

EESC PUBLIC HEARING

« THE CHANGING NATURE OF EMPLOYMENT RELATIONSHIPS, THE SHARING ECONOMY, ZERO-HOUR CONTRACTS AND THE LIVING WAGE ».

Thursday, 31th of March 2016
European Economic and Social Committee, Brussels

*In the last decade loads of transformations have occurred in the European and domestic labour markets leading to emerging **New Forms of Employment (NFE)**. As consequences of **increasing digitalization and flexibility in working patterns, new forms of economy** such as the **sharing (or collaborative) economy** set out the ground for surpassing the traditional and standard conceptions of employment, workers status and law. It raises a brand **new array of challenges for regulators** in multiple areas, namely in particular **social protection, social dialogue, legal status, type of contracts, taxation, living wages, and collective bargaining**. The main idea(l) behind all this is to ensure “**just and fair working conditions for everyone**” (Esther Lynch, ETUC). These changes have two-side aspects whether regarding its positive or negative potential outcomes. First, it is obvious that it can be seen as **opportunities** in terms of **job creation, driving growth through technological¹ and (social) innovation**. Yet, for some, these remaining unregulated sectors can be considered as a **threat to worker’s rights**. In any case, there is a need of a **balanced approach** to get the best benefits of this labour transitional trend. To debate about all these mentioned issues, the **EESC** organized a public hearing with speakers representing a **quadripartite panel of employers, workers, policymakers and civil society stakeholders**.*

PROGRAMME AND SPEAKERS

09h00: Welcome and opening session

- **Wolfgang GREIF**, Section on Employment, Social Affairs and Citizenship, EESC

09h15 Key note speaker

- **Claire COURTEILLE-MULDER**, ILO, Brussels office

09h30 | Panel 1 and Debate - *New forms of employment relationships: benefits v threats for workers, consumers and businesses*

Moderator: *Irini PARI (EESC)*

¹ See: <http://www.euractiv.com/section/innovation-industry/news/europe-looks-for-digital-growth-recipe-to-revive-ailing-economy/>

- **Steve GARELICK**, Former Uber driver
- **Amaya APESTEGUÍA**, Consumers and Users Organisation (OCU), Spain
- **Marco TORREGROSSA**, European Forum of Independent Professionals (EFIP)
- **Marianna GEORGALLIS**, European Youth Forum
- **Maxime CERRUTI**, BusinessEurope
- **Esther LYNCH**, ETUC

11h00 | Panel 2 and Debate - Mind the regulatory and legislative gaps

Moderator: Kathleen Walker Shaw (EESC)

- **Siôn SIMON**, MEP (by video)
- **Tony ROYLE**, The York Management School, University of York
- **Nicholas COSTELLO**, European Commission
- **Gerrit VAN DE MOSSELAER**, Belgian social security department

12h30 | Concluding remarks

- **Kathleen WALKER SHAW**, rapporteur of the EESC opinion ([SOC/533](#))

NINE NEW FORMS OF EMPLOYMENT (NFE)

Development of new Information and Communication Technologies is the main cause of the “flood” of **non standard forms of employment** since the year 2000. In order to put words on them, the EU agency **Eurofound**² conducted a research based on 66 individual case studies from across Europe. The cases studies either deal with a specific employer-worker relationship or comprise a policy analysis (legislation or collective agreement, public support instrument). In a form of a report³, the EU agency identified at least **nine forms of employment** that are new or have become increasingly important in Europe:

- Employee sharing
- Job sharing
- Interim management
- Casual work
- ICT-based mobile work
- Voucher-based work
- Portfolio work
- Crowd employment
- Collaborative employment

² European Foundation for the Improvement of Living and Working Conditions. <http://www.eurofound.europa.eu/>

³ <http://www.eurofound.europa.eu/new-forms-of-employment>

Most of them interwoven in many aspects and face the same challenges. As Eurofound rightly pointed it out, *“although most have the potential to benefit employers and employees equally, in a few instances concerns have been raised about their impact on working conditions and the labour market”*. The report concludes with recommendations about the need to raise awareness of potential problems and establish **safety nets** for workers.

Not yet mentioned here, **zero-hour contracts**⁴ were also a key issue during the public hearing. Their use has increased over the past 10 years in Member States such as Ireland, Italy, the Netherlands, Sweden and the UK. They are commonly used in retail, fast food restaurants and cinemas, and other sectors that experience fluctuations in demand, such as care work or tourism. **Low-skilled workers in low-paid jobs** are the most likely to be offered zero-hours contracts⁵. According to Siôn Simon, one million jobs have been created under this contract since 2008. Likewise the other NFE, its impact should be assessed.

CROWDWORK AND THE SHARING ECONOMY

We hear a lot about sharing or collaborative economy, whereas the notion of **“crowdwork”** or **“crowd sourced work”** is less common (at least in Europe or in non English-speaking countries). Yet it is definitely more relevant in the context of work that uses **digital platforms to connect the clients (users) to the workers** (usually, service providers). Indeed, **Uber or Airbnb has little to do with collaboration or sharing** while they are reaping all the profits they make, leaving low wages for their unprotected workers. Crowdwork is **an ICT-based form of organizing the outsourcing of tasks to a large pool of workers**. Regulating this sector is at stake in order to limit **“agressive tax avoidance”** according to Steve Garelick, former Uber driver. Another challenge here is ensuring digital platform workers have rights. The assumption that was brought up during the public hearing was that these platforms are **employers**, and their workers aren't **“self-employed”**⁶ at all.

Digital platforms claim to be *“digital agents, connecting customers and independent contractors”*. That's an **absolute denial of any worker status**. Some will insist on **direct contractual relationships** between crowdsourcer clients and crowdworkers, whereas others will opt for **tripartite contractual structures**, akin to traditional models of agency work and labour outsourcing⁷. The **level of control** they exercise on workers is really significant, that's why it would be fairer to adopt a **“functional concept of the employer”**⁸ which avoids shortcomings due to the usual contracts-based approach. Indeed, it is rarely easy to establish whether the client or the platforms provide the contract with the worker⁹. This latter conception make it really hard to regulate the sector, that's why it would be a great step forward to admit digital platforms are actual employers.

⁴ <http://www.labourlawresearch.net/papers/zero-hours-contract-regulating-casual-work-or-legitimizing-precarity>

⁵ <http://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/zero-hours-contracts>

⁶ Sometimes called *“bogus self-employed”*.

⁷ Cf. A Kittur et al., 'The Future of Crowd Work', paper presented at 16th ACM Conference on Computer Supported Cooperative Work, www.lri.fr/~mbi/ENS/CSCW/2012/papers/Kittur-CSCW13.pdf; J M Leimeister et al., 'Crowdwork – digitale Wertschöpfung in der Wolke', in W Brenner and T Hess (eds), *Wirtschaftsinformatik in Wissenschaft und Praxis* (Springer Verlag 2014) pp.51-64.

⁸ See a great paper on this approach: Jeremias Prassl and Martin Risak 'Uber, TaskRabbit & Co: Platforms as employers? Rethinking the legal analysis of crowdwork' (2016). <http://www.labourlawresearch.net/papers/uber-taskrabbit-co-platforms-employers-rethinking-legal-analysis-crowdwork>

⁹ *Ibid*, p.15.

As such, an employer is: “*the entity, or combination of entities, playing a decisive role in the exercise of relational employing functions, and regulated or controlled as such in each particular domain of employment law*”¹⁰. There are **5 main functions of an employer**, and in every case, it applies to Uber:

1. **Inception and termination of the employment relationship** (selection and dismissal);
2. **receiving labour and its fruits;**
3. **providing work and pay;**
4. **managing the enterprise-internal market** (i.e. control over all factors of production, and the power to require both how and what is to be done);
5. **managing the enterprise-external market** (i.e. undertaking economic activity in return for potential profit, whilst also being exposed to any losses)¹¹.

Now that the hierarchical link of subordination is well established, another aspect has to be mentioned: these platforms urge for **customer and workers flexibility**.

As an employer, digital platforms **have to meet several obligations**, which is likewise **EESC’s opinion**¹². If they were considered as employers, it would mean they should give up on **low wage-rates** (and provide at least minimum wage), it would also remediate to **economic and legal insecurity** (massive imbalance of bargaining power), and provide protection against **unfair dismissal**. In few words, it would prevent their workers from becoming “**digital slaves**”¹³ by obliging the platform owners with law obligations. An intervention coming from the “crowd” of the hearing named the **counter-example** of the company Smart which gives its employee a legal status, and therefore social security and other rights. Whilst Uber is taking a commission **around 25%** on every ride, in comparison Smart only takes a commission of 6.5%.

THE ROLE OF MEMBER STATES AND EUROPE

Regulation on this ground is **essentially a member states duty**. Because of a lack of European integration in the area of social policies, there’s little EU institutions can do to intervene in it. Some Member States passed new regulations on **self-employment**. In Europe: Italy disclosed a new status called “para-subordinated”; Germany, and Austria called it “self-employment”. Beyond our continental borders is the **forerunner example of New Zealand** which recently passed a law on zero-hour contracts. The hearing speakers stated that it could be very inspiring for us. As the speaker from the Belgian social security department Gerrit Van de Mosselaer pointed it out, it is not an easy task to adapt or create new categories for these new types of worker.

¹⁰ *Ibid*, p.26

¹¹ *Ibid*, pp.17-21

¹² <http://www.eesc.europa.eu/?i=portal.en.soc-opinions.37881>

¹³ M Rosenblum, ‘The Digital Slave – That would be You’ (*Huffingtonpost* 5 June 2013) http://www.huffingtonpost.com/michael-rosenblum/the-digital-slave-that-wo_b_3222785.html; Also see: <http://www.socialistsanddemocrats.eu/fr/newsroom/labour-meps-demand-eu-action-over-modern-slavery-conditions-agency-workers>

Next Slovak and current Dutch Council presidency have asked for the European Union's opinion though. Many digital platforms **operate in various countries**, and sometimes both crowdworkers and crowdsourcers cross borders (e.g. Blablacar). So even if platform headquarters are based in a specific country, only the country's law regulation would probably apply where the work is located, and it gets even more complicated when considering crossing borders. Therefore, it would be better to **cooperate** among European countries in order to put **harmonized legislations** in place to reduce the complex side effects for digital platforms to adapt to every single domestic rule.

There is small room for EU intervention according to Nicholas Costello (DG EMPL), "*it's not an issue EU can do something about*". He also said the employment sector is **changing so fast** that if something was done now, as soon as the legislation comes out, it would be already too late and obsolete. Still, the aspirations brought by the outlines of a genuine **European social pillar** tend to give the EU institutions the ability to involve themselves in social systems¹⁴. As for instance, a **minimum European protection** could be enforced. Also, it can give **guidance** for EU Member States to regulate the sectors in a coherent way.

EU has a say then, and it has been proved when the institutions started holding discussions on **collaborative economy**. The next debate on this subject will be starting in **June 2016**. Furthermore, the EU already enforced **regulations in the social policy area** such as those 3 directives on:

- Part-time work¹⁵
- Fixed-term work¹⁶
- Agency work¹⁷

The European treaties invoke "**equal treatment**" in the single European market, so there should be something done to ensure the effective implementation of this principle.

ARE TEMPORARY AND PART-TIME WORKS VOLUNTEERLY CHOSEN?

Their increasing number, in time of crisis and flexibly injunctions from employer lobbies, raise concerns about labour insecurity and the enlargement of the "poor workers" category. 1/5 of workers are cumulating many jobs in Germany. Also, the share of population in the working age of the 15-24 age group in the EU-28 who indicated to have a **part-time job as their main job has increased steadily, from 16.7% in 2004 to 19.6% in 2014**¹⁸. Should we worry for that, or should we be confident in the way that it also might be a growing wish in society?

¹⁴ http://ec.europa.eu/priorities/deeper-and-fairer-economic-and-monetary-union/towards-european-pillar-social-rights_en

¹⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Ac10416>

¹⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Ac10822>

¹⁷ <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008L0104>

¹⁸ Cf. Eurostat, 2014 [http://ec.europa.eu/eurostat/statistics-explained/index.php/Employment_statistics/fr#Contrats .C3.A0_temps_partiel_et .C3.A0_dur.C3.A9e_d.C3.A9termin.C3.A9e](http://ec.europa.eu/eurostat/statistics-explained/index.php/Employment_statistics/fr#Contrats_.C3.A0_temps_partiel_et_.C3.A0_dur.C3.A9e_d.C3.A9termin.C3.A9e)

According to Marco Torregrossa from the European Forum of Independent Professionals (EFIP), these NFE are useful because not everyone prefers permanent employment. He also declared that self-employment didn't come with the crisis, and that a salient proportion consist in **high-qualified jobs**. Part-time workers find it very convenient when they prefer to have free time for other things (child caring, hobbies, volunteering etc.) Also, thanks to their flexibility, they are types of contracts that are quite **suitable for students**. But for young people who aren't studying, if not having any other life projects in mind, they might be put in **severe insecure living conditions**, and they might not easily get out of it.

The issue of **earning decent living wages** comes next. In addition, contributing in order to benefit from social security, while working at different places, is clearly not facilitated. **The issue of dependency** was barely addressed during the hearing. In which extent crowdworkers are dependant to these platforms for (needed) additional earning? Or zero-hour contracts workers for not finding other steadier jobs to make a living? Indeed, whereas for some it is very beneficial additional incomes, for others it is only a **necessity to survive**, leaving them in tremendous insecure situations.

IMPACT IN THE LONG-TERM

Commenting on the current situation of workers is of major importance. But we do not have to forget to take a more **prospective look on the long-term impact** of these new forms of employment. On-call work, zero-hour contracts, and agency work are definitely **less steady** for those who practice it. This instability has an impact on **maternity, access to property** etc. which are often postponed. The average years of those have already increased as a consequence of these changes. Extreme flexibility also is a **cause of stress and disorder for households**, then, neither is it good for **health**. It has already been proved that young people have the **highest risk of social exclusion and poverty**. Therefore they might be even more exposed to negative impacts. At the same time, it impedes them to contribute in order to benefit from social systems, for instance to contribute for pensions.

So, whereas this new forms of work creates positive outcomes for our societies or disrupt it, **is up to policymakers**. In the area of labour, it is obviously **one of the biggest challenges** today, and it needs to be addressed as soon as possible, whether at the European or national level, or both.

FURTHER DOCUMENTATION ON THIS ISSUE

EESC's website pages related to the event:

- <http://www.eesc.europa.eu/?i=portal.fr.press-releases.38853>
- <http://www.eesc.europa.eu/?i=portal.en.events-and-activities-changing-nature-employment-relationship-ag>

Powerpoint presentation of Amaya Apestegua from the Consumers and Users Organisation:

- <http://fr.slideshare.net/AmayaApestegua/eesceu-public-hearing-about-new-forms-of-employment-consumers-challenges-in-the-sharing-economy-31-march-2016-ocu>

ILO's website page on non-standard forms of employment

- <http://www.ilo.org/global/topics/employment-security/non-standard-employment/lang--en/index.htm>

Periodical articles

ILO/ELLN, Regulating the employment relationship in Europe: A guide to Recommendation No. 198 (ILO 2013) 28 et seq.

http://www.ilo.org/ifpdial/information-resources/publications/WCMS_209280/lang--en/index.htm

J PRASSL, M RISAK 'Uber, TaskRabbit & Co: Platforms as employers? Rethinking the legal analysis of crowdwork' (2016). <http://www.labourlawresearch.net/papers/uber-taskrabbit-co-platforms-employers-rethinking-legal-analysis-crowdwork>

A ADAMS, M FREEDLAND, and J PRASSL, 'The "Zero-Hours Contract": Regulating Casual Work, or Legitimizing Precarity?' (2015) 147 *Giornale di Diritto del Lavoro e di Relazioni Industriali* 529.

<http://www.labourlawresearch.net/papers/zero-hours-contract-regulating-casual-work-or-legitimizing-precarity>

J FUDGE, 'Fragmenting Work and Fragmenting Organizations: the Contract of Employment and the Scope of Labour Regulation' (2006) 44 *Osgoode Hall Law Journal* 609, 636.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=974916

S DEAKIN, 'The Changing Concept of the "Employer" in Labour Law' (2001) 30 *ILJ* 72, 79.