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# The rise of the «just-in-time workforce»: On-demand work, crowdwork and labour protection in the «gig-economy»

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# *The rise of the "just-in-time workforce": On-demand work, crowdwork and labour protection in the "gig-economy"*

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# Abstract

The so-called "gig-economy" has been growing exponentially in numbers and importance in recent years but its impact on labour rights has been largely overlooked. Forms of work in the "gig-economy" include "crowdwork", and "work-on-demand via apps", under which the demand and supply of working activities is matched online or via mobile apps. These forms of work can provide a good match of job opportunities and allow flexible working schedules. However, they can also pave the way to a severe commodification of work. This paper discusses the implications of this commodification and advocates the full recognition of activities in the gig-economy as "work". It shows how the gig-economy is not a separate silo of the economy and that is part of broader phenomena such as casualization and informalisation of work and the spread of non-standard forms of employment. It then analyses the risks associated to these activities with regard to Fundamental Principles and Rights at Work, as they are defined by the International Labour Organisation (ILO), and addresses the issue of misclassification of the employment status of workers in the gig-economy. Current relevant trends are thus examined, such as the emergence of forms of self-organisation of workers. Finally, some policy proposals are critically analysed, such as the possibility of creating an intermediate category of worker between "employee" and "independent contractor" to classify work in the gig-economy, and other tentative proposals are put forward such extension of fundamental labour rights to all workers irrespective of employment status, and recognition of the role of social partners in this respect, whilst avoiding temptations of hastened deregulation.

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# 1. Introduction[1]

This paper deals with the labour implications of the so-called "gig-economy", a catchphrase that has been attracting growing attention in the news and in magazines and journal articles in recent times. The gig-economy is usually understood to include chiefly two forms of work: "crowdwork" and "work on-demand via apps" (Cardon and Casilli, 2015; Kessler, 2015a; Said 2015; Smith and Leberstein, 2015). The first term is usually referred to working activities that imply completing a series of tasks through online platforms (Bergvall-Kåreborn and Howcroft, 2014; Cherry, 2011; Eurofound, 2015; Felstiner, 2011; Howe, 2006). Typically, these platforms put in contact an indefinite number of organisations and individuals through the internet, potentially allowing connecting clients and workers on a global basis. "Work on-demand via apps", instead, is a form of work in which the execution of traditional working activities such as transport, cleaning and running errands, but also forms of clerical work, is channelled through apps managed by firms that also intervene in setting minimum quality standards of service and in the selection and management of the workforce (Aloisi, 2015; Dagnino, 2015; Greenhouse, 2015; Rogers, 2015b).

It is difficult to estimate the number of workers in the gig-economy. Businesses are sometimes reluctant to disclose these data and, even when figures are available, it is hard to draw a reliable estimate, since workers may be registered and work with several companies in the same month, week or even day (Singer, 2014). Data collected and elaborated by Smith and Leberstein (2015) for the principal platforms and apps, however, show that this is clearly a non-negligible phenomenon.

**Principal platforms and apps in the gig-economy**

| Name | Field | Size of Workforce | Operating Areas |
|---|---|---|---|
| **Uber** | Transportation | 160,000 | International |
| **Lyft** | Transportation | 50,000 | U.S. |
| **Sidecar** | Transportation | 6000 | Major U.S. Cities |
| **Handy** | Home Services | 5000 | U.S. |
| **Taskrabbit** | Home Services | 30,000 | International |
| **Care.com** | Home Services | 6,600,000 | International |
| **Postmates** | Delivery | 10,000 | U.S. |
| **Amazon Mechanical Turk** | Crowdwork | 500,000 | International |
| **Crowdflower** | Crowdwork | 5,000,000 | International |
| **Crowdsource** | Crowdwork | 8,000,000 | International |
| **Clickworker** | Crowdwork | 700,000 | International |

Source: (Smith and Leberstein, 2015, 3). See this publication for original references.

This paper analyses opportunities and risks of the gig-economy from the perspective of labour protection. Indeed, whilst these forms of work present significant differences

[1] This paper was presented at the seminar on *Crowd-Sourcing, the Gig Economy, and the Law*, hold at the Wharton School – University of Pennsylvania, on 7 November 2015. Contributions presented at the seminar will be published, after review, in a special issue of the *Comparative Labor Law & Policy Journal*, in 2016. An earlier version was presented at the *IV Regulating for Decent Work Conference* hold at the ILO, in Geneva, *IV Regulating for Decent Work Conference*, 8-10 July 2015.

among themselves, they also share non-negligible similarities. Accordingly, Section 2 first discusses the case of jointly analysing crowdwork and work on demand via apps. It is indeed highlighted how, whereas on the one hand they can provide a good match of job opportunities, allow flexible working schedules and potentially contribute to redefining the boundaries of the firm; on the other hand they pave the way to a severe commodification of work. The theoretical implications of this commodification and also its immediate practical consequences are discussed as well as the risk of work being hidden under catchphrases such as "gigs", "tasks", "rides" etc. Section 3 argues that the gig-economy should not be seen as parallel and watertight dimension of the labour market with structurally separated feature and needs. Some of the relevant unresolved questions, such as employment status and the potential misclassification of employment relationships, extend indeed well beyond the boundaries of the gig-economy and, as such, it is preferable to examine them taking into account broader phenomena such as casualization of the workforce, informalisation of the formal economy and the so-called "demutualisation of risk" in modern labour markets. It will be highlighted that forms of work in the gig-economy share several dimensions and issues with all the non-standard forms of employment as they were recently described by the International Labour Office (ILO, 2015a; ILO, 2015b). Non-standard workers may particularly experience difficulties in acceding to Fundamental Principles and Rights at Work as they are defined by the International Labour Organisation; Section 4 will thus analyse how, in addition to these difficulties, workers in the gig-economy may be affected by specific hardships and risks in connection with the same Fundamental Principles and Rights at Work. Sections 5 and 6 investigate some of the specific issues concerning misclassification of employment relationships that surround the gig-economy; in Section 5, some clauses contained in the terms and conditions of crowdwork platforms and work-on demand apps will be reviewed, as they show some inconsistencies with the independent-contractor status of workers and with the platforms' and apps' purported role of mere facilitators of the business transactions between workers and customers; Section 6 argues that some practices that are widespread in the sector such as giving workers stringent instructions about performance of the service that can also be monitored through customers' reviews and ratings and enforced through deactivation of workers' account and, therefore, termination of their relationship, may be compatible with fulfilling tests of employment status, including the "control test". Section 7 reviews critically the proposal of introducing an intermediate category of workers, between employees and independent contractors to be partially extended labour protections; on the basis of a comparative analysis of existing regulation providing for similar categories, it is argued that this option would not solve most of the labour issues surrounding the gig-economy and would indeed increase complexity and uncertainty for businesses and workers in this sector. Section 8 concludes, by suggesting initial directions for policy and actions for labour market actors.

# 2. The "gig-economy", crowdwork and "work on demand via apps": Risks and opportunities for labour protection

As mentioned in the Introduction, this paper addresses the labour dimensions of the gig-economy, understood as including both crowdwork and "work-on-demand via apps". Crowdwork is work that is executed through online platforms that put in contact an indefinite number of organisations, businesses and individuals through the internet, potentially allowing connecting clients and workers on a global basis. The nature of the tasks performed on crowdwork platforms may vary considerably. Very often it involves "microtasks": extremely parcelled activities, often menial and monotonous, which still require some sort of judgement beyond the understanding of artificial intelligence (e.g. tagging photos, valuing emotions or the appropriateness of a site or text, completing surveys) (Irani, 2015a). In other cases, bigger and more meaningful works can be crowd-sourced such as the creation of a logo, the

development of a site or the initial project of a marketing campaign (Kittur et al, 2013; Leimeister and Durward, 2015; World Bank, 2015).

In "work on-demand via apps", jobs related to traditional working activities such as transport, cleaning and running errands, but also forms of clerical work, are offered and assigned through mobile apps. The businesses running these apps normally intervene in setting minimum quality standards of service and in the selection and management of the workforce.

These forms of work, of course, present some major differences among each other, the more obvious being that the first is chiefly executed online and principally allows platform, clients and workers to operate anywhere in the world, whilst the latter only matches online supply and demand of activities that are later executed locally. An obvious consequence is that this matching can only occur on a much more local basis than what happens with crowdwork (Aloisi, 2015; Greenhouse, 2015; Singer, 2014).

Accordingly, grouping these two different parts of the gig-economy in a common analysis can be slippery. Nonetheless, various arguments also exist to treat them jointly. First and foremost crowdwork and work on-demand via apps are not monolithic or homogenous concepts in themselves. Crowdwork platforms, for instance employ different methods for adjudicating tasks and for payment (Eurofound, 2015; Huws, forthcoming). Some of them may launch competitions with more persons working simultaneously on the same task and the client selecting and paying only the best product. Some may operate on a first-come-first-served basis. In some cases, no relationship exists between the client and the worker: she executes the task and is paid by the platform, which then provides the result to the client. In other cases, the platform acts more as a facilitator of the relationship between clients and workers (Risak and Warter, 2015). Some platforms set minimum compensation for certain tasks whilst other let the compensation be set by their requester (Eurofound, 2015). Moreover, as already mentioned, the nature and the complexity of the tasks may vary significantly, also within the same platform.

Also work-on-demand apps are not homogenous: the most relevant distinction can be drawn between apps that match demand and supply of different activities such as cleaning, running errands, home-repairs and other apps that offer more specialised service such as driving, or even some forms of clerical work such as legal services or consultancy (Aloisi, 2015). Some apps can also differentiate services of the same nature, for instance offering car rides at premium or cheaper prices, also trying to accede to different pools of workers (e.g. professional drivers or persons offering rides whilst commuting to and fro other jobs), even if this is not always frictionless (Griswold, 2014).

All these differences are not only technical but also bear important consequences on the proposal, acceptance and execution of the contracts between the parties involved (Risak and Warter, 2015). The combination of proposal, acceptance and execution may affect other aspects such as the moment and place in which the contract is legally deemed to be concluded, which, in turn, may trigger important consequences on the applicable legislation. In some jurisdictions, the structure of the contracts concluded via the platforms or using the apps could also trigger the application of specific regulatory regimes governing contractual entitlements, obligations and liabilities.

Despite these dissimilarities, however, these forms of work share several features that make a common analysis opportune. First and foremost, they are both enabled by IT and make use of the internet to match demand and supply of work and services at an extremely high speed. This, in general, allows minimising transaction costs and reducing frictions on markets. The rapidity within which job opportunities are offered and accepted and the great accessibility to platforms and apps for workers makes it possible to accede to vast pools of people available to complete tasks or execute gigs in a precise moment of time (McKinsey,

2015). A considerable part of this people may be formed by persons that make use of a particular platform or app in their spare time or to maximise the use of an underutilized asset, for instance by offering rides to passengers while commuting to and fro work. In other cases, however, the compensation received from one or more companies in the gig-economy may represent the main or sole source of income for the workers (Hall and Krueger, 2015; Singer, 2014). In any case, these work practices show the potential of resettling the boundaries of enterprises and challenging the current paradigm of the firm. In Coasian terms, they facilitate a further reshaping of "market" and "hierarchy" patterns (Coase, 1937; Coase, 1960; Gilson et. al, 2009; Williamson, 1981) in addition to the already known "fissured workplace" (Weil, 2014) and "hierarchical outsourcing" discourses (Muehlberger, 2005). In fact, both crowdwork and work on demand via apps allow for a far-reaching "personal outsourcing" of activities to individuals rather than to "complex businesses". This, as it will be shown below, grants even more leverage to standardising terms and conditions of contracting out and assigning work whilst keeping a considerable control of business processes and outputs.

In fact, in the "gig-economy" technologies provide access to an extremely scalable workforce. This, in turn grants a level of flexibility unheard in the past for the businesses involved. Workers are provided "just-in-time" and compensated on a "pay-as-you-go" basis; in practice they are only paid during the moments the actually work for a client. There is no better way to describe this model of work organisation than using the words of the CEO of CrowdFlower, a company engaging in crowdwork:

*"Before the Internet, it would be really difficult to find someone, sit them down for ten minutes and get them to work for you, and then fire them after those ten minutes. But with technology, you can actually find them, pay them the tiny amount of money, and then get rid of them when you don't need them anymore."* (quoted by Marvit, 2014)

Or, to put it in another way, quoting an expression used by the CEO of Amazon, which owns the Amazon Mechanical Turk, one of the most famous and used crowdwork platforms, these practices give access to "humans-as-a-service" (Irani and Silberman, 2013). And, despite these quotations only refer to crowdwork, again, they also hold true for work on demand via apps. They also give the best explanation possible to why they deserve serious attention by labour researchers and institutions, governments and society at large. "Humans-as-a-service" perfectly conveys the idea of an extreme form of commodification of human beings. Commodification and re-commodification of workers, of course, are not confined to the gig-economy as they concern a much vaster part of the labour market. Nonetheless, some of the features of the gig-economy can significantly exacerbate the effects of this commodification for a series of reasons (Bergvall-Kåreborn and Howcroft, 2014; Rogers, 2015b).

First, transactions that only occur virtually, such as it mainly happens in crowdwork, contribute to hide human activities and workers that structurally operate at the other side of a screen (Irani, 2015b). Almost no human contact happens in most crowdwork transactions: this contributes to the creation of a new group of "invisible workers", yet another phenomenon that is by no means limited within the boundaries of the gig-economy but is shared with other sectors, such as domestic work and home-work.[2] The risk, here, is that these workers are yet more invisible because they operate in a new fashion and through new technologies,

[2] Risak and Warter, 2015, indeed, argue that crowdwork can be paralleled to home-work and may fall into the definition of the ILO Home Work Convention, 1996 (No. 177). Indeed, this Convention encompasses provision of either a product or a *service*, by the relevant home-worker. The Convention, however, does not apply to persons that have "*the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions*": the solution of the problems connected to employment status and its potential misclassification, described below in the text, will thus still be relevant.

something that is not normally associated with invisible work. Another serious risk is that the fact work is "supplied" through IT channels, being them online platforms or apps that match the demand and offer of physical chores, can "distort" the perception businesses and customers may have of these workers and significantly contribute to a perceived dehumanisation of their activity. This has both theoretical and practical implications.

From the theoretical point of view, the risk is that these activities are not even recognised as work. Indeed, they are often designated as "gigs", "tasks", "favours", "services", "rides" etc. The terms "work" or "workers" are very scarcely used in this context, and the very same catchphrase "gig-economy" epitomizes this, as the term is often used to indicate a sort of parallel dimension in which labour protection and employment regulation are assumed not to apply by default. As already said, the practical consequences of concealing the "work" nature of these activities and their human components are also potentially detrimental. Workers that can be called by clients and customers at a click of their mouse or at a tap on their mobile, perform their task and disappear again in the crowd or in the on-demand workforce materially risk being identified as an extension of an IT device or online platform. They could be expected to run as flawlessly and smoothly as a software or technological tool and then, if something goes amiss, they might receive worse reviews or feedbacks than their counterparts in other sections of the economy. This, in turn, might have severe implications on their ability to work or earn in the future as the possibilities to continue working with a particular app or to accede to better-paying jobs on crowdsourcing platforms are strictly dependent on the rates and reviews of past activities. Particularly for activities that are carried out in the physical world, this also requires a significant amount of "emotional labour": to show kindness and be cheerful with customers as this would likely affect the rating of one's work (Dzieza, 2015; Rogers, forthcoming). The technology-enabled possibility of receiving instant feedbacks and rates of workers' performance is pivotal in ensuring businesses both flexibility and control at the same time (Sachs, 2015a). First of all, it reduces the need of internal performance-review personnel and mechanisms, contributing to keeping organisations lean. It also allows "shifting" or outsourcing a good deal of customer care to individual workers. In several circumstances, workers may also take the brunt for occasional disruption in the service that is not strictly dependent on their own performance. It is sufficient to think of a client of a car-hailing app that had to wait a long time before being able to find a driver on the app: the possibility of they venting their frustration against the app by giving the individual driver a poor rate are far from remote.

The possibility of shifting risks and responsibilities to individual workers is of course not limited to these aspects. In the vast majority of cases, workers in the gig-economy are classified as independent contractors (Risak and Warter, 2015; Smith and Leberstein, 2015; Sprague, forthcoming). This allows shedding not only potential vicarious liabilities and insurance obligations towards customers but also a vast series of duties connected to employment laws and labour protections, including – depending on the relevant jurisdiction – compliance with minimum wage laws, social security contribution, anti-discrimination regulation, sick pay and holidays (Rogers, 2015b).

The risks reported above are often said to be traded-off by workers with the flexibility connected to a self-employment status: there is no fixed working hours and workers are able to offer their activities on apps and platforms whenever they want (Hall and Krueger, 2015; Harris and Krueger, 2015; World Bank, 2015). The gig-economy, then, may enable workers to benefit from job opportunities that they might not be able to access otherwise and on a flexible-schedule basis, allowing matching work with the performance of other working, family-related, study or leisure activities. Moreover, it may enhance the possibilities of moonlighting and, for jobs offered in the virtual world, it can offer the opportunity to earn some income to people that are home-bound for various possible reasons, for instance for disabilities. This flexibility on the workers' side is often assumed to equate the undisputable flexibility the gig-economy generally affords to businesses.

However, despite the potential beneficial benefits of the gig-economy for the workers' welfare, also in terms of flexibility, these aspects should not be overestimated. Whilst it is certainly true that most jobs in the gig-economy come with a flexible schedule, this does not say really much on the overall sustainability of these arrangements: competition between workers, that in some cases is extended on a global dimension through the internet (Agrawal et al. 2013; Kingsley et al., 2014), pushes compensations so down that people may be forced to work very long hours and to give up a good deal of flexibility in order to make actual earnings (Aloisi, 2015; Cherry, 2009, Eurofound, 2015, Felstiner, 2011). In addition, jobs may be posted or need to be executed chiefly at certain times of the day: this may significantly limit the flexibility in setting one's hours of work. Particularly when transactions involve parties in different geographical and time zones, such as it often happens in crowdwork, this may also require working at night or during unsociable hours (Gupta et al., 2014).

Needless to say, income stability remains a mirage for most of the workers in the gig-economy (Singer, 2014): as praised in the words of one of the businesses' managers quoted above, one of the chief sources of flexibility is exactly the possibility to hire people and "*fire them after* […] *ten minutes"*. This is all the more serious in countries where basic social instruments such as health insurance and pension plans are mainly provided by employers to regular employees, leaving the rest of the workforce uncovered. The problem is even more widespread if we take into account other social entitlements such as unemployment benefits: in jurisdictions where they are reserved to formerly "employed" persons, most workers that are allegedly self-employed in the gig-economy risk to find themselves excluded from coverage.[3]

# 3. Not a parallel universe: Gig-economy, broader labour market trends and non-standard-forms of employment

The problem of exclusion from labour and social protection coverage, of course, is by no means confined to the gig-economy and actually allows reframing some of the narrative surrounding it within a broader picture. It has almost become commonplace that the gig-economy poses issues to policy makers that are totally unheard-of before and unique thereto. Indeed, whilst it is true that some of its dimensions are peculiar, and that the chief role of technologies in matching demand and supply of work is certainly one of those, it would be wrong to assume that the gig-economy is a sort of watertight dimension of the economy and the labour market. Nor would it be correct to take for granted that existing labour market institutions are entirely outdated in its respect or unsuitable to govern it and that therefore we would necessarily have to abandon existing institutions and regulation and to introduce new, and possibly "lighter", ones to keep pace with the challenges presented by the gig-economy (Sachs, 2015b). The fact is, instead, that extreme flexibility, shifting of risks to workers and income instability have long become a reality for a portion of the workforce in current labour markets that goes far beyond the persons employed in the gig-economy. It can indeed be argued that forms of work such as crowdwork and work on-demand via apps are part of a much vaster trend towards the casualization of labour (Bowles and MacPhail, 2008; Campbell, 2004).

[3] For instance, in Florida, the Department of Economic Opportunity, Reemployment Assistance Appeals, *Rasier LLC v. State of Florida, Department of Economic Opportunities*, 30 September 2015, reversed a previous administrative decision that had recognised an Uber driver to be an employee for the purpose of qualification for unemployment benefits.

Developed economies are experiencing the rise of various work arrangements such as zero-hour contracts and on-call labour that afford the possibility to "hire and fire" or, more correctly, to mobilise and demobilise a significant portion of the workforce on an on-demand and "pay-as-you-go" basis (Berg and De Stefano, 2015; Eurofound, 2015; Humblet, forthcoming; Labour Research Department, 2014). In turn, extreme forms of casualization are part of a process of "demutualisation of risks" that has taken place in a great number of developed and developing countries in recent decades and that is also a consequence of the increased recourse to non-standard forms of work in numerous labour markets (Freedland and Kountouris, 2011). In particular, this demutualisation can also occur through the use of "disguised employment relationships," or sham self-employment, in order to circumvent labour and social security regulation or fiscal obligations that may be attached exclusively to employment within a given jurisdiction (Eurofound, 2013; ILO, 2015a; OECD, 2014). Disguised employment can thus also contribute to the informalisation of parts of the formal economy, by allowing a portion of the workforce to be unduly excluded from labour and social protection. All the more, the related savings in costs can significantly result in unfair competition with law-abiding businesses and, ultimately, spur social dumping toward worse terms and conditions of work. Despite being often overlooked, these more general issues are extremely relevant in the analysis of the gig-economy. And indeed, one of the chief legal issues that concern it, one that has already triggered major litigation in this field in the United States, is precisely the classification of the workers involved as employees or independent contractors. This also adds to the argument that the gig-economy should not be regarded as a separate silo of the labour market, since the problem of misclassification extends much beyond its realm. In the Unites States, the Department of Labour recently issued guidelines to address this general problem in the labour market (US DoL, 2015).

Problems related to disguised employment relationships, then, link aspects of the gig-economy with broader trends in labour markets such as the increase in recourse to non-standard forms of employment in recent decades (ILO, 2015a). The on-going debate on non-standard work is extremely vast and it is not possible to go through it here (Stone and Arthurs, 2013; Z. Adams and Deakin, 2014a; De Stefano, 2015; Rubery, 2015). For the purpose of this paper, it is sufficient to notice that there is not a fixed or official definition of what non-standard employment is. A recent high-level discussion on the topic was held at the International Labour Office (ILO), where a Tripartite Meeting of Experts (TME) on Non-Standard Forms of Employment reached some relevant conclusions on the topic, later endorsed by the Governing Body of the ILO. According to the conclusions, non-standard forms of employment "*include, among others, fixed-term contracts and other forms of temporary work, temporary agency work and other contractual arrangements involving multiple parties, disguised employment relationships, dependent self-employment and part-time work*" (ILO, 2015b, 50).

Workers in disguised employment relationships are arguably a significant component of the non-standard workforce (Weil, 2014; Labour Research Department, 2014). It can thus be worthwhile reframing some of the labour-related issues of the gig-economy into a broader discourse on how to secure decent working conditions for non-standard workers at large. Moreover, whilst disguised employment is one of the key aspects in the gig-economy, crowdwork and work on-demand via apps share several relevant dimensions with all the non-standard forms of employment mentioned above. As already pointed out, these two forms of work present many points in common with casual work, an extreme form of temporary work. Very often, casual work takes the form of work on-demand with unpredictable working hours and unreliable source of income (Berg and De Stefano, 2015; O'Reilly, 2015). As already mentioned, in several developed countries work relations are spreading whereby interaction between the parties can extend for a significant amount of time even if the contractual arrangement is concluded explicitly or implicitly for very short periods, very often weeks, days or even hours, and the working activity is activated or deactivated depending on the employer's needs. In these cases, depending on the relevant national regulation and the

parties' agreement, the worker may be obliged to accept the work at the employer's call (Eurofound, 2015). This, however, is by no means always the case as in some forms of casual and on-call work the parties can agree that the worker is not required to accept work from the employer and the latter is not required to provide any work to the former: this can be the case, for instance, of some on-call arrangements in Italy and some zero-hours arrangements in the United Kingdom (A. Adams, Freedland and Prassl, 2015; Z. Adams and Deakin, 2014b; but see also Humblet, forthcoming).

Workers in the gig-economy have neither to show up for work regularly (in their case, this would be done by acceding to the platform or activating the app) nor to accept jobs or calls. However, when they do show up for work they are usually bound to follow rules and guidelines set out by platforms and apps and, in some cases, also to accept a certain percentage of jobs coming through the app.[4] They are generally classified as independent contractors and, as such, they have no access to the vast bulk of employment protection. Even if they were classified as employees, however, the intermittent nature of their activity could be an obstacle to accede to important employment or social rights, such as maternity leave, paid holidays, full unemployment benefits, when these rights are dependent upon a minimum length of service. Unless they are able to establish an umbrella relationship "connecting the dots" represented by any completed job, workers risk being excluded from important labour protection: this risk they share with temporary and casual workers in several jurisdictions (Z. Adams and Deakin, 2014b; Berg and De Stefano, 2015). The same is also true for some part-time workers and, in particular, marginal part-timers who also are not easily distinguished from some forms of casual and on-demand work (Messenger and Wallot, 2015).

Workers in the gig-economy may also share some of the issues faced by another class of non-standard workers, namely those in "contractual arrangements involving multiple parties" such as temporary agency workers and workers engaged via subcontracting or other outsourcing practices. For some of these workers, it is might be difficult to identify who their "employer" is for certain purposes, such as collective bargaining or compliance with health and safety obligations (Prassl, 2015). Similar difficulties could be experienced by workers in the gig-economy. As to crowdwork, for instance, platforms and clients of the platforms may interact jointly with the worker in a number of possible ways, with the clients setting out the tasks and the platforms providing the environment where to discharge these tasks but also some ways of monitoring, rating and compensating the performance and, in some cases, also acting as an adjudicator in settling disputes between workers and clients (Agraval et al., 2013). This could cause some lack of transparency as workers may find it difficult to identify the party who is responsible for a particular action with whom to argue with in case of disagreements. Also, a number of intermediaries can operate within the platforms: specialised firms may offer clients services such as disaggregating complex tasks into mini-tasks and liaise with platforms and crowdworkers for the completion of the tasks (Bergvall-Kåreborn and Howcroft, 2014). This increases the number of actors involved in the process and can add further complication in the allocation of rights and responsibilities. The same may also occur in connection to work on demand via app, as workers using the apps may be employed or engaged as free-lancers by companies that organise their activity and, also, provide them with the means to execute it or other services, for instance by buying cars and putting them at the disposal of the workers for a percentage of their earnings or leasing them those cars (Hall and Krueger, 2015). The gig-economy thus is not only an extreme form of fissurisation of businesses' organisation but is in turn affected by the same fragmentation of workplaces, and the related multiplication of centres of interests involved in the provision of services, as other sectors of the economy. Arguably, indeed, platform and apps may carry out, in some cases,

[4] See Section 6 below.

the activities that private employment agencies execute in other sectors, normally without being subject to the systems of licensing and regulation of these agencies.[5]

Finally, whilst the relation between work in the gig-economy and disguised self-employment has already been discussed, a close relation also exists with "dependent self-employment" namely a form of work that some jurisdictions recognise as an intermediate category between employment and self-employment whereby some labour protection is extended to the relevant workers as they are found to be in need of this protection even if they do not qualify as "employees" under the applicable legislation. Some commentators have indeed argued that a possible solution to fill the regulation gap affecting the gig-economy would be to introduce this intermediate category in jurisdictions where it does not exist and cover workers with some limited form of labour protection. The potential shortcomings of this approach are investigated at Section 7 below.

This section has thus drawn comparisons and links between work in the gig-economy and non-standard form of employment in other sectors of the economy: it has been highlighted how many similar or identical problems in labour protection these forms of work have in common, leaving alone the fact that in the gig-economy as well as in other sectors of the labour market two or more "non-standard" dimension of work may often sum up. For instance, workers may very well be hired under temporary contracts and work through several intermediaries in situations where their employment status may be disguised. Forms of non-standard work are thus often associated: also for this reason, regarding the gig-economy or the singular form of non-standard work as separate entities may prove unsatisfactory. In the following section, potential regulatory gaps and protection deficits regarding Fundamental Principles and Rights at Work will be analysed, recalling some of the general issues that affect non-standard forms of work in general and are also shared by work in the gig-economy and other issues that are specific to this latter sectors.

# 4. The gig-economy's implications on fundamental principles and rights at work

The International Labour Organisation recognises four categories of Fundamental Principles and Rights at Work, namely freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labour, effective abolition of child labour, elimination of discrimination in respect of employment and occupation. These principles and rights are regarded to be universal and to apply to all workers and are enshrined in the eight Fundamental Conventions of the Organisation. The 1998 *ILO Declaration on Fundamental Principles and Rights at Work* calls all the Member States of the ILO to respect and promote these principles and rights, whether or not they have ratified the relevant Conventions.[6] As already mentioned, some significant risks for workers in the gig-economy may arise with regard to the exercise of these principles and rights, besides those shared with other workers in non-standard forms of employment.

As to freedom of association, for instance, the practical possibility of associating is reduced in particular for crowdworkers, also given their dispersion on the Internet.

[5] Very recently, some members of the Chamber of Deputies of the Italian Parliament filed an official parliamentary question to both the Ministry of Labour and the Ministry of Infrastructure and Transport concerning the operation of a car-hailing app, arguing that the app acts as a temporary work agency without the licenses and authorisations required for agencies under Italian Law. The parliamentary question is available at http://aic.camera.it/aic/scheda.html?numero=5/05539&ramo=CAMERA&leg=17 (Accessed 26 October 2015).

[6] See http://www.ilo.org/declaration/lang--en/index.htm (Accessed 26 October 2015).

Nonetheless, some online platforms have appeared that try to organise crowdworkers around common objectives taking into account the singularity of this form of work and of the needs related thereto (Irani and Silberman, 2013). Actions through these platforms, however, tend to suffer from some of the typical problems of online activism (Beyer, 2014; Salehi et al, 2015). In addition, given the huge competition existing on crowdwork platforms workers may also be unwilling to cooperate with each other and opportunistic behaviours may be easily incentivised. Moreover, in forms of work where reputation and ratings play a major role in securing continuation of work with a particular platform or app and access to better-paid jobs, workers may feel particularly reluctant to exercise any collective right as it could adversely impact on their reputation (Dagnino, 2015): this is not only true for crowdwork but also for work on-demand via apps and for the actors that attempt to organise these workers.[7] Also, the possibility of being easily terminated via a simple deactivation or exclusion from a platform or app may magnify the fear of retaliation that can be associated to non-standard forms of work, in particular temporary ones (De Stefano, 2015). The constant IT connection to platforms and apps also increases the businesses' possibilities to monitor and discourage forms of activism, as it already reportedly occurred (Murphy, 2015). On the other hand, it has been observed that the spread and growth of some companies in the gig-economy could also facilitate the exercise of freedom of association, for instance by incentivising vertical integration in some traditionally highly fragmented sectors such as car-hailing services and thus giving rise to bigger actors that could be more easily targeted by labour unions and regulators. This effect, however, is also dependent on political will (Rogers, forthcoming). Also, this partial vertical integration can be offset by the forms of fragmentation and the spread of intermediaries in the gig-economy that affect the very same sector, as discussed at Section 3 above.

Crowdwork and online platforms can be useful to offer job opportunities to workers in zones where no many possible work alternatives exist such as rural areas in developing countries (Greene and Mamic, 2015; Narula et. al, 2011) or even refugees camps (Oshiro, 2009); it could thus have significant positive effects on the relevant communities. These possibilities should not, however, be overestimated: it has been argued that also in developing countries access to job opportunities on crowdwork platforms is heavily dependent on the availability of a quick internet connection (Kingsley et al. 2014), that could not be in place in the abovementioned areas unless specific investments occur. Other studies also highlight how the impact of crowdsourcing platforms in developing countries is limited, in practice, to workers who come from relatively well-off backgrounds, whilst low-income workers scarcely benefit from these opportunities (Thies et al., 2014) albeit some platforms also exist that specifically target some disadvantaged groups, such as Samasource (World Bank, 2015).

In addition, the high mobility of these forms of work could also carry very detrimental effects related to forced and child labour. It is a fact, for instance, that "factories" already exist in some countries where people are employed in "*gold-farming*", a particular kind of virtual work whereby "*workers are paid to harvest virtual treasures for online gamers in the developed world*" who "*want to advance quickly within their online role-playing games of choice*" and avoid the repetitive tasks required "*to build a high-level*" character (Cherry, 2010, 471). Some gold farmers may work up to 12 hours per day (Barboza, 2005); in some cases, detainees in labour camps in China have been reported to be employed in gold-farming (Vincent, 2011). The existence of gold-farming factories and gold-farming in labour camps should prompt reflections about a fundamental issue: virtual work is not necessarily dispersed in people's homes and it can very well be concentrated in "factories" and sweatshops. The risk that workshops exist where people are forced to execute some forms of crowdwork cannot be ruled out. Moreover, as practices like these would open an unusual dimension of

[7] References to subjects that attempt to organise crowdworkers or other workers in the gig-economy are provided at Section 8 below.

compulsory labour, the risk is that they would be undetected through existing instruments aimed at combating forced labour. For instance, codes of conduct and monitoring mechanisms regarding supply chains do not normally focus on this potential expression of forced labour. As forms of virtual work such as crowdwork expand, the need to ensure that they do not elude regulation and policies against forced and compulsory labour must not be neglected (Cherry, 2011).

The very same problems regard child labour: also in this case, the possibilities of circumventing traditional instruments against the unlawful employment of children are certainly enhanced by the spread of crowdwork. Indeed, the risk of child labour is even more pervasive as it may concern a higher number of countries relative to forced labour. Children with access to the internet may be lured to execute working activities online that are remunerated with money or also credits to be spent for online games or on platforms (Cherry, 2011; Marvit, 2014). In doing so, they may also be exposed to contents that are inappropriate for them. Monitoring mechanisms against the improper access of children to work online may be very difficult to implement and existing instruments against child labour may very well fall short of these new possible forms of children exploitation.

The gig-economy also prompts serious concerns about discrimination. Virtual work can indeed have positive effects on this issue. For instance, avoiding "real" personal contact and anonymity on the net can contribute reducing risks of discrimination. Also, as mentioned above, the possibility to work online from anywhere provides access to work opportunities also to persons that are home-bound due to health issues or disabilities. Virtual work, however, is not a cure-all solution against discrimination (for a discussion of both opportunities and risks in this regard, see Cherry, 2011; see also Martin, 2012). Crowdwork platforms, for instance, allow providers to restrict the geographical areas from where workers can undertake tasks online (Kinglsey et. al, 2014). This possibility may allow cutting out entire countries, regions or communities from access to work, without any guarantee that the limit is only imposed for objective grounds such as language. Discriminating practices can therefore definitely occur also in virtual work. Similar considerations hold true also for work on demand via apps. Whilst some arguments exist that this kind of work may contribute to combat discrimination, the risk of discrimination is by no means ruled out in this respect (Leong, 2015). Both explicit and implicit bias of customers may play an important role in deciding whether to accept a worker for a particular job and, above all, when reviewing its performance (Rogers, forthcoming). Since customers' reviews may be essential in preserving the possibility to accede to the app and to future jobs, a biased review could entail a major detrimental effect for workers' employment opportunities. Once, again, given that these working practices are still relatively novel, these risks may evade existing mechanisms and policies against discrimination and they call for action in ensuring coverage and effectiveness of these instruments also with regard to the gig-economy.

In addition to these specific risks, as mentioned above, workers in the gig-economy may face some problems with reference to Fundamental Principles and Rights at Work that affect non-standard workers in general. Particular difficulties and gaps have been reported in this respect, with regard to all forms of non-standard work and it is impossible to recap them here (see ILO, 2015a). Some of these hardships are however particularly significant for workers in the gig-economy, namely those related with self-employment and misclassification of employment status. The ILO supervisory bodies have expressed their concern in various occasions on the fact that when self-employed persons are generally excluded from the application of employment and labour laws, they might find themselves also excluded from regulation protecting fundamental principles and rights at work. As a consequence, workers in self-employment or misclassified workers may find themselves excluded or limited in their right to freedom of association and to collective bargaining, also because they could find themselves in breach of regulation such as competition and antitrust law (De Stefano, 2015).

Moreover, they could be not included in the scope of regulation against child labour[8] and discrimination.[9] Given that the risks of misclassification are some of the chief labour issues in the gig-economy, the very same problems may concern these forms of work. This renders the question of employment status all the more significant in terms of workers protection as not only issues concerning minimum wages and employment benefits but also access to fundamental labour and human rights are at stake. The next two sections will, therefore, concentrate on some of the practices and disputes concerning the classification of workers in the gig-economy. They will mainly focus on Unites States' cases as a vast part of the businesses in this sector of the economy were established in the USA and so is the chief litigation related thereto, even if some cases concerning employment status were also filed in other countries and will also be mentioned below.

# 5. Inconsistent agreements: Independent-contractor clauses and self-contradiction in terms and conditions

The issue of workers' classification in the gig-economy is not an exclusive concern of labour advocates: businesses are also very much attentive to this issue and, most often, terms and conditions of utilisation of platforms and apps explicitly specify that the relationship between the persons executing work and the business running the platform or the app will be one of self-employment. These kinds of clauses are quite frequent in personal service agreements as individuals engaging persons to execute tasks may seek to avoid costs and regulation associated with employment. Of course, these clauses are perfectly legitimate when the classification of the relationship between the parties corresponds to the reality of the transaction, *i.e.* when the person hired fully preserves her autonomy in the actual execution of the task. If this is not the case, however, in a vast number of jurisdictions the relationship could be reclassified as one of employment, according to the so-called "primacy of fact" principle, whereby the determination of the existence of an employment relationship is to be guided by the facts relating to the actual performance of work and not on the basis of how the parties described the relationship (for some examples see ILO, 2015a).[10]

[8] ILO, Committee of Experts on the Application of Conventions and Recommendations (CEACR), *Haiti*, direct request, C.138, 2012, available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3057701,102671,Haiti,2012 (Accessed 26 October 2015); *Ireland*, direct request, C. 138, 2008, available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2294814,102901,Ireland,2008 (Accessed 26 October 2015); *Slovenia*, direct request, C.182, 2009 available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2310634,103533,Slovenia,2009 (Accessed 26 October 2015).

[9] Ilo, Ceacr, *Kenya*, direct request, C.111, 2009, available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2310341,103315,Kenya,2009 (Accessed 26 October 2015); *Malawi*, direct request, C.111, 2006 available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2267240,103101,Malawi,2006 (Accessed 26 October 2015).

[10] This principle is also provided at Paragraph 9 of the ILO Employment Relationship Recommendation, 2006 (No. 198): "For the purposes of the national policy of protection for workers in an employment relationship, the determination of the existence of such a relationship should be guided primarily by the facts relating to the

As already mentioned, classifying workers as independent contractors is a very frequent business practice, one that is also followed by most companies in the gig-economy. In some cases, however, these companies may recur to provisions in their agreements that go beyond the ordinary extent of "independent-contractor clauses." A crowdwork company, for instance, represents that the platform only "*provides a venue for third-party Requesters and third-party Providers to enter into and complete transactions"* and, therefore, it is *"not involved in the transactions between Requesters and Providers*". Nonetheless, the terms and conditions also specify that "*as a Provider you are performing Services for a Requester in your personal capacity as an independent contractor and not as an employee of the Requester (…) This Agreement does not create an association, joint venture, partnership or franchise, employer/employee relationship between Providers and Requesters, or Providers and Amazon Mechanical Turk.*"[11] A very similar clause is provided in the service agreement of a work on demand app, establishing that "*nothing in this Agreement is intended or should be construed to create a partnership, joint venture, or employer-employee relationship between Wonolo and you or between the Customer and you.*"[12] These clauses could indeed be described as "enhanced independent contractor clauses" as they do not only exclude the existence of an employment relationship between the platform or app and the worker but also exclude that the worker and the client may enter into an employment relationship, even when the terms and conditions of the service specify that these actors are "third parties" to the platform. It has been argued that, in doing so, businesses in the gig-economy actually dictate terms and conditions of employment between workers and clients, something that could indeed go in favour of the recognition of the platform as a "joint employer" of the worker in a particular transaction, in the United States (Felstiner, 2011). Whether this is sufficient to find a joint-employment status or not, it is certain that these clauses interfere significantly with the relationships between clients and workers, even if the gig-economy businesses purportedly claim to remain extraneous to those relationships (Bernt, 2014).

As already mentioned, "independent-contractor clauses" and, all the more, "enhanced independent-contractor clauses" are not dispositive, given the just discussed "primacy of fact" principle in force in most jurisdictions. Businesses in the gig-economy seem to be quite aware of the risk of reclassification of workers as subordinated employees due to this principle. As a consequence, agreements concerning the use of platform and apps contain "representation and warranties" aimed at mitigating the risks and liabilities possibly arising in this respect. For instance, terms and conditions of usage of a crowdwork platform require clients to acknowledge that "*while Providers are agreeing to perform Services for you as independent contractors and not employees, repeated and frequent performance of Services by the same Provider on your behalf could result in reclassification of that employment status.*"[13] Other businesses go further and require that Users keep them indemnified from any liability connected with the potential reclassification of workers. A work-on-demand app, for instance, clarifies that "*Sweeps is not an employment service and does not serve as an employer of any User. As such, Sweeps will not be liable for any tax or withholding, including but not limited to unemployment insurance, employer's liability, social security or payroll withholding tax in connection with your use of Users' services. You understand and agree that if Sweeps is found to be liable for any tax or withholding tax in connection with your use of Users' services, then you will immediately reimburse and pay to Sweeps an equivalent amount, including any*

performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties."

[11] Amazon Mechanical Turk Participation Agreement, last updated: December 2, 2014, available at https://www.mturk.com/mturk/conditionsofuse (Accessed 26 October 2015).

[12] Wonolo Terms of Service, 1 May 2015, available at http://wonolo.com/terms/ (Accessed 26 October 2015).

[13] Amazon Mechanical Turk Participation Agreement (n. 11).

*interest or penalties thereon.*"[14] Another platform, instead, does not interfere with the classification of the relationship between clients and workers, leaving "*each User*" assuming "*all liabilities for proper classification of such User's workers as independent contractors or employees based on applicable legal guidelines*". On the other hand, Users of that same platform also agree "*to indemnify, hold harmless and defend Company from any and all claims that a Tasker was misclassified as an independent contractor, any liabilities arising from a determination by a court, arbitrator, government agency or other body that a Tasker was misclassified as an employee (including, but not limited to, taxes, penalties, interest and attorney's fees), any claim that Company was an employer or joint employer of a Tasker, as well as claims under any employment-related laws*", such as claims regarding "*employment termination, employment discrimination, harassment or retaliation, as well as any claims for overtime pay, sick leave, holiday or vacation pay, retirement benefits, worker's compensation benefits, unemployment benefits, or any other employee benefits.*"[15]

These clauses show how companies in the gig-economy are conscious of the fact that outright classification of the work relationships occurring through platforms and apps as ones of self-employment is not watertight. And, indeed, some clauses in the very same terms and conditions may contradict this classification. Significant in this sense, as discussed above, are the "enhanced independent-contractor clauses". But the same could be said of other provisions in the service agreements at hand. For instance, some of the agreements aim at channelling all the contacts and transactions between workers and clients connected via a platform or app, through the same platform or app. An agreement concerning crowdwork, for instance, aims at binding clients to "*only accept work product from Providers that has been submitted through the Site.*"[16] Another agreement is instead directed at workers, as they undertake not to provide any information connected to the platform, including their rating, "*to any third party for the purpose of pursuing employment opportunities without the written consent of topcoder".* Moreover, *should they be "contacted by a third-party regarding employment opportunities*", according to the same terms of use, workers "*agree to promptly notify topcoder of such contact."*[17] These clauses seem to provide some sort of exclusivity obligation upon clients and workers.[18] As such, they might be at odds with the classification of the status of workers rendering services through platforms or apps as an independent-contractor one as opposed as one of employment: in the first case, they could indeed have a restraint-of-trade effect that could be questionable under competition law.

Other examples of clauses whereby platforms interfere with the transaction between the parties and go beyond merely providing venues for these transactions can be brought forward, such as those allowing clients on platforms to refuse payment of work done if deemed unsatisfactory, without having to provide any reason for doing so (Felstiner, 2011). At the same time, these clauses may provide for the right of the client to retain the work done and to be vested of all the rights, including intellectual property rights, arising from this work.[19] Indeed, this is another way of interfering with the relationship between workers and clients and possibly dictating terms and condition of employment, one that may also give rise to

[14] Sweeps Terms of Use, available at https://sweeps.jobs/terms (accessed 26 October 2015).

[15] TaskRabbit, Terms of Service, available at https://www.taskrabbit.com/terms (accessed 26 October 2015).

[16] Amazon Mechanical Turk Participation Agreement (n. 11)

[17] Topcoder, Terms and Conditions, available https://www.topcoder.com/community/how-it-works/terms/

[18] Other companies in the gig-economy seem to apply similar policies, as documented in the litigation of both Uber and Lyft. See United States District Court, Northern District of California, *Cotter et al. v. Lyft Inc.,* Order Denying Cross-Motion for Summary Judgement, 11 March 2015, Document 94; United States District Court, Northern District of California, *O'Connor et al. v. Uber Technologies, Inc., et al.,* Order Denying Cross-Motion for Summary Judgement, 11 March 2015, Document 251.

[19] Amazon Mechanical Turk Participation Agreement (n. 11).

severe abuses from the clients' side spanning from unjust enrichment to wage theft, leaving alone the fact that refusals of work done has normally a direct impact on the rating of workers and consequently has a very detrimental effect on their ability to work in the future and to accede to better-paid tasks on the platform.

As already said, thus, even when terms and conditions of agreements classify workers as independent contractors, the very same agreements contain elements inconsistent with this classification. Other inconsistencies may take place during the very execution of the task and, as it will now be discussed in Section 6, provided room for challenging the alleged employment status of workers in the gig-economy in an increasing number of cases.

# 6. Control of workers in the age of the gig-economy: Litigation and employment-status tests

A vast part of litigation on the gig-economy has concentrated on car-hailing services and is taking place, as mentioned, in the United States (Sprague, forthcoming; Rogers, 2015).[20] In one of such cases, the Labor Commissioner of the State of California recognised that a driver was an employee of Uber and, as such, she was entitled to recover expenses incurred in the discharge of her duties, such as mileage and toll costs.[21] The arguments used by the Labour Commissioner in awarding in favour of employment status are quite similar to those hold by the US District Court in the Northern District of California in two separate cases against Uber and Lyft, another car-hailing business.[22] In the Lyft case, the District Court denied a cross-motion of summary judgment submitted by the two parties, as it ruled that "*if reasonable people could differ on whether a worker is an employee or an independent contractor based on the evidence in the case, the question is not for a court to decide; it must go to the jury.*"[23] The same decision was adopted in the Uber case before the District Court.

In both Uber and Lyft cases, the District Court dismissed the companies' argument that they act merely as "tech companies" providing a platform to match demand and supply for rides. In the Uber case, actually, the court openly stated that "*it is clear that Uber is most certainly a transportation company, albeit a technologically sophisticated one,*"[24] rather than just a tech company. Similar arguments were used in the Lyft case and were also followed by

[20] Other sections of the gig-economy, however, are definitely not immune from litigation, see Kessler, 2015a. For instance, a lawsuit filed against Handy before the Superior Court of the State of California, for the County of Alameda, is available here http://gbdhlegal.com/wp-content/uploads/cases/Handybook-Filed-Complaint.pdf (accessed 26 October 2015).

[21] Labor Commissioner of the State of California, *Berwick v. Uber Technologies, Inc.*, 3 June 2015.

[22] The decisions are cited at n. 18 above. The case in *O'Connor et al. v. Uber Technologies, Inc., et al.,* was later partially granted a class action status, see United States District Court, Northern District of California, *O'Connor et al. v. Uber Technologies, Inc., et al.,* Order Granting in Part and Denying in Part Plaintiff's Motion for Class Certification, 1 September 2015, Document 341. See also Uber's comments to this order in Uber, 2015. Recently the class was expanded also to drivers that had signed arbitration clauses in their agreements with the company, see United States District Court, Northern District of California, *O'Connor et al. v. Uber Technologies, Inc., et al.,* Order Granting in Part and Denying in Part Plaintiff's Supplemental Motion for Class Classification, 9 December 2015, Docket 357.

[23] *Cotter et al. v. Lyft Inc.*, Order Denying Cross-Motion for Summary Judgement (n. 18), p. 10.

[24] *O'Connor et al. v. Uber Technologies, Inc., et al.,* Order Denying Cross-Motion for Summary Judgement (n. 18), p. 10.

the Labor Commissioner to rule against Uber in the decision mentioned above.[25] Both companies, according to the District Court, do not only provide an intermediary platform for drivers and clients to use: quoting the relevant decisions, Uber "*does not simply sell software; it sells rides*" and Lyft "*markets itself to custumers as an on-demand ride service, and it actively seeks out those customers*". Lyft provides drivers with "*detailed instruction on how to conduct themselves*" whilst "*Uber would not be a viable business entity without its drivers.*"[26] Both these arguments look valid for the two companies respectively, reading the information provided by the different decisions.

In rebutting the argument that Uber and Lyft only act as tech companies, the Court and the Commissioner could establish that drivers provide service to them and not only to clients. As a consequence, this kind of transaction falls under California's law presumption that "*a service provider is presumed to be an employee unless the principal affirmatively proves otherwise*"[27]: in such a situation, thus, the burden of proving that individuals performing personal services for a counterpart do so on an independent-contractor capacity lies with the putative employer. Both the District Court and the Commissioner could also refer to the California's Supreme Court decision in *Borello*[28] under which, in determining if sufficient control exists over a person to trigger employment status, the "*right of control need not extend to every possible detail of the work. Rather, the relevant question is whether the entity retains "all necessary control" over the worker's performance.*"[29] The question is "*not how much control a hirer exercises, but how much control the hirer retains the right to exercise.*" [30] Under another precedent of the Supreme Court, moreover, the right to discharge at will, without providing any cause, a right that is expressly reserved by both Uber and Lyft, is "*perhaps the strongest evidence of the right to control.*"[31] Furthermore, under *Borello*, the control test cannot be *"applied rigidly and in isolation*": other secondary indicia can be given weight in determining whether employment status exists and they are not to be applied "*mechanically as separate tests*", since none of them is determinative.[32]

[25] It is worth noting that, in the European Union, a Spanish court requested the European Court of Justice to issue a preliminary ruling on whether Uber should be classified as a transportation services or as a technology company (Ahmed, 2015; Azevedo and Maciejewski, 2015).

[26] *Cotter et al. v. Lyft Inc.*, Order Denying Cross-Motion for Summary Judgement (n. 18), p. 14; *O'Connor et al. v. Uber Technologies, Inc., et al.,* Order Denying Cross-Motion for Summary Judgement (n. 18), pp. 10- 11.

[27] The court quotes *Yellow Cab Coop. Inc. v. Worker's Comp. Appeals Bd.*, 226 Cal. App. 3d 1288, 1294 (1991); and *Narayan v. EGL, Inc.*, 616 F.3d 895, 900 (9th Cir. 2010).

[28] S.G. Borello & Sons, Inc. v. Dep't of Indus. Relations (Borello), 48 Cal. 3d 341, 350 (1989).

[29] *Cotter et al. v. Lyft Inc.*, Order Denying Cross-Motion for Summary Judgement (n. 18), p. 7.

[30] Ayala v. Antelope Valley Newspapers Inc, 59 Cal 4th 522, 531 (2014).

[31] Id., 533.

[32] These factors are: "(a) whether the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the work is a part of the regular business of the principal; and (h) whether or not the parties believe they are creating the relationship of employer-employee". Moreover, some additional factors are relevant: "(1) the employee's opportunity for profit or loss depending on his managerial skill; (2) the alleged employee's investment in equipment or materials required for his task, or his employment of helpers; (3) whether the service rendered requires a special skill; (4) the degree of permanence of the working relationship; and (5) whether the service rendered is an integral part of the alleged employer's business".

However, even focusing only on the right to control, as it could be necessary in jurisdictions where multifactor tests do not accompany the control test, it does not seem possible to exclude the existence of a far-reaching control of workers' performance in the situations at hand. It is true that drivers are under no obligation to show up for work: this is a feature shared by the majority of work arrangements in the gig-economy. Nonetheless, when drivers, and workers in general, accede to platforms or apps and take jobs channelled therein they accept to abide by the policies and instructions unilaterally set by the platforms and apps. From the decisions currently available, it emerges for instance that Lyft drivers are instructed to, among other things, "*be the only non-passenger in the car*", "*keep [the] car clean on the inside and outside*", "*go above and beyond good service such as helping passengers with luggage or holding an umbrella for passengers when it is raining*", "*greet every passenger with a big smile and a fist bump*"[33]: all this while driving their own car and supposedly being independent contractors. Uber drivers must pass a background check and "city knowledge exam" before being hired.[34] Background checks are also carried out by Lyft[35] and other apps such as Taskrabbit, Wonolo and Handy.[36] As to the ability to accept or reject tasks, whilst, in one of the cases tried about Uber, it is reported that the service agreement provided that a driver "*shall be entitled to accept, reject and select*" among the rides offered by the app and "*shall have no obligation to accept*" any ride,[37] in other decisions it is reported that an Uber Driver Handbook states "*We expect on-duty drivers to accept all [ride] requests*" and that the company will "*follow-up with all drivers that are rejecting trips.*"[38] In at least one occasion, Uber was reported to suspend drivers due to "*low acceptance rate*" (Griswold, 2014). Handy, another work-on-demand app, has instead been reported to provide suggestions "*about how to listen to music (only with headphones, with permission from the customer) and go to the bathroom (discreetly)*" whilst cleaning at the customer's home (Kessler, 2015a).

All these practices and policies seem to contradict the idea that control is never exerted on the work performance. This is all the more true since platforms and apps can also constantly monitor this performance by means of the rates and reviews provided by customers (Dzieza, 2015; Sachs, 2015a). Indeed, they also communicate to workers that they can be deactivated unless they do not maintain a certain satisfaction rate, which can indeed be very high. Nor do companies just retain the theoretical right to do so: according to the District Court, "*Uber regularly terminates the account of those drivers who do not perform up to Uber's standards.*"[39]

In the case of crowdwork, as already mentioned, rejection of a work by a client in a platform may determine a dramatic loss in one's ratings, which would prevent acceding to the most remunerable jobs reserved only to those workers with the highest rates.[40] This system

[33] *Cotter et al. v. Lyft Inc.*, Order Denying Cross-Motion for Summary Judgement (n. 16), p. 7.

[34] *O'Connor et al. v. Uber Technologies, Inc., et al.,* Order Denying Cross-Motion for Summary Judgement (n. 16), p. 12.

[35] *Cotter et al. v. Lyft Inc.*, Order Denying Cross-Motion for Summary Judgement (n. 16), p. 3.

[36] TaskRabbit, Terms of Service (n. 15); Wonolo Terms of Service (n. 12); Handy, Terms of Use, available at https://www.handy.com/terms (Accessed 26 October 2015).

[37] Berwick v. Uber Technologies, Inc. (n. 21), p. 2.

[38] *O'Connor et al. v. Uber Technologies, Inc., et al.,* Order Denying Cross-Motion for Summary Judgement (n. 18), p. 21.

[39] *O'Connor et al. v. Uber Technologies, Inc., et al.,* Order Denying Cross-Motion for Summary Judgement (n. 18), p. 12, where it is also reported that Uber managers instruct colleagues to cut drivers performing below 4.5 out of 5.

[40] See Marvit, 2014 who reports the opinion of a worker in the Amazon Mechanical Turk stating: "If you have a 99.8 per cent approval rating and then you work for some jack-wagon who rejects 500 of your HITs, you're

allows to automatically disciplining performance that is poor or perceived to be as such and can therefore also amount to a way of exerting control. In addition, control can be exerted by allotting a fixed amount of time for a specific task or set of tasks and by monitoring systems that are peculiar to virtual work, such as taking screenshots of workers' monitors. It has been argued that "*this often results in determination of work that is so pronounced that it equals "classical" personal dependency necessary for an employment relationship*" (Risak and Warter, 2015, 8). On the basis of what was highlighted above, this observation can indeed be extended to other work arrangements in the gig-economy.

Of course the matter is far from being settled[41] and, most likely, litigation on the classification of workers in the gig-economy will flourish in several countries in the coming years,[42] as most of the issues at hand are at the core of employment regulation and, more generally, of labour protection in most jurisdictions and require the solution of very complex legal questions on employment status. In the United States, bills were introduced or passed in several States mandating that drivers working for businesses such as Uber and Lyft be classified as independent contractors (Weinberg, 2015). Moreover, the decisions of the District Court of California described above have, for the moment, merely allowed the matter to be further trialled before a jury and do not constitute a decision in favour of recognising drivers the status of employees. In the Lyft case the court explicitly remarked this complexity by stating that "*the jury in this case will be handed a square peg and asked to choose between two round holes*" since the "*test the California courts have developed over the 20th Century for classifying workers isn't very helpful in addressing this 21st Century problem*", since some factors go in favour of recognising drivers as employees whilst some others weight in the direction of independent contractor status and "*absent legislative intervention, California's outmoded test for classifying workers will apply in cases like this.*"[43] In addition, the Court also advanced an idea of legislative intervention to solve these issues, which will be commented in the next section.

toast […] Because for every rejection, you have to get 100 HITs that are approved to get your rating back up. Do you know how long that takes? It can take months; it can take years". However, for a different account of "MTurk Stats Math", see http://www.mturkgrind.com/threads/mturk-stats-math.26512/ (Accessed 2 November 2015). I owe thanks, without implicating, to Rochelle LaPlante for this observation.

[41] For instance, consider the decision in *Rasier LLC v. State of Florida,* (n. 3). In Oregon, an Advisory Opinion of The Commissioner of the Bureau of Labor and Industries of the State of Oregon, *The Employment Status of Uber Drivers*, 14 October 2015, was released arguing that under Oregon Law, Uber drivers qualify as employees. In Belgium, the Secretary of State for the Fight against Social Fraud recently referred to a study of the National Social Security Office, according to which Uber Drivers are to be considered contractors with regard to social security law: see Sheftalovich, 2015; Vassart, 2015.

[42] Litigation also regards crowdwork. Recently, for instance, a settlement has been reached in a dispute between some workers and a business involved in crowdwork, Crowdflower, managing activities and tasks through the Amazon Mechanical Turk. The Plaintiffs claimed reclassification as employees under the FLSA and Oregon's laws and the consequent payment of outstanding remuneration for the services rendered to Crowdflower in compliance with the relevant minimum wage rates. Collective action status was conditionally granted by the Court so that other workers could join the claim. A gross settlement amount of c. $ 585,000 was paid to settle the dispute. See United States District Court, Northern District of California, *Otey et al. v Crowdflower, Inc. et al.*, Second Modified Stipulation of Settlement of Collective Action, Document 218-1.

[43] *Cotter et al. v. Lyft Inc.*, Order Denying Cross-Motion for Summary Judgement (n. 18), p. 19. The Judge, however, does not provide a detailed explanation about why California's tests should be considered outmoded: the tests reported at n. 32 above seem to be sufficiently clear and not necessarily tied to a definite and historically-limited business model and are similar to tests and criteria concerning classification of employment status adopted in other jurisdictions: see Countouris, 2011. See also Rogers, 2015 and discussion in Section 7.

# 7. Occam's razor and new forms of work: Why creating an intermediate category of workers between employees and independent contractors would not solve problems in the gig-economy

In highlighting some of the complexities of classifying workers in the gig-economy, the Court in the Lyft case also suggested: "*perhaps Lyft drivers should be considered a new category of worker altogether, requiring a different set of protections.*"[44] Nor would it be isolated in advocating similar solutions (Harris and Krueger, 2015). It was for instance proposed that, in the United States, it would be "*better to create a third legal category of workers, who would be subject to certain regulations, and whose employers would be responsible for some costs (like, say, reimbursement of expenses and workers' compensation) but not others (like Social Security and Medicare taxes)*", following the examples of "*other countries, including Germany, Canada, and France*" that "*have rewritten their laws to expand the number of worker categories*" (Surowiecki, 2015; see also Hagiu, 2015; Weber, 2015).

Whilst this proposal is interesting, as it challenges some of the existing boundaries to the application of labour protection, there are many potential negative implications that should not be underestimated. First and foremost, proposing a new legal bucket for grey-zone cases may complicate matters, rather than simplifying the issues surrounding classification. Creating an intermediate category of worker such as dependent contractors or dependent self-employed persons implies to identify suitable definitions (Rogers, 2015). Legal definitions, however, are always slippery when they are applied in practice: the real risk is shifting the grey-zone somewhere else without removing the risk of arbitrage and significant litigation in this respect, especially if the rights afforded to workers in that category afford any meaningful protection.

Protection for workers in intermediate categories and the tests for applying them also change significantly among national regulations.[45] Some of the applicable tests, for instance, require that a certain percentage of the dependent contractor's business comes from the same principal for the worker to be presumed or considered as a dependent contractor: in the various jurisdictions concerned (Canada, Germany, Spain) this percentage varies between 50 per cent and 80 per cent. It goes without saying that applying any such criteria would be extremely difficult in the gig-economy (Rogers, 2015; Sachs, 2015b; Scheiber 2015). As a matter of fact, this test could be even more complicated than a test based on the control exerted on workers. It would be difficult to assess whether the sources of the workers' income are the platforms or apps or the final clients and costumer on those apps. In the latter case, it would almost be impossible to qualify as falling into the intermediate category, particularly in crowdwork (Klebe and Neugebauer, 2014). Such a test would also be quite unpredictable for workers and particularly for businesses as they would have to take into account which percentage of their overall earnings a worker is making on their platform. In an era of casualised employment with many workers carrying out several jobs for several employers, be more traditional ones or gig-economy business, during a same month, week or even day, this would be extremely burdensome (Sprague, 2015). Both workers and businesses would not improve their situation in terms of certainty of protections, costs and liabilities.

[44] Ibid.

[45] For a comparative overview see the articles published in *Comparative Labor Law & Policy Journal*, Vol., 32 Issue 2, Winter 2010; see also Perulli (2011).

Significant in this respect is the case of Italy. In 1973, Italian lawmakers extended labour procedural rules to those work arrangements where the worker undertakes to carry out an activity in the interests of a principal, on a mainly-personal, continuous and self-employed basis, coordinating with the latter how the activity is performed: in Italian labour studies, they started to became known as *para-subordinate* relationships (Santoro Passarelli, 1979). At the beginning, only procedural rules were extended to them, apart from minor exceptions. However, the fact that lawmakers had mentioned these business-integrated working activities as self-employed relationships had unforeseen effects in this respect. Businesses started to recur to these relationships as a cheap alternative to employment relationships, both because of their lack of protection and the fact that no social security contributions had to be paid in their regard by the principal, at that time. Accordingly, besides genuine self-employment relationships, a large number of disguised employment relationships were, increasingly, being entered into. When, in 1995, modest social security contributions were extended to them, this, far from constituting a disincentive, reinforced the idea that they were a low-cost substitute for employment and their number increased significantly (Accornero, 2006; Gallino, 2007).

Courts, pursuant to the "primacy of fact" principle mentioned above reclassified sham para-subordinate arrangements as employment relationships, but this resulted in uncertainty for workers and businesses and in an upsurge of litigation. As from the early 2000s, regulation was progressively introduced to marginally increase labour and social security protections for para-subordinate workers, to combat their abuse as forms of bogus self-employment and discourage their use as a cheap alternative to employment relationships. These reforms were only partially successful and, by 2012, it was estimated there were 1.5 million para-subordinate workers in a labour force of around 23 million.[46] Moreover, the body of regulation and case law regarding these relationships had significantly grown in number and complication, adding even more legal uncertainty. In 2015, a new reform was passed aimed at enlarging the scope of application of labour regulation and, at the same time, repealing most of the protections afforded to para-subordinate work, without abolishing it, which may further complicate classifying workers' employment status in practice (Perulli, 2015; Razzolini, 2015).

The Italian case, therefore, shows that regulating dependent self-employment is no panacea for addressing the changes in business and work organisation driven by the disintegration of vertical firms. Nor should it be overseen that the workers that would qualify for full protection as employees under the current legal tests would likely become deprived of many rights if they were crammed into an "intermediate bucket". In the UK, for instance, where the law distinguishes between a range of categories, including notably "self-employed and contractors", "workers" and "employees", workers are covered only by parts of employment protection such as the National Minimum Wage, protection against discrimination, working hours and annual holidays; they are not entitled to important rights such as protection against unfair dismissal and redundancy pay and the right to request flexible working. This, coupled with a particular restrictive application of the doctrine of mutuality of obligation in UK courts, which poses serious hurdles for workers engaged in arrangements with discontinuous work schedules or casual employment to claim employment status (Countouris, 2014; A. Adams, Freedland and Prassl, 2015), may have serious implications on the protection of workers in the gig-economy. Indeed, when drivers recently filed a lawsuit against Uber in the UK to claim reclassification of their relationship, they asked to be reclassified merely as "workers" given the difficulties realistically foreseen to claim full employment status in that jurisdiction (see GMB, 2015).

[46] See data available at http://www.amicimarcobiagi.com/istat-ecco-litalia-2012-cala-loccupazione-soprattutto-giovanile/ (accessed 26 October 2015).

Intermediate categories can, therefore, prove to be an obstacle in achieving full labour protection when employment relationships are disguised. Nor are they necessary, in the United States, for providing workers with at least some labour protection. First, it would be wrong to assume that the control test is so narrow that cannot provide guidance in securing employment protection in modern times (US DoL, 2015). As it was highlighted at Section 6 above, control tests do not necessarily require that the employer "*retains the right to control every last detail*" of the work: micromanaging workers is not an essential element of control. As the court in the Lyft case pointed out, moreover, having sparse work schedules "*does not necessarily preclude a finding of employee status.*"[47] The flexibility in choosing hours of work does not preclude that, once a worker decides to work and accede to the app or platform she is subject to far-reaching control and invasive monitoring of her performance, similar to those who are applicable upon traditional employees. Moreover, some fundamental statutes providing labour protection in the United States already provide for a broad definition of employment when determining the scope of their application. For instance, the US DoL recently highlighted how the Fair Labor Standards Act (FLSA) provides a definition of "*employ*" as to "*suffer and permit to work*" that is to be construed more broadly than the Common Law's "control test". The definition under the FLSA took after the definitions used in earlier statutes against child labour in order to encompass also work executed through middlemen and similar arrangements (US DoL, 2015). This is all the more relevant as the FLSA was enacted in 1938, therefore in an age in which the trend was and had been for several years towards "vertical integration" and very hierarchical and bureaucratical and managerial prerogatives (Stone, 2004). By that time, the mere control test might have sufficed to embrace a wider range of working activities than today; still, lawmakers went beyond the control test to ensure the broadest application possible of the statute. This should be borne in mind when applying it nowadays, in the age of fissurization (Weil, 2014) and allegedly less hierarchical management's power over workers (Coffey and Thornley, 2010). These developments do not render the statute outmoded; on the contrary, the broad definition is almost more significant at present times than it was in 1938.

Moreover, the introduction of an intermediate category would be even more debatable if it was applicable only to workers in the gig-economy. As it was pointed out above, problems concerning employment status and misclassification extend much beyond the boundaries of the gig-economy and providing for a specific category of worker in this sector would artificially segment the labour market and employment regulation and it would also add complexity, since a definition of the gig-economy that overlaps significantly therewith, would be extremely difficult to identify.

In light of all the above, the proposal of introducing a new category of employment to regulate forms of work in the gig-economy does not seem a viable solution to enhance labour protections of the relevant workers and provide a predictable framework of rights, costs and liabilities for the parties involved. In the next section, some preliminary policy solutions will be tentatively advanced to deal with the challenges raised by the gig-economy.

[47] *Cotter et al. v. Lyft Inc.*, Order Denying Cross-Motion for Summary Judgement (n. 18), p. 18, n. 7, referring to decision of the Supreme Court of California in *Burlingham v. Gray* 137 P.2d 9, 16 (Cal. 1943). Other relevant judgments in this respect are *Dole v. Snell*, 875 F.2d 802 (10th Cir. 1989) and *Doty v. Elias*, 733 F.2d 720 (10th Cir. 1984). In Italy, for instance, on-call workers are considered subordinated employees during shifts, even when they do not undertake to accept all the employer's calls.

# 8. Conclusions: Protecting work in the gig-economy, which way forward?

To promote labour protection in the gig-economy, the first thing that is needed is a strong advocacy to have jobs in this sector fully recognised as work. This is an essential step to counter the strong risk of commodification that these practices entail. In the light of what was argued above, a cultural struggle to avoid that workers are perceived as extensions of platforms, apps and IT devices is pivotal not only from the theoretical perspective of combating dehumanisation and the risk of creating a new group of invisible workers but also, from a practical standpoint, to stress the recognition of the ultimate human character of the activities in the gig-economy, even if they are mediated by IT tools (Irani, 2015a). Doing so could also mitigate excessively harsh reviews and rating of workers, and the subsequent detrimental impact on their possibility to work.

Secondly, the gig-economy should not be conceived as a separate silo in the economy. As argued above, the strong links of the gig-economy with broader trends in labour markets such as casualization of work, demutualisation of risks and informalisation of the formal economy should not be overlooked, to designate comprehensive solutions to labour problems in modern and future labour markets. In this respect, it is essential to consider how many important dimensions of work in the gig-economy share similar attributes with other non-standard forms of employment. Recognising these similarities helps to avoid unnecessary subdivisions in labour discourses and allows including work in the gig-economy into policies and strategies aimed at improving protection and better regulation of non-standard work, both in general and when addressing specific work arrangements such as casual work or disguised employment relationships.

This will also be pivotal in avoiding hastened legislative responses such as creating specific categories of employment to classify workers in the gig-economy or weakening existing regulation to allegedly better the prospect of developments of businesses in this sector: it is far from being demonstrated that deregulation of labour markets and of non-standard forms of work in particular has positive impacts on growth, innovation or employment rates (Berg, 2015; Berg and Kucera, 2008; Deakin and Adams, 2015; Lee and McCann, 2011). It has also been argued above that basic concepts of employment regulation such as control are not alien to the gig-economy and some existing regulation seems to compatible with forms of work in this sector. When this is not the case, however, efforts should be made to adapt protection to the modern reality of labour markets: for instance, a presumption of employment status could be introduced when a contract of personal service is in place or other indicators are present.[48] Nor should it be taken for granted that work in the gig-economy is incompatible with recognising the relevant workers as employees: some companies, such as Alfred, Instacart, Munchery, have indeed already spontaneously reclassified their workers as employees (De Pillis, 2015; Smith and Leberstein, 2015).

Measures should also be taken to ensure transparency in ratings and, above all, fairness in business decisions such as deactivation of profiles or changes of terms and conditions of use and payment of workers and to reduce the idiosyncratic character of one of the most

[48] Paragraph 11 of the ILO Employment Relationship Recommendation, 2006 (No. 198) suggests ILO Member States to "consider the possibility of the following: (a) allowing a broad range of means for determining the existence of an employment relationship; (b) providing for a legal presumption that an employment relationship exists where one or more relevant indicators is present; and (c) determining, following prior consultations with the most representative organizations of employers and workers, that workers with certain characteristics, in general or in a particular sector, must be deemed to be either employed or self-employed." See ILO, 2013; ILO, 2015a.

important "capitals" in the gig- economy: reputation. Allowing the "portability" of workers' existing good ratings from one platform to another would reduce the dependency of workers upon single platforms: resistance to this development would indeed be inconsistent with the purported role of platforms as facilitators rather than traditional employers. Most importantly, and this is as important for the gig-economy as for any other section of the labour market, some protection should be considered universal and be provided regardless of the employment status.

This is the certainly the case for Fundamental Principles and Rights at Work: no worker should be denied access to basic human rights such as freedom of association and the right to collective bargaining, freedom from forced and child labour and the right not to be discriminated; in addition, other protection of basic needs should be afforded to all workers, such as OSH measures (see Huws, forthcoming, for a discussion of OSH risks in crowdwork). This would already render the protective gap between employment and self-employment less dramatic. With regard to the gig-economy this also calls for a review of existing instruments of protection and promotion of this rights to ensure that new forms of work do not imply new risks of violations.

Of course, this would require multifaceted efforts, in particular for forms of work having a global dimension such as crowdwork: cooperation between regulators and labour market operators will be essential to ensure that the opportunities of development and employment that could accompany crowdwork in developing countries do not occur at the expense of decent work conditions. In doing so, the role of workers' and employers' organisation and social dialogue will be fundamental.

Indeed, several forms of organisation are already a reality in this sector, both for crowdwork – with platforms that try to connect workers online and make them cooperate, for instance by reducing information asymmetries *vis-à-vis* platforms and clients (Irani and Silberman, 2013; Salehi et al., 2015) – and for workers executing activities in the "real" world (Lemonde.fr, 2015). These organisations can be either grassroots or promoted by existing actors, also on a sector level, and – most interestingly – in some cases new realities cooperate with more traditional and structured actors to organise workers in the gig-economy (IRU, 2015; Kessler, 2015b). An example of cooperation is the platform FairCrowdWork that was created by the German labour union IG Metall, which is now also collaborating with some of the creators of the Turkopticon, a platform gathering workers on the Amazon Mechanical Turk.[49] Very importantly, also employers' associations are engaging in the debate on the digital economy (see the interesting considerations contained in the position paper of BDA, 2015; see also McKinsey Global Institute, 2015).

Recognizing in full the human character of activities in the gig-economy and their nature as work is fundamental to support these organisations, also by removing legal barriers, where existing, such as those that may arise from antitrust laws. In this respect, for instance, the Seattle City Council approved a bill allowing drivers for car-hailing apps to form unions, in December 2015 (Wingfield and Isaac, 2015). Self-organisation will enhance the opportunities of workers being made aware of their rights; it will thus be fundamental to support activities aimed at reaching the vastest number of workers possible with campaigns also oriented at workers in developing countries. Besides participating in the organisation of workers, the role of established unions and employees' representative bodies could also concentrate on how to use existing instruments with regard to work in the gig-economy. An example would be to exercise codetermination and information and consultation rights, where present, with regard to the decisions of outsourcing activities via crowdwork or other forms of

[49] See https://turkopticon.ucsd.edu/ and http://www.faircrowdwork.org/en/watch (both accessed 21 December 2015)

work on demand (Klebe and Neugebauer, 2014). Social partners could also be involved in the creation, support and spread of codes of conduct addressing issues of labour protection in the gig-economy: an existing example in this respect is a Code of Conduct concerning paid crowdsourcing, already signed by 3 crowdwork platforms in Germany and supported by the German Crowdsourcing Association.[50]

All this will be fundamental to make sure that workers have a real voice in the future developments of the gig-economy and of the world of work at large. Calls for self-regulation in this context (Cohen and Sundararajan, 2014) are worth exploring but the fundamental voice of workers must not be overlooked and self-regulation cannot be unilaterally set by businesses or aimed at satisfying only the "consumer" part of the stakeholders.

As already mentioned, the challenges the gig-economy poses to the world of work are enormous: simplistic and hastened responses aimed at deregulation and shrinking workers' protection must be avoided if opportunities stemming from the gig-economy and future technology-enabled developments in the economy are to be seized for everyone.

[50] See Code of Conduct Paid Crowdsourcing for the Better Guideline for a prosperous and fair cooperation between companies, clients & crowdworkers available at http://crowdsourcing-code.com/ (Accessed 26 October 2015).

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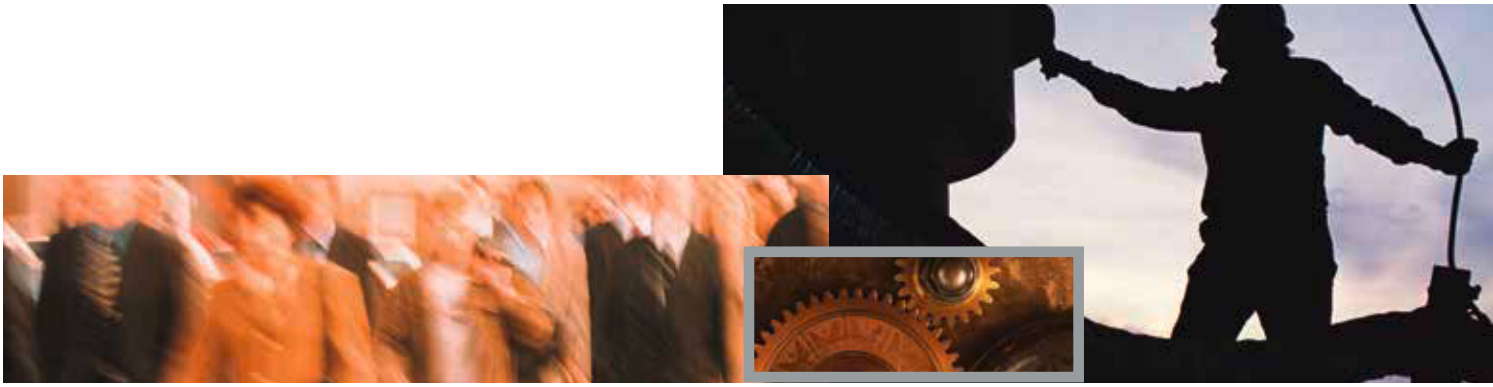

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