

How the gig economy is shaping the labour market: Its effects on the Welfare State

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Abstract

Digitization and the so – called fourth wave of industrialization (PES, 2017), have paved the way for many previously unimaginable innovations. The new gig economy, platform economy and sharing economy are some of the obvious results.

In fact, the classic structure of work that we were used to know seems to have disappeared in favor of new labour market dynamics, dictated by new production processes and the more and more personalized and individualistic consumers' needs.

Despite the upside of creating new peer marketplaces, these platforms seem to act as “free riders” in terms of the Welfare State, pushing the European Union to find new ways of both regulate the labour market and re-think Welfare systems.

This paper focuses the attention especially on the gig economy, aiming at:

1. Briefly underline the implications the gig economy has on the labour market
2. Describing the challenges it represents for the Welfare State
3. Identify possible scenarios for future regulations at the European Union level in terms of labour law

Keywords: Gig Economy, Labour Market, Welfare State

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1. Introduction

The economic crisis of 2007-8 and the improvement in technology have led to the rise of a new platform based economy, the so called platform or gig economy.

The labour market of this economy is organized around some platforms that take on the role of intermediaries, matching the offer of work (gig workers) with the final demand (customers/clients).

In doing so, the new paradigm is reshaping the traditional labour market in the sense of a new form of control exercised by the platforms over the workers, applied without any apparent subordinated working relationship, due to the platforms' role of mere intermediaries and not employers. In addition, there is a loss of the workers' bargaining power and a decrease in average wages, not only in the gig economy, but in the traditional market as well.

Even though the workers of the gig economy in Europe don't exceed the 2% of the adult population, the particular condition of these workers is bringing out new challenges for the Welfare State. In fact, in considering the platforms as simple intermediaries, gig workers are mainly classified as self-employed, and therefore they are granted restricted rights compared to traditional workers, and do not have access to certain social schemes. This, in contradiction with the control exercised over them by platforms, which in some sentences of National Courts of Justice has been recognised as employers rather than intermediaries (Aslam vs. Uber, 2015).

In addition, both gig workers and platforms are acting as free riders in the Welfare system, causing increased costs for social protection that are covered by traditional workers and consolidated companies.

The problem as explained so far has been faced by Member States in a national and local logic, conducting to a fragmentation of the Jurisprudence and inequalities in the treatment of gig workers among Member States.

The solution proposed in the present work foresees a modification within the European Union, based on article 153 of TFUE that recognises to the Union the possibility to complete national Labour regulation in order to guarantee a broader protection to workers. In this sense, a solution for the identification of a final definition of "worker" and "employee" in the European Labour Law has been proposed, together with the hypothesis of a specific directive for the protection of gig workers.

An intervention at the European level is auspicated as to prevent inequalities among workers in different member States and the persistence of a two-speed Europe, in the sense of a new European Pillar on Social Rights as proposed by the European Commission in 2017.

1. Background and data

In order to give a concise definition, it is possible to say that the gig economy describes a labour market based on the use of a digital (online) platform, provided by a specific company, which allows individuals to find a short-term job, which normally ends with the provision of a single work performance (very often without a contract), and on the front of which a modest profit is obtained. In short, the gig economy is characterized by short-term employment contracts and precarious working conditions.

The most frequent jobs of the gig economy, which is consolidated mainly in the services sector, include: use of one's own private car as taxi on request (i.e. Uber), deliveries of food at home on a scooter or bicycle (i.e. Foodora, Deliveroo), couriers of goods, skilled and unskilled labour, and professional, creative and administrative work (Ainsworth, 2017).

The European Parliament defines the gig economy, in its various forms and manifestations, as "peer transactions, with platforms that take on the role of intermediaries". The European Commission (2016) defines it, referring particularly to the sharing economy and crowd economy, as "business models in which the activities are facilitated by collaborative platforms that create an open market for the temporary use of goods or services often provided by private individuals".

It should also be noted that not all the works of the gig economy are the same and that therefore the context is very fragmented. In fact, we can distinguish between physical services (such as taxi services) that need to be lent to a specific location, and virtual services (such as translations) that can be done from any workstation, including one's own private home (Schmid - Drüner, 2016).

Sundararajan (2016) defines physical services as "work on demand through app/ internet" and virtual ones with the term "crowd work". The latter, would be inextricably linked to the broader concept of platform economy.

Schmidt (2017) divides the platform work into two categories: cloud work (web-based digital work, individual or cooperative creative work) and gig work (work found digitally to perform a task in a specific physical location, i.e. home delivery). Therefore, the gig work is considered as a specific category of platform work. Finally, we talk about crowd work "if the task is not assigned to a specific individual but to an indefinite group of people".

Fernández Macías (2017) defines platforms based on the content of their transactions: platforms that exchange goods (such as EBay and Amazon) and platforms that exchange services (such as Uber and AirBnB). Like Schmidt (2017), he distinguishes between online services and local services. Service platforms can also be differentiated according to the types of tasks / assignments required (social or intellectual).

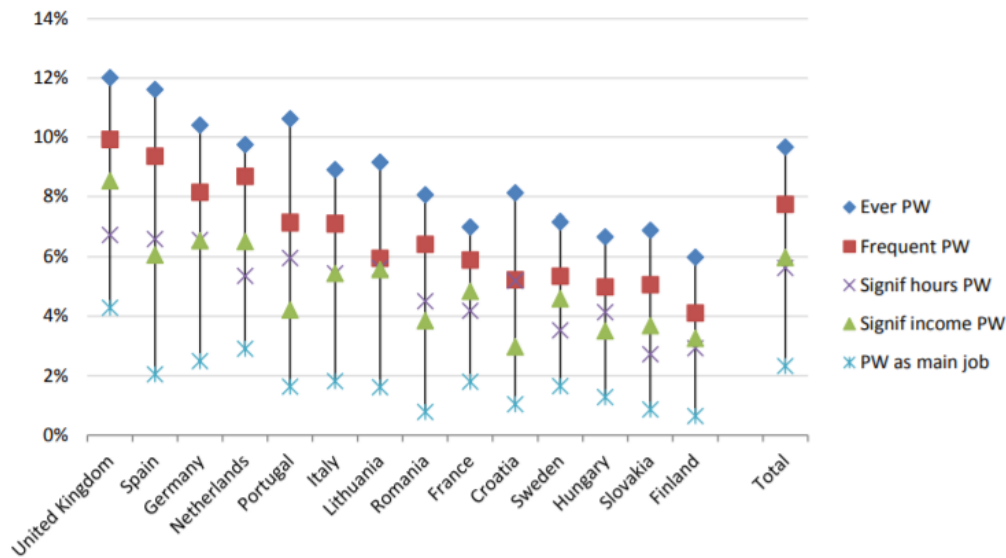
To conclude, we can identify some specific characteristics that make of the gig economy a completely new model:

- First, the role of matching demand and offer for work is completely designated to platforms. No direct contact between worker and client is allowed outside the platform, not for the first interaction nor for the following.
- Second, the tasks are obtained online and performed physically and the working relation starts and ends with every single assignment.
- Third, the compensation, which is very modest, is recognized to the workers through the platform, with little or no control by the workers.

In the sense of the present work, the focus will be on crowd-sourcing, which refers to an organization, a group or an individual who offer jobs to potential salaried persons, regardless of their geographical location (FEPS, 2016).

When it comes to sizing the gig economy, finding reliable data could be very difficult, therefore, to give a real dimension of the phenomenon, it has been decided to use secondary data as to presented in the report on platforms workers by the Joint Research Center (2018), based on the evidence from the COLLEEM survey.

The COLLEEM survey had gathered data from 14 European countries that have been considered representative, in an effort to give a precise picture of the phenomenon for future policy – making.

Figure 1: Different estimates of platform workers (PW) using COLLEEM data

Source: “Platform workers in Europe, Evidence from the COLLEEM Survey”, in JRC science for policy report, 2018, p. 19

According to figure 1, estimates indicate that on average 10% of the adult population in Europe has ever used online platforms for the provision of some types of labour services. However, less than 8% do this kind of work with some frequency, and less than 6% spend a significant amount of time on it (at least 10 hours per week) or earn a significant amount of income (at least 25% of the total).

If we consider the definition used by the JRC for platform workers as those who earn at least 50% of their income through platforms, or work via platforms for more than 20 hours a week, these workers account on average for about the 2% of the adult population.

Differences can be noted among countries, with Eastern and North countries under the average, central and Mediterranean ones on the average and UK considerably higher.

Even though the platform economy may seem to be still very small, it is important to notice that it clearly constitutes an emerging trend, affecting an important number of workers in the European Union. Especially, when considering that the crisis of 2007-8 has eroded traditional jobs in favour of more flexible ones.

2. Implications on the labour market

2.1 Control

The first peculiar characteristic of the gig economy is the role played by platforms, that have become intermediaries in the relationship between workers and employers. In this sense one key aspect for platforms and employers is the control they have over the workers and the tasks they are assigned.

The level of control varies accordingly with the specific task assigned to workers, and as underlined by Kalleberg and Dunn (2016) can be measured in terms of autonomy and flexibility. In particular, the more intellectual and theoretical the task is, the more autonomous (in terms of how to perform the job) and flexible (how long to work, when and where) the worker is. This is the case of translation or coding, for instance. On the other hand, the more

repetitive the task is and especially for physical assignments (i.e. food delivery), the lower the autonomy and the flexibility given to the worker.

Control is key not only in the relationship between employers and workers, but also in the one between the platform, officially an intermediary in the labour market, and the workers. This control is especially exercised in terms of costs control, tariffs and workers shares. Indeed, this is the case of platforms that put in contact workers and final consumers for a specific service. It is immediately understandable how this control is actuated by platforms like Uber (alternative taxi services) and AirBnb (rent of rooms and apartments). The earning model of these companies, in fact, is built on the commissions obtained over the cost of jobs, that are directly retained from the earning of the workers.

3.2. Customers' evaluation

This aspect of control, let us introduce another peculiar characteristic of the gig economy, especially valid for *giggers* who perform tasks and activities that do not require a specific knowledge or know how; that is the role played by customers' evaluation on the workers' possibility to get new gigs, increase earning and continue to be part of the platform.

According to the Local Consumer Review Survey conducted in 2017, 85 percent of consumers trust online reviews as much as personal recommendations, and more importantly 49 percent of them need at least a four – stars rating before choosing to use a business.

It is a matter of fact, that the online rating system allows anyone to evaluate the performance of any worker using a personal subjective opinion on the level of service obtained. Moreover, as stated by Pacella (2017) this system of evaluation can be considered a real instrument of control that the platform uses in order to manage its workers.

To this respect, it is important to remind that in many European countries it is not allowed to let the final customer give any evaluation of workers' job performance, unless it is not useful to identify a misconduct (i.e. Italy). This paradigm has been completely changed by the gig economy, and it has also implied that not only customers directly evaluate the workers, yet the evaluation system is not based on objective performance criteria more than on personal judgement.

This rating constitutes a control instrument for platforms as they use the results over the worker. As Pacella notices in her article, when Uber receives complaints by customers that believe they have been overcharged because the driver has chosen a mistaken route, it immediately makes deductions from driver's account without prior reference to him. In certain cases, users' evaluation is used as a determinant in the relationship termination; when an expert Uber driver (more than 200 rides) has a rating lower than 4.4 stars, he or she is removed from the platform (Aslam Vs. Uber, 2015).

3.3. Bargaining power

Linked to this control, it is the reduction of workers' bargaining power. In fact, the costs for the job performance are directly determined by the platforms, that keep commissions over them, with the workers having no power to negotiate. This is possible when it comes to low qualified jobs because no specific competence or knowledge is required, and so the worker can easily be replaced with someone else, with no damage for the platform, the employer or the final customer.

Moreover, the loss of bargaining power is not exclusive of physical performed tasks, but also for intellectual assignments, even when qualified workers are needed. In fact, the historical concept of work been geographically bounded is not true anymore, with platforms allowing companies to easily find workers in other countries.

Graham et al. (2017) sustain that in this new digitalized world, not only capital can circulate globally, but also labour. If we add to this the uncertainty of *giggers* legal status, of which we are talking extensively in the next section, it appears like we are facing a phenomenon of labour commoditization that gives no space for competitive dynamics, in which digital workers could be disadvantaged and become real price takers.

On the contrary, those who support this new economy, not only the platforms themselves, stress two main advantages. First the optimization of costs for companies, and second the flexibility that this type of work would be able to provide to workers, which appears to be much desired by the new class of employees. In doing so, particular emphasis is put on the work-life balance.

Working for an online platform would allow workers to maximize the flexibility of the employment relationship and thereby achieve the optimum in terms of balance. For example, through an application directly installed on their Smartphone, *giggers* could carry out all the daily life activities, having the certainty that they can be reached at any time to respond to a possible job offer (PES, 2017).

3.4. Wages

The truth is that the loss of control and bargaining power has an important impact on the gig economy's wages that, as pointed out by the Bank of England's chief economist Andy Haldane, experience a discount of up to 15 percent in terms of wages in the case of self – employed workers, and even weaker in the case for zero – hours contracts.

This low level of wages in the gig economy, not only in Great Britain, but in Europe as a whole, could lead to more general lower wages. Indeed, that could happen due to the possibility for the market to substitute a traditional employee with a *gigger*, but also through the apparently deregulation of the labour market and the weakened power of trade unions in terms of salary negotiations.

The commoditized system described so far seems prone to deregulate the labour market on the one hand, and changing the way people think their jobs and careers on the other. In fact, one key aspect of people working life is the possibility for career progression and professional growth, but it results very difficult to imagine a way for this to happen in a market such as the one of the gig economy.

All the same, the system we have briefly described takes with it important challenges for the Welfare State and the Labour law today in force in the European Union, and its member States. These aspects will be extensively treated in the following section.

3. What challenges for the Welfare State

The Welfare State developed in western countries when the second industrial revolution, carrying with it a new economic growth and labour conditions, opened the way for a debate about workers' rights, protection and wealth redistribution.

In general, we can say that in order to protect the new labour class that was growing in Europe, each Government decided to adopt specific Labour Laws and Welfare systems as to guarantee a specific level of protection to workers, at the beginning especially in terms of health and wages.

The development of these measures was pushed by labour and trade unions, that fought in order for the voice of workers to be heard by Governments, in opposition to the demands of employers. In this way, the labour market of western countries became more and more regulated.

In general terms, it is possible to summarize the aspects covered by Labour Law and Welfare provisions, as follows:

- Guarantee of a minimum wage
- Overtime compensation and determination of maximum working hours per day and per week
- Unemployment compensation, maternity and paternity leave
- Family and medical leave, paid holidays
- Employer payroll taxes, for social security and medical care

All these provisions are guaranteed on the basis of the dependency labour relationship between the worker and the employer, the latter limiting the freedom and autonomy of the first, in exchange for some measures of economic security (Donovan et al., 2016).

The important point here is the fact that, in order to obtain many of the advantages offered by the Welfare system, workers must be defined as so, and therefore a dependency relationship must be established between them and the employer.

4.1 Social rights

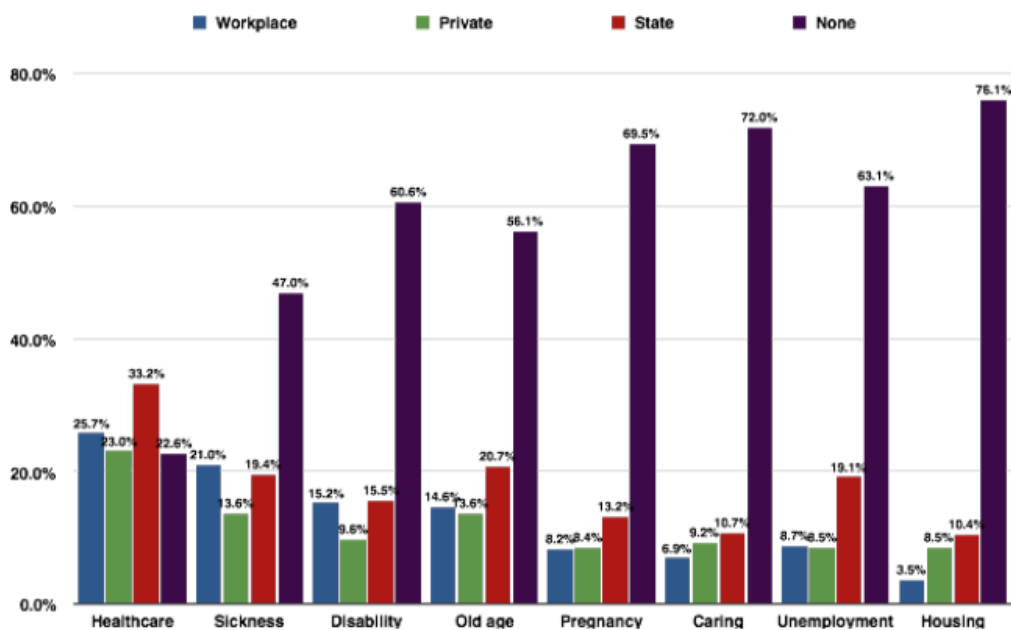
Schmidt (2017) considers the platforms of the gig economy as mere suppliers of an infrastructure that helps customers (the demand) to get in touch with workers (suppliers).

If this is true, then the platform should be considered only as an intermediary of this employment relationship, and the cost of work and the legal responsibilities that belong to the employer in traditional jobs, are transferred to workers in the gig economy. In fact, there is almost never a contract between the worker and the “user”, who appears not to have any responsibility over the first.

According to the European Parliament (2016) the legal status of a platform worker is unclear. Due to the rapid development of platform work, the European legislation has not been able to keep pace and update itself accordingly, which results in uncertainty about which laws and regulations apply to online platforms.

Moreover, the identification of the status of gig workers is made more difficult when a job is not tied to a specific position, as in the case of cloud working. Indeed, it is almost impossible to determine which national legal standards apply, especially when it comes to wages and employment benefits (Schmidt, 2017).

Consistent with the European Foundation for the Improvement of Living and Working Conditions (Eurofound), due to the lack of a specific regulation on employment, most of the workers of the platforms are forced to give themselves the status of self-employed. As a result, this substantially reduces the social rights of employees (Rodriguez Contreras, 2016).

Figure 2: Access to social protection schemes of the platform workers

Source: The social protection of workers in the Platform Economy (2017)

Figure 2, shows some data resulting from a survey conducted between February and April 2017 by the Center of Employment Relations Innovation and Change (CERIC), at the University of Leeds. The respondents were 1200 from four different platforms.

It appears clear that gig workers have problems obtaining access to some social schemes that are guaranteed broadly to traditional workers, a small exception made for the healthcare system.

4.2. Health and security

Besides the immediately recognizable risks deriving from the lack of classification of these workers within the different Member States, in particular the lack of social protection, there are other aspects that must be considered when assessing the impact of the gig economy on workers and the Welfare in the European Union.

As stated by the European Agency for Safety and Health at Work (OSHA, 2015) the platform economy and gig economy can expose workers to stress, musculoskeletal problems and visual fatigue.

In physical services, such as taxi service, workers may be vulnerable to attacks or harassment by their customers, while bicycle couriers (i.e. Foodora) may be exposed to an increased risk of accidents not only because of risks related to road traffic, but due to their increased speed as to deliver more orders, increasing their earnings.

Furthermore, workers would be exposed to numerous psychosocial risks deriving from:

- job insecurity, and therefore uncertainty about when a new job will be obtained and monthly income. It is not surprising that these workers often experience feelings of intense stress, apathy, the impossibility of planning their own future, delayed marriages.

- the impact of assessments by employers or customers, and consequently loss of self esteem
- the need to always be available, not to give others the opportunity to obtain an assignment, with consequent stress deriving from the impossibility of deciding on one's life and one's own time. Workers are faced with a pathology of flexibility, which rather than making them free, make them slaves to the system.
- the fear of interrupting the working period because of illness or malaise, because the cost of the illness could be that of not being able to earn enough salary so to cover monthly expenses, or worse losing score inside the platform.
- unfair working hours (fast pace, no breaks)
- isolation (lack of face-to-face contact with other workers) (Schmid - Drüner, 2016)

A report published by the New York Times is also emblematic in this sense. It has given voice to the experiences of some workers in the gig economy, underlying aspects such as:

- the search for a job as a full-time job
- life put on pause
- living in a constant state of anxiety
- the constant feeling of depression and burnout
- feeling as an object, replaceable with another
- feeling a profound sense of surrender

These risks are not only dramatic per se, but are made worse by the fact that very often statistics are not accurate in determining the dimension of these work – related hazards, and more importantly it is not clear who holds the duty of care in these cases. In the majority of situations, as the gig workers are considered self-employed, the duty of care is put on their own responsibility, but this creates an important social inequality. In fact, while it is possible and maybe easy for high-income *giggers* to take care of their health and safety situation, it is much more difficult, when not impossible, for low-income ones to do the same.

This is to say that the gig economy risks to create new and more difficult to bridge social inequalities, creating a difference in terms of health and security protection not only between traditional workers and *giggers*, but also among *giggers* that operate in different Member States, exacerbating the two-speed Europe perception the European Commission President Juncker is trying to fight since the beginning of his appointment.

4.3. Discrimination and equal opportunities

Another important element linked to inequality resides on discrimination and equal opportunities. Theoretically, platforms can put in touch workers and employers/users independently from their geographical location, and can guarantee transparency in the choice of which worker could best accomplish the demanded task. This due to the fact that the final choice will be based only on the worker's competences, previous assignments, and of course other clients' evaluation. Moreover, those who defend the gig economy, also notice that the easy access to platforms consistently reduces entrance barriers in the labour market, allowing disadvantaged groups, poor people or developing countries to straightforwardly access a global labour market.

This could be true in a utopist reality, but many studies seem to demonstrate otherwise. As a matter of fact, the statement that online platforms are transparent, equal and non-discriminatory is based on the wrong assumption that their mass exposure and access will guarantee the respect of social and moral norms.

Actually, indirect discrimination has to be included in the equation. In fact, it is true that platforms are transparent in their policies and salaries, reducing to almost zero direct discrimination, but they lack of control in terms of indirect one.

Cook et al. (2018) published a study that notices how women drivers in Uber obtain an average hour compensation lower by 7 percent than men. The authors observe that the determination of drivers' compensation is based on a simple algorithm that takes into consideration three different elements: locations and time slots, experience and average driving speed. The relevant point is that all these factors are mainly determined by gender-based preferences (i.e. women are less risk tolerant and prefer a slower driving style), and therefore it appears that even more than in traditional jobs, gig economy can open gender earning gaps.

In addition, some studies have pointed out that despite the potential of inclusion of platforms, cases of exclusion and discrimination have been registered. For example, according to Graham et al. (2017) a *gigger* from Lagos reported that according to his experience, workers from UK and U.S. were more likely to obtain a job, and therefore it was wiser to mask his location in Nigeria.

The problem is not only that these episodes of discrimination exist, but the classification of platforms as intermediaries instead of employers. Thus, this misclassification results in the impossibility to control over this indirect discrimination episodes, and to directly apply European anti discrimination directives.

4.4. Taxes and contributions

Finally, when considering the challenges gig economy rises for the European Welfare system is important to look at social security scheme and the importance of contributions in order to keep it functioning.

This final and crucial point is sustained by a study conducted by the JCR in 2017, which sustain that platforms do not contribute to workers' social security, as they are considered self-employed, and therefore responsible for their taxes payment and social security contributions. Moreover, the JCR notice that in some countries there are not mandatory social security schemes, only voluntary ones.

Therefore, a free-riding conduct could happen on behalf of both the platforms, that are transferring their responsibility to workers, and workers themselves that may decide not to pay for any social security scheme. The final result would be the State may provide basic social security to all and pay the cost from general tax revenues, this is to say that traditional workers will have the burden of social security also for gig workers (JCR, 2017).

Evaluating the size of these externalities is very difficult, as there is not a certain method to estimate the correct number of gig workers. In its communication to the other European Institutions (2016), the Commission expressed its concerns about tax contributions as follows:

"[...] issues have emerged in relation to tax compliance and enforcement: difficulties in identifying tax payers and the taxable income, lack of information on service providers, aggressive corporate tax planning exacerbated in the digital sector, differences in tax practices across the EU and insufficient exchange of information".

The economic dimension of the challenges accompanying the gig economy is under no means the least important, as it could cause significant malfunctioning of the Welfare system.

4. What way forward

The difficulty in correctly classifying gig workers has lead member States to adopt different measures, apply different legal statuses, and consequently guarantee their workers a specific

social protection and rights that are in many cases very different among Member States. This being even more complicated for platforms that operate in different markets, as it appears unclear what national law to apply.

This differentiated system of protection and access to rights and social schemes, appears contrary to the fundamental European Union principles, as stated in Article 3 of the TUE:

“ [The Union] ... shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. [...]”

This has been made even clearer in the political guidelines for the work of the European Commission established in 2014 and presided by President Jean –Claude Juncker, and in the consequent communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European Pillar on social rights.

In the communication, the Commission states as follow:

“The EU is home to the most advanced welfare systems in the world and to a wealth of best practices and social innovations, but it needs to confront and adapt to unprecedented societal challenges [...]The Pillar reaffirms the rights already present in the EU and in the international legal acquis and complements them to take account of new realities”

Therefore, there is a necessity, already perceived by the European Union, of improvement of social rights, in order to take into consideration the dynamic and changing work realities around the monetary Union. The opinion of the Commission is also sustained by the opinion of the European Economic and Social Committee, which also makes a step forward in saying that:

“the future of work — with all the opportunities and challenges this presents — should be a key priority in the debates regarding the Pillar [on social rights]”

At the European level, the debate about the new dimension of work has also been linked to industry 4.0, as stated by the Economic and Social Committee on its opinion of 2016 about the topic:

“at the EU level, social dialogue in industry 4.0 should concern [...] transformations in employer – employment relationships”

Due to this awareness at the European level, and in order to reduce the gap of protection for gig workers and differences on the treatment guaranteed by member States, future actions should go in the sense of a new European legislation that should address the following main points:

- Classification of gig workers;
- Obligations of the platforms;
- Health and safety measures for *giggers*;
- Taxation schemes.

5.1. Finding the right definition

The possibility of a European intervention in matters concerning labour, which is mainly a subject of National jurisdiction, is given by article 153 of the Lisbon Treaty (TFUE), that says that the Union can complement the activities of member States in the following fields:

- “(a) improvement in particular of the working environment to protect workers' health and safety;*
- (b) working conditions;*
- (c) social security and social protection of workers;*
- (d) protection of workers where their employment contract is terminated;*
- [...]*
- (i) equality between men and women with regard to labour market opportunities and treatment at work;”*

These are all aspects identified as critical when it comes to gig economy, as explained in precedent sections. Therefore, the suggestion is for the European Parliament and Council to consider the possibility to adopt a directive on “the protection of gig workers and their access to social protection”.

In this sense, the first important step should be towards a correct classification of *giggers*. It is clear that the majority of member States are incline to consider *giggers* rather employees or self-employed. In addition, in recent years the possibility of creating a third definition has appeared in the scene.

Today there is not clear definition of “worker” or “employee” within the European Law. In fact, we find references to workers in Title IV, chapter 1 of the Treaty on the Functioning of the European Union, that specifically concerns the free movement of persons, services and capitals. However, what we should intend as worker is not stated in the Treaty, for such a definition has been given pragmatically by the Jurisprudence of the Court of Justice, therefore no clear univocal definition can be found.

The case law that is considered a milestone in finding such a definition is the Judgement of the Court of 3 July 1986, in the case 66/85 “Deborah Lawrie-Blum vs. Land Baden-Wurttemberg”, in which the Court expresses as follows:

“The essential feature of an employment relationship, however, is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration”

This definition of “worker” appears extremely vague, as it does not clarify what should be meant by “performing services for and under the direction of”. In fact, it is not clear to what extend one person should exercise a control over another, in order for the latter to be considered a worker.

However, some more clearness is given again by the Court in 2001 case 268/99, in which the Court states that in the absence of a contract or a subordination requirement, then:

“any activity which a person performs outside a relationship of subordination must be classified as an activity pursued in a self-employed capacity for the purposes of Article 52 of the Treaty”.

Therefore, we could imply the presence of a contract or any other demonstrable subordination agreement as a fundamental element in order to identify an employer-employee/worker relationship. While, being in the presence of any other arrangement we should consider the worker a self-employed.

Again, even if this second Judgment helps to clarify the position of European case law, it appears that the definitions of worker and self-employed are not quite adequate in a fast moving labour market, for them not giving any clear guidance as to define the extend of the control exercised by the employer, and in the case of gig economy, by platforms.

These definitions given by the European Jurisprudence seem to privilege a formal evidence of control or subordination, rather than a substantial one. From this derives that if gig workers perform their tasks or assignments in no presence of a contract, or another official document stating their subordination, then platforms should be considered as mere intermediaries.

However, as analysed in previous sections, a substantial examination of many platforms' business model and the control they exercise over workers, it leads to a different interpretation. Is a matter of fact that no formal subordination can be demonstrated, but for sure there is a substantial one.

It is according to this substantial approach that it appears necessary for the European Union to finally give a more precise and up-to-date definition of worker as for European legislation. Hence, the scope of the following paragraphs is to help declining a suitable and applicable system as to lead to a valid definition that could address the reality of the new labour market, with the flexibility and dynamism it requires.

The proposal is to set minimum requirements in order to correctly classify employees and self-employed as the two main categories of workers, exactly like the majority of Member States have been doing in the last years. Consequently, it will be possible to classify *giggers* inside these two categories, and establishing which role platforms play in the employer-employee relationship (employer or intermediary).

In order to do so, it could be useful to apply the rule of control and independence in the relationship between the employer (or platform in the gig economy) and the worker, as it is in Germany.

This is to say, if it is possible to determine there is a control exercised by a company/platform over the worker, such to importantly limiting his/her independence, therefore he or she should be granted the status of employee, and the company/platform must be consider his/her employer.

On the other end, if the control exercised by the company/platform is weak and the worker has an effective high level of independence, then we should consider the worker a self-employed and the company/platform a mere intermediary.

This consideration has to be done case by case according with the business model of the company/platform, and should take into consideration the effective level of control and independence, and not the formal one stated for example in the "terms and conditions" of platforms.

This last one is a very important point, as in many of these terms and conditions, platforms put the worker in the circumstance to sign agreements in which is clearly stated they are not considered workers of the platform, but mere self-employed and obliged to solve any controversy in arbitration (this is the case of Uber and Glovo, for example). However, when analysing the business model of Uber, the control exercised by the platform limits the independence of the worker to the extent his/her bargaining power on wages is null and his/her contract could be terminated any time due to a negative rating.

This situation has been clearly identified by the Employment Appeal Tribunal in London in the case Uber vs. Aslam, in which the court confirmed the previous sentence by the employment tribunals of the 28th of October 2016, that Uber drivers should be considered

employees of Uber due to the control exercised by the platform over the relevant aspects of their job.

Following the logic of the Court in giving its reasons for the sentence, it appears legitimate to perform a factual evaluation of control and independence. The evaluation should take into consideration some key aspects of the workers' obligations imposed by the platform.

The usage of personal equipment shouldn't be taken into consideration as a fundamental element that testifies the independence of the worker. In fact, in models like the Uber's, it is true that drivers use their own cars, but those must have some specific characteristics, and the drivers are obliged to follow certain routes, work at certain times and for a certain amount of hours, and they have no possibility of directly contact final users, which only have contacts with the platform.

Such a business model that is widely spread, especially among those platforms that perform services of food delivery, taxis, etc. clearly configures an employer-employee relationship.

Besides, a useful question should be if considering workers as employees instead of self-employed, then the business model of the platform/company would change. If the answer to this question happens to be negative, then we can easily imply there is a good possibility that the worker is in fact an employee.

Finally, it must be said that one proposed alternative in order to classify gig workers is to keep them separated from the broader definition of worker/self-employed, and create a specific category under which comprehend them. This third definition, should be a hybrid between worker and self-employed.

It might be said that hybrid forms between workers and independent contractors or self-employed already exist in countries such as Canada since the 60's. These workers hold a good degree of autonomy and flexibility, but are granted the same protections as dependent workers.

The difficulty of the identification of such a third specificity could be found in the differences between gig jobs, platforms and sharing economy assignments. In fact, as said earlier this new digital works are not standardized and equal, and broad differences exist between them. Trying to find a single definition could lead to measures applicable only to a small portion of the gig workers, maintaining the same lack of protection and correct classification for others.

In other terms, in a highly digitized labour market, in which changes happen incredibly fast, trying to give a specific definition might mean it will be obsolete in a few years time. Moreover, the need for a third definition would imply the present legislations are not enough to protect *giggers*, which is also not true, since the problem as identified in the present work doesn't derive from inadequate National Labour legislation, but from a failure in classifying *giggers*.

The proposed solution would be helpful not only to address the issues brought out by the gig economy, but more broadly to address the new labour forms that have been appearing in the market in the last years (i.e. zero-time contracts, project contracts, etc.).

5.2. A specific directive

Unfortunately, getting to a final definition of worker and self-employed could require a long time and effort, and it might not be an immediate solution to the problem of gig workers protection and access to social rights and schemes. Indeed, a broader modification of the European Legislation might be requested.

Therefore, as a second best solution it may be considered the possibility to envisage a specific directive that tries to identify what rights and specific protections should be granted to

gig workers, who should be responsible for this protection and who should be responsible for the payment of social security taxes.

Such a specific directive would guarantee to gig workers a minimum standardized protection independently from the Member State they work in or the platform they are linked to.

First of all, the directive should identify who are the gig/platform workers. In doing so, it is possible to apply the definition of platform economy given by Eurofound (2018):

“Platform work is an employment form in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services in exchange for payment.”

Since the scope is not to guarantee protection for occasional platform workers, but for those who use the platform in order to make a living, the workers taken into consideration should be those who spent at least twenty hours a week working through the platform. This threshold is established considering an average working week of forty hours, and a part-time employment relationship of twenty.

Secondly, even if considering platforms as mere intermediaries in the working relationship, it should be recognized the fact that there is no contract between the worker and the final user of the service, and therefore, for certain kinds of protections platforms are the only ones who can effectively intervene. Indeed, the sole stable contact workers have is with the platform that, not only puts in contact the worker with the final user, but prevents him/her to establish any direct contact with the client.

In this sense, the directive should identify in the platform the subject responsible to apply some of the provisions stated in the already into force directive of the Council 91/383/EEC. In particular, provisions contained in articles three, four and five, to the extent that could be consider appropriate for gig workers. That is reformulated as follows:

Article 3:

“1. before a worker takes up any activity, he is informed by the undertaking and/or establishment making use of his services of the risks which he faces;

2. such information:

— covers, in particular, any special occupational qualifications or skills or special medical surveillance required, as defined in national legislation, and

— states clearly any increased specific risks, as defined in national legislation, that the job may entail.”

Article 4:

“Member States shall take the necessary measures to ensure that, in the cases referred to in Article 3 , each worker receives sufficient training appropriate to the particular characteristics of the job, account being taken of his qualifications and experience.”

Article 5:

“Member States shall have the option of prohibiting workers from being used for certain work as defined in national legislation, which would be particularly dangerous to their safety or health, and in particular for certain work which requires special medical surveillance, as defined in national legislation.”

Article 4 as formulated above, could be completed by the provision of specific techniques of training that can clearly not be the same as for more structured companies. However, it would be beneficial for workers to be asked to watch an online video that explains the risks of the

assigned tasks and which are the guidelines to perform them in order to protect their safety and health. Specific examples could concern the average speed they should maintain while driving, the obligation of using personal protective equipment when on bike, after how many minutes on screen to take a break, etc.

Another important aspect platforms should be called to intervene concerns working times and resting periods. In fact, supposing that each worker accomplishes tasks for many different clients, it can be difficult to track the effective time spent on duty. However, these workers are tracked by platforms in performing their assignments through a specific app.

In this sense, some specifications are necessary. First of all, not every platform can control the time workers spend on duty. In fact, it is impossible for platforms that assign tasks that do not require to be performed online to know the effective working hours of workers. Secondly, for platforms that do track their workers while on duty it is important to correctly define what has to be meant by “working time”. Indeed, some could claim that “working time” is only the time spent by the worker in order to complete the task, while others could sustain that the “slack time” between assignments, during which the worker is available, has to be considered working time as well.

Concerning the last point, the definition of working time given by the directive 2003/88/EC should be applied:

“working time’ means any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice.”

The definition appears very clear in saying that working time is the time the worker spends at employer’s disposal. Thus, it is not illogical to assume this time also includes the time between an assignment and the other, due to the fact that not being available could make the worker lose the chance to obtain a task, and therefore availability is intrinsic to platform working time.

In terms of which platforms should guarantee the respect of working and resting periods as specified by directive 2003/88/EC, it is possible to say that any platform that allocates tasks to be performed in a specific period of time, for which it exercises the complete control, should guarantee the respect of the provisions of the directive and prevent the worker to access the platform in over time, unless justified exceptions could be found.

Moreover, for specific sectors, like road transportation, the platform should guarantee the respect of the specific directives (i.e. 2002/15/EC).

For those platforms that allocate tasks over which the worker has the control in terms of his/her own timing and only a deadline for the delivery is fixed, due to the fact the control over the worker’s timing cannot possibly be performed by the platform, the only obligation within the platform should be to inform the worker about the healthiest deployment of working/resting time as defined by directive 2003/88/EC.

Again, it is important to address the point of equal and certain payment. As analysed previously, many platforms establish the salary on the basis of some algorithm that takes into consideration factors considered key by the platform. In doing so, two counterproductive effects happen:

- the worker cannot be certain about his/her minimum, or even final, monthly salary
- unjustified inequalities take place

Thence, to avoid indirect discrimination on one side, and insecurity about salary on the other, platform should be clear about the minimum salary guaranteed to every single worker

(hourly or per task completed), and extra salary could be allowed on the basis of an algorithm as far as it could be demonstrated that its valence is merely rewarding.

This to be applied only to those platforms within which workers have no power for negotiating salaries, that are determined solely by the platform. In these cases, since the workers could be considered price takers, platforms should pay for their social security contributions.

While, for platforms in which a negotiation takes place between workers and the platform itself or the final customer, only a minimum salary should be recognised for each completed task in the case the final customer refuses to pay the agreed amount on the basis of some subjective evaluation. In these cases, workers should be called to pay their social security contributions.

Together with the drafting of such a specific directive addressing gig economy workers, it should be introduced the debate about this specific labour market in the discussions about the European Commission proposal on transparent and predictable working conditions in the European Union.

In this way, first steps will be taken in order to protect these workers that find themselves in a vulnerable and uncertain position.

5. Final considerations

Labour market is changing very fast, due to the necessity of companies to cut on costs on one side, and the disruptive technological progress on the other. In addition, there appears to be a continuous demand for more and more flexibility and freedom in performing one's own work.

This changes have led to the rise of new forms of employment based on platforms that have shaken the European labour market and Welfare system. In fact, it seems that we are assisting to the creation of new inequalities among workers, with a different level of protection granted to gig and platform workers, who have a restricted access to social schemes otherwise guaranteed to traditional workers.

Letting the solution of this problem only to Member States would lead to a divergent system of protection and rights, as well as to different contribution schemes, increasing the perception of a two-speed Europe.

In order to address the problems arising from the gig economy, and to prevent the two-speed Europe enhancement, it has been proposed for the European Union to take action, on the basis of article 153 TFUE, as to set minimum standards aimed at guarantee equal protection and contribution schemes for all the workers in the gig economy. In this sense, the solution proposed is considered only a starting point for more decisive future actions aimed at a final European definition of "worker" and "employee", as to finally have a clear direction in terms of European Labour Law.

Indeed, if the European Union seeks to put the basis of a common social and Welfare system, it can no longer demand the labour-related issues in Europe only to Member States, being the cost of such a decision very high in terms of a Single and more integrated European Union.

Therefore, this paper wants to be a starting point for future actions and consultation at European level in vital topics as that of workers protection, rights and the Welfare system as a whole.

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