

TOPIC 5. Legal Issues in the SHE and NFE European environment



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Introduction

What is this Topic about?

This Topic is about the legal framework related with the exploitation of Sharing Economy Online platforms, which to a large extent is still in the making across the EU and worldwide

Why is this Topic interesting?

The regulation of Sharing Economy platforms has implications for crowd workers, especially regarding their rights and obligations and their social security.

What are you going to learn here?

You will learn about how to deal with the legal issues related with Sharing Economy and also be aware about the issues which are still open to be regulated.

Added Value for

- **Unemployed persons**

Unemployed persons who are planning to be active in the Sharing Economy Platforms must know all the legal issues related with social protection, taxes, etc,...in order to fully fill the regulation as well as being as much protected as possible

- **Entrepreneurs**

Entrepreneurs who want to work with crowd works or simply to develop a new business model must know how to deal with the legal issues affecting their potential “employees”

- **Human Resources Staff**

Human Resources who want their companies to work with crowd works or simply to develop a new business model must know how to deal with the legal issues affecting their potential “employees”

What will you able to do after work on this Topic?

Through this Topic you will be able to deal with the legal issues related with Sharing Economy and also be aware about the issues which are still open to be regulated.

What are you going to find here?

- ❖ **Text Materials; PDF**
- ❖ **Presentation; ppt.**
- ❖ **Practical Activities**

Theoretical Background

The world of work has witnessed rapid changes over the past years, with new forms of work emerging and challenging present work organisation and the ways work is carried out. The 'collaborative economy', 'gig-economy' or the 'sharing economy' are only a few umbrella terms currently circulating in the scientific and non-scientific literature to describe a new form of work organisation, where work or services are being mediated through online platforms. There is no clear terminology; 'crowdsourcing', 'crowdwork', 'cloudsourcing', 'co-creation' and 'prosumption' are a few more of the terms currently in use to describe it. Existing in many different sectors and for a variety of services – space-bound and space-independent alike – this way of brokering work, services or tasks between outsourcers or employers and workers or employees increasingly impacts the world of work. The online platforms mediating the work or workers can be described as new forms of labour market intermediaries. Work mediated through such online talent platforms may be paid or unpaid and directed either to consumers or businesses. In recent years, online talent platforms have increased in economic significance and attracted widespread attention from policy-makers, media and industry. At the centre of these developments are continuous improvements of information and communication technologies, especially the widespread availability of broadband connections and spread of smartphone usage. Through the integrating effects of information and communication technologies, outsourcing and relocation of labour is facilitated, and for digitizable goods the information space on the Internet becomes a new place of production. These new dynamics of work do not only affect digitizable goods, such as software or products to be created (graphics, websites, videos, etc.), but also affect services in accommodation, transportation, food delivery or handicraft and thus the mediation of manpower which is space-bound and cannot solely be performed over the Internet. Here, the Internet seizes the role of modern work agencies, connecting customers and service providers and skipping other intermediaries. Especially the space-bound services in accommodation, transportation and household work that are facilitated by (mobile) internet have soared since around 2010 and contributed substantially to revenues and commerce.

Chances

For the European economy, these new labour market intermediaries convey the promise of increased labour market participation and economic performance of specific regions and the European Union overall. Online talent platforms provide employers or customers with access to a large pool of labour, qualifications and creativity but also the opportunity to profit from higher flexibility, often at lower costs without long-term commitment to the workforce. Similar to outsourcing, this form of labour mediation allows companies to externalise costs of direct employment. In theory, this mode of work offers freelancers new job opportunities, the possibility to be one's own boss and to flexibly arrange working time, including when and how long to work, which jobs to accept and which to decline. In addition, crowdsourcing may offer opportunities to cooperatively solve problems. The European Commission highlights the potential increase in the European markets competitiveness and growth, the consumers' access to goods and services and especially acknowledges new and flexible working opportunities. However, due to a lack of comprehensive cross-national quantitative or qualitative data, the actual impact of online talent platforms on the transition from unemployment to work and on labour market participation remain uncertain.

Risks

In a recent policy brief, the OECD highlights: 'As workers in the "platform economy" are more likely to have multiple jobs and income sources, the role and meaning of traditional labour market institutions are being challenged'. Research shows that the impact the clients of online talent platforms have on the working and private lives of workers – i.e. in respect to working time or availability or to health and safety issues – is tremendous. Workers are formally self-employed, however, clauses and terms and conditions may be contradictory to existing regulations or are not reflecting reality. Often work or employment via online platforms is described as temporary and short-term and it demands high levels of availability during project acquisition and renders standard working time regimes insignificant. This is supported by the tools online

platforms provide for controlling workers or providers, for instance through online surveillance of keystrokes or screenshots of work progress. One crucial aspect certainly is online reputation through platforms' rating systems and the rules for workers' profiles. Regulation of employment status remains uncertain, and while compensation schemes, trust building systems and features for voting and rating contribute to classifying workers as employed rather than self-employed, work for multiple online platforms and the use of own equipment rather lean towards self-employment. Recent court-cases in the UK have challenged the designation 'independent contractors', ruling that they should be classified as 'workers' but not as 'employees'¹.

Elsewhere, the risk of a commodification and of rising standardisation and modularisation of work as well as the potential undermining of existing principles and rights are stressed. Emerging business models may not fit within the respective legislative context and ascribing which regulatory context and which standards to apply proves difficult. Differences in regulation may create uncertainty and market fragmentation.

As already mentioned, a recent study on the gig-economy suggests that only few people are able to make a living by working exclusively over crowdworking platforms. High competition, uncertainty about follow-up jobs and a steady income, social security issues and high time pressure are serious disincentives for working in the gig-economy. The share among workers offering location-based services, such as transportation, may be higher as it presents a more reliable income source.

Keep in mind:

- Workers are not employed by platforms, but are self-employed
- Potentially low payment, but this depends on the respective country's wage level
- Workers have to pay separately for social security
- Long(er) stretches of no or little work
- Tools and equipment are provided by the worker (use your own car), there is no formal employer

¹These cases have concerned workers for Uber, City Sprint, Deliveroo and Pimlico Plumbers.

- Workplace accidents not covered
- Many regulations on workplace safety, minimum wage, working hours, etc. do not apply ->extralegal realm (but this may change soon)
- High competition (from Asian countries) and potentially high education levels required
- Dependent on online reputation and rating systems
- ...

Creative work is often presented as a model of the project-based and freelance economy and a field of labour in which great importance is attributed to self-expression, authenticity and reputation. As a consequence, flexible and temporary cooperation often go hand in hand with relatively high levels of autonomy at work. By definition, creative work is not amenable to direct control by supervisors or to control through organisational and technical structures. Workers' discretion is required so that companies may benefit from workers' ingenuity and creativity. Generally, within an internalised employment relationship the indeterminacy of labour may be overcome also by indirect forms of control aiming at eliciting workers' effort through target setting, paying bonuses, promising employment stability and advancement, addressing normative orientations, influencing workers' beliefs, norms and values or creating corporate identities. Creative workers, such as musicians, in fact 'self-manage their own creativity' (within the framework set by production and business managers who control the access to resources and to the market. On top, creative work seems to be particularly amenable to normative control because of the special relationship to work: The attachment to the content of work is usually rather high as it provides opportunities for self-expression and the products 'may still be experienced as in some sense owned'. The desire for public recognition and the search for opportunities to build up a personal reputation are part of workers' perspectives and thus enter into the bargaining process with the employer.

However, in many creative industries, the internalised employment relationship seems to be the exception rather than the rule as many workers are self-employed. Project-based and freelance work are typical of film, graphic design, architecture, music, advertisement and other creative sectors. Given the widespread absence of an

employment contract one might assume that the issue of managerial control is not relevant. For several reasons, however, we argue otherwise. First, self-employment may include working for only one customer at least for a certain period of time. This blurs the boundaries between freelancing and dependent employment. Second, even in more independent freelancing there is a problem of 'indeterminacy of outcome'. The customers or cooperation partners want to ensure smooth cooperation or the timely delivery and the appropriateness of the contribution or product they ordered. In the creative industries, reputation is of particular importance for being able to continuously find work on a project basis. As a consequence, workers' behaviour is strongly influenced by their concerns for their reputation and therefore reputation is at the core of control strategies.

Creative occupations both use and develop new technologies in particular in the area of Information technology which has profoundly changed creative occupations already some two decades ago turning the computer into a universal work tool. Major new fields of work have emerged for creative occupations due to the spread of broadband internet access, the digitalisation of content and multimedia applications. In particular, transitions from 'old' to 'new' media or the use of video for communication and documentation have changed work in the relevant occupational fields. What is more, the internet offers and creates a "global information space" which provides easy access to information and allows new ways of distributed working. ICTs enable outsourcing and relocation, facilitate cooperation over long distance and allow the digital delivery of immaterial products helping to overcome restrictions of transport giving room for new business models such as e-commerce and crowdworking platforms.

Crowdsourcing means outsourcing, usually over an internet platform, of projects or tasks to an undefined group of potential contractors. The number of crowdsourcing platforms, posted tasks as well as people looking for jobs is steadily increasing. Workers are formally self-employed, having no formal work contract, getting no regular wages and working with their own means of production and bear economic risk. As freelancing is wide-spread in many creative occupations, addressing an undefined and usually spatially dispersed group seems to be the important new

feature. Obviously, the internet which allows for accessing a large number of recipients and the services of the intermediary platforms are the key components of crowdsourcing. In addition, the call for tender, the project handling and the product delivery take place online. Companies and other clients benefit from increased flexibility and lower cost.

There is a triangular relationship between the worker, the intermediary (the platform) and the client. In principle, this is not new because also agency work constitutes a triangular relationship and service work is often characterised by the influence of customers who also play a part in the control over workers. While crowdsourcing resembles a multi-employer constellation or triangularised employment relationship, the platforms deny the role of employer. And in contrast to service work in general, the client is often a principal rather than a customer.

To encourage clients to outsource work to the crowd and thus to waive possibilities of employees' supervision and control the platforms offer tools for handling these higher levels of uncertainty. Interestingly, if creative work is being paid per hour and/or creative workers are being employed more or less continuously, not only the issue of the indeterminacy of outcomes but also that of the indeterminacy of labour applies. Crowdsourcing platforms provide various tools for managerial control through online surveillance of keystrokes or screenshots of work progress. These forms of direct control, however, do not seem to be appropriate for the kind of work and turn out to be time consuming for the client. As in creative work in general, indirect form of control can be assumed to be much more relevant than online-surveillance. One crucial aspect certainly is online-reputation through platforms' rating systems and the rules for workers' profiles. Open source communities are good examples of how gaining reputation both stimulates effort and controls behaviour in an environment where work is not motivated by income.

More research is required into the nature of managerial control systems in crowdsourcing taking into account the design of the crowdsourcing platforms and the strategies of platform organisers: compensation schemes, trust building systems and features for voting, rating and commenting. Temporal aspects play a particularly important role in this. First, the importance of the online-reputation impacts on the

time behaviour of workers as response times and timely delivery are key criteria against which the workers are rated by clients. Second, platforms themselves monitor availability and response times and therefore control workers behaviour in this respect. The platforms' influence on temporal aspects of crowdwork is supplemented by the clients' efforts to reduce the indeterminacy of labour or outcome through setting goals and milestones or demanding interim results. Temporalities of crowdworking are thus crucial with regard to management and control.

On top, temporalities are also key aspects of the quality of work and life of creative workers. Not only crowdworkers but self-employed workers in general face particular temporal demands and time restrictions. 'Portfolio work', for example, i.e. working on different pieces of work for several different clients or employers, leads to pressurised work and high work intensity and work-life balance suffers as a result. The developments towards project-based work and the pervasive use of ICT, too, are often accompanied by a blurring of boundaries between paid work and other spheres of life and they tend to change the perception of where and when it is normal to work. The 'high speed society' seems to become reality as, due to digital communication tools, the speed of work and life further accelerates. In creative occupations the availability of workers via communication technology may lead to 'client colonisation' in the sense of an intrusion into their privacy.

Coverage by EU institutions

In recent years, the sharing economy in its various variants has not only become a topic for social science research, but also for EU institutions. The EU commission in 2016 issued a communication sketching a European Agenda for the Collaborative Economy. This was accompanied by a separate document compiling supporting analysis on the current state of the Collaborative Economy in Europe. The Commission also instigated a study on the current magnitude and impact of the Collaborative Economy in the EU countries which was carried out by a consulting firm; results were also published in 2016. Also, there was a Eurobarometer survey on the use of collaborative platforms published 2016. The EU parliament in 2017 reacted to the European Agenda for the Collaborative Economy with a resolution. The text calls for EU

member states, “in collaboration with social partners and other relevant stakeholders, to assess, in a proactive way...the need to modernise existing legislation, including social security systems, so as to stay abreast of technological developments while ensuring workers’ protection.” The text also notes “that all workers in the collaborative economy are either employed or self-employed based on the primacy of facts and must be classified accordingly.” Before, the European Parliament had already provided an in-depth analysis on the situation of workers in the Collaborative Economy, a literature review prepared by the European Parliament’s Policy Department A on Economic and Scientific Policy, provides a background and main findings of relevant papers on the situation of workers in the collaborative economy.

The European Agenda for the Collaborative Economy provides rather general recommendations for the member states on how to deal with regulation issues the Collaborative Economy raises, like liability, protection of users, the distinction between traders and consumers or the employment status of crowdworkers. E.g., it is suggested that the question whether collaborative platforms are to be regarded as offering commercial services should be judged on a case-by-case basis. Regarding the employment status of crowdworkers, the existence of a subordination link, the nature of work (not marginal and accessory) and the presence of a remuneration are mentioned as criteria for an employment relationship. The European Commission also issued a two-page factsheet on the Collaborative Economy which compiles the main results of the commissioned studies as well as the agenda.

Legal Framework in the partners' countries

While new forms of employment and the new labour market intermediaries have the possibility to positively impact the economic situation of individuals and the overall economy, these developments also pose new challenges to the labour market, to tax and social security systems and to workers' rights and social protection, their employment situation and their income. As crowdsourcing resembles a multi-employer constellation or triangularised employment relationship, classification of employer and employee is complex and the platforms frequently deny their role of an employer. In Europe over the past years, many new regulations have emerged; at the same time, some principal issues about regulating Sharing Economy platforms are still largely unresolved.

First of all, it can be difficult to determine which country's laws should apply to a platform, its clients or workers when it is a frequent occurrence that a platform is physically based in one country, with a registered office in another and an internet service provider in a third.

Furthermore, even if the attribution of a platform to one particular country and its laws can be established, it can prove puzzling to determine which regulations should apply and which body should be responsible for inspecting the platform. This is because online platforms have no recognised legal status. Should they be treated like telephone directory services, advertising agencies, or markets? Or should they be regulated according to the rules within the service provided, e.g. should platforms providing taxi services be regulated in the same way as other taxi companies? Another alternative would be to regard online platforms supplying labour as temporary work agencies or private employment agencies. Bodies such as these are covered by ILO conventions and a variety of different national regulations and European Directives but so far there have been no clear rulings that this status should apply. Until this issue is decisively addressed, online platforms will remain beyond the scope of many of the regulatory requirements that apply to other employers in the territories in which their workers are based.

Another major issue related to crowdwork is the employment status of the workers. Should they be regarded as self-employed? As employees of the client? Or employees of some other intermediary? Regarding the relevant parameters for deliberating this question, there is considerable variation between platforms. There are some cases where workers might be deemed to be genuinely self-employed if national rules were applied. However, there are many common practices which might contradict such a view. In some cases, rates of pay are set by the platform, which may also carry out estimates of how long a task should take, suggesting that workers have limited autonomy. Furthermore, platforms often attach conditions such as requirements for all financial transactions to be processed via the site, and satisfaction clauses which legitimate the rejection of unsatisfactory work without justification. Such conditions suggest a level of control that goes beyond the mere provision of an introduction between two independent parties acting autonomously (as the self-employed status would require). On the other hand, a number of conditions apply that make it difficult to regard crowdworkers as employees, including the fact that they may work for multiple platforms and supply their own equipment. As employment status is an important gateway to other rights, clear rulings on employment status would be important for determining the availability of other rights in specific national contexts.

While as of now, there is no EU legislation on online platforms, in recent years there have been numerous initiatives on the national level to legally tackle the challenges posed by the emergence of online platforms offering various kinds of service. This is also reflected in the partners' country-specific templates that show differing national approaches. While in **Greece**, a general law on the Sharing Economy was prepared to be discussed in Parliament at the time of research, legal reactions in other countries have been more branch-specific with courts sometimes more active than legislators: In **Bulgaria**, there has been a verdict against Uber aimed at banning it from the transportation market which however doesn't seem to have been fully effective as Uber is still present on the Bulgarian market; moreover, there was a legal initiative against regular transport companies with expired license using platforms for shared transport as a means of staying in business. In Spain, there too has been a verdict banning Uber that is still awaiting further processing on the European level. Similar

jurisdiction might be underway for the similar platform BlaBlaCar. Regarding Airbnb, differing local legislation applies, with cities like Madrid and Barcelona in the process of establishing a law that clearly spells out the conditions under which Airbnb may operate in the respective city. A similar process has been going on in the capital of **Austria**, Vienna. In **Slovenia**, there have been initiatives against sharing transport platforms regarding health insurance and against potential black economy elements in neighbour help initiatives. Details on how the mentioned legal initiatives deal with the general issues sketched above are not available from the templates.

Legal Steps to be Self-Employed

Legal Steps to become Self-Employed are different depending on the EU Country. For specific information, please, refer to the details given in Spanish, Bulgarian, Slovenian, Greek and Austrian versions.

At EU level, we can highlight that the diversity of the self-employed has attracted diverse forms of regulation, according to Eurofund². EU employment law addresses the self-employed mainly in narrowly specific areas such as free movement, equal treatment, and in the European Employment Strategy. The entrepreneurship pillar of the European Employment Strategy aims to increase the numbers of self-employed workers in the EU, particularly by encouraging the Member States to reduce tax and social security obstacles to this form of economic activity.

Article 53 of the Treaty on the Functioning of the European Union (TFEU) (previously Article 47 of the EC Treaty) provides for the free movement of the self-employed, stating:

In order to make it easier for persons to take up and pursue activities as self-employed persons, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications and for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons.

The European Court of Justice (ECJ) reinforced these Treaty provisions by defining worker as all persons engaged in economic activity. This definition ensures that all Treaty provisions covering the free movement of workers also apply to self-employed persons.

A number of directives have been adopted to promote the mutual recognition of diverse national systems of qualification and their regulation, and the regulation of particular professional qualifications (lawyers, doctors, architects). Council Directive 89/48/EEC aimed to establish a general system for the recognition of higher education

² <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/self-employed-person>

diplomas awarded on completion of professional education and training of at least three years' duration. Despite these legal moves, free movement of self-employed persons, particularly self-employed professionals, has remained relatively low.

The directive on the application of the principle of equal treatment between women and men engaged in an activity in a self-employed capacity, and on the protection of self-employed women during pregnancy and maternity is significant. Political agreement was also reached in the revision of Directive 86/613/EEC in November 2009 allowing self-employed female workers to have the same access to maternity leave as salaried workers and assisting spouses to have access to the same social protection systems as formally self-employed workers.

Equal treatment of self-employed persons extends beyond gender equality. Council Directive 2000/43, establishing the principle of equal treatment for all, irrespective of racial or ethnic origin, applies to 'all persons... in relation to: (a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion'. Council Directive 2000/78, which establishes a general framework for equal treatment in employment and occupation, contains an identical provision.

Study cases

<http://www.independent.co.uk/travel/news-and-advice/uber-ban-countries-where-world-taxi-app-europe-taxi-us-states-china-asia-legal-a7707436.html>

<https://www.airbnb.at/help/article/376/what-legal-and-regulatory-issues-should-i-consider-before-hosting-on-airbnb>

https://elpais.com/economia/2017/12/01/actualidad/1512138487_606849.html

https://elpais.com/economia/2017/12/16/actualidad/1513450698_104616.html

Videos

Deliveroo Deception - Misleading Contracts & Worker Rights

<https://www.youtube.com/watch?v=AAVylgJemvA>

Deliveroo Experiences. Spain

http://www.lasexta.com/programas/el-intermedio/gonzo/laura-denuncia-la-precariedad-de-los-repartidores-de-deliveroo-si-tienes-un-accidente-se-desentienden_201706275952bedc0cf26ceeda38955b.htm

Complementary readings

Huws, U & S. Joyce, 2016 'The economic and social situation of crowd workers and their legal status in Europe', International Labor Brief.

http://ec.europa.eu/growth/single-market/services/collaborative-economy_en

<https://www.euractiv.com/sections/sharing-economy/>

<https://epthinktank.eu/2017/05/12/the-collaborative-economy-whats-at-stake/>



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