

**Are platform workers at Deliveroo employees with social benefits**

**Or**

**self-employed without collective bargaining rights?**

**Comparison between the UK and the Netherlands**

**Darja Gladkaja**

**U600532**

**LAS**

**Tilburg University**

# Introduction

With the era of digitalization at play, new forms of work have emerged, challenging the widely held view of what employment means. The technology has contributed immensely to a new perception of employment and contractual arrangements. An example of a by-product of the technology is the existence of a so-called virtual work: it (Work in Digital Economy, p.30) implies the types of work that are realized through the means of IT, be it your mobile phone with the Internet connection or computer. Virtual work takes the definition of work to a new level- it is not bound spatially to an office alone but instead can be done through various locations, e.g. be it a park bench or a train (Korunka, 2017, p.15)<sup>1</sup>.

According to ILO, the appearance of the gig or platform economy amounts to 'one of the most important new transformations in the world of work' (ILO,2020). Herewith, 'crowd work' stands out as a part of platform economy which, according to the Eurofound report on New forms of Employment, 'is an employment that uses an online platform to enable organizations or individuals to solve specific problems or to provide specific services or products in exchange for payment'<sup>2</sup>. Such phenomenon has proven to constitute a solid niche on the labour market and, as the trend goes, is

---

<sup>1</sup> Korunka, C. (2017) Job Demands in a Changing World of Work. Impact on Workers' Health and Performance and Implications for Research and Practice, (1), Springer

<sup>2</sup> Eurofound, (2018). Crowd employment  
<https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/crowd-employment>

growing exponentially(De Stefano, 2015, p.1)<sup>3</sup>. Moreover, it has been a subject of a heated debate ever since it came out (Prassl, 2018, p.2<sup>4</sup>; De Stefano, 2016, p.1-3<sup>5</sup>; Schwellnus, 2019, p.3<sup>6</sup>). In the definition of such, it is stated that digital platforms(‘an online business that facilitates the interaction between suppliers and consumers, e.g. Uber, Deliveroo, Airbnb, Amazon’<sup>7</sup>) are used for the purposes of outsourcing work to the so-called crowd- numerous different people spread out location-wise. Within this system, the work is ascribed to people within a designated area or region that, consequently, carry out service tasks, e.g. delivery.

As stated by European Social Policy Network (ESPN) in study on national policies (Spasova, 2017, p.10): “The first preliminary outline of the European Pillar of Social Rights (European Commission, 2016a) highlights that: ‘There are “grey zones”, such as “dependent” and “bogus” self-employment, leading to unclear legal situations and barriers to access social protection’ and while ‘more transitions will take place’ ‘access of self-employed or workers who are not on full-time and permanent contracts to paid family-related leave or insurance schemes remains uneven [across Member States and] the self-employed and those in atypical employment [...] experience higher [...] adequacy risks and lower coverage’, for which reason, inter alia, ‘the participation of the self-

---

<sup>3</sup> De Stefano, V. (2015). The Rise of the ‘Just-in-Time Workforce’: On Demand Work, Crowd Work and Labour Protection in the ‘Gig-Economy’, *Comparative Labour Law and Policy Journal*, SSRN: <https://ssrn.com/abstract=2682602> or <http://dx.doi.org/10.2139/ssrn.2682602>

<sup>4</sup> Prassl, J. (2018). *Humans as a Service: The Promise and Perils of Work in the Gig Economy*, (1), Oxford University Press

<sup>5</sup> De Stefano, V. (2016). Introduction: Crowdsourcing, the Gig-Economy, and the Law, *Comparative Labour Law Journal*, 37(3), pp. 461-470

<sup>6</sup> Schwellnus, C., Geva, A., Pak, M., Veiel, R., (2019). *Gig Economy Platforms: Boon or Bane?* Economics Department, OECD, ECO/WKP(2019)19 [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ECO/WKP\(2019\)19&docLanguage=En](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ECO/WKP(2019)19&docLanguage=En)

<sup>7</sup> ITIF Information Technology & Innovation Foundation, (2018). *What Are Digital Platforms?* <https://itif.org/publications/2018/10/12/itif-technology-explainer-what-are-digital-platforms> or [http://www2.itif.org/2018-tech-explainer-digital-platforms.pdf?\\_ga=2.197669487.1390895701.1591975846-2109920981.1590430901](http://www2.itif.org/2018-tech-explainer-digital-platforms.pdf?_ga=2.197669487.1390895701.1591975846-2109920981.1590430901)

employed in insurance schemes shall be encouraged'. The challenge is, thus, in forming the understanding on how to tackle the issue of social protection for people working on non-standard contracts that are classified as self-employed.

In this paper, I will concentrate on a firm that represents a product of a platform economy and has sparked an intense debate nationwide as well as on the European level: Deliveroo. Commonly known as a food-platform, Deliveroo is many things. To the customer it is an app utilized for ordering food, to the restaurant it is a service that charges a fee for delivering their food. It is a means of earning a profit in return for investments, from the standpoint of shareholders. Finally, this app is work for couriers, a so-called riders in Deliveroo jargon (Riding for Deliveroo, Callum Cant p.12).

In this thesis, A food-delivery platform Deliveroo will be scrutinized in a way which questions the essence of such in relation to the welfare system and its connotation for riders in two countries- the UK and the Netherlands. Deliveroo originated in the UK in 2013. It was founded by two entrepreneurs- Will Shu and Greg Orlowski (Cant, 2020, p.1) and has grown immensely since then. The consequence of such enlargement is that the company exists in many countries, including the Netherlands. The focus of this paper is on the comparative approach as regards to the two designated countries that have different legal systems. Deliveroo, herewith, provides an exemplary case of how the issue of workers' rights is tackled in the context of two dissimilar legal traditions<sup>8</sup>. Being a fastest growing firm in Europe<sup>9</sup> (only in 3 years its revenue has grown by more than 100

---

<sup>8</sup> The Dutch legal system follows civil law tradition based on classical Roman law. A major influence on the system has been the French Civil Code. (The Roman-Dutch Legal Tradition, (2009). University of California, Berkley School of Law. <https://www.law.berkeley.edu/research/the-robbins-collection/exhibitions/roman-dutch-legal-tradition-2/>). It is known that in civil law system, codified statutes are of primary significance. This system contrasts with the common law tradition, pertinent to the UK, where judicial opinions and case law get the upper hand (Syam, P., (2014). The Difference Between Common Law and Civil Law? Washington University in St. Louis. School of Law <https://onlinelaw.wustl.edu/blog/common-law-vs-civil-law/>).

<sup>9</sup> Smith, I., Blood, D., Rininsland, E., (2018). The FT 1000: the complete list of Europe's fastest-growing companies, Financial Times. 11 February. <https://ig.ft.com/ft-1000/2018>

percent), Deliveroo, unlike other platforms, has managed to leave a trace of court cases behind- these will form a substantial part of the comparison of the situations in two countries.

The court cases touch upon the aforementioned problem of platform workers' rights in the gig-economy. In this paper, the question of platform work is considered: is it a flexible work corresponding to the ever-increasing demands of the market and dynamic economy or is it a questionable precarious type of work that undermines the welfare system as much as workers' rights? The main research question is: are platform workers at Deliveroo employees with social benefits or self-employed without collective bargaining rights? The topic has due relevance in the society because it investigates the problem of erosion of rights and the challenge that platform work represents for the conventional outlook on such notions as subordination, autonomy and social protection (De Stefano, 2018, p.4<sup>10</sup>). Deliveroo, hereby, displays these problems vividly as the 'grandness' of the company has brought about a series of strikes by the riders in both the Netherlands and the UK. That is why the case of Deliveroo is so important and provides for a good example for other gig-workers that may be facing the same difficulties.

This paper will address the following sub questions in order to be able to answer the research question. Herewith, the terms social benefits and collective bargaining rights have to be defined in two contexts, i.e. the Netherlands and the UK. These terms have to be specified in order to examine whether there is a due legal protection for self-employed and whether there is a safety net for riders within the thriving gig-economy. The specification of these terms is aimed at the identification as to how the platform work affects the couriers' social security within the welfare system. Ultimately, the terms will examine the impact of platform work on workers' rights and the difference between the welfare systems of the Netherlands and the UK in such regard. (how do these two countries differ in

---

<sup>10</sup> De Stefano, V., Aloisi, A., (2018). European legal framework for "digital labour platforms". European Commission. Publications Office of the European Union. [https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112243/jrc112243\\_legal\\_framework\\_digital\\_labour\\_platforms\\_final.pdf](https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112243/jrc112243_legal_framework_digital_labour_platforms_final.pdf) or <https://ec.europa.eu/jrc>

the approach towards tackling the issue) To be concise, the first sub-question: what are the definitions of social benefits and collective bargaining rights in The UK and what is the legal basis for these? The second sub-question: what are the definitions of social benefits and collective bargaining rights in the Netherlands and what legal basis do they have. Next sub-question concerns the definitions of an employee and self-employed in the context of two countries. This sub-question involves the matter of how does the distinction between the two designated terms relates to social benefits or collective bargaining rights.

In chapter 1, the Research Methods will be discussed in order to provide a basis and framework for answering the research question. Chapter 2 serves as a preamble whereby the technological advancement is considered with the purpose of examining the origin of virtual work. Chapter 2.2 considers the definitions of gig-economy and platform work more closely. Chapter 3 touches upon the various types of work and workers within the system and aims at answering the sub-questions on the definitions of self-employed, employee, benefits and collective bargaining within the context of two countries. Chapters 5 and 6 dive into the subject of platform workers in the Netherlands and the UK with the pertaining court cases. Chapter 7 includes the comparison of the two countries. Last but not the least, recommendations and conclusion are provided at the end of the paper.

# Chapter 1. Research Methods

This chapter sets out to provide the information on the methods used to find the necessary sources in order to answer the research question: are platform workers at Deliveroo employees with social benefits or self-employed without collective bargaining rights? In Research Methods section, the overview of *modus operandi* sets out to provide a framework for the reader in order to have a better understanding of how the required material was gathered. Thus, the section possesses a detailed explanation on how the research was conducted.

The strategy utilized in conducting the research includes a legal comparative technique. The comparative research will be conducted between two countries- The UK and the Netherlands. The comparative approach will take place in pursuit of the designated goal- to answer the research question. The paper will revolve around the company Deliveroo- a food delivery platform that originated in the UK. I will refer to the case law in order to form a comprehensive outlook on how two different legal systems are tackling the issue of social protection in the context of emerging platform economy. Deliveroo exemplifies a controversial platform that sparked interest due to court cases, initiated by two labour unions: FNV (Federatie Nederlandse Vakbeweging) and The Independent Workers Union of Great Britain (IWUGB). Showing a range of important existing judicial cases, the information gathered will help in understanding the current situation on the labour market and the position of workers therein. The major cases used in Chapter 5 about the Netherlands are cases from July 23, 2018 and January 15, 2019 (initiated by FNV. The exemplary case in the UK comes from December 5, 2018, commenced by IWUGB (Chapter 6). Chapter 7 will directly encompass the comparison between the two legal systems in regard to the issue concerned. Herewith, comparative legal research sets out to determine how the issue is tackled under civil and common law systems, represented by the Netherland and the UK, respectively. The statement yet to be tested is that the

result may vary under different sets of rules and approaches of two jurisdictions. Furthermore, the legal comparison in this paper aims at finding more information on the law traditions and discovering a possible solution for the problem of worker rights in platform economy. For the purpose of finding the necessary information, google search engine was utilized with phrases 'Deliveroo court case' and 'workers' rights in platform economy', 'pseudo self-employment', 'collective bargaining rights and platform economy' typed in. Moreover, academic papers on the subject matter on various databases, i.e. Tilburg University Library and Research Gate, were analysed.

A part of the research methods to be considered is a doctrinal legal research. In contrast to the method mentioned in the previous passage, it does not include a case study per se but a general study of written law instead. However, the two methods are intertwined as one delivers the analysis of regulations and the other- applications of these in the court. In this way, primary law, i.e. regulations and statutes, defining 'worker' and 'self-employed' will be presented to the reader in order to comprehend these terms in the context of common and civil law traditions. Moreover, the key concepts, i.e. 'social benefits' and 'collective bargaining rights', will be defined for the same aforementioned reason. The goal is to find the relevant legal basis for the crucial notions and organize the information in a way that would be suitable for addressing the sub-questions which jointly answer the main research question. In this way, the primary sources are interpreted, commented upon and applied to the context of the thesis. In short, the analysis of legal materials serves the purpose of recognizing the ambiguities in law that will subsequently help in identifying possible solution to the issue of workers' rights. The key concepts were googled and filtered in accordance with the relevance to the topic. In addition to rules and regulations, legal articles from reputable institutions of higher education were incorporated in this thesis.



## Chapter 2. History

### 2.1 Technological advancement. The Digital Revolution

The work transformation owes its existence to the technological advancement that brought to the market digital technologies. With the help of the technological breakthrough, the virtual work has appeared, changing the structure of work and challenging the traditional view of what employment means. In order to comprehend the ramifications of such phenomena, it is important to first understand how the digital economy came into being and what its characteristics are.

The computerization of work was brought by the digital juggernaut<sup>11</sup> that exerted immense influence on the subsequent development of digital platforms. How did this phenomenon appear in the first place? The digital revolution started in the mid 50's and is still an ongoing development. At the beginning, computers were used by the military but by the 70s they become more common and accessible to the general population, therefore, marking and solidifying its position on the market<sup>12</sup>. The internet and mobile phones made their entry into the market in the beginning of 90s and by the year 2015 half of the Earth was "connected". Generally, it is a change from mechanical technology to a digital one, signifying the age of information and data. Importantly, the

---

<sup>11</sup> Valenduc, G., Vendramin, P., (2016). Work in the digital economy: sorting the old from the new. European Trade Union Institute. Etui ISSN 1994-4454. URL: [http://ftu-namur.org/fichiers/Work\\_in\\_the\\_digital\\_economy-ETUI2016-3-EN.pdf](http://ftu-namur.org/fichiers/Work_in_the_digital_economy-ETUI2016-3-EN.pdf)

<sup>12</sup> Pariona, A., (2017). What Was The Digital Revolution. World Atlas. URL: <https://www.worldatlas.com/articles/what-was-the-digital-revolution.html>

revolution changed how people communicate: with the help of gadgets such as mobile phones and computers, we can reach each other or find the necessary information within a matter of seconds. Hence, the term was coined in order to accurately describe the time people live in: Information Age (Ameber, 2017)<sup>13</sup>.

The Digital Revolution did not just make former inventions outdated but has left its footprint, importantly, on economy and society. First and foremost, it changed the communication that became much faster and more efficient. The productivity of businesses has increased exponentially, thus, contributing to the parallel growth of economy. On the downside, the revolution challenges the notion of privacy (Shaw, 2009<sup>14</sup>; House of Common & House of Lords Report, 2019<sup>15</sup>) as the GPS tracking system is used in order to monitor workers progress<sup>16</sup>. Moreover, the work-life balance is harder to be achieved due to the fact that the relationship between ‘the provider and the receiver is sporadic and non-permanent’ (Fernandez & Zekic, 2017, pp.1-7). The focus, herewith, is to scrutinize the feature of the digital economy that gave rise to platform work. Therefore, the characteristics of such will be discussed.

There are four attributes pertaining to the digital economy: “the irrelevance of geographical location, the key role played by platforms, the importance of network effects and the

---

<sup>13</sup> Ameber, P. (2017). What Was The Digital Revolution? WorldAtlas [worldatlas.com/articles/what-was-the-digital-revolution.html](http://worldatlas.com/articles/what-was-the-digital-revolution.html).

<sup>14</sup> Shaw, J. (2009). The Erosion of Privacy in the Internet Era. Harvard Magazine URL: <http://harvardmag.com/pdf/2009/09-pdfs/0909-38.pdf>

<sup>15</sup> House of Commons & House of Lords & Joint Committee on Human Rights, (2019). The Right to Privacy (Article 8) and the Digital Revolution, (3), HC 122 <https://publications.parliament.uk/pa/jt201919/jtselect/jtrights/122/122.pdf>

<sup>16</sup> Austermuehle, E. (2016). Impact. Understanding and Managing Business Risk. Monitoring your employees through GPS: What is Legal, and What are Best Practices? Greensfelder Attorneys at Law . URL: <https://www.greensfelder.com/business-risk-management-blog/monitoring-your-employees-through-gps-what-is-legal-and-what-are-best-practices>

use of data” (Valenduc & Vendramin, 2016, p.8; Charrier & Janin 2015). The use of data<sup>17</sup>, being one of the four attributes, supports the digital metamorphosis of a wide range of economic sectors and societies<sup>18</sup>. The information “has become a strategic resource and the network is the chief organizing principle of the economy and society as a whole” (Valenduc & Vendramin, 2016, p.7): data is utilized as an asset and information is commodified, in other words. This asset also allows for the more effective implementation of rules and minimizes the cost of policy targeting<sup>19</sup> (OECD, 2019, p.3). It helps to monitor the results and adjust the efficiency of policies. In the case of Deliveroo, the company is using collected data to improve efficiency of riders that would bring about better service and increase the profits, consequently<sup>20</sup>. Importantly, data is used with the intention to carry out an immediate and on-going operational monitoring<sup>21</sup>. Thus, the data gathered helps to see through the circumstances and problems arising during work (as the customers, riders and restaurants are linked through the app) and address these effectively in order to circumvent further complications.

Network effect, being another attribute of digital economy, stands strong as a major contributor to the development of such. . According to Investopedia, ‘network effect is a phenomenon whereby increased numbers of people or participants improve the value of a good or

---

<sup>17</sup> Df. ‘facts and statistics collected together for reference or analysis’ Oxford Languages.

<sup>18</sup> OECD, (2019). Data in the Digital Age, OECD Going Digital Policy Note, OECD, Paris. URL : <https://www.oecd.org/going-digital/data-in-the-digital-age.pdf>

<sup>19</sup> OECD, (2019). Using Digital Technologies to Improve the Design and Enforcement of Public Policies. OECD Digital Economy Papers. No.274 <https://www.oecd-ilibrary.org/docserver/99b9ba70-en.pdf?expires=1592080850&id=id&accname=guest&checksum=9CCE2095337D738F98F9DEF7A6279A60>

<sup>20</sup> Pudwell, S., (2017). Food delivery firm relies heavily on data and machine learning to increase efficiency. Silicon <https://www.silicon.co.uk/data-storage/bigdata/deliveroo-big-data-deliveries-216163>

<sup>21</sup> Df. ‘Operational monitoring refers to collecting key system performance metrics at periodic intervals over time. This information gives you critical data that refine initial configuration to be more tailored to your requirements’. [https://www.ibm.com/support/knowledgecenter/SSEPGG\\_10.5.0/com.ibm.db2.luw.admin.perf.doc/doc/c0054690.html](https://www.ibm.com/support/knowledgecenter/SSEPGG_10.5.0/com.ibm.db2.luw.admin.perf.doc/doc/c0054690.html)

service. The Internet is an example of the network effect<sup>22</sup>. Initially when it first came out, the Internet had hardly any value due to its small-scale. Nevertheless, it expanded exponentially because it became accessible to numerous users. The consequence of such expansion is that the Internet served as means of connection between people, including businesses, so the phenomenon started to provide more value and, ultimately, produced the network effect. In the context of Deliveroo, the company is providing the service of connecting customers, cafes' and riders via the app. The more clientele there is, the bigger the demand. Hence, the company has to hire more riders in order to fulfil the orders. The people participating in these dynamics are collectively improving the value of the company as the revenue grows.

Most importantly, the phenomena of the digital economy is signified by the use of so-called platforms. 'A platform is a business model that creates value by facilitating exchanges between two or more interdependent groups, usually consumers and producers (Moazed, 2020<sup>23</sup>)'. In order to foster such exchange, a platform comes up with network accessible as and when required. Peculiarly, such business model contributes to the creation of a virtual place or market where people can collaborate, thus, causing network effects. The major difference between this new model with the traditional one is that a platform serves as the method of connection rather than simply possessing the means of production. The chain-supply is not so majorly significant anymore, what matters the most is that a business can provide the connectivity. The value in a platform is, thus, conceived through connecting consumers and producers (e.g. Ebay, Amazon, Alibaba). In the case of Deliveroo, the platform connects consumers, restaurants and riders.

---

<sup>22</sup> Banton, C., (2019). Network Effect. Investopedia <https://www.investopedia.com/terms/n/network-effect.asp>

<sup>23</sup> Moazed, A., (2020). Platform Business Model- Definition. What is it? Explanation. Applico. URL: <https://www.applicoinc.com/blog/what-is-a-platform-business-model/#:~:text=A%20platform%20is%20a%20business,can%20be%20accessed%20on%20demand.>

The role of platforms in the digital economy cannot be underestimated. It has a significant effect on how the labour is provided<sup>24</sup>. Herewith, it influences on means of organizing work process by coordinating demand with the worker that is available and is ready carry out the work. In addition, it alternates the way that service is administered by letting consumers make the payment through the usage of an app. For instance, Deliveroo app can both find the right restaurant for the customer who pays for the order via the app but also allocate the available rider who wants to perform the designated delivery and assign the order to him or her. Thus, a platform serves as a marketplace and gives rise to platform work, labour generated by means of platform. It is a concept of paramount importance to the thesis as Deliveroo riders constitute a part of the subject- they perform work provided by the platform.

The irrelevance of the geographical location is the final attribute of the digital economy. It follows up logically after the examination of the previous features. When a business is a platform it creates a space for connecting different individuals, as it was stated in the preceding paragraph. The geographical location of these people is highly irrelevant in this context, what matters the most is the willingness to participate and be 'connected'. As far as Deliveroo, the food-platform, is concerned, the company provides the app as the means for the interconnectedness between the three players- consumers, restaurants and riders. When the client uses the app, it connects him to the variety of restaurants that the consumers chooses from. When the order is made, the app automatically distributes it to one of the riders. These riders are geographically dispersed and their location does not matter to the system. The system chooses randomly the available at the time rider to carry out the order, the geographical location plays a small role in this decision. The absence of a common workplace, however, becomes problematic from the standpoint of standard binary employment

---

<sup>24</sup> Garben, S., (2017). Protecting workers in the online platform economy: an overview of regulatory and policy developments in the EU. Luxembourg: Publications Office of the European Union. ISBN: 978-92-9496-642-1. <https://osha.europa.eu/fr/publications/protecting-workers-online-platform-economy-overview-regulatory-and-policy-developments>

relationship implementation because the platform workers status becomes diminished to one of self-employment.

An interesting argument is presented by Valenduc and Vendramin who stated that the presence of competitiveness in digital economy results in 'winner-takes-all' paradigm that yields to innovation combined with greater productivity and performance (Valenduc & Vendramin, 2016, p.8)). The question that is, thus, triggered is whether the productivity is achieved at the expense of workers that are a part of a platform? If, presumably, the 'winner-takes-all-paradigm' prevails, then the legal system is faced with a question on how to tackle the social protection of workers in platform economy. In short, the legal system is faced with the challenge of how to facilitate the development of the economy without jeopardizing the rights of workers.

Importantly, businesses profiting from computerization do not add up to the whole market. These businesses benefit from innovation indeed but to the detriment of smaller businesses which do not possess the same funds, hence cannot invest into innovation as much. Smaller enterprises are more likely to face a financial constraint than bigger firms (Toxoepus, 2018 ,p.60)<sup>25</sup>. Moreover, it appears that oftentimes the innovation is utilized with the purpose of fiscal gains and profits or cost minimization, including at the expense of the workers who can be fired or whose wage can be cut (Freeman & Soete, 1994). In addition, the hiring of contract workers is seen as a strategy which is aimed at the minimization of labour costs (Gasteen & Sewell, 1994, p.248)<sup>26</sup>.

---

<sup>25</sup> Toxoepus, H.S. (2018) Financing sustainable innovation: from a principal-agent to a collective action perspective. Erasmus University Rotterdam URL: <https://www.repub.eur.nl> In this thesis, Toxoepus argues that the financial constraint for small businesses is connected with innovation based challenges, e.g. insufficient track record or absence of collateral (asset offered by borrower to a lender as security for a loan (<https://www.patriotsoftware.com/blog/accounting/what-is-collateral/>)), R&D investments to other firms

<sup>26</sup> Gasteen, A., Sewel, J.(1994) Employer Strategy and the Labour Market. Oxford University Press URL: <https://books.google.nl/books?id=aTJSQq82UCYC&pg=PA248&dq=cost+minimization+at+expense+of+workers&hl=nl&sa=X&ved=0ahUKEwjgtMDAstzpAhWBCewKHUe3B84Q6AEINDAB#v=onepage&q=cost%20minimization%20at%20expense%20of%20workers&f=false>

As the technological advancement carries on, new trends appear on the market, marking the digital age. Platform economy stands out as a significant economical occurrence that represents a new model of business handling. Furthermore, the expansion of information technologies goes in hand with the development of data processing systems that are changing the way the companies operate which has implications for workers as well. Such happenings are shaking up the economy and contesting the idea of productivity due to innovation. The next section will examine the concept of the 'gig-economy' and its urgency in the context of the research question. Moreover, the question of what effects does the gig-economy produce for the society and workers in particular will be considered.

## 2.2 The gig-economy

The technological revolution brought about changes to the labour market. First and foremost, it stipulated the emergence of a new form of economy: something that is widely known as the gig-economy now. It touches upon a specific type of work- one that is done on temporary basis<sup>27</sup>. It may be that some of you have heard about the gig-economy as it is giving rise to a heated debate(Prassl, 2018 , p.2; De Stefano, 2016, p.1-3; Schwellnus, 2019, p.3). The purpose of this section, thus, is to give an overview of what gig-economy means and introduce some of the societal implications that it has. What is the gig-economy and how it affect the workplace- these are questions to be discussed herewith.

---

<sup>27</sup> Merriam Webster (2019) <https://www.merriam-webster.com/words-at-play/gig-economy-use-origin-phrase>

The gig-economy is distinguished by short-term contracts instead of permanent jobs. According to the definition in Investopedia<sup>28</sup>, 'a gig-economy undermines the traditional economy of full-time workers who rarely change positions and instead focus on a lifetime career'. In place of having full-time workers, the businesses prefer employing independent contractors for carrying out flexible jobs on a non-permanent basis. An important feature of the gig-economy is that it treats people as self-employed who have flexibility and autonomy in deciding whether they want to accept or decline the job or 'the gig'<sup>29</sup>.

It is indeed true that a self-employed person has a degree of freedom and flexibility provided by the gig-economy but this freedom comes with a price. Flexible work may be enticing for certain people who do not have the opportunity to work full-time or have unstable schedules, e.g. students, or single mothers<sup>30</sup>. The increased transparency and accessibility of platform work in the gig-economy is attractive to these groups. The simplicity of just having the Internet connection in order to download the app with the help of which to find 'the gig' is lucrative indeed. Allocation of employment is not the problem and the transaction costs are minimized. Nevertheless, these gig-workers do not have the same rights as normal full-time employees. A report by the European Trade Union Confederation (ETUC) points out at the fact that the self-employed are denied benefits<sup>31</sup>. The

---

<sup>28</sup> Chappelow, J., (2020) What is the Gig Economy? ABC News URL: <https://www.investopedia.com/terms/g/gig-economy.asp>

<sup>29</sup> Goodman, T., (2019). Overview of the UK Gig economy. Collyer Bristow LLP Lexology. Law Business Research. URL: <https://www.lexology.com/library/detail.aspx?g=a8cb06f2-58ef-49a8-9eca-c669ab55d8f8>

<sup>30</sup> Towers-Clark, C., (2019). The Uberization of work: pros and cons of the gig-economy. Forbes. <https://www.forbes.com/sites/charlestowersclark/2019/07/08/the-uberization-of-work-pros-and-cons-of-the-gig-economy/>

<sup>31</sup> ETUC, (2018). Trade unions protecting self-employed workers. Why self-employed workers need better rights? What unions are doing? Which priorities for the future? [https://www.etuc.org/en/pressrelease/law-denies-rights-self-employed-workers#:~:text=Law%20denies%20rights%20to%20self%20employed%20workers,Trade%20Union%20Confederation%20\(ETUC\).](https://www.etuc.org/en/pressrelease/law-denies-rights-self-employed-workers#:~:text=Law%20denies%20rights%20to%20self%20employed%20workers,Trade%20Union%20Confederation%20(ETUC).) Or <https://www.etuc.org/en/publication/trade-unions-protecting-self-employed-workers>



report targeted the accessibility of benefits for self-employed and it turned out that it is much harder to obtain benefits connected to sickness, paternity and maternity for self-employed, with unemployment benefits having the worst accessibility rate. This puts the self-employed in a disadvantageous position with financial repercussions in cases of job loss. Being in a fiscally sensitive situation, it is of utmost importance to have accessibility to social benefits but self-employed are, unfortunately, denied this access.

It appears that the irregular work does not pay well which poses a difficulty for the groups relying on gig-work alone. Deliveroo (being a product of gig-economy), for instance, was sued by the rider for underpayment<sup>32</sup>. A worker, hereby, claims that his payment was less than minimum wage. The minimum wage is a significant concept to collective bargaining rights. Collective bargaining is directly connected to the minimum wage fixing under Convention no. 131<sup>33</sup>. The definition of collective bargaining goes as follows: 'it is the process of negotiating the terms of employment between an employer and a group of workers. The terms of employment are likely to include items such as conditions of employment, working conditions, and other workplace rules, as well as base pay, overtime pay, work hours, shift length, work holidays, sick leave, vacation time, retirement benefits, and health care benefits. (Investopedia, 2020<sup>34</sup>)'. Being a fundamental right, collective bargaining is enshrined in ILO Constitution and forms a part of ILO Declaration on Fundamental Principles and Rights at Work. With the help of this right, decent pay and working conditions are

---

<sup>32</sup> Chau, D., (2019). Deliveroo sued by former worker who alleges exploitation and underpayment. <https://www.abc.net.au/news/2019-08-28/deliveroo-case-ex-worker-alleges-exploitation/11454870>

<sup>33</sup> ILO, (2020). Minimum wages through collective bargaining. [https://www.ilo.org/global/topics/wages/minimum-wages/setting-machinery/WCMS\\_436112/lang-en/index.htm#:~:text=Collective%20bargaining,131.&text=In%20many%20countries%2C%20bargained%20and%20statutory%20minimum%20wages%20co%2Dexist.](https://www.ilo.org/global/topics/wages/minimum-wages/setting-machinery/WCMS_436112/lang-en/index.htm#:~:text=Collective%20bargaining,131.&text=In%20many%20countries%2C%20bargained%20and%20statutory%20minimum%20wages%20co%2Dexist.)

<sup>34</sup> Kenton, W., (2020) What is collective bargaining? Investopedia. <https://www.investopedia.com/terms/c/collective-bargaining.asp>

deemed and celebrated, thus, leading to equality and fair treatment at work. In this, way, the workers can enjoy labour protection.

The riders at Deliveroo (as much as other platform workers), however, do not enjoy the perks of labour protection. The platform workers are not entitled to the benefits concerned<sup>35</sup>: vacation pay, maternity leave, sickness payments and statutory minimum wages. They are also excluded from enjoying the fundamental principles such as collective bargaining<sup>36</sup>, protection against discrimination or unfair dismissal (De Stefano, 2018, p.8)<sup>37</sup>. This, unarguably, creates an issue for the riders and other platform workers who find themselves in an uncertain position as regards to their rights. In comparison to full-time employees, they cannot rely on an employment protection under labour laws. The concern is raised as to the question whether the riders are being exploited. The unions, on a positive side note, are fighting for the rights those who find themselves in a vulnerable position<sup>38,39</sup>. Unions also realize that other sensitive areas exist as regards to the rights, e.g. the right to have a minimum wage.

---

<sup>35</sup> European Commission. Social security and social assistance. Know your rights . According to an official EU website: 'The Union recognizes and respects the entitlement to social security benefits and social benefits providing protection in cases such as maternity, illness, industrial accidents, old age, in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices. '[https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/solidarity/social-security-and-social-assistance\\_en](https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/solidarity/social-security-and-social-assistance_en)

<sup>36</sup> Collective bargaining right is enshrined in Chapter 4 of the EU Charter of Fundamental Rights alongside other important rights, i.e. fair and just working conditions, protection in case of unfair dismissal and etc. A full version of the Charter can be found in Official Journal of the European Union. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

<sup>37</sup> De Stefano, V., Aloisi, A., (2018). European legal framework for 'digital labour platforms'. European Commission. Publications Office of the European Union. ISBN 978-92-79-94131-3 [https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112243/jrc112243\\_legal\\_framework\\_digital\\_labour\\_platforms\\_final.pdf](https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112243/jrc112243_legal_framework_digital_labour_platforms_final.pdf)

<sup>38</sup> IUF, (2019). Netherlands court confirms food delivery couriers are workers with collective rights <http://www.iuf.org/w/?q=node/6699>

<sup>39</sup> BBC, (2018). Deliveroo wins latest court battle over rider rights. BBC News <https://www.bbc.com/news/business-46455190>

A major point to be taken into account, herewith, is that the classification of a worker defines the rights of a person. Generally speaking, someone considered an employee has more rights. i.e. minimum wage, vacation pay or rest periods. Under the British law, 'workers are entitled to certain employment rights, including: getting the national minimum wage, protection against unlawful deductions from wages, the statutory minimum level of paid holiday, the statutory minimum length of rest breaks, to not work more than 48 hours on average per week or to opt out of this right if they choose, protection against unlawful discrimination, protection for whistleblowing (reporting wrongdoing in the workplace), to not be treated less favourable if they work part-time. They may also be entitled to statutory sick pay, maternity pay, paternity pay, adoption pay, parental pay (Hawker, 2019)<sup>40</sup>. There is a distinction between three terms in the UK as regards to employment : 'worker', 'employee' and 'self-employed'. What typically distinguishes an employee from a self-employed is that the latter does not possess the same employment rights. Thus, the absence of such rights puts a gig-worker, who is prone to the classification as self-employed, into a precarious and uncertain position as they are not entitled to the same protection as employees.

Crowd work<sup>41</sup> is a phenomenon that thrives within the boundaries of the gig-economy. It is a term used to describe the type of work whereby an online platform, within the context of the gig-economy, is used in order to carry out a certain job in exchange for payment (Green et al.2013). Defined by Eurofound report on New forms of Employment as : ' employment that uses an

---

<sup>40</sup> Hawker, R., (2019). Employment Contracts: UK Employment Law. Worklaw (1) URL: <https://books.google.nl/books?id=7029DwAAQBAJ&printsec=frontcover&hl=nl#v=onepage&q&f=falsehttps://www.gov.uk/employment-status/worker#:~:text=Workers%20are%20entitled%20to%20certain,against%20unlawful%20deductions%20from%20wages&text=to%20not%20work%20more%20than,this%20right%20if%20they%20choose>

<sup>41</sup> Df. 'Crowdwork can be defined as the 'organizing of outsourcing of tasks to a large pool of workers' Garben, S., (2017). Protecting workers in the online platform economy: an overview of regulatory and policy developments in the EU. p.13 Luxembourg: Publications Office of the European Union. ISBN: 978-92-9496-642-1. <https://osha.europa.eu/fr/publications/protecting-workers-online-platform-economy-overview-regulatory-and-policy-developments>

online platform to enable organisations or individuals to access an indefinite and unknown group of other organisations or individuals to solve specific problems or to provide specific services or products in exchange for payment’<sup>42</sup>. It is a work that forms a part of on-demand or gig-economy due to unstable nature of such. The typical worker-employer dynamic has been changed due to such innovation as outsourcing of work via platforms becomes more popular. Such tendency is encompassing many economic sectors, including Information Technology but also covering logistics, cleaning services, babysitting etc. Thus, the lower skilled labour is in as much demand as the higher skilled labour is. That is why a great variety of people can participate in crowd working- ranging from highly educated writers to students or single mothers having a job on the side.

Crowdsourcing, or ‘outsourcing of tasks to a large pool of workers’(Garben, 2017, p.13), is a type of employment that has both negative and positive sides pertaining to it . On one side, it is indeed a flexible kind of work which can be potentially combined with other activities, e.g. education, taking of a child, other work etc. (Valenduc & Vendramin, 2016, p.34). Moreover, it provides one with a certain degree of independence because the worker is not in physical contact with the employer- most of the communication is conducted through the app which distributes the tasks. On the other side, problems arise as crowdsourcing contributes to the weakening of essential work or employment rules that were conventionally established, e.g. eroding of workers traditional ways of organisations- trade unions<sup>43</sup> (Durward, 2016, p.15). The payment remains an issue because the businesses tend to retain most of the profit and benefit at the expense of their workers who do not possess the same social protection that not self-employed workers traditionally have. In this way,

---

<sup>42</sup> Mandl, I., Curtarelli, M., Riso, S., Vargas O., Gerogiannis, E., (2015). New Forms of Employment. Eurofund Report on New Forms of Employment, URL: <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/crowd-employment> or <https://www.eurofound.europa.eu/publications/report/2015/working-conditions-labour-market/new-forms-of-employment>

<sup>43</sup> Durward, D., (2016). Principal forms of crowdsourcing and crowd work. FEPS- Foundation for European Progressive Studies. ISBN: 978-2-930769-17-2

there are little guarantees for the workers to have a stable salary which eventually might lead to the destabilization of work-life balance or at least present a challenge for such (Fernandez & Zekic, 2017, p.17). Other disadvantages incorporate social isolation due to lack of quality human contact through the absence of typical colleagues, pressure of autonomy (as the person is responsible alone for the tasks), obliteration of the line between private and public as much as possible intrusion in personal life, e.g. via GPS (Valenduc & Vendramin, 2016, p.22; Iqbal & Lim, 2007, p.2). To conclude the section, gig-economy is a novelty in the market that has both negative and positive sides. It provides flexible work for people who have irregular schedules and cannot have a full-time job. On a down side, the question of workers' rights comes to the forefront due to non-standard employment. To conclude the section, gig-economy is a novelty in the market that has both negative and positive sides. It provides flexible work for people who have irregular schedules and cannot have a full-time job. On a down side, the question of workers' rights comes to the forefront due to non-standard employment. The next section will concern the types of work and workers in order to scrutinize the impact of the digital economy or gig-economy on the labour market.

## Chapter 3. Types of work and workers. Social benefits and Collective Bargaining Rights

The digital revolution goes hand in hand with other innovations in the employment. The usage of the Internet in combination with new technologies persists and the new forms of work arise. Novel work types appear and give rise to a debate as they dispute the validity of the old-fashioned system. What are these types of employment and what are their characteristics? In the following segment, the non-traditional employment will be scrutinized in order to comprehend thoroughly the nature and implications of work. Moreover, this chapter will address the sub-questions on the definitions of self-employed and employee in the context of two countries, i.e. the UK and the Netherlands, and the setting for social benefits and collective bargaining therein.

A workforce can be divided into different categories which forms an understanding as to what types of workers exist on the market. In order to comprehend the nature of a relationship between the employer and the employee a distinction between the types of workers must be made. Depending on the classification, one can also understand the societal implications of a type. The simplified division into categories would denote skilled-unskilled or permanent-temporary workers<sup>44</sup>, however, the labour market would suggest a more complex composition.

---

<sup>44</sup> Quick Books, (2016). Hiring, Recruiting and HR. Different Types of Workers: Employees, Contractors and More URL: <https://quickbooks.intuit.com/r/hiring-and-recruiting/different-types-of-workers-employees-contractors-and-more/>

The first group, most common and widely known, is called employees. Following the Glossary of statistical terms, OECD <sup>45</sup><sup>46</sup> employees are workers who have a job that is a paid employment job. They tend to have fixed contracts, explicit or implicit (written down long-term agreement with the same employer on a continuous basis<sup>47</sup>. Full-time employees are presented with benefits such as maternity leave, paid time off, etc. that are legally prescribed. In such cases, the employer is obliged to secure the payment of taxes and social security of the employee. Part-time employees, in contrast to full-time employees, work generally less hours and have unfixed schedules.

In Dutch Civil Code, there is no distinct definition for 'employee' (Heerma van Voss, 2017, p.9)<sup>48</sup>. Nevertheless, the concept has its roots in the definition of the contract of employment. An employee, herewith, is a person who carries out work for the employer for remuneration for a given period<sup>49</sup>. Thus, an employment contract stands, if there is "performance of work, done in the service of the employer in exchange for remuneration" (Heerma van Voss, 2017, p.1). However, an alternative explanation on the definition of an employee can be found in Acts. For instance, Article 4

---

<sup>45</sup> OECD, Glossary of Statistical Terms URL: <https://stats.oecd.org/glossary/detail.asp?ID=766>

<sup>46</sup> Employment by Status in Employment. ILO, URL: [https://www.ilo.org/ilostat-files/Documents/description\\_STE\\_EN.pdf](https://www.ilo.org/ilostat-files/Documents/description_STE_EN.pdf) DF. 'Employees are workers who hold the type of jobs defined as "paid employment jobs" where the incumbents hold explicit (written or oral) or implicit employment contracts that give them a basic remuneration that is not directly dependent upon the revenue of the unit for which they work' p.1

<sup>47</sup> Costas, A., Stiglitz, J., (1983). Implicit Contracts and fixed Price Equilibria, The Quarterly Journal of Economics, Vol.XCVIII

<sup>48</sup> Heerma van Voss, G.J.J., (2017). The Concept of 'Employee': The Position in the Netherlands. Leiden University.

[https://openaccess.leidenuniv.nl/bitstream/handle/1887/57127/Heerma\\_van\\_Voss\\_-\\_The\\_Concept\\_of\\_Employee\\_-\\_The\\_Position\\_in\\_the\\_Netherlands.pdf?sequence=1](https://openaccess.leidenuniv.nl/bitstream/handle/1887/57127/Heerma_van_Voss_-_The_Concept_of_Employee_-_The_Position_in_the_Netherlands.pdf?sequence=1)

<sup>49</sup> Lawrie-Blum v Land Baden-Wurttemberg (1986). Case 66/85 'The ECJ stated that the concept of "worker" in Article 48 (EEC) should be interpreted broadly as (1) a person (2) performing services (3) under the direction of another (4) for remuneration'

<https://www.studeersnel.nl/nl/document/universiteit-utrecht/european-law/werkgroep-uitwerkingen/seminar-week-2/2747561/view>

of Minimum Wage and Minimum Holiday Allowance Act<sup>50</sup> states that employee presupposes the natural person who is in service. Another example of a definition is in The Working Hours Act which addresses the concept as in relation to the 'employer'. As follows, it encompasses anybody who performs work administered by another (a 'boss'; the stress is on the authority and the 'superior-subordinate' factor) and includes anybody who is open for work for another. Peculiarly, following the last part of the explanation on the availability or openness, it appears that some room is left for the inclusion of self-employed in that definition.

The definition of an employee under British employment law constitutes an important and complex matter. Under Section 230(1) Employment Rights Act 1996, an employee is someone who performs work under employment contract<sup>51</sup>. However, much confusion emerges as regards to the distinction between two terms- employee and worker. Herewith, worker is an umbrella term that can mean both an employee and self-employed<sup>52</sup>. This broad definition is the cause of lack of certainty and clarity which yields to ambiguity. In general, employees can be workers but employees will have additional rights and duties applicable to them. For example, employees are entitled to sick pay, maternity, paternity leave or pay, unfair dismissal protection, redundancy pay, emergency furlough<sup>53</sup>, in addition to rights that also workers have, i.e. national minimum wage, paid holiday,

---

<sup>50</sup> Minimum Wage And Minimum Holiday Allowance Act Law (Wet minimumloon en minimumvakantiebijslag), (1968). <https://www.global-regulation.com/translation/netherlands/3074934/minimum-wage-and-minimum-holiday-allowance-act-law.html>

<sup>51</sup> Employment Right Act 1996 Section 230. DF. 'employee is an individual who has entered into or work under a contract of employment, whether express or implied and whether oral or in writing..'. <https://www.lawteacher.net/free-law-essays/employment-law/distinguishing-between-employees-workers-and-self-employed-employment-law-essay.php#:~:text=Employee%3A%20According%20to%20Employment%20Right,whether%20oral%20or%20in%20writing.>

<sup>52</sup> Harrison, J., (2019). What is an employee? A legal definition and case study. Richard Nelson LLP Solicitors. <https://www.richardnelsonllp.co.uk/services/employment-law/what-is-an-employee/>

<sup>53</sup> Gov.uk. Employment Status. Employee <https://www.gov.uk/employment-status/employee>



unlawful discrimination protection, maximum 48 hours of work per week, 'whistleblowing' protection.

'Non-standard' work types have experienced growth in the past time due to the presence of gig-economy and platforms. The rise is tightly connected with digitalization and technological advancement, a phenomenon previously described in Chapter 1. These types of 'non-standard work' include: 'casual work, on-call work, temporary agency work, informal work and self-employment (Garben, 2017, p.4)<sup>54</sup>. Informal work, as the first example, is inferred from ILO report in 2002<sup>55</sup> (Hussmanns, 2018, p.8) and has a broad definition that can be generally reduced to: a type of work applied to a context whereby a firm is encouraged to hire a worker 'at low wage with few benefits or outsource the production of goods and services'<sup>56</sup>. Casual labour, as another type, is distinguished by atypical employment that generally goes by the hour or day with a worker performing a specific task (Britannica, 2020). Under the definition of the third type, a temporary agency work presupposes the dynamics whereby the employer 'places the worker at disposal of a third party to perform work under supervision of such party' (Hartmann, 2012, p.13)<sup>57</sup>. The focus, however, will be shifted to the remaining two forms of employment: self-employment and on-call work.

---

<sup>54</sup> Garben, S., (2017). Protecting workers in the online platform economy: an overview of regulatory and policy developments in the EU. Luxembourg: Publications Office of the European Union. ISBN: 978-92-9496-642-1. <https://osha.europa.eu/fr/publications/protecting-workers-online-platform-economy-overview-regulatory-and-policy-developments>

<sup>55</sup> Hussmanns, R., (2018). Defining and measuring informal employment. International Labour Office. URL:<https://www.ilo.org/public/english/bureau/stat/download/papers/meas.pdf>

<sup>56</sup> KILM 8, (2013). Employment in the informal economy [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/publication/wcms\\_422437.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/publication/wcms_422437.pdf)

<sup>57</sup> Hartmann, T, (2012). Temporary Agency Work in Germany and the Netherlands. Master Thesis. Tilburg University <http://arno.uvt.nl/show.cgi?fid=127158#:~:text=7%3A690%20BW.,and%20direction%20of%20this%20party.>

On-call work is a type of work within platform economy which is characterized by a long-lasting employment that excludes uninterrupted labour. In this way, the employer bases the contract on the premise that he does not have to provide the worker with a continuous work (Valenduc & Vendramin, 2016, p.35). The effectiveness of an on-call work is the fact that it connects the availability of the worker with the geographical location of the demand. In this way, two out of previously mentioned four attributes of the digital economy are combined. It means that the new forms of employment can be used widely and intensively due to the link between geographical irrelevance and network effect. In other words, geographic flexibility is connected to the demand that creates value for on-call work. Thus, the companies can increase their productivity on ad hoc basis- the labour is supplied when needed. The contract, however, is moulded in a way that it does not ensure a fixed amount of work- “zero hour” contract in the UK and the NL<sup>58</sup>. An on-call worker has similar employment condition to ones of other employees, for instance, salary and vacation days or parental leave<sup>59</sup>. In the UK, zero-hours contracts or casual contracts guarantee statutory annual leave and the national minimum wage to the workers. Within the framework of the law, these workers can seek another job, if it suits them. They are usually required for a gig or ‘on call’ job. They are not obliged to do the work and are free to decline it, if necessary. In the Netherlands, minimum-maximum contracts are also at play where the law governs the hours of work that correspond to the variable amounts. This contract represents the second type of employment contract of on-call workers. In this case, the amount of hours is determined together by the employer and the employee. In accordance with the Dutch Balanced Labour Market Act, a few amendments apply to

---

<sup>59</sup> Government of the Netherlands, (2020). Hiring on-call employees with a zero-hours contract. Government information for entrepreneurs. Business.gov.nl <https://business.gov.nl/running-your-business/staff/recruiting-and-hiring-staff/hiring-on-call-employees-with-a-zero-hours-contract/>

on-call workers since January 2020<sup>60</sup>. These target the strengthening of the legal position of on-call workers due to the presence of uncertainty because of the fluctuating hours. The issue was tackled previously by guaranteeing at least 3 hours' pay per one call. In addition to that, the new amendment offers now a fixed number of hours after the period of 12 months. This rule considerably limits the likelihood of utilizing on-call workers for a long-term.<sup>61</sup> Self-employment represents the last form of work that is worth the consideration within the context of this thesis. A basic definition of the term would typically state that a self-employment presupposes the situation whereby a self-employed<sup>62</sup> person is not bound to a particular employer that pays this person a regular salary. Under the British law, self-employed do not have the same employment rights as regular employees due to the fact that self-employed are generally viewed 'as their own bosses'<sup>63</sup>. Their rights and duties are prescribed by the agreement, in terms and conditions section. However, they possess a basic protection in relation to safety or health clauses. On a further positive side note, self-employed has the autonomy to control their business and possess the freedom of decision-making when it comes to accepting or declining work. This flexibility is what distinguishes a self-employed from other types of workers.

---

<sup>60</sup> Hillebrandt, K., Oberman, P., (2019). The Netherlands: On-call workers and changes in employment law with as from 1 January 2020. L&E Global. <https://knowledge.leglobal.org/the-netherlands-on-call-workers-and-changes-in-employment-law-with-as-from-1-january-2020/>

<sup>62</sup> Independent contractors tend to work on an ad hoc basis, meaning that their schedule is not entirely fixed as they work when the company deems it is required. The major difference between the employees and contractors lies in the fact that the latter do not have taxes subtracted from their salary. Alternatively, they must submit a yearly report of their income. Commonly, freelance workers, people employed to carry out a task, must sponsor their own benefits and suffer from lack of social security as they do not have pension, for instance. Directorate General For Internal Policies, (2017). Employment and Social Affairs. European Parliament. p.56  
[https://www.europarl.europa.eu/RegData/etudes/STUD/2017/595365/IPOL\\_STU%282017%29595365\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/595365/IPOL_STU%282017%29595365_EN.pdf)

<sup>63</sup> Gov.uk <https://www.gov.uk/employment-status/selfemployed-contractor>

The peculiarity of the British system lies in the division in the employment law which includes three terms: 'employee' 'worker' and 'self-employed' (Employment Rights Act 1996)<sup>64</sup>. The presence of the worker, herein, bring about some confusion as to the establishment of the employment status. It was previously mentioned that worker is a much broader term yet it yields to ambiguity when it comes to the reality. A worker can be both an employee and self-employed providing certain circumstances. The difference can be naturally deducted from the facts surrounding specific case, this is the point where the British legal tradition of case study comes in. Thus, in order to circumvent the unnecessary confusion as to the classification of employment status, the court has come up with a test to define such: the control test (in a subordinate-superior relationship), the integration test and the multiple test (also known as the economic test on payments and obligations arising under the contract) (Garben, 2017, p.37).

The control test is undoubtedly an important factor is the establishment of the employment status. In other words, it defines whether a person is an employee or self-employed by testing the degree of control that is exerted in the relationship between employer and employee (if there is one). The control test, thus, is based on a premise that employer exercises control over the subordinate, by telling him what to do and how to do it, which suggests the existence of an employment contract. If the scope of control is less or the degree is lower, then the case concerns self-employment<sup>65</sup>. Although important, the control test does not suffice alone.

---

<sup>64</sup>Garben, S., (2017). Protecting workers in the online platform economy: an overview of regulatory and policy developments in the EU. Luxembourg: Publications Office of the European Union. P.36 ISBN: 978-92-9496-642-1. <https://osha.europa.eu/fr/publications/protecting-workers-online-platform-economy-overview-regulatory-and-policy-developments>

<sup>65</sup> Teacher, Law., (2013). Tests Identifying a Contract of Employment [.https://www.lawteacher.net/free-law-essays/employment-law/tests-identifying-a-contract-of-employment-employment-law-essay.php](https://www.lawteacher.net/free-law-essays/employment-law/tests-identifying-a-contract-of-employment-employment-law-essay.php)

Integration test stands out as another significant criteria for the determination of employment status in the UK. In *Harrison Ltd v Macdonald*<sup>66</sup>, for instance, a crucial issue at hand was whether a person forms an 'integral part of the business' or whether he or she fulfils a 'supplementary (accessorial) role'. The test, however, renders a vague interpretation of the word 'integration' which violates a general principle of legal certainty.

The remaining multiple-test is a complex composition of a variety of factors summarily used with the purpose of defining the employment status. The economic part of the test concerns different remunerations in relation to the salary, pension scheme, vacation arrangements, sick leave and duties or obligations under the terms and conditions of a contract. The application of the multiple test is illustrated in *Ready Mixed Concrete (SE) Ltd v Minister of Pensions and National Insurance (MNPI)* where the drivers were considered as self-employed due to operating at their own fiscal risk<sup>67,68</sup>. The multiple test, nevertheless, does not create a comprehensive list of criteria which pinpoints at the existence of the employment contract. At this point, the test has incorporated the abovementioned control and integration tests. It has proven to be fairly vague and has to be interpreted as according to the facts of a case. A rudimentary concern the test raises is whether there is a subordinate-superior relationship or whether a person was acting on his or her own account. Furthermore, an obligation of personal service<sup>69</sup> is examined- whether a person performs a service personally instead of having someone else undertake work in his or her place. Last but not

---

<sup>66</sup> (1952) 1 TLR 101, 111

[https://en.wikipedia.org/wiki/Stevenson, Jordan %26 Harrison Ltd v MacDonald %26 Evans#cite\\_note-1](https://en.wikipedia.org/wiki/Stevenson,_Jordan_%26_Harrison_Ltd_v_MacDonald_%26_Evans#cite_note-1)

<sup>68</sup> Teacher, Law. (2013). Employment Law-Additional Issues on Employees. URL:

<https://www.lawteacher.net/free-law-essays/employment-law/employment-law-additional-issues-law-essays.php>

<sup>69</sup> Freelance UK. IR35: The obligation of personal service: what it is and why it matters.

[https://www.freelanceuk.com/ir35\\_ir591/obligation-personal-service.shtml#:~:text=An%20obligation%20of%20personal%20service,do%20the%20work%20for%20him.&text=With%20such%20an%20obligation%20a,be%20a%20contract%20of%20employment.](https://www.freelanceuk.com/ir35_ir591/obligation-personal-service.shtml#:~:text=An%20obligation%20of%20personal%20service,do%20the%20work%20for%20him.&text=With%20such%20an%20obligation%20a,be%20a%20contract%20of%20employment.)

the least, a mutuality of obligation forms a crucial part of the test on contract of employment.

Herewith, it concerns an obligation by company to give work and an obligation of a person to accept this work, hence the name- a mutuality of obligation.

In the Netherlands, self-employment is closely connected with the concept of ZZP (Zelfstandig Zonder Personeel<sup>70</sup> or Independent Without Personnel) (Bekker & Posthumus, 2010, p.3-7)<sup>71</sup>. Hereby, it suffices to note that the term self- employed is not set out in the Dutch legal system. It appears that the status of a ZZPs ends up being somewhere in between the one of a business and an employee. Under the Dutch law, unemployment benefits can be obtained by the self-employed in a form of business loan which has to be paid back in due time in accordance with the calculations. This payment is linked to profits that the business made in that time. There is a choice between the loan and another unemployment benefits, however (Bekker & Posthumus, 2010, p.2). Moreover, it is worth mentioning that since 2008, self-employed have maternity leave option and can get a state pension. As far as social security is concerned, the majority of self-employed are not eligible for benefits in cases of disabilities or sickness.

A question of employment status and classification of a worker is closely linked to a question of rights. Labour law governs the relationship between the employee and the employer, addresses the issue of disbalanced power relations as well as assigns rights and duties in terms of employment. However, labour law applies differently to self-employed because employees and self-employed have dissimilar entry levels to rights, i.e. as regards to unfair dismissal or access to benefits like

---

<sup>70</sup> Df. ZZPer has own business that constitutes their main activity and does not have a fixed income or fixed employment. He or she does not hire personnel . Redactie Ensie, (2015). Zelfstandige zonder personeel. <https://www.ensie.nl/redactie-ensie/zelfstandige-zonder-personeel#:~:text=Een%20zelfstandige%20zonder%20personeel%20heeft,onder%20de%20afkorting%20zzp'er.&text=Zelfstandigen%20zonder%20personeel%20komen%20in%20verschillende%20beroe-psgroepen%20voor.>

<sup>71</sup> Bekker, S., Posthumus, M.A.C. (2010). Self-employment in the Netherlands. European Employment Observatory Review, 2010(July), 1-7.

maternal-paternal leave or sick pay<sup>72</sup>. Moreover, the status of a worker affects the social protection aspect in relation to pension. Importantly, employees possess the right to collective bargaining- a right to negotiate the terms and conditions of an agreement with the employer. It is a crucial right because it grants the employee an opportunity to participate in the discussion about wage or social benefits programs by means of the representation by the workers' union.

Collective bargaining in the UK is an optional tool for the settlement in terms of wages and working conditions<sup>73</sup>. The result of the negotiations between the employer and the recognized union is displayed consequently in the employment agreement which becomes legally enforceable. There is a tendency towards the decline in collective bargaining coverage in the UK (BEIS, 2018). It means that less workers are influenced by agreements on wage and conditions that are bargained for by the union and the employer. Partially, the decline is due to a voluntary nature of collective bargaining but also because of insufficient involvement by the state. Herewith, there is a lack of rules in relation to the applicability of collective bargaining which broadens the coverage throughout the sector, for instance. Nevertheless, a law that came out in 1999 created a system of rules which obliges the employers to recognize the union. A union has to convince, the Central Arbitration Committee (CAC) that 'the majority of employees in a 'bargaining unit' wish for the union to represent them'<sup>74</sup>. This can be done by means of a ballot. If the majority of employees become union members and stand for union recognition, the employer is compelled to recognize the union. Such process is called 'statutory recognition'<sup>75</sup>.

---

<sup>72</sup> Eurofound, (2018). Platform work: employment status, employment rights and social protection. <https://www.eurofound.europa.eu/data/platform-economy/dossiers/employment-status>

<sup>73</sup> Brandl, B., Kildunne, A., (2018). Outsourcing and Collective Bargaining in the UK. Recover Country Report [https://ddd.uab.cat/pub/infpro/2019/202076/Country\\_Report\\_UK.pdf](https://ddd.uab.cat/pub/infpro/2019/202076/Country_Report_UK.pdf)

<sup>74</sup> Fulton, L., (2013). Worker representation in Europe. Labour Research Department and ETUI. <http://www.worker-participation.eu/National-Industrial-Relations/Countries/United-Kingdom/Workplace-Representation>

<sup>75</sup> TUC, (2020). Guide to: Collective bargaining. <https://www.tuc.org.uk/workplace-guidance/collective->

Collective bargaining is a hot topic in the context of the gig-economy or platform economy in the UK. Deliveroo riders have brought the issue to the attention of the masses in 2016 by using collective action in order to confront the system within the platform. By doing so, the riders wanted to address the question of low payment or the changes made in the system without their prior consent or deliberation. This action has proven that collective bargaining and platform workers are not too mutually exclusive things. The downside of the gig-economy from a critical standpoint is that it goes against the grain of traditional employment with clear guidelines and instead yields to casual (i.e. not being bound to one employer and having freedom to decline work) and so-called precarious<sup>76</sup>work. Within the niche of employment law, the ability of workers to collectively oppose the current conditions is urgent in order to strive after the re-construction of the standards applied. Nevertheless, as the case *IWGB v RooFoods* (which will be described in the next chapter) has shown that platforms offer resistance to the momentum of collectivisation. The principal assertion made by platform is that collective bargaining is not suitable for flexible work arrangements. In the case at hand, Deliveroo managed to effectively claim that the riders were in fact independent contractors due to the substitution clause in the contract. Notwithstanding the acknowledgement by CAC that ‘the support of recognition, and sustained significant membership levels, point to an underlying majority support within the proposed bargaining unit’ (*IWGB v RooFoods*, 2017, para 133)<sup>77</sup>, the riders lost the case. In the Netherlands, collective bargaining also takes place between employers and trade unions. A few rules exist therein. For instance, a union’s freedom to negotiate is akin to the same freedom of

---

[bargaining#:~:text=Collective%20bargaining%20is%20only%20possible,in%20the%20UK%20are%20voluntary.&text=Collective%20bargaining%20with%20a%20recognised,decent%20wages%2C%20terms%20and%20conditions.](#)

<sup>76</sup> Collinson, P., (2018). Gig-economy: how do Deliveroo and Uber workers cope with precarious pay? The Guardian. <https://www.theguardian.com/business/2018/oct/20/deliveroo-uber-workers-pay-gig-economy>

<sup>77</sup> TUR1/985 (2016)  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/663126/Acceptance\\_Decision.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/663126/Acceptance_Decision.pdf)



employers with a sole condition that the union has to have a legal personality<sup>78</sup>. There is no duty to negotiate for the employers, nevertheless. Collective bargaining, just like in the UK, happens wilfully and on voluntary basis. Collective agreements that are concluded become naturally binding for the employers and unions. Under such agreement, employers are required to provide similar terms to everyone, including people who are not members of the union. Thus, the agreement encompasses all employees. Moreover, both actors can request the government to make the condition mandatory for all employees in a specific sector. According to the European Trade Union Institute report, collective agreements concern various wage and conditions matters, ‘including such things as early retirement, educational leave, the position of women, protection of people with disabilities and the environment...increasingly agreements provide for a range of benefits, from which individual employees can choose’ (ETUI, 2015). In addition, there is such thing as a national minimum wage that is typically increased two times per year.

In the Netherlands, efforts to alleviate the repercussions arising from the appearance of “in-betweeners” (people not falling into either group of workers, i.e. not employees of self-employed) have been much at play. Minimum pay establishment through collective bargaining has been offered as one of the possible solutions<sup>78</sup> (Grosheide & ter Haar, 2018, p.3). The reason behind this is to decrease the strain put on pay resulting from competition generated by self-employed. Moreover, this serves as method of tackling the issue of social protection for the in-betweeners. Being able to negotiate the fee in such situation might put a stop to or diminish a so-called social dumping- a process whereby a party gains competitive advantage over others at expense of workers rights and social security<sup>79</sup>. There is a danger of companies trying to circumvent legal restrictions by hiring subcontractors. Nevertheless, collective bargaining of self-employed is controversial as regards to

---

<sup>78</sup> Collective agreement for musicians substituting for members of an orchestra 2006-2007; Collective agreement for private bus transportation; collective agreement for architectural firms 2015-2017

<sup>79</sup> European Parliament Think Tank, (2018). Understanding social dumping in the European Union [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_BRI\(2017\)599353](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2017)599353)

competition law. Within the framework of Art 101(1) TFEU, restrictions put on competition are conflicting with the market<sup>80</sup>. In this regard, collective bargaining is opposing competition law because it strives after eliminating inequality in terms of pay by “fixing the price of labour”. Therein, two indispensable principles clash with each other, i.e. collective labour rights or ban on cartels.

A peculiar outlook on collective bargaining in relation to remunerations was reflected in FVN Kunsten case<sup>81</sup>. The claim was made that a collective agreement in relation to pay for substitutes for orchestra musicians violated competition law due to the fact that it encompassed substitutes employed under a contract of services<sup>82</sup>. In his opinion, advocate general Wahl stated that : “the EU legislature has, in a number of legal instruments, required Member States to introduce rules on minimum working standards (and, in particular, on minimum pay)- including by means of collective agreements- precisely with a view to preventing social dumping” (FNV Kunsten Informatie enMedia v Staat der Nederlanden, 2014, paragraph 81)<sup>84</sup>. The prevention of social dumping, thus, remains an underlying reason for collective bargaining of workers whose position is strengthened through the use of negotiations. Importantly, Wahl maintained that this prevention constitutes an overriding

---

<sup>80</sup> Eurofound, (2011). Competition law and collective agreements.

<https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/competition-law-and-collective-agreements>

<sup>81</sup> Case C-413/13

<http://curia.europa.eu/juris/fiche.jsf;jsessionid=DC53A27CC140D86272D869798B297677?id=C%3B413%3B13%3BRP%3B1%3BP%3B1%3BC2013%2F0413%2FJ&oqp=&for=&mat=or&lgrc=en&jge=&td=%3BALL&jur=C%2CT%2CF&num=C-413%252F13&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=5942246>

<sup>82</sup> Art. 1 of the Netherlands Act on collective agreements states that these can also encompass contracts of services.

<sup>83</sup> Gideon, A., Schiek, D., (2018). Outsmarting the gig economy through collective bargaining- EU competition law as a barrier? (2 ed.) CETLS Working Paper Series.  
[https://pureadmin.qub.ac.uk/ws/portalfiles/portal/149079237/Schiek\\_Gideon\\_Outsmarting\\_the\\_gig\\_economy\\_January\\_2018\\_wp\\_format.pdf](https://pureadmin.qub.ac.uk/ws/portalfiles/portal/149079237/Schiek_Gideon_Outsmarting_the_gig_economy_January_2018_wp_format.pdf)

<sup>84</sup>E.g. Temporary Agency Work Directive

principle in the context of social interest and rationalizes the limitations on fundamental freedoms (paragraph 80). Thus, fixing pay of self-employed undertaken with the purpose of bettering working conditions is legitimate, if it strives after protection of workers from social dumping by precluding agreements with substitute musicians for lower payments. Ultimately, The FNV ruling has shown that the requirements of two criteria have to be fulfilled, i.e. integration and economic dependency, in order for the status of worker to be established. If two criteria are proven to exist, the case involves pseudo self-employment, so collective bargaining will not be subject to competition law.

In conclusion, it seems that the types of workers form groups that possess own characteristics. The diversity of workforce yields a better understanding of dynamics on the labour market and presents us with the challenge at hand: some workers have more protection under the law than others. The ambiguous status of platform workers remains an issue. The next chapter will dive into the subject of social security and collective bargaining even more by scrutinizing the approach taken in regard to the matter of employment by the Netherlands and the UK.

## Chapter 4. The UK

The following chapter dives into the subject of employment and labour law in relation to the gig-economy in the UK. First, segment 4.1 sets out to explore the scope of platform work in the UK. In doing so, it attempts to define the magnitude of the problem as regards to social protection, benefits or collective bargaining rights. Next, the company Deliveroo, being a prominent product of the gig-economy that created a resonance, will serve as a stepping stone towards the realization of the designated goal: scrutinize the repercussions of platform work in terms of labour law. Being a common law country, the UK will provide for a significant example as to how the country is dealing with an issue by means of judicial decisions and on case-by-case basis (in segment 4.2). In the end of the chapter, in section 4.3, important observations will be duly noted in order to answer the question whether Deliveroo riders are self-employed and whether the matter is solved due to the judicial decision.

### 4.2 Platform workers

According to the data gathered by the Foundation for European Progressive Studies (FEPS) with the help of Trades Union Congress (TUC) (FEPS, 2019, p.1)<sup>85</sup>, the UK has shown the

---

<sup>85</sup> Foundation for European Progressive Studies (FEPS), Statistical Services and Consultancy Unit (SSCU), University of Herfordshire and Herfordshire Business School (HBS), (2019). Platform Work in the UK 2016-2019 <https://www.feeps->

increase in people's involvement with the platform economy. Following the report of 2019, it has been established that the biggest part of workers uses platforms as complementary means to other work, meaning they continue having an extra job on the side.

As far as the numbers are concerned: 48.1% were in full-time employment, 12.4% part-time, 10.7% self-employed, 5.7% full-time parents, 3.2% retirees and 11.4% students (SSCU & HBS, 2019, p.4). Almost 10% of workers have temporary contracts and 13.5% have several jobs. Importantly, 6.3% of workers get a pension or benefit (SSCU & HBS, 2019, p.5). Interestingly enough, the majority of platform workers do not view themselves as independent contractors with only 7% identifying as such. All in all, the platform work represents a part of the British labour market that is highly varied and does not pertain to and fit in with the regular employment model.

Platform work constitutes a major part of Britain's gig-economy. The number of platform workers has increased twofold in three years, reaching a staggering 4.7million<sup>86</sup>. From 2013 to 2016, for instance, the revenue of the company Deliveroo has grown by 107,117 percent (Cant, 2020, p.1), making it the fastest growing company at the time. Thousands of so-called "riders" deliver food throughout the country as the CEO Will Shu claims that the company brings flexibility to its workers. However, counterargument as to the precariousness of platform work persists. Frances O'Grady, general secretary of the Trades Union Congress, said: "the explosion of the gig economy showed that working people ran the risk of battling to make ends meet" (Partington, 2019, 28 June).

The usage of virtual employment is another way of cutting down the labour costs. (Cotton, 2015, p.1)<sup>87</sup>. The statistics have shown that workers with a fixed contract earn circa double the salary

---

[europe.eu/attachments/publications/platform%20work%20in%20the%20uk%202016-2019%20v3-converted.pdf](https://eprints.lse.ac.uk/74209/1/publications/platform%20work%20in%20the%20uk%202016-2019%20v3-converted.pdf)

<sup>86</sup> Partington, R.,(2019, 28 June). Gig economy in Britain doubles, accounting for 4.7 million workers: TUC finds worker rights fading as gig platforms proliferate to employ one in 10 adults. The Guardian <https://www.theguardian.com/business/2019/jun/28/gig-economy-in-britain-doubles-accounting-for-47-million-workers>

<sup>87</sup> Cotton, E., (2015). Self-employment is precarious work <http://eprints.lse.ac.uk/74209/1/blogs.lse.ac.uk-Self-employment%20is%20precarious%20work.pdf>

of a self-employed person in the UK (Cotton, 2015, p.3). It seems that the virtual work creates a room for ambiguity and vagueness as the concept of a traditional agreement does not apply. In this way, the loophole exists to dodge the bullet of social benefits such as minimum wage, sick leave or pensions.

In an attempt to reverse the situation, strikes happened across the UK. Deliveroo riders were backed up by IWGB officials (Independent Workers of Great Britain), with the participation of the general secretary Jason Moyer-Lee. The first strike took place in London in 2016 with many more to come afterwards that would eventually ignite the wave of protests around Europe (Cant, 2020, p.103-121). The riders would mainly protest the change in payment: the decrease of payment per order. Moreover, they would resist the working conditions and claim more protection, be it in relation to safety or social benefits (Brock, 2019<sup>88</sup>; Sharma, 2019<sup>89</sup>).

The next segment will examine the major court case that appeared in the UK as a response to the unfair circumstances for riders created by the platform Deliveroo. The segment will aim at answering the question of employment status of Deliveroo riders- an important step in the determination of couriers' rights.

---

<sup>88</sup> Brock, A., (2019)UK: Deliveroo riders strike over changes in pay structure & working conditions Business & Human Rights Resource Centre. <https://www.business-humanrights.org/en/uk-deliveroo-riders-strike-over-changes-in-pay-structure-working-conditions-includes-comments-from-deliveroo>

<sup>89</sup> Sharma, S., (2019). UK: Deliveroo riders strike in demand of improved conditions including better pay, holiday & sick rights. Business & Human Rights Resource Centre <https://www.business-humanrights.org/en/uk-deliveroo-riders-strike-over-changes-in-pay-structure-working-conditions-includes-comments-from-deliveroo>

## 4.2 Court cases

Court cases constitute an important part of Deliveroo riders struggle. December 5 2018 the High Court has ruled that the riders do not possess the right of collective bargaining<sup>90</sup>. IWUGB (Independent Workers Union of Great Britain) tried to overturn the judgement which named the riders self-employed. Nevertheless, such classification by no means hinders the riders' rights, the court claimed. Mr Justice Supperstone stated: ""Deliveroo riders were not "in an employment relationship" with the firm, so the right to collective bargaining did not apply".

The ruling was a judicial response toward the rider's request for social benefits such as subsistence income, pension or vacation payment. The union had expressed the intention to appeal the ruling of the court as the riders would seek further acknowledgement. The question at hand, thus, is whether the riders can be eligible for such benefits and recognized as workers with pertaining rights, including the right to collective bargaining and representation by the union which undertakes the modalities<sup>91</sup>. Union is not an option for a self-employed, however. So the underlying issue is whether the riders qualify as 'workers under Trade Union and Labour Relations Act 1992, s.296.

Following the law on trade unions, it is obligatory for the union to be comprised solely of workers, "wholly or mainly of workers"<sup>92</sup>(Boella & Pannett, 1999, p.356<sup>93</sup>). The IWUGB was pleading for the acknowledgement of the rider's right for collective bargaining, however, this right is available

---

<sup>90</sup> Deliveroo wins latest court battle over rider rights (2018) BBC News  
<https://www.bbc.com/news/business-46455190>

<sup>91</sup> Case ref: Independent Workers Union of Great Britain v RooFoods Ltd (t/a Deliveroo) TUR1/985(2016) <https://www.icaew.com/archive/library/subject-gateways/law/legal-alert/2017-12/case-law-deliveroo-riders-are-not-workers-with-employment-rights-under-trade-union-law>

<sup>92</sup> Trade Union and Labour Relations (Consolidation Act 1992)

<sup>93</sup> Boella, M., Pannett A., (1999) Principles of Hospitality Law (2) Continuum

only in case of riders not being self-employed. Collective bargaining is a crucial right to have since trade unions can stand up for workers and negotiate the terms and conditions in line with the payment. The capacity to form a union, importantly, is recognized as a fundamental human right enshrined in Article 23 in the Universal Declaration of Human Rights<sup>94</sup>. Another significant law in this regard is the ILO's Declaration on Fundamental Principles and Rights at Work which stipulates that "freedom of association and collective bargaining" forms a crucial workers' right. Let us consider the most notable facts of the case, however.

Importantly, a clause in the agreement between Deliveroo and a rider has stipulated that a person is allowed to have someone else undertake a task for him or her. It means that a rider can have a replacement to fill-in for him in cases of necessity. Moreover, it was stated that the rider is not obligated to notify the company about the swap. A person is endowed with discretion to select anyone he or she pleases to do the delivery, as well as accept or decline the order if the rider performs work himself. Training of a substitute and giving own login data lies on the shoulders of the rider. The company, thus, does not control who does a job, as long as a rider has a valid agreement, he or she can find a substitute. In addition, a rider can work for another employer.

It is known that a person classified as worker is bestowed with benefits that make him socially secure- vacation payment or minimum wage. Deliveroo riders are, however, denied these securities because they do not fall under the definition of a worker. Paragraph 36 states: "Since we have found that the Riders are not workers, we cannot accept the Union's claim for recognition and for rights to negotiate on pay, hours and holidays with Deliveroo. However in case we are wrong about worker status, we will briefly consider the remaining admissibility tests in issue" (IWGB v RooFoods Limited T/A Deliveroo, 2017, p.29<sup>95</sup>).

---

<sup>94</sup> United Nations General Assembly, (1948). Universal Declaration of Human Rights. Article 23.

<sup>95</sup> IWGB v RooFoods (2016). TUR1/985  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/663126/Acceptance\\_Decision.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/663126/Acceptance_Decision.pdf)



The Central Arbitration Committee (CAC), has concluded that the agreement between Deliveroo and the riders is crafted in a way to circumvent the worker definition and the pertaining rights. Riders had the freedom to decline work at own will without any punishment to follow up, if that occurred. In this way, the boss-subordinate dynamic whereby the subordinate obeys and must follow through with the task is not established. Furthermore, the CAC has examined the nature of the relationship by looking into the control factor. The question at stake was whether some degree of control is exerted. In line with that, the autonomy or dependency of the rider was taken into account. From an economical perspective, CAC has examined the fiscal risk involved and the possibility to gain the financial benefit due to the relationship. The Decision of the Panel goes as follows : “Accordingly, the decision of the Panel is that the Union’s application is not accepted since the Riders are not workers within the meaning of s.296 TULR(C)A, but in all other respects the acceptance tests have been met by the Union” (IWBG v RooFoods Limited T/A Deliveroo, 2017, p.37). A commentary on the case will be provided in the next section.

### 4.3 Analysis

The segment 4.3 set out to provide a commentary on the case IWBG v RooFoods Limited. Major observations will be noted in order to answer the question whether Deliveroo riders are workers or not. Sec.296 of Trade Union and Labour Relations Consolidatio Act 1992 <sup>96</sup>defines ‘worker’ as an ‘ (1) individual who works or seeks to work (a) under a contract of employment or (b) under any contract whereby he undertakes to do or perform *personally* any work or service for another party to the contract who is not a professional client of his; (2) in this Act employer, in

---

<sup>96</sup>Trade Union and Labour Relations (Consolidation) Act (1992). Section 296.  
<http://www.legislation.gov.uk/ukpga/1992/52/section/296>

relation to a worker, means a person for whom one or more workers work, or have worked or normally work or see to work (IWGB v RooFoods, 2017, p.24)'.

Sec.296 differs slightly from Employment Rights Act 1996 in regard to the term 'worker' which states that "worker' is an individual who works under (a) a contract of employment (b) any other contract, whether express or implied, whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried out by the individual (IWGB v RooFoods, 2017, p.24)'. Notwithstanding a slight difference in the wording, sec.296 was applied to the case at hand. The term 'worker', therefore, is interpreted in the case as according to sec.296.

It is notable that the relationship between riders and the company was indeed contractual. It means that the parties, both riders and Deliveroo, were bound by an agreement that formed a basis for their connection whereby a rider was undertaking orders for Deliveroo ( clearly not a client but a party providing work). Thus, the first part of sec.296 was applied duly to the case. The core question at stake was whether a rider carries out a delivery personally as an obligation prescribed by an agreement. This leads to the following sub-questions: (a) was there an obligation to carry out work and (b) was there a *personal service* in the relationship.

In order to answer the legal question, a variety of factors have to be scrutinized. For instance, a content of an agreement must be considered carefully. Moreover, it does not suffice to merely refer to the contract, an intent and expectations of both parties concerned form a part of substantiation. In addition, the realm and practice has to be examined in order to see whether a rule in a contract has practical applicability. It is not enough having a written rule, if the practice does not match the expectation. In other words, it does not suffice having a substitution clause in a contract alone: if the rider does not use this option, the rule has zero applicability.

Notwithstanding the fact that working at Deliveroo constitutes the only source of income for many riders, the court does not consider this a defining point as the accentuation is placed on the

personal factor, i.e. whether an individual is obliged to perform work himself (in accordance with sec.296). From the economic standpoint, however, there is an element of dependency in the relationship between the riders and Deliveroo. Considering the fact that many riders work only for Deliveroo and have no other income, they also prefer this work due to the flexibility that it provides. This flexibility is a necessity in the light of the circumstances due to the fact that people have other obligations in addition to work. Nevertheless, sec.296 in the case at hand places importance on the agreement to perform work personally as a prerequisite to the definition of 'worker'. This definition has to be in congruence with the reality of riders' work at Deliveroo in order for them to have employment status of a 'worker' and be eligible for collective bargaining rights.

As the factual basis of the case suggests, acceptance of an order was not compulsory. The contractual standard ascribes no such obligation. A choice is for the rider to make, i.e. to accept or reject the order. The rider can also cease working halfway through an order by merely letting The Riders Support know about the decision. No penalty follows up as a consequence to this action. The intent behind this is to provide flexibility for the riders, a highly valued feature for the majority of couriers' who undertake work at Deliveroo for that reason. Moreover, the agreement does not explicitly state that a rider has to perform work personally. On the contrary, there is a clause that gives the rider a choice to find a substitute for himself. This clause, notably, is contrary to personal service principle common for workers or employees. As the practice has shown, this clause is applied by the riders, though not on a regular basis.

The absence of supervision as to who performs the task on Deliveroo's side points out at the lack of control but this does not exclude the right for substitution. Though rarely used, a substitution clause does not represent a sham. Basically, the riders enjoy discretion in choosing who can undertake the delivery and Deliveroo does not control or participate in this decision-making. This flexibility is what distinguished a self-employed from a worker. Thus, the riders are not considered to be workers under the definition in sec.296 TULR(C)A. Therefore, the riders cannot have collective

bargaining rights. The next chapter will consider the situation in the Netherlands in relation to the research question.

## Chapter 5. The Netherlands

This chapter sets out to examine the circumstances in relation to the Deliveroo riders' rights in the Netherlands. Section 5.1 will give an overview of the situation of platform workers in the country. It will investigate the question: who works for a platform in the gig-economy in the Netherlands and what is the scope of the trend. Section 5.2 will concern Deliveroo-related court cases that are depictive of what employment status means for workers rights. Furthermore, the section questions the criteria necessary for classification of an employment status. In the end, section 5.3 will provide an analysis of the court cases with supporting remarks and observations in order to answer the main research question as to whether Deliveroo riders are self-employed or not.

### 5.1 Platform workers

Innovation that comes along with gig-economy is praised by the companies that manage to cut the costs as well as discover new means of supplying the necessary service. Be it cleaning, food delivery, transportation- everything is accomplished through the platform. This section is based, thus, on the scrutiny of the scope of the gig-economy in the Netherlands and the prospects of such. . The target group is the people who fulfil tasks through the usage of an application via their mobile phones- they will be called workers and the food delivery workers will be called riders. The businesses providing such services are named platforms.

The platform work in the Netherlands is designated through its scope and workers. Currently, a small percentage of people engage into platform work. Mostly, they work not more than 20 hours per week and have a job on the side. There is a difference between the cleaning services staff and food delivery workers, whereby the former tend to be low educated and the latter- highly educated. In the food delivery, a big portion of the workers are youngsters or students who seek a flexible

option for a job next to their studies (Weel & Werff & Bennaars & Scholte & Fijnje & Westerveld & Mertens, 2018, p.7<sup>97</sup>) Notwithstanding the seemingly humble statistics, the numbers are growing steadily. Partially, this growth is due to the fact that the Internet is immensely popular and easily accessible: people experience no inconvenience in using apps that offer work. Partially, the expansion of the platform economy is due to the involvement of foreign investors who see opportunity in the development of the gig-economy. In short, demand is efficiently linked to the supply through means of apps. Being new to the market, the platform economy presents a challenge in terms of law which has to generate rules. If the legal system comes up with a regulation that creates obligation as regards to social security, the platform economy may encounter a halt to the steady growth.

The statistics have shown that the payment varies greatly between the riders. The average is around 790eu a month, providing the majority works twenty hours per seven days. The job at the food delivery services entails that one gets paid per task only, thus, the idle period is not covered. The salary is linked to many factors, including the weather conditions (as people tend to order more in gloomy weather as opposed to eating out in sunny weather), the number and the availability of riders, how fast the rider is and other externalities (e.g. quarantine). It is apparent that the earning is dependent on the time spent on work but the peak salary is around 19 euros, whereas the minimum is 8 euros (Weel & Werff & Bennaars & Scholte & Fijnje & Westerveld & Mertens, 2018, pp.1-7). The payment is established by the company Deliveroo and cannot be influenced by the riders. The claim is that the payment system oftentimes lacks transparency.

Generally, the riders get notifications from Deliveroo about the current adjustments in the system which goes through changes now and then.

Currently, the fee mechanism is tightly connected with the effort that the rider puts into the order. The longer the route qua kilometrage, the higher the payment<sup>98</sup>. Previously, the app would randomly assign the order but now a special mapping system operates. It calculates the best possible outcome, and connects the available rider with the best route based on traffic and landscapes. Moreover, the previous system had bonuses attached to every order which disappeared for a while and finally reappeared but as a downsized version with much smaller bonuses that resulted in lower overall payments. The bonuses are linked to busiest times and do not guarantee a stable income as the majority of riders tend to work mostly in 'rush hours'.

To conclude the section, the platform economy has potential for development within the Netherlands. It creates job opportunities for the people as well as legal challenges in terms of labour law and social security. The next segment will consider the court cases that arose in the past time as regards to the subject matter.

## 5.2 Court cases

Two court cases took place in relation to Deliveroo in the Netherlands. Initiated by the FNV (Federatie Nederlandse Vakbeweging), the biggest union in the Netherlands, the major topic of the case was the status of Deliveroo riders and the usage of the collective agreement. The status is of special importance because it considers whether the riders qualify as employees- such categorization

---

<sup>98</sup>Deliveroo, (2020). Guide to fees. How are fees calculated? <https://sg.roocommunity.com/guide-to-fees/>

defines the rights of the workers apart from merely the status. The decision of the court varies from the previous Deliveroo case ruling whereby a rider Ferwerda was considered self-employed<sup>99</sup>.

Previously, Deliveroo declared that it would discontinue any fixed-term contracts. As a consequence, the riders would have to stay working as self-employed instead. FNV supposes the existence of an employment relationship between Deliveroo and the riders, nevertheless. After a close examination of the case, the Subdistrict Court of Amsterdam has come to agree with the union and ruled in favour of FNV on 15 January 2019<sup>100</sup>. The court has scrutinized the relationship between Deliveroo and the riders with the purpose of answering the question of the employment status. It appeared that the essence of the relationship did not go through a drastic transformation so that the control factor would be affected. In other words, authority was still exercised by Deliveroo. In terms of duty to undertake work, the riders indeed had freedom to decline or accept work. However, this freedom is limited to the fact that declining work may result in fiscal losses for riders whose availability determines the chances of getting orders and bonuses that follow up as a consequence to accepting more orders. Thus, a presupposed autonomy of a rider is a subject to limitations which makes it worth less.

The substitution clause that is prescribed by the agreement is another point considered when looking at the employment status. Though a rider can find a substitute for himself to undertake the order, this substitute falls within the authority of Deliveroo whose confirmation has to be obtained by the rider prior to the act of substitution, i.e. someone else working in his or her place. The reality has also shown that the clause has little practical applicability. Overall, the court decided that the nature of the job did not transform in a way that would substantially affect the employment relationship.

---

<sup>99</sup> Van der Laan, K., (2018). Deliveroo Rider is Self-employed. <https://kvdI.com/en/articles/deliveroo-rider-is-self-employed>

<sup>100</sup> Van der Laan, K., (2019). The Court of Amsterdam rules that Deliveroo-riders are employees. <https://kvdI.com/en/articles/bezorgers-deliveroo-zijn-toch-werknemers>



It is a change from the previous decision of the court on Deliveroo case 23 July 2018. After the discontinuation of the fixed-term contracts by Deliveroo, the rider Ferwerda, had to reluctantly accept the new terms yet firmly believed that the action by the company brought about false self-employment. The rider brought in a claim, backed up by FNV, that the contract between him and Deliveroo still formed an employment agreement. The case touched upon the same issue of employment status. However, the court placed more significance then on the contractual obligations rather the applicability of such. The accent was put on content of the agreement which openly stated that the intention of the parties concerned was not to engage in to employment agreement.

The Dutch civil code stipulates the conditions to be fulfilled for the contract to qualify as an employment contract. The definition of one assumes that the employee carries out labour for the employer and receives a payment in return. Thus, there are three basic features of the labour contract: control, labour and payment (Zekic, 2019, p.3)<sup>101</sup>. Herewith, the contractual relations can be between employer and both employee or the independent contractor, ZZP'er (Zelfstandig Zonder Personeel). A duty to carry out the task is accentuated and if such does not exist, then there is no employment contract to begin with.

The freedom of contract is another notion that is immensely important in the context of the labour law. Following this doctrine, parties can enter into an agreement or not, within the boundaries of law of course. Contract may be realized in many ways under the concept of freedom of contract. It means that the application of the contract presupposes the thought put in before the conclusion of one and, naturally, the consequence of the execution- how the task was carried out, according to The Dutch Supreme Court<sup>102</sup>. In this way, the circumstances, purpose and behaviour are central to the contract. The circumstances presume the personal situation of

---

<sup>101</sup> Zekic, N. (2019, Jul 1). Contradictory Court Rulings on the Status of Deliveroo workers in the Netherlands. (No. 17 ed.) Comparative Labor Law & Policy Journal: Illinois College of Law

<sup>102</sup> Dutch Supreme Court (1997) ECLI:NL:1997:ZC2495

a labourer- the more economically autonomous he is, the less likely he is will be viewed by the judge as an employee.

Section 6 will address the cases in a thorough manner in order to be able to understand the major implications of the rulings for the rights of the riders. An analysis of the cases will be provided with the purpose of answering the question whether Deliveroo riders are self-employed or not.<sup>103104</sup>

### 5.3. Analysis

The following segment is aimed at analysing the core differences between two Deliveroo cases in the Netherlands. It is known that the Subdistrict Court of Amsterdam has produced two opposing decisions on the subject matter with the first one on 23 July 2018 and the second on 15 January 2019. What made the court change its made in only half a year time?

There is an important difference between two court rulings. In the first case dated July 23, the substance of the contract was taken thoroughly into consideration. In line with a confirmative statement from the rider who admitted to being a contractor and having a number in KvK (the Chamber of Commerce), it was concluded that no employment contract was assumed. The rationale of the court stems from two explanations. First of all, the initial intent was contemplated thoroughly as the court looked at the joint agreement between the parties. It was apparent from the content of the contract for services that the design of such was aimed at self-employment. There was no explicit or implicit intention that the rider would take up employment under the contract. The fact that Ferwerda has gone through registration in KvK as a sole proprietor with a BTW or VAT number proves the point. BTW number is important for tax related operations

---

apart from proving your registration at the Chambre of Commerce. Thus, Ferwerda has to personally take care of taxes instead of these being automatically deducted from the salary. This is what distinguishes a self-employed from employed person.

Next, the court observed how the agreement was realized in practice. Within the boundaries of self-employment, there is no control factor present between the company and the contractor. Thus, Deliveroo cannot exercise authority over the rider, otherwise the dynamics of the relationship would pinpoint at the employment. Following the analysis of the facts surrounding the case, it was concluded by the court that the rider was not under the authority of Deliveroo as he enjoyed freedom to decide when to login and whether to reject or accept the order. Moreover, Ferwerda was not obliged to wear the clothing of the company, he could choose his own apparel as well as the bag to carry the food. Lastly, he could use a substitute in his place and work for other companies if needed. All things considered, the court has ruled that the nature of the relationship between Deliveroo and the rider does not resemble an employment agreement.

In the second case, as a contrast, the judge accentuated the fact that the agreement was one-sided and not open for discussion: a premise depicting that such arrangement could not serve as a basis for defining the intent of parties in question. The further stress was put on the flexibility aspect of work at the company. Moreover, when ruminating upon the essence of the “contractor”, the judge found entrepreneurship to be a crucial component of such (Zekic, 2019, p.5). In this way, the accentuation was shifted from the intent of two parties as the contract proved to be not bilateral, thus not fully reflective of the intention.

The nature of link between riders and the company was contested as to the point of examining whether the components of the agreement were fulfilled. Since the riders were categorized as employees first, contractors afterwards, it was of importance to see how their labour and relationship with the business developed. The apparent difference lies in the fact that as employees, the riders could not decline the task, whereas as the contractors they had a freedom to accept or decline one at their will.

The judge, however, was interested in the actual application of the freedom factor. Therefore, the casual relationship was contested. For example, the app provided the planning in accordance with who had the best statistics and gave the preference to the riders who carried out the tasks on a consistent basis- a practice that gave an advantage to some riders over the others as they had better chances of being assigned an order. Hence, there was an obligation to work in peak hours that typically fell into the weekend, as one would pursue better stats. Consequently, the judge deemed that there was an aspect of control to the nature of the relationship. As far as the FNV case goes, the relations of dependence were of an utmost importance. The court has decided that the company has exercised dominance over the riders as they were in control of the salary, which was humble, and the schedule. The preferable working times might be declined by the Deliveroo and presence of GPS supervision disputed the notion of freedom. The fact that the company changed their policy on uniforms as the riders were not obliged to wear one anymore, did not persuade the court. A comprehensive scrutiny of the circumstances comes into play when questioning the employment position. Herewith, the fiscal autonomy or dependency is taken into account- the court examines the factor of whether the rider assertively decided to be a contractor. If the rider unwillingly becomes self-employed, the validity of the employment status becomes questionable.

After the consideration of two cases, it suffices to conclude that the decision of the court is bound to specific circumstances of each case. Naturally, the first case touched upon a personal situation of the rider and facts surrounding his relationship with Deliveroo. The second case, however, represented a more extensive outlook on the dynamics of the relationship between the riders and the company. What is typical of the second case, is that the court has taken in a comprehensive approach in the analysis of the situation- it looked into the terms and conditions prescribed by the contract and their relation to the reality or their practical applicability in general within the company by various riders.

The ruling of the court determined whether the dynamics between Deliveroo and the riders may fall into the framework of employment relationship. The cases at hand will provide for an

example to other platforms that find themselves developing in the Netherlands. The issue of pseudo-employment still remains, nevertheless, as there is room for ambiguity in law. It might as well be a good idea to come up with a regulation that has more extensive and comprehensive or intelligible approach towards defining the criteria for employment.

## Chapter 6. Comparison

The technological advancement has brought about changes that touched upon the labour market of both the UK and the Netherlands. The idea of casual work is spreading throughout Europe through the usage of on-call work and zero-hour contracts (Wouters & Pecinovsky, 2018)<sup>105</sup>. The platforms like Deliveroo are offering non-conventional types of employment to people who do not have fixed schedules. This allows for workers both in the UK or the Netherlands to have flexibility- an advantage, for some. It enables students, for instance, to combine work with studies or gives an opportunity for adults to balance work and life. The platform work has proven to be complementary to the existing or more stable job, as it is infamous for its low payments.

When comparing the two countries, the UK and the Netherlands, a simple observation comes into mind : the platform economy is a relatively new phenomenon but it managed to create a resonance in both countries. The company Deliveroo, being a product of platform economy, was created in the UK and, therefore, had longer history within the local market before it came to the Netherlands. A chain of strikes that happened in the UK brought the attention of the society to the issue of false classification and pseudo self-employment. The overlapping theme of employment classification is what unites two countries with different legal systems. The most common and re-occurring question is one of the employment status. The matter at hand is of the definition of the type that Deliveroo worker is: depending on the status, the rights and obligations can be designated. Thus, the lack of status yields too little to no legal or social protection for workers who find

---

<sup>105</sup> Wouters, M., Pecinovsky, P., (2018). Marginal part-time in Europe: 2018's expansion of flexi-jobs in Belgium. Comparative Labor Law and Policy Journal University of Illinois College of Law. ISSN: 1043-5255 <https://lirias.kuleuven.be/1995275?limo=0>

themselves in a precarious position vis a vis the labour market. It has been decided, however, in some cases that the riders will be defined as self-employed.

According to the European Commission Report, platform workers are those who work an average of twenty plus hours per week and whose at least half of the salary is acquired through platforms (Pesole & Brancati, 2018, p.3<sup>106</sup>). The UK has more cases of people working for platforms as in comparison to the Netherlands. The UK has on average more young platform workers than the Netherlands. A small difference between the two countries persists when the comparison is concerned. The maximum age for workers in the UK is 75, whereas in the Netherlands- 70 (SSCU & HBS, 2019, p.20).

There is one obvious common observation regarding the platform work in both countries that cannot be ignored. Given that people who do platform work vary greatly, it is hard to categorize such work as a separate niche on a labour market. Most of these people have a job on a side and draw their income from different sources, not being solely bound to platform work. Thus, such work is regarded as an additional means for acquiring earnings for a broad array of people, who fall into different kinds of employment: self-employed, zero-hour agreements, full-time or part-time, permanent or temporary (SSCU & HBS, 2019, p.7). The overarching similarity lies in this remark. The fact that people perceive platform work as supplementary pinpoints at the precarious nature of such as workers prefer to have a more stable job to provide for a fixed income or cover the expenses. Considering that more people are on a look out for work than in fact finding one and following through with it, plus having another source of income, indicates the economic urgency factor in the phenomenon (SSCU & HBS, 2019, p.22). Such tendencies point out at the need for

---

<sup>106</sup> Pesole, A., Urzi Brancate, M.C., Fernandez-Macias, E., Biagi, F., Gonzalez Vasquez, I.(2018) JRC Science for policy report: platform workers in Europe. European Commission DOI: 10.2760/742789 [https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157\\_pubsy\\_platform\\_workers\\_in\\_europe\\_science\\_for\\_policy.pdf](https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157_pubsy_platform_workers_in_europe_science_for_policy.pdf)

measures that are wholesome is tackling the issue of insufficient income, uncertainty and destitution.

It is worth-noting that there is a difference in terminology between the UK and the Netherlands as regards to the employment. There are three terms, “employee”, “worker” and “self-employed”, present in the British legal system. However, this creates a room for ambiguity due to a lack of clear distinction between “employee” and “worker”. Herewith, the nature of the relationship between the parties defines the classification. For instance, workers have an duty to undertake work personally, whereas employees have a contract of service or service agreement. Section 230 (1) of the Employment Rights Act 1996 refers to an employee as : “an individual who has entered into or works under (or worked under) a contract of employment”<sup>107</sup>. The law is notorious for its simplicity that brings about little resolution, that is why a standard was set up by courts to decide on the employment status.

In *Ready Mixed Concrete Ltd v the MPNI*<sup>108</sup>, a test was created for the designated purpose that entailed four major points. The first one, called *mutuality of obligations*, determined a minimum pay and hours, suggesting employment. It also examines whether an individual can reject work or has a duty to complete it or whether an employer has to provide work . On its own, the first criteria is

---

<sup>107</sup> L&E Global, (2020). Legal Framework Differentiating Employees From Independent Contractors. <https://knowledge.leglobal.org/eic/country/united-kingdom/legal-framework-differentiating-employees-independent-contractors-21/>

<sup>108</sup> MacKenna, J. (1968). *Ready Mixed Concrete LTD v Minister of Pensions and National Insurance* . *Managerial Law*, Vol.4 NO.2 pp.132-150. <https://doi.org/10.1108/eb021504https://www.emerald.com/insight/content/doi/10.1108/eb021504/full/html>



highly inconclusive as it can exist in both contracts for or of service<sup>109110</sup> and does not fully define the essence of a contract. The second criteria, *personal service*, points out at self-employment, if there is a substitute clause present. The third criteria is *control*- it investigates a variety of questions to determine the employment status. For example, it looks at the degree of subordination in the relationship, the integration level of a person, whether he or she has to take care of own equipment or instruments, whether there is an obligation to wear a uniform, is there is a training involved, whether a person can have other jobs. The last criteria is a multiplicity of economic considerations, i.e. insurance, entitlement to benefits (vacation or sick pay), payment structure (fixed hourly pay or not), fiscal risk involved (exposure to financial losses).

A 'worker' subgroup in labour can be found in 230(3) Employment Rights Act. The section states that: ""worker" is someone who works under a contract of employment or other contract, whether express or implied whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual"<sup>111</sup>. The problem that it is still oftentimes not apparent if the person is self-employed or a worker. That is why the court came up with a multiple criteria test to decide on the issue. For instance, the first element to be considered is presence of a *contract* as according to the

---

<sup>109</sup> Thomson Reuters, (2020). Df. 'contract for services is a contract that is used for appointing a genuinely self-employed individual to carry out services for another party where the relationship between the parties is not that of employer and employee'.

[https://uk.practicallaw.thomsonreuters.com/2-200-3109?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/2-200-3109?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)

<sup>110</sup> Contractor Calculator.co.uk (2017). Employer-employee contract of service: 'permanent employees have a contract of service with their employer.'

[https://www.contractorcalculator.co.uk/difference\\_contract\\_for\\_services\\_of\\_services\\_ir35.aspx#:~:text=By%20definition%2C%20if%20a%20worker,a%20contract%20of%20service%20are%3A&text=Employees%20have%20statutory%20rights%20to,paternity%20rights%20and%20redundancy%20payments](https://www.contractorcalculator.co.uk/difference_contract_for_services_of_services_ir35.aspx#:~:text=By%20definition%2C%20if%20a%20worker,a%20contract%20of%20service%20are%3A&text=Employees%20have%20statutory%20rights%20to,paternity%20rights%20and%20redundancy%20payments)

<sup>111</sup> Employment Rights Act (1996). Sec.230(3)

<http://www.legislation.gov.uk/ukpga/1996/18/section/230>

definition in section 230(3). There is no mutuality of obligation, however (as opposed to the 'employee' standard). Next, *personal service* is another criteria whereby a person is obliged to personally provide service without a right for substitution. The so-called *integration test* is the third element which asks the question of whether a person is indispensable to business. In *Clyde & Co v Bates Winkelhof*<sup>112</sup>, for instance, the court ruled that the party was an integral part of the business which was by no means his client or customer. Interestingly enough, the court also deemed that the component of subordination is not of obligatory urgency in the worker-employer dynamic. It is still essential to the distinction between the three aforementioned terms but every case should be judged based on pertaining facts.

In the Dutch legal system, however, the classification of workers differs: there are employees or independent contractors (i.e. ZZP'ers). The Dutch Civil Code distinguishes three types of contracts: employment agreement (Article 7:610 Dutch Civil Code<sup>113</sup>), contract for services (Article 7:400) and contract of work<sup>114</sup>. A contract of work is a clear-cut dynamic whereby an individual as an independent contractor performs work for remuneration. There is no duty of personal service involved. Another explanation comes into play as regards to the distinction between employment agreement and contract for services which would ultimately define the status of a worker.

---

<sup>112</sup> Dorotheou, E., (2015). Case Comment: *Clyde & CO LLP & Anor v Bates van Winkelhof* (2014) UKSC 32 <http://uksblog.com/case-comment-clyde-co-llp-and-anor-v-bates-van-winkelhof-2014-uksc-32/>

<sup>113</sup> Dutch Civil Code. Book 7 Particular agreements.  
<http://www.dutchcivillaw.com/legislation/dcctitle7777.htm>

<sup>114</sup> L&E Global, (2020). Legal Framework Differentiating Employees from Independent Contractors. <https://knowledge.leglobal.org/eic/country/the-netherlands/legal-framework-differentiating-employees-independent-contractors-12/>

Under the Dutch law, three aspects exist as a part of an employment agreement<sup>115116</sup>. First, there is an element of authority exercised by an employer who instructs the employee. Second, there is a duty of personal service (just like in the British system)- an employee must personally undertake work. Third, the employee gets a salary in return for the service. The importance is placed on the parties' intentions and the actual fulfilment of the three criteria in deciding whether the employment agreement exists. Under the employment contract, there is protection for the worker by Dutch employment law. This entails such matters as collective bargaining , minimum payment, vacation, illness, pension.

A contract for services, on the contrary, comes in handy in situations whereby a person is paid for work and there is no authority involved in the relationship between the parties<sup>117</sup>. Thus, two out of three criteria, i.e. remuneration and work (excluding authority), takes place. In this way, an aspect of authority is crucial in defining the distinction between the two agreements. The issue of authority is examined on a case-by-case basis but there are commonly accepted guidelines that are observed. For instance, the intent of both parties is considered in line with questions on the payment methods, the autonomy of an individual in the undertaking of services and, finally, the degree of (entrepreneurial) risk involved. In addition, the question of whether vacation and sickness pay persists is taken into consideration as well as deductions of social security and payroll taxes by the employer and payment of VAT by the worker (L&E Global, 2020).

---

<sup>115</sup> Df. 'employment agreement exists when a party performs labour in the service of the other party for remuneration for a period of time ' <https://knowledge.leglobal.org/eic/country/the-netherlands/legal-framework-differentiating-employees-independent-contractors-12/>

<sup>116</sup> Bowmer & Nuiten, (2020). Employment contracts in the Netherlands <https://veldlaw.nl/en/services/employment-and-labour-law/employment-contracts-in-the-netherlands>

<sup>117</sup> Schouten, S., (2020). Labor contract or contract for services in the Netherlands? AMS advocaten. [https://www.amsadvocaten.com/blog/dutch-employment-law/the-difference-between-an-labor-contract-or-contract-for-services/#:~:text=Elements%20of%20labor%20contract%20under%20Dutch%20law&text=If%20somebody%20gets%20paid%20for,for%20a%20new%20build%20house\).](https://www.amsadvocaten.com/blog/dutch-employment-law/the-difference-between-an-labor-contract-or-contract-for-services/#:~:text=Elements%20of%20labor%20contract%20under%20Dutch%20law&text=If%20somebody%20gets%20paid%20for,for%20a%20new%20build%20house).)

The grey area between employment and self-employment is an issue which is depicted by the above mentioned Deliveroo cases in both countries. The overlapping elements of classification come into picture that are designated in Recommendation 198, following the International Labour Conference<sup>118</sup>. The dominating factor, herewith, is called *personal subordination* in the relationship between employer and the employee. In other words, it means that the employer possesses the authority to order or instruct and the employee has a duty to obey. With the presence of technological means used by platform, the notion of authority is contested because there is no physical person who is ordering but instead there is an app or a platform that is assigning orders instead. Next, the *mutuality of obligation* is the second element in the picture which basically refers to the duty to be available for work and duty to provide work, by the employee and employer respectively (Schoukens, 2017, p.310)<sup>119</sup>. The third and fourth features of the employment relationship are directly co-related: *remunerations* or payment are given by the employer to the employee in exchange for work which in its turn creates the *economic dependency*. If the criteria are fulfilled, the relationship constitutes a standard employment relationship whereby employees can have complete protection and social security or enjoy collective bargaining rights. The question, however, still stands: what to do with economically dependent self-employed who lack in direct employment relationship due to lower degree of personal subordination, for instance? These people also run great economic risks (having income from one company and being highly dependent on that unstable wage) and raise the issue of classification.

---

<sup>118</sup> International Labour Organisation (2006). Recommendation 198: Employment Relationship Recommendation. 95<sup>th</sup> Session International Labour Conference. Geneva. ILO

<sup>119</sup> Schoukens, P., Barrio Fernandez, A. (2017) The changing concept of work: when does typical work become atypical. European Labour Law Journal, 8(4), pp.306-332.

<https://doi.org/10.1177/2031952517743871>

[https://pure.uvt.nl/ws/portalfiles/portal/23677224/The\\_changing\\_concept\\_of\\_work.pdf](https://pure.uvt.nl/ws/portalfiles/portal/23677224/The_changing_concept_of_work.pdf)

In *IWBG v RooFoods Limited*, the accent was put on the personal service factor as the court was examining the nature of the relationship between the parties. A presence of a substitute clause in a contract between the parties formed a defining moment in the decision of the court as the rider was not obliged to perform work himself. The economic dependency of the riders was not stressed out, the degree of autonomy was considered instead- the fact that the riders enjoyed freedom to decline or accept the order influenced on the judgement because Deliveroo was viewed as lacking in authority or at least in the exercise of one. In contrast, the Dutch cases represented a more holistic approach that the court took in relation to the subject matter. It means that the substitute clause was considered from a standpoint of applicability and as subject to other factors. In addition, an economic factor was thoroughly considered. Is freedom to decline the order subject to the statistics and unfavourable financial outcome for the rider? The more economically dependent the rider is, the greater the likelihood of the rider being an 'employee.' The way the agreement is executed has as much importance as the rules prescribed by such.

## Recommendations and conclusion

The issue of employment remains an important subject of contemplation. As the cases in the Netherlands and the UK have shown, the classification is not as clear-cut as might seem from the first glance. The urgency of the topic should not be underestimated. It is crucial to observe the development of the platform economy as it is a relatively new phenomenon for the market. It is also necessary to align this development with the law in order to make sure that the grey areas are tackled accordingly and in response to the societal tendencies. The bottom line is the realization that pseudo self-employment destabilizes certain layers of society that are unprotected under labour law- it can contribute to social dumping.

A few things can be done in order to tackle the designated issue of pseudo-employment and protection under law. First, on a basic level, the information on workers' rights should be made accessible to everyone in order to move forward in the discussion. People should know their rights and be well-informed on the matter of labour law. Next, case-by-case approach is still applicable and can offer a solution to the issue. The urgency of classification stands as every case should be analyzed as according to the facts surrounding it and personal circumstances of the parties involved.

Importantly, after the examination of a few cases that took place in the Netherlands and the UK, it is worth-noting how crucial it is for the court to have a holistic, comprehensive and malleable approach when scrutinizing every case. Herewith, it is as equally critical to look at the law as it is to see through the effect that this law has in practice. In order to circumvent any trouble, a careful examination of employment status is vital: if the individual has strong economic dependency in his work and works solely for one party, maybe that person should be perceived as an employee. If the platform appears to exercise a degree of control through various means such as GPS tracking, surge or bonus system, then this platform falls within the ambit of an employer. Naturally, in cases of vagueness and unclear employment status, the legal system can also provide for social security and

give benefits to people who do not fall into either category of employed or self-employed. Also, if workers would have collective bargaining rights, they would be able to negotiate the terms and conditions of a contract that could be moulded in way to suit their best interest, i.e. minimum wage or pay transparency. For this to happen, active participation of unions has to take place, FNV and INGW are great examples of how unions are fighting for the rights of platform workers in this regard. The 'Frankfurt Declaration'<sup>120</sup> (Prassl, 2018, p.26) is a notable stepping stone towards the realization of clarity in the matter at hand. If the declaration is endorsed by the society and labour law, the application of it in practice would provide for a viable solution.

Furthermore, there is a call for the creation of another category for platform workers within the labour legislation. A different law for a group that falls in between self-employed and employee. In this way, platforms like Deliveroo would have responsibilities in respect to the riders who will be provided with insurance and social security. Also, the riders would have a right to a minimum payment dependent on the time spend on work. Notwithstanding this, the riders will not have the same level of commitment to the company as an employee would typically have to the employer. The possible downside to this solution, however, is the risk of creation of a new twilight zone due to current employees being moved to a third category.

To conclude, it would make more sense to let people decide for themselves what status they want to enjoy and keep them informed on the possible repercussions of any choice they make. All things considered, the answer to the question whether Deliveroo riders are self-employed or employees relies heavily on the circumstances of every case considered and is subject to intentions of the riders. Keeping in mind the fact that platform work in Deliveroo does not provide for stable income (on the contrary- the riders have strong economic dependency in cases of working solely for one company), it is advisable to set up a guarantee for minimum pay through collective agreement.

---

<sup>120</sup> Prassl, J., (2018). Collective voice in the platform economy: challenges, opportunities, solutions. ETUC Report <https://www.etuc.org/sites/default/files/publication/file/2018-09/Prassl%20report%20maquette.pdf>

## References

Ameber, P. (2017). What Was The Digital Revolution? WorldAtlas. URL:

[worldatlas.com/articles/what-was-the-digital-revolution.html](http://worldatlas.com/articles/what-was-the-digital-revolution.html).

Austermuehle, E. (2016). Impact. Understanding and Managing Business Risk. Monitoring your employees through GPS: What is Legal, and What are Best Practices? Greensfelder Attorneys at Law .

URL: <https://www.greensfelder.com/business-risk-management-blog/monitoring-your-employees-through-gps-what-is-legal-and-what-are-best-practices>

Banton, C., (2019). Network Effect. Investopedia <https://www.investopedia.com/terms/n/network-effect.asp>

Bekker, S., Posthumus, M.A.C. (2010). Self-employment in the Netherlands. European Employment Observatory Review, 2010 (July), 1-7.

Boella, M., Pannett A., (1999) Principles of Hospitality Law (2) Continuum

Bowmer & Nuijer, (2020). Employment contracts in the Netherlands

<https://veldlaw.nl/en/services/employment-and-labour-law/employment-contracts-in-the-netherlands>

Brandl, B., Kildunne, A., (2018). Outsourcing and Collective Bargaining in the UK. Recover Country Report [https://ddd.uab.cat/pub/infpro/2019/202076/Country\\_Report\\_UK.pdf](https://ddd.uab.cat/pub/infpro/2019/202076/Country_Report_UK.pdf)

Case C-413/13

<http://curia.europa.eu/juris/fiche.jsf;jsessionid=DC53A27CC140D86272D869798B297677?id=C%3B413%3B13%3BRP%3B1%3BP%3B1%3BC2013%2F0413%2FJ&oqp=&for=&mat=or&lgrc=en&jge=&td=%3BALL&jur=C%2CT%2CF&num=C->



[413%252F13&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=5942246](#)

Case ref: Independent Workers Union of Great Britain v RooFoods Ltd (t/a Deliveroo)

TUR1/985(2016) <https://www.icaew.com/archive/library/subject-gateways/law/legal-alert/2017-12/case-law-deliveroo-riders-are-not-workers-with-employment-rights-under-trade-union-law>

Chappelow, J., (2020) What is the Gig Economy? ABC News URL:

<https://www.investopedia.com/terms/g/gig-economy.asp>

Collinson, P., (2018). Gig-economy: how do Deliveroo and Uber workers cope with precarious pay?

The Guardian. <https://www.theguardian.com/business/2018/oct/20/deliveroo-uber-workers-pay-gig-economy>

Contractor Calculator.co.uk (2017). Employer-employee contract of service: 'permanent employees have a contract of service with their employer.'

[https://www.contractorcalculator.co.uk/difference\\_contract\\_for\\_services\\_of\\_services\\_ir35.aspx#:~:text=By%20definition%2C%20if%20a%20worker,a%20contract%20of%20service%20are%3A&text=Employees%20have%20statutory%20rights%20to,paternity%20rights%20and%20redundancy%20payments](https://www.contractorcalculator.co.uk/difference_contract_for_services_of_services_ir35.aspx#:~:text=By%20definition%2C%20if%20a%20worker,a%20contract%20of%20service%20are%3A&text=Employees%20have%20statutory%20rights%20to,paternity%20rights%20and%20redundancy%20payments)

Costas, A., Stiglitz, J., (1983). Implicit Contracts and fixed Price Equilibria, The Quarterly Journal of Economics, Vol.XCVIII

Cotton, E., (2015). Self-employment is precarious work

<http://eprints.lse.ac.uk/74209/1/blogs.lse.ac.uk-Self-employment%20is%20precarious%20work.pdf>

(2018, December 5), Deliveroo wins latest court battle over rider rights, *BBC News*, 5 December

2018, Retrieved from <https://www.bbc.com/news/business-46455190>

Deliveroo, (2020). Guide to fees. How are fees calculated? <https://sg.roocommunity.com/guide-to-fees/>

De Stefano, V. (2015). The Rise of the 'Just-in-Time Workforce': On Demand Work, Crowd Work and Labour Protection in the 'Gig-Economy', Comparative Labour Law and Policy Journal, SSRN: <https://ssrn.com/abstract=2682602> or <http://dx.doi.org/10.2139/ssrn.2682602>

De Stefano, V. (2016). Introduction: Crowdsourcing, the Gig-Economy, and the Law, Comparative Labour Law Journal, 37(3), pp. 461-470

De Stefano, V., Aloisi, A., (2018). European legal framework for "digital labour platforms". European Commission. Publications Office of the European Union. [https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112243/jrc112243\\_legal\\_framework\\_digital\\_labour\\_platforms\\_final.pdf](https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112243/jrc112243_legal_framework_digital_labour_platforms_final.pdf) or <https://ec.europa.eu/jrc>

Dorotheou, E., (2015). Case Comment: Clyde & CO LLP & Anor v Bates van Winkelhof (2014) UKSC 32 <http://uksblog.com/case-comment-clyde-co-llp-and-anor-v-bates-van-winklehof-2014-uksc-32/>

Durward, D., (2016). Principal forms of crowdsourcing and crowd work. FEPS- Foundation for European Progressive Studies. ISBN: 978-2-930769-17-2

Dutch Civil Code. Book 7 Particular agreements.

<http://www.dutchcivillaw.com/legislation/dcctitle7777.htm>

Dutch Supreme Court (1997) ECLI:NL:1997:ZC2495

Employment Right Act 1996 Section 230 <https://www.lawteacher.net/free-law-essays/employment-law/distinguishing-between-employees-workers-and-self-employed-employment-law-essay.php#:~:text=Employee%3A%20According%20to%20Employment%20Right,whether%20oral%20or%20in%20writing.>

Employment Rights Act (1996). Sec.230(3)

<http://www.legislation.gov.uk/ukpga/1996/18/section/230>

ETUC, (2018). Trade unions protecting self-employed workers. Why self-employed workers need better rights? What unions are doing? Which priorities for the future?

[https://www.etuc.org/en/pressrelease/law-denies-rights-self-employed-](https://www.etuc.org/en/pressrelease/law-denies-rights-self-employed-workers#:~:text=Law%20denies%20rights%20to%20self%20employed%20workers,Trade%20Union%20Confederation%20(ETUC).)

[workers#:~:text=Law%20denies%20rights%20to%20self%20employed%20workers,Trade%20Union%20Confederation%20\(ETUC\).](https://www.etuc.org/en/pressrelease/law-denies-rights-self-employed-workers#:~:text=Law%20denies%20rights%20to%20self%20employed%20workers,Trade%20Union%20Confederation%20(ETUC).) Or <https://www.etuc.org/en/publication/trade-unions-protecting-self-employed-workers>

ETUI, (2020). Netherlands. Collective Bargaining. <https://www.worker-participation.eu/National-Industrial-Relations/Countries/Netherlands/Collective-Bargaining#:~:text=Links->

[Collective%20Bargaining,pay%20increases%20have%20been%20moderate.](https://www.worker-participation.eu/National-Industrial-Relations/Countries/Netherlands/Collective-Bargaining#:~:text=Links-) Eurofound, (2008).

Crowd employment. <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/crowd-employment>

Eurofound, (2011). Competition law and collective agreements.

<https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/competition-law-and-collective-agreements>

Eurofound, (2018). Platform work: employment status, employment rights and social protection.

<https://www.eurofound.europa.eu/data/platform-economy/dossiers/employment-status>

European Commission. Social security and social assistance. Know your rights .

[https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/solidarity/social-security-and-social-assistance\\_en](https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/solidarity/social-security-and-social-assistance_en)

European Parliament Think Tank, (2018). Understanding social dumping in the European Union

[https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_BRI\(2017\)599353](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2017)599353)

Foundation for European Progressive Studies (FEPS), Statistical Services and Consultancy Unit (SSCU), University of Herfordshire and Herfordshire Business School (HBS) , (2019). Platform Work in the UK 2016-2019 <https://www.feps-europe.eu/attachments/publications/platform%20work%20in%20the%20uk%202016-2019%20v3-converted.pdf>

Fulton, L., (2013). Worker representation in Europe. Labour Research Department and ETUI. <http://www.worker-participation.eu/National-Industrial-Relations/Countries/United-Kingdom/Workplace-Representation>

Freelance UK. IR35: The obligation of personal service: what it is and why it matters. [https://www.freelanceuk.com/ir35\\_ir591/obligation-personal-service.shtml#:~:text=An%20obligation%20of%20personal%20service,do%20the%20work%20for%20him.&text=With%20such%20an%20obligation%20a,be%20a%20contract%20of%20employment.](https://www.freelanceuk.com/ir35_ir591/obligation-personal-service.shtml#:~:text=An%20obligation%20of%20personal%20service,do%20the%20work%20for%20him.&text=With%20such%20an%20obligation%20a,be%20a%20contract%20of%20employment.)

Garben, S., (2017). Protecting workers in the online platform economy: an overview of regulatory and policy developments in the EU. Luxembourg: Publications Office of the European Union. ISBN: 978-92-9496-642-1. <https://osha.europa.eu/fr/publications/protecting-workers-online-platform-economy-overview-regulatory-and-policy-developments>

Gasteen, A., Sewel, J.(1994) Employer Strategy and the Labour Market. Oxford University Press URL: <https://books.google.nl/books?id=aTjSQq82UCYC&pg=PA248&dq=cost+minimization+at+expense+of+workers&hl=nl&sa=X&ved=0ahUKEwjgtMDAstzpAhWBCewKHUe3B84Q6AEINDAB#v=onepage&q=cost%20minimization%20at%20expense%20of%20workers&f=false>

Gideon, A., Schiek, D., (2018). Outsmarting the gig economy through collective bargaining- EU competition law as a barrier? (2 ed.) CETLS Working Paper Series. [https://pureadmin.qub.ac.uk/ws/portalfiles/portal/149079237/Schiek\\_Gideon\\_Outsmarting\\_the\\_gig\\_economy\\_January\\_2018\\_wp\\_format.pdf](https://pureadmin.qub.ac.uk/ws/portalfiles/portal/149079237/Schiek_Gideon_Outsmarting_the_gig_economy_January_2018_wp_format.pdf)

Goodman, T., (2019). Overview of the UK Gig economy. Collyer Bristow LLP Lexology. Law Business Research. URL: <https://www.lexology.com/library/detail.aspx?g=a8cb06f2-58ef-49a8-9eca-c669ab55d8f8>

Harrison, J., (2019). What is an employee? A legal definition and case study. Richard Nelson LLP Solicitors. <https://www.richardnelsonllp.co.uk/services/employment-law/what-is-an-employee/>

Hartmann, T, (2012). Temporary Agency Work in Germany and the Netherlands. Master Thesis.

Tilburg University

<http://arno.uvt.nl/show.cgi?fid=127158#:~:text=7%3A690%20BW.,and%20direction%20of%20this%20party.>

Havelkova, B., Moschel, M., (2019). Anti-Discrimination Law in Civil Law Jurisdictions, (1), Oxford University Press

<https://books.google.nl/books?id=F6rDDwAAQBAJ&printsec=frontcover&hl=nl#v=onepage&q&f=false>

Hawker, R., (2019). Employment Contracts: UK Employment Law. Worklaw (1) URL:

<https://books.google.nl/books?id=7029DwAAQBAJ&printsec=frontcover&hl=nl#v=onepage&q&f=false>  
<https://www.gov.uk/employment-status/worker#:~:text=Workers%20are%20entitled%20to%20certain,against%20unlawful%20deductions%20from%20wages&text=to%20not%20work%20more%20than,this%20right%20if%20they%20choose>

Heerma van Voss, G.J.J., (2017). The Concept of 'Employee': The Position in the Netherlands. Leiden University. [https://openaccess.leidenuniv.nl/bitstream/handle/1887/57127/Heerma\\_van\\_Voss\\_-\\_The\\_Concept\\_of\\_Employee\\_-\\_The\\_Position\\_in\\_the\\_Netherlands.pdf?sequence=1](https://openaccess.leidenuniv.nl/bitstream/handle/1887/57127/Heerma_van_Voss_-_The_Concept_of_Employee_-_The_Position_in_the_Netherlands.pdf?sequence=1)

Hillebrandt, K., Oberman, P., (2019). The Netherlands: On-call workers and changes in employment law with as from 1 January 2020. L&E Global. <https://knowledge.leglobal.org/the-netherlands-on-call-workers-and-changes-in-employment-law-with-as-from-1-january-2020/>

House of Commons & House of Lords & Joint Committee on Human Rights, (2019). The Right to Privacy (Article 8) and the Digital Revolution, (3), HC 122  
<https://publications.parliament.uk/pa/jt201919/jtselect/jtrights/122/122.pdf>

Hussmanns, R., (2018). Defining and measuring informal employment. International Labour Office.  
URL: <https://www.ilo.org/public/english/bureau/stat/download/papers/meas.pdf>

Information Technology and Innovation Foundation (2018), ITIF Technology Explainer: What Are Digital Platforms? URL: <https://itif.org/publications/2018/10/12/itif-technology-explainer-what-are-digital-platforms>

International Labour Organisation (2006). Recommendation 198: Employment Relationship Recommendation. 95<sup>th</sup> Session International Labour Conference. Geneva. ILO

International Labour Organisation, Employment by Status in Employment. URL:  
[https://www.ilo.org/ilostat-files/Documents/description\\_STE\\_EN.pdf](https://www.ilo.org/ilostat-files/Documents/description_STE_EN.pdf)

International Labour Organisation, (2020). Minimum wages through collective bargaining.  
[https://www.ilo.org/global/topics/wages/minimum-wages/setting-machinery/WCMS\\_436112/lang-en/index.htm#:~:text=Collective%20bargaining,131.&text=In%20many%20countries%2C%20bargained%20and%20statutory%20minimum%20wages%20co%2Dexist.](https://www.ilo.org/global/topics/wages/minimum-wages/setting-machinery/WCMS_436112/lang-en/index.htm#:~:text=Collective%20bargaining,131.&text=In%20many%20countries%2C%20bargained%20and%20statutory%20minimum%20wages%20co%2Dexist.)

ITIF Information Technology & Innovation Foundation, (2018). What Are Digital Platforms?  
<https://itif.org/publications/2018/10/12/itif-technology-explainer-what-are-digital-platforms>

IUF, (2019). Netherlands court confirms food delivery couriers are workers with collective rights  
<http://www.iuf.org/w/?q=node/6699>

IWGB v RooFoods (2016). TUR1/985

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/663126/Acceptance\\_Decision.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/663126/Acceptance_Decision.pdf)

Kenton, W., (2020) What is collective bargaining? Investopedia.

<https://www.investopedia.com/terms/c/collective-bargaining.asp>

KILM 8, (2013). Employment in the informal economy [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/publication/wcms\\_422437.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/publication/wcms_422437.pdf)

Korunka, C. (2017) Job Demands in a Changing World of Work. Impact on Workers' Health and Performance and Implications for Research and Practice, (1), Springer

Lawrie-Blum v Land Baden-Wurttember (1986). Case 66/85

<https://www.studeersnel.nl/nl/document/universiteit-utrecht/european-law/werkgroep-uitwerkingen/seminar-week-2/2747561/view>

L&E Global, (2020). Legal Framework Differentiating Employees From Independent Contractors.

<https://knowledge.leglobal.org/eic/country/united-kingdom/legal-framework-differentiating-employees-independent-contractors-21/>

MacKenna, J. (1968). Ready Mixed Concrete LTD v Minister of Pensions and National Insurance .

Managerial Law, Vol.4 NO.2 pp.132-150.

<https://doi.org/10.1108/eb021504><https://www.emerald.com/insight/content/doi/10.1108/eb021504/full/html>

Mandl, I., Curtarelli, M., Riso, S., Vargas O., Gerogiannis, E., (2015). New Forms of Employment.

Eurofund Report on New Forms of Employment, URL:

<https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/crowd-employment> or <https://www.eurofound.europa.eu/publications/report/2015/working-conditions-labour-market/new-forms-of-employment>

Merriam Webster (2019) <https://www.merriam-webster.com/words-at-play/gig-economy-use-origin-phrase>

Minimum Wage And Minimum Holiday Allowance Act Law (Wet minimumloon en minimumvakantiebijslag), (1968). <https://www.global-regulation.com/translation/netherlands/3074934/minimum-wage-and-minimum-holiday-allowance-act-law.html>

Moazed, A., (2020). Platform Business Model- Definition. What is it? Explanation. Applico. URL: <https://www.applicoinc.com/blog/what-is-a-platform-business-model/#:~:text=A%20platform%20is%20a%20business,can%20be%20accessed%20on%20demand.>

OECD, Glossary of Statistical Terms URL: <https://stats.oecd.org/glossary/detail.asp?ID=766>

OECD, (2019). Data in the Digital Age, OECD Going Digital Policy Note, OECD, Paris. URL : <https://www.oecd.org/going-digital/data-in-the-digital-age.pdf>

OECD, (2019). Using Digital Technologies to Improve the Design and Enforcement of Public Policies. OECD Digital Economy Papers. No.274 <https://www.oecd-ilibrary.org/docserver/99b9ba70-en.pdf?expires=1592080850&id=id&accname=guest&checksum=9CCE2095337D738F98F9DEF7A6279A60>

Pariona, A., (2017). What Was The Digital Revolution. World Atlas. URL: <https://www.worldatlas.com/articles/what-was-the-digital-revolution.html>

Partington, R.,(2019, 28 June). Gig economy in Britain doubles, accounting for 4.7 million workers: TUC finds worker rights fading as gig platforms proliferate to employ one in 10 adults. The Guardian <https://www.theguardian.com/business/2019/jun/28/gig-economy-in-britain-doubles-accounting-for-47-million-workers>

Pesole, A., Urzi Brancate, M.C., Fernandez-Macias, E., Biagi, F., Gonzalez Vasquez, I.(2018) JRC Science for policy report: platform workers in Europe. European Commission DOI: 10.2760/742789



[https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157\\_pubsy\\_platform\\_workers\\_in\\_europe\\_science\\_for\\_policy.pdf](https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157_pubsy_platform_workers_in_europe_science_for_policy.pdf)

Prassl, J., (2018). Collective voice in the platform economy: challenges, opportunities, solutions. ETUC Report <https://www.etuc.org/sites/default/files/publication/file/2018-09/Prassl%20report%20maquette.pdf>

Prassl, J. (2018). Humans as a Service: The Promise and Perils of Work in the Gig Economy, (1), Oxford University Press

Pudwell, S., (2017). Food delivery firm relies heavily on data and machine learning to increase efficiency. Silicon <https://www.silicon.co.uk/data-storage/bigdata/deliveroo-big-data-deliveries-216163>

Quick Books, (2016). Hiring, Recruiting and HR. Different Types of Workers: Employees, Contractors and More URL: <https://quickbooks.intuit.com/r/hiring-and-recruiting/different-types-of-workers-employees-contractors-and-more/>

Schoukens, P., Barrio Fernandez, A. (2017) The changing concept of work: when does typical work become atypical. European Labour Law Journal, 8(4), pp.306-332.  
<https://doi.org/10.1177/2031952517743871>

[https://pure.uvt.nl/ws/portalfiles/portal/23677224/The\\_changing\\_concept\\_of\\_work.pdf](https://pure.uvt.nl/ws/portalfiles/portal/23677224/The_changing_concept_of_work.pdf)

Schouten, S., (2020). Labor contract or contract for services in the Netherlands? AMS advocaten. [https://www.amsadvocaten.com/blog/dutch-employment-law/the-difference-between-an-labor-contract-or-contract-for-services/#:~:text=Elements%20of%20labor%20contract%20under%20Dutch%20law&text=If%20somebody%20gets%20paid%20for,for%20a%20new%20build%20house\).](https://www.amsadvocaten.com/blog/dutch-employment-law/the-difference-between-an-labor-contract-or-contract-for-services/#:~:text=Elements%20of%20labor%20contract%20under%20Dutch%20law&text=If%20somebody%20gets%20paid%20for,for%20a%20new%20build%20house).)

Schwellnus, C., Geva, A., Pak, M., Veiel, R., (2019). Gig Economy Platforms: Boon or Bane? Economics Department, OECD, ECO/WKP(2019)19

[https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ECO/WKP\(2019\)19&docLanguage=En](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ECO/WKP(2019)19&docLanguage=En)

Shaw, J. (2009). The Erosion of Privacy in the Internet Era. Harvard Magazine URL:

<http://harvardmag.com/pdf/2009/09-pdfs/0909-38.pdf>

Smith, I., Blood, D., Rininsland, E., (2018). The FT 1000: the complete list of Europe's fastest-growing companies, Financial Times. 11 February. <https://ig.ft.com/ft-1000/2018>

Teacher, Law. (2013). Employment Law-Additional Issues on Employees. URL:

<https://www.lawteacher.net/free-law-essays/employment-law/employment-law-additional-issues-law-essays.php>

Teacher, Law., (2013). Tests Identifying a Contract of Employment.

<https://www.lawteacher.net/free-law-essays/employment-law/tests-identifying-a-contract-of-employment-employment-law-essay.php>

Towers-Clark, C., (2019). The Uberization of work: pros and cons of the gig-economy. Forbes.

<https://www.forbes.com/sites/charlestowersclark/2019/07/08/the-uberization-of-work-pros-and-cons-of-the-gig-economy/>

Toxopeus, H.S. (2018) Financing sustainable innovation: from a principal-agent to a collective action perspective. Erasmus University Rotterdam URL: <https://www.repub.eur.nl>

(<https://www.patriotsoftware.com/blog/accounting/what-is-collateral/>), R&D investments to other firms

Trade Union and Labour Relations (Consolidation Act 1992)

Trade Union and Labour Relations (Consolidation) Act (1992). Section 296.

<http://www.legislation.gov.uk/ukpga/1992/52/section/296>

TUC, (2020). Guide to: Collective bargaining. <https://www.tuc.org.uk/workplace-guidance/collective-bargaining#:~:text=Collective%20bargaining%20is%20only%20possible,in%20the%20UK%20are%20voluntary.&text=Collective%20bargaining%20with%20a%20recognised,decent%20wages%2C%20terms%20and%20conditions>.

United Nations General Assembly, (1948). Universal Declaration of Human Rights. Article 23.

Valenduc, G., Vendramin, P., (2016). Work in the digital economy: sorting the old from the new.

European Trade Union Institute. Etui ISSN 1994-4454. URL: [http://ftu-namur.org/fichiers/Work\\_in\\_the\\_digital\\_economy-ETUI2016-3-EN.pdf](http://ftu-namur.org/fichiers/Work_in_the_digital_economy-ETUI2016-3-EN.pdf)

Van der Laan, K., (2018). Deliveroo Rider is Self-employed. <https://kvdl.com/en/articles/deliveroo-rider-is-self-employed>

Van der Laan, K., (2019). The Court of Amsterdam rules that Deliveroo-riders are employees. <https://kvdl.com/en/articles/bezorgers-deliveroo-zijn-toch-werknemers>

Van Den Heuvel., A., (2017 15 November). Dutch Employment law: Negotiating and Ending an Employment Contract <https://www.iamexpat.nl/expat-info/dutch-expat-news/dutch-employment-law-negotiating-and-ending-employment-contract>

Wouters, M., Pecinovsky, P., (2018). Marginal part-time in Europe: 2018's expansion of flexi-jobs in Belgium. Comparative Labor Law and Policy Journal University of Illinois College of Law. ISSN: 1043-5255 <https://lirias.kuleuven.be/1995275?limo=0>

Zekic, N. (2019, Jul 1). Contradictory Court Rulings on the Status of Deliveroo workers in the Netherlands. (No. 17 ed.) Comparative Labor Law & Policy Journal: Illinois College of Law

(1952) 1 TLR 101, 111

[https://en.wikipedia.org/wiki/Stevenson, Jordan %26amp; Harrison Ltd v MacDonald %26amp; Evans#cite](https://en.wikipedia.org/wiki/Stevenson,_Jordan_%26amp;_Harrison_Ltd_v_MacDonald_%26amp;_Evans#cite_note-1)

[note-1](#)