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Introduction

Brief presentation of the Don't GIG up! project

The present State of the Art Report is the first output of the Don't GIG up! project, co-funded by the Directorate-General for Employment, Social Affairs and Inclusion of the European Commission, and aimed at improving expertise and knowledge on the role unions and social dialogue can play with regard to the protection of gig workers.

The project pursues the following objectives:

- to identify policy options guaranteeing the adequate enjoyment of labour rights by gig workers, including clauses and provisions possibly set by collective agreements;
- to identify policy options ensuring social protection of gig workers, in terms of insurance against accidents at work, illness, pensions, unemployment risk, and coverage of other social benefits;
- to support unions in putting in place effective strategies to organise and represent gig workers; and
- to identify pathways for exploiting the potential positive effects of gig-economy and platform-based work, like the potential to bring back 'gigs' traditionally performed in the framework of the undeclared economy within the reach of employment and fiscal rules.

Running for 24 months (February 2018 – January 2020), the core phases of the project combine studies and action research to analyse features and challenges of the gig economy in a set of selected countries, namely: Germany, France, Italy, Poland, Spain, and Sweden.

After a preliminary analysis on the selected dimensions of the gig economy in the covered countries, mainly based on desk review, the project screens and compares as **case studies** a set of practices initiated by public institutions, social partners, or gig workers themselves to organise gig workers and increase their employment and social security rights. Findings from the preliminary analysis and from case studies shall be discussed in three **mutual learning workshops**, involving partners, unions from different countries, and representatives of platforms. The research is complemented with a final comparative assessment on how gig-economy affects industrial relations at both national and European level, with a view to delivering policy recommendations. A work package on **dissemination** also entails the promotion of findings through publications, seminars, articles, and a final conference.

Methodology and contents of the State of the Art Report

The first phase of the action is dedicated to the elaboration of a State of the Art Report, a document offering an overview on the political, social, and academic debate on the gig economy and its features, as well as on related reforms and data in the countries involved in the project.

The State of the Art Report serves as a standardised and homogeneous knowledge base designed to allow partners and stakeholders to fully exploit the benefits of the following case study analysis and mutual learning activities promoted by the partnership.

The report adopted as sources research papers and articles published in scientific journals, as well as position papers from governmental bodies, unions, and employers' organisations, articles from specialised press, data available from official statistics, or unofficial surveys. The overview was also complemented with media, social media content curation, and information available from websites and blogs managed by social activists, experts, and organisations involved in the topic.

The field of observation of the research encompasses the following proposed classification of platforms[1]:

Table 1: Classification of platforms adopted by Don't GIG up!

Platforms matching passenger transport services (Uber, Lift, etc.)	Type 1
Platforms matching good delivery services (Deliveroo, Foodora, etc.)	Type 2
Platforms matching 'traditional gigs', like gardening, cleaning activities (Task Rabbit, Helpling, etc.), and skilled services (marketing, advertising, translation, etc.), possibly also by means of auctions (Fiverr, Upwork, etc.)	Type 3
Platforms externalising micro-tasks, often performed on the web, to a 'crowd' of workers (crowd work platform like Amazon Mechanical Turk).	Type 4

Platforms that do not intermediate work (e.g. sharing platforms like BlaBlaCar, or marketplaces for businesses like Airbnb), as well as freelance/casual workers not intermediated by platforms, were not the primary focus of the study. Yet, relevant information is sometimes included in the text whenever overlapping with platform-based work (e.g. if policy measures address digital economy or freelance/casual workers as a whole, or if available sources adopted different classifications of platforms).

The report is based on a country questionnaire filled by experts enrolled by the partnership between June and September 2018, and later integrated with key developments occurring by the time of publication. It was designed to obtain a balanced set of information from a qualitative and quantitative perspective. The inquiries can be summarised as follows:

1. *Which are the core issues debated at political, social, and academic level on the gig economy and the organisation and protection of gig workers?*
   The goal of this question was to share knowledge on the ongoing debate regarding the gig economy among those involved in the project, and to highlight the different approaches to the phenomenon at political and social level in each country;
2. *Which are the main features and trends of platform-based work and gig workers as per available statistics and surveys? In case a positive trend is observed, what are the reasons for the growth of platforms in the areas of intermediation and externalisation of work?*
   The former question was aimed at collecting data on the gig economy and the workers concerned, but also at clarifying the degree of compliance of platforms with the regulatory obligations imposed in each country, and at investigating the existence of strategic dissimulation of the employer. The latter question focused on assessing the impact of platforms, as well as whether their growth could overthrow

1. For a comparison, see: Faioli (2018); Prassl (2018); De Stefano (2016, 2017); and Aloisi (2016).

traditional centralised workplaces in favour of enterprises recruiting 'flexible workers' who are brought in only to carry out specific projects or tasks;

The language of innovation seems to conceal two deeper aspects of the gig-economy business model: firstly, a radical shift of business risk away from platforms and onto individual workers; and secondly, the real danger that this recourse to cheap labour could incentivise the very opposite of genuine innovation. To what extent in each jurisdiction/system is it possible to see such aspects (if applicable)?
This question was aimed at triggering reflection on the nature of the platform as an employer and on the working relationship with gig workers;

4. *Which legal issues concerning labour inspections and/or labour judges' activities shall be taken into consideration when considering the way platforms manage and organise work?*
This question was aimed at identifying relevant administrative proceedings or case law on the matter across the countries involved in the research;
5. *Which different views emerge on the positive and negative impacts of the gig economy on growth, employment, working conditions, social inclusion, and social protection?*

This question was aimed at analysing the business model of platforms, as well as its impact on workers' lives, in terms of rights, social protection, and inclusion;

6. *Which are the different approaches proposed by the available literature to guarantee gig workers enjoy adequate protection of labour, freedom of association, and social security rights?*
This question investigated the solutions proposed in the considered systems with a view to protecting gig workers in terms of pay and employment conditions, union rights, and social security coverage;
7. *Which measures have been implemented by governmental bodies, social partners, or other relevant actors to ensure labour rights and social protection of gig workers?*
This question was aimed at identifying how relevant stakeholders reacted to the gig economy in the countries involved in the research.

The information collected is presented in the following country chapters, and is complemented with conclusions comparing and summing up key findings.

The consortium

The action brings together a network of research centres and unions from Germany, France, Italy, Poland, Spain, and Sweden, plus the European Trade Union Confederation (ETUC) as a European-level actor.

A brief presentation of each partner and associate organisation follows.

Partners

FGB

Fondazione Giacomo Brodolini (FGB) was founded in 1971 as a research centre committed to carrying over the political and cultural heritage of former Minister of Labour Giacomo Brodolini, who promoted the approval of the Italian Workers' Charter. Over its 40 years of existence, FGB developed sound experience in research activities, as well as in policy evaluation and project management in the field of labour, industrial relations, and social policies at regional, national, and EU level. In order to support policy making decisions, policy evaluation, and forecasts, FGB has developed econometrical models

adopted at national and EU level. Furthermore, FGB has taken part in several EU-funded programmes and projects in the field of social inclusion, analysing the role of vulnerable groups (young workers, elderly people, women, migrants, etc.) in the general framework of social, economic, and demographic developments, with a focus on social exclusion, employment, and gender.

UIL

Unione Italiana del Lavoro (UIL) is the democratic and unitary union confederation of workers and retired people of any belief, creed, political affiliation, or ethnicity, who work together in order to defend their rights and common professional, economic, social, and moral interests, in compliance with the principles of democracy and freedom enshrined in both the Italian Constitution and the EU Charter of Fundamental Rights. With over 2,000,000 members, UIL is the third largest trade union confederation in Italy.

IRES

The French Institute for Social and Economic Research (IRES) is the independent research centre of the six French labour unions (CFDT, CFTC, CGT, CFE-CGC, FO, UNSA Education). Created in 1982 with government's financial support, IRES is registered as a private non-profit organisation under the Associations Act of 1901. IRES mission statement sets the goal of analysing the economic and social issues, at national, European or international levels, of special interest to labour unions. IRES financially supports the research efforts of each constituent labour union taken separately. Ires also operates as an independent research centre.

UGT

Unión General de Trabajadores de España (UGT) is a trade union confederation founded in 1888. One of the two Spanish largest trade unions, UGT is composed of three state federations grouping together workers in the different economic sectors. UGT aims to represent workers for the purposes of increasing moral, economic, and intellectual welfare. It defends the interests of workers by combining action and negotiation, and by always searching for consensus agreements.

IPA

The Institute of Public Affairs (IPA) is a leading Polish think tank and independent centre for policy research and analysis, established in 1995. IPA's mission is to contribute to informed public debate on key Polish, European, and global policy issues. The main areas of study include European policy, social policy, social dialogue and industrial relations, civil society, migration, and development policy, as well as law and democratic institutions.

Associated Organisations

ETUC

The European Trade Union Confederation (ETUC) was set up in 1973, and now comprises 90 national trade union confederations in 38 countries, plus 10 European trade union federations. ETUC coordinates and represents the union movement at EU level, also by taking part in a number of consultative bodies and in the European social dialogue. ETUC aims to ensure that the EU is not just a single market for goods and services, but also a social Europe, where improving the wellbeing of workers and their families is an equally important priority.

FO

Confédération générale du travail – Force Ouvrière (FO) was created in 1948, after a split of the Confédération générale du travail (CGT). FO is a trade union organisation, independent from political parties, aiming to represent and defend all workers (both public and private-sector ones) in France, regardless of their political or religious beliefs. FO fights for public services, social welfare, social justice, solidarity, and equal rights. The main tool is collective bargaining with a view to building and improving collective rights at all levels (national, sector, and firm).

NSZZ Solidarność

Niezależny Samorządny Związek Zawodowy Solidarność (NSZZ Solidarność) was founded as a result of workers' protests, and established on the basis of the Gdansk Agreement signed on 31 August 1980. NSZZ Solidarność represents 722,000 workers, with members in every industry and services. Membership includes, among others, managers, administrators, and professional staff, as well as scientists and technicians, skilled workers and labourers, and pensioners. The union's goal is to defend the rights, dignity, and interests of its members.

Ver.di

Vereinte Dienstleistungsgewerkschaft (Ver.di) was established in 2001 as a result of the merge of five unions active in the service sector, and is currently Germany's second largest trade union. Ver.di. is democratically structured, it represents and advocates for the economic, ecological, social, working and cultural interests of its members. The union promotes basic workplace rights, co-determination, and equality. It supports and advises youth representatives, works councillors, and staff council members with the aim of ensuring effective representation of employees' interests and of providing support to all members.

Unionen

Unionen is Sweden's largest trade union in the private sector, and the largest white-collar trade union in the world. It has 660,000 members, of whom 30,000 are elected representatives, in over 65,000 companies and organisations. Unionen's members come from a variety of organisations, including major international groups and small family companies. It aims to promote security, success, and satisfaction in working life.

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Country Background: Germany

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Introduction

In Germany, like in many other countries, the gig economy is regarded as one of the most important developments that is going along with the digitalisation of the economy. This is less the case because of the quantitative dimension of the phenomenon – the number of employees affected by this development up to now is far from being clear. However, the gig economy seems to be the area of changes with the most serious impacts on the existing institutions of labour rights and social protection.

The main reason is that gig work seems to create a new form of employment, or better to say work, which is, from a legal and social protection point of view, often registered as self-employment so that workers are not covered by social protection, legal employee rights, and labour regulations like collective bargaining. The more popular gig work becomes, the more it will transform former employees into self-employed gig workers looking for job offers on digital platforms, in turn circumventing and hollowing out the systems of social security and labour protection. As we will show, the German system of social security and labour protection is rather ill-prepared for the challenges of the gig economy. Risks are shifted to workers, and legal protection is missing, whilst there is little evidence that new approaches are developed to cope with the new situation.

The classification adopted in the Don't GIG up! project distinguishes between different types of platforms, namely those matching (1) passenger transport and (2) good delivery services, (3) other skilled local services or internet tasks, or (4) simpler and standardised micro-tasks. Like in other countries, there is a debate in Germany about how to label these different forms appropriately. As a kind of current consensus, the following way of labelling might be presented, which does not entail platforms coping with matching goods, money, entertainment, and so on. Usually, there are two broad categories of platforms matching work: cloud work and gig work (Table 1). Cloud work refers to all activities that are offered working web-based on the internet, whereas gig work refers to all working activities that have to be carried out as a physical service for a customer. Both forms can be subdivided by tasks addressed to specific persons or by tasks addressed to an undefined group of people online, the crowd. Within these categories, the tasks themselves can be differentiated: tiny units for piecemeal work are micro-tasks, more encompassing and qualified tasks are macro-tasks (Schmitt 2017).

Table 2: Forms of digital-platform work

Cloud work	Gig work
Tasks given to individuals (freelance marketplaces)	Tasks given to individuals (accommodation, transportation, or delivery)
Tasks given to a crowd (micro-tasking or contest-based creative crowd work)	Tasks given to a crowd (household services, local micro-tasking)

Bearing this in mind, reference is often made in this contribution to this classification of gig economy, often adopted by many domestic reports and studies.

Current Debate

Challenges and opportunities of gig work are widely debated among political and social actors in Germany like government entities, parties, associations, or other civil society actors. In a study on the political and social discourses in Germany, Greef et al. (2017) have analysed the discourse on cloud and gig work in detail, taking into account more than 100 collective actors and the positions they have published online in the years 2014 to 2017. Not surprisingly, the positions differ a lot between employers' and business associations, unions, occupational associations and associations of self-employed workers, civil society associations, and political actors. Here the focus is mainly on employers, unions, and political parties; political entities like the federal government or regional governments will be regarded later as they are the actors that, to a large extent, define the measures to ensure labour rights and protection. Positions from the scientific realm are also discussed in the next sections.

Employers' and business associations usually agree that cloud and gig work do not require additional legal measures (BDA 2015). In their view, legal measures run the risk of restricting entrepreneurial flexibility. Cloud and gig workers are regarded as self-employed by choice, and self-employment is described with positive notions like flexibility, independency, and individuality. Any attempts to include this group of workers in the social security system, minimum wage standards, or collective bargaining agreements is rejected. Caring about social security is regarded as the own responsibility of workers. Exceptions to this position are published by some associations like the Central Association of the German Handicraft Sector or the Association of the German Machine Tool Industry, and others advocating that at least provisions on pensions should be obligatory and that self-employed workers should be free to choose between the public or a private pension system. Especially in the eyes of companies of the handicraft sector, gig and cloud work is regarded as a kind of unfair competition, because the contractors do not have to care about employers' contributions to the social security system and, therefore, have a competitive advantage.

Unions have a much different point of view, focusing very much on the necessity to create new regulations to cope with the challenges of gig and cloud work. Greef et al. (2017) distinguish five different areas of regulation that are addressed by the unions. First, unions demand some minimum standards to be fulfilled by the platforms concerning transparency and protection against arbitrariness in the terms of business decisions, or minimum standards with respect to the fees. Second, unions want to clarify the status of cloud and gig workers, and demand to regard them as employees and, as a consequence, to adapt the legal definition of employees or also the legal concept of plant or undertaking (which is crucial for the works councils' rights of codetermination). Third, unions opt for the extension of the rights of works councils, both by including cloud and gig workers in the

scope of codetermination, and by extending codetermination rights to decisions about outsourcing activities to platforms. Fourth, cloud and gig workers and other self-employed workers should be covered by the social security systems. Platform data could be used to measure the economic activities of workers, and the contributions should be paid by the workers, on the one hand, and by the platforms or clients, on the other hand (as social contributions in Germany are shared equally by employers and employees). Alternatively, already existing special rules for artists or for homeworkers could be extended to cloud and gig workers, although they define a lower level of social protection than the ones for employees. Fifth, unions want to improve data protection of workers and to restrict the opportunities of the platforms or clients to control workers. Another point mentioned sometimes is the introduction of unions' right of access to platforms in order to organise workers.

There are only few occupational associations or associations organising self-employed workers; they either demand a minimum income and the inclusion of cloud workers in the social security systems (like the Alliance of German Designers), or opt for low social contributions for self-employed workers and for the extension of the concept of employees to solo-self-employed workers (like the German Federal Association of Information Technology for Self-Employed).

Among political parties, there are more or less visible differences along the right-left frontier, with centre-left and leftist parties like Linke (2016), the Green Party, and the Social Democrats (2016) demanding more regulation and some forms of inclusion into the social security system, and also a kind of minimum wage (Linke and the Green Party) or the inclusion into the codetermination system (Social Democrats and Linke). Centre and right-wing parties like the Christian Democrats (2016) have fewer demands in terms of regulation; the Christian Democrats are in favour of some measures to prevent poverty among the elderly, whereas the Liberals (2016) are opting for more deregulation for all through 'regulation pilots', who are to check the usefulness of existing regulations.

Features and Trends

There is little information about the spread and volume of cloud and gig work in Germany. Representative figures only exist for aggregates of employees, self-employed workers, or solo-self-employed workers, which would be the category that seems to best cover them. However, this excludes people that do some cloud and gig working activities while working mainly as employees or being classified as pensioners or students. At the same time, the bulk of self-employed workers are not cloud or gig workers but working as artists, journalists, in parcel services, or in other occupations. Therefore, it is not possible to estimate the amount of gig workers based on data on self-employment and its development, provided that, in any case, it cannot be assumed all gig workers are self-employed.

Moreover, the rise of atypical work in the German economy in the last two decades was very much driven by political and institutional changes like the Hartz reforms of labour market policy from the middle of the last decade, when atypical work like marginal part-time work and temporary agency work, but also self-employment, were deregulated or promoted (Eichhorst et al. 2017). However, after years of growth of self-employment and especially solo-self-employment without employees, up to nearly 2,500,000 employees in 2012, the number of solo-self-employed workers declined again, which is different from what would be expected in case of an employment boom in cloud or gig work.

There are only two surveys that try to analyse the phenomenon empirically. Yet, both of them are not representative and only focus on what is labelled here as cloud work. Leimeister et al. (2016) have conducted a survey reaching 434 cloud workers, based on a questionnaire that was published online in the form of a link on different platforms

(and which was not representative in a stricter sense). According to this survey, workers on average work on two platforms, and are registered for between 8 and 19 months on a platform, with high standard deviations. The workers are about 36 years old on average, and are more frequently men (56%) than women (44%). The workers are rather high qualified: 48% have academic certificates and 34% certificates in vocational training. As to their occupational status, 38% are self or solo-self-employed, 28% are employees working full or part time for another employer, and 23% are students or pupils.

Only 6% of workers on micro-tasks platforms do this as a full-time working arrangement, compared to 28% of workers on marketplace platforms. On average, monthly earnings range from € 144 on micro-tasks platforms, and € 663 on marketplace platforms. The average wages for workers doing full time work on platforms range between € 250 as to micro-tasks platforms, and € 2,265 as to marketplace platforms. Also the weekly working times show high diversity. On micro-tasks platforms, the average is 7.39 hours, whereas on marketplace platforms, the average is 17.04 hours. Workers whose main job is on platforms spend 17 hours a week on micro-tasks platforms, and 31.57 hours a week on marketplace platforms. Interestingly, 46% of workers on marketplace platforms, and 58% of workers on design platforms would like to have a regular employment.

On average, 44% of all cloud workers surveyed are covered by health and unemployment insurance. The figure is higher for workers having their main job on platforms (66%). The average coverage of pension insurance is 52%, only slightly higher for workers active on platforms as a main job (53%). There is little criticism concerning the structure and terms of platform-based work; workers are rather satisfied both with their clients and with the reputation systems organised by the platforms. Nevertheless, 51% say that a collective interest representation for cloud workers would be desirable.

The second survey by Huws and Joyce (2016) on crowd and gig work was conducted among 2,180 adults aged 16 to 70 years (with the representativeness rather unclear), of whom 22% said that they tried to find a job on platforms, and 14% that they managed to do it (16% of men and 12% of women answering the questionnaire). As to the degree of involvement, 11% only work once a year for platforms, whereas 4% do so on a weekly basis (Figure 1). About 20% of the workers doing cloud or gig work were aged between 16 and 24, 28% between 25 and 34, and 17% between 55 and 70.

According to the survey, about 55% of cloud or gig workers say that they earn less than half of their income on platforms, 18% more than half, and 2% all of their income. Forty per cent of workers state that they earn less than € 18,000 per year, 46% up to € 36,000, and 11% up to € 60,000. The range of crowd or gig work activities carried out is broad: 71% say that they are doing office work, short tasks, or click work online at home, 63% are doing creative or IT work, and 57% professional work. According to a multiple-choice question of the survey, gig work in the sense of offline work is carried out in the areas of driving (50%), personal service work (50%) or doing errands (57%), or regular work in somebody else's home (58%).

In a survey on cloud work conducted among employers (Ohnemus et al. 2016), companies were asked about the usage of crowd work in the sense of work that was formerly done within the companies, and was then sourced out to a crowd. About 77% of companies of the IT sector, and around 70% of companies in the manufacturing sector know the concept. However, the actual usage is rather low. The sector using crowd sourcing mostly is media services, with about 6% of companies, followed by IT (5.5%). In the manufacturing sector, only 1.2% of companies have sourced out activities to a crowd. The spread is higher among small (up to 20 employees) than bigger enterprises. Asked why they do not avail themselves of this tool, the companies said that the work done in their companies is not applicable to crowd sourcing (about 70%), that the relevant know-how might be in

danger (50%), that quality is difficult to control (46%) and juridical problems might arise (40%), or that they in general do not want to support this kind of work (about 38%).

The findings of these surveys are confirmed in smaller surveys on the issue[2]. According to the estimation of Pongratz and Bormann (2017), there are about 100,000 to 300,000 active crowd workers in Germany, whereby 'active' means that they do a platform job at least once a month. Only for 5,000 of them at most, crowd working is the main source of income. Crowd workers are recruited from students and retirees, self-employed, and employed people; the level of qualification is rather high, with a high share of academic qualifications. The average wage is rather small; 66% of the respondents of a small survey on micro-tasks platforms say that they earn less than € 19 a week (Bertschek et al. 2016).

Risk Shifting

Is crowd work or gig work going along with a shift of risks away from employers – or clients on a platform – towards workers? The answer to this question depends a lot on the features of the respective legal and institutional systems, and the way platform work is integrated into them. Germany belongs to the group of countries that are usually regarded as cases of rather high labour protection by law and social institutions. However, all these institutions are focused on a traditional concept of employee, which is not defined explicitly by law (Däubler 2015). There are two definitions given implicitly: that a worker is not free to autonomously organise his/her working time; and that the employer defines contents, time, and place of work. There are, therefore, two central characteristics defining an employee:

- he/she is subject to the directives of the employer; and
- he/she is integrated in the organisation of the employer, and in this sense is dependent in a personal way (not in an economic way – this aspect does not play a role in the 'definition').

Employees defined in this sense are covered by a complex set of legal provisions and social institutions, among them:

- the employment contract according to the German Civil Code;
- the National Minimum Wage Law defining a compulsory hourly minimum wage;
- the Working Time Law providing for upper limits for the duration and distribution of working time;
- the Labour Protection Law defining measures to protect employees at the workplace;
- the Law for Dismissal Protection, which allows the employee to take legal action or to get a 'dismissal wage' (50% of monthly wages per year of employment, up to 12 full wages);
- the Maternity Protection Law defining norms for pregnancy and parental leaves;
- the Holiday Law defining a minimum claim for holidays (four weeks a year);
- the Youth Protection Law defining limits for working youths and protecting younger people at work;
- the Law on Equal Treatment excluding discrimination;
- the Law on Continuation of Payments in Case of Sickness;

2. See for a summary: Pongratz and Bormann (2017).

- the Law on Time for Elderly Care, which allows the employee to leave the job temporarily on an unpaid basis, or to work on a part-time basis;
- the Works Constitution Act, which defines the rules for establishing works councils and their rights of information, consultation, and codetermination;
- the Codetermination Law and the Law on Codetermination for the Coal and Steel Industries, which define codetermination rights for employees on supervisory boards of joint stock companies;
- the Collective Bargaining Law allowing collective bargaining agreements by collective labour market actors to set out provisions that are compulsory for their members;
- the Posted Workers Law, which creates the opportunity to extend collective bargaining agreements defining minimum wage standards to all workers in the respective industry, regardless of their country of origin (and that of their firms); and
- a compulsory social security system including pension, unemployment benefits, healthcare, and elderly care, which is organised by the public sector and financed by contributions from both employers and employees.

Workers who are not to be defined as employees in the legal sense stated above are not covered by these provisions and the related entitlements. However, there are exceptions that play a role in the discussion about protecting cloud and gig workers. The main exception is the concept of the employee-like worker. An employee-like worker is defined by three characteristics:

- he/she is not directly subject to the directives of an employer;
- he/she is financially dependent on one employer in the sense that the income he/she gets from the employer is the most important part of his/her income (more than 50%); and
- he/she is dependent on protection in a similar sense as a normal employee; this does not apply to persons with a high income.

Employee-like workers are subject to some legal regulations that take up some aspects of those applied to employees but are far away from having a similar scope:

- the person is entitled to four weeks of holiday a year;
- he/she is fully protected by the Labour Protection Law;
- he/she can benefit from the Law on Time for Elderly Care;
- he/she can take part in company pension systems;
- he/she can be protected by collective bargaining agreements if he/she is included in the scope of the agreement; and
- in case of conflicts between the worker and an employer, he/she can resort to labour courts.

Important legal provisions like protection against dismissals, the Works Constitutions Act, or the minimum wage do not apply; nor are these persons covered by social security contributions except for the pension system, which is compulsory for them.

A more special exception is the one for home workers. A home worker is defined as a person who can work at home for an employer, and is relatively free in terms of organising his/her working time and the way he/she works. Freelancers are not included if they do not work in a workplace they have chosen themselves. The decisive point is that the

worker is given an order by an employer, and is not only invited to make an offer (as is usually the case with crowd work) (Klebe 2017). The following rules apply to this category of workers:

- a committee for home workers is set up at the regional labour ministries, and is composed of representatives of the clients and the workers themselves; this committee can decide on compulsory minimum standards for rewards or other contractual aspects;
- the volume of work should be distributed as equally as possible between workers;
- there are periods of notice for contracts as defined by law;
- provisions on maternity protection, continuation of payments in case of sickness, holiday claims, and youth protection also apply; and
- if the worker works for one main employer, he/she is covered by the Works Constitution Act.

A third exception is the Law on the Social Security System of Artists. Based on this law, a special type of social security system was established for self-employed artists and publicists who have to pay half of the social security contributions usually paid by normal employees, such contributions being supplemented by the State and by social security contributions paid by employers in this field. The only precondition is a minimum income and being a self-employed artist or publicist.

If workers are not covered by any of these definitions, they are in a legal sense self-employed. Here the Civil Code and business law, instead of labour law, apply. There are few rules that may become relevant, such as the structural inferiority that has to be compensated in case of severe hardships experienced by one of the parties. Another rule could be the legislation against restrictions of free competition or property rights on the products of work. There is an open debate if 'entrepreneurial freedom and room of manoeuvre' should be included in the definition of free competition (Klebe 2017).

Looking at the different categories of workers, the aspect of risk shifting can be described more in detail. A shift of risks towards the worker seems to be obvious if a task is shifted from employment forms with a high level of protection to those with lower levels of protection. The central example would be the case of outsourcing: a task that has originally been performed by an employee is shifted by the company to external providers or to a 'crowd' working on platforms. In this case, a highly regulated form of employment will directly be replaced by a low regulated form that might not be regarded as employment at all. The shift is even more direct if workers who have performed the task before are dismissed, and have to apply for their former job through platforms.

The risk shifting is less dramatic if the task outsourced to platforms was not previously performed internally; in this case, there is no direct replacement. However, if all the new tasks are shifted to external platforms and the volume of activities performed within the client firm shrinks, the consequence would also be a replacement effect. Finally, consequences may be less problematic if a platform is used as a new way for workers already working as self-employed, or as a kind of fallback option, and the orders on the platform do not replace what is done internally within the firms.

Legal Issues

If platform work is regarded as self-employment, labour inspections or other forms of public control do not take place. Legal activities are limited to labour courts. Here the following aspects are discussed. First, crowd and gig workers can be regarded as consumers

if they are not entrepreneurs and employers, and work on platforms only occasionally. In this case, they can benefit from consumers' rights. Second, certain aspects of the standard business conditions of platforms could be regarded critically, and might not stand in court procedures (Däubler 2015):

- changes in the content of contracts that are allowed on some platforms, but not according to German law (at least not whenever initiated unilaterally);
- the 'the winner takes it all' principle on design platforms, which contradicts the principle that efforts shall be compensated by the employer and that the producer has copyright on his/her product;
- the possible presence of short deadlines for revising work that do not fit with German law;
- restrictions of personal rights like the prohibition of having contacts with other users of the platform, or the storage of personal data on the platform and its transfer to third parties; and
- monopoly power positions of platforms.

Disputes might be hampered by a number of issues related to the place of business, as the latter defines the legal system that has to be applied in case of conflicts, insofar as this is fixed in the standard business conditions, and the worker is self-employed. Resorting to a foreign court in the country where the registered office of a platform is located can be regarded as a disadvantage for the worker. The situation for the worker improves if he/she is to be classified as an employee or an employee-like person; in this case, central elements of German law like dismissal protection or the Works Constitution Act shall be applied. In case the worker qualifies as a consumer, he/she can rely on the norms on consumer protection.

Approaches to Social Protection

There are several, more far-reaching approaches discussed to increase the social protection of cloud and gig workers. Approaches are discussed with respect to individual or collective rights (Schwemmle 2018). One of the main points discussed is the classification of the status of the activities of platform workers as solo-self-employed workers, employee-like workers, or employees. There are two demands that come into play here. One is to integrate into the social security system all the cloud and gig workers who are dependent on platform work or on certain platforms and who are not able to pay for social security privately on their own. These workers are labelled as 'false self-employed' and should be included independently from their status. Another approach would be to define the legal characteristics of an employee anew, so that economic dependency would be included; at the moment, it is only the personal dependency in the form of availability to comply with the requirements of an employer in terms of time, place, or contents of work that can be made use of.

With respect to collective rights, the main idea is to extend the competencies of works councils to all forms of activities for a company, with the exception of real self-employed workers. This would include cloud work to a certain degree, especially crowd working in the sense defined above. Works councils could guarantee similar standards of protection, they could prevent the outsourcing of former in-house activities to a digital crowd and, in doing this, mitigate competition between internal and external employees.

Measures to Ensure Labour Rights and Social Protection

However, the new legal and social policy approaches discussed with respect to crowd and gig work are far from being implemented. In 2015, the Federal Labour Ministry

has initiated a political process to discuss developments and challenges of digital work, called 'Working 4.0' (*Arbeiten 4.0*). The process started with a green paper published in the same year (BMAS 2015). In this paper, a demand for more and better information about the developments of new forms of employment like solo-self-employment and the situation, working conditions, and remuneration of crowd workers was stated. Moreover, the paper defined some open questions with respect to labour law and social policy: the consequences for social protection and income, the support of interest representation for this group of workers, or the legal distinction between self-employment and bogus self-employment.

Whereas the green paper was regarded as the starting point of the discussion, the white paper published one year later was the result of a discussion process together with a commission of experts from employers, unions, and the scientific world. In the white paper, it was stated that a strong increase of solo-self-employment is not observable and that, therefore, there is no urgency for political measures. What was announced instead was a new reporting system of the world of work, which is to be organised by the ministry and in which data about cloud and gig work should be produced. In case the phenomenon becomes more important in the future, it is said that measures would have to be developed. Among the possible political measures listed in the white paper are new forms of protection similar to the special rules for home workers (defining some standards for holiday claims, codetermination of works councils, or wages). At the same time, it is said that the opportunities and the interests of cloud and gig workers to develop interest representation should be supported, first of all by informing them about the existing possibilities. More concrete measures were not announced; the idea of an adaptation to the social security system for artists was rejected explicitly.

Apart from politics, unions have tried to develop initiatives focusing on cloud workers. Unions like IG Metall or Ver.di tried to cope with the challenges, and developed new strategies to attract and represent cloud and gig workers. As far as Ver.di is concerned, the union demands social protection and an extension of the legal concept of employee to crowd workers; it furthermore tries to engage in dialogue with platforms as quasi-employers, and addresses crowd and gig workers by offering support and consultancy within the consultancy services for self-employed workers. Also, IG Metall demands an extension of social security and employee rights to crowd workers: this is not aimed at preventing crowd work – which might be an efficient way to organise and make use of knowledge – but rather at regulating it. Moreover, the union kicked off – together with other European unions – the platform 'faircrowdwork', on which information for crowd or cloud workers is provided, including a telephone hotline, and an alternative system of reputation of platforms on the basis of workers' assessment is set up. This is in opposition to ranking systems arranged by the platforms themselves, which usually try to get data about the reputation of workers on the basis of clients' assessment.

There are two interesting disputes to mention when it comes to gig work in the food delivery sector. The first case is Delivery Hero. The German subsidiary of the company was organised as a joint stock company in 2017, and employed more than 2,000 employees at that time, so that it fell under the Codetermination Law, which imposes the establishment of a fully codetermined supervisory board. However, the company rejected this claim, but was pushed into accepting it following legal action. As it then transformed into a European Company (SE), the supervisory board was accepted for the SE, with six members, three of whom from the works councils, including one rider (Hinck 2019).

The second case concerns Deliveroo, where the riders have set up a works council. The process started in 2017 in the city of Cologne when the riders began to communicate through a WhatsApp group and to develop consensus about their discontent with the

deteriorating working conditions, erroneous pay slips, or the fact of having to buy all the equipment by themselves. They got support from the food workers union NGG, and organised a campaign via a Facebook platform called 'Delivering at the limits'. The platform registered more than 2,000 interested persons, and meetings were organised. The election of a works council was the final step of this process. However, the success was only temporary: Deliveroo riders were hired under temporary contracts, which were not extended by the company; the latter replaced them with freelancers, who do not have the right to set up works councils (Zander 2018).

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Country Background: France

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Current Debate

The development of the gig economy is part of a broader debate in France on the transformations of employment and an increasing 'porosity' between employment statuses.

The development of platforms has been greatly facilitated by the creation of a new self-employment status (*auto-entrepreneurs*) in 2008. Another specificity lies in the introduction in 2016 of social obligations for platforms.

The political debate has focused since 2016 on the implementation of social obligations upon platforms, in the framework of the application of Article 60[3] of Law no. 2016-1088 of 8 August 2016 (concerning health, industrial accidents, and vocational training), as well as on the consequences and follow-up of this provision (in terms of universality of rights, financing of social security, etc.). The political will is to avoid regulating platforms 'too early', while promoting socially responsible practices.

The situation at the beginning of 2019 has become more complex, due to the combination of different initiatives and rulings. In the summer of 2018, the government launched a new initiative, the 'Etats Généraux des Nouvelles Régulations du Numérique'[4]. The first phase of this initiative took place in the framework of technical groups, bringing together only representatives of the administration, without any stakeholder. It led to the establishment of two 'top-down' scenarios of social evolution for platforms, and was eventually opened to general consultation with stakeholders in January 2019. The first scenario is based on the assumption that the principle of 'social responsibility of platforms' will continue to be implemented on a self-regulatory basis. The second scenario requires an evolution of national law, and is based on proposals aimed at including new binding provisions for platforms into the applicable legislation. In the first scenario, the technical group proposed the possibility for platforms to associate platform workers with their share capital without risking they are requalified as employees[5], as well as the establishment of a right to negotiate collective agreements between platforms and workers with self-employed status[6]. In the second scenario, the technical working group suggested imposing upon platforms, in specific sectors, the obligation to implement the social responsibility charters provided for in an amendment (so-called 'Taché Amendment') proposed by a member of Parliament and discussed in the context of the bill entitled 'Draft act on the freedom to choose one's own professional future' in the spring of 2018[7]. The amendment was rejected by

3. For further details, see the section 'Risk Shifting'.
4. Managed by the Secretary of State in charge of Digital Affairs.
5. There is no reference to alternative governance models, such as cooperatives. Participation in capital is envisaged only in the framework of capitalistic platforms.
6. The proposal is discussed in France since 2016 and in the report produced by the General Inspectorate for Social Affairs (IGAS) (Amar and Viossat 2016). It was also proposed by the Third Chamber in 2017 (CESE 2017) and by the working groups organised by the Sharers & Workers Network in 2017 (Chagny et al. 2017).
7. *Loi pour la liberté de choisir son avenir professionnel* (Law no. 2018-771 of 5 September 2018).

the Constitutional Council in the summer of 2018[8], but the government reintroduced it in a recent legislative package[9]. The draft charter as designed in the draft amendment is the source of many debates: it suggests giving platforms a wide margin of manoeuvre to determine on a voluntary basis working conditions and remuneration and to establish a social dialogue with platform workers, in exchange for the guarantee of being protected from the risk of requalification[10].

So far, the creation of a third status has not been considered as an option in France. But the situation may change, also in the wake of major rulings issued by the Court of Cassation and the Court of Appeal in November 2018 and January 2019 (see below). Following the judgment of the Paris Court of Appeal, representatives of the Minister of Labour explained that there is a need for the legislator to quickly deal with the issue and define a new legal regime specifying the links between workers and platforms (cited by Les Echos, 16 January 2019).

The social debate focuses on four main issues: working conditions (with increasing awareness about the reality of platforms and the necessity to regulate their actors); traditional enterprises' growing trend to shift to the platform economic model; integration issues of those excluded from a workplace; and lastly the possible alternatives to 'capitalist' platforms (cooperative, open source, etc.).

The academic debate has so far focused on legal issues (requalification), collective actions, and working conditions.

Features and Trends

Statistical Sources

Statistical evidence and sources on the gig economy are still scarce. An ad hoc module was added to the Household Survey in 2017. The sample was limited: it included just 3,700 self-employed workers. The module covered only main jobs, with specific questions having been added to Eurostat's specifications. The results are summarised as follows: 100,000 people (70,000, 130,000 confidence interval) (106 respondents) said they rely exclusively on platforms; 105,000 people (80,000, 130,000 confidence interval) (127 respondents) said they do not rely exclusively on platforms; and a total of 205,000 people (170,000, 240,000 confidence interval) are using platforms. This represents 7% of self-employed workers and 0.8% of employees. The figures are considered to overestimate the total number of (main) jobs related to digital platforms (Gazier and Babet 2018). This is connected to the fact that these questions do not allow us to properly distinguish digital platforms from other intermediaries.

IGAS Estimates

In the 2015 report commissioned by the French General Inspectorate for Social Affairs (IGAS) (Amar and Viossat 2016), a thorough analysis of social issues – work, employment, vocational training, and social protection – related to platforms was conducted. The report estimates the volume of business generated on gig economy employment platforms covered by the present project (more precisely, the total amount of transactions between platform workers and final clients) to be € 1.6 billion in 2015 (covering 100 active platforms in France). Based on the volume of business generated by the platforms and on data

8. Mainly due to procedural reasons.
9. The proposal is included in the bill entitled 'Draft Orientation Law on Mobility' (*Projet de loi d'orientation des mobilités*) (article 20) presented by the Council of the Ministers on 26 November 2018.
10. An event organised on 24 January 2019 by the Sharers & Workers Network was dedicated to, among other things, discussing the project.

provided by the platforms themselves on collaborative workers, the report estimated that more than 200,000 workers in France were concerned (excluding second-hand sales and accommodation platforms).

The most recent figures reported by the platforms are the following: Malt (freelance, type 3 platform): 70,000 workers; FouleFactory-Wirk (micro task, type 4 platform): 50,000 workers; Crème de la Crème: (freelance, type 3 platform): 30,000 workers; Uber (transport service, type 1 platform): 15,000 workers; Deliveroo (transport service, type 1 platform): 7,500 workers; Yoss (freelance, type 3 platform): 4,000 workers; Stuart (transport service, type 1 platform): 1,500 workers; and Bnb sitter (domestic services, type 3 platform): 300 workers.

Freelance platform figures should be interpreted with caution. It is considered that a very negligible part of the freelancers registered with the platforms are 'actually' active (evidence collected from stakeholders).

In a paper released in January 2019 (Le Ludec et al. 2019), the very first estimation of the amount of micro-workers active in France was published. The estimates lead to 15,000 'very active' workers, 50,000 'regular' micro-workers and 250,000 'occasional' micro-workers. These figures are to be interpreted as orders of magnitude. Insofar as they exceed the number of contributors to the more publicised platforms such as Uber or Deliveroo, these high figures require the attention of both the public authorities and the social partners.

Trends

According to IGAS, the growth in business volume of employment platforms is very dynamic: +370% between 2012 and 2015. Their impact on the jobs of traditional companies is unfortunately not precisely documented, and is rather ambiguous.

Recently, there has been a rise in the number of 'skilled services platforms', acting as new digital work intermediaries. These new players compete with 'traditional' labour intermediaries, such as temporary work agencies and IT service companies. They are also created as subsidiaries of some traditional actors. This is the case of Yoss, a start-up incubated by Adecco and developed by Microsoft, launched by Adecco in February 2018 to develop new segments (IT, digital, marketing, communication and events, and consulting and business development). The willingness to go on the freelance market and develop new business lines is clearly assumed. The platform is considered as a growth driver not competing with the traditional interim business.

The motivations of clients (large groups and SMEs) are still largely unknown. The only available study was produced by a freelance platform, and therefore shall be interpreted with some caution. The study puts forward several factors: dynamic demand for digital professions, image deficit of large companies for many young digital graduates, and willingness to pursue strategies of re-internalisation of IT or communication, and to complement internal teams with external resources (Vitaud 2018).

Regulatory Obligations and Strategic Dissimulation

In terms of labour law, platforms largely benefitted from the creation of the new legal self-employed *auto-entrepreneur* (AE) status in 2008[11]. The AE status allows platforms to bypass the processes of recruitment, payment of wages (especially the legal minimum wage), and social contributions.

11. For further details, see the section 'The opportunity of the *auto-entrepreneur/micro-entrepreneur* (AE/ME) status'.

In France, it is acknowledged that some digital platforms developed their activities in the loopholes of existing legal systems. This point was emphasised in a recent report by the French Council of State (Conseil D'Etat 2017). Uber was established in France in the legal maze of the passenger transport sector, characterised by a complex piling-up of different statuses – taxis, transport cars with driver (*voitures de transport avec chauffeur*, VTC), 'LOTI' transport (Law no. 82-1153 of 30 December 1982 on guidelines for internal transports, so-called 'LOTI Law' – see below for further details). VTC were introduced in France in 2009, with the so-called 'Novelli Law' (Law no. 2009-888 of 22 July 2009). The law allowed entrepreneurs to exploit passenger vehicles in a simpler way than it was before (in terms of size and power of vehicles, as well as of simple registration). Paris was the first city, outside the United States, where Uber deployed its platform. Uber commissioned 'its' first VTC in December 2011, whereas the company Uber France was created on 27 January 2012.

To establish their presence in the country, some of the companies operating through platforms have resorted to operational plans and policies aimed at avoiding the boundaries of national regulation: VTC can only pick up customers upon booking, and they are not allowed to 'maraud' or wait for clients at taxi stations. The use of the platform makes it possible to respect the rules. The platforms have also purposely taken advantage of the LOTI status (SCP-VTC; Grandguillaume 2018; Abdelnour 2018).

The acronym 'LOTI' actually designates the law that, in 1982, defined the status of the capacity holder: *Loi d'Orientation des Transports Intérieurs* (which literally means 'Orientation Law on Internal Transports'). The LOTI status owes its specificity to taxis and VTC: the LOTI capacity is distinguished from both the taxi licence and the professional VTC card, and the relevant status allows companies (*capacitaires*) to hire employees and to contract them directly with the platform. However, unlike in the case of taxis and VTC drivers, this status until recently did not require either drivers' driving records for pre-employment screening and background checks, or assessments to verify the qualification (except for the enterprise that hired the drivers).

Risk Shifting

The Opportunity of the Auto-Entrepreneur/Micro-Entrepreneur *(AE/ME) Status*

The possibility of shifting risks and responsibilities to individual workers was greatly facilitated by the creation of the AE status in 2008 (Law no. 2008-776 of 4 August 2008 on modernisation of the economy). The AE regime fell within the scope of two measures already in force: the 1991 micro-fiscal regime and the 2003 micro-social regime. It was conceived as part of a long-term policy implemented by the public authorities and boosted by a shift in the political discourse started at the end of the 1990s in favour of occasional entrepreneurs (Abdelnour 2017). This change was reflected by the encouragement of multiple revenue sources, in particular the possibility to combine self-employed income with social assistance.

The AE regime was thought as an instrument of income accumulation 'for everyone'. It was then amended in 2016 (since then, the AE regime is called 'micro-enterprise regime') and in 2018 (when the thresholds were raised).

The AE regime is a social, fiscal, and regulatory regime that individual entrepreneurs can opt for in the trade, craft, and service sectors. The regime is accessible to entrepreneurs with a turnover below a certain threshold. Initially, these thresholds were set as follows: € 80,000 (raised to € 170,000 in 2018) for sales activities, and € 32,000 (raised to € 70,000 in 2018, equivalent to € 1,350 per week) for service activities and professionals.

Gig workers fall under the second category inasmuch as the contractor can conclude a contract with the platform for the provision of services (*louage d'ouvrage*, as defined in Article 1710 of the Civil Code). The advantage for the platform lies in the set of conditions applicable to workers: fee-for-service arrangement, possibility to terminate the employment relationship at any time, and possibility to circumvent labour law.

The benefits for self-employed workers are:

- VAT, corporation tax, and business tax exemption;
- no need to register with the Chamber of Commerce/Trade, whereas a declaration submitted (also online) to a Business Formalities Centre is enough. In principle (so-called 'Pinel Law', i.e. Law no. 2014-626 of 18 June 2014), AE are subject to the same technical and regulatory requirements applying to other professionals engaged in the same activity;
- social security contributions strictly proportional to turnover: 12.8% for sales, and 22% for services / gig workers (as of January 2018);
- the possibility to opt for the flat-rate withholding income tax, on a means-tested basis (€ 26,818 income for a single person in 2018); and
- the possibility of cumulating this status with the schemes for unemployed people starting or taking over a business (the so-called 'ACCRE scheme'), along with the possibility of benefitting from social contribution exemptions.

The disadvantages for workers are obvious in terms of social rights in comparison with employees (see the section: 'Different Views on the Impacts of the Gig Economy') and in terms of working conditions (working time, safety and health at work, etc.).

At the end of 2016, the total amount of AE/ME was estimated at 1.07 million. They accounted for 35% of self-employed workers in 2016, 4% of all people in employment (ACOSS 2018).

Another independent status presents some administrative and social advantages for gig workers: the simplified single shareholder company (*société par action simplifiée unipersonnelle*, SASU). The entrepreneur who creates its business is affiliated with the general social security regime (i.e. the employee regime). He/She also benefits from a better pension insurance than workers under the AE status. On the other hand, no unemployment insurance is granted.

The share of AE among platform workers is not known, but it is very different depending on the platform considered. For instance, AE seems to be a majority among couriers. As to Uber, AE are expected to be numerous at the start of their activity (due to simple administrative procedures and to incentives on the part of the platform). The AE status is quite suitable for occasional drivers or those who wish to test the activity. But the regime loses its advantage when the activity of the workers develops. It is impossible to deduct work-related expenses (petrol, car rental, etc.) since the calculation of contributions is based on the turnover and not on profits. Plus, the AE cannot recover VAT as there is a ceiling in terms of turnover.

As a result, Uber drivers are mainly covered by other employment statuses: drivers can be employees of 'capacity-based' companies under the LOTI Law. In this case, they are covered by the employee status. Many drivers opt for other statuses – single-owner limited liability companies (EURL), simplified shareholder company (SAS), or simplified single-shareholder company (SASU). According to preliminary results (Abdelnour and Bernanrd 2018), more than 30% of UBER independent drivers have a SAS-SASU status,

15% are AE, 15% are in are EURL/SARL/EI/EIRL status, whereas others are employees or cumulate different statuses.

Social Responsibility of Platforms

While remaining within the framework of self-employment, an important step was taken in 2016 for what concerns the social responsibility of platforms vis-à-vis platform workers, with the consequence of a specific legal framework for these workers (not completely corresponding to a third status, albeit introducing new legal provisions for platform workers).

Article 60 of the Labour Law[12] conferred three specific rights on platform workers: protection against accidents at work, right of training, and right to strike.

These three rights constitute the social responsibility of the platform vis-à-vis workers. This provision does not apply to all platforms, but only to those that determine the characteristics of the service provided or of the goods sold, and that fix the price of the service. Typically, this concerns type 1 and 2 platforms of the present project.

The first part of this social responsibility obliges the platform to cover, within the limit of a ceiling set by decree, insurance costs related to the risk of occupational accidents (Article L. 7342-2 of the Labour Code). The platform is exempt from this obligation if the worker adheres to the collective insurance contract the platform puts in place for its workers, provided that the platform contract offers guarantees at least equivalent to those provided for by the individual insurance.

Many platforms have partnered with insurance companies to offer insurance policies for accident and liability protection. Uber announced a partnership with AXA in July 2017, and in May 2018 it declared that it was expanding the partnership on a European scale. Deliveroo also entered into a partnership with AXA in March 2017. These contracts are raising public debate regarding their quality, the consequences for the financing of social protection, and the attachment to the platform rather than to the individual[13].

The second part of the social responsibility pattern under analysis gives workers access to vocational training rights. Regrettably, these rights are built on those of other independent workers and are therefore limited (Article L. 7342-3 of the Labour Code): obligation upon platforms to contribute to self-employed workers' training (without minimum requirements), and payment by platforms of the costs linked to the recognition of competencies acquired on the job (*validation des acquis de l'expérience*, VAE) (State Council 2017). The low obligations for vocational training are also debated.

The exercise of these two rights is conditional on the existence of a minimum turnover achieved by the worker on the platform. Decree no. 2017-774 of 4 May 2017 set this minimum threshold at 13% of the annual ceiling for social security (€ 5,099.64 per month in 2017).

The third part of the social responsibility of platforms recognises the right to strike for workers using the platform (Article L. 7342-5 of the Labour Code). These strikes cannot be considered as grounds for terminating the contractual relationship with the platforms. Workers also enjoy the right to form and join a trade union and to assert their collective interests through trade unions (Article L. 7342-6 of the Labour Code).

Many collective movements have emerged in France since the introduction of platforms. They are concentrated in the transportation sector: VTC drivers in 2015-2016, and then, in 2017-2018, in the courier services sector. These movements frequently followed

12. Law no. 2016-1088 of 8 August 2016 regarding work, modernising the social dialogue, and professional careers.
13. See the section 'Different Views on the Impacts of the Gig Economy'.

decisions by the platforms to increase commissions (e.g. by 20% to 25% in December 2016 in the case of Uber) or to switch to a shift fee instead of hourly remuneration for couriers since July 2017[14].

Legal Issues

Since 2003 (when the Dutreil Law – Law no. 2003-721 of 1 August 2003 – was approved), the legal issue of presumption of salaried or self-employment status has been in favour of self-employment. The presumption of self-employment was extended to AE in 2008. However, the AE status does not preclude the recognition of an employment contract providing the claimant is able to prove the characteristics of such an employment relationship. 'Normal' companies have already had to undergo substantial social security contribution recoveries (Court of Cassation, second Civil Chamber, judgement of 7 July 2016, no. 15-16110 FSPB), not to mention the legal risks related to undeclared work (Court of Cassation, Crime Chamber, judgement of 15 December 2015, no. 14-85638 FPB).

Several legal actions are currently pending concerning the gig economy, with the court decisions showing signs of hesitation. A major step, however, occurred on 28 November 2018, with a judgment of the Court of Cassation.

Court Actions by Workers

Le Cab

On 20 December 2016, the Industrial Tribunal of Paris (RG no. F 14/16389 and no. 14/11044) reclassified the relationship between a driver working under the AE status and a passenger transport platform (Le Cab). The argument invoked by the court for the requalification was the exclusivity clause signed between the driver and the platform. This court decision led the legislator to prohibit exclusivity clauses in the passenger transport platforms (Law no. 2016-1920 of 29 December 2016 – so-called 'Grandguillaume Law' – and Article L. 3142-5 of the Transport Code). Going further, on 13 December 2017 the Court of Appeal (no. 17/00351) added other elements to establish the subordination link (single client and no decision-making power on prices and on work organisation). The court found that the platform knowingly sought to circumvent the rules to avoid its employer obligations. The platform subsequently appealed the decision.

Take Eat Easy, Uber

For nine couriers of the platform Take Eat Easy, the Industrial Tribunal of Paris declared itself incompetent on 27 September 2017.

The driver had filed an appeal before the *tribunal des prud'hommes* against a request for requalification of the existing contractual relationship as an employment contract. After the Industrial Tribunal of Paris and then the Court of Appeal declared that they had no jurisdiction to hear the case, the Court of Cassation ruled on the issue. The decision was delivered with a judgment issued in November 2018[15] in which the Court considering the presence of a disciplinary power by the platform and of a system to monitor worker through GPS, deemed workers to be employees, not entrepreneurs. The Court of Cassation then asked the Court of Appeal of Paris to review the judgment in this sense.

In the case of Uber, and following the Court of Cassation ruling, a first major decision was taken by the Court of Appeal of Paris on 10 January 2019 (judgement of 10 January

14. The Twitter account of Jérôme Pimot, founder of the CLAP courier collective, provides very precise information on these @ Eldjai topics.
15. Court of Cassation, Social Chamber, judgement no. 17-20079 of 28 November 2018.

2019, RG no. 18/08357). The driver' stance had been dismissed at first instance in June 2018 by the Paris Labour Court, deeming he enjoyed complete organisational freedom and could not be recognised as an employee. The Court of Appeal, instead, ordered Uber to reclassify as employment contract the commercial contract that linked it to the independent driver between October 2016 and April 2017.

Litigations with the Administration

Several procedures involve the administration and the platforms, in particular URSSAF (the body in charge of the recovery of social security contributions). URSSAF has initiated legal proceedings to recover nearly € 720,000 worth of unpaid social security contributions and penalties from Take Eat Easy, which went bankrupt in July 2016. But in the case of Uber, the Social Security Court cancelled the USD 5 million contribution adjustment requested by the administration in March 2017. Finally, in June 2018, the Paris Public Prosecutor entrusted the Central Office for Combating Illegal Work (OCLTI) with a preliminary inquiry concerning Deliveroo. The investigation followed a report of the Labour Inspectorate denouncing offences allegedly committed by Deliveroo. URSSAF estimates that the amount of unpaid contributions in 2015 and 2016 exceeds € 6.4 million. The case is currently 'under study' at the Paris Public Prosecutor's Office, and could lead to criminal prosecution.

Different Views on the Impacts of the Gig Economy

Growth and Employment

Debates focus mostly on distortions of competition. The debate was intense in the case of passenger transport, and resulted in a strengthening of the legal requirements for all drivers. After several months of conflict and mediation (Rapaport 2017), a compromise was found at the end of 2016 in favour of more 'professionalisation' of the entire sector. Before 2016, VTC drivers were required to pass an examination (Law no. 2014-1104 of 1 October 2014, so-called 'Thevenoud Law', entered into force in January 2015). But the exams were cancelled due to massive fraud. The Grandguillaume Law introduced major changes. The examination is now organised by the Chambers of Trades and Crafts throughout the country. The Grandguillaume Law, which was fully implemented in March 2018, provided also for a gradual removal of the LOTI statute (in large cities), which allowed platforms to bypass regulation (see above). The debate on the impact of the law is still intense. It is indisputable that the law allowed for the easing of the relationships between taxis and VTCs, and favoured increased revenues for drivers (some sources report an increase of about 15%). The platforms and detractors argue that the exams would be too demanding (Koenig 2018). In the meantime, some platforms have set up training centres (UBER has two), and the success rates for VTC examinations – communicated by the Ministry of Transport – are high: around 70% (Grandguillaume 2018). Reactions are also quite negative on the part of the employers' organisation representing the craft industry (U2P). This organisation has not undersigned a recent opinion of the Economic, Social and Environmental Council (CESE 2017) on self-employment and platforms, on the grounds that it views platforms as a phenomenon of deregulation affecting the growth of self-employment.

Working Conditions

On the positive side, many workers state their desire for autonomy and independence: it would be wrong to consider that all gig-economy workers aspire to work in a 'traditional' company (Sharers & Workers 2018).

On the negative side, the issue of working conditions (hours of work, accidents at work, and health and safety) is, together with remuneration, at the core of the conflicts opposing gig workers and platforms since 2015. Legal progress has been achieved on workplace accidents with Law no. 2016-1088 of 8 August 2016. More recently, in January 2018, the National Research and Safety Institute for the Prevention of Occupational Accidents and Diseases (INRS) focused on the greatest exposure of platform workers to psychosocial risks (INRS 2018), particularly in terms of pace imposed by the new technologies, impact of the rating system, and isolation of workers.

Social Inclusion

Platforms are perceived as a potential instrument of social inclusion, as well as of professional inclusion. There is a broad consensus on this topic, as shown by a recent Sharers & Workers debate in April 2018 (Sharers & Workers 2018). The discussions and proposals relate to a possible articulation with the Public Employment Service (Sharers & Workers 2018, proposals of the think tank #Leplusimportant 2018), as well as the experimentation of 'insertion platforms', in the framework of public integration policies.

Social Protection

In France, there is a broad political will to reduce the opposition between salaried and self-employed workers when it comes to their social rights, and to move towards more universal 'workers' rights'. In that sense, the debate on gig workers is part of a larger societal discussion. An important step towards workers' rights has been taken with the creation of the Personal Activity Account (CPA) in 2016.

The debate on gig workers focuses on three issues (Chagny et al. 2017, CESE 2018):

- whether the rights granted shall belong to the person or be associated to the contractual relationship with the platform;
- the need for a broader general discussion on the financing of social protection;
- the need for a broader discussion concerning the respective place of private social protection in relation to compulsory and universal schemes.

The obligations introduced in the field of industrial accidents by 2016-1088 of 8 August 2016 on social responsibility (see above) give rise to hot debates concerning the 'quality' of some group insurance contracts offered by certain platforms (La Lettre de l'Assurance 2018).

Approaches Proposed to Guarantee Adequate Protection of Gig Workers

There is a long tradition of French literature on the role of 'third parties' in the employment relationship, as well as the need to go beyond the status issue with a view to introducing a specific set of rights, i.e. the rights of economically active persons (*droit de l'actif*). In the mid-1990s, the Boissonnat (1995) and Supiot (1999) reports advocated for the creation of an 'activity contract' or an 'activity status' as a vector of individual social rights acquired in non-linear careers and multiple situations of employment, training, unemployment, self-employment, precarious work, etc. It is in line with these reflections that the Personal Activity Account was adopted in 2016 (Law 2016-1088 of 8 August 2016). The CPA stresses the principle of rights attached to the person (instead of the status), but only for professional training and arduous work. The developments related to platforms are seen in this regard as the continuation of previous trends, with many official discussions focusing on the ways and needs to adapt the social security system to the development of new

forms of employment and work, outside the 'fordist' wage employment contract (see: the Pennel reports of 2015, and France Stratégie 2016).

With regard to 'third parties', the approaches developed in the literature remain relatively broad. They aim to see how alternative 'third parties' allow workers to combine security and autonomy. The reflection on gig workers is also part of a broader context. The possibility to organise gig workers in an alternative way other than through platforms, such as employment and activity cooperatives (*coopératives d'activité et d'emploi*), enabling entrepreneurs to benefit from the protection granted to employees within a cooperative or collective of self-employed workers, is put on the same level as temporary work agencies or 'umbrella companies' (*portage salarial*). In conclusion, there is no argument putting forward the superiority of one form of organisation over the other. And most importantly, the literature endorses the idea that different organisational models can be compatible with high levels of protection for gig workers.

Measures Implemented by Governmental Bodies and Social Partners

Governmental Bodies

The main initiative in this field is the introduction of a social responsibility pattern for platforms, in the framework of Article 60 of Law no. 2016-1088 of 8 August 2016 (discussed above). A second measure was the strengthening of professionalisation in the passenger transport sector with the approval of the Grandguillaume Law in December 2016. An additional step should be taken with the pension reform, to be adopted in 2019. Indeed, the government's goal is to bring together all pension plans, covering both employees and self-employed workers. Particular attention should be paid to platform workers (a workshop was held on 11 October 2018 on this topic, organised by the Sharers & Workers Network).

Social Partners

There are many obstacles and difficulties in establishing a social dialogue within the platforms (Chagny et al. 2017). Both on the platforms' and on the workers' side, the issue of representativeness and the need to structure actors are considered as central factors (Chagny et al. 2017). Currently, the main union initiatives concern the organisation of platform workers and the development of services for workers (drivers, couriers, and freelancers). The first union to have started such a process is UNSA, which in 2015 transformed its statute in order to be able to affiliate non-salaried drivers. All the representative trade union organisations are now involved in the organisation of gig workers (Bedelievre and Grima 2018). An original initiative for freelancers was launched by the French Democratic Confederation of Labour (CFDT) in December 2016, with the setup of the 'Union' platform. The initiative was adopted in the framework of the policies aimed at organising autonomous professions, implemented at the end of the 1990s and in the early 2000s by CFDT. The platform provides, against the payment of a fee equalling 1% of the turnover of the self-employed worker, several services such as: accounting, civil and professional insurance, a complementary health insurance, and legal advice. A second version should be deployed, promoting the logic of mutual aid between members. Autonomous collectives, close to trade union organisations, have also developed (e.g. the CLAP collective for delivery workers). Several union initiatives aim to introduce minimum tariffs – trade unions in the VTC transport sector have been putting forward this claim since 2015. These claims were taken up by the collectives of bikers. As far as platforms are concerned, the initiatives put in place have been based on social responsibility obligations under Law no. 2016-1088 of 8 August 2016: more specifically, they concerned professional training and work accidents. For instance, Uber has a rather ambitious strategy as to

vocational training (cf. the CAMPUS VTC initiative). Some platforms engage in fairly ambitious approaches with regard to their social responsibility (this is for instance the case of STUART, a platform belonging to the group La Poste) (Pour La Solidarité 2018). Platforms initiated discussions with the government in 2017-2018 to promote the possibility for platforms to establish a 'charter of good conduct', by unilaterally defining their social responsibility as well as their rights and obligations with regard to their workers (in terms of decent remuneration, social dialogue, vocational training, etc.). Article 20 of the bill entitled 'Draft Orientation Law on Mobility', to be discussed in the Parliament during the 2019 spring, shall establish this charter on a voluntary basis, despite the presence of much criticism on the idea[16]. Among the opponents, the trade union FO stressed the priority should be instead to take out workers from a grey zone, and allow them to benefit from a real employment framework - either independent or salaried worker - which provides concrete protections. FO demands a negotiation with social partners, at the national level, on the rights and protections of platform workers.

Multi-Stakeholder Initiatives

An innovative initiative has been set up with the Sharers & Workers Network. Sharers & Workers is conceived as a place of debate that aims to interconnect the different stakeholders of the digital economy to reflect collectively on the future of work and social relations. Actors of the collaborative economy and the digital world, the social and solidarity economy, and the cooperative world, as well as trade unionists, researchers, experts, public actors, and so forth meet together in the framework of the Sharers & Workers Network. This initiative was launched in 2015 by IRES, and more than 700 stakeholders have already participated in the Sharers & Workers Days since 2016. The network proposes the creation of a shared observatory on the experimentation of socially responsible practices and social dialogue.

16. See the section 'Current Debate'.

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Country Background: Italy

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Current Debate

Political and media attention on gig economy has been rising in Italy since 2015, following the entrance in the urban passenger transport of Uber (Fontanarosa, Iudicone 2015; Eurofound 2016).

Yet, at that time, debate focussed particularly on the impact on competition of the Uber business model vis-à-vis activities of taxis, regulated as a public service. This was fuelled by harsh protests of taxi drivers, culminating in demonstrations, lawsuits and, sadly, physical aggressions to Uber drivers (Tega 2017; Il Sole 24 ore 2017).

Attention on pay and working conditions of gig workers arose instead, more widely, with the entrance in the food delivery sector of well-known international players, like Deliveroo and Foodora. The 'riders' issue' burst in October 2016, when Foodora workers contested the platform in Turin and issued a strike following the decision of the company to gradually shift from hourly pay (€ 5.60 per hour) to piece-based pay (€ 2.70 per delivery) (Mosca 2016). The dispute followed as well the refusal of the company to meet a range of requests advanced in June by a group of delivery workers and discussed with the managers in July. Apart from remuneration policies, including as well a gap in fees offered in Turin compared to Milan, workers' claims addressed the coverage of costs for maintenance of bicycles and motorbikes, the provision of a dedicated smartphone, the possibility to know the location of the client at the same time of the location of the restaurant, and not only once the restaurant is reached, and other aspects concerning work organisation and working time.

Few months later, driven by similar tensions, workers of Deliveroo in Milan also issued strikes. Protests led by newly born unions of 'riders' reached Bologna as well and, in 2018, Rome, involving also workers of other players, like Just Eat and Glovo (La Repubblica 2017; De Santis 2018; De Ghantuz Cubbe 2018; Forlivesi 2018). The case aroused the never-ending debate about the advantages of flexibility for employers and, to some extent, for workers themselves (free to choose when and where to work), and its limits for the 'precariousness' it brings about, in terms of income and employment stability.

The topics at the heart of political and academical discussion can be schematised as follows.

Self-employed or Employees?

Bogus self-employment is a long-standing core topic in the Italian debate on employment and working conditions and was object of several law reforms, from 2003 onwards.

In 2012, the so-called Fornero Law (Act 92/2012) limited quasi subordinate relationships acknowledging the introduction of the so-called 'project-based contract' by the 2003

Biagi reform (Act 276/2003), which allowed to enter quasi subordinate relationships for 'the performance of projects or of a part thereof', actually incentivised rather than discouraged the abuse of quasi subordinate work.

The possibility to enter quasi subordinate relationships remained unbound to the execution of a project provided they lasted at most 30 working days and generated a maximum income of € 5,000 from the same client over a year ('occasional collaborations'), whereas project-based contracts were bound to a set of conditions concerning the performance of work and to a mild link with minimum rates of pay set for employees by National Collective Bargaining Agreements (NCBAs).

The act also introduced rules addressing bogus self-employment.

In particular, self-employment relationships were to be considered as subordinate ones in presence of at least two out of the following three conditions: the relationship with the same client/principal lasted in total more than eight months within a period of two consecutive years; the compensation paid to the worker covered more than 80% of the income earned by the worker within a period of two consecutive years; the worker had a fixed workspace/station within one of the client/principal's business units. Exceptions addressed workers whose income was above a specific threshold (€18,662 in 2012), and high-skilled workers.

The Jobs Act, in particular Act 81/2015, abrogated the 'project-based contract', the 'occasional collaborations', as well as indicators meant to identify bogus self-employment.

Instead, the reform stated quasi self-employment contracts shall be covered by provisions attached to subordinate employment relationships whenever 'the modality of execution is organised by the client also in terms of working time and place of work'. The actual meaning of this provision attracted much debate at academical level. Interestingly, as it will be further explored below, the first judgements addressing the gig economy are also the first ones relying on these new provisions on quasi self-employment contracts, embedding strong elements of uncertainty.

In addition, the Jobs Act delegated to social partners the possibility to agree other specific conditions allowing to enter quasi subordinate contracts in reason of sectoral specificities and by detailing the related pay and terms of employment.

The possibility to enter 'occasional self-employment' contracts, entailed by the Civil Code, also remained in force. The core features of occasional self-employment lie in the episodic nature of the work provision, and in the absence of coordination by the client.

In line with developments occurring in other EU countries, in 2015 and 2016, food delivery platforms gained room in the Italian labour market challenging once again the efficacy of rules tackling bogus self-employment.

As highlighted in the following sections, platforms make extensive use of quasi self-employment contracts and of occasional self-employment contracts, which are not subject to quantitative limits, albeit the compliance of their employment relationships with qualitative limits entered by the Jobs Act is often contentious.

At the same time, they seem to disregard subordinate employment contracts meeting occasional and flexible working patterns, such as 'casual work' and, especially, 'voucher-based' work, which remain subject to quantitative limits.

The core issue lies in the functioning itself of the algorithm, sometimes identified as 'the employer', which may influence the worker ability to choose when and where to work, or the 'employability' of the worker in reason of more or less known rules behind the rating

mechanisms, including evaluation of his/her previous availability to work or availability to work in unsocial hours, as it is often the case in food delivery platforms[17].

More in general, the discussion targets whether the company behind the platform acts as a mere marketplace or has a concrete entrepreneurial organisation. In the case of platforms under types 1 and 2 (like Uber or Deliveroo), observers seem to agree more and more that we face companies adopting technological tools to organise production[18]. This is less clear for platforms under type 3, which may match traditional 'gigs' without organising the work provision, or for platforms under type 4, where quite different business models can be found.

Some authors deem the features of gig economy do suit the current labour law framework, matching the requisite of direction power typical of subordinate employment or the lighter coordination power entailed for quasi subordinate relationships (De Stefano 2017). Aloisi (2016), for instance, suggested the platform business model could suit quasi subordinate employment or the so-called 'smart-work', i.e. ICT-based mobile work, whereby workers are bound to targets rather than to working time, while being still classified as employees.

Others remark platform work may suit self-employment as well, depending on the features themselves of the relationship and of work organisation. In particular, Biasi (2017), examining employment contracts adopted by two platforms under type 2, remarks their terms and conditions are in line with features of self-employment. At the same time, he acknowledges whenever the enterprise actually chooses the minimum amount of work or monitors the routes of the riders and their working performance, the relationship shall be deemed to be subordinate.

The case platforms may limit themselves to the 'supply' of manpower to 'clients', without choosing who will deliver the service while using algorithms for matching purposes, led some observers to suggest platform work resembles temporary agency work, albeit representing an innovative and more efficient form thereof. In particular, Faioli (2017a, 2017b, 2018a) deems platforms under type 3 shall be ruled to be temporary work agencies. On the one side, they would be bound to the related prescriptions in terms of authorisations for labour intermediation and labour rights, while, on the other side, they would be included in the wider network of public and private actors providing active labour market policies, which access and share data on job-seekers and job offers to the aim of matching the labour market.

Finally, some authors partly depart from the debate on the qualification of gig workers to address the uneven allocation of protections between employees and self-employed. While stressing the attempt to qualify workers as employees or self-employed may fail to guarantee protection from social risks, for also workers featuring the degree of autonomy of self-employed may still be economically dependent on their client, they back the extension of certain rights of subordinate employment to all workers, such as minimum rates of pay, health and safety at work, non-discrimination, union right (Loi 2017; Treu 2017).

Which Pay?

Discussion on pay is still focussed on the earnings of food delivery workers, albeit generic references are often made to the relevance of the topic for other types of platforms. As far as passenger transport is concerned, the remuneration of Uber drivers was also discussed until the service Uber Pop was banned, allowing the company to intermediate only authorised car rental with driver service.

17. See for instance: Antonini (2018); or, among the academical debate, Voza (2017b).
18. This seems to be the predominant business model, albeit with some exceptions. For instance, Just Eat delivers food both through workers contracted by the platform and through workers employed by partner restaurants themselves (de Cesco 2017).

The first aspect to be addressed is the absence of law or collective bargaining provisions guaranteeing a fair pay for self-employed workers. Minimum levels of pay to be adopted as a reference for professionals (like architects or lawyers) were abolished by the Monti cabinet in 2012, after their binding effect towards public administration was abrogated by the centre-left Prodi cabinet in 2006.

Interestingly, following protests by organisations of self-employed, the Democratic party-led Gentiloni cabinet reintroduced minimum levels of pay for self-employed professionals (Act no. 148/2017), but they apply only for specific categories of clients (public administrations, bank and insurance companies, and large companies).

The second aspect concerns the trend of food delivery platforms to adopt piece-based pay or to shift from hourly based pay to piece-based pay soon after they reach a size able to meet the demand. Food delivery platforms which amended their policies (Foodora at first and, later, Deliveroo) argue piece-based pay compensates riders more effectively and in line with the actual effort (La Stampa 2017). Instead, some delivery workers argued these policies push internal competition as they allow the platforms to call in more couriers than needed for the same time slots, as pay is influenced by the accepted deliveries rather than by the available workers. In addition, the distance between the restaurant and the final client is actually a key variable influencing the time necessary to deliver food.

Some observers backed the position of platforms, proposing policy makers should adopt a 'laissez-faire' approach, leveraging on the advantages of the flexibility of employment, in terms of choosing where and when to work or even on the alleged benefits of piece-based pay for delivery workers, as it allows them 'to make more deliveries and to do it faster, earning more money'(Tommasi 2018; Luccisano, Zorzi 2018).

On the other hand, and contradicting the 'win-win' thesis, Foodora claimed it would run out of business if forced to resign from its 'hyper-flexible' model and to increase pay (Savelli 2016)[19]. This unveils a business model quite different than the one promoted by the traditional setting of industrial relations in the country, whereby the 'price' of labour is determined through collective bargaining and represents therefore a cost which all businesses wishing to be economically and socially sustainable should be able to afford[20].

Whereas contracts allowing for flexibility in pay, working time and stability of employment have been often justified at national and EU level as necessary tools to meet flexible needs of production over the latest 30 years, in principle applying to a marginal share of the workforce or for a limited period, platforms like Foodora seem to unveil the desire for a 'right to flexibility' elaborating a business model explicitly grounded on a low-cost and hyper-flexible workforce.

As to crowd-work, some observers also denounced the risk of social dumping arising from the competition for a task between workers from countries with different living costs, for instance whenever tasks are assigned upon 'tenders' awarding the best offer[21]. Proposals to counteract these effects include not only the qualification of platforms as labour intermediaries but also the introduction of joint solidarity clauses between the platform and the clients, this way ensuring the payment of work, and of protections against delays in payment and abuse of economic dependency (as per the Act 192/1998, clauses of commercial contracts imposing excessive obligations upon a party in a position of economic dependence can be ruled to be null and vain)(Voza 2017a).

19. A similar position was held by Deliveroo (Ciccarelli 2018). These positions were partially revised following the proposal of the government to consider gig-workers as subordinate (Meta 2018; Zorloni 2018).
20. The company has eventually decided to leave the Italian market, with Glovo taking over the Italian branch. In the absence of formal protections, unions obtained negotiations to discuss the hiring back of Foodora quasi subordinate couriers by Glovo (Rassegna Sindacale 2018b).
21. See for instance: Pontrelli (2018); Di Nicola (2017).

'Gig' or Main Source of Income?

As emerged from declarations of their managers, platforms stress their workers are often young, students, and perform this activity as a 'gig' (Marro 2018; Di Fazio 2018). This means not only they do not expect to earn a living from this job, but also they want to enjoy flexibility, for instance refusing to work in periods of study peaks. Food delivery platforms also present the job as a way to remunerate the hobby to ride bikes, in a way similar to sharing economy platforms, whereby users are encouraged to make an income out of their hobby or of an activity they would do anyway (e.g. users are planning to travel somewhere and offer to deliver something there).

Internal surveys at Foodora and Deliveroo (INPS 2018) actually estimated about half of their workers are students.

Other research also estimates most gig workers, including those working as crowd workers, do it as a second job (INPS 2018). Yet, the questions remains: (i) if being a student or doing a second job make low pay socially acceptable, possibly undermining as well profitability of a profession for other workers; (ii) what to do with the minority of gig workers trying to make a living out of the gig economy; (iii) to what extent are high turnover rates and high share of students a feature of the jobs themselves or a consequence of the adopted business model.

Use of GPS, Algorithms and Impact on Control of Workers and Workers' Career

As anticipated above, the use of algorithms is at the core of debate, as far as they regulate job/gig opportunities and, in some cases, pay itself. The need for more transparency of these algorithms is often claimed in the public debate, by the newly born unions of food delivery workers and by political parties, including the current ruling party, the Five Star Movement[22]. The largest Italian union, CGIL, disclosed it aims at 'bargaining the functioning of the algorithm', as it does influence control of workers, working time, pay and other aspects usually addressed by collective bargaining (Rassegna Sindacale 2017, 2018a). On the other side, the functioning of algorithms may be regarded as an industrial secret, determining the competitiveness itself of the platforms.

Another recurrent element in the discussion on platform is the possibility to transfer the rating, as this would allow workers to move more easily between platforms having a similar scope. This is indeed addressed in different ways also by the different proposals of regulation presented at the end of this report. They all try to limit the 'property' right these platforms have on their algorithms and/or on the related data, and to overcome possible obstacle due to differences in the ways algorithms work. Foodora also reacted to these policy developments, disclosing its availability to cancel the rating system (Zorloni 2018).

The actual extent to which algorithms determine workers' pay and career questions as well the nature of these platforms as mere intermediaries of workforce or as employers (Voza 2017a, 2017b; Pacella 2018). This adds up to considerations arising from the possible use of further control tools to monitor the work performance, such as the GPS for delivery workers, the PC camera for clerical tasks, or reviews made by users (Pacella 2017). Concerns over the abuse of control mechanisms have recently led to a complaint by former Foodora delivery workers to the Italian Data Protection Authority, alleging the platform localises their position even outside working hours without their consent (Ricca 2018).

22. The issue is actually included in all the key measures promoted up to now to increase protection of gig workers (see the section 'Measures Implemented by Governmental Bodies and Social Partners'.

Unionisation and Right to Strike

After mobilisation of Foodora workers, a group of involved workers stated they had no longer the possibility to schedule shifts in the dedicated platform, whereas Foodora remarked it did not cease the contractual relationships, nor 'logged them out', having even offered them a new contract after the natural ending of the previous one (Longhin 2017; Faioli 2017b)[23].

More recently, a boycott against Glovo followed the interruption of a self-employment relationship allegedly in reason of the affiliation of a worker with UIL and his participation in the dispatching of flyers with the union contesting the behaviour of the platform (Bettazzi 2018)[24].

These cases opened up the debate on the one side on the rise of new movements in the area of precarious employment and their relations with 'traditional' unions; on the other side on the effectiveness for gig workers of the formal right to unionise and strike[25].

Indeed, in Italy, the right to join a union is protected by the Constitution (art. 39) regardless of the type of employment contract.

The right to strike is also guaranteed by the Constitution (art. 40). In the absence of specific law provisions, case law interpreted this right as to cover all workers in an economically dependent position, including quasi subordinate workers and even 'solo-entrepreneurs'.

Albeit case law on platform work did not explicitly addressed the issue so far, it is worthy to remark a judgment of the Tribunal of Turin ruling over the Foodora case (see below) deemed that the circumstance the company did not provide further job opportunities to the claimants (who took part in strikes) could not be seen as a sanction against them, since the employment contracts did not commit Foodora to guarantee job opportunities, an assumption which was not rebutted during the appeal.

Social Security of Gig Workers

Self-employed workers enjoy some access to social security benefits. Yet, as remarked by research and admitted by INPS itself, the adequacy of these benefits is hampered by their low level of contribution and by a set of rules strictly linking benefits with contribution records (in the case of occasional self-employed no contribution is due up to € 5,000 per year, and therefore there is no eligibility to benefits). Indeed, Mr. Tito Boeri, at that time president of INPS, also suggested improvements in the traceability of payments by INPS, for instance by creating an ad-hoc platform to monitor in real time payments to gig workers and pushing platforms to pay social security contributions (Griseri 2018).

As far as self-employed are concerned, there is no public statutory coverage for accidents at work, but some platforms provide private schemes. Following street accidents occurring to food delivery workers, some platforms also increased benefits. Yet, higher standards may imply additional contributions from workers and, in any case, they remain far below those of the public schemes (Gabanelli, Querzè 2018).

Despite disagreement over the 'subordinate' or 'self-employed' nature of the employment relationships, most observers agree an increased coverage of social security is necessary. Debate is rather focussed on how to reach this goal, i.e.: (i) by considering gig workers as employees[26], (ii) by introducing ad-hoc clauses in collective bargaining agreements (entitled to define what constitutes quasi subordinate employment and the related rights) (Leonardi 2018; Faioli 2017a), (iii) by prosecuting the process of extension of social

23. The text of the judgement following the dispute reveals workers had their contracts ended on 30/11/2016.
24. Shortly after, and following clamour by delivery workers and unions, the account was activated again.
25. See, for instance: Faioli (2017a), Forlivesi (2018), Tullini (2018), Engblom (2017), Mensi (2017).
26. See the law proposal backed by the political party 'Italian Left': http://www.camera.it/leg17/126?idDocumento=4283%0D .

security rights to self-employed and quasi subordinate workers (Del Punta 2018), or (iv) by introducing a category of 'dependent self-employed workers', entitled to increased social protections (Perulli 2018).

Finally, some observers rely on the ability of platforms to self-regulate themselves or propose the creation of 'umbrella companies' able to protect workers. These observers refer to the existing cases of 'voluntary' introduction of some social security provisions by platforms themselves, while underestimating the wave of strikes, legal disputes, law proposals and inspections currently pushing platforms to amend their policies (Lucci-sano, Zorzi 2018)[27].

The shared limits of proposals focussing on the increase of social security coverage and, in case, of a set of core rights (right of association, right to vocational training, right to a fair pay, right to a notice period) for gig workers are in the failure to address the issue of concrete protection against dismissals, and the trickle-down effects this has on the effectiveness of other rights (starting from the right to strike as mentioned above).

Albeit these proposals could improve the security of workers performing gigs on an occasional basis, they would deny job prospects for those trying to make a living out of platforms or, in any case, for those pushed by the algorithm to remain available more than they would in order to get job offers.

Features and Trends

Up to our knowledge, three quantitative researches on gig workers have been carried out so far in Italy.

The first attempt was made by the trade union UIL (UILTUCS 2017), which has published an on-line questionnaire meant to reach gig worker. A first summary of results was published on April 2017, based only on 20 answers collected on-line and in person, the latter addressing delivery workers from Foodora and Deliveroo. The majority of answers concerns clerical workers.

These early results suggest income perceived in the gig economy is rather polarised between low earners (less than € 5,000 per year) and top earners (more than € 15,000), and confirm workers are hired mainly through quasi self-employment or occasional self-employment contracts, having poor or none social protection.

Nevertheless, more than half of the sample is rather satisfied about working through platforms.

The network of consumers' cooperatives Coop also published an analysis on gig economy, implemented by a research centre (REF Ricerche) and by a crowd-work platform providing services of data collection (BeMyEye). The research covered 500 platform-based workers (ANCC COOP 2017).

The analysis suggests platform-work is more common between men (54% of the sample) than women, and among younger cohorts (31% of the sample is composed by workers aged 20-29, and 38% by workers aged 30-39).

The majority of the sample is composed by respondents with another, usually dependent, employment, students account for 22% of the sample, whereas unemployed represent 14% of the respondents, and housemakers reach a 6% share.

27. See also Ichino (2018), who praises the approach of Deliveroo, contracting a specific social security scheme for its workers with Smart. Even before the article was published, Deliveroo decided to withdraw from the scheme in Belgium (D'Amico 2017; Ciccarelli 2017). Strong concerns over the functioning of umbrella companies had been raised in UK itself, the country referred as a model (BCC 2017). Indeed, it is really hard to understand how social security could be successfully privatised in a context where workers lack even the contractual power to have a wage in line with minimum rates of pay set by collective bargaining.

The frequency of work is rather low (the majority of respondents worked on a platform less than once a month), a variable impacting as well on the declared monthly wage (up to € 50 for 65% of respondents).

Unfortunately, the report does not provide much methodological information, therefore it is not possible to assess the representativeness of the sample, nor it is specified whether respondents are working only/mainly for the BeMyEye platform.

A more comprehensive analysis was carried out by the survey company Demetra for the Fondazione Rodolfo De Benedetti. The final results were presented in the 2018 Annual Report of the National Institute of Social Security (INPS 2018), which also contributed to the research design. The survey ran online between the 8th and the 15th of May and a total number of 14,857 answers were analysed.

Estimates based on the survey suggest a 1.59% share of population aged 15-64 is active in the gig economy (including asset rental platforms as well, like AirBnB), often as a second job (58%). On the other hand, 19% of gig workers declare to be 'unemployed' (i.e. declare not to have worked in the week of observation, but also to have worked in the gig economy).

Gig workers are more often male (57.2%) than female (42.8%), and are concentrated in the central age cohorts (almost 60% of answers are from workers aged between 30 and 49).

Younger cohorts (18-29) cover about 20% of the sample, and are composed mainly by workers who declare to be students or unemployed.

The majority of the sample (70%) does not provide any working tool except for his/her workforce, and shall be deemed therefore to be in crowd-work or to perform traditional gigs (involving platform types 3 and 4 of our analysis).

Only about 12% of respondents use a means of transport, and is likely to fall therefore under types 1 and 2 of our classification.

Finally, about 6.5% provide a house asset, falling presumably in the asset rental platforms.

Despite most interviewees work for a short time in the gig economy, there is a 13% working for platforms for more than three years.

All in all, about half of the sample is satisfied with the gig economy, 32% would appreciate higher support by the platform and 19% would prefer doing another job.

Most respondents deem having autonomy on the place and time of work, despite 15% declare to have poor or none autonomy, and 50% state an algorithm monitors the work performance and can be used by the platform to decide how to select the best worker for a given task at a given time.

The number of hours worked per week is up to 4 hours for about half of the sample, while about 10% work for 30 or more hours a week in the gig economy.

Gig workers earn on average € 12 per hour and € 346 per month. Yet, the average values hide large differences. The median value of hourly wage lags at € 8 (€ 5 for those deeming themselves unemployed), and the median monthly wage is €100 (€ 30 for unemployed).

A 5% of the sample somehow makes a living out of gigs. Wages at the 95th percentile reach €50 per hour and € 1,200 per month (€ 35 and €700 for unemployed). In the majority of cases (at least 53%), workers receive a piece-based pay.

By addressing the overall individual and family annual income of gig workers, it comes out the participation in the gig economy is negatively associated with income, the share

of gig workers peaking 54.6% in the lowest income group (less than € 8,000 per year) as individuals, and reaching 29.2% as a family in the same income group.

Finally, INPS (2018) enriched findings from the survey with additional elaborations from its administrative databases.

To this aim, employment data of a sample of 50 platforms were analysed.

These include the four types under examination in this report, asset rental platforms, and, apparently, some sharing platforms (Bla Bla car was mentioned as an example, albeit sharing platforms are formally excluded).

The methodology does not allow to distinguish workers having managerial tasks or working in the headquarters from 'gig workers'.

In addition, available data cover only employees and quasi subordinate workers, excluding therefore those employed with occasional self-employment contracts, rewarded with 'bonuses' (such as discounts on purchases of phone charges) or which are simply not declared.

22 platforms do not declare any worker in the country, 17 have only employees (for a total of 661 employees), while 11 employ both employees and quasi subordinate workers for a total of 1,841 quasi subordinate workers (80% thereof employed by Foodora) and 288 employees[28].

Workers are mainly male (68%), especially quasi subordinate workers (86%), and have a young average age (34 for employees and 29 for quasi subordinate workers).

It is interesting to remark out of the 50 platforms investigated by INPS, 22 did not register any employee, being 'unknown' to INPS datasets, and further 16 registered themselves as active in the 'Computer programming, consultancy and related activities' or in 'Information service activities', regardless of whether they are about the provisions of services to enterprises, persons or the delivery of goods. This appear to be in line with the policy of many platforms, self-portraying themselves as a 'marketplace' and replacing the words 'worker' or 'collaborators' with 'users' or with neologisms (turkers, glovers, moovers…).

On the other hand, it shall be stressed there are platforms which use internet as a marketplace for their mother company, which keeps the business risk. This is the case of the cooperative Manutencoop, which allows to book cleaning or care services on-line through the platform Yougenio. Despite providing 'on-call' services, Manutencoop declares to employ staff with a subordinate contract. The platform does not include a rating system but allows the users to read the profiles of workers.

Another example is appTaxi, which intermediate the booking and payment of taxi rides in a way similar to Uber but connecting the users with regular taxis.

These examples suggest digitalisation of services shall be addressed separately from the relationships between the platform owners and the workers, and that the existing law provisions do not preclude digitalisation of services, rather requiring platforms to operate within a set of rules.

For what concerns risks of replacement of traditional businesses by platforms, it shall be stressed gig economy seems to have still a limited diffusion. Research on the 'sharing economy' by the Italian web-site 'Collaboriamo' hosting the main web directory of sharing platforms active in Italy suggests many platforms fail to reach the number of users necessary to survive (Collaboriamo.org 2016; 2017). Platforms deem the lack of a sharing

28. INPS warns the reason the concentration of employees in some platforms may either stem from the enrolment of gig workers as employees, either from a misclassification of the company as a platform. Indeed, the very interesting exercise carried out by INPS has still an experimental nature, in the absence of official national repositories or registers of platforms.

culture and the lack of trust by potential users in the platforms as the main obstacles to growth, besides the digital divide and the weak digital literacy of some components of the Italian population.

In line with the definition of 'sharing economy' adopted, some platforms covered by the survey could actually fall in the type 3 of our classification (for instance UpWork and Vicker), as they intermediate traditional gigs or gigs performed for companies. Indeed, in reason of the business model adopted, the mentioned obstacles may apply as well to the activities of gig economy platforms at large. On the other hand, the impressive pace of ongoing digital transformations and the growth of large transnational players increasingly known in the market may reduce the impact of limits inherent to interactions mediated by the web.

To conclude, it shall be remarked the National Economic and Labour Council (CNEL) is also analysing the issue of gig economy. Preliminary research already produced a list of screened platforms supplying 'labour on demand' (our types 1,2 and 3), useful to give an idea of the types of 'gigs' being supplied.

Table 3: Preliminary screening of 'labour on demand' platforms

Company/Platform	Type of activity
Deliveroo	Food delivery
Foodora	Food delivery
Glovo	Anything delivery
BeMyeEye	Data collection in shops
Pronto Pro	Traditional gigs (jobs: plumber, photographer, personal trainer…)
Vicker	Traditional gigs (jobs: plumber, gardener, house cleaner…)
Helpling	House cleaning
Mamaclean	Home delivered laundry service
iCarry	Local parcel delivery
FoodRacers	Food delivery
MyMenu	Food delivery
MisterLavaggio	Car washing
Sgnam	Food delivery
Moovenda	Food delivery
Foorban	Digital restaurant
UberEats	Food delivery
Jonut	Delivery of personalised dietetic meals
Fazland	Traditional gigs (jobs: painter, accountant, photographer, beautician)
Il mio Supereroe	Traditional gigs (jobs: care worker, babysitter, personal trainer)
Gnammo	Social eating, cooking on demand.
Helpling	House cleaning
Tabbid	Traditional gigs (laundry service, gardening…)
YouGenio	Traditional gigs (home care and personal care)
TaskHunters	Traditional gigs for businesses (theoretically anything)
Le Cicogne	Baby sitting
Ernesto	Traditional gigs (jobs: plumber, painter, blacksmith…)
Macingo	Freight transport
Alveare che dice sì	Food sale
PetMe	Pet care (jobs: dog sitter, cat sitter…)
Supermercato 24	Shop delivery

Risk Shifting

As anticipated above, the average hourly wage of a gig worker is € 12, while the median hourly wage is € 8.

This is not very far from the estimated median hourly wage of private employees in the secondary and service sectors, as presented by INPS in the same annual report cited above.

The median gross hourly wage of these workers is € 10,90, dropping to € 8,65 in the personal care sector.

INPS estimates 16.9% of private employees have an hourly wage below € 8,50, i.e. the German minimum wage.

Albeit Italy does not have a statutory minimum wage, pursuant to case law building on the Constitutional right to have a fair pay, minimum wages set by National Collective Bargaining Agreements at sectoral level shall be taken as a reference. These minimum rates are rarely below € 8,50.

Indeed, even the gross value of an hour of work purchased through vouchers is € 10, a value very close to the median wage.

Worrisome trends have been highlighted also for self-employed workers. For instance, data from the National Institute of Social Security of Italian Journalists (Istituto nazionale di previdenza dei giornalisti italiani, INPGI) show that out of 40,534 self-employed journalists, 41.5% did not earn any income in 2014, whilst a further 30% earned less than € 10,000 (Rea 2015)[29].

The shift of business risk away from employers onto workers has been a more or less declared aim of more and less recent 'labour market' reforms. Rules concerning employment relationships, work organisation and subcontracting were addressed by reforms such as the Biagi reform in 2003 and the Jobs Act in 2015 as boundaries to job creation rather than as tools to guarantee fair working conditions, making more and more possible the existence and growth of businesses unable to face unstable demand trends without discharging the related costs onto workers.

Under the rules of the 2012 Fornero reform mentioned above, platforms would have found uneasy to adopt quasi subordinate or self-employment contracts, despite casual work, and, especially, voucher-based work, would still represent valid options[30].

All in all, despite some limits remain to the excessive use of atypical contracts, both as quantitative limits and as qualitative limits, those are sparse and hardly effective.

For instance, there are no quantitative limits to the use of part-time, self-employment (including occasional self-employment) and quasi subordinate employment. Quantitative limits on temporary contracts and on temporary agency work, in terms of maximum incidence on permanent staff, do not sum up with those set for voucher-based work and casual work, are not automatically enforced, and are subject to a very lose interpretation by the Ministry of Labour and Social policies.

As per qualitative indicators resulting from law and case law, gig workers shall be considered self-employed (possibly occasional self-employed) or employees in reason of the degree by which the platform organises their tasks and exercises decisional power. Following the abrogation of the 2012 Fornero reform, instead, the degree of economic

29. For a provocative opinion on the precarisation of journalism, and how it predates 'gig economy', see Ventura (2018).
30. The law did not provide for an overall maximum use of these contractual forms by the company, allowing for replacement of 'occasional' workers for the performance of continuous tasks. This was, for instance, at the core of a dispute concerning Abercrombie which reached the European Court of Justice (C-143/16). Current rules entail some bans and limits to the use of vouchers following a campaign by CGIL.

dependence is only a supplementary criterion possibly used by courts to solve unclear cases.

Indeed, INPS (2018) itself acknowledged delivery workers employed by food delivery platforms cannot be regarded as occasional self-employed in reason of the continuity of their activity. At the same time, it openly stresses Deliveroo reported to use occasional self-employment contracts for its delivery workers in meetings with the Institute aimed at understanding the features of gig economy.

Another issue to be mentioned is the weak enforcement of the residual existing employment protections.

The number of companies subject to labour inspections gradually fell from 244,170 in 2011 to 160,347 in 2017, and the largest drops were observed over the last two years.

In a way, and also considering the declarations of some managers, deeming flexibility a necessity for their business to survive, some platforms appear to be the ultimate (?) product of economic policies nurturing the dismantling of enterprises and promoting labour-based competition.

As remarked by several research, a labour market featuring low employment protection appears well equipped to rapidly react to positive economic cycles by increasing employment, but performs as well rapid job losses in times of economic downturns[31].

Without going into details on employment quality, which have been explored in the previous sections, as to concerns on the effect on innovation on the diffusion of platform work, there is some evidence flexible employment patterns are associated with lower product innovations (Cetrulo et al. 2018).

Legal Issues and Disputes

According to the analysis carried out for the Fondazione Rodolfo De Benedetti (INPS 2018), only 33% of gig workers are aware of the contract they have.

In 50% of cases they are employed under an occasional self-employment contract, 24% have a subordinate contract (including casual work), 10% have quasi subordinate contracts, 7% are voucher-based workers, 6% have a VAT number, being paid through invoices.

There are not relevant inspectorate orders on the issue yet, despite much rumours about labour inspections addressing Foodora (La Repubblica 2016). Nevertheless, it is important to stress the Ministry of Labour deems the subordination in terms of place of work and working time as sufficient to establish a quasi subordinate relationship is actually 'organised' by the client in breach of the Jobs Act, and is therefore to be converted into a subordinate employment contract[32]. Relevant guidelines from National Labour Inspectorate also read the Article 4 of the Workers' Statute, concerning the control of workers, as to allow the introduction of GPS software without previous agreement with unions only if this is 'essential' for the work performance or required by law, and not an 'accessory' tool for other aims, like for insurance, organisational, productive or health and safety purposes[33]. These aspects are relevant as well for gig workers, especially when read vi-à-vis the different interpretation given in the Foodora lawsuit by the Court of first instance, which follows below.

31. For a literature review and an analysis of the Italian case before the Jobs Act, see: Di Domenico, Scarlato (2013), and Banca d'Italia (2014).
32. See: Ministero del lavoro e delle politiche sociali (2016).
33. See: Ispettorato nazionale del lavoro (2016).

Boundaries between employment and self-employment have been shortly outlined in the previous section. Whenever platforms, or their clients, have a decision power over the worker, being able to sanction him/her, and direct his/her activity, they shall be deemed to be employers.

As to quasi subordinate contracts, the client can coordinate the work performance. Yet, workers shall remain unbound in terms of working place and working time and the performance should have a continuous nature in time, and be 'personal', meaning there should be a qualitative prominence of the labour input vis-à-vis other factors of production and the worker should not avail of other collaborators.

The first case law on the issue have been the judgement of the Tribunal of Turin no. 778/2018 of 7 May 2018, and the judgement of the Tribunal of Milan no. 1853/2018 of 10 September 2018, both concerning food delivery workers hired through Foodora and Foodinho (Glovo) respectively. The first judgement, whose motivations are basically resembled by the Tribunal of Milan, seemed to neglect some very key points concerning the work performance of delivery workers.

All in all, the judgement gave prominence to the formal aspects of the individual contracts (especially the absence of obligations in terms of availability to work and to provide work) over the factual elements, this way dismissing many arguments advanced by the workers, e.g. the consideration of the unavailability of the platform to provide work to workers that went on strike as a sanction.

In addition, the judgement of the Tribunal of Turin relied on a quite arguable reading of the 'quasi self-employment contracts' provisions entered by the Jobs Act. In particular, it deemed the organisation by the client in terms of working time and working place as a subsidiary and not necessary element to ascertain work is organised by the client and is therefore subordinate. Other elements which could lead to identify subordination, such as the presence of GPS controls on workers, the influence of the rating system on available working shifts, pay deductions in case of delays, were instead deemed as mere coordination needs in line with the coordination power allowed to clients under quasi subordinate contracts.

Finally, both the judgements neglected relevant Constitutional Court case law giving relevance to the absence of both ownership of results and of organisation of production by the workers as elements to ascertain subordination[34].

Foodora workers challenged the first instance judgement, obtaining by the Court of Appeal of Turin (judgement no. 26/2019 of 4 February 2019) the recognition of a hourly-based pay in line with minimum levels set by collective bargaining for the logistic sector (see below).

Also this judgement dismissed case law on the absence of ownership of results and organisation of production. Instead, while rejecting the claim for subordination, the judge emphasised the absence of a duty to perform work and the relevance of the contractual form adopted by the parties in presence of overall ambiguity over the actual qualification. At the same time, the judge deemed the features of work, including the presence of shifts, deadlines for the delivery of food, and indications from the app on places of departures and delivery addresses, as sufficient to identify an 'organisation' power by the client. In this regards, the interpretation of the Jobs Act provided in the first instance was also rebutted.

The judge deemed 'some' protections afforded to subordinate workers to apply also for those quasi self-employed workers subject not only to a coordination, but also to an

34. Among the first comments on the judgements, see: Massa Pinto (2018) and Recchia (2018).

organisation power by client, even if only in terms of working time and working place. This interpretation actually creates a new type of (more protected) quasi subordinate work, whose level of protection remains partially undefined. The judge herself imposed the application of minimum rates of pay set by collective bargaining, while excluding protections against dismissal.

Whereas this vision of the gig economy and, indeed, of quasi subordinate work rules, will prevail is still hard to say[35].

Different Views on the Gig Economy

Debate on the gig economy has been widely explored above.

As additional elements, some observers declare gig economy intermediates gigs remaining often undeclared, therefore it can represent a tool to tackle undeclared work. Other positive views, especially targeting crowd work, stress thanks to remote working, platforms can provide an income in areas where it is difficult to find a job, like in Southern Italy (INPS 2018; Cafiero 2017)[36].

Whereas these considerations do have a point in reason the weaker presence of enterprises and job opportunities in some areas of the country, the INPS (2018) analysis suggests income from platform is risible, and many of them do not have any employee. Hourly pay is also often below minimum levels set at sectoral level by NCBAs. On the other hand, the reality is often not much different in the 'traditional' labour market, especially in Southern Italy, calling for a wider approach to ensure good employment within and outside gig economy.

Approaches Proposed to Guarantee Adequate Protection to Gig Workers

Different approaches have been proposed by literature[37] as to address employment and social protection of gig workers, some being also embedded in law proposals. The proposed options can be summarised as follows:

- define a quasi subordinate employment scheme for gig workers, specifying ad-hoc rules for employment protection and pay;
- establish coverage of gig workers by means of voucher-based work, entitling workers to some protection of subordinate relationships (including hourly based pay, breaks and right to unionise) and some social security coverage, or as on-call workers, fully classified as employees. Yet, these options do not guarantee any income/job stability except for the on-call job with obligation to be available, which entails a pay for the waiting periods;
- define some types of platforms as 'labour intermediaries', subject to specific obligations, including the connection with the national databases of job offers, a social capital worthy at least € 600,000, and an initial caution of € 350,000 as a guarantee for workers' wages and social security contributions. This option would increase control over platforms, while limiting the market to large players, unless derogations are made concerning the social capital and guarantee requirements. On the other hand, it would fail to ensure stability of income. About 10% of temporary

35. A third way referred by academicians (and by delivery workers' lawyers) to look at the challenged Jobs Act provisions is to interpret them as anti-fraud norms, reclassifying quasi subordinate workers subject to organisation power as employees.
36. For a similar view, see also: Ichino (2017), stressing how platforms can equip workers with the 'power' to choose their employer, provided public policies provide adequate training and income support to face the challenges of an increasingly flexible economy.
37. For a complete review, see also De Fazi, Piano (2018); Faioli (2018).

agency contracts are open-ended and limits concerning the dismissal of these workers once a service contract ends are still weak and unclear[38];

- define gig work as subordinate employment (other than on call work). This would be the only way to guarantee (i) pay; (ii) social security coverage, and (iii) stability of employment (as far as some limits apply to fixed-term employment, also in terms of maximum use a company can make). Obviously, this would require platforms to change their business models, challenging especially crowd-work, whereas limits on the use of temporary contracts could hardly be met; and
- keep the current law framework enforcing on a case by case basis infringements by platforms. This option would introduce the necessary differences between gig workers performing this work on a pure occasional basis and those resembling a subordinate relationship. Yet, this entails a renewed commitment to inspect and sanction companies, which could prove difficult for crowd-work. On the other hand, such an approach could be fostered by requiring platforms to link their databases with public databases on job offers.

Measures Implemented by Governmental Bodies and Social Partners

The turmoil following the diffusion of platforms and workers' protests led to several initiatives by governmental bodies, both at national and local level, and by unions.

The incumbent Conte government, after disclosing a law proposal meant to extend the notion of subordination, including, inter alia, activities performed for platforms determining the features and price of the services, opened a negotiation table in July 2018 with representatives of workers and of delivery platforms (Meta 2018). The proposed provisions, which were part of the so-called 'Dignity Decree'[39], have been consequently withdrawn from the bill. The table, meant to agree on a set of minimum protections for gig workers, is still ongoing, with the parties maintaining rather different stances. On the workers' side, the table involves the self-organised unions of 'riders', established in the largest Italian cities, as well as the largest national unions, namely: CGIL, CISL, and UIL. The largest platforms of food delivery have been participating also through a newly established employers' organisation: AssoDelivery.

At the moment of writing, the government disclosed its intention to proceed unilaterally by means of a decree law, adducing the unavailability by platforms to reach an agreement. Unions contest the decision, as the recent ruling by the Court of Appeal of Turin may move bargaining out of the impasse.

Unions have also been affiliating and supporting 'riders' by means of activities of awareness raising on rights and social protections implemented on-line and on the field.

For instance, UIL has established a help-desk to support gig workers with fiscal and legal consultancy services, and an observatory on working conditions of gig workers (see the section on features and trends of the gig economy above). In addition, similarly to other unions, UIL has been reaching out delivery workers on the streets, particularly in Milan, to discuss their problems and affiliate them.

Social partners and local governments also experimented other ways to regulate the gig economy. In the Piedmont Region, law provisions have been passed in November 2018 to forbid 'piece-based' remuneration for workers of delivery platforms, whereas attempts to provide a comprehensive regulation of platforms have been put forward also in other

38. See for instance: D'Ascenzo (2016).
39. Later approved as Act 87/2018.

Italian regions and by social partners in the logistic sector (De Fazi, Piano 2018; Faioli 2018b). The main such initiatives are described below.

The Inclusion of Delivery Workers in the NCBA Applying to the Logistics Sector

The first organised answer to delivery platforms has been the renewal of the NCBA applying to the logistic sector, signed on 3 December 2017. The NCBA lifted the ban on 'on call work' applying to the sector as per the previous agreement and, at the same time, agreed to rule over pay, working time and job classification (linked with pay scales) of workers delivering goods with bikes, motorbikes and boats.

On 18 July 2018, the parties implemented this provision by:

- setting a minimum hourly gross pay at € 8.4; to be increased at € 8.9 after six months of employment, and, limitedly to workers delivering goods by means of motorbikes, reaching € 9.1 after further nine months[40];
- setting the standard working time (39 hours), the maximum working time (48 hours) and stating each working day shall last between 2 and 8 hours (10 if the worker is employed also in storage activities), over a maximum 13 hours period (including stand-by time);
- entailing the obligation for companies applying this working time regime to meet unions in advance to verify the presence of enabling conditions (performing activities of good delivery by means of private means of transports which do not require the B driving licence – including bikes, small motorcycles, small boats);
- requiring shifts to be communicated in advance by the employer and not to be influenced by reputational systems based on algorithms;
- requiring daily working periods to last between 2 and 8 hours, while allowing for flexible clauses in part-time contracts including the possibility to change the allocation of shifts and to increase working time (a notice of 11 hours applies for the increase of working time);
- establishing companies shall provide individual protection equipment and pay an insurance for damage against third parties; and
- underwriting availability to negotiate further aspects at firm-level.

The Charter of Universal Rights of the Municipality of Bologna

The Charter was the outcome of a local negotiation table prompted by the Municipality of Bologna following mobilisation of riders.

The Charter set out:

- information duties concerning among others: place of the work performance or how this will be determined; description of the tasks; starting date and, in case, ending date of the employment relationship; pay and modality of pay; procedure for dismissal and notice period; minimum guaranteed paid hours; working tools and how they can possibly determine distance control;
- duty to inform about and provide training courses entailed by EU and national law or by collective bargaining;
- duty to inform about algorithms and the way they influence the employment relationship, guaranteeing workers an impartial procedure to rebut a rating deemed

40. Pay reference is computed as per the amount in force between 1/10/2018 and 1/5/2019.

wrong, and accessibility to documents certifying the employment relationship for the purpose of shifting from a platform to another;

- right to a fair and hourly pay, at least in line with minimum levels set by NCBAs;
- right to pay indemnities set by NCBAs for work in specific circumstances (night work, week-end work, holiday work, work in adverse meteorological conditions);
- right not to execute the work performance in case of extraordinary meteorological conditions seriously hampering safety of workers;
- right to non-discrimination, including duty not to penalise workers unavailable to provide work for a prolonged time, also in terms of work opportunities; and written form of dismissal preceded by an adequate notice;
- coverage of insurance against accidents at work, sickness at work, and damages to third parties paid by the platform;
- obligation to provide health and safety equipment and to reimburse fully or in part costs for maintenance of working tools;
- information duties on the treatment of personal data and right for workers to oppose the treatment of data for control and monitoring purposes;
- ban to monitoring workers' opinions and facts not pertinent to the correct implementation of the work performance;
- right to disconnect;
- right to establish or join a union and right to assembly (10 paid hours a year, in line with the Workers' Statute);
- availability of spaces granted by the Municipality of Bologna for bulletin boards of unions and to hold assemblies;
- right to 'collectively abstain from work for a common target'; and
- establishment of a monitoring table involving signatory parties to meet every six months.

On the platforms' side, the charter was signed only by local service providers, while large players refused arguing the adoption of local rather than national initiatives would jeopardise the regulation of the gig economy[41].

The Bill of the Lazio Region

The Bill, which has been approved by the Board of the Region in June 2018, and is to be discussed by the Assembly, has contents similar to those of the charter, while entailing a more proactive role of the public institution. The main provisions concern:

- obligation for platforms to ensure health and safety at work, insuring workers against accidents at work and occupational diseases, providing the related trainings, and obligation to provide health and safety equipment and pay for maintenance of working tools;
- duty for the worker to take part in health and safety trainings;
- obligation for platforms to insure workers against damages to third parties and for maternity and paternity, at least covering standard minimum daily pay used as reference by INPS (in line with minimum rates set by NCBAs);

41. For the positions of Foodora and Deliveroo see: Basso (2018).

- promotion of supplementary welfare schemes by the Region, also involving social partners;
- right to a fair and hourly pay, in line with NCBAs, and to perceive additional indemnities set by NCBAs;
- obligation to ensure a transparent functioning of the algorithm and the portability thereof, and to ensure an impartial procedure of verification of the system upon request by the worker;
- information duties on risks concerning the work performance, place of work, tasks, pay, protective equipment, functioning of the rating and possible effects on the employment relationship; procedure of verification of the rating system;
- creation by the Lazio Region of a 'Portal of digital work', as a web-site easing access by workers to interventions to be funded by Lazio Region in the areas of: workers' rights, health and safety at work and complementary welfare schemes;
- faculty for workers to register to a regional archive of digital workers, allowing to access public interventions listed above;
- faculty for platforms to subscribe to a regional register of platforms, allowing to access public interventions listed above and to use the label 'Fair economy'; and
- establishment of a committee of digital work, providing suggestions on the annual programmes determining public interventions, on research covering platform-based work, monitoring digital work also through data from the archive of digital workers;

Stipulation of agreements between Lazio Region and Labour inspectorates to enforce the bill, and implement sanctions are also envisaged.

The Law Proposal of the Piedmont Region

On 22 January 2019, the Regional Council of the Piedmont Region approved a bill on the gig economy. Rather than regulating workers' protection at regional level, an option which is at risk of breaching Constitutional provisions on the regional legislative powers, the bill was submitted to the National Parliament to be discussed as a national law proposal.

Indeed, the bill includes many provisions already entailed in the first draft of the above-mentioned 'Dignity Decree' (repealed by the government ahead of the negotiation table with unions and platforms).

In particular, it is to strengthen the notion of subordination, currently linked with the presence of a decisional and disciplinary power by the employer, by codifying criteria adopted by the Constitutional Court concerning the absence of both ownership of results and of organisation of production by the worker. Most notably, a set of provisions closes possible grey areas for platforms, for instance by setting that the circumstances that the working time is not defined in advance and the worker is free to accept the single required task do not constitute self-employment, or that the performance is subordinate also whenever the employer establishes or influences the conditions and the remuneration of the deal, also through a digital platform, and even if the performance is implemented with means and tools of the worker and if requested by a third party. At the same time, provisions specifying features of 'quasi subordinate work' as amended by the Jobs Act shall be abrogated, de facto leaving quasi subordinate work without any social protection while significantly reducing its scope in favour of subordination.

The bill also entails the application of minimum rates of pay set by NCBAs for platform workers, while banning the use of piece-based pay by platforms, and introduces a right to disconnection (at least 11 consecutive hours over a 24-hour period).

Among the other innovations, algorithms shall be subject to an experimental phase and to a consultation right for unions, whereas rating mechanisms based on the reputation of the worker shall be banned.

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Country Background: Poland

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Introduction

The issue of platform work has been debated more frequently in recent years in Europe, including Poland; however, both the terminology, and the data on the scale of this new phenomenon is rather unclear. Many different terms are used to describe the activities that are mediated through on-line platforms: gig work, on-demand work, work-on-demand via apps, platform work, digital labour, digital (gig) economy, crowd sourcing, piecework, and collaborative consumption (Eurofound 2018). Eurofound proposes the following definition of platform work (2018), which is both descriptive and extensive:

> *'Platform work refers to an employment form that uses a platform to enable organisations or individuals to access other organisations or individuals to solve specific problems, or to provide specific services in exchange for payment. Accordingly, the focus of the research is on platforms matching supply and demand for paid labour. The main features of platform work, as it is understood in this project, are:*
>
> - Paid work organised through platforms;
> - Three parties involved: platform, client, worker;
> - Aim is to conduct specific tasks or solve specific problems;
> - Form of outsourcing/contracting out;
> - Break-down of 'jobs' into 'tasks;'
> - On-demand services.'

Debate about platform work – as a new economic and labour market phenomenon – involves at least two general types of problems (in addition to the issue of delimitation and the terminology used to describe it), which are as follows: the legal interpretation of the employment relations between the three actors involved (i.e. platform, client, subcontractor), and the social protection of subcontractors and employees under this activity. Moreover, the labour market and business model practices implemented by on-line work platforms encounter a variety of economic contexts (or varieties of capitalism) in different countries, thus these practices are formed according to local context. The emergence of platform work in Poland – which represents the Central East Europe (CEE) region in the Don't GIG up! project – manifests itself in a manner that is adequate to the country's (or region's) specificity. Therefore, a short introduction to Poland's industrial relations system and labour market characteristics will be useful for a better understanding of the role currently being taken by platform work in this country.

Poland's industrial relations system is described in the literature as a hybrid – having elements of various systems such as pluralism, neo-corporatism and statism, that is, 'corporatism in the public sector, pluralism in the private sector' (Morawski 1995). It is

characterised by a high level of decentralised collective bargaining, underdeveloped sectoral collective bargaining, and relatively weak institutions for social dialogue at the national level. Collective bargaining coverage is less than 15%; and single-employer agreements prevail over multi-employer ones while sector-level bargaining is virtually absent. In 2014 there were only 86 active multi-employer collective agreements covering some 390,000 employees (i.e. some 2.7% of employees), of which 76 covered administrative and technical employees in educational institutions, according to the Ministry of Labour (recent available data). Collective agreements rarely occur in private companies but are more often present in the public sector as well as in foreign-owned companies. According to the National Labour Inspectorate, the content of collective agreements has been successively reduced over the years to a state in which they usually just repeat the generally binding regulations of the labour law. According to recent data, in 2017 trade union density amounted to 11%; and this level of trade union membership has remained stable in recent years. However, a process of decline in this respect has been observed since the nineties. Due to the narrow definition given to the right to association, self-employed and those working under civil law contracts are not eligible to join or organise trade unions (a minimum of 10 employees is required to establish a company-level organisation, those in micro firms [around 40% of all employees] are effectively excluded also).

Among the key labour market problems are: low wages and a prevalence of low-skilled jobs, a very high proportion of temporary employment (the highest among EU countries, 28% of the total labour force, Eurostat), and a relatively low employment rate (approx. 70%, Eurostat). These characteristics relate to the most vulnerable groups in society to an even greater extent, and include: younger and older workers, the disabled, and women. Most of the job creation in recent years has occurred almost entirely through temporary employment contracts, which include fixed-term employment contracts and civil law contracts. The latter are not subject to Labour Code regulations and thus involve lower or no social security contributions, and account for a large proportion of the total number of temporary contracts (1.3 million people, 8.2% of the employed). At the same time, self-employment accounts for 18% of employment in Poland, and could be regarded as another form of 'flexibilisation' and fragmentation of employment relations (and of industrial relations). In recent years however, much improvement has been observed in respect to unemployment, which dropped to 5% in 2017 (Eurostat). Currently, a labour shortage has been diagnosed, due to both a significant economic growth and the out-migration of workers to Western countries (2.5 million persons in 2017). The labour market gap has been supplemented by in-migration of employees coming mostly from Ukraine (1.2 million persons in 2017).

The economic model which has been implemented in Poland is based on low labour costs, relatively well skilled workers, and a low-to-moderate level of taxation, all of which attract foreign direct investment. Compared to Western European economies, Poland's economy is characterised by a relatively low level of innovativeness, which mostly manifests itself in adapting other countries or companies' innovations into more advanced solutions (imitative innovativeness), which has resulted in the uninterrupted growth of GDP since early nineties. The robotisation, automation, and digitalisation of work has proceeded relatively slowly when compared to other EU countries, which is partly due to the fact that labour costs are still lower than the costs involved in companies investing in technology. However, some research predict a significant vulnerability in Poland's labour market to robotisation, claiming that over one-third of professions in Poland will disappear in the next few decades (WISE 2014). Platform work – despite its marginal position in the labour market – enters mostly into labour market segments that are already flexible and amplifies recent processes of 'precariatisation' of certain groups rather than contributing to the innovativeness of the economy.

The Public Debate on Platform Work and the Gig Economy

Acknowledging the context described above, it has to be stressed that the current axis of public debate concerning the labour market in the country focuses mostly on such issues as the economic model embedded in low labour costs, the dependent market economy model, temporary contracts (especially the abuse of civil law contracts), 'precariatisation,' and migration rather than the problems resulting from the emergence of digitalisation. Public debate on platform work plays a marginal role for the country's key stakeholders, which is proportional to its importance in the labour market. Therefore, where this issue of platform work is concerned, it is framed within the debate as a future problem, and so the level of discussion is of a rather general nature and refers to such wider phenomena as digitalisation and the automation of work. In such circumstances, the results of the 'Don't GIG up!' project will be ahead of its time in the Polish context, and could potentially prepare the key stakeholders as well as the most vulnerable groups for future events. In this respect, legislative initiatives that have been undertaken at the European level will also have a valuable impact on regulating certain economic activities just before they are about to spread out into the labour markets in CEE countries.

The key issues within the public debate in the context of the digitalisation of the economy – and platform work in particular – will be presented on the basis of two sources, and supplemented with an overview of media statements made by social partners. The governmental position presented here is based on an analysis of the key strategic document, 'Strategy For Responsible Development' (Strategia na rzecz Odpowiedzialnego Rozwoju, SOR) (Ministry of Investment and Development 2016), while the positions of the social partners have been the subject of a study presented in a report entitled 'Social dialogue in the post-crisis period in Poland' (Czarzasty, Owczarek 2017).

There is a certain level of consensus among the key stakeholders (social partners and the government) on the need to transform an economic model based on labour costs to a highly productive economic model which uses advanced technologies, in which the main competitive advantage is the quality of products and services (juxtaposed with low labour costs). This transformation is primarily aimed at avoiding the middle income trap in economic development, and requires productivity increases through a shift from a high proportion of low-productivity sectors, to a high proportion of high-productivity sectors. The implementation of digital innovation is indicated as a horizontal dimension which affects all sectors, although to different extents (the greatest focus being on manufacturing).

This strategic goal has been explicitly formulated in the governmental Strategy For Responsible Development. The SOR acknowledges that technological advances in the areas of robotisation, mechanisation, automation, energy storage, artificial intelligence, and digital economy development programmes will influence education and the labour market, as well as creating new consumer needs. It also acknowledges the fact that these changes may have an adverse impact on the labour market in coming years as a result of replacing human labour with robotic and automated solutions. For this reason the authors suggest Poland should seek ways to minimise the potential negative social impact of this situation. The strategy also mentions the need to make 'smart reindustrialisation' a priority by implementing new digital, technical, and organisational solutions, and developing new industries based on digital technologies which are capable of creating breakthrough products. This action is expected to provide the impulse for the development of many other areas of the economy, as well as an opportunity for the development of traditional sectors, which, by introducing state-of-the-art production and management technology, have a chance of moving up the value chain. This is expected to trigger a qualitative change in the industry's competition model, which has to date been based on lower labour costs. It is assumed that this will also result in an increase in the share of net income from product

sales made by industrial processing enterprises in the high-tech and medium-high-tech sectors from 32.7% in 2014, to 34% in 2020, and 40–45 % in 2030, as a part of total net income value. The strategy proposes implementing a set of detailed measures which will facilitate the absorption of advanced technology and the creation of an institutional and regulatory environment that is conducive to innovative development.

In addition, in the area of human capital development, the SOR places emphasis on developing digital skills. 'Educ@tion in the digital society' is the key programme in this area, in which infrastructure is to be developed and equipment provided for developing students and teachers' skills and competencies in applying computer technologies within the educational process. Under the same priority there is a reference to the role of social dialogue – in particular to the Social Dialogue Council (RDS) and the voivodship social dialogue councils – which, by involving social partners in the development of the country's social and economic policies, may make a real contribution to the country's development policy.

The SOR focuses primarily on the strategic development of the digital economy and the essential education needed to produce top-quality specialists who will develop solutions in the area of new technologies, as well as universal digital competencies. What is missing in the document is a reference to the potential negative consequences of this development for the labour market and the employees who, in the future, will be pushed out of the market as a result of automation. The document does not explicitly mention the issues of on-demand platforms or platform workers. In the chapter devoted to social problems and social cohesion, there are some general remarks about forms of support for excluded people, although the document does not make a clear link between the development of the digital economy and measures to support workers who are driven out of the labour market as a result of the widespread application of new technologies.

In the view of employers, the SOR relies too much on the 'selection of winners' by public institutions, and fails to provide sufficient response to the need for creating a complete innovation ecosystem where public support is granted to the projects that involve the highest market risk, and, at the same time, have the greatest innovative and developmental potential. Moreover, in the SOR, the proposal for action in the area of innovation is state-centred and focused on research and development (R&D). This is manifest, for instance, in proposals for the creation of the coordination system, that is, the Innovation Council, which is composed of representatives of the administration, whereas one of the success indicators for innovation effort is an increase in the level of R&D expenditure.

In the wider public debate on the digital economy and platform work, employers' organisations and other business entities highlight that the digitalisation of their companies is the main challenge they need to face in the nearest future. The digitalisation of the economy is perceived as being an instrument for creating further flexibility in labour market and an escape from the rigid regulations of employment contracts prescribed by the Labour Code. Platform work, it has been pointed out, is a new form of business operation which will be responsible for a significant share of employment (or rather services) in the future. Self-employment and portfolio work (i.e. under civil law contracts) are the preferred form of legal employment relations, as these better reflect the dynamics of contemporary business, and give more individual freedom to shape a career path. The issue of social protection for platform workers is usually not referred to, and is regarded as being the workers' own responsibility. Some employers' organisations have raised the issue of creating standard regulations across all regulations in order to avoid unfair competition.

Trade unions on the other hand are more active and critically oriented in respect to the gig economy. They usually see opportunities for employees in finding suitable jobs (often beyond borders especially in the ICT sector) and raising wages and labour productivity.

However, they highlight the potentially negative consequences of the overall digitalisation of the economy, which may be manifested in the following: 1) the disappearance of some professions (the idea of the 'end of work' or jobless growth), especially in an economy where the majority of professions are made up of low or medium-skilled positions which are easily substituted by technology; and the appearance of new professions; 2) the fragmentation of employment; 3) the 'precariatisation' of a considerable part of the middle class; 4) an increased proportion of self-employed and so-called freelancers, which will reduce the power of labour, vis-à-vis the capital; and which will then lead to 5) an increase of inequality. Therefore, in order to respond to these forecasted rapid changes in the labour market, the trade unions propose: 1) to increase participation in life-long learning among employees; 2) to increase the proportion of vocational education within the education system, and to improve its quality and capabilities in meeting the needs of the labour market; and 3) the adaptation of higher education, to better match the needs of the labour market. Trade unions also point out several current and forward-looking policies aimed at the following forecasted challenges: 1) an increase in the minimum wage so that it is proportional to economic growth, and with a prescribed full coverage of the labour market; 2) the introduction of a unified and progressive taxation system (with no exceptions for the self-employed or those under civil law contracts, etc.); 3) the taxing of work performed by robots; 4) the taxing of the capital itself, if employees are driven out of employment; and 5) a universal basic income as a potential instrument for counteracting technical unemployment, and enabling people to satisfy essential consumer needs and exercise their human rights.

In regard to platform work specifically, the usual problems are raised: difficulties in defining employment relations and employment obligations, insufficient social protection and placing business risks onto individuals, the 'precariatisation' of a section of platform workers (especially those conducting low-skilled tasks), and social instability among platform workers in the course of their lives. Trade unions also claim that platform work might contribute to the development of a shadow economy and to undeclared work, as the responsibility for paying taxes and social contributions is unclear. Also, in a somewhat wider context, the problem of the entitlement to association in trade unions and access to collective bargaining is referred to in the context of self-employment and employment under civil law contracts.

Features and Trends in Platform Work

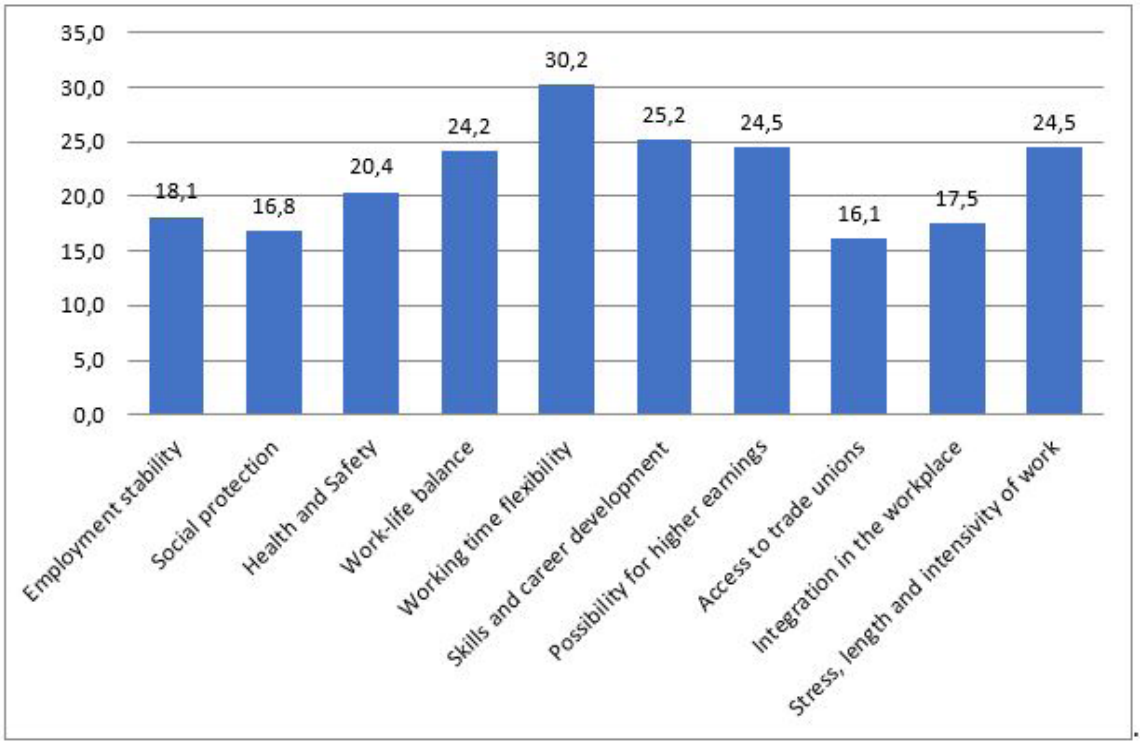
The exact numbers for the scale and scope of platform work in Poland remain difficult to ascertain; the volume of work and of traded tasks is similarly difficult to estimate. In most EU Member States, platforms are not legally obliged to make available information on the numbers and volumes of transactions; this is also the case in Poland. Currently, there is only one national-level study that has estimated the scale of platform work in regard to platform workers and their working conditions. Nevertheless, data such as the number of platforms and the amount of transactions, etcetera, are still unknown in this country. However, there have been some international studies – both quantitative and qualitative – in which Poland was included.

According to the most recent study on new forms of work, as many as 11% of respondents declared they had conducted work using an on-line platform in Poland in the past, and 15% intended to continue to undertake such work in the future (Owczarek 2018). As many as 44% had not heard of this form of work, while another 40% had heard of it, but never worked through an on-line platform. Platform work was one of the least popular

forms of work compared to the other forms under scrutiny,[42] which shows that it is still not popular among workers in Poland. The study showed that platform work was more often performed by the youngest respondents: 22% in the 18–24 age group, and 14% in the 25–34 age group. Thus, it is not surprising, given the context, that platform workers are overrepresented among those with primary and lower secondary education – 17% in each of the two age groups. Also, they more frequently lived in larger cities (15% in cities of 200–499 thousand inhabitants, and 13% in cities over 500 thousand inhabitants). Employment in less stable forms of work is also more frequent in this group: 15% are employed under fixed-term employment contracts, 14% among self-employed, and 14% in the group working without contracts.

For the vast majority of those who had used platforms on a regular basis (only 37% of all respondents who declared some form of platform work), it was a side job (71%) performed only intermittently. Nearly one third (31%) of platform workers in Poland claimed that they were not able to estimate the average number of hours worked per week, one quarter (25%) declared they had worked less than 10h/week, and another quarter (25%) between 10 and 20h/week, 14% between 20 and 40h/week, and 9% over 40h/week. As many as 40% of platform workers declared monthly incomes under one thousand PLN (approx. € 240), 26% between one and two thousand PLN (approx. € 240–480), 18% between two and five thousand PLN (approx. € 480–1200) and 9% had an income higher than five thousand PLN (€ 1200). On the basis of this study, it can be concluded that platform work is still not very popular in Poland, and for the majority of employees it is an incidental form of work (63%). Among those working on platforms on a regular basis, it is a side job that usually brings in 'pocket money' of less than € 480 per month (66% respondents).

Figure 1. Assessment of job quality in regards to platform work among employees in Poland (%)



Source: Owczarek, D. (2018) *New Forms of Work in Poland*, Institute of Public Affairs, Warsaw

42. Employee sharing – 15%, job sharing – 24%, casual work – 54%, ICT-based mobile work – 23%, interim management – 12%, voucher-based work – 8%, portfolio work – 11%, collaborative employment – 13% (Owczarek 2018).

When compared to other forms of work in the study, respondents assessed the quality of jobs offered by on-line platforms as being lower when evaluated against ten job quality dimensions (see Figure 1). The overall result was 21.5% for positive indications (as compared to an average of 23.6% for the entire study). The most distinctive feature of platform work is its flexible working time, followed by the opportunity to develop skills and a career, and then the potential for higher earnings and work-life balance. It should be noted that in the case of the earnings assessment, the results for platform work are the lowest when compared to the other types of work. The lowest performance result for platform work, in comparison to other forms of work, was the stress, intensity, and length of work criterion. Respondents also evaluated platform work lower in terms of providing access to trade unions, social protection, and integration with colleagues in the workplace. These results overlap, in general terms, with the expert assessment of platform work conducted by Eurofound (2015).

A European Commission-funded study covering Belgium, France, Germany, Italy, the Netherlands, Poland, Spain, Sweden, and the UK, estimated that by 2015, 273 collaborative platforms (comprising work platforms as well as rental and accommodation platforms) had been founded in these countries (Vaughan and Daverio, 2016, after: Eurofound 2018). In 2015, household tasks mediated through platforms in these countries are estimated to have had a total transaction value of € 1,950 million, and the platforms' revenue was estimated to be € 450 million. Online professional tasks saw transactions valued at € 750 million with a platform revenue of € 100 million (Vaughan and Daverio, 2016, after: Eurofound 2018). Fabo et al (2017) in their EU-28 study, claims that approximately 45% of the platforms operating in Poland were dedicated to transport services, while the remaining 55% offered other non-transport services (after: Eurofound 2018).

The European Commission published a quantitative report based on a Flash Eurobarometer conducted across all EU countries in 2016 (European Commission 2016). Half of Poland's population (51%) hadn't heard of platforms (as compared to 46%, on average, in other EU countries), 7% had used platforms occasionally (9% in the EU), and 4% were using platforms regularly (4% in the EU). The majority of Poles had not used platform services (66% as compared to 68% in the EU), and only 17% had offered a service via a platform occasionally (18% in the EU). It must to be noted, however, that this study used a relatively wide definition of platform work, which also included renting accommodation, car sharing, and small household jobs. Moreover, the study did not specify if using an on-line platform meant that a respondent worked through a platform, or just used a platform as client. This leads to the conclusion that research is challenged by the absence of a harmonised definition, due to which, different understandings might be implied, and different research approaches be applied by different authors.

In another – much more extensive – report by the European Commission (2017), qualitative methods in the form of 50 interviews, and quantitative methods consisting of an original survey of 1,200 platform economy workers, were applied in eight EU countries: Bulgaria, Denmark, France, Germany, Italy, Poland, Spain, and the UK. The survey was conducted with platform workers across four established platforms: Amazon Mechanical Turk (AMT), Clickworker; CrowdFlower (now Figure Eight); and microWorkers. However, the subsample from Poland and Bulgaria comprised only 8% of the total sample. The average working hours across the platforms stood at 23 hours per week, with the median hourly pay being 6 US dollars. Pay levels across the platforms were significantly lower than the national minimum wage rates across European countries and the U.S., ranging from a gap of 54.1% in France to 3.4% in the United States. The survey also revealed that the relatively high levels of job satisfaction and emotional wellbeing among platform workers were offset by a lack of task autonomy; and a dissatisfaction with career

prospects, pay levels, and job security. The workers' dissatisfaction with job security was considerably higher than the representative average figure across European labour markets.

Based on the survey, the report develops a new categorisation consisting of three clusters of platform economy workers: Moderate Beneficiaries, Random Surfers, and Platform-Dependent Workers. The categories were derived from the degree to which workers were dependent on the platform economy for income, and the quantity of work, notably in terms of whether work was conducted as an alternative or alongside more traditional forms of employment. Statistical analysis found that approximately a quarter (25%) of the platform economy's labour market was comprised of 'Platform-Dependent Workers': those workers who derived a larger share of their personal income from micro-tasking, and did not have other paid jobs. These workers were significantly worse off compared to those who were not reliant on the platform economy, earning on average between 43% and 62% less, regardless of country differences. Access to social protection schemes, with the exception of healthcare insurance, was very low for platform economy workers. Up to 70% of workers participating in the platform economy reported that they could not access basic schemes like pregnancy, childcare, or housing benefits. This effect was especially pronounced among Platform-Dependent Workers.

Interviewees from Poland, in the qualitative part of the study, reported a 'very small' contribution to total GDP from platform work, so its importance is still marginal. Respondents in the in-depth interviews pointed out that the main drivers for the development of platform work in the country included: significant cost savings as a result of utilising labour provided by a workforce that is not directly employed; tax arrangements involving contracts (self-employed, civil law contracts), which also enable lower social contributions; a lack of alternatives in the context of financial insecurity due to the prevalence of low-wage work in the country; and the prior existence of a significant 'grey' economy with a prevalence of undeclared work and earnings (new opportunities presented by online platforms for generating income outside of the formal taxation system).

Legal Regulations on Platform Work

Platform work is a challenge to legal systems which operate with the concepts of 'employer,' 'employee,' and 'employment relationship,' in which 'employee' refers to subordinated and dependent workers while other types of relationships are reserved for independent contractors. Some situations can be understood as multi-employer arrangements or as a triangular relationship between worker, client, and platform. Platform workers share some characteristics with the employee category and some with the independent contractor/self-employed category – depending on the type of platform work, the tasks performed, and the platform. However, the legal reality of the relationship is often determined by the platform's terms and conditions, which commonly deny the existence of an employment type relationship between the platform and the worker, and between the worker and the client. Workers are then designated as independent contractors, and thus self-employed.

In the context of the Polish legal system, the qualification of platform work is not clear and there has been no official interpretation of this sort of employment relationship – so far. Currently, platform workers are not considered to be employees covered by the Labour code and thus having an employment contract. Platform workers contracts fall under one of the two following categories: self-employment or civil law contract. This categorization imposes the responsibility for issuing income taxes or social contributions on the service contractor. In effect, the platform worker is treated, in practical terms, by the platform and the service user as a micro-employer. Self-employed workers and those

employed on civil law contracts are theoretically covered by the general social insurance system, but insurance against some risks is voluntary. Sickness and maternity insurance, for example is voluntary for the self-employed and 'contract of mandate' (a form of civil law contract) workers. Furthermore, the social insurance system does not cover contracts for a specific task (a form of civil law contract), which encompasses much platform work. This incentivises the use of civil contracts, since the costs are lower than for regular employment contracts. Platform work is still not a widescale phenomenon in Poland, but its possible future development might contribute to a key labour market challenge in Poland, that is, the misuse of civil law contracts and bogus self-employment in order to transfer the businesses' risk to 'sub-contractors,' and cut labour costs (fragmentation of the labour market, 'precariatisation' of platform workers). In such circumstances, the alleged innovativeness of on-demand platforms, in terms of their business model, is not so obvious when social consequences are taken into consideration.

From the perspective of access to collective bargaining, legal status plays a crucial role in Poland. According to the current legislation, only employees – meaning those who are employed under employment contracts – are eligible for membership in trade unions and, therefore, to take part in collective agreements. Self-employed and civil contractors are formally excluded from collective employment relations. This situation is to be changed after an amendment to the of Trade Unions Act (the draft amendment is currently in the legislative process).

Currently no legislative work on regulations pertaining to the legal status of platform work is being carried out by the government or any public or consultative body. In a recent report by the Commission for the Codification of Labour Law (Komisja Kodyfikacyjna Prawa Pracy), which was established in 2016 to elaborate the new individual and collective Labour code in order to adapt the labour law system to the current labour and economic conditions in the country, there is a reference to the legal status of platform work: 'Time constraints [in the preparation of the draft labour law] did not allow regulations referring to the phenomena such as the so-called 'uberisation' of the labour market, to be proposed. The above phenomenon has not yet intensified in Poland, and the very regulation of this matter is extremely difficult' (Codification Commission 2018).

Social Partners and Legal Responses Aimed at the Social Protection of Platform Workers

So far, there have been no initiatives raised by social partners or the government in Poland to regulate platform work or ensure the social protection of platform workers. Both public debate and legislative work in the country is focused on other issues which are perceived as being more central to economic and labour market challenges. Platform work is usually treated as a small part of a wider debate on digitalisation and automation. Therefore, there are no tangible proposals that could be referred to in this report.

Despite this, there are still a number of questions that need to be sorted out in legislation and public debate. Some of these have already been mentioned above, such as: the elaboration of a precise vocabulary that enables new labour market phenomena to be labelled (platform work, crowd work, gig-economy, sharing economy, collaborative economy, etc.); the implementation of legal definitions for parties and their legal (and social) obligations in connection to the relationships between platform, client, and service provider; and mechanisms of social protection and inclusion in collective bargaining for platform workers.

There is also the question of organising platform workers in trade unions since a certain number of people, for whom this will be their primary source of income, will become a visible part of the labour market in the near future. The key challenge, in this respect, is

the fact that platform workers operate in isolation from each other, therefore, the opportunity to establish any social relationship with a supervisor or with colleagues is very limited. This impacts negatively on the chance to build a community of interests among numerous workers who are dispersed, not only within one country, but also across the globe. In this regard, the platform workers' situation resembles, to a large extent, the position of outsourced service workers. Some effects of union organizing is possible among workers conducting services in 'the real world' (like drivers, food suppliers, technical services, etc.), while organizing workers who deliver small cognitive tasks is extremely difficult to pursue. Given the context of the collective bargaining specificity in Poland, the chances for covering platform workers with collective bargaining are close to zero. From the perspective of trade unions in Poland, who are challenged by the necessity of effectively managing very limited funds, the investment in organizing such a dispersed and fluid employee group is also unlikely. In such circumstances, trade unions are primarily counting on the introduction of platform workers' protection through legal regulations. Until now, activity in this area has been mostly carried out at the level of European legislation. An attempt to address the issue of platform work under the Commission for the Codification of Labour Law has ended without any conclusions.

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Country Background: Spain

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Current Debate

The debate about gig workers has been present in Spain since 2014, particularly with the arrival of UBER and its services.

In 2014, the company was operating a peer-to-peer service called 'UberPop', which allowed non-professional drivers to pick up passengers along their route. In late 2014, following strikes at national level and protests from taxi drivers and associations (Gutiérrez 2018), a Spanish court ordered Uber to stop operations in the country.

Nevertheless, in 2015 Uber launched its food delivery service in Barcelona (Uber Eats) and in March 2016, it started operating once again through a new model of passenger transportation: UberX, connecting riders directly with drivers holding VTC (chauffeured private hire car) licenses. The Spanish Federation of Taxis (FEDETAXI) - which represents 70% of taxis with licenses – protested throughout the country (Gutiérrez 2017).

More recently, media reports about Uber's return to Barcelona have put the taxi industry on alert once again (Catalan News 2018; Auchard 2018)[43].

At the same time, other platforms have a strong presence in the country. According to a recent study (Kantar Worldpanel 2018), in Spain 40% of home-delivered food is ordered through platforms, and companies such as Deliveroo and Glovo are growing in popularity and stirring up hotter and hotter debates. Deliveroo has recently broadened its presence around the country, making its service available in Palma de Mallorca and Murcia, thus covering 22 cities in Spain (El Español 2018). Glovo operates in more than 30 cities and in the past year won 5% of food delivery orders nationwide, turning the platform into one of the most used in the country (Kantar Worldpanel 2018).

On the other hand, both companies have been under the spotlight of Spain's Labour and Social Security Inspectorate due to the qualification of their couriers, considered as self-employed, but raising doubts in terms of bogus self-employment (Gómez and Delgado 2018).

The controversy regarding gig workers has developed around some central issues, as discussed below.

Definition of Worker

One of the most important issues that is part of the political, academic, and trade union discussions and debates about platform work bears on whether the so-called 'gig workers'

43. Much controversy was triggered by Uber's decision to offer a single price per trip (€ 5) in the city centre, which was in conflict with taxi fares.

can be considered 'traditional' workers or self-employed workers, and whether – and how – it is necessary to adapt existing labour law provisions to these new forms of employment.

The attempt to qualify workers either as employees or self-employed plays an essential role in identifying the terms of employment applicable to the category. More specifically, if qualified as employees, gig workers could benefit from the rights typically granted to workers (i.e. maximum working hours, annual leave, etc.) and better fulfil their work-life balance needs.

Precariousness of Employment

On the contrary, most of workers in the gig economy remain cut out from the vast bulk of employment protection and, while income stability is yet to be achieved, they have to face: reduced wages (most of them below the minimum wage after paying taxes); instability of employment, as a result of platforms hiring for specific tasks or projects, and of high turnover; shortcomings in terms of protection of health and safety at work; and a context of unlimited flexibility that promotes unsustainable working models, implicating health and safety issues and social isolation.

In terms of flexibility, it is worth recalling that, according to a survey carried out by IDC (Eurofound and ILO 2017) in 2013, 70.9% of the surveyed employers stressed the main reason for using flexible work was a 'social motivation', mainly for improving work-life balance; however, under platform-related working conditions, this remains a mirage for most of gig workers.

A work model that rewards the fact of being always connected to maintain a high level of reputation and thus be able to opt for a schedule where there are more orders, only generates uncertainty because the gig worker has no control over how many hours he/she will have to work the following week: depending on the distribution of those hours, the worker might rely on a higher or lower income.

Security and Health at Work

These forms of work (crowd working, gig working, etc.) entail a series of risks for the health and safety of workers.

A recent report by Eurofound and ILO (2017) identifies some of the risks that affect workers operating in this type of sector (isolation, intensity of work, etc.), highlighting, among all of them, the risk to health due to the prolongation of the working day. For instance, in Spain, 19% of the workers performing their tasks at their employer's facilities work more than 40 hours a week, compared to 24% of those who work at home and 33% of those who work elsewhere.

Business Control

The amount of workers' data that the employer can store using email, geolocation systems, video surveillance systems, etc., in addition to increasing supervision and control of workers, is putting gig workers' right to privacy at risk, introducing an important factor of stress into their work activity.

Reputation Systems

This is one of the new tools that digital platforms have developed to constantly assess workers' performance. It is an individual scoring system that allows the platform to unilaterally assign an order or a task based on established algorithms. This evaluation determines the number of working hours per worker and, consequently, his/her wage. This

system represents the main tool to organise platform work and consolidate the idea that, if one does not have more working hours or does not earn what is needed, it is because he/she is not working hard enough. This tool individualises the labour relationship to the extreme, although the worker has no say in establishing the parameters of the digital platform.

Social Protection

The shortcomings of gig workers in terms of social protection are worrying, as a consequence of the insecurity of employment, low wages, and low levels of contribution to social security. Digital-platform workers face difficulties in fulfilling the requirements of access to social security benefits, but even when those requirements are met and they receive social security benefits, the amount is very limited.

The aspect of social security is also worrying when considering the consequences that this type of employment can have on national public services and on the sustainability of the social security system.

Collective Rights: Difficulties for the Exercise of Collective Rights

The main difficulty for the exercise of collective rights lies in the isolation caused by the way new technologies and platforms work: gig workers receive an email or message on their computer/smartphone and subsequently must perform the task; this leads to an atomisation and dispersion of workers, and prevents socialisation among workers and the possibility to share a common working space. However, some distribution-platform workers are concentrated in public squares, waiting for any order to come in.

Another difficulty is represented by the possibility for companies to terminate the relationship in an extremely easy way. Companies have used the euphemism 'disconnection', which consists in sending an email to communicate the end of the commercial relationship with the self-employed worker. Immediately afterwards, the rider will not be able to access the platform. There are other technological elements that serve to sanction, in a unilateral and arbitrary way, the actions that the platforms intend to punish: an example of this is the temporary suspension of the activity of the application, or the fact of leaving the worker without working hours the following week, with the consequent devaluation of his/her individual ranking.

This element prevented workers from forming associations, although there have been cases of organisations of riders who initially caught a lot of attention[44] in the Spanish media by denouncing a precarious situation. Regrettably, over time, the platforms have used the actions explained above to 'dismiss' those workers that were more demanding (Rtve 2017; Mouzo Quintáns 2017). In particular, the Riders for Rights workers' organisation[45] started a strike; however, in Spain, the right to strike for self-employed workers is not recognised, and is therefore inexistent.

Features and Trends

Data regarding the number of companies operating in the framework of this type of economy, or the number of jobs that it has created is still uncertain.

44. See for instance: Ortega (2018) and more recently Rodríguez (2018).
45. The original name is 'Riders X Derechos', the bike delivery movement created in 2017 to defend the rights of gig workers. Although it initially involved Deliveroo workers only, it aims to include those of other companies too. For further information, cf.: Uno (2017); as to their social presence, cf.: https://it-it.facebook.com/ridersxderechos/.

Nowadays, in Spain this new form of business organisation and this new form of employment have reached a limited extension, although a large part of experts agree that it is a business with a great potential for development.

According to a prospective study on collaborative economy in Spain, conducted by the EY Foundation, in cooperation with the Spanish Association of Digital Economy (Adigital), the Financial Studies Foundation, the Business Circle, and the Cotec Foundation, it is estimated that, in Spain, there are 500 companies whose business model is based on this type of economy, whose economic impact is between 1% and 1.4% of GDP. This figure could double from 2018 to 2025, reaching between 2% and 2.9% of GDP (Agidital 2017).

Furthermore, according to a study by the European Commission (Gomez-Herrera et al. 2017), in 2017 11.6% of the Spanish adult population earned income on some occasions through platform work, from those dedicated to the delivery of food at home or passenger transport, to those that offer translation services, data entry, or software development. According to this study, Spain is among the EU countries with the largest volume of workers that provide services through digital platforms.

Finally, in 2015, the companies that form part of the so-called 'collaborative economy' in Spain boasted a turnover of a total of € 15 billion. According to the Ostelea tourism school (Beltran and Cangròs 2018), in 2025 - that is, in seven years - these new business models will have a turnover of € 335 billion, meaning a growth of 2,000%.

In the opinion of UGT, there is a business strategy focused on the deregulation of labour relations, with the aim of obtaining unlimited and excessive flexibility of workers, reducing the protection of working conditions, minimising labour costs, and consequently maximising business profits.

Indeed, the economic model of digital platforms or of the gig economy, with its commitment to resorting to self-employment, questions the essential foundations of the classic employment relationship, and outlines an intention to circumvent labour law.

Box 1: Key features of the Spanish labour reform of 2012

The labour reform of 2012 introduced a new type of employment contract: the indefinite employment contract in support of entrepreneurs. It is a contract with an indefinite duration and a trial period of one year, which seeks to replace the ordinary indefinite employment contract in companies with fewer than 50 workers. The effect is to encourage the outsourcing of services, this type of contract having a lower labour cost due to the possibility to dismiss workers during the trial period without compensation.

The labour reform also allows for overtime and complementary hours in the part-time contract; it furthermore allows the employer to avoid the application of sector regulations or business agreements on matters such as working day, work schedule, work shifts, or salary, when it is necessary due to economic, organisational, or production reasons. Besides, in the absence of agreements, the labour reform gives employers the possibility to distribute irregularly throughout the year 10% of the working day, and makes it easier for employers to terminate the work contract.

Lastly, it establishes the prevalence of the company agreement over the sectoral agreement at central, autonomous community, or lower level in matters such as: setting of minimum wage and supplements; schedule and distribution of working time; or measures to promote the reconciliation of work and family life.

In fact, platform business models allow companies to exit the business quickly, without having to implement any collective dismissal. This was the case of Take Eat Easy, a

delivery platform for home delivery food that was shut down at some point (Muñoz 2017), leaving its workers to their fate.

With regard to outsourcing, in Spain some digital platforms are competing with multi-service companies. This situation is possible thanks to the last labour reforms, which have led to precariousness and to the devaluation of working conditions.

Interestingly, the introduction of digital platforms has more penetration in business activities dedicated to transport, distribution, cleaning and elderly care, and other similar services where high qualification is not necessary and labour supply is significant, also as a consequence of the economic crisis.

From UGT's perspective, based on its activities meant to reach out to and support platform workers, their profile is often not the one of students who need some extra money, but rather the one of workers who need a real wage[46].

Risk Shifting

From the moment when platforms are presented as simple 'intermediaries' between the consumer and the workers who provide the service, and mainly resort to self-employed workers, we can clearly see that the aim of these companies is to transfer the risk of the company activity from digital platforms to workers.

The worker is the one who contributes to social security, pays for his/her work clothes and work instruments, and shoulders all costs in case of sickness, shortage of orders, etc.

All these elements are clearly observed in Spain, but in reality, gig workers are not independent from the digital platform, nor are they entrepreneurs. As already discussed in the previous section, they actually perform their tasks as employees.

Disputes

At present, it is possible to witness a considerable number of resolutions of the Labour and Social Security Inspectorate[47].

Both the Labour and Social Security Inspectorate and courts have put the focus on compliance with criteria identifying employment and, therefore, with the status of subordinate worker.

The Labour and Social Security Inspectorate, for instance, is focusing on more than 100,000 bogus self-employed workers estimated to exist in the Spanish labour market, and thousands of them are linked to the economy of digital platforms (Olías 2018).

It is necessary to emphasise that the computer applications where the actions (and related results) of the Labour and Social Security Inspectorate are collected do not allow for the disaggregation of data concerning inspections conducted on this type of platforms; therefore, those data cannot be used.

Nevertheless, it is known that, during 2017 and 2018, the Labour and Social Security Inspectorate detected situations (involving new platforms) that undermine workers' rights and have their origin – generally – in an incorrect classification in the social security system.

In accordance with the Labour and Social Security Inspectorate, under the cover of certain platforms, true self-employed workers can be found (who are enrolled in the relevant

46. On the widespread presence of self-employed workers 'out of necessity' in Spain, cf.: McKinsey Global Institute (2016).
47. See for instance: Gómez (2018).

social security scheme, the Special Regime of Self-employed Workers), in addition to a large number of bogus self-employed workers, who act as mercantile companies.

The Labour and Social Security Inspectorate has acted against companies such as Deliveroo, Glovo, and UberEats, denying the self-employment status and considering that the relationship between the riders and the company has a clearly labour-related (and not commercial) character.

On the one hand, as to case law, the Social Court of Valencia issued a judgment in June 2018[48] that qualified a Deliveroo worker as an employee of the company (despite being hired as self-employed), and thus considered unlawful the termination of the contract (The National 2018). The court ordered that the worker be reinstated or be paid around € 700 worth of compensation. Deliveroo decided not to appeal the judgment, and paid the compensation (Staffing Industry Analysis 2018). It is very difficult to have a judgment that recognises the nature of the working relationship since many riders - before starting the trials - reached economic agreements with platforms with a view to obtaining higher economic compensation.

It is worth recalling the orientation of the Supreme Court, as outlined in its judgment no. 902/2017[49] regarding translation and interpretation services offered by a company at the request of the police, the Civil Guard, and courts. In this case, the working relationship was identified by the company as self-employment, but the court overturned the qualification in favour of employment.

The judgment considered that, while 'the worker did not have a fixed schedule, [the worker] was still subject to the requests for translation and interpretation services submitted by customers to the company, which was thus setting the day, time, and place of performance of the job'. The worker could choose whether to perform the gig; however, in this regard, the court stated that 'Although it seems that the interpreter enjoys great freedom in deciding whether to provide the service or not, it is certain that if [the worker] does not accept it, [he/she] runs the risk of not being involved again'[50].

In addition to that case, more recently the Labour Court of Madrid published judgment no. 284/2018, which resolved a claim for dismissal of a rider against the company Glovo[51]. The court stated that 'the material reality of the relationship as proved differs considerably from an employment relationship, lacking its main characteristics, and on the other hand, it perfectly fits the conditions defining work under the TRADE regime'[52]. This way, the Labour Court of Madrid moved in the opposite direction compared to the judgments analysed above.

Finally, on 11 February 2019, the Labour Court of Madrid[53] ruled as null the dismissal of a Glovo self-employed worker dismissed for participating in a spontaneous strike. The Tribunal recognised the subordinate nature of the employment relationship while reaffirming the right to strike as a fundamental right. The judge stressed the unilateral definition of contractual clauses by the platform, 'including thirteen different reasons for the resolution

48. Judgment no. 244/2018, Social Court of Valencia, Section 6, Rec. N. 633/2017, 1 June 2018; the text in the original language is available at: https://www.isdc.ch/media/1590/13-juzgado-valencia-1-junio.pdf. For a commentary on the judgment, cf. for instance the analysis by Todolí (2018), Labour Law Professor at the University of Valencia.
49. Judgment no. 902/2017, Supreme Court of Madrid, Section 1, Rec. N. 2806/2015, 16 November 2017.
50. The text in the original language is available at: http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&databasematch=TS&reference=8243382&links=%222806%2F2015%22&optimize=20171227&publicinterface=true.
51. Judgement no. 248/2018, Social Court of Madrid, Section 39, Rec n. 1353/2017, 3 September 2017. The text in the original language is available at: http://www.delderechoydelreves.net/wp-content/uploads/2018/10/sentencia-glovo.pdf.
52. Under Spanish labour law, the TRADE regime envisages that the worker is self-employed, but dependent on one company for most of his/her income.
53. Judgement no. 53/19, Social Court of Madrid, Section 33, Rec n. 1214/2018, 11 February 2019. The text in the original language is available at: http://www.ugt.es/sites/default/files/sentencia_glovo_ugt_febrero2019.pdf.

of the contract', and of the absence of ownership by the worker on results, organisation of production and on sales, being them mediated exclusively by the platform.

Different Views on the Impacts of the Gig Economy

From the point of view of consumers, in some sectors it is outlined that this type of services allows for the adaptation of the level of consumption to their needs, and facilitate access to a wide range of goods and services.

From the business perspective, it is pointed out that digital platforms allow for a more efficient adjustment of supply according to demand, and contribute to reducing transaction costs.

Likewise, some authors point out the dynamic effects that gig economy may have, especially for groups that face difficulties in terms of employability, or in regions affected by economic stagnation. These positive effects include the use of underutilised resources (Consejo Economico y Social España 2018).

As stated previously, a large part of civil society, political parties, and workers' organisations are alarmed about the substantial negative consequences that the massive externalisation of activities and the platform economy entail in terms of employment, wages, social protection, working conditions, social rights, equality, and social cohesion.

In addition, there have been cases of complaints of unfair competition: e.g. UNO (a road transport operator) filed a complaint against Amazon Flex because the self-employed workers working for Amazon with their private vehicles did not have a licence to transport packages.

On the other hand, it should be noted that some platforms generate a downward auction, with the workers themselves competing with each other by lowering the price of their service. This is usual in companies providing cleaning services or performing micro tasks (installation of washing machines, cabinets, etc.).

Approaches proposed to guarantee adequate protection to gig workers

To sum up, it is possible to identify two approaches to the issue at hand:

- on the one side, those in favour of the platform economy, such as one of the employers' organisations of digital companies, Adigital, which believes that the solution is to modify current regulations and to adapt them to these new forms of employment. The rationale here is to contribute to the flexibility and development of this type of business. Accordingly, some support the creation of a new special labour relationship for this type of workers; and
- on the opposite side, experts in labour law and trade unions, who warn about the risks that work carried out through platforms entails (minimum wage, work and rest time management, privacy, reconciliation of work and family life, prevention of occupational risks, collective rights, training, etc.), and stress the validity of the current definition of work and of common labour relationship, outlining the need for digital platforms to comply with them.

In Spain, there is only one digital platform – the Seville-based start-up called 'Mission Box' – that has its distributors hired as 'classic' employees. This seems to demonstrate there is nothing to prevent platforms from applying existing labour regulations and competing within the same legal framework, with no need to modify the applicable labour legislation.

On the other hand, in Spain, there are digital platforms that are also temporary work agencies. It is the case of Jobandtalent, which provides services to companies that have transport licenses and work for Cabify. According to the perception of workers reached by UGT, this system is basically used to strengthen the temporariness of employment.

That is to say, transport companies outsource their drivers to digital temporary employment agencies (ETT), so that, thanks to their temporary contract, they can keep them in an everlasting probationary period.

The experience with digital ETT is to continue with bogus forms of employment, albeit in an externalised way.

Measures to Protect Gig Workers

It must be clearly stated that this model of work organisation and business production adopted by platforms appear not only to promote employment instability, economic insecurity, and precarious working conditions, but also to put employment relationship at risk of termination.

Among the measures meant to address risks posed by these developments, it is worth recalling the Master Plan for Decent Work for the period 2018-2020, approved by the Spanish government on 27 July 2018.

The plan consists of 75 measures aimed at combatting abuse and fraud in the use of temporary contracts, part-time contracts, excess hours and unpaid overtime, breaches of wages, and new forms of work.

It is stated that, through the so-called digital platforms, irregular business practices have arisen in certain cases that are promoting a 'precarisation' of the labour market, based on the lowering of costs through the reduction and violation of labour rights. This process becomes latent not only in the field of highly qualified workers, but also with respect to those employees with fewer possibilities of accessing durable jobs, thus promoting a type of worker who has to work more and more hours for the same wage, or even for a lower one, this way leading to the formation of a group of so-called 'working poor'.

Some companies, hiding under this virtual infrastructure, blur the traditional concept of establishment, and resort to workers who fall under the Special Regime of Self-Employed Workers, either through their usual classification, or through the TRADE type of work, although the characteristics of an employment relationship are met.

Nevertheless, both on digital platforms and in the e-commerce itself, under the anonymity provided by the network, situations of irregular economy could be hidden due to failure to enrol in the Special Regime of Self-Employed Workers or in the General Scheme of Social Security.

To fight against these fraudulent practices, this master plan states that a specific inspection campaign on platforms and e-commerce will be carried out.

On the unions' side, UGT and CCOO have reported to the Directorate General of Labour Inspection and Social Security Inspectorate companies such as Glovo, Deliveroo, Uber Eats, and Stuart, which are deemed to hire bogus self-employed workers.

Spanish unions are currently adapting their structure so as to be able to represent the interests of workers operating under different statuses. This includes exploring ways of organising workers in the digital economy to complement traditional formulas. In the framework of this effort, UGT has launched an online portal (http://www.turespuestasindical.es/) to inform and advise workers who carry out working activities on digital

platforms. The goals of this platform include information, vindication of rights, organisation, and denunciation, as well as serving as a tool to encourage participation.

CCOO has opened a similar platform addressing all workers in atypical contracts (https://precaritywar.es/), and is about to promote a legal assistance service in Madrid for delivery workers enrolled by platforms.

In October 2018, unions and employers' organisations of the tertiary sector have agreed to discuss to explicitly include the occupation of food delivery workers employed by sectoral companies or platforms in the collective agreement covering accommodation and food service activities at national level.

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Country Brief: Sweden, the Perspective of Unionen

Core Debated Issues

The political, social, and academic debates in Sweden concerning the platform economy can be sorted in two categories. Firstly, there has been a debate on working conditions for platform workers in the transport and delivery industries, focused on Uber, Foodora, and Uber Eats. Secondly, there has been a debate on how the platform economy could be regulated in order to include it within the Nordic Partner Model, within which employers' organisations and unions regulate the labour market through collective bargaining.

The first debate has taken place primarily within mass media, where platform firms are often portrayed negatively, and platform workers as victims of bad practices. Furthermore, there has been substantial reporting on the legal status of Uber in Sweden and elsewhere. The second debate has taken place among stakeholders in the framework of the labour market system – government, unions, and employers' organisations – but not too much in public.

Main Features and Trends

Data on the Swedish platform economy is regrettably quite limited and sketchy. Unionen has carried out surveys for the private-sector white-collar platform economy, as it encompasses union members and potential members. The most solid finding from these surveys is that the private-sector white-collar platform economy is very small in Sweden, compared to the traditional labour market, but that it has a large potential for growth. At the moment, however, this growth is impaired by two factors: a strong labour market that provides a record number of traditional employee-type jobs, and platform firms working out ideal business models.

Nevertheless, a sizeable portion of medium-sized and large firms report that they are positive about the idea of using platforms to find workers, primarily with expert skills. Correspondingly, a sizeable portion of white-collar workers are positive about the idea of working part time through platforms. Unionen interprets this as a potential future scenario where white-collar workers with sought-after skills will be able to find desirable part-time jobs with decent pay through platforms. Then again, this will probably require evolution in the business models of platform firms.

Further, it seems as if students in higher education can use the temporary nature of platform work to their advantage. Not depending on platform work for their livelihood, students can enjoy mutual flexibility with platform firms, whereas workers dependent on platform firms for their income risk finding flexibility more one-sided in favour of firms. Therefore, it can be expected that a large group of future platform workers will be students in higher education.

Legal Issues and Future Perspectives

As contextual information, it shall be stressed that the Swedish labour market is to a large extent regulated not by law, but through collective bargaining. Without delving too deep into the functioning of the Swedish labour market, this means that different strategies for organising platform work are necessary, compared to most other countries.

Unionen, which organises white-collar workers within the private sector in Sweden, sees Swedish platform firms' intentions to be serious actors on the labour market. A few have already signed collective bargaining agreements, and Unionen is negotiating with others. Currently this is the case primarily in, but not limited to, white-collar sectors of the platform economy. The rationale for platform firms to sign collective bargaining agreements seems to be threefold. Firstly, these firms appear to have a genuine ambition of being a good employer, a factor often overlooked in the negative reporting on platform firms. Secondly, their business model is to attract other firms as customers, actually making themselves employers of workers who sign up for tasks with customer firms. These customer firms often have policies safeguarding against precarious work, encouraging or obliging them to work with platform firms with similar policies. Thirdly, platform white-collar workers in the private sector (often workers with specific skills or students looking for an extra income) know their worth, meaning they demand of platforms to be transparent and accessible and to ensure decent pay.

Less serious actors will probably have difficulties in thriving on the Swedish labour market. However, this is not to say that Sweden lacks challenges regarding platform work. While the future looks brighter than it could be said not long ago, platform work in Sweden as elsewhere sometimes involves legal uncertainties. Issues include who the actual employer is in different platform business models, risks of not being paid at all or only partly, uncertainties on what happens if one falls ill or is injured while carrying out platform work, or what type of relationship a worker has with the social security system.

Therefore, Unionen works towards both improving working conditions within the platform economy through collective bargaining, as well as revising legislation in order to adapt it to all workers, not only those who are in traditional employment. Legislation is the proper avenue regarding social security and other state-controlled welfare provisions.

However, in order to improve working conditions, most actors in Sweden argue that collective bargaining agreements are supreme over legislation, as legislation risks either hampering innovation (if introduced too quickly) or being forced to confirm existing (undesired) practices (if introduced too slowly). Collective bargaining can be adapted to specific sectors and further adapted as the platform economy evolves.

In June 2018, the Organisation for Economic Co-operation and Development (OECD 2018), in its review of digital transformation in Sweden, cited Unionen's suggested strategies on how to engage with platform firms. Following the OECD review, the Ministry of Enterprise and Innovation organised round-table talks with unions to discuss the OECD recommendations. Unionen has discussed platform work in numerous bilateral meetings with representatives from both parties in the governing coalition, as well as from the opposition.

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Conclusions

The country-by-county overview highlights some common trends across the covered countries in terms of challenges posed by the gig economy, together with a variety of possible responses by policy makers, influenced by the national industrial relations context as well as by the spread and relevance of the phenomenon to the public discourse.

Most debate, research, and policy initiatives actually focus on platforms covering types 1 and 2 of the proposed classification, i.e. passenger transport and delivery platforms. Platforms intermediating 'traditional gigs' and, especially, micro-task platforms appear as less studied, probably also in reason of their lower visibility to the public and of the absence of mobilisation of gig workers or of workers negatively affected by competition from platforms.

Disputes addressing the latter types of platforms mainly concerned the qualification of workers as employees or self-employed workers, with administrative proceedings initiated by labour inspectorates (especially in France and Spain), and lawsuits prompted by gig workers themselves. The alleged failure to observe regulations on taxi service arose especially in France, Italy, and Spain concerning Uber.

Some key differences appear especially when Germany and Poland are singled out. As to the first country, desk research highlights how the food delivery platform Deliveroo initially adopted 'fixed-term' subordinate employment contracts rather than self-employment contracts. Yet, following the setup of a works council at the company, endowed with – among other things – co-determination rights pursuant to German law, Deliveroo switched to self-employment relationships, inhibiting this way workers' representation itself.

Poland, instead, has seen a limited rise of gig economy, except for the passenger transport type, whereby Uber stirred up much debate in reason of its competitive pressures on taxi drivers. In any case, the self-employment status of Uber drivers does not seem to be under discussion in the country for the time being, whereas wider concerns dwell upon fair pay, working conditions, and stability of employment of precarious workers at large, especially those on 'civil law' contracts.

Legal proceedings screened in the covered countries mainly concerned the 'subordinate' or 'self-employment' qualification of the employment relationship, an issue sometimes complicated by the presence of 'in-between' contracts (often referred to in international literature as 'quasi subordinate' contracts), like the Spanish TRADE regime and the Italian 'co.co.co.' contract.

These disputes seem to be oriented towards the classification of delivery workers and of drivers working for passenger transport platforms as employees. Judgments adopting this view often recall aspects concerning monitoring of the performance, especially through GPS, the presence of sanction systems, explicitly or de facto, and the imposition by the platforms of price-setting mechanisms and terms of employment.

On the other hand, some case law, generally rebutted by second or third-instance judgments, confirmed the self-employment features of the relationship, focusing on aspects

concerning the flexibility in terms of work organisation, especially the 'freedom' to accept or not shifts, or the possibility to independently organise one's own work.

Whereas there seems to be a cross-country broader consensus over the ways the web-mediated provision of services resembles functions of the employer, especially as far as delivery workers are concerned, this case law is not undisputed and may be further challenged as well by the adaptation of algorithms to redress key faults identified by the judges, e.g. by reducing control through GPS.

Considering the impact on society at large, the low level of protection granted to self-employed and atypical workers on the one side, often incentivised by policies promoting 'self-entrepreneurship' or loosening restrictions on flexible contracts, and the ongoing technological developments narrowing the border between internal business organisation and market matchmaking, poses the risk that the growth of platforms will create a new category of 'working poor', especially in times of sluggish economic recovery and labour market slack.

Some initial quantitative research works suggest income of platform workers is generally low, whereas their number is on the rise. Little information, often available from surveys made or promoted by platforms themselves, is available on profiles and work satisfaction of platform workers. This seems to suggest people making use of the platforms belong to different categories, ranging from unemployed trying to make a living out of the platform, to students wishing to have a flexible job, or people using them only occasionally.

Quite optimistic standpoints emerge from the focus proposed for Sweden by the white-collar union Unionen. Given a context featuring low unemployment, high union density rates, and widespread practice of collective bargaining at sectoral and company level, the union stresses platforms can be integrated in the so-called Nordic Partner Approach. Lowering remuneration and job quality can be prevented through collective bargaining, while job quality could also be maintained thanks to a labour market still offering good opportunities, and to the widespread presence of company policies meant to avoid practices leading to precarious work. Unionen has signed a handful of collective bargaining agreements with white collar private sector platform firms.

Other country-based contributions also stress that, despite the ability to lower costs, the development of platforms may encounter limits concerning digital literacy of potential clients, or low attractiveness due to lack of trust, or fear to disclose a company's 'know-how', circumstances that may apply especially to crowd work platforms.

The main progress made in terms of legislation can be found in France. Pursuant to the Grandguillaume Law, reforming provisions concerning passenger transport and the related licences, minimum training requirements have been introduced for all drivers performing passenger transport. In addition, service providers – including platforms – have been held responsible for the observance thereof. This approach seems to have triggered a relevant change in the way platforms operate in the country, with some of them even setting up their own training centres for drivers.

Unions are also reacting, mainly by trying to associate gig workers on web or on the streets. In some cases, initiatives targeting gig workers stem from previous activities addressing self-employment and atypical workers at large, e.g. by providing information on their rights or tax counselling. At the same time, new grassroots movements are emerging, especially in the area of food delivery.

The overall picture emerging from the report is that of a rapidly evolving phenomenon, making it quite difficult to draw conclusions on the size the gig economy will reach in the near future, as well as on whether platforms will maintain a business model largely

relying on self-employment and casual work. Nevertheless, the features and social impact of the gig economy are hardly a matter of technological change alone. Instead, the choices and approaches taken by other actors in the same field, such as public institutions, social partners, and workers themselves, remain crucial factors to shape the way emerging actors impact on labour and the economy.

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