



DON'T GIG UP



Policy Recommendations

January 2020



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INTRODUCTION

This report was produced as part of the ‘Don’t GIG up!’ project, co-funded by the Directorate-General for Employment, Social Affairs and Inclusion of the European Commission, and aimed at improving expertise and knowledge on the role unions and social dialogue can play with regard to the protection of gig workers.

Running for 24 months (February 2018 – January 2020), the project brought together unions and research centres to analyse features and challenges of the gig economy in a set of selected countries, namely: Germany, France, Italy, Poland, Spain, and Sweden.

More precisely, the scope of the project was work carried out through labour platforms. At the onset of the research, such platforms were divided into three groups according to their core activities, namely: passenger transport services (e.g. Uber and Lift); good delivery services (e.g. Deliveroo and Foodora); ‘traditional’ gigs like gardening, cleaning, or skilled services (e.g. Task Rabbit, Helpling, Fiverr, and Upwork); and micro-tasks often externalised to a ‘crowd’ of workers (e.g. Amazon Mechanical Turk).

The core outputs of the project include:

- a State-of-the-Art Report providing an overview on the political, social, and academic debate on the gig economy and its features, as well as on related reforms and data in the countries involved in the project;
- five Country Case Study Reports, investigating and assessing practices meant to organise gig workers and to increase their employment and social security rights in France, Germany, Italy, Poland, and Spain; and
- three mutual learning workshops comparing and discussing the practices with project participants and external experts and stakeholders with a view to identifying policy recommendations. Findings and discussion from the meetings were written down and shared to keep track of the different ideas and proposals emerging from them.

As a final step, the project partners compiled a Final Report comparing platform business models and existing initiatives to protect gig workers, as well as developed the present Recommendations.

METHODOLOGY AND CONTENT OF THE RECOMMENDATIONS

Following inputs from the case studies and the mutual learning seminars, the partners agreed on a common tool to share proposals for recommendations according to three core dimensions emerging as crucial, namely:

- individual contracts and policies against misclassification of gig workers;
- gig workers' activities, and promotion of fair pay and price-setting systems; and
- unions' strategies and functions *vis-à-vis* platforms' strategies.

Proposals had to specify: the description and justification of the policy; actors in a position to implement it (target); and pros and cons to feed further reflection.

The proposals were then grouped and summarised according to their content, and underwent a final revision and validation by the partnership.

The scope of the recommendations concerns labour platforms as covered during the study. Despite research highlighted poor availability of data and policy measures concerning micro-tasks platforms, most recommendations may apply also to this category.

In the light of the differences between the various types of platforms as well as in the country features, the recommendations shall be intended as general suggestions to be adjusted according to the relevant context. They are sometimes complemented with examples of acts, rulings, or initiatives deemed of particular interest.

RECOMMENDATIONS



Individual Contracts and Policies against Misclassification of Gig Workers

1. Introduce transparency requirements for platforms to operate in the EU

Platform companies across the four typologies illustrated in the Introduction adopt digital infrastructures to matchmake gig workers on the market.

With a view to ensuring proper monitoring of digital matchmaking and compliance with labour, tax, and social security obligations, it is advisable to introduce transparency requirements for platforms to operate.

In order not to jeopardise regulation throughout the EU with regulatory biases and elusive behaviours, the introduction of EU-wide provisions would be preferable.

In particular, as is the case with Directive 2008/104/EC on temporary agency work) (Article 4), the requirements could affect registration, licensing, certification, financial guarantees, or monitoring of platforms. Such a system should also allow for an EU-wide monitoring of work carried out through platforms, informing possible regulation and action by policy makers, unions, and the social partners.

These requirements shall be without prejudice to the classification of work provided through the platform.

Target: EU-level policy makers

2. Guarantee platform workers enjoy labour rights, also by leveraging existing EU law

The spread of atypical work, including abuse thereof, led the European institutions to introduce a set of measures meant to ensure fair working conditions while meeting flexibility demands by companies under the overarching framework of the European Pillar of Social Rights.

In this respect, given the features of platform work, it is of particular importance that, when transposing Directive (EU) 2019/1152 on transparent and predictable working conditions, EU Member States adopt a definition of worker that, consistently with their own legal systems and case law approaches, encompasses also the phenomenon of gig workers.

Beyond ruling on information rights, the directive (Article 11) entitles EU Member States to introduce a number of measures meant to tackle abuse of casual employment, measures that could be of interest for platform work. In particular, EU Member States shall: limit the use and duration of on-demand or similar employment contracts; introduce a rebuttable presumption of the existence of an employment contract with a minimum amount of paid hours, based on the average of a given period; and introduce other equivalent measures.

Target: National-level policy makers

3. Consider platforms as the employer by default

A great challenge for the enjoyment of labour rights is posed by the strategy adopted by many platforms, which consider themselves not as employers but rather as providers of an information society service for clients and self-employed alike (see also point 1 above).

Literature review and research conducted throughout the project showed that platform companies often do define the characteristics of the service rather than providing a mere IT infrastructure, and exercise decision-making power over their workers explicitly or implicitly. Decision making is to some extent delegated to algorithms, often presented as a neutral tool to allocate jobs, tasks, or shifts. Yet, they are often designed by platform owners to exercise control over workers' activity, rather than simply on the results thereof, and/or to exploit and exacerbate market mechanisms with a view to lowering pay or to pushing workers to stay available on the platform.

These recurrent features argue in favour of introducing a presumption of 'platforms as employers', deeming them obliged to comply with labour law unless there is evidence pointing towards genuine self-employment and the possibility for the self-employed workers concerned to use the platform to develop a truly independent activity.

As the methods used to exercise decision-making power may differ from the one adopted in the past, sector-specific regulation may also introduce / better define the criteria to assess whether a working relationship qualifies as employment. As to countries where multi-employer collective bargaining plays a role in setting terms and conditions of employment, this could also be delegated to multi-employer collective agreements. Such a choice should take into account and address obstacles possibly arising whenever platforms avoid setting up and joining employers' organisations.

Target: EU-level policy makers, National-level policy makers

4. Tackle elusion of sector-specific rules

Despite platforms often consider themselves as IT companies, in order to prevent elusive behaviours, they shall be subject to law and, whenever applicable, collective bargaining provisions concerning the service they provide. The former also includes possible sectoral licences and regulations, such as those in place for taxi and similar activities (see also the ruling of the Court of Justice of the European Union in case C-434/15).

Target: EU-level policy makers , National-level policy makers

5. Enforce rules, and strengthen inspection activities

The way platform companies operate and provide their services is channelled through tools and applications of recent use in the labour field.

For this reason, beyond making sure inspection activities target also companies active on digital platforms, inspectors shall be properly trained to adequately understand the features of work in platforms, including the role of algorithms, the new job profiles, and the rights and procedures that may be established by law or collective bargaining (e.g. procedures to challenge the rating).

Inspections may focus in particular on the possible discriminatory practices embedded in algorithms, and tackle forms of undeclared work or of non-compliance with minimum wages.

At the same time, it shall be borne in mind that the effectiveness of inspections depends on the availability of clear law (or collective bargaining) provisions, proper guidance, and the presence of sufficient staff and financial resources.

Target: National-level policy makers, Labour Inspectorates

Gig Workers' Activities, and Promotion of Fair Pay and Price-Setting Systems



1. Establish procedural rights applying to platform work

Regardless of whether platform workers are classified as employees or self-employed, the unilateral definition of platforms' terms of use may hide unfair clauses. For this reason, the introduction of a set of rights concerning platform-specific tools by law or collective bargaining is advisable.

These could concern: information rights on the rating and ranking system, and the right to challenge its functioning, also directly by representative unions; data protection rights; portability of ratings; the right to access a dispute resolution mechanism in case of dismissal / sudden fall in orders; and the right to access a dispute resolution mechanism in case of unpaid work by the platform or by the client as applicable.

A clear example in this direction is the Frankfurt Declaration on Platform-based Work. As to law reforms, France has recently introduced a 'portability right' for platform workers (Framework Law on Mobility no. 2019-1428 of 24 December 2019).

Target: EU-level policy makers, National-level policy makers, Social partners

2. Adopt or improve tools to ensure social security / tax compliance

Through binding or promotional mechanisms, and in reason of the risks of casualisation of employment, data on employment and service provisions through platforms should be made interoperable with a public database with a view to avoiding irregularities and to allowing access to relevant data in case of dispute. Workers and platforms shall be entitled to check data available on the portal and to verify their compliance with the actual work performance (e.g. hours worked, pay, and occurrence of accidents).

Target: EU-level policy makers, National-level policy makers, Social partners

3. Promote incentives in pricing and supply/demand allocation to take better account of social and public goals

Sectoral regulations can provide for a system of penalties and incentives to meet social targets.

For instance, as far as taxi drivers are concerned, the New York City Taxi and Limousine Commission developed a formula for the minimum reward of self-employed taxi drivers that simultaneously meets various goals: to increase drivers' income; to increase consumer safety; to increase the rate of utilisation of vehicles and to encourage shared rides.

In particular, the formula departs from the hourly minimum wages set for employees, with the goal of setting a level of pay per mile and pay per minute so as to guarantee the same level of income plus the paid leave periods self-employed workers are not entitled to.

In addition, the formula guarantees higher rewards for drivers with cars accessible to people with disabilities, or accepting shared rides, while the level of pay per mile and pay per minute decreases in accordance with the utilisation rate of the vehicle, representing an incentive for the platform not to keep workers on standby during shifts.

4. Monitor the development of fair platform business models

Some experiences of platforms based on ‘fair’ and social economy principles are proving interesting, albeit they are still limited and may need support to grow.

For instance, reflections were made on platform cooperativism in the USA, and cooperative platforms of delivery workers are developing in France.

The way these movements are developing, including the challenges they face, as well as the tools and strategies they adopt, shall be monitored by policy makers inasmuch as they may provide inputs for possible reforms and initiatives. The introduction of an EU-wide framework to support social economy and fair (platform) business models would also benefit these experiences.

Target: National-level policy makers, Local authorities



Unions’ Strategies and Functions vis-à-vis Platforms’ Strategies

1. Ensure adequate workplace representation, and support union activity

In order to avoid the non-enjoyment of collective rights, which stems from the absence of a physical establishment or place of work, the ‘digital’ workplace shall be considered as a bargaining unit for the purposes of union rights, e.g. for thresholds applying to the establishment of works councils, as well as to guarantee other union rights such as freedom to associate, freedom of assembly, right to strike, etc.

More in general, given the considerable precariousness of platform workers, public institutions shall support the presence and activity of unions, very much needed and also more challenging than in other business environments.

Target: EU-level policy makers, National-level policy makers

2. Use existing strategies when possible, and mix them with online out-reach of workers

Many unions across the EU have already developed tools and strategies to reach out to and protect atypical and precarious workers.

Platform workers may need similar strategies, be it reaching out to workers directly in the street, organising forms of strike or conflict (including flash-mobs) to increase resonance of political claims, or use online channels.

The General Union of Workers (UGT, Spain), the Italian Labour Union (UIL, Italy), and Ver.di. (Germany), for instance, set up websites providing basic information on workers' rights, while devoting resources to answer requests submitted by workers through specific forms.

In addition, UIL unionists are getting involved in crowdworkers' forums and even in crowdwork platforms in order to reach out to workers, better understand their needs, and propose viable solutions in cooperation with them.

Another relevant experience is the '[faircrowd.work](#)' initiative, with IG Metall developing and promoting an anonymous questionnaire channelled through platforms themselves.

The achievements and limits of similar experiences shall be shared between the union movement in order to inform union strategies to grow in physical and 'digital' workplaces alike.

Target: Unions

3. Develop new rights and strategies to give voice to platform workers

The exercise of collective action of platform workers is sometimes hampered by their isolation and by the risk of being disconnected in case they engage in collective action. Apart from the legal entitlement to collective action (see point 1), gig workers shall be offered adequate and secure tools for organising collective action, without risking quick retaliation and disconnection by platform owners. For instance, as part of the 'Establishing workers representation and social dialogue in the platform and app economy' project, the European Trade Union Confederation (ETUC) and Sharers & Workers developed social networks and messaging tools that guarantee workers' privacy and anonymisation, while adopting solid W3C standards.

Target: Unions

4. Promoting better policy environment and effective enforcement

To secure better protection of platform workers' rights, regulatory and policy changes are needed along with proper law enforcement. Therefore, trade unions should take advocacy actions targeting policy makers at all levels, including the local one. An example in this respect was the Bologna Charter and the following interactions with Italy's three major union confederations – the Italian General Confederation of Labour (CGIL), the Italian Confederation of Workers' Unions (CISL), and UIL. Albeit not binding, the Bologna Charter pointed out some principles that inspired public and political debate.

Cooperation with relevant enforcement agencies (such as Labour Inspectorates, health inspectorates, or road transport authorities), and involvement in monitoring bodies and initiatives can help to spot law infringements and to support compliance by platforms with applicable regulations.

Target: Unions, National-level policy makers



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