

EXECUTIVE
SUMMARY

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APP WORKERS UNITED

The struggle for rights in the gig economy



GUE/NGL

THE
LEFT

IN THE
EUROPEAN
PARLIAMENT

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INTRODUCTION

At the turn of the 2010s, a new wave of workers described as “atypical” began to appear, coinciding with the arrival of platform companies. These companies have taken the logic of standardisation and outsourcing of tasks to the extreme. Through them, work becomes very ambiguous, unstable and uncertain, much like that of temporary workers or subcontractors in the 1980s and 1990s. The platforms pose as mere technical or commercial intermediaries and thus free themselves from the obligations linked to their status as employers, even though most of them control the content, conditions and access to work.

In a communication dated 14 January 2020, the European Commission announced it would be holding a “platform work summit” during the third quarter of 2020 (postponed until early 2021 due to the health crisis). Germany, which took over the EU Council Presidency in July 2020 announced its intention to contribute towards the drafting of a European legal framework on platform work. From this perspective, Leila Chaibi (La France Insoumise) produced a proposal for a directive, the aim of which is for on-demand labour platform workers to be considered employees in all Member States. Events towards the end of 2020, however, were not heading in this direction; on 3 November, following the American elections, Proposition 22, an Uber offensive in the face of California’s pro-salaried labour law AB5, reaffirmed the model of a “digital independent contractor”; on 1 December in France, the Frouin report, the premise for a forthcoming ordinance, put forward the notion of guaranteeing platform workers’ rights via a third party (wage portage or employment cooperative). Amid this climate of legalising outlawed platform practices and the **urgency of the battle over platform workers’ future status**, this study highlights **the existing action being taken at different levels (local, national, European and international) to support the legal and political struggles of platform workers**. Who will act as interim relays, those involved in the struggle over the long term? And on a more fundamental level, isn’t the model of digitalising/platformising the economy serving to accentuate the neoliberal trends of outsourcing and exploiting labour that we are trying to fight against?

This study focuses primarily on on-demand workers in so-called “lean” platforms such as Uber (2009) or Deliveroo (2013). It analyses the current situation in Europe and provides concrete examples of the various strategies used to **combat the social model imposed on platform workers and the business model** of these new central players in the global economy. It shows how, in spite of real organisational

difficulties, platform workers and their representatives are building a **new laboratory of social protest** mainly on the basis of two complementary strategies: collective action and legal action. Workers' collectives are adapting their list of actions in line with their precarious status (and the different levels of action) and trade unions are putting together legal cases to have workers reclassified as salaried employees.

PART A:

CONTEXT AND CHALLENGES OF PLATFORM WORK

A SPECIFIC FORM OF EXPLOITATION

Platform workers are subject to specific exploitation based on three key elements:

- **Legal uncertainties and insecurity**

Platform workers are today operating in a grey area between self-employment and salaried work. This uncertainty about their status is linked to the nature of their work but also, and most importantly, to the platforms' deliberate attempts to evade the obligations incumbent on employers. This deprives the majority of platform workers of the rights, protections and guarantees normally linked to employee status. More often than not, they are "bogus self-employed", which applies to under-employment (outside the employment contract), or hired under third status (between self-employed and employee), which is characteristic of sub-employment (subject to a degraded employment contract).

- **The extreme degradation of working conditions**

Platform work is poorly paid, with working hours that are too long and unstable, weak or non-existent social protection, largely fictitious "autonomy" and individualisation/fragmentation of labour relations that undermines the possibilities for organisation, representation and collective mobilisation. These characteristics are not unique to platform work, but their cumulative and extreme nature is specific to it. We define it as "naked labour".

- **Submitting to new forms of “digital” dependence and exploitation**

Platform work is also largely digitised. As such, it relies on complex forms of algorithmic management that reinforce the asymmetry of power between platforms and their workers. It is also based on the large-scale collection and exploitation of data by the platforms, which are the only ones able to decide on and benefit from their use.

SOCIAL IRRESPONSIBILITY AND CONCENTRATION OF POWER

The disruption of entire sectors risks seeing the appearance of dumping (fiscal, social, regulatory) in the sectors platformised through this **downwards convergence**. Platforms are **irresponsible towards workers but also towards the communities in which they operate**. For example, Uber is undermining the traditional taxi sector, while at the same time creating additional vehicle congestion in major cities. More generally, with the development of the platforms, the social institutions of labour law and social security in all Member States are being put at risk.

- By accumulating and exploiting as much data as possible, the platforms are seeking to become **sectoral monopolies in digital intelligence**. To do so, they **privately appropriate** individual and collective data generated by their various users, which gives them **increasing economic and political power**, including vis-à-vis States.

PART B:

STRATEGIES TO TACKLE NAKED LABOUR

This study is a response to the question: how can we tackle platform labour that has been defined as “naked”? Platform workers and their representatives are creating a new laboratory of social protest on the basis of two strategies: collective action and legal action, which can be complementary.

1ST STRATEGY: TARGETING PLATFORMS: BUILDING A “GLOCAL” COLLECTIVE ACTOR

- **Forming new collectives**

In spite of real organisational difficulties (linked to fragmentation, turnover, and a heterogeneous population), platform workers start by **organising themselves into collectives** through social networks and mobilisation. Then they organise, with or alongside trade unions, depending on the country. While minority and internationalist unions are focused on direct action with collectives, most traditional trade union organisations are starting to take initiatives by including platform workers in their section for precarious workers, or the self-employed, or by opening a specific category for “digital workers”.

- **Mobilising on the internet or in the street**

Platform workers are resorting to **direct action and switch-off strikes** with demands for concrete improvements in terms of pay or work organisation. Between 2016 and 2017, following the impetus from London, Europe saw a wave of some 40 mobilisations in 15 countries in the bicycle meal delivery sector. **The trigger for the strikes was the drop in “rates”**. The collectives also have some new weapons in their arsenal, such as media coverage, to push the platforms to negotiate. They have also been developing new alliances with a wider front of precarious workers, where collective organisation can think in terms of supply chains, potentially paving the way for a **new “cybertariat”**. However, all these struggles only rarely produce the tangible results of collective bargaining.

- **Federating: obviousness of the transnational “leap”**

Faced with the limits that local struggles were coming up against, there was a clear **need for transnational action**. Collectives are active on several levels: they act at local, national but also international level as we saw with the organising of **the European Couriers’ Assembly** in October 2018 and the **international coordination** named Unidxs World Action (UWA) bringing together drivers and couriers, in October 2020. This created a new **“glocal” collective body**, meaning one that acts locally and thinks globally, with the aim of constructing a shared identity in the face of multinational delivery platforms, calling it a **“new internationalism”**. Just as in Europe, it was following the growing number of local mobilisations in many Latin American countries, and with the accelerating effect of the pandemic in March 2020, that the couriers organised four successive international strikes. Reclassifying the employment relationship as a salaried employee was one of the central demands of the global action days.

2ND STRATEGY: ACTING ON THE LAW: THE STATUS WAR

- **Judges facing platforms: the reclassification conquest**

Workers have been trying to have their status reclassified as employees by the courts, a move that **increasingly favourable case law** seems to favour, with 35 favourable decisions out of 59 over the last five years in the eight countries concerned. The judgements are based on the fact that, even if formally the platform claims to have only an intermediation role from one individual to another, the judge notes that it actually exercises control over the courier, with numerous indications of subordination. This points to a legal uncertainty which requires legislative clarification.

- **Inadequate professional relations systems**

These legal battles are also challenging trade unions to rethink how they perceive and practice representation and collective bargaining based on two approaches: the first consists of trying to integrate platform workers into the existing traditional models of representation at national level. Here, the Nordic countries differ from countries in the centre of Europe. Whilst the former focus on company-level collective bargaining and have already signed a number of “atypical” collective agreements with platforms, the latter are seeking to maintain sector-level collective bargaining. In this process, the German and Austrian platforms have been coming up against the platforms’ relentless refusal to act as speaking partners in collective bargaining which would undermine the foundations of the position they claim to have as a simple intermediary. The second trade union approach, outside any system of industrial relations and especially present in the field of micro-work, seeks to rely on initiatives for ethical certification (labelling) of the platforms, which raises many questions in terms of effectiveness, but also legitimacy.

- **But what are the States doing? The Spanish model against the Uber Law and European third statutes**

To transform the accumulated social forces (on the basis of reclassification decisions and social mobilisations) into bargaining power or political victory and to halt the trend of generalised regression of social rights, collectives and trade unions will also have to win the battle that is being fought at State and EU level over legislation specifically governing platform work. Between American-style underemployment (digital self-employment), European-style sub-employment (third status) and Spanish-style unconditional employment (salaried work), it is difficult to predict which model will prevail. Nevertheless, it is clear that most European States today support platforms whose model

pursues and prolongs their own labour law deregulation policies that have been in place for decades. The few recent political victories that have resulted in binding legislation in the United States and Spain appear to have been already defeated or remain fragile.

KEY LESSONS AND CHALLENGES AHEAD

- **The status war: a difficult legislative transformation**

The study's first lesson is the **importance of the battle over status**, which largely determines everything else. After some disappointing early experiences, the case law on reclassification has moved towards recognising platform workers as fully-fledged employees (especially in Spain), which is a major challenge for platforms. This has given a boost to ongoing debates and legislative initiatives at State and European Union level to clarify the legal status of platform workers. Today, the future of the Spanish law that defends unconditional wage-earning is therefore important not only for Spanish workers, but will serve as a model in the political battle over the future directive set to take place in the European institutions in 2021. Indeed, there is a severe risk that the current legislative initiatives will finally lead to a levelling down of the rights of platform workers in relation to the guarantees and protections under traditional labour law, particularly through the invention of new “discounted” statuses.

- **Collective AND legal action**

The second lesson refers to the **eminently complementary nature of the two strategies being analysed**. Given the balance of power between workers, platforms and States, the aim of direct action is to influence the law. And in turn, legal developments largely condition and guide the possibilities and strategies for taking action. Today, it is indeed the struggle's gathering pace and the building of a powerful collective actor that will open up the opportunity for a workers' victory in the ongoing battle over status. And conversely, it is by building on the victories of favourable case law, by extending this fundamental conquest to include other possible future political victories that collective action can be strengthened.

- **The construction of a new “glocal” actor and new internationalism**

From this point of view, a third key lesson relates to the **genuine achievements of the first strategies in the study** directly targeting platforms: the **progressive construction of a new collective “glocal” player**. Whilst the immediate results of these mobilisations may seem fragile and limited, the fact that they even exist and are multiplying has above all enabled new collective actors to invent and reinvent new ways of acting and mobilising, including on an international scale. At this level, the European Couriers’ GA highlighted two main cross-cutting demands: **data transparency and a minimum hourly wage**. There is still the challenge of coordinating demands at the international level in order to identify a **common substratum of demands, supported by proposals for coordinated action**.

- **Reinventing trade union representation and new digital rights**

A fourth lesson refers to the need to **seriously reinvent trade union practices and demands** so as to adapt them to the new reality of platform work. Attempts to set up collective representation structures (company or sectoral bargaining, certification) remain largely insufficient and/or unsuitable. Another strategy (not covered in detail here) is the representation of platform workers through self-employed trade unions. As pragmatic as this approach appears, it could, however, contribute to weakening the position of platform workers in their struggle to be reclassified as an employee in their employment contract. Finally, the specifically digital nature of platform work must now be taken into account in the **demand for new “digital labour rights”**, with, firstly, the consequences of **“algorithmic management”** on working conditions and, secondly, the place and role of **data** in the business model of platforms.

- **A major oversight: the very contours of the digital economy**

One final lesson concerns the existence of a **major oversight** in the strategies currently being deployed to defend platform workers: the taking into account of **broader developments affecting the functioning of the digital economy** as a whole. These will largely condition future possibilities for improving working conditions on the platforms. Among these developments, probably one of the most decisive concerns the current WTO negotiations on “e-commerce”, the content of which is likely to grant almost total freedom to platforms (including on-demand labour platforms) to carry out their activities on an international scale free from State or trade union interference.

Initiatives claiming to be “platform cooperativism” seek to defend another type of platformisation based on workers reappropriating their working tools and digital data. Coopcycle, the European Federation of Courier Cooperatives, shows the example of this type of alternative with its software perceived as “**a common good returning power to workers**”. Nevertheless, at present, these initiatives still too often suffer from a macro-economic and legal environment that is largely unfavourable to them. Not to mention the ambiguities that permeate the movement itself: while some do have an ambition for social transformation, others are more interested in developing an “ethical” niche within a platform economy that would remain mainly capitalist.

More broadly, there is also the question of the very possibility of another type of platformisation. In this field, as in that of “digitisation” in the wider sense, a preliminary reflection could focus on the limits that we wish to apply to these processes, which now come at an obvious social, political and above all environmental cost.