



DON'T GIG UP



Germany

Case Study Report

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CASES 1 AND 2:

IG Metall's 'fair.crowdwork' and the code of conduct

Description of the measure

What are the **features** of the measure with regard to the protection of gig workers (please refer to all the relevant areas of interest)?

The 'fair.crowdwork' initiative was launched by the Industrial Union of Metalworkers (*Industriegewerkschaft Metall*, IG Metall) in 2015, the year when Christiane Benner, now serving as the union's second chair, edited a book entitled *Crowdwork – zurück in die Zukunft? Perspektiven digitaler Arbeit* (meaning 'Crowd work – back to the future? Perspectives on digital work') (Benner, 2015). This book opened and shaped the trade union debate on crowd work. In the book, the editor refers to three reasons why trade unions should engage with crowd work: because working in the online world will have an impact on the working conditions of all workers; because online work is also work that should be fairly paid and regulated; and because it is important to prevent a social setback that could take society back to the beginning of the industrial age. She demanded that economic property rights such as copyrights and general terms and conditions be applied to crowd workers, that protective rights enjoyed by employees be applied or extended to crowd workers as well, and that digital work be legally framed so as to enforce minimum conditions. The explicit aim is not to outlaw digital work, but to regulate it in a socially acceptable way.

At the same time, the union developed and launched a first version of a 'fair.crowdwork' website. In doing so, it followed the 'Turkopticon' browser plugin, which was developed in opposition to the 'Amazon Turk' platform, and on which crowd workers can review their clients with the long-term goal of establishing a 'workers' bill of rights'. One of the pioneers of 'Turkopticon', Michael Six Silberman, started working for IG Metall shortly afterwards, and took over the management of the platform. 'The general goal behind the website's design was to create a place for workers to post and read reviews of digital labour platforms. Target users were current or prospective platform workers who would like to make better-informed decisions about which platforms on which to work. The platform reviews on this original site had two main sections: worker reviews and a "terms of service check" '(Harmon and Silberman, 2018).

In the same year, the concept of the website was revised, and one year later a second version was put online. The decisive change consisted in developing a new method for the survey. In the first version, the rating was given directly by workers. The only requirement was to log on to the website with an email address; no checks were carried out to make sure that those who were providing reviews had actually worked through a platform. Therefore, such procedure was deemed to be no longer legally admissible. This assumption was triggered by a court action brought by a dentist against a person who had posted a negative review of his surgery on the net: the plaintiff argued that he had never

treated or even seen the author of that negative review. In this case, the court found in favour of the plaintiff, ordering the deletion of the review. In the wake of this decision, IG Metall set out to avoid similar legal issues.

Therefore, in the second version, a new solution was developed: a restricted-access survey to be completed by platform workers. The consent of the platforms concerned was requested as long as the questionnaires could not be posted there from the outside; most of the platforms – with the exception of, *inter alia*, Amazon and Uber, which are known to be critical of trade unions – agreed. IG Metall decided to pay respondents for two reasons: a good response rate had to be ensured; and the main feature of crowd work, i.e. the fact that money is earned with clicks, had to be complied with. The amount of money paid to respondents was calculated based on the fee – ranging between € 10 and € 14 – commonly applied in the framework of the platforms concerned. The questionnaires were then evaluated by IG Metall, and checked against a consistency test before calculating rankings. The number of questionnaires received ranged from 25 to 150 per platform. The survey was not representative, but provided results that were not available elsewhere.

“ ‘We had a big event at the European Trade Union Institute (ETUI) in Brussels in 2016, where people all complained that you don’t know anything about crowd workers, that you can’t get to them. And I could say on the basis of our platform: “People, that’s not true, you can get to the people. It’s not easy, you have to come up with something, but it’s possible. And some of the platforms are also involved. Well, the message was: We are not without chances. And we have decided that we want to talk more with the platforms now.’ (Expert at IG Metall)

The unexpected willingness of the platforms to engage in dialogue provided the impetus to go further. Besides the rating platform and the survey, IG Metall decided to add a second pillar to its trade union strategy with a view to gaining direct influence on the platforms.

IG Metall is currently pursuing three further priorities in its crowd working initiative. The first priority concerns the extension of the list of signatories to the code of conduct: the union is actually talking to other platforms also from the gig economy, and tries to convince them to subscribe to the code of conduct. The second priority concerns the development of a third version of the ‘fair. crowdwork’ platform with the aim of developing and posting a list of criteria to draft the general terms and conditions in the best way possible. From the union’s point of view, general terms and conditions not only determine the status of the workers concerned (employed or self-employed), but also the working conditions with a view to transparency and fair treatment and communication.

“ ‘I personally believe that this is a far more important question than whether crowd workers are defined as employees or self-employed. This question ultimately depends on a few points in the general terms and conditions, and if the platforms change that, the employees will certainly be classified as self-employed.’ (Expert at IG Metall)

The third priority concerns membership recruitment. IG Metall has approached many crowd workers up to now, and has also totalled several hundred members. Although this is not a large number in absolute terms, it is possible to maintain that – in view of the lack of company structures and local representation of interests by works councils (membership recruitment is traditionally the core business of works councils) – success rates should not be underestimated. Nevertheless, the approach and the recruitment of members should

be organised more systematically – this suggestion is to be complied with when setting up the new platform. At the same time, advertising through social media channels should be intensified.



*‘This year we want to improve our systematic address on the platform. So that people will say: Cool, that’s a good thing, I agree with that, it’s important for me or I can help make the collective feel better. Therefore we want to become more active in the social media and serve them accordingly.’
(Expert at IG Metall)*

Description of the platforms

*How is **work organised** in the platforms addressed by the measure in the covered areas (e.g. terms of employment contracts, monitoring of the performance, and flexibility)?*

An important starting point for the development of the IG Metall initiative was the code of conduct targeted at platforms, which had been agreed upon in Germany in 2015 by eight platforms (e.g. Testbirds, Clickworker, content.de, Crow Guru, Streetspotr, appJobber, ShopScout, and BugFinders) with a view to improving their poor public reputation. According to the preamble, the code of conduct is aimed at providing general guidelines about how to act with regard to crowd work and, thereby, at establishing a basis for trustful and fair cooperation between service providers, clients, and crowd workers, a basis that supplements the applicable legislation. The following points are emphasised:

- to check the legal conformity of tasks;
- to inform crowd workers about legal and tax regulations;
- to pay fair and appropriate compensation transparently and without delays;
- to provide a user-friendly and intuitive platform to navigate, as well as to make it possible to request support, set prices, arrange awards, and provide information about frequently asked questions (FAQs) or training opportunities;
- to be aware about the responsibility in terms of respectful interaction between clients and crowd workers;
- to define tasks clearly, and to offer a realistic time schedule;
- to respect the freedom of choice of crowd workers, and not to put pressure on them to accept offers;
- to provide crowd workers with the best possible assistance and technical support, to give prompt feedback on how the tasks have been carried out, and to offer suggestions for improvement;
- to offer an approval procedure for completed tasks that needs to be settled in written form and be transparent to the crowd worker; the rejection of projects must be justified and based on the project description; the possibility of reworking an already completed project must be ensured unless the project specifications do not envisage it; moreover, every platform shall commit to setting up a fair and neutral complaint procedure for crowd workers; and
- to respect and protect crowd workers’ privacy, and thus not to reveal crowd workers’ personal data to third parties without written consent.

In the run-up to the discussion with the platforms, IG Metall, together with international trade unions from Austria, Canada, Denmark, Sweden, and the USA, held a workshop in Frankfurt, and subsequently published the so-called 'Frankfurt Declaration' (IG Metall et al., 2016), in which the trade unions pleaded for compliance with the minimum wage, access to social security, transparency, and arbitration procedures. IG Metall leveraged these issues in its discussions with representatives from the platforms that have signed the code of conduct. In particular, it stressed the role of the minimum wage, and demanded that workers have a viable income, especially if platform work is their only source of income. In countering the argument, the platforms referred to two problems: the difficulty of measuring working time (as the necessary basis for the calculation of the minimum wage), and the global competition in relation to contracts. They also pointed out that pay is of secondary importance for platform workers; their work is, they said, more about fun and variety. IG Metall agreed to conduct a survey on this issue.



'Then we said ok, let's ask the workers what is important to them, and we did that. Then it came out that for the workers fair payment is the most important factor with decency. The platforms said, "ok, that surprises us, then we have to do something".' (Expert at IG Metall)

The platform descriptions on the website are rather detailed, and give significant hints about working conditions. Two examples are provided here below (IG Metall, 2019).

Testbirds, a German software-testing platform, was the main promoter of the code of conduct. This platform does not act as an intermediary matching customers and workers, but rather charges customers directly for services, and organises workers themselves. Workers are self-employed, and the primary jobs offered by Testbirds to crowd workers are bug testing and usability testing. Workers register their personal information and device-related technical details with Testbirds, and are notified when a task is available for them (tasks are made available algorithmically to people whose profile meets the requirements). Once notified, workers are free to accept or ignore the task offered.

Clickworker, instead, is a Germany-based crowd work platform with a focus on microtasks. It claims to have over 800,000 registered workers. This platform accepts complex tasks from clients, and its staff splits them into microtasks; alternatively, clients post their own tasks directly on the platform. Clickworker then categorises tasks by location and by level of skills required for each task, and workers choose tasks from those for which they have the necessary qualifications. Workers that are supposed to carry out more complex tasks are assessed by Clickworker on the basis of tests included in the Universal Human Relevance System; clickworkers can take such tests on a voluntary basis, especially in relation to language and writing skills. Once finalised and submitted, the project is either accepted or, in case of higher-paid projects, proofread. In case of rejection by a proof-reader, workers are allowed to check and correct it once. If rejected again, the project will be advertised again and assigned to another worker. Although a good 41% of surveyed workers experienced non-payment at least once since they started working through the platform, all of these workers also reported that such an occurrence was fairly rare.

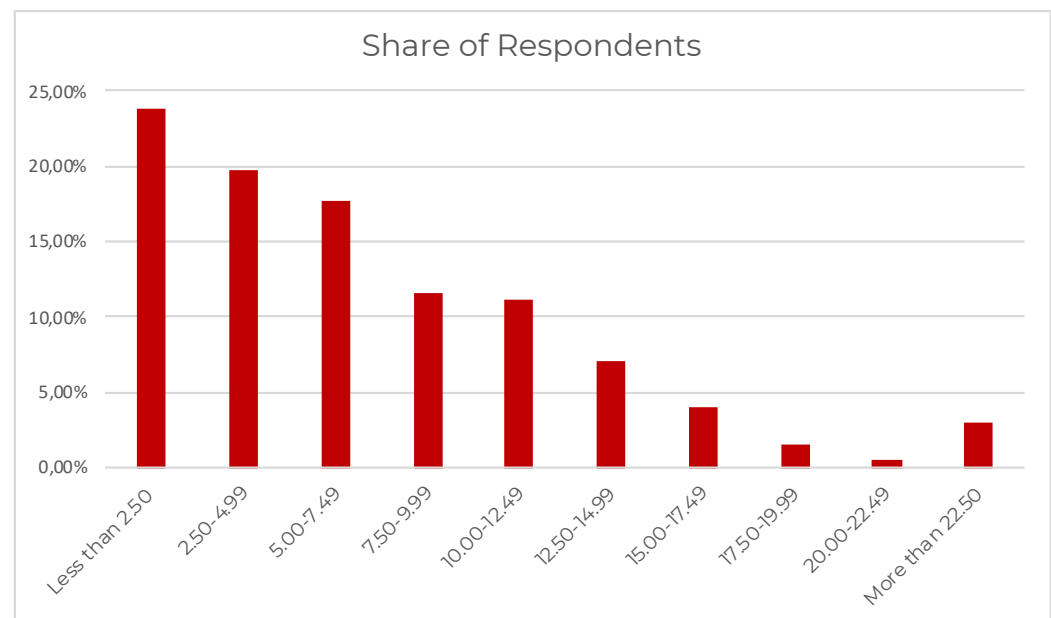
Are work arrangements in line with applicable statutory and collective bargaining provisions?

Working conditions and wages reported by the workers in the survey launched through the 'fair.crowdwork' platform feature a high level of dispersion (Fair Crowd Work, 2019). For instance, as to the 'MylittleJob' platform, it ranges between € 0.40 and € 56.24 per hour: the average wage is slightly above the minimum wage, whereas the median wage is slightly below it. The key findings are provided here below:

- minimum wage: € 0.40;
- maximum wage: € 56.25;
- average wage: € 9.97; and
- median wage: € 7.73.

The following graph shows the average wage dispersion across all platforms included in the survey.

Figure 1. Hourly wage by share of respondents



Source: Fair Crowd Work (2019)

However, the website provides many other important aspects of working conditions such as communication with managers and clients or with other workers, non-payment experiences, the evaluation systems of platforms, the rejection of submitted projects, and the possibility to challenge the rejection or the assessments carried out on tasks and technology.

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

In most platforms, workers are self-employed. Pursuant to German labour law, this means that they are neither considered as employees entitled to the protection granted by labour law or the Works Constitution Act, nor integrated into the compulsory social security system. They are treated as employers or self-employed workers.

ASSESSMENT OF THE MEASURE

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

Information about the spread of crowd work is given in the report on Germany. Within the 'fair.crowdwork' initiative, about 12 platforms are considered; as to each platform, between 25 and 100 crowd workers were surveyed.

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

IG Metall tried to improve wage standards by stressing the role of the national minimum wage and by exerting its influence on other working conditions. It was able to reach an agreement with the signatories of the code of conduct on two important steps. A first step was the revision of the code of conduct: the principle according to which the platforms pay according to the 'local usual fees' was introduced; this did not meet the demand for compliance with the minimum wage, but was seen by IG Metall as an important first step on the path towards the acceptance of the national minimum wage as a wage standard.



'They did not take up our demand for the minimum wage directly and we continue to fight for it; but it was already a first step.' (Expert at IG Metall)

A second important step was taken in 2017, when IG Metall established an ombuds office with the eight signatories of the code of conduct and the German Crowdsourcing Association (*Deutscher Crowdsourcing Verband*, DCV) in order to ensure the implementation of the standards enshrined in the code of conduct, as well as to deal with conflicts between crowd workers and platforms. The ombuds office is made up of five people, including one representative from one of the platforms, one representative from DCV, and two workers' representatives (a crowd worker and a trade union officer); overall, around 30 cases have been dealt with so far, all of which have been settled by consensus with the involvement of the ombuds office.

REFERENCES

Benner, C. (ed.) (2019), *Crowdwork – zurück in die Zukunft? Perspektiven digitaler Arbeit*, Frankfurt.

Fair Crowd Work (2019), *Platform Reviews*, available at: <http://faircrowd.work/platform-reviews/>.

IG Metall et al. (2016), *Frankfurt Paper on Platform-Based Work*, available at: https://www.igmetall.de/dl/igm/20161214_Frankfurt_Paper_on_Platform_Based_Work_EN_b939ef89f7e5f3a639cd6a1a930feffd8f55cecb.pdf.

Harmon, E. and Silberman, M.S. (2018), 'Rating Working Conditions on Digital Labor Platforms', in: *Computer Supported Cooperative Work*, vol. 27, no. 3-6, pp. 1275-1324.



DON'T GIG UP



FRANCE

Case Study Report

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CASE 2 – COOPCYCLE

Description of the measure

Coopcycle aims at offering a concrete and viable alternative to bike delivery actors. It enables them to overcome precariousness through the creation of their own cooperative.

Coopcycle was, at the beginning, a platform software developed in France as an alternative to capitalistic platforms. After the bankruptcy of Take Eat Easy in 2016, a project was born through a meeting between Alexandre Segura, a developer close to the '*Nuit Debout*' movement, and an anti-platform activist and creator of the CLAP, a collective of independent riders in Paris (Jérôme Pimot), also former deliverer for Take Eat Easy and Deliveroo.

Coopcycle is in between to become a European grouping of cooperatives and associations open to bicycle deliverers with a cooperative project. It brings together three types of actors: delivery riders who wish to join a cooperative or association in their locality; restaurateurs who want to engage in an ecological and socially responsible delivery service; and the association 'Coopcycle', which ensures the coordination of the different cooperatives. Coopcycle is also in charge of the development, mutualisation and usage rules of the common tools. The approach is horizontal: Coopcycle federates local cooperatives.

Three primary services are shared: First, the platform software, which allows members of the federation to manage their deliveries (logistic module) and manage the orders (e-commerce service). Second, the smartphone application, which can be used for the orders. And third, the joint commercial offer particularly towards 'key account customers'. Not all cooperatives use the smartphone application. In this case, orders are taken manually. Other services shared include visibility & brand; administrative and legal services such as receipts, contracts, legal status; payments warranty, as warrant instant payments, thus helping financial stability for coops, funding and calls for proposal; insurances, including negotiation of grouping insurance contracts; solidarity trainings; and pooled buys.

Coopcycle brings together (in autumn 2018) about thirty cooperatives from Spain, France, Belgium, Germany, the United Kingdom and Italy (see map), with together 70 persons/riders.

Figure 1. Location of Coopcycle cooperatives



Source: Coopcycle

The software was launched in early October 2018. In spring 2019, it was used in about ten cooperatives in France, Spain, Belgium, Germany, Italy and the United Kingdom by about sixty persons/riders. Paris is the largest cooperative, with 15-20 couriers. The project is developing projects of new associations in Alfortville, Bordeaux, and cooperatives in Grenoble, for example, were mentioned in March 2019.

Coopcycle is also a member of the 'Plateformes en Commun' group. *Plateformes en Commun* is an initiative launched in 2017 by the French association 'Coop des Communs' to federate cooperative platform projects that identify themselves intending to bring social and solidarity economy and the 'commons' together.

Governance of the cooperatives/network

Several governance principles govern the links between the Coopcycle association and local cooperatives.

Coopcycle has set up a license, which is based on Dimitry Kleiner's work within the Peer 2 Peer Foundation (reciprocity licenses). The license (Coopyleft) requires structures using CoopCycle software to meet the following criteria: to adopt a cooperative model and employing their deliverers, via a traditional employment contract or a wage portage company (see box 1), and to meet the definition of SSE as stipulated by National/ eventually European law (see Box 2). The CoopCycle software is not open source: its source code is available on GitHub, but its commercial use is reserved for cooperative companies. The idea is to extend the use of the license to platforms operating in other sectors of activity.

Each local cooperative is free to set its rates to customers and to determine the method of pricing (percentage of the order, per race pricing, per hour pricing, fixed price package, etc.)

At a local level, couriers decide together about:

- The contribution's level of everyone according to its juridical status (cooperative, association, institutional entity);
- The fund's allocation;
- The pay scheme to provide services.

In the long term, it is expected that a levy of 3% will finance the association with 5% on the turnover of cooperatives.

The total turnover is not officially reported.

Box 1: Wage portage

Wage portage is a new form of employment characterized by a tripartite relationship involving an umbrella company, an employee and a company that is the client. An agreement is signed between the client and the umbrella company which collects the fees paid by the client and then pays a salary to the freelancer after deduction of management fees and all the social charges. Wage porting cumulates the advantages of being independent and being salaried.

Wage portage remained marginal for a long time before experiencing significant growth in the 2000s and entry into the Labour Code in June 2008.

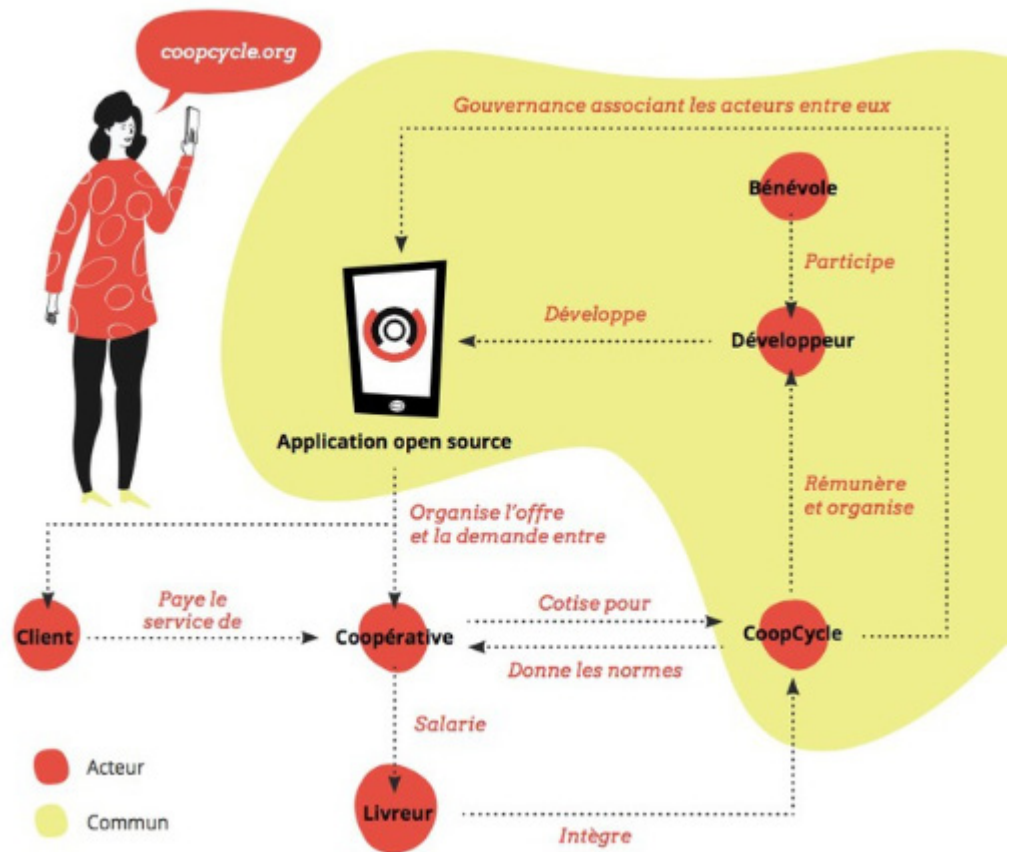
Indeed, this system was introduced into the Labour Code by Act No. 2008-596 of 25 June 2008 on the modernisation of the labour market. Its conditions of exercise were then revised by Order No. 2015-380 of 2 April 2015. It is defined in articles L1254-1 et seq. of the Labour Code.

Box 2: Social and Solidarity Economy (SSE)

Social and Solidarity Economy (SSE) are sometimes just known as the solidarity economy or the economy for the common good. It includes the parts of the not-for-profit sector, which involve trading, such as social enterprises and cooperatives. The Social economy is also known as a third sector among economies between private business and public areas (government).

It includes organisations such as cooperatives, non-profit organisations, social enterprises, and charities. A social enterprise is a revenue-generating business with primarily social objectives whose surpluses are reinvested for that purpose in the market or in the community, rather than being driven by the need to deliver profit to shareholders and owners. Social enterprise applies an entrepreneurial approach to addressing social issues and creating positive community change.

Figure 2: The Coopcycle model



Source: Coopcycle

Description of the platforms

Coopcycle targets cycling enthusiasts. The target is not students nor disadvantaged neighbourhoods. It aims at enabling delivery riders to organize themselves into local cooperatives to become autonomous and benefit from better working conditions. It requires insurance in case of an accident, for their bicycles, a pooling of tools (software, legal assistance, marketing, etc.), and a place to meet. Coopcycle is fully configurable by each cooperative according to the needs of the local market and the expectations of restaurateurs and delivery companies. It is possible to hire 'non-permanent' couriers (e.g. students) to manage peaks during an activity. For these temporary hires, the idea is to favour wage portage.

The modalities of work organization and governance were the subject of working groups that culminated in spring 2019. The following summarizes the status of these groups.

Work Status

Different statuses will be possible, as the state of salaried employees is not possible to apply in all countries, neither desired by all riders. In Paris, for example, all the cooperative's workers will be employees. Other cooperatives in Europe want to remain independent. The status of an employee can be obtained

by leaning on existing support structures: with SMART in Belgium, with the *Coopérative d'Activité et d'Emploi* OPTEOS (see Box 3) in Lille. The members of the Coopcycle association would eventually be employees.

Box 3: Activity and employment cooperatives (coopératives d'activités et d'emploi)

Employment and activity cooperatives in France assist business project holders for the launching of their activity by offering them to become 'contracted-entrepreneurs' (*entrepreneurs-salariés*). The project holder can work with full autonomy to find clients and deliver his services. However, he is bound to the cooperative by an employment contract. The cooperative collects the business sales revenue and gives it back to the project owner in the form of a salary once societal charges and management fees have been deducted.

This work status is close to the wage portage (*portage salarial*) but goes further by offering real individual support to the project owner. It's an alternative to the creation of a company or working freelance (micro-entreprise).

The law has specified the legal status of employment and activity cooperatives in France on 31 July 2014 on Social and Solidarity Economy. Employment and activity cooperatives in France are cooperative and participative companies (*Sociétés coopératives et participatives*, SCOP). It means they are participatory managed. Activity and employment cooperatives are part of the social and solidarity economy. They represent 6,500 employees and 1,500 support staff, and € 100 million in cumulative turnover (2012).

The structure supports entrepreneurs during three stages:

When an entrepreneur joins a cooperative, he/she signs a contract called a support contract for setting up a business (*Contrat d'Appui au projet d'Entreprise*, CAPE). Signing this contract will give access to the social protection and professional insurance needed to start a business. When the entrepreneur sends the first invoice and receives their first payment, the support contract for setting up a business evolves into a permanent contract (*Contrat à Durée Indéterminée*, CDI), and he becomes an employee of the cooperative, earning his salary. Of course, this salary grows accordingly to his business' sales revenue the 'contracted-entrepreneur' cannot have a € 0 salary so his company must have a minimum income for him to get a permanent contract. Also, the deal sets the amount of the fixed part and the variable component of the contracted-entrepreneur's pay. Indeed, 'contracted-entrepreneur' income depends on how much sales revenue one brings to the employment and activity cooperative. In most of the employment and activity cooperatives in France, the payment is approximately 50% to 60% of the sales revenue. As of three years from the date he joined, the entrepreneur becomes an associate of the employment and activity cooperative. It is mandatory. As an associate, the 'contracted-assistant' participates in the daily life and decisions of the cooperative.

Working conditions / Remuneration and working time

The objective, for the employees of cooperatives and associations members of Coopcycle, is to make it possible to work on a full-time basis, paid above the legal minimum wage: € 1,500 € net per month (compared to € 1,522 gross monthly for the minimum wage, i.e. € 1,204 net as of 1 January 2019). The objective is hence, approximately 25% above the minimum wage. The remuneration is set on an hourly basis, not by shift. A minimum number of working hours per week is guaranteed, as well as predictability on working hours.

The associated targeted gross income amounts to € 40/hour (to compare to € 10.7/hour for the hourly cost at SMIC level).

Working conditions /Quality of Life at Work

Guaranteeing good working conditions is a priority for Coopcycle. These conditions (bicycle load, climatic conditions, length of tours) are integrated into the cooperatives' internal regulations in the form of charters. The equipment is provided by the collective (bicycles worth about € 4,000). The cooperatives also provide all other materials (headphones, etc.).

Insurance/mutuals:

Coopcycle's objective is to negotiate 'tailor-made' group insurance contracts for bicycle delivery companies. Contacts have been made with MAIF to determine the type of coverage adapted to needs. MAIF is a mutual insurance company highly committed to supporting the so-called 'collaborative' economy.

Collective agreements:

Courier collectives have been set up in France. In some cases, trade union sections have been set up at the local level, particularly in Bordeaux (affiliated to CGT). Discussions are underway to link the couriers to the collective agreements. In Switzerland, for example, a link to the collective agreement for lorry drivers has been established.

Assessment of the measure

Coopcycle offers an alternative business model to that of capitalistic instant delivery platforms. Rather than making the remuneration of couriers the adjustment variable on which the platform acts (on this point see Aguilera, Dablanc and Rallet, 2018), Coopcycle's objective is to guarantee decent revenues, with low margins levied on restaurateurs and clients. But this is only possible because Coopcycle does not position itself in the competitive segment of low-price food-tech platforms, 'which do not allow drivers to be paid in a decent way', but in the more profitable part of 'last mile delivery'. The counterpart for the higher remuneration is, therefore, a higher price for the service. The rationale is also that significant competition and price wars characterize the food-tech delivery segment through capitalistic platforms, which are also setting up virtual restaurants today.



'Last-mile delivery is something that, with the emphasis on ecology, the concerns about urban congestion, is working very well now. (...) It is often profitable with cargo bike for delivery cooperatives. It is easy to find contracts at higher prices. Often even riders that are beginning to self-organize charge too low prices. They are afraid and do not realize the quality of their service. And so, in fact, it is with the feedback since our creation that they can increase prices because it is a service that is demanded, and it is a quality service that they often provide' (Coopcycle member)

The economic model is not stabilized. The first IT budget for the Coopcycle association was approved in spring 2019, with the funds obtained as part of the 'ESS trophy' from the City of Paris. The grant will cover travel, infrastructure costs (server, hosting, and some necessary services), to mention some. But most of the cost of developing the standard tools were based on free work, for a total estimated development cost (source interview) of € 200,000. It raises the question of financial means allocated to initiatives based on 'Commons'. One possible approach is to recognize the positive externalities for cities of this type of platform and to provide them with public subsidies. Examples of subsidies granted by municipalities exist in France, particularly in Paris, with an integration platform 'Les lulu dans ma rue'. Today, approximately 12% of the revenue of the Coopcycle association come from public funding.

References

Articles

Aguilera, A., Dablanc, L. and Rallet, A. (2018), 'L'envers Et L'endroit Des Plateformes De Livraison Instantanée, Enquête Sur Les Livreurs Micro-Entrepreneurs À Paris', *Revue Réseaux*, no. 212.

Newspaper articles / Press releases

Mediapart (2019), *Le blog de CoopCycle*, press release, available at: <https://blogs.mediapart.fr/coopcycle/blog>.

Platform websites

Coopcycle (2018), *Coopcycle web page*, available at: <https://coopcycle.org/fr/>.

<https://lescoursiersfrancais.fr/comparatif/>

Les coursiers francais (2019), 'Comparatif du coursier à vélo: Uber Eats-Deliveroo-Stuart-Coursier FR-Frichti-Nestor', web page, available at: <https://lescoursiersfrancais.fr/comparatif/>.

Discussions and interviews with different Coopcycle members.

CASE 3: PLATFORM SOCIAL RESPONSIBILITY

Description of the measure

The two stages of social responsibility

Since 2016, France has been committed to a social regulation approach concerning gig workers favouring the principle of ‘social responsibility of platforms’. This approach was the result of a specific choice in terms of regulatory scenario, consisting in advocating priority to the concrete improvement of workers’ rights through the empowerment of platforms, and independently of the work statutes, i.e. by adopting a pragmatic small steps approach.

Two periods are to be distinguished. The first was initiated with the adoption of the Labour Act of 8 August 2016²⁵ and Article 60 of this Act, which introduced the principle of the ‘social responsibility’ of platforms. The second phase began in the spring of 2018, when the parliament examined the bill on the reform of vocational training²⁶ proposed by the new government following the presidential elections in May 2017. At the initiative of a deputy from the new majority and co-rapporteur of the bill, an amendment was introduced allowing platforms to adopt unilateral charters specifying the conditions for exercising their social responsibility. The Constitutional Council rejected the amendment (adopted as article 66 of the law) in the summer of 2018²⁷.

The project of charters was reintroduced in autumn 2018, as part of the Mobility Orientation Bill²⁸. Article 20 of the draft law allows platforms falling within the scope of social responsibility, mainly Don’t GIG Up platforms type 1 and 2, which operate in the mobility sector, to adopt unilateral optional charters. The bill also proposes measures to introduce transparency obligations of the platforms vis-à-vis the workers they intermediate. A government amendment (Article 20 bis) proposes to relax the conditions for the practice of examinations in the VTC profession (see the case study on the ‘Grandguillaume law’). Finally, amendment 3299 (Article 20 quinquies) authorises the government to take legislative measures, utilizing ordinance, to determine the terms and conditions for the representation of platform workers. A period of twelve months is foreseen from the promulgation of the law.

25 Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels/ Law no. 2016-1088 of 8 August 2016 regarding work, modernising the social dialogue, and professional careers.

26 Loi n° 2018-771 du 5 septembre 2018 pour la liberté de choisir son avenir professionnel/Law no. 2018-771 of 5 September 2018 for the freedom to decide on one’s own professional career.

27 Mainly due to procedural reasons.

28 Projet de loi d’orientation des mobilités (TRET1821032L) : <https://www.legifrance.gouv.fr/af-fichLoiPreparation.do?idDocument=JORFDOLE000037646678&type=general&typeLoi=proj&legislature=15>

The project of charters has been the subject of intense debate in France since autumn 2018, with many positions taken by trade unions and platform economy and social dialogue.

In the summer of 2019, this second stage was not completed. Indeed, the deputies and senators failed to agree on a joint text in the joint committee of the assemblies on 10 July 2019, and the bill will return to the National Assembly in November 2019. In addition, a new phase will begin after the adoption of the law, in the field of social dialogue. During the parliamentary debates, the government also announced that it would set up a consultation with the stakeholders for preparing the bill on representation.

Description of the platforms

The social responsibility introduced by Article 60 of the Labour Law of 8 August 2016 (Loi Travail²⁹)

The law conferred three specific rights to the platform workers: protection against accidents at work, right to training, and recognition of the right to strike. These three rights constitute the social responsibility of the platform vis-à-vis the workers.

Social responsibility does not apply to all platforms, but only those that determine the characteristics of the service provided or the good sold and who also fix the price of the service. Typically, this concerns platforms matching passenger transport services, and platforms matching excellent delivery services (type 1 and 2 platforms of the present project).

Implications in terms of employment and social security

The first part of this social responsibility obliges the platform to cover, within the limit of a ceiling set by decree, insurance costs covering the risk of occupational accidents (Article L. 7342-2 of Labour Code). The platform is exempt from this obligation if the worker adheres to the collective insurance contract the platform puts in place for the workers, provided that the platform contract offers guarantees at least equivalent to those provided for by the individual insurance.

The second part of the social responsibility gives workers access to vocational training rights. But these rights built on those of other independent workers and are therefore limited (Article L. 7342-3 Labour Code). For instance, the right to the contribution by the platform to the obligations of self-employed to contribute to their training (without minimum requirement) and payment by the platform of the costs linked to the recognition of competencies acquired on the job (*Validation des Acquis de l'Expérience*, VAE).

The exercise of these two rights is conditional on the existence of a minimum turnover achieved by the worker on the platform. A decree of May 4, 2017 (Decree No. 2017-774) set this minimum threshold at 13% of the annual ceiling for social security (13% of € 5,099.64 / month in 2017).

²⁹ Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels.

The third part of the social responsibility of platforms recognises the right to strike for the workers using the platform (Article L. 7342-5 Labour Code). These strikes cannot be grounds for terminating the contractual relationship with the platforms. Workers also enjoy the right to form and join a trade union and to assert their collective interests via these trade unions (Article L. 7342-6 Labour Code). Following the law, trade unions can establish a local branch (*section syndicale*) which will defend the interests of its members.

The new steps introduced by the LOM³⁰ law project

The measures proposed in the LOM (article 20 of the bill) are intended to go further in defining the social responsibility of platforms. The scope is limited to those that operate in the mobility sector (VTC, two-three-wheel freight deliveries).

The first package of measures aims at setting transparency obligations for platforms regarding the workers they intermediate. Following the bill, platforms would have to inform about the minimum foreseeable price per service and workers would gain the possibility of refusing to provide the service without being sanctioned by the platform. Platforms would also have to publish on their website indicators on income (last calendar year), working time and average price of services. In return, more choice and freedom would be given to workers: possibility to refuse to provide a service, to choose time slots and periods of inactivity without being sanctioned.

Optional charters may be implemented by the platforms to determine the terms and conditions for exercising their social responsibility, the rights and obligations of the platform as well as those of the workers the platforms intermediate.

The charters can cover eight areas: (1) the conditions for exercising the professional activity (guarantee of non-exclusivity - freedom of connecting-disconnecting); (2) the procedures for obtaining a 'decent price' for the services provided; (3) the arrangements for developing skills; (4) the arrangements for improving working conditions, preventing professional risks; (5) the modalities of (social) dialogue between the platform and the workers on the requirements for exercising the licensed activity; (6) the patterns of information on changes in the conditions of the professional activity; (7) the expected quality of service and the circumstances that may lead to a break in commercial relations between the platform and the worker and the guarantees that the latter enjoys in this case; (8) the additional social protection guarantees negotiated by the platform, from which workers can benefit.

Following the bill, the charters are to be approved by the administrative authority (after consultation of the platform workers). If no answer is received within this period, the charter is deemed approved. The charter is to be published on the platform's website and attached to the contracts or general conditions of use.

This approval protects against the risk of requalification of the commercial contract in an employment contract. Disputes on the conformity of the charter and its approval are brought before the High Court (the Tribunal de Grande Instance, i.e. the common law court in civil matters).

³⁰ Projet de loi d'orientation des mobilités (TRET1821032L): <https://www.legifrance.gouv.fr/af-fichLoiPreparation.do?idDocument=JORFDOLE000037646678&type=general&typeLoi=proj&le-gislature=15>

Assessment of the measure

The role devoted to social responsibility in the regulation of platforms

The platform economy is conducive to the emergence of self-regulatory practices, for reasons that can be easily understood: an unstable legal framework and the analogy of experimentations that are continually developing³¹.

It is nevertheless necessary to distinguish unilateral self-regulation (depending on the rule the platform decides to set for itself) from a more collective form of negotiated self-regulation³². Moreover, negotiation needs a balance between stakeholders that is difficult to obtain, especially when trade unions are weak.

In the case of the charters proposed in France, these guarantees are far from being acquired.

The protection provided is very relative since the charter remains optional and unilateral. The permits would have to be approved by the administration and be the subject of consultation with platform workers. But consultation is not binding, and by no means equivalent to negotiating agreements.

Many trade union and stakeholders have publicly expressed their views against the charters and in favour of concrete progress in representation and collective bargaining within the platform economy.

Regarding the representation of workers, if the LOM law is adopted, the government would be authorized to legislate by ordinance within 12 months following the promulgation of the law, to give the sector's stakeholders time to organize themselves. It is a step forward concrete measures in the field of social dialogue, leaving room for consultation.

Can charters clarify the issue of requalification and statutes?

For the promoters of the charters, the hope is that the charter will encourage 'virtuous' actors to adopt measures in favour of platform workers and that this will result in a reduction in the number of court cases³³.

Protection against the legal risk of requalification as an employment contract has been very much in evidence from the outset in the debates concerning the implementation of the platforms' social responsibility. For the platforms, the idea was from the beginning that creating a legal framework concerning the protection of workers would protect them against requalification actions. The discussion of Article 60 of the Labour law raised the questions on the protection against requalification and the exclusion of the link on relationship

31 For shared elements of reflection on self-regulation, reference can be made to the restitution document of the participatory event co-organised by the ETUI, the ETUC, the Sharers & Workers network (co-animated by IRES and ASTREES) on 23 January 2018: 'Construire par le dialogue une économie des plateformes performante et responsable' / Starting a European dialogue on the platform economy <https://www.sharersandworkers.net/23-janvier-2018-construire-par-le-dialogue-une-economie-des-plateformes-performante-et-responsable/>

32 The emblematic example of negotiated self-regulation is, for example, the German code of good conduct.

33 This point was notably mentioned by the law professor Jean-Emmanuel Ray at a seminar organized on 12 June 2019 by the Ministry of Finance and the Ministry of Labour: 'L'organisation du travail à l'ère numérique: les plateformes de services', <https://www.tresor.economie.gouv.fr/Evenements/2019/06/12/l-organisation-du-travail-a-l-ere-numerique>.

subordination. In the first version of the law, it was indeed planned that the exercise of social responsibility would protect against the risk of reclassification. Still, this provision did not survive the parliamentary discussions. A further step is, hence, taken in 2019 with the draft law on Mobility Orientation, with the explicit mention that once the labour administration has approved them, the charters would protect against the risk of requalification.

However, several labour law experts doubt the ability of charters to protect against the risk of requalification effectively³⁴. Indeed, the eight topics that constitute the heart of the charter (see above) and would guarantee the status of independent or at least a presumption of non-subordination can be read as many indicators of the subordination link, with potential boomerang effect in the courts. In other words, the charter makes it possible to identify the elements that the judge will verify to requalify, if necessary, the contract for the provision of services in an employment contract. Moreover, the jurisdiction conferred to the High Court does not prevent a platform worker from applying for reclassification before the labour court.

What can we expect from measures to promote transparency in working conditions?

Following the LOM bill, platforms would have to communicate the information necessary for the performance of the service. They would have to inform about the minimum foreseeable price per service and workers be given the possibility of refusing to provide the service without being sanctioned. Platforms would also have to publish on their website indicators on activity income, activity time, and the average price of services.

But under the argument of transparency, desired by all stakeholders, the objective remains protection against requalification by establishing a principle of free connection of the worker. Most of all, the algorithm can be adapted. For example, it is possible for a VTC platform to set up an incentive system. For the driver, the risk is that in the case of expected low remuneration, he refuses to accept trips, he will no longer or less be solicited for the most profitable trips.

What concrete protections have been provided by the first phase of social responsibility (Article 60)

No official assessment has been made of the 2016 law.

The record that can be drawn is mixed. It leads to linking the social rights of workers to the platform, rather than the person. The guarantees are vaguely defined. For instance, many platforms have partnered with insurance companies to offer these group insurance policies for accident and liability protection. Uber announced a partnership with AXA in July 2017. Uber also announced in May 2018 that it was expanding the collaboration on a European scale. Deliveroo also entered into a partnership with AXA in March 2017. These private group contracts are not without raising debate (on their quality, on the consequences for the financing of social protection, on the attachment to the platform rather than to the individual). The low obligations for vocational training are also a subject of debate.

³⁴ See for example : <http://www.wk-rh.fr/actualites/detail/102581/comment-assurer-la-representation-des-travailleurs-des-plateformes-.html>

On the other hand, the 2016 law probably helped to initiate a positive dynamic in terms of vocational training. Several platforms have thus launched initiatives in favour of the professional training of the workers concerned (VTC Campus for Uber, for example).

References

Reports:

Amar, N., Maymil, V., Viossat, L.C., Leconte, M., and Sauvart, A. (2019), *La régulation du secteur des voitures de transport avec chauffeur et des taxis*, Rapport de l'IGAS N°2018-050R

Amar, N., and Viossat, L.C. (2016), *Les plateformes collaboratives, l'emploi et la protection sociale*, Rapport de l'Igas no. 2015-121R

Conference papers and presentations:

Chagny, O. (2019), 'L'organisation du travail à l'ère numérique: les plateformes de services', conference presentation, *Politiques de l'emploi - Interactions de l'économie et du juridique*, Ministère des Finances et le Ministère du travail, 12 June, Paris, France. <https://www.tresor.economie.gouv.fr/Evenements/2019/06/12/l-organisation-du-travail-a-l-ere-numerique>.

Charhon, P. (2018), 'Plateformes numériques. Mobilisation collective, innovation et responsabilité sociales', conference presentation, *Construire par le dialogue une économie des plateformes performante et responsable* / *Starting a european dialogue on the platform economy*, 23 January, Brussels, Belgium. <https://www.sharersandworkers.net/23-janvier-2018-construire-par-le-dialogue-une-economie-des-plateformes-performante-et-responsable/>.

Viossat, L.C. (2019), 'L'organisation du travail à l'ère numérique: les plateformes de services', conference presentation, *Séminaire co-organisé par le Ministère des Finances et le Ministère du travail Politiques de l'emploi - Interactions de l'économie et du juridique*, 12 June, Paris, France. <https://www.tresor.economie.gouv.fr/Evenements/2019/06/12/l-organisation-du-travail-a-l-ere-numerique>.

Viossat, L.C. (2018), 'Digitalisation, plateformes, données : l'emploi et le travail en devenir, de nouveaux défis pour le dialogue social?', conference presentation, *36e session de l'INTEFP Institut National du Travail, de l'Emploi et de la Formation Professionnelle*, IGAS, 13 December, Marcy L'étoile, France. <http://www.intefp.travail-emploi.gouv.fr/plus/actualites/90-la-36e-session-nationale-de-l-intefp>.

Viossat, L.C. (2018), 'Country perspective: coordinated policy approach to platform work in France', conference presentation, *Conference on policy responses to new forms of work*, OECD, 7 November, Paris, France. <https://www.oecd.org/els/emp/conference-new-forms-of-work-policy.htm/>.

Newspapers / press releases:

CGT (2019), 'Projet de loi LOM, des reculs en perspective', press release, 15 July, available at: <https://www.cgt.fr/actualites/france/services-publics-transport/legislation/projet-de-loi-lom-des-reculs-en>.

FO (2019), '*Charte pour les travailleurs des plateformes : la prime au moins disant social!*', press release, 13 June, available at: <https://www.force-ouvriere.fr/charte-pour-les-travailleurs-des-plateformes-la-prime-au-moins?lang=fr>.

Le Monde (2019), '*La charte des travailleurs de plate-forme « place la France en leader de l'innovation sociale en Europe »*', 14 April, available at: https://www.lemonde.fr/idees/article/2019/04/14/la-charte-des-travailleurs-de-plate-forme-place-la-france-en-leader-de-l-innovation-sociale-en-europe_5450040_3232.html.

Le Monde (2019), '*Salwa Toko: « Souhaite-t-on créer une société à trois vitesses, constituée de salariés, d'indépendants et de travailleurs au statut hybride? »*', 27 April, available at: https://www.lemonde.fr/idees/article/2019/04/27/souhaite-t-on-creeer-une-societe-a-trois-vitesses-constituee-de-salaries-d-independants-et-de-travailleurs-au-statut-hybride_5455751_3232.html.

Le Monde (2019), '*Il est temps que la loi reconnaisse le droit des travailleurs des plates-formes numériques d'être représentés*', 19 May, available at: https://www.lemonde.fr/idees/article/2019/05/19/il-est-temps-que-la-loi-reconnaisse-le-droit-les-travailleurs-des-plates-formes-numeriques-d-etre-representes_5464103_3232.html.

WK RH (2019), '*Comment assurer la représentation des travailleurs des plateformes*', 13 June, available at: <http://www.wk-rh.fr/actualites/detail/102581/comment-assurer-la-representation-des-travailleurs-des-plateformes-.html>.

Websites:

CFDT (2019), *Syndicalisme Hebdo, Projet de Loi mobilité : péril sur les travailleurs des plateformes*, web page, available at: https://www.cfdt.fr/portail/actualites/emploi/-/formation/projet-de-loi-mobilite-peril-sur-les-travailleurs-des-plateformes-srv1_681972.

Discussions and interviews with different stakeholders:

Louis-Charles Viossat (IGAS), Franck Bonot (SPIN Consulting), including mobilization of the expertise developed within the Sharers & Workers network by the redactor of the contribution.



DON'T GIG UP



ITALY

Case Study Report

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CASE 2: Networkers.it

Description of the measure

What are the **features** of the measure with regard to the protection of gig workers (please refer to all the relevant areas of interest)?

Networkers.it (<https://sindacato-networkers.it/>) is the first online union platform for ICT professionals and employees in the tertiary sector. It is a tool created upon the initiative of UILTuCS, the union representing workers in the tertiary sector affiliated with UIL. The goal is to deal with claims and protection issues (even at individual level) emerging in the new areas of work that are not addressed by trade unions' traditional tools¹⁵.

Among the tools adopted in this field, Networkers.it has provided – in addition to basic union services – online union consultancy through the Labour Rights Forum (*Forum per i diritti del lavoro*)¹⁶, the creation of the JobICT.it database aimed at matching labour supply and demand in the reference sector (in cooperation with the National Association of ICT Companies, Assintel), as well as the promotion of a culture of skills both through a specific section on its website, based on the e-Competence Framework (e-CF)¹⁷, and through the membership in the National Coalition for Digital Competences (*Coalizione nazionale per le competenze digitali*) of the Agency for Digitalisation in Italy (AgID).

More recently, following the increase in the number of riders, Networkers.it has extended its scope of action by broadening its target and the focus of its tools aimed at protecting the rights of gig workers. Below are some of the most relevant initiatives¹⁸:

- the Union One-Stop Shop for the Rights of Gig-Economy Workers (*Sportello sindacale per i diritti dei lavoratori della gig economy*): this is a one-stop shop offering free-of-charge legal aid, tax advice, and adequate union representation when interacting with companies that own digital platforms; and
- the Observatory on the Gig Economy (*Osservatorio della gig economy*): this observatory, operated on a permanent basis, was established with the goal of providing a concrete response to the resolution entitled 'Towards fair digital work', approved by the Executive Committee of the European Trade Union Confederation (ETUC) during the session held from 8 to 9 June 2016.

Sociodemographic data, the self-definition of each worker (as a freelancer or a gig worker), the features of the platforms used by each worker, working conditions (type of work, frequency of tasks, remuneration, protection, and satisfaction), and expectations in terms of improvement in working conditions are

¹⁵ For further information, cf. the webpage of Networkers.it: <https://sindacato-networkers.it>.

¹⁶ For further information, cf. <https://sindacato-networkers.it/diritti-del-lavoro/>.

¹⁷ This is the common European framework for professional and managerial competences in the ICT sector, which is linked to the European Qualifications Framework (EQF).

¹⁸ For further information, cf. <https://sindacato-networkers.it/sportello-sindacale-per-i-diritti-dei-fattorini-della-gig-economy/>.

collected on a voluntary basis through an online questionnaire.

The activity of Networkers.it has been integrated with the initiatives of the Milan and Lombardy branch of UIL, which, also through conferences, is addressing the issue of platform delivery workers. In particular, the Milan and Lombardy branch of UIL proposes focusing on policies in favour of these workers, including topics such as rights, safety, and training, with a view to ensuring such people can be retrained. Moreover, it considers essential the networking of one-stop shops operated by public institutions and trade unions.

Within the territorial structure, the union – through its department dedicated to young people, and in cooperation with the Networkers.it union – organises meetings with riders in the areas where the latter usually meet, with a view to approaching this group of workers by talking to them, listening to their problems, and providing them with updates on the initiatives implemented by UIL in this field.

Description of the platforms

*How is **work organised** in the platforms addressed by the measure in the covered areas (e.g. terms of employment contracts, monitoring of the performance, and flexibility)?*

Although the continuous survey¹⁹ carried out through the Observatory on the Gig Economy was based on qualitative information rather than on statistically relevant data, it outlined some interesting elements useful to interpret the trends of platform work. Food-delivery platforms (e.g. Deliveroo, Glovo, Uber Eats, and Just Eat) still play a significant role, and the number of so-called 'crowdworking workers' is on the increase: several work experiences are gained through ClixSense, Rainforest, Neobux, Odesk, and Melascrivi, to mention but a few; moreover, also Italian digital platforms such as Be My Eye and Joebee are found.

In addition to home delivery (which is predominant), working activities include: web development; translation; the implementation of online surveys; graphic design activities; data entry; paid-for display of ads, and online browsing; online search and information comparison; and other micro-tasks typical of crowdworking.

As to working conditions, the interviewees point out what has already emerged from other surveys referred to in this report: the uncertainty linked to the ranking and statistical processing mechanisms; the lack of transparency of the algorithms used by the company; the difficulty in communicating and sharing workers' needs in terms of flexibility; and the implementation of remuneration methods based on competitiveness between workers, which over the years tends to decrease their earnings.

The sample of respondents can be divided based on the degree of satisfaction with the type of work. Such degree is related to the reasons behind looking for a job through online platforms, which include: the lack of other job opportunities; the need to supplement one's own income; or the need for more flexibility. Obviously, also the self-definition as a freelancer or an employee varies in relation to motivational factors.

¹⁹ Available at: <https://sindacato-networkers.it/questionario-gig-economy/>.

Finally, data provided by the observatory in relation to 2019 confirm that, among digital-platform workers, different opinions emerge on the issue of union representation: 43.5% answered that no union representation is possible for this type of work, while 32.6% (up from 25% in 2017) stated that unionism is the main form of organisation that can represent them; finally, 8.7% and 4.3% of respondents (mainly those active as crowdworkers) considered the possibility of being represented, respectively, by voluntary professional associations and by professional associations for which registration is compulsory in order to be allowed to pursue specific careers.

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

As outlined by Networkers.it and the surveys carried out through the observatory, the failure to apply a specific NCBA for this type of jobs results in a strong increase in the number of workers providing their services as freelancers (thus applying for a VAT number), under so-called 'coordinated-collaboration contracts' (i.e. work contracts based on specific projects), occasionally, or without any type of contract.

As to the forms of protection that gig-economy workers would like to have, two groups of respondents can be identified: a) those (mainly crowdworkers) who do not call for other rights, or do not know what such rights could mean; and b) those (mainly home-delivery riders) who call for decent pay, insurance against accidents at work, sick pay, and social security contributions.

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

Working without a work contract implies the lack of labour and social security protection, unless legal actions or inspections ascertain the existence of an undeclared employment relationship, thus triggering the initiation of regularisation procedures, as well as the imposition of sanctions.

In spite of the introduction of some forms of formal protection against the client through Act 81/2017 (known as 'Jobs Act of Self-employed Workers'), the other types of work adopted by platforms do not grant the rights typical of employment relationships, unless – following legal action or an inspection – the working relationship is classified as 'bogus self-employment'²⁰. As to their social security protection, it is very weak (in the case of freelancers working with their own VAT number or of workers hired on 'coordinated-collaboration contracts') or inexistent (occasional workers)²¹.

Even when social security protection is provided (for instance, pension schemes and maternity leave for freelancers working with their own VAT number and for workers hired on 'coordinated-collaboration contracts', and the unemployment allowance for the latter only), benefits are closely related to the contribu-

²⁰ According to recent case law, some forms of protection granted under employment contracts would also apply to some other working arrangements (cf. the case study on the NCBA of the logistics sector).

²¹ In line with the evidence provided in the State-of-the-Art Report (in particular on p. 43), it is assumed that 'occasional work' should be understood as meaning 'occasional autonomous work' and not 'occasional employment'. The latter, which is a type of contract introduced in June 2017, is covered by some limited forms of labour law and social security protection, including minimum hourly pay.

tion history and to the duration of paid work. Therefore, an unstable and low income implies short-term and limited social security provisions. The same can be said in relation to the insurance against accidents at work, provided by the National Institution for Insurance against Accidents at Work (*Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro*, Inail): such scheme is closely related to the amount of pay received, and applies only to workers hired on 'coordinated-collaboration contracts'. However, in the event of permanent disability, workers are paid the relevant allowance by Inail for the rest of their life²².

Assessment of the measure

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

Networkers.it can be considered as a successful practice aimed at testing methods to gain better understanding of gig workers' working conditions and of relevant protection measures. To this aim, it has interacted with such workers by adopting an approach that takes into account their reluctance to consider trade unions as organisations representing their needs.

No quantitative information is currently available that allows for the assessment of the impact of this measure, although the presence of Networkers.it in discussions at public and institutional level is stronger and stronger: for instance, it has been recently referred to as a best practice in recent studies by the International Labour Organization (ILO) (Johnston and Land-Kazlauskas, 2018) and by the European Foundation for the Improvement of Living and Working Conditions (Eurofound) (De Stefano and Aloisi, 2018).

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

Assuming that as many social, economic, and institutional actors as possible should be involved, Networkers.it has started to organise meetings in some cities (e.g. Milan and Bologna) in order to identify new forms of integration in relation to gig workers' social security, labour protection, and safety²³.

In December 2018, Networkers.it developed and disseminated an 'open document' entitled 'Gig economy: A proposal to regulate digital-platform work' (UILTuCS, 2018b). The document builds upon Digital Footprint, an international research project implemented by UNI Europa (Huws, Spencer, Syrdal and Holts, 2017) (which provides some operational information on the phenomenon), as well as on the 'Frankfurt paper on platform-based work' (sometimes referred to as 'Frankfurt Charter')²⁴ and the 'Manifesto to save the gig economy' (De Stefano, Aloisi and Silberman, 2019). After some discussions with labour law experts, labour lawyers, and digital-platform workers, the document was shared by Networkers.it with the national confederal secretariat of UIL. The document is divided into two parts: the first one concerns on-call work carried out through platforms, whereas the second one deals with crowdworking.

²² Recent provisions introduced by Act 101/2019 and by Act 128/2019 increased formal social security coverage of self-employed platform delivery workers, and strengthened some of their labour rights, including by banning the exclusion from the platform and the reduction of work opportunities for reasons linked with the refusal to accept tasks (see also information provided in the previous case).

²³ Cf., e.g., UILTuCS (2018a).

²⁴ Available at: http://crowdwork-igmetall.de/Frankfurt_Paper_on_Platform_Based_Work_EN.pdf.

The document aims to ensure the forms of protection guaranteed through sector-specific collective bargaining or company-level collective bargaining agreements, starting from the assumption that it is simply necessary to update some aspects of today's collective bargaining. In terms of bargaining, this translates into the commitment, by the most developed platforms, to using full-time and/or part-time employment contracts in relation to the group of workers that covers the most significant share of orders, as well as into a reference to the so-called 'on-call work contracts' to cope with demand peaks. Once again, in the case of employment, reference is made to the national legislation on ICT-based mobile work in order to facilitate remote work. Finally, the document proposes that, through specific agreements with the relevant bilateral bodies, additional services can be provided in relation to supplementary pension schemes, supplementary healthcare insurance, and professional training.

In general, the document identifies the need to adapt the definition of employment, as well as the criteria to be used to assess whether a working relationship shall be regarded as employment (i.e. managerial authority, disciplinary authority, and authority in relation to work organisation, working time, and pay) to the production context of the gig economy. Such adaptation could be effected by considering employment in looser terms in view of the fact that a high degree of autonomy in the performance of the working activity is often required also to employees. Anyway, the employment relationship of gig-economy workers as concerns minimum pay, guaranteed minimum number of working hours, protection of health and safety at work, and protection of privacy and of the working activity shall be regulated through collective bargaining²⁵.

References

De Stefano, V. and Aloisi, A. (2018), *Digital Age: Employment and working conditions of selected types of platform work. National context analysis: Italy*, Eurofound, Dublin, available at: <https://www.eurofound.europa.eu/sites/default/files/wpef18056en.pdf>.

De Stefano, V., Aloisi, A. and Silberman, S. (2019), *A manifesto to reform the Gig Economy*, available at: <http://regulatingforglobalization.com/2019/05/01/a-manifesto-to-reform-the-gig-economy/>.

Faioli, M. (2017), 'Jobs "app", gig economy e sindacato', in: *Rivista Giuridica del Lavoro*, no. 2, pp. 291-305, available at: https://art.torvergata.it/retrieve/handle/2108/199589/393528/2017_GIG%20ECONOMY_SINDACATO_RGL%202%202017_FAIOLI.pdf.

Huws, U., Spencer, N.H., Syrdal, D.S. and Holts, K. (2017), *Work in the European gig economy*, available at: <http://www.uni-europa.org/wp-content/uploads/2017/11/europeagigeconomy-longversionpdf.pdf>.

INPS (2018), *XVII Rapporto annuale*, available at: https://www.inps.it/docallegatiNP/Mig/Dati_analisi_bilanci/Rapporti_annuali/INPSrapporto2018.pdf.

Johnston, H. and Land-Kazlauskas, C. (2018), *Organizing on-demand: Representation, voice and collective bargaining in the gig economy*, Condition of Work and Employment Series, no. 94, ILO, Geneva, available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_624286.pdf.

²⁵ For further information and comparisons, cf. also Leonardi and Di Nunzio (2018) and Faioli (2017).

Leonardi, S. and Di Nunzio, D. (2018), *Country Report Italy*, report prepared in the framework of the project 'Digitalisation and restructuring: Which social dialogue?' (DIRESOC), available at: http://diresoc.eu/wp-content/uploads/2019/03/DIRESOC_Italy-country-report-1.pdf.

Tassinari, A. and Maccarrone, V. (2018), 'Le mobilitazioni dei fattorini della gig economy in Italia', in: *Quaderni di Rassegna Sindacale – Lavori*, no. 2, pp. 75-106, available at: https://www.researchgate.net/publication/327269701_Le_mobilitazioni_dei_fattorini_della_gig_economy_in_Italia_forme_organizzative_e_implicazioni_per_la_rappresentanza.

UILTuCS (2018a), *Fattorini e gig economy: primo incontro al Comune di Milano*, available at: <https://uiltucs.it/fattorini-e-gig-economy-primo-incontro-al-comune-di-milano/>.

UILTuCS (2018b), *Gig economy: Una proposta per regolare il lavoro tramite piattaforme digitali*, available at: <https://uiltucs.it/wp-content/uploads/2018/12/proposta-gig-economy-online.pdf>.

CASE 3: THE BOLOGNA CHARTER

Description of the measure

*What are the **features** of the measure with regard to the protection of gig workers (please refer to all the relevant areas of interest)?*

In the fall of 2017, following an intense snowfall that made cycling in Bologna particularly dangerous, riders promoted a 'snow strike', the first-ever organised protest to complain about the lack of an insurance scheme for accidents at work. Through this initiative, the municipal authorities were called upon to impose, through a specific order, the suspension of the food-delivery service even on the day following the strike.

Negotiations were therefore started with the most representative trade unions, and continued into the following winter and spring. They were complemented with a number of hearings held within the council committees of the Municipality of Bologna, as well as with some public awareness-raising initiatives. The negotiation round ended on 31 May 2018 with the signing of the Charter of Fundamental Rights of Digital Work in the Urban Context (better known as 'Bologna Charter') by the municipal authorities, CGIL, CISL, UIL and Riders Union Bologna on the workers' side, as well as, on the employers' side, by the Bologna-based Sgnam and Mymenu food-delivery platforms (Municipality of Bologna, 2018a).

The Bologna Charter, the first metropolitan agreement on the gig economy in the EU, can be defined as a trilateral territorial agreement at municipal level, and is aimed at improving the working conditions of digital workers active in the Municipality of Bologna, by adopting minimum standards of protection regardless of the nature (self-employment or employment) of the working relationship.

The rights enshrined in the charter (Municipality of Bologna, 2018b) are:

- right of information in relation to the contractual elements – place of work, nature of the working relationship, start and end dates in case of temporary working arrangements, remuneration, trial period, training rights (if any), insurance coverage, etc.;

- right of information in relation to reputational mechanisms, as well as right to challenge any ratings deemed to be incorrect, and entitlement to 'rating portability' towards other platform-work contexts; and
- rights of protection of the person and of the latter's fundamental assets: right to receive fair and dignified pay not lower than the minimum standards set out by the collective bargaining agreements, as well as to be paid a specific allowance in case of night work or of work carried out during holidays and in unfavourable weather conditions; prohibition of discrimination; right to health and safety, which is ensured by setting out that digital platforms take out an insurance policy that covers workers against the risk of accidents and sickness; right to the protection of the processing of personal data; right to free-of-charge connection, as well as right to disconnect; and freedom of association.

In addition to disseminating the charter and to promoting it among other potential signatories, the municipal authorities have committed themselves to identifying administrative measures to set out rules, discouraging those practices that are in breach of the principles of the charter. In order to verify the effectiveness and implementation of the charter, the Municipality of Bologna has set up a monitoring mechanism involving the contracting parties, to be activated regularly every six months.

Description of the platforms

*How is **work organised** in the platforms addressed by the measure in the covered areas (e.g. terms of employment contracts, monitoring of the performance, and flexibility)?*

Whereas the main companies in the sector (Foodora, Just Eat, Glovo, and Deliveroo) have not signed the document, formally justifying this choice by referring to the local nature of the initiative, two platforms with a small market share at local level (Sgnam and Mymenu, both owned by Meal Srl) have immediately joined it. A third one, Domino's Pizza, signed the charter in March 2019 (Municipality of Bologna, 2019).

When Sgnam and Mymenu adhered to the charter, they were availing themselves of a total of around 300 riders all over Italy, of whom 130 in Bologna. Recently, the group they belong to has acquired the Milan-based company Bacchette e Forchette, and has progressively expanded the network of riders, reaching a total of 600 people working mainly in northern Italy.

At the moment, the platforms adopt an hourly pay scheme. From 1 January 2019, it shifted from € 7 (after tax) for those who carried out deliveries by bike, and € 8 (after tax) for those who used scooters, to € 7 (after tax) for everyone, plus a flat-rate lump sum of € 0.50 per delivery for bikers, and € 1.50 per delivery for motorbikers. As a matter of fact, the previous pay level is exceeded even with just one hourly delivery.

Domino's Pizza, at the time of joining the charter, was running four pizzerias in Bologna, employing around 80 people, including 50 riders. An additional pizzeria has been opened recently, with the headcount increasing by a further 60 people (including 45 riders).

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

Regarding the type of contract, Meal Srl goes for occasional self-employed work, and, when the worker reaches the maximum amount of income provided for by law as to this type of working arrangement, the company requires the worker to register as a freelancer (by applying for a VAT number).

This behaviour is justified by the management of Meal Srl in view of the 'dumping' strategies adopted by the other platforms that have not signed the charter. Even in relation to, e.g., the extension of the area in which services are provided, which covers neighbouring Municipalities, Sgnam has agreed with workers' representative organisations upon a more limited delivery distance; however, it is often difficult to comply with such commitment in view of competitors' 'aggressive' behaviour (*'If Deliveroo carries out deliveries outside of the municipal territory, Sgnam must adapt'*).

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

Although the type of contract adopted (occasional self-employed work) does not guarantee actual protection with respect to the commitments taken through the charter, on the basis of both the interviews carried out in the framework of the project, and the outcomes of the first monitoring meeting between the signatories of the agreement, the following direct results (UIL Emilia-Romagna, 2018) were identified:

- a slight pay increase, albeit not yet in line with the standards enshrined in the charter;
- insurance coverage (Article 6): in 2017, no platform had taken out an insurance policy for riders; insurance policies (private and with limited ceilings) were introduced gradually over time also by the platforms that had not signed the charter;
- better protection of the processing of personal data (Article 7); and
- the application of the right to hold meetings (Article 9): in general, the riders themselves report a better scenario in relation to the exercise of union rights.

Assessment of the measure

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

No quantitative data on the impact of the measure are available. As already stated, the charter envisages the convening, twice a year, of a monitoring meeting involving the representatives of the signatory parties. The qualitative information therefore includes: the reports of the meetings; articles in newspapers; and interviews with riders, conducted by the same partners of this project.

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

As specified above, the charter is defined as a trilateral territorial agreement at municipal level. The Bologna-based trade unions that signed the charter did not intend to turn it into a template for a future contractual scheme for riders²⁶, as this could have prevented the classification of their working relationship as employment in the framework of the ongoing legal disputes. At the same time, the platforms opposed the qualification, according to the text of the charter, of digital workers as employees.

During the first monitoring meeting, the signatories restated their commitment to extending its application to other food-delivery organisations or to other digital-work areas, in parallel with, and independently of the results of the national-level negotiations (Martelloni, 2018).

In terms of positive impacts, the charter has achieved its primary goal, namely to promote reflection on the digital-work culture in Italy: there have been many feedbacks in this regard on national media and in the framework of national events such as the Trento Festival of Economics. The charter can also be deemed to have promoted similar initiatives by other public administrative authorities, such as the draft law on 'Provisions concerning work carried out through digital platforms', which was submitted to Parliament by the Region of Piedmont in June 2018, as well as the approval, by the Region of Lazio, of Regional Law no. 4/2019 containing 'Norms for the protection and safety of digital workers' (Tassinari and Maccarrone, 2018). Finally, several provisions introduced in November 2019 for self-employed platform delivery workers by Act 128/2019 resemble some articles of the Charter. This is the case of: right to a pay in line with minimum rates set by collective agreements (in the absence of an ad hoc sectoral agreement), the right to a bad weather allowance²⁷, statutory insurance against accidents at work and coverage by protective rules on health and safety²⁸, processing of personal data in line with Regulation (EU) 2016/679, prohibition of discrimination, and right to have a written contract. The presence of binding provisions might finally trigger an improvement of terms of employment applied by delivery platforms, albeit this is subject to a number of caveats concerning both the interpretation of the new rules, and the ability to enforce them.

26 Art. 2, para. 2 of Act 81/2015 actually provides for the possibility for the social partners to define, through national-level agreements, specific sets of rules to regulate the so-called 'coordinated and continuous collaboration working arrangements' (also known as 'co.co.co.') in view of specific needs at sectoral level.

27 These two provisions will enter into force starting from November 2020.

28 This provision will enter into force starting from February 2020.

References

Martelloni, F. (2018), 'Individuale e collettivo: quando i diritti dei lavoratori digitali corrono su due ruote', in: *Labour & Law Issues*, vol. 4, no. 1, pp. 18-34.

Municipality of Bologna (2018a), *Firmata a Bologna la Carta dei diritti fondamentali dei lavoratori digitali nel contesto urbano*, available at: <http://www.comune.bologna.it/news/firmata-bologna-la-carta-dei-diritti-fondamentali-dei-lavoratori-digitali-nel-contesto-urbano>.

Municipality of Bologna (2018b), *Carta dei diritti fondamentali dei lavoratori digitali nel contesto urbano*, available at: http://www.comune.bologna.it/sites/default/files/documenti/CartaDiritti3105_web.pdf.

Municipality of Bologna (2019), *Domino's Pizza firma la Carta dei diritti fondamentali dei lavoratori digitali nel contesto urbano*, available at: <http://www.comune.bologna.it/news/domino-pizza-carta-diritti-fondamentali-lavoro-digitale-riders-piattaforme>.

UIL Emilia-Romagna (2018), *Carta di Bologna sui riders, riunito tavolo di monitoraggio*, available at: <http://www.uilemiliaromagna.net/2018/12/15/uil-er-carta-di-bologna-sui-riders-riunito-tavolo-di-monitoraggio/>.

Tassinari, A. and Maccarrone, V. (2018), 'Le mobilitazioni dei fattorini della gig economy in Italia', *Quaderni di Rassegna Sindacale – Lavori*, no. 2, pp. 75-106, available at: https://www.researchgate.net/publication/327269701_Le_mobilitazioni_dei_fattorini_della_gig_economy_in_Italia_forme_organizzative_e_implieazioni_per_la_rappresentanza.



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