

The side effects of the collaborative economy model in Europe: the self-employed workers

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Summary: 1. Introduction; 2. The progress of the collaborative economy in Europe: threats and regulatory perspectives; 3. Solutions proposed by the institutions and legal literature; Conclusions.

Abstract: The fundamental right to fair working conditions has had a slow influence on the regulatory institutions and it is necessary to demand an immediate regulation on the matter with the advance of the so-called collaborative economy in Europe. The perimeter of this business model is often prone to inequality, which disproportionately affects vulnerable agents such as workers. It is necessary to analyze the effectiveness of the responses that European countries give to these threats and the recommendations given by the authors and other international institutions to seek appropriate guidance. The norm that technology evolves faster than the legal systems does not render fundamental rights violations justifiable.

Keywords: collaborative economy, digital platforms, self-employed, strategy, protests, regulation.

1. INTRODUCTION

Hand in hand with new technologies collaborative economy (the largest industry in terms of market capitalization, behind only the financial sector) ² has experienced a growth of such magnitude in recent years that it has powerfully attracted the attention of institutions and the international and European academic community.

However, the complexity of the concept due to the different denotations that this phenomenon has acquired in recent years has meant that the term is often confused with other definitions. Depending on the perspective taken of this business model, it is sometimes identified with different terms (sharing economy, gig economy, peer-to-peer, etc.). The so-called sharing economy connotation refers to a socio-economic ecosystem in which certain goods of any nature (manufacture, distribution or consumption, for instance) are shared reciprocally and without any necessary economic consideration. Another perspective of the collaborative economy is the peer-to-peer term, applied to organizations and platforms where services are exchanged without intermediaries. The term gig economy is also used to define the

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² Proof of this is that half of the ten most important companies in the world have their main activity in this industry, See PWC: *Global Top 100 Companies by market capitalisation, 2017*, <https://preview.thenewsmarket.com/Previews/PWC/DocumentAssets/477067.pdf>, pag. 4.

perspective of the labor market of the collaborative economy, where many people find flexible jobs adapted to their needs³.

Therefore, for defining purposes in this article it is more appropriate to use the concept used by European institutions as “business models where activities are facilitated by online platforms that create an open marketplace for the temporary use of goods or services often provided by private individuals. The collaborative economy involves three categories of actors: (i) service providers who share assets, resources, time and / or skills - these can be private individuals offering services on an occasional basis ('peers') or service providers acting in their professional capacity ('professional services providers'); (ii) users of these; and (iii) intermediaries that connect - via an online platform - providers with users and that facilitate transactions between them ('collaborative platforms'). Collaborative economy transactions generally do not involve a change of ownership and can be carried out for profit or not-for-profit”⁴.

Within the labor perspective of the collaborative economy that will be analyzed in this document (that is, in its connotation of gig economy), as described by the European Commission, “involves three categories of actors: (i) service providers who share assets, resources, time and/or skills — these can be private individuals offering services on an occasional basis ('peers') or service providers acting in their professional capacity ("professional services providers"); (ii) users of these; and (iii) intermediaries that connect — via an online platform — providers with users and that facilitate transactions between them ('collaborative platforms')”. In the category of service providers, private individuals can be identified as employed and professional services providers can be identified as self-employed. It is in this small plot where the thin line that separates the employed and the self-employed implies a gap in coverage of rights, which in many cases not only marks the difference between dignity or lack thereof at work but also between one's own survival.

With all this, and apart from the considerable advantages and benefits that this business model implies, it is undeniable that there are manifest threats and risks to the conditions of workers that may be counterproductive. According to the European Parliament's Committee on the Internal Market and Consumer Protection, with regard to the labor rights of workers involved in these collaborative business models, there is a “real risk that a detriment to fair working conditions will occur, minimum legal standards and adequate social protection”⁵. The legal insecurity for many workers within this new business model is evident and the lack of adequate guidelines or specific regulations in the member countries of the European Union that chart the way forward means that, in many cases, these limits may be established by the courts of justice through the interpretation of a legal order that needs to be updated to the new reality.

In this article will be exposed the vulnerabilities of the self-employed in this business model and the possible solutions proposed according to the existing panorama.

2. THE PROGRESS OF THE COLLABORATIVE ECONOMY IN EUROPE: THREATS AND REGULATORY PERSPECTIVES

³ STROKES, K. *et alii*: *Making sense of the UK Collaborative Economy*, London (Nesta), 2014, pag. 10, in https://collaborativeeconomy.com/wp/wp-content/uploads/2015/04/making_sense_of_the_uk_collaborative_economy_14.pdf

⁴ EUROPEAN COMMISSION: *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions; A European Agenda for the Collaborative Economy*, 2016, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016DC0356&from=ES>, pag. 3.

⁵ EUROPEAN PARLIAMENT: *Report on a European Agenda for the collaborative economy*, 2017, in http://www.europarl.europa.eu/doceo/document/A-8-2017-0195_EN.pdf, pag. 16.

The most recent and complete research carried out to date while preparing this article on the impact of this business model in the EU was published by the European Commission in February 2018: "Study to Monitor the Economic Development of the Collaborative Economy at sector level in the 28 EU Member States, Final Report"⁶. According to some of the results of this study, the turnover of the collaborative economy in the EU-28 in 2016 was estimated to be EUR 26.5 billion (roughly 0.17% of the EU-28's total GDP) where the four main sectors of activity were finance (accounting for the largest revenues with EUR 9.6 billion), accommodation (EUR 7.3 billion), online skills (EUR 5.6 billion) and transport (EUR 4 billion).

In terms of employment, the study has analyzed people working for both platforms and service providers. The entire business model provides approximately 394,000 jobs across the EU. The most employment opportunities exist in the transport sector (124,800 persons employed), while the fewest are found in the finance sector (67,300 employees).

The results of this study have allowed us to assess the magnitude of this business model in the EU and its development in each of its states based on the responses of its governments. It was observed that the countries that have taken measures to eliminate market barriers are in a favorable position to further develop the collaborative economy (Czech Republic and France, for example); on the flip side, "where governments are rather neutral and the business environment is not as encouraging, the collaborative economy seems to be developing at a slower rate" (Bulgaria, Slovenia)⁷.

Despite the positive inertia of the collaborative economy in Europe, it is clear that the regulatory fragmentation resulting from divergent regulatory approaches at national or local level that exists in the different EU states, according to the European Commission, "hinders the development of the collaborative economy in Europe and prevents the full realization of its benefits"⁸. Furthermore, the controversies generated by the *modus operandi* of many of these platforms relating to workers, drawn from their working conditions (such as, for example, the lack of career prospects, pay levels, job security⁹ or dissatisfaction¹⁰), have caused problems and demand before the courts the protection of the scarce - in the majority of cases - regulations applicable to the effect.

With all this, and for a general overview of the social and legal panorama of the impact of the collaborative economy on labor markets, the author has made a brief summary of the conflicts registered in the 28 member states of the European Union and the main demands exposed in each one of them. From the generic and approximate analysis of the main controversies arisen in these countries, it is necessary to point out two thoughts. The first is that not all member states have had controversies about working conditions in the collaborative economy model. The second is that in those countries where conflicts have been registered, the predominant sector of the demands is the transport sector, and in particular, the food delivery companies (mainly in France, Spain and the United Kingdom) demanding a proper classification of their employment contracts.

⁶ EUROPEAN COMMISSION: *Study to Monitor the Economic Development of the Collaborative Economy at sector level in the 28 EU Member States*, 2018, in <https://publications.europa.eu/en/publication-detail/-/publication/0cc9aab6-7501-11e8-9483-01aa75ed71a>.

⁷ See *id.* at 159.

⁸ See EUROPEAN COMMISSION, *supra* note 4, at 2.

⁹ FORDE, C. *et alii*: *The Social Protection of Workers in the Platform Economy*, Luxemburg (European Parliament's Committee on Employment and Social Affairs), 2017, in [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/614184/IPOL_STU\(2017\)614184_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/614184/IPOL_STU(2017)614184_EN.pdf), pag. 11.

¹⁰ SCHOR, J.B. and ATTWOOD-CHARLES, W.: "The "sharing" economy: labor, inequality, and social connection on for-profit platforms", *Sociology Compass*, Vol. 11, num. 8, 2017, pag. 11.

It should be noted that in many of the countries analyzed, the minor cultural impact that this business model has implied and the wide gap that exists between urban and rural regions has prevented any type of conflict from being registered (Austria or Romania for example). That is why mainly the greatest controversies are recorded coincidentally in the countries where the collaborative economy has had the greatest development.

In France, the first protests for working conditions on the digital platforms, according to the information analyzed, arose from Amazon's headquarters at Chalon-sur-Saône, 12 years after the American e-commerce company arrived in France in September 2000. These were driven by salaried workers, related to excessive surveillance and monitoring of their productive process, overtime hours, frequent rotation and difficulties for the payment of sick leave, among other reasons¹¹. The most controversial reason that generated the call for a strike on May 26, 2015, was work accident statistics¹². Since then, and especially since the proliferation of food delivery services in Paris, protests by delivery workers against digital platforms have not stopped¹³.

In Germany, the union Vereinte Dienstleistungsgewerkschaft (German United Services Trade Union, more commonly known as ver.di), has led various protests and demands since 2012 in which the high rate of temporary contracts, low wages and work accidents due to low protection were criticized, among other reasons¹⁴. The protests, since its inception, have focused mainly on denouncing the lack of job security in the company and the need to improve working conditions¹⁵, even proposing a strike in December 2018 in order to enforce these demands and obtain an adequate agreement through collective bargaining¹⁶.

In this country there have also been major protests by workers from food delivery platforms Foodora and Deliveroo, demanding better wages and working conditions¹⁷. Unofficial groupings of so-called "couriers" or "bikers" (as delivery people who work for these platforms in the indicated status) are increasingly active and demand adequate collective bargaining in which improvements in working conditions can be negotiated for salary purposes, organization, overtime or materials, for example¹⁸.

In the United Kingdom, since the arrival of Amazon in the mid-2000s, there have been protests by workers on this platform regarding wage policies, union

¹¹ VION-DURY, P: "Tu travailles à Amazon? Oh, mon pauvre. Tu tiens le coup?", 2014, in <https://www.nouvelobs.com/rue89/rue89-economie/20140320.RUE2786/tu-travailles-a-amazon-oh-mon-pauvre-tu-tiens-le-coup.html>.

¹² BRIGAND, M.: "Quand Amazon s'arrange avec les accidents de travail", 2015, in http://www.lefigaro.fr/secteur/high-tech/2015/05/22/32001-20150522ARTFIG00258-quand-amazon-s-arrange-avec-les-accidents-de-travail.php?redirect_premium

¹³ SANSOM, A.: "Bicycle couriers protest against takeaway food service Deliveroo", 2017, in <https://www.france24.com/en/20170812-france-paris-protest-food-delivery-service-deliveroo-financial-insecurity-emmanuel-macron>

¹⁴ HASBERG, M.: "Gewerkschaft klagt über Lohndumping bei Amazon", 2010, in <https://www.welt.de/wirtschaft/article11688472/Gewerkschaft-klagt-ueber-Lohndumping-bei-Amazon.html>.

¹⁵ SPONHOLZ, K.: "Beschäftigte beklagen mieses Arbeitsklima bei Amazon", 2012, in <https://www.wr.de/region/westfalen/beschaeftigte-beklagen-mieses-arbeitsklima-bei-amazon-id7064258.html>

¹⁶ REUTERS: "Verdi funkt Amazon im Weihnachtsgeschäft mit Streik dazwischen", 2018, in <https://de.reuters.com/article/deutschland-amazon-idDEKBN1OG0U1>

¹⁷ HASWELL, J.: "Foodora and Deliveroo couriers protest working conditions in Berlin" 2017, in <https://www.thelocal.de/20170518/foodora-and-deliveroo-couriers-protest-working-conditions-in-berlin>

¹⁸ LEHMANN, H: "Fahrradkurierere von Deliveroo und Foodora stellen Forderungen", 2017, in <https://digitalpresent.tagesspiegel.de/fahrer-von-foodora-und-deliveroo-organisieren-sich>

representation and collective bargaining that have spread to other companies¹⁹. Also in the transport sector, part-time independent couriers working for Deliveroo UK supported protests against the new payment terms that the company tried to impose when changing the system of payment by hours to payment for tasks completed. Thanks to the protests and pressure from the government, they not only got the company to withdraw the measure, but also paid them the minimum salary they were in theory not entitled to because they were not legally within the company²⁰.

There have also been controversies in the transport sector with regard to working conditions, mainly by Uber workers. In October 2016, a UK Labor Court stated that Uber drivers were not self-employed workers and they should be classified as employed workers entitled to the minimum salary. Two years later, in December 2018, the England and Wales Court of Appeal (Civil Division) dismissed the appeal filed by Uber and confirmed the judgment of the lower court, stating a "high degree of fiction" in the content of the standard agreement between Uber and its drivers. According to the ruling, "for ULL (Uber London Limited) to be stating to its statutory regulator that it is operating to private hire vehicle service in London, and is a fit and proper person to do so, while at the same time arguing in this litigation that it is merely an affiliate of a Dutch registered company which licenses tens of thousands of owners of small businesses to use its software, contributes to the air of contrivance and artificiality which pervades Uber's case"²¹.

In Spain, the British company Deliveroo has received several complaints from the Labor Inspectorate for using fraudulent contracts since its launch in November 2015. The unions, since the arrival of delivery platforms such as Glovo²², Deliveroo, Uber Eats or Stuart, have reported the use of certain fraudulent practices in hiring their staff. Specifically, they point out that they establish a fraudulent employment relationship through a false self-employed status, organizing the distribution and execution of the work with independent couriers by imposing upon them a rigorous sanctioning regime, setting the order prices unilaterally, providing the fundamental infrastructure of the service to be able to carry out the activity and training their workers in methods of work, behavior and clothing. All these elements have led the Valencia Labor Inspectorate to confirm the allegations, characterizing this type of relationship as a real covert employment relationship²³.

Uber Systems Spain SL (a subsidiary of Uber Technologies Inc.), has also been investigated for the working conditions of its employees. The investigation carried out by the Labor Inspectorate of Catalonia includes in its report of March 9, 2015 (to which the newspaper *El País* had access) that there were notes of dependence in the contracts of this company with its drivers. It was observed that these drivers "lack any type of business organization, being registered *ab initio* to the structure and organization [of the Uber company]" and also "they enjoy a freedom of schedule, but as a counterpart they are subject to a productivity system"²⁴.

¹⁹ BBC NEWS: "GMB union holds protests at Amazon sites", 2013, in <https://www.bbc.com/news/uk-21444710>

²⁰ SINGH, A.: "Deliveroo agrees to pay workers £7 an hour after wage protests", 2016, in <https://www.independent.co.uk/news/business/news/deliveroo-wages-protests-agrees-to-pay-workers-7-an-hour-after-protests-against-wages-overhaul-a7190071.html>

²¹ See Uber B.V. ("UBV") & Ors v Aslam & Ors [2018] EWCA Civ 2748, 2018, in <http://www.bailii.org/ew/cases/EWCA/Civ/2018/2748.html>

²² In this company, without the involvement of trade unions, the workers themselves have supported strikes and protests to denounce their working conditions, see EL PERIODICO: "'Huelga colaborativa' contra Glovo in Zaragoza: sus repartidores colapsan la app in hora punta", 2018, in <https://www.elperiodico.com/es/economia/20180911/trabajadores-glovo-zaragoza-colapsan-app-protesta-laboral-7028233>

²³ UGT: "Denuncia de UGT sobre plataformas digitales in Dirección General de Trabajo", 2017, in <http://www.ugt.es/Publicaciones/denuncia%20plataformas%20digitales.pdf>

²⁴ GOZZER, S.: "Trabajo dice que los chóferes de Uber son empleados de la firma" 2015, in https://elpais.com/economia/2015/06/12/actualidad/1434135569_865496.html

In Poland, the demands promoted by Polish unions have increased in terms of collective bargaining, privacy and monitoring of work, workplace conditions, intensification of work, work-life balance, new burdens or loss of jobs due to digitization²⁵.

In Belgium, protests of a similar nature have also been registered, related to low wages²⁶ and inadequate classification as self-employed²⁷, as also happened in the Netherlands²⁸.

The PAM union, in Finland, has for a long time been warning of the need to regulate the relationships of self-employed workers, as it could contaminate other professions²⁹, and concentrates its efforts in advertising its services to these types of workers³⁰. In Ireland, on the other hand, it is job security what couriers and "riders" are worried about³¹.

In Italy, the first mobilizations of the collaborative economy workers took place in Turin in 2016. The protests were mainly based on demands for the Foodora company to assume the costs of the activity and to increase the hourly rates paid to its workers³².

Many of these exposed controversies (which, as shown, have the self-employed as protagonists), on many occasions, have resulted in collaborative economy regulatory initiatives in different countries.

According to a generic and approximate analysis carried out by the author regarding the regulatory approaches originating in the different member states of the European Union in response to these controversies, the inadequate professional classification of self-employed workers remains not only the main controversy but also the main regulatory response that national governments usually give.

In labor law regulations, the countries that have had the greatest initiatives coincide not only with those where the main conflicts have been initiated, but also with those in which the collaborative economy has had a greater development.

France, reacted by enacting one of the largest regulatory interventions on this business model in Europe, following the line of labor protection required by European institutions. In the labor law framework it has been included the concept of collaborative economy. Through Law no. 2016-1088, of August 8, 2016 a new title was introduced within the Labor Code (article L.7341-1 of the Labor Code) that defines collaboration platforms by reference to article 242 bis of the General Tax Code ("companies, whatever their location is, which put two people in contact at a distance and electronically for the sale of a property, the provision of a service or the

²⁵ See VOSS, E. y RIEDE H.: "Cyfryzacja A Partycypacja Pracowników: Jakie są opinie związków zawodowych, pracowników na poziomie przedsiębiorstwa i pracowników wykonujących prace za pośrednictwem platform cyfrowych w Europie", 2018, in <https://www.etuc.org/sites/default/files/publication/file/2018-09/Voss%20Report%20PL1.pdf>

²⁶ SHENKER, J.: "Strike 2.0: how gig economy workers are using tech to fight back", 2019, in <https://www.theguardian.com/books/2019/aug/31/the-new-resistance-how-gig-economy-workers-are-fighting-back>.

²⁷ CASSAUWERS, T.: "In Europe, food delivery coops are fighting back against the gig economy", 2018, in https://www.equaltimes.org/in-europe-food-delivery-coops-are?lang=es#.XZFA_kYzZPZ.

²⁸ CRISP, J.: "Deliveroo riders go on strike in Belgium and Netherlands", 2018, in <https://www.telegraph.co.uk/news/2018/01/20/deliveroo-riders-go-strike-belgium-netherlands/>

²⁹ YLESRADIO: "Gig economy transforms Finnish labor", 2019, in https://yle.fi/uutiset/osasto/news/gig_economy_transforms_finnish_labour/10844347

³⁰ DØLVIK, J.E. y JESNES. K.: "Nordic labour markets and the sharing economy", 2017, in <https://norden.diva-portal.org/smash/get/diva2:1072087/FULLTEXT02.pdf>.

³¹ CUNNINGHAM, O.: "TERROR ON STREETS Deliveroo riders strike in Dublin to protest recent spate of violent assaults by teenagers", 2019, in <https://www.thesun.ie/news/3787988/deliveroo-riders-strike-dublin-attacks/>

³² TASSINARI A. y MACCARRONE, V.: "The mobilisation of gig economy couriers in Italy: some lessons for the trade union movement", *Transfer*, Vol. 23, 2017, num. 3, pags. 353-357.

exchange or sharing of a service “). The articles that follow in this chapter relating to the social responsibility of platforms incorporate generic guarantees in the matter of accidents insurances, training, strike and association.

Subsequently, Decree no. 2017-774 of May 4, 2017 further specifies these generic guarantees introducing articles D7342-1 and those following it, which describes the responsibility of these platforms in assuming the contribution of insurance and training for self-employed workers in certain circumstances.

Almost a year after the publication of this decree, the draft Law for the Freedom to Choose Professional Future was registered in the national assembly on April 27, 2018, which, after more than two months of debate and analysis of 2500 amendments, was approved on August 1, 2018. Among the measures introduced, the most relevant are: a 800 euros subsidy for self-employed workers in case of the company's bankruptcy; controls on the statistics of temporary contracts; improvements in unemployment subsidies; regulation of training in terms of financing and in terms of quality; the creation of a digital application called “Compte Personnel de Formation” (Personal Training Account) to monitor worker training; an increase in penalties for job insecurity (fines amounting from 2000 to 4000 euros for salary differences, as well as online publication of companies that use illegal tactics); the possibility of establishing a “statute” or “letter” that defines the rights and obligations between workers and platforms.

In the United Kingdom, the most vulnerable actors of the transport sector within the collaborative economy, the so-called Cycle Couriers, began legal battles in mid-2016 against the companies Excel, City Sprint, Addison Lee and eCourier to demand decent working conditions and recognition of their status as employees.

The courts ruled against all companies that Cycle Couriers are not self-employed but employees and that they should enjoy rights as such. As indicated by the court, the worker “was under the direction of another and was not running his own business,” and that “during the time that [the worker] was signed into the system in the morning up to the time he logged off, the working relationship, looked at as a whole, was only compatible with his being a worker under ‘limb b’ --the “limb b” workers are known as persons who are self-employed and provide their services as part of a profession or business undertaking carried on by someone else³³ --”³⁴.

Due to these transcendent sentences on the conditions of the Cycling Couriers, the recommendations of the report made by Matthew Taylor³⁵ (considered insufficient by some union sector³⁶) and the controversy generated by the death of a DPD worker (Mr. Lane, a self-employed courier for DPD who missed medical appointments to treat his diabetes), the working conditions of employees in the collaborative economy have gained special relevance in the UK, where the government has addressed a political strategy aimed at guaranteeing rights in this business model. According to then-UK

³³ See *Pimlico Plumbers y Anor vs. Smith* [2017] EWCA Civ 51, 2017, in <https://www.employmentcasesupdate.co.uk/site.aspx?i=ed35083>

³⁴ *Boxer vs. Excel Group Services Ltd* [2017] ET/3200365/2016, 2017, in https://assets.publishing.service.gov.uk/media/58ecacb5ed915d06ac000150/Mr_A_Boxer_v_Excel_Group_Services_Ltd_in_liquidation_3200365-2016_Final_and_Reasons.pdf

³⁵ This report was commissioned by Prime Minister Theresa May with the aim of reviewing the working conditions of platforms workers due to the social impact that the recent rulings and union protests had entailed, see BOOTH, R.: “Low-paid workers need better job satisfaction, No 10 review will say”, 2017, in <https://www.theguardian.com/society/2017/jul/07/low-paid-workers-job-satisfaction-no-10-review-taylor-report>; SWINFORD, S.: “Theresa May paves way for self-employed and temporary workers to be protected by new laws”, 2016, in <https://www.telegraph.co.uk/news/2016/09/30/theresa-may-paves-way-for-self-employed-and-temporary-workers-to/>

³⁶ MOYER-LEE, J.: “Wishy-washy and full of fluff – the Taylor review offers Little”, 2017, in <https://www.theguardian.com/commentisfree/2017/jul/18/taylor-review-gig-economy-workers>

Prime Minister Theresa May, it is necessary “to make sure we have the right structures in place to reflect those changes”³⁷.

After promising improvements throughout 2018 in matters of temporality, self-employment regulations, and vacation payments, on December 17, 2018 the Department for Business, Energy & Industrial Strategy, presented the “Good Work Plan”³⁸, a package of labor reforms that “will cement the UK’s status as a world leader in workers’ rights now and well into the future and will be the first country in the world to address the opportunities and challenges of the gig economy and the changing world of work, and its impact on a modern economy”³⁹. Among these proposals, which will enter into force in 2019, are the provision of more resources for the Employment Agency Standards (EAS) Inspectorate, new powers to impose penalties for employers who breach employment agency legislation such as non-payment of wages, bring legislation to enforce holiday pay for vulnerable workers, salaried hours work and salary sacrifice schemes to ensure national minimum wage rules.

Spain, compared to other countries, has not formally registered significant advances in the regulation of self-employed beyond tax reforms for large companies (in order to avoid tax fraud⁴⁰) and several legal proposals.

In December 2017, the Committee on Employment and Social Security of the Congress unanimously approved a non-law proposal in which it urged the government to identify the necessary reforms to labor regulations with respect to the collaborative economy, placing particular emphasis on self-employment, to address “the challenges of technological change in our productive system, as well as to digital platforms and their users”⁴¹. In June 2018, the Popular Party (PP) presented during a plenary session of the Congress another non-law proposal to pursue practices that violate the rights of workers in the collaborative economy and especially on the controversy surrounding the figure of the self-employee, giving special prominence to labor inspections⁴².

Through an amendment to this non-law proposal, PSOE, Ciudadanos and PDeCAT agreed to demand the creation of a working group within the government to determine the necessary reforms in order to adapt the current regulatory framework to the collaborative economy⁴³. However, at the time of writing, the aforementioned

³⁷ BOOTH, R.: “Gig economy workers angry at lack of bogus self-employment curbs”, 2018, in <https://www.theguardian.com/business/2018/feb/07/gig-economy-workers-angry-at-lack-of-bogus-self-employment-curbs>

³⁸ DEPARTMENT FOR BUSINESS, ENERGY & INDUSTRIAL STRATEGY, *Good work plan*, 2018, in https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766167/good-work-plan-command-paper.pdf

³⁹ DEPARTMENT FOR BUSINESS, ENERGY & INDUSTRIAL STRATEGY, *Largest upgrade in a generation to workplace rights - getting work right for British workers and businesses*, 2018, in <https://www.gov.uk/government/news/largest-upgrade-in-a-generation-to-workplace-rights-getting-work-right-for-british-workers-and-businesses>

⁴⁰ SERVULO GONZALEZ, J.: “Hacienda pretende gravar más a plataformas como Airbnb y Uber”, 2018, in https://elpais.com/economia/2018/10/04/actualidad/1538646576_607775.html

⁴¹ EUROPA PRESS: “El Congreso pide al Gobierno que estudie cómo adaptar el marco laboral a la economía digital”, 2017, in <https://www.europapress.es/economia/laboral-00346/noticia-congreso-pide-gobierno-estudie-adaptar-marco-laboral-economia-digital-20171213191451.html>

⁴² EUROPA PRESS: “El PP lleva al Pleno del Congreso la precariedad de los ‘falsos autónomos’ en empresas como Deliveroo”, 2018, in <https://www.europapress.es/economia/laboral-00346/noticia-pp-lleva-pleno-congreso-precariedad-falsos-autonomos-empresas-deliveroo-20180621150238.html>

⁴³ LA VANGUARDIA: “PP, PSOE y Cs piden estudiar con sindicatos y patronal cómo adaptar la ley laboral a la economía digital”, 2018, in <https://www.lavanguardia.com/vida/20180626/45424884357/economia--pp-psoe-y-cs->

work team has not been created, nor has any proposal aimed at this end been proposed by any political party within its electoral programs presented for the regional, general and European elections to celebrate on November 2019.

In Poland, despite the existence of a ministry in the Polish government devoted specifically to digitization⁴⁴, the modification or construction of a regulatory framework oriented to this new business model has not been carried forward. Regulations to eliminate abuse towards non-standard workers were approved in 2016 in order to “reduce the asymmetry in terms of hiring and firing workers employed on permanent contracts and other types of contracts”. In the same way, regulations have also been approved regarding equating the rules of social insurance coverage of workers under civil law commission contracts with the applicable rules in the provision of employment under contracts of employment based on the Labor code. These provisions “reduced possibility to hire non-standard employees on very low base contract covered by social insurance and combine it with another one with higher base, not covered by social insurance”⁴⁵.

In Belgium there have been regulations that involve workers and self-employed but all related to tax matters. Moreover, Finland's concern for the collaborative economy advance has not implied any kind of regulatory modification, but rather experimental measures such as the unsuccessful application of a universal basic income motivated mainly by contractual instability in this business model⁴⁶.

In Italy, since the beginning of the Turin protests in October 2016, regulatory needs in the collaborative economy have been at the forefront of the political debate. Since then, there have been numerous legislative assemblies from different regions of the country that have approved or promoted legislative proposals in this area taking the status of self-employed workers as the core of the discussions (Piedmont Region, Tuscany Region, the Municipality of Naples, the Emilia-Romagna Region and the Umbria Region). In June 2018, Luigi Di Maio, current Foreign Minister of Italy, pointed out the need to improve riders' conditions related to wage rates and contractual status, after having met with a delegation of riders⁴⁷.

In the Czech Republic, no specific regulation has yet been approved, however it has been said that one of the main barriers to its development is the existing regulation in the country regarding self-employed workers since the definition of this figure is quite inaccurate and could hinder development⁴⁸.

With all this, and regard to the thin line that separates in many regulations the employed and self-employed, the companies, in many occasions, establish strict parameters to the independent workers to avoid that this relation can be described as labor. In many countries this ambiguity implies the flourishing of many conflicts that, in the absence of a clear regulatory framework, force the courts to resolve them by declaring on many occasions a true labor relationship for self-employed providers (France, Spain, United Kingdom). Therefore, the right road ahead goes by way of a common regulation at European level that covers that space existing between self-employed and employed workers in this business model.

piden-estudiar-con-sindicatos-y-patronal-como-adaptar-la-ley-laboral-a-la-economia-digital.html

⁴⁴ Responsible for the state policy in the field of computerization, the development of electronic public administration services, civil security in cyberspace, infrastructure and the use of modern technologies, whose manager is Marek Zagórski, see <https://www.premier.gov.pl/ludzie/marek-zagorski.html>

⁴⁵ EUROPEAN COMMISSION, *Second Phase Consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges of access to social protection for people in all forms of employment in the framework of the European Pillar of Social Rights*, 2017, in <https://ec.europa.eu/social/BlobServlet?docId=18596&langId=en>, pag. 158.

⁴⁶ PETER, L.: “No plans to expand Finland basic income trial”, 2018, in <https://www.bbc.com/news/world-europe-43866700>

⁴⁷ POLITI, J: “Di Maio takes aim at Italy's gig economy”, 2018, in <https://www.ft.com/content/04b6d97c-7305-11e8-aa31-31da4279a601>

⁴⁸ See EUROPEAN COMMISSION, *supra* note 6, at 87.

3. SOLUTIONS PROPOSED BY THE INSTITUTIONS AND LEGAL LITERATURE

The European institutions have put as much effort into highlighting the advantages of this business model for the economy as the threats that it implies. The main concerns of the main European institutions highlighted through different instruments are indicated below:

A. The European Commission:

- It states that the collaborative economy “may create uncertainty as to applicable rights and the level of social protection [due to] the border between self-employed and employed workers is increasingly diffuse, and there is an increase in temporary and part-time work, and multiple employment”⁴⁹.

- It expressly recommends member states to “assess the adequacy of their national employment rules considering the different needs of workers and self-employed people in the digital world as well as the innovative nature of collaborative business models and to provide guidance on the applicability of their national employment rules in light of labor patterns in the collaborative economy”⁵⁰.

- It identifies the three main political objectives addressing the challenges of access to social protection for people in all forms of employment in the framework of the European Pillar of Social Rights, namely: “coverage (ensuring that everyone in employment or self-employment has formal and effective access to social protection and related employment services); transferability (preserving social protection rights when workers change jobs, sectors of activity, forms of employment, move to or from self-employment) and transparency (ensuring access to user-friendly information on rights and obligations to social protection, irrespective of employment situation)”⁵¹.

B. The European Parliament:

- It asks for “a clear distinction – for the purpose of EU law and without prejudice to national law – between those genuinely self-employed and those in an employment relationship, taking into account ILO Recommendation No 198, according to which the fulfilment of several indicators is sufficient to determine an employment relationship”⁵².

- It states that “this development can also lead to precarious situations”. The Parliament “highlights that all work in the platform economy must be classified accordingly by the Member States; stresses the need for such a clarification, also with the aim of preventing bogus self-employment and ensuring the protection of the social and labour rights of all workers in the platform economy, irrespective of their official status as employed or self-employed”. It also states the need to ensure that “self-employed workers and professionals (...) receive professional-level pay and are guaranteed secure time-frames for payment”⁵³.

- The Parliament thus “calls on the Member States to carry out sufficient labor inspections with regard to online platforms and to impose sanctions where rules have been breached, especially in terms of working and employment conditions and specific requirements regarding qualifications; calls on the Commission and the

⁴⁹ See EUROPEAN COMMISSION, *supra* note 4, at 11.

⁵⁰ *Id* at 13.

⁵¹ EUROPEAN COMMISSION, *Commission Staff Working Document, Analytical Document, Accompanying the document Consultation Document (Second Phase Consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges of access to social protection for people in all forms of employment in the framework of the European Pillar of Social Rights)*, 2017, in <https://ec.europa.eu/social/BlobServlet?docId=18596&langId=en>, pag. 3.

⁵² EUROPEAN PARLIAMENT, *Resolution of 19 January 2017 on a European Pillar of Social Rights*, 2017, in <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0010+0+DOC+XML+V0//EN>

⁵³ See EUROPEAN PARLIAMENT *supra* note 4, at 10.

Member States to pay special attention to undeclared work and bogus self-employment in this sector, and to put the platform economy on the agenda of the European Platform Tackling Undeclared Work; calls on the Member States to provide sufficient resources for inspections”⁵⁴.

C. Eurofond:

- It indicates that “it can therefore be assumed that these forms of employment – in general – are a necessary element of modern labor markets and they are unlikely to disappear. Those that pose inherent danger for working conditions and the labor market should be addressed through legislation or regulation”⁵⁵.

In addition, apart from the direct advices projected from the European institutions, there are research teams and reports financed by these that also alert about the special vulnerability of self-employed workers. It is pointed out that workers are exposed to work accidents, lack of insurance coverage and social benefits (due to outsourcing of service), lack of association rights or high penalties for questionable reputation mechanisms⁵⁶. In addition, it is pointed out that “the design and application of ratings systems can directly impact the interests of service providers—in particular their access to future work or risk of ‘deactivation’—”⁵⁷.

Lastly, it is necessary to refer to the contributions made by the authors of the legal literature in recent years regarding the subject. A thorough analysis of the author regarding the publications on the labor perspective of the collaborative economy in the last five years (especially at European level) has shown that there are two different schools of thought relating to the type of response needed to address labor rights threats caused by this new business model in Europe.

Looking for balance “between facilitating the robotic technological development and protecting the values that are desired by humans”⁵⁸, different criteria can be observed regarding a greater or lesser flexibility in the regulatory intervention aimed at protecting the rights of workers in the collaborative economy. On the one hand, there are advocates of investment in development policies of collaborative economy, from respect for labor rights but giving priority to flexibility in regulation and, on the other hand, there are open defenders of a strict regulatory intervention of the public powers in favor of the guarantee of labor rights, which follow the majority trend of thought.

Some authors of the former persuasion, defend, for example that “rather than labor law, it would be more efficient to support workers directly through social policy, adapting to the evolving needs of both workers and those who would benefit from their skills”⁵⁹. They focus on the development of active policies on digital skills training, so that, in an “adequate legal framework (...), technological advances are

⁵⁴ See *id.* at 10.

⁵⁵ MANDL, I. *et alii*: *New forms of employment*, 2015, in https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1461en.pdf, pag. 144.

⁵⁶ SCHMID-DRÜNER, M.: “The situation of workers in the collaborative economy”, 2016, in [http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/587316/IPOL_IDA\(2016\)587316_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/587316/IPOL_IDA(2016)587316_EN.pdf), pag. 15.

⁵⁷ See *supra* note 9, at 76.

⁵⁸ SÁNCHEZ-URÁN AZAÑA, Y. y GRAU RUIZ, M.A.: “El impacto de la robótica, in especial la robótica inclusiva, in el trabajo: aspectos jurídico-laborales y fiscales”, 2018, in <https://eprints.ucm.es/47523/1/Rob%3%B3tica%20y%20Derecho%20del%20Trabajo%252C%20Derecho%20Fiscal%20final%20mayo%202018.pdf>

⁵⁹ INFORMATION TECHNOLOGY AND INNOVATION FOUNDATION: “Three Paths to Update Labor Law for the Gig Economy”, Washington (Information Technology & Innovation Foundation) 2016, in http://www2.itif.org/2016-labor-law-gig-economy.pdf?_ga=2.219725593.1271927154.1554598313-1835988216.1554598313, pag. 21.

not constituted as an affront to labor rights (...) [and] the limits [in its regulation] are not of such importance that they could impede the advance itself"⁶⁰.

On the other hand, the second and main current of thought – warning of the growth of inequality⁶¹ – is in favor of a strict regulatory intervention in this business model to guarantee labor rights, defending to increase “protection of workers without suddenly increasing the costs for platforms”⁶². Among the measures proposed is the establishment of a minimum wage based on the average time of completion of a task⁶³ or the implementation of the obligation to hire third party liability insurance⁶⁴. Also proposed is “the in-depth reform of the employment training system (...), inclusion of minimum permanence period and non-competition clauses in the contracts (...), a mechanism for regulating the time of work (...), better telecommuting policies in the ICT sector (...), collective treatment of wages in the sector”⁶⁵.

Within this current which sits in favor of incorporating the necessary filters into the collaborative economy, most of the trade union actors that speak on the subject are integrated. Some of them defend measures such as disincentives and penalties for the unjustified temporality employment, the improvement of training and qualifications, the enhancement of the institutional capacities of Public Administrations or the improvement of collective bargaining (measured in which practically all European union actors agree⁶⁶)⁶⁷.

It seems that most of the legal literature, regardless of whether it adopts strict or flexible thinking in the regulatory intervention of the collaborative economy, always considers the abuse of the figure of self-employed worker in this business model as a priority. In addition to other consequences such as the violation of privacy

⁶⁰ SAN MARTÍN MAZZUCCONI, C.: “Generalización Tecnológica: efectos sobre las condiciones de trabajo y empleo”, Madrid (Plataforma Digital Interuniversitaria sobre el Futuro del Derecho del Trabajo OIT), 2016, in https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-madrid/documents/article/wcms_548618.pdf, pag. 8.

⁶¹ See SCHMID-DRÜNER, *supra* note 55, at 9.

⁶² CODAGNONE, C., ABADIE, F. y BIAGI, F.: *The Future of Work in the ‘Sharing Economy’, Market Efficiency and Equitable Opportunities or Unfair Precarisation*, Bruselas (Comisión Europea), 2016, in <http://publications.jrc.ec.europa.eu/repository/bitstream/JRC101280/jrc101280.pdf>, pag. 8.

⁶³ BERG, J.: “Income security in the on-demand economy: Findings and policy lessons from a survey of crowdworkers”, Ginebra (OIT), 2016, in https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_479693.pdf, pag. 23.

⁶⁴ VALENDUC, G. and VENDRAMIN, P.: “Work in the digital economy: sorting the old from the new”, *ETUI*, Working Paper No. 2016.03, 2016.

⁶⁵ RODRÍGUEZ FERNÁNDEZ, M.L. AND PÉREZ DEL PRADO, D.: *Digital Economy: its impact on working and employment conditions. A Case Study of two technological based companies*, Madrid (Fundación para el Diálogo Social), 2017, pag. 70, in http://fdialogosocial.org/public/upload/2/23_FdS_Economia-digital-impacto-condiciones-trabajo-y-empleo_2017_final.pdf

⁶⁶ Professor Baylos Grau, in line with the interpretations of the ILO, propose the need to extend union action to subjects whose work is not inserted within the circle of salaried work, thinking of figures like self-employed workers, see BAYLOS, A.: “El futuro de las normas del trabajo que queremos”, Madrid (Plataforma Digital Interuniversitaria sobre el Futuro del Derecho del Trabajo OIT), 2016, in <https://iniciativaoitinteruniversitariafuturodeltrabajo.com/ver-articulos/item/el-futuro-de-las-normas-del-trabajo-que-queremos>, pag. 11.

⁶⁷ ROCHA, F.: “La Digitalización y el Empleo Decente en España: Retos y propuestas de actuación”, Madrid (Plataforma Digital Interuniversitaria sobre el Futuro del Derecho del Trabajo OIT), 2016, in https://www.ilo.org/madrid/fow/trabajo-decente-para-todos/WCMS_548595/lang-es/index.htm, pag. 12.

in labor relations⁶⁸ or notes of precariousness⁶⁹, the concern for the vulnerability of self-employees has a settled consensus⁷⁰ as the most obvious damage of the collaborative economy.

Undoubtedly, collective bargaining is one of the main remedies upon which most of the legal literature⁷¹ and trade union actors agree in order to solve the problem of self-employed workers. However, despite being a recognized right in Article 28 of the EU Charter of Fundamental Rights, in most of the countries in the European Union there are clear obstacles (especially due to the nature of their contract⁷² and the limitations on competition matters that exist in each of the states) that cause self-employed individuals to be unable to conduct collective bargaining or to be accommodated by neither traditional trade unions nor employer associations⁷³.

4. CONCLUSIONS

In conclusion, it can be observed that despite the proven advantages of this collaborative economy business model, its dislocation in most of the legal frameworks of the states generates inequality among its most vulnerable actors: self-employed workers. This circumstance is evidenced not only by the continuous alerts issued by European institutions and legal literature but by the side effects of their practical application in different countries as these workers they are the core of many protests and proposed solutions.

This is mainly due to a simple reason: the faster advance of technology beyond the law and the obsolete regulatory frameworks of member states. At the legal level, few countries have incorporated the recommendations emanating from the European Parliament and the Commission in order to increase the protection of workers in the collaborative economy. In Europe, France is the member state that has taken the lead on these recommendations and the first to apply major reforms on its labor regulatory system through laws such as the Law on labor and the modernization of

⁶⁸ MCDONALD, P. and THOMPSON, P.: "Social Media(tion) and the Reshaping of Public/Private Boundaries in Employment Relations", *International Journal of Management Reviews*, Vol. 18, 2016, pags. 69–84, in <https://onlinelibrary.wiley.com/doi/epdf/10.1111/ijmr.12061>

⁶⁹ HUWS, U., SPENCER, N. H. y SYRDAL, D.: "Online, on call: the spread of digitally organised just-in-time working and its implications for standard employment models", *New Technology, Work and Employment*, Vol. 33, núm. 8, 2018, pags. 113-129, in https://uhra.herts.ac.uk/bitstream/handle/2299/20891/Huws_et_al_2018_New_Technology_Work_and_Employment.pdf?sequence=1&isAllowed=y

⁷⁰ See EUROPEAN COMMISSION, *supra* note 6, at 11. Also in the legal literature, as indicated, see CHERRY, M.: "Beyond Misclassification: The Digital Transformation of Work", *Comparative Labor Law & Policy Journal*, Vol. 37, 2016, pags. 577–602, in <https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1009&context=faculty>;

TODOLÍ SIGNES, A.: "El impacto de la 'uber economy' in las relaciones laborales: los efectos de las plataformas virtuales in el contrato de trabajo", *Iuslabor*, núm. 3, 2015, pags. 1699-2938;

PRASSL, J. y RISAK, M.: "Uber, Taskrabbit, & Co: Platforms as Employers? Rethinking the legal analysis of Crowdwork", *Comparative Labor Law & Policy Journal*, Vol. 37, núm. 3, 2016, pags. 604-619; MATSAGANIS, M. et alii: *Non-standard employment and access to social security benefits*, Bruselas (Comisión Europea), 2016, in <http://ec.europa.eu/social/BlobServlet?docId=15687&langId=en>; SPASOVA, S. et alii: *Access to social protection for people working on non-standard contracts and as self-employed in Europe*, Bruselas (Comisión Europea), 2017, in <https://publications.europa.eu/en/publication-detail/-/publication/fb235634-e3a7-11e7-9749-01aa75ed71a1/language-en>.

⁷¹ NEWLANDS, G., LUTZ, C. y FIESELER, C.: "The conditioning function of rating mechanisms for consumers in the sharing economy", *Internet Research*, Vol. 29, núm. 5, pags. 1090-1108. También MO, P. y COULSON, N.: "Empowering processes in online support groups among people living with HIV/AIDS: A comparative analysis of 'lurkers' and 'posters'", *Computers in Human Behavior*, Vol. 26, núm. 5, 2010, pags. 1183-1193, in <https://www.sciencedirect.com/science/article/pii/S0747563210000683>.

⁷² In this model "not only are providers distributed geographically, their separation is also inbuilt into platform architecture where the only forms of worker rationality are comparison metrics", see Newlands, Lutz & Fieseler *supra* note 71, at 253.

⁷³ *Id* at 252.

social dialogue or the Law for freedom to choose one's professional future. In this sense, the governments of the UK and Spain have, having observed the social impact of the decisions of the Courts and the insistence of European institutions and academics, focused their proposals (even without results) on the protection of the self-employed.

This situation must be regulated not with words but through laws, which is what is happening now in most affected countries. That is why it is necessary for Europe to take charge of the situation and develop a collaborative economy strategy, as has happened successfully on other occasions when these types of instruments have been used (some examples of effective results are the EU Drug Strategy 2005-2012, European Union Strategy for sustainable development of 2001 and EU Strategy for Combating Terrorism of 2005) so that the basic parameters of this business model could be established and integrated into each of the regulatory systems of the member states.

This collaborative economy strategy should include the measures suggested by the institutions to the member countries and those contributed by the doctrine, taking into account the most common conflicts that have emerged in the labor scenarios of the member states and the answers given for these. In this sense, based on the analysis made in this study, it would be transcendental to include measures of the European Commission regarding: guaranteeing that both workers and self-employed workers have effective access to social protections; maintain properly reputational mechanisms, respecting the data protection and privacy rules of all parties involved when workers change their platform, work, sector of activity or become self-employed; develop mechanisms that allow transparency and the right to information and replicate in reputational mechanisms to enjoy these of transcendental importance, among others. It is also necessary to include recommendations put forward by the European Parliament and its studies commissioned as: the introduction of minimum salary and income requirements; the increase of labor inspections on digital platforms for the control and imposition of sanctions when the law is violated, especially in terms of specific requirements to determine the qualification of the contract and working conditions; increase the coverage of collective agreements to categories that go beyond that of ordinary employee; introduce an independent authority that guarantees the qualification of the nature of the contract (as in some member countries), among others.

The present study therefore proposes the necessary development of a coherent EU Strategy for the Collaborative Economy (which has already been argued for by some MEPs in the European Parliament⁷⁴) that integrates all these extremes so that the vulnerabilities exposed on self-employed workers within this business model can be reduced and consequently the rules of the game in the collaborative economy may one day be the same for everyone.

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⁷⁴ As the MEP Nicola Danti, see EUROPEAN PARLIAMENT: "Sharing economy: Parliament calls for clear EU guidelines, 2017, in <http://www.europarl.europa.eu/news/en/press-room/20170609IPR77014/sharing-economy-parliament-calls-for-clear-eu-guidelines>

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