

Codetermination and the Gig Economy

Including a special reference to the
implication of the COVID 19 pandemic
on the gig economy

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Executive Summary

- > The gig economy has introduced to the world a new form of employment - employment through online labor market (OLM) platforms. The first appearance of such platforms was in 1995, when the website Craigslist was introduced, and to date there are dozens of platforms worldwide, including Uber, Fiverr, Upwork and so on. In Israel, such platforms began to gain traction mainly after 2012, when the Israeli taxi app *Gett* was introduced.
- > Such platforms enabled the creation of job opportunities never before realized by **reducing job market frictions**, enabling employment that is **not geographically dependent**, and **reducing search costs**. Moreover, the platforms enabled employees to increase their income by combining traditional workplace employment with OLM platform employment.
- > OLMs are defined as markets in which labor is exchanged for money, the product of the labor is delivered “over a wire”, and the allocation of labor and money is determined by a collection of buyers and sellers operating within a price system. These markets have six distinctive characteristics: The use of third-party intermediaries; Labor as a service delivered over time; No single “commodity” and information asymmetries; Three-sided profit; Cost-saving benefits for interaction; and Virtual migration.
- > While these platforms have created massive benefits for freelancers and customers, **it cannot be ignored that they have severely impacted workers’ rights**.

Workers face threats of increased risk, overwork, underpay, and lack of legally binding social benefits. The fact that OLMs are seen as ultra-free-markets, who are not subject to any one regulator, has enabled OLM platform corporations to undermine workers’ rights and claim they are not the workers’ employers. These infringements threaten the basis of labor markets worldwide since it creates a loophole for employment without employer responsibility.

- > In order to prevent these implications of OLM’s, a combined legal and corporate effort must be made in order to:
 - > Set a **legal definition** for OLM workers’ status.
 - > Integrate **workers’ participation** in decision-making processes.
- > Regarding the legislation actions needed, a third employment category must be created that is seen as an intermediate category between independent employees and salaried workers. This method should build on previous attempts worldwide to create such a category and define workers who receive per-project compensation from different employers as the employees of the main platform that mediates these employment deals. **Thus, OLM platforms such as Uber, Fiverr and so on will be considered the employers of their service providers.**
- > Once the legal framework defines these workers as employees of the platforms, it will be possible to provide social benefits to their employees as well as workers’ participation in corporate decision-making. However,

the lack of clear geographical jurisdiction will make it difficult for regulators to enforce such benefits. Thus, concurrent to the creation of legal definitions, it is crucial to reshape the relationship between OLM corporations and their service providers.

- > **Codetermination and workers' participation methods should be implemented to allow workers' an impact on the structure of the platforms they offer services in.** Based on previous attempts and pilots, such methods should include OLM workers unions, works councils, and allowing voting rights to employee representatives in corporate decision-making processes.
- > Only through the combination of the Legal and Corporate remedies to the given employment situation in OLM markets, would it be possible to ameliorate the current flaws in this employment method.
- > The recent global outbreak of Covid-19 has drawn more and more people to use and offer their services through online platforms. Physical restrictions imposed by various governments around the world, made OLMs a comfortable and sometimes necessary option for consumption. Meanwhile, those same restrictions caused massive layoffs and furloughs, subsequently bringing many to seek for new job opportunities online.
- > The ability of employees and platforms to find temporary, project-based employment in this uncertain time is crucial for reducing the economic impact of COVID-19 on individuals and corporations. But lack of regulation of these markets threatens to aggravate the lack of workers' rights in OL markets and might result in a fu-

ture reduction of workers' right in traditional markets as well.

Chapter I - Historical Developments of the Gig Economy

The rise of OLM platforms

The digitalization process as well as other technological developments and advancements are challenging traditional work arrangements worldwide. It is hard to name the exact moment in history in which these processes gave alternative work arrangements, such as work through online labor market (OLM) platforms, much more prominence. Traditionally, labor markets have been geographically segmented, yet, OLM platforms have managed to reduce location dependency of job seekers and employers. Yet, offshoring and subcontracting of services such as hotlines, was already a growing phenomenon prior to the introduction of OLMs. Being able to connect through OLM platforms was the first step in the creation of what now is being called the "Gig Economy" (Horton, 2010).

One of the first milestones that could have predicted the future rise of OLM platforms was the introduction of Craigslist in 1995. The website started to operate in the San-Francisco Bay Area and currently runs in more than 70 countries. It includes among other things, a classified advertisement section of jobs in different sectors and localities. Craigslist were pioneers of Online Job Searches (OJS),

and are one of the first examples for the way the internet became a tool both for job seekers and for employers. *Craigslist* has dramatically altered the way people search for jobs (Kroft and Pope, 2014), and in the past 25 years since the introduction of that platform, OJS has become the most preferred method of job search for nearly all types of job seekers.

Another important aspect in the introduction of *Craigslist* is the fact that it is an OLM platform that enables job seekers and employers to meet directly. This basic concept remains one of the key characteristics of newer OLM platforms (Faberman and Kydlyak, 2016). Today there are other platforms that compete with *Craigslist* such as *LinkedIn*, *Indeed*, *Glassdoor*, etc. While the introduction of *Craigslist* and other similar and more advanced platforms did not constitute in itself a major shift in working arrangements, it is a successful marker for the digitalization process of job search, and a sign of the rise of alternative work arrangements.

OJS academic research has focused on improving labor market search and matching (SM) theory that analyzes the process of job creation and the establishment of relationship between job seekers and potential employers as well as the equilibrium between them. There is currently an ongoing debate on the influence of OJS on unemployment. In 2000, OJS was not yet a common tool. Among unemployed people who were looking for a job only a quarter used OJS platforms for job search. Among people who were employed only 11% used digital platforms for job search. However, by 2011 the statistics changed dramatically, three quarters, 76%, of job seekers used online platforms for job

search and nearly half, 48%, of the employed people used such platforms to search for work. More importantly, some research suggests that OJS platforms increased the probability for unemployed persons to secure a job within a year by about 25% (Faberman and Kydlyak 2016; Kuhn and Mansour, 2014). Other research concludes that OJS platforms increase the number of job-to-job flows, meaning more people find new jobs skipping a period of unemployment. However, other research shows that *Craigslist* has no influence on reducing unemployment (Kroft and Pope, 2014). Other criticism suggests that OJS platforms created more opportunities mainly for skilled workforce, leaving the less skillful and less educated populations behind. Therefore, while in the past, periods of high unemployment has hurt individuals in all skill levels, now it especially harms people with low skills, keeping vacancies concentrated among people with high level of skills (Lazear, Shaw and Stanton, 2018).

In addition, OJS platforms were successful in reducing search frictions, meaning the search costs both to firms and to job seekers – it enabled firms to reach a much broader audience in relatively short periods of time as well as lowering search costs. On the other hand, job seekers using OJS platforms managed to receive much more information about vacancies, enabling them to better choose where to put their effort. Those platforms have been successful in reducing search frictions, to increase the job-to-job flows and according to some research, to reduce unemployment. Therefore, it became a very popular tool, and it is unsurprising that it expanded also to OLM platforms.

One such example is the launch of the freelancing website *E-lance*, currently known under the name *Upwork*, in 1999. *E-lance* was the first platform that enabled freelance workers to meet with potential clients online. While at the time the majority of job listings under *Craigslist* were categorized under traditional work arrangements, *E-lance* focused specifically on freelancers. It was the first OLM platform to focus on this labor market population, a key point in reshaping the labor market – making it much easier for people to find alternative work arrangements.

Since then, many other freelancer tools emerged such as *Fiverr*, *Amazon Mechanical Turk*, *TaskRabbit*, *Freelancer*, etc. Those are highly structured platforms created by for-profit intermediaries. The rise of those for-profit intermediaries leads to challenges mainly in two different areas – **labor law and taxation**. Another challenge that the rise of those platforms might pose is that it deepens the trend of part time employment and by this impact **inequality** and development. *Amazon's MTurk* was launched publicly at the end of 2005 and is arguably the largest spot market for labor in the world. It is also unique, as interaction between freelancers and clients can often last only minutes and results in a very small financial transaction.

The end of the first decade of the 2000's marked the launch of other digital platforms. The focus of such digital platforms was not on labor, but rather on enabling individuals to use their capital to generate more income. The most prominent example for such capital-oriented labor platform is *Airbnb*, which was launched in 2008. There are other examples for other digital platforms that enable individuals

to rent their assets for short periods of time. One example is *Turo*, a digital platform that enables individuals to rent their car to strangers for short times. *Airbnb* and other home rental digital platforms generated more competition in the tourism market, and enabled house owners and renters to increase their income. Yet, many criticize those platforms and claim that they led to price increase in the house-rental market and that it amplified inequality as it enabled house owners and individuals with more capital to generate more income, while not enabling this option to people who do not own capital. However, this research will not focus on capital oriented digital platforms.

Further developments of digital platforms also reached the labor market - in 2009, an important development was the launch of *Uber*, a platform that also enables taxi drivers a direct interaction with clients, without the need of a taxi station. The more the platform became popular; the dependence of taxi drivers on the platform grew. In addition, the platform launched the *UberX* service that enabled individuals who are not taxi drivers to use their cars as a taxi. This made taxi drivers one of the most prominent examples for people who are affected from the "Gig Economy".

An important characteristic of the gig economy and of digital labor platforms is that it enables individuals to be engaged in those platforms in addition to their traditional work arrangements. Meaning, people use platforms such as *Upwork*, *Fiverr*, *Amazon MTurk*, *UberX*, *Wolt*, etc. to generate more income additionally to their traditional working arrangements. This poses challenges to the labor market; however, **one of the biggest challenges for deci-**

sion makers is determining what should be the type of contract between platforms and individuals who use them to generate more income, when the majority of their income is dependent on the platform.

The Gig-Economy in Israel

In Israel, the introduction of the 'Gig Economy' is highly correlated with its global introduction, yet there are some trends that are worth mentioning.

The first appearance of a major OLM platform dates back to 2010, when the Get-Taxi platform, currently named *Gett*, was launched in Israel. The application is based on a similar method as *Uber*, allowing users to order taxi services online, and pay for them electronically. However, due to regulatory strains, *Gett* drivers are required to be licensed taxi drivers since only such drivers are allowed, by law, to transport passengers for profit purposes. Thus, while the application created a similar platform as other transportation oriented OLMs around the world, it varied from those in two ways – (1) It is not a Peer to Peer (P2P) service, meaning only licensed drivers are able to use it, and thus it does not offer people with traditional working arrangements to use their personal vehicles to generate more income; and (2) at least at the beginning, most licensed drivers who did use it had a main employer, a taxi station to which they belonged, as well as their subscription to *Gett*. At the time when *Gett* was launched, these stations accounted for at least 70% of drivers' income. Today, exact data is not enclosed by the platforms, however it is assessed that the platforms account for at least 50% of their drivers' income,

and potentially much more (Yablonko, 2020).

Only in recent years, since 2012, has there been a surge in the number of drivers who became dependent on OLM platforms. It is also important to note that in Israel *Gett* no longer has exclusivity in the market. Taxi drivers are able to work with different platforms such as Uber and Yango. Meaning, OLM platforms in Israel have to stay attractive for taxi drivers as there is an increasing competition in the field. In addition, taxi drivers were able thus far to prevent the expansion of Uber in Israel to its P2P service *UberX*, and thus to keep the market relatively closed. Meaning, the legal obligation that a driver must be a licensed taxi driver in order to transport passengers for profit is an example of the regulatory and legal barriers within Israel that prevent the launch of *UberX* and assists taxi driver in maintaining their monopoly in the market. Generally, strong worker unions in Israel tend to use their political power to prevent the approval of OLM platforms that might risk the market share of traditional service providers.

In the case of transportation services, it has been widely published that *Uber* has shown an interest in penetrating the Israeli market, but has avoided doing so since their P2P service could not be adapted to the regulatory conditions. The regulation itself has been examined many times, and many, including officials in the Israeli Finance ministry, have called to adapt the regulation in a way that will allow *UberX* to operate in the country, but such an adaptation has been prevented by the Transportation Ministry, that is in charge of the regulation.

The climax of the struggle over the entering to the

market of *UberX* was recorded in 2016. The main opponents are not the taxi drivers themselves, as those could also drive their private cars, but the taxi license holders. One of the key parties for the struggle is the taxi unions, which include more than 20,000 members (of people with taxi license). They managed by now to prevent the entry of *UberX* to the market. Their position is well understood - in other locations where *UberX* joined the market, the price of a taxi license dropped significantly. The average income of taxi drivers dropped as the rental price for taxis decreased. Also, other public transportation companies as well as other OLM platforms resist the entrance of *UberX* as they compete with their services. Following the 2020 political dead block and change in personal at the Israeli Ministry of Transportation, Uber hopes that a window of opportunity was created in order to penetrate the Israeli market.

Nonetheless, since its initiation, *Gett* is the most popular taxi driver's platform in Israel. As early as 2012, the number of registered drivers was larger than any other taxi employer in the country, and it receives widespread recognition amongst customers. According to the company's 2017 reports, 8,000 taxi drivers were listed to the service, and the vast majority of them are not members of a separate taxi station. This means that over 30% of the 25,000 taxi drivers in Israel are registered to the platform, and based on assumptions within the sector, another 10% are registered to similar services.

It is important to note that many drivers are registered to more than one digital service, however it is unclear how many. These platforms admit that this situation requires

them to persuade drivers to work with them, and not only lure passengers to the service. This might be a first step towards a workers' participation in the decision-making process of these platforms. Nonetheless, most agree that excelling in the latter will eventually incentivize drivers to work with the platform. **Thus, the ongoing competition between the platforms has largely translated into a battle over clients rather than drivers, since more clients will make a platform more appealing to drivers.** Accordingly, in reality, drivers' ability to improve their labor conditions is limited, even though they have several digital platform options.

The example of the transportation sector in Israel – the rise of OLM platforms for taxi drivers, as well as the struggle to prevent the penetration of other global players mainly by the taxi license holders, is perhaps the most prominent example to how regulatory binds in Israel prevent the broadening of many professions through the use of OLM platforms. Meaning, regulation in Israel, which halted the development of a full-scope gig-economy ecosystem in the country, provided traditional arrangements with the tools to tackle the entrance of OLM platforms to the market. Other examples for such binds are in the therapeutic sectors.

Another important development was the launch of *Fiverr*. *Fiverr* is an Israeli company founded in 2010 which practically serves as an OLM platform for freelancers. The company operates globally and has no specific orientation for the Israeli market. Yet, the development of the platform in Israel is another indicator to the growing demand in the past decade in Israel for freelance work. The plat-

form focuses on connecting freelancers and clients in the following topics – graphic and logo design, translation, user's Interface (UI), user's experience (UX), white board animation, digital marketing, voice overs, etc. However, its operation is also available for freelancers working in the programming and tech, business and lifestyle industries.

According to recent assessed trends, more than 40% of the sellers (freelancers) on *Fiverr* earned less than 100 USD during the nine-month period of the study. Only 0.4% of sellers received revenue of more than 50,000 USD (more than 5,500 USD per month on average). Even a smaller percentage made between 10,000 and 50,000 USD at that time period from selling their services on the site. **Meaning, the vast majority of users of the platform do not use it as their main source of income, or tried to and quit.**

Yet, even the fact that at the moment the majority of users are not exclusively dependent on *Fiverr* as a source of income, does not mean there is a growing share of professionals, especially in the graphics and design industry, that become more dependent on OLM platforms as a source to top-up income shortage. **Some of the worrisome effects could be wage reductions at the traditional work arrangements, as extra earning from OLM platforms becomes the norm, and as freelancers' participation in the decision-making processes of the platforms is non-existent.**

Newer trends in Israel that evolved in recent years include the food delivery sector. An example of an OLM platform in that sector is *Wolt*. This platform allows online

food deliveries from various restaurants. Couriers that work using the platform are not the employees of the platform or restaurants, as was common before the introduction of these platforms, but are freelancers providing food deliveries through the apps. Meaning, *Wolt* serves as an OLM platform that matches between restaurants, couriers and clients.

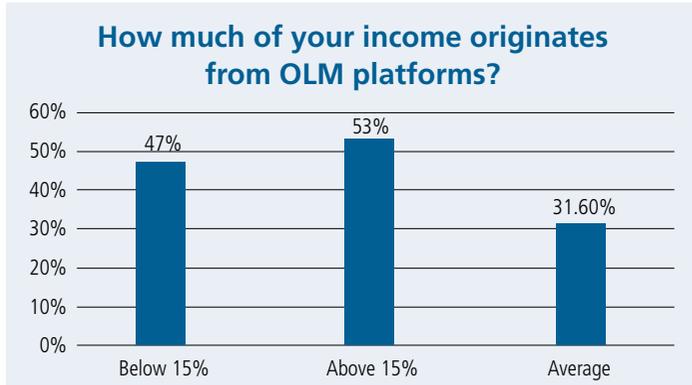
Since the delivery sector is not regulated in Israel as the public transportation sector, the entrance of these platforms to the Israeli market was smoother. Also, the fact that anyone could become a courier makes it easier for users to base their primary income on an OLM platform. This is especially true since the platforms allow couriers to use not only motored transportation methods, such as bicycles, and therefore even a driver's license is not required in order to become a courier. Meaning, by investing a non-significant sum of money in buying a transportation vehicle (scooter, electric bike, etc.), any individual is capable of becoming a courier and base his primary income source on an OLM platform.

The model in which the platform operates is simple – *Wolt* charges the users of the app themselves. Once in an agreed period of time (weekly, monthly) the platform transfers the payments from the clients to the restaurants while charging the restaurants a commission of 25%-30% of each order according to its arrangement with the restaurant. In order to offer those services, the platform has vast operational and logistic capabilities, using couriers. Couriers at *Wolt* enjoy flexibility with regards to working hours and the type of vehicle they use.

In order to better understand the gig freelance workforce in Israel, and to observe their work habits and income, a short survey was conducted by Macro Center in October 2020. This survey was answered by 204 freelance employees in Israel. Regarding the dimensions of freelancers in Israel, it is estimated that more than 7% of the Israeli workforce are freelancers (Nathanson et al, 2015). Vis-à-vis to this current research, we further examined within this workforce, and found that around 8% of freelancers were employed through one of the well-known Gig economy platforms in Israel (*Wolt, Gett and Fiverr*).

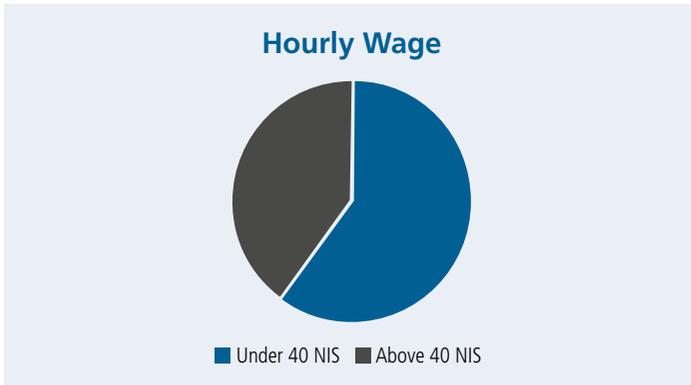
As for their work tendencies, we discovered that workers who used these platforms, did so on a very frequent basis. **41% of them worked via these applications every day of the week**, 23% claimed they only used it less than 5 days a week and the rest 36% used these platforms only a couple of days per month or less. As to their income, more than half of them testified that it represents more than 15% of their earnings. Furthermore, 60% of those who are payed hourly wages, reported that their hourly wage was less than 40 NIS on average, and we found that the average hourly wage was **55 NIS**.

Chart 1: "How much of your income originates from OLM platforms?" (of freelance workers who use OLM platforms).



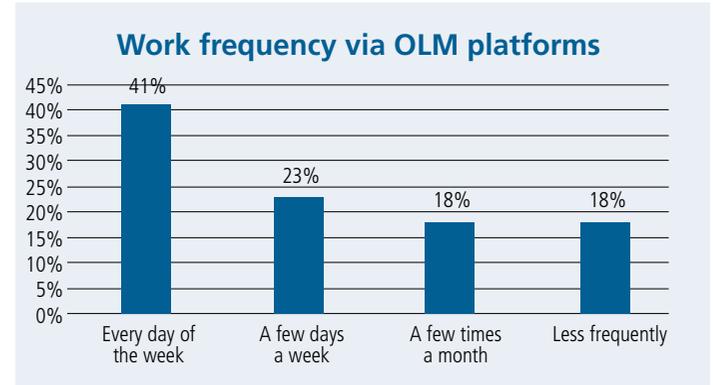
Source: Macro Center for Political Economics - Freelance Work Survey 2020

Chart 2: Reported hourly wage of participants who use OLMs



Source: Macro Center for Political Economics - Freelance Work Survey 2020

Chart 3: "How frequently were you employed through OLM platforms"?



Source: Macro Center for Political Economics- Freelance Work Survey 2020

The rise of these platforms is, again, in line with the global trends. According to recent publications, in 2017 364 million people worldwide used the services of OLM platforms in the food delivery sector. In 2019 it already reached 538 million users. According to different estimates, by 2025 the number of users is expected to reach one billion¹. However, *Wolt* has been struggling to increase the scope of its market, specifically aiming to serve customers throughout Israel, rather than in Tel-Aviv alone. This attempt has proven to be quite hard, they found that the restaurant industry outside of the city is not as versatile, and is incapable to enable such broad services that are appealing to

1. <https://www.statista.com/outlook/374/100/online-food-delivery/worldwide#market-users>

customers. In contrast to the case of taxi applications, in the courier industry it is clear that regardless of prices and discounts, clients will not use courier applications if they do not have a wide variety of restaurant options. Thus, the lack of participation from restaurants outside of Tel-Aviv dramatically complicates the ability of companies such as *Wolt*, or *Ten-Bis* for example, to expand elsewhere in the country. In accordance, these companies are competing on a rather small, geographically confined, market (Zion, Spangler, and Hollman 2019).

Unlike taxi drivers, couriers in the food industry currently have no other option but to be dependent on one of those platforms completely – this is a duopoly market in which all food delivery from restaurant is being carried out by these companies and the couriers have no other option but to work with one of them (while taxi drivers could also gain clients through traditional methods – waiting in main gathering areas, street strolling, etc.).

The increasing penetration of these platforms, as well as the competition between them and other services, **that many times came at the expense of couriers**, has brought to public awareness for the first time in Israel, the issue of the effects and problems which rise with employment through OLMs. Firstly, from a legal standpoint, these employees are considered independent workers, **even though their income is based on a sole provider** - the service they are listed in. This means that these employees are not entitled to various social benefits provided to other employees such as employer pension provision, vacation days, insurance and so on. This issue has yet to be

addressed by the Israeli lawmaker and increases the financial burden of such employment. In addition, the inability to unionize, and the ability of the digital platforms to unilaterally change employment agreements, can create future threats for the employees' income. For example, if a platform were to decrease the profit earned by a courier for each delivery, it would be very difficult for the couriers to resist such decision, since their income depends on the service, and it has no legal obligation towards them. This is not merely a theoretical threat. For example, *Wolt* in Israel made two major changes that directly affected their courier's income. In July 2020 they changed their "payment per delivery" policy in a way that couriers will be paid less for short distance deliveries, but will be compensated for longer distance deliveries. Only two months after this change, they made another meaningful reform to their algorithm, which is responsible of delivery allocation between the couriers. With each change made, groups of couriers tried to protest against the new policy, but so far they came to naught. According to the couriers, the blame is on the company's policy which forbids them to unionize, whereas the company claims that, on the contrary, the changes were made to benefit the couriers, and that the couriers were cooperated in the implementation process. Another example is USA's *Uber* driver's struggle. For over two years, *Uber* workers attempted to unionize due to deterioration of working conditions. These proved unsuccessful, since they do not have a substantial binding legal status to assist them.

Chapter II – Current Prevalence of OLM Platforms

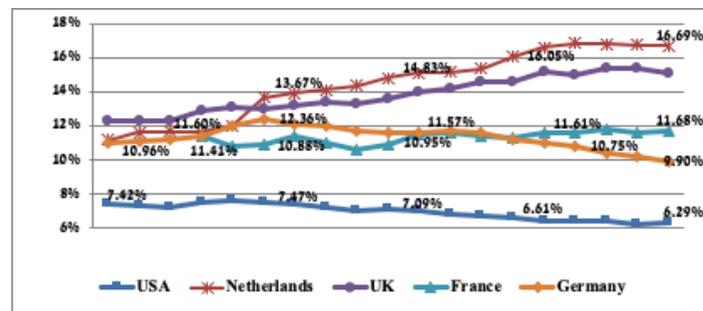
There is a very significant lack of data when researching the gig-economy, a fact that inevitably exacerbates difficulties to quantify the full scope of this employment method. On top of the quantifying difficulty this poses, the lack of data is a clear testament to the lack of regulatory supervision and governmental involvement in OLM platforms. Without such information, it is increasingly difficult for governments to take part in regulating these markets, while OLM's gain influence and experience.

Overall Prevalence

The refusal of OLM platforms to release user data results in a disability to analyze the size of the gig-economy. In the absence of such reports, analysis is largely based on data regarding self-employment and is therefore quite inaccurate. An exception to this is the Netherlands, where a 2018 research suggested 0.4% of the workforce, or 34,000 workers, were gig-workers (SEO 2018). If this number is correct, then 2.2% of all self-employed workers in the Netherlands were, as of 2018, gig and crowd workers. Taking into account the growth in the country's self-employment rates, from 1.51 million in 2018 to 1.525 in 2020, and the growth in the prevalence of the gig-economy, it is estimated that the number of gig-employees has almost doubled since 2018. Using the Netherlands as a model for other western countries, it is possible to provide

a very wide estimation of the crowd working population in selected countries. Measuring around 2.2% of the self-employed workers, the number of gig employees in the U.S is around 440,000 and in Israel only 8,000.

Chart 4: % of Self-Employed from the Overall Workforce, 2000-2018.



Source: OECD.stats

Israel has seen a small increase in the percentage of self-employed workers between 2017 and 2019, and it is expected that by the end of 2020, 11.98% of the workforce will be self-employed. Thus the number of gig-employees by the end of 2020 is estimated at 14,000-18,000.²

2. This figure does not take into account economic changes that might affect employment in general, and gig-economy prevalence, namely the consequences of the COVID-19 crisis. For an analysis of the impact of this crisis on the gig-economy see Appendix.

Chart 5: % of Self-Employed from the Overall Workforce in Israel, 2000-2020 (estimate)



Source: Israel Central Bureau of Statistics.

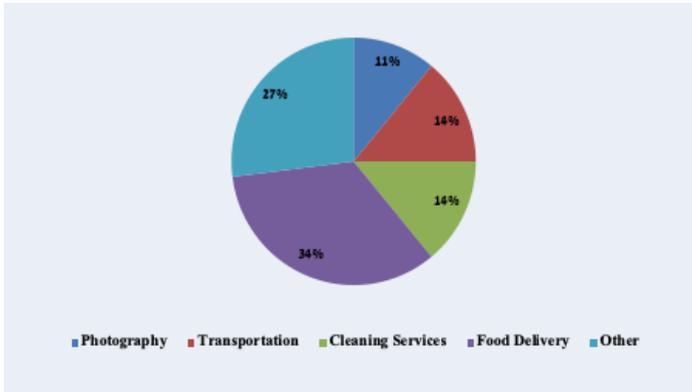
Some effort has been made in recent years to provide more direct results. The COLLEEM survey held by The European Commission's science and knowledge service measured much higher estimates. The survey collected data from 32,409 participants of the adult population in 14 countries of the EU. The results were surprisingly high. It was estimated that almost 10% of the adult population in the sampled countries have provided services digitally and received pay for it at least once. As impressive as this measurement is, it provides little value for policy making. To create a more relevant estimation, the survey provided adjusted figures to measure the number of workers who fit the traditional definition of freelancers. Results were relatively high as well- 2.3% of the sampled adult population generate more than 50% of their monthly income through OLMs. While results vary widely between countries, these results are significantly higher than previous studies. In

comparison to the beforementioned 0.4% estimate in the Netherlands, the COLLEEM survey reports that 2.9% of the adult population in the Netherlands are gig workers. These contradicting results prove the difficulty in accurately assessing the volume of gig workers worldwide and asserts the need for collaboration from the OLM platforms.

Leading OLM Sectors

The gig-economy offers a wide range of services and tasks one can take part in. Examining gig-employment in the Netherlands reveals that the largest gig-industry is that of food deliveries, followed by transportation, cleaning services and photography. Additional sectors include hospitality, construction, and technical services.

Chart 6: Share of Gig-Economy Sectors in the Netherlands by Workers, 2018.

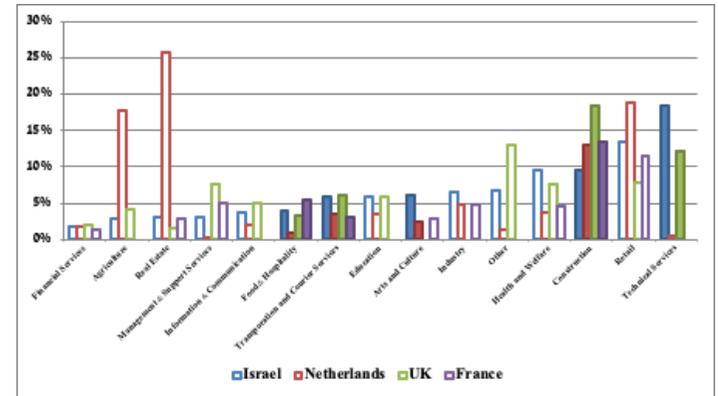


Data: SEO.

As with the estimations on the prevalence of OLM platforms in each country, it is hard, based on the Netherlands alone, to examine the size of each gig-economy sector in other countries. However, examining the size of the same sectors amongst all self-employed individuals might be revealing. For example, in the Netherlands and in Israel, the

percent of self-employed workers in the Transportation and Courier Services sector is roughly the same, and thus the demand for this sector in the gig-economy is also expected to be similar in percentage. In contrast, the percent of self-employed workers in the Technical Services sector is much higher in Israel than the Netherlands, and thus it is expected to be a much more popular OLM sector in Israel.

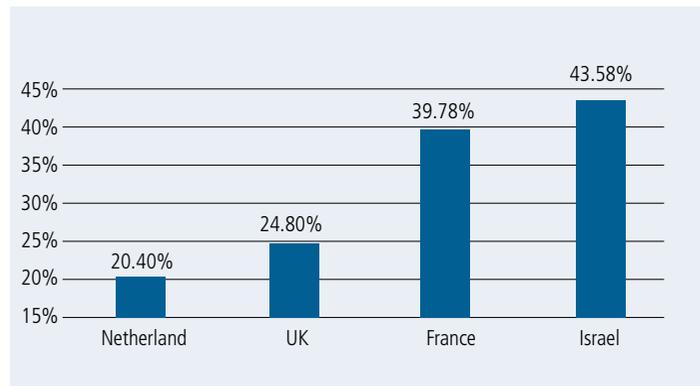
Chart 7: % of each Sector in Overall share of National Self-Employment, 2016-2018 (Bold: gig-economy prone sectors).



Data: Israel CBS; OECD.stats; Office for National Statistics UK; Eurofound.

Based on this comparison, it is also clear that the share of Israeli self-employed workers in OLM prone sectors (meaning sectors that tend to be more adaptable to OLM) is much higher than in the Netherlands, and thus the gig-economy in Israel seems to have more growth potential. Similar determinations can be made regarding France, and to a lesser extent, the UK.

Chart 8: % of OLM Prone Sectors in Overall share of National Self-Employment, 2016-2018.



Data: Israel CBS; OECD.stats; Office for National Statistics UK; Eurofound.

The Digital Day Laborers

The number of clickworkers on the internet is increasing. A study shows who these people in the ‘crowd’ are, and why digital employment requires fair rules.

Who are these digital day labourers, and what do they themselves think about their work? One answer comes from scholars working with informatics professor Jan Marco Leimeister of the University of Kassel. Their study, supported by the Hans Böckler Foundation, provides insights into how clickworkers in Germany perform their work. Clickworkers are often well educated. Many use their internet jobs as a source of additional income, but for around 20 per

cent of the interviewees, they provide their livelihood, for example, as programmers or designers.

Internet marketplaces make it easy for the self-employed to get in touch with potential clients. On the other hand, employers have around-the-clock access to a large workforce reservoir offering various skills. The assignment of jobs to an anonymous mass of people on the net is also called ‘crowdsourcing’. The advantage of crowdsourcing for companies is the ability to accomplish quick and flexible task processing. One possible danger arises: work that was previously completed by regular employees can now be outsourced to clickworkers.

According to the study, ‘clickwork has experienced astonishing growth in recent years. One indication of the number of clickworkers in Germany is provided by the number of users of individual marketplaces. One of the largest and oldest platforms is Clickworker. According to the provider, a quarter of its more than 700,000 members are in Germany. Several thousand members from German-speaking countries are also registered on international marketplaces, such as Freelancer, Upwork or 99Designs. To date, the services provided by clickworkers have been utilized mainly by small and medium-sized companies, but also by large corporations, such as Telekom.

According to the study, the majority of clickworkers are well educated – almost half of them have a degree. Men account for a slightly higher share than women. The majority are unmarried. ‘This leads us

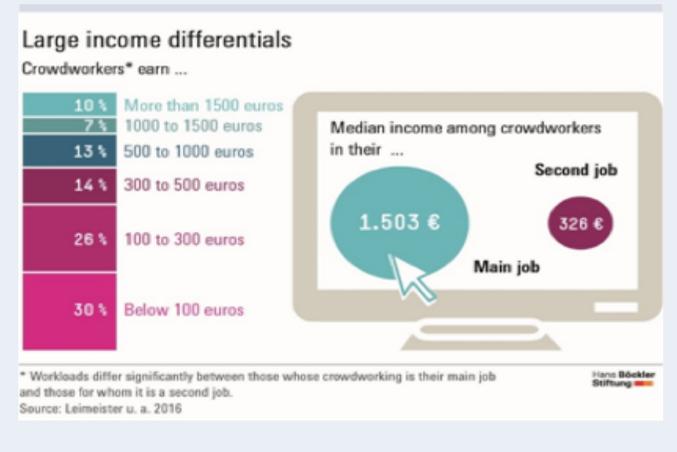
to assume that personal leisure time is used more frequently for clickwork than in the case of married people or people living in a partnership', the study says. Approximately half of the interviewees state that they work at different hours of the day, often in the evenings, or at night. Only 4 per cent are regularly active in the morning hours. The average work time amounts to a little less than 14 hours a week.

The jobs offered on the Internet range from very simple tasks, for quick additional income, to complex projects. Simple work can include, for example, researching addresses or tagging texts or images. A little more demanding is product and app testing. The most stringent requirements are usually found in design and programming.

Incomes differ accordingly. Around 70 per cent of those in the study earn less than €500 a month, after deduction of platform fees, but before taxes. The total median income of people who perform clickwork in addition to their day job is around €326 per month. Those who work as clickworkers as their main profession – only around 20 per cent of the interviewees – have a median income of €1500. A little more than half of those who obtain their main income from digital work do not make any provision for retirement.

According to the study, the majority of clickworkers do not feel exploited. At the same time, they are not satisfied with their work environment. Among them, the designers are least satisfied with their pay

and the appreciation of their work. One possible reason for such feelings is the stiff competition in this area. Several competitors submit their designs for a given tender, but only the successful get paid.



Source: Jan Marco Leimeister, Shkodran Zogaj, David Durward, Ivo Blohm: Crowd Worker in Deutschland: Eine empirische Studie zum Arbeitsumfeld auf externen Crowdsourcing-Plattformen, [Crowd Workers in Germany: An Empirical Study of the Working Environment on external crowdsourcing platforms], Study 323, Download: https://www.boeckler.de/pdf/p_study_hbs_323.pdf

This article was published in Böckler Impuls 6/2016, p.7

Chapter III - OLM Platform Characteristics and the Challenges they Pose

Main Characteristics

A common definition of OLMs, provided by John Horton from Harvard University is a market where (1) labor is exchanged for money, (2) the product of that labor is delivered “over a wire” and (3) the allocation of labor and money is determined by a collection of buyers and sellers operating within a price system (Horton, 2010). There are six distinctive characteristics for those markets:

1. The use of third-party intermediaries – all OLM employment is handled through intermediaries – scope is wider compared to traditional labor markets. The platforms take on themselves the role of promising payment, record keeping, and creating communications infrastructure and search technologies. To a large extent, the wide scope of duties the platforms take on themselves, blurs the traditional distinction between employers and third-party intermediaries.

2. Labor as a service delivered over time – labor becomes a commodity delivered over a specific timeframe, and in relation to a specific task. This, in turn, creates relationship-specific investments in human capital, i.e. skill learning for specific, short-termed jobs.

3. No single “commodity” and information asymmetries – OLM platforms create a double-sided asymmetry where both sides, the freelancers and the employers, have knowledge gaps as to the expertise and trustworthiness of the other side. In addition, one possible service, or one job offer, is hard to compare to another due to various differences in work hours, project length, quality of the freelance, etc. These two factors increase market uncertainty and can, in theory, prevent such markets from existing. In order to address these issues, OLM platforms developed a system that is intended to overcome these boundaries. OLMs increase certainty by providing more information about the freelancers – special categories for professionals, categorize freelancers by skill set, previous reviews and reputation and so on. The platforms act as intermediates between service providers and employers, and as such should ensure payment and fairness in project assessments, yet this is not always the case.

4. Three-sided profit – OLM platforms earn revenue using one of three ways: membership fees; levying ad valorem charges on payments; and charging for the use of the market (for example, charging a fee for every job listing). In all three cases, these fees affect the design of the market itself and impact the wages suggested in it, the products offered and so on. Moreover, these revenue methods impact the size of the market, i.e. the number of participants in it. If an OLM were to adapt its revenue method, participants would not only be im-

pacted by the new fees they might encounter, but also by the scope of opportunities for employment and recruitment that they are offered. Thus, the market might not enable optimal employment that would have been achieved without these fees. Of course, such optimal employment would have rarely been achieved without the platforms, since most OLM's enable contracts that would have not been achieved, were it not for these platforms. In that sense, the platforms enable new employment opportunities.

5. **Cost-saving benefits for interaction** – the ease of communication between buyers and sellers does not only create new markets, once harder to initiate, but also improves existing labor markets: The ease of telecommunication through these platforms serves to cut costs; increased innovation spillover, due to concurrent work of employees in various companies, enables higher productivity; and the ability to employ small amounts of labor lowers the barriers of entrepreneurship.
6. **Virtual migration** – OLM's offer many of the benefits of physical migration. This enables global participation in markets, regardless of country institutional support. If a freelancer can connect to the internet, he could find employment without support from the country he resides in. In theory, these platforms will allow increased physical migration, in the sense that freelancers can reside in countries without a work visa, and **take part in borderless, global, online employment from anywhere.**

Employees of the gig-economy share unique features and experience a rather different work environment than other classes of workers. These penetrate to the employees' personal life and affect their attitudes towards their jobs.

Bikers are Networking

Food couriers usually work under adverse circumstances. Networking could facilitate shared bikers' organization for better working conditions.

The food delivery services market is subject to harsh competition: Deliveroo recently withdrew from Germany. Foodora, too, has vanished from the market and was taken over by Lieferando. For the approximately 2,000 to 4,000 delivery couriers in Germany this spells uncertainty, although so-called 'riders have been working under difficult conditions anyway, as presented by the research study by sociologist Heiner Heiland of Darmstadt Technical University. Heiland, the holder of a Hans Böckler Foundation PhD scholarship, conducted online interviews with 246 couriers of the service providers Deliveroo and Foodora. The results show that they are usually employed under precarious conditions, tend to be dissatisfied with their work, and rarely identify with their job. However, they are not alone: the majority seek regular contact with other couriers.

According to Heiland's analysis, the typical courier is male – only 14 per cent of the interviewees are

women. Their average age is 29 years, most use bicycles. They have a ‘relatively high’ level of formal education: among the Germans, who make up 62 per cent of those interviewed, 53 per cent are high school graduates and 23 per cent have an academic degree. Among the non-Germans, about half have an academic degree, and 25 per cent are high school graduates.

Turnover is high; most couriers hold on to their jobs for six months at most. Their work, so they say, is ‘notoriously precarious’, meaning that it is usually limited, with limited hours and low wages. Of the persons interviewed only 10 per cent had indefinite employment contracts at the time of the research, some 60 per cent were employed on a limited basis, 30 per cent were freelancing.

One characteristic of courier work is ‘market dependent working hours’, says Heiland. The availability of shifts varies with the number of workers needed for food deliveries. The result is that 52 per cent of those interviewed usually work less than has been contractually agreed, 19 per cent work more. The average is 72 hours a month: 87 per cent work very often, or often, on the weekend, 80 per cent work between 6 am and 11 pm.

The maximum net income of 39 per cent of the couriers is the mini-job limit, while 30 per cent earn at midi-job level. Some 63 per cent report a monthly income that is subject to significant fluctuations of up to €300. Almost three-quarters of the couriers re-

gard their income as inadequate or barely adequate. Some 42 per cent of bikers have a second job, although a little over one-third receive other financial support, such as child benefit, or federal support for students (BaföG).

Some 63 per cent of food deliverers feel that their work is at the mercy of digital technology. This is a peculiar feature of platform work, where the app is the central and often the sole connection between the company and the worker. At the same time there are inconveniences that cannot be controlled by the bikers: weather and traffic that need to be overcome under time pressure. Almost half of the interviewees have been involved in an accident at least once.

Accordingly, this work is not enjoyed very much by those who perform it: 60 per cent of the couriers do not identify with their work at all, or only to a small degree. On an 11-point scale, average work satisfaction is 5.7. By comparison, the average value for the German workforce as a whole is 7.49. Only some 14 per cent of the interviewees see no reason for strike or protest action, only 31 per cent can picture themselves performing this job up to five years later, and 51 per cent are seeking other work.

The bikers’ isolation during their work is generally considered a characteristic of this type of employment, and as constituting a high barrier for collective action. However, according to the survey, 61 per cent of the interviewees have frequent or many contacts with other couriers, including out-

side work. In addition, 70 per cent report that they are not informed sufficiently or in good time of the sometimes monthly changes in their working conditions. For this reason, many informal chat groups or fora for exchange and mutual help exist, such as the project ‘Delivery at the Limit’ launched by the food workers’ union Nahrung-Genuss-Gaststätten. According to Heiland’s assessment, these groups could constitute ‘nuclei for collective action’.

Source: Heiner Heiland: Plattformarbeit im Fokus: Ergebnisse einer explorativen Online-Umfrage zu plattformvermittelter Kurierarbeit [Platform work in focus: results of an exploratory online survey on courier work via platforms], WSI-Mitteilungen 4/2019. This article was published in Böckler Impuls 14/2019, p.5.

OLM’s threat to workers’ rights

The gig-economy, with all its benefits and its potential to increase employment and create job contracts not possible before, poses grave risks towards workers and threatens to negatively affect workers’ rights. **Among other things, workers face threats of increased risk, overwork, underpay, lack of legally binding benefits, etc.** (Schor 2017). In general, the shared economy is seen by its initiators, i.e. the OLM platforms, as an ultra-free, unregulated, market, since it does not fall, at least based on traditional classifications, under any one clear regulatory jurisdiction (Ibid). This lack of regulatory supervision is worrisome not only because of the ability to undermine workers’ rights, but also due to the **ability to manipulate the market**

itself. OLM platforms have full control on the job opportunities offered, how they are presented, who can apply to them and so on. Obviously, these actions enable the platforms to garner huge profits, without governmental supervision and in a way that puts to question the assertion that the gig-economy enables an employment method that is transaction-free (Schmidt, 2017).

The main infringement of workers’ rights usually referred to in this context is the **lack of social benefits.** Today, individuals offering their services on gig-platforms are generally not seen as legally employed by any one employer (whether the platform on which the service provider offers his services and/or the one ordering the service), and thus they are not given benefits such as pension plans, social security, and so on. Moreover, the platforms’ legal claim is that regulations such as minimum wage and work hour limitations do not apply to these workers since they voluntarily agree to their terms of service, indicating that any transaction is limited to a **specific project**, and any agreement should not be seen as an employment contract, rather as an agreement on the supply of a specific, short-term service. In any case, even if these contracts were to be seen as employment contracts, the platforms emphasize in their terms of service that any participant in the market agrees to be employed as an independent contractor or self-employed. Such employment methods exempt both the platforms, and those ordering the service, from abiding welfare and labor regulations (Schmidt, 2017). To make things even more complicated, the global structure of the gig economy makes it hard to enforce labor laws

even if these were to apply to gig-economy work relations since in many cases the legal jurisdiction that these contracts need to abide by are unclear. An example of this is when the service provider, the buyer, and the gig-economy platform itself all come from different countries with different regulations.

An important development regarding these employment methods is new court decisions made, as part of the worldwide legal confrontation Uber is tackling for half of the last decade, which began with two of their drivers demanding to acknowledge this type of contracts as an employer-employee relationship. UK's high court has started the process of dealing with Uber's third and final appeal, to overturn an Employment Tribunal decision of two drivers to be recognized as the company workers, and not third-party contractors. Such ruling will enforce Uber to provide them basic employee rights that so far are not provided because of their employment categorization. (Forbes, 2020)

Another frontier which is important to understand is the legislative effort companies such as Uber and Lyft are investing in, when the most recognized and potentially influential of them took place in California. The companies invested nearly \$200 million on ballot measure, which is called "Proposition 22", if it passes, it would let them maintain the current employee status used so far, while giving the drivers a limited set of benefits, instead of the full protective rights granted thanks to employment status (NPR, 2020). Uber and Lyfts' drivers lost this battle in November 2020, when California voters voted to pass

Proposition 22 and deny the drivers' wish to become the firms' employees. While not terminating this possibility, this result enables Uber and Lyft to continue treating these drivers as independent contractors and could serve as precedent in the future.

In addition to these clear-cut implications, many asserts that the **gig-economy also widens global inequality gaps**, between the top 20% and the bottom 80%, but also within the bottom 80% (Schor, 2017). This is very clear in capital-based platforms, such as *Airbnb*, but also in labor platforms such as *TaskRabbit*, *Fiverr* and so on. Namely, while labor platforms are theoretically accessible to anyone, a clear distinction exists between **the opportunities offered to highly educated professionals and those who are less advantaged**. In a general sense, the higher educated participants in the gig-economy enjoy cloud work opportunities, which are web-based freelance jobs that are the highest paying opportunities offered on gig-economy platforms. In contrast, participants with a non-professional background, usually non-educated, are left with crowd work opportunities, meaning small under-paying tasks they conduct concurrent to many others, and/or gig-work, which is location based and usually supplants traditional employment methods in the same sector (*Uber*, Courier services, etc.), while offering less benefits (Schmidt, 2017).

When examining the distinction between these employment opportunities, and the individuals that can access each option, it becomes clear that those who are well off in the first place enjoy the benefits attributed to

these platforms, namely increased employment opportunities due to the creation of easy, transaction-free, employment. At the same time, those who are disadvantaged do not enjoy these benefits, since they do not qualify for the profitable job opportunities, and are left with underpaying, short-termed, and many times physically laborious tasks. Thus, these individuals mainly experience the negative implications of the platforms, suffering from unstable, less rewarding employment without social benefits. For that reason, these platforms are many times seen as redistributing wealth within the middle and low classes, from bottom to top (Schor, 2017).

The threat gig-employment poses to the future of labor rights is not only constrained to the limits of the gig-economy work market itself, **but might also impact traditional work relations**. This might happen, and to some extent is already happening, due to what can be referred to as a double race to the bottom. Firstly, a private race to the bottom led by employers and employees themselves – the fact that cheaper, just as competent, labor can be found online threatens to decrease the amount of job opportunities in the traditional labor market, and thus increase employment based on reduced work benefits (Schmidt 2017). Of course, this phenomenon is somewhat limited by governmental regulation. Without them, in order to prevent a situation in which traditional labor markets become an uneconomic employment market for employers, governments would have to ease regulations on traditional labor, thus creating a second race to the bottom between different countries. **Thus, it is widely expected**

that lower employment standards in the gig-economy will result in a spillover to the traditional labor market, and impact all employees. For that reason, the need to preserve workers' rights in the gig-economy is crucial in order to protect all workers' rights, and not only the rights of gig-economy workers.

Security for Crowdworkers

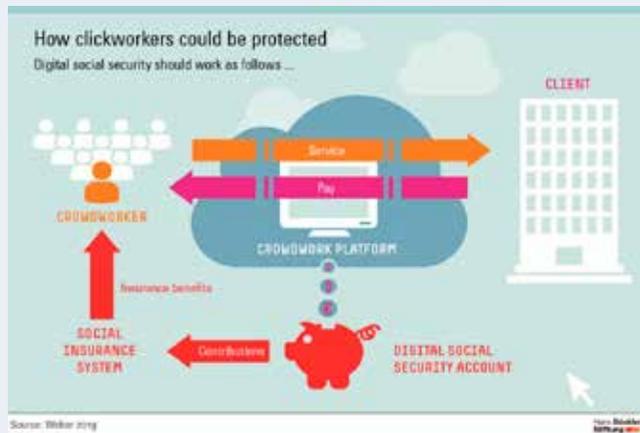
How can clickworkers be provided with better social security? The answer could be a model that itself utilizes digitalization.

Social security coverage for crowdworkers contains major gaps. These could be closed with the concept of 'digital social security', devised by Enzo Weber of the Institut für Arbeitsmarkt- und Berufsforschung (Institute for Labour Market and Occupational Research), which he has further developed with the support of the Hans Böckler Foundation. The intention is a form of digital tax deduction, for which a certain amount of money from each completed job is automatically set aside for social security.

The idea behind it is that social security for crowdworkers must begin where all relevant information regarding the client (contracting entity), the employee and the agreed remuneration is located, and that is directly on crowdwork platforms. Weber suggests the integration of a digital mechanism in these platforms that will deduct a certain percentage of the agreed remuneration for every completed

job anywhere in the world, and deposit it in the crowdworker's personal account. From there the accumulated amounts will be transferred to the social security system of the crowdworker's country of residence. From that point on, standard national regulations may come into effect, for example, when apportioning amounts among the various types of insurance. The advantage is that clickworkers would not be dependent on themselves for their social security, and clients would not be able to evade their social responsibility, even if they are located abroad.

Weber describes digital social security as an efficient tool to 'organize social security unbureau-



cratically in an amorphous labour market'. The purpose is not to create a category of lower-class employees. Crowdworkers who are treated as

dependent employees by their employers should of course enjoy the same rights that apply to regular employees.

Source: Enzo Weber: Digitale Soziale Sicherung. Entwurf eines Konzepts für das 21. Jahrhundert [Digital social security. Outline of a concept for the twenty-first century], Working Paper based on research funded by the Hans-Böckler-Stiftung No. 137, May 2019 Download: bit.do/impuls1568

This article was published in Böckler Impuls 10/2019, p.1

Chapter IV - The Case for a Combined Legal and Corporate Solution

The ability to preserve workers' rights in the gig-economy is based both on the creation of legal structures, and the creation of codetermination and workers' participation methods that will promise employees' ability to take part in designing their own rights. Governments and regulators can create new legal structures that will define the relationship between buyers, employees, and gig platforms, but without employee participation in structuring their own rights, the ultra-free-market build of the gig-economy is bound to prevent basic rights from being kept. Thus, a legal solution to the situation is crucial, but must be enacted together with codetermination methods.

The Legal Action – Third Employment Category

The challenge gig-economy platforms present to traditional work relation definitions, underlined in previous chapters, have created a lively debate regarding the insufficiency of the binary Employed/Independent worker classification.

Currently, in most economies, a binary Employed/Independent worker classification exists, with the conditions and definitions of each category changing from country to country. In many countries the distinction is based on the control test. This test determines that if the one paying for a worker's services (a buyer) is capable of managing the workers service method (i.e. determine hours of work, direct how the job should be done, etc.) he must be seen as the workers employer, and thus the worker is an employee. If the buyer pays per project, as opposed to per hour, and is only able to comment on the final product, then he should be seen as a contractor, and the worker should be considered an independent employee.

However, this test is insufficient in many cases, and is especially insufficient when dealing with gig-economy platforms, where there is no doubt that workers would be regarded, based on the control test, as independent. For that reason, a second test is sometimes used, the financial dependency test. This test examines if the vast majority of a worker's income depends on a sole source, and if so determines the worker is an employee of that source. Based on this test, many gig-economy workers could be regarded employees, yet it is unclear whether a gig-economy platform, such as Uber or Fiverr, can be seen as

their employer since the platform itself is not the buyer of the service.

While both tests contradict each other in many cases, at this point it is legally unclear which of the two tests surpasses the other, and thus much uncertainty stems from the binary Employed/Independent classification. For that reason, many have argued that a third category, aiming to define the legal status of workers who are classified differently by each test, should be adopted (Schmindt , 2017; Schor 2017). The necessity for such a category has stemmed, to a large extent, from the rise of the gig-economy and the consequential increase in the number of unclassified workers.

While such a category would be specifically designed to the changes in the workforce of the 21st century, the idea of a third employment category is not new, and in fact many countries have implemented such a category in the past. This chapter offers a review of third employment categories implemented in various countries at the current time, and an inquiry into their effect (Ibid). Generally speaking, the difference between the countries who implement this category is in their classification method, and in the benefits given to those it applies to. However, in all cases of third employment categories, relevant workers are seen as somewhat dependent on a single employer, while given a degree of freedom in their work method that is irregular for a common employee. Thus, the third category is aimed to assist these workers by granting them specific work benefits. However, usually not all of the benefits are given to those classified as "conventional" employees.

Canada

A third employment category was introduced to Canadian labor laws already in the 1960's. The category, named Dependent Contractor, was originally designed to serve the needs of workers who provide services through an independent business, but in fact, are contracted by a sole entity. At the time, the category was relevant to workers from a wide array of professions, from lawyers to plumbers. This definition, *de facto*, used the financial dependency test to determine who is an eligible worker, while the classification of independent workers was based on the control test.

Workers classified under the dependent contractor category were mostly entitled to legal protections concerning loss of employment. This was achieved by considering an entity that orders a job from a dependent contractor as liable to his severance in the case of replacement. In theory, this category applies to many gig-economy workers, with the gig-platform itself serving as the liable entity. However, to date, no relevant legislation or legal precedent has positively confirmed this.

Italy

In Italy, an employee is defined as a worker who is part of a buyer (employer)/principal (employee) relationship with a sole entity, given that five conditions apply: (1) the work follows specific, reasonable, work rules determined by the buyer; (2) the relationship is lengthily and not sporadic; (3) the work is done in agreed upon work hours; (4) the salary for the work is based on, and reflects the scope, of the work hours; and (5) that the salary is provided regardless of

the outcome, i.e. the provider is compensated for his work even if it is deemed unsatisfactory.

Up to the 1970's, any worker who did not take part in a relationship that met these conditions was regarded an independent contractor. However, during the 70's, a third employment category was introduced, referred to as *Lavoratori Parasubordinati*, or Quasi-Subordinate. This category was used in work relations that were defined as "collaborating with a principal/buyer under a continuous, coordinated and predominantly personal relationship, although not of subordinate character". Four concurrent factors must exist in order to denote this category: (1) cooperation between the principal and the buyer; (2) a continuous and lengthily relationship; (3) functional coordination with the principal; and (4) a predominantly personal service.

Generally, Quasi-Subordinate employees were not entitled to any social benefits, but were given legal standing in case of litigation against the buyer. Interestingly, in 2003 this category was found to harm workers' rights, since it was used by many employers as an alternative, cheaper, employment method, and in fact decreased the number of "conventional" employees in the country. For that reason, a 2015 legislative amendment determined that any principal/buyer relation would be regarded as an employee/employer relationship by default, and would become a Quasi-Subordinate or contractual relationship only if both sides agree. In practice, since this amendment, the Quasi-Subordinate category is no longer in use, and therefore there were no attempts to include gig-workers in it.

Spain

In Spain, a third employment category, *TRADE*, was introduced in 2007 and an employee qualifies for it based solely on the financial dependency test. Spanish law sees a TRADE worker as one who at least 75% of his income is provided by one buyer, a rather high threshold. For that reason, and since being defined as a TRADE worker requires constant bureaucratic tracing, the category applies to only a small percent of the Spanish workforce, and mostly to part-time workers.

However, to those whom it applies to, the TRADE category entitles almost all workers' rights given to a conventional employee. Moreover, in theory, the clear-cut financial dependency test makes this category highly relevant to a large number of gig-workers, if gig-platforms were deemed buyers.

Germany

In 1974, German legislators created a third category, *Employee-Like*, for those who work: (1) for the benefit of the client (buyer); (2) under a service contract for a specific project; (3) personally and largely works without collaboration of subordinate employees; and (4) works mainly for one client and relies on a single client for 50% of his or her income.

South Korea

South Korea introduced a third employment category, *Irregular employment*, that currently describes a third of the South Korean workforce. This category is very

different than third categories in other countries since it defines specific professions as jobs that are held by irregular employees, rather than setting various conditions. The common similarity between these professions is that their employers do not have any subordinates.

The South Korean category is also different in that it was not created in order to allow a semi-employment relationship, but rather aimed to easily define different jobs for employer tax purposes. Thus, irregular employees receive similar right to that of conventional employees.

Table 1: Third Employment Categories Worldwide

Country	Category Name	Relevant Test
Canada	Dependent Contractor	Financial dependency test
Italy	Quasi-Subordinate	Mostly in contrast to the existing employee definition
Spain	TRADE	Financial dependency test
Germany	Employee-Like	4 conditions, including a 50% financial dependency on a sole buyer
South Korea	Irregular Employee	Specific professions

Based on the above examples, it becomes clear that a third employment category, while capable of remedying many of the workforce problem created as a result of

the gig-economy, is hard to implement in a way that will be effective without becoming a cause for employment rights degrading. On the one hand, clear cut definitions are necessary in order to enable actual use of the new category, including the exact benefits that result from such a definition, but on the other such definitions make it easier for employers to degrade current employees to the new third category, as was the case in Italy. In this context, if the South Korean model, defining specific professions that are relevant to the third category, were implemented to accommodate gig-employees, it would allow to limit its use only to such workers. However, such a model will likely be hard to maintain, since many advocacy groups, both of employers and employees, are likely to lobby in order to opt their profession in and out. In addition, since the gig-economy is an evolving work sphere, implementing the South Korean model would most likely require constant, hard to achieve, adaptations.

In any case, it seems clear that a third category must be based on some form of the financial dependency test. However, adapting this test to the gig-economy might prove to be challenging, since the employees' financial dependency is not to a specific buyer, but to a platform mediating between workers and buyers. Thus, it stands to question whether such platforms can be deemed as employers using this test. **For that reason, a third employment category, if implemented, would most likely require to define not only what employees belong to this category, but also who can be seen as their employer.** Since the gig-economy creates a stronger tie between an

employee and the platform through which he is employed, than between the former and the one who employs him, it is clear that such a third employment method must cast employer responsibility on the OLM platforms.

It is now obvious that contrary to traditional labor, workers in the gig economy are not unified by a strong clear and global legal definition.

New Legislation for Digital Work

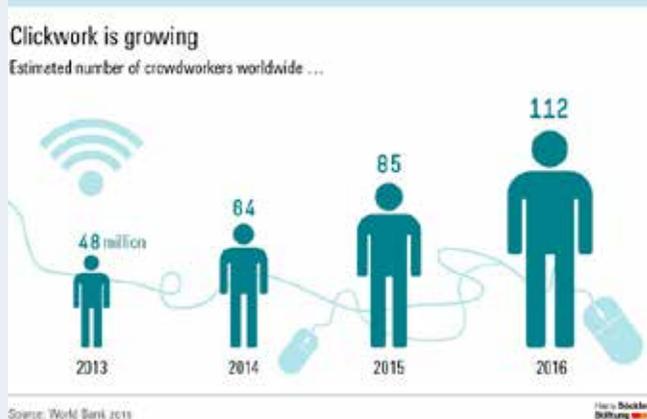
**The number of crowdworkers is increasing.
Is labor law ready for this development?**

Digital technology has introduced various new forms of work: crowdsourcing platforms arranging work assignments for day labourers worldwide constitute a challenge to labour law. A survey of the legal situation in Germany, Japan and the United States is provided by a comparative study for the Hugo Sinzheimer Institut für Arbeitsrecht (Institute for Labor Law) authored by Bernd Waas of the University of Frankfurt, together with his Japanese colleague Katsutoshi Kezuka and US researchers Wilma Liebman and Andrew Lyubarsky.

Waas points out that the term 'crowdwork' covers a wide range of phenomena. The spectrum of tasks ranges from simple and badly paid 'micro work', such as sorting images or data entry, to complex

projects, for example in the field of web design or research and development.

The market for crowdwork has significantly increased lately. According to some assessments, in 2013, 48 million people worldwide were registered with providers and turnover probably reached US\$ 2 billion. The prognosis for 2020 is somewhere in the region of US\$ 15–25 billion. Two-thirds of all clickworkers are found in three countries: the United States, India and the Philippines. However, there has been a noticeable increase in Germany as well, says Waas. Currently, the highest demand is in the fields of technology and the internet. Given the increasing prominence of Big Data, it may be assumed that other branches of the economy will follow.



According to Waas, the economic advantages of crowdwork are obvious: companies have access to

workers 24/7 and throughout the world. Workers, on the other hand, may be in a position to decide freely, when and where they wish to work.

The dark side, however, is that economic risks and the responsibility for health insurance and pensions is completely transferred to the employee, for whom the clients do not pay any social contributions. Some platforms indeed resemble ‘digital sweatshops’, exploiting their employees.

The extent to which labour law can remedy such abuses depends, according to Waas, on the key question of whether crowdworkers are to be regarded as employees in the first place. Looking at the legal systems he examines, the answer turns out to be complicated, not least because definitions of the term ‘employee’ refer to many criteria and factors. They include, for example, the duration of a business relationship, the degree of control, integration in the operational organization, or economic dependency. Because of this, labour courts’ conclusions are often difficult to predict. Because OLM platforms usually allow their customers little direct control, the possibility that crowdwork may be recognized as dependent employment in any individual case must not be excluded. However, the courts may also come to different conclusions.

Another legal issue within labour law is the identity of the employer within this business model: is it the platform or the buyer of the service it provides?

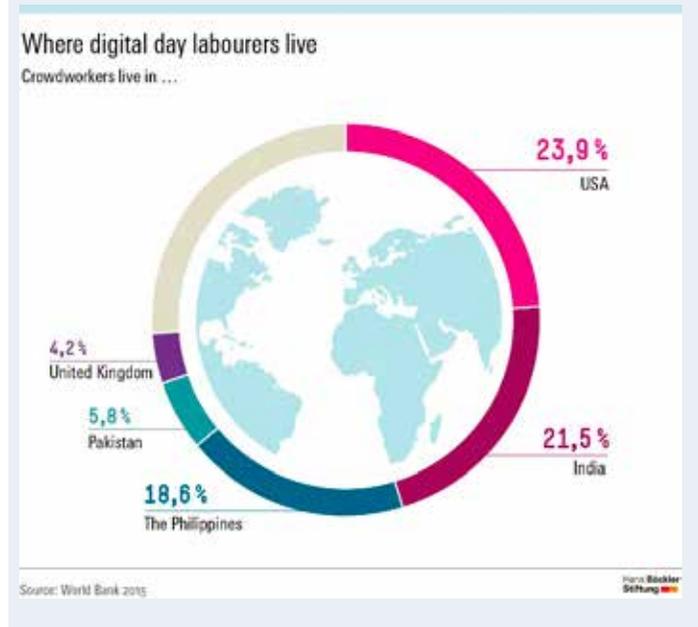
US law is exemplary in this aspect. It states that two or more parties together can function as the employer of the same employee, if they decide together on significant aspects of employment.

German law provides a helpful instrument in this context, namely the status of ‘person similar to an employee’, who may not be personally dependent, but is economically dependent – a category somewhere between employee and freelancer. It has one shortcoming: such a person is entitled only to a small part of regular employee rights; they are not protected against unlawful dismissal, and the minimum wage does not apply. In addition, crowdworkers usually work for several clients.

Apart from that, Waas determines, the self-employed are not completely without protection. Pursuant to the Civil Code, contractual provisions are invalid if they ‘disadvantage one of the parties unreasonably against the rules of good faith’. In the United States, on the other hand, the principle of contractual freedom takes precedence.

All in all, the current legal situation offers relatively little protection for crowdworkers. In terms of possible reforms, mandatory inclusion of self-employed people in social security systems, as well as new legal definitions of ‘employee’ and ‘employer’ are advised. Because crowdsourcing, like outsourced work, involves three parties, the extent to which the same regulation would be applicable should be

examined. Other helpful incentives would be laws protecting industrial home workers. The German Homework Law, for example, determines that unions, on one hand, and employers’ organizations on the other should jointly supervise regulatory compliance. Apart from that, organizing should be made easier for crowdworkers, for example by creating platforms for exchange between clickworkers, and the rating of principals.



Source: Bernd Waas, Wilma B. Liebman, Andrew Lyubarsky, Katsutoshi Kezuka: Crowdwork – A Comparative Law Perspective, HSI-Schriftenreihe Band 22, Bund-Verlag, Frankfurt a. M. 2017 Download: bit.do/impuls0910

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Comission on the Work of the Future (Jürgens, Hoffmann et.al)

Crowdwork frequently has little to do with quality work. The cross-border character of this business model is considered one of its most important features. Because crowdworkers are spread out all over the globe, national regulations may have little effect. How it might still be possible to legally ensure proper working conditions has been investigated by the expert commission on the work of the future, launched by the Hans Böckler Foundation. One possible approach that has been discussed was the introduction of a mandatory ‘customer principle’ for digital work. The basic idea is that the place of jurisdiction with regard to payment and crowdworkers’ rights should not be the place of work performance, but the seat of the principal. This would mean that German or EU law would apply if a German company assigns services via a digital platform. This means, for example, that the minimum wage as laid down in German labour law would apply, even if the contractor lives abroad. However, successful implementation of the customer principle would require the clarification of several open questions. One concerns the scope of regulation: a solution at the European level – analogous to the Posted Workers Directive – would be possible and would constitute significant progress. However, if the

crowdwork is performed outside the EU, European legislation would no longer apply. An additional problem is that crowdworkers are not considered to be dependent employees, but self-employed. Effective protection under labour law would require a redefinition of the meaning of employee, says the commission. In addition, the experts recommend a differentiation between various digital platform formats: providers such as the driver service Uber, whose business model is based on locally limited services, should itself be classified as an employer instead of a mere agent. The mandatory customer principle, on the other hand, would apply to platforms that arrange geographically flexible clickwork.

Source: Kerstin Jürgens et al.: Let’s Transform Work! Recommendations and Proposals from the Commission on the Work of the Future, 2018 Download in English: https://www.boeckler.de/pdf/p_study_hbs_376.pdf. This article was published in Böckler Impuls 19/2018, p.4

The Corporate Action – Co-Determination

As abovementioned, a third employment method is critical in order to preserve workers’ rights not only in the gig-economy, but in the workforce as a whole. However, the various loopholes created by the global nature of the gig-economy, as well as the unique nature of the employment relationship between employees and OLM platforms, make the creation of such a legal entity a first step towards a solution, rather than a full remedy for the problem. Once gig workers are seen as employees by the platforms in

which they find work, these platforms must collaborate with their employees to preserve their rights in practice, and not only in theory.

Codetermination is the practice of integrating employees in the decision-making process within a corporation, and specifically in matters directly related to the employees' rights, opportunities, and future. It is commonly used in various markets worldwide, most significantly in Germany, but has yet to be implemented in the gig-economy. **Creating codetermination methods in OLM platforms is expected to enable the amelioration of workers' rights infringements since corporate decisions will be made with the workers' well-being in mind** (Johnston and Land-Kazlauskas, 2018). As a mere example, codetermination will allow gig-employees to design the terms and conditions under which employees and service customers can use the platform. In doing so, they can influence the rights workers are given by the OLM platforms, as well as the commitments customers take on themselves when ordering a service through the platform.

Of course, employees share a common interest with the gig-corporation they work with. Both sides are very much interested in keeping their market appealing to customers. Without doing so, workers' might be given increased rights on paper, but in reality they will not have job opportunities to actually practice those rights. This fact promises that workers who take part in corporate decision making will not endanger the future of the gig-platform they are employed in for the sake of their own benefits, rather they will advocate a worker's perspective and prom-

ise it is considered during corporate decision making, as opposed to the reality of today in which workers' perspective is largely overlooked (Ibid).

The European Trade Union Institute (ETUI) has elaborated on the importance of codetermination in the digital age, and specifically in relation to OLM platforms. It is clear that these platforms are, in many senses, reshaping the future of workers relations. **Thus, integrating workers in the design of employment within these platforms is ever more crucial.** Among other things, there is a call to integrate workers in decisions relating to training, technology, safeguarding employment, outsourcing, health, and working times (Maschke, 2016).

In the United States and Europe, various attempts to create initial structures that will allow workers' participation have begun, however they have always been employee-based and never received support from the platforms. Most importantly, attempts to unionize have commenced worldwide, all of which, as elaborated on earlier, were seen as illegitimate by the platforms since they did not consider said workers employees of the platforms. That is in fact the reason that the creation of codetermination platforms is largely dependent on the legal definition of gig-workers as employees (Johnston and Land-Kazlauskas, 2018).

Another attempt was made in the city of New York, where the well-established Independent Drivers Guild (IDG) was able to gain a "seat at the table" of the *Uber* local management division by creating a works council that takes part in corporate decision making. The *IDG-Uber* works council acts as a consultant to the Uber board, however

the council does not have voting rights on final decisions. Even without voting rights, the IDG was able to improve workers' rights and increase the applications efficiency. For example, a driver can now determine he is willing to work along a specific route, for example when he is heading back to his home, thus allowing Uber to efficiently distribute rides between drivers. This has both improved workers' well-being, and increased Uber's constant supply of rides (Ibid). Thus, this example is a clear sign that codetermination is the way to go.

The IDG-Uber experience can be seen as a step towards codetermination methods used in European countries such as Germany and Austria. In such countries, worker representatives in major corporation take part in corporate board meetings and have an actual impact on board decisions. In many cases, the stance presented by the worker representatives is based on prior deliberation within works councils, where all various employees are represented (Ibid). This method seems to be the most effective in creating work relations that benefit both employees and employers, and thus it should be then main method implemented as part of gig-economy codetermination.

Summary

The gig-economy changed the traditional job market, and created new opportunities and threats to employees and employers alike. On one hand, it is clear that these platforms create new employment opportunities, reduce job market frictions to a minimum, and increase job search efficiency. On the other, these platforms disconnect employees from a clear employer, and allow hiring services without promising basic social benefits to service providers.

The wide range of OL markets makes these threats ever more tangible. All platforms, from those aiming to offer professional services such as Fiverr to those offering low-trained tasks such as Amazon MTurk, have overlooked workers' rights at an equal rate, and the corporations in charge of the platforms have shown time and time again their persistency in not taking responsibility on the service providers. In Israel, this is most common in the taxi industry, due to the prevalence of apps such as Gett and Yango, and in the delivery industry, with apps such as Wolt and Ten-Bis. However, an increasing number of Israelis have also been resorting to professional service apps such as Fiverr.

The main workers' rights infringed by OLM platforms are increased risk, overwork, underpay and lack of legally binding benefits. This is more evident in cases of low income, non-educated individuals, but is prevalent throughout these job markets. Since these employment methods are on the rise, and can be seen as the future of employment, it is crucial to enable legal and corporate structure that will prevent these infringements.

The ability to do so is based on a concurrent creation of a legal status of employment for service providers on OLM platforms, and the integration of these providers in corporate decisions made by the platforms. Only through the parallel promotion of these two issues will it be possible to reduce infringements to workers' right.

From a legal standpoint, there is a lack of definition regarding the employment status of service providers, which enables both the OLM platforms and those ordering the services to avoid providing social benefits. Service providers are not salaried employees since they receive their compensation on a project basis and from different employers. Then again, they are not independent workers or contractors since they are dependent on one source of employment, the OLM platform. In order to prevent this situation, it is crucial to create a clear legal status to these workers, in which they are determined as employees of the OLM platforms and entitled to a specifically defined set of rights.

However, this legal solution cannot stand on its own. The global nature of the gig-economy, and the increasing number of OLM platforms makes it such that regulation by itself will not succeed in promising workers' rights. For that reason, it is imperative to combine the legal solution with a corporate one, integrating workers into decision making processes of OLM platforms. By doing so, workers' rights will be preserved much more efficiently, and the OLM platforms, which are very much based on the services provided by their employees, will become better adjusted to the needs of both sides of the platform - service providers and buyers alike.

Appendix A: OLM Platforms in the Wake of the COVID-19 Pandemic

The COVID-19 global pandemic resulted in an economic shock of a magnitude almost never before seen. Among many other things, the almost global social-distancing policy has impacted the workforce worldwide and greatly altered traditional work arrangements. Firstly, a huge surge in unemployment occurred worldwide – As 2020 ends, in the United States about 25.7 million workers are officially unemployed and in Israel, over 14% of the workforce is currently unemployed (Central Bureau of Statistics, 2020). Secondly, a large number of employers, who previously employed workers in company offices, have requested employees to work from home - The Washington Post has assessed that in New York City, over 75% of employed workers were working from home at the time, in comparison to less than 10% before the pandemic (Bloomberg, 2020).

These developments created a new era for OLM platforms, affecting both short- and long-term supply and demand in these markets. While these platforms do not reveal their data in full, in various interviews held by Forbes, platforms such as *Fiverr*, *Moonlighting*, and *Wolt* admitted they have seen a significant spike in supply and demand due to the crisis (Younger, 2020)¹.

1. <https://www.forbes.com/sites/jonyounger/2020/08/18/freelance-revolution-rising-check-out-the-growth-at-upwork-fiverr-and-freelancercom/?sh=9fe5a392af52>

<https://www.forbes.com/sites/jonyounger/2020/05/01/how-is-covid-19-impacting-freelance-rates-pricing-and-project-flow/?sh=2ae3fa027b71>

From the supply side, the increase of unemployment rates has sent a massive number of workers to find new jobs, at a time in which there is virtually no recruitment for permanent workers (full or part time). Moreover, an increasing number of employees have been furloughed and are therefore looking for a more temporary work arrangement, hoping to resume their permanent position in the future. In both cases, the ability to find temporary, project-based, sources of income through OLM platforms becomes increasingly worthwhile.

From the demand side, companies have needed to scale down their operations, resulting in laying off personnel. At the same time, specific tasks are usually continued and thus there is a need for temporary, part time, employees. In many cases, the need to realign priorities results in the need for employees who do different tasks than in ordinary times. An example of this is the restaurant industry - Due to regulation in various areas worldwide, restaurants have been required to alter their operation to delivery-based only. This required many restaurants to create ad-hoc delivery services, resulting in an urgent need for couriers. As a result, more restaurants began working with OLM courier platforms such as *Wolt* and *Uber Eats*. Similar examples can be found in trained professional job demand as well.

While in the short term it might seem as though the parallel spikes in supply and demand will create a viable occupation solution, if the current situation were to continue for a much longer, supply will overpass demand substantially. CNN Business has assessed that in California, New York, and Texas, every week of strict physical distanc-

ing results in a 10% decrease in company operations, on top of a sudden decrease of over 70% in each state on the first week of the policy. Thus, as time passes, companies continue to scale down their operations, resulting in new unemployed individuals and a decrease in demand for OLM projects. **Off the record, at least two OLM CEO's admitted to Forbes that soon supply will overpass demand.** Due to the ultra-free nature of OLM's, this will result in a **decrease** in project prices, thus resulting in **lower compensation** to OLM workers at a time in which they have very limited employment options.

Leila Chaibi, a member of the European Parliament has publicly addressed this issue and called to **reform workers' rights on OLM platforms** in the wake of the COVID-19 crisis. Chaibi argued that due to the lack of regulation concerning workers' rights on OLM platforms, the lack in demand parallel to an overflow of worker supply will result in the exacerbation of OLM worker exploitation. Chaibi has also addressed the fear that after the crisis is over, the new, downgraded terms will become a standard in these markets. This poses a great threat to OLM workers' rights in the long term (Chaibi, 2020).

Another threat posed by this situation is the future of direct employment. While it is too early to determine whether companies who have begun to employ workers through OLM platform are satisfied with their services, it is safe to assume that at least some will decide to expand their use of these platforms even after the COVID-19 crisis is over. Thus, it is plausible that traditional employment decrease in the wake of a constant increase in demand

for OLM employment. This poses a true threat to workers' rights in traditional labor markets, since companies might offer reduced compensation for traditional employment, due to their ability to find cheaper labor on OL markets. The continuing uncertainty regarding the future, even after physical distancing policies are lifted, might very well discourage employers from hiring full time personnel, and persuade them to continue to use OLM labor for a long period of time.

In conclusion, the COVID-19 crisis has definitely shined a light on the pros and cons of OLM employment. On the one hand, the ability of both employees and employers to find temporary, project-based employment for this time of uncertainty is crucial for reducing the economic impact of COVID-19 on both individuals and corporations. On the other, the lack of regulation on these markets threatens to aggravate the lack of workers' rights in OL markets and might result in a future reduction of workers' right in traditional markets as well. This is another case for the importance of introducing workers' participation in decision making into those markets, and creating regulations and definition for this unique employment structure. Therefore, the COVID-19 crisis is an opportunity to recognize the great benefits of the gig economy, but also to address the ever-growing threats it poses.

Appendix B: About the authors of the Paper



Dr. Roby Nathanson

Dr. Nathanson holds a PhD in Economics specializing in International Trade, from the University of Köln (Germany).

He served as the director of the Histadrut's (Labor Federation) Institute for Economic and Social Research. Since then, he has published a long list of studies on economic, social, and foreign policy issues.

In 1995 Dr. Nathanson was chosen to head Israel's Economic and Social Planning Administration in Times of Peace, in the Prime Minister's Office.

Since 1995, he has headed the Macro Center for Political Economics.

Dr. Nathanson has lectured at the Eitan Berglas School of Economics, Tel-Aviv University and at the Hebrew University School of Business. He currently lectures at the Academic College of Tel Aviv-Yaffo and serves as a senior advisor at the Open University. He also serves as a board member of several public institutions.

He speaks Portuguese, Spanish, German, English, French and Hebrew



Porat Peretz

Porat is the Head of Research at Macro Center and currently a student of the Interdisciplinary Excellency PPE program (Philosophy, Political Science, Economics and Law) in Tel-Aviv University.

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As part of his work, Porat is actively involved in researches related to cost-benefit analysis of economic reforms, improving the socio-economic status of different sectors in the Israeli society, as well as an analysis of economic aspects of the Israeli-Palestinian conflict.



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Michael is head of the unit 'Codetermination web portal' (www.mitbestimmung.de) and coordinates the scenario activities at the Institute for Codetermination and Corporate Governance (I.M.U.) of the Hans-Böckler-Stiftung. Previously, he worked as a researcher at the European Trade Union Institute in Brussels on European worker participation issues.

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The Macro Center for Political Economics

The Macro Center for Political Economics is a unique socio-economic think tank located in Tel-Aviv, Israel. The Center conducts researches on different topics that combining social and economic dimensions. Among other, the Center focuses its research on Israeli economic reforms in the era of globalization: analysis of state budgets, socio-economic aspects of the Israeli-Palestinian conflict, voluntary national service: a cost-benefit analysis, the status of women in Israel, the identity of Israeli youth, social security and the socioeconomic standing of different sectors in the Israeli population. The Center also assesses and forms recommendations about different policy issues, such as improving labor productivity, the future of work, the rise of alternative forms of employment, etc. Accordingly, the center collaborates with the leading researchers in the area of economics, political science, sociology and psychology in Israel and internationally.

Alongside the studies conducted, the Center promotes a discourse on a broad range of issues that it addresses by creating platforms for discussion which are open to the general public, and by organizing conferences and seminars. These conferences and seminars include the participation of leading figures from academia, as well as decision-makers and experts from Israel and abroad.

The Center cooperates with a diverse range of partners, including the Hans Böckler Stiftung Foundation, the Friedrich-Ebert-Stiftung Israel Foundation, FEPS - Foundation for European Progressive Studies, European Union institutions, Israel's National Insurance Institute, Lahav - the umbrella organization for the self-employed and businesses in Israel, the Histadrut (Labor Federation), the Ministry of Economy, etc.