather than the main source of income. Although there are some differences among countries, the general pattern is similar. Results suggest that more than nine out of ten platform workers combine the earnings with other sources of income.

1.3 WHY WORKING ON A PLATFORM?

Scholars have identified three main reasons explaining the rise of the platform- or app-based workforce: the need to cope with short-run fluctuations on the demand side, the desire to reduce labour costs, the urgency to meet market pressures on short-term results and efficiency.

The Covid-19 pandemic accelerated this phenomenon, even though there is not a common agreement on how it will develop in the future¹⁸.

¹⁸ Becchis, F. (2020) *Covid-19 e piattaforme online: chi guadagna e chi perde* (<https://www.lavoce.info/archives/67360/covid-19-e-piattaforme-online-chi-guadagna-e-chi-perde/>).

There are opposing viewpoints on the transformation of work brought by the sharing economy. Joining this new economy can be appealing for workers and can represent an employment opportunity for students, unemployed and underemployed people for a number of reasons.

First of all, it gives the opportunity to employers to earn an income under flexible work arrangements and working hours. Indeed, the flexible schedule is particularly functional for workers such as students and people with caring responsibilities that may be unable to participate in standard employment. In other words, it promotes autonomy of work. Autonomy involves the freedom of workers to choose which task to do, the working time, and how to organise and perform the work. In this sense, more autonomy is associated with more satisfaction with working conditions¹⁹.

Online platforms of work lower the entry barriers to the labour market and facilitate work participation since working conditions are more favourable for some specific categories of people - people with disabilities or critical health conditions, people that have strong family commitments, young, not educated, or trained people.

While such advantages are evident in some types of platform work, there are disadvantages too. Indeed, trade unions across Europe manifested their concern about the conditions of workers engaged in this kind of work. Their income is often low and unpredictable, working time can be long and unsocial, health and safety might not be properly addressed, and workers are often not sufficiently covered by the state's social protection system.

Many of these individuals tend to be exposed to economic risks and uncertainty with possibilities of losing their sources of income if there is an economic downturn.

They face the issue of the variability and unpredictability of both working hours and income.

It is common knowledge that income has the tendency to be unfair, especially for those people whose main income is platform work.

As the ILO outlined in 2021, many of them face long, irregular, and unsocial working hours²⁰. The general tendency is working the same number of hours as regular workers in order to earn a similar income. In fact, even if the platform's workforce is generally not obliged to go to a specific workplace, it remains always connected. It receives communications through e-mails, messages, or phone calls. For example, in the case of delivery (that we will see in the next chapters), drivers are informed about

¹⁹ Ibid.

²⁰ ILO (2021) *World employment and social outlook: the role of digital labour platforms in transforming the world of work*, Geneva, International Labour Office.

when to expect activity on the platform, and they earn more or less depending on when and where they work.

Moreover, another key issue is the huge amount of time that is unpaid, such as waiting for²¹. In this regard, the ILO found that people working on digital labour platforms spend around one-third of their time on unpaid work²².

Therefore, digital work can change the character of work²³ in the sense of social equity and justice in employment. Social equity refers to the perception of fairness in social arrangements and it expresses how different stakeholder groups interpret the moral aspect of a given situation; justice refers to the fact that the platform economy must work on considering imbalances in order to minimise the free-riding behaviour on the sacrifices made by the less powerful ones.

1.4 THE EMPLOYMENT STATUS OF PLATFORM WORKERS

The disadvantages expressed in the previous paragraph are linked to the fact that workers are very often declared as "self-employed". In contrast to standard employment, platform work is generally considered as non-standard. This typology also includes self-employment, and its main feature is that it does not correspond to an employment relationship in any legal sense. The consequence is that workers are not guaranteed many safeguards: there is no employer giving the worker instructions in the traditional sense, remuneration is paid per task, workers are not paid any minimum wage, or a sector-specific salary agreed by collective bargaining. This fact explains why platforms commonly offer low prices for their services. Since digital platforms rely on a workforce of independent contractors, workers are not covered by the labour rights that dependent employees normally have. The consequence is that health and safety regulation, and social contributions are their own responsibility. Both the platforms and the platforms' clients tend to avoid any responsibility regarding the conditions of work and employment of the workforce. The reason behind that is a cheaper and more flexible supply of labour services, but at the expense of precarious conditions of work and employment for workers²⁴. Finally, there are some challenges that are specific to platform work, like

²¹ Pulignano, V. et al. (2021) *Does it pay to work? Unpaid labour in the platform economy*, Policy Brief 2021.15, Brussel, ETUI.

²² ILO, op. cit., p. 8.

²³ Duggan, J., Sherman, U., Carbery, R. and McDonnell, A. (2020), *Algorithmic management and appwork in the gig economy: a research agenda for employment relations and HRM*, Human Resource Management Journal, Vol. 30 No, 1, pp. 11-132.

²⁴ Dazzi, D. (2019) *GIG Economy in Europe*, Italian Labour Law e-Journal, Issue 2, Vol. 12.

the use of untransparent and disadvantageous terms and conditions that sometimes can be altered without even notifying platform workers. Therefore, the employment status of platform workers is a highly debated topic in both at European and national level.

Considering the fact that platform work is a developing phenomenon, and we still have little literature about it, it is worth examining the EU legislative framework, how this framework is implemented across EU member states and show some evidence presenting a case study. The main reason is that the sustainable growth of the platform economy requires an improved legal clarity for platforms and better working conditions for people working through platforms. Indeed, this new business models challenge the traditional relationship between employer and employee and there seems to be the case that platforms take advantage of the controversial classification of workers.

CHAPTER 2

THE STRUCTURE OF THE EU PLATFORM ECONOMY

The crucial question we would like to answer is whether or not the existing regulatory framework provide an adequate response to the current challenges, considering in particular the number of people working on platforms in Europe.

Generally, online platforms have proven to be difficult to be regulated. The reasons behind that are several.

Firstly, given the dynamism of the online platform sector and the fact that everyday new businesses are created, and many others disappear or are integrated into digital businesses, the platform economy can be considered a moving target from a regulatory point of view.

Secondly, another typical approach of online platforms has been the so-called ‘fait accompli strategy’, meaning that they tend to think about growing first and then caring about ensuring official permission to operate through following the existing administrative procedures²⁵. This attitude has allowed companies to gain wealth and leverage to obtain the desired political results, even being exempted from regulations sometimes; moreover, it has allowed such companies to acquire customers, workers, etc. that rely on them and may therefore act in their political support²⁶.

Thirdly, the online platform sector has always been presented as something ‘new’ and ‘unprecedented’, as the result of rapid technological change and as an innovative type of economy. Therefore, following this argument, online platform companies should not have the same, more traditional treatment, as the already-existing economic activities. Regulating this new sector represents a challenging task for regulators because the emergence of the online platform economy coincides with many related, yet different, trends and concepts, which are often conflated and confused.

Fourthly, many companies argue that they just act as intermediaries that merely act in order to bring people together and that such people engage in the economic activity, not the platforms themselves. This strategy emerges also in the contracts, where it is stated sometimes that there is no employment relationship between the platform and the user, and that the worker is an independent contractor, making it complicated for regulators to intervene.

Lastly, there is an enormous heterogeneity in the online platforms and the activities they perform – the way they are organized, the sector in which they are involved, their scale, their scope, their target.

²⁵ Sacha, G., (2017) *Protecting Workers in the Online Platform Economy: An overview of regulatory and policy developments in the EU*, European Risk Observatory Discussion paper.

²⁶ *Ibid.*, p. 14.

Another remarkable aspect to take into consideration is the transnational nature that online platforms very often have. All these proxies make it challenging to have just one general approach: they rather seem to require a case-by-case assessment and, consequently, treatment. In the case of transnational companies, there can be also conflicts of law.

The challenges raised by the platform economy are several and include different sectors, such as work, tax, safety and health, quality and consumer protection, and anti-discrimination²⁷. Certainly, many of them are easier to legislate on or to extend the existing policy framework, whereas many other represent a more demanding task. Regardless the difficulty, policy initiatives related to the growing phenomenon of the gig economy, both at national and supranational level, seem to be aware of the challenges that should be addressed.

2.1 THE INTERNATIONAL LABOUR ORGANISATION'S EFFORT

Before focusing on the existing framework at European level, it is worth underlying the role of the International Labour Organization (ILO) and its effort to guarantee adequate working conditions for all types of workers and, also, for people working through platforms.

The ILO, drafting and adopting international labour standards every year, aims to improve human beings' conditions of freedom, human dignity, economic security, and equal opportunity in the world of work, enabling them to pursue their material well-being and spiritual development²⁸. Always keeping this mission in mind, the ILO is responsible for evaluating and assessing national and international policies, in order to ensure that these policies contribute to social justice²⁹. To summarize, the ILO's mandate is remarkably broad since its main objective is to enclose the market into the social sphere.

Since his appointment in 1999, the ILO's Director General, Juan Somavía, underlined the fact that 'the primary goal of the ILO is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity³⁰'. According to his point of view, in order to achieve these four main objectives for everyone, Member States have to

²⁷ Lobel, O. (2016) *The law of the platform*, Legal Studies Research Paper Series 212.

²⁸

²⁹ Humblet, M., Zakra-Matres, M. (2002) *The Declaration of Philadelphia sets forth the principle of social objectives over those of economic policy*, ILO Standards Policy 1, 6.

³⁰ ILO Director-General, *Decent Work* (ILO 1999).

respect and promote the principles concerning fundamental rights. However, the main problem of these strategic objectives was their vagueness. In fact, on the one hand, the concept of decent work can be easily appreciated by everyone; on the other side, it lacks details and presents little actual content, since decent work represents a goal that evolves as the possibilities and priorities of societies evolve³¹. Therefore, Member States can set their own goals taking into account their specific circumstances and possibilities.

In 1997, the ILO adopted the Private Employment Agencies Convention (No. 181), which regulates labour market intermediation and the employment of workers by ‘agencies’ for the execution of work at user enterprises. In addition to Convention No. 181, two more documents connected to platform work have been adopted, namely The Transition from the Informal to the Formal Economy Recommendation 2015 (No. 204), and Domestic Workers Convention, 2011 (No. 189). Both these Conventions were considered necessary because they take care of some specific parts of the labour market that, until so, were underregulated and lacked protective labour and social measures. In particular, Convention No. 177 was aimed at regulating industrial home work and some forms of digital work; in particular, it regarded workers that do not have an employment relationship because, since they perform their tasks in a decentralized way, they are hard to organize and their interaction with the employer is operated through intermediaries, making it difficult to formalize the work arrangement according to standard employment³². Even if some years passed from the adoption of this Convention, it is still relevant because people working through platforms now still live these working conditions that home workers used to live in the 1990s.

More recently, in 2019, the ILO adopted the Centenary Declaration. This Declaration, in line with the inclusive approach of the ‘Decent Work for All Agenda’, contains eight policy outcomes, committed to research how workers’ labour protections in diverse forms of work arrangements can be strengthened. Platform work is included. Furthermore, during the period 2020-2021, the ILO informs labour administrations about platform work, and supports ILO constituents in ‘formulating and adopting measures integrating social protection with employment, wage or fiscal policies in order to effectively support transitions to the formal economy and the extension of social protection coverage to workers in diverse forms of work arrangements, including platform work.

Unfortunately, the Covid-19 pandemic broke out right after the launch of this programme. Consequently, the ILO had to change its priorities and draft the Strategic Plan for 2022-2025 to

³¹ ILO Director-General, *Reducing the Decent Work Deficit – a Global challenge* (ILO 2001).

³² Schneider de Villegas, G. (1989) *Home Work: An Overview*, 8 Conditions of Work Digest 3.

implement the Centenary Declaration, which takes into consideration the consequences of the pandemic in the labour market. The Plan envisages five policy outcomes, namely addressing change in the world of work, addressing the need to leave no one behind, the global social protection deficit, safety and health at work and the global recovery from the Covid-19 crisis.

As far as platform work is concerned, the programme and budget proposals for 2022-2023 mention that ‘addressing regulatory gaps concerning digital platform work will be prioritized³³’. In particular, research on platform work will advance and the ILO will ‘develop guidance to cover workers on digital platforms through adapted national social security legislation and enhanced compliance of digital platforms and explore options for cross-national coordination³⁴’.

To conclude, there seems to be that platform work represents a point of concern for the ILO. Recommendations and conventions are the main instruments in the hands of such organization. On the one hand, recommendations, regardless their non-binding nature, are frequently used as standards of reference. On the other hand, conventions are considered a legally binding international treaty, which contains legal obligations that Member States have to take into consideration. Therefore, states should ratify it and make the provisions of the Convention effective. Unfortunately, this does not happen all the times because the ILO lacks a forceful enforcement mechanism³⁵, making the back-and-forth relationship complicated.

2.2 THE DIGITAL SINGLE MARKET STRATEGY

Given these premises, this chapter aims at studying the main regulatory, policy and legal responses that the EU institutions provided in relations to the online platform economy and its workers.

First of all, the EU Commission examined the role of platforms in its Communication of 6 May 2015 on a Digital Single Market Strategy for Europe 2015³⁶. Here, it states that it has conducted a number of studies and public consultations³⁷ on this sector and it clarifies that, when ruling on online platforms, it will follow some principles: a level playing field for comparable digital services, responsible

³³ ILO Director-General, *Programme and Budget Proposals for 2022-23* (ILO 2021).

³⁴ *Ibid.* p. 50.

³⁵ Maupain, F. (2014) *The ILO Regular Supervisory System: A Model in Crisis?*, 10 *International Organizations Law Review* 117.

³⁶ COM(2015)0192 final.

³⁷ Such as an economic study of online platforms by the Commission’s Joint Research Centre, two Eurobarometer surveys, a hearing on online platforms organized by the European Political Strategy Centre, and the conclusions of numerous interactions with academics and stakeholders that fed into the Commission Staff Working Document that accompanies the Communication.

behaviour of online platforms to protect core values, transparency and fairness for maintaining user trust and safeguarding innovation and open and non-discriminatory markets in a data-driven economy³⁸.

Few days later, the Commission adopted the Communication of 2 June 2016 on a European agenda for the collaborative economy³⁹. The aim of such Communication is to provide a legal guidance and policy orientation to Member States to help ensure balanced development of the collaborative economy across the EU, complementary to the Commission's broader approach to online platforms presented in May 2016 as part of the Digital Single Market strategy⁴⁰. The Communication clarifies what the 'collaborative economy' is:

business models where activities are facilitated by collaborative platforms that create an open marketplace for the temporary usage of goods or services often provided by private individuals. The collaborative economy involves three categories of actors: (i) service providers who share assets, resources, time and/or skills – these can be private individuals offering services on an occasional basis ('peers') or service providers acting in their professional capacity ('professional services providers'); (ii) users of these; and (iii) intermediaries that connect – via online platform – providers with users and that facilitate transactions between them ('collaborative platforms'). Collaborative economy transactions generally do not involve a change of ownership and can be carried out for profit or not-for-profit⁴¹.

On the one hand, it notes that the collaborative economy frequently raises issues regarding the application of the existing legal framework, that can result in uncertainty about the applicability of some rules and therefore slow down the development of the collaborative economy across the EU Member States. On the other hand, it has the potential to create opportunities for consumers, undertakers, and new job opportunities for workers. However, especially as far as employers are concerned, these flexible work arrangements can create uncertainty about rights and social protection since such works are generally performed on an ad hoc basis rather than tasks performed in a predefined environment.

Furthermore, the Commission sheds light on market access. Whether or not a platform is subject to market access requirements depends on the nature of its activity, e.g., if it is an information society service, it is not subject to any requirement that target those services, as stated in Art. 2(a) of Directive

³⁸ Sacha, G. op. cit., p. 73.

³⁹ COM(2016)0356 final.

⁴⁰ Sacha, G. op. cit., p. 73.

⁴¹ European Commission, 'A European agenda for the collaborative economy', COM(2016) 356 final.

2000/31/EC⁴². In other cases, the right to market access must be assessed according to the service provided by the platform. To do so, the Commission identified some relevant elements to determine if the service is provided by the platform or not, which are (i) if the platform is the one setting the final price that the user has to pay. Where it recommends a price, the criterion is not met. (ii) If the platform sets terms and conditions that determine the contractual relationship between the service provider and the user; (iii) if the platform owns the key assets to provide the service. Then, there are other criteria, such as the situation where an employment relationship exists between the collaborative platform and the person providing the underlying service in question, which could indicate that the collaborative platform exerts a high level of control and influence over the provision of the underlying service⁴³.

It should be noted that the EU Commission claimed that rights to workers should be applicable only when people are classified as ‘workers’, i.e., they are in an employment relationship. In this regard, the CJEU argued that ‘the essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration’. This classification, as underlined by the Commission, should be taken into consideration also when applying some EU directives in the social field.

There are three cumulative criteria to distinguish if an employment relationship exists or not. The first one is the existence of a subordination link. The provider is not free to choose the activity, the remuneration and his working conditions; they are always chosen by the platform. The second criterion is the nature of work, meaning that the provider has to seek an effective and not marginal economic activity. In order to distinguish whether the provider is pursuing such activity, national courts have adopted different approaches, thresholds and ad hoc assessments. The last criterion is the remuneration one. A provider is classified as worker if he receives any remuneration for the activity pursued.

⁴² Article 2(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on ‘e-Commerce’).

⁴³ European Commission, Communication on a European agenda for the collaborative economy, COM(2016)0356 final, p. 6.

2.3 THE EUROPEAN PILLAR OF SOCIAL RIGHTS

A step towards social objectives was made in 2017, when the European Pillar of Social Rights was launched after a year-long preparatory phase⁴⁴, in occasion of the Social Summit for Fair Jobs and Growth in Gothenburg.

The EPSR represents a promising step in reinforcing the EU social dimension and in providing guidance to EU institutions on how they should understand social rights and principles. It comprises a set of social rights and principles. Moreover, it contains a package of proposals and legislative measures. Even if it does not exclusively target online platform workers, there are some legislative proposals that are suitable for such workers. These initiatives concern the issue of precariousness linked to the fact people working on online platforms are generally classified as self-employed. Their scope is to provide minimum protection and security for non-standard employment. Indeed, principle no. 5 states that ‘innovative forms of work that ensure quality working conditions shall be fostered’ and ‘employment relationships that lead to precarious working conditions shall be prevented. Furthermore, principle No. 12 on ‘social protection’ aims to acknowledge the right to adequate social protection to all workers and, under comparable conditions, the self-employed, ‘regardless of the type and duration of their employment relationship’⁴⁵.

Moreover, two legislative proposals are the Access to Social Security Initiative⁴⁶ and the proposed revision of the Written Statement Directive⁴⁷ have been launched.

The first one deals with the lack of social protection and employment services for self-employed people since it can represent an impediment for the well-functioning of the labour market across the EU Member States. According to such initiative, a possible solution would be implementing an EU Directive with provisions ensuring similar social protection rights for similar work and the transferability of acquired social protection rights.

As far as the revision of the Written Statement Directive is concerned, it tackles with increased rights for workers. Indeed, the Commission intended to introduce a provision in the Directive where core labour standards protecting all forms of employment are well-defined. These rights, as stated by the Commission, include the right to a minimum duration of probation where a probation period is laid

⁴⁴ European Commission, Communication of 8 March 2016 launching a consultation on a European Pillar of Social Rights, COM(2016)0127 final.

⁴⁵ Ratti, L. (2022) *Crowdwork and work on-demand in the European legal framework, Premises and Expectations*, Cambridge University Press.

⁴⁶ European Commission, *Commission Work Programme 2017: Delivering a Europe that Protects, Empowers and Defends* (2016).

⁴⁷ European Commission, C(2017) 2610 final.

down, the right to reference hours in which working hours may vary under very flexible contracts to allow some predictability of working time, the right to a contract with a minimum of hours set at the average level of hours worked during a preceding period of a certain duration for very flexible contracts, the right to request a new form of employment, the right to training, the right to a reasonable notice period in cases of dismissal/early termination of contract, the right to adequate redress in cases of unfair dismissal or unlawful termination of contract and the right to access to effective and impartial dispute resolution in cases of dismissal and unfair treatment⁴⁸.

Even though the EPSR is not directly referred to platform work, it constitutes a meaningful tool to understand the future developments of the EU law in the social sphere.

Later that same year, the European Parliament adopted a resolution on a European Agenda for the collaborative economy⁴⁹, calling on the Commission to ‘examine how far existing Union rules are applicable to the digital labour market and ensure adequate implementation and enforcement’.

As a result, the European Parliament has played a crucial role in the debate around providing a proper framework to the collaborative economy and, in particular, to implement rights to people working on platforms. As already stated, it was the one launching the resolution on the digital single market; it also stimulated and enriched the dispute by providing some authoritative studies, such as an extensive analysis on the situation that workers in this sector live⁵⁰.

In general, the EP, since it recognized the potential of the gig economy to bring many new jobs, it highlighted the need of ensuring adequate working conditions, and legal and social protection for all workers on platforms. Regarding the European Pillar of Social Rights, the EP encouraged the European Commission to include all forms of employment in the Working Statement Directive and to guarantee the relevant existing minimum standards to ‘work intermediated by digital platforms and other instances of dependent self-employment, a clear distinction – for the purpose of EU law and without prejudice to national law – between those genuinely self-employed and those in an employment relationship, taking into account ILO Recommendation No. 198, according to which the fulfilment of several indicators is sufficient to determine an employment relationship; the status and basic responsibilities of the platform, the client and the person performing the work should thus be clarified;

⁴⁸ EPSR (2016/2095).

⁴⁹ European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights (2016/2095).

⁵⁰ M. Schmid-Drüner, (2016) ‘The situation of workers in the collaborative economy’, European Parliament: In-Depth Analysis, available at:

[http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/587316/IPOL_IDA\(2016\)587316_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/587316/IPOL_IDA(2016)587316_EN.pdf)

minimum standards of collaboration rules should also be introduced with full and comprehensive information to the service provider on their rights and obligations, entitlements, associated level of social protection and the identity of employer; those employed as well as those genuinely self-employed who are engaged through online platforms should have analogous rights as in the rest of the economy and be protected through participation in social security and health insurance schemes; Member States should ensure proper surveillance of the terms and conditions of the employment relationship or service contract, preventing abuses of dominant positions by the platforms⁵¹.

2.4 DIRECTIVE (EU) 2019/1152

The direct development of the European Pillar of Social Rights has been Directive (EU) 2019/1152 on transparent and predictable working conditions of the European Parliament and of the Council of 20 June 2019.

It has its basis on Directive 91/533 on the employers' obligation to inform employees of the conditions applicable to the contract or employment relationship, but it contains more detailed information on the aspects that the employer must guarantee to the employee at the beginning of the relationship. The Directive serves also as a tool to strengthen the EU social acquis, provided that Member States are keen to adequately transpose it to achieve its ambitious goals⁵².

To summarize, the aim of Directive (EU) 2019/1152 is to ensure that workers, regardless their job, have exhaustive info about the essential aspects of the work, can seek additional employment without exclusivity clauses, can be informed in a reasonable period in advance about when the work will take place (especially in the case of on-demand work) and the use and duration of casual contracts is limited. Regardless the aim of the Directive, the beneficiaries represent a matter of controversy. Indeed, the minimum rights envisaged in it apply to 'every worker in the Union who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State with consideration to the case law of the Court of Justice'. Therefore, if they accomplish the criteria set out by the CJEU, on-demand, interim management, ICT-based mobile, portfolio work, voucher based, trainees, apprentices and platform workers are entitled to benefit from the Directive and minimum standards should be guaranteed. The controversy is linked to the fact that Member States

⁵¹ Sacha, G., op. cit., p. 6.

⁵² Ibid., p. 7.

are free to determine the employment relationship, i.e., limiting the application of the EU social acquis, and therefore interpret the Directive in a broader way.

According to art. 10, workers have the right to be informed about the changeable organization of their work and when it begins with a reasonable notification period. Moreover, they have to be informed about the number of guaranteed paid hours and how they will be paid for any additional hour⁵³.

Another element of reticence between EU legislators is the fact that it is exclusively focused on more transparency and better information. Full awareness on contractual terms does not solve the problems linked to this sector. Indeed, platforms represent an enormously heterogeneous reality and different platform types, sizes, and scopes should be taken into consideration.

However, it is still too early to assess the efficacy of the measures laid down because the deadline to transpose it is August 2022.

2.5 THE VON DER LEYEN EUROPEAN COMMISSION

The current EU Commission included the needs of platform workers among the 100 days priorities by EU Commissioner on Jobs and Social Rights, as a sign of willingness to provide a far-reaching response. In fact, in 2019 the EU commissioned a High-Level Expert Group (HLG), which identified three main areas that should be reformed. These can be summarized as (i) building a skilled workforce to support digitalization of work, (ii) managing new labour relations, and (iii) creating a new contract to support digital workers⁵⁴.

The first one focuses on concerns linked to the organization of work of platform workers, such as providing workers with a ‘Digital Skills Personal Learning Account’ - accounts thanks to which workers can acquire and list skill qualifications that are portable between digital platforms⁵⁵, create communities to foster learning and reduce the lock-in effect of platform work and set up career counselling to accompany workers through their adaptation to the digital workplace.

The second one has a special focus on providing decent work conditions to this category of workers. Indeed, it recommends interventions to reduce health risks (especially as far as mental health and stress are concerned) and the creation of a new ‘Social Dialogue’ between workers and other stakeholders.

The third one focuses on ‘preventing economic and social polarization in labour markets’. Proposed reforms include ensuring social protection for workers regardless of their employment status, the

⁵³ De Stefano, V., Aloisi, A. op. cit., p. 33.

⁵⁴ Ibid., p. 7.

⁵⁵ Ibid., p. 8.

creation of a ‘Digital Single Window’ to manage employment contributions and taxes for gig economy work, and redistributing the value of digital ownership by treating the data generated or provided by workers as either capital, labour or intellectual property⁵⁶.

Overall, the HLG identified some crucial challenges that deserve to be addressed, however it presents some weaknesses in terms of discrimination and exclusion of people working through platforms. More importantly, it under addresses the problems linked to the usage of algorithmic systems to supervise work and to match workers with work. In fact, it is common knowledge that these systems do not meet the transparency and accountability principles.

The follow-up arrived in February 2021, when the Commission consulted social partners on their disposition to initiate social dialogue according to Article 154 (2) and 154 (3) TFEU⁵⁷. The consultation document by the EC contains some interesting points about the main concerns on platform work. It is noteworthy mentioning some identified challenges, such as the clarification of the employment status of platform workers and their working conditions, their access to social protection, their ability to get collective representation and bargaining, the cross-border dimension of platform work, its algorithmic management, and training and professional opportunities for platform workers⁵⁸. The points envisaged in the document are broad enough to include any initiative by social partners, particularly in the case of collective representation and collective bargaining. However, this broadness is not really appreciated by technical experts. For example, while it seems advisable that the EU intervenes to discourage the misclassification of platform workers, the document does not specifically clarify whether a presumption on employment status will be introduced, nor if different approaches will be undertaken⁵⁹.

Later on, in June 2021, a second phase consultation with social partners was launched⁶⁰. Even though the elements are again quite general, a remarkable step forward is the explicit reference to the issue of ‘supporting the sustainable growth of digital labour platforms in the EU’, while ensuring decent working conditions to people working through platforms⁶¹. Moreover, the document identifies some challenges for people working through platforms, namely (i) obtaining the correct legal employment

⁵⁶ Ibid.

⁵⁷ EU Commission, Consultation Document “First phase consultation of social partners under Article 154 TFEU on possible action addressing the challenges related to working conditions in platform work” (C(2021) 1127 final).

⁵⁸ Ratti, L., *op. cit.*, p. 203.

⁵⁹ Ibid., p. 204.

⁶⁰ EU Commission, Consultation Document “Second-phase consultation of social partners under Article 154 TFEU on possible action addressing the challenges related to working conditions in platform work” (C(2021) 4230 final).

⁶¹ Ibid., p. 19.

status in the light of their relationship with the platform and gain access to associated labour and social protection rights, (ii) fairness, transparency, and accountability in algorithmic management, and (iii) clarity on applicable rules for all people working through platforms operating across borders⁶².

As a matter of fact, the second phase consultation document focuses more specifically on the status of platform workers and identifies some areas of intervention, like a rebuttable presumption or an administrative or certification procedure⁶³. However, several aspects still remain unsettled, especially from a social point of view and representation and collective bargaining. The outcome of these consultation is the proposal of the Directive on improving working conditions of platform work launched by the EC on December 9, 2021, that we will see in Chapter 4.

As already stated, the current EU Commission is expected to further deliver on this sector, considering the fact that President Von der Leyen asked the Commission for Jobs and Social Rights to produce an action plan to implement the European Pillar of Social Rights. Furthermore, in 2020, a communication that presented the project of a ‘Platform Work Summit’ was advanced by the Commission, with the aim of identifying some priority aspects and possible solutions. However, due to the Covid-19 pandemic, the Summit did not take place. However, many consultations occurred and, in 2021, the EC adopted the Work Programme, that includes a legislative proposal⁶⁴ to improve the working conditions of people working through platforms and ensure adequate social protection. Notably, the 2021 ‘European Pillar of Social Rights Action Plan’, as wished by the EC President, includes two remarkable legislative initiatives about collective bargaining for autonomous workers who are in a vulnerable position, and on the working conditions of platform workers.

To conclude, all these efforts are aimed at avoiding a downward spiral and limiting the risks that platform workers very often run. On the one hand, since the interpretation is not legally binding, as it is the CJEU that has the final say in the interpretation of the EU law, the European Commission acknowledges that labour law mostly falls under national competence. On the other hand, the EU provides some orientation on the distinction between self-employed and traditional workers, and it stresses the fact that certain minimum standards in the field of social policy should apply across all EU Member States. In fact, the EU has urged the Member States to fully implement the relevant legislation and to update the national regulatory framework in order to guarantee the right to healthy and safe

⁶² Ibid., p. 20.

⁶³ Ibid., p. 21-22.

⁶⁴ Based on Art. 153 TFEU.

working conditions, including protection against workplace risks, as well as provisions on minimum rest periods and annual leave to all people that work through platforms.

In the next chapter, I will analyze the national level in order to show how the legislation for people working through platforms is not equally implemented. To do so, I will use the example of Foodora platform.

CHAPTER 3 NATIONAL RESPONSES: THE FOODORA CASE

3.1 EMPLOYMENT RELATIONSHIP AND REGULATORY ISSUES

After the main characteristics of how working through platforms is like and how it works at supranational level, now we turn to EU Member States in order to show how they have adopted different approaches, with a special focus on food delivery.

Member States, when responding to the regulatory challenges analysed in the previous chapter, have different policy options and, generally, despite the efforts at supranational level, the employment status of people working through platforms tends to remain uncertain. In fact, if we look at the EU Member States it seems that they did not adopt clear regulations specifying the employment status of platform workers⁶⁵.

The first option is to apply, or in some cases extend, the already existing legislative framework to people working through platforms and that is the case of most European countries. This option can entail different approaches: in a more conservative way, it is limited to removing from the online platform economy those practises that fall within the pre-existing regulatory categories, whereas, on a more expansive way, it entails the adaptation of the pre-existing criteria that determine the existence of an employment relationship, to include online platform working arrangements⁶⁶ that are considered similar enough to be included. However, this traditional approach could be not suitable to capture the features of platform workers because, in the absence of a tailor-made status, they rely on the existing framework. In particular, in Italy delivery riders are covered by the collective agreement in the logistics sector, thanks to which rider is a contractual position for which working conditions can be negotiated⁶⁷. Likewise, in Germany platform workers covered by the IG BAU trade union are included in collective agreements. Moreover, it is noteworthy considering the example of Poland and Sweden, where governments agreed that the regulatory framework for self-employed people was enough to protect platform workers. That is also the case of Member States and Denmark, where the current legal provisions are applied and that leads to platform workers to be classified as self-employed, meaning that most employment law is not applicable. Therefore, what emerges is that in most European countries, policymakers did not set up a specific framework dedicated to platform workers that

⁶⁵ Eurofund, *Employment and working conditions of selected types of platform work*, op. cit., p. 43.

⁶⁶ Garben, S. op. cit., p. 18.

⁶⁷ Linkiesta (2017) *La proposta della Cgil: l'algoritmo di Deliveroo e Foodora crea discriminazioni, contrattiamolo*.

determines their employment status; in general, they focused more on extending the already existing legislative framework to this category of workers.

Secondly, another option is to create a new category in-between the employment relationship and self-employment, that specifically captures the condition of people performing casual work. Specifically, these workers lie in a middle ground between the existing categories of employee and independent contractor. In this case, businesses would provide some benefits and protections to employees without fully assuming the legal costs of becoming an employer⁶⁸. In Europe there are also few cases of platforms that advanced employment contracts to platform workers, such as in Belgium, The Netherlands and Italy; however, that is generally the result of a decision taken by an authority rather than the platform itself. Moreover, there are some cases of workers that fall back to another employment status, in-between employment, and self-employment. For example, French platform workers very often belong to the intermediate status of micro-entrepreneurs. Another example is Austria, where platform workers can be applied the ‘employee-like’ status, which, unfortunately, has some stringent economic dependence criteria that are very often difficult to be met. Other examples are Belgium and Slovenia, where they can be employed under the employment status of ‘students’. In particular, in Belgium, this category of workers can work up to 475 hours per years and pay lower social contributions than a regular employee. Moreover, wages are subject to collective agreements, or, since 1 June 2017, may be set at the ‘average minimum monthly income’, which may be pro-rated according to age – it means that a 16-year-old would be entitled to 70 per cent of the average minimum monthly income, and an 18-year-old would be entitled to 82%⁶⁹. In the case of Slovenia, student work is casual work performed by people still in education. It is based on oral agreement and student workers are subject to social insurance on months where their income reaches a minimum of 60 per cent of the average monthly salary and it can apply to up to 12 months per year. Social insurance, in the case of Slovenia, covers pensions contributions, protection against occupational injury and disease. Moreover, there are some cases of platform workers working under a contract for services. That is the case of Croatia and Estonia, where they pay contributions at half the rate set for self-employed workers. Despite such efforts, the reports regarding the status of online platform workers in these countries show that the introduction of these mechanisms do not always solve the difficulties linked to the categorization and that a case-by-case assessment by courts is still decisive.

⁶⁸ Harris, S., Krueger, A. (2015) *A Proposal for Modernizing Labour Law for Twenty-First Century Work: The ‘Independent Worker’*, Hamilton Project.

⁶⁹ De Groen, W. P., op. cit., p. 44.

The third option is applying the provisions of the employment relationship in a more universal way, including to self-employed people. Therefore, the traditional distinction between employment and self-employment would be abolished, making employment rules, such as minimum wages and social security, applicable for self-employed people too.

Lastly, the fourth option is introducing a new, specific-sector regulatory regime for online platform work. It means that specific protection could be provided regardless the employment status. This new regime has been largely discussed among EU Member States. In fact, in Sweden, social partners widely debated on the introduction of a new status for platform workers, but they rejected the idea, arguing that it would have been a too strict legal definition that would give rise to new boundary issues. Social partners in Sweden claimed that the current system is flexible enough to deal with the new developments in the labour market. Indeed, temporary workers can join the so-called ‘umbrella organisation’, which entitles them to receive administrative support and pays employees’ contributions, makes tax deductions, and pays the rest as a wage to who performed the work.

Something similar happened in other EU countries, such as France. There, policymakers refused to introduce a new status because they claimed that it would not solve the issues linked to the blurred boundaries between the different statutes⁷⁰. However, in France exists now a ‘special labour law’ for different professions, including online platform work. In particular, Act of 8 August 2016 on work, modernisation of social dialogue and securing of career paths was implemented. The act provides (i) that independent workers in an economically and technically dependent relationship with an online platform can benefit from insurance for accidents at work which is the responsibility of the online platform in question; (ii) that these workers equally have a right to continuing professional training, for which the online platform is responsible, and should at their request be provided with a validation of their working experience with the platform, by the online platform; (iii) that these workers have the right to constitute a trade union, to be a member of a union and to have a union representing their interests; (iv) that they have the right to take collective action in defence of their interests⁷¹.

More in general, the establishing of a specific-sector regulatory regime should guarantee (i) to workers the freedom to establish their own working schedules and work hours, while the regulation should set the maximum number of working hours; (ii) the freedom to work for different platforms; (iii) minimum wage⁷².

⁷⁰ Ibid., p. 45.

⁷¹ Garben, S., op. cit. p. 46.

⁷² Telodi-Signes, A. (2017) *The “gig-economy”: Employee, self-employed or the need for a special employment regulation?*, 23 Transfer.

As a matter of fact, there is large ambiguity and uncertainty about the employment status of platform workers among EU Member States, therefore it comes without surprise that this issue has been subject of court cases. Several times, courts have been asked to make clarity about the employment status of platform worker and each time, they took into account the specific circumstances in order to provide a case-by-case ruling. Therefore, courts can come to different conclusions, depending on a set of criteria that help to determine the level of subordination and autonomy of platform workers, as well as their economic and personal dependence on the platform⁷³. Moreover, such criteria are not assessed in the same way across EU countries and courts consider different factors like the personal duty to perform work according to the contract, performance of work, being prevented from performing similar work, being subject to order and control, and using the equipment of the employer⁷⁴. For instance, in Italy it is crucial the case of Foodora, that the Labour Tribunal of Turin was called to rule on in 2016, as we will see in the next paragraphs.

To conclude, European Member States did not yet adopt a proper mechanism in relation to work performed through platforms, meaning that it is the platform's terms and conditions determining the status of the employment and, in most of the cases, platform workers are considered self-employed.

3.2 FOOD DELIVERY AND THE CASE OF FOODORA

As far as food delivery is concerned, Dazzi⁷⁵ distinguished between restaurant-to-consumer delivery and platform-to-consumer delivery. The former is the case of meals ordered online are directly from the restaurant, the latter is the case of meals ordered online through the usage of a platform, as in the case of Foodora.

In Europe, the value of platform-to-consumer delivery has represented a growing phenomenon for the last few years, and the Covid-19 pandemic showed the importance of the service provided by this kind of platforms, especially because they gave restaurants the possibility to continue working during lockdowns. As far as Foodora platform is concerned, in March 2020, more than 25,000 new restaurants were estimated to have access to the platform in that year⁷⁶. Moreover, sales grew from 80 million euros in 2019 to 161 million euros in 2020, since the active users grew by 28 per cent in 2020.

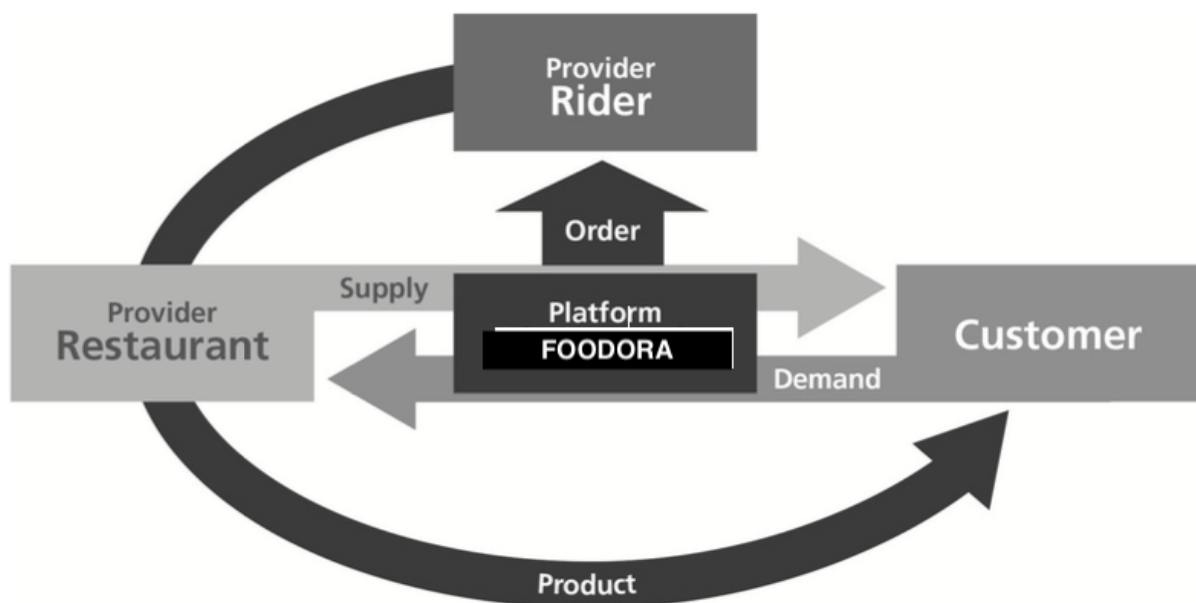
⁷³ De Groen, W. P., op. cit., p. 45.

⁷⁴ Ibid., p. 46.

⁷⁵ Dazzi, D. (2019) *GIG Economy in Europe*, Italian Labour Law e-Journal, Issue 2, Vol. 12.

⁷⁶ As reported by Spiegel, available at: <https://www.spiegel.de/panorama/coronavirus-bei-lieferando-wir-gehen-in-den-park-wenn-wir-aufs-klo-muessen-a-ff05f574-0ffa-4768-922e-3b0fdbf27a12>.

Foodora is an online food delivery company that was launched in Germany, Munich, in 2014, under the name ‘Volo’ as a bicycle delivery service for restaurants in the premium sector. One year later, it was bought by the investment company Rocket Internet, that renamed it ‘Foodora’. It rapidly grew, as many other platforms offering food delivery and, in 2018, it reached over 36,000 restaurants in over 260 cities in 22 countries, mostly in Europe, Southeast Asia and Canada.



Source: *Work organisation, labour & globalization*, Vol. 15, N. 1, 2021.

The graph above shows how the Foodora platform works: via Foodora customers have the possibility to order food, which is delivered by a rider, commonly a bike courier. The platform itself plays both the role of ‘marketplace’ of the food offered, and the role of a recruiter, because it provides the requirements to apply for a courier position⁷⁷. Couriers work is as follows, they firstly log in the platform, then they receive the order, which indicates the restaurant, the pickup point, and the delivery time⁷⁸. All the tasks are assigned according to an algorithm, which takes into consideration the address

⁷⁷ Rauseo, A. (2018) *Riders on the Precarious Digital Work. Foodora and the Riders’ Collective Action in Italy*, *Economia & lavoro*, Fascicolo 2, Maggio-agosto 2018.

⁷⁸ ‘Terms and conditions’ section of the Foodora website, available at: <https://www.foodora.com>.

of the customer and the location of the courier. Consequently, workers can stay hours without receiving any order at all, as many riders claimed⁷⁹.

3.3 FOODORA RIDERS' PROTESTS

Despite its rapid growth, the Foodora company started to encounter resistance at the end of 2016, as the number of criticisms regarding the poor working conditions grew. Thousands of riders coordinated at international, national, and regional level and formed a collective identity because, even though some disparities in their working conditions, protests showed many similarities in their demands: an improvement in working conditions and remuneration structures, the fact that they had to use their own equipment to work and the insecurity of the employment structures. They even managed to come together at an international conference in 2016 in Bilbao, where eight international trade unions set up the #deliverunion campaign in order to form a coordinated international cooperation and to raise consciousness about workers' rights.

Protests began in different UK cities, and it rapidly arrived in Italy, where discontent began to grow in 2016, when riders realized that the platform started a recruiting campaign with a different pay rate and, as a consequence, they sent a letter to complain. Therefore, Foodora workers engaged in a collective action. The question that may arise is if such workers possess the right to strike. The answer is that even if they had an autonomous employment relationship, they were allowed to exercise this freedom and the right to strike. Indeed, the Constitutional Court considers a strike when a self-employed worker decides not to perform his work. Moreover, the Italian Supreme Court deems that 'the right to strike can be exercised not only within the legal framework of a subordinate relationship in a formal sense, but every time the provider of services is in a weak position against the counterpart, from which the 'attitude to the conflict' or the 'right to conflict' arises'⁸⁰.

The reasons behind the protests were several. Most probably, the main one is the fact that the first type of contracts for these kinds of workers has been the so-called 'coordinated and continuous collaboration' with a EUR 5.6 pay per hour. Later, Foodora changed the contractual condition and fixing a rate of EUR 3.60 for each delivery. One of the clauses in their employment contract refers to Article 2 of Legislative Decree No. 81 of 15 June 2015. According to this legal provision, the typology

⁷⁹ As reported by DW, available at: <https://www.dw.com/en/italys-foodora-cyclists-take-gig-economy-to-court/a-41356273>.

⁸⁰ Forlivesi, M. (2016) *La sfida della rappresentanza sindacale dei lavoratori 2.0*, Diritto delle Relazioni Industriali.

is included in the field of ‘autonomous’ work, whereas the same article provides for a substantial application of the subordination or ‘peri-subordination’ regime⁸¹. Demonstrators in Turin managed even to have a meeting with Foodora’s management, thanks also to the wide interconnection with riders’ organizations from other European countries that had the power to unify and give voice to workers experiencing the analogous conditions. Regardless the efforts, in April 2018 the Labour Tribunal of Turin rejected the claim of six Foodora riders to be classified as employees instead of autonomous workers. The court contended that workers are given the freedom to decide whether to work or to disregard the agreed shifts, therefore, this freedom makes them autonomous workers. In other words, the Tribunal of Turin argued that there was no subordination of food-delivery riders because of their freedom to decide on their own their worktime and, for this reason, there should be no employment relationship with the Foodora platform.

Probably due to the Covid-19 pandemic, this state of things changed in 2021, when a decision against earlier judgements was taken: the Italian Labour Inspectorate and Milan prosecutors ordered food delivery platforms to pay €733 million in fines and fully hire the riders⁸². Moreover, while the Turin Court of Appeal confirmed the previously stated ruling, it ruled also that riders should not be regarded as solely self-employed. Moreover, it added that a third category for Foodora riders should be introduced⁸³. Finally, the Italian Supreme Court found itself in favour of them and applied 2015 legislations according to which employment and labour protection should be applied to all workers working for someone else, the so-called *lavoro etero-organizzato*, which was included in the “Jobs Act” reform package. This means that, regardless being in an employment relationship or not, everyone who is *etero-organizzato*, should be recognized all labour and employment protection.

Italy and the United Kingdom were not the only example where riders took collective action; indeed, this phenomenon was organized in other European cities, like Germany, France, and Spain. The main reason behind these protests was enhancing their working conditions and spreading awareness among the population about their conditions. Mobilizations around Europe were focused on slowing down the service, distributing pamphlets with their demands and ‘flash-mob’ actions, aimed at reducing the level of precariousness linked to their employment status through the boycotting of the company.

⁸¹ Perulli, A. (2015) Il lavoro autonomo, le collaborazioni coordinate e le prestazioni organizzate dal committente, Working Paper CSDLE, n. 272.

⁸² As reported by Politico, available at <https://www.politico.eu/article/italy-demands-733-million-euros-in-fines-from-food-delivery-platforms/>.

⁸³ Decision 26/2019 Turin Court of Appeal.

In particular, in Germany, the headquarter of Foodora, the Free Workers Union (FAU) launched a massive campaign in 2017, named ‘Deliverunion’, which was notably effective in terms of media visibility. In particular, the FAU drafted a catalogue of demands and underlined it with public actions in front of the company headquarters⁸⁴. However, what riders were asking to the company was different from Italy and from other EU countries. Essentially, they were requesting the introduction of a system that allowed them to be paid according to the kilometers made during the working hours, the introduction of work equipment, improved safety and covering all the expenses linked to the bicycle. Indeed, German riders, in contrast to their Italian colleagues, was already recognized the right to have sick days, holidays and a proper insurance by the employer. Furthermore, more recently, the German Federal Employment Court has made clear that crowdworkers, as well as platform workers, are employees⁸⁵. Even if there is not a clear reference to food delivery riders, the German government is committed to improve their legal position, which is already better compared to many other EU countries, as testified by the ‘Fair Work in the Platform Economy’ report published by the Federal Ministry of Labour and Social Affairs.

In Northern European countries where Foodora operates, platform work remains non-standard because of the use of part-time employment contract. In Norway, couriers are classified as marginal part-time employees, while in Sweden they are employed on renewable short-term contracts. This means that they are entitled to basic labour rights⁸⁶. Some of them have always been recognized, many others have been achieved thanks to collective bargaining agreements. Foodora is operative in Norway since 2015 and it is the biggest food delivery company in the country. It hires its workers as employees on marginal part-time contracts; even though it guarantees them 10 hours per week, many work for more hours.

Therefore, Foodora riders in Norway took collective action too. After starting in Oslo, the strike spread also to other Norwegian countries. They tried to take public opinion on their side through the usage of social networks and promoting dialogue in the cities. It led to the agreement of a collective agreement in 2019. The agreement included an annual pay hike of EUR 1,500 for full-time riders, winter allowance and compensation for the use of equipment at work such as bikes, clothes, and smartphones⁸⁷. In Sweden, Foodora started to face some resistance at the end of 2016, due to the spread

⁸⁴ Degner, A., Kocher, E. (2018) *Arbeitskämpfe in Der “Gig-Economy”? Die Protestbewegungen Der Foodora Und Deliveroo “Riders” Und Rechtsfragen Ihrer Kollektiven Selbstorganisation*, Kritische Justiz, 51 (3).

⁸⁵ German Federal Employment Court of 1 December 2020.

⁸⁶ Anxo, D. (2021) *Digital Labour Platforms in Sweden*, Centre for European Labour Market Studies Report.

⁸⁷ As reported by Itfglobal, available at: <https://www.itfglobal.org/en/news/union-win-historic-agreement-food-delivery-workers>.

of criticisms about the riders' working conditions. These criticisms were primarily advanced by the Swedish labour unions and by the Swedish Work Environment Authority, particularly because the platform itself challenged the norms implemented by the Swedish government to guarantee employment security. Another important aspect was the variety of contractual forms used by the company, which led to significant differences in payment rates for riders. In 2019 they managed to sign a collective agreement⁸⁸, which entitled Foodora couriers to an increased base-rate, payment increases for tenure and winter-work, and equipment reimbursement on a per-delivery basis. Moreover, the agreement included workers in an early retirement pension scheme.

In Sweden, riders are classified as employees, however Foodora provides short-term contracts because it claims that the job should be considered as an extra. Furthermore, as many couriers affirmed⁸⁹, they are pressured in order to increase the pace and not to get fired and those who do not belong to the top 50 per cent of performance are threatened to be dismissed. Lastly, another reason for criticism was that the company does not provide tools and vehicles to carry out the work; couriers themselves have to have a vehicle and take care of its maintenance. Therefore, the company faced a high level of criticism from the Swedish Work Environment Authority and labour unions. Finally, in 2021 the Swedish Federation of Transport and Foodora signed a collective agreement, which set a minimum wage, with extra wages during certain times of day, other provisions regarding compensation for bicycle maintenance and work clothes, access to pension and insurances and also recommendations for setting up guidelines for improving the couriers' working environments⁹⁰.

As far as the United Kingdom is concerned, Foodora workers engaged in a collective action when the company tried to change their pay rate; in France workers set up the 'Clap' campaign. There, as already stated, platform workers, and consequently couriers, are considered micro-entrepreneurs, a subtype of self-employment. This means that Foodora workers are affiliated to *la Sécurité sociale pour les indépendants*, the French social insurance scheme for self-employed people, and have to pay contributions to be entitled to receive social security benefits like pension. However, available benefits are much less favourable than the general scheme applicable to employees; on the contrary, they are not insured for unemployment, accidents at work or occupations diseases⁹¹. In Eastern European countries too Foodora riders are generally classified as self-employed.

⁸⁸ The "Tariffavtale for distribusjon og budtjenester i Foodora 2019-2020" agreement.

⁸⁹ As reported by Gigwatch, available at: <https://www.gigwatch.se/en/2019/09/21/foodora-2/>.

⁹⁰ Newlands, G. (2022) 'This isn't forever for me': Perceived employability and migrant gig work in Norway and Sweden, EPA: Economy and Space, 1-18.

⁹¹ Ibid., p. 10.

3.4 THE ALGORITHMIC MANAGEMENT OF PLATFORMS

Notwithstanding the precariousness of riders due to their employment status, another important feature is the reliance of Foodora and many other food delivery platforms on algorithms. Algorithmic management essentially refers to the automated mechanism through which the digital workforce is directed in terms of work coordination and behaviour⁹² and to the surveillance mechanism through which the workers' performance is assessed. In this regard, a Eurofund report claimed that "there are some grounds for assuming that automated matching is more objective than a human and hence prevents discrimination against workers based on factors such as ethnicity or disability status"⁹³.

On the one hand, they could be seen as a tool to protect workers avoiding the bias of human supervisors, on the other hand, this impersonal nature of platform work makes it a critical issue and, therefore, they could be a disadvantage for workers.

Foodora, since it acts as the intermediary between demand and supply, serves as the central control authority, which has the power to oversee, connect and aggregate the data streams from all participants⁹⁴. In other words, algorithms are useful to match offer and demand and rely on speed, meaning that a rider who takes too much time to accept a task will lose it to another worker. Consequently, algorithms do not take into consideration the reasons behind the delay, meaning that they can be a source of frustration for platform workers. Therefore, platforms create an asymmetry between the company operating through the platform (i.e., restaurants) and workers.

Moreover, platforms generally negate their responsibilities towards their workers by shifting risks onto them. This reflects the disparity between those who design and provide the algorithms and those who physically run the service. Since the algorithmic management coordinates the whole workflow through modular units, it functions as the key resource for managing the workforce, using tracking mechanisms that appear to be objective. Thereby the algorithms and their mode of operation remain opaque to the workforce⁹⁵.

Furthermore, algorithms are used to 'direct workers by restricting and recommending, evaluate workers by recording and rating, and discipline workers by replacing and rewarding'⁹⁶. This means

⁹² Schreyer, J. (2021) *Algorithmic work coordination and workers' voice in the COVID-19 pandemic. The case of Foodora/Lieferando*, Work organisation, labour & globalization, Vol. 15, No. 1.

⁹³ Eurofund 2019.

⁹⁴ Duggan, J., Sherman, U., Carbery, R., McDonnell, A. (2020) *Algorithmic management & app-work in the gig economy: A research agenda for employment relations and HRM*, Human Resource Management Journal, 30 (1).

⁹⁵ Goods, C., Veen, A., Barratt, T. (2019) "Is your gig any good?" *Analyzing job quality in the Australian platform-based food delivery sector*, Journal of Industrial Relations, 61 (4).

⁹⁶ Kellogg, K. C., Valentine, M. A., Christin, A. (2020) *Algorithms at work: The new contested terrain of control*, Academy of Management Annals, 14 (1).

that algorithms provide the employer with real-time and predictive analytics covering the whole work process and enable the company to measure and control its workforce quantitatively and normatively using rankings. Moreover, this also means that riders and platform workers in general, are in a vulnerable position. Indeed, there are people with the possibility to gain insights of how the algorithm works and, on the other side, people that physically provide the work, that cannot access such information. Therefore, since riders are ‘under the algorithm’ and have to face such powerlessness, they managed to create collective actions, in order to establish a counter-power.

Another important aspect is that algorithmic management, since it is such a new and developing phenomenon, it is still largely unregulated and uncertain. Indeed, national authorities do not always have sufficient access to data on digital platforms and on people working through them. This is especially true for digital platforms operating across borders and this information include the number of people working for a platform, their contractual relationship, their employment status, or terms and conditions.

To summarize, people working for a food delivery platform, and platform workers in general, very often struggle with underregulated working conditions. As already stated, their precariousness is generally linked, on the one hand, to the self-employment classification and, on the other hand, to the high dependence on the platform and its algorithmic management. In the EU, people working through platforms typically do not have a separate status and, therefore, are recognised under the employment status existing in the country. First of all, this kind of work represents a complex employment relationship where many parties are involved, like the platform itself, clients, restaurants and other potential actors. Foodora generally claimed to be just an intermediary, responsible for matching supply and demand and sometimes this is also specified in their terms and conditions. Therefore, workers are everywhere fighting to achieve some sort of recognition and social protection and courts have been asked many times to make clarity on the characterization of employment relationship, sometimes leading to disparities among countries. Moreover, collective actions gained new relevance in the last couple of years, because the Covid-19 pandemic led to new problems, such as the lack of enough protective equipment for the workforce and the risk of being infected and spreading the virus during the work shifts.

To conclude, even in presence of an employment contract between workers and platforms affiliated workers do not operate under this employment status. That is the case of Foodora, which works with a mix of employees and self-employed workers.

CHAPTER 4

THE DIRECTIVE PROPOSAL AND THE FUTURE OF THE ‘GIG ECONOMY’

The platform economy in Europe represents a growing phenomenon; on the one hand, it provides new opportunities in the EU for workers in terms of flexibility, additional jobs and income for people that have more difficulties in entering the labour market. On the other hand, it can also lead to new forms of insecurity because of the lack of transparency due to the algorithmic management, predictability in working conditions and scarce social protection.

All these weaknesses became even more evident when the Covid-19 pandemic outbreak; as it was spreading around the world, platforms became always more important in ensuring access to services to those self-isolated or positive to the virus. Moreover, during lockdowns, their work prevented thousands of restaurants from the collapse. Therefore, food delivery riders proved to be indispensable. At the same time, the pandemic made evident some weaknesses, like precarious working conditions, increased health and safety risks, income instability, inadequate working time regulation, occupational safety and poor access to social protection.

Furthermore, as already showed in the previous chapters, a sustainable growth of the platform economy needs an improved legal framework because evidence from EU Member States and Foodora still show many deficiencies, that result in uncertainty and poor regulation. It is true that many countries tried to protect riders following the inputs provided by the European institutions, but their efforts always seemed to be uncoordinated and not sufficient.

4.1 THE DIRECTIVE ON IMPROVING THE WORKING CONDITIONS ON PLATFORM WORK

The Covid-19 pandemic made the EU institutions recognizing the importance of the platform economy and gave a new impetus to provide further legislation. Moreover, in the past few years, there has been a consistent number of court cases around the EU Member States, including France, Spain, that ruled that platforms are employers.

What EU institutions realized is their potential to create opportunities both for consumers and businesses. They can rapidly match demand and supply and provide new job opportunities. Nevertheless, on the supply side, they provide the opportunity to create a wider client base, helping businesses to grow. Indeed, in 2020 the European Commission organised a dedicated exchange with

social partners with the aim of share views on the current opportunities and challenges that should be addressed. Social partners played a fundamental role because, according to Article 154(2) of the TFEU, the Commission should consult them before submitting a proposal in the social policy field. During the first stage of consultations the possible areas of intervention were mainly discussed, and, in the second stage, they debated around the possible areas of intervention, that made evident how divergent were their positions.

On December 9th, 2021, the European Commission launched a legislative proposal for a set of new measures to improve the working conditions of platform workers, and to support the sustainable growth of digital labour platforms. These proposals include the Directive of the European Parliament and of the Council on improving working conditions in platform work⁹⁷.

According to the draft Directive, 28 million people currently work on digital labour platforms across the EU. In addition, this proportion has been predicted to grow to 43 million by 2025.

Moreover, it is not surprising that, according to the EU Commission, nine out of ten of these platforms classify people as self-employed.

The aim of the proposed Directive is improving the working conditions and social rights of people working through platforms, including with the view to support the conditions for the sustainable growth of digital labour platforms in the European Union.

The target of the Directive, as Article 2 claims, is everyone performing a digitally mediated platform work “irrespective of whether that work is performed online or in a certain location”. Therefore, it is very broad: it potentially applies to all platform workers, including food-delivery riders, drivers of ride-hailing platforms, domestic workers and people who work for exclusively online platforms

In particular, the main objectives are: (i) making sure that people working through digital platforms have the correct employment status and is guaranteed access to labour and social protection rights; (ii) ensuring more transparency on the algorithmic management; (iii) promote transparency and traceability of developments in platforms and improve the enforcement of rules for all people working through platforms.

According to this proposal, all people working through a digital platform would be classified as employees if at least two criteria are met. These criteria are: (i) the platform determines the level of remuneration; (ii) the platform requires workers to follow rules regarding appearance, conduct toward clients or performance of the work; (iii) the platform uses electronic means to supervise and assess the performance of work; (iv) the platform limits the possibilities to freely choose working times, periods

⁹⁷ European Commission, Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, COM(2021) 762 final.

of absence and to accept or refuse tasks; (v) the platform restricts the possibility to work for any third party.

In order to achieve the second objective of transparency of the algorithmic management, Chapter III focuses on the introduction of new material rights for people performing platform work⁹⁸. They are considered as a supplement to Directive 2019/1152 on transparent and predictable working conditions and include the right of transparency when using an automated monitoring system, but also ensuring human monitoring of the impacts of these automated systems in order to guarantee basic workers' rights. Thus, workers should have the right to be informed about any decision taken by the platform or supported by an automated decision-making system that affects the worker's working conditions. This means that platform workers should have the contact of someone designated to discuss and to clarify the facts and the circumstances that led to a given decision.

As far as the third objective is concerned, Chapter IV includes some concrete measures to enhance transparency and traceability. In order to achieve this objective, platform should declare the work performed by platform workers to national authorities and share with them relevant data. In this way, national authorities are given the necessary information make sure that rights are guaranteed. Such information includes the number of employed people, their employment status and terms and conditions of the platform. Another important aspect of the proposed Directive is that people working through a digital platform should be in contact with each other and with representatives of the platform.

4.2 WEIGHTING ADVANTAGES AND DISADVANTAGES

The Commission noted that it would want this proposed Directive to become EU law by 2024. At the moment, the EU Commission seems to have a widespread support not only from the EP, but also from policymakers and the public opinion, and, if it will be passed, countries would have two years to incorporate the rule into their national law.

Currently, the European Parliament is debating the proposal. Indeed, on May 10, Elisabetta Gualmini, the EP's rapporteur, in her draft report proposed substantial changes to the text and added some stronger provisions to protect workers and more obligations to enhance transparency of the algorithmic management. In particular, she raised the number of criteria to eleven. She argued that the motivation behind these additional provisions is not punishing platforms, rather avoiding a detriment effect to workers. In addition, these transparency obligations are meant to give the EU Member States data on

⁹⁸ Ibid. p. 4.

the number of people working through online platforms and their contracts, in order to provide countries with enough information to be aware of how platforms operate.

Finally, this draft report sets the basis for the parliamentary discussion in the committee on employment and social affairs and we will see in the next weeks how it will be considered by the other MEPs.

Certainly, this new proposal represents an enormous step forward for the gig economy.

In order to achieve a sustainable growth of digital work, people working through digital platforms should be recognized a legal employment status. In this way, they would have access, on the one hand, to labour and social protection laws, on the other hand, on increased fairness, transparency and accountability in algorithmic management.

After all these years struggling with the consequences of being self-employed, they would finally be reclassified as employees. Consequently, they would gain the right to a minimum wage, safety protections, paid leave, and unemployment benefits.

In addition, it represents a decisive step towards improved working conditions of people working through platforms. It is an attempt to advance the divergent approaches at national level regarding the misclassification of the employment status.

Furthermore, it seriously tries to tackle the issue of the algorithmic management, since digital labour platforms will have to show the functioning of their algorithm.

Even though the necessity of improving the working conditions of people working through digital platform and the importance of the approval of this draft Directive, it also includes some shortcomings. First of all, it essentially covers everyone in the EU who has or may be deemed to have an employment relationship with a digital labour platform⁹⁹; this means that the scope is very broad. Therefore, it could lead to some difficulties in the phase of implementation of the Directive and, consequently, some workers run the risk of not being included in its scope.

Furthermore, it will be interesting to see how each Member State will transpose the Directive into national law. This could be a way to increase legal certainty and to minimize the risks linked to self-employment. Indeed, according to Article 4(1), when the platform exercises some degree of control over the platform workers, the contractual relationship should be legally regarded as an employment relationship. Moreover, according to Article 4(2), this legal presumption should already apply in the

⁹⁹ Ibid., Article 2.

case that two of the five control criteria regarding the performance of the work are met. When transposing these criteria in national law, it emerges the fact that they should not be universal because they do not correspond to the real practices of platform workers and could create a conflict with national legislations. In other words, since Member States have different legal systems with differences in taxation and social security, that result in divergent requirements for the employment status, a one-size-fits-all solution does not seem appropriate. In fact, many national legislations already have sufficient possibilities for people performing platform work, making it unnecessary to provide more legal criteria at European level. Moreover, additional criteria could have the potential to endanger the already existing legal system, particularly in countries where a dedicated regime for self-employed platform workers has been developed; alternatively, it could lead to the introduction of a third status at national level.

Another important aspect linked to the employment status is that it could hamper the flexibility that characterizes platform work, by making it difficult for them to operate as self-employed. This could lead to consequences not just for workers, but also for the economy in general and the development of entrepreneurship.

Regarding self-employed people, the Directive does not include any improvement in the protection of this category. Therefore, those platform workers which will continue to be classified as self-employed, will still not have basic rights, including the right to a minimum wage, health and safety protection, transparency and collective representation.

As far as the algorithmic management is concerned, at EU level there already are legal texts aimed at creating transparency and a level playing field for people working through platforms. As already mentioned, these legal texts are the Directive 2019/1152/EU on transparent and predictable working conditions, which should be transposed into national law by August 1, 2022, and Regulation (EU) No. 2019/1150 to promote fairness and transparency for business users of online brokerage services¹⁰⁰. Therefore, the proposed Directive should accomplish what has already been promoted. It envisages obligations on the platform to labour and social protection authorities, so that information is provided to workers, as well as terms and conditions of the contractual relationship. In addition, it argues that a human should always be the last decision-maker for all aspects of professional life. Besides the

¹⁰⁰ The so-called “Platform-to-Business” Regulation. Its scope is to ensure that self-employed “business users” of the intermediary services of an online platform are treated in a transparent and fair way.

importance of improved transparency of platforms, it is crucial not to create overlaps with the already existing provisions because it could lead to excessive additional administrative burdens for platforms.

Finally, the proposal does not focus on improving the collective representation of people performing platform work. In other words, the Directive, thus facilitating communication among workers, it does not go far enough in incentivizing communication between workers and the platform. Without any measure in this regard, workers will be denied the possibility to raise their concerns vis-à-vis platforms.

4.3 WHAT IS NEXT?

Despite the efforts to improve the working conditions of people working through platforms, the costs and benefits remain highly contested.

The platform economy is an important source of job creations and offers possibilities to make a living or earn additional income, especially for those people who face barriers to access the labour market, such as young people, people with disabilities, migrants or those with caring responsibilities. In addition, they can serve as an opportunity to learn new skills and to improve CVs.

On the other hand, they are sometimes accused of creating a new class of low-income workers. However, opinions about platform work can vary a lot according to age, gender, type of platform, tasks, particular reasons for taking up such work, as well as the level of dependence on the platform, expectations on the pay and local labour realities. In particular, if we consider the Foodora case, it is possible to highlight the fact that thousands of riders across Europe took collective action to demonstrate against working conditions, thus the reasons behind manifesting were sometimes different.

Despite the flexibility that characterizes platform work, riders, and platform workers in general face very often a high level of uncertainty due to their employment status. Such uncertainty refers also to income: in the case of low-skilled work wages are often very low.

Another important aspect is the frustration linked to the algorithmic management. The lack of a human intervention to understand workers' needs can have long term consequences. Therefore, the Directive proposal represents a crucial step to improve working conditions, to address the deficiencies of the already existing legislation at EU level and to have more coordinated frameworks at national level. It sends a decisive message to the general approach towards employment status. Furthermore, it really tries to tackle the downsides of the algorithmic management.

Since many scholars are highly debating around the future of work, providing better conditions for platform workers is a key element nowadays. In fact, discussions around the future of work call for an urgent need to acknowledge the multiple forms of employment and ways of organizing labour and go beyond the traditional distinction between employer and employee. This means that the one-size-fits-all approach at EU level is not suitable for the diversity of platforms and work through platforms. Platform work covers different realities and many situations.

The success of many platforms in different sectors shows that the gig economy really works and fits the future of work. Consequently, it urges the need for the gig-economy to be associated with highly skilled, independent workers, instead of low-skill jobs.

To conclude, since the nature of work is changing, a coordinate and unified approach should be taken, so that policymakers and legislators have all the information necessary to be fully aware of the opportunities and challenges brought about the gig economy. In my view, in order to have a more comprehensive view, national labour statistics must progress and capture the divergent types of employment.

Secondly, a deeper understanding of the new technologies used to manage workers, i.e., the algorithmic management, is fundamental to be aware of the future challenges of platform work and to provide adequate protection.

Thirdly, since many digital platforms operate across different jurisdictions, some tools to monitor compliance with national legislation is necessary. Consequently, international agreements on the governance of algorithms could be useful.

Fourthly, some level of human control, both at national and international level, is required to ensure that basic workers' and social security rights are guaranteed.

CONCLUSION

Policymakers, both at European and national level are currently showing their activism to close the loopholes that characterize the platform economy. Platform workers have been fighting to get some level of recognition and protection. That is the case of Foodora, an online food delivery company that has its headquarter in Munich. It was established in 2014, but it rapidly reached many European, American, and Asian countries. While it was rapidly growing, reaching more and more countries and restaurants, it started to encounter some resistance as soon as couriers working for the platform became aware of their poor working conditions

Therefore, thousands of riders coordinated at international, national, and regional level and formed a collective identity to spread awareness among the public opinion and to fight to achieve better working conditions. Even though some disparities at national level in terms of employment, protests showed many similarities in their demands, such as an improvement in working conditions and remuneration structures, the fact that they had to use their own equipment to work and the insecurity of the employment structures.

Moreover, due to gaps in the regulatory framework, poor harmonization and different rulings, national courts have been increasingly called to determine platform workers' legal status. However, responses very often resulted in disparities.

Therefore, it is time for the EU to start recognizing and regulating these jobs to offer better worker protections. The current EU Commission, even before the outbreak of the Covid-19 pandemic, has been showing its determination to do so. Indeed, the Von der Leyen Commission included the needs of platform workers among the 100 days priorities by EU Commissioner on Jobs and Social Rights, as a sign of willingness to provide a far-reaching response. The result of this intention has been the launch of a two-stage consultation with social partners to find the grey areas in the already existing regulatory framework and the possible areas of intervention. The identified challenges have been clarification of the employment status of platform workers and their working conditions, their access to social protection, their ability to get collective representation and bargaining, the cross-border dimension of platform work, its algorithmic management, and training and professional opportunities for platform workers. In the light of these consultations, the Directive on improving working conditions of platform work was launched in December 2021.

Undoubtedly, the proposal is a key attempt to tackle some of the issues that people working through platforms in EU countries experience, such as all the consequences linked to the employment status and the algorithmic management. However, some gaps remain unaddressed.

Finally, delivering positive outcomes for platform workers requires combined efforts. A coordinated and multilateral response is the preferable option for mitigating the risks. In other words, policymakers and legislators should be given all the information necessary to be fully aware of the opportunities and challenges brought about by the gig economy and to deliver proper regulation.

Another important aspect to take into consideration is that regulators need to resist the idea of a homogeneous approach. As shown in Chapter 1, the platform economy refers to a wide array of sectors and, therefore, there is an urgent need to acknowledge the multiple forms of employment and ways of organizing labour and go beyond the traditional distinction between employer and employee. This means that the one-size-fits-all approach at EU level is not suitable for the diversity of platforms and work through platforms.

References

- Ales, E., Curzi, Y., Fabbri, T., Rymkevich, O., Senatori, I., Solinas, G., (2018) *Working in Digital and Smart Organizations. Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, Palgrave Macmillan.
- Aloisi, A. (2016) *Commoditized Workers: Case Study research on Labor Law Issues Arising from a set of “On-demand/Gig Economy” Platforms*.
- Aloisi, A. (2019) *Negotiating the digital transformation of work: non-standard workers' voice, collective rights and mobilisation practices in the platform economy*, European University Institute.
- Aloisi, A. (2020) *Platform Work in the EU: Lessons learned, legal developments and challenges ahead*, Directorate General for Employment, Social Affairs and Inclusion.
- Aloisi, A., De Stefano, V., (2020) *Regulation and the future of work: The employment relationship as an innovation facilitator*, International Labour Review, Vol. 159, No. 1.
- Anxo, D. (2021) *Digital Labour Platforms in Sweden*, Centre for European Labour Market Studies Report.
- Berg, J., Furrer, M., Harmon, E., Rani, U., Silberman, M. S., (2018) *Digital labour platforms and the future of work. Towards decent work in the online world*, International Labour Office, Geneva.
- Botsman, R. (2015) *Defining the sharing economy: what is collaborative consumption and what isn't?* Fast Company.
- Countoutis, N., *Platform Work: Regulatory and Jurisprudential Perspectives. The UK Case*, Cambridge University Press.
- Dazzi, D. (2019) *GIG Economy in Europe*, Italian Labour Law e-Journal, Issue 2, Vol. 12.
- Dazzi, D., (2020) Paper on the European Union co-funded project VS/2019/0040 *Gig economy and processes of information, consultation, participation and collective bargaining*.
- Daugareilh, I., Degryse, C., Pochet, P. (2019) *The platform economy and social law: Key issues in comparative perspective*, European Trade Union Institute.
- Defossez, D. (2022) *The employment status of food delivery riders in Europe and the UK: Self-employed or worker?* Maastricht Journal of European and Comparative Law 2022, Vol. 29(1).
- Degner, A., Kocher, E. (2018) *Arbeitskämpfe in Der “Gig-Economy”? Die Protestbewegungen Der Foodora Und Deliveroo “Riders” Und Rechtsfragen Ihrer Kollektiven Selborganisation*, Kritische Justiz, 51 (3).
- De Groen, W. P., Killhoffer, Z., Lenaertsm, K., Mandl (2018) *Employment and working conditions of selected types of platform work*, Eurofound.
- De Stefano, V., Aloisi A. (2018) *European Legal framework for digital labour platforms*, European Commission, Luxembourg.

De Stefano, V., Durri, I., Stylogiannis, C., Wouters, M. (2021) *Platform work and the employment relationship*, ILO Working Paper 27.

Del Prato, F., Stagnaro, C., (2018) *Take it easy, rider! Perché la flessibilità dei lavoretti è un valore e non un limite*, Istituto Bruno Leoni, Torino.

Digital platforms and the world of work in G20 countries: Status and Policy Action, June 2021.

Duggan, J., Sherman, U., Carbery, R., McDonnell, A. (2020) *Algorithmic management & app-work in the gig economy: A research agenda for employment relations and HRM*, Human Resource Management Journal, 30 (1).

EU Commission, *A European agenda for the collaborative economy*, COM(2016) 356.

European Commission (2016) *Commission Work Programme 2017: Delivering a Europe that Protects, Empowers and Defends*.

EU Commission, Communication of 8 March 2016 launching a consultation on a European Pillar of Social Rights, COM(2016)0127.

EU Commission, *Communication on a European agenda for the collaborative economy*, COM(2016)0356.

EU Commission, Consultation Document, *First phase consultation of social partners under Article 154 TFEU on possible action addressing the challenges related to working conditions in platform work* C(2021) 1127.

EU Commission, Consultation Document, *Second-phase consultation of social partners under Article 154 TFEU on possible action addressing the challenges related to working conditions in platform work* C(2021) 4230.

European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights (2016/2095).

Furunes, T., Mkono, M. (2019) *Service-delivery success and failure under the sharing economy*, International Journal of Contemporary Hospitality Management, Vol. 31, No. 8.

Garben, S. (2017) *Protecting Workers in the Online Platform Economy: An overview of regulatory and policy developments in the EU*, European Risk Observatory Discussion paper, European Agency for Safety and Health at Work

Goods, C., Veen, A., Barratt, T. (2019) *“Is your gig any good?” Analyzing job quality in the Australian platform-based food delivery sector*, Journal of Industrial Relations, 61 (4).

Hamari, L., Sjöklint, M. and Ukkonen, A. (2016) *The sharing economy: why people participate in collaborative consumption*, Journal of the Association for Information Science and Technology, Vol. 67 No. 9.

- ILO (2021) *World employment and social outlook: the role of digital labour platforms in transforming the world of work*, Geneva, International Labour Office.
- Kellogg, K. C., Valentine, M. A., Christin, A. (2020) *Algorithms at work: The new contested terrain of control*, *Academy of Management Annals*, 14 (1).
- Kilhoffer, Z., De Groen, W. P., Lenaerts, K., Smits, I., Hauben, H., Waeyaert, W., Giacumacatos, E., Lhernould, J., Robin-Oliver, S. (2020) *Study to gather evidence on the working conditions of platform workers*, Final Report, Research Institute for Work and Society.
- Kocher, E. (2022) *Digital Work Platforms at the Interface of Labour Law: Regulating Market Organizers*, Bloomsbury Publishing.
- Kuhn, K. M., Maleki, A. (2017) *Micro-Entrepreneurs, Dependent Contractors, and Instaserfs: Understanding Online Labor Platform Workfoces*, *Academy of Management Perspectives*, Vol. 31, No. 3.
- Lazzari, C. (2018) *Gig economy e tutela della salute e sicurezza sul lavoro. Prime considerazioni a partire dal caso Foodora*, *Rivista del Diritto della Sicurezza Sociale*, Fascicolo 3, settembre 2018.
- Lee, Y. (2021) *After a Global Platform Leaves: Understanding the Heterogeneity of Gig Workers through Capital Mobility*, *Critical Sociology* 1-15.
- Lobel, O. (2016) *The law of the platform*, *Legal Studies Research Paper Series* 212.
- Medico, F. (2019) *Verso una maggiore protezione costituzionale dei gig workers? I riders di Foodora e la loro prima vittoria giudiziale*, *Quaderni costituzionali*, Il Mulino, Fascicolo 2, giugno 2019.
- Newlands, G. (2022) *'This isn't forever for me': Perceived employability and migrant gig work in Norway and Sweden*, *EPA: Economy and Space* 1-18.
- Pantea, S. (2022) *Self-employment in the EU: quality work, precarious work, or both?* *Small Bus Econ.*
- Persole, A., Urzi Brancati, M. C., Fernández-Macías, E., Biagi, F., González Vázquez, I., *Platform Workers in Europe*, EUR 29275 EN, Publications Office of the European Union, Luxembourg, 2018.
- Piasna, A., Zwysen, W., Drahokoupil, J. (2022) *The platform economy in Europe. Results from the second ETUI Internet and Platform Work Survey*, ETUI aisbl, Brussel.
- Pulignano, V., Piasna, A., Domecka, M., Muszynski, K., Vermeerbergen, L. (2021) *Does it pay to work? Unpaid labour in the platform economy*, ETUI Policy Brief.
- Ratti, L. (2022) *Crowdwork and work on-demand in the European legal framework, Premises and Expectations*, Cambridge University Press.
- Rauseo, A. (2018) *Riders on the Precarious Digital Work. Foodora and the Riders' Collective Action in Italy*, *Economia & Lavoro*, Fascicolo 2, maggio-agosto 2018.

Sacha, G. (2017) *Protecting Workers in the Online Platform Economy: An overview of regulatory and policy developments in the EU*, European Risk Observatory Discussion paper.

Schmid-Drüner, M. (2016) *The situation of workers in the collaborative economy*, European Parliament.

Schreyer, J. (2021) *Algorithmic work coordination and workers' voice in the COVID-19 pandemic. The case of Foodora/Lieferando*, Work organisation, labour & globalization, Vol. 15, No. 1.

Tan, Z. M., Aggarwal, N., Cowls, J., Morley, J., Taddeo, M., Floridi, L. (2021) *The ethical debate about the gig economy: A review and critical*, Technology in Society, Elsevier.

Telodi-Signes, A. (2017) *The "gig-economy": Employee, self-employed or the need for a special employment regulation?*, 23 Transfer.

Wouters, M. (2022) *International Labour Standards and Platform Work. An Analysis of Digital Labour Platforms Based on the Instruments on Private Employment Agencies, Home Work and Domestic Work*, Kluwer Law International BV, The Netherlands.

Web references

<https://blog.opencorporation.org/2020/04/21/delivery-riders-in-the-time-of-covid-19-between-europe-and-regionalisms/>

<https://www.shrm.org/resourcesandtools/hr-topics/global-hr/pages/eu-proposed-protections-gig-workers.aspx>

https://www.theguardian.com/technology/2020/mar/25/uber-lyft-gig-economy-coronavirus?CMP=share_btn_fb

<https://viennawurstelstand.com/article/what-is-it-like-to-be-a-delivery-rider-during-the-coronavirus-pandemic/>

<https://www.twobirds.com/en/insights/2022/denmark/forslag-til-eu-direktiv-om-forbedring-af-arbejdsvilkaar>

<https://fair.work/en/fw/blog/fairwork-response-to-the-european-commissions-proposal-for-a-directive-on-platform-work/>

<https://www.euractiv.com/section/digital/news/leading-mep-pushes-for-tight-employment-protection-in-platform-workers-directive/>

<https://socialeurope.eu/european-commission-takes-the-lead-in-regulating-platform-work>

<https://verfassungsblog.de/work-directive/>

<https://www.lavoce.info/archives/67360/covid-19-e-piattaforme-online-chi-guadagna-e-chi-perde/>

ABSTRACT

Platform work, understood as the matching between supply and demand through an online platform, has been developing across the EU Member States in the last few years. This dynamism, the broad scope of platform activities and its related economic opportunities are a highly debated topic among scholars, policymakers, legislators, social partners, workers, and the society as a whole. Indeed, while rapidly developing, it is still a source of litigation.

This study examines how the existing EU labour law provisions improve the labour conditions of platform workers. Its overarching goal is to address possible policy gaps and the implications of the EU law on national legislations, taking into consideration the lessons that can be drawn from the Foodora example. Considering how the Covid-19 pandemic boosted the spread of online labour platforms and, consequently, made some weaknesses in terms of employment relationship and algorithmic management evident, the aim of this study is trying to understand whether the proposed Directive on improving working conditions on platform work is enough to close the loopholes of the system.

CHAPTER 1

The first chapter tries to make clarity on what is meant by platform work and the proportion of this sector in Europe. It deepens the debate around the several labels that have been given to this new phenomenon describing its main characteristics and weighting the advantages and disadvantages of working through a platform. Furthermore, joining this new economy can represent an employment opportunity for students, unemployed and underemployed people for several reasons, like the flexible schedules, which is particularly appealing for those with other responsibilities, autonomy, and the low entry barriers to the labour market. However, working for a platform has also many shortcomings, such as unpredictability of working hours, and being exposed to economic risks.

Even though measuring the actual proportions of this ecosystem is quite problematic because different methodologies can result in different assessments, answering to the question "how many platform workers are there in Europe?" is crucial for policies since the already-existing legislative framework does not always apply to such jobs.

The last data at our disposal are the ones provided by the ETUI Internet and Platform Work Survey in 2022. They conducted a survey in 14 EU countries.

Findings show that, among the surveyed people, 4.3 per cent performed a platform work in the last 12 months. Moreover, the prevalence of platform workers is quite similar across the analysed countries and there is not a clear geographical pattern. If we compare these results with the ones provided by the COLLEEM survey in 2017, it is possible to underline the fact that online income generation is growing with similar patterns almost everywhere in Europe, with the highest levels in Central and Eastern Europe (Czechia, Slovenia and Estonia) and in Southern Europe (Italy and Spain) and the lowest levels in Northern and Western Europe (France, Germany, Sweden the Netherlands and the UK).

To conclude, platform workers, especially people working for a delivery platform, tend to be men. 71 per cent of them are aged between 18 and 44. Even older age categories are well represented. Indeed, 29 per cent of platform workers are aged between 45 and 65. If we look at each country it is possible to outline the fact that the situation is quite similar among the surveyed countries, with Poland being the one with the youngest platform workers. In addition, migrants are generally more likely to work on a platform than those born in the country of residence. This pattern holds in most the surveyed countries, even in the case of countries with low levels of migrants, such as Romania, Bulgaria, Poland, and Slovakia. Surprisingly, this picture is reversed in the case of Estonia, Italy, and Greece. To conclude, in France there seems not to be a remarkable difference in the share of foreign-born and native people performing platform work. In the vast majority of cases, platform work represents a supplement to other earnings rather than the main source of income.

CHAPTER 2

The second chapter deals with the policymaking initiatives at international and European level.

Generally, online platforms have proven to be difficult to be regulated for several reasons.

Firstly, given the dynamism of the online platform sector and the fact that everyday new businesses are created, and many others disappear or are integrated into digital businesses, the platform economy can be considered a moving target from a regulatory point of view.

Secondly, another typical approach has been the so-called ‘fait accompli strategy’, meaning that they tend to think about growing first and then caring about ensuring official permission to operate through following the existing administrative procedures.

Thirdly, the online platform sector has always been presented as something ‘new’ and ‘unprecedented’. Therefore, online platform companies should not have the same, more traditional treatment, as the already-existing economic activities.

Fourthly, many companies argue that they just act as intermediaries that merely act in order to bring people together and that such people engage in the economic activity, not the platforms themselves.

This strategy emerges also in the contracts, where it is stated sometimes that there is no employment relationship between the platform and the user, and that the worker is an independent contractor, making it complicated for regulators to intervene.

Lastly, there is an enormous heterogeneity in the online platforms and the activities they perform.

Therefore, the challenges raised by the platform economy are several and include different sectors, such as work, tax, safety and health, quality and consumer protection, and anti-discrimination. Certainly, many of them are easier to legislate on or to extend the existing policy framework, whereas many other represent a more demanding task. Regardless the difficulty, policy initiatives related to the growing phenomenon of the gig economy, both at national and supranational level, seem to be aware of the challenges that should be addressed.

In particular, platform work has always been a point of concern for the International Labour Organization (ILO), which provided many recommendations on this issue. At EU level, in 2015 platform work has been examined on Commission Communication of 6 May 2015 on a Digital Single Market Strategy for Europe. The aim of such Communication is to provide a legal guidance and policy orientation to Member States to help ensure balanced development of the collaborative economy across the EU.

In addition, this Chapter analyses the European Pillar of Social Rights (EPSR), which is a promising step in providing guidance to EU institutions on how they should understand social rights and principles, even in case of non-standard employment. Even if it does not exclusively target online platform workers, there are some legislative proposals that are suitable for such workers. These initiatives concern the issue of precariousness linked to the fact people working on online platforms are generally classified as self-employed. Their scope is to provide minimum protection and security for non-standard employment.

Furthermore, the Directive (EU) 2019/1152 on transparent and predictable working conditions is examined. It has its basis on Directive 91/533 on the employers' obligation to inform employees of the conditions applicable to the contract or employment relationship, but it contains more detailed information on the aspects that the employer must guarantee to the employee at the beginning of the relationship. The Directive serves also as a tool to strengthen the EU social acquis, provided that Member States are keen to adequately transpose it to achieve its ambitious goals.

To summarize, the aim of Directive (EU) 2019/1152 is to ensure that workers, regardless their job, have exhaustive info about the essential aspects of the work, can seek additional employment without exclusivity clauses, can be informed in a reasonable period in advance about when the work will take place (especially in the case of on-demand work) and the use and duration of casual contracts is limited.

Finally, the current Von der Leyen Commission is showing activism in improving platform workers' conditions. Therefore, it included the needs of platform workers among the 100 days priorities by EU Commissioner on Jobs and Social Rights, as a sign of willingness to provide a far-reaching response and launched a two-stage consultation with social partners.

To conclude, the EU provides some orientation on the distinction between self-employed and traditional workers, and it stresses the fact that certain minimum standards in the field of social policy should apply across all EU Member States. In fact, the EU has urged the Member States to fully implement the relevant legislation and to update the national regulatory framework in order to guarantee the right to healthy and safe working conditions, including protection against workplace risks, as well as provisions on minimum rest periods and annual leave to all people that work through platforms.

CHAPTER 3

The third chapter takes into consideration national level and what the situation of platform work is like in European Member States. In order to do so, the example of Foodora is considered.

Foodora is an online food delivery company that has its headquarter in Munich. It was established in 2014, but it rapidly reached many European, American, and Asian countries. While it was rapidly growing, reaching more and more countries and restaurants, it started to encounter some resistance as soon as couriers working for the platform became aware of their poor working conditions. Looking at Foodora riders, it emerges that riders are very often classified as self-employment, meaning that they run risks in terms of poor social and labour protection and minimum wage. Furthermore, while they struggle with underregulated working conditions, they are highly dependent on the algorithmic management of platforms and increased competition.

Consequently, because of some deficiencies in the European legislative framework, platform work has been reason of demonstrations and litigations at domestic level. In other words, courts have been asked to determine the legal status of riders.

Therefore, thousands of riders coordinated at international, national, and regional level and formed a collective identity to spread awareness among the public opinion and to fight to achieve better working conditions. Even though some disparities at national level in terms of employment, protests showed many similarities in their demands, such as an improvement in working conditions and remuneration structures, the fact that they had to use their own equipment to work and the insecurity of the employment structures.

Moreover, due to gaps in the regulatory framework, poor harmonization and different rulings, national courts have been increasingly called to determine platform workers' legal status. However, responses very often resulted in disparities.

CHAPTER 4

The fourth chapter deals with the recent Directive proposal by the European Commission to address the existing deficiencies in platform work, such as employment status, algorithmic management, and collective bargaining. Moreover, it concludes by analysing advantages and disadvantages of this proposal, in terms of employment status, algorithmic management and collective bargaining, trying to answer to the research question of this study.

It is argued that, since it covers everyone in the EU who has or may be deemed to have an employment relationship with a digital labour platform, its scope is very broad and could lead to difficulties in the implementation stage. Moreover, the criteria to determine whether a worker should be classified as employed or not could collide with national legislations and it does not include any improvement in the protection of the self-employed. Finally, as far as the algorithmic management is concerned, while the Directive tries to include some level of human presence, policymakers should be careful not to introduce excessive administrative burdens for platforms.

Policymakers, both at European and national level are currently showing activism to close the loopholes that characterize the platform economy.

Therefore, it is time for the EU to start recognizing and regulating these jobs to offer better worker protections. The current EU Commission, even before the outbreak of the Covid-19 pandemic, has been showing its determination to do so. Indeed, the Von der Leyen Commission included the needs of platform workers among the 100 days priorities by EU Commissioner on Jobs and Social Rights, as a sign of willingness to provide a far-reaching response. The result of this intention has been the launch of a two-stage consultation with social partners to find the grey areas in the already existing regulatory framework and the possible areas of intervention. The identified challenges have been clarification of the employment status of platform workers and their working conditions, their access to social protection, their ability to get collective representation and bargaining, the cross-border dimension of platform work, its algorithmic management, and training and professional opportunities for platform workers. In the light of these consultations, the Directive on improving working conditions of platform work was launched in December 2021.

Undoubtedly, the proposal is a key attempt to tackle some of the issues that people working through platforms in EU countries experience, such as all the consequences linked to the employment status and the algorithmic management. However, some gaps remain unaddressed.

Finally, delivering positive outcomes for platform workers requires combined efforts. A coordinated and multilateral response is the preferable option for mitigating the risks. In other words, policymakers and legislators should be given all the information necessary to be fully aware of the opportunities and challenges brought about by the gig economy and to deliver proper regulation.

Another important aspect to take into consideration is that regulators need to resist the idea of a homogeneous approach. Since the platform economy refers to a wide array of sectors there is an urgent need to acknowledge the multiple forms of employment and organize labour beyond the traditional distinction between employer and employee. This means that the one-size-fits-all approach at EU level is not suitable for the diversity of platforms and work through platforms.