

# Fairwork Germany Ratings 2021: Labour Standards in the Platform Economy

## Editorial

The COVID-19 pandemic constitutes a pivotal moment for the platform economy, in Germany and beyond. It has accelerated existing trends, pushing more customers and companies to make use of digital platforms for the offering and purchase of goods and services – a shift in demand for digital interactivity that is unlikely to be reversed when the pandemic finally subsides. Platforms have become an integral part of the urban economy of most societies, and digital apps have increasingly become an everyday go-to for a wide range of goods and services, from groceries to babysitting, and medical supplies to transportation.

To date, estimates indicate that almost six percent of the workforce in Germany earn at least a quarter of their income through platform work.<sup>1</sup> The increasing number of workers joining the platform economy has gone hand in hand with new platforms entering the market, especially in the food and grocery delivery sector.<sup>2</sup> These platforms, often backed by substantial venture capital funding, have been able to establish themselves as important players in their respective sectors: Getir, Gorillas and Flink have come to dominate grocery deliveries, while the almost market dominance in food deliveries once enjoyed by Lieferando is now shared by the likes of Wolt and Uber Eats.

But Germany is not just an important market for these platforms. Several platforms are homegrown and/or headquartered in the country. They have found a fertile environment for development and growth in Berlin and are helping the German capital build a reputation as an emerging tech hub.<sup>3</sup> Accounting for 58% of the venture capital invested in Germany (3.1 billion euros in 2020), Berlin remains an important region for venture capital investments – the second-largest volume among European cities.<sup>4</sup>

The pandemic has also highlighted the many vulnerabilities platform workers face. As we discussed in last year's Germany report, platform workers, particularly when self-employed, often have scant health and safety protections and few can access financial protection in the case of sickness. Thus, the pandemic has exacerbated the precarity and insecurity of these

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<sup>1</sup>Urzi Brancati, M.C., Pesole, A. and Fernandez Macias, E. Publications Office of the European Union. (2020). New Evidence on Platform Workers in Europe (EUR 29958 EN).

<https://publications.jrc.ec.europa.eu/repository/handle/JRC118570>

<sup>2</sup> Erich Reimann. (2020, April 2). Plötzlich beliebt: Corona beflügelt Lebensmittel-Lieferdienste. Absatzwirtschaft. <https://www.absatzwirtschaft.de/ploetzlich-beliebt-corona-befluegelt-lebensmittel-lieferdienste-171226/>

<sup>3</sup> Bocksch, R. (2020, July 14). Investitionshauptstadt Berlin. Statista.

<https://de.statista.com/infografik/10210/in-deutsche-startups-investiertes-risikokapital/>

<sup>4</sup> Bundesministerium für Arbeit und Soziales/Federal Ministry of Labour and Social Affairs (2018). Ausmaß von Plattformarbeit in Deutschland könnte höher als bisher angenommen sein. <https://www.bmas.de/DE/Presse/Meldungen/2018/ausmass-von-plattformarbeit-in-deutschland-hoehler-als-erwartet.html>

workers, who have sometimes found themselves with no other choice but to continue working, despite the risks.

Although the majority of platforms in the food and grocery delivery sector provide employment contracts, which, by law, entitle workers to a minimum wage, and provide paid sick, holiday, and parental leave, the legal framework also presents important loopholes that have allowed platforms as well as more traditional companies to avoid some of the usual employer's obligations, and to dilute employment rights, chiefly through the use of independent service contracts and sub-contracting arrangements. These practices have been partly enabled by the fact that the vast majority of platform workers are not proficient in German and have limited knowledge of their legal rights because they are either immigrants or are born to parents or grandparents who have migrated to Germany. Although several policy proposals have been advanced, so far, no comprehensive reform to improve the rights of platform workers has been enacted, with changes mostly coming through court rulings.

It is in this context that we have produced our second year of Fairwork scoring of platforms in Germany, based on the Fairwork principles we continue to develop.<sup>5</sup> In a change from last year's report, we have included the most important new players in the market (Getir, Gorillas, Wolt, Flink, FreeNow), and have also dropped some of the platforms we rated last year (Berlkönig, Instaff and Clevershuttle) as they have had limited operations during extended lockdowns, or changed their business models. This has brought our total number of scored platforms to 12, compared to nine last year.

Similarly to last year, our scores highlight a wide variety of labour standards in the German platform economy, showing that working conditions, far from being homogeneous, differ significantly from platform to platform, and in some instances, from workplace to workplace. We also show that the increased competition among platforms, with the entrance of new companies, has not necessarily translated into increased competition in improving labour standards. While some platforms, as our report highlights, have implemented policies to offer their workers better rights, overall, there are many additional steps waiting to be taken.

At the same time, our research underlines that some platforms have made conscious efforts in improving and/or upholding fair working practices, partly thanks to their engagement with us. This year, an increasing number of platforms were willing to communicate with us in order to improve their scores. Our research has shown several platforms implementing changes, such as Wolt and Flink using third party auditors to monitor workplace conditions; Lieferando and Flink employing workers on permanent contracts, and Zenjob continuing to implement explicit anti-discrimination and diversity clauses in their terms and conditions. This year, we have also intensified public relations work through social media campaigns, publishing billboards across Berlin and producing several project films to raise awareness for the topic and project. To engage directly with the public, we conceptualised and held an interactive workshop at the Berlin Science Week. Through our efforts we hope to achieve sustainable change by informing consumers to make conscious choices. Our scores can also help inform the procurement, investment and partnership policies of institutions operating in the civil, economic, and political spheres. To this aim, we launched our global Fairwork Pledge

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<sup>5</sup> Interviews with platform workers and management were conducted in the second half of 2021. Our communication with both workers and management, however, continues to date.

campaign in 2021 to support this process. Institutions and organisations willing to show their support can become Fairwork partners by signing the pledge and committing to consult the Fairwork scores in future labour decisions.

The dispersed and fragmented nature of platform work presents certain challenges for workers to connect and create networks of solidarity. But many of the workers we interviewed in the research phase of this report have either already started to organise or mentioned that they would join a labour union if one existed. The most prominent example is the extensive series of strikes the Gorillas Workers Collective have organized in Berlin to demand improved working conditions among several other issues. Another example is the current negotiations of a collective agreement between Lieferando and Germany's Food, Beverages, and Catering trade union (NGG). Organizing efforts have also led to the establishment of Works Councils, a specific legalized German model for worker representation.

We hope our research will continue to shed light on the important shortcomings in providing decent and fair labour standards in the German platform economy. But we also hope that our research shows that a different platform economy is possible – and that innovation and flexibility should not necessarily equate with precarity and insecurity. We also hope that our work will keep feeding into policy and regulatory reform debates, and that the Fairwork principles will continue informing the actions of policymakers, platforms, unions, consumers and workers alike.

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### **Fairwork Germany is supported by...**

*"Berlin wants to be a pioneer of fair work – especially with regard to new forms of work in the platform economy. The Berlin Senate, and in particular the Senate Department for Integration, Labour and Social Affairs, are committed to fair working conditions in this sector. That is why I very much welcome and support Fairwork's efforts to make labour standards in the platform economy transparent and to contribute to their improvement."*

*The Fairwork Report for Germany shows that working conditions do vary, but above all that there is still a lot to be done. Business models based on unfair and unsafe working conditions are 'out' and should be a thing of the past."*

Katja Kipping, Berlin Senator for Integration, Labour and Social Services

*"The WZB Berlin Social Science Center is proud to be the home of the Fairwork Secretariat. Because Fairwork stands for exactly what the WZB is all about: excellent research that contributes to improving our society. Fairwork understands how to raise awareness about fair working conditions among HR managers in the platform economy. Some platforms have already responded and are planning improvements. This creates momentum and pressure: more platforms will follow suit. And platform workers will demand their rights more strongly. We see: Platform work in itself doesn't have to be bad, if co-determination and certain regulations are accepted."*

Prof. Dr. h.c. Jutta Allmendinger, Ph.D., President of the WZB Berlin Social Science Center

## **Executive Summary**

Digital platforms, particularly in the delivery sector, have played a crucial role in keeping society functioning during the COVID-19 pandemic by meeting consumer demands and providing jobs to a unique, often marginalised, workforce. In this report we examine the fairness, inclusivity and precarity of working conditions in digital labour platforms in Germany, highlighting questions of transparency, social protection and labour rights.

2021 has brought several changes – some related to the ongoing pandemic, and others resulting from worker activism – which have shaped the platform economy in new ways. The pandemic has provided challenges and opportunities for platforms, forcing some to adapt their business models while encouraging others to enter and expand into the German market.<sup>6</sup> The increased use of digital technologies and contactless / contact-free transactions in the pandemic has provided new opportunities for platform businesses to grow, resulting in increasing challenges for physical operations: While some platforms were forced to adapt their value creation strategies and business models to the new situation, others were encouraged to enter or expand into the German market. On the labour side, our findings indicate that many workers have been offered somewhat fairer contracts, providing them with better access to a social / financial safety net. Amidst the ongoing crisis, they had

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<sup>6</sup> European Foundation for the Improvement of Living and Working Conditions. (July 2020). Platform Economy: Developments in the COVID-19 Crisis. <https://www.eurofound.europa.eu/nl/data/platform-economy/dossiers/developments-in-the-covid-19-crisis>

to put on a fight, though, to secure these gains. And their struggle is far from over, as platforms continue to look for ways to cut down costs in the face of increasingly strong competition, and also to attract investors.

The biggest change this year was experienced in the food and grocery delivery sector, with new platforms entering the market and competing for greater digital demand by customers and businesses like shops and restaurants.<sup>7</sup> This change was reflected in our research strategy: Whereas last year's report only included Lieferando from the delivery sector, this year, we have incorporated four more platforms from that industry: Gorillas, Flink, Getir, and Wolt. Our analysis shows that the introduction of these companies into the platform economy has introduced new opportunities and challenges for workers, resulting from the rapid evolution and massive growth of the sector, combined with the race to the bottom logic that many workers have fought against. Indeed, 2021 has seen the flourishing of a number of new workers movements, the most notable being the Gorillas workers who, after an almost year-long struggle, were able to set up a recognised Works Council.<sup>8</sup>

Besides delivery services, the ride-hailing and event planning sectors have also been affected by the pandemic. As certain platform activities were brought to a standstill, platform workers faced the severe consequences of forced work stoppages due to self-isolation, and lack of sick pay. In the case of platforms that operate a subcontracting model, such as Uber and FreeNow, neither the platforms nor the subcontractors stepped in to compensate for the income lost during lockdowns, and instead expected their workers to rely on government aid. Other ride-hailing platforms such as Clevershuttle and BerlKönig, where workers are provided with a safety net, shrunk their work hours (Kurzarbeit), and revisited their business models – moving from a business-to-customer (B2C) to a business-to-government (B2G) model to remain profitable.

### *Key Findings*

*Fair Pay:* Most platforms in Germany could provide evidence that they provide wages to their workers that exceed the minimum hourly wage of 9.60 Euros (valid July-Dec 2021), after costs associated with work. Some platforms (in particular those that employ workers on a self-employment, independent contractor or subcontracting model) however, fail to meet this basic threshold as they do not have a wage floor, charge high commissions, or do not provide compensation for work lost to the pandemic. Some platforms could also show that they provide an hourly wage which we consider is on par with a living wage threshold ensured by collective bargaining agreements. Few provide hourly wages that exceed the amount of

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<sup>7</sup> Dannenberg, P, Martina F., Riedler T., and Wiedeman C. (2020). Digital Transition by COVID-19 Pandemic? The German Food Online Retail. *Journal of Economic and Human Geography*, 111(3), 543-560. <https://doi.org/10.1111/tesg.12453>

<sup>8</sup> Works Councils are worker-organized representative bodies that complement representation by labour unions. They can be set up in private sector companies who employ at least five employees. The origins of Works councils in Germany go over a century back; their constitution is regulation in the Works Constitution Act (Betriebsverfassungsgesetz). Federal Ministry of Justice. Works Constitution Act. [http://www.gesetze-im-internet.de/englisch\\_betrvlg/](http://www.gesetze-im-internet.de/englisch_betrvlg/)

the private consumption expenditure rates proposed by the Federal Statistical Office of Germany, which is 14.50 Euros/hour.<sup>9</sup>

*Fair Conditions:* Many workers in the platform economy work in precarious conditions as most workplaces are not regularly audited for safety. There are also cases where the equipment provided to workers fails to mitigate risks associated with work. In food and grocery delivery platforms, warehouse maintenance continues to be a problem, where certain warehouses fail to meet basic safety measures. The equipment provided to workers, including the bikes they ride to make deliveries, as well as weather-proof jackets, trousers, and shoes, were evidenced to be either lacking in quality, or not delivered to workers in a timely manner. Some platforms could not show that they provide personal protection equipment to their workers – expecting either the clients, the customers or the workers to provide face masks and disinfectants themselves. With regards to a safety net, workers who have employment contracts are by law provided paid sick, holiday, and parental leave options. However, platforms that employ workers on a self-employment / independent contractor model fail to provide these measures.

*Fair Contracts:* As contracts in Germany are highly regulated, workers are offered contracts or terms and conditions that are comprehensive, and usually offered in two languages – German and English. Data protection is also subject to a comparatively strict-data regulation legislation (Datenschutz-Grundverordnung, DSGVO or GDPR). Moreover, in late 2021, we have witnessed an improvement in contracts especially in food and grocery delivery platforms, where more platform workers are now offered permanent contracts. Finally, we have seen that platforms in the ride-hailing sector have moved away from a self-employed to an increasingly subcontracting-focused business model, where the platforms have limited checks over the contracts offered to the workers driving in their names. This leads to disparities within a platform's driving fleet with regards to payment and working conditions, with digital platforms offering little to no help when it comes to resolving the issues faced by their drivers.

*Fair Management:* Most platforms operating in Germany could show they have human representatives to address queries by workers. The efficacy of these channels, however, is questionable, as many fail to provide workers with an adequate response in a timely manner. This is an issue particularly in platforms that operate on a self-employment, independent contractor or subcontracting model where workers are forced to resolve problems either within their own groups (on social media and messaging apps) or in conversation with clients and customers. As worker testimonials show, this leaves workers vulnerable to working for exploitative clients and customers in order to maintain their jobs. Despite the high ratio of migrant and female labour in the German platform economy, most platforms also fail to provide measures to promote anti-discrimination in the workplace or to address discriminatory behaviour by customers and clients. We see it as the management's responsibility to ensure that workers do not face discrimination by customers and clients, which is a particular issue in the domestic and care work sector.

*Fair Representation:* We have witnessed an increase in worker activism this year, especially in food and grocery delivery platforms, leading to the formation of new bodies of worker

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<sup>9</sup> Important to note is that the wages set by collective bargaining agreements can be lower than the amount set by the private consumption expenditure.

representation (such as Works Councils). We have evidence, however, of some platforms hindering this process by obstructing worker activism (e.g. giving workers who attend demonstrations a warning) or by changing their business models abruptly to render existing bodies of worker representation obsolete. Few platforms could provide evidence of functioning bodies for workers to raise their voice in a collective manner, and those that do are usually in the earlier stages of development. We encourage platforms to work with their workers to make these channels more accessible to the wider worker body. We also encourage them to be in conversation with other representative bodies, such as trade unions.

## **The Fairwork Framework**

The Fairwork project evaluates the working conditions of digital platforms and ranks them on how well they do. Our goal is to show that better, and fairer, jobs are possible in the platform economy.

To do this, we use five principles that digital platforms should comply with in order to be considered to be offering ‘fair work’. We evaluate platforms against these principles to show not only what the platform economy is, but also what it should be. The five Fairwork principles were initially developed at a multi-stakeholder workshop at the International Labour Organisation. We then held follow up workshops for local stakeholders in Berlin, Bangalore, Cape Town, and Johannesburg. Our Berlin workshops were held in collaboration with the Weizenbaum Institute in May 2019. Attendees represented a variety of key stakeholders, including Berlin’s Senate Department for Labour and Social Affairs, the Federal Ministry of Labour and Social Affairs, and the German Trade Union Confederation (DGB). These workshops and our follow-up conversations with platform workers, platforms, trade unions, regulators, academics, and labour lawyers allowed us to revise and fine-tune the principles, and ensure that they were applicable to the German context.

Further details on the thresholds for each principle, and the criteria used to assess the collected evidence to score platforms, can be found in the Appendix.

## **The Five Principles**

**Fair Pay:** Workers, irrespective of their employment classification, should earn a decent income in their home jurisdiction after taking account of work-related costs. We assess earnings according to the hourly minimum wage set by the Minimum Wage Act, as well as the current living wage, which we calculate based our calculations using the Household Final Consumption Expenditure Index.

**Fair Conditions:** Platforms should have policies in place to protect workers from foundational risks arising from the processes of work, and should take proactive measures to protect and promote the health and safety of workers.

**Fair Contracts:** Terms and conditions should be transparent, concise, and provided to workers in an accessible form. The party contracting with the worker must be subject to local law and must be identified in the contract. Regardless of the workers' employment status, the contract must be free of clauses which unreasonably exclude liability on the part of the platform.

**Fair Management:** There should be a documented process through which workers can be heard, can appeal decisions affecting them, and be informed of the reasons behind those decisions. There must be a clear channel of communication to workers involving the ability to appeal management decisions or deactivation. The use of algorithms is transparent and results in equitable outcomes for workers. There should be an identifiable and documented policy that ensures equity in the way workers are managed on a platform (for example, in the hiring, disciplining, or firing of workers).

**Fair Representation:** Platforms should provide a documented process through which worker voice can be expressed. Irrespective of their employment classification, workers should have the right to organise in collective bodies, and platforms should be prepared to cooperate and negotiate with them.

## **Methodology Overview**

The Fairwork project uses three approaches to effectively measure fairness at work.

**Desk Research:** The process starts with desk research to ascertain which platforms are operating in each city, as well as noting the largest and most influential ones. In Germany, we focused on platforms operating in Berlin. This research provides the overall range of the platforms that are ranked, as well as identifying points of contact or ways to access workers. Desk research also flags up any public information that could be used to score particular platforms (for instance the provision of particular services to workers, or ongoing disputes).

**Platform Interviews:** The second method involves approaching platforms for evidence. We interview platform managers and request evidence for each of the Fairwork principles. This provides insights into the operation and business model of the platform, while also opening up a dialogue through which the platform could agree to implement changes based on the principles. In cases where platform managers do not agree to interviews, we limit our scoring to evidence obtained through desk research and worker interviews.

**Worker Interviews:** The third method involves interviewing platform workers directly. We aim for a sample of 6-10 workers interviews at each platform. Workers are approached either through the platform directly or at known worker meeting points. These interviews do not aim to build a representative sample. They instead seek to understand the processes of work and the ways it is carried out and managed. They allow us, for instance, to see contracts and learn about platform policies that pertain to workers. The interviews also allow the team to confirm or refute that policies or practices are really in place on the platform.



Putting it all together: This threefold approach provides a way to cross-check the claims made by platforms, while also providing the opportunity to collect both positive and negative evidence from multiple sources. Final scores are collectively decided by the Fairwork team based on all three forms of information gathering. The scores are peer reviewed by the country team, the Oxford team and two reviewers from other country teams. This allows us to provide consistency and rigour to the scoring process. Points are only awarded if clear evidence exists on each threshold.

How we score: Each of the five Fairwork principles is broken down into two points: a basic point and a more advanced point that can only be awarded if the basic point has been fulfilled. Every platform receives a score out of 10. Platforms are only given a point when they can satisfactorily demonstrate their implementation of the principles. Failing to achieve a point does not necessarily mean that a platform does not comply with the principle in question. It simply means that we are not—for whatever reason—able to evidence its compliance.

See the Appendix for further details on the Fairwork scoring system.

## **Overview of the Platform Economy in Germany**

Fairwork published its first rating schemes in Germany in May 2020. Since then, the confluence of an expanding platform economy, the ongoing COVID-19 pandemic, and new waves of labour struggles have led to more active public discussion in Germany around working conditions and workers' rights.

### *The Expansion of the Platform Economy*

Across the European Union, more than 28 million people now work through digital labour platforms (a number that is expected to reach 43 million by 2025), with 55% of people earning less than the net hourly minimum wage of the country they are working in.<sup>10</sup> According to a recent study published by the European Commission,<sup>11</sup> in 2018, 12 percent of employable people in Germany had done platform work at least once in the past.

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<sup>10</sup> European Commission (2021, December 9). Questions and Answers: Improving Working Conditions in Platform Work.

[https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_21\\_6606](https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_6606)

<sup>11</sup> Urzi Brancati, M.C., Pesole, A. and Fernandez Macias, E. Publications Office of the European Union. (2020). New evidence on Platform Workers in Europe (EUR 29958 EN).

<https://publications.jrc.ec.europa.eu/repository/handle/JRC118570>

Extrapolated to the labour force potential, this number corresponds to about 5.6 million people. This survey shows that almost six percent of the working population (i.e., approximately 2.8 million workers) earn at least a quarter of their income from platform work. Depending on survey methods and the definition of “platform work”, other estimates range between 500,000<sup>12</sup> to 1.6 million<sup>13</sup> workers.

Some platforms, particularly in the food and grocery delivery sectors, are now operating on the basis of employment contracts with riders. But while technological advancements and the high influx of venture capital have facilitated a mushrooming of new digital labour platforms, concerns about a two-tier labour market in Germany are by no means new. Looking at the big picture of the labour market, our focus on fair working conditions in the platform economy raises familiar questions relating to the struggle to create decent working conditions for all workers, irrespective of their employment status or background.

### *Features of the German Labour Market*

The German economy has long been characterised by a rich tradition of tripartite social partnership. Historically, this model of regulating the labour market involved close coordination between three pillars of competing interests: strong labour unions representing a relatively homogeneous domestic workforce, employers’ organisations, and the government.<sup>14</sup> At the firm level, practices of co-determination<sup>15</sup> have frequently brought about potent legal mechanisms for workers to actively influence decisions in their workplaces, through arrangements such as Works Councils. With that in mind, a question that bears asking is how does Germany’s distinctive labour market environment relate to the rise of digital platforms? Could Germany serve as a model for other countries when it comes to taming the worst excesses of platform capitalism?

At first glance, the historical legacy of strong social partnership between employers’ and workers’ organisations means we have powerful regulatory frameworks to thwart precarity, discrimination, and atomisation in the platform economy. However, in recent decades, the spread of non-standard employment arrangements and exploitative subcontracting practices have tested these institutional checks. Most importantly, many companies relying on migrant work often evade sectoral collective bargaining agreements and undermine minimum labour standards. As long-term analyses of essential sectors such as the meat

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<sup>12</sup> Pesole, A., Urzì Brancati, M. C., Fernández-Macías, E., Biagi, F., González Vázquez, I., European Commission, & Joint Research Centre. (2018). Platform Workers in Europe (EUR 29275 EN). [https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157\\_pubsy\\_platform\\_workers\\_in\\_europe\\_science\\_for\\_policy.pdf](https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157_pubsy_platform_workers_in_europe_science_for_policy.pdf)

<sup>13</sup> Bundesministerium für Arbeit und Soziales/Federal Ministry of Labour and Social Affairs. (2018). Ausmaß von Plattformarbeit in Deutschland könnte höher als bisher angenommen sein. <https://www.bmas.de/DE/Presse/Meldungen/2018/ausmass-von-plattformarbeit-in-deutschland-hoehere-als-erwartet.html>

<sup>14</sup> Lesch, H., Vogel, S., & Hellmich, P. (2017). The State and Social Partners Working Together: Germany’s Response to the Global Financial and Economic Crisis. *International Labour Organization Working Papers* 994961593002676

<sup>15</sup> McGaughey, E. (2016). The Codetermination Bargains: The History of German Corporate and Labour Law. *Columbia Journal of European Law*, 23(1), 135–176. <http://dx.doi.org/10.2139/ssrn.2579932>

industry,<sup>16</sup> the construction industry<sup>17</sup> and the health care sector<sup>18</sup> show, outsourcing and subcontracting practices have long been widespread in Germany.

These examples demonstrate that concerns about a two-tier labour market in Germany are by no means new, nor are they restricted to platforms. At the same time, the high proportion of low-wage earners can also be evidenced quantitatively. In November 2021, more than half of the working population in Germany (33.6 million people) were registered employees subject to social security contributions, with an adjusted unemployment rate of 3.2 per cent.<sup>19</sup> Despite this relatively low unemployment rate, in 2018, there was a high share of low-wage earners (22.5 percent), which significantly exceeded the European average (17.2 percent).<sup>20</sup> In other words, in recent years, the German labour market has been characterised by a comparatively high reliance on low-wage employment.

### *Migration and Platform Work*

Platform work in Germany is often lauded for its flexibility and low entry barriers, as there is generally no need for specific occupational licences, and it can often be performed with limited knowledge of the German language. Therefore, platform work can provide a fast route to earning income and is frequently a lifeline for those who face barriers to standard employment. These characteristics make platform work particularly attractive for migrants.

It is thus not surprising that most of the platform workers we interviewed are either immigrants or are born in Germany to parents or grandparents who have migrated to Germany. Migrant workers often stressed that they find platform work more accessible than much of the rest of the local labour market. When migrant workers engage in platform work, a number of particular issues come to the fore. For instance, language proficiency might affect a worker's ability to understand a platform's terms and conditions. It might also affect their ability to communicate with their co-workers and the platform's management to discuss any issues that arise. Moreover, newcomers often lack a clear understanding of workers' rights in their new country of residence, including the legal procedures and institutions that might protect them.

Our research shows that clear contracts, as well as transparent terms and conditions, available in languages other than German, can make an enormous difference for many migrant workers. At the same time, establishing formalised and well-advertised channels for workers to communicate with platforms, both to raise grievances and to appeal disciplinary decisions, are fundamental to empower workers to express their voice and

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<sup>16</sup> Wagner, B., & Hassel, A. (2016). Posting, Subcontracting and Low-Wage Employment in the German Meat Industry. *Transfer: European Review of Labour and Research*, 22(2), 163–178. <https://doi.org/10.1177/1024258916636012>

<sup>17</sup> Kahmann, M. (2006). The Posting of Workers in the German Construction Industry: Responses and Problems of Trade Union Action. *Transfer: European Review of Labour and Research*, 12(2), 183–196. <https://doi.org/10.1177/102425890601200206>

<sup>18</sup> Lutz, H., & Palenga-Möllenbeck, E. (2010). Care Work Migration in Germany: Semi-Compliance and Complicity. *Social Policy & Society*, 9(3), 419–430. doi:10.1017/S1474746410000138

<sup>19</sup> Statistisches Bundesamt/Federal Statistical Office of Germany. Labour Market: Employment. [https://www.destatis.de/EN/Themes/Labour/Labour-Market/Employment/\\_node.html](https://www.destatis.de/EN/Themes/Labour/Labour-Market/Employment/_node.html)

<sup>20</sup> Eurostat. Earning Statistics. [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Earnings\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Earnings_statistics)

exercise their rights. Finally, the existence of a collective body representing workers can monitor working conditions, improve the bargaining power of workers against arbitrary decisions, and help to protect the most vulnerable workers from exploitation.

## **The Legal Context: What Makes a Worker an Employee?**

In Germany — as in most other jurisdictions<sup>21</sup> — worker protections, derived from labour laws and social security laws, are mostly predicated on workers being classified as ‘employees’. German labour law is embedded in the country’s model of a social market economy. The legal definition of ‘employee’ has been developed over more than a hundred years in the context of hierarchical organisations typical of the Fordist production system and informed by collective agreements. Therefore, the classification of workers in atypical and platform-mediated working contexts presents problems. Nevertheless, according to the definition of what constitutes an ‘employment contract’<sup>22</sup> a good number of geographically tethered labour platforms could be argued to qualify as employers — and some of them, namely in the food-delivery sector, have been complying with this classification. Still, however, some platforms seem to be circumventing their obligations to provide workers with employment rights by contractually classifying — or, in the frequent case of ‘disguised employment relationships’ (Scheinselbstständigkeit), misclassifying — platform workers as independent contractors. This leaves them without minimum wages, health and safety regulations, sick pay, working time regulation or collective bargaining rights. Furthermore, these workers only enjoy limited social security protection.

With this lack of specific regulation, legal security for misclassified workers can only come through the courts. But while it has been difficult to know for certain how a court or tribunal would end up classifying the employment relationship in adjudicating disputes, the Federal Labour Court, in December 2020, made a big jump by classifying a microworker / crowdworker as an “employee”.<sup>23</sup> To this end, the court used a rather innovative reinterpretation of the law in its classification, by looking at the coercive effects / incentives created by the platform’s rating and booking system.

Yet even labour relationships in the platform economy that are based on the employee model have been subject to ongoing legal disputes. Lieferando and Gorillas, for example, have been fighting in the courts over the establishment of Works Councils. And a decision by the Federal Labour Court of November 2021 was needed in order to force Lieferando to provide its employees with bicycles and smartphones.<sup>24</sup>

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<sup>21</sup> Rogers, B. (2016). Employment Rights in the Platform Economy: Getting Back to Basics. *Harvard Law & Policy Review*, 10, 479-520. <http://dx.doi.org/10.2139/ssrn.2641305>

<sup>22</sup> German Civil Code, Section 611a. [https://www.gesetze-im-internet.de/englisch\\_bgb/](https://www.gesetze-im-internet.de/englisch_bgb/)

<sup>23</sup> Bundesarbeitsgericht/Federal Labour Court. (2020, Dec 1). Case 9 AZR 102/20, <https://www.bundesarbeitsgericht.de/entscheidung/9-azr-102-20/?highlight=9+AZR+102%2F20>.

<sup>24</sup> Bundesarbeitsgericht/Federal Labour Court. (2021, November 10).

<https://www.bundesarbeitsgericht.de/presse/arbeitgeber-muss-fahrradlieferanten-fahrrad-und-mobiltelefon-als-notwendige-arbeitsmittel-zur-verfuegung-stellen/>

It is important to note that labour law is by no means the only regulatory framework that affects the platform economy in Germany. For example, in the rich regulatory history of Uber Germany, the law of public transport and unfair competition has played a key role in shaping the company's operations, including its relationship with intermediary companies employing its drivers. In August 2021, a long-standing dispute between taxi drivers and ride-sharing platforms such as FreeNow, Uber and Clevershuttle was decided with the help of an explicit statutory confirmation that digital ride-hailing companies such as Uber may operate legally, but that its drivers must continue to return to their place of operation after each trip unless a new transport order has been accepted beforehand.<sup>25</sup>

### *Policy Developments*

First and foremost, it is necessary to enforce existing labour laws in cases of disguised employment relationships, i.e., in the case of labour platforms that — despite their claims to the contrary — are not simply intermediaries between workers and customers but that exert significant control over the labour process. Secondly, in order to hold digital labour platforms accountable according to their grip on workers, the former Federal Ministry of Labour and Social Affairs, in November 2020, released a list of proposals to ensure fair conditions for both platform-mediated gig work and cloudwork.<sup>26</sup> However, the recent coalition agreement for the 2021-2025 governmental term seems rather to foreshadow a step backwards, as it does not mention regulation, but rather relies on collecting data and dialogues.<sup>27</sup>

But the legislative environment of the platform economy in Germany is also affected by policy developments on EU level, which the German coalition agreement promises to keep up with in a constructive way. In particular, this should concern the European Commission's Proposal for a Directive on Improving Conditions on Platform Work,<sup>28</sup> a proposal that constitutes an important step towards fairer working conditions in the European platform economy, while at the same time still containing important shortcomings and failing to address some of the most significant issues faced by many platform workers in their daily working lives.<sup>29</sup>

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<sup>25</sup> Sec. 49 para 4 (3) Personenbeförderungsgesetz (PBefG).

<sup>26</sup> Bundesministerium für Arbeit und Soziales/Federal Ministry of Labour and Social Affairs. (2021, January 27). Key Issues of the Federal Ministry of Labour and Social Affairs: Fair Work in the Platform Economy. "<https://www.bmas.de/SharedDocs/Downloads/EN/Topics/Social-Europe-and-international-Affairs/key-issues-platform-economy.html>.

<sup>27</sup> Die Bundesregierung/Federal Government. (2021). Koalitionsvertrag zwischen SPD, Bündnis 90/Die Grünen und FDP. <https://www.bundesregierung.de/breg-de/service/gesetzesvorhaben/koalitionsvertrag-2021-1990800>

<sup>28</sup> European Commission (2021, December 9). Commission Proposals to Improve the Working Conditions of People Working through Digital Labour Platforms. <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=10120&furtherNews=yes>.

<sup>29</sup> Fairwork (2021, December 9). Fairwork Response to the European Commission's Proposal for a Directive on Platform Work. <https://fair.work/en/fw/blog/fairwork-response-to-the-european-commissions-proposal-for-a-directive-on-platform-work/>

The Fairwork team hopes that German lawmakers will continue to be active in reforming labour law to address the many challenges faced by platform workers.

## Fairwork Scores

Zenjob	9/10
Wolt	7/10
Lieferando	7/10
Flink	6/10
Careship	6/10
Getir	5/10
Amazon Flex	3/10
Betreut.de	2/10
Helpling	2/10
Gorillas	2/10
FreeNow	1/10
Uber	1/10

### *Fair Pay*

In order to meet the basic threshold, workers have to make at least 9.60 Euros/hour (valid July-Dec 2021), after costs associated with work, including equipment, vehicle, and its maintenance. The majority of platforms included in our study met this basic threshold. Points were not awarded to Betreut.de, as the platform did not provide evidence for a wage floor, which can lead workers to charge below minimum wage to remain competitive; to Helpling, where worker evidence indicates high commissions, especially for the first three cleanings done for each new customer, leading workers to earn below minimum wage; and to FreeNow and Uber, due to lack of evidence from subcontractors regarding payment structures, and the service-based payment model these platforms operate on, which led to loss of income during consecutive lockdowns, when drivers could not work on a steady basis.

To meet the advanced threshold, workers have to make at least the minimum living wage after costs. In Germany, due to lack of a living wage indicator, we have chosen to go with rates set in collective bargaining agreements. In the absence of collective bargaining agreements, we used the private consumption expenditure rates defined by the Federal Statistical Office of Germany (Statistisches Bundesamt)<sup>30</sup> which, based on our calculations, translate to 14.50 Euros/hour. Our research shows that the majority of platforms operate in sectors which are not covered by collective bargaining agreements or that they fail to

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<sup>30</sup> For this year's research, we decided to use the private consumption expenditure as a proxy for living wage. The average private consumption expenditure per month for a single person (in Tax Category 1; with no children; does not pay church tax; and uses public health insurance) is 1.600 Euros net, and 2.330 gross. For a full-time employee who works 40 hours/week, this figure brings us to 14.50 Euros of net hourly wage. [https://www.destatis.de/EN/Themes/Society-Environment/Income-Consumption-Living-Conditions/Consumption-Expenditure/\\_node.html](https://www.destatis.de/EN/Themes/Society-Environment/Income-Consumption-Living-Conditions/Consumption-Expenditure/_node.html)

provide a rate that exceeds 14.50 Euros/hour after costs. The exceptions are Careship (17.50 Euros/hour) and Zenjob (collective bargaining agreement for temporary workers). Lieferando and Wolt came close to providing their workers with an hourly living wage, but only after delivery and distance (Kilometergeld) bonuses were included.<sup>31</sup>

### *Fair Conditions*

In order to meet the basic threshold, platforms need to have policies and practices in place that protect workers from task-specific risks, and they need to implement measures to protect workers' personal data. The latter part of this principle is met by all platforms in Germany as the German state requires all businesses to abide by data protection regulations. However, not all platforms could provide evidence that they ensure a safe working environment, including the equipment provided to workers, and personal protection equipment and rapid tests (or reimbursement) during the pandemic. Moreover, platforms that have physical workplaces (e.g. grocery delivery platforms which have warehouses) have to ensure a clean and safe work environment. The platforms operating in the domestic work and care sector in this year's study (Betreut.de, Helpling, Careship) failed to provide evidence that they protect their workers against these risks, either in regulating the workplace (i.e. clients' houses) or providing personal protection equipment and rapid tests (or reimbursement). Platforms in the food (Wolt and Lieferando), grocery (Gorillas, Getir, Flink), and logistics (Amazon Flex) delivery sector, as well as ride-hailing (Uber, FreeNow) could all show that they have provided personal protection equipment and rapid tests (though often after significant delays, as was the case with Lieferando and Wolt) and administered new measures (e.g. plastic panels in cars, new regulations to curb carpooling or excess number of passengers) in that regard. Here, Gorillas stands out as the only platform in the grocery delivery sector with documented failures at workplaces (the most recent being a bedbug infestation which led health and safety regulators to shut down a warehouse) leading to a null point for this basic threshold.<sup>32</sup>

The advanced threshold addresses the presence of a safety net in case of loss of work and wages (due to sickness or emergencies) and expects platforms to not hold their workers accountable, e.g. by issuing warnings or terminating their workers' employment. Since all contracted labour in Germany is subject to social security (paid sick, parental, and holiday leave), most platforms that attained point 2.1 also met 2.2. It should be noted, however, that worker evidence highlights that the process of demanding these benefits can be lengthy and in certain cases, payments are delayed. Hence, platforms which have gained a score on this threshold should work towards making the process less cumbersome for their workers. In the case of independent contractors, there was no documented policy of a safety net, and in most cases, no evidence of health insurance offered by the platforms. For this reason, no point was provided to platforms which work on an independent-contractor model.

### *Fair Contracts*

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<sup>31</sup> Both platforms pay a flat rate of 11 Euros/hour, plus tips and bonuses, which in peak times, spikes the hourly earnings.

<sup>32</sup> Zeit Online (2021, December 1). Gorillas-Standort Wegen Schädlingsbefall Geschlossen. <https://www.zeit.de/news/2021-12/01/gorillas-standort-wegen-schaedlingsbefall-geschlossen>

The basic threshold for this principle evaluates whether the contracts offered to workers (or in lieu of contracts, Terms and Conditions) are comprehensive, and presented in clear and understandable language. Contracts should also be accessible to workers at all times, and changes made in the contracts have to be notified within a reasonable timeframe. As contracted labour is regulated under the German labour law, most platforms could provide the necessary evidence to meet this basic threshold. Moreover, the majority of contracts or Terms and Conditions are offered in German and English, increasing their legibility to platform workers, a large share of whom are migrants with little to no command of the German language. Nevertheless, the Fairwork Germany team will continue to push platforms to provide copies of contracts in languages other than English, such as Spanish, Hindi (and other relevant South Asian languages), Turkish, and Arabic, as a majority of the workers in big cities where the platforms operate (especially in the food and delivery sector) come from Spanish and Arabic-speaking countries, Turkey, and South Asia.

The advanced point in this principle can only be attained if workers or platforms can provide evidence that their contract clauses neither include liability for negligence nor prevent workers from seeking redress for grievances. While most platforms included in our study were awarded this point in light of the evidence collected from workers, including work contracts and terms and conditions, platforms who failed to attain this point include Gorillas (due to evidence of unfair termination of contracts), Amazon Flex (due to liability clauses where lost packages lead to warnings and downgrading of workers' ratings), FreeNow, and Uber (the latter two due to the subcontracting nature of their business, and the lack of evidence of close monitoring by the platforms of the contracts offered by subcontractors). Important to note here is the six-month probation period, especially for work contracts that were initially limited to one year. There is evidence to indicate that some platforms use the probation period as an excuse to terminate the contracts of "problematic" workers, such as those who organise in the workplace or who attend demonstrations.<sup>33</sup> While by law, workers can be put on a probation period for the first six months of their employment, we encourage platforms to shorten this period in order to offer their workers greater job security.

### *Fair Management*

The first threshold on the fair management principle assesses the presence of a human representative to address worker queries, as well as a process for workers to seek answers to work-related issues (including non-payment, deactivation, penalties or disciplinary action). Workers, moreover, should not be disadvantaged for raising concerns. The majority of the platforms included in our study have a human representative responsible for addressing workers' questions. There is, however, documented evidence of queries being received but not addressed, as well as long waiting times for the queries to be resolved. For this reason, this basic point was only awarded to platforms who were either able to document mechanisms in place to respond to worker queries, or platforms whose workers made it clear in our interviews that the mechanisms provided to reach platform management were sufficient. The point was not awarded to the majority of platforms using an independent-contractor or a subcontractor model, as these platforms (the majority of

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<sup>33</sup> Wahmkow, J, Nowak P & Schulz, B. (2021, June 10). Alle Rider Stehen Still. *Taz*. <https://taz.de/Arbeitskampf-bei-Lieferdienst-Gorillas/!5774459/>



them in domestic work and care, and the ride hailing sector) either failed to evidence that they provide assistance for the problems faced by their workers (e.g. regarding their relationship with their customers, or delayed or partial payments from customers), or delegated these tasks to subcontractors who, in various instances, could be shown to have failed to address their workers' questions.

The advanced threshold for this principle ensures that discriminatory behaviour (by customers, clients, or the platform management) is closely monitored and proactively tackled. This advanced point can only be awarded when the platforms can provide evidence of anti-discriminatory measures in place, and that they actively improve access to work for all workers regardless of their beliefs or background. Only three platforms were able to provide evidence of proactive measures to tackle discrimination in the workplace. These are Lieferando (a speak-up policy to send anonymized emails concerning discriminatory behaviour at work to platform managers), Wolt (workers can choose not to make certain deliveries based on their preferences), and Zenjob (antidiscrimination and anti-harassment measures incorporated into their terms of service). More policies, however, need to be implemented to continue to protect platform workers from structural discrimination, which continues to be a problem in Germany today. While we understand that platforms cannot be held solely responsible for tackling this issue, they do need to play a proactive role as prominent actors in the labour market to further encourage social change.

### *Fair Representation*

In Germany, workers in private companies that employ five or more employees have the right to form representative worker bodies known as Works Councils. Workers, moreover, have the legal right to representation by trade unions. Few of the platforms in this study could provide evidence of a documented mechanism for expression of collective worker voice, or that they willingly recognise, or bargain with, a collective body of workers or a trade union. While platform managers explained this to us as a lack of demand by the workers themselves, this explanation is partial at best, as most platforms could not prove to have communicated the possibility of such channels of representation. Worker interviews, moreover, highlight the possible repercussions for workers who choose to form such channels, often communicated to them verbally through their supervisors. The effort by Gorillas workers is a case in point, where attempts to form a Works Council have been repeatedly hindered by the management. Although Gorillas workers have now established a Works Council, the collective body is itself now being sued by the management as the platform undergoes a change in its business model (moving into a franchising model). For this reason, we cannot award Gorillas a point for either the basic threshold (willingness to recognise a collective body) or the advanced threshold (public and formal recognition of a collective body of workers). Nevertheless, one platform, Zenjob, is piloting programmes to implement worker representatives to correspond with its workers. Moreover, we have been informed of similar efforts by other platforms in the food and grocery delivery sector, including Flink, which is working towards building a new collective body of representation (i.e., a Europe-wide Flink SE Works Council), and Lieferando, whose workers, in addition to eight local and regional Works Councils including Hamburg, Cologne, Frankfurt/Offenbach and Stuttgart, are organising to form a Works Council in Berlin. Lieferando is currently the only platform in the food and grocery delivery sector that has multiple Works Councils. However, worker evidence suggests that their demands to found new Works Councils (e.g.

in Berlin) are met with resistance and delays (office space and IT infrastructure, and communication channels to send mass emails, not provided in a timely manner), and we encourage Lieferando to be more cooperative in this process.

## Platforms in Focus

### *Gorillas*

Gorillas is a grocery-delivery platform founded in Berlin in May 2020. As of 2022, it operates in eight European countries and in the United States. Germany holds the title for the largest operation, with warehouses in 20 cities. The reason we have highlighted Gorillas, however, has to do with its media exposure, especially for its worker activism, which led to the establishment of a Works/Workers Council<sup>34</sup> after an almost year-long struggle with management.<sup>35</sup> To date, Gorillas is the one of the largest food and grocery delivery platforms in Germany with an active body of worker representatives (in Berlin) — Lieferando being the other (with eight established local and regional Works Councils, and more recently, with an electoral council in Berlin.)<sup>36</sup> In this section, we chronicle efforts by the Gorillas workers to highlight how workers voice is an indispensable part of the platform economy, and why platforms need to listen to their workers as they evolve.

Gorillas workers come from diverse backgrounds. Some are German citizens, while most are immigrants and international students visiting Germany on temporary working holiday and student visas. As demand for couriers has soared during the pandemic, and with new companies entering the platform economy, Gorillas has also resorted to temporary employment agency platforms, such as Zenjob, to recruit workers. Most Gorillas workers start with a year's contract, where the first six months constitute the probation period which grant the platform the option of dismissal of contracts. After the first year, contract extensions are offered. Unlike with Gorilla's competitors, such as Flink, worker evidence suggests that these extensions have yet to be made permanent contracts.<sup>37</sup>

Gorillas workers are made up of riders, pickers and rider operations personnel (rider-ops) at warehouses. The pickers prepare groceries at warehouses spread around

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<sup>34</sup> Gorillas workers use the term Workers Council to describe their official body of worker representation.

<sup>35</sup> rbb24 (2021, November 29). Berlin Lieferdienst Gorillas Hat Nun Einen Betriebsrat. <https://www.rbb24.de/wirtschaft/beitrag/2021/11/berlin-gorillas-start-up-wahl-lieferboten-abgeschlossen.html>

<sup>36</sup> Henning, M. (2021, August 2). Lieferando und Seine Betriebsräte. *Netzpolitik.org*. <https://netzpolitik.org/2021/arbeit-lieferando-und-seine-betriebsraete/>

<sup>37</sup> Gorillas workers have recently sued the platform to get unlimited contracts. Currently, only those who are serving as plaintiffs in this case are granted unlimited contracts. Kluge, C. (2021, September 6). Gorillas-Rider Klagen Gegen Befristete Arbeitsverträge. *Der Tagespiegel*. <https://www.tagesspiegel.de/berlin/express-lieferdienst-vor-dem-arbeitsgericht-gorillas-rider-klagen-gegen-befristete-arbeitsvertraege/27586028.html#:~:text=Gorillas%20stellt%20die%20Besch%C3%A4ftigten%20%C3%BCblicherweise,Klagenden%20%C3%BCberhaupt%20rechtm%C3%A4%C3%9Fige%20Vert%C3%A4ge%20haben.>

neighbourhoods in cities where the platform operates, while the riders deliver the groceries from the warehouses to customers. Warehouse work is supervised by warehouse managers and rider-ops, the latter in charge of maintaining the bicycles that the couriers ride, who themselves are monitored by the upper management, which is constituted of city managers. Riders and pickers earn 10.50 Euros/hour (with a recent raise to 12 Euros/hour offered only to new riders) plus tips. As contracted employees, Gorillas workers also receive health and accident insurance, paid sick leave, and holiday leave. Many workers work part time, considering it a side job to their studies or other (platform) work. Some also use the platform as a full-time opportunity to make a living.

The problems Gorillas workers initially faced were similar to those of workers in other food delivery platforms. It was February 2021 when these problems were first vocalised by Gorillas workers. Amid harsh winter conditions, Gorillas workers in Berlin demanded that the platform provide them with rain-and-windproof jackets, gloves, and shoes to do their jobs in an effective and safe manner, and to be given paid time off to avoid biking in icy conditions, which the platform initially refused. This led riders in several warehouses to stop deliveries for consecutive days. The Gorillas management eventually followed the recommendation by the Ministry of Transport to cease operations until weather conditions improved. Despite this, workers found the winter equipment provided by the platform to be insufficient (and indeed, it was only distributed in early Spring), and soon after, other problems came to be discussed more vocally by worker activists, such as miscalculated and delayed payments, unpaid sick leave, and lack of response by management to workers' grievances. This led Gorillas workers to increase their efforts to organize in various warehouses, and to raise their voice via social media.

In late March 2021, another incident sparked worker activism. An organiser for the then nascent group of Gorillas worker collective was fired by Gorillas just two weeks before the end of their probation period, but after legal opinion provided by the Free Workers' Union (FAU), the termination was deemed invalid due to a technical issue. The termination was contested by workers, and flyers were hung by three organisers in the (Berlin) Kreuzberg warehouse inviting workers to a General Assembly (Betriebsversammlung) to set up an Electoral Council for a Works Council. These three organisers would later be joined by dozens of others in what has come to be known as the Gorillas Workers Collective.<sup>38</sup>

Another demonstration was held in the (Berlin) Schönhauserallee warehouse in June 2021 in support of another worker fired within their probation period. The demonstration, which shut down operations in that warehouse for the remainder of the day, was widely attended by workers, community activists, the media, and was heavily monitored by the police. Only the warehouse manager was present to respond to questions from workers who demanded job security during their probation period. Raising their voices to demand better working conditions, some workers argued, was the real reason behind the terminations.<sup>39</sup> The management provided no response in the days that followed, which led to yet another demonstration later in June, this time in front of the Gorillas headquarters in Prenzlauerallee. Both the CEO of Gorillas, Kağan Sümer, and several city managers, were present to respond to queries from workers who inquired why their payments had been

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<sup>38</sup> Gorillas Workers Collective, Twitter. <https://twitter.com/GorillasWorkers>

<sup>39</sup> Fairwork, Twitter (2021, June 24).

<https://twitter.com/towardsfairwork/status/1408033148588363782?lang=da>

miscalculated and delayed, and whether the company would provide its workers with better bicycles and equipment. Similar demands were raised on social media, where workers shared their stories, often accompanied by visuals of broken or malfunctioning bikes, delayed or miscalculated pay slips, and equipment that could not to handle the Spring rains.<sup>40</sup>

A few days after this demonstration, Sümer issued a statement — an email which was disseminated amongst Gorillas workers and later leaked to the public. In the statement, he highlighted the need for workers to act as a family, and blamed a minority of workers spoiling the work experience for everyone else.<sup>41</sup> There was, however, no mention of the management’s shortcomings in addressing the issues raised by workers, and no steps were taken to address them in the weeks that followed.<sup>42</sup> The lack of response by the Gorillas management led to another string of city-wide demonstrations in July, including a bike tour by Gorillas workers and community activists that led to four warehouses being shut down for the day, and several strikes in the following months, each of which brought further disruption of business.<sup>43</sup> The company considered these actions to be illegal, as Gorillas workers did not have a Works Council, and the “wildcat strikes” were not supported by a union.<sup>44</sup> These strikes led to 350 workers being laid off by Gorillas in October, many of whom either left Gorillas to join other delivery platforms, or were reinstated to their jobs as the firings were deemed illegal (following a string of court cases in the Labour Court) due to yet another technical issue.<sup>45</sup> The wildcat strikes, however, continued, and so did Gorillas workers activism. By mid-autumn, Gorillas workers were gathering in warehouses and other spaces across Berlin to gather more support for an Electoral Council, which would later constitute the members of the Gorillas Workers Council.

Gorillas workers’ activism continued in October and November, both in courtrooms and on the streets. In court, the workers defended their fired colleagues, and contested the platform’s decision to annul the ongoing efforts of the Electoral Council to establish a Works Council.<sup>46</sup> These issues were also brought up on the streets. In mid-November, a day before the court case to decide the fate of Gorillas Workers Council, and less than a week ahead of the elections, Gorillas workers gathered in Kreuzberg, accompanied by hundreds of community activists, to reiterate their demands for a representative body, and to advocate for higher pay, better working conditions, and improved contracts. The four-hour

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<sup>40</sup> gorillasriderlife, Instagram. <https://www.instagram.com/gorillasriderlife/?hl=en>

<sup>41</sup> Geiger, G. (2021, June 28). Delivery App CEO Accuses Protesting Workers of ‘Political Ambition’. *Vice*. <https://www.vice.com/en/article/5db5yb/delivery-app-ceo-accuses-protesting-workers-of-political-ambition>

<sup>42</sup> Fairwork Podcast. <https://shows.acast.com/fairwork-podcast/episodes/007-gorillas>

<sup>43</sup> Martin, S. Z. (2021, October 5). Gorillas in Unlimited Strike. *KlasseGegenKlasse*. <https://www.klassegegenklasse.org/gorillas-in-unlimited-strike/>

<sup>44</sup> Our desk research highlights that Gorillas workers had initially reached out to several unions, but after having received lukewarm response, the workers decided to continue their action without official union backing,

<sup>45</sup> Bateman, T. (2021, October 8). Gorillas Delivery App Fires Hundreds of Berlin Workers for Strikes Over Pay and Working Conditions. *Euronews*. <https://www.euronews.com/next/2021/10/08/gorillas-delivery-app-fires-hundreds-of-berlin-workers-for-strikes-over-pay-and-working-co>

<sup>46</sup> Meaker, M. (2021, November 30). Europe Went Bananas for Gorillas. Then Its Workers Rose Up. *Wired*. <https://www.wired.com/story/gorillas-gig-economy-unions-germany/>

long demonstration was joined by other platform and service workers who shared Gorillas workers' plight.<sup>47</sup> The following day, the court came to a decision to allow Gorillas workers to continue with their efforts to form a Works Council. On the last weekend of November, elections went ahead as planned, and the Gorillas workers of Berlin were finally able to form a Works Council.

Evidence collected from desk research and worker interviews indicate that Gorillas management continues to fail on a number of grounds to offer a fair work experience. Payment issues, such as delayed or miscalculated payments, is still a problem for many Gorillas workers; bikes and equipment, though improved, are yet to provide adequate measures to mitigate task-related risks; contracts, though comprehensive, are not permanent and in some instances, terminated without just cause; despite channels of communication being open, workers' interaction with the management, especially in case of appeals, is delayed (especially for workers who request copies of their payslips); and channels for representation are obstructed despite the formation of a Works Council.<sup>48</sup> Nonetheless, Gorillas worker activism serves as a powerful reminder to researchers and workers that workers voice is an integral part of the platform economy, and a necessary one to bring change to it. Important to note, however, is that a large share of the workforce in platforms like Gorillas work on fixed-term contracts, or are employed through temporary employment agencies such as Zenjob. The temporary nature of employment through fixed term contracts and short-term gigs offered through temp-agencies provide a major obstacle to organizing efforts by the workers. We therefore encourage platforms such as Zenjob, who are used by platforms such as Gorillas and Flink for labour recruitment, to support their workers to join representative bodies, and to stimulate change in platforms they collaborate with.

## *Wolt*

Wolt is a Helsinki-based food delivery platform founded in 2014. Currently, it operates in over 170 cities across 23 countries. In 2020, Wolt launched its operations in Germany, with Berlin serving as its headquarters. The platform operates in three other German cities: Frankfurt, Hannover, and Munich.

Wolt follows a business model akin to its competitor, Lieferando, where the majority of bicycle and car couriers undertake restaurant to home and business deliveries. Recently the platform has also started partnering with retail shops to deliver non-food items in Germany – a practice that has already been in place in other countries. From the couriers' perspective, work at Wolt goes as follows: When the customer places an order using the Wolt app, the couriers closest to the restaurant are notified on their phone app. Upon accepting an order, the courier goes to the restaurant, picks it up, and delivers it to the

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<sup>47</sup> Martin, S. Z. (2021, November 18). Über 600 Menschen auf Gorillas-Demo: Angriff auf Betriebsrat Abgewehr! *KlasseGegenKlasse*. <https://www.klassegegenklasse.org/erfolgreiche-gorillas-demonstration-angriff-auf-betriebsrat-abgewehrt/>

<sup>48</sup> Worker evidence suggests that Gorillas is currently bringing the case of Gorillas Workers Council to court, once again. The platform claims that in light of a proposed change to the company's business model, the Works Council is no longer a legal representative body.

customer. Riders and drivers are paid a base wage of 11 Euros per hour, plus an additional 4.20 Euros per delivery,<sup>49</sup> and are provided with additional money for the distance travelled, mainly to compensate for vehicle wear and tear.<sup>50</sup> While workers are responsible for providing their own vehicle (many Wolt riders in Berlin rent e-bikes from companies like Swapfiets), the equipment (phone covers and dongles, power banks, summer and winter appropriate shirts, cube-bags) are provided by the platform free of charge. And recently, Wolt has initiated a pilot program to provide free bicycle repairs, in collaboration with a German mobile bike-repair company. Wolt's competitor, Lieferando, has a similar policy.

Fairwork research on Wolt highlights the platform's changing business model and payment structure throughout 2021 – three different payment models were tested within the same year, which received negative reactions from workers. Worker satisfaction with the platform was initially high, with the workers we interviewed praising the competitive payment scheme and bonus system which, in most instances, allowed them to earn above a living wage in high-demand periods – a rare instance in this sector. However, in the latter half of 2021, Wolt shifted its business model to decrease hourly wages and eliminate the delivery bonuses. Other issues surfaced regarding access to pay slips, and taking paid sick and holiday leave. Under the new payment structure, workers were guaranteed a minimum wage of 10 Euros/hour, plus tips and kilometre money. According to estimates obtained from one worker interview, in which the worker provided us his own personal calculations, workers experienced a 30% decrease in their wages, with earnings capped at a maximum of 14 Euros/hour. The new model also made it harder for workers to decline orders located too far away – and thus have to make exhausting trips to the restaurant, for which the worker receives no kilometre money – thereby making the job a less flexible experience than advertised.

On August 13, 2021, Lieferando and Gorillas couriers in Berlin attended a day long demonstration to raise their voices against pay cuts and precarious working conditions.<sup>51</sup> Many Wolt workers also attended the demonstration. Like couriers on other platforms, Wolt riders actively participate on social media and messaging groups to share expertise and organise actions to hold the platform accountable. Because Wolt riders (like Lieferando riders) do not have warehouses, social media participation provides a key means for worker organising.

Desk research and interviews conducted with workers and management in 2021 indicate that the shift in Wolt's business model led many riders to leave the platform and seek employment on other food and grocery delivery platforms. By late summer, Berlin was filled with billboards advertising employment opportunities in the city's growing platform economy, with signup bonuses upwards of 150 Euros for new workers. Increased competition for workers among platforms has compelled Wolt to revisit its new payment model, and eventually pushed the management to implement a new scheme in October 2021, which includes an increased hourly minimum wage and delivery bonuses. Worker evidence suggests that while this third model is worse than the first model in terms of its

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<sup>49</sup> Plus an additional 50 cents/hour for deliveries done on Sundays after 5pm.

<sup>50</sup> Kilometer money/kilometergeld: 20 cents/km for bicycles and 30 cents/km for cars, distance counted from restaurant to the delivery destination.

<sup>51</sup> LabourNet.TV (2021). Food Delivery Workers Protest in Berlin. <https://en.labournet.tv/food-delivery-workers-protest-berlin>

payment structure, it offers a significantly improved payment scheme compared to the second model.

Wolt has also introduced a number of policies to provide workers with a safer and more inclusive working environment. These include partnership with an occupational health and safety provider to advise the platform on weather conditions (where Wolt can shut down operations to ensure workers safety in hazardous weather conditions); collaboration with a health and safety regulator to run quarterly audits to assess worker safety; providing an option for workers to opt out of certain deliveries (e.g. alcohol, sex toys); providing bicycle helmets that can be worn over head covers (e.g. turban, dastar); expanding its human resources team to provide a rapid response to workers, restaurants, and customers; offering free bicycle checks and repairs (for which Wolt riders are also compensated for their time); and a road safety training programme for Wolt couriers. Wolt has also limited its restaurant-to-delivery radius in Berlin to three kilometres, allowing workers to do more deliveries per hour and avoid excessive rides to and from restaurants. The platform also runs regular focus groups and conducts surveys amongst its workers on issues regarding gender equality, payment structure, and equipment.

Despite these measures, there is currently no Works Council (or at least an informal worker representation) to hold the platform accountable for change, meaning that it is in the platform's discretion to improve working conditions and ensure fair contracts. By contrast, its competitor, Lieferando, has Works Councils which have legal rights to demand changes in company policies in response to workers' demands—including, for example, the recent request for better winter gloves, which Lieferando management delivered. Workers in Lieferando were also recently granted paid time off to pick up their gear from hubs. As worker evidence suggests, Wolt still fails to provide high quality summer and winter equipment—an issue, however, we have reason to believe the platform is aware of, and is working to improve. Although we have evidence of restaurants being taken out of Wolt's network after worker and customer complaints, and the possibility for workers to opt out of taking deliveries from certain restaurants, the process for these measures to be operationalized can be lengthy, and can end up with workers continuing to complain about restaurant owners (for order delays, or discriminatory treatment). Another issue that platforms including Wolt have to consider is discriminatory treatment by pedestrians and customers. Given that many Wolt workers come from abroad, they are often at the receiving end of discriminatory or xenophobic remarks. We encourage Wolt to work towards raising public awareness on these issues, and to proactively confront the structural issues faced by platform workers. Devising new policies to that end—preferably in conversation with a worker collective, and a union—would be a welcome step in this direction. We hope to continue our dialogue with Wolt to ensure that these measures are taken in 2022.

## **Worker Stories**

*Camila, working for Helpling and Gorillas*

Camila<sup>52</sup> came to Germany from South America in November 2020. After losing her job as a freelance graphics designer due to COVID-19, she decided to make use of the working holiday visa and try landing a job in Berlin. She also wanted to use this opportunity to gain a degree as a graphic designer which would help her find a steadier job in Europe.

Upon arriving in Berlin, Camila needed money fast as her savings were running out, despite sharing a hostel room with a friend. She went on the Internet and searched for temporary jobs that requires little-to-no skills in German. The suggestions offered by Google were mostly platforms — some open primarily to students and German speakers, such as Zenjob, and others accepting applications from anyone with a work permit, such as Helpling and Gorillas. She figured that she could clean houses, and ride a bicycle to do deliveries on the side, and gave Helpling and Gorillas a try.

Both platforms accepted her application, with Helpling giving her a freelance position and offering her use of its interface to seek customers to do domestic work on a freelance basis, and Gorillas a year-long contract with a six-month probation period. While working for Helpling as a cleaner, Camila was able to set her own hourly wage. She sought the advice of a few colleagues, who advised her to start with 10 Euros/hour (which she found too low, and later increased to 12), so that she could build up her resume on Helpling's interface and become a more desirable candidate for other customers later on. The drawbacks, however, were two-fold: first, the job came with no paid sick leave, meaning that if she had to cancel an appointment, she not only lost income, but also had to explain to the customer why she could not show up for work, and hope that the customer nevertheless kept her on the books for the longer term. The second point is that working with the same customer for longer stints matters in this job, as Helpling takes 40 percent of the first three shifts with each new customer, meaning that if she failed to secure a regular customer, she risked making less than the state-mandated minimum wage. After the first three shifts, the commissions went down, but unless she charged above 12 Euros/hour, she would still barely scrape the minimum wage after transportation costs. She did not mind getting paid below the minimum wage, as long as she could make enough money from the platform to pay her rent. So, Camila started cleaning houses for an hourly rate which at times fell below the minimum wage.

With Gorillas, Camila was offered an employment contract at an hourly wage of 10.50 Euros/hour, plus the tips, which were rare, to transport groceries from the warehouse to homes and workplaces. She also got health insurance, which covered work-related accidents, and sick pay. Camila nonetheless preferred working for Helpling, as she preferred working indoors to riding the streets of Berlin in winter. So, despite the lower income, and hearing stories of sexual harassment in the workplace from other Helpling colleagues, she kept the Helpling job. She was also part of a WhatsApp group created by other South American Helpling workers called the *Sindicato* (“the Trade Union”), where workers shared work difficulties, and discussed questions for which the platform offered no help, such as issues with payment or interaction with customers. They even had an Excel sheet pinned to the top of the group which included names and addresses of “problematic” customers — those who did not pay on time, asked for extra hours without pay, and made sexual advances. Camila was grateful that such a support group existed. Had the platform

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<sup>52</sup> In this section, pseudonyms have been used to preserve the anonymity of the interviewees.



provided a similar channel to raise collective grievances, she could have opted for it – but no such channel existed to her knowledge.

The idea of a marketplace is a common narrative among workers finding jobs through “freelance-“ platforms such as Helpling and Betreut.de, where the platform provides an interface for the customer and worker to meet and set up a work schedule, often in exchange for a hefty commission (which is not the case with Betreut.de, but workers who seek quick employment prefer paying the platform's monthly fee to be more visible on its interface).<sup>53</sup> Other workers we interviewed used the analogy of a “ghost” to describe the platforms they worked for, to point out the lack of a physical entity to respond about problems faced at work. While they could email the management about problems they faced at work – such as problematic clients whose houses were larger than advertised on the platform, clients who had pets, or those who made discriminatory, and sometimes, sexist remarks – response rates were slow, and in some instances, absent.

With Gorillas, there was at least a warehouse, and a manager in a physical space who could respond to queries – though many workers like Camila complained about warehouse managers neither having the knowledge, nor the power, to resolve workers’ queries. Hence, what they would often do was to contact the upper management or Human Resources on the workers’ behalf, which did not prove too useful. Another option was to send emails or call the headquarters directly with issues, such as delayed payments, lost pay slips, rescheduling issues, or requests for sick and holiday leave. For Camila, however, the job at Gorillas had other difficulties. Camila was never a regular bicycle rider – certainly not the kind who could face regularly biking fifty kilometres a day to do deliveries. She did ride a bicycle back in her home country for leisure, but the bigger issue was that the e-bikes offered by Gorillas ran much faster than she had anticipated. Furthermore, workers were pushed to ride fast to ensure that orders were received by customers within the 10-minute time limit as advertised.<sup>54</sup> It was therefore no coincidence that when Camila sat down with us for an interview, she was wearing a plastic cast on her elbow – the result of a bicycle accident when doing a delivery, which left her with a fractured elbow. The doctor anticipated at least two more weeks before she could get back to work. This meant two more weeks without pay from her job as a cleaner for Helpling. With Gorillas, she was paid for the time lost due to sickness, but she was not sure if it would equal the amount of money she would have anticipated to make, or whether it would have adversely affected her probation period.

Work accidents do not only constitute a health hazard for platform workers. They also mean lost income, either in terms of how platforms calculate sick leave payments (e.g. not including bonuses), or loss of employment in other platform jobs, such as cleaning jobs, which work on a freelance basis, and often do not come with sick pay. While the platform economy is often cherished for providing “flexible” hours, in practice, there are many caveats to this narrative, as we can see from Camila’s story.

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<sup>53</sup> Workers who pay a monthly fee are prioritized in the platform’s algorithm for finding jobs by either being more visible in searches, or having the option to contact clients directly via telephone.

<sup>54</sup> Neuhetzki, T. (2022, January 5). Lieferungen in 10 Minuten: Bring, Gorillas, Flink & Co. im Vergleich. *Inside Digital*. <https://www.inside-digital.de/ratgeber/lieferung-in-10-minuten-bring-gorillas-flink-vergleich>

### *Suzanna, working for Zenjob*

Suzanna is a German student who is pursuing an undergraduate degree at a university in Berlin.<sup>55</sup> She had heard of Zenjob, a platform that provides students with employment opportunities, and had used the platform to seek short term jobs in past. As the pandemic resulted in most classes going online, she was left with more time than usual, and decided to use the platform more actively to make some extra cash.

Zenjob offers a range of temporary employment primarily to students enrolled in higher education institutions. The types of jobs offered include cashier or inventory personnel at supermarkets, sales personnel in retail, administrative assistant/office help, event promotion and preparation tasks (such as stage construction), call-centre jobs, and rider and picker jobs at grocery delivery platforms (such as Gorillas and Flink). Once the jobs appear on the Zenjob website, workers can apply to the job directly. And once selected, they sign a contract with Zenjob on a short-term basis.

In 2021, new jobs were offered through Zenjob due to increasing demand for vaccination centre personnel. These jobs were well paid – she could earn 18 Euros/hour, which is higher than most jobs Suzanna previously found through the platform, which averaged 12-15 Euros/hour – and she was lucky to secure one, and work part time to save some money for her upcoming summer vacation.

Most Zenjob offers are of a temporary nature, ranging from one day to a few days. However, Zenjob does not follow the freelance model highlighted before in Camila's story. Instead, each job, regardless of its duration, comes with an employment contract that the worker signs, thereby providing the worker with a safety net in the case of sickness, or payment issues. As the majority of jobs are handled by students, workers already have their health insurance in hand. But the platform also provides accident insurance in the case of income lost due to a workplace accident or sickness. This insurance, however, only covers the span of the contract, meaning that it does not pay for potential opportunities through the platform that the worker lost. Workers also get to feed back on their experiences, which, our interviews with workers and the management indicate is something Zenjob management takes seriously, by way of regular survey feedback, and the company provides regular workplace checks to ensure that its workers (or "talents," as they are referred to as), are provided with a safe working environment.

Suzanna found the job at the vaccination centre to be a pleasant experience. But the same does not apply to all Zenjob workers who find temporary employment in other sectors, such as in delivery-platforms (e.g. Gorillas or Flink), where the hourly pay is lower (around 12 Euros/hour), and where work conditions depend on the particular warehouse where the worker is employed. While Zenjob workers receive higher pay than those couriers who are employed directly by delivery platforms, worker evidence shows that they are asked not to share their payment details, which can create resentment among the other workers. Moreover, due to the temporary nature of the jobs, Zenjob workers are required to seek

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<sup>55</sup> As a student, she can opt for student jobs, which allow her to work legally up to 20 hours per week (for a total of 120 full days) during the academic year, and full-time during vacations, or take mini jobs, which are tax free, but capped at 450 Euros.

new employment opportunities regularly, meaning that they may not always land the jobs they desire.

Suzanna considered herself lucky as she was able to secure consecutive shifts at the vaccination centre. She also liked her supervisors and had no complaints other than the stress of securing new shifts at the work centre, which she sometimes had to do in her toilet breaks to beat the competition. She found the idea of signing a new contract each time she was offered a temporary position somewhat cumbersome. But she was very happy with the pay, as well as the opportunity to call or email someone at Zenjob if she faced a problem at work. And each time she reached out, she received a response in a timely manner – either a phone call within minutes, or an email within a day.

In our sample of platforms, Zenjob stands out as the only one that provides contracts in a market which is normally defined through its freelancing / independent contractor nature. However, there is no certainty that workers seeking employment through Zenjob can secure future jobs, or the types of employment that they desire. Suzanna, for example, did not want to work for Gorillas as she heard of the troubles at warehouses. Hence, unless she could secure a job similar to the one at the vaccination centre, she would prefer taking a break from the labour market and focusing once again on her studies. As a German student, she also has alternatives, such as mini jobs at her university, to which non-German students or expats only have limited access.

## **Theme in Focus: The COVID-19 Pandemic Challenges and Opportunities to Platforms and Workers in Germany**

As in our first report from 2020, the pandemic continues to shape the platform economy in unprecedented ways. Some platforms see in the pandemic an opportunity to grow, while others scale down and even suspend operations to revisit their business models and to adjust to changing health and safety regulations. This year, we have continued to witness many platforms implementing new measures to ensure greater checks on worker safety, but there are also others which chose to leave it to the workers' discretion to confront problems pertaining to their mental, physical, and financial health amidst the ongoing crisis. In this section we provide a general overview of the challenges and opportunities that COVID-19 has presented to platforms and their workers in Germany.

In terms of ongoing challenges, our research shows that the pandemic has continued to refashion platforms in two major ways. Firstly, we found that most platforms adopted binding federal regulations to control how workers interact with each other and customers. In the case of ride-hailing platforms such as Uber and FreeNow, protective plastic panels were installed in the early months of the pandemic in 2020 to ensure limited physical interaction between drivers and passengers. Drivers were asked not to take passengers in the front seat – limiting the number of people they could take per ride – which was closely monitored by the police. Drivers (as well as passengers) were also required to wear a face mask while using the platform, with access to the application interface enabled only upon sending a selfie with a mask prior to a shift. Not all drivers, however, were provided with personal protective equipment (e.g. disinfectants and face masks). This primarily has to do with the subcontracting nature of ride-hailing platforms in Germany, where platforms

allocate responsibility to subcontractors to monitor regulations and ensure a safe working environment. In some cars, for example, plastic panels are now in poor condition, and even torn. We also witnessed some drivers not wearing a face mask during rides. In the case of uncooperative passengers (i.e., who did not wear a mask), our worker interviews show that drivers were given the option to reject rides and ask passengers to leave – while also bearing the burden of these decisions, which includes receiving lower ratings from passengers, and losing income. Drivers also mentioned that when customers sent a formal complaint to the platform about them not wearing a mask, they risked being deactivated by the platform. Platforms were unresponsive to requests by drivers that passengers be informed of new regulations – leaving it up to drivers to deal with uncooperative passengers. Despite the pandemic, most drivers continued to share cars (day and night shifts), which could leave drivers exposed to transmission. Finally, drivers experienced a loss of income, especially during total lockdowns where passengers did not use ride-hailing platforms, which was neither compensated by the platforms, nor by the subcontractors who employed the drivers.

In the delivery sector (food, grocery and logistics), platforms had to adopt binding federal and request workers to make contact-free deliveries, meaning that packages were dropped off at the door rather than being handed to the customer. While this policy is a positive step towards the protection of workers against a highly transmissible, and in some cases, lethal virus, our interviews show that some workers experienced a drop in tips, given the lack of option to receive cash. Workers, especially in the logistics sector (Amazon Flex) also mentioned packages being lost (or stolen) as there was no possibility to obtain a proof of delivery (e.g. an electronic signature obtained from the customer upon receiving a package, which was rendered impossible by contact-free delivery) which, in some instances, left workers with a downgrade of their overall score, and, if repeated, led to their deactivation from the platform.

While personal protective equipment and disinfectants were provided to delivery riders and couriers, for those workers who had to return to a warehouse to pick up orders or work in warehouse settings (e.g. pickers preparing orders for delivery, rider operations maintaining bikes, warehouse managers supervising the process, or logistics couriers picking up packages), the risk of transmission continued to be an issue. Although there were instances of warehouses being shut down on discovery of COVID-19 cases, it was recently brought to public attention that the Gorillas Schönhauserallee warehouse had remained open despite the discovery of 14 COVID-19 cases among its workers.<sup>56</sup> In Amazon Flex warehouses, where workers went on a strike in 2020 to oppose risky working conditions, our interviews with couriers found that many of them were asked to stay in their cars for long periods.<sup>57</sup> As our interview data does not include warehouse workers, we cannot say whether warehouse conditions in Amazon Flex have improved since 2020.

In the domestic (Helpling, Betreut.de) and care (Careship) work sectors, worker evidence reveals that platforms failed to provide personal protective equipment or financial compensation for rapid tests and PCRs, which were not required by platforms, but

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<sup>56</sup> Gorillasriderlife Instagram (2022, January 16). <https://www.instagram.com/p/CYyzHwALtND/>

<sup>57</sup> Heater, B. (2020, June 29). Amazon Warehouse Workers Strike in Germany over COVID-19 Conditions. *TechCrunch*. <https://techcrunch.com/2020/06/29/amazon-warehouse-workers-strike-in-germany-over-covid-19-conditions/>

sometimes requested by customers. This led most workers participating in our study to cover these costs themselves. Moreover, workers were not provided with any financial support in the event of contracting COVID-19 and going into quarantine for extended periods of time, or of dropping any clients who refused to social distance or provide a safe working environment, leading to loss of employment and income. While the platforms included in our study did notify workers and customers via messages and emails to use a face mask and hand sanitiser to reduce the possibility of transmission, this was neither regulated nor enforced.

While many platforms implemented new policies to adjust to pandemic regulations, others had to revisit their business strategies or downscale their operations to remain profitable in this economy. One of the ride-hailing platforms we included in our 2020 report, Clevershuttle, exited the Berlin market in 2021, and also ceased business-to-customer operations in Düsseldorf and Leipzig.<sup>58</sup> It now mainly operates a business-to-government (B2G), and due to this change in business model, we decided not to include it for our rankings this year.

Another platform, BerlKönig, which is operated by a public enterprise, also experienced a similar fate. Already in 2020 there were discussions about the platform, which operates mostly in eastern Berlin, ceasing its operations.<sup>59</sup> Like Clevershuttle, BerlKönig offers ride-hailing services based on a car/taxi-pooling model, which, during COVID, had to cease. While it currently continues to operate, BerlKönig vehicles are now less visible in circulation.<sup>60</sup> The platform also focuses more on a B2G model where they offer rides to health care workers.<sup>61</sup> For these reasons, we decided to exclude BerlKönig from our study in 2021.

Finally, another platform included in our 2020 study, InStaff, which is a temp-agency platform that recruits workers for event venues (conferences, cultural events, festivals), was hit by the pandemic as most events were cancelled during the consecutive lockdowns. We found it difficult to recruit enough interviewees who met the criteria for participation (i.e., having found employment through the platform in the last six months, and preferably having worked for the platform for at least a month), and were therefore forced to exclude the platform in this year's research.

On the flipside, other platforms saw in the pandemic an opportunity to grow. The rapid rise of food and grocery delivery platforms – with many new platforms entering the platform

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<sup>58</sup> Julke, R. (2021, December 15). Pandemiefolge und Neuorientierung: Clever Shuttle Stellt Eigenwirtschaftlichen Fahrbetrieb ab Mitte Januar 2022 ein. *Leipziger Zeitung*. <https://www.l-iz.de/wirtschaft/firmenwelt/2021/12/pandemiefolge-und-neuorientierung-clever-shuttle-stellt-eigenwirtschaftlichen-fahrbetrieb-ab-mitte-januar-2022-ein-425229>

<sup>59</sup> Hasselmann, J. (2020, February 5). Senat Zweifelt an BVG-Projekt BerlKönig Könnte Schon Ende April Engestellt Werden. *Der Tagesspiegel*. <https://m.tagesspiegel.de/berlin/senat-zweifelt-an-bvg-projekt-berlkoenig-koennte-schon-ende-april-eingestellt-werden/25507754.html>

<sup>60</sup> Hanack, J. (2021, May 3). BerlKönig Fährt Weiter durch Berlin. *Berliner Morgenpost*. <https://www.morgenpost.de/berlin/article232201897/Berlkoenig-faehrt-weiter-durch-Berlin.html>

<sup>61</sup> Heine, H. (2021, January 24). 20 Weitere Corona-Infektionen in Berliner Krankenhaus Festgestellt. *Der Tagesspiegel*. <https://www.tagesspiegel.de/berlin/ganze-klinik-nach-b117-ausbruch-in-quarantaene-20-weitere-corona-infektionen-in-berliner-krankenhaus-festgestellt/26846988.html>

economy in 2021, some of which are included in this study – is a case in point. The pandemic also created new employment opportunities for workers (not least in testing and vaccination centres), which led to many workers finding temporary employment through platforms like Zenjob.

At Fairwork, we believe that it is the platforms' responsibility to ensure a safe working environment for its workers, and to compensate for the financial difficulties their workers face. To that end, we encourage platforms to take further proactive measures to provide a safety net for all workers who have to confront the challenges faced by the pandemic. We have already published a set of policy recommendations to help platforms navigate these troubling times,<sup>62</sup> and we aim to continue our dialogue with platform workers and management to ensure that we can grow out of this crisis together, and stronger.

## Impact

This report concludes the second year of our research into working conditions in the platform economy in Germany. Following last year's scoring, we observed an increased willingness of platforms – both previously rated platforms as well as new ones – to engage with us. This willingness was accompanied by noticeable improvement in some sectors: In food and grocery delivery, for instance, Wolt and Flink both introduced third-party auditors to monitor workplace conditions (Fairwork Principle 2) – a measure we encourage other platforms, such as Gorillas, Lieferando and Getir to follow. Regarding fair contracts (Fairwork Principle 3) Lieferando was the first platform in our study to start employing workers on a permanent basis, with other platforms, such as Flink, soon following suit. As a result of direct cooperation between the Fairwork team and Zenjob, the platform has revised their anti-discrimination approach and implemented explicit anti-discrimination and diversity clauses in their terms and conditions, also making it part of their onboarding process (Fairwork Principle 4). Particularly noteworthy are the innovations in the area of worker representation (Fairwork principle 5): Zenjob started a pilot programme for worker representatives to offer their workers a new channel to raise issues and concerns. Other platforms such as Wolt have voiced interest in learning from their experience.

Besides engaging with platforms, Fairwork also strives to create awareness among consumers. Our yearly ratings give consumers the ability to choose the highest scoring platform with the fairest working conditions operating in different sectors ranging from passenger transportation to household services and food delivery. To do so, we launched social media campaigns, published billboards across Berlin, produced several project films and organised an interactive workshop at the Berlin Science Week, to inform the public about the challenges and issues presented by the platform economy. By enabling consumers to make conscious choices, we can collectively put pressure on platforms to continuously improve working conditions.

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<sup>62</sup> Fairwork (2020). The Gig-Economy and COVID-19. <https://fair.work/en/fw/publications/the-gig-economy-and-covid-19/#continue>

Beyond individual consumer choices, our scores can help inform the procurement, investment and partnership policies of institutions operating in the civil, economic, and political spheres. They can serve as a reference for institutions and companies who want to ensure they are supporting fair labour practices. To that end, Fairwork has launched its global Pledge campaign to support this process. Institutions and organisations who are willing to show their support can become Fairwork partners by signing the pledge and committing to consult the Fairwork scores in future collaboration and consumption decisions. We are excited to have the WZB Berlin Social Science Centre as our first partner in Germany and we are looking forward to further institutions joining the cause.

We also continue to engage with policy makers and government bodies to advocate for extending appropriate legal protections to all platform workers, irrespective of their legal classification. Fairwork Germany's 2020 research was endorsed by Elke Breitenbach, Berlin's former Senator for Integration, Labour and Social Services, and is included in the Federal Government's Digital Implementation Strategy. This year, our report has been endorsed by the new senator, Katja Kipping. We will continue our policy advocacy efforts with the new government to help ensure that workers' needs and platforms' business imperatives are balanced.

Finally, and most importantly, workers and workers' organisations are at the core of Fairwork's action-oriented research. Our principles were developed, and are continually refined, in close consultation with workers, their representatives, and competent international institutions. Our fieldwork data, combined with consultations involving workers, unions, and experts, inform how we systematically evolve the Fairwork principles to remain in line with their current needs. Through continuous engagement with workers' representatives and advocates, we aim to support workers in exercising their rights. A key challenge in the platform economy is that workers are often isolated, atomised, and placed in competition with one another. The platform work model presents challenges for workers to connect and create networks of solidarity. But many of the workers we have interviewed are either already starting to organise or have said they would join a labour union if one existed. Our principles can provide a starting point for envisioning a fairer future of work and setting out a pathway to realise it. Principle 5 in particular, on the importance of fair representation, is a crucial way in which we aim to support workers to assert their collective agency. Here, we would like to extend our gratitude to the members of the Gorillas Workers Collective, and the Lieferando Workers Collective, both based in Berlin, for collaborating and communicating with us on several occasions.

There is nothing inevitable about poor working conditions in the German platform economy. Notwithstanding their claims to the contrary, platforms have substantial control over the nature of the jobs that they mediate. Workers who find their jobs through platforms are ultimately still workers, and there is no basis for denying them key rights and protections. Our scores show that the platform economy, as we know it today, already takes many forms, with some platforms displaying greater concern for workers' needs than others. This means that we need not accept low pay, poor conditions, inequity, and a lack of agency and voice as the norm. We hope that our work, by highlighting the contours of today's platform economy, helps paint a picture of what it could become.

## **Appendix: Fairwork Scoring System**

The five Principles of Fairwork were developed through an extensive literature review of published research on job quality, stakeholder meetings at UNCTAD and the ILO in Geneva (involving platform operators, policymakers, trade unions, and academics), and in-country stakeholder meetings held in India (Bangalore and Ahmedabad), South Africa (Cape Town and Johannesburg) and Germany (Berlin). This document explains the Fairwork Scoring System. Each Fairwork Principle is divided into two thresholds. Accordingly, for each Principle, the scoring system allows one 'basic point' to be awarded corresponding to the first threshold, and an additional 'advanced point' to be awarded corresponding to the



second threshold (see Table 1). The advanced point under each Principle can only be awarded if the basic point for that Principle has been awarded. The thresholds specify the evidence required for a platform to receive a given point. Where no verifiable evidence is available that meets a given threshold, the platform is not awarded that point.

*Table 1: Fairwork Scoring System*

Principle	Basic Point		Advanced Point		Total
Fair Pay	1	+	1	=	2
Fair Conditions	1	+	1	=	2
Fair Contracts	1	+	1	=	2
Fair Management	1	+	1	=	2
Fair Representation	1	+	1	=	2
Maximum possible Fairwork Score:					10

## **Principle 1: Fair Pay**

*Threshold 1.1 – Guarantees workers earn at least the local minimum wage after costs<sup>63</sup> (one point)*

Platform workers often have substantial work-related costs which include direct costs the worker incurs in performing the job. The costs could include, for instance, transport in between jobs, supplies, vehicle repair and maintenance, fuel, data charges and vehicle insurance, as well as commissions. Work-related costs mean that workers' take-home earnings could fall below the local minimum wage.<sup>64</sup> Workers also absorb the costs of extra time commitment, when they spend time waiting or travelling between jobs, or other

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<sup>63</sup> Correction (20/04/2022): The wording of the summary statement of Principle 1 was changed to clarify that the principle asks for a wage floor to be guaranteed by the platform.

<sup>64</sup> The ILO defines minimum wage as the "minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract." Minimum wage laws protect workers from unduly low pay and help them attain a minimum standard of living. The ILO's Minimum Wage Fixing Convention, 1970 C135 sets the conditions and requirements of establishing minimum wages and calls upon all ratifying countries to act in accordance. Minimum wage laws exist in more than 90 per cent of the ILO member states.

unpaid activities necessary for their work, which are also considered active hours.<sup>65</sup> To achieve this point platforms must demonstrate that work-related costs do not push workers below the local minimum wage. The platform must satisfy the following:

- workers earn at least the local minimum wage, or the wage set by collective sectoral agreement (whichever is higher) in the place where they work, in their active hours, after costs. In order to evidence this, the platform must either: (a) have a documented policy that guarantees the workers receive at least the local minimum wage after costs in their active hours; or (b) provide summary statistics of transaction and cost data.

*Threshold 1.2 – Guarantees workers earn at least a local living wage after costs<sup>66</sup> (one additional point)*

In some places, the minimum wage is not enough to allow workers to afford a basic but decent standard of living. To achieve this point platforms must ensure that workers earn a living wage. The platform must satisfy the following:

- workers earn at least a local living wage, or the wage set by collective sectoral agreement in the place where they work, in their active hours, after costs. In order to evidence this, the platform must either: (a) have a documented policy that guarantees the workers receive at least the local living wage after costs in their active hours; or (b) provide summary statistics of transaction and cost data.

In Germany, we take the Household Final Consumption Expenditure Index as our reference to calculate a living wage threshold. The average private consumption expenditure per month for a single person (in Tax Category 1; with no children; does not pay church tax; and uses public health insurance) is 1.600 Euros net, and 2.330 gross. For a full-time employee who works 40 hours/week, this figure corresponds to 14.50 Euros of net hourly wage.

## **Principle 2: Fair Conditions**

*Threshold 2.1 – Mitigates task-specific risks (one point)*

There are policies to protect workers from risks that arise from the processes of work. This threshold requires the platform to ensure that there are safe working conditions, and that potential harms are minimised.<sup>67</sup> For 2.1, this means identifying the task-specific risks that

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<sup>65</sup> According to the ILO's (2018) report on "Digital Labour Platforms and the Future of Work", for every hour of paid work, workers spend 20 minutes on unpaid activities, including, for example, searching for tasks and researching clients. In order to account for this additional time spent on searching for work, as well as time spent between work tasks, we define 'working time' as including both direct (completing a task) and indirect (travelling to or waiting between tasks) working hours

<sup>66</sup> Correction (20/04/2022): The wording of the summary statement of Principle 1 was changed to clarify that the principle asks for a wage floor to be guaranteed by the platform.

<sup>67</sup> The starting point is the ILO's Occupational Safety and Health Convention, 1981 (C155). This stipulates that employers shall be required "so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health", and

are involved for the worker, for example, if a vehicle is used, or there is interaction with customers. The specific practices leading to the awarding of this point may vary by the type of work and the risks involved. To be awarded a point for 2.1, the platform must be able to demonstrate that:

- There are policies or practices in place that protect workers' health and safety from task-specific risks
- Platforms take adequate, responsible and ethical data protection and management measures, laid out in a documented policy.

#### *Threshold 2.2 – Provides a safety net (one additional point)*

There are proactive measures to protect and promote the health and safety of workers or improve working conditions.

Platform workers are vulnerable to abruptly losing their income due to unexpected or external circumstances, such as sickness or injury. Most countries provide a social safety net to ensure workers don't experience sudden poverty due to circumstances outside their control. However, platform workers usually don't qualify for protections such as sick pay, in many cases due to their independent contractor status. Acknowledging that most workers are dependent on income from the platform for their livelihood, platforms can achieve this point by compensating for loss of income due to inability to work.

- that they take meaningful steps to compensate workers for income loss due to inability to work commensurate with the worker's average earnings over the past three months.
- that where workers are unable to work for an extended period due to unexpected circumstances, their standing on the platform is not negatively impacted.

### **Principle 3: Fair Contracts**

#### *Threshold 3.1 – Clear terms and conditions are available (one point)*

The terms and conditions are transparent, concise, and provided to workers in an accessible form.

The threshold for 3.1 involves demonstrating that the terms and conditions of the contract issued to workers are available in an accessible form.<sup>68</sup> Platforms must demonstrate that the contracts are accessible for workers at all times, whether through the app itself or direct communication with the worker. This is necessary for workers to understand the

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that "where necessary, adequate protective clothing and protective equipment [should be provided] to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health."

<sup>68</sup> The ILO's Maritime Labour Convention, 2006 (MLC 2006), Reg. 2.1, and the Domestic Workers Convention, 2011 (C189), Articles 7 and 15, serve as helpful guiding examples of adequate provisions in workers' terms and conditions, as well as worker access to those terms and conditions.

requirements of their work. The contracts should be easily understandable by workers, and available in the language/languages commonly spoken by the workers on the platform. To be awarded a point for 3.1, the platform must be able to demonstrate all of the following:

- The contract is written in clear and comprehensible language that the worker could be expected to understand; and,
- The party contracting with the worker must be identified in the contract, and subject to the law of the place in which the worker works; and,
- The contract is available for workers to access at all times; and,
- Every worker is notified of proposed changes in a reasonable timeframe before changes come into effect; and the changes should not reverse existing accrued benefits and reasonable expectations on which workers have relied.

*Threshold 3.2 – The contract does not impose unfair contract (one additional point)*

In some cases, especially under ‘independent contractor’ classifications, workers carry a disproportionate share of the risk in the contract. They may be liable for any damage arising in the course of their work, and be prevented by unfair clauses from seeking legal redress for grievances. To achieve this point, platforms must demonstrate that the risks and liabilities of engaging in the work is shared between parties.

To be awarded a point for 3.2, the platform must be able to demonstrate that the contracts

- neither include clauses that exclude liability for negligence nor unreasonably exempt the platform from liability for working conditions.
- nor include clauses which prevent workers from effectively seeking redress for grievances which arise from the working relationship.

#### **Principle 4: Fair Management**

*Threshold 4.1 – There is due process for decisions affecting workers (one point)*

There is a documented process through which workers can be heard, can appeal decisions affecting them, and be informed of the reasons behind those decisions. There is a clear channel of communication to workers involving the ability to appeal management decisions or deactivation. The threshold for 4.1 involves a platform demonstrating the existence of clearly defined processes for communication between workers and the platform. This includes access by workers to a platform representative, and the ability to discuss decisions made about the worker. Platforms must be able to evidence that information about the processes is also easily accessible to workers. To be awarded a point for 4.1, the platform must be able to demonstrate all of the following:

- The contract includes a documented channel for workers to communicate with a designated representative of the platform. Platforms should respond to workers within a reasonable timeframe; and,
- The contract includes a documented process for workers to appeal disciplinary decisions or deactivations, without being at a disadvantage for voicing concerns or appealing disciplinary actions; and,
- The platform interface features a process for workers to appeal disciplinary decisions or deactivations; and,
- In the case of deactivations, the appeals process must be available to workers who no longer have access to the platform.

*Threshold 4.2 – There is equity in the management process (one additional point)*

There is evidence that the platform is actively seeking to prevent discrimination against workers from disadvantaged groups. To be awarded a point for 4.2 the platform should demonstrate the following:

- It has a policy which guarantees that the platform will not discriminate against persons on the grounds of race, gender, sex, sexual orientation, gender identity, disability, religion or belief, age or any other status which is protected against discrimination in local law; and,
- Where persons from a disadvantaged group (such as women) are significantly underrepresented among its workers, it has a plan to identify and remove barriers to access by persons from that group, resulting in improved representation; and
- It takes practical measures to promote equality of opportunity for workers from disadvantaged groups, including reasonable accommodation for pregnancy, disability, and religion or belief; and
- If algorithms are used to determine access to work or remuneration, these are transparent and do not result in inequitable outcomes for workers from historically or currently disadvantaged groups; and
- It has mechanisms to reduce the risk of users discriminating against any group of workers in accessing and carrying out work.

**Principle 5: Fair Representation**

*Threshold 5.1 – There are worker voice mechanisms and freedom of association (one point)*

The first step for the justification of 5.1 is establishing the platform's attitude towards and engagement with workers' voice. This includes both listening to and responding to worker voice when raised with the platform, as well as clearly documenting for workers the process for engaging the platform in dialogue. Workers should be able to freely organise and associate with one another, regardless of employment status. Workers must not suffer discrimination for doing so.

To be awarded a point for 5.1, a platform must be able to demonstrate that:

- There is a documented process for the expression of worker voice.
- There is a formal policy of willingness to recognise, or bargain with, a collective body of workers or trade union, that is clearly communicated to all workers.
- Freedom of association is not inhibited, and workers are not disadvantaged in any way for communicating their concerns, wishes and demands to the platform

#### *Threshold 5.2 – Supports democratic governance (one additional point)*

There is a collective body of workers that is publicly recognised and the platform is prepared to cooperate with collective representation and bargaining (or publicly commits to recognise a collective body where none yet exists) This threshold requires the platform to engage with, or be prepared to engage with, collective bodies of workers that could take part in collective representation or bargaining. The collective body must be independent of the platform. It may be an official trade union, or alternatively a network or association of workers. Where such organisations do not exist, the platform can sign a public statement to indicate that they support the formation of a collective body

To be awarded a point for 5.2, the platform must fulfil one of the following criteria:

- Workers play a meaningful role in governing it.
- It publicly and formally recognises an independent collective body of workers, an elected works council, or trade union.
- It seeks to implement meaningful mechanisms for collective representation or bargaining.

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Please note that this report contains sections in common with other Fairwork reports, notably the Fairwork Framework, parts of the Impact and Next Steps section and the Appendix.

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<sup>69</sup> Two of our research assistants were also workers at Gorillas during the second half of 2021, when the bulk of Fairwork Germany research was conducted. In line with research ethics, and to prevent bias, we have excluded them the interviews conducted with Gorillas workers.