

COLLECTIVE VOICE IN THE PLATFORM ECONOMY:

CHALLENGES, OPPORTUNITIES, SOLUTIONS



Report to the ETUC

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September 2018

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TABLE OF CONTENTS

Preface (P. Scherrer/W. Kowalsky)	4
Executive summary	5
PART I: UNDERSTANDING WORK IN THE PLATFORM ECONOMY	6
A Defining the Platform Economy	6
B Measuring Platform Work	8
C Working Conditions in the Platform Economy	10
i) Legal Status	10
ii) Wages	11
iii) Rating Mechanisms	12
PART II: THE COLLECTIVE CHALLENGE	14
A Platform Resistance	14
B Dispersed Workforce	16
C New demands from the workforce	17
PART III: CHARTING POSSIBLE SOLUTIONS	19
A starting point: gigs, tasks, and rides are work	19
A Embedding Platform Work in Collective Structures	19
i) Organising	19
ii) Information and Consultation	21
iii) Collective Bargaining in the Platform Economy	22
iv) Co-Determination	24
B Customer Engagement and Platform Certification	24
PART IV: LEGAL IMPLICATIONS	26
CONCLUSION	28

PREFACE

When the ETUC started to work in depth on digital issues, the hype around digitalisation had already started but from a trade union perspective nothing had been accomplished at that time. Times have changed since.

In the meantime, trade unions have greatly developed their knowledge and have become a vocal actor dealing with digitalisation, and not only in the context of workers participation. Quite a lot of progress has been made and we have concrete examples of workers participation in the context of online platforms (establishment of works councils at Foodora in Cologne and Vienna etc.), and also a first example of collective bargaining with a labour platform (Hilfr in Copenhagen), but in particular more awareness amongst trade unions and a more proactive attitude to address the needs of platform workers. Quite a number of successful initiatives are analysed in this report: from setting up a code of conduct or a bespoke website about signing a collective agreement to putting workers representatives in the supervisory boardroom of a major platform.

However, trade unions cannot solve the problems of digital labour platforms on their own. Policies, both European and national, are clearly needed to solve the overarching and outstanding question of European regulation and legislation. A lot of issues remain unsolved: the non-coverage by employment law, the difficulty or impossibility to get access to social security or to workers' rights such as paid leave, training, collective bargaining, the question of work-life-balance, which is more than ever blurred in that area of work. At the heart of a directive should be a rebuttable legal presumption that the contractual relationship constitutes an employment relationship between the platform worker and the platform. Not only legislation is needed: A fair digital corporate responsibility based on ethical guidelines would be another necessary step in the right direction. In the middle of the trade union concerns is the issue of future of work. What will labour look like in the middle of the 21st century? This study considers the critique of the so-called 'sharing' or 'collaborative economy' as justified. The term 'platform economy' describes more aptly the phenomenon of outsourcing tasks to a large pool of workers through a digital platform.

The ETUC was quite disappointed by the initial communications from the European Commission and sees with some relief that the Commission has recently tried to correct the course and to get its focus right, looking deeper into the scale of platform work and in general into the status of platform work in the context of the broad discussion on the future of work. However, there is still a long way to go. The discussion on possible regulations has not come to a final conclusion, even if some proposals for regulatory approaches at the EU level are on the table now. The report to the ETUC is one important but surely not the last contribution to that debate.

Peter Scherrer (Deputy General Secretary ETUC)

Wolfgang Kowalsky (Senior Advisor ETUC)

EXECUTIVE SUMMARY

The rapid growth of the platform economy in Europe has triggered much discussion about the future of employment rights. This report focuses on a particularly important subset of issues raised by the spread of platform work across industries and Member States: what are the challenges and opportunities for workers' collective voice?

In making the case for the inclusion of the platform economy in existing structures of worker representation and collective bargaining, the report is structured as follows: a first part sketches out key facets of the phenomenon, beginning with an analysis of competing definitions and measures of the size of the industry. It then turns to an exploration of working conditions in the platform economy, focusing on three particularly salient challenges: a (purported) lack of clarity as regards platform workers' legal status; wage rates which can be far below legal minimum levels once all expenses and time are factored in; and rating mechanisms which exercise significant control over platform workers' daily efforts.

A second part then turns to the collective challenge in particular, identifying three oft-discussed potential obstacles to ensuring collective voices can be heard in the platform economy: operator resistance, from downright refusals to engage with worker representatives through to more subtle suggestions that collective bargaining is fundamentally ill-suited to platform-based work; workforce dispersal, as platform workers often find themselves working on individual schedules and scattered around a city – or in the case of online platform work, even the entire world; and new demands from a workforce which does not fit into the existing understanding of the needs of a stable, full-time workforce. Upon closer inspection, however, it quickly becomes evident that none of these obstacles are in fact insurmountable: the inherent flexibility and adaptability of collective bargaining structures turn out to be an important trump card in this regard.

A third section underlines this point by setting out a series of examples of successful collective engagement with platform operators: it explores different organising and worker engagement strategies, before turning to the full spectrum of worker representation. There are instances of information and consultation machinery (whether within the scope of collective legislation, or in the form of voluntary arrangements between workers and platform operators) through to an example of co-determination at board level. Discussion is particularly focussed on the content of collective bargaining in the platform economy: what are the sort of topics which workers and platforms might be interested in, and which are specific to the context of platform-based work? In addition to this analysis of existing bargaining structures, there is also a discussion of alternative models of engaging consumers and platforms directly, whether through a system of platform certification, customer pledges, or the institution of a crowdwork ombuds office.

A brief concluding section, finally, turns to an exploration of the legal challenges raised by the report. Whilst there have been sustained calls for reform in the individual dimension of employment rights, the flexibility and adaptability of collective bargaining means that there is only one major issue to be considered: the role of European Union Competition Law norms. Drawing on recent jurisprudence of the Court of Justice, however, it is clear that the successful organisation of platform economy workers would not be caught within the reach of the Treaties.

PART I:

UNDERSTANDING WORK IN THE PLATFORM ECONOMY

Over the past few years, the platform economy has quickly become a focal point for discussions about the future of work in Europe and beyond. The first part of this report sketches an outline of key issues in understanding work in the platform economy. After a brief introduction to key definitions and business models, discussion focuses on the size and growth of the industry, before looking at the implications for work: on the one hand, the platform economy has significant potential to make work more flexible and inclusive; on the other, there is a real danger that the reality behind promises of ‘micro-entrepreneurship’ is one of tight control and low wages.

A) DEFINING THE PLATFORM ECONOMY

Most readers will be familiar with leading platform economy operators. An ever-growing number of start-ups are setting up online platforms and mobile ‘apps’ to connect consumers, businesses, and workers – often for jobs lasting no longer than a few minutes. What started out as a small niche for digital ‘crowdwork’ on platforms such as Amazon’s Mechanical Turk has grown into a much larger phenomenon. Some of the major players have quickly become household names – from ‘ridesharing’ companies such as Uber, delivery apps Deliveroo and Foodora, or casual task platforms Helping and TaskRabbit.

Competing labels and definitions abound: work in the platform economy is often referred to as crowdwork (as tasks are outsourced to a ‘crowd’ of workers available through an app or website), or gig work (evoking the musician’s life where each concert or ‘gig’ is but a one-off task or transaction, without further commitments on either side). The European Commission formally speaks of the collaborative economy (for the full definition, see inset box). The present report is focused on a slightly smaller subset, ignoring platforms for the provision of goods and/or assets, such as *AirBnB*: that platform’s business model is premised on selling short-term access to assets, rather than work.¹

The Collaborative Economy – a European Definition

According to a recent Communication from the European Commission, this term ‘refers to business models where activities are facilitated by collaborative platforms that create an open marketplace for the temporary usage of goods or services often provided by private individuals. The collaborative economy involves three categories of actors: (i) service providers who share assets, resources, time and/or skills – these can be private individuals offering services on an occasional basis (‘peers’) or service providers acting in their professional capacity (“professional services providers”); (ii) users of these; and (iii) intermediaries that connect – via an online platform – providers with users and that facilitate transactions between them (‘collaborative platforms’). Collaborative economy transactions generally do not involve a change of ownership and can be carried out for profit or not-for-profit.’

The Communication highlights that the ‘term collaborative economy is often interchangeably used with the term ‘sharing economy’. Collaborative economy is a rapid evolving phenomenon and its definition may evolve accordingly.’

Source: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European agenda for the collaborative economy. 2 June 2016, COM (2016) 356 final, page 3.

¹ Renting out a house or flat does require a fair amount of labour, of course, from changing sheets to cleaning the bathrooms. At the end of the day, however, the product offered to the consumer is use of an asset, rather than on-demand labour.

A further scope limitation should briefly be highlighted: the platform economy is an increasingly global phenomenon, in two distinct dimensions: first, because many of the platforms involved operate in jurisdictions around the world. Second, because digital work in particular can easily be outsourced across borders. In January 2017, researches at the Oxford Internet Institute published the results of an intensive three-year study into online gig work across the globe, concluding that platform work was 'becoming increasingly important to workers living in low- and middle-income countries.'² Whilst the emphasis of this report is clearly on possible solutions in the framework of the European Union, it is important to keep the second transnational dimension of the platform economy firmly in mind: at least insofar as digital crowdwork (or 'online clickwork') is concerned, work might take place far beyond the reach of Union law.

Heterogeneity and Commonalities of Platform Work

Platform economy brands and business models vary across countries and operators. New platforms are launched and old ones dispatched into bankruptcy on a daily basis. Even well-established operators seem to reinvent themselves constantly: a platform might experiment across different cities with its customer pricing, the commission it charges, and how workers are assigned to particular tasks. Changes to the business model require little more than a software update.

In order to grapple with the constant evolution of the on-demand economy, scholars have developed a number of competing taxonomies of platform work. Professor Jan Marco Leimeister of Kassel University sets out perhaps the most extensive classificatory scheme of crowdsourcing and crowd work. This distinguishes, for example, between 'internal' and 'external' crowdwork, depending on whether on-demand workers are employed by the platform operator or not. The latter category is then subdivided into a series of 'archetypes', including categories such as 'Microtask', where 'tasks are predominantly simple and repetitive', or 'Marketplace platforms', where 'more long-term and complex jobs are given into crowd'.³

This understanding of *crowdwork* as a purely digital form of on-demand labour, where tasks can be completed behind a computer anywhere, is usually contrasted with *gigwork*, where tasks mediated through a platform have to be completed offline – such as for example food delivery or cleaning.⁴ The axes along which the field could be organised are nearly unlimited. Whether work is completed on- or off-line is one possible dimension, but it isn't the only differentiation found in the scholarship: there are also differences between task-specific platforms (Uber, Deliveroo) versus generalist operators (Helping, TaskRabbit), or differences in who sets the price of each task (the platform in some cases, the consumer or even the worker herself in others). In reality, platforms' business models overlap and intersect – with several crucial commonalities, including notably the use of algorithmic rating mechanisms (explored further, below).

Most importantly, however, the key function of platform economy operators as discussed in this report is *Digital Labour Intermediation*. In order to deliver tightly curated products and services to customers, platforms actively shape the entire transaction through close control over their workforce: from setting terms and conditions and checking relevant qualifications to ensuring proper performance and payment. Platform economy apps do not just make it quick and easy to find workers and tasks: user ratings provide quality control and feedback, and digital payment systems render the entire transaction cashless.

² Mark Graham et al, *The Risks and Rewards of Online Gig Work At The Global Margins* (Oxford Internet Institute 2017) 1,2 (Electronic version available at: www.oii.ox.ac.uk/publications/gigwork.pdf)

³ David Durward, Ivo Blohm, Jan Marco Leimeister, 'Principal Forms of Crowdsourcing and Crowd Work' in Werner Wobbe, Elva Bova and Catalin Dragomirescu-Gaina (eds), *The Digital Economy And The Single Market* (FEPS 2016) 46-7, 48.

⁴ Michael Heiling and Sylvia Kuba, 'Die Ökonomie der Plattform' in Doris Lutz and Martin Risak (eds), *Arbeit in der Gig-Economy: Rechtsfragen neuer Arbeitsformen in Crowd and Cloud* (OGB Verlag 2017) 28, 33-4.

The Platform Paradox before the Court of Justice

According to most platforms' terms and conditions, their business model is to operate powerful software applications ('apps') designed to match consumers who need a task done with entrepreneurs in search of their next 'gig'. Upon closer inspection, however, it quickly emerges that platforms offer much more than mere matchmaking services. They are in the business of *Digital Work Intermediation* (see main text).

This is the *Platform Paradox*: platform economy operators present themselves as marketplaces even though in reality they often act like traditional employers. Instead of passive matchmaking, platforms rely on rating systems and algorithmic control to ensure that each aspect of the worker's task is completed in compliance with company policy and customer instructions.

This Paradox plays a crucial role for purposes of EU law: in recent litigation, Uber suggested that its platform was an 'information society service' for purposes of the EU's electronic commerce directive. In Case C-434/15 *Asociación Profesional Elite Taxi v Uber Systems Spain SL*, both Advocate General Szpunar and the Grand Chamber of the Court of Justice disagreed: given the tight control exercised over individual drivers, the company offered 'more than an intermediation service' [37]: indeed, the platform's 'intermediation service simultaneously offers urban transport services' through its app [38].

Whilst the context of the decision was not within the field of labour law, it is nonetheless an important precedent for present purposes: save where otherwise provided by Union Law, Member States retain domestic regulatory authority over platform operations. The judicial acknowledgment of tight platform control could also play an important role in litigation over disguised self-employment (discussed below).

B) MEASURING PLATFORM WORK

Gauging the size of the platform economy in Europe is difficult: competing sources offer wildly different numbers – especially when trying to determine what proportion of the overall workforce are engaged in the platform economy⁵. This is driven, not least, by the fact that statistical measurement often focuses on 'non-standard' or 'atypical' work more broadly, rather than platform-based work in particular, and are focused on labour markets in the United States and/or the United Kingdom. There, several studies using a range of methodologies, from traditional surveys to an analysis of bank accounts to determine where income is derived from, have homed in on a figure of approximately 4% of the working-age population both in the US and the UK⁶. A spring 2017 report by the RSA, a UK think tank, similarly estimates that there are currently 1.1 million gig workers in Great Britain, and that approximately '3 percent of adults aged 15+ have tried gig work of some form, which equates to as many as 1.6 million adults.'⁷

A 2018 Technical Report published by the European Commission's Joint Research Centre (JRC) provides comprehensive statistics on the basis of a survey of 14 EU Member States. Measuring worker engagement with 'labour service platforms', a definition which includes both 'location-independent, web based' app services as well as platforms where 'work is performed on-location', the report sug-

5 See McKinsey Global Institute ('MGI'), *Independent Work: Choice, Necessity, and the Gig Economy* (McKinsey&Company October 2016) 36; Brhmie Balaram, Josie Warden and Fabian Wallace-Stephens, *Good Gigs: A Fairer Future for the UK's Gig Economy* (RSA 2017) 18. On some methodologies, the size of the platform economy is negligible: Lawrence Katz and Alan Krueger, 'The rise and nature of alternative work arrangements in the United States, 1995–2015' (2016) NBER Working Paper No 22667. It is not just the size of the platform economy with which statisticians struggle: attempts to determine key worker characteristics are plagued by similar problems. Take gender as an important example. Male and female workforce participation turns out to be very hard to measure, not least given huge variation across different platforms in recording and displaying worker demographics. McKinsey, on the one hand, suggest that 'there is gender parity in independent work, but men are more likely to be free agents and women are more likely to be supplemental earners', (MGI, *Independent Work* (43) whereas the RSA, a UK think tank, concludes that 74% of weekly gig workers are men; a figure which rises to 95% for driving platform Uber (RSA, *Good Gigs* 29.)

6 MGI, *Independent Work* (n 5) 30; Diana Farrell and Fiona Greig, *Paychecks, payday, and the online platform economy: Big data on income volatility* (JPMorgan Chase Institute 2016); CIPD, *To Gig or Not to Gig? Stories from the Modern Economy* (Survey Report 2017) 4.

7 RSA, *Good Gigs* (n 5) 13.

gest that 'on average 10% of the adult population has ever used online platforms for the provision of some type of labour services.'⁸ Crucially, however, the numbers of workers engaged in platform work more fully are lower:

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).⁹

There is furthermore significant variation across the Member States surveyed. Looking at platform work as a main job, for example, estimates range from more than 4% in the United Kingdom to less than 1% in Finland.¹⁰

From an overall labour market perspective, these numbers don't necessarily sound like a major concern – it is important, however, to consider the fact that most serious attempts at measuring the size of gig work in the broader labour market tend to understate its extent. Current statistical measures often fail to take into account the full scope of platform economy work, not least because they tend to focus on primary income sources: workers supplementing their income with platform-based work are thus likely to be excluded from official statistics.¹¹

Even if platform-based work is therefore not a very significant part of most Member States' labour markets, two caveats need to be borne in mind: the fast growth rates of the platform economy, and its links with broader labour market trends. As regards the first of these, nearly all commentators agree on the rapid pace of growth in the industry: whether it's the range of tasks offered and industries affected; turnover; numbers of consumers and workers; whichever way one measures the platform economy, growth rates are enormous. And it is not just growth in numbers: new platforms are cropping up in industries from transportation to domestic care, from professional services to manual labour.

Second, and perhaps most importantly, it is crucial to remember that the labour market challenges highlighted by the rise of the platform economy are by no means limited to the world of digital labour intermediation: whether it is the intermediacy of short-term work engagements or the multilaterality of work for multiple employers, there is little that is fundamentally different from the broader move toward non-standard work across the European Union and beyond.¹² Successful solutions developed in the context of the platform economy will form the basis for tackling a much broader range of issues facing the labour markets of tomorrow. Regardless of its size, the platform economy thus represents a unique regulatory laboratory for developing new models of worker representation and engagement, with rich potential for translation into other non-standard models of work.

8 P Annarosa et al, *Platform Workers in Europe: Evidence from the COLLEEM Survey* (Publications Office of the European Union, Brussels 2018 <http://publications.jrc.ec.europa.eu/repository/handle/JRC112157>) 5.

9 Ibid 3.

10 Ibid 21. For a different set of estimates, see Professor Ursula Huws of the University of Hertfordshire Business School, who in 2017 presented the results of a broad study, published jointly with the Foundation for European Progressive Studies and Uni Europe, on the prevalence of platform-based work in Austria, Germany, Italy, the Netherlands, Sweden, Switzerland and the UK. Using an extensive definition of platform-based work (encompassing both purely online and mixed online-offline work), the study found that a surprisingly large segment of different countries' population had engaged in crowdwork, 'ranging from 9% in Germany and the UK to a high of 22% in Italy' – albeit 'as a very occasional supplement to other earnings.' See U Huws, N Spencer, D Syrdal, and K Holts, *Work in the European Gig Economy: Research Results from the UK, Sweden, Germany, Austria, The Netherlands, Switzerland and Italy* (FEPS, UNI Europa & Hertfordshire Business School, 2017) 10.

11 MGI, *Independent Work* (n 5) 3. Regulators are beginning to take notice. In April 2016, the UK's Office for National Statistics released a detailed feasibility study on measuring the sharing economy, presenting several potential options and data sources, as well as a wide range of problems; it remains to be seen whether specific measurements will be introduced in due course: Michael Hardie, *The Feasibility of Measuring the Sharing Economy* (ONS 2016) available at <www.ons.gov.uk/economy/economicoutputandproductivity/output/articles/thefeasibilityofmeasuringthesharingeconomy/2016-04-05>

12 Valerio De Stefano. 'The Rise of the "Just-in-Time Workforce": On-Demand Work, Crowdwork, and Labor Protection in the "Gig Economy"' (2016) 37 *Comparative Labor Law & Policy Journal* 471; ILO, *Non-standard employment around the world: Understanding challenges, shaping prospects* (International Labour Office, Geneva 2016).

C) WORKING CONDITIONS IN THE PLATFORM ECONOMY

In considering working conditions in the platform economy, it must be noted that the jobs on offer can have many attractions for workers: after a quick sign-up and registration process, apps will provide access to flexible work and a chance to earn additional income as and when needed.¹³

Individuals are free to choose when and what to work, without the regimented working day and overbearing management control which are (stereo-)typical of traditional work. Some workers even seem to relish the daily physical exertion in particular platform jobs. As one courier explained in an interview with *The Guardian* newspaper:

“Most of us just love riding around London,” [cycle courier Andrew Boxer] says of his job with courier firm Excel, which can involve 60 to 70 miles a day in the saddle. “Even in appalling weather, riding along the river is an exciting experience. Most low-paid jobs aren’t this much fun.”¹⁴

Platform work, finally, is also sometimes marketed as unlocking new ways of tapping into otherwise idle time, for example during daily commutes or while waiting for a doctor’s appointment.¹⁵

There are further clear benefits at the wider, macro-economic level, particularly in terms of increasing labour market participation for traditionally excluded groups: the easy accessibility of work, particularly as regardless purely digital ‘clickwork’, provides opportunities for workers who might otherwise suffer from structural exclusion for myriad reasons. This can make a real and markedly positive difference: Uber, for example, has long been hailed for its creation of new job opportunities in France’s *banlieues*, the Paris suburbs suffering from persistent structural unemployment.¹⁶

At the same time, however, critics have highlighted a number of more problematic facets of platform-based work. Three such elements deserve particular scrutiny: first, the legal status of platform workers, which is often characterised by contractual attempts to assert independent contractor status; second, the low wages which result from intense competition between individuals and a shifting of business risks onto workers; and third, the tight algorithmic control exercised by many a platform operator.

i. Legal Status

The contractual denial of employee or worker status is a prominent feature of nearly every work contract in the platform economy: the individual is asked to sign documentation which purports to establish her status as an independent contractor, and denies the existence of any employment relationship. The significance of this point, both to the individual and collective dimension of employment law, cannot be overstated: In return for the economic benefits of control over their workforce, employment regulation imposes a number of protective obligations. A version of this crucial trade-off lies at the heart of every European system of employment law: workers have to follow their employers’ orders, and enjoy a basic level of stability and economic security. Genuinely independent service providers, on the other hand, enjoy no such legal protection – but they are free to choose their customers, set their prices, and negotiate over terms and conditions. Work, in short, is legally protected; entrepreneurship is not.

13 RSA, Good Gigs (n 5) 26. Discussion in this section draws on J Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (OUP 2018).

14 <https://www.theguardian.com/money/2016/jul/30/job-pay-workers-gig-economy>

15 Hannah Curran, ‘How a Mom Found Professional Success While Staying at Home with a Newborn’ (Fiverr, 21 February 2017) <<http://blog.fiverr.com/how-a-dallas-mom-found-professional-success-while-nursing-a-newborn-baby/>>.

16 Anne-Sylvaine Chassany, ‘Uber: A Route out of the French Banlieus’ *Financial Times* (London, 3 March 2016) <<https://www.ft.com/content/bf3d0444-e129-11e5-9217-6ae3733a2cd1>>.

Whilst debates about employee misclassification should be highlighted at this stage (not least as they can act as drivers of low wages and lacking security, as discussed immediately below), it must also be noted that there is nothing new or special about platform work in this regard. Indeed, in response to employers' attempts to misclassify their workforce as independent entrepreneurs, legal systems all over the world have over a long time developed a variety of doctrines to ensure that the law classifies a relationship according to the realities of the situation, rather than the labels which one party might have foisted on the other.

Most European jurisdictions know similar approaches as the 'principle of the primacy of facts', which has also been recognised in the International Labour Organisation's Employment Relationship Recommendation: worker classification 'should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties'.¹⁷ A detailed discussion of the recent, and fast-moving case law on the platform economy is beyond the scope of the present report; suffice it to say that courts, including appellate tribunals, in several jurisdictions have found platform workers not to be engaged as independent contractors, despite clear contractual documentation to that effect.¹⁸

ii. Wages

Viewed from the platform perspective, employing a large workforce creates responsibilities – particularly for people-intensive business models. In return for the benefits of control over their workforce, employment regulation subjects employers to regulatory obligations: from paying social security contributions, complying with minimum wage laws, and providing sick leave, to ensuring health and safety in the workplace and engaging with worker representatives and collective bargaining.¹⁹

Independent contractor classification, on the other hand, allows platforms to offer services without having to pay for their cost. Responsibility for assets, remuneration, insurance and tax, as well as the risks of fluctuating demand, are devolved to individual 'micro-entrepreneurs'.

The starkest impact of this fundamental redistribution of business cost and risk can be observed in platform workers' wage levels, which are often reported as falling significantly below applicable minimum thresholds. In 2017, for example, Frank Field, a Member of Parliament in the United Kingdom, chaired the House of Commons Work and Pension Committee, overseeing a major enquiry into gig economy work

An analysis of drivers' financial submissions suggested that platform drivers were 'at risk of taking home less than a third of the National Living Wage', even though they had to 'stay on the road for extended periods of time to make a living', and did 'not have the freedom to determine their own working patterns'.²⁰

The problem is not limited to low wage levels alone. A survey by the UK's Chartered Institute of

17 International Labour Organisation, Recommendation 198 of 2006 [9]. For a detailed guide, see ILO, *Regulating the Employment Relationship in Europe: A Guide to Recommendation No 198* (Geneva 2013) 33ff.

18 See, for example, the much discussed decision in *Aslam, Farrar v Uber*, in which the Tribunal could not 'help being reminded of Queen Gertrude's most celebrated line: The lady doth protest too much, methinks.' *Aslam and Farrar v Uber* Case No 2202550/2015 (London Employment Tribunal) [87]-[89] (Employment Judge Snelson); available at www.judiciary.gov.uk/wp-content/uploads/2016/10/aslam-and-farrar-v-uber-reasons-20161028.pdf.

19 Questions about the true cost of the platform economy platform model do not stop there. Individual contractor classification doesn't just shift many business costs to individual workers: it increases them. Daniel Hemel of Chicago University has highlighted the cost of this 'unpooling': employment law bundles risks (from health and longevity to disability and productivity) from a large group of workers, which makes insurance cheap. As risk is devolved to individual workers, the price of individual insurance inevitably rises. See Daniel Hemel, 'Pooling and Unpooling in the Uber Economy' (2017) University of Chicago Legal Forum.

20 F Field and A Forsey, *Sweated Labour – Uber and the 'Gig Economy'* (London, 9 December 2016) 5.

Personnel and Development has warned of the overall lower financial resilience of platform economy workers – nearly half of whom said that they could only ‘afford to live for either less than one month or for up to two months without falling behind on paying key bills or living expenses if they lost their income due to unforeseen circumstances’.²¹ Psychologists increasingly warn of the dangerous public health implications of low-paid, insecure work.²²

Control over wage levels is central to the on-demand business model: costs to consumers must be kept low, whilst maximising platform income. CrowdFlower’s CEO once suggested in an interview that his company paid most workers no more than US \$2 to \$3 per hour – and this is by no means an isolated incident: a worrying proportion of on-demand economy workers appear to be paid well below minimum wage levels. Professor Panos Ipeirotis of New York University suggests that the average hourly wage for workers on Amazon’s MTurk is \$4.80 (2012), whereas Professor Lilly Irani in work with Six Silberman has calculated a more realistic rate of \$2.²³

The pressure on platform work wages is even higher in the context of purely digital platform work, where competition is essentially global. A recent World Bank report found that the heterogeneity of work translates into starkly different worker experiences:

“A part-time Filipino online worker reported earnings of \$3–4 per hour on oDesk (rebranded as Upwork), performing tasks such as transcription, data entry, and basic administrative services. In contrast, an experienced Nigerian online freelancer reported earnings of \$20 per hour for software development and website design.”²⁴

iii. Rating Mechanisms

A final aspect of problematic working conditions to be highlighted relates to the use of rating systems to exercise tight control over platform workers. In order to help users find a perfect match, platforms rank service providers through a system of points or stars. Scores are calculated – ostensibly – on the basis of previous consumers’ anonymous feedback following each task, with the resulting rating displayed to future users before the next ‘gig’ commences.

In reality, however, on-demand economy ratings might have little value in this regard. Drawing on a range of empirical studies, Tom Slee concludes that ‘reputation systems fail in their basic task of distinguishing high quality or trustworthy offerings from lower-quality or untrustworthy offerings.’ Reputation algorithms, he argues, should instead be seen as ‘a substitute for a company management structure, and a bad one at that. A reputation system is the boss from hell: an erratic, bad-tempered and unaccountable manager that may fire you at any time, on a whim, with no appeal’.²⁵

Algorithmic control is exercised in myriad ways, often eschewing direct orders or explicit instructions. Alex Rosenblat and Luke Stark’s study of Uber’s control mechanisms demonstrates how platform work conditions can easily be ‘shaped by the company’s deployment of a variety of design decisions and information asymmetries via the application to effect a “soft control” over workers’ routines’. Even though instructions are ‘carefully designed to be indirect, presumably to avoid the appearance of a company policy’,²⁶ they are incredibly powerful. As a Judge in US litigation found, ‘Uber’s application data can ... be used to constantly monitor certain aspects of a driver’s behavior. This level of

21 CIPD, *To Gig or Not To Gig* (n 6) 16.

22 Anjana Ahuja, ‘Why ‘gig health’ matters’ *Financial Times* (London, 25 May 2017) www.ft.com/content/bdc90c22-408f-11e7-82b6-896b95f30f58.

23 Steven Hill, *Raw Deal* (St Martin’s Press 2015) 11.

24 SC Kuek et al, *The Global Opportunity in Online Outsourcing* (World Bank Group 2015) 3.

25 T Slee, *What’s Yours Is Mine – Against the Sharing Economy* (O/R Books, New York 2015) 100-1.

26 Alex Rosenblat and Luke Stark, ‘Algorithmic Labor and Information Asymmetries: A Case Study of Uber’s Drivers’ (2016) 10 *International Journal of Communication* 3758, 3775.

monitoring, where drivers are potentially observable at all times, arguably gives Uber a tremendous amount of control over the “manner and means” of its drivers’ performance.²⁷

Where a platform does not specify the work to be done, it will still often control the way in which tasks are performed – whether through detailed stipulations such as TaskRabbit’s bright green T-shirts featuring the company logo, or through general conditions of use: MTurk insists that users ‘specifically acknowledge and agree’ to a range of conditions, including for example ‘not [to] use robots, scripts or other automated methods to complete the Services.’²⁸

Technology is once more key to this tight control: Upwork clients can check up on their workers through a so-called ‘work diary’: whenever a freelancer is engaged on an hourly-paid job, the platform’s software captures regular screenshots of the freelancer’s screen, counts keystrokes and records work completed to enable clients’ monitoring whether the freelancer is working for the whole of the time that she has billed for. Following a recent software update, Uber’s app now taps into the GPS, gyrometer, and acceleration sensors in each driver’s iPhone to detect drivers’ speeding or abrupt braking.²⁹

Crucially, however, algorithmic control often does not extend to protecting workers or facilitating their entrepreneurial choices: whilst some platforms let workers rate customers, the scores are either not displayed at all, or have little bearing on a consumer’s ability to use the service.³⁰

27 *Douglas O’Connor v Uber Technologies Inc* (2015) 82 F Supp 3d 1133 (ND Cal) [1151] - [1152] (District Judge Edward M Chen).

28 ‘How TaskRabbit Works: Insights into Business & Revenue Model’ *Juggernaut* (10 August 2015) <<http://nextjuggernaut.com/blog/how-task-rabbit-works-insights-into-business-revenue-model/>>; Amazon Mechanical Turk, ‘Amazon Mechanical Turk Participation Agreement’ (Clause 3(b)) <www.mturk.com/mturk/conditionsofuse>.

29 Upwork, <https://www.upwork.com/i/howitworks/client/>; Andrew Beinstein and Ted Sumers, ‘How Uber Engineering Increases Safe Driving With Telematics’ *Uber Engineering* (29 June 2016) <<https://eng.uber.com/telematics/>>.

30 TaskRabbit, ‘Frequently Asked Questions’ <https://support.taskrabbit.com/hc/en-us/articles/204409560-Can-I-leave-a-review-for-my-Client->.

PART II: THE COLLECTIVE CHALLENGE

The challenges to fair digital working conditions by elements of the platform economy are not limited to the individual dimension: just as importantly, prevalent business models can threaten workers' exercise of fundamental collective rights, including freedom of association, the right to collective bargaining, and access to information and consultation machinery. Indeed, the challenges faced by platform workers might be significantly higher than in traditional workplace settings, due to a number of specific features of platforms' business models. As Steven Greenhouse has noted,

'In many ways, digital on-demand workers face far more obstacles to organizing and being heard than workers in the traditional economy. Isolated as so many of them are, on-demand workers rarely meet face to face, and online forums are a second-best substitute for building trust and solidarity. Sometimes when these workers communicate online, companies spy on them – and even kick potential troublemakers off their platforms. Moreover, since on-demand workers are frequently considered independent contractors, they aren't protected by federal labor laws that prohibit companies from retaliating against employees who join together to improve conditions.³¹

The second part of this report sets out to explore these challenges to effective collective representation of worker interests in depth. It breaks down the particular obstacles crowdwork presents for collective worker voice, focusing on three elements: first, platform resistance to collectivisation, whether in the form of outright hostility, or more indirectly, for example through the provision of alternative representation structures. A second, practical challenge arises from the dispersed nature of platform workers – whether across town in the case of local apps, or potentially the globe, in the case of clickwork platforms: organising such a workforce might at first glance appear to be a daunting task. The third challenge arises from the specific needs of platform workers, which may in certain circumstances differ significantly from traditional trade union offerings – and be highly heterogeneous across different platforms. In highlighting these challenges, it must be emphasised that none of them should be characterised as insurmountable obstacles. Instead, a closer look will provide important pointers towards shaping potential responses.

A) PLATFORM RESISTANCE

Platform operators' resistance to collective worker efforts range across a wide spectrum, from outright rejection to arguments that collective bargaining would not be appropriate for flexible work models and the setting up of alternative representation arrangements to compete with traditional worker representatives.³²

A relatively recent example of the outright rejection of collectivisation efforts can be found in food delivery platform Deliveroo's denial of a union recognition request in the United Kingdom. The IWGB trade union had sought to be recognised for food delivery drivers on motorbikes and bicycles in the Camden area of London in the autumn of 2016. On appeal to the government's Central Arbitration Committee ('CAC'), Deliveroo successfully argued that due to the operation of substitution arrange-

31 Steven Greenhouse, 'On Demand, and Demanding Their Rights' *The American Prospect Magazine* (Washington DC, 28 June 2016) <<http://prospect.org/article/demand-and-demanding-their-rights>>.

32 Individual arbitration clauses are another major concern. In jurisdictions including the United States, platforms have generally sought to ban jury trials and class action law suits (which might be easier to bring for low-income workers), and are insisting that any suit must not be brought before a public court and diverted into private arbitration instead. See, for example, Katherine Stone, 'Uber and arbitration: A lethal combination' *Economic Policy Institute* (24 May 2016) www.epi.org/blog/uber-and-arbitration-a-lethal-combination/.

ments in its operating practices, the riders in question were independent contractors. Despite the panel's recognition that 'the declared support of recognition, and sustained significant membership levels, point to an underlying likely majority support within the proposed bargaining unit', the claim for union recognition therefore failed.³³

A more fundamental challenge lies in the the argument that traditional collective bargaining arrangements are inappropriate for platform based work.³⁴ In a recent ILO Conditions of Work and Employment Paper, Hannah Johnston and Chris Land-Kazlauskas cite a detailed explanation from Amit Singh, the platform's Global Lead, Future of Work Policy, presented at a Facebook live event:

The actual model that we operate and the way in which we have this flexible model means that there are certain ways in which you can protect yourself, that you typically wouldn't need certain ways in which you would ordinarily protect yourself in other things. That is the reason why they don't necessarily exist. So things like collective bargaining and other things, because of the flexible nature of our work, because you can come on and off the platform, the purpose that collective bargaining was originally structured for doesn't necessarily hold.³⁵

A third response which can be noted has been the creation of union-inspired structures, albeit outside the traditional legal structures of collective bargaining and union recognition. In the early summer of 2016, for example, Uber announced the creation of the 'Independent Drivers Guild', a new organization dedicated to the collective representation of drivers' interests vis-à-vis the platform in New York. Details will be discussed in the following section; suffice it to say for now that there are several potentially attractive elements, notably as regards communication between driver representatives and local management.

That said, the voluntary creation of engagement structures might also have a number of drawbacks: not least, because the precise nature of the arrangement will depend on parties' relative bargaining power, which will usually be slanted in favour of the on-demand platform. The Independent Drivers Guild, for example, explicitly lacks any power to engage in collective bargaining over wages or other working conditions, let alone the ability to threaten or organize industrial action to shore up any demands. As the New York Times reported less than a year after the guild's foundation, 'the group's relationship with Uber has also inspired considerable suspicion among labor leaders, activists and experts.'³⁶

The first challenge to the collective organisation of platform workers, then, can be found in varying degrees of resistance on part of the platform operators. They range from downright refusal to engage to more subtle mechanisms, such as the questioning of existing frameworks and the organisation of alternative mechanisms of worker representation. In many ways, however, this challenge is not a novel one, mirroring similar resistance in other workplaces, nor is it unsurmountable.

33 Central Arbitration Committee: Trade Union And Labour Relations (Consolidation) Act 1992 Schedule A1 - Collective Bargaining: Recognition Decision On Whether To Accept The Application (Case Number: TUR1/985(2016), 14 November 2017) at paragraph [133] available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/663126/Acceptance_Decision.pdf

34 Alison Griswold, 'This is the script Uber is using to make anti-union phone calls to drivers in Seattle' *Quartz* (22 February 2016) <http://qz.com/621977/this-is-the-script-uber-is-using-to-make-anti-union-phone-calls-to-drivers-in-seattle/>.

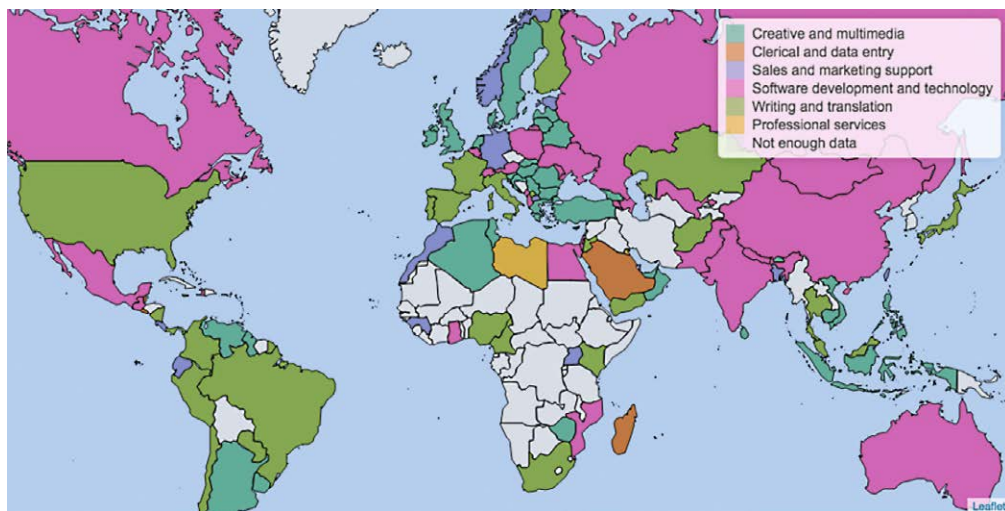
35 Hannah Johnston and Chris Land-Kazlauskas, *Organizing on-demand: Representation, voice, and collective bargaining in the gig economy* (Conditions of Work and Employment Series No. 94, International Labour Office, Geneva, 2017) 23.

36 <https://www.nytimes.com/2017/05/12/business/economy/uber-drivers-union.html>

B) DISPERSED WORKFORCE

The second major challenge to organising collective representation in the platform economy is more directly driven by the industry's business model: in the absence of a defined place of work or regular work patterns, it appears difficult to find a way for organisers to connect with individuals. Most countries grant union organisers paid time off for their work and protect them against employer reprisals, as employers and legislators recognise the value of having a clear voice to represent workers' concerns. On-demand economy workers, on the other hand, must attempt to organise colleagues using their own time and resources, and can easily be deactivated from their platform in retaliation.³⁷

As a result, collective efforts can be logistically difficult and legally fraught: the fragmentation of work in the platform economy is a serious challenge for union organisers. Gone are the regular shifts before and after which groups of workers would congregate to voice their grievances, the geographic proximity of workers with shared interests, and the sense of being a united workforce. Individual workers are left to fend for themselves: click workers are without guidance in selecting tasks online, and ride-sharing drivers are forced to hide out in increasingly rare open parking lots, often struggling to find a place to rest or even go to the toilet.³⁸



Online Labour Index top occupation by country, 1-6 July 2017

Source: V Lehdonvirta, Oxford Internet Institute 2017

Employers are similarly dispersed: it is a very common pattern for platform economy workers to be signed up simultaneously to a number of different operators, whether in the same line of services, or different kinds of tasks. A ridesharing driver might spend her lunch hour delivering food; a handyperson looking for work through TaskRabbit could spend time waiting for the next assignment by completing online questionnaires on Amazon MechanicalTurk. On any one day, a platform worker might thus in fact be engaged by a number of potential employers, for varying slivers of time.

The challenges arising from a dispersed workforce are taken to yet another level in the context of online platform work, where the workforce can potentially be dispersed across continents, languages, time zones, legal systems and cultures.

³⁷ Jonathan Owen, 'Uber driver 'threatened' by senior manager after establishing union' *The Independent* (London, 3 November 2015).

³⁸ Sally Guyoncourt, 'Why Uber drivers' loo breaks are going out the window – literally' *The Independent* (London, 10 June 2015).

The Online Labour Index, created by Vili Lehdonvirta and colleagues at the Oxford Internet Institute, tracks the development of ever-changing global platform work arrangements:

The largest overall supplier of online labour according to the data is the traditional outsourcing destination India, which is home to 24 percent of the workers observed. India is followed by Bangladesh (16 %) and United States (12 %). Different countries' workers focus on different occupations. The software development and technology category is dominated by workers from the Indian subcontinent, who command a 55 percent market share. The professional services category, which consists of services such as accounting, legal services, and business consulting, is led by UK-based workers with a 22 percent market share.³⁹ In addition to demonstrating the vast geographical spread of online-based platform work, the Online Labour Index thus also highlights a clear variation of task patterns across different jurisdictions: the extent to which clickwork can be dispersed depends on a complex mix of factors, from timing and linguistic capability through to the complexity of particular tasks.

C) NEW DEMANDS FROM THE WORKFORCE

The platform economy workforce is not just geographically dispersed: it is also highly heterogeneous in its potential demands towards collective organisation.⁴⁰ The interests and needs of students occasionally dipping into the platform economy might differ substantially from a worker seeking to make a full-time living, paying a mortgage, and sustaining dependants: the former will primarily be interested in benefits which are most relevant 'in the moment' – whether it be the provision of safety equipment such as helmets for bicycle couriers, insurance when actually on the job, or assistance with the acquisition and maintenance of their vehicles and tools. For the latter group, on the other hand, longer-term benefits such as holiday pay, pension contributions, and income protection in case of illness might play a more important role. Finally, workers on comparatively well-paid clickwork tasks such as design work might be able to pay union subscriptions at regular rates, whereas cost of union membership, particularly early on when few if any tangible benefits are available, can be prohibitive or at least act as a strong deterrent for those struggling at the very bottom of the wage distribution.⁴¹

Once more, this heterogeneity in workforce demands is not necessarily a novel phenomenon – as is the fact there are also many commonalities: even before workers can benefit from the results of collective bargaining, offers such as pooled insurance products or legal assistance – whether in employment litigation, or in scenarios such as work accidents – could be very attractive. Furthermore, there are particular aspects of platform economy work which do raise entirely novel issues to which collective efforts could provide an answer.

One such challenge relates to the fairness and transparency of rating mechanisms, as already discussed in Part I of this report: what are the avenues through which workers can challenge low ratings? Are there ways of ensuring that algorithms are tweaked to ensure that systemic biases are addressed as soon as they can be detected?

A related point arises from the often one-sided nature of ratings: whilst consumers can rate workers, the opposite is not always the case – or even if a rating is collected, it is not always made available to workers. Unscrupulous platform users can take advantage of this information asymmetry, for example by refusing to pay for already completed tasks on quality grounds. The collection and diffusion of feedback about such users is the only way of tackling this problem: when Lilly Irani and Six Silberman realised that workers on Amazon's MTurk had no easy way of providing feedback about dishonest and abusive customers, they developed feedback software to be installed

39 <http://ilabour.oii.ox.ac.uk/where-are-online-workers-located-the-international-division-of-digital-gig-work/>

40 <http://prospect.org/article/demand-and-demanding-their-rights>.

41 For a recent survey on point, see E Voss and H Riede, DIGITALISATION AND WORKERS PARTICIPATION: What trade unions, company level workers and online platform workers in Europe think (ETUC, Brussels 2018) Chapter 7.

in workers' browsers. TurkOpticon, as the plugin is called, allows Turkers to rate requesters for factors from accuracy of task description to promptness of payment, thus warning future users off unreliable clients.⁴²

One of the best examples of online redress is the plug-in Turkopticon. This is how it is introduced to workers looking for help:

'How Turkopticon works: Turkopticon adds functionality to Amazon Mechanical Turk as you browse for HITs and review status of work you've done. As you browse HITs, Turkopticon places a button next to each requester and highlights requesters for whom there are reviews from other workers. Bad reviews let you avoid shady employers and good reviews help you find fair ones. You can view reports made against requesters with a quick click. As you review HITs you've completed, are there HITs you weren't fairly paid for? Turkopticon adds a button that lets you review requesters from your "Status Detail" page.'



Source: <https://turkopticon.ucsd.edu>

42 Lilly Irani and M Silberman, 'Turkopticon: Interrupting Worker Invisibility in Amazon Mechanical Turk' (CHI 2013: Changing Perspectives, Paris, France Session: Smart Tools, Smart Work), available at <<https://hci.cs.uwaterloo.ca/faculty/elaw/cs889/reading/turkopticon.pdf>>.

PART III: CHARTING POSSIBLE SOLUTIONS

Having thus set out an overview of the challenges faced by workers in the platform economy, the final parts of this report chart possible solutions (Part III) and briefly explore their legal implications. Two approaches in particular fall to be explored: first, the inclusion of platform operators in existing regimes of information and consultation as well as collective bargaining – albeit with potential modifications as and when appropriate given the specificities of platform work highlighted thus far. And second, the setting up and operation of independent certification regimes, through which trade unions could engage with platform operators to ensure that basic working conditions are consistently applied. Consultation and information, collective bargaining, and certification regimes are not independent or mutually inconsistent solutions – indeed, it is through an overlapping approach that the most promising results could be achieved: gathering information, building capacity, and establishing trust between trade unions and platform operators.⁴³

A starting point: gigs, tasks, and rides are work

Before embarking on a detailed look at possible solutions, the starting point taken should clearly be set out: despite much talk of gigs, tasks, rides, or even HITs ('Human Intelligence Tasks'), the vast majority of labour bought and sold in the platform economy is work: work, in the sense of the legally widely opposite of entrepreneurship, attracting the full suite of legal protective rights, from wage and hour laws through to anti-discrimination protection. The success of individual initiatives notwithstanding, the overall challenges for worker organisation as highlighted in the previous part remain acute. Once work in the on-demand economy is properly classified as employment, on the other hand, workers will be able to organise themselves and form trade unions to bargain directly with platforms over their terms and conditions – backed up if necessary by the power to mandate negotiations and threaten industrial action.

Following on from this observation, the vast majority of platforms will fall to be classified as employers: a functional approach developed by Prassl and Risak suggests that in all but a few scenarios of genuine entrepreneurship, the degree of control exercised by platform operators brings them squarely within the range of employer responsibility.⁴⁴

Finally, in terms of regulatory strategy, the first and foremost goal should be to apply existing information and consultation as set down in European regimes, and collective bargaining as per national regulations. This is not to suggest that adaptations and developments will not be required: but it is crucial not to fall into the trap of technological exceptionalism. While the rise of the platform economy presents collective labour with some new challenges, the underlying business model is not a fundamentally new one. In order to engage positively, the most promising strategy is thus one of the consistent application and enforcement of existing regimes, combined with incremental adaption of underlying norms. New legislation is unlikely to keep pace with technological change and might struggle to respond to potential unforeseen consequences. The inherent flexibility and reflexivity of collective bargaining, on the other hand, presents a unique opportunity to ensure fair working conditions for all workers in the platform economy.

⁴³ This paper is focused on a practical analysis of potential options. For a deeper-reaching normative analysis, see A Lamine and J Prassl, 'Collective Autonomy for On-Demand Workers? Normative Arguments, Current Practices and Legal Ways Forward' (2018) 99 *Bulletin of Comparative Labour Relations* 269-292.

⁴⁴ J Prassl and M Risak, 'Uber, TaskRabbit, and Co.: Platforms as Employers? Rethinking the Legal Analysis of Crowdwork' (2016) 37 *Comparative Labor Law and Policy Journal* 619-651.

A) EMBEDDING PLATFORM WORK IN COLLECTIVE STRUCTURES

On the basis of these observations, the primary and most promising strategy for ensuring fair work in the platform economy should be an embedding of platform work in existing collective structure, across the entire spectrum: from organising workers and engaging in information and consultation exchanges with platforms through to collective bargaining and co-determination (as jurisdictionally appropriate). A closer look at the obstacles identified in Part II suggests that many, if not all of them, can be – and to some extent have already been – overcome, as the following examples hope to demonstrate. The biggest challenge ahead lies in building on and further developing creative ways of organising, and in developing the substantive content of collective bargaining to encompass areas of particular concern to platform workers

i. Organising

Organising a platform workforce appears daunting, given the geographical dispersion and heterogeneity of motivations of interests. However, the very technology which enables the dispersion of workers is also the key to their organisation: nearly by definition, the platform-based workforce is highly computer literate, proficient in digital communication, and near-constantly online. As a result, while traditional organising in or close to the workplace or local community might not be able to speak to platform workers, digital campaigns are key. Whether it is through dedicated online fora, gig worker apps, or even just through widely available messaging software: in engaging platform workers, geographical dispersion can easily be overcome. Through software such as Turkoption (discussed above), for example, workers from all over the world can contribute information about unscrupulous requesters, thus directly tackling wage theft.

This still leaves the challenge of raising awareness of the existence of collective organisation, and potential offerings. Local initiatives have already begun to overcome some of these obstacles, with new Unions such as London's IWGB actively engaged in combining online strategies with high-profile local actions to attract and organise platform economy workers.⁴⁵ Given that these individuals heavily rely on their smartphones and computers, organising is increasingly taking place over the internet and communication apps. The results are sometimes reasonably akin to historical union actions – when Deliveroo drivers wanted to protest against the radical changes in guaranteed pay, for example, they relied on social media including Facebook and WhatsApp to rally their colleagues and organise protests outside the company's London headquarters.⁴⁶

The IWGB's organizing strategy in London combines these elements with a strong, consumer-focused publicity strategy: in seeking payment of at least the equivalent of the London living wage plus costs,⁴⁷ for example, the Union organized large-scaled protests, bringing couriers together not just at their employer's headquarter, but also outside a number of significant customers, including well-known companies such as television station ITV, the Guardian Newspaper, financial services firm HSBC, consultants PWC, and law firm Linklaters.⁴⁸ Slogans such as 'we dodge death to meet your deadlines' and 'your profits are made at our loss' expressed drivers' and riders' frustration with their high-pressure, low-wage working conditions, and sought an acknowledgment of their working realities not just from the operator, but also their consumers directly.

45 Independent Workers Union of Great Britain, 'How We Began' <https://iwgb.org.uk/how-we-began/>.

46 <https://www.theguardian.com/business/2016/aug/15/deliveroo-workers-strike-again-over-new-pay-structure>

47 Pressure grows on tax dodging CitySprint to stop exploitation of couriers, ReelNews YouTube channel (12 November 2015), https://www.youtube.com/watch?v=_pnwWwxfNX0 4:46

48 *ibid* 7:30ff

The IWGB's high-profile campaigns have already begun to bear fruit in many regards. In London, for example, delivery firm Citysprint dropped some of its lowest payment rates, and other companies agreed to substantial pay rises.⁴⁹ In addition to engaging in such informal wage bargaining with courier firms and other platform economy employers in the transportation sector, the Union has also begun to fund a series of high-profile lawsuits against other platforms, with a string of notable successes across different branches.⁵⁰

In addition to these direct organising strategies, trade unions are also increasingly pursuing indirect ways of raising attention, whether through the funding of high-profile law suits and test cases against platform operators, or intensive political and corporate lobbying.⁵¹

ii. Information and Consultation

On the basis of these organising efforts, worker representatives can then engage directly with platforms operators with a view to establishing consultation and information machinery. One of the earliest examples of successful organising in the platform economy are the efforts by Austrian cycle couriers working for food delivery platform Foodora in Vienna. When the platform first arrived in Austria in the autumn of 2015, most couriers were directly employed under traditional contracts of service. As a result, the platform's workforce felt closely involved in the operations of the company, and enjoyed perks such as access to a local garage which served as a place to look after each others' bikes and meet before and after work. Some time later, however, workers began to notice significant changes: permanent staff were dismissed, others reclassified as independent contractors; the garage was shut and communications began to break down.⁵²

It was in direct response to these changes that the couriers began to organise collectively, leading to the election of a works council ('Betriebsrat') to (re-) engage with their employer. The platform appeared to be supportive: after some initial doubts, local Foodora management was happy to engage with the works council, recognizing the potential benefits of social dialogue to both sides.⁵³ A similar works council is in place for Foodora's workers in Cologne, Germany.⁵⁴

Even in the absence of employer cooperation with existing legal frameworks for worker information and consultation, collective representation can take hold. In New York, for example, Uber has recognised the value of direct engagement with worker representatives, collaborating with established unions in the set-up of the he already-mentioned Drivers Guild. The resulting machinery, whilst formally outside the legal realm of collective bargaining, includes several elements instantly familiar from collective labour law: driver representatives were offered monthly meetings with management to raise and discuss members' issues, and individuals in dispute with the company over 'deactivation' (firing) can request that a guild member join them during hearings.⁵⁵ The Guild is also working actively towards using the combined purchasing power of its members to negotiate better deals for key services including insurance and legal protection, and actively engages in lobbying local law-makers to create a basic floor of rights for drivers.⁵⁶

49 ibi 9:30

50 <https://iwgb.org.uk>

51 Political activism has also led to localised legal protection: in Australia, a concerted campaign by Unions NSW led to a detailed agreement with gig economy platform Airtasker, including above-minimum wage pay rates and recourse to independent dispute resolution mechanisms: Anna Patty, 'Airtasker and unions make landmark agreement to improve pay rates and conditions' *The Sydney Morning Herald* (Sydney, 1 May 2017) <www.smh.com.au/business/workplace-relations/airtasker-and-unions-make-landmark-agreement-to-improve-pay-rates-and-conditions-20170427-gvtvpo.html>

52 https://www.falter.at/archiv/FALTER_2017041930FD6DCA17/warum-bekommt-foodora-jetzt-einen-betriebsrat-frau-siegl

53 <http://diepresse.com/home/wirtschaft/unternehmen/5199850/FoodoraZusteller-in-Oesterreich-gruenden-Betriebsrat>

54 <https://www.zeit.de/arbeit/2018-02/foodora-deliveroo-kuriere-betriebsrat/komplettansicht>

55 <https://www.nytimes.com/2016/05/11/technology/uber-agrees-to-union-deal-in-new-york.html>

56 <https://drivingguild.org/idg-benefits/>

iii. Collective Bargaining in the Platform Economy

Collective Bargaining: key issues in the platform economy

In addition to the traditional topics of collective bargaining, the specificities of work in the platform economy require agreement on topics such as:

- Ratings
- Pay Periods
- Conflict Resolution
- Privacy, Data Protection & Data Ownership
- Deactivation

The next step along the collective redress spectrum is full trade union recognition, followed by collective bargaining over key terms and conditions. Depending on local practices, this might take place at different levels: in the United Kingdom and Sweden, for example, trade unions have begun to succeed in being recognised for collective bargaining purposes by individual employers,⁵⁷ whereas unions in Austria are aiming for sectoral collective negotiations, such as for bicycle delivery couriers.⁵⁸ In the spring of 2018, Danish task platform Hilfr signed the 'first ever collective agreement for the platform economy in Denmark' in collaboration with trade union 3F.⁵⁹

Once a union is formally recognised, the single biggest challenge lies in shaping the substantive content of any collective bargaining and eventual agreement. Whilst traditional topics such as hours, wages, and holiday arrangements continue to play a significant role, it is also important to keep in mind the specificities of platform-based work, and include these in negotiations.

An exhaustive list is beyond the scope of this report, and will vary from platform to platform or at least sector to sector; the following examples highlight some of the most fundamental challenges and suggest how they might be tackled in a collective agreement:

► RATINGS

Given the central role ratings play in shaping platform workers' daily experiences, collective bargaining over the operation of rating systems should play a central role. Potential aspects include the *factors* by which ratings are compiled (such as consumer feedback, compliance with policies, and the role of algorithmic monitoring) and their *relative weighting* in determining overall scores and/or task assignment. Platforms should also develop a system which allows workers to *challenge ratings*, for example when a low rating was given by a consumer in retaliation for a worker's refusal to bend the rules or worse (such as taking an extra passenger in a taxi, or work which far exceeds task descriptions). Linked to this is the problem of *algorithmic discrimination*: collective agreements should include provisions for the monitoring of platforms' rating systems' impact on different segments of the workforce, to ensure that the operation of rating algorithms does not lead to discrimination against particular groups. Finally, collective agreements could also stipulate for the *portability of ratings*: workers should be free to export their rating from a platform and take it to another operator in order to avoid a locking in into a particular company.

► PAY PERIODS & ARRANGEMENTS

In addition to baseline collective bargaining over wages, platform based work raises additional challenges in relation to payment calculation and regularity. In this context, a collective agreement could play an important role in ensuring *pay transparency*, for example by setting out agreed mechanisms for the resolution of disputes between consumers and workers, or liability for incidental costs and equipment.

57 <https://www.personneltoday.com/hr/gig-economy-union-first-recognised/>; Johnston and Land-Kazlauskas (n 35) 30, citing Turula, T. 2017. "These tiny electric tuk-tuks are taking on Uber in Stockholm – offering a 'super cheap' and emission-free ride." *Business Insider Nordic*, May 10, Online edition, <http://nordic.businessinsider.com/these-hilarious-electric-tuk-tuks-are-now-taking-on-uber-in-stockholm----super-cheap-zero-emission-and-fair-to-drivers-2017-5>

58 http://www.vida.at/cms/S03/S03_20.a/1342577497037/wien/betriebsrat-fuer-fahrradzustelldienst-foodora

59 <https://blog.hilfr.dk/en/historic-agreement-first-ever-collective-agreement-platform-economy-signed-denmark/>

Collective bargaining could also tackle *regular payment mechanisms* to ensure that workers have easy access to their platform income: the variability and unpredictability of certain operators' pay modalities is frequently raised as a complaint.

► CONFLICT RESOLUTION

Closely linked to pay transparency is the question of conflict resolution between all parties involved in platform economy transactions. Disputes frequently arise, for example, between consumers and platform workers, whether it is a challenge to a particular route taken, the speed of a delivery, or the quality of online work. A collective agreement should set out clear procedures for the resolution (or escalation) of such conflicts, including for example the evidence admissible in disputes, and workers' rights to explain their position and if appropriate be accompanied to a disciplinary hearing. Similar mechanisms should also be in place for disputes between a platform and workers, especially in the context of potential deactivation (see further below).

► PRIVACY, DATA PROTECTION, AND DATA OWNERSHIP

As platform workers use operators' apps and websites, a significant amount of data is constantly collected and compiled. Collective agreements should include comprehensive provisions on worker privacy and data protection. As regards the former, for example, there could be clearly defined limits as to which data an app may collect, and at which times it is able to do so. In so far as data protection is concerned, in addition to compliance with baseline legal standards such as the European Union's General Data Protection Regulation (GDPR), collective bargaining should also cover topics such as data access and protection against online fraud. A final topic under this heading is data ownership and intellectual property: at the moment, nearly all platforms' default approach is that both content and metadata created through the operation of a platform economy service belong to the customer or platform operator. In the course of collective bargaining, these default settings should be scrutinised to see whether they are always appropriate or whether, depending on the specific business model in question, there are modifications which might ensure a more appropriate sharing (or remuneration in lieu).

► DEACTIVATION

A final example of platform-specific collective bargaining relates to deactivation: particularly in the context of purely online platforms with global reach, traditional models of dismissal protections (including, for example, an in-person appeal hearing and assistance from colleague or trade union representative) might not always be suitable. Platform collective agreements should therefore include both clear criteria and an easily accessible process for deactivation, including for example a system of escalating warnings, a clear explanation of reasons, and the worker's right to make representations in her defence. Crucially, the deactivation procedure should also include explicit protection against retaliation, for example for organisers or whistle blowers.

* * *

Given the vast heterogeneity of platform economy work, this list can offer but a few illustrations of challenges common to most platforms. Specific industries and sectors will require detailed consideration of particular issues (e.g. in the transportation sector, topics such as minimum time and distance rates, or tipping options, are frequently listed concerns).⁶⁰ This is a crucial advantage of collective bargaining: the substantive norms can be shaped both to meet workers' needs and business operation requirements in a flexible and tailored way. A good guide to underlying principles can be found in the so-called Frankfurt Declaration (see box below), which sets out a number of fundamental principles and requirements for fair platform economy bargaining.

60 Johnston and Land-Kazlauskas (n 35) 6.

The so-called ‘Frankfurt Declaration’, endorsed by Trade Unions across Europe and the United States, ‘calls on the diverse stakeholders to “platform-based work” to work together to:

- ensure that platform businesses comply with relevant national laws and international conventions, rather than using technology to work around them;
- clarify the employment status of platform-based workers;
- ensure that platform-based workers who are not truly self-employed have the right to organize and negotiate collective agreements with platform operators and/or clients;
- seek to ensure that all platform-based workers, regardless of employment status, receive at least minimum wage in their jurisdiction (or, in jurisdictions with no minimum wage, the wage specified in the relevant collective agreement) for their work;
- ensure that platform-based workers have access to social protection – such as unemployment insurance, disability insurance, health insurance, pension, and compensation in the event of work-related illness or injury – regardless of employment status;
- develop transparent, accountable methods for resolving disputes between clients and workers – and, as needed, between workers – in cases, for example, of client nonpayment or unclear allocation of intellectual property rights; and
- increase transparency in the world of platform-based work.’

Source: <http://faircrowd.work/unions-for-crowdworkers/frankfurt-declaration/>

iv. Co-Determination

Depending on national regulatory systems, a final option for trade unions is to engage in full co-determination of platform enterprises or their holding companies. One of the earliest success stories in this regard is Delivery Hero, a holding company for a number of German food delivery services including Foodora. Following a judicial decision in the spring of 2018, Delivery Hero (incorporated as a German stock corporation at the time of the case) was obliged to offer seats on its board to worker representatives:⁶¹ as a company employing more than 2000 workers in Germany alone, the codetermination provisions envisage half of the board to represent workers’ collective interests. An initially hostile approach from management gave way to a climate in which senior management actively point to codetermination as part of Delivery Hero’s organisational culture. Even an upcoming change of legal form into a European Company (SE) will continue an element of co-determination: a smaller supervisory board of six members will still be co-determined.⁶²

B) CUSTOMER ENGAGEMENT AND PLATFORM CERTIFICATION

In addition to engaging in collective bargaining with platform operators, trade unions could also develop plans for involving platform service consumers in the protection of basic working standards, notably through certification and recognition schemes, not unlike the ‘FairTrade’ movement for certain consumer goods. Trade Unions or other independent operators could set out a set of standards to evaluate and certify platform operators who comply with their legal obligations (or, in a tiered system, voluntarily go beyond them). This information could then be advertised prominently on the platform itself, alerting consumers to the fact that its services comply with the relevant standards. A leading example in this regard can be found in Germany’s metal worker’ union, IG Metall, which has been closely involved together with unions in Austria and Sweden in the creation of *FairCrowdWork Watch*, a site which allows workers to rate different platforms’ working conditions, compare payment rates, and access basic legal advice.⁶³

In a world of increasing cross-platform competition, where multiple operators compete to offer very similar services, consumer choice could become a key driver for a re-thinking amongst platforms. Platform certification would thus become part of a broader collective bargaining agenda, with a high rating or certification status offered to platform operators who engage in the full ambit of collective negotia-

61 <https://ngin-food.com/artikel/delivery-hero-arbeitnehmer-aufsichtsrat-se/>

62 <https://www.magazin-mitbestimmung.de/artikel/Delivery+Hero+ab+jetzt+paritatisch@6545>

63 <http://www.faircrowdwork.org/en/watch>

tions. Crucially, however, a certification regime could also take place purely externally, with independent experts analysing contractual terms and conditions, working practices, and other relevant factors to construct platform ratings. At least in the short run, finally, certification processes could even be combined with other assistance to on-demand economy workers, along the lines of the Independent Drivers' Guild services discussed above.

Another way of directly engaging with customers is through best-practice guides, or even customer pledges to ensure fair digital working conditions. A good example of this practice is the so-called academic users pledge set up by a group of MechanicalTurk workers operating as a collective named Dynamo.⁶⁴ One large constituency of online platform work are academic researchers, who make questionnaires and small experiments available through platforms. Funding for such research is often conditional on ethics approval, with research councils and universities insisting on high standards of research integrity.⁶⁵

The idea behind the academic users' pledge is to help both parties involved: for scientists who have undertaken to comply with community-developed ethics principles, it might become significantly easier to obtain ethics approval, whilst workers should see sustainable improvements in their basic conditions. Specific requirements included in Dynamo's user pledge include clear identification of the requester and her academic affiliation, providing reasonable time estimates, prompt settlement, and protection of worker privacy. Other concerns included clarity about work reject, maintaining open lines of communication. When it comes to payment calculation, a sub-forum provides a detailed guide to what might constitute fair payment.⁶⁶ Throughout, the user pledge is clearly written with regard to the interest of both consumers and workers: a discussion of wage rates, for example, includes an explanation why too low a rate of pay might skew a researcher's sample in ways which would threaten the integrity of the larger enquiry. Whilst the current number of users and workers involved in Dynamo still appears to be relatively small at the time of writing, the underlying idea is one which could easily be taken on by trade unions and other worker representatives.

Another way of organising such pledges is through direct contact with platform operators, and the establishment of clear codes of conduct. A number of platform operators in Germany and the United Kingdom, for example, have signed up to this code, which sets out a number of principles for fair platform work: from tasks in conformance with the law and clarification on legal situations to respectful interaction and clear tasks and reasonable timing. The code also stipulates a process for approval of completed work and the possibility of 'rework' when there are quality issues, undertakes to ensure data protection and privacy, and prohibits platforms from sanctioning workers who refuse to accept particular tasks. Finally, there is also a section on payment, in which platform operators

commit to pay a fair and appropriate wage or to advise the contracting authorities accordingly. Generally, the wage is project-based. The calculation is done by the crowdsourcing provider to the best of their knowledge and includes factors such as task complexity, necessary qualifications, local dependence and wage standards as well as predicted expenditure of time.⁶⁷

Crucially, however, the effectiveness of any code of conduct or similar voluntary agreements will depend on its enforcement mechanisms. In this regard, the Crowdsourcing Code of Conduct provides an interesting model – the Crowdsourcing Ombuds Office.⁶⁸ If a worker wants to complain about a breach of the code (and she hasn't been able to settle the issue in direct conversation with the platform operator), she can use a relatively straightforward online form to outline her complaint.

This is then taken on by the Ombuds Office, who engage in confidential discussions with the platform and the worker in order to resolve the dispute. The Office itself is staffed by volunteer representatives from both platform operator and trade union side, as well as crowdworkers, and is led by an independent labour judge.⁶⁹

64 http://wiki.wearedynamo.org/index.php/Guidelines_for_Academic_Requesters; see also Johnston and Land-Kazlauskas (n 35) 14-15

65 See, for example, http://ec.europa.eu/research/participants/data/ref/fp7/89888/ethics-for-researchers_en.pdf

66 http://wiki.wearedynamo.org/index.php?title=Fair_payment

67 <http://crowdsourcing-code.com>

68 <https://ombudsstelle.crowdwork-igmetall.de/en.html>

69 <http://faircrowd.work/de/2017/11/08/ombudsstelle-fuer-crowdworking-plattformen-vereinbart/>

PART IV: LEGAL IMPLICATIONS

Debate about changes to the individual dimension of employment law are already well underway. It is in this dimension that legal change might be required, as illustrated for example in a notable report for the Friedrich-Ebert Stiftung by Professor Martin Risak.⁷⁰ Most importantly for present purposes, Risak sets out a number of indicators for employment status, and proposes a rebuttable legal presumption of an employment relationship in the platform context – a promising approach to the status problems identified in earlier parts. As Risak also highlights, however, such change would require legislation at the European level.⁷¹ The solutions proposed in this paper, on the other hand, tie in neatly with existing EU provisions and domestic regulation: the flexibility and adaptability of collective negotiations is a clear advantage in this regard.

That said, there is one important legal issue to note in concluding. Successful attempts at organizing platform based workers and engaging in collective bargaining on their behalf might be said to fall foul of anti-trust or competition law: groups of genuinely independent entrepreneurs are not generally allowed to come together and use their dominant position to set prices and negotiate conditions.⁷² The specific details vary across jurisdictions, but the essence of the problem returns to the issue of employment status, discussed in section II, above: nearly all platform operators insist in their contractual terms and conditions that they are not service providers with employees, but rather mere intermediaries connecting independent businesses with customers. On that analysis, attempts to organize on-demand economy workers with a view to collectively bargaining over wages and other terms and conditions could be seen as anticompetitive behaviour: genuinely independent business are not generally allowed to collude with each other when it comes to negotiations with suppliers and other business partners.

At the same time as highlighting these problems, however, it is crucial not to see them as overwhelmingly determinative of the collective autonomy question. From a legal perspective, even competition or antitrust law may pose less of a challenge than appears at first. The prohibitions on coordination and price setting only apply to *genuinely* independent business. As the Court of Justice of the European recently highlighted, whilst the European Treaties do apply to agreements between the genuinely self-employed and independent undertakings, they will not,

... however, prevent such a provision of a collective labour agreement from being regarded also as the result of dialogue between management and labour if the service providers, in the name and on behalf of whom the trade union negotiated, are in fact ‘false self-employed’, that is to say, service providers in a situation comparable to that of employees.

... the classification of a ‘self-employed person’ under national law does not prevent that person being classified as an employee within the meaning of EU law if his independence is merely notional, thereby disguising an employment relationship.⁷³

70 M Risak, *Fair Working Conditions for Platform Workers: Possible Regulatory Approaches at the EU Level* (Friedrich Ebert Stiftung, Berlin 2018).

71 *Ibid* 13-14.

72 Courts will, however, look at the reality of the underlying relationship to determine whether the workers in question are genuinely independent entrepreneurs. See, for an example before the European Court of Justice, case C-413/13 *FNV Kunsten Informatie en Media v Staat der Nederlanden* ECLI:EU:C:2014:2411.

73 *ibid* at para 31, 35

In short, therefore, the Court of Justice has pointed out that EU Competition law ought to be wary of attempts at independent contractor classification which – even if successful at national level – would not automatically engage the scope of Union norms. Localised legislative initiatives have already begun to build on this line of reasoning: since the summer of 2017, for example, the Irish Competition (Amendment) Act 2017 has extended key collective bargaining provisions to workers including the ‘false self-employed’ and ‘fully dependent self-employed workers’, as well as setting out clear statutory definitions of these notions, including sham independent contracting.⁷⁴

⁷⁴ <http://www.irishstatutebook.ie/eli/2017/act/12/section/2/enacted/en/html#sec2> . See further Johnston and Land-Kazlauskas (n 35) 25-26.

CONCLUSION

In June 2017, the European Parliament passed its 'Resolution on the European Agenda for the collaborative economy.' The final text adopted clearly highlighted 'the paramount importance of safeguarding workers' rights in the collaborative services – first and foremost the right of workers to organise, the right of collective bargaining and action, in line with national law and practice'.⁷⁵

This paper has attempted to set out in detail how concrete steps can be taken to achieve this vision, and turn the vision of collective rights for platform economy workers into a reality.⁷⁶ The examples drawn from across different Member States clearly demonstrate the potential for the full range of collective labour law to be applied in emerging forms of work. Some adaptation, particular as regards content, might be required – but given the inherent flexibility and adaptability of collective bargaining, there are few labour market regulatory institutions better suited to responding to and accommodating new developments.

Embracing technology will be a crucial step in organising platform-based workers, and delivering services to them. At the same time as enthusiastically endorsing the potential technology has to make work – and organising – more productive, safer, and interesting, it is important to remember the Platform Paradox as discussed in Part I of this report, and avoid the lure of technological exceptionalism: the technology powering the platform economy is novel and exciting – but the underlying business model is not. As a result, there is ample space to meet the platform economy and its operators within the realm of collective voice.

The benefits of the resulting collectivisation will accrue to all involved: workers will be able to enjoy the flexibility of new forms of work without the risk of exploitative working conditions and low wages; platform operators will be able to harness the skills and experience of a dedicated workforce; and consumers will benefit from a sustainable work environment and much-improved service delivery.

The findings of this report should not be taken as a suggestion that fostering collective voice in the platform economy will be without its challenges: to the contrary, as seen in Part III, there are obstacles both novel and well-known to keep in mind. In the long run, however, organising the platform economy will also provide ample opportunity for innovation and experimentation, the fruits of which will benefit workers and trade unions across the board, whether online and through platforms or in more traditional forms of non-standard work.

⁷⁵ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0271+0+DOC+XML+V0//EN>

⁷⁶ For further collective ideas, see e.g. Rebecca Smith and Sarah Leberstein, *Rights on Demand: Ensuring Workplace Standards and Worker Security in the ON-Demand Economy* (NELP 2015).



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