

Platform Reps

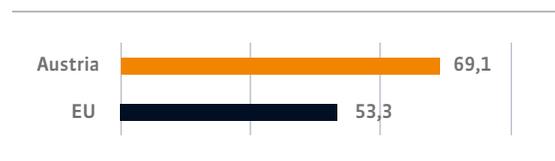
# AUSTRIA: Country report 2022



# 1. Context: Social dialogue and work in platforms

According to Eurofound, the overall quality of social dialogue in Austria ranks significantly higher than the EU average (see **Figure 1** below).

**Figure 1: Industrial Relations Index (2013-2017)<sup>1</sup>**

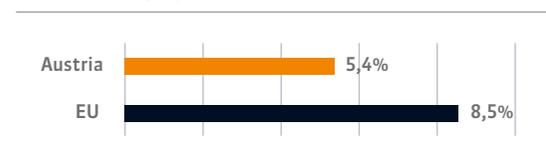


Source: [Eurofound Industrial Relations Index](#)

At the same time, measured as a share of the adult population, work in digital labour platforms (hereafter referred to as “platforms”)

in Austria is much below the EU average (three percentage points), amounting to 5.4% (**Figure 2**).

**Figure 2: The share of workers in platforms in the adult population (2021)<sup>2</sup>**

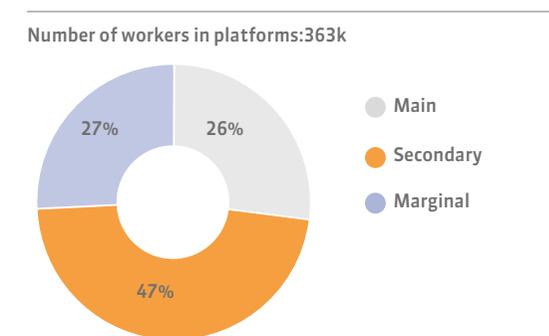


Source: EC (2021); Eurostat.

According to 2021 estimates, up to around 363,000 people might have engaged in work in platforms in Austria more than sporadical-

ly, i.e., at least 10 hours a week or contributing to more than 25% of their income (**Figure 3**).

**Figure 3: Number and categories of workers in platforms (2021)<sup>3</sup>**



Source: EC (2021)

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1. The index measures the overall quality of the “collective and individual governance of work and employment” across four categories, based on 47 indicators. See: Eurofound (2018). *Measuring varieties of industrial relations in Europe: A quantitative analysis*. Publications Office of the European Union, Luxembourg., p. 1.

2. The numbers cited are an upper-bound estimation based on 2021 survey results. They cover all types of work in platforms from low- to high-skill and from on-location (e.g., transport, delivery) to online work (e.g., ICT, data entry, creative work). See: EC (2021). [Study to support the impact assessment of an EU initiative to improve the working conditions in platform work](#)

3. Main workers work through platforms for at least 20 hours a week or receive at least 50% of their income therein. Secondary workers spend between 10 and 19 hours per week or receive between 25% and 50% of their income from work in platforms. Marginal workers spend less than 10 hours a week working via platforms and get less than 25% of their income via platforms.

## 2. Current legal framework

### 2.1. LABOUR LAW

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Different pieces of legislation cover various aspects of employment relationships in Austria. The labour law provisions are relatively limited and generic at the federal level.<sup>4</sup> For example, there is no universal definition of an employee. Nevertheless, the [Labour Constitution Act \(Arbeitsverfassungsgesetz, ArbVG\)](#) defines who is not an employee within the scope of the ArbVG, i.e. collective bargaining and industrial relations (a negative definition). Likewise, the [General Social Insurance Law \(Allgemeines Sozialversicherungsgesetz, ASVG\)](#) defines an employee as follows (Article 4(2):

• An employee within the meaning of this Federal Act is anyone who is employed in a relationship of personal and economic dependency for remuneration; this also includes persons in whose employment the characteristics of personal and economic dependence outweigh the characteristics of self-employment.

According to Austrian jurisprudence, the essential features of an employment relationship in-

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4. These include, for example, the Labour Constitution Act ([Arbeitsverfassungsgesetz](#)), Salaried Employee Act ([Angestelltengesetz](#)), or Working Hours Act ([Arbeitszeitgesetz](#))

5. Business Service Portal (n.d.) [Types of employment](#).

6. See: oesterreich.gv.at (n.d.). [Arbeitsverhältnis](#).

7. Interview with ÖGB representatives.

8. Business Service Portal (n.d.) [Types of employment](#).

9. Interview with ÖGB representatives.

clude personal and economic dependence, entitlement to remuneration based on working time and not results, continuing obligation, and duty to carry out the work individually.<sup>5</sup> However, the personal dependence of the employee is decisive in establishing the employment relationship. It involves, in particular:<sup>6</sup>

- Integration of the employee in the operational processes of the firm
- Set working time
- Assigned place of work
- Fixed work process
- Subordination to the instructions of the employer
- Continuous control by the employer

However, these criteria are somewhat “fluid”<sup>7</sup>. For example, the classification of an employment relationship depends on whether the above criteria outweigh other considerations, e.g., if the focus is on imparting knowledge and skills, there is an apprenticeship relationship (even though all criteria may be met).

Other employment statuses envisioned by the Austrian legal framework include:

- **Independent contractors (“Freie Dienstnehmer\*innen”)** work under similar conditions as employees (including a continuing obligation, economic dependence, remuneration for working time and not results, etc.), but without personal dependence, i.e. are mostly independent concerning when and where they work, provided that they fulfil their contractual obligation. They are not considered as employees under Austrian law and therefore do not have access to labour rights, but they are covered by pension, health and accident insurance.
- **Self-employed**, who provide a service for a fee based on a particular delivered outcome, are personally and economically independent from clients and are not bound to follow instructions.<sup>8</sup>

Besides the provisions of labour and civil law, sectoral collective agreements are the most important tools for regulating working conditions and access to rights, including minimum wage. Approx. 98% of employees are covered by such agreements, although they do not apply to the self-employed.<sup>9</sup>

## 2.2. PLATFORM-SPECIFIC LEGISLATION

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No national legislation exists or is foreseen to address workers' status and working conditions in platforms specifically. In the area of transportation law, the [Occasional Transport Act \(Gelegenheitsverkehrsgesetz\)](#) was reformed in early

2021. The amendments related mostly to licensing rules and setting prices (which ride-hailing platforms were undercutting)<sup>10</sup> but also regulated working time for self-employed drivers and the right to training.<sup>11</sup>

Furthermore, workers in platforms in two sectors (delivery and transport) have been explicitly included in sectoral collective agreements,

as summarised in **Table 1** below. More collective agreements might apply to workers in platforms, depending on the sector they operate in – for example, a platform operating in the domestic services sector should fall under corresponding collective agreements as soon as it starts employing workers.<sup>12</sup>

**Table 1: Collective agreements in Austria, covering workers in platforms**

Agreement	Key provisions
<a href="#">Collective agreement for bicycle couriers (2021)</a>	<p>The agreement applies to all bicycle couriers with an employment contract at a traditional or platform company. Among others, it regulates:</p> <ul style="list-style-type: none"><li>- The weekly standard working time (40 hours), daily breaks and rest periods, night work, overtime and work on weekends and holidays;</li><li>- A minimum salary of €1,539.98 for full-time employment; additional compensation of €0.24/km if a privately owned bicycle is used, and another €20 per month if a privately owned mobile phone is used; holiday and Christmas allowances, and continued payment in case of accidents and sickness; and</li><li>- Employers' obligation to provide helmets, rain jackets, rain trousers, gloves and overshoes of appropriate quality.</li></ul>
<a href="#">Collective agreement for drivers in passenger transport (2021)</a>	<p>The agreement covers all drivers in passenger transport who have an employment contract at any traditional or platform company. It regulates:</p> <ul style="list-style-type: none"><li>- Working time, including the weekly maximum of 40 hours, rest periods, overtime, and work on weekends and holidays; and</li><li>- A salary range between €1,604.10 and €2,756.70 (depending on working experience and occupation group) and holiday and Christmas allowances.</li></ul>

Source: Visionary Analytics, based on the sources in the hyperlinks and Eurofound (2021). [Collective agreement for bicycle couriers in Austria](#).

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10. Interview with ÖGB representatives.

11. Barcevičius et al. (2021). [Study to support the impact assessment of an EU initiative to improve the working conditions in platform work](#).

12. Interview with ÖGB representatives.

### 3. State-of-play of workers' rights

Workers enjoy different access to labour rights, depending on their status, as summarised in **Table 2** below.

**Table 2: Worker statuses and corresponding labour rights**

Worker status	Legal basis	Labour rights	Social security	Union representation	Collective bargaining
Employee	Labour law	✓	✓*	✓	✓
Independent contractor	Civil law	✗	✓*	✓	✗
Self-employed		✗	✓ (self-paid)	✗	✗

Source: Visionary Analytics, based on Business Service Portal (n.d.) [Types of employment](#).

Note: \*Below a threshold of €485.85 monthly – only accident insurance.

In general, conditions for most workers in platforms are precarious, albeit relatively good compared to other countries and low-skilled jobs, including pay (although, in reality, often stemming from long working hours).<sup>13</sup> However, **working conditions have remained the same or worsened throughout and after the pandemic**. For example, according to Fairwork, in 2021, out of eight examined platforms, only three provided earnings to all their workers that exceeded the “at-risk-of-poverty” threshold. Working condi-

tions also significantly vary across sectors (e.g., ride-hailing platforms Uber and Bolt scored the lowest in the Fairwork ranking in Austria – two and one point out of ten, respectively), and individual platforms (e.g., in the delivery sector, Lieferando employs all its workers, while in Mjam, 90% are independent contractors).<sup>14</sup>

In general, **the main obstacle to ensuring workers in platforms have adequate access to rights is the widespread misclassification of the employment status**. Although the collective agree-

ments provide good rights coverage, they apply only to workers with employment contracts. However, according to one recent survey, in the delivery sector, only a third (33%) work as employees, while the majority (59%) are employed as independent contractors. A small percentage (3.3%) stated that they were self-employed with a trade license.<sup>15</sup> Drivers are probably even less likely to be employed.<sup>16</sup> This means that while the collective agreement contributes to better working conditions for those few workers who hold an employment contract, it produces no consequences for independent contractors and the self-employed, who constitute a majority of the workforce.

Nevertheless, **no legal cases in Austria have, so far, focused on the employment status of workers in platforms**. This reluctance derives from several reasons (beyond the precarious working conditions and platform practices – see the next section), including the uncertain outcome for independent contractors and a limited effect of a court decision (applying only to the litigants and not to all workers in each platform).<sup>17</sup>

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13. Interview results

14. Fairwork (2022). [Fairwork Austria Ratings 2022: Labour Standards in the Platform Economy](#).

15. Geyer, L. & Prinz, N. (2022). [Arbeitnehmer\\*innen-Vertretung in der Gig-Economy: Erfahrungen von Fahrradzusteller\\*innen in Österreich](#).

16. Interview results

17. Ibid.; interview results

## 4. State-of-play of union action

Union action on behalf of workers in platforms in Austria can be analysed at three levels, as summarised in **Table 3** below.

**Table 3: Action taken on behalf of workers in platforms**

Level	Actions
<b>Established trade unions</b>	The established sectoral trade unions negotiate collective agreements. They work on the ground to raise awareness, organise workers, and coordinate actions internationally (e.g., through the <a href="#">DiDaNet</a> project).
<b>Emerging movements</b>	New entities are being formed with the trade unions' support, which work as contact points between the unions and workers. These include the creation of cooperatives ( <a href="#">Riders Collective</a> ) and the establishment of works councils (e.g., at <a href="#">Foodora</a> ).
<b>Anti-union action</b>	Platforms appoint fake representation bodies, engage in union-busting, and hinder the independent work of works councils in favour of the interest of the company.

Source: Visionary Analytics, based on an interview results.

The level of union action depends on the sector. **Transport and delivery sectors are most visible and best represented** (evidenced, for example, in the signed collective agreements). [While GPA-djp](#) (the Austrian union of private sector employees, printing, journalism, and paper) opened its membership to “crowd-workers” in 2019, online gig workers are much less covered. The ÖGB also attempted to reach out to some of them but it has been a lower priority compared to the on-location workers who represent a much larger workforce, which, according to the interviewee,

are in a position of vulnerability and precarity, and require proportionately more attention.<sup>18</sup> **Workers have also initiated many actions and come to the unions for support.** These initiatives now operate under the trade union umbrella but retain a high degree of autonomy in their operations, which need to be adapted to the realities of work in platforms. For example, a garage was set up in a convenient location where people could meet, fix their bikes, get a coffee, and obtain information and advice.<sup>19</sup> Public awareness campaigns are another important avenue – for

example, a social campaign was organised about the loads which Majm grocery couriers were carrying – it pressured the platform to enter works council negotiations. Eventually, the maximum load was lowered from 20kg to 7kg.

These movements have spurred responses from some platforms, which started setting up parallel structures and institutions as bogus representation bodies. For example, Mjam established a position of “rider care agent”, while a grocery delivery platform Flink set up a “rider representative”, who is in fact, appointed by the management.

Furthermore, **platforms hinder the work of works councils** by not answering their queries, giving false information, etc. (which makes their actions time-consuming and frustrating and thus drives some to give up) or even preventing the formation of councils in the first place.<sup>20</sup> For example, as a response to efforts to set up a works council at Veloce, the company immediately dismissed couriers involved in the organising processes.<sup>21</sup>

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18. Interview results

19. Interview results

20. Interview results

21. A council was finally successfully established in 2020. See Eurofound (2021). Works Councils Lieferando, Mjam and Veloce.

### Lieferando works council

In 2019, Lieferando workers established a works council. In response, the platform filed a lawsuit against its establishment. It argued that Lieferando was not a company, but only a dependent branch, even though it employed

over 300 employees in Austria at the time (according to the Labor Constitution Act, a company must actually exist so that a works council can be established).

Despite the legal dispute, the works council successfully established regular meetings and managed to negotiate some improvements

such as liability insurance coverage as well as better backpacks, tires and brakes for the bikes.

Source: Visionary Analytics, based on Eurofound (2021). [Works Councils Lieferando, Mjam and Veloce.](#)

The key obstacles to more effective unionisation of workers in platforms are presented in **Table 4** below.

**Table 4: Obstacles to unionisation for workers in platforms**

Legal	Social and cultural	Related to platforms' business model
<ul style="list-style-type: none"><li>- The self-employed, and therefore also workers who were falsely classified as self-employed, cannot join a union and are mandatory members of the Austrian Economic Chamber instead..</li></ul>	<ul style="list-style-type: none"><li>- The precarious situation of people working in platforms (especially undocumented third-country nationals) prevents them from taking action, also because of fear of retaliation.</li><li>- The awareness about rights is low.</li></ul>	<ul style="list-style-type: none"><li>- Work in platforms is often temporary or marginal (part-time).</li><li>- Platforms hinder unionisation efforts.</li><li>- It is difficult for trade unions to reach out to the workers.</li><li>- Platforms control workers and their information channels (including WhatsApp groups).</li></ul>

Source: Visionary Analytics, based on interview results.

## 5. Action checklist

### Potential application of the proposal for a Directive of the EC and/or the ETUC policy proposal

The proposal for a Directive of the EC is generally a good step towards reclassifying workers and creating minimum transnational standards. However, several points need to be further negotiated. The definitions and wording used in reference to worker representatives, algorithmic management, and start-ups are concerning for Austrian unions in terms of infringement of national legislation and practices. Concerning the latter, the question also arises as to the concrete meaning of the wording proposed in Article 4(3),

“that the impact on start-ups needs to be taken into account”. From the ÖGB’s point of view, there can be no lower level of labour law protection for start-ups.

Most importantly, the criteria proposed in the Directive, which are more restrictive and focus on control of work, may clash with the existing case law in Austria, which emphasises the personal dependence aspect and is generally more fluid. Setting up specific narrow criteria could also open the door and provide guidelines for platforms on how to evade the classification of the employment relationship. On the other hand, the ETUC proposal (with no predetermined criteria) could be potentially better ac-

commodated in the Austrian context, allowing for the fluidity of employee status definition. In either case, the existence of the third category of workers (independent contractors) is a potential obstacle in the effective implementation of the policy proposals, which assume the binary choice between “employee” and “self-employed”. The Austrian unions are not in favour of abolishing this status altogether as it serves the purposes of certain groups of workers (e.g., artists). However, its abuses in the platform economy must be recognised and resolved.

Source: Visionary Analytics, based on interview results and an ÖGB position paper (unpublished).

Preliminary suggestions for actions to be taken by the national unions are summarised in **Table 5** below.

**Table 5: Action checklist in two main areas**

Policy	On-the-ground action
<ul style="list-style-type: none"> <li>- Work to extend the sectoral collective agreements to as many workers as possible, considering they are the main tool for ensuring good access to rights.</li> <li>- Build political pressure to address some of the issues pertinent to working conditions in platforms at the federal level (through the transposition of the EUDirective).</li> <li>- Continue the close cooperation between unions and the Chamber of Labour, including research, awareness-raising and knowledge exchange.</li> </ul>	<ul style="list-style-type: none"> <li>- Continue public social campaigns that raise awareness about the precarious conditions in platforms among the broader audience.</li> <li>- Strengthen and expand the actions that directly support riders, including those provided directly by the trade unions and facilitated by works councils and other initiatives (supported by unions); find a balance between top-down support and bottom-up.</li> <li>- Step up efforts aimed at bringing misclassification cases to Austrian courts, which could provide a turning point in the perception of the status of workers in platforms.</li> </ul>