



## Platform work in Croatia and Serbia: Varieties of organizational models and work arrangements

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### 1. Introduction

The advent of the platform economy and platform work, as paid work mediated by digital labour platforms<sup>1</sup>, has posed challenges for established institutions and models of governance of work. In 2016, Arun Sundararajan proclaimed that digital technology would bring a radical shift in the way economic activity is organized and unlock the decentralized excess capacity. With this shift, workers will no longer toil in their day-job but become small-scale commercial entrepreneurs enjoying the flexibility and fluidity of contracting.<sup>2</sup>

The transformation of wage labourers into entrepreneurs along with the novelty and fluidity of platform business models have raised a host of legal questions in almost every legal domain, from data protection to antitrust and fair competition.<sup>3</sup> In the area of labour law, platform business models have challenged the foundational principles of labour law protection from health and safety issues, the right to paid overtime, paid sick leave, paid annual leave, compensation for wrongful termination of an employment relationship, severance pay, to the right to collectively organize and bargain.<sup>4</sup> Since the status of an employee is a gateway to access all the above-mentioned rights, not surprisingly most labour law scholars turned their attention to the single question of the legal classification of platform

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<sup>1</sup> Niels Van DOORN: Platform labor: on the gendered and racialized exploitation of low-income service work in the ‘on-demand’ economy. *Information, Communication & Society*, vol. 20, n. 6. (2017) 898–914.

<sup>2</sup> Arun SUNDARARAJAN: *The sharing economy: The end of employment and the rise of crowd-based capitalism*. Cambridge, MA, MIT Press, 2016.

<sup>3</sup> Eva KOCHER: *Digital Work Platforms at the Interface of Labour Law: Regulating Market Organisers*. London, Bloomsbury Publishing, 2022.

<sup>4</sup> Antonio ALOISI – Valerio DE STEFANO: *Your boss is an algorithm: artificial intelligence, platform work and labour*. Bloomsbury Publishing, 2022.

workers.<sup>5</sup> The issue of legal classification has gained prominence among courts and policymakers and is one of the central questions the proposed European Union (EU) regulation concerning platform work is trying to solve.

Labour law scholars usually discuss the issue of the status of platform workers vis-à-vis the level of control exercised by platforms and the applicability of different legal tests of employment to demonstrate the existence of the employment relationship between digital labour platforms and platform workers.<sup>6</sup> A growing number of court cases also show the possibility of innovative approaches and the use of interpretative techniques to extend the notion of control and recognize employee status for platform workers.<sup>7</sup> There have also been some notable regulatory initiatives addressing the issue of the legal classification of platform workers, such as the Spanish Riders Law<sup>8</sup> or the EU Proposal for a Directive on improving working conditions for platform work<sup>9</sup> (EU Platform Work Proposal) that address the issue of misclassification of platform workers through a rebuttable presumption of an employment relationship between workers and digital labour platforms. Despite all these efforts, there is no definitive answer to the question of the legal status of platform workers.

The debate over whether platform workers are employees or self-employed is based on two related but rather unchallenged notions. The first notion deals with the organizational model of how digital labour platforms organize their business operations, and the second is concerned with the effects of such an organizational model on the status of workers and their work conditions. The organizational model of digital labour platforms is usually understood as a triangular relationship<sup>10</sup> or triadic model<sup>11</sup> in which the platform operator connects two other parties (workers and clients) for the purpose of exchange. The dominant effect of such a structure is the transformation of traditional employment relationship into self-employment.<sup>12</sup>

The aim of this article is to raise awareness of another important and growing phenomenon of platform work – the organization of platform business operations through the introduction of a new

<sup>5</sup> Tamás GYULAVÁRI – Emanuele MENEGATTI: Labour, Law and Digitalisation. In: Tamás GYULAVÁRI – Emanuele MENEGATTI (eds.): *Decent Work in the Digital Age: European and Comparative Perspectives*. Oxford, Hart Publishing, 2022.

<sup>6</sup> Valerio DE STEFANO: The rise of the just-in-time workforce: On-demand work, crowdwork, and labor protection in the gig-economy. *Comparative Labour Law and Policy Journal*, vol. 37. (2015) 471.; Jeremias PRASSL – Martin RISAK: Uber, TaskRabbit, and co.: Platforms as employers-rethinking the legal analysis of crowdwork. *Comparative Labour Law and Policy Journal*, vol. 37 (2015) 619.; Antonio ALOISI: Commoditized Workers. Case Study Research on Labour Law Issues Arising from a Set of On-Demand/Gig Economy Platforms. Case Study Research on Labour Law Issues Arising from a Set of 'On-Demand/Gig Economy' Platforms (May 1, 2016). *Comparative Labor Law and Policy Journal*, vol. 37, no. 3. (2016); Miriam A. CHERRY: Beyond misclassification: The digital transformation of work. *Comparative Labor Law & Policy Journal*, vol. 37 (2015). Forthcoming, *Saint Louis U. Legal Studies Research Paper*, 2016-2.

<sup>7</sup> For example, the Spanish Supreme Court found Glovo food delivery riders to be employees considering, among other indicators, that the rating system and use of geolocation constitute a form of control (see Tribunal Supremo, Case 4746/2019).

<sup>8</sup> Royal Decree Law (RDL) 9/2021.

<sup>9</sup> Proposal for a Directive of the European Parliament and the Council on improving working conditions in platform work. COM(2021) 762 final.

<sup>10</sup> PRASSL–RISAK op. cit. 619.

<sup>11</sup> Eric TUCKER: Towards a political economy of platform-mediated work. *Studies in Political Economy*, vol. 101, no. 3. (2020) 185–207.

<sup>12</sup> Jan DRAHOKOUPIL – Maria JEPSEN: The digital economy and its implications for labour: 1. The platform economy (introduction to the special issue of Transfer). *Transfer: European Review of Labour and Research*, vol. 23 (2017) 103–119. 10.1177/1024258917701380.

actor – a third-party contractor, positioned between platforms and workers. At a time when there seems to be a growing political will to regulate platform work at the EU and national levels, it is important to draw attention to other possible organizational models of platform work and their implications for workers and regulation. This is particularly important as the use of third-party contractors in the organization of digital labour platforms has received little scholarly attention and there is evidence that this model is becoming prevalent in some countries in Europe.

In 2018, Loffredo and Tufo found the existence of what they called the quadrilateral model in the Italian platform transportation sector; in addition to platforms, workers, and clients, a new actor-partner company, appears assuming the functions of an employer.<sup>13</sup> They discovered that such a quadrilateral model poses significant difficulties in constructing the notion of the platform as a sole employer as the employer's functions are shared between the platform and a third-party contractor. In 2021, following the adoption of the Spanish Riders Law, newspapers revealed a new strategy of Uber Eats to subcontract its riders from third-party distributor companies.<sup>14</sup> Beginning of 2022, the Croatian government in its position statement regarding the EU Platform Work Proposal highlighted that the majority (80%) of platform work in Croatia is conducted through third-party partner companies.<sup>15</sup> Furthermore, in a 2022 study on food delivery platforms, Ametowobla and Kirchner found that the singular employment status of self-employed, dominant in North America, does not reflect the situation in Europe where the majority of food delivery platforms (70%) offer a variety of employment options, among which combination of self-employed and workers employed by a third party is the most dominant option.<sup>16</sup> According to the same study, Bulgaria, Croatia, and Romania exhibits the highest inclination toward the later model. These findings suggest that the quadrilateral or subcontract model of platform work represents a growing and even prevalent modality in some countries.

Despite these emerging findings, little is known about the functioning of the quadrilateral or subcontracting model and the work conditions of platform workers under such arrangements. This article tries to fill this gap by exploring how the relationship between a third-party contractor and platform workers is legally constructed and what are the actual conditions of work are under such regimes. To do so, I draw upon the empirical study on platform work in two countries where the quadrilateral platform model is prevalent – Croatia and Serbia. The findings presented in this article are based on a total of 62 in-depth interviews with platform workers across four platforms in Zagreb (Croatia) and Belgrade (Serbia). The selected platforms in the transportation sector were Uber in

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<sup>13</sup> Antonio LOFFREDO – Marco TUFO: Digital Work in the Transport Sector: In Search of the Employer. *Work Organisation, Labour & Globalisation*, vol. 12, no. 2 (2018) 23–37. <https://doi.org/10.13169/workorglaboglob.12.2.0023>.

<sup>14</sup> Marimar JIMENEZ: Uber Eats sella acuerdos con Deelivers, Closer Logistics y Delorean para subcontratar sus 'riders'. *CincoDías*, 12. August 2021.

<sup>15</sup> Parliament of Republic of Croatia: Opinion of Croatia about the Proposal for a Directive on improving working conditions for platform work, No. 21/032 – 2022.

<sup>16</sup> Dzifa AMETOWOBLA – Stefan KIRCHNER. Mapping the diversity of the platform economy across Europe and North America. *Working Paper "Fachgebiet Digitalisierung der Arbeitswelt"*, No. 0 (2022).

Croatia and CarGo in Serbia, and Glovo and Wolt, as the largest food delivery platforms operating in both Croatia and Serbia.

The article is structured as follows: first, a brief profile of the selected platforms is provided, followed by a description of the organizational models and work arrangements on digital labour platforms in selected countries and actual working conditions under different models. The study confirms the existence of a variety of organizational models of digital labour platforms in food delivery and the transportation sector. The disjunction found between the legal status of platform workers and their actual working conditions is a result of digital labour platforms severing any contractual ties with workers, by imposing intermediary employers, but remaining the ones organizing the market and conditions of work. Therefore, the future regulation of platform work needs to find ways to assign responsibility and accountability to digital labour platforms as organizations in the position of structural and market power over workers, regardless of the way in which they (re)configure labour relations.

## 2. Platforms profiles

Croatia and Serbia belong to the region of Central and Eastern Europe which is characterized by a significant uptake of digital labour platforms in search for work compared to the rest of the European continent.<sup>17</sup> The organizational model of subcontracting platform workers in the food delivery sector is also prevalent in this region.<sup>18</sup> Digital labour platforms in both countries are concentrated in the transportation and food delivery sectors, while the penetration of platforms in the sectors of household and care services is still underdeveloped. The market in both countries is characterised by the presence of domestic start-ups and big multinational platform companies.

### 2.1. *Transportation sector: Uber (Croatia) and CarGo (Serbia)*

The development of the platform transportation sector in Croatia is led by foreign platform companies. Uber, which entered the Croatian market in 2015, was the first digital labour platform to disrupt the incumbent taxi industry. Uber is a US-born platform company whose business operations include passenger transportation, freight transportation, food delivery, and courier service. Today Uber International operates from its headquarters in the Netherlands<sup>19</sup> in more than 85 countries and over

<sup>17</sup> Mariya ALEKSYNSKA: Digital work in Eastern Europe overview of trends, outcomes and policy responses. (ILO working paper 32.) Geneva, International Labour Organization, 2021.

<sup>18</sup> AMETOWOBLA–KIRCHNER op. cit.

<sup>19</sup> In 2015 Uber moved ownership of many of its foreign subsidiaries to the newly established Uber International registered in the Netherlands shielding much of its income from US tax. For more see Brian O'KEEFE – Marty JONES: How Uber plays the tax shell game? *Fortune*, 22 October 2015.

10,000 cities. The entrance of Uber into the Croatian market was accompanied by the protest from taxi drivers over unfair competition and the illegality of Uber's operations. The tension was resolved in 2018 when passenger road transportation regulation was liberalized.<sup>20</sup> While drivers for platform companies still must pass an exam to obtain qualification for taxi drivers and have a license for taxi transportation, the procedures for meeting these requirements were substantially relaxed. Following the liberalization of the market, Estonian Bolt also entered the Croatian market, first just offering rides, and subsequently expanding to the food delivery sector.

Unlike Croatia, in Serbia, the platform economy in the transportation sector is domestically led. Serbian start-up CarGo started offering rides through an app in 2015. At that time, CarGo was operating as a provider of limousine services, in accordance with law regulating tourism.<sup>21</sup> The tension between CarGo and taxi drivers exploded in 2018 when the protests spilled onto the streets. The state sided with taxi drivers and requested that CarGo and their drivers comply with road transportation regulations. In response, CarGo re-established itself as a citizens' association<sup>22</sup>, available only to its members (users), who through the application can be connected to a physical person who can provide innovative road assistance service.<sup>23</sup> Given the high-barrier road passenger transportation regulation, no other platform exists on the market, and CarGo continues to operate in a legal gray zone.

Both companies, Uber and CarGo, define themselves as a technology platform that enables users to arrange and schedule transportation services. Both companies exclude themselves from the contractual relationship between users and service providers. Uber's user terms for Croatia stipulate that Uber is not a contractual party but acts as an appointed representative between clients and service providers who are independent contractors, who are not employees of Uber.<sup>24</sup> Similarly, CarGo user terms stipulate that once the client confirms its request on the application, the service contract between the client and service provider is concluded to which CarGo is not a party. Both companies process payments for their service and on behalf of service providers.

The first glimpses of the existence of a quadrilateral model can be seen on the Uber Croatia website which provides information about the conditions that partner fleet companies need to fulfill to provide services (mainly firm registration and taxi licence).<sup>25</sup> The website also informs persons without their own vehicle that they can become drivers by joining partner fleet companies.<sup>26</sup> Neither the user terms nor the CarGo website provides any information about how to become a service provider or their status.

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<sup>20</sup> Law on Road Transportation. *Official Gazette of the Republic of Serbia*, 041/2018.

<sup>21</sup> Law on Tourism. *Official Gazette of the Republic of Serbia*, no. 36.09, 88/10, 93/12, 84/15.

<sup>22</sup> In Serbian legislation, a 'citizens' association' is defined as a voluntary, non-government, and non-profit organisation established on the principles of freedom of association with the aim to fulfil and enhance the goals of the association or other common goals.

<sup>23</sup> CarGo: Terms and Conditions, retrieved from: <https://api.appcargoo.com/terms/terms-en.html>

<sup>24</sup> Uber: Terms and Conditions retrieved from: <https://www.uber.com/hr/hr/>

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

## 2.2. Food delivery sector: Glovo and Wolt

Food delivery is a dynamic sector, characterized by numerous global and local acquisitions and market consolidations but also by the continued presence of domestic start-ups. The food delivery sector in both countries was initially developed by domestic companies Pauza.hr in Croatia and Donesi.com in Serbia, both of which are now part of the Spanish multinational company Glovo. The food delivery market recorded significant expansion during the Covid-19 pandemic and remains growing following the pandemic. Today, four major platforms operate in Croatia – Glovo, Wolt, Bolt, and domestic platform Dobar Tek. A similar situation is found in Serbia where along with the two multinational platforms, Glovo and Wolt, a new domestic platform Mister D started operating in 2022.

The emergence of the platform food delivery sector can be traced back to 2006 with the foundation of Serbian start-up Donesi.com and 2008 when Pauza.hr was created in Croatia. Both start-ups offered food orders and deliveries first through the internet webpage and later through the mobile application. Both companies were bought in 2015 by Delivery Hero, a German multinational food-delivery platform operating in more than 50 countries internationally, although they kept operating under their original name. Following the global merger between Delivery Hero and Glovo and the division of the European market between them, in 2021 Pauza.hr and Donesi.com became part of Glovo.

Glovo is a Spanish multicategory delivery platform offering delivery of food from restaurants, goods from pharmacies and groceries, as well as other goods from local shops and other commercial enterprises. Glovo was founded in 2015 and today it operates in more than 25 countries and more than 1,300 cities globally. Glovo's entry in 2019 into the Croatian and Serbian markets was rather modest; it rapidly grew after acquiring Pauza.hr and its network operations in over 20 cities across Croatia and Donesi.com which operated in over 30 cities in Serbia.

A major competitor of Glovo in both countries is the Finish food delivery platform Wolt. Founded in Helsinki (Finland) in 2014, Wolt joined forces with DoorDash, a US-based platform company in 2022; today these companies operate in 27 countries. Wolt started operating in both Croatia and Serbia in 2018.

Both Glovo and Wolt define their core business as the development and management of a technology platform. Glovo platform allows local stores to offer their products through mobile or web application based on a commercial agreement; delivery of the product is an additional service available upon the request of the user in which case Glovo acts as an intermediary in the contracting of on-demand service between a user who mandates third parties, a network of self-employed professionals who work with Glovo, to carry out such service.<sup>27</sup> Similarly, the Wolt platform allows users to place orders from restaurants, retail shops, or other service partners who have signed a partnership agreement with Wolt; delivery of such goods, is here too, as additional service performed by Wolt courier partners,

<sup>27</sup> Glovo: Terms and Conditions of use of the Glovo platform for couriers, available at: <https://glovoapp.com/en/legal/terms-couriers/>

independent contractors, a natural or legal person (or their substitute) who has signed a partnership agreement with Wolt.<sup>28</sup>

Both platform companies have a webpage dedicated to information about becoming a rider (Glovo) or courier partner (Wolt) and an online application form. Neither Glovo nor Wolt's website contains information about the possibility of working through a third-party contractor. However, a quick Google search of job listings or a search through dedicated Facebook pages reveal multiple job advertisements from third parties offering flexible working time, the formalization of the employment relationship, and good earnings.<sup>29</sup>

### **3. Varieties of organizational models and work arrangements in platform work in Croatia and Serbia**

The review of the platform's profile demonstrates that all of the studied platform companies define themselves as intermediaries facilitating the exchange between users and service providers, who are designated as independent contractors. This follows the dominant triangular organizational model usually discussed in platform literature. Yet in practice, a variety of organizational models are identified in both observed countries.

#### *3.1. Platforms as aggregators*

The first organizational model involves platforms allowing multiple restaurants or stores to offer their products through mobile or web application without involving the platform in the delivery of such products. This model is found only in the food delivery sector; Eric Tucker called this organization model an aggregator model.<sup>30</sup> In both Croatia and Serbia, this model is present; Glovo and Wolt offer local restaurants and stores advertising and marketing service as well as handling payments for deliveries but without involving themselves in organizing or monitoring the delivery itself. Restaurants or stores organize their own delivery service; when ordering a product clients can see that the delivery is organized by the producer and can only receive information about the estimated time of arrival as the platform does not engage in real-life tracking of such deliveries. The workers performing delivery under this model have a contractual relationship with the business that owns a restaurant or a store and have no relationship with the platform nor does the platform exercise

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<sup>28</sup> Wolt: Users terms of service, available at: <https://wolt.com/en/hrv>

<sup>29</sup> For example, see <https://rs.jooble.org/posao-glovo/Srbija> or <https://hr.jooble.org/posao-glovo/Hrvatska>

<sup>30</sup> TUCKER op. cit.

any significant control over the relationship between workers and employers. Once the platform company is involved in providing the additional service of delivery a new organizational model appears – the triangular organizational model.

### *3.2. Triangular organizational model*

In a triangular model, platforms act as an intermediary between clients (clients and restaurants or stores in the case of food delivery) and service providers who are independent contractors. However, platform companies are more than intermediaries as they exercise various levels of control over drivers and couriers – by controlling access to tasks, determining remuneration, requiring adherence to rules of conduct or appearance, verifying the quality of work, or restricting the choice of working hours or acceptance and refusal of tasks. For example, Uber Croatia temporarily or permanently removes drivers-independent contractors from the application when they refuse a certain number of requested drives while CarGo fines drivers-independent contractors if they do not wear the required outfit (white shirt and black sweater) or keep their vehicles clean. Glovo requires couriers to pre-select time slots during the days of the week when they want to perform deliveries, de facto turning flexibility of working time into shift work. Furthermore, access to the selection of time slots is dependent on the performance score and to maintain a high performance score courier has to adhere to the selected time slots. The performance score is a combination of adherence to platform's rules, customers' reviews, working during high demand, and the number of deliveries; such a performance score influences the access to tasks – the higher the performance score the more tasks are available.

It is critical to note that neither the Croatian nor Serbian legal systems recognize self-employment as a legal category. To perform platform work as an independent contractor a worker must be registered in accordance with laws regulating craft and trade, or company law. This requirement, indeed, may help to explain the proliferation of subcontracting arrangements when it comes to platform work in the two countries.

Those who do decide to perform platform work as independent contractors in Croatia are either registered as crafts or as a simple limited liability company. Croatian Law on trade and crafts stipulates that a craftsperson is a natural person who conducts business activities to increase income through production, trade, or service.<sup>31</sup> In conducting business activities, a craftsperson can rely on the work of other persons (they can have other employees or contributing members of the family who do not have to be employed). There is no required capital for opening a craft and registration can be done online through an e-application, although craft owners are liable for their obligations with all their personal assets. Also, a popular legal form among platform workers is a simple limited liability company

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<sup>31</sup> Law on trade and crafts. *Official Gazette of the Republic of Croatia*, no. 143/13, 127/19 and 41/20.

introduced by the Croatian company law in order to facilitate the growth of small enterprises. A simple limited liability company can be founded with a minimal capital of approximately 1 EUR and has a flat capital tax of 20%; the procedure for opening and closing such a simple limited liability company was also simplified.

Both legal forms are not subject to value-added tax (VAT) up to a certain revenue threshold and have simplified bookkeeping. Also, under both legal forms, owners have to pay pension, disability, and health insurance contributions and therefore have access to social security schemes except for unemployment; however, they lack access to labour rights and protections. Nevertheless, independent contractors in Croatia can form a trade union, as the Croatian labour law stipulates that a trade union can be founded by 10 natural persons of full legal capacity.<sup>32</sup> In fact, there was a union drive in Croatia in 2021 when the Digital Platform Workers Trade Union was founded, mostly by independent contractors working on the Uber platform. Due to diminished interest in the collective organization, the trade union ceased to exist. There is no record of any litigation in Croatia over the misclassification of platform workers as independent contractors.

In Serbia, the predominant legal form for platform workers who provide services as independent contractors is a sole proprietorship. Under Serbian company law, a sole proprietor is a natural person who is registered to conduct business activities in order to make a profit and who is liable for her/his obligations with all her/his personal assets.<sup>33</sup> Sole proprietors can conduct business on their own or have employees; income tax can be paid based on their actual income or at a flat rate (depending on revenue). Sole proprietors are obliged to make mandatory social contributions – e.g., in terms of pension, disability, health, and unemployment benefits – for themselves and their employees, if applicable. Therefore, sole proprietors in Serbia working on digital labour platforms do have access to social security schemes but no access to labour rights and protections. Unlike in Croatia, independent contractors in Serbia cannot form a union as the right to collectively organize and bargain is restricted to those workers with the status of an employee.<sup>34</sup> Similar to Croatia, there is no litigation involving determining the legal classification of platform workers. There is a new trend in Serbia of some platform companies posing restrictions to the type of business organization they accept; namely, Glovo since 2022 started requiring that independent contractors must be registered as limited liability companies.

Despite the relative ease of opening a firm, platform workers in both countries are reluctant to work as independent contractors. As a reason for such reluctance, most platform workers usually report that they do not want to bear the risk of having their own firm, especially if they see this work as a temporary solution, and not wanting to deal with bureaucracy (administration, bookkeeping, and

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<sup>32</sup> Labour law. *Official Gazette of the Republic of Croatia*, no. 93/14, 127/17, 98/19 and 151/22.

<sup>33</sup> Companies Act. *Official Gazette of the Republic of Serbia*, no. 36/2011, 99/2011, 83/2014 – other law, 5/2015, 44/2018, 95/2018, 91/2019 and 109/2021.

<sup>34</sup> Labour Law. *Official Gazette of the Republic of Serbia*, no. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017, 113/2017 and 95/2018.

similar). When they first entered the markets of both countries, platform companies tried to promote the independent contractor model; they engaged in various strategies to encourage platform workers to open their own firms. For example, Uber Croatia had a service center dedicated to educating and helping workers open their own firms; however, the center closed due to a lack of interest. CarGo Serbia resorted to more repressive measures as they required, as a condition to continue providing services, that workers who worked with a CarGo vehicle open their own firms; they too soon abandoned this tactic. Now, some platform companies have completely abandoned the organizational model based on independent contractors. According to interviewed platform workers, Wolt Croatia has stopped accepting independent contractors as its courier partners since November 2022 and Glovo Croatia soon followed suit. The only possibility to perform courier service through Wolt or Glovo in Croatia now is to join a third-party contractor. This brings us to the next organizational model – the quadrilateral model.

### *3.3. Quadrilateral organizational model*

In both countries, platform work is predominately delivered through a quadrilateral model that involves a new actor – a third-party contractor. The quadrilateral model is constructed based on a commercial contract between a digital labour platform and a third-party contractor who acts as an employer for a platform worker. The study's findings confirm earlier estimates about the spread of the quadrilateral model; between 75-80% of participants stated that they perform platform work through a third-party contractor. Among drivers on transportation platform companies (Uber Croatia and CarGo Serbia), the proportion of those working through third-party contractors is almost identical (72% and 73%). The quadrilateral model is also prevalent among food delivery platforms, although with some differences among the platforms; for example, in Croatia the ratio of people working through a third-party contractor is higher among Glovo couriers (85%) than Wolt couriers (70%).

Without having access to contracts between platform companies and third-party contractors it is impossible to determine the objective of such a relationship and the function of the third-party contractors. In the transportation sector, the platform assembles clients and service providers through its application that also provides routes and GPS monitoring. In food delivery, it could be assumed that the third-party contractor acts as a logistic company, but here too the platform companies assemble consumers, good producers, and delivery workers and their algorithm monitors product transportation. The role of third-party contractors could also be a way to expand the network of service providers (workers) as they are actively recruiting workers through job advertisements and to decrease the administration for platform companies (akin to staffing and payroll service).

Similarly, the role of third-party contractors toward workers is ambiguous. Formally they are employers, but, in reality, they do not exercise any of the employer's functions; digital labour platforms organize the work, set remuneration, and control workers through algorithmic management. Even the decision to hire or fire a worker is not something a third-party contractor can decide without the platform's consent since platforms are the only party that can activate or deactivate workers. Almost all interviewed platform workers expressed their understanding that the third-party contractor is just there to fulfill some formal requirements but that their real employer is the platform. Here too, a third-party contractor acts more like a staffing agency and a payroll service; in fact, third-party contractors charge a fee from platform workers for providing such services. The amount of fee varies across platforms and contractors; those contractors working with Uber Croatia charge a fixed 10%, CarGo contractors charge between 3-10% and contractors for food delivery platforms usually apply a scale – a certain percentage up to a certain amount of revenue and then as revenue gets higher fees tend to decrease. In both countries, relevant legislation forbids charging a fee from a job seeker or by a temporary employment agency, but since third-party contractors are formally employers there is a legal grey area.

### 3.3.1. Work arrangements under the quadrilateral model

When looking at work arrangements between third-party contractors and platform workers there are two noticeable trends: informal work or formal work characterised by informality (quasi-formal work arrangements) and the use of legal forms of an employment relationship where tax and social security burdens can be lessened.

Platform workers from Croatia report that before 2020/21, most workers performed this type of work informally, with no contract at all. The pressure toward formalisation of working arrangements came from both platform companies, that started requiring third-party contractors to comply with national labour regulation, and increased controls by tax and labour inspectorate. Platform workers reported that the type of work arrangement depends on a particular third-party contractor, but that they also actively inquire about the conditions across various contractors and make a rational choice to embrace informality. Today most informal platform workers in Croatia belong to groups that have specific characteristics which they see as an obstacle to seek formal work. For example, these are mostly workers who have temporary restrictions on their bank accounts due to accumulated unpaid bank debts or persons who are recipients of some kind of state benefit that may be restricted or withdrawn in case they declare their income.

In Serbia, the presence of undeclared work depends on a particular sector. All interviewed CarGo workers stated that having a contract and being registered on the social security system has been

mandated by CarGo to all third-party contractors from the very beginning. In the food delivery sector, the situation is quite different, informal work is wide-spread. Based on statements from platform workers, informality can be a choice; some third-party contractors would offer a choice to workers between declaring their work or informality, while others insist on some kind of formalisation of work.

If we look at formal work arrangements, there are two predominant contractual forms in Croatia: a part-time employment contract in case platform work is a sole source of income for the worker, or a supplement-work contract, in case the worker is already employed with another employer. The part-time employment contracts are concluded for a duration of usually two hours per day, although in some instances workers have contracts with four or six hours of daily working time. The supplement-work contracts are concluded for a maximum of eight hours a week, in accordance with the restriction stipulated in the labour law. Both contracts grant workers labour rights and protection in proportion to the hours worked. The contractual salary is calculated based on the national minimum wage rate per hour. This amount is considered gross income from which income tax and social security contributions are paid. Because of the small number of hours, these contracts are usually exempt from tax. According to the Croatian social security regulations, contributions for pension are paid by the employee, and health insurance is paid by the employer. The contracted number of hours is important for calculating the pension insurance period while they have no bearing on acquiring status within health insurance.

In Serbia, contractual relationships between platform workers and third-party contractors are usually based on fixed-term employment contracts, supplement-work contracts, or temporary and occasional work contracts. Among CarGo drivers, fixed-term contracts for the duration of three months were common when platform work is the sole source of income; supplement-work contracts are usually concluded with persons who have other primary jobs or pensioners. The practice of under-declaring working time has not been reported, but all contracts stipulate minimum wage. Among those formally employed in the food delivery sector, fixed-term contracts and temporary and occasional work contracts are the dominant forms. In food delivery sector in Serbia, similar to Croatia, the under-declaring of working time is also present; for example, some couriers reported having contracts stipulating that they work only two days per week. All these types of contracts are flexible forms of work that can be used under certain restrictions stipulated by Serbian labour legislation.

The use of fixed-term contracts needs to be justified by the existence of legitimate reasons and can be concluded for the maximum duration of 24 months. Supplement-work contract can only be concluded with a person who is already a full-time employee of another employer and up to a maximum of one-third of full working time. Temporary and occasional work contracts are legally excluded from the category of the employment in the sense that individuals on this type of contract do not enjoy labour rights but do have social security coverage. Temporary and occasional work contracts can only be concluded with an unemployed person, a part-time employed person, an old-age pension beneficiary,

and a person who is a member of a youth or student cooperative, and only for performing jobs whose nature is such that they do not exceed 120 workdays in a calendar year.

While the uses of flexible forms of work as set in Serbian labour law are narrow, the actual practice reveals how third-party contractors make wide use of them. For example, fixed-term contracts were the preferred model of work arrangement amongst CarGo third-party contractors as it complements another practice they often engaged in. As mentioned earlier, certain legal forms of business organizations are exempt from VAT up to a certain revenue threshold; to avoid paying VAT, third-party contractors would frequently formally close their firms and open new firms; which usually happened every three months. The workers then would conclude new fixed-term term contracts with a new firm, even though they have not changed the contractor. As an illustration, one of the drivers said: *“I have never changed my contractor, but I changed 19 firms”*.

### 3.3.2. Realities of platform work under a quadrilateral model

In reality, regardless of contractual modalities, formal rights, and restrictions, platform workers in Croatia and Serbia work under the same conditions.

The most egregious violation of employment contracts is in regard to working time. All platform workers report excessive working time and spend significantly more time working through platforms than what is stipulated in their contracts. The platforms' piecemeal payment system and bonus schemes require workers to spend long hours working to make any sort of decent income and achieve bonuses. According to Glovo couriers in Serbia, to make more than 100 deliveries per week, it is necessary to work between 10-12 hours a day at least six days a week if not every day. Similarly, CarGo drivers reported working on average 60 hours a week. The situation is similar in Croatia where workers reported working approximately 30-36 hours a week, in the case of those workers who are supplementing their income, to 56-60 hours a week in case platform work is their sole source of income.

None of the interviewed workers stated that they ever enjoyed the right to paid daily or weekly breaks, paid vacation, or paid sick leave despite having such rights stipulated in their employment contracts. If they get injured, take a vacation, or take a day off, they are left with no income or compensation; in fact, they keep occurring expenses as they have to provide for monthly wage, tax, and social security contributions. If they provide services with a rented vehicle (car, scooter, or electronic bike) they may have to bear these costs as well even if they are not working. The costs of renting vary from 5 EUR a day for an electronic bike to 55 EUR per day for an upper-class car.

Another widespread practice is the payment of envelope wages. Here we can observe wage underreporting as a sort of rational choice similar to the choice of informal work. By agreeing to work under contracts that only stipulate minimum obligations (in terms of hours and/or salary), workers are

opting for higher take-home pay. The tangible difference between the amount of take-home pay under minimum declared hours/salary and full declaration is augmented by the fact that platform workers have to bear the entire costs associated with providing this type of work from equipment, various fees (some platforms charge workers fees in addition to the fees charged by third-party contractors), to even salary and mandatory contribution to social security schemes that should be paid by their formal employers. Even though the practice of envelop wages is widespread in both countries, the transfer of all work-related and social security costs to a worker is new.

These practices create conditions in which workers, far from enjoying the flexibility and fluidity of being small-scale entrepreneurs as Sundararajan envisioned, find themselves in a situation resembling bonded labour. One of the workers illustrated this system by stating: *“When I wake up, I am already in debt to platform and contractor, so whether I want to or not I have to go out and make at least what I owe”*.

On top of the precarity of their working conditions, platform workers often fall victim to third-party contractors who withhold their wages or do not make social security contributions for which they took money from the workers. This practice has been reported by many interviewed workers, some directly affected by such practice. There are dedicated Facebook pages in Croatia and Serbia where deceived workers compile a sort of blacklist of third-party contractors.<sup>35</sup> Since most third-party contractors are registered as sole proprietors or simple limited liability companies, once they take the money, they would simply close that business and open another firm leaving workers with no legal recourse. Upon complaints made by workers, some platforms investigated, albeit reluctantly, these claims and in some cases terminated the partnership agreements with such contractors<sup>36</sup>, while others intervened by repaying all the owed money to workers<sup>37</sup>. Despite these occasional interventions, all digital labour platforms insist that they are not a party to the relationship between third parties and workers and therefore not liable for any of the wrongdoings of the third-party contractor.

### 3.4. *Special regime of student work*

Even though student work is the least widespread form of platform work and is also performed through third-party contractors, given the special regime it has in both Croatian and Serbian legislation, it deserves special attention. While the realities of platform work for students are the same as for any other platform workers under the quadrilateral model, the peculiarity of student work is that it brings yet another entity acting as an intermediary into an already crowded relationship.

<sup>35</sup> For example: see Facebook page Wolt, Glovo and Bolt couriers Croatia at <https://www.facebook.com/groups/2031470197002544/> or Deceived workers of CarGo at <https://www.facebook.com/groups/161356195505332/>

<sup>36</sup> This was reported by platform workers in the case of Wolt Croatia.

<sup>37</sup> This was reported by CarGo platform workers.

In Croatia, students who are not employed otherwise or have registered craft shops or other firms can be employed on the basis of a student contract which is a trilateral contract concluded between a student, an intermediary organization (student center), and a party who orders work or service.<sup>38</sup> These contracts are concluded for each month, that is their duration is set for 30 days, exceptionally 45 (with proper justification). The third party and student have to submit to the student center a statement declaring how many hours in that month the student worked; based on that number of hours, remuneration and contributions are calculated. In reality, third-party contractors and students agree to report as few hours as possible. Additional motivation for this could also be that the student center takes 12% of reported income. On top of the fees platform workers already pay to the platform and/or third-party contractors, they have to pay another fee to the student center each time there is a payout.

Similarly, in Serbia student cooperatives appear as an additional actor, but the work contract remains bilateral. In order to perform work, a student must be a member of a student cooperative for which a yearly membership is paid. The fact that the membership fee is independent of the student's income eliminates the need to underreport hours of work. The circumvention of labour protection is allowed by the law itself. The Serbian labour law allows employers to conclude temporary and occasional work contracts with members of student cooperatives.<sup>39</sup> These contracts, according to the law, do not establish an employment relationship and workers under this contract do not have labour rights associated with the employment relationship, such as paid vacation, paid sick leave, or paid overtime. Another advantage of student work is that the tax and social security burdens are the lowest.

#### **4. Concluding remarks: The implications of different organizational models on the regulation of platform work**

The strategy of imposing intermediary employers between the entities of capital and labour is not new, nor specific to digital labour platforms. The same is true for the strategy of substituting employment contract for civil law contracts and transforming employees into self-employed. Both are well-known strategies for the fissuring of the workplace in the process of restructuring the economic organization and evasion of social responsibility for the workers.<sup>40</sup> Both strategies also reveal the structural weakness of labour law, based on the contract of employment, to provide labour protection to workers

<sup>38</sup> Law on the performance of student work. *Official Gazette of the Republic of Croatia*, no. 96/18 and 16/20.

<sup>39</sup> Labour law. *Official Gazette of the Republic of Serbia*, no. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017, 113/2017 and 95/2018.

<sup>40</sup> David WEIL: *The Fissured Workplace*. Harvard University Press, 2014.

in a fragmented organization, outside of the bounded relationship between two independent and legally equal individuals – a single employer and an employee.<sup>41</sup>

The regulatory strategy for addressing platform work has increasingly been focused on the introduction of legal instrument of a rebuttable presumption of the existence of the employment relationship. This legal instrument has been seen as a way to prevent abuse resulting from atypical work contracts<sup>42</sup> and solution to bogus self-employment in platform work.<sup>43</sup> The presumption of an employment relationship is also seen as contributing to legal certainty, eliminating potential breach of competition law in relation to collective bargaining, and improving enforcement.<sup>44</sup> In the situation where the majority of the EU member states do not have legal presumption regarding the employment relationship and in the case of the independent contractor model this could have beneficial outcomes for some platform workers.

However, the legal presumption of the employment relationship does not address the situation of a quadrilateral or subcontracting model where there is an entity already acting as an employer (although only on paper), while digital labour platforms remain the ones organizing the market and determining conditions of work. Both, Croatian and Serbian labour laws already have the institution of a legal presumption of the employment relationship, but it has not been evoked in either of the two organizational models. The minority of platform workers in the status of self-employment have no interest in pursuing legal action against digital labour platforms and the majority of digital labour platforms can not use the presumption instrument as they already have an employer in form of a third-party contractor. By severing any contractual relationship with workers and imposing an intermediary employer, digital labour platforms found a new way to prevent the establishment of an employment relationship.

Future regulation of platform work should be conscious of the diversity of organizational modalities of platform work and different strategies digital labour platforms are already using to evade their responsibility as an employer. This requires rethinking approaches to regulating platform work to ensure labour laws assign accountability and responsibility to digital labour platforms regardless of the organizational model.

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<sup>41</sup> Judy FUDGE: Fragmenting work and fragmenting organizations: The contract of employment and the scope of labour regulation. *Osgoode Hall Law Journal*, 44 (2006) 609.; Zoe ADAMS: Labour Law, Capitalism and the Juridical Form: Taking a Critical Approach to Questions of Labour Law Reform. *Industrial Law Journal*, vol. 50, no. 3. (2021) 434–466.

<sup>42</sup> For example, the EU Directive on transparent and predictable working conditions introduced a rebuttable presumption of the existence of an employment contract as one of the alternative measures to combat.

<sup>43</sup> Proposal for a Directive of the European Parliament and the Council on improving working conditions in platform work. *COM(2021) 762 final*.

<sup>44</sup> M. KULLMANN: ‘Platformisation’ of work: An EU perspective on Introducing a legal presumption. *European Labour Law Journal*, vol. 13, no. 1. (2022) 66–80.