



DON'T GIG UP



Poland

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 rights¹.

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.

¹ In the absence of remarkable practices concerning platforms providing food delivery services in Poland, this report also includes a description of how a Polish startup (Pyszne.pl) active in this sector operates. This is useful with a view to comparing cases concerning similar platforms in other countries, studied in the framework of the present project.

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.

CASE 1: Enforcing and amending laws relevant for gig drivers in the passenger transport services sector

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 entry of Uber into the Polish market in the summer of 2014 was welcomed by many passengers, who started to avail themselves of a new cheap and innovative service, and by drivers looking for a valuable opportunity to earn money without formalities. However, soon thereafter, as licensed taxi drivers began to protest against unfair competition, the question whether Uber practices are lawful was raised publicly, also in the form of protest actions organised by licensed taxi drivers and their associations. In response to that: a) the Ministry of Finance clarified that Uber drivers shall submit their income tax return as self-employed entrepreneurs; b) relevant inspection authorities started to conduct field inspections to check whether drivers earning money by providing passenger transport services hold the required licences, and comply with all the other applicable regulations; and c) through Act no. 1180/2019, the Parliament adopted a set of amendments to the Road Transport Act (no. 1371/2001), as proposed by the Ministry of Infrastructure, with a view to regulating *road transport intermediaries*, as well as to making it easier for drivers to enter the passenger transport services sector by reducing licence-related requirements (the new set of rules will become effective in January 2020).

Making reference to the provisions of the Personal Income Tax Act (no. 350/1991), the Ministry of Finance clarified in its statement of 2015 that money earned by natural persons from the provision of transport services through the Uber application are subject to the aforementioned legislation. Since Uber acts as an intermediary (and not as an employer or as a client), it is the responsibility of the driver to fulfil the relevant tax obligations, as required by the law. Such tax obligations apply irrespective of the legal requirements regulating business activities or transport services, i.e. whether or not the person has actually registered a business activity, or obtained a passenger transport licence.

With its statement, the Ministry of Finance specified that, under the existing legal framework, Uber drivers had to make sure that their remunerative activity was registered, and due taxes were paid. Where no employer can be identified, as has been the case with the working activity intermediated through Uber and similar platforms, the working activity carried out by car drivers shall be registered as business activity. Such registration defines the relationship between the driver and the platform in business-to-business terms. Pricing and pay (as well as other terms of service) are then considered as a contractual issue, subject to standards applicable to business relationships. At the same

time, it should be noted that self-employed entrepreneurs in Poland are compulsorily covered by (and must shoulder the costs of) the social security system, and so are (and must) gig workers, once they register as self-employed workers.

In particular, self-employment understood as a one-person business activity, involves:

- enrolment in the Central Register and Information on Business (CEIDG), which is free of charge;
- payment of compulsory social security contributions (as to which, in principle², 60% of the projected average salary in Poland³ is used as the calculation basis), which cover the insurance related to the retirement pension, the disability pension, accidents at work, unemployment, and healthcare;
- optional contributions related to the sickness insurance; and
- bookkeeping and financial reporting obligations, which, in practice, implies the need for self-employed workers to shoulder the costs of an accountancy service.

In addition, following the protest actions organised by licensed taxi drivers' organisations, a number of inspections were held in different towns by the General Inspectorate of Road Transport, and fines were imposed on drivers performing taxi-like services without having the relevant licence, since, under the Road Transport Act, passenger transport as a remunerative activity is subject to a licence (Bulsa, 2016; Korolczuk, 2018; Marczak, 2015; epoznan, 2017; Krakow. pl, 2017).

In 2017, the Ministry of Infrastructure started drafting amendments to the Road Transport Act to regulate the activity of road transport intermediaries and to modify provisions on the passenger transport licence. The final version was adopted through Act no. 1180/2019 by the Parliament in mid-May 2019, and will enter into force in January 2020. As a result, the intermediation activity will be subject to a licence, and require registration in Poland. Individuals convicted for, *inter alia*, offences against the working environment or for breaches of labour legislation or pay terms cannot be the board members of the intermediary entity. The intermediary shall contract out passenger transport only to entrepreneurs holding relevant passenger transport licences. The law provides for fines for both the intermediary operating without the licence, and the driver accepting orders from such an intermediary. Moreover, the intermediary will be obliged to keep track of all orders. At the same time, the amendments are aimed at relaxing the requirements for the obtention of the taxi licence allowing drivers to provide passenger transport services: more specifically, they abolish mandatory training and tests in local topography and local legislation. The new provisions also allow for the use of mobile software applications for fare calculation as an alternative to taximeters.

² Please note the exceptions discussed in the last section.

³ The amount is announced annually at the end of the preceding year by the Ministry of Family, Labour, and Social Policy.

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)?*

As of February 2019 (when most of the data presented below were collected), there were a few platforms providing (or intermediating) taxi services in Poland: among them, Uber (the first to start operations as early as in mid-2014), Taxify⁴, Mytaxi, iTaxi, and Optitaxi. The last two accept orders placed by phone, too.

Since the beginning of its operations in Poland, Uber has perceived itself as an intermediary, and the contracts entered into 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; and 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, 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). Beforehand, as an Uber driver pointed out, 'working for Uber was bringing quite nice profit, on which nobody paid tax' (Uberblogger, 2016).

Drivers may also work in the framework of the Uber platform through so-called 'partner firms', which are usually the owners of the leased fleet; these firms directly recruit drivers who do not have their own cars, and/or do not have (do not want to register) their own business activity (Szczepaniak and Szczygieł, 2016).

The drivers who are legally employed by partner firms work under the so-called 'contract of mandate' (*umowa zlecenie*), which is a type of civil contract concluded pursuant to the Civil Code; therefore, no labour law provisions apply (such as, for instance, working time limits); however, the hourly pay rate shall not be lower than the statutory minimum rate, and the payment of social security contributions is mandatory (except for the sickness insurance). As is the case with the employer, the contracting party is responsible for calculating the individual income tax advancements and social security contributions for the contractor, as well as for deducting the due amounts from contractors remuneration and making the payment to the relevant funds.

According to Uber, a good 40% of its drivers worked through partner firms in 2017. The latter take care of fuel, maintenance, and depreciation costs. Cars have to be in non-stop use in order for the business to pay off. Hence, the work is often organised based on 12-hour shifts and, as a result, on fixed hourly rates. In an interview, an Uber driver complained that partner firms take more orders, and that their drivers are continuously on the move, while independent drivers like him have to wait 30 minutes⁵ (Rozwadowska, 2017). Some Uber drivers consequently organised a protest action in December 2016, demanding equal treatment for all drivers in the assignment of orders; however, Uber's spokesperson denied that drivers working through partner firms have priority in the assignment of orders (Grabiec, 2016a; Grabiec, 2016b; Nowak, 2016).

⁴ Renamed 'Bolt' in March 2019.

⁵ Uber self-employed drivers, however, continued to work according to flexible schedules (cf. Nowak, 2016).

As to the system involving partner firms, taking into account the margin deducted by Uber, the remaining 75% of the amount paid by passengers is split between the partner firm and the driver, either equally or 60 to 40. The hourly rates that platform drivers earn in the framework of this system, as reported in September 2017, ranged from PLN 10 (according to job announcements) to PLN 20 (as declared by the partner firms interviewed)^{6,7} (Rozwadowska, 2017). In comparison, the statutory minimum hourly gross rate was PLN 13.7 (€ 3.77) in 2017, and PLN 14 (€ 3.35) in 2018, which correspond to the net rates of PLN 10.25 (€ 2.32) and PLN 10.48 (€ 2.51)⁸, respectively (after deducting the social security contributions listed above, and following the application of the personal income tax rate on gross monthly earnings exceeding PLN 200)⁹.

Since the pay rates offered to gig drivers are low, these jobs have been largely taken over by migrant workers (mainly from Ukraine), who more readily accept lower earnings (Kosiński, 2016a; Rozwadowska, 2017; Ziobrowska, 2017). Some cases of partner firms offering a job without a contract (Szczepaniak and Szczygieł, 2016)¹⁰ or applying 'unclear account settlement practices' (Uberblogger, 2016) have also been reported.

Platforms use different ranking systems having a performance monitoring or motivation function. Uber uses a system in which passengers can assess drivers and vice versa. Drivers who obtain an average score below the desired standard (i.e. lower than 4.6 over a five-point scale) are required to attend training; if the score does not improve, they can no longer work for the platform (Kosiński, 2016a). As to iTaxi, the scoring depends on the car (model, age, and cleanliness), the assessments made by passengers, and the length of the driver's availability through the platform application; the third factor is supposed to have a much greater weight on the order assignment by the platform algorithm. iTaxi drivers claim that, in order to get a high score (and thus a higher number of orders), one needs to work over 300 hours a month, and, if a driver takes a weekend off, the score will decrease significantly (Ziomek, 2018). Mytaxi prefers assigning orders to drivers whose cars bear the 'Mytaxi' label.

The inspections performed by the General Inspectorate of Road Transport in cooperation with other inspection agencies have revealed that transport orders commissioned by intermediaries (platforms) are performed also by drivers and entrepreneurs without the licences required by law in relation to the provision of paid-for passenger transport services¹¹. The Ministry of Infrastructure, justifying the need for the proposed amendments to the Road Transport Act, pointed out that drivers (who include foreign citizens) are often unaware of the legal provisions they must comply with (Bill of March 2019 amending the

6 At that time, PLN 10 corresponded to between € 2.2 and € 2.3; therefore, the respective statutory minimum hourly gross rate amounted to between € 3 and € 3.2. It is interesting to note that an Uber self-employed driver working 40 hours a week in Krakow calculated his hourly net income in November 2016 at approximately PLN 10 (between € 2.2 and € 2.3) – i.e. after deducting Uber's margin of 20%, VAT, social security contributions, petrol costs, civil liability and car insurance, and vehicle depreciation from his monthly revenue, which amounted to PLN 5,400 (equivalent to € 1,247) a month.

7 The source does not clarify whether such pay rates are calculated on a net or gross basis.

8 Euro equivalents based on historical currency exchange rates are provided in brackets.

9 Based on the historical currency exchange rates, such amount corresponded to € 45.35 in 2017 and to € 47.88 in 2018.

10 However, it should be noted that the contract of mandate does not require the written form to be valid.

11 In 2017, the General Inspectorate of Road Transport carried out 4,664 random inspections, which identified as many as 384 cases of infringement of the Road Transport Act. From January to August 2018, 135 cases of infringement were identified, as reported in the impact assessment of the proposed amendments to the Road Transport Act. No data were published on how many of them involved platform drivers.

Road Transport Act and the Drivers' Working Time Act).

Neither Uber nor Taxify (Bolt) requires a *taxi licence* from its drivers. These platforms only require drivers to have a registered business activity or to operate through a registered business entity (partner firm). On the other hand, iTaxi and Mytaxi work only with licensed taxi drivers (who, by definition, are self-employed entrepreneurs) (Szczepaniak and Szczygieł, 2016; cf. also platform websites). It can happen that a single driver takes orders from (works with) more than one platform.

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

As provided for by the Road Transport Act, having a registered business activity is one of the requirements for obtaining the taxi licence. Therefore, licensed taxi drivers are, as a rule, self-employed entrepreneurs. Platform drivers without the licence required by law risk being fined by the Road Transport Inspection. In particular, the applicable legislation requires that either the driver be a taxi-licence holder, or be employed by a taxi-licence holder. Hence, partner firms that provide the fleet, and employ drivers should themselves be taxi-licence holders in order to operate in compliance with the transport regulations.

The contract of mandate – concluded by such partner firms with gig drivers – could be considered as a legally acceptable form of employment, as long as the following conditions are fulfilled: a) the working activity is not performed under the direct supervision of the contracting party; the contractor is responsible for performing specific lawful activities, and is not obliged to follow the orders of the contracting party; and b) the contracting party does not impose the place of work, which is instead agreed between the parties.

No statutory working time limits apply either in the case of work performed in the framework of a self-employment work relationships (business activity), or under the contract of mandate; hence, working hours can be flexibly set by the parties. In both cases, the parties may easily terminate the relationship.

While there are no applicable collective bargaining provisions in that sector, there are a number of trade unions that represent the interests of licensed taxi drivers, and have been active in demanding action from the government to eradicate unfair competition from platform drivers (i.e. to combat their non-compliance with the applicable legislation and to regulate the operation of intermediaries, i.e. platforms) (Cyzdik, 2016; Duszczuk, 2014; Grabiec, 2016a; Rozwadowska, 2018).

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

Those gig drivers who are self-employed entrepreneurs enjoy the same level of social protection as licensed taxi drivers.

Those who work under the contract of mandate, too, are covered by the social security system through mandatory contributions¹² aimed at funding the retirement pension, the disability pension, the unemployment allowance, and the health insurance, and the contribution rates are the same as in the case of

¹² Except if the person is a student or an employee under another form of contract.

employees. An exception to this is represented by sickness insurance contributions, which, in the case of workers under the contract of mandate, are optional; therefore, only insured drivers are entitled to the sickness benefit¹³ and the maternity benefit (if applicable). It should be stressed, though, that these workers (just like self-employed entrepreneurs) do not enjoy employee rights (such as, for instance, maternity leave, paid holidays, and contract termination notice).

¹³ The entitlement to the sickness benefit is enjoyed by workers who have been insured for at least 90 days.

ASSESSMENT OF THE MEASURE

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

No quantitative data on the impact the measure has on gig workers have been made available so far.

Qualitative information includes: binding and proposed legal provisions; stakeholders' comments and opinions (provided by, among others, employers' organisations and trade unions) published in the report on the public consultations held during the drafting phase of the aforementioned amendments; the entry requirements for drivers, published by platforms (with different levels of detail); recruitment information included in job advertisements; information on practices in the sector, such as drivers' earnings and terms of service, disclosed during media investigations, or shared directly online; news published by the media; platforms' operation rules and regulations published on their websites; and articles with opinions on Uber and similar platforms, as well as on the gig economy.

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

The statement of the Ministry of Finance, as well as *ad hoc* inspections conducted by the General Inspectorate of Road Transport following pressure from licensed taxi drivers' organisations, has apparently effected a shift to registered employment among platform drivers (either as self-employed entrepreneurs or as workers operating under a contract of mandate concluded with partner firms). Consequently, the coverage of the relevant social protection system has increased. However, the success of the measure in terms of eradicating undeclared work is uncertain and difficult to assess.

Inasmuch as the fees for passengers have not been raised, and Uber's margin¹⁴ on the amount paid by the passenger has not been reduced, the previously unregistered earnings of Uber platform drivers have been downsized by taxes,

¹⁴ The margin, originally set at 15%, was 20% at that time; it was then raised to 25% (Kosiński, 2016b).

social security contributions, and administrative costs (such as those related to accountancy services in the case of self-employed entrepreneurs, or margins charged by partner firms in the case of workers under a contract of mandate). As a result, once Uber started to provide its taxi services only through registered entrepreneurs, many drivers withdrew from the platform, especially those who considered this job as an additional source of income (Sendrowicz, 2016).

It is worth noting that self-employed entrepreneurs who start their business activity are exempt from the payment of social security contributions for the first six months, while over the following 24 months they are required to pay such contributions at reduced rates (the exemption and the reduced rates do not apply to health insurance contributions). This regime may encourage new entrants, and, as a result, increase the competition in the market; at the same time, the reduced financial burden may make them more prone to lower remuneration rates. Pursuant to another noteworthy provision, in force as of January 2019, self-employed entrepreneurs may choose to link their contributions (except for health insurance contributions) to their actual revenue (instead of paying the statutory lump sum amount)¹⁵ if their revenue in the previous year did not exceed 30 minimum monthly salaries (PLN 63,000 – € **15,082.60** – in 2018)¹⁶ (Act No. 887/1998, as amended).

While both registered forms of work, i.e. self-employment as part of a business activity, and contracts of mandate, provide drivers with social security coverage (though weaker than the one that would be provided under standard employment contracts), neither of the two forms grants any employee rights, such as paid holidays or contract termination notice as guaranteed by the Labour Code, or limited liability of the worker in case of loss or damage to third parties.

The discussed measures focus only on one sector of the gig economy, but the statement of the Ministry of Finance may be considered relevant also to platform work in other sectors inasmuch as it outlines that individual income earners shall be considered as employers (and shall be registered as self-employed entrepreneurs) in those cases in which their working activity is remunerated, but no other entity or person can be identified as performing the employer role. Consequently, the platform, denying being an employer, has no choice but to base its operations on business-to-business relationships, i.e. with self-employed entrepreneurs or with businesses, which could serve as the missing link, and play the employer role for those who do not want to become self-employed entrepreneurs (such a model can be found in the cleaning services sector). While such businesses become relevant players as far as labour and social rights of gig workers are concerned, they tend to rely on civil contracts when hiring workers.

The changes in the road transport legislation have been motivated by the need to regulate *business activities* in the sector so as to ensure fair competition, more effective control, and passenger safety. They provide a legal basis for the operation of platforms, as well as easier access to taxi licences for new (business) entrants to the market. The issues of undeclared work, working conditions, social protection, and worker rights were not addressed in the legislative reform, which can be considered a missed opportunity.

¹⁵ This is set by using 60% of the average salary as the calculation basis.

¹⁶ Historical currency exchange rates have been used to calculate euro equivalents.

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Platform websites

iTaxi: <https://itaxi.pl/praca-kierowcy/taxi-warszawa/>

Mytaxi: <https://pl.mytaxi.com>

Optitaxi: <https://optitaxi.pl/>

Taxify: <https://taxify.eu/pl/>

Uber: <https://www.uber.com/pl/pl/>

CASE 2: Pyszne.pl

Description of the platform

*How is **work organised** in the platform chosen for comparison in the covered areas (e.g. terms of employment contracts, monitoring of the performance, and flexibility)?*

Pyszne.pl was launched as a Polish startup based in Wrocław (with the financial support from the EU 'Innovative Economy' Operational Programme, OP). In 2012, 100% of its shares were sold to yd.yourdelivery; however, the majority of managerial staff members maintained their positions within the firm. In 2014, it was taken over by Takeaway.com, a Dutch company, but maintained its operations in Poland under the 'Pyszne.pl' brand.

Pyszne.pl is an online platform where customers can place food delivery orders from the menus of approximately 6,000 restaurants listed on the platform. In most cases, the delivery is the responsibility of the restaurants, which rely on their own drivers/couriers¹⁷, or on a specialised courier service, such as Stava, a Polish startup that operates on a business-to-business basis, and delivers meals from restaurants to their customers.

Grzegorz Aksamit, co-founder and Vice-President of Stava, declared: 'our activity consists in providing logistics services and in developing technology and algorithms [...], the business of Pyszne.pl [...] consists in customer marketing and the acquisition of orders, while our business concerns the delivery of those orders' (Kurasiński, 2017). Currently, Stava operates in 15 Polish towns. To become a Stava courier, it is necessary to have a car and a driving licence, as well as to know the local topography. Couriers are offered contracts of mandate along with full coverage of social insurance contributions. As of 18 February 2019, according to the information provided on Stava's website, the hourly gross rate offered is PLN 13.7 (€ 3.16) in Łódź, Białystok, Rzeszów, Opole, Siedlce, and Łomża, and PLN 17 (€ 3.93)¹⁸ in Wrocław.

The client restaurants of Pyszne.pl are offered Pyszne.pl-branded working clothes for their couriers as well as brand labelling of their fleet by the platform (cf. Gajewski, 2016). The restaurants may also rent electric scooters with the 'Pyszne.pl' brand from the platform (Hamdan, 2018).

In November 2016, Pyszne.pl started to provide food delivery services on electric bikes through its own bike couriers to restaurants that do not provide food delivery to customers by themselves. Initially, the service covered selected restaurants in Warsaw; in 2018, it was launched in Wrocław and Kraków (Mam Startup, 2019; Kurasiński, 2017).

The service is provided with company-owned electric bikes. Bike couriers are equipped by the company with branded weatherproof clothes and food box-

¹⁷ Based on the information contained in online job advertisements, it is possible to infer that Polish restaurants hire food delivery couriers on either a contract of mandate, a service contract (i.e. as self-employed workers), or an employment contract, offering statutory minimum rates.

¹⁸ Euro equivalents based on historical currency exchange rates are provided in brackets.

es. At the beginning of the working day, couriers pick up all the equipment at the company's premises, and, while riding, are tracked by the dispatcher, who is trained to respond to any inconvenience. Food delivery can be tracked also by the customer in real time through the relevant function available on the platform (Horecabc, 2018). Pyszne.pl couriers are hired under contracts of mandate, i.e. a type of civil contract concluded under the Polish Civil Code, meaning that no labour law provisions apply (such as, for instance, working time limits); however, the hourly pay rate cannot be lower than the statutory minimum rate. Job positions are advertised as casual or temporary work (for instance, on job search websites such as www.olx.pl or www.gumtree.pl). Couriers work under flexible schedules set weekly.

Joanna (surname not disclosed), a woman courier employed by Pyszne.pl, and interviewed by its blog, declares that she starts working at 01:00 p.m. and, on average, makes deliveries for the next three to six hours, two or three days a week. She can adjust the working schedule so that it does not interfere with her other commitments (university classes). Daily, she covers a distance of 40 km (Pyszne.pl, 2017), i.e. half of the riding distance ensured by one battery charge (Mam Startup, 2019).

No other information could be found online or in other written sources as to the actual working conditions of Pyszne.pl couriers, or the use of mechanisms to rate couriers. The Pyszne.pl website informs that its customers can assess the delivery service and the food delivered, pointing out that both aspects are the responsibility of the restaurant. This is not surprising inasmuch as the share of food deliveries managed directly by Pyszne.pl has been marginal in comparison with the scope of the platform's activities. As of April 2018, Pyszne.pl was working with as few as 55 bike couriers in Warsaw, and was recruiting new bike couriers for a similar service in Wroclaw and Krakow. Conversely, the platform boasted over 110 staff members tasked with sales, customer service, graphic design, human resources, finance, and partner services (the latter include additional services and products, such as pizza boxes or scooters made available to client restaurants). The company furthermore reported offering regular training and weekly English lessons to its staff (Miśków, 2018).

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

The contract of mandate used by Pyszne.pl to hire bike couriers is a form of employment that may be considered in line with the relevant statutory provisions. According to the law, it can be used in relation to jobs that – unlike those to which the standard employment contract would apply – a) are not performed under the direct supervision of the contracting party (the contractor is supposed to perform specific activities, and is not obliged to follow the orders of the contracting party), and b) are not performed in a place imposed by the contracting party (i.e. the place of work is agreed upon between the parties).

While Pyszne.pl does not disclose the rates offered to its bike couriers, the statutory minimum hourly gross rate in the case of contracts of mandate was PLN 13.7 (€ 3.28) in 2018, to be raised to PLN 14.7 (€ 3.42)¹⁹ starting on 1 January 2019 (CoM, 2017; Com, 2018).

There are no relevant collective bargaining provisions that could be used as a reference.

¹⁹ Euro equivalents based on historical currency exchange rates are provided in brackets.

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

The work arrangements described (contracts of mandate and flexible working schedule) are often used for casual or temporary jobs (taking aside non-registered work), whether or not intermediated or assisted by IT tools. The contract of mandate involves social protection comparable to the one guaranteed by the employment contract (unless the person is a student or an employee hired under another form of contract) inasmuch as the mandatory contributions cover the retirement pension, the disability pension, unemployment benefit, and healthcare, and the rates (calculated in relation to pay) are the same as in the case of employees. The exception is represented by sickness insurance contributions, which are paid on a voluntary basis in the case of workers hired under the contract of mandate; therefore, only the insured ones are entitled to the sickness benefit²⁰ and to the maternity benefit (if applicable). It should be stressed, though, that workers hired under the contract of mandate do not enjoy employee rights (such as maternity leave, paid holidays, and contract termination notice).

The approach adopted by Pyszne.pl has been to use the existing legal framework to shape the work arrangements adopted in relation to its bike couriers. This implies that it may be considered as a feasible solution for that type of gig work.

For comparison purposes, it is worth noting that a different approach is adopted by Uber Eats (which operates in Warsaw, Krakow, Poznan, and Wroclaw only). Uber Eats takes care of the deliveries of all meal orders generated by its own platform. Uber Eats couriers deliver meals with their own cars, scooters, or bikes. Those aspiring to become Uber Eats couriers shall be registered as self-employed workers, or work with an Uber Eats partner, i.e. be contracted by a separate business entity cooperating with Uber Eats. In this latter case, the employment and social security arrangements depend largely on the integrity of Uber Eats partners. The system is similar to the one used by Uber in passenger transport (cf. the case study concerning gig drivers). *Gazeta Wyborcza* (one of Poland's major daily newspapers) has discovered and reported on some legally dubious practices implemented by Uber Eats partners with a view to avoiding work registration and the payment of social security contributions. Some examples are listed here below: a) bike rental contracts, pursuant to which the partner company rents the bike owned by the courier, and pays the latter for the actual usage of the bike (instead of paying this worker for a working activity that should be performed under the contract of mandate); b) contracts of mandate with a weekly flat rate of PLN 50 (€ 11.44)²¹, payable only if the value of the orders delivered has reached at least PLN 75 (€ 17.16); and c) contracts according to which the courier is obliged to pay PLN 20 (€ 4.58)²² a month to have access to the 'account setting system' (Szostak, 2019).

20 The entitlement to the sickness benefit is enjoyed by workers who have been insured for at least 90 days.

21 Contracts of mandate envisaging the payment of an amount equal to or below PLN 200 (€ 45.77 as of 27 August 2019) a month are subject to a flat income tax rate, and do not require the preparation, by the employer, of a worker personal income statement.

22 Euro equivalents based on the currency exchange rate as of 27 August 2019 are provided in brackets.

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www.olx.pl

498827559 posted on 5 February 2019 (bike courier in Warsaw at Pyszne.pl)

494713871 posted on 4 February 2019 (bike courier in Krakow at Pyszne.pl)

494712315 posted on 4 February 2019 (bike courier in Wroclaw at Pyszne.pl)

oferty.praca.gov.pl

pl.jooble.org

sprzedajemy.pl

Platform websites

pyszne.pl

stava.pl



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