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CHAPTER 2

Connecting Crowd-Work with Work-Life Balance: Mission Impossible?

Alberto Barrio & Nuna Zekić

§2.01 INTRODUCTION

Even though it is a fairly new phenomenon, the literature on ‘crowd-work’ or ‘the sharing economy’ is growing vastly. Dictionaries often define ‘crowd-work’ as the process of obtaining needed services, ideas, or content by soliciting contributions from a large group of people, especially an online community, rather than from employees or suppliers. It is a timely topic in economic, business, computer-science, sociological, and legal research. Even though crowd-work might still be in its infancy, it has the potential to affect the ‘world of work’ greatly. For now, it challenges some of the basic principles and definitions of that field, such as the employment contract.

Currently, it has been observed that this model might offer ‘job opportunities’ to people who are bound to stay at home, or give the chance to top-up income for persons already in employment.¹ In that respect, some of the advantages of crowd-work have been identified – easy access, quick turnaround, flexible scheduling, etc.² – but so have its disadvantages or ‘challenges’.³ The impact of crowd-work on work-life balance can be found among both the advantages and disadvantages, as discussed in the literature. On first sight, that might not be surprising, since it is precisely in these work arrangements that boundaries between private time and working time become blurred.

1. J. Berg, ‘Income Security in the On-Demand Economy: Findings and Policy Lessons from a Survey of Crowdworkers’, *Comparative Labor Law & Policy Journal* 2016 Vol. 37 No. 3, pp. 543–576.

2. M.A. Cherry, ‘Beyond Misclassification: The Digital Transformation of Work’, *Comparative Labor Law & Policy Journal* 2016 Vol. 37 No. 3, p. 599.

3. See for example, I. Mandl, ‘Working Conditions in Crowd Employment and ICT-Based Mobile Work’ *The Digital Economy and the Single Market. Employment Prospects and Working Conditions in Europe*, FEPS – Foundation for European Progressive Studies 2016, pp. 111–138.

However, this is not the only reason why it is difficult to pinpoint exactly whether crowd-work has a positive or negative impact on work-life balance. Different types of crowd-work may produce different results, while the group of workers active on platforms may also be very diverse.

Our main argument is that the complexity of crowd-work should be integrated in the current discussion. A correct appraisal of the different features of crowd-work is fundamental in a moment when attempts of regulating it at national and transnational level are being performed. This study aims to bring together and highlight some main aspects of the discussions on crowd-work in relation to work-life balance. One can find that, within the literature on crowd-work, its potential impact on work-life balance is not elaborated in much detail. Further details on crowd-work and the existing assumptions and arguments in the literature (especially, but not limited to research in the labour and social security law area) on its impact on work-life balance must be brought together in order to take into account the combined effects of all features of crowd-work on this particular topic.

Section §2.02 gives a detailed explanation of crowd-work. It outlines the essential features of crowd-work, describing (diversity of) the platforms, the providers and the consumers together with the process. In addition, it is explained why terminology is important when this topic is discussed. Section §2.03 discusses the main legal challenges crowd-work is posing today. Section §2.04 further zooms in on the relation between crowd-work and work-life balance, while section §2.05 contains some concluding remarks.

§2.02 WHAT IS CROWD-WORK?

The concept of crowd-work has been broadly used, to a point of covering in occasions almost any productive activity performed in connection to the Internet. In this context, achieving an integrated concept of crowd-work – without leaving out important forms of work that have been included in this term – is a significant challenge. Nevertheless, in this chapter we will attempt to both note the diversity among forms of crowd-work while at the same time highlighting the common threads between them, as we believe in those two aspects reside the importance of a proper discussion about crowd-work and work-life balance.

In order to do so, we will draft a wide definition of crowd-work, from which we will develop a typology of crowd-work that will address relevant features in greater detail. This classification does not attempt to be exhaustive, but instead to exemplify the complexity of crowd-work, adding to the legal debate on the issue.

Finally, some remarks concerning terminology must be done before delving further into the topic. Being a fairly new development, there is no consensus yet on the designation, definition and forms of work, which may be covered by what we refer in this chapter as ‘crowd-work’. In fact, the terminological academic debate, which is common concerning new developments, is even more complex than usual due to the

parallel legal discussion on the employment status of the persons providing services or products through crowd-work platforms. As a result, when trying to rely on one term or another, particularly to design those persons providing services, there is the risk of seeming to take a part in this discussion (whether the term user – favoured by platforms – is the one chosen, or instead the term worker is preferred – used by advocates of considering them in an employment relationship). In order to avoid such conundrum, we have opted to use the term ‘providers’ (i.e., providers of services or products) to refer to these persons. The receivers of such services or products are referred to as ‘consumers’, while the internet-based structure which links both (as well as the organisation or individual who owns the platforms and/or controls them) is referred to as ‘platform’.

[A] Definition of Crowd-Work

In this chapter, we define crowd-work as the on-demand performance of tasks by persons selected remotely through online platforms from a large pool of potential and generic workers. Other terms have been used to refer to forms of work that we understand to be encompassed by the concept ‘crowd-work’: crowdsourcing, gig economy, sharing economy, on-demand economy, participatory economy, collaborative economy, peer-to-peer economy, digital economy, ICT-based mobile work or peer production. We select the term ‘crowd’ in order to emphasise both the scale and the undefined⁴ character of the mass of workers on whose contributions crowd-work is based.

[B] Essential Features of Crowd-Work

We divide the features of crowd-work among those referred to the providers, the receivers, the platforms and the process itself.^{5,6}

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4. In this regard, we base our work on the concept ‘crowdsourcing’ as established by Howe (*see* Howe, ‘Crowdsourcing: A Definition’, June 02, 2006, Retrieved on 31 January 2017 at http://crowdsourcing.typepad.com/cs/2006/06/crowdsourcing_a.html).
 5. This last group of features draws from Information System literature, such as D. Geiger, et al., ‘Managing the Crowd: Towards a Taxonomy of Crowdsourcing Processes’, *Proceedings of the Seventeenth Americas Conference Systems*, Detroit, August 2011.
 6. For further information on typologies of crowd work (and particularly in relation to crowdsourcing) *see*, inter alia, E. Estellés-Arolas and F. González-Ladrón-de-Guevara, ‘Towards an Integrated Crowdsourcing Definition’, *Journal of Information Science* 2012 Vol. 38 No. 2, pp. 189–200; E. Estellés-Arolas, R. Navarro-Giner, and F. González-Ladrón-de-Guevara, ‘Crowdsourcing Fundamentals: Definition and Typology’, in F. J. Garrigos-Simon, I. Gil-Pechuán and S. Estelles-Miguel (eds.), *Advances in Crowdsourcing*, New York: Springer International Publishing, 2015, pp. 33–48; D. Geiger, M. Rosemann, and E. Fiel. ‘Crowdsourcing Information Systems: A Systems Theory Perspective’, *Proceedings of the 22nd Australasian Conference on Information Systems* 2011; A.C. Rouse, ‘A Preliminary Taxonomy of Crowdsourcing’, *Proceedings of the 21st Australasian Conference on Information Systems* 2010; D. Geiger, et al., ‘Managing the Crowd: Towards a Taxonomy of Crowdsourcing Processes’, *American Conference on Information Systems* 2011.

[1] *Platforms*

In all the different variants of crowd-work, platforms are website-based structures. Furthermore, and as far as we are aware, the platform is owned by others than the providers. This is a key aspect, as platforms are the ones who define most of the elements that will be addressed below. In a similar line of thought, platforms may be divided between those in which the providers cannot participate in its governance and configuration and those which allow some form of participation (an example of the latter is *Wikipedia*⁷). Furthermore, crowd-work forms of work may be divided between those that seek a profit for the owner of the platform (which is the general rule), and those that are non-profit (such as, again, *Wikipedia*⁸).

[2] *Process*

By process, we refer to the set of characteristics of the crowd-work that determines how work is performed and monitored. In this regard, all forms of crowd-work are characterised for providing flexibility for both parties (being based on the *demand*⁹ of both the provider – who may choose when she wants to work – and the consumer) and linking them *remotely*¹⁰ with the intervention of an *algorithm*.

Also, the capability of crowd-work platforms to motivate providers to participate is an essential element of crowd-work itself, as it is this significant power of summoning a large group of potential workers that is one of the main aspects that makes crowd-work platforms attractive for consumers. This motivation boils down to a form of *compensation* for providers, which may materialise in many forms (in most cases, platforms will provide different forms of compensation simultaneously): Payment (whether in cash,¹¹ product or service – e.g., access to the platform), feeling of

7. Wikipedia is part of the non-profit organisation ‘Wikimedia Foundation’. The Wikimedia Foundation is governed by a Board of Trustees, which is composed by the founder of the platform (Jimmy Wales), two representatives of the regional Wikimedia chapters, three users voted in biannual elections at the Wikimania, and four experts selected by the rest of the Board. See Wikimedia Foundation Meta-Wiki, ‘Wikimedia Foundation Board of Trustees’, Retrieved on 31 January 2017 at https://meta.wikimedia.org/wiki/Wikimedia_Foundation_Board_of_Trustees.

8. See Wikimedia Foundation Meta-Wiki, ‘Frequently asked questions’, Retrieved on 31 January 2017 at https://wikimediafoundation.org/wiki/FAQ/en#How_is_the_Wikimedia_Foundation_run.3F.

9. A. Kittur et al., ‘The Future of Crowd-Work’, *Proceedings of the 2013 Conference on Computer Supported Cooperative Work*, pp. 1301–1318.

10. P. Heymann and H. Garcia-Molina, ‘Turkalytics: Analytics for Human Computation’, *Proceedings of the 20th International Conference on World Wide Web*, New York, 2011, p. 477.

11. O. Tokarchuk, R. Cuel and M. Zamarian, ‘Analyzing Crowd Labor and Designing Incentives for Humans in the Loop’, *IEEE Internet Computing* 2012 Vol. 16 No. 5, pp. 45–51.

altruism¹² (i.e., contribution to a greater social goal), social status,¹³ self-marketing,¹⁴ entertainment value¹⁵ or personal achievement and learning.¹⁶

Furthermore, crowd-work platforms may differentiate themselves from the way they supervise the quality of the work performed by the providers. In almost all platforms, the control is done based on results and not (as it was the case in some traditional forms of work) on the process. In this regard, providers in crowd-work have greater freedom on determining how to perform their task. However, the way this supervision is performed varies among platforms. In some cases, the platform relies on ratings done by consumers,¹⁷ while in others consumers are given the choice of selecting the outcome they consider the best among those offered by different providers, or otherwise the platform uses a more complex set of algorithms for the monitoring aspect.

Finally, crowd-work will differ on whether the form of crowd-work is or is not *location-dependent* (with some platforms linking providers and consumers in a world-wide or nationwide scale – as is the case for most platforms who offer work online, such as Amazon Mechanical Turk¹⁸ –, while others connecting consumers to only those providers who are near them), which will also reflect on the way the work is performed (whether online or offline).

[3] *Providers*

As mentioned above, crowd-work is characterised by the fact that the providers are part of a generic pool of workers to which receivers have access through the platform. By generic we refer to the fact that the relationship between the provider and the receiver are generally *sporadic and non-permanent*,¹⁹ as well as to the fact (developed further below) that in most cases anybody may register in the platform and be a potential provider. There is nonetheless space for diversity among the characteristics of the crowd targeted by different crowd-work platforms.

12. *Idem*.

13. A.C. Rouse, 'A Preliminary Taxonomy of Crowdsourcing', *21st Australasian Conference on Information Systems*, Brisbane, 2010, p. 6.

14. J. Leimester et al., 'Leverage Crowdsourcing: Activation-Supporting Components for IT-based Ideas Competitions', *Journal of Management Information Systems* 2009 Vol. 26 No. 1, p. 205.

15. G. Kazai, J. Kamps and N. Milic-Frayling, 'An Analysis of Human Factors and Label Accuracy in Crowdsourcing Relevance Judgements', *Inform Retrieval* 2013 Vol. 16 No. 2, pp. 138–178.

16. J. Leimester et al., 'Leverage Crowdsourcing: Activation-Supporting Components for IT-based Ideas Competitions', *Journal of Management Information Systems* 2009 Vol. 26 No. 1, p. 206.

17. This is often done through so-called rating or scoring systems, in which the parties may rate their satisfaction with the transaction. Often, the platform deactivates accounts with low ratings, particularly concerning providers (see, for example, concerning Uber in the US, Uber, *Legal. Uber community guidelines*, Retrieved on 24 January 2017 at <https://www.uber.com/legal/community-guidelines/us-en/>).

18. See Amazon Mechanical Turk, 'FAQ', Retrieved on 31 January 2017 at <https://www.mturk.com/mturk/help?helpPage=overview>.

19. See A. Felstiner, 'Working the Crowd: Employment and Labor Law in the Crowdsourcing Industry', *Berkeley Journal of Employment & Labor Law* 2011 Vol. 32 No. 1, p. 194.

In this regard, crowd-work may differ depending on the *features of the work* that the platform requires from the crowd. Some platforms are focused on providers perceived as consumers (whose perspective as such is valuable for the company in order to improve the product²⁰); while others reach for persons that provide a professional service that the receiver would not perform by himself (whether for lack of the necessary expertise or to reduce costs). Even in the latter case, the form of crowd-work varies depending on the different levels of skill requested from providers by the platform, from almost no expertise to those focused on skilled²¹ or highly skilled providers.²² Most platforms provide an open-call, meaning they let any provider (with possible limitations concerning location, which we already mentioned) apply, although some platforms seeking very specialised work make a previous selection of the persons allow to present their candidacy.²³ When the platform focuses on skilled workers, there are differences in crowd-work depending on the duration and complexity of the tasks required by the platform. Finally, crowd-work varies depending on the degree of freedom in deciding how to perform the task allowed to the provider.

[4] *Consumers*

Finally, there is also diversity in which kind of consumers the platforms target, whether they are companies looking to outsource part of its activity or individual consumers trying to access certain services. Furthermore, depending on the platform, the consumers may or may not have to make some sort of payment to the platform and/or the provider in order to access the service or product.

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20. M. Hossain and I. Kauranen, 'Crowdsourcing: A Comprehensive Literature Review', *Strategic Outsourcing: An International Journal* 2015 Vol. 8 No. 1, p. 3. An example of platform used to improve the product through the input of consumers may be the case of 'Lego Ideas', a website created by Lego that allows users to propose ideas for new Lego products, see Lego Ideas, *Discover*, Retrieved on 30 January 2017 at <https://ideas.lego.com/howitworks>.
 21. An example is the case of TaskRabbit, who advertise itself with the slogan 'we are skilled specialists', see TaskRabbit, 'Homepage', Retrieved on 24 January 2016, at <https://www.taskrabbit.com/>.
 22. Examples may be the case of the design of parts of the 787 Streamliner (which Boeing opened to the contributions of 100 of its regular providers through crowdsourcing, see CBS, 'For Boeing, it Takes a Village to Build a New Airplane', *CBS News*, Jun 17, 2008, Retrieved on 31 January 2017 at <http://www.cbsnews.com/news/for-boeing-it-takes-a-village-to-build-a-new-airplane/>) or, closer to a definition of crowdsourcing, the open competitions for the design of spaceflight software created by the US Government and its contractors (for an example of the functioning of such a competition, see S. Nag, *Collaborative Competition for Crowdsourcing Spaceflight Software and STEM Education Using SPHERES Zero Robotics*, Space System Laboratory of the Massachusetts Institute for Technology, 2012).
 23. This was the case in the abovementioned call for contributions on the design of the 787 Streamliner, which was open to only 100 companies which have previous collaborated with Boeing, see CBS, 'For Boeing, it Takes a Village to Build a New Airplane', *CBS News*, Jun 17, 2008, Retrieved on 31 January 2017 at <http://www.cbsnews.com/news/for-boeing-it-takes-a-village-to-build-a-new-airplane/>.

[C] Other Features of Crowd-Work

Besides the features that define the nature of the crowd-work platform, there are other elements that define the nature of the relationship between providers, receivers and platforms. The most prominent is the assumed casualty of the work performed (i.e., it is generally assumed that this activity does not constitute the main professional activity of the performer).²⁴ Furthermore, the role that crowd-work plays in the overall life of the provider must be taken into consideration when differentiating crowd-work situations. Depending on whether it is the provider's main occupation or not,²⁵ or whether she is part of a family unit in which one of its members is in (full-time) standard employment, performing crowd-work will produce very different situations.

§2.03 LEGAL CHALLENGES CROWD-WORK POSES**[A] Employment Status**

When we focus on the relationship between the platforms and the providers of work or services, in this early stage of crowd-work, the main question at this point is whether this relationship is an employment relationship. Most of legal debate on the topic of crowd-work relates to this question. Are the providers employees of the platforms, are they independent contractors (self-employed), or do they form a whole new category?²⁶ As Aloisi explains, platforms challenge traditional business models, but they also tend to undermine the common structure of the 'employer-employee' scheme.²⁷ Most platforms regard the providers not as employees (or workers) but as independent contractors. Consequently, this business model can become a means to circumvent labour and social security laws. The European Commission has issued a (non-binding) guidance on how existing European Union (EU) law should be applied to – what the Commission calls – the collaborative economy.²⁸ The Commission firstly notes that the working arrangements in the collaborative economy are part of a more structural shift where there are increasingly blurred boundaries between the self-employed and the workers. For this bigger problem, the Commission refers to the consultation it issued in

24. N. Raval and P. Dourish, 'Standing Out from the Crowd: Emotional Labor, Body Labor, and Temporal Labor in Ridesharing', *Proceedings of the 19th ACM Conference on Computer-Supported Cooperative Work & Social Computing*, San Francisco, 2016, p. 97.

25. J. Berg, 'Income Security in the On-Demand Economy: Findings and Policy Lessons from a Survey of Crowdworkers', *Comparative Labor Law & Policy Journal* 2016 Vol. 37 No. 3, pp. 543–576.

26. Some jurisdictions have border concepts for economically dependent workers: the English law acknowledges 'workers' besides 'employees', the German law 'Arbeitnehmerähnliches' besides 'Arbeitnehmers', and the Spanish law recognised the form of the 'Trabajador autónomo económicamente dependiente'.

27. A. Aloisi, 'Commoditized Workers: Case Study Research on Labor Law Issues Arising from a Set of on-Demand/Gig Economy Platforms', *Comparative Labor Law & Policy Journal* 2016 Vol. 37 No. 3, p. 655.

28. European Commission, 'A European agenda for the collaborative economy', *Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions* COM (2016) 356, 2016.

2016 on a European Pillar of Social Rights.²⁹ Since the definition of the employment contract and most of labour law fall under national competence,³⁰ the Commission calls on the Member States to ‘provide guidance on the applicability of their national employment rules in light of labour patterns in the collaborative economy’.³¹ In most cases, this will have to be determined on the basis of a case-by-case assessment, looking cumulatively in particular at the well-known three essential criteria for an employment relationship,³² but also considering all the relevant facts and circumstances characterising the relationship between the platform and the underlying service provider, and the performance of the related tasks.³³ More or less the same legal test is applied also outside the EU.³⁴ Furthermore, it is also worth noting that it is often the case in crowd-work that the traditional employer functions (e.g., supervision, remuneration, providing of the tools) are distributed among different parties to the employment relationship (often between the platform and the consumer). In this regard, suggestions have been made to assign the duties and obligations of the employer depending on who assumes which functions.³⁵

When assessing whether a worker is indeed an employee or an independent contractor, one of the most relevant factors is that the business model described seems to imply a lack of dependence or subordination of the worker.³⁶ In most cases the provider is able to choose when and how long to work. She even seems to enjoy a considerable freedom in the way the work is being performed. The factor ‘remuneration’ can, however, also play an important role. The English Employment Tribunal in London ruled in 2016 that claimants – Uber drivers – can be classified as workers.³⁷ One of the arguments used by the judges is that under London’s Uber Policy, it was not

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29. European Commission, ‘Launching a consultation on a European Pillar of Social Rights’, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions* COM (2016) 127, 2016.
 30. At EU level the Court of Justice (CJEU) has defined the concept of worker for the purpose of applying EU law: ‘the essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration’. European Commission, ‘Reaffirming the free movement of workers: rights and major developments’ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions* COM (2010) 373, 2010.
 31. European Commission, ‘A European agenda for the collaborative economy’, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions* COM (2016) 356, 2016, p. 13.
 32. International Labour Office and European Labour Law Network, *Regulating the Employment Relationship in Europe: A Guide to Recommendation No. 198*, Geneva: International Labour Office, 2013.
 33. *Idem*, p. 12.
 34. A. Felstiner, ‘Working the Crowd: Employment and Labor Law in the Crowdsourcing Industry’, *Berkeley Journal of Employment & Labor Law* 2011 Vol. 32 No. 1, pp. 143–204.
 35. Referred to as the ‘functional concept of the employer’, see J. Prassl, and M. Risak, ‘Uber, TaskRabbit, and Co.: Platforms as Employers? Rethinking the Legal Analysis of Crowdwork’, *Comparative Labor Law & Policy Journal* 2016 Vol. 37 No. 3, pp. 646–649.
 36. A. Todolí Signes, ‘The End of the Subordinate Worker: Sharing Economy, On-demand Economy, Crowdsourcing, Uber Economy and Other Ways of Outsourcing’, *SSRN Electronic Journal*, 2015, p. 11.
 37. Employment Tribunal, *Aslam, Farrar and others versus Uber B.V., Uber London Ltd, Uber Britannia Ltd*, 28 October 2016, Case Nos: 2202550/2015.

possible for the drivers to negotiate with passengers for a higher fee than the standard fee that Uber sets and passes to the passenger as an estimated fee for every ride. A lower fee is possible, but this is not advantageous, since Uber's commission remains based on that standard fee.

This discussion about employment status classification is fundamental, as when the providers are treated as independent contractors, they usually do not enjoy any of the labour law protection granted to employees, such as the payment of a minimum wage. In most cases, they may be partly or fully excluded from certain social insurance schemes, like unemployment benefits.³⁸ There is usually no (investment in) training involved. For these reasons, some authors have already labelled this type of work as precarious work.³⁹

Some authors have argued that the service provided on platforms 'represent a genuinely novel form of work, deserving of its own legal status and regulatory apparatus?'⁴⁰ In such proposals, such third category – intermediate between employee and self-employed or independent contractor – would qualify for some benefits and protections that employees receive, but not all. For example, in the United States (US) it has been suggested that service providers should fall under the protection of antidiscrimination laws, but not under the protection of minimum wage or unemployment benefits.⁴¹

The question of employment status is also relevant in the context of collective bargaining. The Court of Justice of the EU (CJEU) has ruled that an organisation, which carries out negotiations acting in the name and on behalf of self-employed persons who are its members, 'it does not act as a trade union association and therefore as a social partner, but, in reality, acts as an association of undertakings'.⁴² The EU law prohibits agreements between undertakings that limit competition in the EU market (Article 101 Treaty on the Functioning of the European Union, TFEU). Setting minimum fees for the self-employed in collective agreements is thus not allowed under EU competition law.⁴³ Where the CJEU has found in other cases⁴⁴ that collective agreements are excluded

38. While significant progress has been made worldwide during the last twenty years concerning the social security coverage of the self-employed (particularly regarding pensions), there is still an important gap concerning schemes such as unemployment benefits, see ILO, *World Employment and Social Outlook – The changing nature of jobs*, 2015, p. 79. See also, inter alia, W. Eichhorst et al., *Social Protection Rights of Economically Dependent Self-employed Workers*, Luxembourg: European Parliament, 2013. Even if they are included in social insurance schemes, often they may receive a very limited benefit as a result of having chosen a low contributory base, see *Ibid*, p. 42.

39. M.A. Cherry, 'Beyond Misclassification: The Digital Transformation of Work', *Comparative Labor Law & Policy Journal* 2016 Vol. 37 No. 3, pp. 598–602.

40. S.D. Harris and A.B. Krueger, 'A Proposal for Modernizing Labor Laws for Twenty-First-Century Work: The "Independent Worker"', *The Hamilton Project Discussion Paper* 2015-10, 2015.

41. *Idem*.

42. *FNV Kiem*, CJEU 4 December 2014, C-413/13, para. 28.

43. In general, the same applies in the United State under federal antitrust law.

44. *Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie*, CJEU 21 December 1999, C-67/96; *Brentjens' Handelsonderneming BV v Stichting Bedrijfspensioenfonds voor de Handel in Bouwmaterialen*, CJEU 21 September 1999, C-115/97-117/97; *Maatschappij Drijvende Bokken BV v Stichting Pensioenfonds voor de Vervoer- en Havenbedrijven*, CJEU 21 September 1999, C-219/97.

from the prohibition of Article 101(1) TFEU if certain broad conditions are fulfilled, this is not the case where it concerns collective agreements on minimum fees for the self-employed. The agreements may, however, be regarded as the result of collective bargaining and therefore, they may be covered by the collective bargaining exception only if the service providers, in the name and on behalf of whom the trade union negotiated, are in fact ‘false self-employed’.⁴⁵ ‘False self-employed’ are, according to CJEU, service providers who are in a situation comparable to that of employees, i.e., a subordinated relationship. Whether the workers are indeed ‘false self-employed’ is left to the referring court to determine.

It is unclear whether – by introducing false self-employment – the CJEU intended to create a new category of economic actors as discussed above, or did the Court instead only meant to prevent abusive misclassification. Several authors believe the latter is true and they praise the Court for taking ‘a realist mode of interpretation’.⁴⁶

The debate on false or bogus self-employment has not reached a final conclusion, nor has the discussion on the employment status of crowd-workers. The case law is still under development. The final judgment in the Uber-cases is unknown at the time of this writing, since the London Uber is appealing against the decision of the Employment Tribunal and in the US a high-profile case, *O’Connor v. Uber*, was settled out of court.⁴⁷ Moreover, it is difficult to produce any general conclusions on the possible outcomes of applying the conventional legal test of determining the employment relationship to platform work in general, since the platforms can differ greatly, as was illustrated in the second section of this chapter. The relevant conclusion for our purposes is that the providers of work or services on platforms *could be* determined to be workers or employees, but that for the time being most of them are treated as independent contractors.

[B] Differences Within Employment Status

If the providers are in fact considered employees, another important issue remains to be resolved. In *which form* of employment are they performing work? Are they trainees or workers, in temporary or open-ended labour contracts, on full-time or part-time basis and, in case of the latter, which percentage of reduction on their working time do they have and how is this working time distributed –in a daily, weekly, monthly or even annually basis, whether they are on-call or not, or whether there is a third intermediate party or not? In this regard, the characteristics of the employment relationship may have very significant consequences on whether the person may effectively access the rights to which in theory she may be entitled. Nonetheless, the legal discussion on crowd-work has left this important aspect mostly unattended.

45. *Idem*, para. 31.

46. E. Grosheide and M. Barenberg, ‘Minimum Fees for the Self-Employed: A European Response to the “Uber-ized” Economy?’ *Columbia Journal of European Law* 2016 Vol. 22 No. 2, p. 224.

47. M.A. Cherry, ‘Beyond Misclassification: The Digital Transformation of Work’, *Comparative Labor Law & Policy Journal* 2016 Vol. 37 No. 3, p. 583.

In this regard, it is worth noting that the comparison to temporary agency workers has not been made very often, while the triangular relationship between the provider (or worker), the platform and the consumer resembles the relationship between the agency worker, the agency and the user firm. In addition, the role of the platforms resembles the intermediate role of the agencies in matching the offers of and the applicants for paid work. One of the main differences is, however, the fact that duration of the relationship between agency workers and user companies usually tends to be (much) longer compared to the relationship between the providers and consumers. Moreover, the agency workers perform work under the supervision and direction of the user company,⁴⁸ while in crowd-work control is mostly exercised by the platforms, if it is exercised at all.

[C] New Forms of Subordination

We have seen above that the element of subordination is relevant for the question whether the crowd-worker is an employee. However, whether the crowd-worker is subordinated to the platform and in what form are questions that have relevance on their own. They can pose different (legal) problems. In this case, the question of subordination comes to the forefront when we consider how the crowd-workers are managed or controlled by the platforms. Many platforms use some sort of a rating system as a form of quality control. The consumers can rate the providers. In some respects, that means less control than is normally exercised by the employer, because the platforms do not monitor the workers themselves. On the other hand, it can mean more effective control, because the platform has at its disposal a wealth of information that allows for automatically determining the ideal outcome per task on an individualised basis.⁴⁹ Such internal rating system has an impact on the successive hiring. It can put a worker into ‘an endless probation period’.⁵⁰ Moreover, it is not enough to have high ratings, as Cherry explains, ‘their scores are ranked, ordered, and the workers are expected to out-achieve each other’.⁵¹ The ranking system also ties them to a specific platform, even though this might not be different from the dependency of some employees on their employer. However, when the rating system is dependent solely on customers’ ratings as opposed to evaluation by a (trained) manager, it is more prone to racial or religious bias, whether conscious or unconscious.⁵²

48. Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.

49. S. O’Connor, ‘When Your Boss Is an Algorithm’, *Financial Times*, 8 September 2016, Retrieved on 31 January 2017 at <https://www.ft.com/content/88fdc58e-754f-11e6-b60a-de4532d5ea35>.

50. A. Aloisi, ‘Commoditized Workers: Case Study Research on Labor Law Issues Arising from a Set of On-Demand/Gig Economy Platforms’, *Comparative Labor Law & Policy Journal* 2016 Vol. 37, No. 3, p. 671.

51. M.A. Cherry, ‘Beyond Misclassification: The Digital Transformation of Work’, *Comparative Labor Law & Policy Journal* 2016 Vol. 37, No. 3, p. 601.

52. *Ibid*, p. 597; N. Zatz, ‘Beyond Misclassification: Gig Economy Discrimination Outside Employment Law’, *On Labor*, January 19, 2016, Retrieved on 31 January 2017 at <https://onlabor.org/>

[D] Collective Representation

The increase of the number of crowd-workers can pose (additional) challenges for trade unions and collective bargaining. Irrespective of the classification, an important feature of platform work is that work is strongly individualised. Providers of services (or crowd-workers) are not ‘centralised’, work is not performed at one physical workplace as it usually the case in for example manufacturing sectors, and it usually does not take place within a bounded geographic area. All of this makes it more difficult to organise compared to the typical working organisations where workers work at one or more employer’s premises. Even though this is not a problem specific to crowd-work, since it is acknowledged that the increase in all kinds of ‘atypical’ or precarious forms of work has created one of the major challenges trade unions are facing today.⁵³ It is nevertheless important to stress, that this seems to be even truer for crowd-work. As a result, the providers may be left without a collective representation as a countervailing power to the primacy of platforms.

When platforms operate on a global scale – in cases when there is no requirement of local execution –, it becomes even more difficult to organise. In that case, these emerging markets can ‘give people in poor countries access to buyers in rich countries’.⁵⁴ This is obviously beneficial for workers in developing countries, but it can also be seen as a disadvantage for workers, since it puts them in a greater competition with one another. It can even cause protective laws of all countries in the world to compete with each other.⁵⁵

§2.04 ATTENTION PAID TO WORK-LIFE BALANCE

To our knowledge, no research has been conducted on the relationship between crowd-work and work-life balance. However, several studies on crowd-work hint (explicitly or implicitly) to its possible impact on work-life balance.⁵⁶ More often, the literature on crowd-work highlights features of this form of work which might have an impact on work-life balance, but without analysing this possible impact directly. For example, the results from a survey undertaken in 2015 by the *ILO* of crowd-workers on the *Amazon Mechanical Turk* and *Crowdfunder* platforms show that one of the main

2016/01/19/beyond-misclassification-gig-economy-discrimination-outside-employment-law/; R. Brisben, ‘The Social Costs of Uber’, *The University of Chicago Law Review Dialogue*, 2015 Vol. 82, p. 95.

53. R. Gumbrell-McCormick, ‘European Trade Unions and “Atypical” Workers’, *Industrial Relations Journal* 2011 Vol. 42 No. 3, pp. 293–310.

54. A. Aloisi, ‘Commoditized Workers: Case Study Research on Labor Law Issues Arising from a Set of On-Demand/Gig Economy Platforms’, *Comparative Labor Law & Policy Journal* 2016 Vol. 37, No. 3, p. 658.

55. A. Todolí Signes, ‘The End of the Subordinate Worker: Sharing Economy, On-Demand Economy, Crowdsourcing, Uber Economy and Other Ways of Outsourcing’, *SSRN Electronic Journal* 2015, p. 6.

56. See G. Valenduc and P. Vendramin, ‘Work in the Digital Economy: Sorting the Old from the New’, Working Paper 2016.03, Brussels: Etui, 2016; W. Wobbe, E. Bova, C. Dragomirescu-Gaina (eds.), *The Digital Economy and the Single Market. Employment Prospects and Working Conditions in Europe*, Brussels: FEPS, 2016.

reasons for crowd-working is the fact that the respondents prefer to work from home.⁵⁷ This finding might imply that crowd-work has a positive impact on work-life balance, since this type of work allows the workers to reconcile the work with their other responsibilities or to have more free time, but the chapter does not investigate this assumption.

Based on a review of the literature, we have identified several features that are present in most forms of crowd-work (although to a different degree) and that may have an impact on work-life balance.

[A] Possibility to Perform Work on Distance

The element of telework (i.e., work performed independent of a location, often from home, and particularly present in those forms of crowd-work where work is performed online) is probably the one feature that has received the greatest attention from the literature. In this regard, research has been conducted on the impact of ‘virtual work’ on work-life balance.⁵⁸ Even though telework is a much broader concept and the research in question is usually concerned with *employees* who perform telework, the results may nevertheless be transferred to some forms of crowd-work.

However, the results on telework are mixed: most (highly educated) workers find that virtual technology makes the reconciliation of work and family life easier, but also more complicated ‘as it is more difficult to be off from work, even on vacation’,⁵⁹ reducing the opportunities to recover.⁶⁰ In a similar line of thought, the opportunity to (continue to) work from home due to digital technology tends to blur the boundaries between work and private (or family) life. While many workers may appreciate the blurring boundaries between work and family life up to a point, they also acknowledge the challenges of this development.⁶¹

[B] Flexibility on Working Time

Arguably, in crowd-work the providers enjoy more flexibility to decide *whether and when* to work, what has been equalised by some authors with greater work-life balance.⁶² In a broader perspective, social scientists have different theories about the relationship between job autonomy (of which flexibility arguable is one element) and

57. J. Berg, ‘Income Security in the On-Demand Economy: Findings and Policy Lessons from a Survey of Crowdworkers’, *Comparative Labor Law & Policy Journal* 2016 Vol. 37 No. 3, p. 552.

58. For example, G.L. Rafnsdóttir and A.S. Stefánsson, ‘Virtual Work and Work-Life Balance for Managers’, *International Journal of Business and Management* 2014 Vol. 9 No. 11, pp. 1–12.

59. G.L. Rafnsdóttir and A.S. Stefánsson, ‘Virtual Work and Work-Life Balance for Managers’, *International Journal of Business and Management* 2014 Vol. 9 No. 11, pp. 1–12.

60. J. Popma, *The Janus Face of the ‘New Ways of Work’. Rise, Risks and Regulation of Nomadic Work*, ETUI, Working Paper, Brussels. 2013.

61. *Idem.* See also European Commission, *The increasing use of portable computing and communication devices and its impact on the health of EU workers*, Publications Office of the European Union, Luxembourg 2010.

62. See, for example, W. Wobe et al., *The Digital Economy and the Single Market*, Brussels: FEPS, 2016, p. 128, 134, 145.

work-family conflict for employees and the self-employed. In short, a high level of job autonomy in self-employment does not necessarily lead to greater work-family balance.⁶³ Transferred to our crowd-work-case: the fact that crowd-workers may enjoy more autonomy does not necessarily mean they experience more work-life balance.

Aloisi argues that a contradictory idea of flexibility exists in the context of crowd-work.⁶⁴ Although providers have the possibility to decide when to ‘log in’ and be available to perform work, the time they spend on the platform impacts their daily compensation (and their internal ranking). Because in most cases the payment is low⁶⁵ – below minimum wage – providers might have to work more hours every day than a ‘standard’ worker in order to earn a significant amount of money. This is particularly important, of course, concerning those workers for whom crowd-work is their main source of income, a group that in Europe constitutes a small but important minority,⁶⁶ and the in the US amount to one third of all workers.⁶⁷

Furthermore, in order to find tasks to perform, providers in crowd platforms often have to spend long hours online just searching for paid tasks (a time that is not remunerated).⁶⁸ As *Berg* indicates, this ‘pressure to be on-line to find work appears to erode the flexibility that is so coveted in the job’.⁶⁹

Moreover, the theoretical flexibility to decide *when* to work might be eroded as a result of the demand-driven character of the relationship, as providers will often need to work in rush hours in order to obtain work.⁷⁰

[C] Holding Multiple Jobs

Another consequence of the low compensation per task in crowd-work mentioned above is that, in most cases, such work cannot replace a ‘normal’ full-time job in terms of income security. Often, such workers may need an extra job. Arguably, having multiple jobs is not beneficial for work-life balance. It can even become questionable whether the workers have enough ‘free time’. However, in case of platform work, this possible effect has not yet been investigated fully.

63. S. Drobnič and A.M. Guillén Rodríguez, ‘Tensions Between Work and Home: Job Quality and Working Conditions in the Institutional Contexts of Germany and Spain’ *Social Politics* 2011 Vol. 18 No. 2, pp. 232–268.

64. A. Aloisi, ‘Commoditized Workers: Case Study Research on Labor Law Issues Arising from a Set of On-Demand/Gig Economy Platforms’, *Comparative Labor Law & Policy Journal* 2016 Vol. 37, No. 3, p. 662.

65. J. Berg, ‘Income Security in the On-Demand Economy: Findings and Policy Lessons from a Survey of Crowdworkers’, *Comparative Labor Law & Policy Journal* 2016 Vol. 37 No. 3, p. 557.

66. U. Huws, N.H. Spencer and S. Joyce, *Crowd-Work in Europe. Preliminary Results from a Survey in the UK, Sweden, Germany, Austria and the Netherlands*, FEPS Studies December 2016.

67. J. Berg, ‘Income Security in the On-Demand Economy: Findings and Policy Lessons from a Survey of Crowdworkers’, *Comparative Labor Law & Policy Journal* 2016 Vol. 37 No. 3, p. 554.

68. As *Berg* reports, for every hour of paid work, AMT workers spent eighteen minutes searching and doing unpaid preparatory work. *Idem*, pp. 543–576.

69. *Idem*, p. 561.

70. In addition, due to the often global character of the platform, providers may even have to work at ‘unsocial hours’. See V. De Stefano, ‘The Rise of the “Just-In-Time Workforce”: On-Demand Work, Crowdwork, and Labor Protection in the “Gig-Economy”’, *Comparative Labor Law & Policy Journal* 2016 Vol. 37 No. 3, p. 480.

While, for example, an author will acknowledge that ‘having a second job means that the scheduling may get a worker fired from the first’ and therefore, puts the worker ‘in a trap’,⁷¹ the issue of work-life balance is left untouched. This is despite the fact that most persons in crowd-work use it to complement their main occupation.⁷² In fact, it has been noted that those workers who rely on crowd-work as their primary source of income are in a significantly insecure position (both financially and concerning their labour market and social security situation).⁷³

§2.05 CONCLUSIONS

Through this chapter, we have identified two potential issues that crowd-work presents for a well-protected work-life: one drawing from the still generally unclear legal nature of crowd-work, and another originating from the potential threads that apparently common features among forms of crowd-work may present to work-life balance.

It is difficult (if not impossible) to regulate something that is unknown or undefined. It seems therefore understandable that most legal discussions on crowd-work surround the basic issue of its employment status. Currently, arguments move between considering persons providing services or products through crowd-work platforms as self-employed, employees or members of a third category with some features of both. At the moment of writing this chapter, the outcome seems unclear, with most platforms considering persons who provide services or products through them as self-employed, while some judicial decisions have forced them to grant providers some minimum labour rights. A decision in one or other direction will obviously have significant implications, mostly concerning the possibility to apply the already existing legislation on work-life balance for employees. However, it is quite likely that we are heading towards a system with different individual decisions depending on the features of each platform or contract rather than towards a general and all-encompassing regulation for all crowd-work. Furthermore, the discussion may become even more complex if taken into account the fact that, sometimes, one and the same person can have the status of consumer and provider of services simultaneously. Consider, for example a person that writes a review after receiving a service or product, and that review being a service itself that helps other users and the platform to monitor quality;⁷⁴ or a person that must perform a micro-task in order to access a service.⁷⁵

71. M.A. Cherry, ‘Beyond Misclassification: The Digital Transformation of Work’, *Comparative Labor Law & Policy Journal* 2016 Vol. 37 No. 3, p. 598.

72. J. Berg, ‘Income Security in the On-Demand Economy: Findings and Policy Lessons from a Survey of Crowdworkers’, *Comparative Labor Law & Policy Journal* 2016 Vol. 37 No. 3, p. 554.

73. *Idem*.

74. For example, the website ‘Yelp’ exists for the purpose of rating everything commercial. The reviews written by consumers form the main value of the site. While Yelp does not pay for reviews, it does encourage loyalty among its most active and well-respected reviewers by awarding them ‘Elite’ status along with certain perks. See concerning this issue M.A. Cherry, ‘Beyond Misclassification: The Digital Transformation of Work’, *Comparative Labor Law & Policy Journal* 2016 Vol. 37 No. 3, p. 589.

75. This was the case in *Gabriela Rojas-Lazano v Google Inc*. In this case, the plaintiff challenged the use by Google of CAPTCHAs (small sections of text embedded in images that sometimes must be

While this issue has not yet been fully introduced into the bigger debate of status classification, when (and if) it does, it may have disruptive effects for the traditional regulation of work.

Even if we accept the broad and generally undefined nature of crowd-work, it is still possible to determine a set of essential features of crowd-work. Through this chapter, we have highlighted the importance of some of these features, such as the online character of work or the fact that it addresses an undefined pool of workers. However, it is no less important to also acknowledge the current form in which crowd-work is present in the labour market, and the nature of the platforms: Highly flexible, with a low remuneration, and complementing income from other occupations.

If there is one key concept that defines crowd-work, that may be flexibility, with some authors even referring to crowd-work as ‘hyperflexible’.⁷⁶ This is in fact a feature shared by all of the so-called ‘new forms of work’ or non-standard work, which answers to a demand for greater flexibility from employers, employees or both.⁷⁷ However, it is important to not confuse flexibility with a displacement of the costs of production. As *Holtgrewe* explains, crowd-work and other forms of casual employment have ‘the aim to comprehensively remove slack times from work and to have employers or customers pay for active working times or immediate results only’.⁷⁸ This is particularly significant if combined with the low and diverse compensation received by workers, as analysed above. As a result, workers are often forced to work long hours to achieve sufficient income, often performing multiple jobs (whether with different platforms, and/or combining crowd-work with another form of work), and rarely achieving to work as much as they would desire.⁷⁹ These issues, together, often provoke an insecure situation for those in crowd-work, due to its casual and unstable nature.

In this regard, we must beware of arguments on crowd-work that present it as a completely new phenomenon, one that escapes from the traditional discussion on labour and social security rights. While some of the features of crowd-work may be unique, the most essential of them (casualisation, flexible character, third party

recognised and written by the user of Google products in order to prove that the person is a human being and not an algorithm producing fake traffic) to transcript books for Google, something about which the users were not informed. The Court, however, considered that the fact that Google profited did not necessarily mean that there was any damage to the user, dismissing the claim due to the small amount of effort from the user that filling the CAPTCHA required. See further United States District Court N.D. California, *Gabriela Rojas-Lazano v Google Inc*, February 3, 2016, Case No. 15-Cv-03751/JSC.

76. Eurofound, *New Forms of Employment*, Publications Office of the European Union, Luxembourg 2015, p. 135.

77. *Idem*.

78. U. Holtgrewe, ‘Working in the Low-Paid Service Sector: What Is to Be Learned from the Analogue World?’ *The Digital Economy and the Single Market. Employment Prospects and Working Conditions in Europe*, FEPS – Foundation for European Progressive Studies 2016, p. 101.

79. As noted from a survey performed by the ILO, 90% of the respondents say they would like to do more crowdwork than they are currently doing, see J. Berg, ‘Income Security in the On-Demand Economy: Findings and Policy Lessons from a Survey of Crowdworkers’, *Comparative Labor Law & Policy Journal* 2016 Vol. 37 No. 3, p. 560.

employment relationship) have been present for decades if not centuries.⁸⁰ It is important to not let technology or new terms disguise old issues, and to return to the basic aims of labour and social security law (such as security or solidarity) when possible. At the same time, it is also undeniable that the combination of features presented in crowd-work sometimes originates new challenges, particularly so for work-life balance. In this regard, the wealth of literature on telework and work-life balance may need some adaptations in order to integrate the interaction between this element of work on distance and others such as casualisation, divergent methods of monitoring, lesser accountability and more complex methods for the resolution of individual conflicts.

80. *Finkin* shows that models such as the Amazon Mechanical Turk uses are in fact similar to home-based contract work that has been used for most of history. M.W. Finkin, 'Beclouded Work, Beclouded Workers in Historical Perspective', *Comparative Labor Law & Policy Journal* 2016 Vol. 37 No. 3, pp. 603–618.