



DON'T GIG UP



Final Report

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INTRODUCTION

This report was produced as part 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.

Running for 24 months (February 2018 – January 2020), the project brings together unions and research centres to analyse features and challenges of the gig economy in a set of selected countries, namely Germany, France, Italy, Poland, Spain, and Sweden.

More precisely, the scope of the project is work carried out through labour platforms. At the onset of the research, such platforms were divided into four groups according to their core activities, as per the table below.

Table 1. Proposed classification of platforms covered by the project

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

Platforms which do not intermediate work (e.g. sharing platforms like BlaBlaCar or marketplaces for businesses like Airbnb) were generally excluded from the observation field.

The project matched literature reviews and field research activities to investigate working conditions and business models in the gig economy as well as to understand the achievements and limits of attempts to increase the protection of gig workers.

The core outputs of the project include:

- a State of the Art Report providing 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;
- five Country Case Study Reports, investigating and assessing practices meant to organise gig workers and to increase their employment and social security rights in France, Germany, Italy, Poland, and Spain; and
- three mutual learning workshops comparing and discussing the practices with project participants and external experts and stakeholders with a view to identifying policy recommendations. Findings and discussions from the meetings were written down and shared to keep track of the different ideas and proposals emerging from them.

As a final step, the project partners developed the project Policy Recommendations and the present Final Report. The report builds on previous phases to sum up different views emerging on platform business models and the strategies adopted by various social partners, policy makers and other stakeholders to address challenges posed by the 'gig economy' in the covered countries.

ARE THERE VARIETIES OF 'GIG ECONOMY'?

Features, similarities and differences of platform-based business

Platforms: Characteristics and Types

The 'Don't GIG up!' project analyses the challenges of the platform economy for the development of working conditions and forms of employment, and at the same time focuses on initiatives by social partners or state actors and institutions to tackle these problems and develop solutions for them. But what exactly are platforms? What business models have they developed? And what significance do they have in the countries under scrutiny?

Platforms are a diverse phenomenon. They are a central, if not constitutive, element of digitisation and it is no coincidence that in this context we are also talking about 'platform capitalism' (Langley and Leyshon, 2016; Srnicek, 2017). Platforms thus shape the face of the changes that can currently be observed in the developed political economies and beyond. McAfee and Brynjolfsson (2017, p. 137) define platforms 'as a digital environment by near zero-marginal cost of access, reproduction and distribution'. This definition is so broad that it includes the entire internet or the World Wide Web as platforms. According to McAfee and Brynjolfsson, platforms in a narrower sense are characterised by two further features: firstly, two-sidedness as a mediator between different types of users, customers or clients and, secondly, the setting of standards for contributions. Similarly, Srnicek (2017, p. 43) describes platforms as 'digital infrastructures that enable two or more groups to interact': platforms position themselves as intermediaries that bring together different users such as customers, advertisers, service providers, producers, suppliers and even physical objects. According to Langley and Leyshon (2016, p. 5), platforms form an 'intermediate logic of connective ecologies and infrastructures' and thus solve the classic coordination problem of market transactions of bringing suppliers and consumers together. Platforms achieve this by digitally compressing spatial distances on the internet.

Departing from this position, platforms can be considered as performing matchmaking activities in radical markets, also of labour demand and supply, by means of legal schemes similar to auction (Faioli, 2019).

In economic sciences, matchmaking is an application and selection process, within a pre-set framework, of subjects producing goods or providing services. In the 'gig economy', the pre-set framework is the labour market, governed by a complex set of rules, also in reason of the different levels of legislation. Whereas raw materials markets are based on prices, the markets based on matchmaking are shaped by the choice made by one of the parties thereto: such party decides what they need, whether they can afford it, and how to get it. The raw materials markets are almost completely shaped by prices, which

allow for the matching between demand and supply. In the gig economy, the pattern looks more complex, since the parties are matched through an application. In some situations, matchmaking stems from exchange practices and takes root over time in relation to the existing reality. This has not been the case for the labour market. It can be assumed that it will also be difficult for transactions taking place on a digital platform. Regulation aimed at market design has been necessary for the labour market and will be necessary for activities provided through a digital platform.

The market of digital platforms features a large number of participants (workers, platform companies, and entrepreneurs buying goods/services). Each subject can theoretically benefit from the most advantageous contract. Economists define such a phenomenon as 'market density': a high-density market can offer so many options as to engender congestion. In the case at hand, the marketplace of digital platforms benefits, on the one side, from job applications and, on the other, from requests for services (e.g. a restaurant and a person asking for the home delivery of a dish). The digital platform managing legal relations liaises between workers, the business, and the consumer. A key feature is that the platform company deals with a large number of applicants. Quite often it does not have any interest in getting to know them. Instead, it is interested in meeting the needs of clients and consumers. The platform avoids congestion through an algorithm that tracks the reference market, manages workers, anticipates consumer needs, and sends alerts to restaurant managers or managers of other types of business covered by the platform. The management of workers is based on patterns stemming from game theory, with the goal of implementing a market design aimed at making the market freer, safer, and smarter. The platform can thus be considered an 'algorithmic' employer. It can be added that the gig economy creates a marketplace where all participants carry out commercial and working activities, with a digital connection and a price that will be paid through e-money (Faioli, 2018).

In addition, beyond matching demand and supply, the tools coordinate working activities, measure their quality, and forecast the needs of consumers and sellers of goods/services. This means the price seems to play a minor role. The consumer may not be interested in it, except insofar as it can help to compare a good or service: e.g. the overall price of the service in food delivery platforms is largely influenced by the chosen meal. The seller of goods may also attach significant value to having access to a digital showcase. Finally, the platform may not be interested in the price since several workers are available. The price, stemming from this legal pattern, has an impact on labour costs: the lower the labour costs, the lighter the burden entailed by the value chain (platform, seller, and consumer).

A very interesting aspect is the potential of platforms to increase employability. In other words, as to casual work, we could achieve a so-called 'top trading cycle', i.e. a best-performing trading cycle deriving from a digital triangulation that ensures that no demand from consumers, sellers, or workers is unmet. The opposite can be stated: the consumer will receive their meal at home; it will be delivered by a worker who shall receive an overall decent wage (including social security contributions) for the working activity performed. Finally, the seller is satisfied with the larger volume of food sold through the digital platform.

This perspective is not a complement to the theoretical framework that is currently trying to classify working activities performed through digital platforms according to the categories of self-employment or employment. The goal is not to understate the problem of job classification but to go beyond it, starting from the assumption that some types of gig work could fall under the temporary agency work regime or similar regulations (Faioli, 2018, 2019).

At the same time, the role platforms play often goes beyond market intermediation and features an unbalanced use of technology in favour of the platform company itself. According to Dolata (2018), platforms are private-sector institutions that structure both economic processes and large parts of social exchange on the internet. This happens in three ways. First, through privatisation, i.e. the establishment of a private regulatory framework for the use of the interaction space organised by the platforms; second, through curating, i.e. the formulation of rules for these interactions through user interfaces and evaluations, creating preferences or giving recommendations; and third, through commodification, the economic exploitation of user activities as data raw material, which is then evaluated, aggregated and elaborated into profiles. The rules on platforms are defined by the 'Terms of Service', which are non-negotiable as they are 'adhesion contracts' that are written by only one of the contract parties, the platforms (ILO, 2018). Apart from not being user-friendly to read and understand, on labour platforms the Terms of Services define many aspects of the workers' labour conditions. The use of the platforms involves the acceptance of these rules based on the legal framework of the country in which the platform is located. A second central element of curating is the extensive automation of platform processes through big data and algorithms. On this basis, platforms can outsource central functions such as quality control to users, whose performance evaluations are then combined into rankings (Schmidt, 2017).

Platforms also have specific investor structures. The characteristic of platform 'capitalisation' (Langley and Leyhson, 2016) refers to the fact that platforms serve their investments in infrastructure – or the rental costs for it – primarily from venture capital, which they attract as objects of risk investments and as start-ups. In return, they try to realise sales and profits through usage and transaction fees. The supply of venture capital to the platforms – despite the mostly negative profits of the companies – enables them to pursue aggressive growth strategies. On this basis, however, they can also dispute expensive court proceedings, which mostly relate to the question of the legal validity of their Terms of Services (Schmidt, 2017).

The growth strategies financed with external capital are closely related to the network effects that platforms create and on which they depend (Srnicek, 2017). The more users use a platform, the more valuable the service of the platforms becomes for the users, as they can realise more contacts, use more offers and, above all, generate and evaluate more data. On the one hand, these data can be evaluated by the platforms to improve their service functions and, on the other hand, they can market them to advertisers because they can be condensed into consumer profiles using artificial intelligence. The stronger the network effect, the more the platforms tend to form 'the winner-take-all-markets' (McAfee and Brynjolfsson, 2017). That is why they have an interest in keeping the prices of their services low in order to grow as quickly as possible. The more successful they are, the more 'switching costs' they generate for users who switch to other platforms because they lose the advantages of the platforms. Added to this are the advantages of the platforms as 'eco-systems', which combine complementary services and secure them through curating. An example of this is the number of artists who market their music on iTunes; the more artists do this, the more attractive the purchase of an iPhone, because iTunes is only available on iPhones.

Nevertheless, platforms have not yet led to the emergence of market monopolies, but to a mixture of concentration and competition. US-based companies such as Amazon, Google and Facebook have emerged as major internet groups that are leaders in special markets, such as Amazon as a trading platform, Facebook as a networking and messaging platform and Google as a search engine and, via YouTube, as a video channel. These companies gen-

erate large revenues; in 2017, their revenues ranged from just under 180 billion US dollars in the case of Amazon to over 40 billion US dollars in the case of Facebook (Dolata, 2018). This gives them such financial strength that they can invest in expanding their services and technological infrastructures more than other providers.

However, these concentration trends go hand in hand with intense competition. This applies above all to the smaller internet platforms such as Uber and Airbnb, which in 2017 each had revenues of 7.5 (Uber) and 3.3 billion US dollars (Airbnb). According to Dolata (2018), they are in close competition with direct competitors and large internet groups. In the case of Airbnb, these competitors are primarily booking portals such as Booking.com or Expedia, while Uber competes with other providers of driving services such as Lyft, a platform financially supported by Google, but also with the large automotive groups such as VW or BMW, which bring their own car-sharing and driving services to the market, and finally with the established taxi industry. Competition is too strong, the business areas are too narrow and the business models too fragile to produce rapid growth and monopoly-like structures in these markets. It is no coincidence that the smaller platforms mentioned also show losses in turnover (Uber) or only slight profits (Airbnb).

On this basis, several types of platform can be distinguished. Whereas, as anticipated, the project restricted the focus on 'labour platforms', selecting four different typologies which inspired the analysis, when considering the impact of 'platform economy' on competition, a wider scope shall be of use.

Table 2 gives an overview of some typologies developed in the literature.

Table 2. Some typologies of platforms

Types of Platforms	Source
Online Exchange Markets (Amazon, Apple, eBay...) Social Media (Facebook, YouTube, Twitter...) Sharing Economy (Uber, Airbnb, Sidecar...) Crowdsourcing (TaskRabbit, Upwork, Amazon MT...) Crowdfunding (Kickstarter, Lending Club...)	Langley and Leyshon 2016
Advertising Platforms (Google, Facebook) Cloud Platforms (AWS, Salesforce...) Industrial Platforms (GE, Siemens...) Product Platforms (Rolls Royce, Spotify...) Lean Platforms (Uber, Airbnb...)	Srnicek 2017
Commercial Digital Platforms Goods (tangible/intangible - for sale/for rent, Amazon, Airbnb) Money (Crowdfunding, Kickstarter...) Communication and Entertainment (dating - social media, Facebook...) Information (news - search, Google News...) Services (cloud work web – gig work location, Uber, Amazon MTurk...) Commercial Digital Labour Platforms Cloud Work Tasks to individuals (freelance marketplaces, Upwork...) Tasks to the crowd (micro-tasking – contest based creative, Amazon MT...) Gig Work Tasks to individuals (accommodation, transportation, delivery – household services, Airbnb, Uber, Lieferando, Taskrabbit...) Tasks to the crowd (local micro-tasking, App Jobber, Streetspotr...)	Schmidt 2017 (similar: ILO, 2018)

The differences in typologies are explained by the fact that they are based on different characteristics. The classification of Langley and Leyshon (2016) is mainly based on the differentiation of markets; the types are defined as different marketplaces for different offers. Online Exchange thus forms a marketplace for selling products and services through physical delivery or downloads, Sharing Economy a marketplace for renting property or services owned by others, or Crowdsourcing a marketplace for contractual, independent or informal work and knowledge. According to Srnicek (2017), it is rather the differences in business models and platform activities that stand in the foreground of the typology. For example, advertising platforms focus on collecting, evaluating and selling data profiles for advertising purposes; cloud platforms focus on renting hardware and software to platforms or other users; industrial platforms focus on selling hardware and software that industrial users need to digitally control their processes; product platforms focus on transforming traditional products into services that can be rented or subscribed to; lean platforms focus on selling services such as transport services or overnight stays at lower costs than traditional providers with as little own capital as possible. Finally, in Schmidt's typology, the focus is on the objects of the brokerage services of the platforms such as goods, money, communication or services.

Types and Business Models of Digital Labour Platforms

The 'Don't GIG up!' research project focuses on platforms on which services are provided in the form of work. In Langley and Leyshon (2016), these digital labour platforms are divided into the sharing economy, where platforms mediate the use of other people's property (apartments, vehicles, etc.) and the associated work services such as driving services on the one hand; and crowdsourcing, in which companies tender contracts to a crowd on platforms, on the other hand. In Srnicek (2017), digital work platforms only fall into one category, the lean platforms, which include all business models that provide work, be it a local service or a computer activity that can be performed more or less worldwide. Schmidt takes up this difference in his separation of gig work and cloud work. On the question of whether the activity is tied to a certain place of execution (gig and cloud work), Schmidt links the second question to whether it is tied to a certain individual or whether it can be performed by anyone. In this way, he distinguishes within gig work between the household, transport and delivery services for which a particular company is contracted with its employees, and local micro-tasking. And at the same time, cloud work is composed of crowd work, where work is broken down for an unspecified number of employees, and freelance marketplaces, where offers are directed at specific individuals or groups. This distinction resembles to a large extent the classification adopted in our project.

What are the specific characteristics of the business models developed by the digital labour platforms compared to the general characteristics of the platforms? According to Srnicek, these platforms have revived a model from the 1990s, the 'Business Growth before Profits' model. They operate a 'hyper-outsourcing' model (Srnicek, 2017, p. 76) in which both workers and fixed capital or training costs are outsourced. However, the platforms hold two important assets: platform software and digital data analysis (whereby the necessary technology can also be borrowed from cloud platforms). These assets guarantee them the power to create order and curation on their platforms. Work is usually outsourced, and in addition, workers are not regarded as employees, but as independent and self-employed contractors who are paid according to order. In this way, the platform companies not only save a considerable part of direct labour costs such as paid holidays, overtime bonuses or sick days, but also the indirect costs of social security contributions or training and, in the

case of work from anywhere in the world, they can put costs out to tender and compete with costs from low-wage countries.

In this way, platforms are a new step of outsourcing labour. Both traditional forms of employment in the service sector and administrative or service areas of industry can be outsourced to platforms. And the platforms themselves try to outsource work as cost-effectively as possible, along with further costs such as investment costs (in vehicles or buildings). Platforms combine this strategy with intensive data evaluation, which is used for quality and behaviour control as well as for process optimisation. At Uber, for example, optimal route profiles are planned with the help of driver and customer data. According to Srnicek (2017, p. 87), the existence of digital labour platforms depends on special situational conditions: outsourcing, unemployment or the existence of surplus capital invested into risky business. Despite these advantages, the digital work platforms in particular have a weak and predominantly negative profit structure. Srnicek is therefore quite sceptical about their further development: 'Far from representing the future of work or that of the economy, these models seem likely to fall apart in the coming years' (Srnicek, 2017, p. 88).

The different business models of platforms can be described by Schmidt's (2017) typology. Concerning cloud work, the 'freelance marketplace' platforms such as Upwork are aimed specifically at creative and highly qualified young people who want to work as 'digital nomads'. Workers are selected according to their abilities and can negotiate compensation individually, however competing with employees around the globe. The higher the qualification level, the better the negotiating position. In some cases, only one employee works on an assignment. The platforms charge a fee of 10% to 20% of the contract volume for a placement. Furthermore, they monitor the activities intensively, like Upwork, which takes several screenshots of the contractor's computer per hour, counts the number of mouse clicks or takes webcam photos of the contractors.

Digital crowd working is split into 'microtasks' and 'contest-based creative crowd work'. In the first case, work is about simple and repetitive activities. The ILO report (2018, pp.16 ff.) differentiates ten 'task categories' which are typical for microtasks: data collection like addresses or contact information; categorisation of images or other issues; content access like creating accounts; verification and validation of data or classifications; content moderation with respect to laws or platform guidelines; market research and reviews of products, services or locations; supporting artificial intelligence and machine learning by collecting material; transcription of information from different media into written form; content creation and editing by producing new designs or proof-reading or editing materials (the creative aspect can also be classified under contest-based creative work). The processing of these activities is highly automated and the employment contracts for the mostly small-scale activities are predefined. If the work is rejected or other problems arise, there is usually no possibility of complaint, and in some cases the client can still use the results. However, there are few obligations for both sides; even the crowd worker can dismiss his work without a reason.

The context-based creative crowd work usually refers to design or marketing tasks. An optimal solution for the problem advertised is sought, and usually only one of the solutions received is paid for; a division of the task into smaller units is not suitable for creative activities. In addition, workers must endeavour to develop their own profile and a portfolio of successful assignments because these are used as important evaluation indicators for clients. Rejected solutions are not paid. Although the creatives have a copyright on them, this is of little use if the solutions are tailored to a particular client. Some of the platforms charge fees of up to 40% for their activities. In both variants of crowd

work, the business models of the platforms can still be differentiated according to whether the platforms are limited to the mediation tasks or whether they also assume tasks of the organisation and publication of the advertised activities. Such additional services are tailored to the customers and provided with individual fees (ILO, 2018, p. 14).

Local gig work, which is usually associated with personal contact with a customer, is more likely to involve general requirements for service activities such as friendliness and attentiveness in customer contact. Therefore, individual ratings of employees by customers or other personal information are important for the platforms – platforms such as Uber also create motion profiles of their drivers. While platforms with a focus on accommodation in fact do not provide any work, this is certainly the case with driving or transport and delivery services (our type 1 and 2 platforms). Driving service providers such as Uber are in direct competition with the taxi industry, which has monopolised driving services in many countries. They operate with drivers who make themselves and their cars – and all associated costs – available for the service. In this way, they avoid fixed costs and the traditional regulations on passenger transport (which also entail qualification costs), which in some countries has led to legal problems, resistance from the taxi industry and a ban on the passenger transport offered by the platform. Although the platforms undercut the traditional providers in terms of price, they are also under strong price pressure due to competition between transport platforms. This is why, for example, in recent years Uber has reduced fares and thus the charges for drivers considerably – in the USA fares have been reduced to a significant degree (Schmidt, 2017). Through this, and by expanding the driver network, Uber has tried to increase its network effects. At the same time, Uber's data analysis allows it to adjust prices precisely to fluctuations in demand. However, driving service providers such as Uber can only set up networks locally – a high driver and customer density in Warsaw is irrelevant for the network effect in Rome. This is why the competition begins anew in every city. For this reason, and because new transport technologies such as the use of drones or autonomous driving depend on technology leaders such as Google, Amazon or automobile companies, the profitability of the business model of transport platforms is fundamentally questioned (Durant, 2019).

The competitive situation is similarly unstable for delivery services, which have opened up a market that was previously only served by supermarkets and pizza suppliers. Delivery services were also mostly set up as start-ups and financed with venture capital. In contrast to the transport service providers, delivery services partly work with employees hired on a temporary basis. The employees work in shifts of several hours and usually receive an hourly wage plus extra premiums for deliveries. However, the cost of materials such as bicycles, clothing or insurance is delegated to the drivers. Large platforms such as UberEats, Deliveroo or Takeaway have established themselves in the market, partly with regional focuses such as North America, Europe or East Asia. However, there is intense competition between companies; market consolidations such as the acquisition of the German company Delivery Hero by the Dutch Takeaway platform in 2018 are indicators of the market dynamics in delivery services (Singh, 2019).

Platform-mediated personal or household services such as Helping or Task-Rabbit eventually work with a crowd approach. These platforms provide services ranging from household cleaning and repairs to care services. The success of these services, however, depends on the appearance as well as the experience and qualifications of the employees. Trust has to be generated as customers have to accept access to flats and houses. Cases of a lack of qualifications or communication skills damage the image of the platforms. The platforms therefore face the problem of controlling the integrity, appearance

and qualifications of workers. Some platforms have therefore switched to employing workers as employees and controlling them more or investing in their qualifications (Schmidt, 2017, p. 22).

Platforms in Europe – institutions and contexts

The business model of many platforms has a global or at least an international focus. This is especially true for crowd work platforms that can operate around the globe, the only precondition is to use English as the working language of the platform. This raises the question of whether and how platforms adapt to national or local institutions and regulations and if platforms from different countries show different characteristics in organising work.

An example of a platform operating with a global strategy in different countries is Uber. Uber has found very different conditions to operate with its main business, taxi-like services provided by UberPop, as shown in the 'Don't GIG up!' State of the Art Report and Case Study Reports. In France, for example, Uber benefited at first from beneficial legal conditions; this is why Paris became the first Uber platform outside the US. To be mentioned here is the creation of the new legal self-employed auto-entrepreneur (AE) status in 2008 which allows platforms to bypass the processes of recruitment, payment of wages (especially the legal minimum wage) and social contributions. Furthermore, there was a 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) and 'LOTI' transport (Law no. 82-1153 on guidelines for internal transports, so-called 'LOTI Law'). VTC were introduced in France in 2009, with the so-called 'Novelli Law' (Law no. 2009-888). 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). 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 purposely taken advantage of this piling up of regulations. In particular, they used the VTC framework and the provisions of the LOTI law to be able to find drivers without training, the use of capacity companies hiring drivers with LOTI status allowing them to easily access a driver pool. Most of the regulations enacted after that aimed at harmonising the regulation of VTC with those of taxis, particularly concerning the professional aptitude of drivers, with mitigated results. UberPop was prohibited in 2015, but Uber remained in France, operating with UberX and UberPool services.

The development was similar in Spain, where 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 a national level and protests from taxi drivers and associations, a Spanish court ordered Uber to stop operations in the country. Nevertheless, 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. Restrictions on VTC services, including a minimum notice to book a ride, were introduced by the Catalan regional government, with Uber and Cabify temporarily stopping their operation in the region. Nevertheless, in March 2019, Cabify announced having adapted its business to comply with the new regional rules (Catà and Pueyo, 2019; Chagny, 2020). In Madrid, instead, VTC services currently operate without particular restrictions.

Platforms like Uber and Cabify also contract VTC companies to provide their services. Here, although drivers are generally employees, problems remain in

the computation of working time, as companies tend not to recognise waiting times between rides as part of the working time.

Also in Germany, UberPop was prohibited by a court decision in 2015 as it offered 'taxi-like' deliveries without official licences. Uber tried to get access to the market by offering taxi services with 'legal' taxis coordinated by a TaxiApp (UberTaxi). Here, Uber is in direct competition with other taxi providers and the traditional taxi offices. However, Uber's taxi service UberX, which operated with licensed drivers and rental cars, was prohibited by a court in Cologne for Germany as a whole because it is possible for the drivers to accept an offer directly by the app and not via the taxi office, which is a legal obligation for rented cars. The legal action on this issue is still going on, however the service was and still is closed.

In Poland, Uber has been much more successful. Here, Uber started its operations as early as mid-2014, followed later on by other platform taxi services like Taxify (Bolt), Mytaxi, iTaxi, and Optitaxi. Since the beginning of its operations in Poland, Uber has perceived itself as an intermediary, and the contracts with drivers explicitly state that it is the sole responsibility of the latter to fulfil any obligations related to their activity, as provided by the Polish law. Initially, drivers had to comply only with the following requirements: to be at least 21 years old; to have obtained their driving licence at least one year earlier; to have a clean criminal record and not to have committed road traffic offences; to have a car not older than 10 years (Borowska, 2018; Cydzik, 2016; Szczepaniak and Szczygieł, 2016). Following the statement of the Ministry of Finance (see *Poland, Case Study Report*, pp. 3-4), Uber changed its policy: as of 19 February 2016, the company explicitly requires that drivers using its platform be registered as self-employed entrepreneurs (Sendrowicz, 2016; Sowa, 2016). Drivers may also work in the framework of the Uber platform through so-called 'partner firms', which are usually the owners of a leased fleet; these firms directly recruit drivers who do not have their own cars, and/or do not want to register as self-employed entrepreneurs (Szczepaniak and Szczygieł, 2016). According to Uber, around 40% of its drivers worked through partner firms in 2017.

Since driver earnings are reduced by the margins taken by Uber and the partner firm, driver hourly rates are close to the statutory minimum. For that reason, the jobs have been largely taken over by migrant workers (mainly from Ukraine), who more readily accept lower earnings (Kosiński, 2016; Rozwadowska, 2017; Ziobrowska, 2017). Even though the self-employment status and the contract of mandate have served as workable legal employment frameworks for platform drivers, cases of undeclared work continue to be observed. Besides the problem of undeclared driver income which the Ministry of Finance addressed in its statement, the inspections performed by the General Inspectorate of Road Transport in cooperation with other inspection agencies (mainly as a result of pressure from licensed taxi drivers) have revealed that platform drivers, while performing taxi-like services in many cases, lacked the legally required taxi licences. To address the issue of non-compliance and unfair competition, the Ministry of Infrastructure proposed amendments to the Road Transport Act (adopted by Parliament in May 2019) which eased the taxi license requirements for new entrants.

The food delivery service Deliveroo is also active in several of the countries under scrutiny. In Italy, the company declared having about 6,500 food delivery workers, generally hired under quasi subordinate or self-employment schemes. As to working time, contracts do not set out minimum or maximum standards. The company declared workers perform on average 13 hours a week for a €12 hourly pay (above minimum wages) (Sarzana, 2019). Yet, the possibility to choose working slots is actually influenced by rating and ranking systems and, as highlighted in the Italian case studies, figures on pay and working time are highly questioned.

In Germany, at the time of the study, Deliveroo was active in 15 cities and availed itself of about 1,500 riders. Orders placed by customers are processed by an algorithm, which transforms them into orders for the riders. The latter are provided with rucksacks, rain jackets, rain trousers, and T-shirts by the company, whereas the rest of the equipment (including smartphones and bikes) is provided by the riders themselves. At food delivery companies, riders are either employed under temporary contracts or self-employed. According to the statements made during the interviews, only temporary contracts (mainly with a one-year duration) are used at Foodora, whereas Deliveroo makes use of both temporary employment contracts (with a duration of about six months) and self-employment. Wages are paid on the basis of the German national minimum wage (€9.19 per hour in 2019). Deliveroo furthermore pays a bonus on top, calculated on the basis of the number of deliveries made, which has been reduced over time. Such reduction has led to protests among Deliveroo drivers in several EU countries (The Guardian, 2016).

Formally, work arrangements at Deliveroo are in line with statutory and collective bargaining provisions. According to the German legislation on part-time and temporary work, companies are free to make use of temporary contracts if workers are needed only on a temporary basis, if the contract follows vocational training or academic studies, if the worker is replacing another worker, or if a trial period leading to a permanent contract is needed. Apart from these reasons, temporary contracts can be used for a period of two years with a maximum of three extensions. After this period, factual reasons shall be given for temporary employment, e.g. projects based on external funds that end at a certain point in time. If temporary contracts meet these requirements, they are deemed to be lawful. There is no legislative provision governing solo-self-employment; however, it is clear from case law that two preconditions have to be met in the case of this work arrangement: a) the worker does not employ other workers; b) the worker is not dependent on one client only. In the case of riders, solo-self-employment would be lawful if they did not earn all or most of their income by working for one platform only. Moreover, as the platform gives them concrete instructions in terms of when and to whom to deliver, it actually decides about the time and location of their working activity; in this way, riders are dependent on the employer's instructions. In the light of the above, workers who carry out their working activity only or mainly for one platform could leverage this grey zone in legislation to claim a change in their working status from self-employment to employment (Däubler, 2015)

An alternative form of food delivery is organised by Coopcycle through the creation of a cooperative. Coopcycle was, in the beginning, a platform developed in France as an alternative to capitalistic platforms. After the bankruptcy of Take Eat Easy in 2016, a project was born through a meeting between Alexandre Segura, a developer close to the 'Nuit Debout' movement, and Jérôme Pimot, an anti-platform activist, former deliverer for Take Eat Easy and Deliveroo, and creator of CLAP, a collective of independent riders in Paris. Coopcycle aims to become a European grouping of cooperatives and associations open to bicycle deliverers with a cooperative project. It brings together three types of actors: delivery riders who wish to join a cooperative or association in their locality; restaurateurs who want to engage in an ecological and socially responsible delivery service; and the association 'Coopcycle', which ensures the coordination of the different cooperatives. Coopcycle is also in charge of the development, mutualisation and usage rules of the common tools. The approach is horizontal: Coopcycle federates local cooperatives. Three primary services are shared: first, the platform software, which allows members of the federation to manage their deliveries (logistic module) and manage the orders (e-commerce service). Second, the smartphone application, which can be used for the orders. And third, the joint commercial offer particularly towards 'key account customers'. Other shared services include visibility & brand or ad-

ministrative and legal services. Coopcycle brings together (in autumn 2018) about thirty cooperatives from Spain, France, Belgium, Germany, the United Kingdom and Italy, with together 70 persons/riders. The software was launched in early October 2018. In spring 2019, it was used in about ten cooperatives in France, Spain, Belgium, Germany, Italy and the United Kingdom by about sixty persons/riders. Several governance principles govern the links between the Coopcycle association and local cooperatives: to adopt a cooperative model and employ their deliverers via a traditional employment contract or a wage portage company, and to meet the definition of Social and Solidarity Economy as stipulated by national/eventually European law. Each local cooperative is free to set its rates to customers and to determine the method of pricing. At a local level, couriers decide together everyone's contribution according to their juridical status (cooperative, association, institutional entity), the fund's allocation, the pay scheme to provide services. Different statuses will be possible, as the state of salaried employees cannot be applied in all countries, nor is it desired by all riders. In Paris, for example, all the cooperative's workers will be employees. Other cooperatives in Europe want to remain independent. However, the objective for the employees of cooperatives and associations members of Coopcycle is to make it possible to work on a full-time basis, paid above the legal minimum wage. A minimum number of working hours per week is guaranteed, as well as predictability on working hours. The equipment is provided by the collective (bicycles worth about € 4,000), and the cooperatives also provide all other materials (headphones, etc.). Coopcycle's objective is to negotiate 'tailor-made' group insurance contracts for bicycle delivery companies. Contacts have been made with MAIF to determine the type of coverage adapted to needs. Discussions are underway to link the couriers to the collective agreements. In Switzerland, for example, a link to the collective agreement for lorry drivers has been established.

Looking at Europe as a whole, institutional and legal conditions for labour platform services vary significantly between the Member States of the EU. The case of Uber gives an example of these differences. However, the market for passenger services is highly regulated in terms of conditions and provisions for drivers and companies; other markets like those of food deliveries or cloud and crowd work are much less regulated. Here it is not the fulfilment of the legal market regulations which is the most important question but the employment status of platform workers. As platforms usually define their role as market intermediates and not as employers, they offer contracts for self-employed workers. This means that platform workers are not regarded as dependent employees and are usually not covered by the legal and social rights provided for this group of workers. As the platforms are able to define the employment status in their 'Terms of Services' and as in all countries solo-self-employment is a legal status, there are two questions to be tackled: first the legal question, whether the platform workers fall under this category of workers; and, secondly, the political question if and how the legal and social security systems have to be changed and adapted to the development of platform work.

In **Italy**, although gig workers may be classified by the platform as self-employed, they may still be subject to the employee's regime protection. Under a technical legal viewpoint, there is a scission between the gig worker status (employee/self-employed) and the effects of such a status. The Italian labour legal systems introduced such a special regime by Act no. 81/2015, art. 2, para. 1.

Case law (in particular, Supreme Court judgment of 24 January 2020, No. 1663) buttressed this regime, highlighting that the strategic dissimulation concerning gig worker status can be demonstrated on the ground of the actual decision-making power on the organisation of the work performance by the client. As a consequence, the labour judge and/or the labour inspectorate can order the application of the employee status's protection on an easy burden of proof.

The judgement seems to clarify the interpretation of much-debated provisions introduced by Act no. 81/2015 to tackle abuse of the Italian 'third status' (also called 'quasi subordinate work'). As detailed in the State of the Art Report (pp. 32-34), these provisions replaced anti-fraud rules introduced in 2012 which leveraged instead on a criterion of 'economic dependency' (see *the State of the Art Report*, pp. 32-34).

More recently, after difficult bargaining between the Italian Government and social partners, Act no. 128/2019 introduced a minimum set of protections for self-employed gig workers dealing with food delivery in urban areas only (art. 47 bis – Act no.81/2015 as amended in 2019). The provision targets goods delivery platforms which fix the pay and determine the modality of the work performance. Among others, workers shall be entitled to minimum pay as per collective bargaining and protections in terms of health and safety, whilst disconnection or reduction of offers due to unaccepted jobs are prohibited. Nevertheless, these measures shall become fully operative by November 2020.

Spain introduced a third status (so-called TRADE regime) in 2007 to overcome legal uncertainty over misclassification of workers. The status grants some protections to self-employed in a position of economic dependency from the client (mainly in terms of working time, interruption of the contract, social protection, and right to collective bargaining) (Gonzalez Gago, 2018; Sanz et al., 2017). Yet, there is some evidence on abuses of this status to disguise employment relationships and, as shown in the State of the Art report (p. 68), some ambiguity arose in case law concerning platform food delivery workers themselves (judgement no. 284/2018 of the Labour Court of Madrid rebutting the presumption of employment in favour of the TRADE regime).

In **France**, the status of solo-self-employment has been created rather recently with the introduction of the auto-entrepreneur (AE) in 2009. For what concerns more specifically platform work, law provisions introduced the principle of social responsibility for platforms in 2016. 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. 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. As a consequence, 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 raised public debate regarding their quality, the consequences for the financing of social protection, and the attachment to the platform rather than to the individual. The second obligation gives workers access to vocational training rights. Yet, these rights are built on those of other independent workers and are therefore limited: 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. 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 (€5,347.7 per month in 2020). The third part of the social responsibility of platforms recognises the right to strike for workers using the platform. 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. Many collective movements have emerged in France since the introduction of platforms. They are concentrated in the transport sector: VTC drivers in 2015-

2016, and, since 2017, mainly in the courier services sector. These movements frequently followed 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.

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’). 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 is the exception of the status 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%); he/she is dependent on protection in a similar sense as a normal employee. Note that 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: 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. In a white paper from 2017, 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. 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, and the idea of an adaptation to the social security system for artists was rejected explicitly.

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 categorisation imposes the responsibility for issuing income tax 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 wide-scale 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, 'precarisation' 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. 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) – 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' (Komisja Kodyfikacyjna, 2018).

THE PROTECTION OF PLATFORM-BASED WORKERS: STRATEGIES AND ACHIEVEMENTS

The new business strategies implemented by digital platforms require new forms of workers organising in order to protect their rights vis-à-vis the employer. Due to the fact that digital platforms often elude the existing legislation and regulations protecting workers, the initiatives of trade unions take place on unstable ground. Platforms refuse to be classified as employers and therefore to be subject to the usual employer obligations, including entering collective employment relations. This position disrupts collective bargaining systems in European countries. Moreover, the legal status of gig workers is still not clear in many countries. The workers are frequently recognised by platforms as independent contractors (not as employees) and their relation to platforms is often interpreted as a business-to-business relation. Therefore, it is also not clear how trade unions may organise platform workers. In this sense, current relations between worker and platforms may recall to some extent the state known in the 19th century before workers' rights and social protection were won.

Current experiences show that platform work poses a challenge for both workers and trade unions in many aspects such as the following:

- ensuring decent pay;
- avoiding misclassification of employees and forms of digital illicit intermediation or undeclared work;
- ensuring social protection;
- ensuring compliance with applicable labour standards, including those concerning health and safety at work and termination of the contract/dismissal;
- promoting vocational training and training on health and safety matters;
- promoting a positive impact of platform work on work-life conciliation;
- using platform data for inspection purposes.

The unclear legal status of digital platforms and gig work, as well as occurrences of numerous labour-related difficulties between the two, leads to a question on the approaches that may be deployed by social partners and national policy makers in order to tackle threats posed by the gig economy to workers' rights. This chapter outlines three main areas in which some initiatives have been undertaken so far in Europe: social dialogue attempts, new forms of gig worker representation, and union organising and services offered to gig workers. This mapping exercise is aimed at an overview of those initiatives in order to empower workers by delivering tangible examples of actions. The chapter is structured from 'hard' to 'soft' measures adopted in practice in the project countries: France, Germany, Italy, Poland, and Spain.

Social dialogue attempts

Social dialogue is at the core of protecting workers' rights, therefore workers strive to determine collective employment relationships in order to establish satisfying working conditions with digital platforms. Currently, there have been many attempts to undertake social dialogue actions in this challenging environment across Europe. These initiatives took various forms: social dialogue at company and sectoral level, introduction of legal regulations at national level, regional agreements, and collective actions like protests and strikes.

Social dialogue solutions

There were attempts to establish a **works council**, which is the key social dialogue body in the German industrial relations system, in several food delivery platforms like Lieferando and Foodora. The most successful one was carried out in **Deliveroo in Cologne** in 2017 and was preceded by a media campaign on riders' working conditions entitled 'Delivering at the limit'. Workers reported problems with wrong or incomplete pay slips, temporary employment status, etc. Riders established a WhatsApp discussion group after shutting down the Deliveroo communication platform for workers and demoting the leader who initiated the election commission¹. Deliveroo also tried to disable the election process by proposing an election date (at 9 am) out of the usual delivery hours (lunchtime and later) and outside the corporate premises. In order to gain more attention, riders organised a flash mob in Cologne. The event was very effective in terms of outreach to media, riders in other platforms (Foodora) and the general public. It also attracted the attention of the Federal Minister of Labour (*for details see Germany, Case Study Report*).

In Italy, the scope of the NCBA Applying to the Logistics Sector was modified in December 2017 to clarify that it also applies to platform delivery workers. 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. The duties and job classification of these workers were detailed later on (18 July 2018) in dedicated provisions, where minimum standards in terms of wages, working time (working hours limits, shifts, etc.), provision of protective equipment to riders, and civil liability insurance were agreed and defined (*for details see State of the Art Report, Italy, p. 46*).

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

In Sweden, inputs provided for the State of the Art Report by the white-collar union Unionen highlight instead how some platforms intermediating 'traditional gigs' or micro-tasks were more prone to adhere to the dominant collective bargaining model, considering their reputation as a 'fair' platform as an asset to attract clients and workers alike.

In this respect, some platforms underwrote to apply sectoral collective agreements.

¹ There is a legal gap in terms of protecting workers against dismissal and demotion during the run-up phase of a works council. The members of the work council are covered with protective regulation just after the official establishment of the body.

Legal solutions

In 2016, a so-called **'social responsibility package'** was introduced into the labour law in France in order to specifically provide platform workers with some protections. Article 60 of the Labour Law² conferred three types of protections: **protection against accidents at work, the right to vocational training, and the right to strike, trade union membership and collective bargaining.** This provision applies to those platforms that determine the characteristics of the service provided or of the goods sold, and that fix the price of the service, like platforms matching passenger transport (Uber, Lyft, etc.) and goods delivery (Deliveroo, Foodora, etc.) services. Platforms matching 'traditional gigs' (TaskRabbit, Helping, Fiverr, Upwork) and externalising micro-tasks (like mTurk) are not covered by the law. **Protection against accidents at work** (up to a ceiling defined by a separate decree): the platform is exempt from this obligation if the worker already has individual insurance. Many platforms have partnered with insurance companies to offer insurance policies for accident and liability protection. **The right to vocational training** is limited only to independent workers (like self-employed). Platforms are also obliged to cover the costs of the recognition of competencies acquired on the job (*validation des acquis de l'expérience*, VAE). The above two rights are conditional to a minimum worker's turnover (Decree no. 2017-774 of 4 May 2017 set this minimum threshold at 13% of the annual ceiling for social security, namely €5,347.7 per month in 2020). **Right to strike:** 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 (*for details see State of the Art Report, France, pp. 24-25*).

Minimum fees

Several union initiatives in **France** aimed at introducing minimum fees for platform workers, especially in the transport sector. These claims have been put forward since 2015 without success in the transport sector. The adoption of a new law at the end of 2019 (Law no. 2019-1428, named 'Framework Law on Mobility') allows platforms to set up unilateral charter arrangements aimed at enabling workers to obtain a decent price for their services, without any detail about what can be considered as a 'decent price'. Indeed, so far, the only effective measure relating to minimum fees is the one proposed by alternative and cooperative platforms, like Coopcycle. For reference please see the previous chapter.

In July 2018, the **Spanish government** adopted the **Master Plan for Decent Work** for the period 2018-2020 aiming 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. The plan included collaboration with the Tax and Transport Inspection bodies, special visits on weekends and nights, and reinforcement of inspections in areas more at risk. The Master Plan for Decent Work relates to platform work among other economic practices. Digital platforms are accused of 'precaritisation' of the labour market, based on the lowering of costs through the reduction and violation of labour rights of both blue-collar and white-collar workers. In effect, gig workers work more hours for the same (or even lower than before) wage, leading to an increase in the 'working poor' group. Moreover, it states that platforms abuse the status of self-employment (Special Regime of Self-Employed Workers) while the work should be regulated under a labour contract. In order to fight these fraudulent practices, the Master Plan announced that digital platforms and e-commerce will be a subject of labour inspections in the nearest future.

² Law no. 2016-1088 of 8 August 2016 regarding work, modernising the social dialogue, and professional careers.

Regional agreements

Following the example of the Charter of Fundamental Rights of Digital Work in the Urban Context of the Municipality of Bologna (see details in the next sub-chapter), some regional administrations in Italy decided to prepare local legal acts regulating digital platforms and gig work. **The Act of the Lazio Region**, approved in April 2019, while featuring contents similar to the Charter, entails a more proactive role of the public institutions.

In particular, the law introduces:

- the obligation for platforms to insure workers against accidents at work and damages to third parties, provide personal protective equipment free of charge, cover expenses for the maintenance of working tools;
- the obligation for platforms to ensure social protection of workers, in line with national standards;
- the right to collectively agreed minimum pay, including an allowance for cancelled shifts, whenever the withdrawal is not ascribable to the worker;
- the obligation for platforms to ensure a transparent functioning of the algorithm matching labour demand and supply, and of rating systems, including an impartial procedure of verification of the rating upon request of the worker;
- portability of ratings;
- preventive information to be provided by platforms to workers.

In addition, the law commits the Lazio Region to implementing a set of soft measures among which training, a web portal on digital work, a 'Fair economy' label for platforms, and a stakeholders' committee tasked of promoting research and policy proposals on digital work as well as supporting dialogue.

On 22 January 2019, the Regional Council of the **Piedmont Region approved a bill on the gig economy**. The bill was submitted to the National Parliament to be discussed as a national law proposal in order to avoid a breach of Constitutional provisions on the regional legislative powers. In particular, it aims to strengthen the notion of subordination of worker by addressing possible grey areas for platforms. Among other provisions, algorithms shall be subject to an experimental phase and a consultation right for unions, whereas rating mechanisms based on the reputation of the worker shall be banned (*for details see State of the Art Report, Italy, pp. 47-48*).

While inspiring and fuelling debate on gig workers and laying down possible ways forward, similar initiatives came to terms with the limited competences of the Italian regional and local authorities on aspects concerning pay and social protection.

Collective actions

Collective actions, namely protests and strikes, which are the hardest sorts of actions that could be undertaken by workers, took place in each of the project countries (France, Germany, Italy, Poland, Spain). In **Germany**, the mobilisation of food delivery workers achieved large resonance through the above-mentioned campaign 'Delivering at the limit' in 2017. In **France**, the collective actions were organised mostly against platforms in the transport sector (in 2015-2016 mainly in the passenger transport sector, and, starting from 2017, in the delivery sector). The protests frequently followed platform decisions on increasing commissions (e.g. from 20% up to 25% by Uber in December 2016), switching to a shift fee instead of hourly remuneration for couriers since July 2017,

and, in 2019, decreasing the shift fee. In **Italy**, Foodora workers issued a strike in October 2016 after the decision of the company to gradually shift from hourly pay (€5.60 per hour) to piece-based pay (€2.70 per delivery). The dispute also followed the company's refusal 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 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, not only once the restaurant is reached, and other aspects concerning work organisation and working time. A 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. In **Poland**, massive protests of taxi drivers were organised in the years 2017-2018 against Uber and Uber drivers. The main accusation formulated by the taxi drivers was that of unfair competition due to not being subject to the same obligations, like having a taximeter, paying social contributions, passing an exam and having a taxi licence, etc. In **Spain**, the Riders for Workers' Rights started a strike in 2017; however, the right to strike for self-employed workers is not recognised and therefore did not bring any improvement in working conditions of Deliveroo riders.

Union influence and possible new forms of workplace representation for gig workers

Legal recognition

Right to trade union membership, right to collective actions

Due to the fact that the employment status of platform workers has not been clearly defined, the fundamental workers' rights such as the right to membership in trade unions, the right to collective bargaining and to collective actions, had to be confirmed and recognised by the states. 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 covering all workers in an economically dependent position, including quasi subordinate workers and even 'solo-entrepreneurs'. Yet, strike action by atypical workers is quite unusual given the high risk they face of not having their contract renewed. Indeed, the landmark Foodora lawsuit follows the non-renewal of atypical contracts to delivery workers having taken part in the first demonstrations claiming for adequate protections.

In **Spain**, the Labour Court of Madrid ruled (on 11 February 2019) 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 of the contract', and the absence of worker ownership on results, organisation of production and on sales, being mediated exclusively by the platform. In **Poland**, only employees – meaning those who are employed under employment contracts – were eligible for membership in trade unions and, therefore, to take part in collective agreements before 2019. Self-employed and civil contractors were formally excluded from collective employment relations. The amendment to

the Trade Unions Act extended the right to union membership (and therefore also the right to collective bargaining) also to self-employed and civil contractors. In this way, the right to strike has also been confirmed indirectly for both groups. However, to go on strike, workers in the company have to be represented by a trade union (established in the company or an external trade union organisation) and to get through a multi-stage collective dispute procedure with the employer (including a valid referendum on strike). In practice, fulfilling these formal criteria is hardly possible, even if the digital platform accepts to take up the formal role of employer in the collective dispute process. In this context, regular civic protests are a more adequate form of expressing discontent. As mentioned above, article 60 of the Labour Law in **France** confirmed the right to strike, trade union membership and collective bargaining. In **Germany**, self-employed workers are allowed to be members of trade unions, and the service sector union Ver.di, for example, has a tradition of organising self-employed journalists. Journalists belong to the few exemptions of self-employed made by the Collective Bargaining Law from 1949 for whom a collective bargaining agreement can be made; in general, self-employed are not covered by the agreements.

Codes of conduct

While collective employment relations are difficult to establish with digital platforms, workers resort to alternative solutions in the form of codes of conduct to which platforms are voluntarily committed.

In 2015, IG Metall – a German trade union – initiated the **Code of conduct** for digital platforms aiming at providing general guidelines about how to act with regard to crowd work and, thereby, at establishing a basis for trustful and fair cooperation between service providers, clients, and crowd workers, a basis that supplements the applicable legislation. As many as eight platforms joined the initiative, namely Testbirds, Clickworker, content.de, Crowd Guru, Streetspotr, appJobber, ShopScout, and BugFinders. The code included the following protections: obligation to inform on legal and tax regulation, fair, on time and transparent remuneration, task description, and work schedule, enabling communication between workers and platforms, freedom for the worker to undertake tasks, assistance and technical support in carrying out work, written justification on rejection of projects, personal data protection. In the run-up to the discussion with the platforms, IG Metall, together with international trade unions from Austria, Canada, Denmark, Sweden, and the USA, held a workshop in Frankfurt and subsequently published the so-called **‘Frankfurt Declaration’**. The union then pushed for amending the Code of conduct in order to introduce a guarantee of ‘local usual fees’. This did not meet the demand for compliance with the minimum wage, but was seen by IG Metall as an important first step on the path towards the acceptance of the national minimum wage as a wage standard (*for details see Germany, Case Study Report, pp. 4-8*).

As to France, in the spring of 2018, in the context of the bill on the reform of vocational training, an amendment was introduced allowing platforms to adopt unilateral ‘charters of good conduct’ specifying the conditions for exercising their social responsibility. The eventually approved amendment was rejected by the Constitutional Council in the summer of 2018. The project of charters was reintroduced in autumn 2018, as part of the draft Framework Law on Mobility, adopted in December 2019 (Law no. 2019-1428). This allows platforms operating in passenger transport and goods delivery to adopt unilateral optional charters (Article 44 of the law). Finally, article 48 authorises the government to take legislative measures within a 12-month period to determine the terms and conditions for the representation of platform workers. In the initial version of the law adopted, platforms that adopted charters validated by administrative authorities were protected from the requalification of the workers they intermediate. The Constitutional Council ruled out this option as unconstitutional.

Following the mobilisation of riders, the **Charter of Bologna** was adopted in 2018. This local-level non-binding code proposed a list of digital platform duties and rider protections: obligation to deliver to riders a detailed work description, minimum wage and other wage-related obligations, right not to execute the work performance in case of extraordinary meteorological conditions, right to non-discrimination, insurance against accidents at work, obligation to provide health and safety equipment and to reimburse fully or in part costs for maintenance of working tools, right to disconnect, personal data protection, right to establish or join a union and right to assembly, establishment of a monitoring table involving signatory parties to meet every six months, etc. The charter was signed only by local service providers, while large players refused, arguing that the adoption of local regulation would jeopardise the national regulations. Following the example of the Charter, the Bill of the Lazio Region (2018) and the Law Proposal of the Piedmont Region (2019) were initiated (see above) (for details see State of the Art Report, Italy, pp. 46-47).

Ombudsman office

In 2017, the **Ombudsman office** was established in Germany as a direct effect of IG Metall's initiatives in order to respect provisions of the Code of conduct and to resolve conflicts between digital platforms and workers. The Ombudsman office consists of five members, including one representative from one of the platforms, one representative from the German Crowdsourcing Association (*Deutscher Crowdsourcing Verband*, DCV), and two workers' representatives (a crowd worker and a trade union officer). Overall, around 30 cases have been dealt with so far, all of which have been settled by consensus with the involvement of the Ombudsman office.

Cooperation with labour inspectorates

Trade unions also try to undertake some alternative actions in the form of cooperation with labour inspectorates, if direct representation of platform workers is not fully possible. In **Poland**, NSZZ 'Solidarność' turned to the National Labour Inspectorate to conduct an audit at Uber in 2019. The audit covered mostly health and safety issues, but also irregularities in payments to workers. The Inspectorate concluded in the post-audit report that current legislation is insufficient to control all practices pursued under the Uber (and Uber-like) business model. In **Spain**, the UGT and CCOO trade unions have reported companies such as Glovo, Deliveroo, Uber Eats, and Stuart to the Directorate General of Labour Inspection and Social Security Inspectorate, as they are deemed to hire bogus self-employed workers. Most judgements endorsed union complaints, ruling in favour of workers.

Employers best practices

There are also some examples of initiatives undertaken by digital platforms themselves aiming at creating a fair working environment. They aim to see how alternative 'third parties' allow workers to combine security and autonomy. These solutions enable entrepreneurs to benefit from the protection granted to employees within a cooperative or collective of self-employed workers. In **France**, a large-scale initiative called **Coopcycle** was created by a collective of activists and delivery workers with the aim of supporting the birth and growth of cooperative and fair platform businesses (see above). In **Spain**, a Seville-based start-up called '**Mission Box**' employed delivery workers under employment contracts. This demonstrates that there is nothing to prevent platforms from applying binding labour regulations and competing with other digital platforms, with no need to modify the applicable labour legislation.

Union organising and services to gig workers

Unions try to organise workers in their work environment. This poses a number of challenges as the nature of gig work is characterised by a lack of physical workplace, dispersion of workers, flexible working time patterns, casual employment relation, and use of new technologies (both digital devices and on-line applications). Platform workers therefore have work-specific needs which should be addressed separately and in a new way. On top of that, the public opinion on digital platforms and gig workers is still not fully shaped, therefore unions also address their actions to the wider public.

New union organising strategies

Unions across Europe are adopting new strategies to organise workers. First of all, they are trying to reach platform workers where they are, meaning both in virtual space and on the streets where the gigs are carried out. Gig workers are contacted through social media, thematic forums and dedicated online platforms (see more below). Union organisers hand out leaflets encouraging to join unions and containing information about services dedicated to platform workers. Also, some events in public space are organised, like the flash mob in Cologne, that attract the attention of public opinion and workers alike. These strategies have been applied by IG Metall and Ver.di (which launched a special office addressed to independent contractors and self-employed) in **Germany**. In **France**, UNSA launched its first actions addressed to gig workers in 2015 by amending the statute in order to be able to affiliate non-salaried drivers. Non-salaried drivers are also affiliated by FO and CFDT. Local sections have been created by the CGT for delivery workers. Currently, all representative trade unions have some services addressed to gig workers. An original initiative for freelancers was launched by the CFDT in December 2016, with the set-up of the 'Union' platform. New independent collectives were also created, such as the *Collectif des Livreurs Autonomes Parisiens* (CLAP) for delivery workers. In **Italy**, the first attempts to unionise platform workers started in 2017 with an online questionnaire on working conditions and expectations of workers towards unions launched by UILTUCS, the trade union for workers in the trade and service sector affiliated to UIL. The union has been reaching out to delivery workers on the streets, particularly in Milan, to discuss their problems and affiliate them. A similar strategy was adopted by CGIL, launching a campaign in July 2019 with leafleting and initiatives in squares and shops where delivery workers meet. Delivery workers also organised strikes and campaign through independent movements, especially in large cities. In **Spain**, unions – especially UGT and CCOO – are currently adapting their structure so as to be able to represent the interests of workers operating under different employment statuses. This includes exploring ways of organising workers in the digital economy to complement traditional formulas (for details see below).

Services provided in a traditional way and online

Unions have developed a number of services addressed directly to gig workers or to the broader group of independent workers (self-employed, civil contractors, etc.) whose mode of operation resembles casual employment relationship. Namely, some platform services delivered online have been created:

- <http://faircrowd.work/> – an online platform initiated by IG Metall, Austrian Chamber of Labour, Austrian Trade Union Confederation, and Unionen aiming at a workers' assessment (ranking) of digital platforms based on surveys with workers and exchange of information on workers' experienc-

es. The portal contains also other useful information, like basic knowledge on platform work, contacts to unions organising gig workers, link to the 'Frankfurt declaration';

- <https://selbststaendigen.info/> – an online platform operated by Ver.di addressed to independent contractors (self-employed, gig workers, etc.) delivering legal, contract-related and tax advice to both union members and other independent contractors. The latter group is charged for the advice while the union members are supported on the basis of their membership fees.
- <http://www.turespuestasindical.es/> – an online platform operated by UGT to inform and advise platform workers in Spain. The goals of this platform include information, vindication of rights, organisation, and denunciation, as well as serving as a tool to encourage participation in unions;
- <https://precaritywar.es/> – an online platform operated by CCOO and addressed to atypical workers, aiming at legal assistance for platform delivery workers operating in Madrid;
- **Union platform for freelancers** created by CFDT, supporting them with accounting, civil and professional insurance, complementary health insurance, and legal advice, as well as mutual aid between members. The project was relatively dormant between 2016 and 2019, and received a new impulse in 2019 with the creation of an association, supported by – but independent from – the CFDT.

Moreover, unions prepared new services in order to meet the specific needs of gig workers in a traditional way. For instance, UILTUCS has established a help-desk to support gig workers with fiscal and legal consultancy services.

Research and cooperation

There are also some research and cooperation initiatives undertaken by unions in order to update information on this dynamic phenomenon and to prepare adequate reactions. In **Italy**, UILTUCS established an Observatory on working conditions of gig workers. Some local committees addressed to the monitoring of platform work have been created at a regional level. In **France**, the Sharers & Workers Network has been established by IRES and Astrees in 2015, aiming to interconnect the different stakeholders (trade unions, researchers, experts, public actors) of the digital economy to reflect collectively on the future of work and social relations. As much as 700 stakeholders have already participated in the Sharers & Workers Days since 2016. At the **EU level**, the European Observatory on Digital Labour Platforms has been launched in 2019 by the ETUC, IRES and Astrees. The Observatory aims at mapping and assessing existing practices of worker representation and social dialogue within platforms, as well as developing new methods of representation and dialogue with the stakeholders and specifically platform workers at the European level.

CONCLUSIONS

The comparative analysis implemented throughout the project highlighted some common challenges across the covered countries. The largest labour platforms seem to elude both provisions covering regulated occupations and sectors, such as the taxi industry, and labour obligations by automating decision-making processes through algorithms and/or by using competition among workers triggered by their 'marketplace' to put pressure on their pay and availability to work while shifting the business risk onto self-employed. The use of these new tools to organise production and manage the workforce represents a 'stress test' for unions and social dialogue as well as for the efficacy of regulatory and enforcement systems. This applies especially to political choices on the regulation of labour rights and labour market, and to the integration of platforms in the existing systems of collective bargaining and workplace representation of labour.

In Germany, IG Metall managed to achieve preliminary forms of collective bargaining in crowd-work platforms, discussing possible amendments and improvements to the Code of Conduct voluntarily adopted by platforms and including some guarantees for gig workers. Sweden seems to go even beyond. As remarked by Unionen, platforms have shown tendencies to favour collective bargaining agreements to overcome reputation problems and credit themselves towards clients and workers in a context featuring high union density and a strong role of collective bargaining in shaping working conditions.

The allegation by Uber that it does not perform a taxi service was rebutted by courts or inspectorates in all covered countries, whilst the project witnessed a trend in recognising the factual existence of an employer-employee relationship through court rulings or inspection activities in food delivery platforms encompassing France, Spain and, lastly, Italy. Poland seems instead to perform a significant legislative gap with respect to platform work. Only in the road transport sector (covering Uber-like platforms) were new regulations introduced in this country, but with the intent to level the position of both traditional and platform taxi drivers through deregulation of the sector and lower requirements for taxi drivers.

Nevertheless, the platform business model was also confronted with labour market institutions weakened by more than two decades of flexibility and, later on, austerity policies. The introduction of simplified tax and social security regimes for self-employed or 'mini-jobbers', loopholes in the regulation of quasi subordinate work, the weak protections accorded to self-employed (especially in terms of right to strike and minimum pay), and the inability in some countries to tackle undeclared work (including abuse of self-employment and 'civil law' contracts), are all factors preceding the development of platform work, sometimes flourishing in already precarious occupations.

In that respect, the project partners identified a set of 13 recommendations meant to exploit the features of platforms to the advantage of workers. The use of digital tools by platform companies can ease the monitoring and enforcement of workers' rights by public institutions also in activities often confined to the shadow economy. At the same time, gig workers should be guaranteed

new rights addressing the features of work in platform businesses, whilst web forums and chats can become new channels by which unions reach out and inform workers, and workers can organise themselves.

While remaining open to adaptation and interpretation in the relevant context, the recommendations can achieve their full potential if accompanied by policy reforms addressing the wider loopholes and gaps in the regulation and monitoring of non-standard work and self-employment, often a cheap option to escape the costs and boundaries associated with standard employment contracts. By shedding light on business models and activities going on in the so-called 'gig economy' and by discussing possible initiatives to improve workers' rights, we wish to inspire policies promoting employment and growth through social justice while reinstating that labour is not a commodity.

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