



New Social Initiatives on Cloud – and Gigwork – Germany and Italy Compared

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1. Introduction

The use of digital technologies in the organisation and distribution of work is both changing traditional employment and creating new forms of employment. With the establishment of digital, internet-based platform companies, new intermediary players are emerging in the exchange process of labour supply and demand. The platform economy is regarded as one of the greatest challenges for labour regulation in the developed political economies. Platform-mediated work as a ‘logged labour’¹ is characterized by being quantified and standardized, strongly technologically monitored and controlled, and requiring a connection to an online platform. Platforms develop their explosive power for labour regulation by transforming normal employment into precarious self-employment, by favouring a worldwide offshoring of activities, by lowering market entry barriers and creating new competition between workers, and by promoting the marketing of work, for example through reputation and evaluation procedures². Through platform rules³ the new intermediaries ‘orchestrate’ payment, control and access to job opportunities. The platforms thus (pre-)structure the working conditions.

Since the placement of work activities via online platforms also means that activities previously carried out within companies can be outsourced to a large number of people (to a ‘crowd’), the term ‘crowdsourcing’⁴ has become established for this type of placement. However, a closer look at different platforms reveals an enormous range of different business models, which also have a more or less direct

¹ Ursula HUWS: Logged labour: A new paradigm of work organisation? *Work Organisation, Labour & Globalisation*, vol. 10., no. 1., 2016. 7–26.

² Cf. Jan DRAHOKOUPIL – Brian FABO: The platform economy and the disruption of the employment relationship. *ETUI Policy Brief*, no. 5/2016. <https://bit.ly/3itzCM9>

³ Sascha DICKEL – Carolin THIEM: Zur Organisation von Arbeit 4.0: Crowdsourcing als Sozialtechnologie. In: Tobias REDLICH – Manuel MORITZ – Jens P. WULFSBERG (eds.): *Interdisziplinäre Perspektiven zur Zukunft der Wertschöpfung*. Wiesbaden, Springer Fachmedien Wiesbaden, 2018. 252.

⁴ Jeff HOWE: The Rise of Crowdsourcing. *Wired Magazine*, no. 14. 2006. <https://www.wired.com/2006/06/crowds/>

impact on the structuring of work by the platforms. ‘Work platforms’⁵ provide work for paid services. Two basic distinguishing features can be identified. On the one hand, a distinction can be made between whether the mediated activities are performed digitally and online (cloudwork) or whether they are locally bound work tasks (gigwork)⁶. On the other hand, tasks can be assigned to individuals, or work tasks can be advertised to a (indefinite) multitude of persons. These members of the crowd can then apply to complete the respective task. Especially in the case of simple and less complex activities, the so-called micro-tasks⁷, prompt responses to calls for tenders are important. In addition, there are ranking systems on many platforms that give better placed/rated crowdworkers access to more lucrative work orders. The exact rules and evaluation criteria are not always straightforward for crowd members, and platform rules seem to be unilaterally changeable by platform operators.

The platforms benefit from the fact that as a rule they place work orders with (solo) self-employed persons and thus there are no co-determination rights or information obligations on the part of the crowd. Additionally, self-employed workers are lacking social protection and security mechanisms, e.g. with regard to loss of earnings in the event of illness or non-payment for work already performed. This leads to criticism of the conditions under which platform work is carried out⁸ and of the proximity to precarious employment⁹.

This poses two fundamental challenges both for national laws and trade unions as potential interest representatives of platform workers. The first challenge concerns the protection of employees under labour law and social law, particularly in the area of crowdworking, which is regarded as self-employed and therefore is usually not covered by the respective national protection systems. The second challenge concerns the trade unions, namely the representation of the work-related interests of platform workers and their organisation as members in the trade unions. Both aspects are closely related, because only as effective interest groups can trade unions make their mark with platform workers, and at the same time they can only represent them effectively if they can also rely on organisational power.

The conditions for this, in turn, are problematic for platform work¹⁰. Firstly, platforms are not real employers or pretend that they only mediate work; secondly, platform work promotes individualised industrial relations; and thirdly, platform work has no company structures. Therefore there is neither

⁵ Florian A. SCHMIDT: *Arbeitsmärkte in der Plattformökonomie - Zur Funktionsweise und den Herausforderungen von Crowdwork und Gigwork*. 2016. 6. <http://library.fes.de/pdf-files/wiso/12826.pdf>

⁶ Cf. Stefan KIRCHNER: *Arbeiten in der Plattformökonomie: Grundlagen und Grenzen von „Cloudwork“ und „Gigwork“*. *KZfSS Kölner Zeitschrift für Soziologie und Sozialpsychologie*, 2019. <https://link.springer.com/article/10.1007/s11577-019-00587-w>

⁷ Cf. Christine GERBER – Martin KRZYWDZINSKI: *Schöne neue Arbeitswelt? Durch Crowdworking werden Aufgaben global verteilt*. *WZB Mitteilungen*, no. 155., 2017. 6.

⁸ Cf. Hans J. PONGRATZ – Sarah BORMANN: *Online-Arbeit auf Internet-Plattformen: Empirische Befunde zum ‚Crowdworking‘ in Deutschland*. *Arbeits- und Industriesoziologische Studien*, vol. 10., no. 2., 2017. 158–181.; Thomas KLEBE: *Arbeitsrecht 4.0: Faire Bedingungen für Plattformarbeit*. *WISO direkt*, 22/2017.

⁹ Cf. Philipp LORIG: *Soloselbständige Internet-Dienstleister im Niedriglohnbereich: Prekäres Unternehmertum auf Handwerksportalen im Spannungsfeld zwischen Autonomie und radikaler Marktabhängigkeit*. *Arbeits- und Industriesoziologische Studien*, vol. 8., no. 1., 2015. 55–75.; Sebastian STRUBE: *Die Entstehung des digitalen Prekariats*. *Standpunkte*, no. 02/2015.

¹⁰ See also: Christiane BENNER: *Amazonisierung oder Humanisierung der Arbeit durch Crowdsourcing?* In: Christiane BENNER (ed.): *Crowdwork – zurück in die Zukunft? Perspektiven digitaler Arbeit*. Frankfurt am Main, Bund Verlag, 2014. 289–300.

co-presence and exchange between employees about possible work problems, nor can employees be represented by works councils or unions at least in the area of crowdworking – this might be different for local gig workers as we will show – either because they are solo self-employed or because they do not form a company. This eliminates the social contexts that usually favour trade union membership. The situation is made even more difficult by the fact that most platforms are transnational in character and recruit their employees worldwide.

Nevertheless, in several European countries first initiatives of unions or state actors can be identified in the field of platform work that aim to change working conditions and to organise and represent the interests of crowd and gig workers. In this paper some of these initiatives will be presented in a two country approach, focusing on Germany and Italy, namely: the IG Metall Fair Crowd Work initiative (developed in cooperation with other trade unions) and the initiative to set up works councils for food delivery companies from Germany, the inclusion of ‘riders’ in the collective agreement of the logistics sector, local initiatives to regulate platform work by the Municipality of Bologna and the Lazio Region, and the 2019 national legislation on platform work from Italy.

The analysis was carried out mostly in the course of the EU research project ‘Don’t GIG Up!’ coordinated by the Fondazione Brodolini, and taking place between February 2018 and January 2020. The empirical basis of the analysis is provided by information available on relevant websites (e.g. websites of platforms or of the covered union initiatives), literature review, and interviews conducted with experts, those responsible for the initiatives, platform managers and workers. Each of the interviews has lasted between one and two hours. With an exemplary view of these initiatives, this article aims to answer the following questions: How do the regulatory actors, trade unions and employees, deal with the challenges of platform work outlined above? What are the starting points for an active policy of interest representation and organisation despite unfavourable conditions? What can we learn about the role of different institutional conditions in developing such initiatives?

The article is structured as follows. The second chapter introduces features of crowd and gig work in Germany and Italy, reviewing results and findings of available surveys; the third and fourth chapters analyse a set of initiatives implemented by workers, unions and policy makers in Germany and in Italy respectively; the fifth chapter draws on achievements and limits of the assessed initiatives to provide hints for policy making.

2. Crowd and Gig work in Germany and Italy

The current empirical significance of platform-mediated work is limited and the data situation unsatisfactory. According to a survey of Huws and Joyce¹¹ on cloud and gig work among 2,180 adults aged 16 to 70 years (with the representativeness rather unclear), 22% of the respondents said that they tried find work on platforms and 14% that they managed to this successfully, 16% of the men and 12% of the women answering the questionnaire. 11% only work once a year for platforms, 4% do so on a weekly basis. About 20% of the workers doing cloud or gig work were aged between 16 and 24, 28% between 25 and 34, and still 17% between 55 and 70.

In a survey on cloud work made among employers¹², companies were asked about the usage of crowdwork in the sense of work that was formerly done within the companies and was then sourced out to a crowd. About 77% of the companies of the IT sector and around 70% of the companies in the manufacturing sector knew the concept. However, the actual usage of the concept is rather low. The sector using crowd sourcing mostly was media services with about 6% of the companies, followed by IT (5.5%). In the manufacturing sector only 1.2% of the companies have sourced out activities to a crowd. The spread is higher among small (up to 20 employees) than among bigger enterprises. Asked why they do not use the concept the companies said that the work done in their companies is not applicable for crowd sourcing (about 70%), that know-how might be in danger (50%), that quality is difficult to control (46%) and juridical problems might arise (40%), or that they in general do not want to support this kind of work (about 38%).

The findings of these surveys are confirmed in smaller surveys on the issue¹³. According to the estimation of Pongratz and Bormann, there are about 100,000 to 300,000 active crowdworkers in Germany, whereby active means that they do a platform job at least once a month. For only 5,000 of them, at maximum, crowdworking is the main source of income. Crowdworkers are recruited from students and retirees, self-employed and employed people; the level of qualification is rather high with a high share of academic qualifications. The average wage is rather small; 66% of the respondents of a small survey on micro-task platforms say that they earn less than € 19 a week¹⁴.

Crowdwork as an additional source of income is, however, quite common. According to a survey of 376,750 Internet users, Serfling¹⁵ estimates that up to 4.8% of Germany's electorate are active

¹¹ Ursula HUWS – Simon JOYCE: Size of Germany's 'Gig Economy' revealed for the first time. *Crowd Working Survey*, November 2016. https://www.uni-europa.org/wp-content/uploads/2016/11/crowd_working_survey_Germany.pdf

¹² Daniel ERDSIEK – Jörg OHNEMUS – Steffen VIETE: *Crowdworking in Deutschland 2018: Ergebnisse einer ZEW-Unternehmensbefragung. Expertise im Auftrag des Bundesministeriums für Arbeit und Soziales*. Mannheim, ZEW, 2018. <https://bit.ly/3khnZnW>

¹³ See, for a summary: PONGRATZ–BORMANN op. cit. 158–181.

¹⁴ Irene BERTSCHEK – Jörg OHNEMUS – Steffen VIETE: *Befragung zum sozioökonomischen Hintergrund und zu den Motiven von Crowdworkern*. Endbericht zur Kurzexptise für das Bundesministerium für Arbeit und Soziales, 2015.

¹⁵ Oliver SERFLING: *Crowdworking Monitor No. 1*: für das Verbundprojekt "Crowdworking Monitor". 2018. 13. <https://bit.ly/3iptleR>

crowdworkers. The user numbers, some of which are spread by the platforms themselves, also point to a relevant number of active platform workers.

Hoffmann and Suchy¹⁶ point out that looking at (a few) full-time crowdworkers ‘completely wrongly’ leads to classifying this form of work organisation as insignificant. Instead, the topic of crowdsourcing would become relevant primarily because more and more companies with traditional work organisation would test the extent to which they could restructure at least parts of their value creation by outsourcing to crowds. Platform-mediated forms of employment are thus able to put traditional and regulated employment (in companies) under pressure¹⁷. The ranks of the (DGB) trade unions in particular are therefore calling for ‘a competitive framework for platforms and a design framework for crowdwork’¹⁸.

Basically, a distinction can be made between two groups of activities which are mediated via platforms and which affect the design of the platform and the working conditions there: on the one hand there are ‘standardised routine and support tasks broken down into small work packages such as text production, data categorisation or surveys (so-called micro tasks); on the other hand there are creative solutions which can also be relatively standardised – as is partly the case in the design field – or which are highly specialised and knowledge-intensive, as in the field of programming or innovation (so-called macro tasks)’¹⁹. Leimeister et al. were able to show that the mostly quite young crowdworkers (36 years on average) are often active on several platforms at the same time and that they have relatively low earning potential²⁰. Similar considerations are made by Bertschek et al. (2015, p. 9), whose findings show that 69% of crowdworkers earn less than € 19 per week²¹. The majority (65%) also receive on average less than two euros for a completed work order. The high level of education of the interviewees is striking²². However, crowdwork is not the main source of income for the majority of those employed in this way. Crowdwork is mostly used to provide (quick) additional income without the need for special knowledge or vocational qualifications.

Among surveys implemented in Italy on platform work, it is worthy to recall that of Fondazione Debenedetti, mentioned in the 2018 Annual Report of the National Institute of Social Security (INPS), and the PLUS Survey by the National Institute for the Analysis of Public Policies (INAPP). The survey by Fondazione Debenedetti involved a sample of 15,011 respondents, reduced to 14,857 after

¹⁶ Reiner HOFFMANN – Oliver SUCHY: Aussichten für die Arbeit der Zukunft. *Working Paper Forschungsförderung*, no. 013., 2016. 27. https://www.boeckler.de/pdf/p_fofoe_WP_013_2016.pdf

¹⁷ Cf. Samuel GREEF – Wolfgang SCHROEDER: *Plattformökonomie und Crowdworking: Eine Analyse der Strategien und Positionen zentraler Akteure*. Bundesministerium für Arbeit und Soziales [Forschungsbericht No. 500.], 2017.; Moritz ALTENRIED: Die Plattform als Fabrik: Crowdwork, Digitaler Kapitalismus und die Vervielfältigung der Arbeit. *PROKLA*, Vol. 47., no. 2., 2017. 175–191.

¹⁸ HOFFMANN–SUCHY op. cit. 26.

¹⁹ GERBER–KRZYWDZINSKI op. cit. 6.

²⁰ Jan Marco LEIMEISTER – David DURWARD – Shkodran ZOGAJ: *Crowd Worker in Deutschland: Eine empirische Studie zum Arbeitsumfeld auf externen Crowdsourcing-Plattformen*. Study no. 323., 2016. https://www.boeckler.de/pdf/p_study_hbs_323.pdf

²¹ BERTSCHEK–OHNEMUS–VIETE op. cit. 9.

²² LEIMEISTERR op. cit.

data cleaning, and was implemented between 8 and 15 May 2018²³. Results suggest a 1.59% of the population in active age (15-64), i.e. 589,040 persons, worked in the gig economy in the reference week.

Whereas most of the respondents perform ‘gigs’ as a second job (58%), a 19% share considered themselves ‘unemployed’²⁴. For the remaining share, the ‘gig economy’ is the only job. Data highlight a greater presence between men (57.2%) compared to women (42.8%), and in the 30-49 age group, covering almost 60% of the sample. Interestingly, the remaining share is equally divided between people aged 18-29 and 50-64²⁵. The analysis by age suggests that the central cohorts are more likely to perform gigs as a second job, whereas the share of younger and older cohorts is higher among those performing gigs as their only job and among unemployed.

Questions on the use of working tools reveal only a small size of the sample (12%) uses a bike or a scooter and only 6.5% uses a house asset. The large majority of the sample shall therefore be ascribed to cloud work or to gig work not concerning the transport or delivery sectors. As to working time and pay, about half of the overall sample works up to 4 hours per week, about one third when looking at those performing only gig work. The monthly pay reaches barely € 100 as a median value, lagging at € 400 at the 75th percentile and at € 1,200 at the 95th percentile. The amounts are not considerably higher when looking at those performing gig as their only job (€ 200, € 500 and € 1,500). When looking at the contractual relationship, 67% of respondents are unaware, the remaining share being employed through self-employment and casual relationships.

The INAPP findings²⁶ build on a module on platform work included in an official survey (PLUS). Albeit the survey guarantees an overall representativity of the sample compared to the Italian population, the very small share of the Italian population aged 18-74 working through digital platforms (0.49% out of about 16,000 respondents) suggests for caution when reading the results. The most part of ‘gig’ workers seems to be male (54.3%). Similar to INPS results, almost half of the sample declares not to be in employment – 23.8% is looking for a job, 1.8% is retired and 17.9% is inactive. On the other edge, a 17.1% share is composed by students and people in employment reach a 39.3% share. In terms of age groups, the 18-29 age group accounts for a 44.5% share, with high frequencies reported also among the 40-49 (24.2%) and the 30-39 (20.5%) cohorts.

²³ INPS: *XVII Rapporto annuale*, 2018. https://www.inps.it/docallegatiNP/Mig/Dati_analisi_bilanci/Rapporti_annuali/INPSrapporto2018.pdf

²⁴ The condition of unemployment or of inactivity is based on the self-assessment of the respondents, even if they declare to have worked in the reference week. This way, the survey assumed the self-perception of participants as a criterion to distinguish between the different statuses.

²⁵ Yet, the structure of the Italian population shall be borne in mind, with the 18-29 group representing the 20% of population in active age, against a 34% of the 50-64 group (ISAT, Labour Force Survey).

²⁶ Massimo DE MINICIS – Piero ESPOSITO – Salvatore MARSIGLIA – Manuel MAROCCO – Sergio SCICCHITANO: Gli internauti e i lavoratori on line: prime evidenze da INAPP-PLUS 2018. *INAPP Policy Brief*, no. 15., 2019.

The survey is in line with INPS findings also when considering the contracts used by the platforms. It is alarming to highlight, despite the use of technological tools, work is implemented according to ‘informal agreements’ in 42.1% of cases, whereas a 14.4% are not aware of the contract used, and other occurrences have generally to do with non-standard (generally self-employment) contracts.

3. Initiatives in Germany

3.1 Fair Crowd Work

Probably the most elaborate trade union initiative to disseminate interest representation structures in the platform economy is the Fair Crowd Work initiative of IG Metall, which was launched in 2015. Shortly before this, Christiane Benner, now the union’s second chairman, had published a book entitled ‘Crowdwork – Back to the Future? Perspectives on Digital Work’²⁷. This book opened and shaped the trade union debate on crowdwork. In the book, the editor gives three reasons why trade unions should engage with crowdwork: Because working in the online world will have an impact on the working conditions of all workers; because online work is also work that should be fairly paid and regulated; and because it is important to prevent a social setback that could take society back to the beginning of the industrial age. She demanded that economic rights such as copyrights and general terms and conditions should apply to crowdworkers, that protective rights for workers should apply to crowdworkers or be extended to include them, and that digital work should be legally designed to enforce minimum conditions. The explicit aim is not to prevent digital work, but to regulate it socially.

At the same time, the union developed and launched a first version of a website entitled ‘Fair Crowd Work’. In doing so, it followed on from the browser plug-in ‘Turkopticon’, which was developed as a counter-movement to the ‘Amazon Turk’ platform²⁸ and on which crowdworkers can rate their clients with the long-term goal of establishing a ‘Workers’ Bill of Rights’. One of the pioneers of ‘Turkopticon’, M. Six Silberman, moved to IG Metall shortly afterwards and took over the management of the ‘Fair Crowd Work’ platform.

“The general goal behind the website’s design was to create a place for workers to post and read reviews of digital labor platforms. The target users were current or prospective platform workers who would like to make better-informed decisions about which platforms on which

²⁷ BENNER (ed.): *Crowdwork – zurück in die Zukunft?* Frankfurt am Main, Bund Verlag, 2014.

²⁸ Cf. Michael Six SILBERMAN – Lilly IRANI: Operation an employer reputation system: Lessons from turkopticon, 2008-2015. *Comparative Labor Law & Policy Journal*, vol. 37., no. 3., 2016. 505–542. http://wtf.tw/text/operating_an_employer_reputation_system_preprint.pdf; Markus ELLMER: „Ich geb’ dir eine Review, Große/r!“. Amazon Mechanical Turk, Turkopticon und Solidarität in transnationalen, digitalen Arbeitsräumen. *Kurswechsel*, vol. 2/2016. 51–62. <https://bit.ly/32qNK38>

to work. The platform reviews on this original site had two main sections: worker reviews and a terms of service check.”²⁹

In the same year, the concept of the website was revised, and one year later a second version of the website was put online. The decisive change was to change the method of the survey. In the first version, the rating was given directly by the visitors. The only requirement for this was to register on the website with an e-mail address; there was no secure information as to whether the evaluators had actually worked on a platform. This process no longer seemed legally secure enough. The background to this assumption was the legal action brought by a dentist who had filed a lawsuit against an online evaluation of his practice, arguing that he had never treated or even seen the evaluator who had rated him badly. In this case, the court decided for the plaintiff that the rating had to be deleted. These legal problems should be avoided.

Therefore, in the second version, a new access was developed, namely a survey of employees on platforms. Platforms were requested to assist in this task, provided that the questionnaires could not be posted there from the outside, and most of the platforms – with the exception of platforms such as Amazon and Uber, which are known to be critical of trade unions – also agreed. IG Metall decided to pay the respondents money for this survey. On the one hand, this should ensure a good response rate, and on the other hand, the character of the crowdwork should be taken into account to earn money with clicks. The tariffs were adapted to the habits of the platforms; they ranged between € 10 and € 14. The questionnaires were then evaluated by IG Metall and subjected to a consistency test before the rankings were processed. The number of questionnaires received ranged from 25 to 150 per platform. The survey was not representative, but it provided results that were not available elsewhere.

“We had a big event at the ETUI in Brussels in 2016, where people all complained that you don’t know anything about crowdworkers, that you can’t get to them. And I could say on the basis of our platform: ‘People, that’s not true, you can get to the people. It’s not easy, you have to come up with something, but it’s possible. And some of the platforms are also involved. Well, the message was: We’re not without opportunities. And we have decided that we want to talk more with the platforms now.” (Expert IG Metall)

The unexpected willingness of the platforms to engage in dialogue provided the impetus to expand the dialogue. IG Metall decided to place a second pillar of its trade union strategy - direct influence on the platforms - alongside the rating platform and the survey. An important starting point for this was the Code of Conduct for platforms, which had been agreed by some platforms in Germany in

²⁹ Ellie HARMON – Michael Six SILBERMAN: Rating Working Conditions on Digital Labor Platforms. *Computer Supported Cooperative Work*, vol. 37., no. 3., 2018. 1283.

2015 in order to improve the poor public reputation of the platforms. According to the preamble, the Code of Conduct, which has now been signed in a second version by eight platforms, has the goal of ‘establishing generally applicable guidelines for one’s own actions in the context of paid crowdwork in addition to legislation and thus creating a basis for trusting and fair cooperation between platform operators and crowdworkers’, fair – in particular transparent – remuneration, good work, respectful behaviour, clear objectives and reasonable timing, constructive feedback, a regulated evaluation process and compliance with data protection law and privacy for employees.

In the run-up to the discussion with the platforms, IG Metall, together with international trade unions from Austria, Sweden, Denmark, the USA and Canada, held a workshop in Frankfurt and subsequently published the ‘Frankfurt Declaration’³⁰, in which the trade unions pleaded for compliance with the minimum wage, access to social security, transparency and conciliation procedures. IG Metall has used these points in discussions with representatives of the platforms that have signed the Code of Conduct. It stressed in particular the role of the minimum wage and demanded that one must have a survivable income even if one only lives from platform work. The platforms pointed to two problems: the difficulty of measuring working time and global competition for contracts. They also pointed out that wages for platform workers were of secondary importance; it was more about fun and variety. IG Metall was able to agree to conduct a survey on this question.

“Then we said ok, let’s ask the workers what is important to them, and we did that. Then it came out that fair payment is the most important factor for the workers with decency. The platforms said, ‘ok, that surprises us, then we have to do something‘. (Expert IG Metall)

A first step was to revise the Code of Conduct. A new principle was introduced: the platforms pay the local fees. This did not meet the demand for compliance with the minimum wage, but was seen by IG Metall as an important first step.

“They did not take up our demand for the minimum wage directly and we continue to fight for it, but it was a first step.” (Expert IG Metall)

The revised version of the Code of Conduct was presented in 2017 and signed by five additional platforms compared to the first version. A second important step was also taken in 2017, when IG Metall set up an ombuds office with the eight signatories of the Code of Conduct and the German Crowdsourcing Association (DCV) to ensure implementation of the Code of Conduct standards and deal with conflicts between crowdworkers and platforms. The ombudsman consists of five people, including two representatives of the platforms (a platform and the DCV), two representatives of the

³⁰ IG METALL et al.: *Frankfurter Erklärung*. 2016. <https://bit.ly/32qbvZ4>

employees (a crowdworker and a trade union representative) and a labour judge as a neutral person. Since the opening of the ombudsman's office, around 30 cases have been dealt with; all cases have been resolved by consensus with the involvement of the ombudsman's office.

IG Metall is currently pursuing three further focal points in its crowdworking initiative. The first focus is on expanding the list of signatories to the Code of Conduct; the union is also talking to other platforms from the field of gig working and is trying to convince them to sign the Code. The second focal point is the development of a third version of the Fair Crowd Work platform with the aim of developing and publishing a catalogue of criteria for a good design of the General Terms and Conditions (GTCs). From the union's point of view, the GTCs not only determine the status of the employees, but also the working conditions with a view to transparency and fair treatment and communication.

“I personally believe that this is a far more important question than whether crowdworkers are employees or self-employed. This question ultimately depends on a few points in the general terms and conditions, and if the platforms change that, the employees will certainly be classified as self-employed.” (Expert IG Metall)

The third focus is membership recruitment. Although IG Metall has approached many crowdworkers and also achieved several hundred trade union membership figures, the number of new members is still rising. Although this is not a large number in absolute terms, in view of the lack of company structures and representation of interests – membership is the traditional core business of works councils – the successes are not to be underestimated either. Nevertheless, the approach and the recruitment of members are to be systematised. This is also to be set up on the new platform. At the same time, advertising on social media channels is to be intensified.

“This year we want to improve our systematic approach on the platform. So that people will say: Cool, that's a good thing, I agree with that, it's important for me or I can help make the collective feel better. Therefore we want to become more active in the social media and serve them accordingly.” (Expert IG Metall)

3.2 Establishing Works Councils in Food Delivery

The second initiative reported here is the establishment of works councils in the field of food delivery services. In Germany, there is now a broad network of such services offered by multinational companies such as Foodora, Lieferando or Deliveroo in urban areas. Initiatives for the establishment of works

councils can be found in several companies in the sector; the focus here is on the development of Deliveroo, a company based in London (UK) which also operates in Germany. Here, the initiators of the works council have launched an extremely successful media campaign with the title ‘Delivering at the limit’, in which they scandalised the working conditions at the delivery services and made them known to a broad public.

Online food delivery services supply customers with drinks and food prepared in partner restaurants. The work organisation is ‘almost completely digitalised’³¹. The work orders to the drivers, also known as ‘riders’, are distributed using algorithms: Incoming orders are accepted; then the algorithm locates the next available driver and sends him the order. At Deliveroo, the starting point of the initiative was that the majority of the employees were employed on a fixed-term basis, with six-month employment contracts. In addition, there were – fewer – freelancers who worked on a contract basis as solo freelancers. The freelancers were paid per trip and the employees received a fixed hourly rate. The riders themselves are equipped with rucksacks, rain jackets, rain trousers and T-shirts, the rest of the equipment they have to provide themselves. This concerns in particular a Smartphone including data tariff, which is indispensable for the exercise of the activities, as well as a bicycle. At Deliveroo, there was another problem, which was perceived as unfair by the employees and led to the establishment of a works council: the pay slips, which were wrong or incomplete for many employees, and this mostly to the detriment of the employees.

“When I started, problems began. I didn’t get a pay slip in the first month, it wasn’t reported properly to the payroll office. I then went to the office and asked whether I could at least get a discount, but that was refused and said that everything would then be paid with the next payroll run. There was no room for manoeuvre. But then they first entered the wrong tax class, and that had to be changed again.” (Expert Deliveroo)

The city of Cologne developed into the centre of activities. In the summer of 2017, a works council had already been set up at a competitor, Foodora. From there some active people switched to Deliveroo and were initially surprised to find similar problems there as with their old employer.

“There were then three people who pushed this forward and who wanted to set up a works council. They then went to the NGG and got advice on what to do.” (Expert Deliveroo)

This project should prove to be a stony process. This was demonstrated by two decisions made by the company after the initiators announced that they wanted to set up a works council. The first

³¹ Georgia PALMER: Foodora & Co.: Die Revolte der neuen Dienstbotenklasse. *Blätter für deutsche und internationale Politik*, no. 7/2017. 29.

was the company's social media platform. This platform enabled communication both with the other employees in Cologne and, on a second channel, with employees throughout Germany. In September 2017, the initiators sent the information that they wanted to establish an electoral board for a works council in Cologne via the Germany-wide networking. Less than an hour later, the company switched off the platform. Since then, communication between employees via company channels has only been possible via the company's headquarters in Berlin.

The second decision concerned the initiators themselves. When they officially announced the establishment of an electoral board to the company, the main initiator, the future chairman of the works council, was degraded in the organisation. Although he was also a rider, he also advised and mentored the drivers in the office. After the announcement he was forbidden to enter the office any further; he was only allowed to deliver orders. The company has thus exploited a regulatory weakness in the German Works Constitution Act. Although the law protects election committees from dismissal or other discrimination, there is no legal protection during the run-up to the election.

After the election committee was founded despite these adversities, the company tried to take the reins of action and determine the time and place of the election. The company suggested organizing the process and holding the election on a Friday at 09:00 in a Cologne hotel. Thus the choice would have been outside the working hours, which begin only with the noon journeys.

“The initiators then said that this was not possible; the election committee pleaded for the time of 15.00. The CEO then phoned the initiator and accused him of damaging business behaviour.” (Expert Deliveroo)

The election finally took place in the office; some 30 people from about 200 employees at the site took part in the election. All participants were drivers.

“The people from the office only stopped by once and were distanced; the accounting manager made his contempt clear by gestures.” (Expert Deliveroo)

Alternative communication channels had to be made available for the information before and after the election, because communication via the company's social media platforms was blocked. Alternatively, two WhatsApp groups were set up among the drivers. One of them only serves to make an appointment for the end of the day. The other is the forum for criticism. Thanks to the communication of this group, the knowledge of the many accounting errors was spread; here the drivers also learned about the complaints of the riders, who are supported by the union NGG.

Immediately after the election, the company began to replace its employees with freelancers. Expiring fixed-term contracts were not renewed, but contracts were increasingly awarded to freelancers. In

November 2017 there were about 140 employed riders, in February only about 20. “Within three months the company had more than half of the 100 fixed-term contracts expired at the Cologne site”³².

The works council initially tried to obtain information and data from the company on employment relationships and pay. In this way, it wanted to sound out its opportunities for co-determination in the structuring of employment relationships. In the course of the works council election and the numerous disabilities, the initiators also had the idea of going public with the problems.

“We thought about what public relations could look like. We also obtained information from the NGG trade union. We wanted to create a public sphere. First we developed a poster with the slogan ‘Delivering at the limit.’ (Expert Deliveroo)

With the poster a Flash mob was organized on a place in the city of Cologne. In fact, it was more of a demonstration. The campaign was very effective in advertising; newspapers as well as radio and public television were on site. Also drivers of the competitor Foodora - the drivers are connected in friendly competition - came in and joined the demonstrators. Then a spiral of growing interest unfolded, leading the initiators to the Federal Minister of Labour.

“We gave interviews to the press and then the interest grew. The chairman of the works council was later on television during a political talk show, where the Federal Minister of Labour was also present, and afterwards the two had an intense conversation over a beer. So we got in touch with the Minister of Labour. He also visited us once in Cologne and talked to us very intensively for about one and a half hours.” (Expert Deliveroo)

The initiators also set up a page on Facebook for ‘Delivering at the Limit’, which they update to this day. The goal is to make public what happens with the food suppliers. Interview requests and invitations to conferences and talk shows also testify to an unbroken interest in the topic.

‘Delivering at the limit’ was an initiative of the drivers. But the Food and Catering Union (NGG) played an important supporting role in the process. It advised the initiators in setting up the works council, and it helped refine the public relations concept, and strategy meetings are still held today at the union’s offices on how to continue the campaign. The union also advises on press work, which has become more and more complex. A member of Deliveroo’s original works council has joined the union and is now project secretary for delivery services. The union’s long-term goal is to conclude collective agreements with the supply services.

³² Cf. Ingo ZANDER: Naturtalent der Mitbestimmung. *Mitbestimmung*, no. 07/2018. 17. <https://bit.ly/33vJJWp>

“That’s very good; now there’s someone there to coordinate the work and has resources. You know who to turn to and there is more support. The aim of the union is clear: they want to enforce collective agreements for delivery services. The focus is now on Foodora.” (Expert Deliveroo)

Today, the works council at Deliveroo’s Cologne location still consists of one person. Four of the five works councils are no longer there because their employment contracts have not been extended. Three of them have appealed against this decision and accepted a court settlement. The chairman of the works council is still in office, he has not accepted the settlement. The court had decided that he was not properly limited in time and had to be reinstated. The company is now appealing to a higher court.

“In any case, it is still there, and it is a works council only for office employees. Because only freelancers are still driving on the street.” (Expert Deliveroo)

In Münster there was also a works council initiative at Deliveroo; there the company did not recognise the works council and argued that there was no office and therefore no business there. The drivers there would therefore belong to Cologne and would have to elect their works council here.

At the delivery service Foodora, a direct competitor of Deliveroo, the establishment of the works council was less competitive. Here, too, a works council committee could be elected at the Cologne location. The structural conditions for this were better because the fixed-term employment contracts there have a duration of one year and because the company does not work with freelancers, i.e. has not replaced fixed-term employees with freelancers. Nevertheless, problems arose from the fixed-term contracts.

“Foodora also has a nine-member works council in Cologne, which is around 250 people. He now wants to be re-elected because there have been some changes, the deputy chairman was not extended and had to resign.” (Expert Deliveroo)

4. Initiatives in Italy

4.1. Social partners defining rules applying to platform delivery workers

The first initiative concerning Italy concerns the attempt by social partners in the logistics sector to make clear their sectoral collective agreement did cover also platform delivery workers. First of all, it shall be borne in mind Italy does not have a law on representativeness.

Sectoral agreements play a central role in defining minimum wages and terms of employment both since legislation has been promoting their role by entitling them to derogate or complement law provisions, and since case law has acknowledged the role of minimum rates of pay established in sectoral agreements as a reference when assessing the compliance with right to a ‘remuneration commensurate to the quantity and quality of work and in any case such as to ensure workers and their families a free and dignified existence’ enshrined in the Italian Constitution (Article 36).

Whereas the agreement covering logistics has a material scope which can well fit with the activities of many delivery platforms (which could fall under ‘logistics services’ activities or even ‘e-commerce activities’), and includes ‘delivery workers’ among the addressed job profiles, the social partners agreed to define a new occupation as ‘workers carrying out distribution logistics activities, including transport-related activities, by means of bikes and motorbikes’. In particular, the renewal of the sectoral agreement signed on 3 December 2017 committed the parties to define terms of employment and wage applying to the new job profile whilst abrogating the ban to use on-call contracts in the sector.

Instead, the actual rules concerning the new job profile were defined in a complementary agreement signed on 18 July 2018.

While setting a minimum hourly pay of € 8.4, the parties defined flexible terms of employment concerning in particular working time. Among other, the agreement of the 18 July 2018 entailed that:

- the daily working time shall be between 2 and 8 hours (10 if the worker is employed also in storing activities);
- the daily working time can be spread over a 13 hour-time span, this way allowing for long breaks between lunch and dinner services;
- the shifts can be moved or extended with an 11-hour notice.

It is worthy to stress the agreement banned the use of ranking systems to assign shifts, committed companies to provide adequate individual protection equipment and to insure also scooters and bikes for damages to third parties, and entitled firm-level bargaining both to certify conditions allowing the company to adopt these special provisions and to negotiate further issues, e.g. a performance related pay.

In fact, the provisions apply only for workers performing transport activities who are employed in discontinuous tasks and whose working time does not coincide with the time at disposal of the employer in reason of objective organisational limits due to the type of transport, implying the alternance between working time with periods of inactivity, rest or breaks.

Despite negotiations on the issue actually followed bans in urban areas to deliveries by vehicles, forcing large operators to change their fleets while introducing bike couriers, they matched the rise of protests by platform delivery workers, so they evolved toward an attempt to negotiate terms of employment in platforms.

“Activities for the renewal of the agreement started in 2015, when it expired. Negotiations lasted two and a half years and since the beginning there was the idea to include the job profile of ‘riders’, as the collective agreement did not include this specific occupation. Yet, this job already existed, even beyond food delivery activities. There are big companies that deliver letters or parcels in urban areas. These workers are riders like those employed by food delivery platforms. Therefore, we advanced the request to regulate this specific occupation, and the employers’ organisations acknowledged this need. As some cities closed the urban areas to vehicles, they did start using delivery by bike. Yet, there was uncertainty over which pay level applied, as well as on aspects concerning insurance in case of road-traffic accident.

At the time negotiations were proceeding towards some concrete solutions, the case of food delivery platforms burst, which was a well-fitting coincidence.” (Unionist at UILTrasporti)

Indeed, the unions’ counterparts negotiating the agreements represent players like DHL or FEDEX but not platform companies. Therefore, as recognised by interviewed unionists themselves, the agreement is actually applied by large logistic players affiliated to the signatory employers’ organisations but not by platforms. Indeed, the employers’ organisation representing largest platforms, Assodelivery, affirmed there are not collective agreements applicable to their new ‘type of workers’, a position which can hardly be supported by evidence³³.

A significant exception is represented by the agreements signed by the Florence-based companies La Consegna and Sviluppo pg (also known as Runner Pizza), already active in the sector of food delivery of pizza, and underwriting to apply the contract at a time the case law seemed to reject the qualification of ‘riders’ as employees³⁴.

Yet, the agreements actually set a scheme whereby working time is computed as a ‘standard’ time depending on the distance between the place of collection of goods (not the place of departure) and the place of delivery. The time per delivery ranges between 7 minutes in case of distance lesser than 2 Km, to 20 minutes for distances between 5 Km and 8 Km. Taking into consideration the minimum hourly pay agreed at sectoral level, this means a basic pay ranging from € 1 to € 3 per delivery. Despite some indemnities and bonuses are entailed³⁵ and the companies committed to guarantee at least 10

³³ See: Assodelivery: *Documento depositato presso le Commissioni 10° e 11° riunite per le audizioni sulla conversione in legge del decreto-legge 3 settembre 2019, n. 101, 2 ottobre 2019.* <https://bit.ly/33mTPga>. The text, wrongly refers to an inexistent Law Decree 109/2019, which shall instead read as Law Decree 101/2019. For some examples of sectoral agreements suiting the activities of delivery platforms, see: Ivana VERONESE – Antonella PIRASTU – Pierluigi RICHINI – Feliciano IUDICONE: *Italy – Case Study Report, Don’t GIG up!*. 2019. 4. http://www.dontgigup.eu/wp-content/uploads/2020/02/Casestudy_IT.pdf

³⁴ Whereas the judgement of the Tribunal of Turin no. 778/2018 and the judgement of the Tribunal of Milan no. 1853/2018 classified platform delivery workers as self-employed, the former sentence was rebutted by the Judgement of the Court of Appeal of Turin no. 26/2019. The judgment entitled platform delivery workers to ‘some’ protections of employment while maintaining their self-employment status. This position built on an interpretation of rules concerning quasi-subordinate contracts which was later revised in a more protective way by the Supreme Court judgement no. 1663/2020, but which remains subject to debate (see, for instance: Michele FAIOLI: *Jobs-App, Gig-Economy e Sindacato. Rivista Giuridica del Lavoro*, no. 2/2017. 291–305.; Giuseppe SANTORO PASSARELLI: *Sui lavoratori che operano mediante piattaforme anche digitali, sui riderse il ragionevole equilibrio della Cassazione 1663/2020. WP C.S.D.L.E. “Massimo D’Antona”.IT*, no. 411/2020. <https://bit.ly/3mkBKYR>

³⁵ Among them, the risible sum of € 0.6 per hour for stand-by periods, provided the worker does not refuse delivery orders.

hours of work per week, the overall pay risks to be even below this offered by large delivery platforms, beside resembling, de facto, a piece-rate rather than hourly rate pay scheme.

In terms of influencing the debate, the sectoral agreement was probably more successful. While representing a concrete attempt by social partners to regulate an occupation allegedly far from the ‘traditional’ employment schemes, the agreement proved collective bargaining can still represent a solution to reconcile workers’ rights with new models of work organisation³⁶.

Actually, the agreement was successfully used as a reference for establishing minimum wages in the landmarking Foodora case law³⁷, it became a cornerstone in the request to consider platform workers as employees advanced by unions in tripartite meetings³⁸, and was used to back protests and claims. For instance, the campaign by CGIL ‘No Easy Riders’³⁹ to inform platform workers about the union’s proposals and claim for better protections, asks, among other, the application of the agreement, whereas the independent Riders Union Bologna claimed for the application of the minimum rates of pay set by the agreement also with forms of ‘virtual strikes’.

“Frank, the Deliveroo algorithm, computes the number of delivery workers necessary for each shift. Whenever fewer workers are available, it sends an email to all workers, offering a € 1 bonus to all those logging in, a bonus that increases as long as the target number of workers is not met. Sometimes, we ‘played’ with the algorithm, refraining from logging in until the amount offered by Frank was as high as the minimum levels set by the NCBA on logistics. Then, we all logged in. This way we managed to obtain € 3 more per delivery.” (Unionist at Riders Union Bologna).

Last but not least, by means of Law 121/2019 (see the next paragraph), the legislator bound platforms engaged in the delivery of goods in urban areas either to sign a collective agreement or to apply hourly pay set by collective bargaining even to their self-employed delivery workers.

Whilst a valid agreement was not concluded in time for the entry into force of these provisions (November 2020), the Ministry of Labour and Social Policies intervened with a communication

³⁶ The recognition of the employment status and the application of the agreement became a cornerstone in the requests advanced by unions in the tripartite meetings with platforms taking place at the Ministry of Labour premises, and the City of Florence even buttressed the firm-level agreements calling the government to take them as a model at national level. See: *Duecento riders di Runner Pizza assunti con contratto di lavoro subordinato, il sindaco Nardella: “Svolta storica, ora si applichi in tutta Italia”*. Città di Firenze, Press release, 22 July 2019. <https://bit.ly/33sVn8w>

³⁷ The case went through the three instances of judgements (judgement of the Tribunal of Turin no. 778/2018, judgement of the Court of Appeal of Turin no. 26/2019, and Supreme Court judgement no. 1663/2020). It represented the first case law concerning ‘platform delivery workers’ and interpreting new provisions concerning quasi-subordinate workers introduced by the Jobs Act (more specifically by Legislative Decree no. 81/2015).

³⁸ CGIL: *Rider: CGIL, CISL, UIL, bene sentenza Torino, ora estendere diritti e tutele attraverso accordo collettivo*, Press release, 14 January 2019. [hereinafter: CGIL (2019a)] <https://bit.ly/3kkgZL9>

³⁹ CGIL: *Food delivery: CGIL, da 8 città parte la campagna ‘No easy riders’*. Press release, 4 July 2019. [hereinafter: CGIL (2019b)] <http://www.cgil.it/food-delivery-cgil-da-8-citta-parte-la-campagna-no-easy-riders/>

considering the minimum rates set in the agreement covering logistics as the reference to apply, also in case of sanctions⁴⁰.

4.2. Local regulatory attempts: the Bologna Charter, and the Act of Lazio Region

As a second case, two similar initiatives by local institutions are proposed. The first attempt to regulate platform delivery work in Italy was in fact engaged in Bologna.

Albeit first protests by ‘riders’ spurred in Turin and, then, Milan, it was with the refusal by platforms to stop the service in the event of a severe snowfall in November 2017, that Bologna workers gathered around unions and new-born movements (Riders Union Bologna) to claim for better working conditions. At that point Riders Union sought for the support of the Municipality, asking to order the stop of the food delivery service, and triggering a debate at local level which eventually brought the Municipality to launch a consultation table⁴¹.

The finally agreed ‘Charter of Fundamental Rights of Digital Work in the Urban Context’, signed on 31 May 2018, while engaging the platform to guarantee pay in line with sectoral agreements, and to provide adequate information in written contracts to workers, formulated new rights. Differently than the agreement covering logistics, the Charter implicitly accepted the use of rating and ranking systems. The Charter banned reduction of work opportunities by the platform due to prolonged absence of the workers, while entitling workers to information, portability and mediation rights. Yet, this point was among the most difficult aspects of the negotiations.

“These companies are flourishing thanks to data but treat them as a trade secret. The problem is that, this way, their whole business becomes a trade secret. The right to have information on the functioning of rating was highly debated during negotiations for the Charter of Bologna.”
(Unionist at Riders Union Bologna)

In addition, the Charter committed platforms to:

- guarantee at their own expenses an insurance against accidents at work, also covering damages caused to third parties in case of road-traffic accident,
- observe data protection rights, informing workers on their source, use and finalities, while recognising the right for workers to oppose data treatment in presence of justified reasons;
- pay indemnities in case of adverse meteorological conditions or even to suspend the service,

⁴⁰ See: Communication of the Ministry of Labour and Social Policies no. 7 of 30 October 2020.

⁴¹ Federico MARTELLONI: Individuale e collettivo: quando i diritti dei lavoratori digitali corrono su due ruote. *Labour & Law Issues*, vol. 4., no. 1., 2018. 32–34.

- guarantee collective rights, including paid assembly and right to strike.

Yet, the Charter was signed only by two local companies on the platforms' side (SGNAM and MyMenu), later joined by Domino's Pizza, with unions complaining the same companies are overlooking obligations, also due to competitive pressure by leading companies. Leading platforms, in fact, refused to accept the Charter, not to jeopardise regulation of platform work across the country⁴². Foodora also reacted by launching a Charter of Values⁴³ together with some smaller operators (Foodracers, Moovenda, Presto Food). Whilst the proposal accepted some demands of the Charter, actually endorsing the abolition of rating and ranking systems to assign shifts, the company exited the Italian market few months later, being acquired by Glovo.

After the signature of the Charter, Riders Union acknowledged some improvements, limitedly to union presence and, to some extent, pay.

“It is noteworthy our presence increased. Now, we have a paid assembly and we overcome the initial phase of the conflict when riders protested covering their face.

There has been also an improvement in pay, even if not yet in line with the standards set by the Charter and not negotiated with unions⁴⁴.

More in general, in meetings with SGNAM, they complain difficulties to stick to the Charter, especially for what concerns pay, as other platforms do social dumping.

Overall, this makes sense. They tried to use the Charter to present themselves as a fair platform. Yet, this is a business based on ‘aggressivity’. Platforms guarantee good conditions for workers and client restaurants when they are settling in the city, and then reduce their standards.” (Unionist at Riders Union Bologna).

The ‘Rules for the protection and safety of digital workers’ represents a similar case, while featuring a direct initiative by the local institution. In May 2018, the Board of the Lazio Region launched a consultation on a bill for the protection of platform workers, both on-line and through consultation with social partners and stakeholders. The text, passed one month later by the Board, was approved only in March 2019 by the Council of Lazio Region, suffering from delays due to the concomitant attempt by the government to regulate the topic at national level.

The act introduced a set of rights for workers enrolled through platforms, defined as any ‘enterprise that organises the workers’ activity with the goal of supplying a service to third parties by means of a digital application, defining the characteristics and fixing the price of the service’.

⁴² Lorenzo FANTONI: Come cambia Just Eat, tra vecchie abitudini e nuovi modelli di mercato. *La Stampa*, 03 June 2018. <https://bit.ly/3mmohzx>; Foodora e Deliveroo: la carta di Bologna per i rider? Serve tavolo nazionale. *Corriere di Bologna*, 2 June 2018. <https://bit.ly/3kgrEGG>

⁴³ The Charter is available at: <http://www.tosieassociati.it/archivionotizieDett.aspx?SysPk=Snr9FiAP6jlboaBywInUVg%3D%3D>

⁴⁴ As later communicated by the interviewee, Sgnam eventually further raised pay standards to meet the minimum levels set by sectoral collective bargaining.

In particular, the law introduces:

- measures addressing health and safety at work, including obligation for platforms to: insure workers against accidents at work and damages to third parties, provide personal protective equipment free of charge, cover expenses for the maintenance of working tools, further measures to be defined by implementing acts;
- obligation for platforms to ensure social protection of workers, in line with national standards;
- right to a fair and hourly pay, in line with minimum levels and bonuses established by collective agreements, and including an allowance for cancelled shifts, whenever the withdrawal is not ascribable to the worker;
- obligation for platforms to ensure a transparent functioning of the algorithm matching labour demand and supply, and of rating systems, including an impartial mechanism of verification of the rating;
- portability of ratings between platforms;
- preventive information to be provided by platforms to workers on terms of employment, covering, among others: pay, health and safety at work, the functioning of algorithms, the functioning of rating systems, and the related mechanism of verification.

While representing the first law regulating platform work in the country, the act covers several matters falling under the national legislative competency, such as the regulation of pay and social security. At the same time, some ‘soft’ measures (not implemented yet) seem thought to incentive voluntary adhesion to the act.

In particular, the law commits the Lazio Region to implement:

- measures promoting awareness on workers’ rights, trainings on health and safety and complementary welfare schemes;
- a web-portal on digital work, where, upon registration, workers and platforms can access the said measures;
- a ‘Fair economy’ label for platforms observing provisions of the act;
- a stakeholders’ committee of digital work, charged of promoting research and policy proposals on digital work, to support dialogue between platforms, workers and social partners, and to elaborate a ‘Charter of rights of digital workers’.

As of November 2020, the Stakeholders’ Committee has been established and funds were earmarked to implement the web-portal and the accompanying measures set by the act. Provisions on pay, social protection and health and safety at work seem instead to be somehow overcome by the following introduction of national regulations, probably in turn influenced by the act.

4.3. National regulations – the Law 128/2019

In September 2019, the Italian government approved the Law Decree 101/2019. The Decree entailed some labour protections for food delivery platform workers. In addition, whilst backing the qualification of platform workers as quasi subordinate workers, it increased social protection for this category of workers (mainly in case of unemployment and sickness). The act was widely revised by Law 128/2019, converting the decree (i.e. an act enacted by the government with temporary efficacy) into law.

The overall ambition of the act is to level costs and protections of employees and self-employed, at least for delivery platforms, while promoting the achievement of a collective agreement as negotiations tabled to this aim by the government in June 2018 could not reach a consensus. At that time, the Ministry of Labour disclosed a bill meant, instead, to address platform work within a set of rules tackling abuse of self-employment status. The bill had the effect to push platforms into accepting negotiations with unions, but was then significantly watered down in the eventually approved Law Decree 101/2019 and Law 128/2019.

The new rules basically reword provisions guaranteeing the application of employment protections to self-employed workers (more specifically quasi subordinate workers) ‘organised’ by the client to specify they apply also whenever workers are organised through a platform. Among the many possible interpretations raised by the quite vivid academic discussion⁴⁵, case law and the most recent guidance provided by the Ministry of Labour seemed to converge on the extension of labour and social protections granted to employees also to quasi subordinate workers whenever they are ‘organised’ by the client, while maintaining their formal status of quasi subordinate workers⁴⁶. Rules applying to quasi-subordinate workers ‘organised’ by the client also entitle social partners to define ad-hoc pay and terms of employment, this way settling protections applicable in peculiar situations and sectors.

At the same time, the law introduces a set of rights specific to platform delivery workers enrolled in urban areas as self-employed. The act bans piece rate pay and binds platforms to observe hourly rates set by applicable collective agreements unless specific wage setting mechanisms are established through collective bargaining. In addition, the new rules grant coverage against accidents at work, a minimum 10% indemnity in case of night work, holiday work or work in adverse meteorological conditions, and prohibit the reduction of working opportunities following refusal to accept deliveries on the platforms.

This last point is particularly relevant insofar it creates a clear fracture between the possibility to use self-employment contracts, and an algorithm-based system of incentives for workers to be more

⁴⁵ For a review of the different positions, see: SANTORO PASSARELLI op.cit.; Marco BARBIERI: Della subordinazione dei ciclofattorini. *Labour & Law Issues*, vol. 5., no. 2., 2017. <https://labourlaw.unibo.it/article/view/10235/10120>

⁴⁶ See, in particular, the Communication of the Ministry of Labour and Social Policies no. 7 of 30 October 2020.

available than their colleagues in order to get ‘gigs’, a model lying at the very heart of many delivery platforms.

As key provisions on pay and wage setting entered into force only in November 2020, the law had its first notable effects only during the Autumn 2020.

First of all, on 15 September 2020 Assodelivery signed an agreement with the right-wing union UGL meant to exclude the qualification of riders as employees while building on the rules set by Law 128/2019 for quasi subordinate and self-employed platform workers. The Ministry of Labour reacted with a formal letter to Assodelivery stating the agreement seems unlawful both for exceeding competences of collective bargaining and for failing to meet representativeness criteria.

The same position was later detailed and substantiated by two communications by the Ministry of Labour⁴⁷, whilst social partners of the logistics sector reacted by signing an agreement on the same legal basis, yet going on the opposite direction, i.e. extending provisions entailed for employees to self-employed platform delivery workers.

Platforms are now at a crossroad. The prosecution of their ‘business as usual’ strategy risks leading to sanctions and losses, be them imposed by labour inspectors or in courts, whilst the application of the agreements of logistics or the negotiation of an ad-hoc agreement with representative unions appear as more feasible solutions⁴⁸.

Negotiations are in fact still open at the Ministry of Labour premises, whilst unions recently won another lawsuit, actually classifying a Glovo food delivery worker as an employee⁴⁹.

5. Conclusions

The initiatives presented can be considered from two angles. On the one hand, they seem to be more or less isolated measures with an initially low impact and at most moderate results. In Germany, IG Metall’s talks with the platforms within the framework of the Faircrowdwork initiative are still limited to a few cases, and recruitment successes are low; the establishment of works councils in the field of supply services is also locally limited and threatens to fail because of the overpowering position of the platforms, which can arbitrarily switch between different forms of employment in order to prevent the emergence of interest groups.

⁴⁷ Communication no.17 of 19 November 2020 and Communication no. 7 of 30 October 2020.

⁴⁸ Following the latest developments, Just Eat actually quitted from Assodelivery and committed to employ its ‘riders’ as employees, yet starting from 2021. See: Stefano RIGHI: Contini (Just Eat): «Assumeremo i rider, investiremo sulle persone». *Corriere della sera*, 07 November 2020. <https://bit.ly/2Kxvcrq>

⁴⁹ At the time of closing the article, the Tribunal of Palermo (judgement no. 3570/2020) just reclassified a Glovo food delivery worker as employee, while building on the mentioned case law by the Italian Supreme Court, on the Court of Justice of the European Union judgement in C-434/15, Asociación Profesional Élite Taxi vs. Uber Systems Spain SL, [ECLI:EU:C:2017:981], and, lastly, on the Communication of the Ministry of Labour and Social Policies no. 17 of 19 November 2020 itself. Practices implemented by platforms faced a setback also in May 2020 with the extraordinary administration imposed by the Tribunal of Milan over the Italian branch of Uber Eats and based on an extensive wiretapping involving managers of Uber Italy, its subcontractors and workers backing the accusation of ‘gangmastering’.

In Italy, efforts to regulate platforms by means of collective agreements or soft law proved ineffective at first in triggering adhesion by leading platforms to applying the required standards in terms of pay and workers' rights.

The situation seems to be at a turning point after the approval of Law 128/2019, pushing platforms to accept the use of employment contracts, or to stick to the new, rather protective, regulation of self-employed platform delivery workers. Yet, first examples concerning the application of employment status to platform workers reveal firms can still play on the definition of working time to keep pay low and replicate piece-rate pay schemes. From this point of view, it can be argued the glass is half-empty; some initiatives are going on and seem to influence the perception of 'gig economy' in the debate and, limitedly to Italy, in policy-making. Yet, they are far from having solved the problems of working conditions, social protection or interest representation connected with cloud- and gig-work.

On the other hand, it can also be stated that the initiatives and thus collective action are possible despite the limitations put by platforms in the sense of undermining the classical concept of establishments and creating self-employment instead of socially and legally protected forms of work. The examples listed above show that platform work may constrain the articulation of collective interests, but the platform logic that promotes competition does not prevent the emergence of joint employee concerns. In this perspective, the glass can be regarded as half-full. Bottom-up initiatives like 'delivering at the limit' of the riders or the mobilisation of the riders in Bologna profit from the location-dependence of the gig working. The bike couriers could meet during their work (as well as during breaks or on the way from/to the beginning of the shift) in the cityscape and could recognize each other by their clothes.

From this it can be concluded that direct communication and direct exchange – i.e. face-to-face conversation – remain important for the development of expressions of solidarity even in digitally coordinated work. In the field of cloudworking, the absence of this co-presence of crowdworkers stands in the way of any bottom-up initiatives. Nevertheless, such approaches also exist here, as the reference to the Turkothon project has shown. However, such initiatives gain much more weight if they receive organizational support from established interest representation organizations Top-Down as it was the case in the Faircrowdwork campaign of the German IG Metall; and also the campaign at Deliveroo could benefit from the support of the NGG union.

Initiatives by interest groups or to establish interest groups in Germany have so far broken new ground without any legal changes. However, this does not mean that political frameworks for the design and regulation of crowd and gig work are not important⁵⁰. On the contrary, this need becomes clear precisely through the initiatives. This includes, in the German case, the question of the legal safeguarding of temporary works councils as well as the protection of initiators in works council

⁵⁰ Cf. Catherine Bettina BAETHGE – Michael BORBERACH – Anke HOFFMANN – Ole WINTERMANN: *Plattformarbeit in Deutschland: Freie und flexible Arbeit ohne soziale Sicherung*. 2019. 66. <https://bit.ly/2H05Xw8>

elections from the election of the electoral body or the question of the operational form of platform work. Instead, in Italy, action by grassroots movements and social partners seems to have triggered the introduction of new protections by policy makers at regional and national level.

In particular, two main aspects emerge as key in the regulatory attempts experimented in Italy. First of all, the initiatives explored shared the goal to ensure a basic set of protections to platform workers, be them employees or self-employed.

This is especially the case of guaranteeing collective rights, social protection, and fair pay.

The second aspect concerns the introduction of rights concerning specifically tools adopted by platforms to organise production, i.e. rating and ranking systems managed through algorithms.

Here, a variety of proposals can be found, from the strict abrogation of ranking and rating systems, to the introduction of consultation rights to unions, to the ruling of information rights for worker and the adoption of dispute resolution mechanisms.

Overall, both the Italian and the German systems seem to strive to embed platform work, especially gig work, in their established industrial relations models. Whereas the case has to do especially with representation and codetermination rights in Germany, in Italy much ado was and still is about the application of sectoral collective agreements.

In both cases, the models seem to suffer especially for the ability of platforms to establish a business activity on a core bulk of self-employed workers and a marginal share of employees.

This attitude challenges policy makers on the one side to close cost gaps between employment and self-employment schemes, on the other side to rethink rights, social benefits and collective rights typical of employment, in a way to suit self-employed. The two approaches may also show complementarities, for instance a right to a fair pay for self-employed shall both close cost gaps and increase rights. Whichever way, net of some specificities, mainly concerning the extensive use of algorithms and data, problems posed by platform work call for policies reinforcing labour rights, social protections and collective rights of the workforce at large.