Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Peer Country Comments Paper – Italy

A fascinating chapter in the "gig" saga. How to deliver decent work to platform workers in Italy?

Peer Review on "Platform Work"

Germany, 12-14 October 2020

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1 Introduction

This paper has been prepared for the Peer Review on "Platform Work" within the framework of the Mutual Learning Programme. It provides a comparative assessment of the policy example of the host country and the situation in Italy. For information on the host country policy example, please refer to the Host Country Discussion Paper.

2 Situation in Italy

Five years have passed since the advent of the first companies operating in the "platform economy" in Italy. If at the initial stages platform work was branded as a ground-breaking model capable of unleashing the potential of the digital age, new developments have situated this novel manifestation in the larger trend of causalisation of work and erosion of protection, marking a new episode in the old saga of precarious employment.

This emerging phenomenon has also been identified as a stress test for social institutions amid profound societal transformations accelerated by far-reaching technological, organisational and demographic trends. In 2019, the Italian Parliament passed one of the first laws in the EU regulating terms and conditions for 'workers engaged through digital platforms'. Some pioneering collective agreements have been signed, and social partners are building alliances with self-organised group. Also, in 2020, Italy's Supreme Court found in favour of a group of riders litigating against their platform. This intense activism, both from above and below, makes the Italian response a fascinating one.

Although its presence in the labour market is notable, quantifying platform work faces challenges associated with limited access to data, the prevalence of informality, changing taxonomies and administrative classifications. According to the Italian Social Security Institute (INPS), in 2017 there were 753,248 platform workers. This number is the result of a study conducted by the De Benedetti Foundation[1], showing that 150,000 platform workers depend entirely on the income derived from these activities. Researchers found that the number of workers has increased significantly between 2011 and 2017[2]. An EU-wide study, whose results are contentious as the estimates are much higher than what other studies have found, reports that 22% of Italy's working age population (16-70) has provided paid services through platforms[3]. Yet, only half of them engaged through platforms frequently. Regarding growth prospects[4], two surveys conducted consecutively in 2017 and 2018 show a slight decline in the share of workers who have engaged in platform work. Nonetheless, it is quite clear that promises and perils of platform work far outweigh its relevance as a current source of employment.

Research has dispelled the widely held myth that platform workers are young students looking for gigs to top up their earnings or workers supplementing their incomes. Despite the reluctance of many riders to be mapped due to their vulnerable status, field interviews suggest that more than 65% of the interviewees are migrants, from African (40%) and Asian (15%) regions, working for more than 30 hours per week[5].

3 National policies and measures

In Italy, most attention has focused on one of the many facets of platform work, namely work on demand mediated by digital platforms in last-mile logistics services. In contrast, very little is known about workers who utilise digital platforms to complete non-manual

[1] INPS (2018), Boeri et al. (2018). See also Borelli (2019) 63-64, 71-72.
[2] This trend is also confirmed by data on total turnover, which rose from a few thousand euros in 2011 to almost 50 million euros per year in 2017. See Giorgiantonio and Rizzica (2018).
[3] Huws et al. (2017). However, the definition of platform workers used in the survey is very broad as it includes workers who may have provided services only once in the past.
[4] Pesole et al. (2018) 12; Urzì Brancati et al. (2020) 14-15. See also INAPP (2018).
[5] Natale (2019).

and cognitive tasks. This narrow approach is reflected in the regulatory measures adopted and in most of social partners' initiatives. The rider-centric logic might end up exacerbating the social and political invisibility of several groups of workers, especially those in household services, health and caring sector or those in the hotel, retail and catering ('horeca') sector, who represent the largest share of platform workers.

Platform workers are predominantly hired as self-employed persons and therefore excluded from the scope of employment law and not entitled to protections such as sick or holiday leave, minimum rates of pay, working time regulation and job security against wrongful termination. In principle, self-employed workers enjoy freedom of association and the right to collective bargaining as well as the right to strike. However, they face practical difficulties in exercising collective rights due to the fragmentation of the workforce, the high turn-over and the unwillingness of platforms to engage in collective processes. In an earlier phase, many platform workers were classified as *"collaboratori"* (quasi-subordinate workers, a relatively protected area of self-employment). Over the last two years, casual self-employment contracts have become prevalent[6].

Undeniably, there is a strong discrepancy between the contractual scheme adopted and the way in which the performance is executed. Indeed, platforms exercise managerial prerogatives that are comparable to those conferred on 'traditional' employers while workers cannot control their own work processes. They are exposed to potential work intensification and unsecure working conditions, receive low and unstable income – computed on a pay-per-task basis – and cannot determine how the chores are allocated, because the internal rating-and-ranking system is not disclosed in a transparent way[7].

3.1 Rider-centric policies to update the binary divide

In Italy, there used to be a rigid binary divide between employment and self-employment determined by an 'all-or-nothing' application of labour protection. However, in the last decades the attribution of a set of labour and social security entitlements to some self-employed workers has resulted in the unsought creation of an intermediate category of *"collaboratori"*, thus relaxing the original dichotomy.

To counter the widespread risk of misclassification, the Italian legislator decided to discourage bogus self-employment by introducing more stringent requirements as a prevention measure. In 2015, the coverage of employment law was extended to those self-employed workers who are dependent on the client for the organisation of their performances, unless collective agreements specifically establish otherwise[8]. The reform had an anti-fraud logic. According to article 2 of Legislative Decree No. 81/2015, employment and labour legislation applies to 'work organised by the other party' (*"etero-organizzazione"* in Italian), a subset of personal work arrangements, whereby the principal organises several performance-related aspects, including among others location and time allocation. The provision made it easier to identify the organisational power exercised by a principal as a defining element for the application of employment regulation. Although the law was not directly intended to address platform workers, in a pragmatic manner it offered a tangible tool to deliver decent working conditions to barely autonomous self-employed workers in the so-called "grey area"[9]. Its significant impact has been confirmed by a judgement of the Supreme Court in 2020 (see below).

In 2018, after making a public commitment to combat precariousness for the younger generations, the government promoted consultations with digital platforms, grassroots movements and trade unions. The Ministry of Labour put forward a legislative proposal aiming to extend the notion of subordination to cover platform workers *en bloc*. This

[6] In a limited number of cases they are so-called VAT workers, i.e. self-employed workers paying full social contributions on their own. See Iudicone and Faioli (2019). For an overview, see Cherry and Aloisi (2016).
[7] De Stefano (2020).
[8] Article 2 of the Legislative Decree No. 81 of 2015. Parallel to this initiative, in 2017 specific social protections were granted to purely independent contractors, see Del Conte and Gramano (2018)
[9] Perulli (2020), Magnani (2020), Carinci (2020), Santoro Passarelli (2020), Aloisi (2020), Martelloni (2020).

arguably radical and controversial proposal was later amended but never implemented due to strong opposition among stakeholders. A new law was approved in November 2019 addressing platform workers explicitly[10]. It includes two main regimes. The first one deals with workers whose performance is organised by the principal 'also by means of digital platforms', while the second defines a set of labour protection for 'self-employed couriers delivering goods by means of two-wheelers vehicles in urban areas'.

The first section amended the rule introduced in 2015 (see above). Today, the scope includes all workers whose personal performance is organised by the client also through a digital platform. Although the amendment is marginal, it conveys an explicit message to all parties involved. The significance of the new text is mainly practical. In short, it has a tangible remedial effect for dependent self-employed workers who are not truly autonomous and are unreasonably left outside the protective ambit of protection.

The second section covers only self-employed riders working for platforms ('digital software used by the client which are instrumental in delivering goods, setting the fee and determining the conditions of the performance execution'). It lays down a mandatory written form for contracts. The new law also aims at enabling collective autonomy. Social partners are expected to reach a collective agreement establishing remuneration levels within one year of the date of entry into force (November 2020). Should the social partners be unable to define collectively-negotiated schemes, wages shall be defined in accordance with the minimum standard set in national collective bargaining agreements for equivalent sectors. In addition, extra payments for work performed by riders over nights, public holidays or in unfavourable weather conditions, and mandatory insurance coverage against work accidents and occupational diseases are established. The law includes provisions regarding data protection and anti-discrimination[11]. In September 2020, the business association *Assodelivery* and a small trade union signed a contract aimed at avoiding the application of statutory provisions set in the 2015/2019 reforms. The agreement includes health and safety protections, training opportunities and collective rights, but specifies that riders are self-employed workers. It remains to be seen how major trade unions will react to this development.

The profiles of social security and tax compliance are major concerns for regulators. Before the 2019 reform, only some platforms used to provide private insurance schemes covering occupational hazards. Typically classified as self-employed persons, platform workers are entitled to only a minimum set of social security benefits. Very often, they do not meet the minimum criteria for the application of social security schemes based on contribution due to the intermittent and low-income nature of their engagements[12]. Therefore, the adequacy of these scheme is weakened by the low level of contributions. More encompassing and elastic solutions based on transferability and inter-operability of acquired social rights have been advocated for by commentators. At the same time, effective reporting systems could increase traceability thus encouraging compliance.

3.2 The Supreme Court ruling: delivering employment rights

In 2020 the Supreme Court (*Corte di Cassazione*) applied employment protection to a group of food-delivery couriers who initiated a lawsuit when their contracts were not renewed[13], allegedly for their involvement in one of the first flash mobs organised against a shift in the payment system from an hourly-based to a piece rate model. In first instance, the Tribunal of Turin rejected the workers' claims because the riders were free to decide if and when they have to execute the tasks allocated, thus relying on a very narrow understanding of the notion of subordination (interpreted as 'hetero-

[10] Law No. 128/2019 amending Decree 101/2019 on urgent measures for the protection of work.
[11] At the local level, based upon consultation with stakeholders, the Lazio region approved specific rules on health and safety for riders, irrespective of their employment status Legge Regionale 12 April 2019, *"Disposizioni per la tutela e la sicurezza dei lavoratori digitali"*. Similar legislative proposals were presented in Piedmont, Lombardy and Campania.
[12] In the case of occasional self-employed no contribution is due up to € 5,000 per year.
[13] Cassazione, Sez. Lavoro, n° 1663/2020, 24/01/2020 (applying the 2015 legislation examined above).

direction', i.e. subjection to the employer's command-and-control power). Indeed, alternative case-law acknowledges that workers could have a considerable amount of freedom to organise their work, yet they could be still classified as employees, if other factors leans towards the existence of an employment relationship (e.g. binding instructions, fixed remuneration, etc.). What is worse, the Tribunal did not consider the 2015 legislation as applicable to the case. In second instance, the Court of Appeal agreed that that there was no subordination, on the basis of such strict understanding of the concept, but did not uphold the judgment. Conversely, the Court of Appeal applied the 2015 provisions that extend employment protection to (nominally independent) self-employed workers whose personal activity is unilaterally organised by the principal. However, the judges decided to extend only a portion of protection, i.e. wages and occupational health and safety-related rules. Last January, the Supreme Court extended the application of the 2015 provisions in ruling that, regardless of the legal status, workers who are organised by the other party are entitled to the same employment protection, originally reserved only to employees. It can be assumed that doctrinal contribution and the recent legislative intervention have indirectly influenced the ruling.

Although employment status is pivotal when it comes to defining the scope of workers' protection, we are not witnessing a flood of litigation at the domestic level. This is probably because workers are more interested in wage increases and transparency of the metrics led by artificial intelligence that are used to assign tasks. One of the major Italian trade unions took court action against the algorithm used by a food-delivery company, alleging discriminatory and retaliatory practices. The COVID-19 pandemic has further exacerbated the precarious situation of workers considered essential but left poorly protected. Two court orders forced some platforms to provide their couriers with personal protective equipment, referring to the reasoning developed in the Supreme Court ruling. The Milan Tribunal placed an online food delivery company under receivership over alleged gangmastering offences. Following these incidents, law enforcement put major companies under scrutiny. In an unprecedented way, *Carabinieri* circulated a questionnaire among workers to map key aspects of their engagement.

3.3 Sectoral and local collective bargaining agreements

On several occasions, workers' collectives have sparked outrage over debatable practices to increase public awareness and put pressure on social partners and legislative bodies. Since 2017, the new Italian national collective bargaining agreement (NCBA) for the transport and logistics sector signed by the three main trade unions (Filt Cgil, Fit Cisl, and Uiltrasporti) has included concrete provisions for the rider job position. By lifting the ban on casual work, it offers a balanced compromise between security and flexibility. A specific protocol was signed in 2018 qualifying riders as subordinate employees without prejudice to any subsequent agreements. In Tuscany, last year trade unions negotiated an agreement with a small delivery company based on the national NCBA for the freight, logistics and shipping sector. The model might lead the way, but major platforms do not seem willing to follow the example, nor are they signatory parties of the NCBA. At the local level, the city of Bologna encouraged the adoption of a 'Charter of fundamental digital workers' rights within an urban space', signed in 2018 by the city's Mayor, the Riders Union (a local worker-led initiative), the representatives of the local federations of main national trade unions, and by the managers of two food-delivery companies. The Charter sets out a fixed hourly rate in line with the minimum wage in the respective industry, compensation for overtime, public holidays, adverse weather conditions and bicycle maintenance, insurance to cover occupational accidents and sickness. It also guarantees freedom of association and the right to strike.

4 Considerations for future policies and initiatives

The platform work ecosystem is very diverse, which makes it challenging to regulate it. An umbrella definition of platform work would be convenient, as legislative responses need to be general enough to apprehend many situations. At the same time, the lack of

a uniform, or at least universally accepted, definition is one of the key drawbacks for policymakers. In addition, the difficulty in examining dimensions and dynamics of this evolving phenomenon makes any policy intervention an unpredictable challenge.

However, regulators need to resist the idea of a unique and homogenous form of work deserving one-size-fits-all interventions. From a policy perspective, excessive precision might result in rapid obsolescence. Thus, it would be short-sighted not to include platform workers in inclusive measures aimed at securing decent work for all forms of non-standard work. Moreover, the fast-changing nature of the phenomenon, alongside the cross-border aspects, suggests that a coordinated supranational response is the preferable option when it comes to averting the risk of regulatory arbitrage in the EU.

Today many workers face the consequences of the inefficacy of labour regulation resulting from a combination of deliberate attempts of sidestepping employment legislation and the narrow construction of certain areas of law. Further emphasis must be put on enhancing a broader construction of employment protection, let alone the need to strengthen enforcement of widely recognized rules and compliance with basic provisions. The main task is to include platform workers into existing legal frameworks to avoid the risk that they are considered, by default, to fall in a normative vacuum.

In Italy, concrete responses have been provided through different tools, including legislation, case law and collective autonomy. The 2015 provisions, as updated in 2019, expanded the scope of employment protection to all technically dependent self-employed workers, without amending the relevant article of the Italian Civil Code. Collective agreements may lead to opt-out from this regime. A more direct reliance on the 'business integration' factor could represent a viable solution also for those jurisdictions which have already developed a familiarity with intermediate categories (e.g. 'employee-like person' in Germany). Having defined a general mandatory framework, the second section of the 2019 law encourages collective negotiation among social partners and requires a mandatory occupational insurance scheme. Collective agreements can indeed introduce adaptable measures to offset imbalances resulting from platformisation of work in a way that is faster and more accurate than through legislative reforms and individual litigation (which is costly and time-consuming, while platforms might tweak terms and conditions to mitigate legal risks). They can also be essential when it comes to increasing wages, reducing pervasive surveillance, improving working conditions, contesting ratings, cancellations and deactivations. Such initiatives could also introduce rights to disconnection and to training and re-skilling. At the same time, the General Data Protection Regulation could be relied on to improve transparency and working conditions, which is one of the most pressing concern raised by workers. In this regard, the transposition of the Directive on transparent and predictable working conditions could mark the start of an adaptation of pre-existing legal tools to new needs, ensuring predictability and limiting use and duration of casual contracts.

Enforcement of taxation rules is difficult, and many platform workers are unaware of the applicable procedures. Earnings often remain unreported. However, platform work also offers the opportunity to combat informal and undeclared work. By encouraging a sincere cooperation between platforms, workers and tax authorities, digital tools and data can be used to facilitate registration and collection procedures, and to avoid errors. New solutions are needed to enhance formalisation and ease administrative complexity.

5 Questions

- Can the 2015/2019 Italian model be translated into the German legal order, for instance by restructuring the employee-like category?
- Is the German system of collective bargaining suitable and adaptable enough to include platform workers in existing agreements?
- Are there alternative ways to increase wages, promote transparency and predictability and ensure better working conditions for platform workers?

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Annex 1 Summary table

The main points covered by the paper are summarised below.

Situation in the peer country

- Recent developments have situated platform work in the larger and lasting trend of causalisation of work and erosion of protection.
- This emerging phenomenon has been identified as a further stress test for social institutions amid profound societal transformations accelerated by far-reaching technological, organisational and demographical trends.
- An intense vitality, in terms of legislative reforms, collective action and litigation, makes the Italian chapter a fascinating one on the European landscape.
- The presence of platform work in the labour market is notable. According to the Italian Social Security Institute (INPS), in 2017 there were 753,248 platform workers.
- Research has dispelled the widely held myth that platform workers are young students looking for gigs to top up their earnings or workers supplementing their incomes.

National policies and measures

- Attention has focused primarily on work on demand mediated by digital platforms in last-mile logistics services. Very little is known about workers who utilise digital platforms to complete non-manual tasks.
- Platform workers are predominantly engaged as self-employed persons and excluded from the scope of employment law and social security.
- A new law was approved in 2019 addressing platform workers explicitly. It provides employment protection to workers whose personal performance is organised by the principal 'also by means of digital platforms' and defines a set of labour protection for 'self-employed couriers delivering goods'.
- By relying on the 2015 legislation, in 2020 the Supreme Court (*Corte di Cassazione*) applied employment protection to a group of food-delivery couriers.
- Some pioneering national and local collective agreements have been signed. While the NCBA for the logistics sector regulates the job position of riders, local agreements lay down protection regardless of the employment status.

Considerations for future policies and initiatives

- Numbers on platform work remain uncertain. Moreover, the lack of a uniform definition of this phenomenon is one of the key drawbacks for policymakers.
- Regulators need to resist the idea of a unique and homogenous form of work deserving one-size-fits-all interventions. From a policy perspective, this may prove to be ineffective, if not even detrimental.
- Thanks to the 2015 reform and to the 2019 law, organisational dependency has become a key criterion ensuring the extension of employment protection to a group of self-employed workers including those in the platform economy.
- Collective agreements can introduce adaptable measures to offset imbalances resulting from platformisation of work in a way that is faster and more accurate than through legislative reforms and individual litigation.
- By encouraging cooperation between platforms, workers and tax authorities, digital tools should be used for facilitating registration and collection procedures.

Questions

- Can the 2015/2019 Italian model be translated into the German legal order, for instance by restructuring the employee-like category?
- Is the German system of collective bargaining suitable and adaptable enough to include platform workers in existing agreements?
- Are there alternative ways to increase wages, promote transparency and predictability and ensure better working conditions for platform workers?

Annex 2 Example of relevant practices

Name of the practices:	Article 2 of the Legislative Decree No. 81 of 2015 as amended by Law No. 128/2019 amending Decree 101/2019 on urgent measures for the protection of work
Year of implementation:	2015 and 2019
Coordinating authority:	Government and Parliament
Objectives:	Applying employment regulation to all personal work arrangements whereby the performance is organised by the principal
Main activities:	Adoption and adaption of new policy measures
Results so far:	The personal scope of labour legislation has been extended. Protection shall apply to all self-employed workers who are dependent on the principal for the organisation of their work performance. Since 2019, the same rule applies when the client's unilateral interference is exercised through a digital platform. This reform helps easing the process for the attribution of employment rights. However, it cannot be considered as the introduction of a broader concept of employee. All workers whose performance is organised by the principal are substantially protected as subordinate employees even if they cannot qualify as such under the relevant legal definition. The criterion of organisational dependence determines the application of employment regulation.

Name of the practices:	National and local collective bargaining agreement (NCBA) for logistics
Year of implementation:	2017 and 2018
Coordinating authority:	Social partners
Objectives:	Including riders in the personal ambit of application of the sectorial NCBA
Main activities:	Renewal of the sectorial NCBA
Results so far:	The NCBA now includes the job position of 'new types of workers executing freight delivery by means of bikes, motorbikes and boats'. They are classified as employees and entitled to the relevant protection. The main provisions include: a minimum hourly gross pay, maximum working time, measures aimed to increase predictability of slots and to ban the algorithmically driven allocation of tasks, the obligation upon companies to provide personal protection equipment and occupational insurance. Note that in Italy NCBAs have *de facto* binding legal force only for firms affiliated with the signatory employers' organisations. Major platform companies are not member of traditional employers' organisations[14].

[14] Veronese et al. (2020), Aloisi (2019), De Stefano and Aloisi (2018)


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