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paper

**Improving the EU
Platform Work Directive
proposal: a contribution
from emerging research
findings**



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Improving the EU Platform Work Directive proposal: a contribution from emerging research findings

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Abstract

This Opinion paper has two aims: first, it discusses the limitations of the proposed EU Directive on Improving Working Conditions in Platform Work; secondly, it indicates the areas to improve in the Directive, considering the existing literature and the emerging findings of comparative research on the work and financial insecurities experienced by platform workers, and their social protection needs (GIGWELL). EU policy debates have centred on employment status and algorithmic control. In contrast, the existing literature and our emerging findings offer important insights into the relationship of platform work to wider labour market insecurity, the financial burden placed on gig workers operating as self-employed contractors and the social protection exclusions workers face across different welfare models. We conclude by discussing how this emerging research evidence could be used to improve how the EU Platform Work Directive responds to gig workers' social protection needs.

Introduction

Expanding rapidly over the past decade, labour platforms like Uber and Deliveroo sit alongside other types of 'platform' – including online marketplaces such as Amazon – to occupy an increasingly central role in the global economy (Srnicek 2016). Though still only involving a minority of workers (Huws et al. 2017; Urzì Brancati et al. 2020), labour platforms propose a new model that has been heralded as revolutionising the future of work.

This model claims to eliminate both employer and employee. Instead, workers access customer requests ('gigs') via phone apps or internet sites ('labour platforms'). They meet these requests in exchange for a fee, generally using their own equipment. With no apparent employer mediating between customer and provider, platform or 'gig' workers generally work as self-employed contractors. As a result, they often lack the employment and social protection provided to employees. In this Opinion paper, we discuss the existing literature and present emerging findings from a research project on platform workers, called GIGWELL ⁽¹⁾, to show how these exclusions, combined with the new ways work is organised via the platforms, create particular forms of work-related and financial insecurity for platform workers.

Until recently, research on platform labour has paid relatively little attention to these insecurities: to platform workers' financial lives, how these are connected to their employment conditions and how they create specific needs with respect to social protection (Graham, Hjorth and Lehdonvirta 2017; Malin and Chandler 2017). In the present European climate, research into these topics is essential and timely: following a tide of court and labour authority rulings in favour of platform workers' employment rights (International Lawyers Assisting Workers Network 2021), policymakers are starting to wake up to platform workers' needs, and designing instruments to address them. Central to these initiatives is the proposed EU Directive on Improving Working Conditions in Platform Work, which is currently under negotiation between the European Parliament, Council and Commission (European Commission 2021a).

Our research project's emerging findings make important contributions to the current policy debate over platform work, including the EU Platform Work Directive. In this Paper, we discuss what EU policymakers currently negotiating the new directive can learn from the existing literature and our emerging findings.

The structure of this paper is as follows. We start by providing an overview of the EU Platform Work Directive proposals, first detailing the main advances and then highlighting some limitations.

1. [GIGWELL](#) is a research project funded by the UK Economic and Social Research Council that explores the welfare state gaps faced by [gig workers](#) in Italy, Sweden and the UK. See Section 2.1 for a detailed introduction.

Then, we compare the Commission's approach to that of other key stakeholders, paying special attention to European Parliamentary Rapporteur Elisabetta Gualmini's proposed amendments. Next, we briefly introduce the GIGWELL project's research aims and methods, before outlining findings from that research with relevance for current EU policymaking. Finally, we draw some conclusions for present and future policymaking at EU and Member State levels, demonstrating the potential of the Rapporteur's amendments to address some of the policy needs evidenced by our research and inadequately handled in the Commission's proposed directive.

1. The EU Directive on Improving Conditions in Platform Work

In December 2021, the European Commission (2021b) published its Proposal for a new Directive on Improving Working Conditions in Platform Work (hereafter 'the Proposal'). The initiative came in response to mounting evidence about the negative labour and social conditions faced by platform workers, as well as the rapid growth of platform economies and their potential to transform labour markets.

A key plank of European Commission President Ursula von der Leyen's European Pillar of Social Rights agenda, the Proposal aims to address these challenging labour conditions by changing the way that platform labour has been regulated to date. The directive is part of the Commission's broader 'Digital Agenda', alongside the new Digital Markets Act and Digital Services Act (both expected to enter into force in October 2022). Following two rounds of consultation with social partners during 2021, negotiations between the Parliament, the Council of the EU and the Member States commenced in spring 2022 and are ongoing at the time of writing (October 2022). The Commission hopes to adopt the final Directive by late 2023.

1.1 The Commission's proposals: extending employment protections to those most clearly mis-classified as self-employed contractors

The Commission's core proposal for improving conditions among platform workers is to re-classify those platform workers whose employment situation more closely resembles that of an employee than a self-employed person. To achieve this, workers' employment conditions are to be assessed using a series of five criteria designed to evaluate whether platforms are effectively acting as employers, irrespective of what the workers' contractual terms state (that is, according to the 'primacy of fact'). While the definition of an employment relationship varies across Member States (Forde et al. 2017), worker dependence on or subordination to an employer are common features. The Commission's criteria therefore seek to apply this existing definition to the new reality of platform work, drawing on key jurisprudence from Member State case law, including that of the supreme courts of France, Italy and Spain (2).

The Commission's 'subordination criteria' assess the degree of control that platforms exercise over workers' pay rates, working hours, appearance, performance and ability to work for other clients. It is estimated that the criteria would re-classify between 1.72 million and 4.1 million people (European Commission 2021b), the majority being on-location delivery and taxi drivers (Fairwork Foundation 2021). This represents a small proportion of the EU's self-employed platform workforce (Barcevičius et al. 2021). Analysis by the European Trade Union Confederation (ETUC) found that

2. Respectively, Mr X v. Uber France and Uber BV Ruling No. 374, 2020; Mr B. v. Take Eat Easy, Judgment N 1737, 2018; Glovo. Rider v. Glovo App 23, S.L., 2020; Cass. n. 1663/2020 (Foodora), 2020 (International Lawyers Assisting Workers Network 2021).

workers operating through Europe's five biggest labour platforms would be considered employees under the criteria (ETUC 2022a).

Secondly, the Commission addresses the new data-driven technologies (algorithms) commonly used by platforms. The Commission recognises that algorithms sometimes manage the conduct and conditions of workers as a human manager might otherwise do. For this reason, the Proposal includes measures to subject this 'algorithmic management' to the same rules as employers when it comes to protecting workers' privacy and data, their health and safety, and their rights to non-discrimination and transparent, accountable decision-making. The transparency measures are particularly important, because they would illuminate the currently opaque ways in which algorithms manage workers and their conditions. In this way, they might allow for more informed bargaining between platforms and workers and possibly pave the way for adjustments to the subordination criteria. These rules on algorithmic management would apply to all platform workers, whether employed or self-employed.

Finally, the Proposal recognises that platform workers' access to social protection is hindered not only by de jure exclusions, but also by problems with de facto enforcement, traceability and transparency, especially in common cross-border situations. In response, the Commission introduces duties for platforms to declare data on their workforces to labour and social protection authorities. While this is a first step towards collecting social security contributions and taxes from platforms that operate as employers, these social protection measures have significant limitations.

1.2 Limitations of the Commission's proposals: will conditions improve in practice?

The Proposal establishes that all self-employed platform workers whose conditions meet two of the five 'subordination criteria' outlined in Section 2.1 will be re-classified as employees unless the platform proves otherwise. On paper, this follows the recommendations of labour law experts (Aloisi 2020; Cherry and Aloisi 2017; Stefano and Aloisi 2021) ⁽³⁾, the ETUC (2021), the European Parliament's (2021) Resolution on fair working conditions, rights and social protection for platform workers and the examples of several Member States (Sanz de Miguel et al. 2021) in using what is known as a 'rebuttable presumption of employment,' with the burden of proof on the platform.

This approach is intended to automatically classify as employees all qualifying workers operating for a given platform in a given jurisdiction under similar terms, unless the platform proves in court that they are genuinely self-employed. It is intended to reverse the present situation, whereby self-employed workers must undergo lengthy, costly court battles to appeal their status; the rulings of which generally only apply to the individual litigants. However, in a letter to Minister and EU Ambassadors dated 23rd September 2022, the ETUC (2022b) expressed concerns that the

3. See Kullmann (2022) for a discussion.

presumption of employment as laid out in the Proposal would not in effect achieve these changes: the burden of proving employee status would continue to rest with individuals or national enforcement authorities; and favourable rulings would apply only to the litigants in question. These loopholes in the operation of the rebuttable presumption would seriously undermine the Commission's strategy of improving conditions by tackling 'false' self-employment.

A second concern is that the Commission's approach may fail in practice to provide gig workers with access to social protection. Studies indicate that social protection coverage among platform workers is low, both in Europe (Chartered Institute of Personnel and Development 2017; Forde et al. 2017) and elsewhere (Berg 2016). Yet in contrast to earlier consultation documents (European Commission 2021b, 2021c), the Commission's draft Directive only deals with social protection insofar as it extends employee status to the 'falsely' self-employed. This is concerning because it does not address the social protection gaps that platform workers are likely to face regardless of their employment status.

Across most Member States, self-employed workers (including self-employed platform workers) often have statutory access to social protection by law. However, effective protection – people's ability to build-up entitlements in practice – tends to be much lower (Matsaganis et al. 2016; Forde et al. 2017; Spasova et al. 2017; Spasova et al. 2021a; European Commission 2018, 2019). Schemes are often geared towards the regular, predictable patterns of work and payment typical of standard employment. As a result, self-employed people often struggle to meet qualifying criteria such as minimum income and working hours thresholds. Consequently, while formally included, the self-employed may in practice be only partially covered, receive lower benefits than their employed counterparts or be excluded entirely. Platform workers remaining self-employed under the Commission's proposals are at risk of these exclusions.

Moreover, even those who are re-classified under the Proposal may still face social protection gaps. This is because re-classified platform workers are likely to be employed using non-standard employment contracts, for example temporary, part-time or agency contracts. In Member States that, like Spain and Sweden, have already taken measures to reduce false self-employment among platform workers, platforms have used exactly such employment forms to minimise their responsibilities towards workers (Hooker 2021; Friedrich Ebert Stiftung 2022). This is concerning, because non-standard workers face very similar barriers to effective social protection as the self-employed. An additional barrier for these workers may be the inability to transfer social security entitlements when changing statuses (Matsaganis et al. 2016; Forde et al. 2017; Spasova et al. 2017; Spasova et al. 2021a; European Commission 2018, 2019). Therefore, it is likely that many of those re-classified under the Proposal, despite gaining some new rights as employees, will continue to face inadequate social protection.

In this respect, the social protection measures in the Commission's text are much weaker than those presented to the social partners during consultation on the directive and for which there was strong support from trade unions and civil society (European Commission 2021b, 2021c). Rooted in the recommendations of a 2017 report for the European Parliament's Employment and Social Affairs Committee (European Parliament 2017), support for stronger measures was also echoed in the European Parliament's Resolution of September 2021 (European Parliament 2021). Passed by an overwhelming majority (of 524 votes to 39, with 124 abstentions), the Parliamentary Resolution insisted that adequate formal and effective social protection 'should apply to all [gig] workers including the self-employed;' that is, regardless of employee status. The Commission's adopted Proposal does not heed the Resolution's call to ensure adequate formal and effective social protection, including for the self-employed. Instead, it seeks to improve social protection by re-classifying workers as employees. The next section briefly situates the Commission's proposals in the debates among stakeholders in the Parliament and Council, before taking a deeper look at the potential of the European Parliament Rapporteur's proposed amendments to overcome the limitations in the Commission's text.

1.3 Debates in the Parliament and Council: collective bargaining among self-employed workers, versus wide-scale re-classification?

The Commission's approach is a middle ground between two poles of the debate between EU stakeholders, which loosely represent the political right and left respectively. At one pole lies a majority of liberals and conservatives, represented by parliamentary groups such as the European People's Party, Renew Europe and European Conservatives and Reformists. These actors join platform businesses themselves in coalescing around a range of policy options that seek to maintain the self-employed worker model (European Parliament 2022a, 2022c; Pollet 2022a, 2022c) or introduce new 'intermediate' employment statuses, as in Germany, Italy and Spain (Cherry and Aloisi 2018). This is the option also favoured by the French Presidency of the Council of the EU (January-June 2022), plus a bloc of Nordic and Eastern European Member States in the Council (Bourgery-Gonse 2022; Verheecke 2022). In place of re-classifying workers, these groups propose collective bargaining between workers (whether self-employed or with 'intermediate' statuses) ⁽⁴⁾ and platforms as an alternative route to addressing poor conditions in the sector, as modelled in France's 'social dialogue' initiative (Pollet 2022b; Wray 2022) ⁽⁵⁾.

At the other pole of the debate are various proposals representing the left and labour movement (European Parliament 2022a, 2022c; Valmassoi 2022). In general, these actors follow the

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4. Collective bargaining rights for platform workers would mean modifying European competition law, an issue currently being negotiated in a parallel initiative: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6620 (for discussion, cf. Schiek and Gideon 2018).
 5. The legislative initiative was presented by Ministers and given a first reading in the Senate on 21st April 2022. For details: <https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000045614388/>

Commission in seeking to re-classify the falsely self-employed as employees, but may do so on a wider scale than the Commission. Amendments proposed by the Rapporteur for the Parliament's Committee for Employment and Social Affairs, Elisabetta Gualmini from the Socialists and Democrats (S&D) group, are among the most radical of these proposals. We now outline in more detail some of the Rapporteur's proposals, because they address some of our key findings about platform workers' needs.

1.4 The Rapporteur's amendments: algorithmic management as the keystone to employment status

Rapporteur Gualmini presented her draft report to the Committee on 19th May 2022. No less than 1,023 amendments to her proposals were tabled in the Committee on 10th July 2022 (European Parliament 2022a, 2022b, 2022c). At the time of writing (September 2022), negotiations over the proposals were ongoing.

The Rapporteur's primary intervention was to propose strengthening and substantially expanding the Directive's measures on platform workers' employment status. To that end, Gualmini's draft report (henceforth 'the draft report') carefully avoids any loopholes regarding the operation of the 'rebuttable presumption of employment.' Unlike the Commission's text, it recommends a 'proactive' and collective method for re-classifying workers. Social security agencies would mandatorily register all platform work contracts, verify them against the criteria and, supported by labour inspectorates, extend re-classification to all affected workers en masse.

This approach has the additional advantage of directly equipping social security agencies with the necessary – and thus far evasive – information to enforce platforms' income tax and social security obligations. Elsewhere in the text, the Rapporteur also proposes strong measures to enforce these and other employer obligations. In these respects, the proposed amendments offer important steps to recognising and enforcing platforms' fiscal responsibilities, thus providing Member States with the necessary funds to extend social protections to gig workers.

Secondly, the Rapporteur takes careful account of cutting-edge knowledge about the nature and extent of algorithmic management (Wood et al. 2019; Curchod et al. 2020; Duggan et al. 2020; Aloisi and De Stefano 2022). The draft report underlines the role of algorithmic management in intensifying work, heightening unstable and unpredictable work schedules, driving down pay rates, extending work activity beyond the conventional workplace and working hours and generating unfair treatment. It also highlights the psycho-social effects of these common features of platform work, for example by creating feelings of insecurity, occupational stress and anxiety among workers.

For the Rapporteur, these features indicate that platforms exercise high degrees of control over workers' conditions; and must, therefore, be reflected in the Directive's subordination criteria. To this end, the draft report proposes to substantially expand the Commission's criteria from five to eleven; and it lowers the Commission's threshold, suggesting that workers be deemed employees providing just one criterion is met (European Parliament 2022d, pp. 28-29). These changes would extend employee status to many more gig workers than the Commission's Proposal, making the employment status approach more adequate to the problems of the platform model. Recognising platforms' propensity for rapid innovation, the draft report also recommends that the criteria should evolve over time.

Unlike the Commission's proposals, the Rapporteur's proposed amendments also address unpaid waiting time. This further, less direct way in which platforms exercise control over workers is a major grievance that has been raised by gig worker unions in the delivery sector and has received much attention in the media. The draft report stipulates that waiting time should be paid, meaning working time would start not when a worker accepts a gig, but rather from the moment they make themselves available for work to the exclusion of other activities. In so doing, it incorporates jurisprudence by the European Court of Justice, which in 2018 and 2021 found that stand-by time, 'during which the worker's opportunities to carry out other activities are significantly restricted,' (European Parliament 2022d, p. 13) should be considered working time.

Going further still, the Rapporteur's proposals also seek to curb the platform model's contribution to wider-scale erosions of employment quality and security across the labour market and the particular impact of these erosions on disadvantaged workers. To this end, the draft report proposes both to discourage the abuse of non-standard employment categories when re-classifying platform workers; and to avoid the creation of new 'intermediate' employment statuses geared towards platform workers.

Moreover, the Rapporteur's proposed amendments address the disproportionate impacts of poor employment and social protection for non-standard workers, including self-employed gig workers, on disadvantaged and vulnerable workers. For example, the draft report introduces a clause that defines and sanctions 'particularly exploitative working conditions,' 'including those resulting from gender-based or other discriminations, where there is a striking disproportion compared with the terms of employment of legally employed workers' (ibid. pp.22-23). Recognising that 'the use of undeclared work in delivery platforms has been evidenced in several Member States' (ibid. p.21), it also suggests measures to protect undocumented migrants from labour exploitation: namely, through accountability in sub-contracting and the separation of labour rights enforcement from immigration control. These clauses reflect a growing body of literature that underlines the over-representation of disadvantaged and vulnerable workers in gig work, and the specific risks it presents to them (Barratt et al. 2020; Altenried 2021; van Doorn et al. 2022; Wolf 2022).

2. Improving the Platform Directive proposals: contributions from our emerging research findings

2.1 Introducing the project

To contextualise the relevance of our research findings to current debates over the EU Platform Work Directive, this section offers a short description of the project's aims and methods.

Starting in March 2020, GIGWELL ⁽⁶⁾ investigated the nature of platform workers' work-related and financial insecurity, and the relationship between these. Secondly, it illuminated the role of social security systems in mediating these insecurities. To do so, the project examined and compared platform workers' work and financial experiences across three different welfare models, in Italy, Sweden and the UK ⁽⁷⁾.

The project focusses on gigs completed on-location, rather than online 'crowd-work' (Aloisi 2016; Kenney and Zysman 2019; Schor et al. 2020). In the main, the existing literature about on-location gig work looks at its most widely-used and highly-developed forms: namely, urban transportation (taxis) and delivery (food and mail). These sectors have majority male workforces. With this in mind, our research was designed to expand this focus and reflect a greater diversity of gig work experiences, particularly with respect to gender (Hunt and Samman 2019; Webster and Zhang 2020; Kampouri 2022). As such, our participants worked not only in transportation and delivery, but also as food shoppers, beauticians and massage therapists. The latter activities tend to attract more female workers. In this respect, our research contributes to a growing body of work on feminised sectors of platform work, which has so far largely investigated cleaning and care-giving (Ticona and Mateescu 2018; Ilsøe 2020; Webster and Zhang 2020; van Doorn 2021; Kampouri 2022). Moreover, by examining a range of sectors, we were able to identify themes that are common across sectors and work models.

The project captured platform workers' experiences during the 2020-21 period of the Covid-19 pandemic. During this period, the platform workforce expanded, partly because platform services were in high demand by consumers, while also offering work to those who lost income due to pandemic control measures (Badoi 2020; Barcevičius et al. 2021; Polkowska 2021; Piasna et al.

6. The project's full name is 'The effect of gig economy work on workers' financial (in)security and the mediating role of social security systems,' March 2020-December 2022, University of Birmingham (Department of Social Policy, Sociology and Criminology), Dr. Lorenza Antonucci (Principal Investigator), funded by the UK Economic and Social Research Council (ESRC) (ES/S016414/1). www.gigwell.org

7. The project produced three qualitative data sets: a) 101 interviews with platform workers exploring their work and financial lives, and their use of social protection; b) 40 multi-media financial diaries documenting the evolution of interviewees' financial situation and use of social protection, created using digital ethnography app Indeemo; and c) policy analysis identifying gaps, issues and good practices in social protection for platform workers in the three case-study countries.

2022). Also at this time, EU Member States introduced emergency schemes to support workers affected by the pandemic (Spasova et al. 2021b; Spasova et al. 2022; Spasova and Regazzoni 2022). In some cases, these schemes improved access for self-employed and non-standard workers (albeit temporarily), a fact that was evidenced in take-up of the schemes by research participants.

2.2 Emerging research findings

2.2.1 Gig work both responds to and exacerbates widespread labour market insecurity

Usually, commentators understand platform work as a phenomenon distinct and separated from the general labour market environment. By contrast, the project shows that platform work emerges as a reaction to conditions in the labour market: namely, to declining quality and security of work across the labour market at large. The project found that platform work responds to labour market insecurity in two ways.

Firstly, we found that those who relied mainly or solely on gigs for work tended to be labour market outsiders with few employment alternatives. Such outsiders include migrants, a phenomenon that is increasingly acknowledged in debate on platform work (Barratt et al. 2020; Urzi Brancati et al. 2020; Webster and Zhang 2020; Altenried 2021; van Doorn et al. 2022; Wolf 2022). In our research, such labour market outsiders also included people with disabilities and those with a history of exclusion from the labour market.

The second way in which platform work responds to wider labour market insecurity is by providing people with additional income to compensate for declining real wages and security in the 'traditional' economy. That is, some of our interviewees who have main jobs in the 'traditional economy' reported using gig work part time to supplement their main income. This 'top-up' income allowed them, for example, to feel more financially secure or to accumulate savings, which they could not from their main income. This finding is particularly pertinent as inflation, economic stagnation and the cost of living crisis are intensifying sharply across Europe over 2022.

At the same time, platform work exacerbates wider labour market trends towards greater insecurity and declining job quality. Regarding quality, we found that the conditions of platform labour, including algorithmic management, fluctuations in consumer demand and over-recruitment of workers, increase competition between workers, thus driving down pay rates. Further, our respondents in Italy, Sweden and the UK told us that pay tends to decline following the gig worker's initial period of registration, during which platforms offer special incentives. We also found that income levels are squeezed by unpaid waiting time and the high work-related expenses workers must bear, as discussed in the following section.

Our research likewise illustrates how platform work is a contributor to employment insecurity. For example, in Sweden, delivery gig workers (e.g. Deliveroo and Wolt) are commonly employed on one or three-month contracts, renewable according to performance. Although they enjoy some advantages as employees and are covered by collective agreements, our data showed the significant employment insecurity – and associated financial difficulties – that these workers continue to face despite being employees. This insecurity is compounded by the threat of dismissal for poor performance, a threat we found to affect self-employed gig workers (via account de-activation) in Italy and the UK too.

2.2.2 Platforms offload their fixed costs onto workers

The direct and indirect contribution that workers make to platform revenues with their working tools and their time emerged clearly among participants, highlighting the importance of this matter for policy on gig work. Many of our respondents lamented how low their incomes are once work-related expenses – commuting costs, equipment and consumables (e.g. vehicles, petrol, beauty products), taxes and holiday allowances – are considered. Workers' shouldering of these expenses contributes directly to lowering platforms' fixed costs. The project found that the combination of high costs and low pay rates results in different forms of financial burden for gig workers, such as having to take loans from banks or informal sources, or facing financial anxiety.

Alongside these direct contributions, workers also contribute indirectly to lowering platforms' fixed costs in the form of unpaid labour. For many of our respondents, waiting time was a major source of frustration. Some participants lamented having to make themselves available for work via a particular platform, and thus unavailable for other work or personal activities, yet having to face long waits, whether at home or on the street. By comparing delivery and digital micro-task platforms, recent research concluded that unpaid waiting time is a systemic feature of platform work, particularly in sectors using the self-employed or piece-rate models (Pulignano et al. 2022). Our emerging research findings echo and expand upon this work, by showing that unpaid waiting time is also a feature of gig-based food shopping and health and beauty services.

2.2.3 Gig workers face important gaps in welfare state support

Our research findings highlight that welfare states of various stripes are failing to meet the social protection needs of gig workers, signalling that tackling employment status and insecurity alone – as is the focus of much policymaking – will not fully resolve their problems. The welfare states represented in the project have different systems of social protection. Each of these systems makes different assumptions about gig workers. However, regardless of the differences between these models and assumptions, we found that gig workers in all three welfare models end up facing multiple forms of exclusion from the main welfare state:

- *The self-employed gig worker – United Kingdom*

In the UK, gig workers receive some support as self-employed workers. Platforms indirectly benefit by not paying social security contributions for their self-employed workforces, which reduces their labour and fixed costs. During Covid-19, gig workers in the UK were able to access the emergency Self-Employed Income Support Scheme (SEISS). This mechanism had several gaps, but was a form of support available to gig workers by virtue of their self-employed status. It is also an example of the importance of moving beyond the status debate for gig workers: the self-employed status of gig workers does not necessarily impede access to social protection for gig workers and social protection could be extended also to self-employed gig workers through ad hoc self-employed schemes.

- *The informal gig worker – Italy*

In Italy, gig workers who earn below 5,000 euro a year do not have to legally declare their working status or pay taxes; thus, they are invisible to official institutions and are also excluded from welfare state protection. Gig workers who earn over 5,000 Euros in a year must declare taxes under a scheme called 'Partita IVA,' giving them access to some types of benefits such as contributory unemployment benefits, pensions and family benefits.

- *The employed yet excluded gig worker – Sweden*

In Sweden, delivery gig workers (e.g. Deliveroo and Wolt) are employed through precarious, short-term renewable contracts. Transportation gig workers (e.g. Uber and Bolt) are usually self-employed. Self-employed gig workers in Sweden, by virtue of their self-employed status and of the barriers applicable to all self-employed workers, will face limitations in accessing several forms of social protection: in addition to no sick pay, they will have limited access to sick leave and conditional/limited access to family benefits and unemployment support schemes. Also, employed gig workers are partially excluded from the welfare state protection system in Sweden; this is due to the nature of their renewable (monthly or three-monthly) short-term contracts (which make it more difficult for workers to build up contributions for unemployment/income support, family and sick leave protection than open-ended contracts) and also due to the low union membership in the gig sectors (union members in Sweden can access additional income insurance schemes).

These many gaps across the various welfare and employment models cast doubt on whether, on its own, creating mechanisms to extend employee status to qualifying platform workers will be enough to deliver social protection to all platform workers.

3. Improving the EU Platform Work Directive: discussion and next steps

To re-cap then, our emerging research findings offer important insights in the following areas:

- the relationship of platform work to wider labour market insecurity;
- the contributions that gig workers make to reducing platforms' fixed costs, especially as self-employed workers, and the financial burden this places on them;
- the social protection exclusions faced by platform workers across different welfare models.

These insights point to limitations in the Commission's draft directive: namely, in its ability to fully address the specific work-related and financial insecurities faced by platform workers, their associated needs for social protection and the welfare gaps that exist not only under existing systems, but that may also persist under the new Proposal.

Our early findings also underline the need to address the contribution that platforms make to declining job quality and security across labour markets, as well as the impact that poor conditions in the sector have for disadvantaged and vulnerable workers, such as migrants and people with disabilities. These are issues that the Rapporteur's proposed amendments handle well. To tackle them, she not only aims to extend employee status to many more workers but also seeks to go beyond the role of false self-employment in creating negative labour conditions. For example, her amendments address the systemic use of unpaid stand-by time. As evidenced by our research, unpaid stand-by is a major driver of low pay for gig workers, and also an example of how platforms offload costs onto workers. The Rapporteur also broaches the misuse of non-standard contracts for salaried gig workers, another contributor to insecurity identified in our research.

One issue raised by our ongoing research – which both the Commission's proposals and the Rapporteur's proposed amendments fail to tackle – is that of social protection gaps for gig workers, whether self-employed or employed. With respect to improving social protection for gig workers, both the Commission and the Rapporteur rely on re-classifying them as employees, an approach our findings (and the wider literature) show to have limitations. Regarding these gaps, neither text fully meets stakeholder proposals for the extension of formal social protection to all platform workers regardless of employment status. These proposals were outlined in the Commission's earlier consultation documents (European Commission 2021b, 2021c), supported by consultation responses from trade union and civil society social partners, and echoed in the European Parliament's Resolution of 14th September 2021 (European Parliament 2021).

These proposals were also fleshed out in the recommendations of a 2017 report, 'The Social Protection of Workers in the Platform Economy', for the European Parliament's Employment and Social Affairs Committee (Forde et al. 2017). Recognising that platform labour has intensified the

steady deregulation and casualisation of labour across many European labour markets in recent decades (Arnold and Bongiovi 2013; International Labour Organisation 2015; Mandl et al. 2015; Matsaganis et al. 2016), that report recommended a range of social protection reforms aimed at reducing differences in treatment across different forms of work; and at extending existing social protections to all non-standard workers. For example, the 2017 recommendations address effective exclusions of platform workers despite formal inclusion in certain schemes.

With social protection remaining within the remit of the Member States, these are matters upon which EU lawmakers have limited powers to intervene. As our findings show, securing social protection for all platform workers will therefore rely in large part on national efforts. Such efforts may perhaps be guided by other EU initiatives under the European Pillar of Social Rights, particularly the effective implementation of Council Recommendation 2019/C 387/01 on social protection for workers and the self-employed (European Commission 2017; Council of the EU 2019). The latter recommends that Member States ensure that both workers and the self-employed have access to *effective and adequate* social protection.

Yet despite their limited competencies to intervene in Member States' social policy, EU lawmakers do have scope to steer national policy. The Rapporteur's proposals for the compulsory registration of platform contracts with social security agencies illustrate this scope. While primarily designed for the purpose of determining employment status (operationalising the 'rebuttable presumption of employment'), this measure would also directly equip social security authorities with the necessary – and thus far evasive – information to enforce platforms' fiscal and social security obligations. This measure, which in turn would generate funds, would pave the way for states to improve social protection for gig and other non-standard workers. In this way, the Rapporteur's proposed amendments show that a stronger approach to social protection than that offered by the Commission's draft is possible within the scope of the Directive. Based on GIGWELL's findings, we strongly urge policymakers to adopt such an approach, especially in view of the additional burdens that the oncoming economic downturn will place on low-paid, non-standard workers such as platform workers.

Bibliography

- Aloisi A. (2016) Commoditised workers: case study research on labour law issues arising from a set of 'on-demand/gig economy' platforms, *Comparative Labor Law & Policy Journal*, 37(3), 653-690.
- Aloisi A. (2020) Platform Work in the European Union: Lessons Learned, Legal Developments and Challenges Ahead. Exploring ways to improve working conditions of platform workers: The role of EU labour law, Thematic Working Paper ID 3556922, European Commission, p.15.
- Aloisi A. and De Stefano V. (2022) *Your boss is an algorithm: artificial intelligence, platform work and labour*, Gordonsville: Hart Publishing.
- Altenried M. (2021) Mobile workers, contingent labour: Migration, the gig economy and the multiplication of labour, *Environment and Planning A: Economy and Space*, 1-16. Available at: <https://doi.org/10.1177/0308518X211054846>
- Arnold D. and Bongiovi J.R. (2013) Precarious, Informalizing, and Flexible Work: Transforming Concepts and Understandings, *American Behavioral Scientist*, 57(3), 289-308. Available at: <https://doi.org/10.1177/0002764212466239>
- Badoi D. (2020) Platform Work in the Context of COVID-19: Study case on the Food-delivery Platform Workers, *Quality of Life Review*, XXXI(2), 188-207.
- Barcevičius E., Gineikytė-Kanclerė V., Klimavičiūtė L. and Ramos Martin N. (2021) Study to support the impact assessment of an EU initiative to improve the working conditions in platform work: final report, Luxembourg: Publications Office of the European Union.
- Barratt T., Goods C. and Veen A. (2020) 'I'm my own boss...': Active intermediation and 'entrepreneurial' worker agency in the Australian gig-economy, *Environment and Planning A: Economy and Space*, 52(8), 1643-1661. Available at: <https://doi.org/10.1177/0308518X20914346>
- Berg J. (2016) *Income security in the on-demand economy: Findings and policy lessons from a survey of crowdworkers*, Geneva: International Labour Organisation.
- Bourgery-Gonse T. (2022) How France lobbied against Commission's proposal on platform workers' rights, Euractiv, 05.09.2022. <https://www.euractiv.com/section/sharing-economy/news/how-france-lobbied-against-commission-for-presumption-of-employment-for-platform-workers/>
- Chartered Institute of Personnel and Development (2017) To gig or not to gig? Stories from the modern economy, Survey Report, United Kingdom. https://www.cipd.co.uk/Images/to-gig-or-not-to-gig_2017-stories-from-the-modern-economy_tcm18-18955.pdf
- Cherry M.A. and Aloisi A. (2017) 'Dependent Contractors' in the Gig Economy: A Comparative Approach, *American University Law Review*, 66(3), 54. Available at: <https://doi.org/10.2139/ssrn.2847869>
- Cherry M.A. and Aloisi A. (2018) A Critical Examination of a Third Employment Category for On-Demand Work (In Comparative Perspective), in Davidson N.M., Infranca J. and Finck M. (eds) *The Cambridge handbook of law of the sharing economy*, Cambridge University Press (Cambridge Law Handbooks), pp. 316-327. Available at: <https://doi.org/10.1017/9781108255882> (Accessed: 11 August 2022).
- Council of the EU (2019) Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019/C 387/01), *Official Journal of the European Union*, 15.11.2019.
- Curchod C., Patriotta G., Cohen L. and Neysen N. (2020) Working for an Algorithm: Power Asymmetries and Agency in Online Work Settings, *Administrative Science Quarterly*, 65(3), 644-676. Available at: <https://doi.org/10.1177/0001839219867024>
- Duggan J., Sherman U., Carbery R. and McDonnell A. (2020) Algorithmic management and app-work in the gig economy: A research agenda for employment relations and HRM, *Human Resource Management Journal*, 30(1), 114-132. Available at: <https://doi.org/10.1111/1748-8583.12258>
- European Commission (2017) First phase consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges of access to social protection for people in all forms of employment in the framework of the European Pillar of Social Rights, Consultation document, C(2017) 2610 final, 26.04.2017.

European Commission (2018) Access to social protection for workers and the self-employed: best practice examples from EU Member States, Luxembourg: Publications Office of the European Union.

European Commission (2019) Mutual Learning Workshop on Access to Social Protection 'Extending formal coverage. Mandatory versus voluntary approach' Outcome Report, 29-30.10.2019.

European Commission (2021a) Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, Press Release, 09.12.2021.

European Commission (2021b) First phase consultation of social partners under Article 154 TFEU on possible action addressing the challenges related to working conditions in platform work, Consultation Document, C(2021) 1127 final, 24.02.2021.

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

European Parliament (2021) European Parliament resolution of 16 September 2021 on fair working conditions, rights and social protection for platform workers – new forms of employment linked to digital development (2019/2186(INI)).

European Parliament (2022a) Amendments 164-404 Improving working conditions in platform work, 2021/0414(COD), EMP_AM_732875_EN, Brussels: European Parliament: Committee on Employment and Social Affairs, 10.06.2022.

European Parliament (2022b) Amendments 405-726 Improving working conditions in platform work, 2021/0414(COD), EMP_AM_732875_EN, Brussels: European Parliament: Committee on Employment and Social Affairs, 10.06.2022.

European Parliament (2022c) Amendments 727-1023 Improving working conditions in platform work, 2021/0414(COD), EMP_AM_732906_EN, Brussels: European Parliament: Committee on Employment and Social Affairs, 10.06.2022.

European Parliament (2022d) ***I DRAFT REPORT on the proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work, (COM(2021)0762 – C9-0454/2021 – 2021/0414(COD)), EMPL-PR-731497_EN, Brussels: European Parliament: Committee on Employment and Social Affairs, Rapporteur: Elisabetta Gualmini, 03.05.2022.

European Trade Union Confederation (2021) ETUC reply to the Second phase consultation of social partners under Article 154 TFEU on possible action addressing the challenges related to working conditions in platform work, 10.09.2021. <https://www.etuc.org/en/document/etuc-reply-second-phase-consultation-social-partners-under-article-154-tfeu-possible>

European Trade Union Confederation (2022a) Uber and Deliveroo fail EU tests on self-employment, Press Release, 25.01.2021.

European Trade Union Confederation (2022b) Letter to the Ministers and Ambassadors calling for an ambitious Directive on improving working conditions in platform work, 23.09.2022. <https://etuc.org/en/document/letter-ministers-and-ambassadors-calling-ambitious-directive-improving-working-conditions>

Fairwork Foundation (2021) Fairwork Response to the European Commission's Proposal for a Directive on Platform Work, 09.12.2021. <https://fair.work/en/fw/blog/fairwork-response-to-the-european-commissions-proposal-for-a-directive-on-platform-work/#continue>

Forde C., Stuart M., Joyce S., Oliver L, Valizade D., Alberti G., Hardy K., Trappmann V., Umney C. and Carson C. (2017) The Social Protection of Workers in the Platform Economy, Study, Brussels, Belgium: European Parliament Committee on Employment and Social Affairs, 07.12.2017.

Friedrich Ebert Stiftung (2022) Mapping Platform Economy. <https://futureofwork.fes.de/our-projects/mapping-platform-economy>

Graham M., Hjorth I. and Lehdonvirta V. (2017) Digital labour and development: impacts of global digital labour platforms and the gig economy on worker livelihoods, Transfer: European Review of Labour and Research, 23(2), 135-162. Available at: <https://doi.org/10.1177/1024258916687250>

- Hooker J. (2021) European Parliament Resolution offers promise in avoiding pitfalls in the Spanish Riders' Law, GIGWELL blog, 25 October. <https://www.gigwell.org/resources/d0nlveoku7dqjup3r9fnodf503uac1>
- Hunt A. and Samman E. (2019) Gender and the Gig Economy: Critical steps for evidence-based policy, Working Paper 546, London, UK: ODI. <https://odi.org/en/publications/gender-and-the-gig-economy-critical-steps-for-evidence-based-policy/>
- Huws U., Spencer N.H., Syrdal D.S. and Holts K. (2017) Work in the European Gig Economy, Foundation for European Progressive Studies (FEPS). [https://uhra.herts.ac.uk/bitstream/handle/2299/19922/Huws U. Spencer N.H. Syrdal D.S. Holt K. 2017 .pdf?sequence=2](https://uhra.herts.ac.uk/bitstream/handle/2299/19922/Huws_U._Spencer_N.H._Syrdal_D.S._Holt_K._2017_.pdf?sequence=2)
- Ilsøe A. (2020) The Hilfr agreement: negotiating the platform economy in Denmark, FAOS Research Paper 176, Employment Relations Research Centre.
- International Labour Organisation (2015) Non-standard forms of employment: report for discussion at the Meeting of Experts on Non-Standard Forms of Employment (MENSFE/2015) (Geneva, 16-19 February 2015), Geneva: ILO.
- International Lawyers Assisting Workers Network (2021) Taken for a Ride: Litigating the Digital Platform Model, Issue Brief, March 2021, ILAW. <https://www.ilawnetwork.com/issue-briefs-reports/taken-for-a-ride-litigating-the-digital-platform-model/>
- Kampouri E. (2022) Gendering platform research: Theoretical and methodological considerations, Work Organisation, Labour & Globalisation, 16(1), 14-33. Available at: <https://doi.org/10.13169/workorgalaboglob.16.1.0014>
- Kenney M. and Zysman J. (2019) Work and Value Creation in the Platform Economy, in Vallas S.P. and Kovalainen A. (eds) Work and labor in the digital age (1st edition), Bingley, UK: Emerald Publishing (Research in the sociology of work, V), pp. 13-41.
- Kullmann M. (2022) 'Platformisation' of work: An EU perspective on Introducing a legal presumption, European Labour Law Journal, 13(1), 66-80. Available at: <https://doi.org/10.1177/20319525211063112>
- Malin B.J. and Chandler C. (2017) Free to Work Anxiously: Splintering Precarity Among Drivers for Uber and Lyft: Splintering Precarity Among Drivers for Uber and Lyft, Communication, Culture & Critique, 10(2), 382-400. Available at: <https://doi.org/10.1111/cccr.12157>
- Mandl I., Curtarelli M., Riso S., Vargas O. and Gerogiannis I. (2015) New forms of employment, Luxembourg: Publications Office of the European Union.
- Matsaganis M., Özdemir E., Ward T. and Zarakou A. (2016) Non-standard employment and access to social security benefits, Brussels: European Commission.
- Piasna A., Zwysen W. and Drahoukoupil J. (2022) The platform economy in Europe: Results from the second ETUI Internet and Platform Work Survey (IPWS), 22.05, Brussels: ETUI.
- Polkowska D. (2021) Platform work during the COVID-19 pandemic: a case study of Glovo couriers in Poland, European Societies, 23(S1), S321-S331. Available at: <https://doi.org/10.1080/14616696.2020.1826554>
- Pollet M. (2022a) Conservatives prepare to battle on platform workers directive, rally up with industry, Euractiv, 11.05.2022. <https://www.euractiv.com/section/digital/news/conservatives-prepare-to-battle-on-platform-workers-directive-rally-up-with-industry>
- Pollet M. (2022b) French platform workers elect representatives ahead of 'social dialogue', Euractiv, 09.05.2022. <https://www.euractiv.com/section/digital/news/french-platform-workers-elect-representatives-ahead-of-social-dialogue/>
- Pollet M. (2022c) Platform workers: liberal, conservative MEPs align to fight centre-left's proposal, Euractiv, 09.16.2022. <https://www.euractiv.com/section/digital/news/platform-workers-liberal-and-conservative-meps-align-to-fight-back-the-centre-lefts-proposal/>
- Pulignano V., Piasna A., Domecka M., Muszyński K. and Vermeerbergen L. (2022) Does it pay to work? Unpaid labour in the platform economy, ETUI Policy Brief 2021.15, Brussels: ETUI.

- Sanz de Miguel P., Bazzani T. and Arasanz J. (2021) The definition of worker in the platform economy: Exploring workers' risks and regulatory solutions, a study for the The European Economic and Social Committee, European Economic and Social Committee.
- Schiek D. and Gideon A. (2018) Outsmarting the gig-economy through collective bargaining - EU competition law as a barrier?, *International Review of Law, Computers & Technology*, 32(2-3), 275-294.
- Schor J.B., Attwood-Charles W., Cansoy M., Ladegaard I. and Wengronowitz R. (2020) Dependence and precarity in the platform economy, *Theory and Society*, 49(5-6), 833-861.
- Spasova S., Bouget D., Ghailani D. and Vanhercke B. (2017) Access to social protection for people working on non-standard contracts and as self-employed in Europe: a study of national policies 2017, Report, European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Publication Office.
- Spasova S., Ghailani D., Sabato S., Coster S., Fronteddu B. and Vanhercke B. (2021a) Non-standard workers and the self-employed in the EU: social protection during the Covid-19 pandemic, Report 2021.10, Brussels: ETUI.
- Spasova S., Ghailani D., Sabato S. and Vanhercke B. (2021b) Social protection of non-standard workers and the self-employed during the pandemic. Country chapters: Belgium, France, Ireland, Italy, Lithuania, Portugal, Romania, Sweden, Brussels: ETUI.
- Spasova S., Ghailani D., Sabato S. and Vanhercke B. (2022) Social Protection for Atypical Workers During the Pandemic: Measures, Policy Debates and Trade Union Involvement in Eight Member States, Working Paper 2022.10, European Social Observatory and ETUI.
- Spasova S. and Regazzoni P. (2022) Income protection for self-employed and non-standard workers during the COVID-19 pandemic, *International Social Security Review*, 75(2), 3-24.
- Srnicek N. (2016) *Platform capitalism*, Cambridge, UK; Malden, MA: Polity (Theory redux).
- Stefano V.D. and Aloisi A. (2021) European Commission takes the lead in regulating platform work, *Social Europe*, 09.12.2021. <https://socialeurope.eu/european-commission-takes-the-lead-in-regulating-platform-work>
- Ticona J. and Mateescu A. (2018) Trusted strangers: Carework platforms' cultural entrepreneurship in the on-demand economy, *New Media & Society*, 20(11), 4384-4404. Available at: <https://doi.org/10.1177/1461444818773727>
- Urzi Brancati M.C., Pesole A. and Fernández-Macías E. (2020) New evidence on platform workers in Europe: Results from the second COLLEEM survey, Luxembourg: Publications Office of the European Union.
- Valmassoi P. (2022) European Parliament S&D group meeting hears support for broadening platform work directive to include all workers managed by algorithms, *Brave New Europe*, 21.06.2022. <https://braveneweuropa.com/piero-valmassoi-european-parliament-sd-group-meeting-hears-support-for-broadening-platform-work-directive-to-include-all-workers-managed-by-algorithms>
- van Doorn N. (2021) Stepping stone or dead end? The ambiguities of platform mediated domestic work under conditions of austerity. Comparative landscapes of austerity and the gig economy: New York and Berlin, in Baines D. and Cunningham I. (eds) *Working in the context of austerity: challenges and struggles*, Bristol: Bristol University Press, pp. 49-69.
- van Doorn N., Ferrari F. and Graham M. (2022) Migration and Migrant Labour in the Gig Economy: An Intervention, *Work, Employment and Society*, 00(0), pp. 1-13.
- Verheecke L. (2022) Take care platform workers, France is president of the EU Council, Gig Economy Project, *Brave New Europe*, 28.01.2022. <https://braveneweuropa.com/gig-economy-project-lora-verheecke-take-care-platform-workers-france-is-president-of-the-eu-council>
- Webster N.A. and Zhang Q. (2020) Careers Delivered from the Kitchen? Immigrant Women Small-scale Entrepreneurs Working in the Growing Nordic Platform Economy, *NORA - Nordic Journal of Feminist and Gender Research*, 28(2), 113-125. Available at: <https://doi.org/10.1080/08038740.2020.1714725>
- Wolf A.B. (2022) COVID and the Risky Immigrant Workplace: How Declining Employment Standards Socialized Risk and Made the COVID-19 Pandemic Worse, *Labor Studies Journal*, 47(3), 286-319.

Wood A.J., Graham M., Lehdonvirta V. and Hjorth I. (2019) Good Gig, Bad Gig: Autonomy and Algorithmic Control in the Global Gig Economy, *Work, Employment and Society*, 33(1), 56-75. Available at: <https://doi.org/10.1177/0950017018785616>

Wray B. (2022) 'We are still fighting against Macron, only now at the European level': Interview with Edouard Bernasse of the Collective of Autonomous Platform Delivery Workers (CLAP), Gig Economy Project, Brave New Europe, 02.02.2022. <https://braveneweuropa.com/gig-economy-project-we-are-still-fighting-against-macron-only-now-at-the-european-level-interview-with-edouard-bernasse-of-the-collective-of-autonomous-platform-delivery-workers>