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Making a Living in the ‘Gig’ Economy: Last Resort or a Reliable Alternative?



Nada Bodiroga-Vukobrat, Ana Pošćić, and Adrijana Martinović

Abstract Modern work arrangements in the collaborative or ‘gig’ economy challenge and redefine traditional work patterns. Extensive scholarly writings in the last years have been dedicated to revealing the true nature and implications of such work, and this topic is a matter of heated debates. However, empirical research on the prevalence of ‘gig’ work is still relatively scarce and not reliable enough to reach any definite conclusions or provide prospective outlooks. This contribution does not aspire to analyse all open issues associated with the work in the ‘gig’ economy but instead attempts to bring only the most pressing issues to the forefront.

1 Introduction

Volumes of literature have been written about the topic that is somewhat euphemistically known as flexible employment.¹ The gist of it suggests that a combination of various causes, including, but not limited to, globalisation of economy, liberalisation and technological advances in the world of work, has contributed to the proliferation of non-standard forms of work. Defining non-standard work is a demanding task by itself. Majority of legal scholars agree that various working arrangements may fall under the common denominator ‘non-standard’.² The term itself presumes that there is a ‘standard’ work and that ‘non-standard’ work is its opposite. It is almost taken for granted that standard work means full-time, open-ended contract of employment. But with the world of work so radically changing, and at an increasing speed, perhaps it is time to revisit the traditional concepts. Have we reached a point where ‘non-standard’ grows to become a new ‘standard’ before our very eyes?

¹Flexibility of labour relations has become an inevitable topic in labour law academic circles since 1980s. The authors have also dedicated substantial amount of research and published several papers on this topic.

²See, e.g., Davies and Freedland (2007); McCann (2008), p. 4.

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This contribution focuses on specific types of non-standard work appearing in the digital economy, namely crowdwork and work on demand via apps. Regardless of whether we treat persons who perform such work as ‘workers’ or ‘microentrepreneurs’, the reality is that this ‘just-in-time workforce’ is rising globally.³ There are numerous problems associated with this type of work, starting with the lack of coherent naming and definitions, as well as the lack of consensus whether it should be considered as non-standard employment relationship, self-employment in its various forms (bogus, dependent) or a separate category by itself. The legal theory and practice so far have been struggling to properly label these emerging forms of work, which at their very best can be subsumed under the common denominator of casual labour. However, they display characteristics of various types of non-standard, ‘new’ forms of employment and thus make the search for a workable regulatory solution even more difficult. Although non-standard does not necessarily mean precarious work,⁴ the reality behind new types of work in the ‘gig’ economy ‘is often one of precarity and exploitation’.⁵

2 Non-standard Work in the ‘Gig’ Economy

Although evidence of the extent of work in the so-called gig economy is scarce, some estimates show that people performing such work as their main labour market status do not make up more than 0.5% of all employment in Europe.⁶ Findings from another survey show that around 5–9% of the ‘online adult population’ in selected five EU countries was engaged in some type of crowd work on a weekly basis.⁷ A survey from the UK shows that in comparison to other atypical or non-standard forms of work, where up to one third of workers perform such jobs because they could not find ‘traditional’ work, people working in the gig economy are more inclined to take such jobs because it suits their personal needs and preferences.⁸

³“Workers are provided “just-in-time” and compensated on a “pay-as-you-go” basis; in practice, they are only paid during the moments they actually work for a client.” See De Stefano (2016a), p. 476.

⁴The authors of this contribution have analysed aspects of precarious work in their previous works, most recently in Bodiroga-Vukobrat et al. (2016).

⁵Prassl (2015).

⁶Eurofound (2017), pp. 23–25. The authors of the report highlight that the most reliable estimate is from the UK in 2016, where 4% of employed people performed such work, 25% of which reports this type of work as their main job. For further estimates see Smith and Leberstein (2015) and Katz and Krueger (2016).

⁷Huws et al. (2016). The same survey revealed that crowd work is generally only a small supplement to total income of a person, with 45% respondents stating that it represents 10% or less of their income.

⁸Just 14% of people engaged in the gig economy because they could not get traditional jobs with employers. See CIPD (2017).

Nevertheless, the preponderance of evidence shows that it is extremely difficult, if not impossible, to make a living solely from a gig economy job.

It may seem that gig economy jobs are only marginal, but they are undoubtedly changing the world of (non)standard work. As already mentioned, the term ‘non-standard work’ escapes any conventional definition.⁹ It may include various forms of employment (fixed-term, temporary, agency work, etc.) and also a number of work relations that do not easily fit under the labour law protection, including crowdwork; digital platform work; job or employee sharing; casual work, including on-call or zero-hours work; voucher-based work; self-employment (especially own-account work), etc. If we take a look at the ILO classification of non-standard employment, it includes temporary employment (fixed-term contracts, including project- or task-based contracts, seasonal work, casual work, including daily work), part-time and on-call work (including zero-hours contracts), multi-party employment relationships (‘dispatch’, ‘brokerage’ or ‘labour hire’, temporary agency work, subcontracted labour) and disguised employment or dependent self-employment (including sham or misclassified self-employment).¹⁰ Crowdwork and on-demand work display the main identifying characteristics of all these categories since the work performed is usually not open ended, not full time; there is no direct, subordinate relationship with end user; and/or there is no formal employment relationship at all. However, if workers in the gig economy were truly independent contractors or self-employed, they would not even be caught by the most definitions of non-standard work.

Specific forms of non-standard work in collaborative economy can best be described by the ILO definition of casual work in ‘on-demand’ or ‘gig-economy’.¹¹ Again, forms of work in the gig economy are very heterogeneous, but they do share some common characteristics. For example, crowdwork and work on demand via app, as the main forms of work in the gig economy, have common traits with other forms of non-standard work, especially casual work and ambiguous and disguised employment relationships.¹² In many countries, such workers have limited access to social security and labour protection as they are often classified as ‘independent contractors’ rather than workers. Crowdwork is defined as work ‘[...] executed through online platforms that connect organizations, businesses and individuals through the internet, potentially on a global basis’.¹³ The work tasks vary from the

⁹The ILO uses “non-standard employment” as an umbrella term which groups together distinct forms of work contracts that deviate from the standard employment relationship definition. See ILO (2016), p. 20. This definition distinguishes between salaried employment and self-employment, which does not strictly fall under the category of ‘non-standard work’. Similarly, the European Commission refers to non-standard work as including temporary work, part-time work or contractual arrangements involving multiple parties. European Commission (2016), pp. 87, 164. OECD, on the other hand includes self-employment (own-account workers) under the term non-standard work. See OECD (2015), p. 138.

¹⁰ILO (2016), p. 8.

¹¹ILO (2016).

¹²ILO (2016), p. 39.

¹³ILO (2016), p. 40.

most common ‘microtasks’ to bigger jobs.¹⁴ Work on demand via app, on the other hand, includes a variety of traditional jobs, such as transport, cleaning, etc., offered and assigned via mobile apps.¹⁵ Apps or platforms are run by businesses, which usually set the minimum quality standards of service and/or pricing, and connect the customer with the ‘independent contractor’. The performance of workers in the gig economy is constantly monitored and rated by ‘customers’ and clients.¹⁶ The most important difference between crowdwork and on-demand work is that crowdwork platforms connect clients and workers so that the work is performed online, whereas in on-demand work, tasks are mediated online but performed locally.¹⁷

As noted by many scholars, these activities are often not even recognised as work and are referred to as ‘gigs’, even subconsciously avoiding any association with traditional labour regulations and standards.¹⁸

Are these types of work going to evolve and transcend their current relatively marginal status? Some authors suggest that it would be better to avoid ‘the language of marginality or exceptionality’.¹⁹ The evolution of work patterns and relationships and the rise of the gig economy are bound to transcend the standard/non-standard dichotomy. Regardless of how we attempt to classify the legal status of persons performing such work (as employees or self-employed), the fact remains that the proliferation of new forms of work profoundly affects every aspect of what we know and perceive as labour law and worker protection legislation and brings the issue of precarity of working relations to the forefront.

Some authors suggest that the centrality of contract of employment in labour law actually contributes to the growing uncertainty.²⁰ Especially in legislation in which the status of an employee is dependent upon and defined by the existence of the contract of employment,²¹ ‘alternative’ work arrangements are by definition excluded from the protection that the traditional labour law and regulations were designed to confer. Although definitions of employment relationship may vary

¹⁴ILO (2016), p. 40.

¹⁵ILO (2016), p. 40.

¹⁶De Stefano (2016b).

¹⁷De Stefano (2016b), p. 462; Aloisi (2016), p. 661. Some authors include both types of work arrangements under the common denominator “crowdwork” or “crowdsourcing of labour”. See Prassl and Risak (2016), pp. 623–624; Huws et al. (2016). Majority, however, agrees that work over crowdsourcing websites has to be distinguished from work on-demand via app over Uber-like online platforms. See e.g. Ratti (2017), p. 479. See also ILO (2016).

¹⁸De Stefano (2016a), p. 478.

¹⁹According to them, the phenomenon customarily labelled as ‘atypical employment’ “. . .now looms so large that it can no longer satisfactorily be described in the language of marginality or exceptionality”. See Albin and Prassl (2016), p. 209.

²⁰See, for example, Freedland (2016), p. 4.

²¹In Croatia, for example, employee or a worker is a natural person who performs work for an employer. Employer is a natural or legal person who employs an employee (worker) and for whom worker performs certain tasks in an employment relationship. See Article 4 (1) and (2) of the Labour Act (Official Gazette *Narodne novine* no. 93/2014).

considerably across legal systems, Casale succinctly points out that a common feature of employment relationship lies in the hierarchical power of employers over employees, which itself consists of three elements or powers: directional (power to assign tasks), control (power to monitor performance and compliance) and disciplinary power (power to sanction).²² Modern work arrangements attempt to eliminate this focus on hierarchy and power from the equation and externalise the risk by transferring it to workers. This is what happens in a gig economy.

3 The Challenging Realm of the Collaborative or ‘Gig’ Economy

Arguably, the Single Market is one of the European Union’s greatest achievements.²³ New market opportunities and economies of scale for European companies, increased industrial competitiveness, creation of jobs, strengthened position of consumers, ability to live, study and work abroad without obstacles are just some among the frequently highlighted benefits of the Single Market.²⁴

Despite its many acknowledged benefits for citizens and businesses alike, the functioning of the Single Market and the achievement of a truly free movement of goods, services, capital and people largely depends on continuous efforts, both at the Union as well as the Member States’ levels. In some areas, for instance, there is no truly integrated European market as missing legislation, administrative obstacles and a lack of enforcement leave the full potential of the Single Market unexploited.²⁵

For this reason, the European Commission adopted the Single Market Act in 2011²⁶ – a series of measures to boost the European economy and create jobs.

At the occasion of celebrating the 20th anniversary of the Single Market in 2012, the Commission has launched another communication, the so-called Single Market Act II²⁷ with a second set of priority actions. It recognises that the development of the Single Market is a continuous exercise. For that endeavour to succeed, the transposition and day-to-day implementation of Single Market rules by authorities in Member States is of paramount importance.

The four drivers of growth around which the Commission focuses its actions include (1) developing fully integrated networks in the Single Market, (2) fostering mobility of citizens and business across borders, (3) supporting digital economy across Europe and (4) strengthening social entrepreneurship, cohesion and consumer

²²Casale (2011), p. 3.

²³European Commission (2015a), p. 3.

²⁴European Commission (2015b), p. 1.

²⁵A deeper and fairer Single Market: Commission boosts opportunities for citizens and business, Brussels, 28 October 2015, http://europa.eu/rapid/press-release_IP-15-5909_en.htm.

²⁶European Commission (2011).

²⁷European Commission (2012).

confidence.²⁸ As evident, digital economy with all its perks and perils is one of the key drivers of growth in the eyes of the Commission.

In 2015, the European Commission presented the new Single Market Strategy²⁹ to deliver a deeper and fairer Single Market that will benefit both consumers and business. The actions are focused on three main areas: (1) creating additional opportunities for consumers, professionals and businesses; (2) encouraging the modernisation and innovation that Europe needs, and (3) ensuring practical benefits for people in their daily lives. The first area deserves particular attention as it actually encompasses the rapidly developing concept of the collaborative economy.

The model is particularly widespread in certain sectors such as transport, accommodation and professional services but is growing across the whole economy. It is sometimes known also as collaborative consumption, sharing economy, peer-to-peer economy, access economy or ‘gig’ economy.

The sharing, collaborative or ‘gig’ economy challenges traditional notions of private ownership and is instead based on the shared production or consumption of goods and services. Social media and mobile technology facilitate and amplify the impact of the sharing economy, boosting its growth potential.

Jeremy Rifkin refers to the sharing economy as the ‘third industrial revolution’.³⁰

According to a recent study, the five main collaborative economy sectors (peer-to-peer finance, online staffing, peer-to-peer accommodation, car sharing and music video streaming) have a potential to increase global revenues from around EUR 15 billion now to EUR 335 billion by 2025.³¹

The idea behind collaborative business models is to mobilise underutilised assets in an innovative way: private homes are being opened up to tourists; personal cars are being used for sharing/offering rides; previously owned goods are being rented, sold or swapped; laboratories and research findings are being opened to people outside academia; the quality of service providers is being rated and reviewed online.³²

According to the research of PricewaterhouseCoopers LLP, the sharing or collaborative economy as a business model is distinguished by these core pillars:

1. Digital platforms that connect spare capacity and demand—sharing economy business models are hosted through digital platforms.
2. Transactions that offer access over ownership—access can come in a number of forms, but all are rooted in the ability to realise more choices while mitigating the costs associated with ownership: renting, lending, subscribing, reselling, swapping and donating.

²⁸European Commission (2012).

²⁹European Commission (2015b).

³⁰Rifkin (2014).

³¹What do you know about peer-to-peer or sharing economy?, <http://www.certusrecruitment.com/news/what-do-you-know-about-the-peer-to-peer-or-sharing-economy-62451134438>.

³²European Commission (2015b).

3. More collaborative forms of consumptions—consumers who use sharing economy business models are often more comfortable with transactions that involve deeper social interactions than traditional methods of exchange.
4. Branded experiences that drive emotional connection—the value of a brand is often linked to the social connections it fosters. By providing consumers with ease of use and confidence, the company moves beyond a purely transaction-based relationship to become a platform for an experience.³³

The allure of the collaborative economy may lie in the fact that it increases productivity and offers alternatives to traditional provision of services and goods. It is claimed that consumers are offered more choices at potentially lower costs.³⁴ Ideally, collaborative economy is consumer or demand driven. Some economic sectors are particularly prone to this business model, with an extraordinary expansion potential.³⁵ Some studies indicate that 68% of adults globally are willing to share or rent goods for money.³⁶ But this is only one side of the medal.

The importance of the collaborative economy has also been recognised in the Digital Single Market strategy, in the context of the action on platforms.³⁷ The strategy identifies many open issues and regulatory uncertainties surrounding collaborative economy business models.³⁸ Traditional rules and traditional business-to-consumer models are hardly applicable here. For example, in sectors where business authorisations and registration obligations exist, it is still not clear to which extent they apply here.³⁹ Another important issue is the application of consumer protection legislation as most transactions here are based on a peer-to-peer model. This issue is related to the issue of liability of digital platforms for the transaction or service provided as the appropriate insurance schemes for collaborative economy services are still in the early stages of development.⁴⁰

One of the most important wider issues associated with the collaborative economy is its evolution and impact on work patterns. On the one hand, the collaborative economy allows workers/entrepreneurs to organise their work (and time) on a more independent basis and creates new opportunities for the unemployed to enter the workforce. On the other hand, this could mean a shift of certain risks from firms to workers (e.g., income instability, absence of minimum wages, etc.), thus changing

³³PwC (2015).

³⁴European Commission (2015a), p. 7.

³⁵See e.g. ING International Survey (2015).

³⁶Nielsen Global Survey of Share Communities (2014).

³⁷European Commission (2015c).

³⁸European Commission (2015a), pp. 5–6.

³⁹The case of ‘Uber’ is very illustrative for this example.

⁴⁰European Commission (2015a), p. 6.

the nature and balance of labour relationships.⁴¹ Therefore, in the gig or collaborative economy, ‘workers find both freedom and uncertainty’.⁴²

4 Regulating Work Relations in the Gig Economy: A Case-Study Example

A tentative conclusion is that regulation is the main inhibitor for the growth of the collaborative economy. It can thrive in a liberal legal environment, but the moment one tries to tie it to more traditional, regulated sectors, such as taxi transport or accommodation, its potential weakens. It is not surprising that the rise of the online platforms is traced to neoliberal economies such as the United States, where the trend of ‘uberification’ of local services is obvious.⁴³ Work on demand via apps is often associated with Uber, one of the most successful businesses in this field. Its business model started to boom in 2009, when it was established, so that the model itself is often described as ‘uberification’ or ‘uberizing’. What the ‘uberization process’ actually entails is combining innovative procedures, such as geo-location, online payments, workforce management and distribution,⁴⁴ basically to enable work ordered on apps. The smartphone-based app connects drivers offering rides with passengers seeking them, and passengers pay per km or minute through credit cards, which the company keeps on file, so the transaction is completely cashless. Uber takes a percentage of each fare and transfers the rest to drivers. Uber became the most renown ride-sharing platform without actually owning any cars or formally employing any drivers. In many countries, Uber drivers have challenged their status as ‘independent contractors’ and requested their recognition as workers before courts and tribunals.⁴⁵ Uber’s business model itself has been challenged as contrary to national transport regulations in many countries where Uber operates.⁴⁶

The key innovation of the collaborative economy lies in the fact that it cuts transaction costs, and the key method for cutting transaction costs is through externalisation of work. The externalisation of work is not a novel phenomenon,

⁴¹European Commission (2015b).

⁴²See “In the sharing economy, workers find both freedom and uncertainty”, NY Times, 16 Aug 2014, <https://www.nytimes.com/2014/08/17/technology/in-the-sharing-economy-workers-find-both-freedom-and-uncertainty.html>.

⁴³See e.g. “Uberification of the US Service Economy”, <https://schlaf.me/2014/04/04/uberification-of-the-us-service-economy/>; “Apple Pay’s Real Killer App: The Uber-ification of Local Services”, http://www.huffingtonpost.com/michael-boland/apple-pays-real-killer-ap_b_6233828.html.

⁴⁴Aloisi (2016), p. 670.

⁴⁵One of the most recent cases involves the recognition of the status of workers to Uber drivers in the United Kingdom (Aslam and others v Uber, Case Nos. 2202551/2015 & others, Judgment of 28 October 2016).

⁴⁶See, e.g. Case C-434/15, Asociación Profesional Elite Taxi v Uber Systems Spain SL pending before the Court of Justice of the European Union.

but it is amplified by the use and effect of the new technology. Workers become ‘microentrepreneurs’, and hiring (and firing) ‘humans-as-a-service’⁴⁷ becomes a new business model. Aloisi warns that the rise of the sharing economy can act as a ‘midwife for further growth of precarious employment’.⁴⁸ Hence, we are not far from the new precariat or ‘cybertariat’.⁴⁹

Is on-demand work in the gig economy a form of disguised employment relationship or casual work or some other form of non-standard work or indeed a category of work of its own,⁵⁰ requiring a different set of rules, standards and definitions? There are many similarities between on-demand and crowdwork in the gig economy and non-standard forms of employment. For example, on-demand workers via app and crowdworkers are not required to accept work. However, in many cases, not accepting work over platform may reflect negatively on their overall rating and future prospects of work, so their position is even more ‘dependent’ than the position of workers on casual contracts, such as on-call or zero-hours contracts in some countries.⁵¹ In addition, when they do accept work, they are required to abide by the standards set by the platform operator. Failing to follow those rules may result in the immediate termination of their contract with the platform. Unpredictable working hours, unreliable income and intermittent nature of work are what these working arrangements have in common. Despite the similarities, workers in the gig economy are often not classified as employees and are therefore precluded from accessing many individual and collective labour and social, such as a minimum wage guarantee, annual leave, paid sick leave, maternity and parental benefits, collective bargaining, etc.

This evidence shows that although non-standard forms of work in the gig economy present new job opportunities, they do not easily fit into the standard labour protection and social protection systems. Therein lies their allure but also their peril. National social protection systems are traditionally built on standard employment, especially in insurance-based schemes.⁵² Consequently, non-standard employment, including self-employment in its various forms (e.g. bogus, dependent, own account, etc.) is always more exposed to risk and insecurity.

⁴⁷A phrase ascribed to Amazon CEO Jeff Bezos at the occasion of presenting Amazon Mechanical Turk in 2006: “You’ve heard of software-as-a-service. Now this is human-as-a-service.” See Irani and Six Silberman (2013).

⁴⁸Aloisi (2016), p. 683.

⁴⁹See Huws (2003, 2014).

⁵⁰On a proposal to develop a separate category of ‘independent workers’ see Harris and Krueger (2015).

⁵¹For example zero-hours contracts in the UK, see <https://www.gov.uk/contract-types-and-employer-responsibilities>.

⁵²See ILO (2016), p. 11; Spasova et al. (2017), p. 7.

5 Self-Employed or Workers' Dilemma

Treating gig economy workers as 'independent contractors', or self-employed in the widest sense, in most cases does not reflect the reality of their work status. According to a recent study, almost half of gig economy workers stated that the work they do in the gig economy does not make them feel like their own boss.⁵³ However, one cannot easily jump to the conclusion that they are dependent workers or employees either. It is more likely that they find themselves somewhere in a grey area, which is amplified by the diversity of forms of work offered and performed in the gig economy. If we treat them as self-employed, or more precisely, own-account workers, their position is as vulnerable as the position of employees with casual employment contracts, as elaborated above. It should not be overlooked that in Europe, own-account workers are a majority among the self-employed and represent a particularly sensitive category of workers because they can be either dependent on a single client or vulnerable because of their small size and lack of resources.⁵⁴ Their position is precarious and in that sense similar to the position of workers on the most casual employment contracts, especially on account of low levels of social protection.⁵⁵ However, it is also worth noting that many gig economy workers do not consider themselves as employees or even aspire to that status in the first place. Admittedly, all the assurances that come with a traditional employment contract, such as minimum wage guarantee, maximum working hours, paid leaves etc., are traded for a tempting flexibility.

6 Conclusion

A claim that a sharing economy is both a response to and an influencer of the changing nature of work and the workplace is true. The example of Uber shows how advanced technology, coupled with an aggressive expansion policy, destroys traditional work patterns to the point where 'non-standard' becomes 'standard', where all safety nets are broken and the chances of 'landing' a standard job in certain sectors are rapidly deteriorating. In the words of one Uber driver in the UK: 'I could get another job, but Uber has so aggressively come into the market, the chances of working for other operators are rapidly evaporating'.⁵⁶ This is the 'dark side' of digital technology and digital revolution: it returns us to the economy of the eighteenth century, described by Adam Smith as a genuine market economy of

⁵³CIPD (2017), p. 21.

⁵⁴Eurofound (2017), p. 14.

⁵⁵Eurofound (2017), p. 14.

⁵⁶BBC News, 6 Nov 2015, <http://www.bbc.com/news/business-34733862>.

individuals engaging in commerce with one another.⁵⁷ What is absurd is that the technology of the twenty-first century brings us back to the pre-industrial nineteenth century, ‘an era when most people who did not farm or own property were casual labour’.⁵⁸ Perhaps there is something to be learned from past experiences and debates because it seems that the only things that are genuinely new are the global dimension and the ‘catalytic consequences of computerization’.⁵⁹

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⁵⁷ Adam Smith, *The Wealth of Nations* 1776; see “The ‘gig economy’ is coming. What will it mean for work?”, *The Guardian* 26 Jul 2016, <http://www.theguardian.com/commentisfree/2015/jul/26/will-we-get-by-gig-economy>.

⁵⁸ Kuttner (2013).

⁵⁹ Finkin (2016), p. 617.

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