



Assodelivery and Italian trade union UGL concluded the first agreement in the food delivery sector

by Paolo Dammacco

The recent [collective agreement signed on 15 September 2020 in Italy by Assodelivery and the UGL Trade Union Organisation](#) to regulate the work of riders is already producing an intense debate both on the political level and in academic discourse.

The central issue is the representativeness of the signatory parties in a sector that is new and does not currently have any specific contractual intervention expressly dedicated to it. The collective agreement for the logistic sector, for example, which included a reference to riders in 2018, has a much broader scope of application.

The scope of the article is to reconstruct the collective agreement normative genesis and its main contents.

The collective agreement undersigned finds its legal basis in chapter V-bis of Legislative Decree no. 81/2015 “Protection of work through digital platforms” and in art. 2, 2, letter a) of the same decree, and will apply to the delivery of goods for others, carried out by self-employed workers, so-called riders, and will be in force for three years starting from 3rd November 2020.

The signing of the collective agreement - which aroused the protests of the confederal trade unions and led the Ministry of Labour to take immediate action - is part of a process of evolution in the attention of the Government and, in particular, of the Ministry of Labour to the phenomenon of the gig-economy.

In June 2018, immediately after taking office as Minister, Luigi Di Maio announced that there were two possible ways to guarantee rights and protection to riders: (1) inserting specific rules in the “decreto Dignità”, whose drafts provided that riders should be classified as employees; and (2) beginning a competition with companies in the sector with the aim of building a national collective agreement.

The negotiations promoted by the Ministry between food delivery companies, riders' associations, and social partners and/or trade unions did not lead to the desired results. Based on these factors, along with last autumn's change of government, the Minister and his team decided to take the first step toward change.

On 3 September 2019 with Decree-Law no. 101, published in the “Gazzetta Ufficiale” of 4 September 2019, no. 207, containing “[u]rgent provisions for the protection of employment and for the resolution of company crises.” On 2 November 2019, these provisions were revised and converted by Law no. 128 in order to guarantee that the government intervenes directly in the food delivery sector.

The Decree-Law introduces a double regulatory track: a specific discipline on behalf of riders and an attempt to extend the protection of paid employment by extending and specifying the scope of application of the notion of employer-organised work.

The specific discipline, applicable to food delivery workers/riders, is achieved by introducing Chapter V- bis in Legislative Decree 81/2015. In fact, a series of minimum protections (art. 47-bis, 47-ter and 47-quarter) are provided for, which apply only to riders, qualified as “workers employed with non-paid employment relationships”, “employed in the delivery of goods on behalf of others, in urban areas and with the help of bicycles or motor vehicles... through platforms, including digital platforms”.

Alongside this series of minimum protections, as mentioned above, the further path followed by the Government has been to extend the protections provided for paid employment. Among the innovations introduced by the Decree-Law there is, in fact, the amendment of art.2 comma 1 of Legislative Decree 81/2015. The regulation, which applies the discipline of paid work to collaborazioni etero-organizzate, is modified in the sense of making its application easier by expanding the reference to the organisation of times and places of performance, as well as specifying the possible role of platforms in the organization to the application requirements.

The specific reference of applicability to the platforms should therefore allow for an easier link back to the application of employment law.

In the face of these regulatory changes, the recent collective agreement in question has a twofold framework: on the one hand, to apply the rules of the new Chapter V-bis; on the other hand, to make use of the delegation provided for in paragraph 2 letter a) of Art. 2 of Legislative Decree 81/2015.

The latter, in fact, makes it possible to limit the operation of paragraph 1 (which, entails the application of the employed labour regulations) and is justified by the particular production and organisational needs of the specific sector. The second part of the framework mentioned above also provides for specific disciplines regarding economic and regulatory treatment. This treatment excludes those collaborations for the national collective agreements, which are stipulated by trade unions that are comparatively more representative on a national level.

In this context, the bargaining table has been called again in order to manage the proxies provided for within the default discipline referred to in Chapter V-bis. While the table was still debating without reaching an agreement, the stipulation of the National Collective Agreement takes place, which is linked to the new regulation of 2019.

It should be stated that the collective agreement outlines the regulatory framework and provides the definitions of Rider, Platforms, and Service Areas.

Among the characteristics of Food delivery, also specified in the recent collective agreement, there is the qualification of the agreements between Platforms and Rider as self-employment contracts, former Art.2222 cc or former art. 409, n.3 c.p.c. . These are self-employment services that are characterised by flexibility: there are no obligations regarding working hours or availability and the provision of services is merely possible.

The individual contract, which must be stipulated in writing form, must contain a series of elements including: explicit reference to the rules of the collective agreement, the contractual obligations of the parties, reference to the obligations in terms of safety in the workplace established by Legislative

Decree 81/2008, respect for and the application of the national (Legislative Decree 196/2003) and European legislation on the protection of personal data (European Regulation 2016/679-GDPR).

The collective agreement regulation is linked to the provisions of the Decree-Law in Chapter V-bis. Art. 47-ter states, in fact, that “individual employment agreement[s]...are proven in writing and workers must receive all information useful for the protection of their interests, rights and safety”.

A central issue of the discipline prepared by the parties is the remuneration of riders. In accordance with art. 47-quater para. 1, collective agreements entered into by the comparatively most representative trade unions and employers' organisations on a national level may define criteria for determining the overall remuneration, taking into account the way in which the service is performed and the organisation of the client.

In the absence of a collective agreement, workers cannot be paid on the basis of the deliveries made and, therefore, they should be guaranteed a minimum hourly wage based on the minimum wages established by national collective agreements of similar or equivalent sectors signed by the trade unions and employers' organisations that are comparatively more representative at the national level.

The collective agreement mentions the presence of a minimum remuneration that the rider will receive, but only after meeting certain pre-established criteria.

The rider's remuneration is linked to the execution of one or more deliveries and parameterised on the basis of the estimated time for their execution. This is equivalent to €10 per hour worked and can be re-parameterised if the estimated time for deliveries is less than one hour.

The Parties shall then identify a number of criteria that may be implemented to determine the overall compensation: distance of delivery; estimated time of delivery; time slot; weekday or national holiday; weather conditions.

In the final part of the National Collective Agreement concerning the remuneration, it is agreed that the rider will receive remuneration based on the deliveries made, without prejudice to the possibility for the Parties to determine it based on further parameters.

In addition to the minimum remuneration, a series of circumstances are identified that give rise to a supplementary indemnity that echoes some of the provisions of Article 47-quarter, paragraph 3 of decree-law 81/2015 (work performed at night, work performed during holidays, work performed in negative weather conditions).

The National Collective Agreement is also concerned with certain aspects relating to safety in the performance of work activities.

These aspects are, mainly, the provision of at least one high visibility garment for all riders and a safety helmet for riders who make deliveries on their bicycles.

As provided for by the regulations, in particular by art. 47-septies of Legislative Decree no. 81/2015, the riders shall be entitled to compulsory insurance which covers against accidents at work and occupational diseases and insurance cover shall be provided, regardless of the vehicle used, against any damage to property or third parties that the latter may cause during the performance of the work services covered by the self-employment contract.

Finally, the platforms undertake to adopt non-discriminatory policies when offering job offers, also with regard to ranking systems that must take into account the rider's right to rest.

The collective agreement will apply to companies that are members of Assodelivery and to companies that join to the same association, or to companies that include a reference to the collective agreement within the individual contract.

The contents of the agreement reached on 15 September, are already being examined by the Ministry, which, as mentioned above, has already raised a number of issues with regard to the possibility of this recent collective agreement to exercise the delegations of law.

All that remains to be done is to wait for the evolution of the matter to understand the effectiveness and the effects that will result from this bargaining act.

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