



DON'T GIG UP



Germany

Case Study Report

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INTRODUCTION

This paper is one of the Country Case Study Reports 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 (from February 2018 to January 2020), the project combines studies and action research to analyse features and challenges of the gig economy in a set of selected countries, namely: Germany, France, Italy, Poland, Spain, and Sweden.

The first phase of the action was dedicated to the drafting of a State of the Art Report, a document providing an overview of the political, social, and academic debate on the gig economy and its features, as well as of relevant reforms and data in the countries covered by the project.

Whereas the report provided a homogeneous knowledge base on the topic, the following case study analysis investigates and assesses practices meant to organise gig workers and to increase their employment and social security rights.

The comparison of practices, taking place also by means of three mutual-learning workshops, shall lead to a final comparative assessment on how the gig economy affects industrial relations at both national and EU level, with a view to delivering policy recommendations.

METHODOLOGY AND CONTENTS OF THE CASE STUDY REPORT

The report is based on a questionnaire for each case study, filled out by experts appointed by the project partners. This questionnaire was structured along three sections, covering respectively: the features of each selected practice; contextual information on the platforms concerned; and a final assessment.

An abridged version of the questionnaire was used to implement a preliminary screening and to select practices deemed to be more interesting for the purposes of the project.

The questionnaire was complemented with an introduction on the target measures and the topics of interest to be investigated.

With a view to guaranteeing homogeneity and comparability of results, the introduction also provided guidance on the sources suggested for the analysis, namely: press releases and press articles; existing literature (reports, studies, scientific articles, opinion papers, and policy papers); reviews and information available on the '[faircrowd.work](https://www.faircrowd.work)' website as applicable to the covered country, as well as on forums where gig workers interact; available data on working conditions as per official or independent surveys; and interviews with stakeholders, including those having a direct role in the implementation of the measure.

The partners agreed to conduct a minimum of two semi-structured interviews for each case, possibly by phone, and using the grid proposed as a basis for the questionnaire, while focusing on the aspects best known to the respondents.

CASES 1 AND 2:

IG Metall's 'fair.crowdwork' and the code of conduct

Description of the measure

What are the **features** of the measure with regard to the protection of gig workers (please refer to all the relevant areas of interest)?

The 'fair.crowdwork' initiative was launched by the Industrial Union of Metalworkers (*Industriegewerkschaft Metall*, IG Metall) in 2015, the year when Christiane Benner, now serving as the union's second chair, edited a book entitled *Crowdwork – zurück in die Zukunft? Perspektiven digitaler Arbeit* (meaning 'Crowd work – back to the future? Perspectives on digital work') (Benner, 2015). This book opened and shaped the trade union debate on crowd work. In the book, the editor refers to three reasons why trade unions should engage with crowd work: because working in the online world will have an impact on the working conditions of all workers; because online work is also work that should be fairly paid and regulated; and because it is important to prevent a social setback that could take society back to the beginning of the industrial age. She demanded that economic property rights such as copyrights and general terms and conditions be applied to crowd workers, that protective rights enjoyed by employees be applied or extended to crowd workers as well, and that digital work be legally framed so as to enforce minimum conditions. The explicit aim is not to outlaw digital work, but to regulate it in a socially acceptable way.

At the same time, the union developed and launched a first version of a 'fair.crowdwork' website. In doing so, it followed the 'Turkopticon' browser plugin, which was developed in opposition to the 'Amazon Turk' platform, and on which crowd workers can review their clients with the long-term goal of establishing a 'workers' bill of rights'. One of the pioneers of 'Turkopticon', Michael Six Silberman, started working for IG Metall shortly afterwards, and took over the management of the platform. 'The general goal behind the website's design was to create a place for workers to post and read reviews of digital labour platforms. Target users were current or prospective platform workers who would like to make better-informed decisions about which platforms on which to work. The platform reviews on this original site had two main sections: worker reviews and a "terms of service check" '(Harmon and Silberman, 2018).

In the same year, the concept of the website was revised, and one year later a second version was put online. The decisive change consisted in developing a new method for the survey. In the first version, the rating was given directly by workers. The only requirement was to log on to the website with an email address; no checks were carried out to make sure that those who were providing reviews had actually worked through a platform. Therefore, such procedure was deemed to be no longer legally admissible. This assumption was triggered by a court action brought by a dentist against a person who had posted a negative review of his surgery on the net: the plaintiff argued that he had never

treated or even seen the author of that negative review. In this case, the court found in favour of the plaintiff, ordering the deletion of the review. In the wake of this decision, IG Metall set out to avoid similar legal issues.

Therefore, in the second version, a new solution was developed: a restricted-access survey to be completed by platform workers. The consent of the platforms concerned was requested as long as the questionnaires could not be posted there from the outside; most of the platforms – with the exception of, *inter alia*, Amazon and Uber, which are known to be critical of trade unions – agreed. IG Metall decided to pay respondents for two reasons: a good response rate had to be ensured; and the main feature of crowd work, i.e. the fact that money is earned with clicks, had to be complied with. The amount of money paid to respondents was calculated based on the fee – ranging between € 10 and € 14 – commonly applied in the framework of the platforms concerned. The questionnaires were then evaluated by IG Metall, and checked against a consistency test before calculating rankings. The number of questionnaires received ranged from 25 to 150 per platform. The survey was not representative, but provided results that were not available elsewhere.



'We had a big event at the European Trade Union Institute (ETUI) in Brussels in 2016, where people all complained that you don't know anything about crowd workers, that you can't get to them. And I could say on the basis of our platform: "People, that's not true, you can get to the people. It's not easy, you have to come up with something, but it's possible. And some of the platforms are also involved. Well, the message was: We are not without chances. And we have decided that we want to talk more with the platforms now.' (Expert at IG Metall)

The unexpected willingness of the platforms to engage in dialogue provided the impetus to go further. Besides the rating platform and the survey, IG Metall decided to add a second pillar to its trade union strategy with a view to gaining direct influence on the platforms.

IG Metall is currently pursuing three further priorities in its crowd working initiative. The first priority concerns the extension of the list of signatories to the code of conduct: the union is actually talking to other platforms also from the gig economy, and tries to convince them to subscribe to the code of conduct. The second priority concerns the development of a third version of the 'fair. crowdwork' platform with the aim of developing and posting a list of criteria to draft the general terms and conditions in the best way possible. From the union's point of view, general terms and conditions not only determine the status of the workers concerned (employed or self-employed), but also the working conditions with a view to transparency and fair treatment and communication.



'I personally believe that this is a far more important question than whether crowd workers are defined as employees or self-employed. This question ultimately depends on a few points in the general terms and conditions, and if the platforms change that, the employees will certainly be classified as self-employed.' (Expert at IG Metall)

The third priority concerns membership recruitment. IG Metall has approached many crowd workers up to now, and has also totalled several hundred members. Although this is not a large number in absolute terms, it is possible to maintain that – in view of the lack of company structures and local representation of interests by works councils (membership recruitment is traditionally the core business of works councils) – success rates should not be underestimated. Nevertheless, the approach and the recruitment of members should

be organised more systematically – this suggestion is to be complied with when setting up the new platform. At the same time, advertising through social media channels should be intensified.



*‘This year we want to improve our systematic address on the platform. So that people will say: Cool, that’s a good thing, I agree with that, it’s important for me or I can help make the collective feel better. Therefore we want to become more active in the social media and serve them accordingly.’
(Expert at IG Metall)*

Description of the platforms

*How is **work organised** in the platforms addressed by the measure in the covered areas (e.g. terms of employment contracts, monitoring of the performance, and flexibility)?*

An important starting point for the development of the IG Metall initiative was the code of conduct targeted at platforms, which had been agreed upon in Germany in 2015 by eight platforms (e.g. Testbirds, Clickworker, content.de, Crow Guru, Streetspotr, appJobber, ShopScout, and BugFinders) with a view to improving their poor public reputation. According to the preamble, the code of conduct is aimed 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. The following points are emphasised:

- to check the legal conformity of tasks;
- to inform crowd workers about legal and tax regulations;
- to pay fair and appropriate compensation transparently and without delays;
- to provide a user-friendly and intuitive platform to navigate, as well as to make it possible to request support, set prices, arrange awards, and provide information about frequently asked questions (FAQs) or training opportunities;
- to be aware about the responsibility in terms of respectful interaction between clients and crowd workers;
- to define tasks clearly, and to offer a realistic time schedule;
- to respect the freedom of choice of crowd workers, and not to put pressure on them to accept offers;
- to provide crowd workers with the best possible assistance and technical support, to give prompt feedback on how the tasks have been carried out, and to offer suggestions for improvement;
- to offer an approval procedure for completed tasks that needs to be settled in written form and be transparent to the crowd worker; the rejection of projects must be justified and based on the project description; the possibility of reworking an already completed project must be ensured unless the project specifications do not envisage it; moreover, every platform shall commit to setting up a fair and neutral complaint procedure for crowd workers; and
- to respect and protect crowd workers’ privacy, and thus not to reveal crowd workers’ personal data to third parties without written consent.

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' (IG Metall et al., 2016), in which the trade unions pleaded for compliance with the minimum wage, access to social security, transparency, and arbitration procedures. IG Metall leveraged these issues in its discussions with representatives from the platforms that have signed the code of conduct. In particular, it stressed the role of the minimum wage, and demanded that workers have a viable income, especially if platform work is their only source of income. In countering the argument, the platforms referred to two problems: the difficulty of measuring working time (as the necessary basis for the calculation of the minimum wage), and the global competition in relation to contracts. They also pointed out that pay is of secondary importance for platform workers; their work is, they said, more about fun and variety. IG Metall agreed to conduct a survey on this issue.



'Then we said ok, let's ask the workers what is important to them, and we did that. Then it came out that for the workers fair payment is the most important factor with decency. The platforms said, "ok, that surprises us, then we have to do something".' (Expert at IG Metall)

The platform descriptions on the website are rather detailed, and give significant hints about working conditions. Two examples are provided here below (IG Metall, 2019).

Testbirds, a German software-testing platform, was the main promoter of the code of conduct. This platform does not act as an intermediary matching customers and workers, but rather charges customers directly for services, and organises workers themselves. Workers are self-employed, and the primary jobs offered by Testbirds to crowd workers are bug testing and usability testing. Workers register their personal information and device-related technical details with Testbirds, and are notified when a task is available for them (tasks are made available algorithmically to people whose profile meets the requirements). Once notified, workers are free to accept or ignore the task offered.

Clickworker, instead, is a Germany-based crowd work platform with a focus on microtasks. It claims to have over 800,000 registered workers. This platform accepts complex tasks from clients, and its staff splits them into microtasks; alternatively, clients post their own tasks directly on the platform. Clickworker then categorises tasks by location and by level of skills required for each task, and workers choose tasks from those for which they have the necessary qualifications. Workers that are supposed to carry out more complex tasks are assessed by Clickworker on the basis of tests included in the Universal Human Relevance System; clickworkers can take such tests on a voluntary basis, especially in relation to language and writing skills. Once finalised and submitted, the project is either accepted or, in case of higher-paid projects, proofread. In case of rejection by a proof-reader, workers are allowed to check and correct it once. If rejected again, the project will be advertised again and assigned to another worker. Although a good 41% of surveyed workers experienced non-payment at least once since they started working through the platform, all of these workers also reported that such an occurrence was fairly rare.

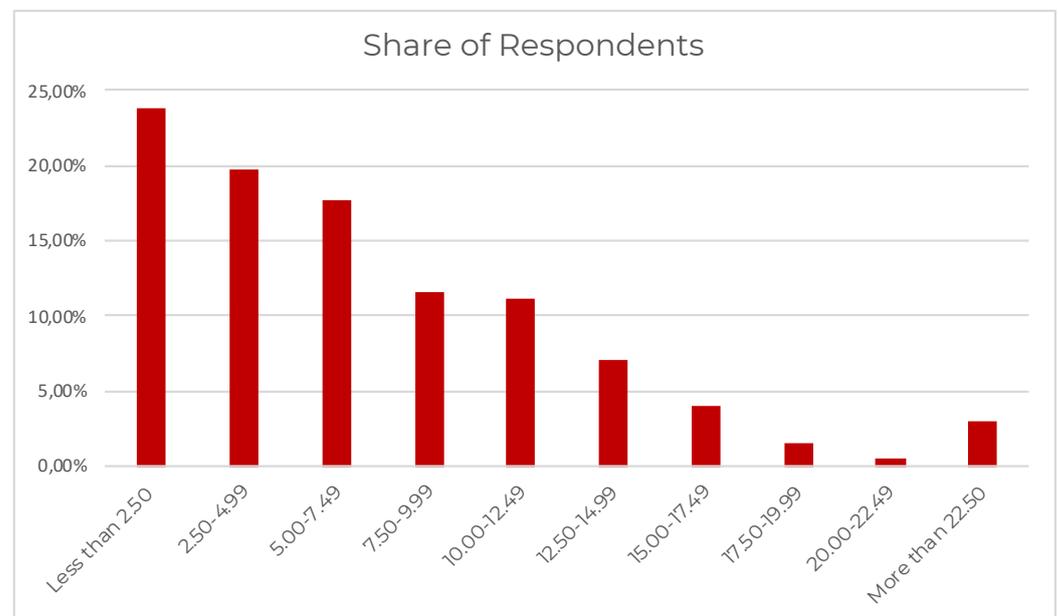
Are work arrangements in line with applicable statutory and collective bargaining provisions?

Working conditions and wages reported by the workers in the survey launched through the 'fair.crowdwork' platform feature a high level of dispersion (Fair Crowd Work, 2019). For instance, as to the 'MylittleJob' platform, it ranges between € 0.40 and € 56.24 per hour: the average wage is slightly above the minimum wage, whereas the median wage is slightly below it. The key findings are provided here below:

- minimum wage: € 0.40;
- maximum wage: € 56.25;
- average wage: € 9.97; and
- median wage: € 7.73.

The following graph shows the average wage dispersion across all platforms included in the survey.

Figure 1. Hourly wage by share of respondents



Source: Fair Crowd Work (2019)

However, the website provides many other important aspects of working conditions such as communication with managers and clients or with other workers, non-payment experiences, the evaluation systems of platforms, the rejection of submitted projects, and the possibility to challenge the rejection or the assessments carried out on tasks and technology.

*Which are the expected **implications in terms of employment and social security** of gig workers?*

In most platforms, workers are self-employed. Pursuant to German labour law, this means that they are neither considered as employees entitled to the protection granted by labour law or the Works Constitution Act, nor integrated into the compulsory social security system. They are treated as employers or self-employed workers.

ASSESSMENT OF THE MEASURE

What qualitative and quantitative information and data are available on the measure?

Information about the spread of crowd work is given in the report on Germany. Within the 'fair.crowdwork' initiative, about 12 platforms are considered; as to each platform, between 25 and 100 crowd workers were surveyed.

How does the measure fare in relation to labour and social rights of gig workers?

IG Metall tried to improve wage standards by stressing the role of the national minimum wage and by exerting its influence on other working conditions. It was able to reach an agreement with the signatories of the code of conduct on two important steps. A first step was the revision of the code of conduct: the principle according to which the platforms pay according to the 'local usual fees' was introduced; 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.



'They did not take up our demand for the minimum wage directly and we continue to fight for it; but it was already a first step.' (Expert at IG Metall)

A second important step was taken in 2017, when IG Metall established an ombuds office with the eight signatories of the code of conduct and the German Crowdsourcing Association (*Deutscher Crowdsourcing Verband*, DCV) in order to ensure the implementation of the standards enshrined in the code of conduct, as well as to deal with conflicts between crowd workers and platforms. The ombuds office is made up of five people, including one representative from one of the platforms, one representative from 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 ombuds office.

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CASE 3:

Food delivery companies and the implementation of works councils

Description of the measure

What are the **features** of the measure with regard to the protection of gig workers (please refer to all the relevant areas of interest)?

This case study is about the establishment of works councils in food delivery services, which have become an important business in the gig economy. Big players in Germany are Lieferando, Foodora, and Deliveroo. Attempts to establish works councils in the field of food delivery services have taken place in several companies; the focus here is on the development of a works council within the Deliveroo delivery service in the city of Cologne. In this company, the initiators of such an initiative launched an extremely successful media campaign entitled 'Delivering at the limit'; this campaign focused on the working conditions experienced within delivery companies, and made them known to a broader public. One issue in particular was perceived as unfair by the employees, and eventually led to the establishment of a works council: wrong or incomplete pay slips for many employees, mostly to the detriment of the employees themselves.

“*‘When I started, problems started. I didn’t get a pay slip in the first month, it wasn’t reported properly to the payroll office. I went to the office and asked if I could get at least a discount, but they refused and said that everything would be paid with the next payroll. There was no room for manoeuvre. But then they first entered the wrong tax class, and it had to be changed again.’ (Expert at Deliveroo)*

The city of Cologne became the main hub for delivery companies. In the summer of 2017, a works council had already been set up at Foodora, a direct competitor headquartered in the city. Some workers changed to Deliveroo, and were astonished to find similar problems as with their previous employer.

“*‘There were then three people who pushed this forward and who wanted to set up a works council. They then went to the NGG (Gewerkschaft Nahrung-Genuss-Gaststätten, Food, Beverages, and Catering Union) and got advice on what to do.’ (Expert at Deliveroo)*

The project proved to be very difficult to implement: this is demonstrated by two decisions made by the company after the initiators announced their intention to set up a works council. The first decision concerned the establishment of a corporate social media platform; this platform enabled communication both with the other employees in Cologne and, through a second channel,

with employees throughout Germany. Through this second channel, in September 2017, the initiators informed about their intention to establish an election commission for a works council in Cologne. Less than one hour later, the company switched off the platform. Since then, communication between employees via corporate channels has been possible only through the company's headquarters in Berlin.

The second decision concerned the initiators themselves. When they officially announced the establishment of an election commission to the company, the main initiator, who was to become the chair of the works council, was demoted: until then, although he was serving in the position of rider, he had been tasked with advising and mentoring riders, i.e. with white-collar tasks in addition to his usual manual work. After the announcement, he was forbidden from entering the office, and was only allowed to deliver orders. The company thus exploited a regulatory weakness of the German Works Constitution Act: although the law protects the members of election commissions against dismissal or other forms of discrimination, there is no legal protection during the run-up phase.

After the election commission had been implemented despite these problems, the company tried to take the reins of action, and aimed to determine the time and place of the election. The company suggested holding the election on a Friday at 09:00 a.m. in a hotel located in Cologne, i.e. outside of working hours, which begin only with the midday deliveries, as well as outside of the corporate premises.

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'The initiators then said that this was not possible; the election committee pleaded for the time of 15.00. The CEO then phoned the initiator and accused him of damaging the company's business.' (Expert at Deliveroo)

The election eventually took place within the company premises; some 30 people from among 200 employees at the site took part in the election. All participants were drivers.

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'The people from the office only stopped by once and were distanced; the accounting manager made his contempt clear by gestures.' (Expert at Deliveroo)

Alternative communication channels had to be made available to provide information before and after the election inasmuch as communication through the corporate social media platforms was prevented. Alternatively, two WhatsApp groups were set up among the riders: one of them was exclusively aimed at making appointments for the evening after work, whereas the other served as a forum for criticism. Thanks to this second group, knowledge about the many payroll errors was spread.

The works council initially tried to obtain information and data from the company on employment relationships and payment practices with a view to playing an active role in the issue. In the face of the numerous hurdles during the works council election, the initiators also came up with the idea of going public with the problems.

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'We developed ideas on how to make public our problems and how to make a public campaign. We also asked the NGG trade union for information on this. We wanted to create a public sphere. First, we developed a poster with the slogan "Delivering at the limit".' (Expert at Deliveroo)

Then, a flash mob – i.e. something more than a mere demonstration – was organised at a place in the city of Cologne. The event proved to be very effective in terms of outreach, and newspapers, radio, and public TV were on site. Moreover, riders from Foodora (Deliveroo’s competitor) – who are engaged in a friendly competition – joined the flash mobbers. Then, a spiral of growing interest was triggered, with the initiators ending up in front of the Federal Minister of Labour.



‘We gave interviews to the press, and then the interest grew. The chairman of the works council was on television during a political talk show later on, where the Federal Minister of Labour was also present, and afterwards the two had an intense conversation over a beer. That is how we got in touch with the Labour Minister. He then visited us once in Cologne and talked to us very intensively for about an hour and a half.’ (Expert at Deliveroo)

The initiators also set up a Facebook page for the ‘Delivering at the limit’ campaign, which they still update. The goal is to raise awareness about what happens in the field of food deliveries. In this regard, interview requests and invitations to conferences and talk shows testify to a growing interest in the topic.

Description of the platforms

*How is **work organised** in the platforms addressed by the measure in the covered areas (e.g. terms of employment contracts, monitoring of the performance, and flexibility)?*

Food delivery companies are multinationals, most of which are present in many advanced economies. By way of example, Deliveroo is a British company active in seven EU Member States and in eastern Asia; Foodora, its main competitor in Germany, is a German company with operations in six countries. Whereas the latter in 2018 was present in 36 German towns, and availed itself of about 2,600 riders, the former 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 smart phones 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).

At the beginning of the process leading to the establishment of a works council, the majority of workers at Deliveroo were employed under temporary contracts with a six-month duration; there were also a limited number of freelancers who worked as solo-self-employed on a contract basis. When the works council was elected, the company started to replace temporary workers with solo-self-employed workers, with the number of employed riders plummeting

from around 140 in November 2017, to about 20 in February 2018. 'Within three months, the company let more than half of the 100 fixed-term employment contracts expire at the Cologne location.' (Zander, 2018, p. 17)

Are work arrangements in line with applicable statutory and collective bargaining provisions?

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; and 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).

Collective bargaining legislation does not require employers to become members of an employers' association and consequently to implement the relevant collective bargaining agreement (negotiated between this organisation and a trade union), or to negotiate a new collective bargaining agreement; only a trade union – based on its bargaining power – could enforce a collective bargaining agreement. This is what NGG is trying to do. This union has already played an important supporting role in the implementation of a works council: it advised the initiators of the initiative on the establishment of the works council, and helped to fine-tune the concept for public relations purposes. Strategy meetings on how to carry on with the campaign are still taking place in the union's offices. A member of Deliveroo's original works council has joined the union, and is now acting as secretary in charge of delivery services. The union's ultimate goal is to conclude collective agreements with supply services.



'That's very good; now there's someone there to coordinate the work, and they have resources. You know who you can turn to and there is more support. The aim of the union is clear: they want to enforce collective agreements for delivery services. The focus is now on Foodora.' (Expert at Deliveroo)

Finally, the German Works Constitution Act allows workers to elect a works council on a voluntary basis in establishments with more than five employees. The law sets forth a procedure for the establishment of an election commission; this can be requested to the Labour Court by at least three employees or a union. The members of the election commission are protected by law against dismissals or other actions by the employer. In the case of food delivery platforms, several problems in terms of compliance with applicable legislation can be identified.

First, platforms make use of a gap in applicable legislation, as this does not deal with temporary workers: companies can thus weaken a works council by not extending the contracts of its members employed under temporary contracts. As a matter of fact, the works council at Deliveroo's Cologne location now consists of one person: the other four members are no longer there because their employment contracts have not been extended; three of them challenged the company's decision not to extend their contracts, and eventually accepted a court settlement. From his part, the chair of the works council (who is still in office) did not accept the settlement, and decided to go on with the lawsuit: the court found that the temporary nature of his contract was unlawful, and thus ordered his reinstatement. The company is now appealing to a higher court.

“*'In any case, he is still there, and he is a works council only for office employees. Because only freelancers are still driving in the street, and they are not entitled to be represented by a works council.'* (Expert at Deliveroo)

The same strategy was pursued by Foodora. There, too, a works council election commission was set up at the Cologne location. The structural conditions for the election procedure were better because that company was making use of fixed-term employment contracts with a one-year duration, and was not availing itself of freelancers (therefore, it did not replace employees under fixed-term contracts with freelancers). However, problems arose in relation to fixed-term contracts.

“*'Foodora also has a nine-member works council in Cologne, which is around 250 people. The works council now wants to be re-elected because there have been some changes, the contract of the deputy chairman was not extended and he had to resign.'* (Expert at Deliveroo)

Second, the term 'establishment' is not defined clearly in the law. Companies can thus try to avoid the setup of works councils by arguing that no 'establishment' exists. In Münster, for instance, another attempt to set up a works council was experienced at Deliveroo; however, the company management did not recognise the works council by arguing that the company has no office and, therefore, no business in that town: the drivers working in Münster would allegedly fall under the scope of the Cologne-based establishment, and would thus have to elect their works council there.

Third, Foodora, just like Deliveroo, put pressure on the initiators during the election period, and did not recognise the elected works council. More specifically, it did not provide the works council with timely information and the opportunity to engage in consultations, nor was the working time spent by the employees in the performance of their duties as works council members paid correctly (Die Zeit, 2018).

Which are the expected implications in terms of employment and social security of gig workers?

It is worth stressing two implications in terms of employment and social security.

First, gig-economy platforms operate with non-standard forms of employment with little employment security. In the case of temporary contracts, these can be extended twice and up to a maximum of three years; however, during this period, workers are covered by social security, and employers are obliged to pay their share of contributions. On the other hand, solo-self-employed contracts can have a much longer duration, but do not envisage the payment, by the client, of social security contributions (workers themselves have to shoul-

der the whole amount). By availing themselves of both non-standard forms of employment, platforms benefit from the curtailment of employment and social security protection.

Second, platforms try to prevent the establishment of works councils (and, of course, also the presence of unions). They do this by making use of gaps in the law, by putting pressure on employees, and by refraining from providing the information required. This strategy represents a problem that, as to some aspects, needs to be tackled in case law (e.g. concerning the provision of information), and, as to some other aspects, requires further legal regulation (e.g. an explicit paragraph in the German Works Constitution Act on how to protect works council members employed under temporary contracts).

ASSESSMENT OF THE MEASURE

Which qualitative and quantitative information and data are available on the measure?

No quantitative data are available on the impact of the measure on gig workers. Qualitative information includes articles in newspapers, a few articles in journals, and own research.

How does the measure fare in relation to labour and social rights of gig workers?

The measure is aimed at enforcing legal rights of gig workers in order to ensure the collective representation of interests and to guarantee the respect of the collective rights of information, consultation, and codetermination. The measure represents an important first step in this direction, and helps to identify labour regulation problems in relation to platform work. These problems shall be taken into account if collective bargaining and codetermination institutions are to play an effective role in the gig economy.

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