



TACKLING SOCIAL DISRUPTION IN THE ONLINE PLATFORM ECONOMY

Shifting the narrative to the benefits of (EU) regulation

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Abstract

This paper makes the case that there is a need to regulate the activities of online platforms at EU level, especially when it comes to the precarious position of their workers. It describes the vulnerable nature of (much) online platform work, it links the challenges to those present for other types of atypical employment and surveys the current regulatory responses at national level, which have not yet resulted in sufficient protection for online platform workers. The paper considers what steps the EU is now taking, with a specific focus on the European Pillar of Social Rights. The paper will consider how the EU's response can be further improved, to ensure that the positive potential of the online platform economy is harnessed and embedded to yield benefits for everyone, especially those people who are at the core of generating these benefits. This may entail a holistic upgrading of the current EU *acquis* of atypical work. The paper concludes that it is important to shift the narrative away from 'harmful rules' that 'hamper' technological 'innovation' and instead to argue for a socially sustainable technologically supported economy that benefits everyone involved.

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EXECUTIVE SUMMARY

- In our increasingly digitalized world, a crucial role is played by online platforms. They affect the economy and our society in various ways and their regulation (or lack thereof) is increasingly the subject of public and political debate.
- A key problem is the position of the people working in the online platform economy who are generally contracted by the online platforms as formally self-employed and are therefore often not given access to the social, labour, health and safety protections that are in most countries connected to an employment contract. This also implies a lack of social security contributions and tax revenues, which present a socio-economic sustainability problem.
- However, considering the vulnerable profile of many people working in this sector in often precarious conditions, these social, labour, health and safety protections are very much needed in the online platform economy. Online platform work poses a range of both pre-existing and new health, safety and wellbeing risks for workers, both physical and psycho-social.
- Moreover, to an important extent, the various individual and societal risks associated with platform work coincide with those that are found in other types of atypical employment, for which different forms of regulatory frameworks already exist at EU level (see table 1). At the moment, it is not clear to what extent the rules covering fixed-term work, temporary work and part-time work also apply to platform work, but it is evident that they do not constitute a sufficiently encompassing framework to address this phenomenon.
- It appears that the online platform economy is growing ‘for the wrong reasons’, namely not to deliver new, innovative and better-quality services for the benefit of customers and with the side-benefit of creating quality employment opportunities, but instead that it is used as ‘unfair competition’ to undercut the existing industry operators. The profit is generated on the back of the individual worker’s wellbeing and the welfare state’s sustainability. If these externality costs were properly factored into the calculation of the economic effects of the online platform economy, it is doubtful that it would generate a net benefit for the majority of the individuals working within it, and for society at large.
- Nonetheless, national regulators have found it difficult to cope with these developments, as the online platform economy is a moving target, as it has deliberately avoided rule-compliance and, importantly, due to a persistent narrative that considers these ‘new’ and ‘innovative’ developments as something that regulation should either not apply to or should foster rather than ‘stifle’. Therefore, a fundamental shift in narrative is in order, where instead of buying into the idea of ‘harmful rules’ that ‘hamper’ technological ‘innovation’ the importance is underlined of a socially sustainable technologically supported economy that benefits everyone involved.
- So far, there have been different responses at national level, ranging from applying existing categories of employee and self-employed to platform workers, which often depends on a case-by-base assessment and leads to different results depending on the country; applying an intermediate category of ‘independent worker’ with limited forms of protection, or by setting up new regulatory frameworks specifically for platform workers, either in the form of legal rules, collective agreements, or self-regulation. All of these approaches have different strengths and drawbacks, but none provide a holistic approach that would solve the problems identified earlier (see table 2 for an overview).
- While the problems raised are not unique to labour provided through online platforms but instead coincide with the more general *problématique* of increased non-standard and precarious work, online platform work is ‘special’ in terms of the extent to which it places atypical employment at the very core of its approach to labour. Nevertheless, it would seem that the most appropriate and effective regulatory response would be to address the problem of low-quality work more generally. The Social Pillar could be used as the pathway to launch a holistic process of the social (re-)regulation of work at EU level, which upgrades and complements the current measures on atypical work to provide a truly effective, and truly social, minimum floor of workers’ rights.

1. INTRODUCTION

In our increasingly digitalized world, a crucial role is played by online platforms.¹ These platforms - dynamic websites that constitute digital public squares or marketplaces - affect the economy and our society in various ways and their regulation (or lack thereof) is increasingly the subject of public and political debate. The way in which Facebook deals with personal and public information, the influence of Airbnb on our habitat, Uber's effects on the taxi sector, the working conditions of Deliveroo couriers or tech-workers on Amazon Mechanical Turk: the 'disruptive' effects of the activities of the platforms regularly make headlines.

A key social problem is the position of the people working in the online platform economy as cleaners, drivers, engineers etc. As they are generally contracted by the online platforms as formally self-employed, these people do not (seem entitled to) benefit from the social, labour, health and safety protections that are in most countries connected to an employment contract, even if their precarious working conditions and socio-economic position very much requires such protection. The ensuing lack of social security contributions and tax revenues present a sustainability problem for social systems more generally in the long run. It should be noted that these challenges as such do not seem to be unique to the online platform economy (De Stefano, 2016). The past few decades have seen an increase in the use of non-standard forms of work, such as casual work, on-call work, temporary agency work, informal work and dependent self-employment. Many of the working arrangements set up by the online platforms coincide, or closely resemble, these forms of atypical work or a mixture thereof, sometimes with the only difference that they make use of a digital tool. However, some online platforms seem to have built their entire business model and technological infrastructure around this precarity, which does seem to lift the overall *problématique* to a higher level.

There is a necessity to better regulate the activities of online platforms, especially when it comes to the position of their workers, and this paper argues that the EU level should play an important role in this regard (Section 2). The first, normative, reason is that platform workers are especially vulnerable (Section 2.a. below). The second is that platform work is to a large extent coterminous with atypical forms of work that are already regulated at EU level (Section 2.b.). Thirdly, the different approaches adopted by the Member States have not been able to achieve sufficient protection (Section 2.c.). The paper will consider the ways in which the EU is already taking up this responsibility, particularly in the context of the European Pillar of Social Rights (Section 3.a. below). This paper will consider how the regulatory responses can be further improved, to ensure that the positive potential of the online platform economy benefits everyone, especially those people who are at the core of generating these benefits. It will conclude that it is important to shift the narrative away from 'harmful rules' that 'hamper' technological 'innovation' and instead to argue for a socially sustainable technologically supported economy that benefits everyone involved (Section 3.b.).

2. WHY THE EU SHOULD REGULATE ONLINE PLATFORMS

The regulatory challenges or questions raised by the online platform economy are manifold and "span the entire map of the legal world, including work, tax, safety and health, quality and consumer protection, intellectual property, zoning, and anti-discrimination" (Lobel, 2016). The key social and legal question is to what extent the various labour and employment regulations, that have usually been designed with a traditional bilateral, standard, open-ended employment relationship in mind, can and should be applied to the often atypical working arrangements used in the online platform economy.

The drivers, riders, cleaners, designers, translators, technicians and others working in the online platform economy are often formally contracted as independent, and their working arrangements tend to exhibit features that are difficult to square with the traditional employment relationship, such as the use of own materials (e.g. the driver's car), autonomy concerning working hours (e.g. deciding to work by logging into a smartphone app), the short duration of the relationship (e.g. the translation of a single sentence, (Milland, 2017))², and the multilateral character of the relationship (e.g. the driver, the platform and the passenger). At

¹ This paper builds on the research presented in Garben, 2017, Garben, 2019.

² Some online platforms, such as the Amazon Mechanical Turk platform, are specifically set up to provide such 'microtasks'. In a recent study, the ILO describes these microtask platforms as "a type of web-based labour



the same time, the worker may well be economically dependent on the platform work, the contractual independence can be constructed in rather artificial ways (e.g. a driver that works fulltime for a platform for several years but is formally contracted per journey) and the platform can exert significant control over the work and the person performing it. This complex reality has challenged judges in many jurisdictions, who have had to decide on claims brought by online platform workers against the platforms, arguing that they should be treated not as independent contractors but as “employees or workers”.

The additional protection that would usually result from such (re-)qualification seems however very welcome from a social security, labour law and occupational health and safety (OSH) perspective, especially considering the vulnerable profile of many people working in this sector in often precarious conditions (Section 2.a). Such precarity connected to atypical working arrangements more generally has already been partially addressed by the EU in the form of a number of Directives providing a minimum level of protection. Platform workers, however, risk being excluded from the protections offered by current EU legislation (Section 2.b.). At Member state level, various regulatory approaches have been piloted, but none has been able to achieve a sufficient level of protection for online platform workers (Section 2.c.).

2.a. The precarious nature of online platform work

Online platform work poses a range of both pre-existing and new health, safety and wellbeing risks for workers, both physical and psychosocial. The fact that online platform workers share many similarities with both temporary workers and agency workers, means that they are probably exposed to the same risks, with studies consistently showing higher injury rates among workers on these non-standard arrangements (Howard, 2017). Moreover, any physical health and safety risks could be anticipated to be worse because of the loss of the protective effect of working in a public workplace, as most of this work is transacted in private automobiles or homes (Tran and Sokas, 2017, Rockefeller Foundation, 2013). This may also mean that the work equipment does not meet ergonomic criteria and that other environmental factors are not optimized for working. In addition, online platform workers tend to be of younger age, which is a well-known independent risk factor for occupational injury (Tran and Sokas, 2017). In addition, platform work, through competitive and rating mechanisms, encourages a rapid pace of work without breaks, which may induce accidents (Huws, 2015). Pay not being continuous but per-assignment adds such time pressure. The lack of appropriate training further increases the risk of accidents, and this while several key activities typically carried out by online platform workers are in occupations that are notoriously dangerous, such as construction and transport (Huws, 2015).

The fact that online platform workers will usually be denied the right to paid sick leave leads to increased illness morbidity. Working while sick can increase the risk of injury (Howard, 2017). In several studies, workers with paid sick leave benefits were 28% less likely than workers without access to paid sick leave to sustain a work-related injury (Asfaw et al, 2012). Studies suggest that health problems may in fact be a main reason to engage in digital online platform work such as on microtask platforms (Berg, 2018). On the one hand, this means that online platform work can provide an alternative way for people with health impairments to carry on work and earn some income, contributing to social and labour market inclusion. On the other hand, it also means that many online platform workers are already in a vulnerable position from an OSH perspective, which the online platform work may aggravate.

Furthermore, workers in the online platform economy are exposed to a range of psycho-social risks. These follow from the lack of a common workplace, as most of the tasks will be performed individually, separated from—and often competition with—fellow workers, which can lead to isolation by denying workers face-to-face contact with their colleagues, which forms the basis of both social support and discussion of work concerns (Tran and Sokas, 2017, Smith 2015, Valenduc and Vendramin, 2016). This lack of a monitored workplace may also mean that a worker can develop anti-social and/or health-threatening habits as a means of

platform that provide businesses and other clients with access to a large, flexible workforce (a “crowd”) for the completion of small, mostly clerical tasks, that can be completed remotely using a computer and Internet connection. These tasks are diverse, including image identification, transcription and annotation; content moderation; data collection and processing; audio and video transcription; and translation. Clients use the platforms to post bulk tasks that need completion; workers select the tasks and are paid for each individual task or piece of work completed. The platforms pay the workers the price indicated by the client minus their fee.” Berg et al, 2018.

coping with stress (such as dependence on alcohol or drugs) which would be spotted by the employer in a normal working situation but can escalate rapidly if nobody is aware of them (Huws, 2015). Continuous real-time evaluation and rating of worker performance can become an important source of stress: workers have to be friendly, efficient and serviceable at all moments, akin to a “constant monitoring system” (Aloisi, 2016). Stress can result where “the facility to use platforms combined with the availability of a large pool of workers makes the timing of this type of outsourcing extremely compressed” (Maselli et al, 2016). In addition, the worker must always be on stand-by to accept any potential upcoming jobs, which also blurs work-life boundaries (Huws, 2015, Degryse, 2016, Valenduc and Vendramin, 2017, Harris and A. Krueger, 2015). In other words: “[t]he friendly and flexible ‘anytime and anyplace’ working model can easily turn into an “always and everywhere” trap for some workers – with negative effects on psychological health” (Eurofound, 2016).

Finally, job insecurity, apart from an important social concern in itself, is known to contribute to poor overall health among contingent workers and is salient among online platform workers (Tran and Sokas, 2017, Cummings and Kreiss, 2008, Benach and Muntaner, 2007). Their working relationship with the online platform can usually be ended without notice or any form of dismissal protection, and even when the relationship is active, there is no guarantee of minimum pay since this is dependent on performing an assignment. Precariousness therefore defines this type work; for many workers it is “unclear from one day, or even one hour, to the next, whether they will have work, and if so, what that will consist of, or when, or even if they will be paid (in some cases no payment may be received at all because the work is deemed unacceptable by the client)” (Huws, 2015). In terms of psychological impact, as Tran and Sokas point out, the role of choice is likely to be important: a study of a large sample of women with temporary jobs showed psychological distress and somatic complaints were higher among those who were involuntarily performing temporary jobs, compared with those workers who preferred temporary work (Tran and Sokas, 2017). Research has shown that insufficient work is a principal concern of online platform workers, the majority of whom expressed a desire for more hours, either in crowdwork or non-crowdwork activities (Berg, 2006, Berg et al, 2018). Such underemployment and intermittency of work require daily or even hourly job search,³ with the added stress and excess working time that ensues.

Last but not least, on a societal level, the fact that online platform workers are generally treated as independent/self-employed instead of workers/employees, means a grave loss of social security contributions and tax revenue. This may, in the long term, undermine the position of not just the online platform workers but the sustainability of the welfare state and the economy more generally.

2.b. Online platform work as ‘standard’ atypical work

In light of the digital/technological element necessarily involved in online platforms, the activities of these platform companies have been presented as ‘new’ and ‘unprecedented’, as novel features emerging from rapid technological change and a new type of economy, to support the argument that they should not be treated similarly to any existing economic activities. For regulators, it has proven difficult to sort ‘the old’ from ‘the new’. This is compounded by the fact that the emergence of the online platform economy coincides with many related, yet different trends and concepts, which are often conflated and confused, such as, *inter alia*, the “digital economy”, “sharing economy”, “collaborative economy”, “gig-economy”, “crowd-work”, “piece-work”, and “gig-work” (Codagnone and Martens, 2016). This has also allowed hard-core economic activities (with sometimes exploitative features) to cloak themselves in the ‘fluffy’ positive language of peer-to-peer sharing and citizens’ initiatives. The sharing or collaborative economy is often understood as to comprise not-for-profit activities of genuine sharing between citizens, which however runs counter to the common understanding of ‘economic’ transactions, thus producing a *contradictio in terminis* (oxymoron).

Regulators may fear negative political consequences in appearing unwelcoming of these ‘new’ developments, which are presented to hold great economic promises especially for a younger generation that has been hit hard by the labour-market consequences of the 2008 economic crisis, and which is particularly receptive to the communitarian idea of a ‘sharing society’. However, this results from the incorrect way in which online platform work is generally conceptualized. It would seem far more appropriate, and useful, to stress that the

³ The ILO has revealed that on average, workers on microtask platforms spent 20 minutes on unpaid activities for every hour of paid work, searching for tasks, taking unpaid qualification tests, researching clients to mitigate fraud and writing reviews. See Berg et al, 2018.

precarious and exploitative features of some online platform work are not so new and different. Instead, what also emerges from the discussion in Section 2.a., to an important extent, the various individual and societal risks and costs associated with online platform work coincide with those in the context of a-typical employment and increasing precarity on the labour market more generally.

The challenges presented by a-typical employment/working relationships do not seem to be unique to the online platform economy, or even the digital economy, in a conceptual sense. Partially due to the evolution of labour markets and society, partially due to the economic crisis (and labour market policy responses thereto), and facilitated by the digitalization of society and the economy, the past few decades have seen an increase in the use of non-standard forms of employment and work, such as casual work, on-call work, temporary agency work, informal work and dependent self-employment (Eurofound, 2015). Many of the working arrangements set up by the online platforms coincide, or closely resemble, these forms of a-typical work or a mixture thereof, sometimes with the only difference that they make use of a digital tool. Gig-work (working not on a continuous basis but in the form of one-off assignments) could, for instance, be seen as a form of casual or on-call work. It can comprise work performed on demand through an online platform but also other types of freelance-type activities, digitally facilitated or not.

Indeed, the online platform working arrangements can at times resemble *very* old working arrangements, presented in a new digital ‘jacket’, such as piece-work (a type of employment in which a worker is paid a fixed piece rate for each unit produced or action performed regardless of time) which was very common under the Guild System before the 18th century as well as in the Industrial era, and putting-out work/home-work, a form of subcontracting widely used in early times of industrialization where work is contracted by a central agent to subcontractors who complete work in off-site facilities either in their own homes or in workshops (Risak and Warter, 2015). This putting-out/home work closely resembles certain aspects of crowd-work, which is regularly at the heart of ‘typical’ online platform work.⁴ Crowd-work is not only similar to home-work, but also shares many similarities with other forms of non-standard employment such as temporary work, part-time work or temporary agency work (Berg, 2006).

While therefore, as stated, all these forms of a-typical work are not unique to labour provided through online platforms, it should be recognized that the features of online platform work (i) are particularly suited to various forms of a-typical work and thus operate as a catalyst for it, and (ii) often result in a mixture of various types of a-typical employment (triangularity resembling temporary agency work, digitalization leading to autonomy in work place and time and as such to potentially dependent self-employment, crowd-sourcing leading to a casual, on-call nature of the working arrangement, etc). Moreover, (iii) many online platforms have taken these atypical features to the extreme and place them at the centre of their business model and seem to be organizing themselves to generate their profits not on the basis of quality services and products but rather on the back of these exploitative working arrangements that allows them to undercut prices of the more socially sustainable alternative services offered by ‘traditional’ competitors.

Thus, on balance, it seems fair to say that “it is important not to overstate, and at the same time not to underestimate, the magnitude of the problem. The [online platform] economy may be revolutionary in some respects [...], but in the current context the challenges it creates are not unlike those we have already been struggling with for many years [...]. These challenges certainly require discussion, and justify debates about the best way to address the new problems, but there is no reason to see them as paradigm-shifting” (Davidov, 2017). This double-edged finding is very important, because on the one hand it neutralizes the regulation-delaying and -avoiding narratives that these ‘new’ developments require either no or very different levels and types of regulation to thrive, while on the other hand it underlines the need for firm regulatory action to counter the significant negative effects.

At EU level, an important chapter of the social *acquis* consists of measures concerning atypical forms of work, namely fixed-term work, part-time work and temporary agency work. These non-standard working arrangements are often part of an irregular career pattern and carry a high risk of unemployment (Schulze Buschoff and Protsch, 20018). The EU directives seek to address this precariousness to a certain degree, and

⁴ Crowd-work can be defined as “the organizing of outsourcing of tasks to a large pool of workers”, potentially provided to a large pool of customers/employers, often through online platforms (Prassl and Risak, 2016).

consider the open-ended, direct and full-time employment relationship to be most preferable form of employment, even if also reflecting the ‘flexicurity’ approach that promotes atypical working arrangements as desirable in specific circumstances. As can be seen in the table below, they offer different kinds of protection. Whether an online platform worker can also benefit from the protection offered in the directive depends on the situation. In any event, the protective model followed in these directives is that atypical workers need to be treated on equal terms as standard workers in the company or, in the absence of a comparable worker, in the sector. However, in the case of many online platforms, everyone is in the same (precarious) position, which means that a mere principle of equal treatment will not resolve the issues.

Table 1 - EU laws on atypical work

EU Measure	Scope	Main Elements of Worker Protection	Position of Online Platform Workers
The Fixed-Term Work Directive 1999/70/EC	<p>Applies “to fixed-term workers who have an employment contract or relationship as defined in law, collective agreements or practice in each Member State”.</p> <p>A fixed term worker is “a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event”.</p>	<p>Lays down the principle of equal treatment: fixed-term workers should not get less favourable employment conditions than permanent workers, unless objectively justified.</p> <p>Obliges MS to adopt measures to prevent abuse of successive fixed-term employment and gives the choice between (i) requiring objective reasons for the renewal of such employment, (ii), providing an overall limit of duration of such employment, and (iii) providing a maximum number of renewals of successive fixed-term employment.</p>	Unclear; possibility for an online platform worker with a fixed-term position to rely on the rights in the Directive depends largely on their employment status under national law.
The Temporary Agency Work Directive 2008/104/EC	<p>Applies to “any person who, in the member state concerned, is protected as a worker under national employment law”.</p> <p>But the CJEU held in <i>Ruhrlandklinik</i> that this cannot mean that the EU legislature waives its power to determine the scope of the Directive itself. Instead, the Directive applies to those “who for a certain period of time perform remunerated services for and under the direction of another person to the</p>	Provides the principle of equal treatment for temporary agency workers, entitling them to the same conditions of employment, including pay, as directly hired workers.	Depends on whether the online platform worker can be considered a worker in the definition of the CJEU, and whether the online platform can be considered a “legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction”.

	exclusion of marginal and ancillary activities”.		
The Part-Time Work Directive 97/81/EC	<p>Applies to part-time workers who have an employment contract or relationship as defined by the law, collective agreement or practice in each Member State.</p> <p>'Part-time worker` refers to an employee whose normal hours of work, calculated on a weekly basis or on average over a period of employment of up to one year, are less than those of a similar full-time worker.</p>	<p>Provides that part-time workers are not to be treated less favourably in relation to employment conditions than full-time workers (subject to the <i>pro rata temporis</i> principle).</p> <p>Provides that employers should facilitate voluntary part-time employment.</p> <p>Provides that “a worker's refusal to transfer from full-time to part-time work or vice-versa is not in itself a valid reason for termination of employment”.</p>	Unclear; whether an online platform worker who works less than fulltime can benefit from the Directive depends largely on their employment status under national law.

2.c. The failure to resolve the regulatory challenges of online platform work at national level

The developments concerning the digital economy, online platforms and their activities, especially where they impact on the provision of labour, have caught national regulators stuck between a rock and a hard place.

Firstly, the online platform sector is highly dynamic, with new businesses being created virtually every single day, and others disappearing or being quickly integrated in other digital businesses. This is partially due to the relatively low entry-barrier to the creation of a new online platform and thus the realization of a new business idea, which is as easy as creating a dynamic website (or having it created for you), partially a “combination of a new industrial revolution and gold rush” (Degryse, 2016), partially because of socio-cultural factors such as the influence of Generation Y (millennials) (Bluekens, 2017), and partially due to changed labour-market and economic conditions since the 2008 economic crisis. The online platform economy is thus, from a regulatory perspective, a moving target.

Secondly, the approach of most of the online platform companies has been to “grow first and ask compliance-related questions later” (Jain, 2015), which has been labelled a “*fait accompli* strategy” (Degryse, 2016). Instead of first ensuring the official permission to operate through following the existing administrative procedures, the online platform companies have often simply rolled out their activities and gained market-share without asking, confronting regulators with a *de facto* situation that proves much more difficult to change. In particular, this strategy (i) has prevented these companies from being subjected to existing regulations from the get-go, which would have made it harder for them to argue later that they should be exempted from these regulations, (ii) it has allowed the companies to acquire wealth and influence, helping them to obtain desired political results (which is to be exempted from regulation), and (iii) it has allowed these companies to first gain users (customers, clients, employers, workers, etc.) who have become reliant on them and who may now therefore act in political support of the online platform companies and their political agendas.

Thirdly, most of the online platform companies have taken deliberate steps to try and render existing regulations inapplicable, where possible. They argue that they are simple intermediaries, digital ‘bulletin boards’ that merely serve to bring people together, and that it is those people that they bring together that engage in the real economic activity in question – not the online platforms themselves. This line permeates their communications and HR strategies. They seek to have this mentioned explicitly in the agreements/contracts that they conclude with users, where it is often stated that there is no employment relationship between the platform and the user, that workers are independent contractors, and that the platform as intermediary can incur no liability for anything related to the transaction between the users it has

connected with each other. This assertive approach makes it harder for regulators to intervene and re-qualify the status and obligations of these companies. It is also highly dependent on intervention by the judiciary, which however is not an option open to many online platform workers in practice.

Fourthly, it should be recognized that some of the online platform companies' activities do objectively pose difficulties in relation to the pre-established regulatory categories. For instance, because of the increased variety, complexity and scale of the atypical working arrangements it facilitates, online platform work presents a particularly difficult set of questions in terms of labour law, as will be discussed further below. Regulators (in a broad sense, including courts) may be genuinely unsure of whether the existing rules apply/ought to apply in some of these cases, and in what way. Furthermore, there is an enormous heterogeneity in the various online platforms and their activities, in terms of the way they are organized, the sectors they impact/belong to, their scale and scope, the type of users they target, etc. This makes it difficult to apply a one-size-fits-all approach and seems to argue for case-by-case assessment and treatment, implying a much higher hurdle for regulators. Moreover, some online platform companies' activities are by their nature transnational, and therefore pose complicated conflict of laws questions and may warrant transnational policy responses instead of, or in addition to, national ones.

The above notwithstanding, it should be pointed out that in addition to regulatory challenges, the online labour platform economy might also present some beneficial regulatory opportunities. In some sectors, the online labour platform economy "transfers transactions that were probably conducted in the shadow economy to the formal sector" (Maselli et al, 2016 ; Dagino, 2016). Indeed, it would seem that online platform companies increase the visibility and institutionalization of many odd-jobs and informal transactions that before in all likelihood took place 'in the black' and can thereby facilitate at least the declaration of these activities to the competent authorities – even if the question about which regulations to apply and to whom, remains open.

Despite the challenges, to try and meet the various concerns raised by online platform work, commentators and regulators have proposed and adopted different approaches. Indeed, although some consider that traditional labour protections are not suitable for the "new" and "innovative" aspects of online platform work and that the application of these protections would inhibit their dynamic development, many others argue that employment rules should at least in some form apply (*inter alia*: Tolodi-Signes, 2017 ; Rogers, 2016, Davidov, 2017 ; J. Prassl and M. Risak, 2018 ; Davies and Freedland, 2006 ; Ratti, 2017).

A first option is to 'simply' apply existing regulations to online platform work. Often, this would entail a case-by-case determination whether the online platform worker is an employee, or self-employed, or – in some countries, such as the United Kingdom – falls in a third category in between. Depending on the (flexibility of the) test applicable to determine labour status, this may already include many online platform workers in the category of employee, or in an intermediate category, meaning that (most) employment and OSH rules would apply – at least in legal terms. Active enforcement by the competent authorities and effective access to justice for workers are necessary for this approach to be effective, especially considering the systematic rule-avoiding behavior of many online platforms. Countries that seem to largely follow this approach a present are the United Kingdom, Ireland, Sweden and the Netherlands. In contrast, in Denmark and Belgium, the approach of applying the current legal provisions will usually lead to online platform workers being classified as "self-employed", leaving most employment law inapplicable (Garben, 2017, Garben, 2019).

A second possibility is to take specific action to narrow the group of persons that will be considered self-employed. This could most notably be achieved through the addition of an intermediate '(independent) worker' category. In the United States particularly, there has been a call for the introduction of a new 'independent worker' status (Harris and Krueger, 2015). Advocates of that midway approach tend to call for legislative intervention to regulate relationships that do not easily fit into the employed – self-employed dichotomy (Ratti, 2017). These independent workers "would occupy a middle ground between the existing categories of employee and independent contractor; the latter typically are workers who provide goods and services to multiple businesses without the expectation of a lasting work relationship" (Harris and Krueger, 2015). The idea would be that based on a set of governing principles to guide the assignment of benefits and protections to independent workers, businesses would provide certain benefits and protections that employees currently receive without fully assuming the legal costs and risks of becoming an employer. Several jurisdictions, such as the United Kingdom, already have such a third category, and this approach would entail

the expansion thereof. In particular, it has been argued that such expansion is necessary because in most countries the law requires some degree of subordination even for this intermediate group (or at least this is how legislation has been interpreted). This means that the intermediate group is much smaller than it should be, with many dependent workers still left outside the scope of (even partial) protection. In any event, workers in the intermediate group usually receive only very minimal protections, especially related to social security and sometimes the ability to bargain collectively. In fact, large parts of labour law should apply when a worker is dependent on one client (who should be considered an employer for such purposes) (Davidov, 2014).

Another way to limit the group of self-employed is through a rebuttable presumption of employment. This exists already to some extent in countries such as the Netherlands and Belgium. The legal cases concerning the status of online platform workers in these countries, as well as in the United Kingdom with its intermediate category, however show that these mechanisms do not necessarily resolve the categorization difficulties, and that in the end, a case-by-case assessment (by courts) is likely to still remain necessary, with the legal uncertainty that this entails (Garben, 2017). It should be noted that this approach could also be adopted organically, most notably by courts, as they can adapt the tests of (self-)employment that they have often themselves developed to the specific features of online platform work, for instance by placing less emphasis on ownership of key assets of the business (such as cars in the context of passenger transport) and more emphasis on de facto control mechanisms (such as rating and pricing systems operated by the platforms).

A third possibility is to provide specific protection for online platform workers, regardless of their employment status. This can be through state regulation, such as in France, which has adopted the Act of 8 August 2016 on work, modernization of social dialogue and securing of career paths that provides: (i) that independent workers in an economically and technically dependent relationship with an online platform can benefit from an insurance for accidents at work which is the responsibility of the online platform in question; (ii) that these workers equally have a right to continuing professional training, for which the online platform is responsible, and should at their request be provided with a validation of their working experience with the platform, by the online platform, (iii) that these workers have the right to constitute a trade union, to be a member of a union and to have a union represent their interests, and (iv) that they have the right to take collective action in defense of their interests.

Such regulation can also be done by the stakeholders themselves. In Denmark, a collective agreement has been signed between the Danish cleaning services digital platform Hilfr and the United Federation of Danish Workers, guaranteeing the same conditions as elsewhere on the Danish labour market. The 1-year “trial” agreement, in force from 1 August 2018, covers pensions and sickness benefits, holiday pay and collectively agreed wages. After 12 months, a revision will be carried out and training, education, and OSH may be included. The framework for the agreement was created by the Danish Government, aiming to ensure fair competition by creating the same rules for all (for example in relation to taxation). An agreement was reached in the Danish Parliament on automatic sharing of information by platforms to tax authorities.

Finally, a “weaker” form of self-regulation has taken place in Germany, where in 2017, eight Germany-based platforms have signed a Code of Conduct in which they agree to conclude local wage standards as a factor in setting prices on their platforms.

Table 2 - national responses to platform work

RESPONSE	COUNTRIES	ADVANTAGES	DISADVANTAGES
Application of current legal framework	- Most EU countries, such as the UK, the Netherlands, Belgium, Sweden and Ireland	- Precise case-by-case analysis by judiciary - Legally binding	- Unpredictable (legal uncertainty) - Different levels of protection, depending on the national rules
Application of new legislation	- France	- Targeted and legally binding	- Does not resolve the core issue of labour status
Collective agreements	- Denmark	- Agreed by both workers and employers	- Sector-specific - OSH not included up until now
Self-regulation	- Germany (Code of Conduct)	- Bottom-up	- Not legally binding - Limited scope

3. HOW THE EU CAN REGULATE ONLINE PLATFORM WORK

The EU shares competence with the EU Member States on a range of employment issues, in accordance with the provisions of the Social Policy Title in the Treaty on the Functioning of the EU. While this competence is in principle limited to setting minimum standards and should not prejudice the Member States' responsibility for the fundamental organization of their social security systems, the EU's social acquis should not be underestimated, consisting in a rich body of law on issues such as non-standard employment, working time and occupational health and safety.

3.a. Current steps at EU level

In its Communication on a European agenda for the collaborative economy of 2 June 2016, the European Commission has set out the conditions under which it considers that an employment relationship exists for the purposes of applying these EU social law provisions. It considers that the Court of Justice of the EU's (CJEU) definition of 'worker' as applied in the context of the free movement of workers also guides the application of EU labour law, entailing that "the essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration". Whether an employment relationship exists or not has to be established on the basis of a case-by-case assessment, considering the reality of the relationship, looking cumulatively at the existence of a subordination link, the nature of work and the presence of a remuneration.

The Commission has furthermore proposed two measures in the context of the European Pillar of Social Rights that may impact online platform workers' social and employment rights. Firstly, it has proposed the revision of the Written Statement Directive 91/533/EEC. The proposal aims to reinforce the rights already contained in that Directive about the information the worker is entitled to receive in their employment contract by applying them to all workers irrespective of their employment status. In addition, the revised Directive (that will be entitled the Transparent and Predictable Working Conditions Directive) defines core labour standards for all workers, particularly for the protection of atypical, casual forms of employment. The proposal was adopted by the Council on 24 May 2019 and will have to be implemented in three years after its entry into force.

Table 2 – Breakdown of Transparent and Predictable Working Conditions Directive

Scope	Information rights	Substantive rights
<p>The Directive lays down minimum rights that “apply to every worker in the Union who has an employment contract or relationship as defined by the law, collective agreements or practice in force in each Member State with consideration to the case-law of the Court of Justice”.</p> <p>If the criteria of a worker as defined in the CJEU’s case law are fulfilled, platform workers “could fall within the scope of this Directive”.</p>	<p>Essential information in written form is to be given to the worker between the first day of work and the seventh calendar day that follows.</p>	<p>The probationary period is limited to a maximum of 6 months, longer periods are only allowed in a case where this is in the interests of the worker or is justified by the nature of the work.</p>
<p>All workers working more than 3 hours per week over four weeks (i.e. over 12 hours per month) are to be covered by the directive.</p>	<p>Supplementary information is to be given within 1 month.</p>	<p>After six months service with the same employer, the worker can request an employment status with more predictable and secure working conditions.</p>
<p>On objective grounds, certain groups of workers may be excluded from some of the provisions of the directive (for instance civil servants, armed forces, emergency services and law enforcement services).</p>		<p>Workers may take up a job in parallel with another employer (exclusivity clauses are banned).</p>
		<p>Workers with variable working schedules (for instance on-demand work) should know in advance when they will be requested to work.</p>
		<p>Workers must receive training cost-free, when EU or national law requires such training.</p>
		<p>Member States that allow on-demand or similar employment contracts, must take measures to prevent abuse, such as limitations to the use and duration of on-demand or similar contracts or a rebuttable presumption on the existence of an employment contract with a minimum amount of paid hours based on the average hours worked.</p>

Secondly, the Commission has proposed a Council Recommendation on Access to Social Protection, hoping to tackle the problem that up to half of people in non-standard work and self-employment are at risk of not having sufficient access to social protection and/or employment services across the EU (European Commission, 2017). The Recommendation urges Member States to provide similar social protection rights for similar work regardless of labour status and the transferability of acquired social protection rights.

It should also be mentioned that in an important judgment, the EU Court of Justice examined the nature of the activities of the online platform company Uber. The central question was whether Uber's activities were to be classified as "information society services" under EU law, in which case market access should be granted and restrictions on its operation should have been notified and could only be accepted in limited circumstances, or whether they instead constituted "transport services" which fall outside the scope of the EU rules in question and can therefore in principle be freely regulated by the Member States. In its judgment, the Court considered that the intermediation service provided by Uber is based on the selection of non-professional drivers using their own vehicle, to whom the company provides an application without which (i) those drivers would not be led to provide transport services and (ii) persons who wish to make an urban journey would not use the services provided by those drivers. In addition, Uber exercises decisive influence over the conditions under which that service is provided by those drivers. Uber determines at least the maximum fare, receives that amount from the client before paying part of it to the non-professional driver of the vehicle, and exercises a certain control over the quality of the vehicles, the drivers and their conduct, which can, in some circumstances, result in their exclusion. Therefore, it was "inherently linked to a transport service and, accordingly, must be classified as "a service in the field of transport" which can be freely regulated by the Member States. While the judgment does not concern the labour status of the Uber drivers, the CJEU's considerations concerning the measure of control of the online platform may be relevant for future labour law cases at national and EU level in the future. It suggests that online platform workers may well be considered, in many cases, "workers" in the sense of EU law, meaning that the protection of EU labour directives, especially the new Transparent and Predictable Working Conditions Directive, will apply to them.

3.b. What way forward for the EU's approach to online platform work?

A key question to ask in considering why and how to regulate the various aspects of the social disruption caused by online platform work is what actually drives the growth of the online platform economy. Research conducted by the European Parliament (2017) found that

"Often, the key issue motivating companies to adopt platform-based forms of work organisation was seen as the availability of significant cost savings as a result of utilising labour provided by a workforce that is not directly employed. [...] In the UK, for instance, companies moving from a direct employment model to a self-employment model typically reduced their labour costs by 13 per cent through avoiding employers' contributions towards National Insurance (social security payments), and by a further 12 per cent through avoiding the requirement to provide paid holidays under EU Working Time Regulations. [...] Overall, many of our interviewees thought that tax arrangements in particular Member States gave financial incentives to companies to move away from direct employment towards a platform-based workforce. While some employer representatives we interviewed saw benefits for businesses in adopting this approach, others argued that the platform economy "should not be about reducing the costs of employment" (intermediary, Italy). Indeed, interviewees from employer organisations often reflected their members' complaints that such practices place more responsible employers at an unfair disadvantage. Moreover, as interviewees also pointed out, this business model also reduces financial contributions to important social protection schemes."

This suggests that the online platform economy is probably growing 'for the wrong reasons', namely not to deliver new, innovative and better-quality services for the benefit of customers and with the side-benefit of creating quality employment opportunities, but instead that it is used as 'unfair competition' to undercut the existing industry operators. In some cases it may even be that online platforms are not just using non-standard employment in order to drive a low-cost business model, but that the model of online platform work is chosen

simply in order to use non-standard employment (and to avoid tax and social security implications) to the extreme. The profit is generated on the back of the individual worker's wellbeing and the welfare state's sustainability. If these externality costs were properly factored into the calculation of the economic effects of the online platform economy, it is doubtful that it would generate a net benefit for the majority of the individuals working within it, and for society at large.

This supports the argument emerging also from the discussion in the previous sections, that instead of treating the online platform economy as something precious, unique and tender that needs to be cradled and protected from intrusive rule-making, it features (as a rule rather than the exception) harmful trends and practices and that need regulation. First and foremost, therefore, a fundamental shift in narrative is thus in order, where instead of buying into the idea of 'harmful rules' that 'hamper' technological 'innovation' the importance is underlined of a socially sustainable technologically supported economy that benefits everyone involved.

Of course, that conclusion does not in itself resolve the question of what that regulation should look like. We have seen in Section 2.c that there are many different possibilities, which each have their own merits and drawbacks.

Perhaps the most fundamental decision that has to be made is whether to treat online platform work, and the challenges related to it, separately from the broader *problématique* of non-standard, precarious working conditions, or whether a holistic response is in order. Although this paper has argued that online platform work is 'special' in terms of the extent to which it places atypical employment at the very core of its approach to labour, it would seem that the most appropriate and effective regulatory response would be to reinstate the importance of the standard employment relationship and to allow all atypical working arrangements, including dependent contractor status, only in highly exceptional circumstances, if at all, and accompanied by a range of protections and obligations that would essentially allow and incentivize the use of these exceptions 'for the right reasons' only.

For this, it is not necessary to (re-)invent the wheel. Many elements are already present at EU level, that could be used to build into a coherent overall regulatory framework to tackle the social disruption of non-standard employment and precarity.

The EU's approach to other atypical work forms, such as temporary agency work and fixed-term work, has been to ensure the equal treatment of these workers with those in standard, direct employment in the company. This provides a minimum level of protection against exploitation for the worker concerned and reduces the incentive of companies to resort to such forms of employment simply to cut costs. It has furthermore encouraged the transition to standard employment, for instance by limiting the successive use of fixed-term contracts. The Transparent and Predictable Working Conditions Directive proposes to oblige Member States, where they allow for the use of on-demand or similar employment contracts, to take measures to prevent abusive practices, such as limitations to the use and duration of on-demand or similar contracts or a rebuttable presumption on the existence of an employment contract with a minimum amount of paid hours based on the average hours worked during a given period. It furthermore provides minimum information rights for workers on any type of contract and some minimum substantive rights, such as a maximum probation period. EU law furthermore features a wide definition of a 'worker' and thus already integrates a large part of the online platform economy's workforce even where they are formally contracted as 'independent' within the scope of protection of all these measures.

This is a great place to start from.

In this author's opinion, it would be useful, once the Transparent and Predictable Working Conditions Directive is successfully adopted, to launch a holistic revision process at EU level that (with an emphasis on security more than on flexibility) considers how to regulate in an integrated, coherent fashion all various forms of non-standard employment - including dependent self-employment and gig-work - in such a way as to ensure fair and decent working conditions for everyone and to guarantee a sustainable tax base and social security system. This should draw together the existing EU measures in the field and upgrade them and enlarge their scope, with the specific aim to provide a solid minimum floor of all workers' rights at EU level, which Member States may always choose to surpass in a process of upward convergence.

Indeed, the European Pillar of Social Rights provides a highly suitable pathway for the roll-out of such an initiative. It clearly suits the philosophy, objectives and working method of the Pillar very well and testifies to the political momentum present to sustain such an ambitious move. Furthermore, rather than approaches that just ‘tinker in the margins’, a far-reaching promise to tackle the decreasing quality of work in all forms would provide a positive post-crisis narrative that European and national politics desperately need.

Any such initiative should not, in turn, be undermined by contradictory measures in the context of decision-making on other, economic, issues, such as for instance in the European Semester. For a long time, country-specific recommendations have promoted a flexibilisation narrative that diametrically opposes the approach suggested in this paper. While the European Semester is arguably increasingly socialized (Zeitlin and Vanhercke, 2014) also in light of the European Pillar of Social Rights, the process overall still needs to “shift the narrative from austerity to social investment in social rights and standards, and finance adequate and sustainable welfare states through tax justice and progressive taxation” (European Anti Poverty Network, 2017).

4. CONCLUSION

We have seen that there are strong reasons to provide appropriate protection for people working in the online platform economy. Firstly, the working conditions tend to be precarious and the profile of many online platform workers is vulnerable. In an EU that protects, these workers should be the focus of attention. Secondly, online platform work is connected to other atypical forms of work, which present similar individual and societal challenges, even if not always to the same extent, and for which the EU has already provided some minimum level of protection in its EU labour law *acquis*. Thirdly, the different responses at national level show that the Member States have not been able to provide effective responses and sufficient protection, while the problem is a common one and an interlinked one in the EU’s internal market.

The EU, with the European Pillar of Social Rights and especially the Directive on Predictable and Transparent Working Conditions is taking steps to ensure that the positive potential of the online platform economy is harnessed and embedded to yield benefits everyone, especially those people who are at the core of generating these benefits. This paper has argued that further, more ambitious steps are warranted. This may entail a holistic upgrading of the current EU *acquis* of atypical work. In achieving this, it is very important to shift the narrative away from ‘harmful rules’ that ‘hamper’ technological ‘innovation’ and instead to argue for a socially sustainable technologically supported economy that benefits everyone involved – and that it is for the EU to set the minimum standard in this regard.

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