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Manuscript

Towards 'bogus employment?' The contradictory outcomes of ride-hailing regulation in Berlin, Lisbon and Paris

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The issue of employment classification has been central in the politics around the platform economy. Crucial has been the phenomenon of 'bogus self-employment', whereby workers in de facto dependent employment relationships conduct services as independent contractors. Legislators around the world have aimed to tackle this issue by obliging platforms to classify their workers as employees. Based on empirical research in the ride-hailing industry of Berlin, Paris and Lisbon, where such classification exists already, we highlight its contradictory outcomes. We argue that platform companies have managed to introduce forms of 'bogus employment' whereby even formally employed workers lack basic worker rights.

Keywords: platforms, regulation, classification, employment, ride-hailing, Uber

JEL Classifications: E24, L51, J81, J83

Introduction

The topic of regulation has received much attention since the emergence of the platform economy. Besides issues of consumer rights, antitrust and taxation, labour and employment conditions have been the focus of debates (De Stefano, 2018; Aloisi, 2022). In particular, the classification of workers as employees and an effective end of 'bogus self-employment' have been called for by unions, workers and the general public (De Stefano, 2018). Bogus self-employment describes self-employed workers whose working conditions in fact resemble dependent employment and therefore a misclassification. Although ignored in the earlier years of the platform economy, which at that point was often deemed 'too big to control, too new to regulate, and too innovative to stifle' (Graham, 2020: 453), such efforts have gained traction in recent years and have the potential to limit the power of platform corporations significantly. This has manifested in the conflicts around the legislation AB5 in California, the supreme court ruling against Uber in the United Kingdom and the recent EU platform work directive (Aloisi, 2022). Especially ride-hailing business models such as Uber, Bolt or FreeNow have been central to such conflicts.

Whereas regulating the employment status of platform workers presents a new issue for some lawmakers, others have introduced variations of this model already. The experiences with employment and ride-hailing legislation in countries of Continental Europe can serve here as examples of what has worked and what has failed when platform workers are obliged (or have the option) to work as an employee. Empirical data from such countries are

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not just insightful from a legal viewpoint, but can contribute to the current implementation of such classification efforts.

Based on three cases of ride-hailing regulation in Germany, France and Portugal, we argue that the implementation of employment status regulation on platform companies often fails to improve the social security and income of workers. Instead, it has introduced a system of subcontracting that enables forms of what we coin *bogus employment* for workers. Bogus employment models, ergo forms of 'false employeeship', shift the burden of regularisation from platforms towards the subcontracting of third parties and often replicate the risks of self-employed gig work under a formal layer of regulation. While this practice rarely strips away all contractual rights and entitlements of workers, it often compromises them severely. We list three major causes for bogus self-employment: intentionally unlawful practices, (mis)use of short-term or marginal employment contracts, and lack of enforcement in municipalities.

The empirical foundation of our argument is derived from 38 qualitative interviews with Uber drivers in Berlin, Lisbon and Paris conducted between November 2019 and October 2020, as well as from interviews with local experts (between 5–9 in each city) and industry stakeholders (between 6–9 in each city) in the same time period. Our research is part of a larger project that has comparatively analysed the issue of platform labour in seven European cities and four different industries (Bojadžijev and Mezzadra, 2020). As for the ride-hailing sector, we analysed interviews with 12 drivers in Berlin, 15 drivers in Lisbon and 11 drivers in Paris. Local experts and stakeholders included representatives of drivers' associations, unions, city administrations, company representatives and administrative staff of an Uber subcompany in Germany.

Our article begins with an overview of current regulative efforts in platform work and ride-hailing around the world. We then present each case (Berlin, Lisbon, Paris) in the following order: first, the context of the ride-hailing sector in each city, secondly, the process of regulating Uber legally and its enforcement, and thirdly, the practical outcomes of the regulation, namely sub-contracting models—private hire operators in Berlin, the TVDE model in Lisbon and the VTC capacitaire model in Paris. We argue that, while each regulative approach formally provides social security and workplace rights for drivers, those were in practice undermined and subverted by various forms of subcontracting. As a consequence, drivers end up in similar forms of precarity as observed with self-employed workers. In the final step, our article compares the three cases and looks at similarities and differences. With upcoming regulation policies around the world in mind, we conclude that the instrument of formal employment should not be treated as a universal improvement for workers per se, but instead needs to be implemented with each national and urban regulatory framework in mind, and with caution to legal loopholes and lack of enforcement.

The platform regulation debate

Regulating employment in the digital economy has become a priority for policy makers and legal scholars in recent years (Lane, 2020). The diffusion of platform labour models in sectors such as mobility, delivery logistics, rental and household services has brought along labour models based on self-employment and digital control (Rosenblat, 2018; Schor, 2020; Aloisi, 2022). Through technological means, firms have started to offer forms of work that are neither based on personal instructions nor on physical workplaces. Labelled as flexible income opportunities, such forms of work allow companies to retain control over the labour process while treating them as self-employed 'partners', thereby avoiding social security payments and liability for risks (De Stefano, 2018). As shown by both research and worker protests on the issue, these conditions appear not compatible with a proper definition of self-employment and often resemble a de-facto employment relationship (Berg et al., 2019: 104f.). For instance, an app-based taxi driver who does not know the destination of his or her customer, who might be disconnected from the application based on ratings, and who is dependent on the company's bonus schemes in order to make a living, is without much doubt in a dependent employment relation (Rosenblat, 2018).

Among researchers and policy makers, an established term for this phenomenon has been 'bogus self-employment' or false self-employment. In the European Parliament, bogus self-employment has been discussed as a work relationship 'where employees are falsely declared as self-employed with the aim of paying less in social contributions' (European Parliament, 2016). Worker misclassification in this regard results in loss of workplace security and (most importantly) payment for workers. For the United States, Dubal (2020) argues that 'direct employment increases corporate costs by roughly one-third, so classifying workers as independent contractors significantly increases profitability' (ibid.). False self-employment has been described as 'a hidden and growing problem in [...] labour markets, depriving governments of tax revenue and workers of their rights to sick pay and the minimum wage' (European Parliament, 2016). The vulnerability of wrongly classified gig workers has been especially visible during the Covid-19 pandemic, when demand for many services such as mobility declined and gig workers not just lost their income sources, but also had no social security to rely on (Pirone et al., 2020).

While platform labour has brought new attention to it, evading liabilities through contractual (mis)classification is far from a recent phenomenon. False self-employment, subcontracting and piece wage systems have been in use

since the onset of industrial capitalism, in (amongst others) mining and factory work (Braverman, 1971). Especially in the low-wage sector and among migrant workers, such practices have been maintained even throughout the more regulated phases of 20th century welfare states. In the last decade, platform business models have brought along new legal avenues for worker misclassification, mainly by new means of remote managerial control and the separation of workers from physical workplaces. This has caused new debates concerning the autonomy and control of workers in contemporary labour environments (Rosenblat and Stark, 2016).

Until recently, platform workers were mostly classified as independent contractors and therefore often involved in false self-employment. However, through workers' protest, strategic litigation and research efforts in the last years, such cases have in the last years come to the attention of policy makers and juridical entities, and have triggered several reform agendas and court decisions on municipal, regional, national and transnational levels of governance. The most prominent reforms have been the Assembly Bill 5 (AB5) in California, the EU Directive on platform work, and prominent legal decisions have taken place in the United Kingdom (Browne, 2021). All of them aim (or have aimed) at classifying workers as dependent employees, with reference to their de-facto dependency on orders by the company. Part of AB5 and the EU directive has been to assume employment status, unless the company proves otherwise (Davidov and Alon-Shenker, 2022). The EU directive also demands new standards of algorithmic transparency and fair data management by companies. All initiatives and decisions have been highly contested and received backlash from companies, who have aimed at reversing these developments through lobbying and court cases. The biggest example of this is AB5, a state-level bill which was repealed through a public vote in California after ride-hailing companies had invested 200 millions USD into campaigns (Conger, 2020). Such conflicts suggest that regulating the employment status of platform workers is indeed of high importance, even though a clear path has yet to be identified.

Indeed, despite the intention of regulators to decrease precarity in platform work by granting employment status, there have been doubts on the effectiveness of such measures. One frequent argument, often supported by platform company officials, has been that the employment status decreases the degree of worker flexibility (Chen et al., 2019). This has been refuted by unions and scholars alike, who have argued that flexibility does not need to come at the expense of social security and that these aspects are not mutually exclusive (De Stefano, 2018; Crouch, 2019; De Stefano et al., 2021). Another argument has been that formal employment is not an option for undocumented workers because it requires documents they by definition do not have, and can hence lead to mass firings (Van Doorn et al., 2022). This has raised questions on how social security for workers can be established despite the restrictions that immigration policies present. Our article introduces an additional concern, arguing that firms sidestep their obligations as employers through practices of subcontracting, using loopholes that both the legal form and the de facto implementation of the laws present. The article is based on findings from three countries and cities that have taken measures to regulate the platform economy earlier than in other areas. Insights can therefore be useful for both the state of research and policy making on the issue.

Existing research on worker classification in the platform economy is extensive and has mainly been done from a labour law perspective (Prassl and Risak, 2016; Dubal, 2017; Kocher, 2022). In addition, industrial relations research and policy reports have highlighted the practical implications of false self-employment for working conditions, especially the parallel existence of freelance status and algorithmic control (Rosenblat and Stark, 2016; Altenried et al., 2020; Parrott and Moe, 2022). Some research has been done on the implications of formal gig worker employment in the sense of a 'third category' between freelancer status and standard employment (Cherry and Aloisi, 2017). Apart from some notable exceptions (Howson et al., 2022; Van Doorn et al., 2022), the issues and problems with (conventional) dependent employment classification have not been considered in depth. Our contribution aims to fill this gap with an analysis of empirical material in the ride-hailing sector.

The ride-hailing industry, which provides the sectoral context of our study, has been among the earliest and most capital-intensive sectors in the platform economy. Starting with Uber and Lyft in the USA after the financial crisis of 2008/2009, the model has since transformed the taxi markets globally and has become an income source for millions of drivers around the world.[1] Ride-hailing firms, also conceptualised as Transportation Network Companies, connect drivers of private-held cars with customers through an app-based marketplace platform (Rosenblat and Stark, 2016: 3758). Firms generate revenue through the extraction of a commission for each transaction conducted through the app. Uber alone has been able to raise over 25 billion USD in investment for its operations by 2022, amounts of capital that have fundamentally transformed, pushed back or destabilised local taxi industries and their institutionalised arrangements (Dubal, 2020). In most countries, ride-hailing companies have proven incompatible with local taxi regulation (Thelen, 2018). The industry's qualification requirements, fixed fares and vehicle caps limit the profit prospects of the company, who sustains profits through competition by oversupply and surge pricing mechanisms (Rosenblat and Stark, 2016).[2] Conflicts around the employment status of drivers have been very visible in the industry and contributed to a 'politicization of digital markets' (Staab et al., 2022: 14) in the last years. Specifically Uber has also put efforts to actively

shape the academic and public debate in its favour, for instance by funding research and news articles (Medina and Sadek, 2022). With its deep socio-economic implications for urban areas and labour conditions around the world, the ride-hailing industry is therefore a suitable case for looking at the role of worker (mis)classification.

Conceptual and methodological approach

Research on the political economy of digital platforms has brought forward a range of concepts and characteristics (Huws, 2019), of which we employ some to explain the operation of ride-hailing platform firms. At the most basic level, platform companies might be described as data-driven intermediaries that are structured as proprietary marketplace infrastructures (van Dijck et al., 2018; Kenney and Zysman, 2020; Staab, 2023). The core business of platforms does not revolve around the manufacturing or sale of products, but around generating revenue by extracting rents (commissions) from marketplace participants and their services (Sadowski, 2020). In the case of ride-hailing, such participants are mainly drivers and customers. Platform corporations aim for quasi-monopolies in one or more fields of the economy, as their service value increases critically with the number of its users (Shapiro and Varian, 1999). To ensure such 'network effects' (ibid.), platforms often offer services for low prices and therefore rely on cross-subsidisation through venture capital investment or other operations. One aim of our analysis is to provide an understanding of how platform architectures might transform or complicate their structures under the current pressure of regulation.

The notion of 'conjunctural geography' (Graham, 2020) has been developed to describe an operational logic of platform firms that are 'simultaneously embedded and disembedded from the space-times they mediate' (ibid.: 454), referring specifically to the contradictory role of platforms as similarly involved and unaccountable entities in the urban space. Failing attempts to regulate the employment of platform workers are examples of this phenomenon, as Graham lays out. The roots of this phenomenon appear to lie in both socio-technical developments (the possibility to employ and control workers remotely) and legal legacies (the notion of spatial 'autonomy' for independent contractors within legal systems). Except for rare cases, cities in the EU do not have regulatory responsibilities on labour policies. They are usually attributed to national institutions, who are generally responsible for regulating the industrial sectors in which many platforms operate, including local transport services. The asymmetric tension between the global and urban scales is made even more complex by the existence of intermediate (national) levels of regulation: not only because of the overlapping regulatory responsibilities but also because the relationship between local and national authorities is place-sensitive too. It reflects a range of techno-political dynamics configured differently in each country. In this sense, the conjunctural geography shaped by platforms is not dual but multifaceted. As far as most of these phenomena are concerned (including ride-hailing), the urban space is the scale at which the reconfiguration of production relations is materialised. It is in the city that the regularisation patterns shaped by national laws and sentences react with a plurality of economic and social actors that make up the ecosystem in which passenger transport takes place. Therefore, this article sets the lenses of field research at the urban scale, where it is possible to observe the interplay between the algorithmic organisation, control and measure of labour carried out through platforms, and the broader impact on the everyday use and production of urban space by the larger spectrum of social and technical actors composing the urban digital ecosystem.

The underlying assumption of this article is that the urban digital ecosystem of European cities is undergoing a process of platformization, with platforms and their organisational models achieving growing relevance and even re-shaping the social and technical boundaries of urban societies (Secchi et al., 2021). In urban digital ecosystems, platforms are integrated and cross-fertilise with the pre-existing social and juridical structures, adapting to the contextual configuration of power relations. So, there is not a radical rupture, but platform rationales cross-fertilise pre-existing institutions and the practices that structure societal organisation, while—at the same time—changing the latter.

In this article, using primary data collected during our research, we analyse the impacts of the attempts to regulate the use of platforms in three European cities—Berlin, Lisbon and Paris—and the way in which the urban society of these three cities reacted, adapted or countered the national level initiatives. Despite being three important European capitals, these cities are characterised by a great diversity of powers and competences, resources, administrative structures, population, extension, wealth, institutional capacity, skills and digital infrastructures, etc., and in turn each one depends on a peculiar national institutional system. Methodologically our analysis draws on frameworks from the field of comparative urbanism, which aims at 'developing knowledge, understanding, and generalisation at a level between what is true of all cities and what is true of one city at a given point in time' (Nijman, 2007, 1). This relevant differentiation of the urban contexts shall be contrasted methodologically within the so-called dilemma of 'synecdoche in the new urbanism', that is, 'the methodological dangers of overgeneralizing from one or a few examples and the danger of over emphasising particular spaces, senses of time and partial representations within the city' (Amin and Graham, 1997, 416). In our research, the three cities are neither understood as locally isolated, absolute unique cases, nor as equivalent or

universally comparable to each other. Instead, they are seen and analysed as intertwined with each other through European legislation, a global and regional political economy as well as strategies of platform firms and their conjunctural geographies, all of which generate similarities, fragmentations, and specificities of various sorts.

Our comparison provides an empirical outlook and systematic analysis of the shortcomings that classification efforts by national legislators in the platform economy have had so far. In each city, the analysis explains a distinct (but similar) form of subcontracting and its political history, and compares the practical implications for drivers across countries: whether they enjoy the payment conditions tied to direct employment in their country (minimum wage, paid sick leave, paid leave), its social security benefits (insurance entitlements and contributions by employer) and additional guarantees (company vehicle, paid repairs). The analysis also refers to measures taken by either drivers or legislators to tackle the discrepancies.

Empirical findings in Berlin, Lisbon and Paris

Berlin

Berlin has the highest density of taxis and ride-hailing services in Germany. As of 2023, around 5400 taxis and circa 4400 ride-hailing vehicles were operating in the city (Stadt Berlin, 2023). The market entry of Uber, FreeNow and Bolt from 2014 onwards has significantly increased the amount of single passenger transportation vehicles in the city. Due to steady growth in international tourism and business visits in recent decades, Berlin's mobility market has generally expanded steadily and increased capacities and investments in recent years (Hoffmann, 2021). Ride-hailing companies in Germany compete with and operates within a highly regulated taxi industry. Obligations and rights of taxis and similar services are stipulated in the *Passenger Transportation Act* (Personenbeförderungsgesetz), which defines taxis as part of the public transport system. Uber and other platform firms operate as *private hire operators* (Mietwagenunternehmer), a legal alternative to taxis historically used by chauffeur services. Like taxi companies, owners of private hire companies can employ drivers, but are not bound to public transport obligations such as fixed fares or vehicle caps. As employees of such a company, drivers are entitled to the legal protections of a dependent employment relationship.

In Berlin, over 700 private hire operating sub-firms were registered in 2023 (Stadt Berlin, 2023).[3] Sub-companies usually employ between 5 and 500 drivers, which they provide with a labour contract and a car. Earnings are split into a share for Uber (circa 30%), the sub-company (circa 35%) and the driver (circa 35%). More than 10,000 ride-hailing drivers were registered in Berlin as of August 2020, the majority of them sub company employees (Free Now, 2020; Stadt Berlin, 2023). Although it appears to be costly for Uber, the company seems to embrace the private hire operator model. Publicly, the company claims that partner drivers at Uber 'are subject to social insurance contributions, are covered accordingly and usually earn well above the statutory minimum wage' (Uber, 2022).[4] Although the private hire operator model limits wrongful self-employment, it did not guarantee sufficient protection to drivers in our sample. This was mainly due to two reasons: first, the use of marginal employment misdeclaration, which resulted in an evasion of standard employment, and secondly, the practice of a commission-based piece wage system, which resulted in a large amount of unpaid overwork and wage dumping.

To prevent the installation of costly employment contracts, sub-companies often make use of so-called *marginal employment jobs* (Minijob, 450-EUR Job), a legal form of 40 hours/month employment that exempts employers from social security contributions (Altenried, 2021). Companies would then pay extra hours informally, effectively circumventing social security obligations. According to our interviews, drivers often receive temporary contracts for 12 months, which include a 6-month probation period during which they can be laid off quickly.[5] The combination of marginal employment and probation periods makes it legally possible that drivers are often neither insured nor subject to proper dismissal protection. Both topics came up frequently in our interviews. One driver claimed that based on requests at her boss's company, she assumes the majority of drivers to be on marginal employment: 'Judging by how many people ask for moonlighting, uh, or ask for 450€ basis, I assume that about 80% from this industry are actually officially part-time workers'. Another driver stated that while his employer paid social security contributions, he was not allowed to take sick leave, a right that workers in Germany are entitled to (up to 6 weeks) and indeed even on a marginal employment contract: 'Sick leave in general, [...] no. If you got sick, you were not compensated. Although they know that [it is not allowed], they did not pay. Either you work or you don't get paid, that was the point'.

A second obstacle to social security was the *commission-based piece wage system*. Instead of hourly pay of at least minimum wage, drivers were usually only paid per ride. This was especially so if drivers worked informally on a minijob basis. The provision-based income model at Uber leads to enormous insecurity, unpaid extra hours and precarity among workers. Although the evasion of labour standards makes it possible to increase incomes, this comes at enormous expenses for the health and living quality of workers. Although with breaks, many drivers work practically around the clock for five to six days a week. Working for Uber is often a semi-legal activity for all actors involved and economically only feasible through additional bonus payments to sub-companies by Uber. Both the evasion of marginal employment and minimum

wage regulation in Berlin are also an established practice because compliance is rarely enforced by the municipality, an issue which labour unions have raised for several years (Rühle, 2020).

With several exceptions, many working arrangements we observed resulted in high amounts of (unpaid) overwork. Full-time drivers of our sample in Berlin worked between 40 and 70 hours a week, often effectively below minimum wage. Although many drivers worked beyond full time, they were dependent on state support, which obliged them to go through additional bureaucratic processes. Generally, the subcontracting system produced a vast heterogeneity of (often informal) payment and sanction schemes that appear to have been tolerated by Uber. According to our interviews, the practice of subcontracting also made it difficult for drivers to collectively organise, as conditions were very different in each company. However, some protections for drivers remained. Drivers did not have to take out loans for their cars, were not required to do repairs and often preferred driving to more tedious jobs in gastronomy or construction work. A long-discussed amendment of the Passenger Transportation Act in 2021 has extended the leverage of German municipalities to stipulate pricing and social standards in their cities (Bundesministerium für Digitales und Verkehr, 2022). While it remains to be seen if and how municipalities make use of such tools, an end to the (already unlawful) practices described above appears unlikely through this change alone.

In conclusion, it is fair to say that the employment status of (most) Uber drivers in Berlin does not result in sufficient social protection. Although drivers benefit from some aspects, only few have access to standard contracts and its social security benefits. Even more, the de-facto piece wage system leads to vast amounts of overtime hours and income levels below minimum wage. Contrary to Uber's claims, the employment of drivers in Berlin is therefore a rather fictitious form of employment on most aspects and largely reproduces outcomes similar to those of false self-employment cases in the USA and other countries. Interestingly, Uber in Germany has also extended this model to its food delivery division *Uber Eats*, which started operating in the city in 2021. This further supports the suggestion that while the regulative situation is not ideal for platform companies and produces costs, the practice of subcontracting appears a viable workaround due to legal loopholes in labour law and lack of enforcement.

Lisbon

Uber started its operations in Lisbon in 2014 and has expanded greatly since then. The relevance of Lisbon in Uber strategies can be inferred by the company's decision to integrate the Portuguese's capital in its circuit of technological and excellence centres, the operative infrastructure where Uber experiments and improves services which will be implemented also in other urban contexts (Leonardi and Pirina, 2020; Allegretti et al., 2021; Tomassoni and Pirina, 2022). In the years following the entrance of Uber, other ride-hailing companies (such us Bolt, Freenow, etc.) have settled in Lisbon. The lasting impact of ride-hailing business models has resulted in legislative interventions to regulate and formalise the sector.

In 2018, the Portuguese parliament proposed a law in this regard (law 45/2018, so-called 'Uber law') through which the ride-hailing sector has been formalised as TVDE (*transporte individual e remunerado de passageiros em veículos descaracterizados a partir de plataforma eletrónica*—Private transportation on private vehicle via electronic platform). The law obliges ride-hailing companies to operate through an intermediary company (TVDE partner-company). It also introduced specific requirements such as a paid theoretical and practical training course (for drivers who want to obtain the TVDE licence), the obligation to start (or work with) a TVDE partner-company and the obligation for digital platforms to comply with the Portuguese fiscal rules and Labour Code. Furthermore, the law formally introduced a maximum of 10 working hours a day, but without introducing an effective supervision system. In the month prior to the entry into force of the law, traditional taxi drivers started a strike that lasted two weeks, as they considered the measure adopted insufficient, particularly regarding the violation of competition law operated by Uber and similar companies. The mobilisation ended after the government promised to transfer the competences of regulating the ride-hailing sector and the licensing of drivers to the municipal scale.

The law 45/2018 introduced a threefold and hierarchical working relationship which now governs the Portuguese digital ride-hailing sector. Digital platform companies, such as Uber, subcontract their business to a TVDE partner-company, which itself works with specific TVDE drivers. Drivers have to be contracted by the partner-company or have to open their own firm in order to work. Platform companies formally perform the intermediation between drivers and clients and are responsible for the collection of fees and earnings and the distribution to partner-companies which, in turn, pay the drivers. Following the law, the drivers can be employees of a partner-company or self-employed. If they are employees, workers are under the social protections umbrella with clear working conditions, which are otherwise negotiated between self-employed drivers and partner-company. In this case, drivers pay the partners either a fee or a percentage in exchange for having access to a 'TVDE authorised' car, plus limited extras regarding ordinary maintenance, cleaning and generally also fuel (Rodrigues et al., 2020). Thus, a key difference between partner-companies and drivers regards the ownership/access to the means of production, that is cars and the related services of registration, maintenance and insurance required to be licensed as TVDE partner-company. Moreover, the latter have a

specific digital platform app aimed to manage workers and the car fleet. Effectively, the TVDE sector is marked by *de facto* wage-labour relationships and by the creation of a subcontracting system.

In the period following the 'Uber law' implementation, the TVDE sector attracted large numbers of both drivers and sub-company entrepreneurs. According to the last data released by the Institute of Mobility and Transport (*Instituto de Mobilidade e Transporte*—IMT)[6], in December 2022, there were 47,838 TVDE drivers licences and 11,620 partner-companies (almost half of those in Lisbon), while in March 2019 (before introduction of the law) there were fewer than 6000 drivers.[7] However, the concrete articulations of the hierarchical dimension of the service and working conditions led to an increasing mobilisation of drivers/partner-companies, who have been claiming more protections—also with the support of Union of Road and Urban Transportation Workers Strup—by the Government to face the on-going degradation of TVDE platform work and business model. Indeed, the competition between digital platforms to attract more and more customers by reducing ride cost and the increasing cost of the 'work equipment' (fuel, assurance, training courses, car leasing, etc.) caused a high pressure on drivers, who have had to work more and more hours in order to face the decrease of earning and profit margins. As highlighted by a TVDE driver/entrepreneur,

> 'This is not profitable, a lot of people are taking advantage of this with the car leasing companies. In the first year I rented a car for 490 euros, with everything included. The same car is now 690 euros, 200 euros more expensive. Uber's fare is the same and the price of diesel has gone up a lot. The value of the tariffs does not increase because there is rivalry between the three platforms'

The mobilisation against precarious working conditions of drivers continued during the Covid-19 lockdown and maintained an on-going public debate on the dignity of working conditions. Generally, the law 45/2018 appears to be insufficient to address the working and business controversies related to digital ride-hailing service, since it only offers a legal framework to regulate the sector, while failing to offer an effective supervision system of compliance of concrete working conditions. As pointed out by a TVDE driver,

> 'I know colleagues who are making good money but to make good money they go to sleep 2 hours, then start working again, then go to sleep another 3 hours. They work night, by day, I mean, it's dangerous. Also on Sunday I was lucky, I took a trip to the airport because the colleague who was in front of me was literally sleeping. I honked twice because I know her, and she didn't wake up'

Concluding, it can be said their classification as employees has not benefitted drivers in Lisbon significantly. On the contrary, a specific form of Intermediary Platform Capitalism emerged that intensified existing controversies and power asymmetries (Rodrigues et al., 2020). In 2021, as a response to protests by drivers and criticism by other actors, the Ministry of Labour proposed changes to the law, which were followed up upon in parliament through an amendments to the Labour Code in December 2022 (Pereira, 2022). Through the new article 12-A, a direct link between drivers and digital platforms has been created and an employment relation is assumed unless proven otherwise. This opens legal avenues for drivers to enforce a direct employment with platform companies. While the change was received well by legal experts (Esquerda, 2023), its effect on the relation between platform firms, drivers and their conditions still remains to be seen.

Paris

Platform companies in Paris have expanded rapidly during the last decade, particularly within the tourism industry and the related transport and mobility sector. Paris was the first expansion of Uber outside of the USA, and the company appears to work with around 20,000 drivers in the Parisian region (Pommier, 2018). In France, Uber competes with a wide range of competitors (FreeNow, Bolt, Heech, Marcel and Snapcar) on the ride-hailing market. The regulation of ride-hailing in France has gone through several stages. When platform companies started to operate in Paris from 2011 on, they were able to do business under the then newly introduced entity of VTC (*voiture de transport avec chauffeur*), a legal alternative to taxis and intended for chauffeur services. After going through a registration, owners of a VTC licence have two options: to work self-employed, or to employ a fleet of drivers who themselves did not need a VTC licence or training (Chagny, 2019). This subcontracting system enabled ride-hailing companies to replicate their model of recruiting large pools of untrained drivers, with the difference that they were employed by the VTC company. However, after pressure from taxi associations, a law was introduced that required all drivers to go through formal training in order to drive and took steps to align taxi and VTC requirements (Grandguillaime law).[8]

While a majority of drivers today are self-employed, around 30% appear to work as employees (Chagny, 2019).[9] Driving as an employee has become an option for drivers who cannot afford the initial investments necessary to start self-employment (especially the leasing or purchasing of a vehicle). Within these companies, labour relations are often informal—with the difference that now they also need to obtain a VTC licence. These small businesses that hire drivers vary in size from two to more than ten vehicles on average. For instance, one interviewed driver was employed by friend of his:

> 'I now work with the car of a friend, which belongs to him, because I cannot afford to have my own car. I am his employee, I work for him. We each have our own vehicles and he takes a percentage of my turnover. My friend also works with another person, with a vehicle of his own. Before, I worked for another person'.

Arrangements between drivers and sub-companies vary in nature: sometimes drivers are paid by a daily flat rate (e.g. 70 euros per day), sometimes with a monthly salary corresponding to the minimum wage. In other cases, sub-company owners receive a daily percentage of the profits (mostly 30–50%) made by the driver. Generally, employed drivers did not appear to enjoy more social security than self-employed drivers. Economic constraints were relatively similar, and neither a guaranteed wage nor proper insurance was provided.

As in the other cities, in Paris, we observed that economic pressure pushed employed drivers to increase their working hours informally and to organise their working day according to surge pricing. This means they were active in the early mornings, at the end of the day, at nights and at weekends. Uber drivers we interviewed declared working an average of 50–60 hours per week for Uber and other ride-hailing platforms. At many sub-companies in Paris, declared hours at subcompanies correspond to the hours of connection to the application and not to the actual driving hours. Effectively, this barely allows a VTC driver to achieve an income equivalent to the monthly minimum wage. This creates precarious circumstances, especially for those with family responsibilities, who make up the vast majority of the drivers interviewed in Paris.

Outcome: 'bogus employment'

With a perspective on three cities and countries that allow for or demand the dependent employment of drivers, we have looked at the contradictory outcomes of dependent employment of platform-based drivers. In all three cities, ride-hailing firms comply with this regulation through forms of *subcontracting*. Through our empirical research on a city level and a comparative approach, we could show that this does not only serve to maintain the company's status as legally uninvolved platform company, but also allows for forms of 'creative compliance' (Kocher, 2022: 9) or 'regulatory arbitrage' (Fleischer, 2010), meaning a de-facto circumvention of the law through loopholes. While in theory drivers of sub-companies (rental car PHVs in Berlin, TVDE companies in Lisbon and VTC capacities in Paris) are entitled to benefits such as social security payments, paid leave and a minimum wage, in practice this does often not (or not fully) apply to drivers. Instead, drivers often work unpaid overtime, earn significantly below minimum wage and tend to work semi-formally or informally for their companies, for instance on low-hour contracts that do not include mandatory social security (Table 1).

Although drivers are clearly dependent on both their employers *and* Uber's algorithmic system, in practice their social security circumstances appear to resemble rather that of precarious independent contractors, whose work is commission-based and not tied to minimum wages. Based on our research, we argue that such cases of alleged social security of formally classified workers might be labelled as *bogus employment*, to highlight the discrepancy between formal obligation and practical reality for ride-hailing drivers and other low-wage platform workers. The concept of bogus employment builds on 'bogus *self*-employment', as a well-established description of wrongly classified gig work freelancers, and applies it to the misclassification of direct employment, which has come up more recently and is likely to increase due to regulative pressure in many countries. By widening the established understanding of worker misclassification, we want to demonstrate the complexities of undermining labour standards in the gig economy, which go far beyond the issue of formal employment. This issue is also important to highlight because despite the good reputation of worker classification in the general public, actual working circumstances are sometimes worse and even more nontransparent than what is known about the independent contractor relationship with ride-hailing companies. The subcontracting system, sometimes extended into sub-subcontracting chains, works to diffuse the responsibilities of both Uber and subcompanies, and has made it difficult for drivers to address their workplace issues. The system of bogus employment is possible due to several causes, most importantly the loopholes that labour and transportation law leave open and due to informal circumvention practices that could spread through a lack of effective rule enforcement.

However, this observation should not undermine the fact that the introduction of a classified employment relationship has brought improvements for drivers in many cases. Although some aspects of the employment relationship were circumvented, many drivers profit from workplace security, health care benefits and access to vehicles through their company (Table 1). It also should be noted that the practice of informal labour law circumvention is not restricted to platform companies, but is also a common practice within industries in the low-wage segment more generally. The issue appears to be a combined product of intentional circumvention, lack of enforcement by authorities and legal use of contingent employment tools introduced in European labour markets in the last two decades.

While the dynamics of bogus employment appear somewhat similar, its application and outcomes also have local particularities (See Supplementary Appendix). For one, the contexts of granting employment status were different: in Germany and France, platforms made use of a historical ('black cab' or private driver) category where dependent employment has been the norm. In Portugal, a new category was implemented to create this status. Secondly,

Table 1. Overview of employment classification laws and their outcomes in Berlin, Lisbon and Paris.

	Law Ref.	Subcontracting model	Problems and advantages for drivers
Berlin	Paragraph § 49 Passenger Transportation Act (Pbfg)	*PHV/Mietwagen*: a legal alternative to taxis and intended for chauffeur services	**Five main problems:** - Evasion of minimum wage - Unpaid working time/ wage theft - Lack of paid leave - Lack of paid sick days - Partial or complete lack of insurance and/or social security contributions **Three main advantages:** - Vehicle is provided—no starting capital or loan necessary - Partial existence of insurance and social security (e.g. accident insurance) - Secondary advantages of employment contract (e.g. as proof of income for housing applications)
Lisbon	Law 45/2018 ('Uber Law')	*TVDE*: 'authorised' intermediary company, entrusted with labour relation management.	
Paris	Loi n° 82-1153 ('LOTI Law') Loi n° 2009-888 ('Novelli Act')	*VTC*: a legal alternative to taxis and intended for chauffeur services	

both municipalities and workers have reacted to the circumstances in several cases. With the Grandguillaume law in France, an instrument was introduced to fight bogus employment and other difficulties of the new ride-hailing category, and to facilitate social dialogue. In Lisbon and Paris, drivers organised group action against the outcomes of bogus employment and other issues. In Berlin, where subcontracting appears to be most dominant, subcontracting seems to have made organising protest more difficult, since it produced fragmentation among workers.

Conclusions

This article has looked at three cases of employment classification for drivers in the platform-based ride-hailing industry. Against the backdrop of political and public demand for such policies in recent years, investigating the impact of existing forms of worker classification appears timely. Our three cases suggest that although employee classification comes along with legal social security and workplace security entitlements for drivers (especially full-time drivers), the practical outcomes often maintain the precarious circumstances in the field, a phenomenon we call *bogus employment*. Bogus employment functions through forms of subcontracting between platform companies and sub-companies, where legal obligations and standards are undermined. It is facilitated by a lack of regulation enforcement and semi-legal use of contingent employment instruments. In some cases, circumstances within bogus self-employment were even more severely precarious than for self-employed drivers, due to the informal economies within sub-companies.

Our results might not appear surprising given the growth strategies of platform business models, their reliance on cheap labour and considering the general conditions in low-wage sectors. Nevertheless, the fact that even employed drivers often experience a lack of social security and workers' rights, point to major flaws of regulating labour in the platform economy through employment classification. Our article names three major causes connected to this: first, *intentionally unlawful practices* by both platform operators and sub-companies, often done informally. Secondly, the *lack of enforcement* within contingent and low-wage labour by governments and municipalities. And thirdly, the *(mis)use of new forms of temporary, short-term or 'marginal' employment contracts* that have been introduced during the liberalisation of European labour markets in the last two decades.

What can be learned from our three case studies on a general level? Assuredly, the dynamics of regulative intervention vary across the globe, and bogus employment is not a necessary outcome of employment classification rules in ride-hailing. However, our comparison shows that the use of the loopholes described here present tempting opportunities for platform companies across legal contexts when confronted with regulative threats to their business models. More so, practices such as bogus employment present an opportunity to 'fair-wash' corporate practices by allegedly abiding by regulation. As regulative pressure increases around the world, it is not hard to imagine bogus employment as a common challenge within the more 'consolidated' platform economies currently emerging. Although our observations were largely confirmed in stakeholder interviews and focus groups, the limitations of our study due to its explorative nature and

small sample size needs to be kept in mind. Additional research, especially on similar (national, state-level or municipal) regulation efforts in ride-hailing or other platformized industries would be useful to assess the scope and heterogeneity of bogus employment practices.

The findings of our research do not suggest that employee classification is an unhelpful instrument per se. In fact, even drivers that were denied social securities and rights often enjoyed a set of securities that they would not have had access to as independent contractors (Table 1). However, the practices observed in all cases may contribute to curbing the enthusiasm about employment classification as a tool against precarious working conditions. While it is important to acknowledge legally that drivers are dependent workers and should be treated as such, an employment status does not fix the problem of precarious work itself. As previous research has shown, precarious working conditions are deeply ingrained into the business practices of platform companies and the low-wage sector more generally. The issue of bogus employment becomes of paramount concern regarding worker classification, which previous research has pointed out, namely the risk of further precarisation of informal workers through rule enforcement (Van Doorn et al., 2022).

In light of these findings, it is worth considering that the debate about social security and workplace security does not need to be tied to employment status. Many researchers and policy experts argue, alongside the ILO Global Commission on the Future of Work, that '[a]ll workers, regardless of their contractual arrangement or employment status should enjoy fundamental workers' rights' (International Labour Organization, 2019: 12). Parts of such universal entitlements can be seen in countries such as the United Kingdom and Spain, where access to health care is granted to every resident. This could be extended to other rights and basic entitlements, too (Crouch, 2019). However, strategies for policymakers are usually dependent on national regulation legacy, with limited space for universal guarantees. Given this fact, it is worth considering that besides its flaws in practical implementation, formal employment classification 'remains the most important gateway to protection for many workers around the world' (De Stefano, 2021) and should therefore be made accessible in reliable ways to as many workers as possible.

To effectively ensure the benefits of employment status for workers, legislators should not limit their concern to false self-employment. To account for the broader pattern of labour standard evasion by platform firms, they should also address the issue of false employment through subcontracting and other means. Not doing so contradicts the very goal of such classification reform, namely holding platform firms accountable. While reform agendas such as the EU directive on platform work do usually not aim more broadly at migration legislation and low wage sector laws (which would be necessary to tackle the issues on a general level[10]), extending the liability of platforms across the value chain they profit from could be a first step. Such liabilities could include measures by platforms to guarantee minimum wage, appropriate working hours and social security for workers and would need to be sanctionable if broken. Specifically, the EU directive has raised the issue of subcontractors as 'intermediaries' in its proposals (Bourgery-Gonse, 2022), but it remains unclear whether it addresses the range of loopholes we have raised here. With more and more classification legislations in mind around the world, it can be hoped that legislators, policymakers and municipalities do not again leave loopholes and gaps that enable bogus employment practices in the future.

Endnotes

1 Exact numbers on the number of drivers are unclear. However, the two biggest companies alone (US-based Uber and China-based Didi) listed around 16.5 million drivers as of 2021 (Conger, 2021; Cheng, 2021).
2 *Surge Pricing* describes a 'dynamic pricing' algorithm that ride-hailing firms use to boost prices for rides if demand is high in an area at a specific time.
3 Technically, Uber itself is obliged to work with only one single company in Berlin, a so-called *general partner* (Generalunternehmer). This general partner is a sub company, but also subcontracts to each other private hire companies in the city. Essentially, this constitutes a sub-subcontracting system.
4 The concession for Uber was costly not only since it had to share revenues with sub-companies, but also due to to the *obligation to return* (Rückkehrpflicht) for private hire operators, which obliges them to return to the address of their company after reaching a customer's destination.
5 Generally, German labour law sets relatively high barriers for employers to cancel standard employment relationships. This makes the probation period an exceptional state, where the contract can be terminated within 2 weeks without explanation.
6 https://imt-tvde.webnode.pt/.
7 https://observador.pt/2021/10/31/tres-anos-de-lei-uber-com-perto-de-32-mil-motoristas-e-alguns-problemas-no-setor/
8 Grandguillaume Law: https://www.assemblee-nationale.fr/14/propositions/pion3855.asp
9 Official numbers are not available. However, according to Chagny (2019: 9), Uber stated in 2019 that 70 percent of its drivers were working as self-employed entrepreneurs, while 30 percent were working as employees for sub-companies.
10 For proposals on how to reform those, compare Van Doorn et al. (2022).

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