

## FACING DIGITAL PRECARIOUSNESS IN THE PLATFORM ECONOMY – ON THE WAY TOWARDS A MORE SUSTAINABLE FUTURE OF WORK

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The ongoing process of digitalisation and globalisation is deeply transforming labour market and working relationships. Emerging forms of work (crowdwork) go far beyond the traditional model of employment relationship, posing numerous challenges in terms of social protection. The gig economy exacerbates common tendencies towards the informalisation of employment, and opens the gate to a new stage of precariousness. Are crowdworkers doomed to be an extremely vulnerable group of workers – a “cybetariat”? Does the algorithmic model of management redefine the notion of subordination? How should the current legal framework be reshaped in order to ensure a sustainable and equitable future of work? These are just a few intriguing, key questions that the platform economy raises.

L'attuale processo di digitalizzazione e globalizzazione sta trasformando in profondità il mercato del lavoro e i rapporti di lavoro. Le forme di lavoro che stanno emergendo attualmente (*crowdwork*) vanno ben oltre il modello tradizionale di rapporto di lavoro subordinato, ponendo numerose sfide in termini di protezione sociale. La *gig economy* accentua le tendenze verso la trasformazione del lavoro subordinato in un rapporto sempre più informale, e introduce una nuova fase di precarietà. I *crowdworkers* sono destinati a rimanere una categoria di lavoratori in condizioni di vulnerabilità, in altre parole un “cibertariato”? Il modello gestionale algoritmico ridefinisce la nozione di subordinazione? In che modo si dovrebbe riformare l'attuale ordinamento giuridico al fine di assicurare un futuro del mondo del lavoro che sia sostenibile ed equo? Questi sono solo alcuni dei principali quesiti sollevati dalla cosiddetta “platform economy”.

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### 1. INTRODUCTION

Crowdworking has been a topic of an academic and political debate for well over a decade now (Howe, 2006). Since the very rise of the gig economy, researchers, policy makers, judges, and social partners have been struggling to characterise crowdworkers, determine their employment status, and indicate the scope of the labour and social protection applicable to them. Particular attention has been given to the legal nature of the tripartite relationship between crowdsourcers, crowdworkers, and online platforms. Still, no coherent response to the problem of accommodating the new kind of work arrangements in the current regulatory framework has been delivered.

In brief, it has been widely argued that the platform economy poses formidable challenges to the traditional system of labour law, which, most broadly, is built upon

the assumption of a subordinate, binary relationship between employee and employer<sup>1</sup>. Crowdfunding combines the elements characteristic of standard employer-employee relationships with the constituent features of self-employment, and yet not always squarely fits into the “dependent contractor” categories, existing in many jurisdictions<sup>2</sup>. There are substantial differences between the “new kind” of work arrangements, and the standard employment relationship. In some instances, attempting to bring them under the scope of labour law resembles the struggle to “fit the square peg into a round hole”<sup>3</sup>. Much has been said about the need to revise the current framework of labour law, either on the legislative (e.g. Kennedy, 2016) or interpretative level, *inter alia* by adopting a purposive approach to labour law (Davidov, 2017), or by a functional approach to the employer (Prassl, Risak, 2016).

The uncertainty regarding the legal status of this new category of workers, resulting in their exclusion from the scope of labour law, renders crowdworkers an extremely precarious group. The social risks that crowdworkers face are the main focus of this paper. The present contribution demonstrates that not only are they exposed to many risks that affect other non-standard workers, but they encounter certain specific hardships connected with the digital, hypertemporal, and undefined character of their work via Internet platforms. It elaborates on the possibilities of securing more decent working conditions to crowdworkers.

The foregoing investigates solely the “online crowdwork”, namely crowdwork in a narrow sense, i.e. the working process that is entirely effectuated virtually via Internet platforms. Consequently, the present paper does not address the “off-line” type of crowdwork (the so-called “work on-demand via apps”), according to which work is assigned and coordinated through Internet platforms but is performed locally, in the “real” world. While both economic models share certain common tendencies towards precariousness and tend to be investigated jointly (De Stefano, 2016), a separate analysis of crowdworking platforms such as Amazon Mechanical Turk, Clickworker, or CrowdFlower allows more focus on specific issues. Internal forms of crowdworking (online outsourcing of tasks within the companies’ organisational structure) will be excluded from the scope of this contribution.

The paper is structured as follows: in the first part, it briefly defines the notion of crowdworking and illustrates its multifaceted character. It also scrutinises the nature of crowdworking through the lens of other problems arising in the era of digitalisation, characteristic of atypical forms of employment. Further, it indicates some of the specific social risks that crowdworkers face. In the second part, in order to provide a deeper insight into the changing model of subordination and control, the article looks more closely at the model of algorithmic management. It argues that crowdworkers, despite their formal independent-contractor status, are often dependent on the crowdsourcing platforms. At the same time, it outlines the difficulties of bringing the crowdworkers under the scope of labour law by applying a direct approach, i.e. by recognising their employment status. The third part of the paper addresses some policy measures and initiatives that have been

<sup>1</sup> By “labour law system”, I deliberately do not refer to any specific, national labour law regime, but focus on the underlying assumptions of labour law, such as the unitary concept of employer, and the binary divide between employees and self-employed.

<sup>2</sup> In Europe, an intermediate category of workers exists *inter alia* in Austria, Germany, Italy, Portugal, Spain, Switzerland, and the United Kingdom.

<sup>3</sup> *Cotter et al. v Lyft Inc.*, Order Denying Cross-Motion for Summary Judgement (no. 18), p. 19.

undertaken with the view of securing the rights of this new group of workers regardless of their employment status. It exemplifies the idea that work on digital platforms can be delivered with more respect to labour rights, even if crowdworkers are denied employment status. In the final part, the contribution discusses possible future regulations concerning the social protection of crowdworkers, underlining both the necessity and potential difficulties of such regulations.

## 2. DIGITAL PRECARIOUSNESS

### 2.1. *Concept of crowdwork*

Crowdwork can be loosely defined as a new form of work performed in exchange for payment, in which Internet platforms or mobile applications connect clients (crowdsourcers, requesters) with service providers (crowdworkers) (Eurofound, 2015). In other words, crowdwork constitutes a digital form of outsourcing tasks (Günther, Böglmüller, 2015), in which work is not delegated individually to a previously chosen worker but is instead addressed through an open call to a wide range of unknown service providers – a “crowd”.

At the outset, it needs to be stressed that crowdwork is a highly multifaceted, dynamic, and imprecise concept. In fact, there are just as many variations of digital business models as crowdsourcing platforms. Some crowdsourcing websites indeed serve merely as databases aggregating freelancers’ profiles, and making them accessible to clients, without intervening in the relationship between them. Their role does not go beyond establishing contact between the two sides of the market. Much more problematic from the legal standpoint are those platforms that interfere in the working process to a varying extent and at different stages. They may verify and assess workers’ profiles, automatically connect them with clients, unilaterally set conditions and mode of service performance, or mediate payment. Amazon Mechanical Turk, a microtask crowdsourcing platform founded in 2005, is regarded as a prototype of this kind of online crowdworking platforms. Other prominent examples are Twago<sup>4</sup>, UpWork<sup>5</sup>, Freelancer<sup>6</sup>, and Clickworker<sup>7</sup>. These generic platforms offer various kinds of tasks, without restricting themselves to offers from a particular service branch (Todolí-Signes, 2017b).

Crowdwork is commonly associated with mundane microtasks such as testing software, tagging images, collecting data, conducting surveys, comparing products, or transcribing audio clips. These are often referred to as “Human Intelligence Tasks” (HITs), understood as simple, repetitive activities that can be easily performed by humans but are still too complicated to be issued by computer algorithms (Bergvall-Kåreborn, Howcroft, 2014, p. 217). Yet, there are numerous examples of platforms dedicated to specialised services requiring higher qualifications, such as design (CoContest), medical services (Medicare), or legal advice (UpCounsel). It is not much of an exaggeration to state that practically any form of working activity can, at least to some extent, be fragmented and crowdsourced.

<sup>4</sup> Currently, the largest platform for freelance work in Europe. Since its launch in 2009, it has generated over EUR 400 million in project volume (<https://www.twago.com/blog/about-us/>).

<sup>5</sup> Currently world-leading freelancing website, via which freelancers earn more than USD 1 billion each year (<https://www.upwork.com/about/>).

<sup>6</sup> A platform with over 24.2 million registered users, designed primarily for small enterprises mediating all range of services such as a website or mobile app development, data entry, internet marketing, or graphic design.

<sup>7</sup> Germany’s largest crowdworking platform established in 2005, whose number of “clickworkers” reached 800,000 in 2016.

Never before has it been so easy to outsource even complex working processes as now, when a vast array of online platforms matches labour demand and supply in next to no time and, most importantly, the transaction costs are almost non-existent. There is little doubt that this model will spread considerably in the years to come<sup>8</sup>.

The “virtual” model of crowdwork poses numerous challenges to the protection of labour rights. The first group of social risks that crowdworkers face stems from their classification as independent contractors, which, in many cases, leads to their being excluded from the scope of labour law regulations. The second group of risks is connected with the hypertemporal and precarious character of digital work. It is not without reason that online crowdworkers are often referred to as invisible “digital slaves” (Lee *et al.*, 2015, p. 2) or a new kind of proletariat – a “cyberiat” (Huws, 2009). The next part of the contribution explores this argument.

## 2.2. Deepening precariousness

Spreading and deepening precariousness appears to be one of the major challenges for modern labour law, not only in view of the platform economy. Flexibilisation, casualisation, informalisation, and commodification of employment relationships are currently unfolding tendencies, which have as yet been ameliorated by the proceeding digitalisation. Digitalisation opens one more gate through which employers may escape from employment-related obligations. The emerging digital forms of work should not be therefore analysed in isolation, but rather need to be perceived as part of broader tendencies in the evolution of employment relationships (De Stefano, 2016).

In a sense, crowdworkers are exposed to the same vulnerabilities as “traditional” employees (Todolí-Signes, 2017b, p. 5). One of these phenomena is the so-called “permanent availability” and ever-blurring boundaries between work and personal life. It is no novelty that an increasing number of employees feel obliged to work outside regular working hours and to stay available for their employees and colleagues at any time. However, in the case of crowdwork, being “always-on” is not an additional requirement, but a prerequisite to being assigned to a task. Sometimes it takes longer for crowdworkers to find a task than to complete it; a considerable amount of time online is spent unproductively (Todolí-Signes, 2017b, p. 24). Unless they stay attentive to the offers appearing on the website and respond to them almost immediately, the service may be provided by a different service provider. This illustrates how easily workers in the gig economy can be substituted, and how fleeting the digital working relationships are.

To date, there is no specific data on the psychological influence of micro-task crowdworking on individuals. Still, ample evidence of the far-reaching negative impact of the “permanent reachability” definitely holds true for crowdworkers. Their constant “stand-by modus” makes them especially vulnerable to “technostress”, burnout, poor work-life balance, and addiction to technology (European Agency for Safety and Health at Work, 2015, p. 14). While academics, policy makers, and social partners throughout Europe are intensively debating on effective mechanisms to enforce protective working-time regulations, specifically the “right to disconnect”<sup>9</sup>, crowdworkers, by nature, are under the “obligation

<sup>8</sup> This statement can be supported, among others, by a PwC report estimating that the global revenue from the on-demand economy may grow from approximately USD 15 billion in 2013 to USD 335 billion by 2025. The report is available at: <http://www.pwc.co.uk/issues/megatrends/collisions/sharingeconomy/the-sharing-economy-sizing-the-revenue-opportunity.html>.

<sup>9</sup> For example, France introduced in January 2017 a law guaranteeing the “right to disconnect”. Companies with

to connect”. As will be argued below, their flexibility in terms of the choice of working time and workload is in many cases illusionary.

Some similarities can be further drawn between the “bring your own device” tendency present in many modern companies, and the fact that crowdworkers perform their services using their own tools. Even in the instance of non-standard forms of work carried out outside the on-site workplace, such as telework, employers are responsible for securing occupational health and safety standards. Crowdworkers, to the contrary, although exposed to similar risks, are not covered by regulations regarding health and safety, and bear all the safety risks as well as insurance costs (European Agency for Safety and Health at Work, 2015).

Beyond all the abovementioned general risks connected with digitalisation, which affect workers in both standard and non-standard forms of employment, a number of specific features characteristic of work in the gig economy arguably render crowdworkers even more precarious than the “traditional” workers.

Gig workers are subject to enormous market pressures and are forced to offer their services at the lowest price possible. They compete incessantly against each other. It has been reported that some tasks in the digital marketplace disappear literally within seconds (Milland, 2016). The global, boundless nature of crowdwork means that workers from low-labour-cost countries such as India or China, who are willing to work for much lower remuneration, have equal access to those in well-developed countries. Needless to say, the national regulations on minimum wages do not apply to crowdworkers. This imminently leads to the social dumping and race to the bottom of remuneration.

Further concern is the isolation of the working process, which undermines the social function of work. “Digital nomads” (Sutherland, Jarrahi, 2017) have no chance to develop social bonds with each other, because of their anonymity and the hypertemporality of the working relationships. The “cloud-based nature of services” is a serious obstacle to building solidarity. (Aloisi, 2016, p. 679). Workers are disempowered, in a sense that they do not establish a direct collaboration, either with other service providers or with the end-user. There is no job interview; neither party gets to know the other during the working process. The contract between Internet platform and crowdworker is in practice concluded by the click of a mouse accepting terms and conditions. Human working activities are hidden by the screen and are often anonymous. On Amazon Mechanical Turk, for instance, each worker is identified through an individual alphanumeric ID number, which makes them anonymous and invisible to the client (Bergvall-Kåreborn, Howcroft, 2014). Particularly in the case of HITs, this raises a potential problem of perceiving “humans as services” and the commodification of work (De Stefano, 2016, p. 4).

Another crucial aspect of “digital precariousness” is the severe income instability. Crowdworkers are mostly remunerated not on an hourly, but on a piece-rate basis. Only a few platforms, such as Upwork, provide the possibility of working on an hourly basis. More often than not, the remuneration for “gigs” is strikingly low. Amazon Mechanical Turk, on which approximately 90% of tasks are valued at less than USD 0.10, and an hourly wage for work at this platform is estimated at USD 2, is just one telling example (Eurofound, 2015). On Clickworker, nearly 70% of crowdworkers earn approximately the

more than 50 workers are obliged to introduce regulations granting their workers the right to ignore emails after working hours.

net amount of EUR 4.99 weekly, while only 3% of them earn at least EUR 20 per week (Bertschek *et al.*, 2016).

In many platform companies, standard fares fluctuate constantly, which makes the overall remuneration difficult to predict. The system of remuneration and charging commissions often lacks clarity (De Groen, Maselli, 2016). The payment rates can be changed by an update, without workers having any say in this regard. Particularly alarming are the remuneration policies adopted by some gig-economy platforms that organise contests for potential service providers, and envisage the reward only for the “winner” – a participant chosen by the client. It is a common practice among companies to use the “wisdom of crowd” in creative projects (“CoCreating”). An example of this is the crowdsourcing platform CoContest. Designers are invited to send their project proposals, and finally only three of them obtain remuneration (the winner receives 70% of payment, 20% of the sum is awarded to the second participant, and 10% to the third one). The other participating designers do not receive any reward for their completed work (De Groen, Maselli, 2016, p. 11)<sup>10</sup>.

Many crowdsourcing platforms such as Amazon Mechanical Turk or Upwork provide that crowdworkers receive the payment only upon the approval, by the client, of the completed task. These “mandatory satisfaction clauses” (Bergvall-Kåreborn, Howcroft, 2014, p. 218) expose crowdworkers to a “wage theft” (Milland, 2016, p. 85), as their work can be rejected for any reason by the requester, who still retains intellectual property rights in relation to the completed work (Bergvall-Kåreborn, Howcroft, 2014).

The issue of income instability and extremely low wages might seem less dramatic if we consider that, for most crowdworkers, working on platforms is the source of a complementary income. Indeed, in the vast majority of cases, the gig workers have a different occupation and are covered by the social security insurance elsewhere. According to a report by the International Labour Organization (ILO), this is the case for over 80% of crowdworkers (Berg, 2016). However, the precarious situation of those for whom the crowdwork is the main source of income should not be neglected. Certain studies indicate that many crowdworkers are economically dependent on one or several platform companies they are simultaneously active on. For instance, for approximately 40% of crowdworkers, their work on Amazon Mechanical Turk is a full-time occupation (Milland, 2016). The importance of securing social protection for crowdworkers should not be diminished by arguments that it is crowdworkers’ free choice to involve themselves in such forms of work, or by the fact that their digital occupation is mainly a supplementary source of income.

### 3. EMPLOYMENT STATUS OF CROWDWORKERS

#### 3.1. *Algorithmic management*

The following part of the article scrutinises the algorithmic model of management. It explains how the traditional ways of supervision, evaluation, and optimisation of the service performance have been transformed. “Algorithmic management” here denotes a software algorithm that assumes managerial functions (Lee *et al.*, 2015), and directly or

<sup>10</sup> For further examples of platforms adopting such policies, such as Jovoto and Pearlfinder, see an article published on the online edition of the *Die Zeit* newspaper, available at: <http://www.zeit.de/2016/18/crowdworking-freelancer-digital-arbeitsmarkt>.

indirectly steers the working process. Gaining a deeper understanding of this phenomenon may be essential to determining the extent to which crowdworkers are dependent on the crowdsourcing platforms and thus help in establishing their genuine employment status.

In general terms, three functions of algorithms can be distinguished in the context of the platform economy; crowdworkers are influenced on the decisional, informational, and evaluation level (Lee *et al.*, 2015). Firstly, the Internet platforms either automatically assign clients to service providers or, more commonly, suggest the crowdworker who is supposed to be best suited to perform a task. The allocation of tasks is largely determined by the workers' position in ratings. The "digital trust" ("digital reputation") mechanism is, on the one hand, fully understandable and very useful. It has been created primarily to increase the security of services. To a certain extent, it indeed guarantees reliability of service providers and facilitates users' choice. On the other hand, however, given that the quality assessment is based merely on customers' general impression and rarely on objective criteria, the risk of an unfair assessment, which is connected with serious consequences for crowdworkers, is very high. In the system of meritocracy (Al-Ani, Stumpp, 2016), the employability of workers depends on highly subjective and hardly verifiable users' comments. Only a small group of best-rated workers is privileged and receives offers. According to some statistics, only 6% of workers with the highest ratings earn about one third of the total revenues on the platform (De Groen, Maselli, 2016).

The control mechanisms applied to crowdworkers differ considerably from the standard models of supervision, where subordinate employees have to follow their supervisors' instructions and comply with the clearly set companies' standards. Crowdworkers are not directly controlled by the platform executives. Monitoring and supervisory power, primarily a domain of the management, has been partly vented to the customers (Schmid-Drüner, 2016). What is more, we could speak of an "indirect control" – by making unbinding suggestions as to the provision of services, the clients have certain expectations towards service provision, and require the crowdworkers to comply with them (Schmid-Drüner, 2016, p. 7). The clients' evaluation of the service provision has a direct impact on the further work of contractors. If the ratings indicate unsatisfactory service performance, gig workers will be deactivated from the platform. Platforms, in fact, frequently reserve the right to deactivate the accounts literally without any reason<sup>11</sup>. This 'deactivation' amounts to an automatic dismissal, with no possibility to appeal against it.

Such a new model of control is an optimal solution for companies that thanks to it have accurate information about work performance, without incurring any supervision costs. Paradoxically, although crowdworkers are not directly supervised, the level of their control is much higher than in the case of standard working relationships (Todolí-Signes, 2017a). Crowdworkers (their reaction time, performance rate) are observed incessantly; every single job performance is assessed. In fact, what is assessed is not only the quality of service but also drivers' "level of cooperation with the algorithmic assignment" (Lee *et al.* 2015, p. 2). There is no room for unproductivity or errors (Al-Ani, Stumpp, 2016).

Gig-economy companies tend to emphasise workers' autonomy and freedom to accept or reject tasks, as well as nearly absolute flexibility regarding working hours. Having said that, they do not hide the fact that they exert control over crowdworkers. Quite to the contrary, they assure it to *their* customers, which is meant to be a guarantee of high quality

<sup>11</sup> For instance, the Terms and Conditions of Freelancer stipulate as follows: "We [Freelancer] may close, suspend or limit your [users] access to your Account without reason".

of services provided by on-demand workers. For instance, Clickworker regularly screens, tests, and assesses clickworkers. They are obliged to complete certain tests and training, which is a prerequisite to access a respective task<sup>12</sup>. Only after a successful completion of training and a given number of tasks can a clickworker become an “expert” who may be assigned to a more complex and better-remunerated task.

### *3.2. Employment status as key to labour protection?*

In virtually all cases, terms and conditions of platforms or applications mediating work stipulate that crowdworkers are self-employed. Crowdworkers are, in contractual terms, independent, flexible, and free entrepreneurs. Companies adopting the gig-economy business model maintain that they are merely technological companies enabling two sides of the market to connect. They explicitly exclude any liability and keep themselves extraneous to the relationship between workers and clients, by, for instance, refusing to mediate any disputes between them. Some platforms go a step further and introduce “enhanced independent contractor clauses” stipulating that there is no employment relationship between workers and clients (De Stefano, 2016, p. 13). Other platforms additionally indemnify themselves from any claims arising in the case of potential reclassification of crowdworkers as employees. Such arrangements lead to a state of “organised irresponsibility”, in which several entities perform a certain kind of employer’s functions, although none of them accepts the primary responsibility (Prassl, 2015). This results in a so-called “no employer black hole”, where apparently nobody is performing the employer’s functions (Collins, 2015). The entire social risk is shifted to crowdworkers.

As the previous section of the paper has demonstrated, there are, however, several factors substantiating the claim that crowdworkers are misclassified and should be recognised as employees. Although the discussion regarding the classification of gig workers has so far revolved mainly around the “on-demand-via-apps” business model, some of the arguments indicating an employment relationship between crowdworkers and the platform or application hold true for the “online crowdworking”. Amazon Mechanical Turk, Clickworker, or Crowdflower also develop their businesses entirely through workers who allegedly are not their employees. These Internet platforms are not merely marketplaces that technically provide crowdworkers with the opportunity of advertising and delivering their services to clients. Their role goes far beyond the one of a “payment processor” (Bergvall-Kåreborn, Howcroft, 2014, p. 220). As exemplified above, they implement various algorithmic mechanisms that, directly or indirectly, stimulate, optimise, and synchronise the workers’ performance so that it meets certain requirements set by them. They predetermine conditions of work and evaluate crowdworkers’ compliance with them. A meticulous scrutiny of the factual terms and conditions of service provision, and the application of “standard” employment tests could therefore possibly detect the existence of an employment relationship between the crowdsourcing platform and crowdworkers. One of the crucial questions to be addressed while assessing the employment status is: whose purpose is served by means of crowdworkers’ service provision? Are crowdworkers

<sup>12</sup> Interestingly, Clickworker explicitly calls the requesters its’ (and not the clickworkers’) customers, although it regards crowdworkers as independent service providers. Compare: “To ensure the quality of the work results for *our* customers, it is essential that the Clickworkers who process the jobs are qualified accordingly.” (*emphasis added*, <https://www.clickworker.com/about-us/clickworker-crowd/>).

the only ones to profit from their work performance? Or are they rather “powerless cogs” (Aloisi, 2016, p. 25) who work not for their own, but for the platforms’ reputation?

That being said, bringing crowdworkers under the scope of the existing labour law regulations by recognising their employment status is not straightforward. In most cases, the complex web of contractual and factual arrangements underlying the crowdworkers’ performance cannot be easily disentangled. One of the major difficulties in applying such a direct approach is the demutualisation of risks and the fragmentation of the employer’s functions (Prassl, Risak, 2016). Typically, instead of a single contract obliging the worker to perform tasks for a given end-user, there is a multitude of “micro-contracts” concluded with different partners, neither of which is ultimately responsible for the working conditions. Some of the managerial competences are split into several entities (the end-user and the platform), or are exercised jointly by them. In general terms, the end-user controls the working process (selects the crowdworker; sets out the details according to which the service should be provided; accepts or rejects the provided service; and issues the payment order), but it is the algorithm that empowers them to do so and that orchestrates the entire process. This leads to complex problems with the allocation of the employment-related obligations. A holistic, systematic approach towards the attribution of responsibility in case of such multilateral work relationships is still lacking.

#### 4. ON THE WAY TOWARDS A MORE SUSTAINABLE FUTURE

##### 4.1. *Good practices of platforms and self-initiatives*

The legal classification of crowdworkers into the existing employment categories remains, to date, one of the most contentious issues triggered by the gig economy. Given the pivotal role of the determination of employment status, it is natural that one endeavours to extend the scope of the labour law regulations to crowdworkers, in order to grant them social protection. Their categorisation as employees or, broader, as dependent workers, would entitle them to such core labour rights as minimum wage, overtime payment, sick or holiday leave, protection against unfair dismissal, or social security. As the previous section has demonstrated, such a straightforward solution is, however, not always viable. Hence, it appears necessary to reflect on the possibilities of improving crowdworkers’ protection irrespective of their employment status. The following illustrates that there are plenty of policies and initiatives that can be, and partly already are, undertaken to render the working relationships in the gig economy more just.

One of the primary issues when discussing labour rights of crowdworkers is to assure greater transparency in the functioning of platforms (Milland, 2016) and to bring clarity to the working conditions of crowdworkers. The moment crowdworkers accept the terms and conditions of a platform, they should be fully aware of the nature and the details of the project. Its duration and the remuneration for it should be predetermined<sup>13</sup>. Such practices

<sup>13</sup> Council Directive 91/533/EEC of 14 October 1991 on an employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship (Written Statement Directive) could serve as an example. It guarantees that employees are provided with basic information such as identity of the parties and the place of work, nature of job, the date the contract begins and its duration, the amount of payment, normal working hours, and the collective agreements governing the employee’s conditions of work. Employees with contracts concluded for less than one month or with a working week consisting of less than eight hours are exempted from the application of this directive.

as reserving the right to terminate a working relationship for no reason and without prior written notice and argumentation are unacceptable. Therefore, some effective mechanisms of protection against unfair dismissal are necessary. Contract termination by a platform should always be objectively justified and primarily limited to the event of violation of terms and conditions on the part of the crowdworker. The possibility to end a contract “without any reason whatsoever”, not even without due notice, is unacceptable. In this respect, a good example to follow is a policy introduced by the crowdsourcing platform CrowdFlower, which reserves the right to terminate the contract with crowdworkers with 60 days’ prior notice. The termination or suspension of the agreement “immediately, at any time, without notice or refund” is possible only in the case of non-compliance with the terms and conditions of the contract on the part of the “crowdflower” (i.e. the worker)<sup>14</sup>.

Some crowdsourcing platforms have adopted codes of conduct. For instance, the Code of Conduct of Freelancer obliges its users to respect confidentiality and privacy, not to engage in any fraudulent or illegal action, to refrain from inappropriate and defamatory remarks, not to bully or discriminate and, generally, to act “ethically and with integrity”. It provides that violations of these policies will result in disciplinary action, including account termination. Freelancer also provides the Freelancer Support platform, where users can ask any questions or express any concerns regarding the Code of Conduct and the correct procedures<sup>15</sup>.

Furthermore, it is vitally important to secure certain communication mechanisms between workers, so that they do not feel isolated in the working process and have the opportunity to establish contact with the “crowd” they are part of. There is an increasing number of self-organising initiatives among crowdworkers. Just one notable example is Turkopticon 2 – a platform bringing together crowdworkers from Amazon Mechanical Turk, and enabling them to exchange opinions about the requesters and offer mutual help.

Apart from such self-organising initiatives, some external platforms have been created with the aim of providing legal support for crowdworkers. Since May 2015, the largest German trade union ver.di (*Vereinte Dienstleistungsgewerkschaft* – United Services Trade Union) has been managing an Internet website on which crowdworkers can seek advice<sup>16</sup>. Moreover, some of the crowdsourcing platforms, well aware of the need to establish a community among crowdworkers, provide forums for crowdworkers or moderate their communities on social media platforms (e.g. the Clickworker Lounge forum).

Further, one of the most commonly raised issues is the crowdworkers’ right to collective bargaining and the right to strike. Involving crowdworkers in collective mechanisms plays a fundamental role in empowering them and compensating for democracy deficits embedded in this form of work. While there seems to be a consensus that crowdworkers should be granted *some* form of collective rights, including collective bargaining, it is much harder to speak about this right in concrete, practical terms. When we look back to the 19<sup>th</sup> century’s “crowd” of proletariat who managed to gather and stand up for its collective rights, several features distinguishing today’s digital crowd of workers from the realities of those times are clearly visible (Schwemmler, 2015). The extremely high competition between crowdworkers, which is inherent to the gig-economy business model, as well as their great global dispersion and anonymity, may dissuade them from cooperating with

<sup>14</sup> Point 11.2 of the Terms and Conditions (<https://www.crowdfLOWER.com/legal/customer-terms-conditions/#id0>).

<sup>15</sup> Available at: <https://www.freelancer.com/info/codeofconduct.php>.

<sup>16</sup> Available at: <http://www.ich-bin-mehr-wert.de/support/cloudworking>.

each other on a union level. Crowdworkers constitute a highly heterogeneous group of workers, whose divergent motivations to work and expectations make it impossible to regard a “crowd” as a uniform entity of workers (Schwemmler, 2015, p. 36). Furthermore, what is likely to impede their engagement in any form of collective action is the lack of clarity regarding the legal status of both platforms and clients, as crowdworkers do not know against whom to strike (i.e. who their employer is).

Having said that, despite these obstacles, granting fundamental collective rights to crowdworkers might be a viable solution to hinder the deepening of digital precariousness. The attempts to unionise crowdworkers are crucial not only to prevent the precarious working conditions, but also to counteract the disruptive effects of the gig economy on the traditional labour market, such as social dumping (Schwemmler, 2015). There are already certain signals indicating that some forms of unionising crowdworkers are viable. To give an example, some crowdsourcing platforms, such as Coworker.org and Dynamo, enable workers to organise collective actions (Smith, Leberstein, 2015).

The abovementioned examples illustrate how the platform’s good practices and top-down initiatives may guarantee crowdworkers more sustainable conditions of work. These are tiny, yet important steps in securing basic labour rights of this emerging group of workers. These initiatives are invaluable for raising the awareness about crowdworkers’ rights, which is, sadly, alarmingly low. They are also a sign that platforms are open to dialogue and willing to introduce certain ‘crowdworker-friendly’ policies. Still, there is no scope for complacency, as crowdworkers encounter numerous work-related risks that cannot be tackled by single, punctual measures. Creating an integrated policy framework that would respond to the changing reality of working relationships and bring into balance the economic and social interests of all stakeholders is the only truly viable solution to the challenges of the gig economy.

#### *4.2. Regulating the Legal Vacuum*

The attempts to elaborate an adequate response to the gig economy should be a joint effort of the judiciary, legislators, and platforms themselves. Presently, platform-based companies are self-regulating entities operating in a legal vacuum (Finck, 2018). Most of the companies, unsure about the applicable law, abstain from providing support to their workers (such as training), since it could constitute a factor indicating that they are employers (Kennedy, 2016). They manage to circumvent employment law provisions and set their own standards, which often leads to abuse of their dominant position rather than to the empowerment of workers. On the other hand, some companies apply the new business model not in order to maliciously circumvent the employment regulations, but because they seek to adjust themselves to the current economy and to respond to the predominant tendencies in the labour market (Henriques, 2015). If uncontrolled, the exorbitant growth of the gig economy is likely to lead to a parallel labour market and may undermine social standards. The impact of online platforms on labour markets and employment relationships will largely depend on the reaction from policy makers. The regulatory response to the gig economy should reconcile two objectives. It needs to provide gig workers with an adequate level of social protection, without stifling the innovative platform-based businesses and undermining the flexibility embedded in them (Risak, 2018). The current debate is thus an endeavour to find a balance between business efficiency and social justice.

It is essential to realise that, contrary to what is sometimes argued, extending the scope of labour law protection to crowdworkers would not necessarily be incompatible with

business models in the gig economy. To be sure, the denial of employment status of crowdworkers allows platform companies to have a competitive edge over the traditional ones. It is estimated that classifying workers as employees would increase the labour cost up to 20-30%<sup>17</sup>. Bluntly put, the gig-economy model is based exactly on the premise of using independent contractors as workers, without granting them any employment protection. It is, however, an exaggeration to argue that requiring employers to pay their workers minimum wages and give other employment-related benefits would inhibit the advancement in the gig economy and collapse the entire on-demand business model. On the contrary, it could bring mutual profits. Not only would it guarantee decent and stable remuneration to platform workers, but it could also stimulate their efficiency (Berg, 2016).

While there seems to be a wide consensus that digital workers should enjoy basic labour and social protection, it is far less clear how to define the scope of this protection. Should crowdworkers be on equal footing with “conventional workers” or should the scope of their rights be more nuanced, limited to some “hard core”? What exactly are the social rights that need to be granted to crowdworkers? One of the major regulatory challenges is to differentiate between crowdworkers who are active on crowdsourcing platforms only occasionally, for fun, and treat clickwork as “gigs” rather than a serious source of income, and those who economically rely on one or multiple crowdsourcing platforms<sup>18</sup>. While the first group can hardly be described as a “cybetariat”, the deskilled crowdworkers for whom the hypertemporal microtasks are their main source of living are definitely in a vulnerable situation and deserve protection. Economic dependency, rather than the fact that crowdworking is solely a part-time occupation, should be considered as a determinant factor by establishing the protection scope (Davidov, 2017). An optimal solution to safeguard decent conditions in the gig economy could be to extend the minimum wage to all workers who are economically dependent on crowdworking platforms, even if, formally, they are classified as self-employed (Davidov, 2017). The minimum wage should be paid at least for the time during which the gig worker was actively working for the end-user (Todolí-Signes, 2017a). The piece rates should be estimated on the basis of the average time needed for the completion of tasks (which is easily measurable), and should be set on a level that will comply with the minimum wage (Todolí-Signes, 2017a)<sup>19</sup>.

As commonly raised in the academic debate, various issues concerning crowdworkers need to be dealt with as a part of broader discussions regarding labour rights of non-standard workers and independent contractors (De Stefano, 2016). These are *inter alia* unresolved questions of the extension of social security schemes, the introduction of minimum wage, as well as the application of working time and safety at work regulations. Setting minimum standards is a challenging exercise, and even more so is the enforcement of the already existing protection schemes. In view of the ever-growing number of cases when employment is measured in minutes instead of years (Milland, 2016), workers are not inte-

<sup>17</sup> In France, it is calculated that the costs could even rise by up to 50%, as reported in an article published by Bloomberg, available at: <https://www.bloomberg.com/gadfly/articles/2017-03-16/uber-needs-to-get-real-about-that69-billion-price-tag>.

<sup>18</sup> According to the ILO report of 2016, 54% of the interviewed crowdworkers have been working on digital platforms for at least one year. In the case of Indian AMT workers, over 71% of them have reported working on the platform for more than three years (Berg, 2016).

<sup>19</sup> Some authors argue against the extension of the minimum wage, and point out practical difficulties with determining an hourly wage for a digital work performed on various platforms (Harris, Krueger, 2015). As a matter of fact, however, the measurement of the working hours does not seem to be much of an obstacle, since the work-related data are automatically collected by the on-demand platforms (so: Cherry, Aloisi, 2016).

grated into the corporate structures and the risks are demutualised, there is a pressing need to reconsider the labour and social law regulations, in order to extend their scope to those who genuinely need protection, irrespective of their formal employment status.

The extension of the European social acquis to self-employed workers has been widely debated over the last several years, as exemplified by the discussion over the European Pillar of Social Rights, finally adopted on 17 November 2017. This document acknowledges that “regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection”. It clarifies that the notion of workers applies to “all persons in employment, regardless of their employment status, modality and duration”. This wording suggests that also crowdworkers whose work consists of hypertemporal gigs should enjoy due social protection, as long as they provide services under conditions comparable with those of workers. It is vital that the European Pillar of Social Rights makes it explicit that the employment status is not a prerequisite for bringing the worker under the protective scope of labour and social law provisions. That being said, the pillar lacks binding power – it merely constitutes a general declaration of basic social rights and principles that, in order to be effectively enforced, needs to be accompanied by other initiatives. This declaration is to be welcomed as a compass and a guide<sup>20</sup> for the further developments of the European social policy. It indicates a common consensus among European policymakers that the interests of those in non-standard working relationships, including work on digital platforms, should also be considered. It is also interesting to note that the tendency towards a more inclusive labour law is not novel. A similar proposal of adapting a common, broad legal definition of an economically dependent worker has been presented already over a decade ago in the Green Paper on “Modernising labour law to meet the challenges of the 21<sup>st</sup> century: A critical and constructive evaluation”<sup>21</sup>. There is a growing advocacy for a “new bill of rights” that would clarify the rights of *all* workers<sup>22</sup>. The ongoing debate on the labour rights of crowdworkers is, therefore, focused on the extension of the scope of labour law to platform workers thorough a broad definition of “worker”.

## 5. CONCLUSIONS

The emergence of the gig economy, with its new patterns of work, exceeds the boundaries of labour law, and makes us reflect about the future of work. Addressing the far-reaching implications the gig economy has on the employment relationships is one of the major challenges facing modern labour law. There is no use in “demonising” the gig economy, since digital crowdsourcing platforms are, as such, not a negative phenomenon. To the contrary, they offer ample innovative opportunities that can be beneficial not only for the platform companies and their clients but also for individuals who resort to virtual forms of work. Bringing clarity to the working relationships in the gig economy, however, seems to be a prerequisite to establishing a framework that could provide an adequate protection for crowdworkers. New forms of work are often on the verge of current regulations, validate the escape from labour law, and ameliorate the tendencies brought about by digitalisation.

<sup>20</sup> These expressions have been taken from the Preamble (point 12) of the European Pillar of Social Rights.

<sup>21</sup> COM(2006) 708 final.

<sup>22</sup> Cf. <https://www.herts.ac.uk/about-us/news/2017/november/working-in-the-european-gig-economy>.

Arguing that working relationships in the gig economy ought to be regulated, that employment status of on-demand workers should be clarified, and that crowdworkers need to be granted basic labour rights is, indubitably, easier said than done. What makes the research on platform work exceptionally challenging is the multifaceted and dynamic character of this phenomenon. Digital forms of work are constantly evolving, which renders any attempt to classify them rather elusive. So far, despite the extensive debate over the last few years, there is no clear answer to fundamental issues surrounding work in the gig economy.

Rethinking longstanding tests for employment status and attempts to determinate the scope of labour law more precisely is beyond doubt of paramount importance. Still, it is vital to realise that providing at least the basic protection to crowdworkers is also possible without acknowledging their employment status. The crowdworkers' status of independent contractors should not imply their precariousness. We need to "get back to the basics" (Rogers, 2016, p. 483) and focus on the core functions of labour law as an instrument to protect workers against social risks. Much has changed since the early 20<sup>th</sup> century, when labour law statutes were established, but the fundamental role of these regulations remains the same. Only when due protection is granted, irrespective of the formal classification of working relationships as subordinate ones, can we secure a sustainable future of work.

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