

# The Pillar of Sustained Business During COVID-19: The Platform Economy



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In recent years, there has been a significant growth of an interest in the gig economy built upon the premise of online platforms that connect customers with service suppliers. Platform work brings more opportunities to traditional businesses by closely connecting suppliers and customers and reducing transaction frictions. COVID-19-induced lockdowns only advance the spread of delivery via platforms, since some sectors (such as ride-sharing) have expanded their operations into delivery of meals and produce from local restaurants and stores, to which access is restricted due to nationwide lockdowns. In addition, platform work offers more means of prosperity not only for those seeking more work-related flexibility and additional income, but also for those who directly suffered financial losses due to the lockdowns.

The breakthrough of the gig economy was preconditioned by the laxity, or even absence, of regulation, i.e. more freedom to create and act. However, there are growing concerns at both the European Union (EU) and national level on whether to impose more encompassing and rigid regulations on platform work. There are ongoing considerations on the possibilities of expanding labor regulations on platform workers and platforms, along with additional restrictions such as national language requirements for ride-sharing service drivers.

The best way forward is to at least maintain the regulatory *status quo* of platform work, to foster competition in the sector among platform operators, and to establish efficient and easily accessible dispute resolution mechanisms. Due to the nature of platform work, it is most prudent to create conditions for the sharing economy to further develop and ensure a regulatory environment that would meet the flexibility needs of platform work. In contrast, an



## COVID-19-INDUCED LOCKDOWNS ONLY ADVANCE THE SPREAD OF DELIVERY VIA PLATFORMS

increase in regulation and imposing labor standards on platform work is not only unfounded, but may also have detrimental effects on the sector, consumers, and national economies as a whole.

### THE UPRaise OF DEBATES ON REGULATING THE SHARING ECONOMY

The EU has long had an enthusiastic approach to the benefits of platform work. It is regarded as a source of job and economic growth<sup>1</sup>. Further, it is hoped that the collaborative economy will lead to new opportunities and new routes into work and may serve as a point of entry to the labor market<sup>2</sup>. This not only benefits local workers seeking additional income, but also foreign workers in terms of their integration into the labor market. Platform work increases the efficiency of the matching process, which may help to alleviate problems such as frictional unemployment and skills mismatches. It may also offer new work opportunities to graduates and immigrants,

<sup>1</sup> European Commission (2016) "A European Agenda for the Collaborative Economy", [in]: COM (2016) 356 final, 2.

<sup>2</sup> European Parliament (2017) *Resolution of 15 June 2017 on a European Agenda for the Collaborative Economy*, (2017/2003(INI)), recital 37.



THE COMPETITIVE SITUATION IS SIMILARLY UNSTABLE FOR DELIVERY SERVICES, WHICH HAVE OPENED UP A MARKET THAT WAS PREVIOUSLY ONLY SERVED BY SUPERMARKETS AND RESTAURANTS, THE NEED FOR WHICH PARTICULARLY GREW DURING THE PANDEMIC

and act as an income supplement for individuals transitioning into periods associated with low earning potential<sup>3</sup>. Moreover,

<sup>3</sup> Lane, M. (2020) "Regulating Platform Work in the Digital Age", [in]: *GoingDigital Toolkit Policy Note*, No. 1. Available [online]: <https://goingdigital.oecd.org/toolkit-notes/regulating-platform-work-in-the-digital-age.pdf>

a study carried out in Poland concluded that the work of food couriers is a *good job* during the COVID-19 pandemic, as it enables those who have unexpectedly lost their source of income to stay afloat. It also gives satisfaction to those who started this work before the pandemic due to an increase in the number of orders<sup>4</sup>.

At the same time, the EU raised concerns regarding the application of existing legal frameworks and the blurred lines between consumer and provider, employee and self-employed as this can create regulatory gray areas<sup>5</sup> [See: Figure 1]. The core concerns are those specifically related to platform work that covers the work dimension (e.g. performance appraisal, autonomy, the physical environment, monitoring, etc.) and those of the employment dimension (legal status of the worker and platform). It must be noted that the said criteria may serve as a basis for categorizing key aspects of any work performed via platforms; however, any considerations of imposing harmonized measures should take into account that some concerns raised by the European Commission (EC) and European Parliament (the Parliament) are sector-specific. The Parliament stresses the importance of safeguarding workers' rights and calls on the EU Member States and the EC to ensure fair working conditions and adequate legal and social protection<sup>6</sup>.

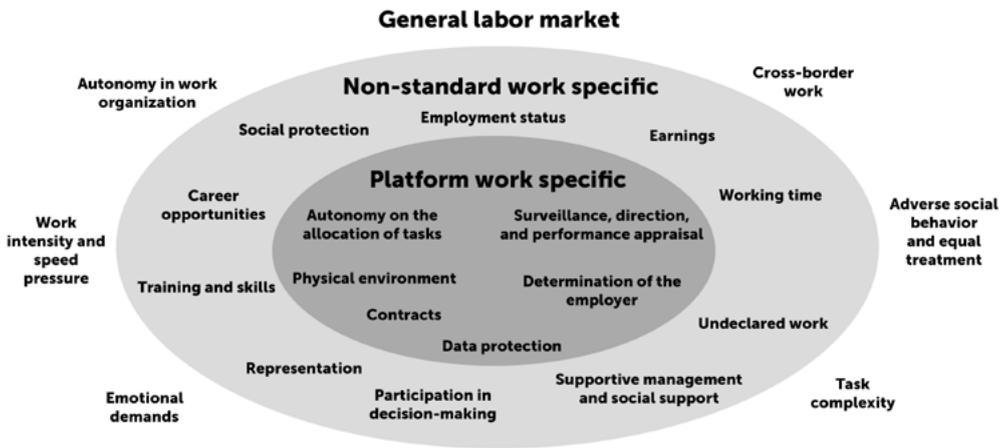
Among one of its key goals for 2021, the EC has set the aim of preparing as a legislative proposal to improve the working conditions

<sup>4</sup> Polkowska, D. (2021) "Platform Work During the COVID-19 Pandemic: A Case Study of Glovo Couriers in Poland", [in]: *European Societies*. Available [online]: <https://doi.org/10.1080/14616696.2020.1826554>

<sup>5</sup> European Commission (2016) "A European Agenda for the Collaborative Economy", [in]: *COM* (2016) 356 final, 2.

<sup>6</sup> European Parliament (2017) *Resolution of 15 June 2017 on a European Agenda for the Collaborative Economy*, (2017/2003(INI)), recital 37.

Figure 1: The summary of challenges outlined by the EC



Source: Kilhoffer, Z., Lenaerts, K., Smits, I., Hauben, H., Waeyaert, W., Giacumacatos, E., Lhernould, J.P., and S. Robin-Olivie (2020) *New Study Looks at the Challenges Faced by Platform Workers*. Available [online]: <https://ec.europa.eu/social/main.jsp?catId=89&furtherNews=yes&langId=en&newsId=9582>

of platform workers. The particular content of the regulation is yet unknown, but it may be assumed that it will be closely based on a prior EC study on working conditions of platform workers<sup>7</sup>.

### MATCHMAKING AND EMPLOYMENT: TOMATO-TOMATO?

Although platforms undercut the traditional providers in terms of price, they are also under strong price pressure due to competition between transport or delivery platforms. For example, this is why ride-sharing services tend to reduce fares and thus the

charges for drivers considerably based on the state of competition in the market<sup>8</sup>. Through this, and by expanding the driver network the company's network, effects are increased. The competitive situation is similarly unstable for delivery services, which have opened up a market that was previously only served by supermarkets and restaurants<sup>9</sup>, the need for which particularly grew during the pandemic.

<sup>8</sup> Schmidt, F. A. (2017) *Digital Labor Markets in the Platform Economy*, Friedrich-Ebert-Stiftung.

<sup>7</sup> Kilhoffer, Z., Lenaerts, K., Smits, I., Hauben, H., Waeyaert, W., Giacumacatos, E., Lhernould, J.P., Robin-Olivie, S. (2020) *New Study Looks at the Challenges Faced by Platform Workers*. Available [online]: <https://ec.europa.eu/social/main.jsp?catId=89&furtherNews=yes&langId=en&newsId=9582>

<sup>9</sup> Singh, S. (2019) 'The Soon to Be \$200B Online Food Delivery Is Rapidly Changing the Global Food Industry', [in]: *Forbes*. Available [online]: <https://www.forbes.com/sites/sarwantsingh/2019/09/09/the-soon-to-be-200b-online-food-delivery-is-rapidly-changing-the-global-food-industry/>



## THERE ARE NO COMMON ISSUES THAT ALL PLATFORM WORKERS FACE

In addition, some researchers argue that labor platforms (such as ride-sharing, delivery, etc.) rely on the model of “Business Growth before Profits” meaning that they operate a “hyper-outsourcing” model<sup>10</sup>, in which both workers and fixed capital or training costs are outsourced. Work is usually outsourced and workers are not regarded as employees, but as independent and selfemployed contractors who are paid according to order. In this way, the platform companies not only save a considerable part of direct labor costs such as paid holidays, overtime bonuses or sick days, but also the indirect costs of social security contributions or training and, in the case of work from anywhere in the world, they can put costs out to tender and compete with costs from low-wage countries.

All of this combined leads to the assumption that due to the essence of platforms they are not to be expected to provide stable income and workload. Accordingly, platforms should not expect their contractors to work on a stable basis.

### REGULATING THE AUTONOMY OF WORK AND THE RELEVANCE OF “PERFORMANCE REVIEW”

One of the fields that the EC is considering for revision is the work dimension<sup>11</sup>. It includes, among others, the autonomy of work, surveillance, direction and performance appraisal, and the physical environment. In these areas the EC is contemplating measures of ensuring greater stability and protection of workers that would enhance their bargaining powers.

The peculiarities of the digital market may radically reshape how work is allocated, organized, monitored and performed. However, there are no common issues that all platform workers face. Certain issues outlined by the EC as being problematic, such as the physical environment or allocation of tasks, are characteristic of particular tasks rather than platform work as a whole<sup>12</sup>. Therefore, the true object of the EC’s policy considerations on the matter is not platform work *per se*, but particular operations – such as ride-sharing services. This is why any attempts to regulate platform work would unjustly affect other forms of services (e.g. consultants, lawyers, architects, etc.), even if they did not share the same challenges that the EC are concerned about.

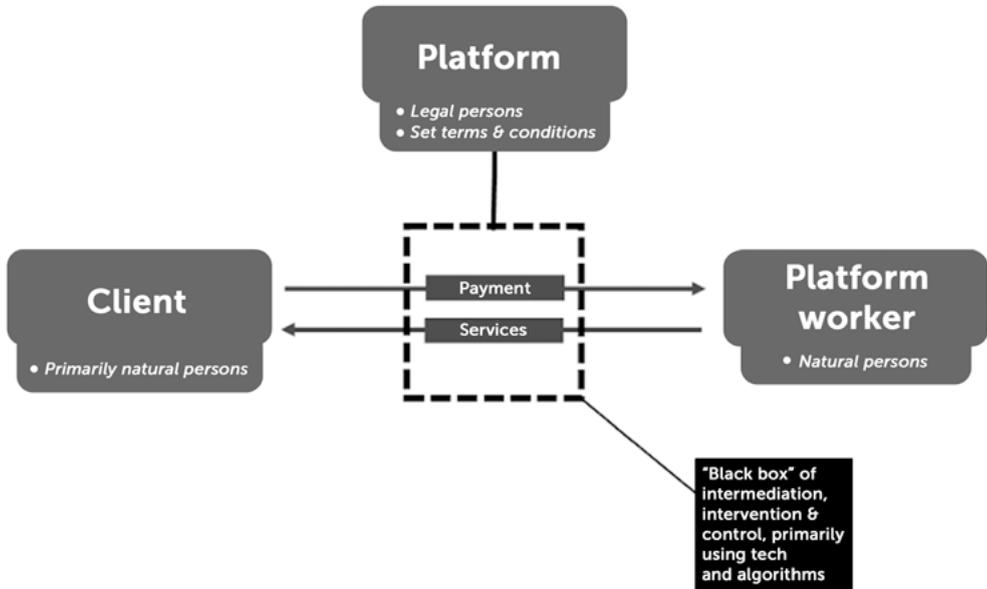
It must be kept in mind that the platform functions as an intermediary [See: Figure 2] between the service provider and the end-user, and does not operate as an employer since the platform can neither prevent service providers from carrying out their tasks via other platforms or mediums, nor is the platform a determinant condition for

<sup>10</sup> Srnicek, N. (2017) “Platform Capitalism”, [in]: *Polity Press*, Cambridge, p. 76.

<sup>11</sup> Kilhoffer, Z., Lenaerts, K., Smits, I., Hauben, H., Waeyaert, W., Giacomacatos, E., Lhernould, J.P., Robin-Olivie, S. (2020) *New Study Looks at the Challenges Faced by Platform Workers*. Available [online]: <https://ec.europa.eu/social/main.jsp?catId=89&furtherNews=yes&langId=en&newsId=9582>

<sup>12</sup> Ibid.

Figure 2: Conceptualization of platform work



Source: Kilhoffer, Z., Lenaerts, K., Smits, I., Hauben, H., Waeyaert, W., Giacumacatos, E., Lhernould, J.P., and S. Robin-Olivie (2020) New Study Looks at the Challenges Faced by Platform Workers. Available [online]: <https://ec.europa.eu/social/main.jsp?catId=89&furtherNews=yes&langId=en&newsId=9582>

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THE RESPONSIBILITY FOR HEALTH AND SAFETY FALLS UPON PLATFORM WORKERS THEMSELVES, WHO, NOTABLY, USE THEIR OWN MATERIALS AND EQUIPMENT

the provision of services. Rather than getting employed, the service provider buys the service of connectivity through the platform. Accordingly, primacy should be given to the principle of contractual freedom between the platform worker and operator to decide upon particular conditions of their relationship, assuming that the worker finds the particular conditions acceptable.

In the majority of cases, platforms serve the purpose of more efficiently connecting the service provider and the customer, without imposing requirements on how the service must be provided allowing more leeway for the platform worker to decide on what one finds to be most convenient in terms of working conditions. The responsibility for health and safety falls upon platform

workers themselves, who, notably, use their own materials and equipment<sup>13</sup>.

The fact that individuals themselves decide to engage in platform work suggests that they regard other conditions of platform work (such as remuneration and flexible timetables) as significantly better, and thus more attractive. It may also demonstrate the desire to distance oneself from employment relationships and related restrictions on activities, such as minimum rest, maximum working hours, subordination to the employer, etc.

A standardized service contract is concluded between the platform operator and a person buying platform connectivity services, and the premise is that the signatories fully understand their intent and conditions of their relationship. Given that there is no single dominant platform in the market, individuals can choose companies that best suit their interests. In addition, by being able to conclude contracts freely, companies are encouraged to compete in order to attract service providers. In this case, the sole function of governments is to ensure that individuals willing to pursue platform work are provided with the necessary information to make a decision to engage in platform work instead of prohibiting certain conditions – such as a non-compete clause, service costs, and others – from the contracts.

A lack of legal certainty regarding a possible dispute resolution may precondition the need for more rigid rules on contracts. Given that in times national courts may be overloaded with cases, individuals may feel less assured that they will be able to have their disputes resolved. Therefore, the state must commit itself to ensuring prompt dispute settlement, alternative dispute



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resolution means included. It is inefficient to engage in patchwork regarding particular terms and conditions of contracts. Rather, it is more beneficial to focus on establishing proper dispute resolution means for people to defend their interests on their own terms. For example, Portugal has introduced a new, simplified judicial procedure to target the growth of false self-employment through changes in 2013 and 2017 (Law n.º 63/2013, August 27 and Law n.º 55/2017, July 17). It provides workers with a speedier court decision recognizing the existence of an employment relationship<sup>14</sup>.

#### **EMPLOYEE VERSUS DIGITAL NOMAD**

The EC has raised concerns regarding the employment dimension of ride-sharing, which primarily focuses on the status of

<sup>13</sup> Ibid.

<sup>14</sup> Menéndez, U. (2020) "Recent Developments in Employment Disputes in Portugal", [in]: *Lexology*. Available [online]: <https://www.lexology.com/library/detail.aspx?q=da11d99f-8dc3-4a6f-8262-52affa8986e5>

platform workers<sup>15</sup>. Lately, there has been a rise in criticism of gig-economy companies suggesting that they are misclassifying workers who should, in fact, be considered employees and provided benefits<sup>16</sup>. However, others argue that this precise approach contradicts the nature of platform work and may have detrimental effects<sup>17</sup>.

It is well-established in legal theory that a contractor is someone who is free from the control and direction of the hiring entity in connection with the performance of the work, does work that is outside the usual course of the hiring entity's business, and is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the

<sup>15</sup> Kilhoffer, Z., Lenaerts, K., Smits, I., Hauben, H., Waeyaert, W., Giacumacatos, E., Lhernould, J.P., Robin-Olivie, S. (2020) *New Study Looks at the Challenges Faced by Platform Workers*. Available [online]: <https://ec.europa.eu/social/main.jsp?catId=89&furtherNews=yes&langId=en&newsId=9582>

<sup>16</sup> See, e.g. Ossowski, Y. (2021) "What Does the UK Supreme Court Ruling on Uber Mean for the Gig Economy? Business and Legal Experts React". Available [online]: <https://consumerchoicecenter.org/what-does-the-uk-supreme-court-ruling-on-uber-mean-for-the-gig-economy-business-and-legal-experts-react/>; ILO (2021) "World Employment and Social Outlook 2021: Role of Digital Labor Platforms in Transforming the World of Work"; Aloisi A. (2018) "The Role of European Institutions in Promoting Decent Work in the "Collaborative Economy", [in]: Bruglieri M. (eds) *Multidisciplinary Design of Sharing Services. Research for Development*. Available [online]: [https://doi.org/10.1007/978-3-319-78099-3\\_11](https://doi.org/10.1007/978-3-319-78099-3_11), etc.

<sup>17</sup> See, e.g., Griswold, A. (2019) "How Much It Would Cost Uber and Lyft If Drivers Were Employees", [in]: *Yahoo Finance*. Available [online]: <https://finance.yahoo.com/news/much-cost-uber-lyft-drivers-151818345.html>; Ossowski, Y. (2021) "What Does the UK Supreme Court Ruling on Uber Mean for the Gig Economy? Business and Legal Experts React". Available [online]: <https://consumerchoicecenter.org/what-does-the-uk-supreme-court-ruling-on-uber-mean-for-the-gig-economy-business-and-legal-experts-react/>; Schragger, A. (2020) *Taking the Freedom Out of Freelancing*; Hawkins, A. J. (2020) "An Uber and Lyft Shutdown in California Looks Inevitable - Unless Voters Bail Them Out". Available [online]: <https://www.theverge.com/2020/8/16/21370828/uber-lyft-california-shutdown-drivers-classify-ballot-prop-22>, etc.



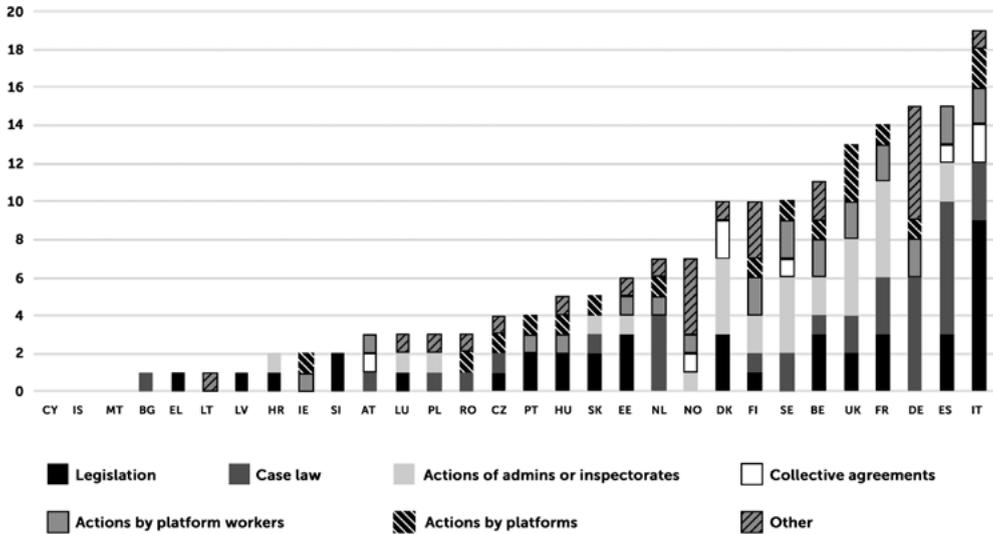
## THE PLURALISTIC BUSINESS LANDSCAPE RARELY FOLLOWS THE SAME OPERATIONAL MODEL

work performed<sup>18</sup>. However, many individuals and industries fail this test if followed formally. In other cases, people who have been contracting their work for decades run the risk of losing the possibility to engage in their form of work. These include insurance brokers, freelance journalists, doctors, lawyers, architects, accountants, and many others, from translators to "owner-operator" truckers. Applying the employee classification test to these workers could cost them their independence, flexibility, and, if employers did not find it worthwhile to hire them, possibly their livelihoods. For the consumers this *means* increased service prices and, possibly, reduced availability of services. It must also be kept in mind that rigid regulations force some service providers into the shadow market, which means fewer guarantees for consumers.

Relying solely on the basic classification criteria proves to be insufficient and rigid when assessing complex and unorthodox

<sup>18</sup> Kilhoffer, Z., Lenaerts, K., Smits, I., Hauben, H., Waeyaert, W., Giacumacatos, E., Lhernould, J.P., Robin-Olivie, S. (2020) *New Study Looks at the Challenges Faced by Platform Workers*. Available [online]: <https://ec.europa.eu/social/main.jsp?catId=89&furtherNews=yes&langId=en&newsId=9582>

Figure 3: The variety of recorded responses of various EU countries



Note: The figure shows the count of significant identified responses. It does not indicate the intensity or effectiveness of the responses.

Source: Kilhoffer, Z., Lenaerts, K., Smits, I., Hauben, H., Waeyaert, W., Giacomacatos, E., Lhernould, J.P., and S. Robin-Olivie (2020) New Study Looks at the Challenges Faced by Platform Workers. Available [online]: <https://ec.europa.eu/social/main.jsp?catId=89&furtherNews=yes&langId=en&newsId=9582>

business models. The pluralistic business landscape rarely follows the same operational model. Instead of establishing an exhaustive list of criteria that would define employment it is expedient to shift the focus onto proving that certain contractors are indeed service providers and not employees. This would entail a different assessment approach. Service providers are primarily characterized by their independence in operations, responsibility and liability. For example, when classifying a particular relationship, one must assess whether the worker is provided with necessary work tools and equipment, whether the worker is financially responsible for both the equipment and services provided, and who bears the costs of providing the

services. One must also determine whether the worker has the exclusive right to decide on providing the services, meaning that the platform worker may accept, reject, or ignore a particular order at one's discretion. In cases of ride-sharing, strict requirements for the vehicles may be considered merely a civil contract requirement and not an implication of employment relations.

The divergence of national decisions demonstrates that no common principles of classifying platform workers may be established, and issues are solved on a case-by-case basis depending on a particular platform and its terms – rather than addressing any common issues related to platform work as such. Governments



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around the world are already pursuing the balance between protecting worker rights and allowing the benefits of flexibility and opportunity that gig-business models propose. For example, France has provided some labor rights for self-employed (digital) platform workers and has added new rights specifically for drivers<sup>19</sup>. At the same time in the UK, the government is exploring worker classifications<sup>20</sup>, and it has been decided that Uber drivers are to be regarded

<sup>19</sup> Gerard, J. F. (2019) "Better Protection for Gig Economy Workers", [in]: *Lexology*. Available [online]: <https://www.lexology.com/library/detail.aspx?g=035bd2b8-4d12-4b80-b516-fc0ae7fb4d3d>

<sup>20</sup> Summers, N. (2019) *UK Government Will Final Settle the Gig Economy 'Worker' Debate*. Available [online]: <https://www.engadget.com/2018/02/07/uk-gig-economy-worker-rights-consultation/>

as workers that should have access to minimum wage and paid holidays<sup>21</sup>.

Several courts in the EU member states have ruled that digital platform workers cannot be qualified as employees, as the former have the ability to independently manage their time and they are free to select their shifts, and refusing a shift did not trigger any sanction from the company<sup>22</sup>. In April 2018, the Labor Court in Turin, Italy, rejected a claim from six platform workers of the food-delivery company, *Foodora*, seeking to be reclassified as employees<sup>23</sup>. In reaching his decision, the judge relied extensively on the fact that these workers were free to decide when to work and to disregard previously agreed shifts, returning a verdict that the six workers were self-employed.

**DISRUPTING THE DISRUPTORS  
OF TRADITIONAL BUSINESSES WILL  
AFFECT WORKERS AND CONSUMERS**

With regards to classification of the relationship between the platform worker and operator it must be noted that a particular relationship depends on the entirety of characteristics that cannot be established in advance.

The variety of state responses to platform work suggests that any efforts to harmonize principles that separate employees from contractors are most likely to fail and will result in a patchwork of different rules for different jobs [See: Figure 3]. Therefore, private parties should be allowed to

<sup>21</sup> Butler, S. (2018) "Uber Loses Appeal over Driver-Employment Rights", [in]: *The Guardian*. Available [online]: <https://www.theguardian.com/technology/2018/dec/19/uber-loses-appeal-over-driver-employment-rights>

<sup>22</sup> De Stefano, V. (2020) "EU Court of Justice's Decision on Employment Status Does Not Leave Platforms Off the Hook", [in]: *Regulating for Globalization*, Wolters Kluwer.

<sup>23</sup> Ibid.



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individually decide on the nature of their relationship. Establishing a rigid scheme of separating employment and provision of services deprives individuals from independently deciding on their preferred work mode.

The costs and implications of employee reclassification (i.e. employing a service provider under a labor contract instead of an agreement on provision of services)

suggest that intervening into the market with rigid requirements and restrictions may not bring desired results. Equity research analysts at Barclays have estimated that the reclassification of workers could cost Uber an additional USD 3,625 per driver in California. This would increase the company's annual operating loss by more than USD 500 million<sup>24</sup>. Any new regulations may bring additional operational costs and result in a decreased amount of contracts, loss of flexibility for workers, and increased prices or reduced service provisions due to all of the factors that make platform work appealing to both platform workers and consumers. In addition, new restrictions on flexibility may force platform workers into the shadow market; accordingly any attempts to increase their social protection would be fruitless. However, there are also cases where courts decided that selfemployed drivers to be deemed as traditional workers. For example, in 2021, the UK Supreme Court ruled in favor of thirty-five Uber drivers, who were considered selfemployed, to be classified as workers<sup>25</sup>. Yaël Ossowski, deputy director of the global consumer advocacy group Consumer Choice Center, stated that the "ruling sends the signal that rideshare companies are not welcome in the UK" and that this is "not what consumers want". He continued by emphasizing the importance of flexibility in the sector as it has propelled the growth of companies like Uber, Lyft, and others and it has been beneficial for both drivers who want independence and consumers who want convenience and competitive

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<sup>24</sup> Griswold, A. (2019) "How Much It Would Cost Uber and Lyft If Drivers Were Employees", [in]: *Yahoo Finance*. Available [online]: <https://finance.yahoo.com/news/much-cost-uber-lyft-drivers-151818345.html>

<sup>25</sup> Ossowski, Y. (2021) "What Does the UK Supreme Court Ruling on Uber Mean for the Gig Economy? Business and Legal Experts React". Available [online]: <https://consumerchoicecenter.org/what-does-the-uk-supreme-court-ruling-on-uber-mean-for-the-gig-economy-business-and-legal-experts-react>



## NEW RESTRICTIONS ON FLEXIBILITY MAY FORCE PLATFORM WORKERS INTO THE SHADOW MARKET

prices<sup>26</sup>. However, obligatory reclassification of workers may not only drive the prices up, but also could even result in major players exiting the market and thus causing job losses<sup>27</sup> [See: Box 1].

### SOFT-LAW MEASURES INSTEAD OF INCREASED RIGIDITY

Decision-making is most effective when left at the lowest chain possible, without intervention into market mechanisms. An example could be the Code of Conduct adopted by several German platforms, which is meant to discipline the minimum levels of payment by the platforms, increase the transparency of criteria applied in the operation of rating systems, and ensure the legitimacy of content exchanged online. The document lists some best practices for governing work in these new digitally mediated non-standard work environments and offers a catalog of behaviors to be avoided. Another example may be found

<sup>26</sup> Ibid.

<sup>27</sup> Browne, R. (2021) *Uber Employment Rights Setback Is a 'Gut Punch' to Its Prospects in the UK*. Available [online]: <https://www.cnbc.com/2021/03/18/uber-is-reclassifying-uk-drivers-as-workers-heres-what-happens-next.html>

in France where a law introduced the possibility for platform operators to draw up a social responsibility charter with a certain number of guarantees for workers. The administration may also approve the platform operator's charter, provided that workers using the platform have been consulted in advance. The idea is that platform operators can make commitments to improve working conditions, with the understanding that their compliance with these commitments cannot be used to presume an employment relationship<sup>28</sup>.

Instead of adopting rigid requirements and limits, governments should opt for defining social responsibility by default, which could promote transparency of internal processes, especially in case of sanctions such as downgrading or deactivation of workers' accounts<sup>29</sup>. In addition, greater information and counseling, rather than intervention, would enable individuals to make independent and informed decisions when entering contracts with online platforms. In this sense greater personal responsibility should be fostered instead of deciding for the worker in advance.

### ARE THE LABOR REGULATIONS PREPARED?

Forcing former service providers and atypical workers into formal and traditional employment relations poses another conundrum, given that the employment

<sup>28</sup> Lane, M. (2020) "Regulating Platform Work in the Digital Age", [in]: *Going Digital Toolkit Policy Note*, No. 1, p. 19. Available [online]: <https://goingdigital.oecd.org/toolkitnotes/regulating-platform-work-in-the-digital-age.pdf>

<sup>29</sup> De Stefano, V. (2020) "EU Court of Justice's Decision on Employment Status Does Not Leave Platforms Off the Hook", [in]: *Regulating for Globalization*, Wolters Kluwer.; Aloisi A. (2018) "The Role of European Institutions in Promoting Decent Work in the 'Collaborative Economy'", [in]: Bruglieri M. (eds) *Multidisciplinary Design of Sharing Services. Research for Development*. Available [online]: [https://doi.org/10.1007/978-3-319-78099-3\\_11](https://doi.org/10.1007/978-3-319-78099-3_11)

### LESSONS TO BE LEARNED FROM FREELANCER RE-CLASSIFICATION: REGRETS MAY SOON FOLLOW<sup>30</sup>

California's Assembly Bill 5 (AB5) aims to make contract workers – such as Lyft, Uber drivers – regular employees. Regardless of the assumed theoretical benefits, soon after introducing AB5, ride-sharing service platforms refused the application of said laws and announced that they will have to entirely shut down operations in California<sup>31</sup>.

AB5 should bring higher pay and benefits to retained workers, but it will also increase costs, which means higher prices for customers. By requiring ride-sharing apps (such as Uber and Lyft) to reclassify their drivers as full employees, the law

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TECHNOLOGY IS TRANSFORMING THE LABOR MARKET, BUT THIS DEVELOPMENT CALLS FOR BETTER REGULATION OF GIG WORK, NOT EFFECTIVELY ELIMINATING IT

framework may be ill-prepared to handle unorthodox work through platforms. It must be kept in mind that platform workers may not wish to engage in traditional employment or are unable to do so due to the peculiarities of their status. The latter may occur in instances where the person does not have a work permit due to immigration status. Furthermore, the majority of traditional employment contracts do not meet the need for flexibility that is provided by platform work.

In this instance an alternative could be zero-hour contracts that are the closest alternative to platform work and could ensure the flexibility needed. However, such contracts are prohibited in the majority of EU states, and the EU has itself discouraged them. When considering policy initiatives in terms of platform work, the use and benefits of zero-hour contracts should also be revisited. Work under a zero-hour contract provides the possibility for the worker to determine the preferable amount of work, while being guaranteed at least some income in cases where the worker does not exceed the set minimal amount of work hours. Such contracts provide the possibility to better accommodate the worker's personal needs, it also allows working for multiple employers as it not only ensures flexibility in the work regime, but also ensures a sanction-free

<sup>30</sup> Schragger, A. (2020) *Taking the Freedom Out of Freelancing*.

<sup>31</sup> Hawkins, A. J.v (2020) *An Uber and Lyft Shutdown in California Looks Inevitable — Unless Voters Bail Them Out*. Available [online]: <https://www.theverge.com/2020/8/16/21370828/uber-lyft-california-shutdown-drivers-classify-ballot-prop-22>

mandated that the companies provide healthcare and benefits to all the drivers in their system and pay additional taxes.

According to Allison Schrager, a senior fellow at the Manhattan Institute, if in an industrial economy dependence on a single employer made sense, in a knowledge-oriented economy, where technology makes work easier to find and on-the-job skills are more commonly transferable across companies than in the past, independence can suit both employers and employees. As Schrager argues, technology is transforming the labor market, but this development calls for better regulation of gig work, not effectively eliminating it. As Brad Polubo argues, legislators did not realize the drastic implications their legislation would have; they were simply hoping to improve

working conditions in the gig economy. The unintended consequences may end up destroying it instead<sup>32</sup>.

Even "granting that the law was a well-intended effort to ensure workers are provided the benefits and protections of part- and full-time employment, the law, as conceived, written and implemented wreaked havoc across California"<sup>33</sup>. Though the law was clearly aimed at companies like Uber and Lyft, workers who choose to support themselves as independent contractors found themselves out of work. AB 5 did not work as predicted. It led mostly to firing instead of full-time hires. California companies responded to the law not by turning contractors into employees, but by getting rid of them<sup>32</sup>.

refusal to take upon an employer's work task.

## CONCLUSIONS

For the past decade, platform work has been spreading rapidly, yet its relevance became evident during the COVID-19 pandemic. It serves as a key lifeline for restaurants and stores, which gained access to their clients whilst being closed down, as it also provided supplementary (or at least minimal)

<sup>32</sup> Polumbo, R. (2020) *Why Uber and Lyft Are about to Shut Down All Operations in California*. Available [online]: <https://fee.org/articles/why-uber-and-lyft-are-about-to-shut-down-all-operations-in-california/>

<sup>33</sup> Editorial Board (2020) "Proposition 22, a Strong Rebuttal to Assembly Bill 5, Withstands Legal Challenge", [in]: *The Willits News*.

<sup>34</sup> Bader, H. (2020) *Why Is Joe Biden Supporting California's Job-Killing Anti-Gig Work Law?*. Available [online]: <https://fee.org/articles/why-is-joe-biden-supporting-californias-job-killing-anti-gig-work-law/>



GREATER  
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INSTEAD  
OF DECIDING  
FOR THE WORKER  
IN ADVANCE



THE MAJORITY  
OF TRADITIONAL  
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CONTRACTS  
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income for those who lost their jobs or had to go into idle time. Nevertheless, along with the growth of platform work's popularity concerns about the protection of workers grew too. Centralized rigid regulations of platform workers and reclassification would be a step backwards and would deny the very essence of working through online platforms as it would deprive individuals of their ability to decide on their preferred work mode and conditions. Imposing labor standards to platform work could possibly reduce the supply of services and increase their cost for the consumers, which may lead to many platform workers losing their income. This would result in decreased possibilities to get employed in this sector, which is particularly relevant for those suffering the consequences of nation-wide lockdowns and unemployment due to the pandemic. The most efficient and sustainable strategy for governments is to ensure

an enabling environment and foster competition between platform operators, to ensure more availability of information to the society and to provide an efficient legal infrastructure for dispute resolution.



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