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About this journal

The globalisation of world trade in combination with the use of information and communications technologies is bringing into being a new international division of labour, not just in manufacturing industry, as in the past, but also in work involving the processing of information.

Organisational restructuring shatters the unity of the traditional workplace, both contractually and spatially, dispersing work across the globe in ever-more attenuated value chains.

A new 'cybertariat' is in the making, sharing common labour processes, but working in remote offices and call centres which may be continents apart and occupying very different cultural and economic places in local economies.

The implications of this are far-reaching, both for policy and for scholarship. The dynamics of this new global division of labour cannot be captured adequately within the framework of any single academic discipline. On the contrary they can only be understood in the light of a combination of insights from fields including political economy, the sociology of work, organisational theory, economic geography, development studies, industrial relations, comparative social policy, communications studies, technology policy and gender studies.

Work organisation, labour and globalisation aims to:

- bring together insights from all of these fields to create a single authoritative source of information on the new global division of labour, combining theoretical analysis with the results of empirical research in a way that is accessible both to the research community and to policy makers;
- provide a single home for articles which specifically address issues relating to the changing international division of labour and the restructuring of work in a global knowledge-based economy;
- bring together the results of empirical research, both qualitative and quantitative, with theoretical analyses in order to inform the development of new interdisciplinary approaches to the study of the restructuring of work, organisation and labour in a global context;
- be global in scope, with a particular emphasis on attracting contributions from developing countries as well as from Europe, North America and other developed regions;
- encourage a dialogue between university-based researchers and their counterparts in international and national government agencies, independent research institutes, trade unions and civil society as well as policy makers. Subject to the requirements of scholarly peer review, it is open to submissions from contributors working outside the academic sphere and encourages an accessible style of writing in order to facilitate this goal;
- complement, rather than compete with existing discipline-based journals;
- bring to the attention of English-speaking readers relevant articles originally published in other languages.

The editor welcomes comments, criticisms, contributions and suggestions for future themes. For further information, visit the website: http://www.analyticapublications.co.uk.

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Digital economy and the law:
introduction to this Special Issue

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ABSTRACT

This article introduces the special issue of *Work Organisation, Labour & Globalisation* on the digital economy and the law. After summarising the literature and setting out some of the key issues raised by digitalisation in general and online platforms in particular for labour rights, it introduces the contents of the issue in detail, positioning them in relation to these larger debates.

KEY WORDS

gig economy, crowdwork, digitalisation, platforms, crowdworkers' collective representation

The growth of information and communication technologies over recent decades is giving rise to a new business model. A variety of terms have been used to refer to this phenomenon, including 'gig economy', 'sharing', 'collaborative', 'platform', or 'on-demand' economy, 'crowdsourcing', 'cloud sourcing' and 'digital economy'. What is new about this business model is the fact that people offer certain assets or services – a particular activity, a vehicle or accommodation – to other individuals or companies through digital platforms that instantaneously connect demand and supply.

Platforms relying on this business model, such as Uber, Lyft, TaskRabbit and many more, have been growing rapidly, taking over an important share of the markets they operate in as well as opening up new markets for low-cost services.

From a labour law and industrial relations perspective, the unprecedented spread of digital platforms and the provision of work through these platforms raise many

problems. The radical fragmentation, or reduction to the minimum, of the productive organisation is accompanied by the fragmentation of the work activity itself. The work is done by an anonymous multitude of people – the 'crowd', a term referring to the many workers active on platforms. The choice of word is intentional; it is there to stress the impersonality of the work offered – *who* performs the activity becomes utterly irrelevant.

One crucial issue concerns the personal scope of employee protection laws. Should those providing work through digital platforms be considered employees and thus fall under the scope of provisions designed to protect employees? Or should they be classified as independent contractors and be excluded from labour law protections? The debate on determining the coverage of labour law is nothing new to labour scholars. Yet the digital economy challenges the traditional techniques used to distinguish between employees and independent contractors and the discussion remains essential as it is still open to solutions. In particular, the freedom of the service providers (*alias* the workers) to choose if and when to work combined with the considerable interference of platforms in the organisation and monitoring of their activity deeply challenges the traditional parameters used to detect the existence of an employment relationship (De Stefano, 2016; Prassl, 2018; Prassl & Risak, 2016).

The new business model is also changing the way work is organised, giving rise to new working arrangements, management practices, and surveillance patterns that depart from the standard model of full-time, permanent employment with one employer paid by the hour, day or week (see De Stefano, 2018, who advocates for a human rights-based approach to labour regulation to protect workers' privacy against invasive electronic monitoring). New forms of work organisation and the diversity of those providing work on digital platforms imply further challenges for collective organisation; other important issues relate to the role of trade unions in the organisation and representation of 'gig' workers.

The debate on these questions is already wide and rich, and many approaches have been suggested to provide concrete answers to them. Some advocate a purposive approach, focused on the aims of labour law, for assessing the legal status of crowdworkers instead of being stuck with formalistic tests that might be anachronistic (Davidov, 2017). In a similar vein, other scholars highlight the need to go beyond appearances when assessing the legal status of crowdworkers and pay particular attention to the level of control exercised by platforms in the workers' activities (Cherry, 2016; Liebman, 2017). In the search for protective regulatory frameworks, scholars draw attention to the analogy between platforms' business models and the triangular structure of temporary work agencies for which EU legislation already exists, suggesting that this legislation should apply to platforms (Ratti, 2017).

Yet we believe there is still space for innovative insights that might be able to move the discussion beyond the tracked lines of scientific research, making it possible to be original and thoughtful when contributing to the debate on gig economy and labour law. That is why this Special Issue of *Work Organisation, Labour & Globalisation* includes contributions that address the impacts of the digital economy on labour and industrial relations law from EU, national and comparative law perspectives.

The reader will notice that the authors come from different perspectives, might have different views on the same issue and therefore propose different potential solutions. As guest editors we welcome this diversity. We wanted the Special Issue to capture the richness of the debate and encourage the reader to reflect on the complementarity of the different approaches and voices presented here.

More specifically, some articles, like Ichino's *A New Labour Law for Platform Workers and Umbrella Companies* (this volume) and *Digital Work in the Transport Sector: In Search of the Employer*, by Loffredo and Tufo (this volume) deal with the scope of the application of labour laws, by focusing on the new forms of work, in the first case, and in the fundamental question *who is the employer*, in the second, with a particular focus on tri and quadrilateral relationships in the transport sector. Hiessl's *Labour Law for Terms of Service and Human Intelligence Tasks* (this volume) and *Traditional and New Forms of Organisation and Representation in the Platform Economy* by Lenaerts et al. (this volume) as well as Roque's *Call Centre Workers Unite!* (this volume) focus the analysis on collective organisation issues including considering the effects of digitalisation on 'traditional' workers, such as the call centre operators studied by Roque.

Ichino's starting point is that the rapid growth of online labour platforms has several benefits for consumers. By eliminating intermediaries in the demand and supply of labour, Ichino argues, platforms make available to the consumer a wide range of high- and low-skill services that are delivered on time and at very competitive rates. Consumers can thus have the service they need – be it transportation, delivery of goods, IT services, care, household maintenance or something else – exactly when they need it and without having to pay too much. There are also considerable benefits for companies, which can easily access a pool of flexible labour, made up of people offering services in direct competition with each other and thus willing to work as efficiently and cheaply as possible. Companies are therefore able to obtain the service they need, exactly when they need it but without having to commit to an employment contract.

For those providing work through online platforms, though, the picture is much more complex. While engaging in platform work arguably has certain benefits for them too, given the flexibility such work allows, the disadvantages might outweigh the benefits. Ichino notes that the most significant impact is that of turning 'the final provider, who until recently was an employee of the service provider, into a self-employed person'. This classification of crowdworkers mainly as independent contractors has negative impacts for the person providing work: not only does she lose rights and entitlements reserved for employees; she now must comply with bureaucratic formalities, which are normally the employer's burden. People working through platforms are under continuous evaluation by clients for their services and must compete to get offers for work; when the services offered are considered low-skilled, platform workers have less bargaining power and fewer possibilities for safeguarding their rights.

Against this background, Ichino proposes a series of initiatives to remedy platform workers' disadvantage: creating umbrella companies which would offer permanent open-ended employment contracts; contracting short-term work through a voucher system which would allow monitoring compliance with minimum wage regulations where applicable; establishing rules to ensure that platforms function in a fair and

non-discriminatory way and – something the author considers to be key – implementing training and skill development programmes to increase workers' productivity and bargaining power. For Ichino, the answer to the legal and societal problems posed by labour-mediating platforms is not to restrict this type of work. For him, the pressing challenge for labour law today is not how to redesign labour law to include new forms of work, but how to create rights for workers in their 'transition from old to new work'.

A large part of labour law scholarship on platform-mediated work has examined the issue of the legal characterisation of the relation between platform and worker in a triangular setting – platform, worker and client – posing the question, fundamental from a labour law point of view, of who the employer is. Loffredo and Tufo's contribution uses a case study of two transportation companies, Uber and FlixBus, to explore the theme of legal characterisation in a quadrilateral setting, that is, in the four-way relationship between the platform company, partner company, worker and client. After a detailed examination of how work is organised in Uber and FlixBus, the authors show how court findings in different jurisdictions concerning Uber's nature as a transportation company – and not the platform merely connecting demand and supply that the company argues itself to be – could be applied to FlixBus as well. According to these authors' analysis, despite its complex structure, with multiple partner companies, FlixBus still qualifies as a transportation company bound by competition law as well as labour law. Turning to the legal implications of this finding, particularly for labour law, Loffredo and Tufo carefully scrutinise FlixBus' functions to reach the conclusion that the company can be considered to be *one* of the drivers' employers, sharing these employers' functions with its partner companies.

Christina Hiessl's contribution moves away from the scholarly focus on the employee status of those engaging in work through platforms. Her starting point is that the contractual relationship between platform and crowdworkers is 'fundamentally different from the employment relationship'. Therefore, trying to fit it into the scope of existing labour laws, designed with the employment relationship in mind, seems of little practical value in achieving better protection for crowdworkers, especially micro workers. Instead, Hiessl turns her attention to exploring ways that crowdworkers' collective organising might be promoted. She starts by identifying the obstacles for collective organisation: the difficulties of building solidarity among workers due to their diversity and, by default, competition; their geographical dispersion; the lack of face-to-face interaction; and the fact that there are no real prospects for going on strike. Hiessl then describes some online tools developed by crowdworkers to share information about job requests and rate the providers but also to propose campaigns to improve their conditions. While these tools do not qualify as genuine trade union activity, Hiessl notes that they are a first step towards building a community. She finally explores the usefulness and potential of certain collective labour law mechanisms for workers' involvement that exist in the non-digital work and the adaptations that such models would need to encompass crowdwork realities.

The article by Lenaerts, Kilhoffer and Akgüç touches on three important questions concerning collective organisation in the platform economy: how Social Partners have engaged in the debates on platform workers' employment status and working

conditions; to what extent there is already collective organisation of platform workers and of platforms and what kind of activities that entails. The authors draw examples from a variety of European countries and the USA and provide evidence of intensified industrial relations activity in the platform economy and numerous attempts to organise collectively. While such attempts are noted primarily among workers, especially low-skilled and location-dependent workers, there are also examples of platforms organising to promote their joint interests. Their contribution documents significant variety in both types of collective organisation – from grassroots organisation to trade unions – and of actions undertaken – from information exchange to collective negotiations and strikes. Such variety, the authors conclude, signals that 'the platform economy is broadening the scope of industrial relations activity'.

Finally, Roque's piece focuses on a specific sector, which, while not involving online platforms, nevertheless exemplifies the relationship between technological innovation and labour flexibility: the call centre sector. The investigation is based on a number of interviews conducted by Roque with both call centre workers and trade unions, together with activists and academics, from the UK and from Portugal. The interviews aimed at collecting information on workers employed in call centres (their education level, working history, length of service at the call centre, health conditions, etc.) but mainly sought to understand the engagement of workers in social movements or trade unions, to react to management. By comparing the Portuguese and the British cases, the author reaches some conclusions on the level of unionisation of the workers but also on their engagement in new forms of communities outside the more traditional means of collective organisation channelled by established unions. Some experiences of 'digital unionisation' are also considered, especially in Portugal, as a 'model of bottom-up organisation that could be of relevance to other digital workers'.

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A new labour law for platform workers and umbrella companies

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ABSTRACT

This article highlights one aspect of technological evolution which impacts the labour market and, consequently, our labour law systems: the advent of so-called labour platforms, entailing disintermediation in the matching of supply and demand for labour. It examines the prospects for the future development of instruments aimed at ensuring that platform workers obtain a minimum level of adequate occupational, financial and welfare security.

KEY WORDS

labour law, labour market, technological innovation, gig economy, platform worker, dependent contractor, independent worker

How new technologies, and specifically the gig economy, impact the standard structure of employment relations: the effects of reducing transaction costs

One of the most visible effects on labour of the advent of new technologies – especially, information technology and telematics – is the reduction, in some cases almost to zero, of the costs incurred in overcoming the difficulty of finding target people and communicating at a distance. The so-called labour platform is a typical tool for the reduction of such intermediation costs: a virtual place accessible through electronic networks, where each provider can be contacted at any time by someone interested in the available service, can be hired and also paid, on the basis of an individual negotiation or a standard fee set by the platform manager. This model of disintermediation, which has been tried and tested on a global scale for the marketing of car rides by Uber, is now often referred to as 'Uberisation'.

These platforms allow direct communication between service providers and users: a disintermediation that, as explained below, leads immediately to

improvements in service and reductions in costs, to the advantage of the user of the service. But this disintermediation may also allow a company operating in the market segment concerned (e.g. in services such as nursing or domestic care, electrical, hydraulic, aerial or IT maintenance or other household services) to be always able to find an available person at short notice to render the service in the required place and manner. The same applies to cases in which a company requires services as part of its own production process. One example of this is a publisher who can access a network of experienced proofreaders through a platform: it is no longer necessary to hire one or more proofreaders as employees and the performance of proofreading is guaranteed, just in time, only when production requires it. Likewise, by using a platform, a postal company can draw on a large network of carriers with their own car or motorbike or bicycle, ready to answer the call to work at any time and in the most convenient place.

In the field of the organisation of passenger transport, or of collection and delivery services in urban areas, such platforms, nowadays, allow for a greater reduction in transaction costs compared with what was possible using earlier technologies. In the 1980s, for example, the use of a radio connection with the central office enabled the creation of 'pony express' jobs, in a system in which an indefinite number of 'delivery boys/girls' could freely decide to make themselves available at any time and be contacted by radio to be notified of particular delivery tasks. This raised questions about the substantial economic dependence of the people employed in these jobs, even if their contracts did not oblige them to respond to the radio alerts, and, because of this, their jobs were classified under the law as freelance. Today, the same question is raised again in relation to a much greater number of cases and for a much wider range of services, for example those provided by Uber, Amazon, Foodora and Deliveroo as well as many lesser-known companies.

There has also been a growth in the phenomenon whereby the same person performs a combination of several different kinds of service using digital platforms. These workers who are, so to speak, platform amphibians, are sometimes called 'slashers' (derived from the word 'slash' = the oblique stroke): for example, a plumber/driver or an electrician/babysitter.

Estimates of the number of people who work permanently through a labour platform vary from 600,000 in the USA (Harris & Krueger, 2015) to tens of millions worldwide (Smith & Leberstein, 2015). It is a still very modest proportion compared with the size of the whole labour force of countries with a modern production base. However, the number is rapidly increasing; it can thus be assumed that in the not-too-distant future there will be an erosion of the area of work that can be classed as subordinate according to traditional criteria and is therefore protected by some insurance-type coverage. This is now raising a social problem of significant importance, requiring an adjustment of the social protection system and, in particular, a redefinition of its scope. In the USA, it has been proposed that these new employees should be redefined as *dependent contractors* (Harris & Krueger, 2015) and in the United Kingdom, a new status of *independent worker* has been suggested (Taylor, 2017). The World Employment Confederation (2016:22) refers to *tempreneurs*: self-entrepreneurs who make themselves available for time work.

This new way of organising work can have negative impacts on the weaker half of the category of workers concerned as service providers. It should be noted, however, that at the beginning of the industrial revolution, despite technological progress, the same weaker part of the workforce was mostly excluded from the advantages deriving from that industrial revolution, that is, the reduction in the price of goods and services produced and the improvement in their quality. Today, on the contrary, the majority of the population can benefit from these advantages – whether this concerns transport services at a quarter of the price, the possible delivery to the home of a book that would be difficult to find otherwise, within three days of the online request, or delivery of a pizza within half an hour of the telephone call. This should be taken into consideration in the evaluation of the social effects of the platform phenomenon.

There are also positive aspects to these organisational patterns, in which the service is provided without time constraints and outside the company venues. As well as the risk that workers lose protections and security, there is also the possibility they may be able to regain their freedom to organise their time to create a better balance between paid work and any other activity or non-activity relating to their family, social and personal lives. Such opportunities can be of great interest to workers who suffer from time poverty and feel constrained by being chained to the rigid working hours of a traditional employment relationship to which they are so frequently condemned. These opportunities may be of special interest to women who bear the greatest burden of family care.

The disintermediation that is enabled by the labour platform, hence, makes it possible to transform the final provider, who until recently was an employee of the service provider, into a self-employed person. A first problem is that in this way such people might be deprived not only of their insurance-type protection in case of sickness, maternity, invalidity, and old age but also of another form of 'protection' little considered by scholars and observers but nevertheless very important, which in modern law systems is granted only to the subordinate employee: that is, the almost total exemption from a set of numerous and complex bureaucratic formalities, for which the employer is entirely responsible. To solve this problem, companies have been set up in Europe following the example of 'umbrella companies' such as SMart,[1] operating in nine different countries. These companies offer an employment relationship, even as a subordinate employee, to workers who are actually self-employed and have their own customer portfolio or, at any rate, their own ability to come into direct contact with their clients, mostly through a digital platform. The companies provide them with social security coverage and with the execution of all administration formalities necessary to cash their compensations. However, these companies also perform the function of a mutual fund, since they are able to provide continuity in income flows by making up for late payment and paying off clients' settlement defaults. In Belgium, for example, SMart has negotiated an agreement with Deliveroo, which provides for a minimum guaranteed compensation for cyclists (a kind of availability allowance) regardless of the number of deliveries made, a contribution for the use of bicycles and smartphones, and a possible contribution to

1 See https://smart-eu.org/

the cost of necessary bicycle repair. Deliveroo itself pays these contributions to SMart, which in turn uses them for paying compensation and social security contributions, calculated as if they were related to an on-call contract (this is not allowed in Italy, due to the tight limits imposed to this type of work contract). The Belgian agreement provides – and this has been already fully implemented – that the same ID code used by Deliveroo for each cyclist is also used for accessing the worker's account with SMart, thus simplifying all data and money transfer. In fact, the two platforms are able to dialogue directly with each other, exchanging the necessary data for an organisation that currently involves about 2,000 people. Such umbrella companies offer an interesting example of the importance of transaction costs in the labour market, which we will shortly come back to.

A possible change in the boundaries of the labour law system

For a better understanding of the ways in which the reduction of antagonisms and the risk-taking swap between the parties to the relationship (enabled by the platforms mentioned above) impact labour law, we may consider the different ways in which the specific economic-social function of the dependent employment contract was identified by two economists in the 20th century – F.H. Knight (1921) and R. Coase (1988). Knight observed that, under a dependent employment relationship, the self-confident and enterprising party takes on the risk of the result of a productive activity of goods or services and sells security to the party who is more reluctant to incur risk, assuring this party a continuous income in exchange for collaboration. Here, the emphasis falls, evidently, on the insurance content of the employment contract, which becomes essential for its raison d'être. Conversely, the employer's managing power over the employee is only a normal – but not essential – aspect within the contract since the worker has a guaranteed income and does not particularly care how or for what purpose the work activity is performed and, therefore, is not concerned about leaving such decisions to the employer. Coase, on the contrary, identifies the essential function of the contract as the saving of transaction costs by the entrepreneur: by employing employees on a permanent basis, the employer acquires their availability to perform continuously a certain type of activity and to follow the employer's directives. Otherwise, it would be necessary to enter into a new employment contract for each new requirement, that is, to renegotiate at every step with the workers the ways that they must perform their services, to align them to the continuously changing needs of the business that arise over time. Thus, a single contract replaces a long series of contracts. Here, the emphasis is placed on the employee's subordination to the power of the management, while the insurance content is only a normal, but not an essential, element of this contract. In such a scheme, there is nothing to prevent a combination of the full subjugation of the service to the executive power of the entrepreneur with a remuneration linked in whole or in part to the actual productivity of the company, or to its profitability, with a consequent reduction or cancellation of the insurance content of the contract.

Since the first decades of the 20th century, most European legislative systems have been oriented towards assuming as an essential element of the case to which labour law

applies the full subordination of work performance to the executive power of the employer – the Coasian soul, so to speak, of the contract of employment – placing instead the insurance content, its Knightian soul, among the mandatory effects of the contract thus identified. The reasons for this choice by the legislators are well understood: the full subordination of the service to the executive power is a benefit for the entrepreneur; to benefit from it, the employer must accept the insurance obligation towards the employee imposed by the law, combined with a minimum standard of remuneration. From the point of view of worker protection, the reverse scheme does not seem to make much sense.

However, the new applications of information technology and telematics mentioned at the beginning of this article are now starting to change the factual framework in which, a century ago, that legislative choice matured. In the case of umbrella companies, for example, it is clear that the instrument of the durable employment contract, even in a subordinate form, is mainly used to provide the person concerned with insurance coverage, without the 'employer' having any direct interest in the work performance or in saving transaction costs. However, it is the same worker, and not the employer, who, by means of a subordinate employment contract with the umbrella company, pursues the reduction of transaction costs for the collection of the compensation from the users of the service.

Digital platforms for matching supply and demand also alter the traditional framework in another crucial aspect: there are many productive organisations in which the greater the reduction in the transaction costs necessary to find the necessary job and adapt it every day and time to the needs of the company, the more the entrepreneur's interest in replacing a market relationship with a hierarchical relationship (i.e. to include the provider within the business organisation) is reduced. The drastic reduction in transaction costs allowed by the platform therefore helps to put out of the game, so to speak, the scheme proposed by Coase in the 20th century for explaining the employment contract.

In other words, digital platforms have now overturned the Coasian paradigm: while, according to this paradigm, a subordinate employment contract allows the entrepreneur to replace an innumerable series of contracts with a single contract, the platform, however, makes it possible to replace the single subordinate employment contract with an innumerable series of contracts, thus breaking the provider's activity into a myriad instantaneous or very short-term contractual services – that is, unless an umbrella company is used to reintroduce continuity in discontinuous services.

It should be noted that, in all cases where the purpose of the employment contract is not a durable work activity, the imposition of an insurance contract as the binding content of the contract itself becomes inconceivable. If the share of the labour force using online platforms reaches double digits, this phenomenon will bring into question, much more so than in the past, the choice of subordination as a fundamental and almost exclusive case reference point for the protective system. The area of subordinate work will coincide less and less with the area in which the protection of the legal system is necessary, not only because subordination is compatible – this has been observed for some time now, especially, in the

management area – with situations where the service provider has considerable power to determine contractual terms and conditions but above all because, on the contrary, there will be a large expansion in the proportion of the workforce who can be categorised as 'self-employed' but perform functions traditionally typical of subordinate employment. New technologies facilitate workers' exit from the subordinate work area but do not make their needs for protection disappear. Among these service providers, the half which is professionally stronger will have few problems: indeed, open competition with others will allow them to highlight their greater productivity; but the weaker half will no longer be protected by the collective standard of treatment that has worked so far, somehow efficiently, in the field of subordinate work. Three further points must be noted: first, that the mechanism which made possible the functioning of that collective standard presupposes that the recruitment of workers takes place to some extent 'under the veil of ignorance' about the quality of their performance; second, that the recruitment gives rise to a durable contract; and third that, when, after a certain period of observation, the quality of the individual performance becomes known, the replacement of the less efficient worker is hampered by an adequate cost for dismissal. It is immediately evident that it is impossible to operate this mechanism when a work activity is carried out through a digital platform and broken up into a myriad of very short discrete relationships. This situation is aggravated by the fact that the platform allows each user of the performance to know the previous users' judgement of the quality of the performance itself.

Given these destructuring effects of labour platforms on the traditional protective system, it is not absurd to hypothesise that, when this form of work organisation starts to involve significant portions of the productive base of the services sector, legislators can solve the problem by moving from the Coasian notion of the standard case of reference of labour law to a notion closer to a Knightian approach: that is, they can establish that a protective system applies where there is an evident need for security of the provider, regardless of the full subordination of the worker's performance to the managing power of the employer. At this point, the instrument providing protection can only vary depending on whether the new organisation of work can do without subordinate employment by breaking the activity into the myriad direct relationships with individual users made possible by a digital platform, or whether instead the constraint of subordination is overcome by means of forms of technological/telematic remote connection between the provider and the rest of the company organisation, but still within a contractual relationship of appreciable duration.

As for the second case (the one in which work outside the company's perimeter will continue to be subject to a durable relationship with a principal), this objection can be expected to be raised: in the relationship between a party, the creditor, who is inclined or indifferent to risk, and a party who is typically risk averse and therefore interested in the insurance content of the employment relationship, it is not necessary to impose that insurance content by means of a mandatory rule since the very different ways in which they look at the risk will lead the parties to negotiate the optimal distribution between them, with the corresponding reward for the employer, who takes the risk, in terms of lower hourly cost of work. The answer to the objection lies in the models proposed by

modern labour economics, which show that the asymmetry of information about the extent of risk associated with the personal characteristics of the individual provider does not allow a free market to determine the optimal allocation of risk, a point that Aghion and Hermalin (1990) were among the first to make.

Providing security to workers who render services directly to customers via digital platforms

The debate that began at the end of the 1970s in Italy (Passarelli, 1979) about the need to expand the scope of application of employment law focused above all on the possibility of including in it the work carried out in a condition of substantial dependence on the principal, even in the absence of full subordination: 'parasubordinate work'. Since then, the attention of labour law specialists to the kinds of collaboration characterised by continuity and coordination, but without the proper characteristics of subordination, has focused on the possible attribution of a legal significance to the concept of 'economic dependence'. There has always been a broad consensus that what should be considered as an essential element of this concept is an appreciable length of time in the duration of the relationship between principal and provider, without which any construction of 'dependence' of the latter to the former seemed inconceivable. Now, however, the technological developments described above lead us to focus on the need to protect people who come into direct contact with the final users of their services via digital platforms but do not have a long-term relationship with a single principal in a dominant position, with their work distributed over a myriad relationships with individual clients.

Here, the raison d'être of a protective action is clearly no longer an 'economic dependence': these workers draw their income from their relationships with a plurality of clients, operating directly in a market that is competitive on both supply and demand sides. Their weakness is not due to a distortion of the market, or any dysfunction of it, but is the direct consequence of the low professional content of their work. At the same time, the market in which they operate puts them in a position of permanent comparison with those who offer the same services and therefore exposes them to the 'competition stress' that all forms of collective self-protection typically tend to limit, in the field traditionally characterised by subordinate work (Cascio & Montealegre, 2016:357). And the fact that their work activity is broken down into multiple very short-term, if not instantaneous, relationships makes it structurally impossible to place within a single relationship some mandatory protections, such as the limitation of the temporal extension of the service through a day, week or year, the right to daily, weekly and annual rest, or paid sickness leave. The translator, proofreader, electrician, aerial installer, bellboy or nurse, when they become 'entrepreneurs of themselves' offering their work directly to users through the platform, continue to do the same work that until yesterday they did for a single entrepreneur able to valorise it in the market, but now they have lost the insurance cover that only the direct relationship with that single entrepreneur could offer them.

The disintermediation enabled by digital platforms, therefore, brings a net and indisputable benefit for the users/consumers, granting them precise information on the

quality of the service and lowering its cost; the effect of disintermediation for the worker, however, has two faces. On the one hand, it frees workers belonging to one of the many sectors providing personal or business services from the need to become part of an entrepreneurial organisation capable of managing and enhancing their performance. On the other hand, far from freeing them, it subjects each of them, even more than before, to comparison with other workers who perform the same activity, to the knowledge of the quality of the work performed up to that moment and therefore to an assessment that is potentially more and more easily analysed and penetrated by potential users. In this way, disintermediation through digital platform not only rewards them more precisely for their merits but also chains them to their defects, whatever they may be, making these defects easily known and requiring them to pay the full cost of any defect almost immediately.

When this is the case, protective action, if it is to be effective and not generate distortions, can no longer take the form of a mandatory regulation of the individual employment relationship of short or no duration, except for the establishment of a universal minimum hourly wage (providing its amount is determined with careful prudence). But this measure can only be applied in cases where the work performance is measurable on the basis of its temporal extension.

From the point of view of the essential protection of this form of work, it is first and foremost necessary to eliminate – wherever these exist, as in Italy today – the legal obstacles that prevent the stipulation by the worker of a permanent employment contract with an umbrella company. In countries where, on the contrary, this type of contract is used on a regular basis, this is mostly entered into, as we have seen, in the form of an on-call job contract, which allows for the size and frequency of remuneration to be adjusted in relation to the size and timing of work. In cases where a person working through a digital platform does not make use of an umbrella company, the problem arises of how to guarantee social security cover for disability, old age and accidents at work. To solve this problem, in Italy, a bill was recently presented (Senate, 4 October 2017, no. 2934) which proposed a form of salary payment through a sort of virtual voucher issued by the digital platform and managed by the public welfare agency (INPS) for the payment of wages for occasional housekeeping work. The voucher, which incorporates the social security contribution, is exempted from income tax at source, but workers must report the wages received in this way in their annual income tax returns, when tax becomes due if the income exceeds a defined threshold. This system would allow monitoring of compliance with the universal minimum wage standard where applicable and ensure full transparency of the relationship.

In addition to such initiatives, the most important protective action – if implemented effectively, through the right incentives and with mechanisms to control the results accurately – is the provision of personalised services to those concerned, capable of identifying the specific problems of each member of the 'lower half of the category' – that part of the category which, in terms of productivity and income, is below the average for that category, that is, the weaker part. These services should be aimed at increasing the workers' skills and productivity, enabling them to gain a higher overall income from the work itself.

It is also possible to envisage rules that impose the necessary impartiality and transparency in the functioning of the digital platform, preventing it from being surreptitiously used for the benefit of one group and to the detriment of another.

What should not be allowed for, however, is the creation of barriers to entry and minimum professional fees other than the universal minimum wage standard already mentioned. Those minimum fees would not be justified by some market failure, that is would not correct any distortion arising from monopsonistic market power or from asymmetry in information flows, which are corrected by the digital platform. Such barriers would have the sole effect of dividing the workers in the sector concerned into insiders and outsiders, protecting the interest of the former against those of the latter. In other words, we should be careful not to use a re-edition of measures typically aimed at correcting a monopsonistic market, which would eliminate the most positive effects of disintermediation by digital platforms. The first of these benefits is the 'space created for outsiders and dropouts': the possibility for 'many little Davids [. . .] with their small slingshots [to] defeat the great Goliath of their times' (Belloni, 2017:5). Another benefit, both for customers and for outsider workers at the same time, is the replacement of certified expertise and reliability, obtained exclusively through enrolment in a professional register (after passing any relevant examinations once and for all) by a constantly updated statement of expertise and reliability. This day-to-day assessment of quality is provided by the reviews – recorded and circulated on the web – provided by the customers who are the final users of the service. Such reviews are adjustable any time in the event that the performance was not satisfactory. In this new market, every worker, as need be, should be helped by an efficient employment service to overcome any performance defects, to fill any professional gaps, to switch to new functions where necessary or appropriate; but not to escape the new forms of evaluation and selection that are characteristic of the market structure itself, which would be impossible anyway.

A set of rights for this new *tertium genus* of independent proletarians

As we have already seen, with reference to the new types of workers of the gig economy in the USA, Harris and Krueger (2015) have proposed that the juridical system should acknowledge an intermediate type between that of the traditional employee and that of the self-employed worker, which they propose to designate the 'independent worker': a type that, according to these two economists, should be exempted from antitrust discipline, since they should be entitled to create associations, to strike and to bargain collectively at the company level, where there is a plurality of suppliers of the same service to the same principal. This category of worker should also, they argue, be helped by the State to obtain at least a basic social security protection. Unlike the protections provided by traditional labour law, aimed at adjusting the typical distortions of a monopsonistic market, the benefits provided in this case are essentially aimed at providing some support to objectively disadvantaged people. What Harris and Krueger propose, hence, has little to do with the elaboration of European labour law doctrine on the subject of parasubordination: the new category they refer to is not characterised by

a position of substantial dependence on a principal who is in a dominant position. The weakness of independent workers and their consequent need for protection is essentially due to the abundance of competing labour supply and the difficulty faced by weaker subjects in differentiating their performance by its quality from that of their competitors. In the view of these experts, it is essentially on this ground that they must be supported and helped to become stronger.

The Italian debate in this area is lagging somewhat: this new *tertium genus* comprising 'independent proletarians' has not yet been subjected to a focused analysis.

When, six years ago, Law no. 92/2012 (the so-called Fornero law) was adopted, by which Italian lawmakers decided to enlarge the applicability of general labour law to workers in a position of economic dependence on the principal, there was still very little, if any, awareness of the issues that labour platforms were going to raise in the field of employment policies (Uber had been born only years earlier, in 2009, and was still taking its first steps in the very limited sector of luxury car transport).

As a matter of fact – in consideration of the need to protect weak workers operating in the context of ongoing relations with their principals – a choice was made by Italian lawmakers through Law no. 92/2012, which substantially extended the area of application of labour law protection to all relationships characterised by continuity, a single market and low incomes, even in the absence of the element of subordination in the strict sense. Less than 3 years later, however, when Article 2 of Legislative Decree no. 81/2015 was enacted, the Italian lawmakers changed direction, repealing the rule set up in 2012 and extending the area of application of labour law protection to durable relationships that are performed inside company venues and subject to time constraints, even if subordination is not present. By this new *summa division*, Uber car drivers, delivery workers for Foodora and Deliveroo and the other protagonists of the gig economy were almost all excluded from the area of application of traditional labour law.

We are thus now facing again, the increasingly important issue of this new *tertium genus*, in many respects different, sometimes very different indeed, from the traditional figure of the coordinated and continuous collaborator. In this context, it is worth taking into consideration the abovementioned proposal of Harris and Krueger. The same trend can be observed in case law regarding work through digital platforms in the United Kingdom, where a decision of the Royal Court of Justice (Pimlico *vs* Smith, 10 February 2017) and another of an Employment Tribunal (Uber *vs* Aslam, Farrar et al., 28 October 2016, confirmed by the Employment Appeal Tribunal on 10 November 2017) have recently designated platform workers as workers under the Employment Rights Act 1996, but not as employees. A similar judgement was reached in the case of a plumber working with the Pimlico chain and some Uber drivers. In the United Kingdom too, therefore, this type of work organisation is starting to be classed as a *tertium genus*, separate both from traditional subordinate employment and from independent work.

This approach is probably also intended to avoid the risk – which is, moreover, much more serious in continental Europe than it is beyond the English Channel or across the Atlantic – that by the inclusion into labour law, the new forms of work that are under discussion may be stifled rather than protected.

Conclusion

The dominant trait of our foreseeable future will not be constituted by the 'end of work' and not even by the end of subordinate or dependent work. Faster technological evolution will, however, in order to avoid losses in terms of employment, require a drastic improvement in the efficiency of education, training and reskilling services aimed at new needs. These services should be coupled with an adequate level of income support for those who are involved in the change, and the coherence between reskilling services and actual allocation of the people involved should be subject to a widespread and thorough monitoring.

Probably, the new frontier of labour law of the 21st century is placed here: not so much in a radical redesign of the compulsory discipline of the traditional work relationship, but in the construction of a subjective right to effective support in the transition from old to new work. This is essentially the right to training services and continuous and adequate retraining in relation to the needs of the rapidly evolving productive fabric.

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Digital work in the transport sector:
in search of the employer

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ABSTRACT
This article analyses two of the major digital platforms dealing with transport: Uber and FlixBus. It reconstructs the nature of these platforms as transportation companies and studies their structures. It finds that such companies can assume 'trilateral' or 'quadrilateral' structures, depending on the subjects involved, with different consequences for labour relations. Following on from this, the article investigates the applicability of labour law in such structures, searching for an employment relationship in 'trilateral' structures and identifying the real employer in 'quadrilateral' structures.

KEY WORDS
Uber, FlixBus, gig economy, transport sector, competition law, trilateral structures, legal qualification, quadrilateral structures, functional approach, co-employment

Introduction

Analyses of work on digital platforms are often focused on the legal status of the relationship between platforms and workers.[1] In some cases, the question 'who is the employer?' has been raised, in relation to the 'trilateral' structure of these relationships (platform–worker–client), which makes it difficult to understand whether the employer is the platform or the client (Prassl & Risak, 2016). These studies, however, assume that the relationships on these digital platforms are 'trilateral', neglecting the fact that they may sometimes be 'quadrilateral' (platform–partner company–worker–client). Moreover, because digital platforms are very active in the transport services sector, which has been revolutionised by the introduction of apps, it sometimes seems as if the use of online platforms, and the many questions that this raises, are

1 On labour law in the gig economy, see De Stefano, 2016, for an overview. On the legal qualification issues in the gig economy, see Biasi, 2017; Voza, 2017a, 2017b; Perulli, 2017; Treu, 2017; Aloisi, 2016b.

synonymous with this sector. A key question here is whether such platforms should be considered to be transport companies or digital companies.

The present article aims to answer some of these questions.

First, we examine two of the major platforms dealing with transportation: Uber and FlixBus, with particular reference to national and European Union jurisprudence. In the light of these reflections, the second section of this article tries to address the legal consequences of the nature of these two platforms, focusing on the Italian experience. The decision to study these specific platforms is that they have adopted both 'trilateral' and 'quadrilateral' structures. The third section discusses the issues raised by 'trilateral' structures, focusing on whether it is possible to identify a labour relationship between the platform and the driver. Fourth, the legal issues raised in 'quadrilateral' structures are studied, with the aim of identifying the real employer. Finally, some conclusions are offered, to understand whether the principles of the employment contract are still valid in the digital economy.

Are Uber and FlixBus transportation companies?

The Uber and FlixBus models are similar in some aspects but different in others

Coming from two different parts of the world (California and Germany, respectively), both companies have grown rapidly during recent years and can now be considered as leaders in their sectors.[2] Indeed, Uber and FlixBus are both active in the transport of passengers: the former is similar to a cab or a car-and-driver hire company; the latter can be compared to an intercity bus company. But the peculiarity of these enterprises is they do not deal directly with transport. Uber and FlixBus are apps through which passengers have the opportunity to find the most suitable means of travel, with the help of digitalisation. The Uber app allows passengers to call drivers nearby, thanks to the GPS system incorporated into the drivers' smartphones,[3] while the FlixBus app[4] makes it possible to book and buy digital tickets for buses, see where the stops are and receive information on delays. For this reason, the success of these companies is often attributed to the strong impact of digitalisation, able to innovate the transportation sector and reduce the costs of services. However, the real secret of Uber and Flixbus stems from their business models.

Uber's organisational structure is shaped by the use of two different models. In the first type, private drivers, who are owners of their cars, open an account and begin to collaborate with the app, after a driving test to verify their skills and knowledge of the

2 Uber was founded in 2009 and is established in San Francisco. Today, it is present in 68 countries at least, with a value of over US$60 billion (Aloisi, 2016a:672). FlixBus was founded in Munich and spread across Germany thanks to the end of the national rail monopoly in 2013 (FlixBus website, retrieved on 12 June 2018 from https://www.flixbus.co.uk/company/about-flixbus). In 2015, FlixBus began to operate in all Europe and in 2016 it also acquired its principal competitor, Megabus, to provide transportation services in continental Europe (Busworld, retrieved on 12 June 2018 from https://www.busworld.org/articles/detail/2888/flixbus-acquires-megabus-europe).

3 Retrieved on 13 June 2018 from https://www.uber.com/en-IT/ride/.

4 Retrieved on 13 June 2018 from https://www.flixbus.co.uk/service/bus-app.

city where the activity is performed (Aloisi, 2016a:672–73). In the second type, Uber collaborates with drivers' cooperative societies that employ the drivers themselves.[5]

By contrast, FlixBus has established a network of Small and Medium Size Enterprises (SMEs) throughout Europe.[6] In particular, FlixBus manages these companies which own and maintain the buses, dealing only with logistics, booking and commercialisation.[7]

It can therefore be seen that neither Uber nor FlixBus has the formal organisational responsibility for the range of functions exercised by a traditional transport company, simply because they are not the owners of the means of transport through which their activities are performed. For this reason, the nature of these enterprises is still questioned, since it could be claimed that they are nothing but platforms, or, more specifically, electronic intermediaries or providers of information services.

Indeed, some important clarifications on the nature of these enterprises in Europe have already been made by jurisprudence at national and supranational levels.

Italian[8] and Spanish[9] judges, first, and the European Court of Justice (ECJ),[10] subsequently, have stated that Uber cannot be considered only as a platform.[11] Not only does Uber select its drivers, stipulating specific requirements (for example by specifying particular types of car, or the possession of a driving licence), but it also controls the drivers' activities through the rating system and sets the fares.[12] In other words, Uber exerts direct control over factors which shape the performance of the transport service, modifying the transport supply with respect to the demand from passengers.[13] Consequently, the activity performed by Uber is in competition

5 Retrieved on 13 June 2018 from https://www.uber.com/it/blog/milan/guidare_con_uber_in_italia_17/.

6 A list of such companies can be consulted at https://www.flixbus.com/company/partners/buspartners?wt_eid=215153411466645277 5&;wt_t=1516444729818&_ga=2.9110135.358517828.1516441055–119806198.1515341146 (retrieved on 14 June 2018).

7 See Premessa and paragraph 2 Contratto di collaborazione FlixBus.

8 Trib. Roma, Sez. IX, 7 April 2017, in *DeJure*; Trib. Torino, Sez. I, 22 March 2017, in *DeJure*; Trib. Torino, Sez. spec. Impresa, 1 March 2017, in *DeJure*; Trib. Milano, ord., Sez. spec. Impresa, 9 July 2015, in *Rivista Italiana di Diritto del Lavoro*, 2016, no. 1, II, 46 ff.; Trib. Milano, ord., Sez. spec. Impresa, 25 May 2015, in *DeJure*.

9 Audiencia Provincial Civil de Madrid, Sección Vigesimoctava, 23 January 2017, no. 15, retrieved on 15 June 2018 from http://cdn.elindependiente.com/wp-content/uploads/2017/02/auto_uber.pdf.

10 C-434/15, *Asociación Profesional Élite Taxi v. Uber Systems Spain SL*, retrieved on 15 June 2018 from http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d2dc30dd79aed293274c44bcae02ba0c72d956f5.e34KaxiLc3qMb40Rch0SaxyNaNn0?text=&docid=198047&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=834073.

11 Similar considerations can be found in some US cases such as *Berwick v. Uber Technologies Inc.*, 3 June 2015, Case no. 11 – 46739 EK, Labor Commissioner of the State of California, point 9, retrieved on 15 June 2018 from https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1988&context=historical, and, referring to Lyft, in *Cotter v. Lyft Inc.*, no. 13 – cv - 04065 - VC, 2015 WL 1062407, retrieved on 15 June 2018 from: http://www.lyftdriverlawsuit.com/courtdocs.

12 See C-434/15, *Asociación Profesional Élite Taxi, v. Uber Systems Spain SL*; Audiencia Provincial Civil de Madrid, Sección Vigesimoctava, 23 January 2017, no. 15, points 89–90. See also the Opinion of Advocate General Szpunar delivered on 11 May 2017, Case C-434/15, *Asociación Profesional Elite Taxi v. Uber Systems Spain SL*, especially points 41 ff., retrieved on 16 June 2018 from http://curia.europa.eu/juris/document/document.jsf?text=&docid=190593&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=834582.

13 See Opinion of Advocate General Szpunar, point 51.

with other transportation enterprises both because of the unbreakable nexus between the platform and the transportation services offered by drivers[14] and through the connection with the passengers' demand.[15] In other words, if Uber drivers are in competition with taxi drivers, Uber itself is in competition with traditional taxi companies,[16] because it is impossible for it to exist without the performance of the drivers.[17]

Beyond the competition law consequences of these decisions, it is interesting to see how the statement about the transport company nature of Uber can affect FlixBus.

Indeed, FlixBus controls the quality of buses, sets timetables and fares.[18] Moreover, it also exercises its power over labour relationships by fixing working time[19] and laying down specific requirements for hiring and the tasks of workers.[20] In this sense, even if FlixBus does not deal directly with transportation, claiming to deal only with logistics, booking and commercialisation, it actually imposes its supply conditions onto the enterprises it controls, establishing a strong nexus with their transportation performance; indeed, FlixBus activities cannot survive and make no sense without those of the partner companies. Therefore, FlixBus is undoubtedly in competition with intercity bus companies and consequently it should be deemed a transport company.

In the light of this, the lack of a substantial structure is not sufficient to exclude Uber and FlixBus from the status of transportation companies, because in practice they organise entrepreneurial transportation activities, exploiting the advantages stemming from the violation of competition law, which enable them to circumvent the tariffs set by the State for passenger transportation services.[21] On this issue, the Advocate General of the ECJ has been very clear, stating that whether a company, like Uber or FlixBus in our case, is (or is not) the owner of the means of transport

> *is [. . .] irrelevant, since a trader can very well provide transport services using vehicles belonging to third persons, especially if he has recourse to such third persons for the purpose of those services, notwithstanding the nature of the legal relationship binding the two parties.*[22]

14 See Trib. Roma, Sez. IX, 7 April 2017; Trib. Milano, ord., Sez. spec. Impresa, 9 July 2015, point 4.3; Trib. Milano, ord., Sez. spec. Impresa, 25 May 2015, point 7.

15 See C-434/15, *Asociación Profesional Élite Taxi, v. Uber Systems Spain SL*, point 39.

16 See Trib. Roma, Sez. IX, 7 April 2017; Trib. Milano, ord., Sez. spec. Impresa, 9 July 2015, point 4.3; Trib. Milano, ord., Sez. spec. Impresa, 25 May 2015.

17 Opinion of Advocate General Szpunar, point 56.

18 Article 2 Contratto di collaborazione FlixBus.

19 Article 2 Allegato n ° 1, Servizi di linea e uso dei veicoli, Contratto di collaborazione FlixBus.

20 For example, in Italy drivers have to speak Italian fluently and to have a good appearance. Moreover, they have to help passengers with luggage, sell snacks and drinks on board, gather payments and announce bus stops (Article 2 Allegato n ° 2, La qualità nel servizio delle linee, Contratto di collaborazione FlixBus).

21 Trib. Torino, Sez. I, 22 March 2017, points 4.5.3, 4.5.8, 4.6.2; Trib. Torino, Sez. spec. Impresa, 1 March 2017, points 4.5.8, 4.6.2, 4.7.3.

22 Opinion of Advocate General Szpunar, point 55.

Searching for labour law in digital transportation companies

The judgements that Uber is a transport company, mentioned above, could also have some consequences for labour law issues.

First of all, if platform companies such as Uber, and therefore FlixBus, are transportation companies, the related legislation, both concerning competition and labour law, should be applied, with certain distinctions.

Since, as already noted, Uber is similar to (and in competition with) cab and car-and-driver hire companies, it should be subject to the specific laws regulating these enterprises.[23] Focusing on the Italian system, it is interesting to see that such legislation gives some information about the juridical nature of the drivers' labour relationships because it allows for these activities to be exercised, in general terms in three different ways: as craft enterprises, as cooperative societies or as entrepreneurs (see Article 7, paragraph 1, Italian Law no. 21/1992).This heterogeneity means that the application of the transport status provision does not lead to a general solution that can determine the legal status of Uber drivers, because under this law they could be formally either entrepreneurs or working partners, who, under Italian labour law,[24] may also be employees to whom the related national collective agreements[25] are applied.[26]

Looking at FlixBus, we have seen that its activity, performed through the partner companies that employ the drivers, consists of offering intercity bus services. Thus, the special Italian legislation for transportation workers,[27] as well as the European directives concerning driving times, breaks and rest periods,[28] together with the national transport collective agreements, should be applied. This solution has been followed in Italy by FlixBus itself which, on 18 December 2017, signed a Protocol with the Confederation of Trade Unions, providing for the application of the transport national collective agreements to the labour relationships between the partner enterprises and the workers they employ.[29] However, the binding nature of this agreement is questionable because it has been concluded only by FlixBus and not by the partner companies. In this sense, the Protocol appears to be just a social responsibility

23 Law no. 21/1992 in Italy.

24 See Article 1, paragraph 3, Law no. 142/2001, according to which the working partner's performance can be subordinate, quasi-subordinate, self-employed or any other typology of labour relationship.

25 That is the CCNL Autoferrotranvieri 23 July 1976 (so-called 'Testo Unico Autoferrotranvieri').

26 See for example CCNL per i lavoratori delle cooperative esercenti attività nel settore TAXI, 4 June 2008; CCNL per i soci e i dipendenti delle cooperative esercenti attività nel settore autonoleggio con e senza autista, noleggio autobus, scuolabus e locazione veicoli, 14 March 2007.

27 The reference is mainly to the old Royal Decree no. 148/1931, which delegates many parts of the specific regulation to collective agreements, especially concerning working time and wages. Indeed, the general discipline on working time, contained in Legislative Decree no. 66/2001, implementing EU Directives 93/104 and 2000/34, does not apply to transports (see Article 2, paragraph 1, Legislative Decree no. 66/2001).

28 Namely EU Regulation no. 2001/561 and Directive no. 2002/15 (implemented in Italy with Legislative Decree no. 234/2007). On these legislations, see Antolini (2016).

29 See Protocollo di intesa del 18 dicembre 2017 tra FlixBus Italia e Filt-Cgil, Fit-Cisl, Uilt-Uil, Faisa-Cisal, Ugl-Fna, retrieved on 17 June from http://olympus.uniurb.it/index.php?option=com_content&view=article&id=17847:flixbus17&catid=227&Itemid=139.

tool through which FlixBus indicates to the Trade Unions its intention to comply with the Italian legislation and to exercise its economic power over the partner companies to this end. It is noteworthy that the Protocol was signed on 18 December 2017, namely two days before the ECJ decision on Uber, giving some indication of its real nature. In other words, it seems that FlixBus intended to distance itself from the Uber model to protect its reputation with consumers. Here too, the application of transportation legislation does not solve the legal status issues of FlixBus workers, because those regulations, although they can be used to improve working conditions, are addressed to all road transport drivers, regardless of the nature of their labour relationships.[30]

It is worth noting that the Uber and FlixBus phenomena are covered by the same regulation concerning strike action because they offer a public service, the transport of passengers, for which a particular law applies in case of strikes.[31] This means that these companies are subject to the limits laid down by the law on strikes in public services.[32] However, even this regulation does not offer a solution for the legal status of workers on these platforms either, because it is addressed both to employees and to self-employed people.[33]

To determine employment status, it is therefore necessary to look more closely at how the relationship between platform and driver is articulated in Uber and FlixBus. To this end, it is important to understand that platforms similar to Uber go beyond acting as mere intermediaries between drivers and passengers and ask whether the interferences of the platform in the performance of their work can be sufficiently important to establish a labour relationship with drivers (Gogliettino, 2018:7).

Scholars have generally focused on the Anglo-Saxon 'control test'[34] to establish whether gig economy workers are employees. Indeed, although work in the gig economy is generally characterised by time flexibility, platforms exercise forms of control that may be more invasive than those of subordination (De Stefano, 2016; Cherry, 2016). As already mentioned, Uber controls the quality of performance through a rating system[35] – with consequences for the worker's very right to remain on the platform, and therefore for the persistence of the legal relationship – as well as controlling the execution of the work through the GPS system. The same principles may be applied to FlixBus, since this company imposes a number of restrictions on drivers. For example, it requires that drivers have a 'welcoming and

30 See Article 2 Legislative Decree no. 234/2007; Article 1 Regulation no. 2006/561; Article 2 Directive no. 2002/15.

31 Law no. 146/1990.

32 As, for example, guaranteeing the service through a minimum of workers or giving notice of ten days at least.

33 Indeed, Article 1 Law no. 146/1990 states that the limits on strikes in public services apply regardless of the nature of the labour relationship.

34 As it is known, English and American courts have elaborated some criteria or tests to identify the existence of an employment relationship in the concrete case. The 'control test' is one of the most important tests for this purpose and its best known expression has been given in *Yewens v. Noakes* (1880) 6 QBD 530, 532, 533: 'a servant is a person subject to the command of his master as to the manner in which he shall do his work'. On the Anglo-Saxon tests of subordination, see Deakin and Morris, 2012:145 ff.

35 Retrieved on 18 June from https://help.uber.com/it_IT/h/478d7463-99cb-48ff-a81f-0ab227a1e267 which explains how passengers can assign from one to five stars to drivers. The same system is adopted for example by Lyft (retrieved on 18 June from https://www.lyft.com/).

well-groomed appearance', which implies the obligation to wear uniforms offered by FlixBus; it bans smoking in front of passengers; and it requires them to speak Italian fluently (Loffredo, 2018:135). Moreover, drivers are charged with additional tasks such as loading and unloading baggage, selling snacks and drinks, implementing the company's advertising campaigns and being obliged to be friendly to customers.[36]

However, the presence of this kind of control may be not considered sufficient to qualify Uber and FlixBus drivers as employees, because 'the company may very well provide its services through independent traders who act on its behalf as subcontractors'.[37] Thus, the analysis of the two platforms may take two different paths, because of the divergences in their contractual structures. As seen above, the Uber structure is sometimes 'trilateral', being composed as follows: Uber platform–independent driver–passenger. Therefore, taking into account the control exercised by Uber over its drivers, the question about 'who the employer is' seems to be no longer relevant, as we are presented with a dichotomy whereby the driver may be classified either as an independent contractor or an employee. The well-known *Aslam* case in the UK concerned a situation where this 'trilateral' scheme was present and was resolved by a decision that Uber is an employer, even though its drivers have the status of 'workers' rather than 'employees'.[38]

However, in other situations both Uber and FlixBus use a structure that is 'quadrilateral', involving a four-way relationship: the platform–the partner cab/transport company–the drivers–the passengers. In such cases, Uber and FlixBus have a double controlling power: towards the collaborating companies on the one side, and towards the drivers on the other. Thus, in relation to the issue of who the employer is, the key question here is whether only the partner companies are liable for labour obligations or whether Uber and FlixBus also have responsibilities as employers.

The legal qualification of performances in 'trilateral' structures

As seen above, in 'trilateral' structures the critical point is whether workers are employees or independent contractors. Because Uber offers the best example of 'trilateral' structure, a study of the nature of its working relationships can be useful for answering this question.

Until now, attempts to establish the employment status of Uber drivers have adopted a number of different approaches.[39] In this research, carried out within the

36 See Article 2 Allegato n. 2, La qualità nel servizio delle linee, Contratto di collaborazione FlixBus.

37 Opinion of Advocate General Szpunar, point 54.

38 See *Aslam and Farrar and others v. Uber B.V., Uber London Ltd, Uber Britannia Ltd*, 2015 ET 2202551/2015 & Others, retrieved on 18 June from https://www.judiciary.gov.uk/wp-content/uploads/2016/10/aslam-and-farrar-v-uber-reasons-20161028.pdf. This decision has been confirmed also by the Employment Appeal Tribunal on 10 November 2017 with Appeal No. UKEAT/0056/17/DA, retrieved on 18 June from https://assets.publishing.service.gov.uk/media/5a046b06e5274a0ee5a1f171/Uber_B.V._and_Others_v_Mr_Y_Aslam_and_Others_UKEAT_0056_17_DA.pdf.

39 Besides the already mentioned control test, it is worth recalling the so-called purposive approach (Todolí-Signes, 2017; Davidov, 2017).

context of the Italian jurisprudence on subordination, we propose an 'empirical' approach, focusing on the elements emerging from the case of Uber as a specific company.

According to the Italian Court of Cassation, a labour relationship can be considered to be subordinate when directive, disciplinary and control powers are exercised and the worker is integrated into the employer's organisation in a stable and exclusive way. To investigate such elements in any concrete case, a series of indices, which do not necessarily have to be present together, can help the judge to arrive at a decision. Factors to be taken into account, when the performance is characterised by the absence of business risk, include the continuity of the performance, the working time obligation, the existence of a wage, the use of working instruments belonging to the employer and, when the activity is performed on the employer's premises, a relationship of subordination, according to the overall assessment of the court.[40] If these criteria are applied to Uber, its drivers could be qualified as employees.

In general terms, the exercise of directive and control powers is inherent in the business models of platforms: the performance is interactive, so that the employer's powers can be put into action live, in real time. Even if such interactivity is lacking, control can be exercised over the outcome of the performance and by means of the employer's directives that are given at the beginning of the performance (on telework, see Nogler, 2000; Gaeta, 1995; Ichino, 1992).[41] Furthermore, there is an Italian jurisprudential trend[42] to rule that directive power can consist in the mere possibility of being able to address directives to workers, varying depending on the organisational context and the professional content of the performance (Marimpietri, 2009:34; Ichino, 1992:25). Therefore, even if Uber did not exercise its directive power directly, the online connection with workers would still allow for this opportunity and consequently there would be an element of subordination. Moreover, it is undeniable that an Uber driver's performance is strongly controlled both geographically, due to the use of GPS, and qualitatively, due to the adoption of the customer rating system. The same reasoning could be followed to find the disciplinary power, as there is always a possibility of exercising this power even if this does not actually happen in practice (Zoppoli, 2015:64). In fact, Uber uses a sort of disciplinary power whenever it terminates a driver's account because of violations of terms and conditions,[43] because such terminations are justified by the workers' conduct (Birgillito, 2016:73). Still, a considerable part of the business risk is borne by the platform which, on the one hand, receives profits and incurs losses coming from the drivers' activity, while, on the other hand, it decides the costs of the performance and owns the Uber brand, that is exploited in commercial terms and leads to globally

40 See most recently Italian Court of Cassation 11 October 2017, no. 23846, in *DeJure*.

41 In jurisprudence see in particular Italian Court of Cassation 27 November 2002, no. 16805, in *DeJure*.

42 See, for example, Italian Court of Cassation 27 October 2016, no. 21710, in *DeJure*; Italian Court of Cassation 26 August 2013, no. 19568, in *DeJure*.

43 See Section 12.2 Uber Technology Services Agreement, retrieved on 19 June from http://ucustomersupport.com/wp-content/uploads/2016/01/Uber-Driver-Terms-and-Conditions.pdf.

identify Uber services as a unique entity (Prassl & Risak, 2016:640–41). Also, the reputation that drivers gain on Uber, through its rating system, is not portable to other platforms; therefore, drivers cannot in fact diversify their own risk by working for different platforms (see Todolí-Signes, 2017:261 ff.). In addition, the majority of Uber drivers work continuously for Uber itself, again largely due to the non-portability of reputation.[44] Furthermore, sometimes Uber provides workers with the equipment needed to carry out their work, by renting electronic devices to drivers.[45] In any case, the fact that work tools belong to drivers does not necessarily exclude a relationship of subordination, because some organisational forms of subordination, such as homeworking, teleworking and 'agile working',[46] are indifferent to the question of ownership of work tools. Here, the pronouncement of Advocate General Szpunar is relevant, according to which the ownership of the means of transport is not relevant for determining the relationship between Uber and its drivers.[47]

This latter observation is also useful for identifying the presence of another element of subordination: the inclusion of drivers in the Uber organisation. The concept of organisation does not exactly match with the substantial structure of the employer but with its productive activity (Campobasso, 2012:25) so that for the employer's organisation to be deemed to exist it suffices that the employer organises the worker's performance (Persiani, 1966), especially concerning working time and the place of work.[48] If we look at Uber, the platform seems to organise the worker's performance because, on the one side, Uber defines the geographical area where drivers operate,[49] while, on the other, it decides what constitutes the driver's working time, which starts 'as soon as [the driver] is within his territory, has the App switched on and is ready and willing to accept trips and ends as soon as one or more of those conditions ceases to apply'.[50]

Lastly, the personal character of the performance, though devalued by work on digital platforms (Tullini, 2017:152–53), may still be found, since access to drivers' accounts is permitted, of course, only to those who possess both their username and password.[51]

In conclusion, in the specific case when Uber adopts the 'trilateral' structure, there are many elements of the driver's performance that lead to the driver's status being deemed to be that of an employee under Italian labour law.

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44 According to Berg (2016), 37% of Amazon Mechanical Turk and CrowdFlower workers interviewed in a survey carried out by the International Labour Organization, in November and December 2015, rely on these platforms as their principal source of income.

45 See Section 2.6 Uber Technology Services Agreement.

46 The reference is to Law no. 81/2017 (Articles 18–24) which introduced in Italy a new form of work where the performance is carried out partly in the employer's premises and partly outside, thanks to the use of Information and Communications Technologies.

47 Opinion of Advocate General Szpunar, point 55.

48 This conclusion is corroborated by Article 2 Law no. 81/2015 which provides that when 'time and space' are organised by the client in a quasi-subordinate performance, the legislation on subordination is applied.

49 See *Aslam and Farrar and others v. Uber B.V., Uber London Ltd, Uber Britannia Ltd*, 2015 ET 2202551/2015 & Others, point 86.

50 See *Aslam and Farrar and others v. Uber B.V., Uber London Ltd, Uber Britannia Ltd*, 2015 ET 2202551/2015 & Others, point 122.

51 See Section 2.1 Uber Technology Services Agreement.

Who is the employer? Applying the functional approach to 'quadrilateral' structures

We now turn to the 'quadrilateral' structures used sometimes by Uber and adopted by FlixBus as its particular business model to see whether the functional approach can be useful here too. Research has shown that breaking down the role of the employer and looking separately at those subjects involved in a labour relationship to identify who exercises the functions of an employer can shed light on employment status (Prassl, 2015). According to Prassl and Risak (2016), the Uber platform takes on all five of the employer's functions in this situation, making Uber the sole employer in the case of a trilateral relationship.

However, if we try to apply this functional approach to the 'quadrilateral' model sometimes adopted by Uber and usually by FlixBus, as its peculiar feature, it is often considered that the idea of a sole employer is difficult to rebuild. Actually, this conclusion can be rebutted using a careful schematic analysis of the employer's functions in this context:

First, we look at the inception and termination of the employment relationship. When Uber and FlixBus collaborate with partner companies, these companies have the power to select drivers, as well as to begin and terminate the labour relationship. However, this does not preclude the possibility that the economic power exercised by the platform on the partner company could lead to interference in the labour relationship between the company and the driver. Indeed, if, for example, a driver does not comply with the terms and conditions set by the platform,[52] that platform could bring pressure to bear on the company to terminate the collaboration with the driver,[53] forcing the partner company to dismiss that driver. The same situation can arise in relation to hiring drivers, because the inception of the labour relationships is only possible if the partner company complies with the rules and requirements set by the platform. Thus, although the partner companies are formally the sole employers of the drivers, this does not correspond to the reality, due to the economic imbalance between these partner companies and the platform. Consequently, the first function (that of hiring and firing) is shared by platforms and partner companies.

The second employer's function we examine is who receives the labour and its fruits. This second function of the employer is also shared between partner companies and platforms. This is how it works: passengers pay the platform through the electronic system and the profit is then shared with the partner company,[54] which pays the drivers' wages. Moreover, the platform handles all the invoicing, claim reconciliation and complaints, so that this function, even though it is nominally shared between the two subjects, seems in practice to be exercised more by the platform than by the partner company.

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52 For example, the 'quality' conditions set by FlixBus are actually obligations and duties, as it is textually proclaimed in Article 2 Allegato n ° 2, La qualità nel servizio delle linee, Contratto di collaborazione FlixBus.

53 According to Article 6 Contratto di collaborazione FlixBus, the parties has the right to compensation in case of breach of the contract. Moreover, if the partner company does not comply with the quality conditions, mainly concerning working time and drivers' performances, FlixBus can terminate the contract.

54 Specifically, in FlixBus earnings are shared as follows: 70% to the partner company; 30% to FlixBus (see Article 3 Contratto di collaborazione FlixBus).

The third function is the provision of work and pay. Here, looking closely, we see that work is provided by the platform. Indeed, the customers' network is that of the platform, since passengers go to the platform to buy tickets. They consider the partner companies and the platforms to be a single entity (and probably do not know they are different subjects).[55] On the other hand, as already noted, drivers are paid by the partner companies, who pay their wages directly, as agreed in the employment contracts. Thus, even this function is shared by the two 'employers'.

Management of the enterprise in relation to its internal market constitutes the fourth function. This factor is undoubtedly carried out by the platform. Both Uber and FlixBus coordinate the productive factors relating to their business. Indeed, even if the means of transport are owned by the partner companies, it is the platforms that decide the timetables and routes, set the minimum standards of quality for services, fix the working hours and specify the specific behaviours drivers must adopt towards passengers.

Finally, we turn to the management of the enterprise in relation to its external market. Here, the business risk is shared between the platforms and their partner companies. Indeed, on the one side, the latter make available their substantial structure, including vehicles and workers, while, on the other side, the platform handles the brand and the image of the transport service, as is demonstrated by the fact that the means of transport and the drivers' uniforms carry the platform logo.

The 'quadrilateral' model: towards co-employment?

The application of the functional approach to the 'quadrilateral model' leads to the theme of co-employment (see most recently Garofalo, 2017:38 ff.). Therefore, at this point it becomes necessary to investigate whether in the Italian system there are legal instruments that make it possible to trace back the labour relationship both to the platform and to the partner companies.

According to some Italian scholars, in the presence of an integrated undertaking, where the traditional unity of the business structure is replaced by a network structure composed of a plurality of firms, each with its task in the productive cycle, it is possible to speak about co-employment (Carinci, 2016:735; Speziale, 2010). Indeed, the integrated undertaking exists thanks to contractual integration, namely the adoption of commercial contracts creating stable business relationships among enterprises, particularly strong in the case of economic dependence. This organisational integration allows the undertakings involved in a network of enterprises to share productive factors. However, it must be recognised that labour is itself a productive factor. This means that the workers' performance can also be shared in the network (Speziale, 2010:38). Thus, we have to focus our attention on the connection between the commercial contract and the employment contracts themselves. In fact, the business and organisational needs and decisions directly affect the labour relationships. It can be

55 Indeed, the means of transports used by Uber and FlixBus are immediately recognisable. Uber cars are identified by the Uber brand put on their body. According to Articles 1 and 2 Allegato n ° 2, La qualità nel servizio delle linee, Contratto di collaborazione FlixBus, the FlixBus brand is on the buses, which are green, and also on the uniforms worn by drivers and provided by FlixBus itself.

said that all the undertakings involved in a network have a common interest: to organise the labour relationships with the aim of reaching a unique economic objective (Speziale, 2010:38 ff.). In this sense, even if, from a formal point of view, only some enterprises have labour relationships, the others which have not concluded employment contracts should also be considered as employers, with all the legal consequences of this (Speziale, 2010:45 ff.). Indeed, the reconstruction of a plurality of employers is not against Italian labour law (Treu, 2015:14; Razzolini, 2013:33), because this legal system does not provide a definition of an employer but only of an employee (Speziale, 2010:26 ff.).[56] Moreover, through the notion of an employee, under the interpretation offered by the courts with the 'empirical' approach, seen above, it is possible to rebuild the idea of co-employment because it is clear that in an integrated undertaking, all characteristics of subordination can be present. Indeed, the directive and disciplinary powers can be exercised by the formal employer on behalf of the connected undertakings; the control power is often directly exercised based on the results of the workers' performance; and the profits are shared among the employers, whether their role as employers is formal or actual (Speziale, 2010:47 ff.). Thus, the functional approach we have applied seems to produce a reverse view of the indices of subordination, so that, even if we wanted to find a specific disposition to identify who the employer is, Article 2094 of the Italian Civil Code could be sufficient, giving the definition of the employee and, therefore, implicitly, of the employer.

In the light of this co-employment theory, there is room to consider Uber and FlixBus as co-employers together with their partner companies in the 'quadrilateral' model.

There is no doubt that the relationship between the platform and the partner company produces what is in effect an integrated enterprise, regardless of the commercial contract formally adopted between the parties. The transport activity, which is a phase of the productive cycle, is performed by the partner companies, whereas the platforms deal with other phases, such as logistics, booking and commercialisation. This would suffice to consider platforms as employers, due to the common organisational interest they share with the partner companies. Indeed, the drivers are inserted into the whole organisation of the integrated undertaking composed of the platform and the partner companies, and the platform itself uses the productive factor of their work, as is demonstrated by the fact that the employer's powers are exercised by platforms, sometimes directly, sometimes indirectly, through the partner companies, thanks to the relationship of economic interdependence which binds them together.

Conclusions

In conclusion, we have seen that Uber and FlixBus are employers not only when they have a direct relationship with drivers but also when they adopt a 'quadrilateral' structure, namely when some of the employers' functions are shared with partner companies.

56 Article 2094 of the Italian Civil Code defines the employee as someone who obliges herself/himself to collaborate in the enterprise, in exchange for wages, executing the performance under the employer's dependence and direction.

For some authors, this conclusion is not entirely satisfactory. Indeed, the co-employment doctrine is controversial at the moment in Italy,[57] especially because its regulation is incomplete (Biasi, 2014:124; Mazzotta, 2013; Pinto, 2013)[58] and this might explain why there is not much case law yet in this respect.[59] Moreover, if we follow the jurisprudential trend relating to co-employment in Italy, the consequence of rebuilding a plurality of employers is generally the joint liability of employers towards workers (Treu, 2015:22; Biasi, 2014:134).[60]

However, the analysis carried out shows that the protection of workers in the gig economy is nevertheless quite possible under current conditions. Of course, we do not yet have the basis to create a general rule to solve the problems of all online digital platform work, because the protections and rules which have to be applied depend on the concrete case in question (Voza, 2017a:10).

Therefore, the empirical approach proposed seems able to make the structure of the employment contract suitable for the new business models introduced by platforms. But if the structure of the employment contract is still valid for digital work, it has to be asked whether the gig economy, far from being an unprecedented phenomenon, is in reality still 'the same old song and dance'.

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57 For a reconstruction of this debate, see Garofalo, 2017, 38 ff.

58 Indeed, the only textual reference to co-employment is Article 30, paragraph 4-*ter*, Legislative Decree no. 276/2003, according to which co-employment is allowed in networks of companies.

59 For a study on jurisprudence about co-employment in Italy, see Greco, 2013.

60 See, for example, Italian Court of Cassation 5 March 2003, no. 3249, in *DeJure*; Italian Court of Cassation 20 October 2000, no. 13904, *ivi*; most recently App. Roma 22 May 2017, no. 2809, retrieved on 20 June from http://www.soluzionilavoro.it/2017/07/27/codatorialita-e-unicita-del-rapporto-di-lavoro/.

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Labour law for TOS and HITs?

reflections on the potential for applying 'labour law analogies' to crowdworkers, focusing on employee representation[1]

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ABSTRACT

A growing number of people are performing work tasks via online platforms, referred to under various designations such as 'Human Intelligence Tasks' (HITs), under conditions set out not in an employment contract but through the standardised Terms of Service (TOS) of their contract partner. This article argues that, in spite of increasing evidence of precarious working conditions and circumvention of labour law and social protection standards in 'turking'-style work environments, attempts to classify these forms of crowdwork as employment relationships are of limited practical use and benefit for those working in the industry. Instead, departing from much-debated concepts of a 'purposive' approach to labour law, it makes the case for a differential analysis of the aims of diverse elements of labour law and a consideration of whether, and to what degree, these can be instrumentalised for dealing with a contractual relationship that, notwithstanding socio-economic similarities, is fundamentally different from the employment relationship for which that law was developed, in several respects. It discusses the merits of rules on workplace employee representation and explores options for operationalising these for crowdworkers. For this purpose, it considers forms of collective organisation of crowdworkers via various networks as they already exist and are emerging in practice to question whether it is or should be reasonable for crowdworkers to be legally entitled to rights analogous to the workplace representation bodies such as works councils, which would entitle them to rights ranging from information and consultation to co-determination as well as veto rights on specific issues.

1 This article elaborates on a conference paper presented at the International Congress on the Sharing Economy in Valencia on 29 September 2017.

KEY WORDS
crowdwork, gig economy, collective labour rights, workers' representation, purposive approach to labour law

Introduction

Crowdwork – a phenomenon which just a few years ago was largely considered of minor or negligible importance, both economically and for the workers involved – has recently sprung to the forefront of heated discussions in diverse academic fields. This debate has been sparked by an impressive surge in the use of crowdwork and projections indicating that this is just the beginning of a boom that is expected to intensify over the decades to come. This is valid not only for indicators such as market share or turnover[2] but also for the number of individuals engaging in platform-based work. In the USA, their number was already estimated at around 600,000 (close to 0.5% of the economically active population) in 2014 (Dau-Schmidt, 2017; see also Harris & Krueger, 2015), while estimates for Europe, though lower (see De Groen & Maselli, 2016; Meil & Kirov, 2017), also predict a significant rise in the wake of the economic crisis (Mandl & Curtarelli, 2017).

Even more important than the sheer number of people concerned is the degree to which crowdwork actually determines an individual's working life, giving rise to concerns from a social policy point of view. In this regard, while the majority of participants doubtlessly still regard their crowdwork activity as a mere supplement to other sources of income, the share of those asserting a state of economic dependence on their platform-based income is rising.[3] And while crowdwork undeniably offers certain unique advantages and opportunities, such as the option of entirely flexible labour market participation (making it accessible even for people with unpredictable work, child care or other family obligations or a demobilising or unstable health condition: see Cherry, 2009; Cherry & Poster, 2016; Coimbra Henriques, 2015; European Trade Union Confederation [ETUC], 2016; Felstiner, 2011; Mandl & Curtarelli, 2017; Prassl & Risak, 2017a; Prassl & Risak, 2017b), the price that crowdworkers have to pay for this flexibility is considered disproportionately high by an increasing number of observers. The combination of very low pay,[4] lack of power to influence

2 The worldwide turnover of US-based crowdsourcing companies in 2016 is estimated to have constituted around US$15–26 billion. In 2025, the five key sectors of the industry alone are expected to create a turnover of 335 billion (Aloisi, 2016; Dau-Schmidt, 2017; ETUC, 2016; Leimeister, Zogaj & Durward, 2016; Prassl & Risak, 2017b). Even when considering only the turnover generated through crowdwork in its narrower sense (as defined *infra* at Section 'Crowdwork – a working definition'), the World Bank predicts a turnover of about US$25 billion in 2020, whereas other studies put this number even higher at up to US$46 billion (Klebe & Heuschmid, 2017; Durward, Blohm & Leimeister, 2016; ETUC, 2016).

3 Already in 2010, 20% of Amazon Mechanical Turk (AMT) crowdworkers (even 30% in India) indicated that work as their main occupation (Adda & Mariani, 2014; see also similar results for the USA as referred to by De Groen & Maselli, 2016).

4 At an average hourly rate of US$1.25 for workers of AMT according to Adda & Mariani (2014) or US$2 according to EU-OSHA (2017), Klebe and Heuschmid (2017) and Prassl and Risak (2017a). Similar results, at times pointing out regional and other differences, are cited by Berg (2016), Dau-Schmidt (2017), De Groen and Maselli (2016) and Kingsley, Gray and Suri (2015). According to Klebe and Heuschmid (2017), several years of work experience increase the average yield to US$8; specialised technical skills to US$24.

terms and conditions (Adda & Mariani, 2014; Cherry, 2009), insufficient data protection (Mandl & Curtarelli, 2017; Van der Graaf & Fisher, 2017), lack of remedies against arbitrary denial of payment or negative ratings which forms the main determinant of career development on the platform, with every lapse durably influencing the individual's position (Prassl & Risak, 2017b),[5] and fierce competition for tasks that promise decent conditions (Cherry & Poster, 2016; Coimbra Henriques, 2015; Smith & Leberstein, 2015) – which inevitably evokes further inflation of remuneration (Cherry, 2009; Cherry & Poster, 2016; ETUC, 2016; Huws, 2017) – has led various observers to characterise working conditions in the crowd as 'completely unfair' (Klebe & Heuschmid, 2017), resembling 'virtual sweatshops' or 'digital slavery' (Cherry, 2009; Cherry & Poster, 2016; Prassl & Risak, 2017a; Prassl & Risak, 2017b). Considering that the avoidance of this kind of precariousness resulting from a fundamental power imbalance between the contracting parties has traditionally been the key function of labour law, observers around the world are increasingly concerned to discover what prevents crowdworkers from benefitting from this legal protection and what options there are for remedying the situation.

In the light of this ongoing debate, this article will set out briefly the core difficulties of dealing with crowdwork appropriately in the existing legal framework prevailing in developed countries, outline the promising concept of taking a 'purposive' approach to labour law and, on this basis, explore the utility of 'labour law analogies' for designing a legal framework capable of accommodating the particularities of crowdwork. This will be illustrated by taking a closer look at options for designing a legal framework for collective representation as a crucial and promising field for policy reform.

Background: crowdwork and labour law

Crowdwork – a working definition

At the outset, it should be noted that the analysis that follows focuses on forms of crowdwork in its narrower sense, that is, not including so-called 'work on demand via apps' (see the definitions in Aloisi, 2016; Dau-Schmidt, 2017; Cherry & Poster, 2016; De Stefano, 2016; Donini et al., 2017; Lo Faro, 2017; Mandl & Curtarelli, 2017; Prassl & Risak, 2017b), for which, at least in certain cases,[6] valid arguments can be invoked for applying labour law largely without restrictions. Rather, it will concentrate on the specific situation of workers who complete tasks (frequently micro-tasks) that are received and also delivered via crowdsourcing platforms. This allows for a focus on the particularities of a working environment characterised by a high prevalence of only sporadic or casual participation, very short-term contractual relationships and triangular structures in which none of the actors

5 The result of ratings influences significantly not only the likelihood of being recruited but also the expected payment per task (Aloisi, 2016; Cherry, 2009; Cherry & Poster, 2016; De Groen & Maselli, 2016; Kingsley, Gray & Suri, 2015; Prassl & Risak, 2017b).

6 See, for example, the wave of litigation about Uber and similar platforms (Aloisi, 2016; Davidov, 2017; De Stefano, 2016; Lo Faro, 2017; Prassl & Risak, 2017a; Prassl & Risak, 2017b; Rogers, 2016; Smith & Leberstein, 2015).

involved bears much resemblance to the employer as conceptualised for the purpose of national labour law (Aloisi, 2016; Adda & Mariani, 2014; Berg, 2016; Cherry, 2009; Coimbra Henriques, 2015; Dau-Schmidt, 2017; De Groen & Maselli, 2016; Kingsley, Gray & Suri, 2015; Klebe & Heuschmid, 2017; Kingsley, Gray & Suri, 2015; Leimeister, Zogaj & Durward, 2016; Prassl & Risak, 2017b).

This definition includes the commissioning of tasks requiring specialised knowledge[7] as well as low-skill tasks in the context of 'human computing' (Adda & Mariani, 2014), which is frequently based on the division of a complex project into a large number of micro-tasks which – as far as they require a human brain (rather than an algorithm) but no specific knowledge – are distributed to the 'crowd' via a platform (Adda & Mariani, 2014; Cherry & Poster, 2016; Klebe & Heuschmid, 2017; Prassl & Risak, 2017a; Prassl & Risak, 2017b; Smith & Leberstein, 2015). The doubtlessly most well-known and most widely researched (e.g. Aloisi, 2016; Berg, 2016; Cherry, 2009; Coimbra Henriques, 2015; Dau-Schmidt, 2017; Klebe & Heuschmid, 2017; Kingsley, Gray & Suri, 2015; Leimeister, Zogaj & Durward, 2016; Prassl & Risak, 2017b) example of category is Amazon Mechanical Turk (AMT), founded in 2005, and its 'Human Intelligence Tasks' (HITs).[8]

Legal classification of crowdworkers *de lege lata*

An assessment of any specific legal order with reference to the question of how crowdworkers would 'fit in' would be beyond the scope of this contribution, but the international legal literature indicates that at present virtually every national legislation would classify typical forms of work performance via platforms as service contracts between independent entrepreneurs rather than employment contracts. Arguably, many jurisdictions today are increasingly putting an emphasis on questions of economic (rather than formal-organisational) dependence for establishing worker status, and the utter dependence of one contracting partner on the Terms of Service (TOS) prescribed by another could be seen as an indication of clear economical imbalance. Yet, eventually, such economic dependence cannot on its own compensate for a complete lack of the elements that are typically included in national tests for establishing worker status such as subordination, personal dependence, durability, organisational integration and control. In the case of crowdwork, academic analyses tend to point out that it is usually difficult to argue that these elements would be present to a sufficient degree in relation to either the platform (e.g. Adda & Mariani, 2014; Cherry, 2009; Cherry & Poster, 2016; De Stefano, 2016; Donini et al., 2017; European Agency for Safety and Health at Work [EU-OSHA], 2017; Felstiner, 2011; Lobel, 2016; Mandl & Curtarelli, 2017; Prassl & Risak,

7 Especially technological and IT solutions, which were prevalent in the early days of crowdsourcing platforms (Cherry & Poster, 2016; De Groen & Maselli, 2016; Huws, 2017).

8 Other notable examples of such platforms include Freelancer, InnoCentive, Twago, CrowdFlower, Microworkers, Clickworker, oDesk, Freelancer.com, TopCoder, Testbird, CloudCrowd, Lingjob, Taskub, Academy of Ideas, Topdesigner, Boblr, Idea Hunting or Adtriboo (see Aloisi, 2016; Adda & Mariani, 2014; Coimbra Henriques, 2015; Dau-Schmidt, 2017; Klebe & Heuschmid, 2017; Leimeister, Zogaj & Durward, 2016; Mandl & Curtarelli, 2017; Smith & Leberstein, 2015).

2017b) or the crowdsourcer (the person or legal entity posting the concrete tasks to be completed by a crowdworker: e.g. Cherry & Poster, 2016; Coimbra Henriques, 2015; Klebe & Heuschmid, 2017; Mandl & Curtarelli, 2017). Self-evidently, as is frequently remarked in these sources, a different outcome is conceivable in the individual case, depending on the details of the contractual relationship; yet apparently, this might not necessarily be the case for the most precarious forms of work in the industry. At times, significant doubts are also raised as to whether a characterisation of crowdworkers as employees would be practically feasible or even advantageous for the workers concerned (Adda & Mariani, 2014).

In most countries, working under a service contract rather than an employment contract has far-reaching consequences, most notably the deprivation of protective mechanisms such as minimum wages, working time and paid leave regulation, non-discrimination and dismissal protection, unionisation and collective bargaining, and state-level as well as firm-level social security (Aloisi, 2016; Prassl & Risak, 2017b; Rauch & Schleicher, 2015). In line with this, a study conducted by the International Labour Organization (ILO) notes that workers performing crowdwork as their main occupation tend to lack any form of financial security or insurance against social risks (Berg, 2016). In practice, laws around the world are attaching the label of entrepreneur (rather than employee) to a group of persons working in a position of clear material dependency without any genuine entrepreneurial scope for manoeuvre to make up for the lack of security. This has provoked debates on how legislators could and should react to find a more suitable approach to crowdwork.

Application of labour law to crowdworkers *de lege ferenda*

Amendment of the definition of a worker

In the legal academic literature dealing with the regulation of crowdwork, one can observe the increasing emergence of voices exploring the merits of ascribing the role of 'employer' either to crowdsourcers or to the operators of platforms that connect crowdsourcers and crowdworkers by means of amendments to the aforementioned prevailing approaches to the definition of an employment contract (Adda & Mariani, 2014; Kingsley, Gray & Suri, 2015; Lobel, 2016; Rogers, 2016). For this purpose, a number of intriguing proposals for a more economically plausible delimitation of workers from entrepreneurs, such as the anti-domination principle (see Rogers, 2016), have been put forward.

While these approaches are frequently based on solid and persuasive teleological argumentation and partly also discuss possible solutions to the problems that are bound to arise, caution may be warranted when contemplating the implementation of any of these concepts. Most fundamentally, it cannot be ignored that dealing with the usually considerable range of obligations flowing from an employment relationship for a huge number of workers who decide freely upon their participation, face no duty of availability and can hardly be made subject to any form of control would imply a very substantially elevated level of costs and risks for the undertakings in question. As Kingsley, Gray and Suri (2015) put it,

> *if platform providers like AMT are defined as employers, legally speaking, many platform providers would likely opt out of the market [. . .] Conversely, if the people who post tasks to online, crowdsourcing labour markets are defined as employers, they will face prohibitive costs [. . .] This outcome would not only harm people posting tasks, but the hundreds of thousands of people who rely on the income they earn from the work they do online.*

In view of this finding, it appears that for many crowdworkers, it is the very fact that participation in crowdwork is flexible that even enables them to take part in the online labour market, and any measure which effectively risks deterring platforms and/or requesters from demanding such work must be viewed as problematic. And whereas it is conceivable that the problem might be alleviated, for instance, by awarding employee status only to the most active participants, it seems very difficult to design a legal framework that could ensure this in an evasion-proof way. For example, if employee status was prescribed as an automatic consequence after completing a certain minimum number of tasks for the same requester, the latter might block workers from further engagements just before they reach the threshold. As a consequence, the workers who are meant to benefit from the rule would actually be worse off because completing a large number of tasks for the same requester (which promises both efficiency gains and better safeguards against bad practices such as groundless refusal of payment) is rendered impossible or at least more burdensome (since workers might find ways around the blockage, for example, by registering several accounts).[9]

Ultimately, these considerations cannot but give rise to doubts whether the 'all-or-nothing'-based concept of the employment relationship is at all suitable for the crowdworking world. It remains to be explored whether this necessarily means that there is no way of regulating the contractual relationships involved in a way that achieves a fairer distribution of risks and obligations to the benefit of crowdworkers.

Legal approach sui generis

Among what are certainly the most intriguing developments in the area of basic labour law research in the recent past is the emergence of 'purposive' approaches to labour law, the theoretical foundations of which are currently being refined in a rapidly expanding body of literature. Its essence amounts to a departure from 'all-or-nothing' concepts in the sense that individual areas of labour law are reviewed in the light of their purpose, with the result that the appropriateness of their application varies for different groups of persons. At present, this concept is being referred to by a growing number of authors as a promising starting point for regulating work in the gig economy, for which the conflict between the clear desirability of improved protection and the infeasibility of

9 Note that, as stressed among others by Kingsley, Gray and Suri (2015), extensive conceptions of the worker definition can be observed to have negative repercussions for workers already today as, for companies anxious that their 'independent contractors' may be re-classified as employees, the most rational reaction is to avoid offering these contractors any benefit or element of stability that risks making the relationship appear too 'employment-like'. This illustrates that attempts of more inclusive definitions are likely to backfire wherever they essentially depend on the design of TOS, which in the end are determined unilaterally by the 'employer'.

certain components of labour law seems particularly pronounced (Bernt, 2013; Kennedy, 2016; Spitko, 2017). This nourishes the argument that a 'third way' approach might help to 'treat crowdsourcing labour markets according to their needs, and not those of traditional, offline markets' (Kingsley, Gray & Suri, 2015; see also Coimbra Henriques, 2015; Harris & Krueger, 2015; Lo Faro, 2017; Lobel, 2016).

In the context of US law, the purposive evaluation of labour law for persons – like crowdworkers – who are able to decide flexibly whether, when and where to perform tasks, without however working independently in an economic entrepreneurial sense, has led to the proposal of a concrete intermediate concept frequently termed 'independent worker'. Most notably, this concept dismisses the application of working time, overtime and minimum wage-related regulation as inappropriate for this category. By contrast, it calls for the unrestricted applicability of freedom of association and the right to collective bargaining, protection against discrimination regarding the conclusion and termination of the contractual relationship and working conditions, as well as the application of tax and social security provisions equivalent to those in place for employees (with the exception of unemployment insurance: Harris & Krueger, 2015; Kennedy, 2016; Lobel, 2016). In the European literature too, comparable approaches leading to similar results can be found (De Stefano, 2016; Prassl & Risak, 2017a).

Needless to say, the idea of giving up the principle of a single and unalterable concept of the employment contract is not without its critics. In particular, there is an obvious danger that increased complexity might lead to legal uncertainty, which would almost inevitably be detrimental to workers with their more limited access to specialised legal expertise (Prassl & Risak, 2017a; Rogers, 2016). Furthermore, it has been cautioned that there is a risk that employers would use this new complexity to re-classify genuine workers as falling into the intermediate category instead (Rogers, 2016). It is disputable to what degree this is a plausible scenario and whether such risks would be outweighed by the gains for those who are currently categorised as self-employed and accordingly denied any protection (Lobel, 2016).

It is beyond the scope of this article to evaluate the merits of introducing either a comprehensively conceived new category to include a broad group of independently working individuals or alternatively a set of rules targeted narrowly only to crowdworkers (which would avoid the dangers of abuse by 'downgrading' real workers). Instead, it aims to explore in an illustrative manner how rules could be designed to achieve these purposes – to provide genuine protection that fulfils, as far as possible, the same functions that labour law does for regular workers, but avoiding the pitfalls described in the previous subsection that would result from an unreflective application of the entirety of employment law. For this purpose, this article will focus on an area of labour law typically suggested as suitable for application to intermediate categories, whatever their definition: freedom of association and collective bargaining.[10] For these rights, there seems to be wide agreement about the appropriateness – or even necessity

10 See their designation as 'basic employment rights' by Prassl and Risak (2017a). See also De Stefano (2016).

from a human rights perspective – of a comprehensive extension to all workers in a way that enables their effective exercise. At the same time, more detailed reflections on how to make collective interest representation a reality for very atypical collectives of workers such as crowdworkers seem to be largely absent from the academic debate as of yet. For this reason, the remainder of this article aims to outline the major difficulties that are bound to occur in this context and evaluate options for addressing them.

Analysis: collective interest representation for crowdworkers

Theoretical considerations

The significance of an 'enabling' right

Any discussion of the significance of a legally guaranteed and practically functioning system of collective organisation benefits from a reference to the International Labour Organization (ILO), which has repeatedly highlighted freedom of association as 'the key enabling right' (e.g. International Labour Office Governing Body, 2000). This enabling characteristic appears all the more important in the context of a markedly feeble level of legal guarantees to protect the weaker of the contracting parties – as is undeniably the case in the field of crowdwork. At least in theory, collective bargaining has the promising potential to come up with precisely the tailor-made solution that legal regulation could hardly hope to achieve in the light of the sheer heterogeneity and rapidly changing nature of the platform economy. Undeniably, the extreme lack of economic power of an individual completing small-scale tasks for a handful of dollars for a remote requester stands in stark contrast to the crucial economic role of the 'crowd' as a collective, which could in principle expect to assume considerable bargaining power if its constituents were to find ways of acting in a concerted manner. Considerations of this kind have led some observers to regard legal frameworks for collective association and collective bargaining as a key element if regulation is to stand a chance of bringing about genuine improvements in the social situation of crowdworkers (Al-Ani & Stumpp, 2016; Klebe & Heuschmid, 2017; Mayo, 2016).

Suitability of collective labour law for a crowdworking environment?

As opposed to rights such as minimum wages and working time protection, which might be claimed with some justification to address primarily the situation of a personally dependent employee lacking the possibility of determining their income-generating activities independently, no such claim can be made for the right to collective interest representation. The latter is indisputably a tool meant to address economic rather than personal dependence and the power imbalance between the contracting parties – which, as set out above, is true for crowdworkers no less than for employees in the 'proper' sense of the term. From a practical point of view, crowdworkers also appear to have the same potential for organising collectively as other workers – if not an even greater one. Indeed, the unique point of departure of Internet-based work even offers new and promising opportunities for networking among a workforce that is by definition familiar with virtual networking, close and continuous

cooperation and exchange as well as rapid mainstreaming of movements, largely unrestrained by specific formal or financial barriers (Aloisi, 2016; Ranchordás, 2017; Salehi et al., 2015).

Such considerations may make a strong case for the compatibility of crowdwork and collective labour relations, but consideration must also be given to some of the fundamental preconditions and assumptions that underpin prevailing models of collective organisation and collective bargaining. This becomes obvious if we consider the ordinary processes involved when trade unions form structures and engage 'ordinary' employees in their activities. The initiation of such processes is bound to encounter major obstacles in a work environment such as crowdwork in its current forms. In particular, the flipside of the aforementioned low-barrier accessibility by the crowd in large numbers is the necessarily very loose nature of a community with a large but very volatile membership and poor prospects for developing real solidarity among its members. The international dimension of crowdsourcing and the geographical dispersion that results from this is also bound to contribute to heterogeneity and reduce the likelihood of genuinely common interests and solidarity – especially among crowdworkers from countries with fundamentally different levels of economic development, wages and prices (Aloisi, 2016; Felstiner, 2011; Holtgrewe & Schörpf, 2017; Salehi et al., 2015). In this respect, it should also be noted that, in contrast to 'ordinary' workers, crowdworkers are in constant competition with each other, so that even basic information sharing concerning work opportunities and strategies may be considered 'irrational' from an economic theory point of view (Benson, Sojourner & Umyarov, 2015). This and the lack of 'real' personal interaction may constitute substantial obstacles to action that would require a significant degree of commitment.

Even assuming that a genuine and representative solidary community capable of effective decision-making and action could be established, the question remains as to whether it could realistically assume a position resembling that of a trade union in bipartite or tripartite relations. Most notably, if – departing from *Blanpain's* much-cited assertion (see Blanpain, 1984; Jacobs, 1993; Britz & Schmidt, 2000; Vogt, 2016) that collective bargaining without a possibility to go on strike is essentially just collective begging – the genuine involvement of collectively organised crowdworkers would actually presuppose their potential to exert economic pressure on the 'employer' by concerted withdrawal of labour. This in turn is hardly conceivable in an environment characterised by short-term tasks that frequently do not require any form of continuity, which are distributed to a crowd on an international scale; the easy replaceability of one worker by another is effectively an insurmountable obstacle to any prospects of exercising pressure through collective action. Furthermore, observers of current developments in the crowdsourcing industry point towards a situation of clear excess labour supply (Cherry & Poster, 2016; Coimbra Henriques, 2015; Smith & Leberstein, 2015), so that a withdrawal of labour to a degree that is economically significant for the industry as a whole would require an unrealistically high degree of international participation in collective action. The targeting of action towards a specific crowdsourcer would be dependent on virtually universal participation. Those participating in such hypothetical collective actions would face a disproportionate risk

of retaliation from platforms and/or crowdsourcers; in a world where information spreads within a fraction of a second, their crowdworking accounts (if not de-registered right away) would immediately and durably be marked with the 'blemish' of having supported the action (Aloisi, 2016; Felstiner, 2011; Holtgrewe & Schörpf, 2017). Future platform activity would probably be possible only through re-registration via a new account, which is equivalent to losing a career status linked to the original account that may have taken years to establish.

Summing up, although the right to association and dialogue with the 'employer' may be considered a vital element of a legal regime that would do justice to the particularities of crowdwork, there seem to be compelling reasons to assume that existing models of collective labour law present some insurmountable obstacles to achieving this. This leads to the question whether and how a realisation of these rights could nevertheless be possible by means of an adoption of the principles of collective labour law that is not equivalent but analogous, based on an adaptation that gives due consideration to just these particularities.

Practical evidence

Is there a demand for association opportunities among crowdworkers?

Starting with the question whether there is a demand in the crowdworking community for mechanisms that allow for a collective pursuit of common interests, it cannot be overlooked that this is already happening in various forms. Although admittedly not comparable to 'genuine' trade union activity, diverse online tools supporting forms of collective organisation of crowdworkers have been emerging in the recent past and are observed with increasing interest by academic commenters as they develop.

So far, the central focus of such academic interest has been on the increasingly diverse engagement of crowdworkers offering their services on AMT. AMT is notorious for placing its crowd workforce in a very insecure situation, particularly, by failing to mandate a proper contractual relationship between requesters (the clients) and 'turkers' (the workers), which leaves the latter with no legal remedy in case payment for accomplished work is refused without reason and/or negative reviews have repercussions for their platform careers (Benson, Sojourner & Umyarov, 2015; Kingsley, Gray & Suri, 2015).[11] In response, a variety of online discussion forums and platforms dedicated to exchange between turkers have mushroomed since the early days of AMT. A by no means exhaustive list of these includes TurkerNation, MTurkGrind, Reddit's /r/HITsWorthTurkingFor, MTurk Crowd and MTurk Forum (Silberman & Irani, 2015/2016).

Two of the most remarkable frameworks for turkers' collective activities have actually been created through the purposive efforts of scholars researching crowdwork from different scientific perspectives.

11 Silberman and Irani (2015/2016) set out how both the requirement to give a reason for rejection and to answer to turkers' complaints are rendered meaningless as requesters can – and frequently do – fill the respective fields with a single character or automatically generated text, and eventually (2015/2016) note that 'AMT's rejection feature has effectively legalized wage theft'.

First, Turkopticon, created in 2008, provided turkers with a sophisticated tool to rate requesters according to various criteria including pay, pay speed, fairness of evaluation and communication, thereby offering information and warnings to their peers and also confronting requesters with the threat of losing their attractiveness as a contracting partner (Kingsley, Gray & Suri, 2015; Silberman & Irani, 2015/2016; Silberman, 2015). A majority of users reported that they valued the platform not only because it enabled information sharing but also for the opportunities it offered for socialising and 'feeling like a part of a worker community' (LaPlante & Silberman, 2016).

Another team of researchers followed suit by creating a platform called Dynamo, which may be considered to go one step further in resembling union-like worker collectives because it is explicitly devoted to the development of campaigns that give workers a common voice and help them in their quest for better working conditions (Zawacki, 2014). This platform was carefully designed to optimise conditions for such 'collective action' (Salehi et al., 2015), including a registration process that – unlike the forums and platforms mentioned so far – requires proof of regular turking (with a requirement for a minimum of 100 HITs completed on AMT) but makes sure that workers' Dynamo identities are not linked in any publicly recognisable way to their AMT accounts (Salehi et al., 2015). Dynamo users can post campaign ideas in short (maximum 140-character) descriptions and obtain a separate forum thread for those suggestions that receive 25 'upvotes' by other users (unless there is a larger number of 'downvotes'). Within these threads, the campaign can be developed using tools such as a MediaWiki installation and a mechanism for signing declarations (Zawacki, 2014; Salehi et al., 2015).

Is there a manifest need for legal intervention?

Precisely because of the existence of initiatives such as the ones mentioned above, it might be argued that legal intervention to grant crowdworkers a right to organise might actually be superfluous since effective collective mechanisms tailor-made to fit the needs of crowdworkers can already be created (Salehi et al., 2015).

And indeed there is evidence that the abovementioned web tools are in fact somewhat alleviating the great imbalance faced by crowdworkers in their everyday work. Notably, the much-investigated platform Turkopticon has developed an astonishing dynamic over the last few years. In early 2016, use of the Turkopticon's browser extensions[12] had grown to 35,000, and over 5 years, more than 14,000 users had posted 290,000 reviews of 42,000 requesters. Studies also support the conclusion that today most 'professional' AMT workers use Turkopticon (Silberman & Irani, 2015/2016; Silberman, 2015). The platform design is updated continually to optimise its functioning in constant dialogue with users and backed up by insights from research (Silberman & Irani, 2015/2016; Silberman, 2015). A recent study (Benson, Sojourner & Umyarov, 2015) exploring the effects of employer rating on Turkopticon found that these ratings are in fact meaningful both for workers and for

12 'Turkopticon' and 'Toggle Mixed Active Content'.

requesters on AMT. More specifically, one experiment testing the 'accuracy' of ratings showed that average wage outcomes for tasks completed for requesters with a 'good reputation' on Turkopticon were indeed 40% higher than those for 'bad reputation' requesters. From the requester's point of view, having a good reputation on Turkopticon helped to attract suitable crowdworkers to complete their requests twice as fast as having a bad reputation.

Furthermore, the numerous forums targeted at the crowdworker community are used very actively and have been shown to help not only with achieving better financial and career results but also with various other concerns (extending at times to issues such as crowdworkers' mental health) and have even triggered dialogue with requesters who care about their reputation and consequently seek to interact with workers, for example, to explain accidental blocking or rejection and so on (Silberman & Irani, 2015/2016). Finally, although the development history of Dynamo might still be too recent to draw meaningful conclusions, the platform's creators reported 6 months after its kick-off in mid-2014 that over the short period, it had attracted 470 registered turkers, 5,800 visitors and more than 32,000 views. Among 22 ideas for action, two had already been transformed into campaigns. The first of these had led to the drafting of a comprehensive online guide for academic requesters covering matters such as fair pay, how to respect turker privacy and how to respect turker communities online, which could subsequently be signed by registered turkers. The second, which was also broadly captured outside the community of Dynamo registrees, was a letter-writing campaign to Amazon CEO Jeff Bezos, meant to give turkers and their everyday struggle a 'human face' (Zawacki, 2014; Salehi et al., 2015).

All this evidence from the communitarian structures that have evolved among the workforce of AMT as the currently most numerous collective in the crowdworking world indicates that the lack of central elements that traditional collective labour law is built upon could potentially be 'replaced'. Notably, two features of crowdwork seem capable of empowering these workers even in the absence of the conventional means of exercising pressure on employers: the risk of a bad rating (lowering the requester's ability to attract qualified workers at favourable pay rates) and the threat of bad publicity as a result of targeted campaigning activities by a critical mass of workers. Both seem reasonably powerful means of – as Benson, Sojourner and Umyarov (2015) put it – 'disciplining' employers. Visibly, none of this has necessitated any prior legal intervention to emerge.

Having said that, and without wishing to downplay the remarkable progress of this awakening of collectivism among crowdworkers, it might be useful to recall just how far the achievements made up to now still have to go before they can offer any realistic prospect of improving any of the abovementioned major deficiencies of crowdwork from a worker's perspective. Ultimately, even studies that are basically full of praise for the swift development of these intiatives do point out that 'Turkopticon does not solve the asymmetry of market power' (Kingsley, Gray & Suri, 2015). While it might help crowdworkers to beware of those requesters with obviously unacceptable business practices, it has to be recalled that, as it stands, a rating on Turkopticon is basically an unfiltered accumulation of anonymous opinions, with no possibility of verifying their accuracy – as shown by the countless accounts of flawed or useless ratings and disputes

among the community. Because entries on the platform require an 'altruistic' motivation of investing time for providing information to a vast unknown community of turkers, the mechanism is obviously not immune to manipulation,[13] let alone a natural divergence of opinions among the highly heterogeneous international workforce about what constitutes 'fair' behaviour on the part of a requester.[14] And, although further technical improvements might find ways of addressing some of these issues, they suggest that an elimination of information imbalances is unlikely to be expected from rating systems (especially bearing in mind that requesters interested in upholding the imbalance may also benefit from technological advances).

Further research is needed to determine to what extent, if any, Turkopticon actually exerts the intended disciplinary effect on requesters. A context in which the market seems to be characterised by excess labour supply and falling wage rates puts into perspective the meaningfulness of the findings of the abovementioned study (Benson, Sojourner & Umyarov, 2015). Notably, some caution should be exercised before concluding that the claimed effect – that the best-rated requesters 'attract work of the same quality but at twice the rate as bad-reputation employers' (Benson, Sojourner & Umyarov, 2015) – would likely give a noticeable incentive to requesters to make a good rating on Turkopticon a priority. It should also be noted that even the creators of Turkopticon have expressed clear reservations vis-à-vis the suggestion that their tool should be considered as a 'Union 2.0' (Irani & Silberman, 2016), in an acknowledgement that there is a limit to how much pressure the platform can bring to bear on the employer. Furthermore, there are self-evident limits to a 'dialogue' that essentially consists in an accumulation of evaluations of specific work tasks and their providers by individuals.

As for approaches like the one taken in Dynamo, it would be even much more premature to try to gauge their potential as a real means of worker empowerment at this stage. It is hard to imagine that campaigns emerging from such a form of cooperation could rely on anything beyond soliciting public attention to bring pressure to bear on platforms by means of a threat of bad publicity. And while it can hardly be denied that much of the same is true for 'real' unions in sectors where workers are 'easily replaceable', so that a threat of strike can hardly be expected to impress the employer, it is nevertheless difficult not to conclude that the situation comes perilously close to Blainpain's above-cited image of 'collective begging'.[15]

Against this backdrop, it seems warranted to contemplate the potential utility of legal mechanisms that could equip a workforce that has shown that it is basically willing and able to unite with appropriate means, which would ensure that collective efforts

13 Ranging from defamation for revenge to the drafting of over-euphoric reviews, frequently raising the unverifiable suspicion that they might have been created by the requesters themselves.

14 So that, for example, the improvement of tools for detecting and avoiding requesters' manipulation of their own rating may be met by even faster development of more sophisticated manipulative tools. For a detailed account of problems concerning review reliability by the platform's operators, see Silberman and Irani (2015/2016).

15 One might also assume that crowdworkers, who are remote and 'invisible', face even greater difficulties in attracting public attention than unions representing marginalised workers – who can, for example, mount actions of great visibility and with a very clear connection to a specific employer to arouse the awareness and sympathy of a local community.

would at least stand a chance of genuinely influencing their working conditions. The natural starting points for such reflection are existing models of employee involvement that target situations that are at least to some extent comparable with those of crowdworkers.

In search of role models of employee involvement

Even in the 'non-digital' world of work one can observe – in a number of countries – legal models of employee involvement which do not necessarily require an actual balance of power in economic terms and are based on a more collaborative, rather than confrontational, approach. Such models are mainly present in the form of employee involvement at the enterprise level via specific bodies such as works councils. Crucially, these systems rely on legal arrangements that specify the concrete obligations related to workers' involvement, with a strong focus on procedural rules. Notwithstanding a substantial degree of diversity when it comes to arrangements under national law, the essence of this kind of regulation comes down to requiring the employer, firstly, to permit the establishment of workers' representation bodies in the undertaking and enable their functioning (frequently including paid leave and the provision of facilities for representatives' activities) and, secondly, to involve these bodies in decision-making on certain issues as defined by law. Broadly speaking, this involvement may take the form of (one-sided) information, consultation (requiring the employer to enter into a dialogue) or co-determination (implying a veto power of the workers' representation body).

In the European Union, where a number of countries have a well-established tradition of workers' representation in the described form, at least the mechanisms of information and consultation have been mainstreamed by binding directives, particularly, the SE (European Company) and SCE (European Cooperative Society) Directives, the European Works Council Directive and the Framework Directive on Information and Consultation. These have been supplemented by various more specific provisions in legal acts such as the Collective Redundancies Directive, the Transfer of Undertakings Directive, the Insolvency Directive and the Merger Directive, all of which mandate the representatives' involvement under specific circumstances. To illustrate, according to Point 1(a) of the subsidiary rules in the annex to the European Works Council Directive, (mere) information 'shall relate in particular to the structure, economic and financial situation, probable development and production and sales of the [. . .] undertaking', whereas additional consultation is required

> *in particular [on] the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.*

Legally granted co-determination rights, by contrast, exist only in a minority of countries and are of major practical relevance mainly in the Benelux countries, Germany and Austria. As an illustration, the areas made conditional upon the works council's agreement by Article 27 of the Dutch Works Councils Law (*Wet op de ondernemingsraden*) include the institution of pension or life insurance funds; working

time and rest agreements; salary scale and bonus schemes; workplace rules about working conditions, sick leave and reintegration; general recruitment, promotion or dismissal policies; and general rules on training, staff assessment, company welfare, consultation meetings, complaint procedures, personal data processing, control measures and whistleblowing policies. Similar issues are listed in the equally extensive Article 87 of the German Industrial Constitution Act (*Betriebsverfassungsgesetz*). The consent of the representatives can usually be replaced by a collective agreement, a court order (as in the Netherlands) and/or specific arbitration bodies that tend to have a bipartite composition (such as the German conciliation body/*Einigungsstelle*). This may be different for specifically sensitive areas, such as the introduction of disciplinary rules, processing of personal data, control measures and specific remuneration schemes such as piece work, for which Article 96 of the Austrian Works Constitution Act (*Arbeitsverfassungsgesetz*) does not permit replacement by a decision of the otherwise competent bipartite body (*Schlichtungsstelle*). Furthermore, a number of legislations place the day-to-day management of institutions such as, notably, company-internal welfare facilities and training schemes fully or partly into the hand of workers' representatives, frequently in cooperation with the management, such as in Article 15(h) of the Belgian Enterprise Life Organisation Law (*Wet houdende organisatie van het bedrijfsleven*).

To summarise, at least some countries have put in place relatively tight procedural rules to ensure that workers' representatives will have a say on virtually all issues that concern employees' interests. These straightforward legal requirements do not necessitate any form of 'power struggle' between management and labour, and, in particular, the existence of co-determination rights in certain areas may be conducive to making an employer interested in a 'good relationship' with its workers' representation body.

From existing models to analogies suitable for crowdworkers

Following this line of reasoning, the key question that is raised relates to the merits of using such models of employee involvement as a starting point for conceiving a system of analogous rights for crowdworkers for future legislation. By contrast to a 'crowdsourcer-targeted' mechanism such as Turkopticon (aimed at the requester), the actor of choice to represent the 'employer's side' in such a model would most likely be the platform provider – as the only single institution to which the entire workforce is connected and which basically has the power to determine the conditions of the work performance mediated via the platform by means of clauses in its TOS that both requesters and workers are required to accept.

Using such an approach, it would be conceivable for a wide range of platform policies to be made subject to obligatory information and/or consultation when introduced or amended. Presupposing the existence of a body that is legally recognised to represent workers' interests (I elaborate on this point below), information obligations could reasonably be construed broadly as the presumably continuous availability of all relevant actors online reduces the costs of communication as such virtually to zero. This implies that, to start with, all information that is neither difficult to retrieve for the platform provider nor 'sensitive' (in the sense of a justified interest in confidentiality) could be made subject to an unrestricted information obligation. And while relevant

updates of the TOS applicable to crowdworkers should be communicated to all workers anyway, so that representatives will already be aware of them, the information requirement might, for instance, also relate to changes to the TOS applicable to crowdsourcers or to any general features of the platform.

Beyond this, one could argue that the typical contents of an employer's information obligation concerning the structure, economic and financial situation of the undertaking would be just as relevant in the crowdworking context as in the offline world to those whose working lives rely on income from work on specific platforms. Notably, the financial situations of platform providers can be presumed to be much more volatile than those of undertakings operating in more traditional sectors of the economy, possibly changing from a boom phase to an imminent threat of business closure within very short time frames.[16] Information obligations in this field would self-evidently require secure transmission of information to identifiable representatives under a strict confidentiality obligation. While this would doubtlessly be technically possible, one may imagine that such a rule would turn out to be much more controversial than in the context of an actual employment relationship, where at least a certain level of mutual trust can be assumed through the personal relationship that exists between the management and representatives with a usually long-term attachment to the undertaking who do not simultaneously work for a competitor (which may well be the case for crowdworkers who are active on several platforms). Such considerations indicate that a comprehensive prior policy debate would be essential for determining what form and degree of business transparency could and should be required.

With regard to consultation, needless to say, numerous items that are typical in traditional enterprises, relating to matters of employment and work organisation (such as redundancies, production schedules, etc.), would be obsolete in the context of crowdwork. The natural focus of consultation would most realistically lie on the 'crowdwork equivalent' of working conditions and work organisation, which are the platform rules as contained in its TOS, and possibly other features of interest to the workforce, such as tools for mutual evaluation of crowdsourcers and crowdworkers, complaints mechanisms and dispute settlement procedures. In respect of such issues, the platform provider could be reasonably expected to 'listen' to crowdworkers' opinions and proposals by some means. The crucial question would of course be how to ensure that such an obligation does not end up as a mere farce, as is evidently the case in relation to the abovementioned obligation of requesters to explain their reasons for a denial of payment on AMT (Silberman & Irani, 2015/2016). As in existing regulations on consultation mechanisms, some form of good faith obligation subject also to judicial control might be an indispensable starting point, but inspiration could also be drawn from procedural prescriptions concerning the forms in which dialogue

16 As shown by the case of Homejoy, a former major player in the gig economy, a failure of communication between platforms and workers may not only be a reason for workers to be caught off-guard by an unexpected closure – it may actually *cause* the closure itself (in the mentioned case, a class action had been brought against the provider by crowdworkers demanding to be granted employee status, whereupon the provider decided to terminate any further market activity: see Deamicis, 2015).

should take place – for example, by entitling workers' representatives to at least one substantially reasoned reply in writing and one opportunity for direct consultation in a more dialogue-like setting (say, by means of video conferencing) per item of its agenda within a given time frame.

A final question concerns whether a right of co-determination should be conferred on crowdworkers' representatives. At first sight, this might seem to be a very far-fetched proposal, considering that even 'real' workers are not provided with this instrument in the majority of legal orders, even within the European Union. Having said that, it could be argued that such a mechanism might constitute a solution for the dilemma that a legislative determination of working conditions in crowdwork (for instance, by prohibiting certain clauses in a platform's TOS) seems so difficult to achieve, due *inter alia* to the great diversity of platforms, the rapid evolution of their operating structures and great uncertainties as to the practical implications of different forms of regulation. By contrast, a framework that is the outcome of negotiations between platform management and workers' representatives would seem to be much more flexible and more likely to be capable of addressing those concerns that are most pressing for workers.

Having said that, the establishment of a dialogue might realistically necessitate measures to account for the fundamental imbalance of powers that makes the workers' side virtually unable to press for any of its demands. Here, again by analogy to the existing models of co-determination, a possible approach might be to equip the workers' representation body with certain 'trump cards' in the sense of giving it a veto right on certain issues that are particularly sensitive or unfavourable for workers. This might include, for instance, the processing of personal data and their transmission to crowdsourcers, the permissibility of certain payment structures that leave crowdworkers without any remedy against non-payment, or excessive consideration periods for requesters to decide on the approval of already completed work. The existence of such veto rights on certain issues might thus pave the way for genuine negotiations, in which the labour side might make its agreement in the named areas conditional on concessions on the part of the management – which may include the introduction of integrated review and rating mechanisms (which are frequently considered preferable to separate tools such as Turkopticon: see Silberman & Irani, 2015/2016), arrangements for dispute settlement or mediation, insurance policies and so on.

While such a scenario would seem a promising approach in terms of stimulating genuine exchange and bargaining activities between platforms and their crowdworkers, numerous questions remain to be dealt with. Notably, if a negotiation body representing crowdworkers is to be given any substantive competence to act on behalf of the latter and even conclude agreements determining future arrangements, issues of representativeness are bound to arise. Considering the sheer number of individuals involved in crowdwork, with widely diverging levels of participation intensity, a determination on the basis of 'one worker, one vote' would hardly be appropriate. Here, it may prove useful to refer to the innovative approach of Dynamo, which – as indicated – makes access to the platform's key functions (initiating campaigns and voting on them) dependent on having completed a certain number of HITs on AMT. Crucially, this is

done without making the link between the user and their AMT identity visible in any way that would endanger workers' anonymity which is key to protecting campaigning activity from retaliation (such as the blocking of a turker by a requester). One possible option might be to consider departing from this concept of an anonymous link and develop it further by setting up a system of weighted voting rights. This could enable the combination of a very inclusive approach, in which all workers who have a subjective interest in who is going to represent the crowd's interests are able to get involved in the process including pre-election debates, with a safeguard for representativeness, because in the decisive voting process the weight of the individual vote would be determined by the regularity and intensity of that member's work activity on the platform.

Finally, one important component of legal rules on workers' representation in the national context relates to financial matters. To the degree that the European Works Council Directive is taken as an illustration of a certain minimum consensus about the framework in which workers' representation should take place, reference could be made to Point 6 of the subsidiary rules, which clearly requires that '[t]he operating expenses of the European Works Council shall be borne by the central management', which should include all appropriate financial and material resources and '[i]n particular, the cost of organising meetings and arranging for interpretation facilities and the accommodation and travelling expenses of members of the European Works Council and its select committee', whereby national legislation can determine limits such as cost compensation for consulting not more than one expert. Translated to the crowdwork world, this principle could be applied when it comes to the maintenance of the platform, which might be considered the online equivalent of the physical facilities such as meeting rooms that must be provided by employers. In the literature, it has been stressed also with regard to platforms such as Turkopticon and Dynamo that currently they can work as they do solely because researchers are sufficiently interested in their development to maintain and develop the respective platforms free of charge for users (Benson, Sojourner & Umyarov, 2015; Salehi et al., 2015; Irani and Silberman, 2016; Silberman & Irani, 2015/2016; Silberman, 2015). Needless to say, in the long run this cannot be a sustainable financial basis for systems that are continually growing, becoming more complex and aspiring to turn into a permanent feature of the crowdwork world, which must inevitably lose the particular interest for research that currently justifies its constant monitoring.

Discussions on how financing could be ensured in the long-term perspective are already considering – besides scenarios such as support by government agencies, labour organisations or foundations – legal requirements that the platform operator should bear the costs of a system maintained by an independent actor for the organisation of its workforce (Silberman & Irani, 2015/2016). Such a solution seems feasible if payments are calculated based on the experience of existing crowdworker organisation platforms regarding the work intensity of maintenance. Beyond that, regulation providing for equivalents to the paid leave that employee representatives are entitled to in many legislations might also be considered. Most likely, this would also need to take the form of a plain payment obligation on the part of the platform provider.

Summing up, existing models of firm-level employee representation, while ill-suited for a one-to-one adoption in the gig economy, appear to provide an array of leverage points for analogies that could be useful for designing a model suitable for crowdworkers. Their closer exploration in relation to the particularities of the crowdsourcing world could provide evidence that different degrees of modification might enable legislators to develop a framework that preserves the functions of existing rules in a different form.

Discussion and conclusion

This article has aimed to explore possibilities for addressing the working reality in which crowdworkers enjoy almost no social protection by analysing rules of collective labour law with a view to their potential for benefitting crowdworkers when applied in a modified way. Self-evidently, this very cursory review of possible directions of legal regulation in support of crowdworkers' collective rights and genuine involvement can only give a very abstract insight into the range of concrete measures that might be taken, and the gains and risks to be expected. It deals neither with the integration of such measures in to the existing legal system of any particular country nor with the problems that are necessarily connected with any form of regulation under one state's law targeted at multinational economic entities with almost no real local ties to any specific country. Naturally, the preeminent risk of evasion by relocation will be of concern for any reform attempt that makes legislation in one jurisdiction appear significantly more burdensome for such undertakings. Also questions of competition law and anti-trust regulation, which are bound to arise in the context of associations of persons who are formally self-employed[17], could not be addressed in the present context.

What this contribution aims to provide, rather, is a preliminary reflection on the methods and means by which crowdwork and labour law – especially collective labour law – could be made compatible. It argues that, if a workable solution of real value for improving rights, security and working conditions in the crowdsourcing industry is to be found, simple analogies will be of little value. Rather, the pursuit of socio-economic fairness in this sector will require further in-depth analysis and scrutiny of a range of issues that take account of its specific characteristics. As has been discussed elsewhere,[18] any concrete steps in this direction will benefit from a multidisciplinary and inclusive debate that should involve all relevant stakeholders to increase the chances of finding an appropriate approach to the largely uncharted and fast-changing world of crowdwork. In this sense, the present contribution is meant to act as a stimulus to potentially fruitful scientific and regulatory debates in the interest of filling a blind spot in present-day social protection systems.

17 Cf. for US law Bisom-Rapp (2016), Harris and Krueger (2015); for the European Union the CJEU's judgment in the case of FNV Kunsten Informatie en Media, C-413/13, EU:C:2014:2411 (pronounced on 12 April 2014) and the comments by Donini et al. (2017); Prassl and Risak (2017a); Prassl and Risak (2017b).

18 For example, Silberman and Irani (2015/2016).

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Traditional and new forms of organisation and representation in the platform economy

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ABSTRACT
This article investigates whether the existing frameworks of industrial relations and social dialogue can also be applied to work in the platform economy. It further questions what role the traditional Social Partners can play in dealing with the challenges of this new form of work. The article maps new forms of organisation, of both workers and platforms, and explores how these interact with the traditional actors and structures. While organising platform workers is difficult, numerous successful efforts to do so exist, including by grassroots organisations, worker cooperatives and formal unions. All of these, to different degrees, perform similar functions to those of traditional Social Partners.

KEY WORDS
platform economy, trade unions, new forms of organisation, industrial relations, social dialogue

Introduction
Digitalisation is an important driver of economic change and alternative work arrangements, of which work in the platform economy is one particular form that has been subject to much debate. The platform economy can be defined as that part of the economy composed of digital platforms that enable users to share, lend, rent or purchase goods and services (Kilhoffer, Lenaerts & Beblavý, 2017). In the past few

years, platforms have rapidly gained ground in the European Union (EU), attracting an ever increasing number of users and workers.

For some, platform work is seen as entailing more flexibility, greater access to the labour market, additional income and other benefits. Others regard the platform economy as disenfranchising vulnerable workers and legitimising a particularly precarious form of work. The opportunities and risks of platform work, and what to do about it, have become much-discussed topics in both academic and policymaker circles – particularly in Europe, in the context of the Digital Single Market and the European Agenda on the Collaborative Economy (European Commission, 2016).

As the use of platforms expands, trade unions have become increasingly interested in engaging with and representing platform workers (Kilhoffer, Lenaerts & Beblavý, 2017). In several EU Member States, trade unions are undertaking collective actions aimed at supporting platform workers and leading negotiations on their behalf (Eurofound, 2018b; Vandaele, 2018). The unions' involvement has been encouraged by workers as well as policymakers, notably the EU institutions.

Yet, the relationship between the platform economy and the existing structures of industrial relations is not immediately intuitively obvious (Kilhoffer, Lenaerts & Beblavý, 2017; Eurofound, 2018b). Platforms and workers do not generally fall into the roles of employers and employees: platform workers are not usually employees, and platforms are not usually employers, though exceptions exist for both. How then can the organisation of these workers into employee organisations, or of platforms into employer organisations, be envisaged? A related matter is that some platform workers are incorrectly classified as self-employed, but in practice maintain an employee–employer relation with the platform (Aloisi, 2016; Rogers, 2016). This issue has resulted in several court cases, of which many are yet to be settled. Finally, the role of governments in dealing with the platform economy also differs from its usual form.

Although these dynamics are much discussed, they are poorly understood, which is why the organisation and representation of platforms and their workers warrants further analysis. The platform economy has created new conflicts and made old conflicts more salient. These include the declining share of formally employed workers, and the corresponding increase in self-employment (Sheehan & McNamara, 2015). The growing prevalence of non-standard work arrangements has corresponded with a decline in union membership in many countries (Visser, 2011). At the same time, Social Partners as well as workers are increasingly concerned about the impact of digitalisation on work more generally (Degryse, 2016; Vandaele, 2018). Thus, a number of cross-cutting issues are at play, which shape the interactions between platforms, platform workers and traditional actors and give rise to possibilities for engagement between new actors, such as grassroots organisations of platform workers, and traditional trade unions.

Against this background, this article investigates the industrial relations and social dialogue in the platform economy. By 'industrial relations', we mean the collective relationships between workers, employers and their respective representatives, including the tripartite dimension where public authorities at different levels are involved. 'Social dialogue' refers here to all communications between representatives of

the Social Partners[1] and the government, ranging from the exchange of information to collective negotiations. Historically, industrial relations and social dialogue have been seen as a cornerstone of the European social model (European Commission, 2015a, 2015b).

This article focuses specifically on three angles: first, we examine the role of industrial relations and social dialogue in the platform economy (and how this is linked to the debate on the employment status of platform workers and their working conditions); second, we investigate what levels of organisation and representation exist, both informally and formally; and third, we look at the activities that representation entails (from information exchange to negotiations). With regard to the two latter questions, our aim is to understand what types of actions are undertaken by whom, studying both the traditional Social Partners and new forms of grassroots organisation.

In this article, we present evidence that platform workers and, to a much more limited extent, platforms are increasingly represented and organised. We document new forms of grassroots organisation, as well as cooperation with the traditional actors in industrial relations. The article further shows that different types of actions and initiatives exist side by side with grassroots organisations providing information to workers and unions entering into negotiations with platform owners. Different forms of organisation could come into competition with each other but generally appear to collaborate (Vandaele, 2018). It is clear that much more is happening in terms of industrial relations and social dialogue in the platform economy than might be expected at first glance.

This analysis derives from desk research and is limited to countries where substantial activity connecting industrial relations and the platform economy has been established. It is based on a thorough review of the academic and grey literature, publications of Social Partners and other organisations, blog posts and newspaper articles, as well as other materials, most of which was published before the spring of 2018. The scope of the literature review is broad as there is little academic research on organisation and representation in the platform economy. For that reason, the desk research has also been enriched with a number of expert interviews with representatives of the government and Social Partners. Interviews were used to validate information gathered through desk research and to gather additional insights.

The remainder of this article is organised as follows. The following section offers a brief discussion on work in the platform economy. Although the working and employment conditions of platform workers are not the main focus of this article, this section is fundamental to providing an explanation of why there could be a role for industrial relations and social dialogue in the platform economy and what this role might entail. The subsequent section elaborates on the industrial relations and social dialogue angle, carefully considering whether the existing structures could also be applied to platform workers and platforms. It also reflects on new forms of organisation and representation. Within this section, both informal and formal forms of organisation and the activities of these groups (from information exchange to negotiations) are discussed. The final section of the article formulates the conclusions of this work.

1 'Social partners' is a term generally used in Europe to refer to representatives of management and labour (employers' organisations and trade unions).

Work in the platform economy: conditions and status

As a starting point for the analysis of industrial relations and social dialogue in the platform economy and the roles of traditional and new actors, a brief discussion on the nature of platform work is informative. Research into work in the platform economy has accelerated, especially in recent years, with the studies of Codagnone, Biagi and Abadie (2016), Drahokoupil and Fabo (2016), Huws, Spencer and Joyce (2016), Prassl and Risak (2016) and Schmidt (2017) being prominent examples. Around the same time, platform work became a much-discussed topic in public debates, which highlighted both the opportunities and the risks associated with this new employment form (Eurofound, 2018b).

Nevertheless, the debate on work in the platform economy is obfuscated by the abundance of terms that are used for identical or similar phenomena – or not (Codagnone, Biagi & Abadie, 2016; Eurofound, 2018a). Concepts such as 'collaborative economy' or 'sharing economy', which were popularised early on, are increasingly refuted, because they convey an image that does not necessarily match with the business models of the platforms (Codagnone, Biagi & Abadie, 2016; Eurofound, 2018b). As a result, the debate has moved away from its initial focus on altruistic platforms to platforms that present larger regulatory challenges, such as those intermediating paid labour. For the purpose of this article, the more neutral term 'platform economy' is, therefore, preferred.

Work in the platform economy is highly diverse, and is becoming more heterogeneous as the platform economy develops (Kilhoffer, Lenaerts & Beblavý, 2017). Following De Groen, Maselli and Fabo (2016), platform work can be classified into four groups as illustrated in Table 1, depending on whether services are provided offline or online and on the level of skills required to perform them. While this distinction may appear simplistic, it does capture the diversity of platform work rather well. Even in more sophisticated classifications and typologies such as those of Schmidt (2017) and Eurofound (2018b), the format of service provision and the levels of skills required are key classification elements. All four types identified in Table 1 come with their own implications for the employment and working conditions of the workers involved. Especially, low-skilled activities that are carried out online are believed to be precarious (e.g. click work on Amazon Mechanical Turk typically involves micro tasks that are remunerated by just a few cents but are still highly competitive; Silberman & Irani, 2016). In addition, as will become clear below, there are differences in the extent of organisation of platform workers involved in different types of work.

Table 1: Conceptualisation of work in the platform economy

Virtual/global services		Physical/local services	
Low-skilled	High-skilled	Low-skilled	High-skilled
e.g. MTurk	e.g. Upwork	e.g. Uber	e.g. TakeLessons

Source: De Groen, Maselli and Fabo (2016).

Against this background, concerns have been raised about the employment and working conditions facing those working in the platform economy. Workers' employment status is typically tied to specific rights and obligations, for example, in the areas of taxation, social insurance provision, maternity and parental leave, workplace health and safety regulations and paid holidays. If platform workers are unaware of their status or misclassified they may, for example, miss out on some of the benefits they are entitled to. In responding to these challenges, platform workers have turned to traditional trade unions, started their own associations or have taken issues to court, for example in France, Italy and the United Kingdom.

As a new form of labour, platform work often presents a challenge for clear determination of employment status. By default, platform workers are regarded as self-employed in most EU Member States, but not always (Goudin, 2016; Eurofound, 2018b). In many of the services where platform economy models are prevalent (e.g. taxi services, domestic cleaning), self-employment was already the norm before the advent of online platforms. However, workers are not always aware of their employment status or of the implications that this may have (Cheselina, 2017). Platforms may also offer workers different types of contracts, even when identical work is being performed (e.g. in Germany, depending on the number of hours one wants to work, Foodora offers three different types of contract), which further complicates the issue. Although issues relating to categorisation of workers are not new (Goudin, 2016), working arrangements in the platform economy have made the employment status debate considerably more salient (Prassl & Risak, 2016).

France has been at the forefront in addressing employment issues raised by the digital economy and particularly the platform economy. Recognising the limitations of the binary system of French labour law, whereby workers are classified either as self-employed or as employees, instead of creating a new employment category, the government has given certain minimum social rights to platform workers under the *Act of 8 August 2016 on work, modernisation of social dialogue and securing of career paths – Loi n. 2016-1088 du 8 août 2016, Article 60*. As a result, the rights of platform workers now include the possibility to benefit from work-related accident insurance (which would be the responsibility of the online platform), continued professional training and the validation of the working experience with the platform. More relevant in the context of representation, the law also gives platform workers the right to constitute a trade union, to be a member of a trade union and to take collective action in defence of their interests. There is also an ongoing debate on unemployment insurance for independent workers (*l'assurance chômage indépendants*).

One aspect of platform work that has been noted for its potential to lead to the abuse and exploitation of platform workers is the way that platforms are able to determine the general terms and conditions of contracts unilaterally (Deutscher Bundestag, 2015). As there is no specific regulatory framework for platform work in most countries and the employment status of workers is legally unclear, the terms and conditions stipulated by the platforms indicate the status of workers and determine the formal relationships between the platform, worker and client (Eurofound, 2018b). The terms and conditions are also frequently ambiguous, and even contain clauses that violate the freedom usually allotted to self-employed individuals to complete their work

at a time and place and in the manner of their choice (Schmidt, 2015). The terminology contained within contracts for platform work, while generally vague, can also be illustrative. For example, Uber uses the euphemism 'partners' to describe its drivers, which is regarded as a sign of bogus self-employment in some studies (Jorens & van Buynder, 2008).

Some trade unions have taken a step further towards addressing this ambiguous employment status of some platform workers. For example, the GMB, a general British trade union, filed a case against Uber on behalf of 17 Uber drivers alleging that Uber had falsely classified its drivers as self-employed. The GMB won the ruling, which was unambiguous and concluded that Uber drivers are workers and, therefore, entitled to basic workers' rights including holiday pay and the minimum wage (Osborne, 2016).

Organisation and representation in the platform economy: the role for traditional and new actors

Historically, employee and employer associations in Europe emerged as a response to precarious working conditions in the second industrial revolution. The Social Partners have traditionally had an important role in the EU as is recognised in Article 152 of the Treaty on the Functioning of the Union (effective since 1958). It is still the case that the Social Partners are seen as prime actors in the EU policy domain. With work in the platform economy challenging legal and regulatory frameworks, governments and the Social Partners have started to take note. When the employment and working conditions of platform workers started to be questioned and it was suggested that platform work might crowd out more protected (and sometimes unionised) forms of work, the Social Partners got involved in the platform economy debate. In Germany, for example, the trade union IG Metall developed an interest in platform work when large and influential German companies began outsourcing part of their activities to platforms. This raised concerns about working conditions and wages with the trade union (Eurofound, 2018b).

Since their inception, the Social Partners have taken up different functions. The trade unions, for example, are concerned with building and maintaining an identity, collective bargaining, protection of worker rights, collecting and sharing information for workers, ensuring workers access to social protection, and developing human capital through education and training. These functions are also relevant in the platform economy. The EU has taken the stance that Social Partners have an essential role to play in the development of the platform economy (European Commission, 2016). Below, we assess to what extent Social Partners are actually involved in the platform economy and what forms of organisation have emerged so far.

Applying the industrial relations framework to the platform economy

Industrial relations structures, which have a rich history, are well established in the EU, and in all of its Member States, bipartite and tripartite social dialogue embedded in the regulatory frameworks governing labour relations. With these structures and practices in place (as depicted in Figure 1), the question is to what extent the platform economy can be introduced into this framework?

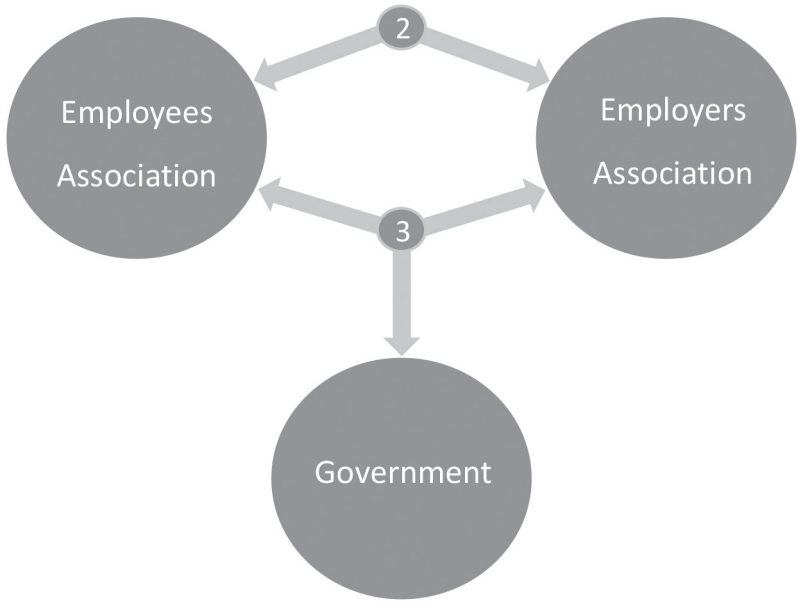

Figure 1: Conceptualisation of bipartite and tripartite social dialogue

Note: The bipartite relationship is indicated with number 2, and the tripartite is indicated with number 3.
Source: Authors' elaboration.

We explore this question with reference to Figure 2. Already, at first glance, it is clear that several reservations must be noted (Kilhoffer, Lenaerts & Beblavý, 2017). Looking at labour supply, platform workers tend to be classified as self-employed, even if their activities correspond in many ways to a traditional employment relationship. This complicates their organisation and representation (e.g. because of anti-cartel laws or because workers consider themselves to be self-employed and do not see the need for organisation). Second, platforms do not usually recognise themselves as employers but rather consider themselves to be 'intermediaries' between workers and clients, or even as tech start-ups (Lenaerts et al., 2018). Third, while the government representatives in industrial relations are typically those at the sectoral, national or supranational level, those involved in discussions with actors in the platform economy may primarily be active at lower levels (e.g. the local level). Fourth, some soft forms of organisation do not function exactly like trade unions but rather as a sort of watchdog or intermediary. Examples of this are platform cooperatives such as SMart[2] or union-affiliated guilds such as the Collectif des coursier-e-s/KoeriersKollektief in Belgium[3] (Vandaele, 2018). Such initiatives frequently receive support from established trade unions.

2 See https://smart-eu.org/.
3 See: https://cne.csc-en-ligne.be/default.html.

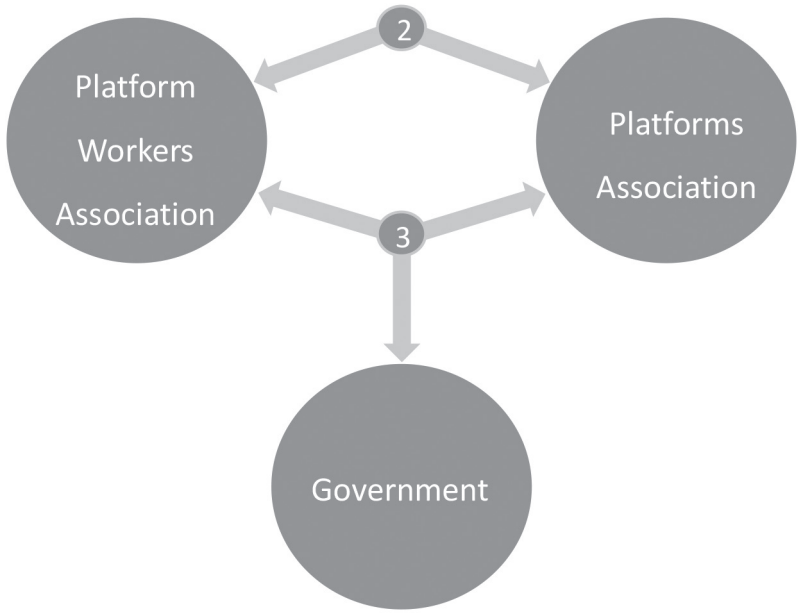

Figure 2: Potential conceptualisation of bipartite and tripartite social dialogue in the platform economy

Note: Bipartite relationships are indicated by the number 2, and tripartite relationships by the number 3.
Source: Authors' elaboration.

These observations suggest that industrial relations and social dialogue are likely to differ from the traditional ones shown in Figure 1 in the context of the platform economy. Nevertheless, there are also cases in which the relationship shown in Figure 2 is nearly a perfect fit, which happens when platforms formally employ their workers. Although these cases are the exception and not the rule, such examples do exist. In Sweden, for example, Foodora couriers have an employment contract with the platform. Another example is Germany, where, platform workers of Foodora and Book A Tiger are employees, and thus, the relevant organisational structures for German employees apply to them. However, in the German case, both platforms began operations using self-employment contracts and only started using the employee model after pressure from the Social Partners. In France, a recently founded delivery start-up, Stuart, which had been collaborating with large firms such as Carrefour and Zalando, was bought by La Poste, the national postal service company.[4] La Poste envisions offering longer term employment contracts (currently 14% of workers have a full-time employment contract) as well as a social protection package (details unknown) to Stuart's independent workers (Steinman, 2017).

4 See the press release of La Poste regarding the 100% acquisition of the Stuart start-up: https://legroupe.laposte.fr/content/search?presse=1&SearchText=stuart (accessed on January 14, 2018).

In the more common case where platform workers are self-employed, a variety of different forms of organisation are possible. In some countries, unions have long existed specifically for self-employed workers, especially in the cultural and social domains (Vandaele & Leschke, 2010). Examples are trade unions representing journalists, actors and film and TV workers in the United Kingdom. In other cases, such unions were established more recently, such as the Freelancers Union in the USA. In other cases, employee organisations have represented self-employed workers alongside employees, and some have opened up their statutes to the self-employed recently (e.g. IG Metall in Germany; Eurofound, 2018a and as confirmed in expert interviews with representatives of trade unions). The German United Services Trade Union Ver.di, for instance, counts some 30,000 self-employed workers as members.

We now proceed to examine the extent to which the platform economy is compatible with industrial relations and to what extent actors in the platform economy have penetrated the traditional industrial relations framework.

To what extent are platform workers organised or represented?

In this section, we discuss the organisation and representation of platform workers along two axes: the level of organisation (which captures the formality of the effort) and what actions are undertaken (which captures the types of activities). Both are discussed simultaneously.

Soft forms of organisation are relatively common in the platform economy (Silberman & Irani, 2016; Kilhoffer, Lenaerts & Beblavý, 2017; Vandaele, 2018; Eurofound, 2018a). At the least formal level, these may include chat forums on social media, mobile phone app groups or other web forums, facilitating communication between platform workers. Such soft forms of organisation are worth considering as they are performing some of the functions of trade unions and can indicate the first steps to more formal organisation and representation. Interestingly, some traditional trade unions have also turned to social media to engage with their members (Carneiro, 2018). In addition, grassroots efforts of platform workers are growing in number and relevance (e.g. there are multiple bottom-up initiatives for Uber drivers, such as UberPeople.net; Kilhoffer, Lenaerts and Beblavý, 2017). In particular, social media platforms, such as Facebook, have proven to be effective tools for these purposes.

One of the first soft forms of organisation was Turkopticon. Turkopticon was created by Silberman and Irani in response to reports of 'low pay, slow pay, poor communication, and arbitrary rejections (i.e. non-payment)' for Amazon Mechanical Turk (AMT) workers (Silberman & Irani, 2016). Turkopticon's website also links to grassroots web forums run by and for AMT workers (Turkers), on which information about the AMT marketplace is shared. Turkopticon further maintains a web browser extension that allows Turkers to see and contribute ratings for clients based on pay, pay speed, fairness of work evaluation and communication. Another example of informal organisation is UberPeople.net, an informal community of Uber drivers (Karanovic, Berends & Engel, 2017). Within this community, Uber drivers give one another advice on legal issues. For example, threads stress the need to use 'dash cams' to protect oneself against accusations of unprofessional conduct and verify claims made against passengers.

Other noteworthy efforts of self-organisation models include collectives, cooperatives and mutuals. Some organisations such as Outlandish have utilised a business model owned by the workers themselves (i.e. cooperatives; Robbins, 2014; Parsons, 2016). In other cases, organisations such as the Freelancers Union of the United States legally function as a mutual rather than a union but nevertheless provide a number of services typical of trade unions (e.g. discounted social protection; Heckscher, Horowitz & Erickson, 2010).

Branches of platform work that are particularly well organised are those involving drivers and bicycle couriers. Organisations of the latter, in particular, are prevalent in a number of major European cities. The reason for the relatively high level of activity may be that these workers work in close proximity with one another and are able to recognise each other as working for the same platform, facilitating the building of contacts. It may also be that their work frequently shares a number of features of employment (e.g. mandatory hours, wearing a uniform), while not always receiving the benefits of employment. Whatever the reason, drivers and bicycle couriers for platforms including Uber, Foodora and Deliveroo have organised and held protests over working conditions and remuneration.

In France, bike riders for various food delivery platforms such as Deliveroo, Foodora and UberEats have organised themselves into a collective called CLAP – *Collectif des livreurs autonomes de Paris*. CLAP underlines the precarious conditions of workers with a high dependence on the platforms and defends the rights of the workers to exercise their profession with decent working conditions and social protection. This organisation mainly uses social media channels (e.g. Facebook) to reach out to couriers to organise gatherings and to allow them to express their problems and experiences working for food delivery platforms. The members of CLAP also advocate the idea of providing further self-management to the couriers and suggest ways of developing a new platform cooperative, which would be owned by the couriers themselves (Leblond & Voldoire, 2017).[5] One such attempt is CoopCycle,[6] which is an open source software managed by volunteers that enables couriers to organise their own delivery work in the city in which they operate (Leblond & Voldoire, 2017).

In the USA, the Teamsters 117 in Seattle and the Independent Drivers' Guild of New York City provide examples of organisation of drivers. The Independent Drivers Guild was formed in May 2016 as part of a compromise in the New York City area between Uber and the International Association of Machinists and Aerospace Workers. As part of the arrangement, members of the Guild met regularly with Uber officials in New York City, but the Guild also had to agree not to challenge Uber's stance that its drivers are independent contractors rather than employees. The Guild has had successes, such as requiring Uber to offer an in-app tipping option and raising the minimum fare rate (Scheiber, 2017). Nevertheless, it has also faced criticism from unions such as the Teamsters and New York Taxi Workers Alliance for brokering a deal with Uber before building a more formal organisation of drivers (Scheiber, 2017).

5 As part of our interviews, we also had the chance to talk to two members of CLAP who expressed these opinions.

6 https://coopcycle.org/en/.

A much discussed example of a cooperative engaging platform workers is SMart (Kilhoffer & Lenaerts, 2017; Vandaele, 2017). Until late 2017, SMart had a partnership with bicycle delivery platform Deliveroo in Belgium that received considerable attention in the literature on the platform economy (De Groen, Maselli & Fabo, 2016; Drahokoupil & Fabo, 2016). Through this partnership, Belgian couriers could opt for self-employment or employment through SMart (while receiving tasks through Deliveroo). At the time, self-employed couriers were paid €11 hourly, plus €2 per delivery, a €25 bonus for every 25 deliveries and €1.5 for three deliveries within an hour. Couriers employed through SMart received €9.31 hourly (student rate) or €11 (independent rate). As of February 2017, about 90% of Deliveroo's Belgian couriers were employed through SMart (De Groen, Lenaerts, Bosc & Paquier, 2017).

When this partnership came to an abrupt end in October 2017, as Deliveroo announced it would only work with self-employed couriers from 1 February 2018 onward, a heated debate started among the workers, SMart, trade unions, the government and the platform (Kilhoffer & Lenaerts, 2017, Vandaele, 2017). At the time, SMart was engaged in negotiations with trade unions BTB (ABVV), HORVAL (ABVV) and CNE (ACV) that seemed close to reaching a company-level collective agreement for the platform workers (Kilhoffer & Lenaerts, 2017; Vandaele, 2017).

The break-up of the partnership between SMart and Deliveroo also led to actions (Kilhoffer & Lenaerts, 2017; Vandaele, 2017; Eurofound, 2018b). A collective of workers, supported by traditional trade unions, pledged to hold regular strikes until their demands were met. In January 2018, bikers conducted a sit-in at the Deliveroo headquarters in Brussels. A close collaboration between individual workers, collectives of workers and trade unions emerged (Kilhoffer & Lenaerts, 2017; Vandaele, 2017). Trade unions working on the Deliveroo case adopted a range of measures, for example distributing leaflets, talking to workers on the street and via Facebook groups, and launching negotiations. The case of Deliveroo touches on numerous points: organisational reaction to a growing group of precarious workers, social dialogue and collective industrial action concerning platform workers, and employment status shifts.

A combination of formal and informal organisations, engaging in different types of activities, has also been used elsewhere. In Germany, Deliveroo and Foodora, as well as couriers working for these platforms, have been working with the Freie Arbeiterinnen- und Arbeiter-Union (Free Workers' Union; FAU, 2016). Foodora has also concluded an agreement with the Gewerkschaft Nahrung-Genuss-Gaststätten (Food, Beverages and Catering Union) in Cologne regarding working conditions (Jauch, 2017). These examples corroborate the work of Al-Ani and Stumpp (2015), who find that platform workers themselves acknowledge the importance of engagement with trade unions.

French drivers have been particularly engaged in organising themselves in relation to large platforms, mainly Uber. In recent years, many drivers have worked for Uber under the VTC system (*voiture de tourisme avec chauffeur)*, a status that involves an easy process for obtaining the right to drive (unlike the traditional taxi licence). However, Uber drivers have found themselves in vulnerable situations and, in particular, lack control over the pricing of the ride, which is set by the platform, even though the drivers are supposed to be independent. Other concerns related to social protection, accident insurance, working hours and maintenance costs have been raised,

and drivers have also started to mobilise around these issues. Initial initiatives were based on mobile app and social media groups, which finally led to the formation of the first official syndicate of VTC drivers (Syndicat SCP VTC) in France and Europe in 2015. The syndicate has been supported by the larger traditional trade unions such as UNSA Transport. The syndicate was also behind a series of strikes against Uber in Paris at the end of 2016 (Vedrenne, 2016). Following the strikes, Thibaud Simphal, Uber's general manager for Western Europe, entered into negotiations with drivers at the request of the French government in December 2016. The negotiations were moderated by a mediator, Jacques Rapoport (who is an expert on transport issues), appointed by the government. After consultations with both sides, Mr Rapoport, in turn, submitted his recommendations to the French government.[7] These conclusions also included financial compensation from Uber to drivers.

This chain of events offers a near-textbook example of industrial relations in action. This was possible, in part, because Uber is large enough to have reached a 'critical mass' of Parisian drivers working for it, which precipitated organisation and collective action. Furthermore, Uber's model approximates sufficiently to a traditional employment relationship to merit the provision of additional protections. A recent law known as *Loi Grandguillaume*, due to be implemented in 2018, aimed at a stricter regulation of the transport sector regarding VTC drivers and access to the profession, limits the space for manoeuvre available to big platforms.

In the examples presented so far, the role of traditional trade unions has mostly been linked to platform work that is done offline. Organising those who work online (i.e. performing location-independent activities) is a much more difficult challenge as these workers are harder to identify, reach and unite. In spite of these challenges, the German Trade Union, IG Metall, has made significant progress in engaging these workers. One result of IG Metall's efforts is Fair Crowd Work, which is a type of watchdog organisation run in collaboration with the Austrian Chamber of Labour, the Austrian Trade Union Confederation, and the Swedish white collar trade union, Unionen. Fair Crowd Work collects information about platforms and produces a rating system based on the platforms' terms and conditions and workers' reviews. Fair Crowd Work additionally offers advice to workers on relevant labour unions and was also involved in producing the 'Frankfurt Declaration' on fair practices in platform work (Fair Crowd Work, 2016). Lastly, Fair Crowd Work provides information on legal status and workers' rights (Fair Crowd Work, 2017a). These activities, however, remain largely focused on providing information. At the time of writing, there is no evidence of more advanced actions, to the best of our knowledge.

Our findings on the types of organisation and representation of platform workers are summarised in Table 2. Although they are not exhaustive, the examples presented are illustrative of how far the organisation and representation of platform workers has

7 The official conclusions submitted to the government by the moderator are published here: https://www.ecologique-solidaire.gouv.fr/sites/default/files/Rapport%20du%20m%C3%A9diateur%20Jacques%20Rapoport%2008022017.pdf (accessed on January 14, 2018).

The mediator Jacques Rapoport also has reported further information on the process in his personal blog: https://blogdumediateur.wordpress.com/ (accessed on January 14, 2018).

progressed (also see Vandaele, 2018). Yet, it has been argued that organising platform workers is uniquely difficult (Kilhoffer, Lenaerts & Beblavý, 2017; Scheiber, 2017; Vandaele, 2018). Platform workers are less likely to organise due to their unclear status, frequent turnover, dispersed locations and uncertain organisation rights stemming from cartel and competition laws (Scheiber, 2017). Some platform workers are attached to their autonomy and fear that the political agenda of traditional trade unions might not reflect these concerns of the platform workers. Additionally, many platform workers may not recognise their activities as work, know that opportunities for organisation and representation exist, or acknowledge the utility of representation for the types of platform work they perform. The latter, for example, holds true for high-skilled workers on online contest-based design platforms such as 99designs (Eurofound, 2018b). This raises challenges for grassroots and trade union efforts to reach platform workers. Nevertheless, examples of organisation and representation do exist and are expanding. As the table shows, workers doing low-skilled physical activities, such as drivers and bikers, groups who are easier to identify and reach, have been particularly likely to organise and be represented.

Table 2: Synthesis of the types of organisation and representation of platform workers

Overall level of organisation	Virtual/global services		Physical/local services	
	Low-skilled	High-skilled	Low-skilled	High-skilled
	Low	Medium	High	Negligible
Types of organisation				
Information sharing networks	Yes	Yes	Yes	Yes
Grassroots organisation	Yes	Yes	Yes	
Formation of workers council			Yes	
Incorporation into union	Yes	Yes	Yes	
Types of actions				
Information exchange and consultation	Yes	Yes	Yes	Yes
Lawsuits			Yes	
Collective actions (e.g. strikes)			Yes	
Collective negotiations			Yes	
Collective agreements			Yes	

Source: Authors' e-analysis.

To what extent are platforms organised or represented?

In contrast to the developments on the side of the platform workers, there is less evidence of platforms organising themselves into associations or of established employers' associations accepting platforms into their ranks. On the contrary, there are examples of employers' associations fighting against platforms, such as the ongoing battle between Airbnb, hotel industry associations and hotel unions over the platform's operations in San Francisco (Benner, 2017). There are, nevertheless, a handful of interesting cases worth mentioning here as well.

One interesting example of platform organisation is that of the *Deutscher Crowdsourcing Verband* (German Crowdsourcing Association) (De Groen, Kilhoffer & Lenaerts, 2018). Founded by eight platforms, the Deutscher Crowdsourcing Verband represents the first known formal organisation of platforms and is noteworthy for creating a voluntary agreement to abide by certain principles. Together, the eight platforms have drafted a Code of Conduct, aimed at the promotion of a fair and trust-based collaboration between platforms and crowd workers. The Code of Conduct establishes a framework covering ten fields of interest: lawfulness of task, clarification of the legal framework, fair pay, 'motivating and good' work, respectful conduct, clear task definitions and appropriate time planning, freedom and flexibility, constructive feedback and open communication, rule-based process to reject completed work and request rework, and data privacy and the private sphere (Deutscher Crowdsourcing Verband, 2017).

Since the Code of Conduct's inception, Testbirds, one of the founding platforms, has collaborated with IG Metall to improve the code and further develop fair crowd employment practices (Paulo, 2017). In November 2017, the Code of Conduct was further formalised with the creation of a dispute settlement mechanism (Fair Crowd Work, 2017b). In collaboration with IG Metall, an Ombuds Office was established by the platforms of the Deutscher Crowdsourcing Verband, to hold signatories of the Code of Conduct accountable. The purpose of the Ombuds Office is to serve as a formal mechanism to voice grievances and find resolutions for crowd workers who work through one of the signatory platforms and believe that the platform is not holding itself to the standards agreed to in the Code of Conduct (Fair Crowd Work, 2017b). Given its recent inception, it is not yet clear what impact the Ombuds Office will have for German platforms and crowd workers. If the Code of Conduct and Ombuds Office prove to be effective, both would provide examples of how self-regulation in the platform economy can be approached.

Beyond the Deutscher Crowdsourcing Verband, little organisation appears to be occurring on the platform side and certainly not at the level of formality that has been achieved by the Crowdsourcing Verband. Furthermore, activities have so far mostly focused on information exchange and consultation. One example is the open letter that was sent in February 2016 by Uber, Airbnb and 45 other platforms to the Dutch Presidency of the Council of the EU concerning the EU's initiatives to develop a European agenda on the platform economy (Codagnone, Biagi & Abadie, 2016). Notwithstanding this example of joint action, it is clear that the organisation and representation of platforms is a far cry from that of crowd workers.

Several reasons have been put forward that could explain the more limited organisation of platforms (Eurofound, 2018b). One possible explanation is that platforms are not organising because platform workers' organisations are in their infancy, so countering their influence is not seen as a priority. Similarly, platforms tend to argue that, due to their business model, they are in close contact with workers and can resolve issues on a one-to-one basis. Platforms may regard themselves as intermediaries, and therefore may see no need for negotiation with workers and, by extension, for organisation and representation. Another reason could be that platforms have sufficiently divergent interests from each other and from other businesses and, therefore do not see organisation as a helpful strategy. Finally, the platform economy is evolving fast, with smaller platforms being bought out by larger ones and frequent platform mergers, which could make platform associations less viable. The lack of a negotiation partner on the platform side is seen as problematic by the unions.

Conclusion

This article has presented an overview of existing practices in the platform economy, touching upon the employment and working conditions of these platforms and how the relevant actors, including the workers and owners of platforms, have been engaging or organising, if at all, to address the conditions they face. The cross-country evidence on the platform economy presented here clearly shows a domain that is evolving fast, especially, in the context of industrial relations and social dialogue.

The diversity of national approaches to industrial relations is on full display in the platform economy. Platform workers are engaging in soft forms of organisation, creating associations exclusively for their own interests, joining new intermediaries as well as being brought into existing employee associations. In some cases, established Social Partners have supported or led the process, while grassroots organisation is also present. Even as Social Partners and governments try to fit the platform economy into an industrial relations framework, the platform economy is broadening the scope of industrial relations activity.

New forms of organisation and partnerships between platform workers and other organisations, such as Fair Crowd Work, demonstrate that worker organisation is adapting to alternative work arrangements. However, activity is also noteworthy in the traditional model of industrial relations consisting of bilateral and trilateral social dialogue. This article has discussed examples of platform worker organisation, with a focus on the cases of Germany, France, Belgium, the United Kingdom and the USA, which can be regarded as prime examples. While this list of examples is far from exhaustive, these cases are illustrative of the increasing potential for integrating the platform economy into industrial relations systems and for the role of social dialogue in the context of platform work. What makes this selection of countries particularly interesting is the combination of different types and levels of organisation (from informal, grassroots networks to formal trade unions) and different types of action (from information exchange on web forums to strike and collective negotiations).

Based on available evidence, platform workers performing low-skilled, offline platform work, such as Uber drivers or Deliveroo bikers, are particularly likely to organise. This category is followed by platform workers performing high-skilled tasks

(e.g. freelancers), and then by those doing low-skilled online tasks. The greater level of organisation among drivers and riders is at least partially due to the fact that drivers and riders are more likely to work in urban areas in close proximity to each other, enabling organisation to be accomplished more readily. Conversely, platform workers using Clickworker or AMT can work from anywhere and may be a more heterogeneous group. As such, the most concrete forms of organisation are observed for 'location-dependent' platform workers, whereas only soft forms of organisation have been found among online or 'location-independent' platform workers.

By organising, platform workers stand to benefit from improved working conditions. By assisting platform workers, trade unions stand to gain new members, representing a growing share of the labour market. By engaging with platform workers and trade unions, platforms may gain access to markets that otherwise would not allow their operation. As such, the incentives for greater integration of the platform economy into industrial relations structures are already in place.

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Call centre workers unite!

changing forms of organisation and representation in the Portuguese and British Digital Economy

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ABSTRACT

In the 21st century the introduction of digital technologies has been accompanied by a rise in precarious, cheap and vulnerable work. Call centres represent a part of the service sector that exemplifies many aspects of technological innovation, being one of the fastest developing forms of digitalised work. This article draws on 30 semi-structured interviews conducted between 2014 and 2017 with former and present Portuguese and British call centre workers, trade union delegates, activists and academics, aiming at analysing the engagement between trade unions and social mobilisation, that is, how workers engage in new forms of organisation in Portuguese and British call centres.

KEY WORDS

call centres, cybertariat, digital labour, trade unions

Introduction

Portugal and the UK are two significant sites for call centre services, favoured not only for their cheap and skilled labour but also for their geographical location and low-cost infrastructures and facilities for the establishment of call centres. Many comparative studies have been carried out comparing the labour conditions of call centre workers among several European countries, as well as in Brazil and India. Nevertheless, in the empirical research realm there is a dearth of comparative analysis between British and Portuguese call centres that looks at trade unionism, social protest movements and occupational identities.

The present study was conducted in Portugal and in the UK with the support of a Short-Term Scientific Mission of the 'Dynamics of Virtual Work' COST Action,[1] supervised by Ursula Huws. Between 2014 and 2017, 30 semi-structured interviews were conducted with present and former Portuguese and British call centre workers, academics and trade union representatives from call centres involved in the provision of inbound, outbound and sales services. Finding interviewees in Portugal was a relatively easy task, since the author had already worked in several Portuguese call centres throughout her professional life and has been involved in social protest movements and trade unions there. Various other informants were also identified through snowball sampling. Concerning the British fieldwork, the interviews were prepared weeks before the short mission took place, in November 2015, with the help of the supervisor, academics and trade unions. Emails and phone calls were used to establish contact and to arrange meetings with the workers, trade unions, activists and academic researchers. The interviews took place in coffee-shops, call centres, in the interviewees' homes and online via Skype. The main concepts used in the interviews sought to obtain information about the workers' educational level, their employment situation, the number of years they had worked in contact centres, how the pace of work affected them physically and psychologically, whether they were seeking any medical help, whether they were unionised or participated in strikes and/or social protest movements and their conceptions of their level of precariousness, alienation and happiness/fulfilment with their work. In the UK, I interviewed 15 people, of whom nine were women and six were men, and in Portugal, I also interviewed 15 people, of whom eight were women and seven men. The women's ages ranged from 23 to 68 and the men's from 28 to 65. The UK presented the highest rates of temporary workers, with some combining call centre work with other activities. Among the call centre workers, women had the highest education levels, with the highest rate of holding an academic degree, as well as the longest periods of service in call centres. Six academics were also interviewed, of whom two were men and four were women, from Brazil and the UK.

These interviews were designed to focus in particular on the call centre workers' social engagement in movements and their practices of resistance to the companies' power. In particular, they aimed to investigate how these workers sought to defend their dignity and personal identity in the workplace in a broader context of destruction of a unionised workforce, isolation, alienation, loss of agency and, ominously, the proliferation of surveillance and control which affects workers' mental and physical well-being (Woodcock, 2016).

The new architecture of social media has provided both employers and workers with fresh opportunities, and this was a particular focus of investigation, in particular to examine whether the use of social media has led to increased respect for international labour standards, including collective bargaining and how it has affected the employment relationship, discrimination and rights of women workers in the context of uneven distribution of labour rights and access to decent work across the service sector.

1 This 31-country Research Network (COSTIS1202) was funded by the COST Association from 2012 to 2016. For further information, see: http://www.cost.eu/COST_Actions/isch/IS1202 (accessed on October 11, 2017).

The current article draws on data which are already included in a previously published paper (Roque, 2017); however, the scope of the two papers is very different. While the previous article was only focused on the Portuguese call centre trade unions and social protest movements, this one aims at comparing and contrasting two major 21st-century examples of call centre locations with distinctively different traditions: Portugal and the UK. In particular, it examines how call centre workers organise themselves, and how they deal with the lack of clear occupational identities within this precarious professional activity and uncertain mode of living (Seymour, 2012). Furthermore, drawing on some of the critical Internet studies literature, it investigates how these call centre workers perceive their class identities and whether or not they see themselves as part of the working class in a Marxist sense. In particular, I draw on the work of Fuchs (2010:179) who stresses the concept of exploitation in class formation and of Wright (2005:718) who argues that the Marxian concept of class is explicitly normative and political, aiming at the abolition of exploitation and the establishment of a participatory democracy, of emancipatory social change for the economically oppressed. In this sense, through an analysis of the role of British and Portuguese trade unions and social mobilisation in call centre service, I explore whether or to what extent these workers constitute themselves as a class-for-itself through workers' unity (Lukacs, 1971) developing new means of action especially through cyberspace, against the capitalist system and their precarious situation.

Call centre assembly lines

The challenges for labour brought by the digital revolution of the 21st century are complex, with social, economic and technological dimensions. The spread of the call centre industry has often been linked to the increasing requirement for speed in service delivery (Mukherjee & Malhotra, 2006) and represents one of the fastest developing forms of electronic work. Paul and Huws have characterised call centres as 'information processing factories' or 'modern-day sweatshops', discussing the way that call handlers are 'chained to cage-like workstations' by their headphones (Paul & Huws, 2002:71). Call centres have emerged, not so much as a single industry but as a business function that crosses several industries in a post-industrial service economy accompanying the proliferation of deregulation and privatisation programmes and the contraction of the welfare state. They represent a paradigmatic illustration of the relationship between 21st-century technologies and labour conditions that in some ways resemble those of the 19th century, submitting workers to forms of flexibility and control stemming from Taylorism that have been described as 'Toyotist' (Antunes & Braga, 2009).

In a pattern that is characteristic under neoliberalism, companies that use call centres often engage in forms of outsourcing to foreign countries where costs are lower and labour is cheaper. The optimal location of call centres is determined by economic viability studies and varies widely in different parts of the world, reflecting diversities in terms of technology and culture (Bonnet, 2002). Call centres are heterogeneous, with different types of call centre service which provide information to callers, connect consumers to third parties, sell goods, products or services over the telephone and supply emergency services and helplines (Glucksmann, 2004). This means that some

call centres are exclusively focused on inbound services while others encompass both inbound and outbound services, receiving or transmitting a larger number of requests by telephone, email and chat. Call centres can thus be considered as emblematic of modern digital economies, where services are available all around the clock, being delivered from almost any spot (Paul & Huws, 2002).

Although labour flexibility can also be found in many other sectors, call centres provide a particularly vivid example of the way that this can be detrimental to workers' interests, exemplified by the use of the 'lean production model' which seeks the lowest possible investment in workers (Kovács, 2002). Call centre companies have led the way for companies in other fields, in promoting their services or customer support as those with the lowest costs (Knights & McCabe, 2002; Burgess & Connell, 2006; Taylor & Bain, 2007:355). This has been achieved mainly, but not exclusively, through the use of temporary work agencies, offering short-term contracts which allow workers to be easily dismissed or seasonally replaced by others who can be more profitable for the company. Dex and McCulloch (1995) identified eleven different forms of precarious work: self-employment, part-time work, temporary work, fixed-term contract work, zero-hour contracts of employment, seasonal work, home working, teleworking, term time only working, Sunday working and job sharing, all of which can be found in call centres. The use of these flexible forms of work renders the social and working life of individual workers unstable and precarious. It is often thought that such a scenario reinforces individualism, decreasing trade union membership and weakening professional and social bonds (Sennett, 2001).

Call centre workers

Call centre workers have been described variously as members of a 'precariat' (Standing, 2011), 'infoproletariat' (Antunes & Braga, 2009), 'cyber-proletariat' (Dyer-Witheford, 2015) and 'cybertariat' (Huws, 2003). They are caught up in a 'cybernetic vortex' (Dyer-Witheford, 2015), being treated as disposable by temporary work agencies which provide them only with ephemeral linkages to the service companies for whom they work. These workers can also be seen as 'knowledge workers' (Drucker, 1959) who perform abstract/immaterial labour (Hardt & Negri, 2000), organising and redirecting information, performing the virtual delivery of products, sustaining and managing the relationship between corporations and the clients of service sector companies. Their daily labour is typically characterised by a narrow range of repetitive movements which prevent them from developing their mental capabilities and potential, rendering them a mere extension of the computer, and allowing no space for passion or autonomy at work.

Apart from speaking with the customers, workers must be able to register in a virtual application on the computer all the actions undertaken during the call, electronic file updating, and tasks related to the telephone operator. Being a call centre worker also presents physical challenges. Typically, workers are restrained in small cubicles inside a room, with access to a shared keyboard, with seating, headset and mouse that are ergonomically poorly designed. Furthermore, the workspace may not be cleaned properly, and the room temperature may be inadequately controlled. Training is very occasional, mostly virtual and carried out at the workstation. Teams are typically

made up of 20 to 30 workers, managed by a single supervisor. This leaves almost no support for workers, especially in the first weeks, when they start working by themselves, with a high level of uncertainty about how to proceed, leading to long call durations which is reflected in negative impacts on their weekly evaluations, and as a result on their wages at the end of the month.

Call centre workers are also obliged to attract and retain customers through the use of their emotions, in other words to perform 'emotional work' (Hochschild, 1983). This can be seen as a commodification of emotions in the form of customer service, that is, the 'fusion' of their public (commercialised) self with their 'private sphere' self (Brook, 2009). To sell more products and/or services and to secure customer loyalty, workers must ignore all verbal forms of aggression, always smiling down the phone through the use of their voices (Hochschild, 1983; Callaghan & Thompson, 1999; Taylor & Tyler, 2000; Taylor, Mulvey, Hyman & Bain, 2002; Roque, 2016). They must also be fast, attentive, friendly, emotionally balanced and flexible, able to deal with unexpected situations and act pleasantly to clients even when they are subject to moral harassment and verbal aggression. One interviewee described the mental degradation he had suffered as a result:

> *I think that working in a call centre can definitely create a precarious mind, especially if you work fulltime or unsociable hours. You just want to shut down and be as mindless as possible because the work isn't sociable at all. You are being treated like a machine and you are just literally acting as a command voice. We have people who do that and come to union meetings saying that they hate it, it's fucking horrible, but still manage to do it. When you are speaking on the end of the phone with someone you are made to put up a persona that isn't real, you must put on this smile and make it like it is the best thing in the world, that you wouldn't rather be doing anything else, though you hate it. (Male Charity Contact Centre Worker, UK, 32 years old, November 2015)*

One of the academic researchers I interviewed as part of this research was Claudia Nogueira, who pointed out that the majority of call centres rely on female emotional labour and communication skills to build customer relationships. As she put it:

> *For most women, working in a call centre can be their first but also their last employment opportunity. It represents an opportunity for conciliating domestic labour and child rearing. In Portugal, the socio-gendered division of labour is unequal and call centres are the easiest ways of entering the labour market. Women are strongly represented in unskilled manufacturing jobs, service jobs, both in the public and private sectors, and in occupations which rely on part-time workers. (Interview with Claudia Nogueira, UK, November 2015)*

According to a British supervisor, women are considered to be best suited for call centre work because of their presumed communication and social abilities, in particular for their capacity to 'smile down the phone' (Taylor & Bain, 1999). In this capacity, service workers must sell their feelings in the service industry, rearranging their emotions so that their entire personality becomes an emotional commodity. This requires the subordination of the self to the needs of the company, an ability to disguise what one

actually feels, pretending to feel what one does not feel (surface acting) or the manipulation of internal thoughts and feelings, involving and deceiving oneself as much as deceiving others (deep acting) (Hochschild, 1983).

In the rooms where call centre workstations are located, the ranking of workers are updated weekly and motivational slogans are posted onto walls, to sustain the pressure to sell and to ensure that information is provided in the highest quantity but in the shortest time possible (Lean Production). These pressures are often reinforced by aggression and bullying by managers and customers. Many cases of moral, sexual and racial harassment were reported by the union delegates I interviewed, including cases where female workers were screamed at and gay and lesbian workers were harassed. African and East and South Asian workers were subjected to racial slurs, not only by the customers but also by their supervisors.

Career progression in call centres is very limited or even non-existent, with the role of supervisor generally the most senior that can be attained, leading to a lack of a sense of belonging to the company (Roque, 2017). One Portuguese female call centre worker described the situation in these words:

> *Before I became a supervisor, I was happy because I took it as a professional evolution that doesn't exist. It's just a status because we do not liberate from the call centre work that the operators do. We receive the same wage in the first months and we have more responsibility. Only after we have proven to be worthy of being a supervisor do we receive 120 euros extra, with increased responsibilities. We keep the same precarious contract and we can also be easily replaced or dismissed. I consider myself a precarious person. (Interview with Female Call Centre Supervisor, Portugal, 42 years old, July 2015)*

According to Brophy (2009), the Neotaylorist mode of production exemplified in call centres provides the workers with low wages, high stress, precarious employment, rigid management, draining emotional labour and pervasive electronic surveillance; however, it does not provide them with a set of common attributes which could add up to a coherent occupational identity. A Portuguese female call centre worker I interviewed confirmed this impression:

> *I used to say that the cleaning lady has a profession, she is an employee of a company and dedicates herself to the cleaning business. A call centre operator does not have a profession or a career, but only works at a call centre. I think that no one there feels like having a profession but just works at a call centre. I am nothing, there's no sense of identity, there isn't a feeling of career. (Interview with Female Inbound Call Centre Worker, Portugal, 36 years old, January 2015)*

Towards the end of the 20th century and in the early 21st century, there were significant changes in the labour market, leading to a profound restructuring of the social relations of work, sometimes described as a growth in vulnerable work (Pollert & Charlwood, 2009).

The UK Health and Safety Executive define vulnerable workers as 'those who are at risk of having their workplace entitlements denied, or who lack the capacity or means to

secure them' (HSE).[2] Pollert and Charlwood (2009:344) have argued that the question of vulnerability is best understood with an emphasis on the conditions of low pay and low rates of trade unionism. Vulnerable work is insecure and low paid, placing workers at a high risk of employment rights abuse. It offers very scarce opportunities for progression and few opportunities for collective action in improving those conditions for there is no social mobility, nor alternatives in the labour market. Vulnerable employment also places workers at greater risk of experiencing problems and mistreatment at work, through fear of dismissal by those in low-paid sectors with high levels of temporary work.[3] The restructuring of labour markets places high-skilled sectors that deal with new technologies side by side with situations of great precariousness and vulnerability (Estanque, 2006). It has been argued by Standing (2011) that these vulnerable workers constitute a new class, the 'precariat'. This precariat is made up of vulnerable workers who are in a weakened bargaining position in accessing the labour market, where in many situations the absence of the enterprise and state benefits intensifies their vulnerability to poverty (Standing, 2011:77). Vulnerability can thus be seen as the precarious condition resulting from economic, political or social pressures acting on the subject of labour or starting from labour itself.

According to classical Marxist labour theory, vulnerability is created through the operation of the capitalist system, being attached to all workers and dealing with exploitation and abuse of power, while according to the other labour law theories, vulnerability can be seen as a particular economic moment associated with specific problems of precarious work, concerning the labour market (Rodgers, 2016:42). According to Standing, vulnerability can affect workers in the sense of lacking financial support from the community and the state, without traditions of social memory, but also dealing with the lack of career growth, lack of stability and lack of sense of belonging to an occupational identity (Standing, 2011:13).

In the particular case of call centre workers, these processes lead to a situation where their work identities are deconstructed, in the sense that they feel unable to identify with the role of call centre operators, preventing them from achieving a professional career or attaining a sense of belonging to the company or to a call centre profession. This is exacerbated by the fact that the majority of call centre workers are subject to high levels of turnover and/or dismissals, so their experience of work consists only of short-term contracts. This gives them little incentive to join trade unions and leads to a loss of social power and resilience and an increase in their vulnerability (Huws, 2003; Roque, 2017).

Social mobilisation and trade unionism in call centres

The Portuguese case

On 6 April 2011, Portugal signed a Memorandum on Economic Adjustment with the Troika[4] which mandated various austerity measures including fiscal consolidation

2 HSE: Vulnerable workers http://www.hse.gov.uk/vulnerable-workers/ (accessed on May 2, 2018).

3 http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf (accessed on May 2, 2018).

4 The European Decision Group set up in the aftermath of the financial crisis of 2008 is made up of the European Commission (EC), the European Central Bank (ECB) and the International Monetary Fund (IMF).

through spending cuts and revenue increases and the implementation of various structural reforms relating to state-owned enterprises, financial sector regulation and labour market rules and regulations (Gurnani, 2016).

The austerity policies imposed by the state applied to society in general and to the sphere of labour in particular, setting in motion a national political dynamic whereby the actions of a government were linked to spreading the message that there was no alternative to transferring the costs of the crisis to society and that all citizens should contribute to the payment of the debt, because all were to blame because of their past actions and reckless way of life (Bauman, 2002:87).This marked the beginning of a period when it became very difficult for the Portuguese labour market to create employment for skilled people with high academic and professional qualifications, to the containment of state expenditures, privatisation of the public sector, tax increases, decline in wages and liberalisation of labour law, corresponding to a sociological logic of naturalisation of inequalities (Ferreira, 2011:120).

In the labour market, the majority of job advertisements related to precarious jobs and these offered one of the easiest forms of integration into the labour market, especially for women and students, because they made possible the conciliation of work with other activities through part-time work. According to Rodgers (1989:3) and Vosko (2006:4), precarious jobs have four key characteristics: first, instability in the short term or when the risk of job loss is high; second, insecurity or lack of control over working conditions, wage, or the pace of work; third, a lack of protection in employment and social security (stipulated either by law, collective organisation or customary practice); and fourth, social or economic vulnerability, associated with low income, poverty and insecure social insertion, high risks of ill health, uncertainty, low income, and limited social benefits and statutory entitlements.

Drawing on such analyses, McKarthy (2005:57) created a further distinction among precarious workers between 'BrainWorkers', those who are hired not for their general labour but for specialised skills or their creativity, and 'ChainWorkers', employed to work at large chain companies like supermarkets and call centres. These workers are 'automatons' who sell their labour with the discipline of the factory with none of the interdependency and vulnerabilities which formerly allowed workers to fight back, facing the largest structural barriers for organising. Because of their need for emotional skills, however, call centre workers, while belonging mainly to the category 'ChainWorkers,' also require elements of 'BrainWork' to be employable.

Since the 1990s, following the emergence of anti-globalisation social movements and the expansion of digital technologies, the diffusion of ideas, forms of action, and frames has acquired extreme relevance (Della Porta, Kriesi & Rucht, 1999; Givan, Roberts & Soule, 2010; Castells, 2012). In the Information Age, digital communication technologies have become powerful tools for diffusion of knowledge and information (Castells, 2012), especially through non-relational channels, like mass media, digital social networks and interpersonal contacts (Tarrow, 2005).

In Portugal, social mobilisation connected with digital labour did not develop significantly until 2006. Since then, cyberspace has contributed new resources for social action and democratisation of the workers' movement. Following transnational forms of activism (Tarrow, 2005) against austerity measures and participatory and deliberative

democracy protest movements, a series of Portuguese anti-austerity demonstrations took place, introducing changes in the organisational structure of mobilisations, remarkable for their impact beyond traditional trade unions. Just as alternative media activists in the late 1960s and 1970s incorporated video technologies, contemporary workers' mobilisations have communicated and disseminated their messages mainly through social media and digital technologies (Raymond, 1999; Hamelink, 2000; Edwards, 2001).

In Portugal, general strikes have been accompanied by social demonstrations, involving trade unions, activist groups and social protest movements (Baumgarten, 2013). The 'newest social movements' arose as specific protest actions focusing on the struggle against austerity measures, triggered by the financial and economic crisis (Feixa, Pereira & Juris, 2009). Since 2011, a number of social protest movements have emerged in Portugal, including *Precários Inflexíveis* (Inflexible Precariat), Mayday, *Indignados*, *Ferve* (Tired of the False Green Receipts), *Geração à Rasca* (The Desperate Generation), *Plataforma 15 de Outubro* (15th October Platform), *Que se Lixe a Troika* (Screw Troika), and more specifically in the call centre service, *Pt Precariações* (Pt Precarious Actions) and the Call Centre Workers' Trade Union (STCC). Earl (2010) describes the dynamics of diffusion of such forms of protest via the Internet, giving examples of 'virtual-real' activism, and showing how this can work as a powerful weapon which can lead to new forms of recruitment and mobilisation, contributing to the revitalisation of the trade union movement (Diamond & Freeman, 2002).

Social protest movements in call centres

The most important organisational consequence of these social protest movements was the emergence of *Precários Inflexíveis* in 2013. This was one of the first cyber platforms, operating a website, a blog and a Facebook page, aiming at supporting precarious workers and trade unions from any sector. Its members were young graduates, mainly from the Left Bloc Party.[5] It has its headquarters in an associative space called MOB, located in Lisbon, with a cultural and political agenda which includes several working groups focusing on issues such as Green Receipts,[6] Temporary Work Agencies, Research Assistants, Social Security and Call Centres. Its members hand out flyers to workers in the streets and participate in social protest demonstrations and strikes. Their most important aim is to inform workers and unemployed people about their labour and civic rights, by means of newsletters and flyers.

Until 2014, although there were several trade unions representing electrical workers and post and telecommunications workers, there was no trade union specifically addressing call centre issues. This situation led to a feeling of discontent and a

5 The Left Bloc (Bloco de Esquerda), considered as a radical left-wing party, was formed in March 1999 by the People's Democratic Union (Communist Marxist), Revolutionary Socialist Party (Trotskyist Mandelist), and Politics XXI (Democratic socialist). At the 2005 election, it received 6.5% of the votes enabling it to enter the Assembly of the Republic for the first time with eight MPs. On 10 November 2015, the Left Bloc signed an agreement with the Socialist Party aimed at identifying convergence issues, while also recognising their differences, while ruling Portugal as well with the Communist Party (Geringonça).

6 The completion and filing of 'green receipts' is a bureaucratic requirement of the Portuguese social security system.

'rebellion' instigated by several workers, mainly from the Telecommunications service in Coimbra. They organised seasonal anonymous public demonstrations, calling for better working conditions and aiming to raise public awareness of the human atrocities to which call centre workers were exposed. Between 2006 and 2013, their main activities were distributing flyers outside call centres, contacting potential recruits through a word of mouth strategy, and developing a blog. In 2013, most of the members of the group went to Lisbon, Braga and Porto where they continued to distribute flyers and met frequently, holding plenary debates, as well as publishing in their blog and on Facebook.

In September 2014, at a meeting in Lisbon, they decided to formalise their struggle, creating the Call Centre Workers' Trade Union (STCC), a development which can be seen as the result of 'virtual-real' activism and interaction among call centre workers. STCC's online presence includes a webpage, a blog and a Facebook page named '*Tás Logado*' (You're Logged In), where call centre workers can pose their questions related to labour and legal concerns, interact with leaders and delegates and collect information about their activities.

Trade union leaders have a non-stipendiary mandate of two years and collaborators, that is, call centre workers who have become active in this organisation, work voluntarily. This has made it possible to broaden their range of action both nationally and internationally and enabled cooperation with other trade unions, institutions, academia, several social movements and even with various political parties. Besides the official trade union email list, they also communicate by means of Facebook chat and, more recently, in 2017, they have created a mobile help line. In most cases, anonymity is required. STCC only operates in the field after the workers' approval has been granted. Sometimes, legal support is required, and frequent meetings for elucidation or negotiation with the involved parties take place.

STCC membership

According to the President of STCC, Danilo Moreira, the structure of the call centre industry in Portugal is changing with a growth of inbound call centres, especially in the field of customer support for foreign companies. These companies are attracted to Portugal because it can offer a cheap and skilled workforce, as well as excellent geographical, digital and technological structures, and with few stringent labour regulations for the call centre service. Telecommunications call centres and the inbound service in Portugal represent around 70% of the calls operated by call centres.

These structural changes have also led to changes in the composition of the workforce. Moreira also described how the workers' profile has been changing, with people holding school certificates replacing those with higher academic qualifications, changing age structure and a higher rate of male workers. As he put it:

> *In the late nineties, when I started working in call centres, there were more women and students with a part-time job. With the emergence of call centre lines related with banks and the growth of technical support services linked to information and communications technologies, more men were hired. Since the 2008 crisis, the average age of call centre workers has become higher because*

> *dismissals and company closures are forcing people to face new realities and new means of survival. Nowadays we still see mostly people in their thirties and forties, but also unemployed people aged 50 and more, some of them working part-time in call centres as a supplement to their basic pension. (Interview with the Portuguese Call Centre Workers' Trade Union President, July 2016)*

On 12 October 2016, STCC submitted an electronic petition (E-petition) to the Portuguese Parliament, asking for the recognition of call centre work as a profession, the inclusion of this profession in the Standard Classification of Occupations, and its recognition as a 'high stress occupation'. To avoid excessive stress and fatigue, due to the frenetic assembly-line character of the call answering, the union has also demanded that there should be task rotation in call centre work, with only 75% carried out online and the remaining 25% of the work carried out in the back office. This would decrease the level of vulnerability and provide more stable working conditions to the workers, as well as promoting decent work for all. Since the highest number of complaints relate to psychological issues, with depression and burnout situations often reported, the union has also called for the creation of multidisciplinary teams to deliver psychological support to workers, with the help of call centre operators who are also specialised in Psychology and Health and Safety at Work.

STCC also aims to increase the number of associates and stimulate them into action, consolidating the bonds between social media, legal authorities and other call centre trade unions, especially at the international level, sharing synergies and struggles with call centre workers in Brazil, Poland and Spain, but also with workers' commissions and active social movements fighting precarity. STCC representatives have also attended several conferences and debates, supporting the development of academic research on call centres so that they can present it to the wider society and the Portuguese Parliament to substantiate their claims.

The British case

In the UK, call centres emerged in the context of neoliberal policies resulting in programmes of deregulation, privatisation and withdrawal of the state from many areas of social provision (Harvey, 2007; Fisher, 2009). My information on trade union organisation in UK draws on a series of key informant interviews with trade union officers and academic researchers as well as call centre workers themselves.

Some background information was provided by two representatives of the Communication Workers Union (CWU), a Union Organiser and a Policy Advisor. CWU is a British trade union that has for the past 28 years brought call centre workers into union membership. Affiliated with UNI Europa (Global Union) it also networks internationally. According to these informants, a high proportion of British call centres deal with charity and sales services. They predominantly employ women as well as older people who have been made redundant from the coal, fishing and mining industries, students, seasonal workers and intermittently employed workers, such as creative workers, who seek a 'guaranteed' wage to pay their bills. This heterogeneous nature of the call centre workforce was described by an interviewed British call centre worker:

> *It was a mix, there were students, older people, a mix of men and women. There were many people who were actors, musicians and it was an acceptable situation for them because they had seasonal professions, actors or musicians, and could always return to them or work part-time. There were also a large number of students and people of my age who needed a job. (Interview with a Male Charity Call Centre Worker, UK, 63 years old, November 2015)*

The CWU is one of the most important British trade unions in the call centre sector, having been active since the 1990s in their recruitment, organisation and representation of call centre workers. The union began by representing postal and telecom engineers but then expanded across the telecommunications sector as call centres started to be used for customer service operations. At the time of the interview, 75% of the membership worked for British Telecom, of whom at least 15,000 were call centre workers, of whom 65% were female. Nevertheless, as a consequence of the recession of the previous eight years and the loss of jobs in the coal mining and other production industries, there has been a bigger influx of men into call centres, which often provide the only way for them to be (re)inserted into the labour market.

The CWU mainly recruits call centre workers through union delegates who work at each call centre who approach workers inside and outside the buildings, distributing leaflets, offering their support and pointing out the advantages of union protection in terms of union benefits and the ability to negotiate collectively. In each call centre where the union is recognised, the representatives have facility time,[7] so workers are able to raise problems directly with representatives when they arise; if there is a bigger issue, members can come to the union headquarters to speak with the officer and there is then a negotiation between the manager of the call centre and the officer of the union.

In addition to these traditional forms of representation, this trade union is starting to engage more in virtual communication through social media, Facebook, an email list created especially to support call centre workers and a Twitter account where they post relevant information about their meetings and events and workers' rights. They have also published a booklet for union representatives which provides guidance on how to organise in call centres and that they have shared with some European Union trade unions as well.

CWU representatives also discussed several structural and contractual changes taking place in call centres, especially in relation to new forms of employment contract, and admitted that trade unions are still catching up in terms of adapting their structures and procedures to adjust them to take account of the specificities of call centre employment. This includes addressing such issues as short-term daily, weekly, monthly and zero-hour contracts as well as unusual shift patterns. One of the main challenges concerns temporary work agencies. This CWU Union Organiser described how the Union was attempting to convert temporary contracts to permanent ones.

7 The union agreement stipulates that the employer provides the union representatives with certain facilities, including the ability to conduct union business in time that is paid for by the employer.

> *At the moment, we are working on converting people from Manpower[8] to Telecom,[9] that is, we are trying to give them contracts with the main company without any involvement from temporary work agencies. In this sense, workers can regain their full wages and rights, becoming less prone to dismissals. We have been working very hard with British Telecom to make sure that people can get a contract. So, we have been paying a lot of time to temporary agency workers to obtain permanent jobs for them. But turnover is very high. (Interview with the CWU Union Organiser, UK, November 2015)*

High levels of turnover are a characteristic of the service industry and are particularly acute in call centres, for example. This poses a significant obstacle to organisation as networks that are built fall away rapidly as existing people drop out. Another important challenge identified by the Union is related to alienation and occupational identity. Quoting CWU's Policy Advisor:

> *It's all about being a mechanical worker and that is one of the points that we have been including in our videos and in our charter. The alienation is always present amongst many workers, even if you exit for a couple of days you almost feel incapable of saying hello or to pick a call on the mobile phone. Workers are subject to [very tight] call handling times and to script robotisation. (Interview with CWU Policy Advisors, UK, November 2015)*

According to the CWU Policy Advisors , the UK call centre sector is volatile. Many call centres are now located in the peripheral South and North of England, especially in Scotland, where the government supported their opening. Nevertheless, in 2001 the call centre industry suffered from an outsourcing wave, to India and to Southeast Asia. But within ten years, many companies decided that the practice, known as offshoring, had been oversold. Issues of language and racism started to come up due to British customers who demanded to be answered by native workers. As a response to this development, call centres started to move to the peripheries of the UK. According to the CWU Union Organiser, call centres tend to move to the job-deprived areas as a result of the loss of coal mining, steel work and heavy industries, that is, to settle in cheaper cities because of the high costs of infrastructure and property prices in London. Wales was a mining community and Yorkshire, in the north, has a business park including numerous call centres. There are also concentrates in the North West (for example around Manchester), which was formerly a centre for manufacturing and in Glasgow, traditionally a site for ship building. The CWU has its origins as a trade union in representing mail and telecoms workers when they were in the public sector. Although Royal Mail remains public, British Telecom was among the first public organisations to be privatised. The union has, however, kept its presence there and expanded beyond it into other parts of the telecommunications sector.

Drawing upon the interviews, it can be concluded that in both the UK and Portugal, the number of qualified women working in call centres is higher compared

8 A large temporary work agency.
9 British Telecom – the ultimate employer.

with men. In the British case, there are men and women who lost their jobs after a working life, mainly miners, fishing workers and secretaries, and found in call centres a new occupation. According to the CWU Policy Advisor, there is a higher rate of unionised women who are also involved in social protest movements, since they tend to spend more years working in call centres. The banking/financial sector displays a higher male rate, while the telecommunications sector is predominantly female. In Britain, there is a higher rate of workers in the charity, outbound call centres, while in Portugal there are more workers in the inbound, telecommunications service.

Many Portuguese and British workers have precarious contracts, not providing them with full rights regarding parental licence nor sick leave, that is, they will never benefit from the same social and labour rights that a regular worker is entitled to. The CWU Policy Advisor mentioned that in the 1970s, under the Thatcher government, there was a major dispute with the coal miners, as well as a great deal of trade union militancy. Nowadays, it is much harder to persuade workers to join unions because even though the level of precariousness is high, they prefer keeping their jobs rather than having a relationship with their union. Danilo Moreira, STCC's President, mentioned that there is an enormous sense of fear and resignation, especially among the people who do not hold a degree and have fewer chances of finding a better job, conceiving their labour experience as a permanent occupation, especially because of the precarious labour market which cannot offer them alternatives. The most involved people in trade unionism were young adults, with ages between 28 and 43 years, who revealed the highest levels of frustration, since they could not have autonomy, creativity and career progression in the call centres where they worked.

Academic interviews

The academic interviewees for the present study included Jamie Woodcock, who carried out extensive research in a London call centre in the insurance sector for his PhD thesis using participant observation (Woodcock, 2016), that provided a number of parallels with my own research, also as a participant observer, in a Portuguese call centre (Roque, 2010). He described his experience both as a worker and as a trade union activist in this call centre. He confessed that sometimes he felt like leaving because of the repetitiveness of the work and the rudeness of the supervisors who would shout at the workers.

He and other colleagues had initially reacted to this kind of behaviour by demanding that managers show them more respect, saying they could not be treated that way. As a result, they were put on probation, with the imposition of performance targets requiring a certain number of sales. At a certain point, he decided to stop fighting the universal bullying and decided to start carrying out interviews and reporting the whole process. He was employed by a temporary work agency, but was always on probation, meaning that he could be sacked at any time.

He described the call centre environment as very poor from the point of view of health and safety. The office was only cleaned occasionally, and the headsets were filthy, old and used by everyone. He experienced physical problems, including headaches, and but most of all, he hated to use the phone after work. This evidence (Woodcock, 2016) reflects the conclusion from my own research in Portugal (Roque,

2010) that is common for call centre workers to experience this aversion to using a phone outside work, especially if they are required to work long (seven-hour) shifts or work during weekends. Woodcock followed the common ethnographic practice, which was also followed in my own participant observation research in Portugal (Roque, 2010), of writing a field diary on his way home from work on the Tube. This enabled him to record everyday personal feelings, behaviours, resistance and experiences of acceptance of power and moral harassment by the call centre workers while they were still fresh in his memory. He also recorded notes of meetings of the workers' committees and interviews on a daily basis. In this practice, Burawoy's (1991) and Estanque's (2000) extended case method were followed, an approach that is sensitive to the socio-historical context in which the research is carried out during the analysis of a given social situation in a specific period of time, taking account of prevailing exterior social forces of society.

According to the interviewed call centre workers, it was very difficult to cope with the stress and the precariousness of the working situation. Some of them took medication, as a way to try to maintain focus while they were at work and make the sales that were necessary to meet the targets on which their salaries depended. Woodcock described it in these words:

> *Most of the time you are waiting but you don't know how long that wait is going to be; there is no chance to rest, you are constantly on the edge, which is emotionally draining. There are people who feel that working in call centres can be fulfilling in various ways, but high sales service can be terrible. They only exist to flog products that people don't want to buy, to pressure old people who can't afford to give money. (Interview with Jamie Woodcock, UK, November 2015)*

The stressful nature of the work gave it a contingent character, with little sense of a collective occupational identity. As Woodcock went on to say:

> *There was a lot of socialising after work between the workers but none of them would describe themselves as call centre workers. They would say they were students or aspiring actors or musicians who happened to be at a call centre. It was something temporary. (Interview with Jamie Woodcock, UK, November 2015)*

This was reflected in some of my other interviews with call centre workers interviewed in the UK, during 2015, who were working part time to provide them with a regular fixed salary to pay for their bills while working intermittently in their main jobs as creative workers.

The unsatisfying nature of call centre work, and the fact that it is not perceived as a primary occupational identity was confirmed by Juliet Webster, another academic interviewee who has carried out extensive research in call centres as part of comparative European projects. She argued that workers often respond to this, not by organising for improvements at their existing place of work but by moving on to alternative employment. As she put it:

> *People move between call centres because they get fed up with the lack of decent working conditions. So, they dream that working in the next call centre is going to*

> *be so much nicer, that they can develop a career. Call centres aim at reducing uncertainty for the employer and to reduce variability in the service experience, this means reducing the creativity of the call centre worker. The only creativity is in the tone of their voice, the connection with the customer. Call factories can also engage in motivational games to keep teams with balloons and team games. (Interview with Juliet Webster, UK, November 2015)*

Another academic researcher who had done research on call centres in the context of comparative European research was Jane Paul. She described some of the work done by the TOSCA Project (2000–2004) which aimed at analysing social relations and working conditions in European call centres, as well as research carried out in the UK concerning how work can affect the physical and mental health of call centre workers.

She reported that large numbers of call centre workers suffered from burnout and stress, leading to high turnover rates (Paul & Huws, 2002). Stress was exacerbated by other factors, such as the use of zero-hour contracts and the lack of clear health and safety policies (Interview with Jane Paul, UK, November 2015).

My final academic interviewee (who also acted as supervisor for the UK part of the study) was Ursula Huws, whom I interviewed in 2014 and later in 2015. Summarising her research on the international division of labour in call centre work (Huws, 2009), she described the increasing practice of global sourcing, whereby, often with the help of temporary work agencies, call centre labour can be relocated around the world. Partly because this ability to relocate reduces the bargaining power of workers in any given location, call centres have been the pioneers of several forms of work casualisation that are now spreading throughout the world, with the rapid growth of zero-hour contracts in the UK providing a vivid example. Compared with other forms of outsourced employment, such as factories, the investment required to set up a call centre is very small; it is possible to recover this investment in a matter of months. The main requirement for opening a call centre in any part of the world is a highly educated workforce that speaks several languages and has empathetic skills. Areas of Britain where employment in production industries is declining have been shown to be very attractive sites to install call centres, because of the high levels of unemployment and cheapness of building rental. A large and multilingual student population also supplies a good source of flexible labour for this kind of work. For this reason, a large number of call centres can be found near universities, drawing on the labour of students who had taken out loans to pay for their fees. The high proportion of students in the call centre workforce also has implications for occupational identity and hence for union organisation. As Huws explains:

> *Call centre work wasn't considered as a category in the official statistics, so it could not be coded or classified which makes it invisible as an occupation. Workers do not see themselves as call centre workers; they don't identify with that activity; it is a temporary or parallel activity alongside another identity. People don't necessarily organise themselves around occupational identities, of course, but it has nevertheless played an important role historically in the development of trade unions. At present, there is a very strong general tendency for the destruction of occupational identities, fragmentation of jobs and an increase in the*

number of jobs with no formal classification or recognition of their skills. In this sense, call centre workers aren't recognised as professionals. Call centre workers often say that this is not what they want to do with their lives, but this is how they make a living. It may be their only form of income. Unprecedentedly we are now seeing new forms of unionisation amongst call centre workers. As time goes by they remain in call centres, something that is contradictory to what they established in their minds. This has historical parallels. When industrialisation took place, people were sucked in from the village to come and live in the city, trying to make a better life for themselves. They never thought this kind of industrial work would be what they would be doing forever, that this was going to be their new identity. They always imagined it as temporary. This first generation of call centre workers is like that: they never really believed that this was going to be forever, it is like a step of a ladder that they are expecting to climb. (Interview with Ursula Huws, Skype, April 2014)

Conclusion

The present study is limited, raising many questions that will need further research to confirm. Nevertheless, it does reveal some interesting differences between approaches to trade unionism in British and Portuguese call centres.

It is clear that in the British case, established trade unions achieved some successes using traditional methods. However, these have been limited, partly because of the mobility of the call centre workforce, with workers moving between several call centres throughout their lives. In the Portuguese case, workers appear to be more submissive and less engaged in trade unionism, preferring to hold on to something they may initially have expected to be temporary, but which has eventually become permanent (Roque, 2010). Nevertheless, there is evidence, especially in the Portuguese case, that workers are developing new forms of antibureaucratic and anticapitalist forms of syndicalist, council communist, and autonomist worker representation. These experiments in new forms of organisation are important because they are 'rooted in the self-activity and democratic impulses of members and committed to developing egalitarian organisations in place of traditional union bureaucracies' (Ness, 2014:1).

The examples analysed in this study suggest that, especially in Portugal, trade unionism is being revived through cyberactivity. Indeed, according to Danilo Moreira, the STCC has been a pioneer in the development of digital unionisation, as well as providing the only example in Portugal of a form of unionisation specifically addressing call centre issues. Since it is constituted only by practicing call centre workers, who have to deal with this reality daily, STCC offers a model of bottom-up organisation that could be of relevance to other digital workers.

Such examples suggest that workers may be developing forms of collective identity that go beyond mere occupational identities, which, if this is the case, raises large questions about class consciousness. Might this be evidence of the development of a sense of a 'class for itself' (Lukacs, 1971) a notion that posits the idea that through their self-understanding of a social class members are motivated to join forces with other social movements and trade unions, fighting against what are perceived as the common cause of their problems? This can strengthen their bonds and bring lessons

on how to engage in social struggle, that is, the consciousness of sharing common grievances against capitalism. Further research will be required to establish to what extent this is the case.

An interesting question raised in this context is the role of social media in promoting such awareness. The evidence from this study suggests that social media act as a strong propulsor to it, especially through the distribution of items such as Youtube videos and Instagram photos that promote their actions and giving credibility by providing first-hand workers' testimonials. Social media seem to have generated a greater and faster connection between workers, reaching a wider audience, creating a stronger visual impact, sometimes stronger than words, overcoming linguistic and geographical barriers. Facebook also provides a sense of community for dialogue between delegates and workers, where they can discuss and receive community-oriented messages. Strikes and plenary meetings of workers have also been convened through social media. Online communication is particularly important for labour organising when some constraints exist, especially in the case of geographical distance and the lack of a physical space for meeting.

This article has pointed to some of the lessons that we can learn from the new social protest movements, influencing trade unions' sphere of action as well as the many questions that remain to be addressed. These organisations are constantly changing and raising social awareness of the precarious workers' situation and are also progressively obtaining media and government attention, with a strong impact on the international level, establishing associations with other trade unions, as well as with workers' movements. It remains to be seen whether they can fulfil their promise of providing a combative, democratic, open and independent trade unionism for the 21st century.

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Review

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Book reviewed

Jeremias Prassl *Humans as a Service. The Promise and Perils of Work in the Gig Economy*. Oxford: Oxford University Press, 2018. 199 pages. ISBN: 9780198797012, hardcover.

A few years ago, I happened to have a conversation with a dear friend and colleague. The topic was the gig economy and its potential impact on working relationships. At that time, I did not know much about it, and the debate was certainly not as widespread as it is today. My friend explained that the gig economy could have a substantial impact on the traditional issues surrounding labour law: not only on the misclassification of workers but also on the role of trade unions and representative bodies and ultimately on the formalisation of the exchange of work and remuneration outside the channels of a regular employment contract.

Probably due to the fact that the whole phenomenon was completely new to me at the time, the conversation left me perplexed and a bit sceptical. I asked myself whether the narrative that the traditional legal categories would be challenged or even disrupted by this new business model spreading around the world was realistic. Or, whether we were instead observing a problem that was not new at all.

Now, I can say that neither of the perspectives I considered at the time was right or reasonable.

The rich theoretical debate that followed the conversation with my friend proved me wrong. As usual, *in medio stat virtus.*

It is true that there are two competing narratives: on the one hand, that the gig economy would radically change our lives and ways of working and would nullify all the legal dogmatic concepts that we have used to build the labour law system thus far; on the other, that the gig economy is nothing but a temporary bubble doomed to be overcome by new trends and new topics for bored intellectuals.

However, some of the scientific works produced in recent years have shown that discussion of the topic can be essential and enriching in placing the phenomenon of the

gig economy and the labour issues that are related to it in the right perspective (to name a few: De Stefano, 2016; Davidov, 2017; Prassl & Risak, 2016).

Among these, a fundamental role is played by the latest book by Jeremias Prassl, Professor of Law at the University of Oxford: *Humans as a Service. The Promise and Perils of Work in the Gig Economy*. He provides a masterful analysis of the gig economy with balance and rigour and discusses the problems related to it by offering innovative insights into a debate that has been crowded by superficialities, which he disposes of based on method.

The book aims at providing an exhaustive description of the gig economy phenomenon and its legal implications to a public that lacks a legal background. This intention of the author, who has engaged not only with legal scholars, sociologists and economists but also with journalists and company CEOs, contemplating the numerous narratives that surround the gig economy from many different perspectives, has been fulfilled. This alone is a good reason to read the book. While being clear and informative, it engages with the complexity of the gig economy and the multitude of angles from which it might be observed.

While making clear that the business model adopted by the platforms might vary considerably from one case to another, Prassl underlines that there is one shared feature that prompted him to analyse the gig economy comprehensively. The fundamental premise of the functioning of the platforms is the availability of a large pool of on-demand workers. All the platforms are made up of on-demand work, provided by a multitude of people who might be spread around the world or might be in the same place as the customers, but all of whom are in the shared situation of being required to provide a small service (a gig) through a digital platform.

The essential role of labour in the functioning of these platforms is what captured the attention of Prassl and builds the core of his analysis. He explains that in some cases the platform business model might lead to extreme forms of labour commodification, leading him to ask 'how can the gig economy sell humans as a service and ignore traditional employment law protection?'.

More specifically, Prassl starts from a critical assessment of the competing narratives about the gig economy. While the platforms define themselves as mere marketplaces that are able to match the demand and supply of certain services, often denying the fact that, to a large extent, they act like traditional employers (the 'platform paradox'), Prassl looks far beyond the contractual terms, investigating the broader implications of the gig economy for consumers, taxpayers and markets.

His thesis is that the platforms do indeed provide digital work intermediation by means of close control over their workers. He demonstrates the level of the platforms' interference in the organisation and monitoring of the activity by analysing what he defines as three archetypical operators: Uber, TaskRabbit and MTurk.

He also places the phenomenon in the right perspective when addressing the dimension of the market theme of the gig economy and the sources of its economic success and value, which is largely based on regulatory arbitrage: 'the evasion [of] employment law is at the core of [the] platforms[']' business model'.

He goes further when analysing the terminology adopted by gig economy operators to channel a particular understanding of them as innovative and disruptive of big

monopolistic companies. He provides an excellent explanation of how language might deeply shape the understanding of such a phenomenon and ultimately discourage its legal regulation. In reality, the business model adopted by the platforms is far from new, but instead has deep historic roots.

A disclaimer: Prassl does not argue that the platform model is indeed wrong or harmful *per se.* Instead, he asserts that there are undeniably good aspects to providing fast and good services, while ensuring flexibility for the workers.

However, in the author's opinion, employment law must play an essential role in the gig economy. There is no reason for the platforms to be considered as different from regular companies making use of the labour force to provide services to their customers.

This is the point where the book may leave us with some perplexities. The author addresses several legal problems related to the platforms' business model: primarily, the identification of the workers' legal status (as employees or as independent contractors); and the identification of the employer. With reference to the first issue, Prassl seems confident that various jurisdictions may have already successfully elaborated some good antidotes against the misclassification of workers. He refers to the well-known *Aslam, Farrar v. Uber* case decided by the Employment Tribunal of London and confirmed by the Court of Appeal, together with other cases that have involved courts in the USA and social security inspection bodies in various other countries (France, for example). With reference to the latter, he advocates for a flexible approach in identifying the employer reliance on the thesis developed in his previous monograph, *The Concept of the Employer* (Prassl, 2015).

Although we might rely on many judgements that have assessed the legal status of platform workers as employees, we might also consider many others in several jurisdictions that have reached the opposite conclusion. Self-evidently, each case has its own peculiarities, and it would be impossible to pretend that there is a general and always valid answer to the question of these workers' legal status (as Prassl underlines, 'gig workers are a vastly heterogeneous group'). However, it seems that Prassl is overly optimistic in assessing that the problem might be resolved merely by making reference to the traditional parameters for the classification of workers or by making use of the multiple notions of the concept of an employer, which is indeed an innovative and fascinating thesis, though it still does not have much space in the courts.

What is however convincing is his idea that employment law might not be enough. Prassl proposes that we should aim at specific measures that would protect gig workers, while making it possible for them to maintain their flexibility. This does not mean that new rules must be introduced for the platforms. On the contrary, Prassl advocates for the development of existing standards, among which European Union law must play a central role. In this respect, the author stresses that three main aspects should be considered: the unpredictability of the working hours; the effects of ratings on binding the workers to the platform; and the collective representation of gig workers. This covers the last part of the book, which is the most interesting and inspiring one. Prassl makes positive suggestions for how these issues might be regulated to guarantee protection for the workers, while ensuring the flexibility the platform-based model seeks and considering the perspective of consumers and taxpayers.

To conclude, the author has certainly succeeded in writing a rich and well-documented analysis of the gig economy. Prassl's book represents an authoritative critical assessment of the legal issues related to labour for digital platforms and stands as a contribution that has great value for scholars from many disciplines.

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