

Tilting at Windmills?

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The proposals for an EU Directive on platform work have been subject to much debate, and will continue to do so during the now announced trilogue negotiations in Brussels. What often remains blurry in this debate are the subjects of the legislation: Who is working on platforms? Are we talking about leisurely side arrangements, freelance entrepreneurs, or wrongly employed full-time earners? The answer to this question is complicated already by what we understand as a platform, an issue the Council has not clarified in an encompassing way (see the upcoming blog posts by Silberman and Kocher). Empirically, we find a very broad spectrum of digital labour platforms, from online crowdworking platforms to the organisation of offline work such as care, repair or cleaning. However, the cases that have been most discussed in debates about platform work, including the policy debates around an EU Directive, are location-based platform workers such as delivery riders and ride-hailing drivers. The difficulties these workers face every day can give us insights into what a robust legislation for platform workers would need to look at.

A good opportunity to learn more about these workers is a summer evening in Berlin's Friedrichshain district. Friedrichshain is one of the city's buzzing tourist hotspots and streetfood destinations. Its streets are not just packed with tourists and residents, but also with young or middle-aged delivery riders from Pakistan, India or Syria who deliver for companies such as Wolt, Lieferando or Uber Eats. Many of them have arrived in the city some years ago, and many have been educated for office jobs in their home countries. Most of them work under conditions that according to German employment law are not legal. Platform-mediated cleaners, who sometimes are hired to clean the many Airbnb apartments that mushroomed across Friedrichshain in the last years, often share a similarly precarious situation: they roam through the city for cleaning jobs, unsure if the platform offers enough shifts to make ends meet. Many of them have recently arrived from Argentina and Chile and have heard through online forums about this form of work.

In the last decade, work through platforms has become an engine for the [“multiplication of labour”](#) in contemporary capitalism, the integration of a multiplicity of workers in intensified conditions through a variety of contractual arrangements. Algorithmic management systems and remote control technologies allow for the [“tightly controlled and standardized cooperation of a huge number of \[...\] workers how can come from different backgrounds, experiences, and locations and who are distributed throughout \(urban\) space”](#). Not surprisingly, the vast majority of platform workers in Europe are migrants or part of [racialized minorities](#). Such groups have often been specifically advertised for by platform companies. Whether workers themselves like the job or not, whether they come from inside or outside of the EU, one thing is common in most of the research on the issue: platform work, especially its location-based variant, is systemically geared towards the exploitation of vulnerable workforces through [breaches of labour law and technologically mediated management](#). Will the platform directive change this situation?

Germany is an interesting country to assess this question in, since most workers on delivery platforms officially work on an employment contract. This means that, in theory, they receive social security benefits, paid sick leave, paid vacation days and have the right to form a Works Council. To some extent, this is a victory of platform worker struggles, which have mounted public pressure onto companies and triggered steps that led companies to anticipate potential reclamation claims by the German pension fund. However, a proper employment relationship is not the reality for many of the riders at Wolt or Uber Eats: many of them have neither contracts nor any kind of security – they are dependent on subcontractors who offer the services of their ‘fleets’ to the platform companies. While some are paid by the hour and receive a monthly wage, many earn based on the number of orders they receive per day. Some receive their income in cash through envelopes at the end of the week, others have never even seen money so far and complain about wage theft. Some have paid 500 EUR in cash to a middle man in order to even start working with an account. How can this be?

Cases like this one show how illegal, precarious and dangerous the labor of workers on the ground remains despite the high-aspiring messaging of platform companies. The company Wolt, which many workers mentioned above work for, describes itself as [“deeply rooted in the Scandinavian welfare state”](#) and claims that [“all our couriers are employed on a permanent basis, have health insurance and are discernibly paid above minimum wage”](#). Although platform companies formally insist on working through employment contracts, they make use of an array of loopholes (such as subcontracting) that have been in use in the low-wage service sector since years, for instance in [parcel delivery or the meat processing industry](#). A role model for this in Germany’s platform economy is the ride-hailing giant Uber, who has practiced subcontracting since around 2016 after regulative pressure on basis of the Passenger Transportation Act. In effect, what can be observed in Germany’s platform economy (as well as in other countries such as Portugal or [Croatia](#)) is a movement from ‘bogus self-employment’ to [‘bogus employment’](#), where employment classification is granted but its guarantees are denied towards workers.

The text of the Council’s proposal now discussed actually demands member states to “ensure that the use of intermediaries does not lead to a reduction in the protection” (Council of the EU 2023). While it is helpful that the proposal mentions the issue at all (the Commission’s proposal did not), its formulation is weak and non-binding. If it remains this way, it appears unlikely that the directive will erase the various loopholes and tools that labour market liberalization and subcontracting possibilities have opened for platform companies. The business model of platform companies is inherently tied to avoid social security payments for workers. Without finding such loopholes, whether by classifications as self-employed or employed, none of the business models would survive.

For subcontracted workers at Wolt in Berlin, and all over Europe, it remains unclear whether the Directive will change their circumstances. In fact, more and more platform in Europe experiment with subcontracting arrangement since the proposal of the EU Directive in 2021. It is not far-fetched to expect more and more strategies of [“creative compliance”](#) tied to formal employment in the upcoming years. Plus,

even the existing law (such as social security payment obligations and minimum wage law) are very rarely enforced by authorities or the state. This is why after a new account of wage theft ([several 100.000 EUR of wages were not paid](#)), workers have [organized concrete protests](#) in spring and summer this year to mount public pressure onto their employers. They have also filed lawsuits against Wolt in the labour court. However, the resources and capacities for such protests and lawsuits are immense and only the tip of the iceberg when it comes to the problems of workers in the platform economy.

The proposal for the Directive, in particular the presumption of employment are clearly a step forward for workers in the platform economy. Even if companies do not comply with its standards, the possibility of holding them accountable through law is likely to raise labour standards. However, especially for migrant workers (especially if undocumented), employment classifications are not guarantees of safety – they can in fact be the [opposite](#). What should be strived for is ultimately what the [ILO Global Commission on the Future of Work](#) proposes, namely that “[a]ll workers, regardless of their contractual arrangement or employment status should enjoy fundamental workers’ rights”. However, universal rights for workers would demand severe reforms of migration and social security legislation. As this is unlikely to happen soon, the Directive can act as a powerful tool in the upcoming years, if its implementation process rules out the various loopholes that have been laid out here.

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