



Gig Economy: Opportunity or Risk for the Labour Market?

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- › Despite public attention, the impact of the gig economy on the German labour market has so far been low. Regardless, the emergence of new flexible models of the platform economy increases employment.
- › The classification of the gig economy has encouraged public debate where legal and societal factors related to labour market, social, data and competition policy come into play.
- › Social insurance of gig workers in particular dominates the current debate. The distinction between (solo) self-employed and (classic) employee becomes blurred. Where and when exactly does the platform become an employer?
- › Overall, the political debate on the gig economy offers an opportunity for developing new innovative business and employment models.

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Abstract

The gig economy offers new forms of employment as online platforms mediate between customers and workers. Gig work currently receives much public attention. The gig economy gives rise to new forms of self-employment, hybrid employment histories and challenges the distinction between “classic” employment and independent contract work. Do these developments necessitate changes to labour legislation? The debates on banning transport services (Uber) and wage structures of takeaway companies (Foodora, Deliveroo etc.) urge political attention on labour market policy and platform regulation.

The Gig Economy – An Overview

The gig economy refers to a **sector of the labour market where customers assign short-term tasks to independent or self-employed workers via online platforms**.¹

Workers work on ‘piece rate’, i.e. they are paid per completed task. Examples of such platforms include personal transport service **Uber**, meal delivery platforms such as **Deliveroo** or **Foodora** or the German cleaning service provider **Helpling**. Their business models are deemed to be highly influential on shaping future labour markets since they efficiently bring together many customers with independent contractors².

Finding a clear definition or categorisation of emerging forms of work proves difficult as terms such as **sharing economy**, **crowdwork**, **gig economy** and **platform economy** are neither clearly defined nor used coherently. The development of new forms of work challenges or even redefines traditional terms such as “employer”, “employee” and “company”. **Atypical employment** such as contract work, fixed-term contracts and part-time work increasingly replaces the **traditional working day** – the standard understanding of employment since the foundation of the Federal Republic of Germany.³

In contrast to classic self-employment, **a platform in the gig economy mediates** between the customer seeking a service and the worker fulfilling the task. Usually the platform charges its users an intermediary fee.

The gig economy merely constitutes a small part of the labour market so far. Yet it efficiently brings customers and contractors together.

Definition and demarcation

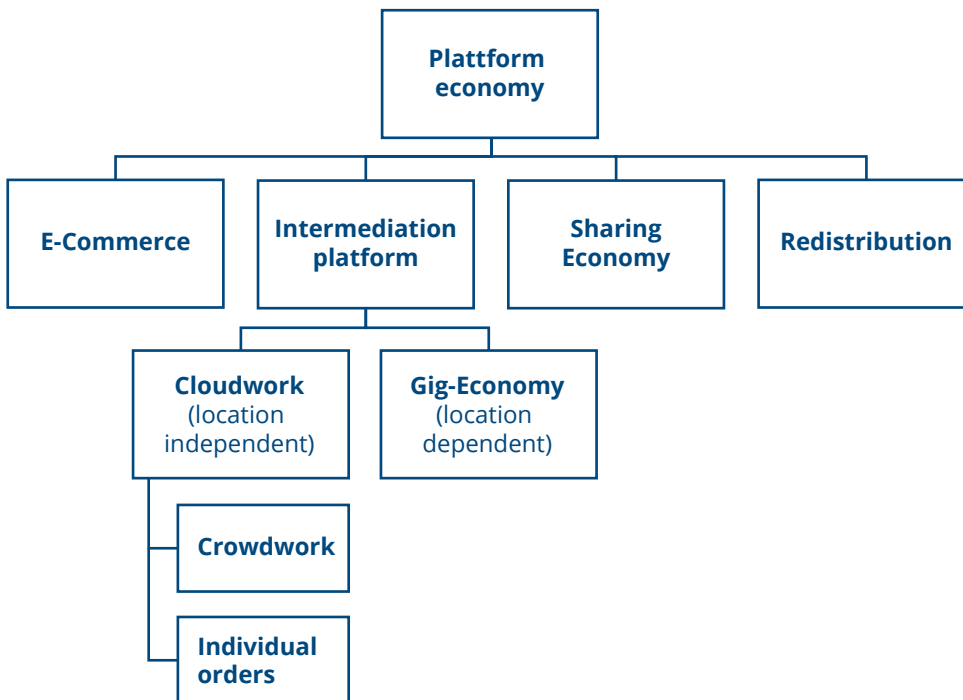
The term “gig economy” emerged in the United States during the peak of the 2009 financial crisis, when many laid-off workers became self-employed.⁴ Similar to musicians playing one ‘gig’ after another, ‘gig workers’ proceeded from one small job to the next.

Although a clear definition and demarcation of new forms of employment is difficult, the gig economy constitutes a **subcategory of platform economies**.

There are two major differences between cloud work and gig work. Firstly, whilst **cloud work is independent from location** of a person and a job, **gig work is location dependent**.⁵ In most cases, there is personal contact between customer and contractor, for example during the delivery of takeaway orders, home help or repairs.

Secondly, while tasks on **crowdworking** platforms are advertised openly and can be implemented by any member registered on the platform⁶, a **gig job** is allocated to one specific individual who is then responsible for its full execution.

The gig economy constitutes a subcategory of platform economies. There often is personal contact between customer and contractor.



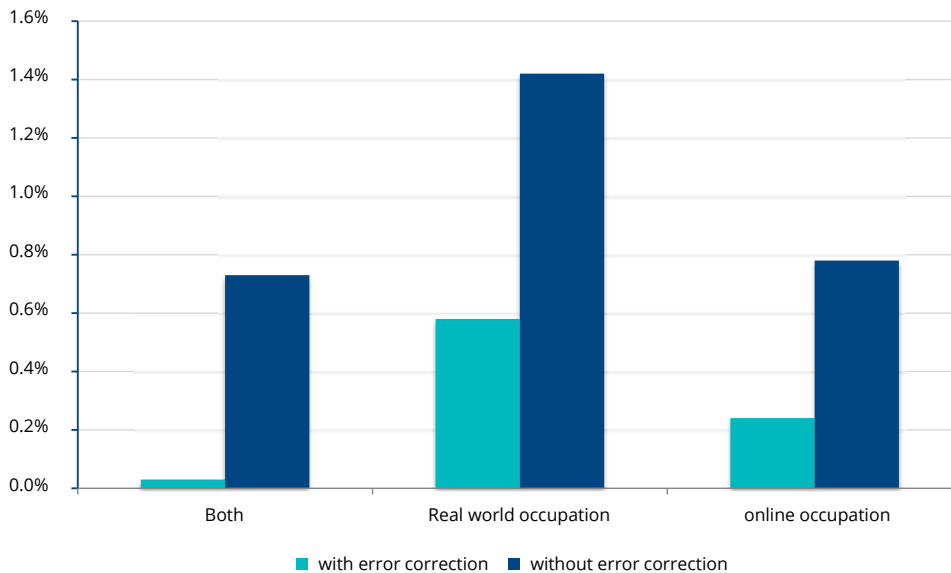
Graph 1: Categorisation of the platform economy

Own design

Sometimes the **platform economy is portrayed as part of the sharing economy**. It remains controversial to which extent crafts and services can be shared, however. Distinguishing between sharing goods and the mediation of crafts and services as shown in graph 1 seems reasonable. The main focus is not only on sharing instead of owning goods, but also on **offering commercial services**.⁷ Discussions often neglect the differences between the gig economy and cloud work or crowd work since the lines between them are blurred. Yet both phenomena make it difficult to distinguish between employee and contractor.

Scale and Scope of the Gig Economy

It is difficult to determine the amount of workers in the gig economy as companies hardly publish data and distinctions are often blurred. The IZA – Institute of Labor Economics found that the spread of crowd- and gig-working in Germany is hardly measurable. In other words, the impact of gig- and crowd working on the German labour market is low (even though gig- and crowd working still remain politically relevant).



Source: Calculation and illustration by IZA. Database: Omnibusbefragung zur Verbreitung neuer Beschäftigungsformen. Hochrechnung unter Verwendung der von Kantar Public auf Basis des aktuellen Mikrozensus

The 2016 study ‘**Exploding myths about the gig economy**’⁸ by McKinsey Global Institute surveyed 8,000 participants from the United States, Great Britain, Germany, Sweden, Finland and Spain. The survey found that 20 to 30 per cent of the employable population (by age) had already worked on a self-employed basis. Even though the gig economy has been growing over the past years, merely **15 per cent of self-employed workers** in the study worked in the gig economy. 70 per cent stated that they are self-employed for flexibility reasons. The majority of them use the **gig economy as sideline for additional income** and tend to be students or pensioners. Both in Germany and the US, employment on platforms tends to be sideline rather than the main source of income.⁹

Gig economy as
sideline

The German Federation of Trade Unions (Deutscher Gewerkschaftsbund) estimates that about **two million people in Germany are working in the platform economy**.¹⁰ One million of them count as crowdworkers.¹¹ In comparison with the findings of Bonin, Rinne¹² (2017) and four million statistically recorded self-employed in Germany, the estimation of the German Federation of Trade Unions seems exaggerated.

Self-disclosed employment statistics of the platforms provide an adequate picture of the scale of gig work: In 2017, 2,600 carriers were registered on Foodora, whilst 1,500 worked for competitor Deliveroo.¹³ In August 2018, 150,000 German flats were available for short-term rent on Airbnb, 10,000 cleaners were registered on Helpling.¹⁴ UberTaxi currently mediates about 1,500 taxi drives in Berlin, giving it a market share of about 20 per cent.¹⁵

Given the variety of business models, quantifying activity in the gig economy is challenging. Although a study conducted by the US Federal Bank¹⁶ concludes that current attention exceeds economic relevance, gig work will most likely become more relevant.

Platform economies indicate a trend in the development of labour markets

In this context, the 2018 ILO study 'Digital Working Platforms and the Future of Work: Towards decent work in the online world'¹⁷ surveyed 3,500 participants in 75 countries and investigated five microtasking platforms¹⁸: Amazon, Mechanical Turk, Clickworker, Crowd-Flower and Microworkers.

The gig economy embraces many economic and social trends.

The ILO observed a general **tendency towards the outsourcing of labour** via platforms and apps. This results in a lack of appropriate regulation and legal frameworks for new forms of employment. The study emphasized three main issues for platform workers:

- › Lack of social security
- › Lack of advocacy and rights of codetermination
- › Insufficient remuneration and financial dependence.

In-depth interviews with German crowd workers registered on the platform Clickworker indicate that **only 7 per cent of them earn more than the German minimum wage**. 17 per cent claim that crowd work is their main source of income and 44 per cent state that they do not have any other paid jobs.

Access to **social insurance** often depends on other employment or the partner, for example.

Regarding the issue of **advocacy and codetermination**, the study highlights the following factors:

- › Distribution of the workers on various different platforms and even countries
- › No physical presence, low contact to colleagues and isolated work
- › High competition for contracts
- › The feeling of substitutability.

Based on these findings, the ILO demands the **adaption of social protection and insurance** for emerging forms of new work.

Current Issues in Germany

The Employer/Employee debate

The ILO findings also shape the German debate on how to deal with employment in the platform economy. Especially the legal classification of gig workers in labour and social security law is currently subject to political and public debate.

Self-employed or employee?

Social insurance is a particularly important issue in the gig economy, where tasks are physical and based on **personal interaction** between customer and worker. In general, the gig worker counts as self-employed. Quite often the term "solo self-employment" is also used since gig workers are solely responsible for the fulfilment of a contract and lack own employees.¹⁹ The

platform merely serves as an intermediary. However, some platforms challenge the distinction between **self-employment and dependent contracting**. The issue of dependent contracting raises the question whether gig workers can be considered self-employed or rather employees, given that they work for the platform. In addition, German legislation is narrowing the gap between self-employed and employees by introducing the term “employee-like person” (*arbeitnehmerähnliche Person*).²⁰

“The employee-like person is a legal term originating from the Home Work Act. Back then, the idea was to offer legal protection for freelancers such as independent journalists. The term employee-like person covers economically dependent workers in need of protection. Further conditions to count as employee-like person include working for one single person and deriving at least half of one’s total income from the occupation. This term then effectively covers dependent employment that lacks operational integration and hence cannot be labelled as such. This legal ‘bridge’ thus does not apply to gig workers since they work for multiple employers by definition.”

Regardless of the initial classification of a gig worker as self-employed, employee-like or employee, the working conditions for gig workers are decisive.

Flexibility

Workers cannot take the promised **flexibility** for granted. The fixed allocation of orders to specific times of day (e.g. peak time for food orders) impedes the scope of self-determination. Long inactivity on the platform might lead to a downgrading of one’s own performance score²¹ or even the exclusion from the platform and the app – i.e. no more orders can be taken and implemented.²² Hence gig workers are urged to work a certain amount of hours per month or week in order to retain their score and remain active.

The platform makes
the difference.

Terms of use

In order to ensure a certain quality standard, platforms’ terms of use and codes of conduct for gig workers might exceed common standards of polite behaviour and quality assurance.

An American law suit highlighted that personal ride provider Uber and competitor Lyft both have very specific codes of conduct which drivers had to comply with. Lyft has specific instructions regarding the cleanliness of the car and the contact with clients. In case of misconduct the platform reserves the right to exclude drivers from using the service. Such rules are limiting the degree of self-determination for gig workers on how to perform their tasks in self-employment. Accordingly, American courts **classified platforms as companies** and drivers as employees, rather than independent contractors.²³ Although both companies refused to agree with this classification, the judges considered their main source of revenue to be offering rides, rather than just their mediation. The companies could further not operate **without their drivers**.

Tracking for quality management

In order to ensure a smooth and efficient allocation of orders to workers, companies receive workers’ GPS-locations during shifts. Although platforms claim the sole purpose to be quality management, workers face constant supervision. The companies use these data for performance rankings (number of orders/rides completed, average time per contract) and for determining the wage to be paid for completing orders.²⁴ Workers are not aware whether their data is used for other purposes.²⁵

Mediator or employer?

The decisive question in assessing gig work is whether the platform acts as mediator or employer.

Employer or
contractor?

The redefinition of paragraph 611a of the German Civil Code illustrates that the distinction between these categories is blurred. The attempt to classify the diverse and complex labour market into simple and mutually exclusive categories has failed. It was therefore necessary to find more open definitions that could be used for employment contracts.

When does a platform become an employer? Workers that work exclusively for one delivery service, wear the companies' workwear and are kept under surveillance seem to be employees rather than "just" gig workers. German trading platforms like Foodora and Deliveroo would accordingly count as ecommerce companies.

A recent case study comparing Foodora and Deliveroo in Berlin²⁶ concludes that the apps and therefore the companies have strong authority over their workers. This seems more legitimate in case of Foodora, which explicitly employs its workers. Deliveroo uses comparable practices although classifying its workers as independent contractors. Although the terms of use of some crowd or gig working platforms suggest that the workers are **self-employed at any time** and further that no employment relation arises from any interaction with the platform or the client, the terms of use are obviously decisive for the classification of the platform as a company. In cases where companies have strong authority over their workers, they enter a **legal grey area between 'mere' mediator and employer**, as they are in the position to undermine the independence of their 'contractors'. Their status has to be determined by employment viz. social jurisdiction.

Platforms have to treat their workers as employers if their terms of use strongly commit their workers. Following this argumentation, a court in London ruled that Uber needs to enforce the rights of Uber drivers.²⁷ They ought to be treated as employees and therefore **are entitled to minimum wage as well as holiday pay**. Other platforms have established alternative measures in order to respond to public criticism regarding their employment habits. Uber competitor Lyft introduced a pension scheme for its drivers, Airbnb insures landlords against third-party risks.²⁸

If classified as self-employed, gig workers **do not have any rights on advocacy** and representation. The 2017 German initiative 'Liefere am Limit' aimed to enforce fair and stable working conditions for workers of Lieferando, Deliveroo and Foodora. The initiative demanded the abolition of temporary contracts, the establishment of a workers' council²⁹ and better protection for workers. The protests arose amid a planned change in wage structures, delayed payment of wages and the high personal costs of equipment (coats and bags with the company logo, bike services) which platforms do not cover. The initiative was partly successful as high media attention forced Deliveroo to retreat from ten German cities.³⁰

Deliveroo drivers had started the movement following a failed attempt **to establish a workers' council**. The management prevented the initiative by dismissing engaged staff. Foodora also faces criticism for insufficiently respecting their workers' and employees' rights. Foodora drivers are employees, working either full-time, part time or as student employees. Full-time employees are entitled to form a workers' council. Although Foodora did not try to prevent the formation of a workers' council, it ignores most of its drivers' demands. Deliveroo drivers predominantly work as independent contractors. Since the workers' council affair, Deliveroo has been continuously decreasing the amount of workers employed.³¹

Workers' participation
as opportunity rather
than stumbling block

Do platforms play fair? – Competition law and the Gig Economy

Beyond issues of labour rights and responsibility for employees, **established economic sectors** claim that their gig economy counterparts might violate competition law.

The debate on the **prohibition of Uber in Germany** mainly revolved around the issue of whether Uber is merely an intermediary for ride-hailing or actually established a rival system to the cab business in German cities.³² In March 2015 a court in Frankfurt ruled that Uber violated **German competition law**.³³ Following the verdict, UberPop was closed down at the end of 2015.³⁴

Uber adapted by setting up UberX. Instead of offering rides by private individuals, UberX allocates clients to professional and licenced drivers. The company is responsible for assuring that every driver has a licence. In Berlin, UberX is roughly 20 to 30 per cent cheaper than conventional cabs.³⁵ UberTaxi allocates conventional cabs at the usual cab tariff.

The gig economy drives competition and thus entails both opportunities and risks.

The current legal situation in Europe

In response to the increasing public attention for the legal issues of platform economies, the European Parliament demands a common European legislative framework with clear guidelines.³⁶ The EU however clearly supports the newly emerging business structures of the platform economy. As long as the platforms adhere to labour and competition law (due to be adapted), the European Commission clearly supports their development. The aim was not to protect old business models from new ones as this hampered innovation.³⁷ Instead, the Commission focuses on constructing **legal frameworks for innovation** and ensuring fair taxation of platforms.

Legal Aspects in Germany

On the national level, discussions focus on the **legal liabilities of platform services** regarding taxation, social insurance and the extent to which the legal situation of gig workers needs to be refined.³⁸

A report by the Scientific Service of the German Bundestag emphasizes that the status of platform workers had not been determined in social law.³⁹ The legal term of the **employee-like person** (arbeitnehmerähnliche Person) could not be applied to gig workers.⁴⁰

A report by the Federal Ministry of Economy and Energy highlights that the diversity of new forms of employment exceeds **current legal definitions**.⁴¹ Further, the **Heimarbeitgesetz (Home Work Act)** is **outdated** and due to be renewed and adapted to cover workers in the platform economy. The solo self-employed should be more integrated into social insurance. The report further stresses the need to adjust working hour and labour protection regulation since the **Working Hours Act** and related rights only apply to employees by current definition.⁴²

Regulation of the gig economy should put human beings at the center.

Solutions – Appropriate Regulation and Adaptation

The current discussion shows that attempts for legal adjustments to the platform economy face two main issues: labour rights and competition law. The traditional definition of employee takes centre stage.

Regarding labour rights and competition law, different approaches are being discussed⁴³:

Strict regulation or prohibition of economic services such as Uber might soon collide with European legislation since new business models will not be prohibited as long as they adhere to labour legislations (see above).

Deregulation of labour and competition law for established business models constitutes the other end of the spectrum. Such attempts aim to support innovation and market entry of young enterprises.

According to the German Employer's Association, **German labour law is well equipped** to respond to the challenges of the digital economy. The German Monopole Commission highlights that **existing legislation** ought to be assessed on whether it impedes market entry for digital businesses. On the other hand, law that currently impedes the adaptability of existing businesses to new competitors needs to be adjusted to ensure a level playing field for all market participants.

Labour Contracts and the 'employee' definition

The issue of suitable contracts for workers in the platform economy raises the question whether existing law and legal definitions are sufficient. If not, the legal term 'employee' would have to be refined.

Existing law should
be checked and
eventually adapted
accordingly.

The ILO report (as cited above) doubts whether creating new **specific contracts for platforms and the gig economy would** sufficiently improve the legal standing of gig workers. Different countries have already attempted to create forms of **employment that are somewhere between 'regular' employment and self-employment**, for instance the 'employee-like person' in Germany. The biggest challenge is to find a single response to the myriad of new arising business and employment structures.

In this context, the Hans-Böckler-Stiftung warns of the increased use of **contracts for work**.⁴⁴ These would have adverse effects on the productivity and quality of output in the long run since temporary workers tend to be less loyal and less concerned with the long term success and subsistence of a company.

Outlook: the potential of a changing economy –platforms of and for innovation

While some industries and service sectors see the emergence of the platform economy as a threat to their own business, others emphasize **opportunities for innovation and the opening of new markets**. The co-founder of Helping stresses that the company does not compete with industrial cleaning companies, but rather aims to challenge **the black market for cleaners** by insuring cleaners.⁴⁵

According to the Economist, a study conducted by the University of Oxford⁴⁶ found that the average wage of cab drivers in American cities rises following the launch of Uber. This seems to indicate **more efficient use of resources in platform economies** as drivers are more productive when spending less time waiting for a new client.

Moreover, working in platform economies is an opportunity to **bridge periods of dips in the labour market**. Another study found that two thirds of the drivers registered with Uber cease to be active after six months – implying that they might have found their way back into longer term work or permanent employment.

The gig economy
bears opportuni-
ties for the labour
market.

Further, many gig jobs **do not require high qualification** and therefore offer employment opportunities for people struggling on the conventional labour market. As long as they do not undermine the promised flexibility, platforms seem to offer a more attractive **work-life-balance** than the classic nine-to-five job.

Digitalisation and the growing relevance of the service sector will likely **increase demand for flexible forms of employment**⁴⁷. Therefore the gig economy should not be seen as an isolated challenge of virtual markets, but rather as an evolution of the labour market driven by innovation and technological progress. Finding suitable guidelines for the gig economy is an opportunity not only to face and discuss, but also to **renew, innovate and actively shape** emerging forms of employment.

- 1 <https://www.gruenderszene.de/business/gig-economy-swiss-innovation-outpost-2015-3514>
- 2 ILO (2016): „The rise of the just in time workforce“, available at: https://www.ilo.org/wcmsp5/groups/public/-ed_protect/-protrav/-travail/documents/publication/wcms_443267.pdf
- 3 For more information on new forms of employment cf. Schäfer/Köster (2018) „Neue Beschäftigungsverhältnisse: Daten, Fakte, Argumente“ available at http://www.kas.de/wf/doc/kas_53331-544-1-30.pdf?180927101711.
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- 5 Hans-Böckler-Stiftung (2016) „Crowdworker in Deutschland“, available at https://www.boeckler.de/pdf/p_study_hbs_323.pdf and Friedrich-Ebert-Stiftung (2016) „Arbeitsmärkte in der Plattformökonomie“, available at <http://library.fes.de/pdf-files/wiso/12826.pdf>.
- 6 There are different types of implementation which however will not be covered.
- 7 Cf. Wissenschaftliche Dienste Deutscher Bundestag (2016) „Sharing Economy“, available at <https://www.bundestag.de/blob/422762/dba2f255d095bec790b14090a886d484/wd-5-027-16--pdf-data.pdf> (accessed on 30/11/2018).
- 8 McKinsey (2016) „Exploding myths about the gig economy“, available at <https://www.mckinsey.com/mgi/overview/in-the-news/exploding-myths-about-the-gig-economy>
- 9 Süddeutsche Zeitung (2018) „Mehr Mythos als Wirklichkeit“, available at <https://www.sueddeutsche.de/wirtschaft/uber-jobs-mehr-mythos-als-wirklichkeit-1.4005939>
- 10 This is an estimated value. It does not consider that students and retirees can also work in the gig economy, which are not considered in the value of the working population.
- 11 Die Zeit (2018): „DGB-Chef warnt vor moderner Sklaverei“, available at <https://www.zeit.de/wirtschaft/unternehmen/2018-04/uber-plattformoekonomie-dgb-arbeiten>
- 12 Bonin, H. & U. Rinne (2017) „Omnibusbefragung zur Verbesserung der Datenlage neuer Beschäftigungsformen: Kurzexpertise im Auftrag des Bundesministeriums für Arbeit und Soziales“, in IZA Institute of Labor Economics, Research Report Series, available at http://ftp.iza.org/report_pdfs/iza_report_80.pdf (accessed on 10/04/2019).
- 13 Cf. Süddeutsche Zeitung (2017) „Für 92 Cent Trinkgeld durch den Regen“, available at <https://www.sueddeutsche.de/wirtschaft/radkuriere-fuer-cent-trinkgeld-durch-den-regen-1.3565389>, Die Zeit (2018) „Aufstand der Essenskuriere“, available at <https://www.zeit.de/arbeit/2018-02/foodora-deliveroo-kuriere-betriebsrat>.
- 14 Cf. Spiegel Online (2015) „Niemand muss bei uns bleiben“, available at <http://www.spiegel.de/karriere/helping-putzportal-chef-franke-ueber-preise-und-festanstellungen-a-1041366.html> (accessed on 30/11/2018).
- 15 Cf. Wirtschaftswoche (2017) „Uber – Neue Konzepte für Deutschland“, available on <https://www.wiwo.de/unternehmen/dienstleister/uber-neue-konzepte-fuer-deutschland/20378496.html> (accessed on 30/11/2018).
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- 18 On Microtasking platforms tasks are allocated as such so that every sub-task is viewed as a small contract that often only takes a few clicks or seconds to complete.
- 19 Cf. <http://www.bpb.de/politik/innenpolitik/arbeitsmarktpolitik/187821/selbststaendigkeit?p=all>.
- 20 Wissenschaftliche Dienste Deutscher Bundestag (2016) Sachstand Papier „Tarifvertragliche Regelungen für arbeitnehmerähnliche Personen nach dem Tarifvertragsgesetz“ available at <https://www.bundestag.de/blob/482664/0a9d764196d96ff4608b029d7b787f6/wd-6-123-16-pdf-data.pdf>
- 21 Most Platforms use a scoring system to grade the performance of their gig workers available to view by all members registered.
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- 23 Griswold, A. 2014. "Uber Just Caved on a Big Policy Change After Its Drivers Threatened to Strike", Slate (12 September), available at http://www.slate.com/blogs/moneybox/2014/09/12/uber_drivers_strike_they_protested_cheap_uberx_fares_uber_backed_down.html and Kessler, S. (2015.) "The gig-economy won't last because it's being sued to death", Fast Company (17 February), available at <http://www.fastcompany.com/3042248/the-gig-economy-wont-last-because-its-being-sued-to-death>.
- 24 Ivanova et al (2018) „The App as a Boss?“, available at <https://cihr.eu/wp-content/uploads/2015/07/The-App-as-the-Boss.pdf>.
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- 27 Spiegel Online (2017) "Uber-Fahrer in Großbritannien haben Anspruch auf Mindestlohn", available at <http://www.spiegel.de/wirtschaft/unternehmen/uber-fahrer-in-grossbritannien-haben-laut-gerichtsurteil-anspruch-auf-mindestlohn-a-1177384.html>.
- 28 <https://www.airbnb.de/host-protection-insurance>.
- 29 A workers' council is constituted by employees in companies with at least five workers. In case of social issues, such as working conditions, it is able to influence or veto decisions of the employer. When it comes to economic decisions, it has the right to participate in decision-making processes. Further, the workers council controls labour agreements. Cf. <http://www.bpb.de/nachschlagen/lexika/lexikon-der-wirtschaft/18880/betriebsrat>.
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- 31 Die Zeit (2018) „Aufstand der Essenskuriere“, available at <https://www.zeit.de/arbeit/2018-02/foodora-deliveroo-kuriere-betriebsrat>.
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- 34 On UberPop, individuals without transport license offer rides in their private car.
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- 37 Europäische Kommission Vertretung in Deutschland Pressemitteilungen, available at https://ec.europa.eu/germany/news/20180321-digitale-wirtschaft_de.
- 38 Deutscher Gewerkschaftsbund (2018) „Unfallversicherung: Uber, Airbnb & Co sollen Sozialabgaben zahlen“, available at <http://www.dgb.de/themen/++co++7bf86424-f11e-11e7-83ab-52540088cada>.
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