

WORKING PAPER

Gig Economy and its Implications for Social Dialogue and Workers' Protection. Main Findings in Switzerland

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Introduction

This report includes a literature review as well as empirical data collected for the Swiss case of the SNIS project “Gig economy and its Implications for Social Dialogue and Workers’ Protection”. Its purpose is to evaluate the extent of the social dialogue on platform labour markets in Switzerland and to present the key issues in the public debate that is taking place among academics, policy makers and social partners. We will discuss both local and national contexts in this review. When the context of a particular city seemed relevant, we led case studies that focus on local issues and responses. The gig economy should still be considered an emerging and not stabilized phenomenon in a broader turmoil related to the digitization of the economy and the industry 4.0. The fact that this topic receives a growing attention in the public debate seems to reveal a large consciousness about the potential disruption that it could have for workers’ protection and social dialogue.

Although the state and multiple NGOs already published numerous reports tackling the digitisation of the economy, few used the same definitions of this phenomenon. The actors identified either referred to the gig economy as a new form of digitisation of the workplace, a sign of automation, or a subset of the sharing economy. Very often, reports addressed the question of “digitisation” very broadly and the gig economy only swiftly, with conclusions and policy recommendations only designed for the sharing economy (promoting sharing for environmental reasons) or standard workplace digitalization (promoting education in digital tools). We define the gig economy as the new tendency of employment relations that allows employers to rely on technological devices in order to manage their workforce at distance and thus have them self-employed. This definition requires two main criteria for an employment relation to be considered “gig work”: the use of the internet and tasks on-demand.

The first part of this report provides a summary of our data. The second part establishes the context and provides facts about the extent of the gig economy with an emphasis on the transportation, accommodation and financial sectors. The third one illustrates the institutional responses at both national and local levels. The fourth one reviews the debates about the future of social dialogue. Traditional employers and trade-union organizations produced divergent discourses, but independent think tanks also brought ideas that contributed to the reflections. The fifth and last part analyses three case studies in sectors where platforms started to organize gig work: transportation, delivery and cleaning. The conclusion synthesizes the main findings.

1 Method

1.1 Legal and political debates

Three main sources are used for the literature review. The first part of our report focuses on the legal and political debates surrounding the emergence of the gig economy in Switzerland. In this endeavour, we gathered data from both literary sources as well as in-person interviews with key actors. The reports produced by the Swiss government agencies seem to give the widest information about this reality in the country. This can be interpreted as a willingness to know about the gig economy and to monitor its emergence. They constitute often a reaction to MP postulates at the Swiss parliament. Some private consulting institutions produced as well public reports that are taken in account in this desk research. Secondly, there are more articles written by legal scholars that stress on the juridical challenges for the labour law. An institutional observatory exists for the accommodation sector and is based in the canton of Wallis. Third, there are the national and local media such as the press and the public broadcast (TV and radio). The articles or posts focus on inquiries about gig workers mostly in the transportation sector. This literature review has been completed with interviews with seven major stakeholders: five policy makers, five academics and five high-rank social

partner representatives (one trade-union, one employer's association, and one tenant's association).

1.2. Case studies

Three case studies make the second part of our report. Based on our desk research, we identified transportation, delivery and cleanings as the most suitable for production and analysis of empirical data. In transportation there has been a fierce struggle in Geneva a year ago between Uber and the traditional taxi drivers. Uber was operating illegally and the debate ended with the promulgation of a law that allowed Uber drivers to work under similar, but much more flexible conditions than traditional taxis. Thus, we interviewed seven drivers, three main partners in the debate surrounding the arrival of Uber in Geneva, two trade-unionists and one representative of a traditional taxi drivers' association, Uber's attorney, and the founder of a local platform that promotes itself as an ethical alternative to Uber. We are currently negotiating an interview with the representative of the Uber drivers themselves. In deliveries, social dialogue is an ongoing process. To better grasp it, we led interviews with six bike couriers, three platform managers and three trade-unionists in parallel with participants' observations as bike courier on four platforms and by following a local trade-union activity in Geneva. We also focused more specifically on a platform based in Bern, where a struggle took place at the firm level and was led by the gig workers themselves while supported by a trade union. In cleanings, we interviewed a manager and four cleaners working for a platform located in the canton of Vaud. The situation seems more complex since the platform provides a basic workers' protection and considers the gig workers as dependent, but without assuming the role of the traditional employer. All three case studies are discussed and analysed in the fifth part of this working paper.

2 The extent of the gig economy

Few people seem to engage in platform-mediated gig work in Switzerland. Nonetheless this topic is greatly debated. Questions around its possible development are not settled yet. The statistics addressing its extent are scarce and suffer from a divergence in the definition of what the gig economy is. Deloitte ordered a survey in order to assess the number of people engaging in the sharing economy.¹ They found that among 1'400 interviewed people, 18% already used online sharing platforms. However, the authors addressed the sharing economy in a broad term, which included platforms of tools sharing, car-pooling and free hosting that we do not consider as gig economy. Another similar survey led at the same time estimated that 10% of the Swiss workforce declared to be employed in the gig economy at least one a week, but only 2.5 to 4% of them are expected to receive their main income from digital platforms (Portmann & Nedi, 2015, p. 95).

In a similar vein, Syndicom, a major Swiss trade union, conducted a survey among a representative sample of 2'000 persons and established that 18.2% found work on platforms "such as Upwork, Uber or Handy".² Whereas Uber and Handy are unquestionably gig economy platforms, Upwork is based on a radically different business model, since its purpose is only to connect businesses and independent professionals, without intervening in the work itself. Finally, Credit Suisse tried to compute the share of GDP that the sharing economy could represent and they found that it constitutes only 0.25 to 1% of the domestic

¹ Deloitte, *L'économie du partage: Partager et gagner de l'argent Quelle position pour la Suisse?*, Zobrist, L., & Grampp, M., 2015.

² Syndicom, *Crowdworking en Suisse*, 2017.

product.³ The industries mainly affected by this phenomenon are trade (retail and wholesale), transportation, accommodation and food services.

Even though we cannot infer any precise number regarding the extent of the gig economy from these findings, it is possible to distinguish the most prominent sectors in the Swiss case. Whereas transportation and housing seem to be the most important sectors employing in Switzerland, very few people seem to be engaged in financial gig economy. To conclude, state reports depict a reassuring view of the situation, emphasizing a high percentage of dependent work (85%) with no sign of decline.⁴ Five sectors have been primarily affected by the emergence of platform management in Switzerland. The extent of the phenomenon will be discussed for each sector in turn.

2.1 Transportation

Uber dominates transportation via online platform and it is by far the most debated issue regarding the gig economy in Switzerland. It raises sensitive questions since this competition directly affects the traditional taxi drivers. Since 2014, Uber operates in the four most populated cities of the country (Zurich, Geneva, Basel and Lausanne). UberPop was the first service offered by the company at first, but it now adjusted to anticipate and adjust to the local legislation. UberPop is now available only in Basel, other cities allowing UberX or UberBlack, requiring professional driving licences. Other local platforms offer similar transportation services, but they are relegated to niche markets such as limousine or electric car services. Around 3'000 drivers are supposedly employed in Switzerland through the Uber platform.⁵ Their working conditions are difficult to assess, because the company is very secretive about it. As depicted by some newspaper articles, some of them seem to suffer of low paid and bad working conditions because of a lack of protection. Journalistic investigations affirm that such drivers earn 21 francs per hour (net income)⁶ or that they have to work until 100 hours a week and are constraint to sleep in their car between work-shifts.⁷ Third party companies seem to be involved by providing drivers to the platforms. Still, those data have not been verified.

2.2 Deliveries

Deliveries via online platform is also gaining importance in Switzerland. The market significantly differs from other European countries in that multinational corporations such as Deliveroo, Foodora, Glovo, or UberEats have been remarkably absent. Uber Eats launched its services in the country in late 2017 only. The market is thus made of multiple local platforms and the competition is fierce. They mainly propose food deliveries, but many are trying to expand their services to groceries and parcel deliveries. No studies allow for statistics for the moment, but due to their high visibility, they are abundantly discussed in the media.⁸ (RTS, 2018).

2.3 Hospitality

The main digital platforms active in the hospitality and accommodation sector is AirBnB followed by its competitor HomeAway. Since 2014, the Walliser Tourism Observatory is in

3 Credit Suisse, The spectacular rise of sharing platforms (2.15; Global Investor), Farronato, C., & Levin, J., 2015.

4 Conseil fédéral, La réglementation dans le secteur de l'hébergement, Berne, 2017.

5 Le Temps, 22.3.2018.

6 Tages-Anzeiger, 21.5.2016.

7 Le Matin Dimanche, 8.4.2018.

8 RTS, Temps présent, 3.1.2018.

charge of monitoring this sector nationally and locally. In Switzerland, AirBnB offers 30% of the whole hotel beds. This means 80'227 beds for 29'595 objects (houses or flats) at the end of June 2017. HomeAway offers instead only 17'409 beds for 7'955 objects in the country (Observatoire Valaisan du Tourisme, 2016, 2017). However, regional inequalities still persists in relation to the local touristic activities. AirBnb offers for instance more than two third of beds in the canton of Wallis (the equivalent of 22'953 beds and 5'150 objects), where winter tourism plays an important role in local economic activities. This platform has some strength as well in some urban cantons like Basel-Stadt (20,3% of objects) followed by Geneva (8,8%) and Zurich (6,5%). Those digital platforms are still growing in the hospitality and accommodation sector. This tends to professionalize the people involved in this market. Indeed, an estimated 22.5% of Airbnb hosts are professionals (renting multiple lodgings).⁹ We can thus suppose that the organization and maintenance of those rental places generate a substantial amount of work. Such platforms as Coucou & Co are trying to engage this market by offering rent management and cleaning services for AirBnB or HomeAway clients.

2.4 Financial sector

As of today, online platforms play a minor role in the Swiss financial sector. They are limited to the role of crowdfunding, which means offering a platform allowing raising money from a crowd of individuals. It is difficult to consider the actors in this sector as taking part in any kind of work and a concluding section below will provide a discussion about the legitimacy of the financial sector in our project.

2.5 Digital work

Digital work does not need to be anchored in a geographically place and can be done wherever in the world just with a computer. The low rate of unemployment (3,2% in February 2018) makes gig jobs less attractive in Switzerland when they are geographically independent (Mattmann et al., 2017). Thus, such platforms as Amazon Mechanical Turk do not exist in Switzerland. The high cost of living plays as a barrier for businesses based on low wages. Nevertheless, a potential development and impact seem to exist in other economic sectors like media and design, IT, and consulting.

2.6 Domestic work

It appeared from our literature review that several stakeholders are increasingly referring to domestic work as a new trend worth studying¹⁰ (Conseil fédéral, 2017c; Syndicom, 2017). Domestic work can related to the care of people in their private household or the household cleaning services. Since 2015, a few platforms have made a remarked appearance and their activity is growing fast. Batmaid and Book a Tiger both are platforms, which act as an intermediate between workers and private individuals for the provision of cleaning services. However, as for bike deliveries, no statistics or data are currently available for such a recent phenomenon.

⁹ Conseil fédéral, Conséquences de la numérisation sur l'emploi et les conditions de travail. Opportunités et risques, Berne, 2017.

¹⁰ Conseil fédéral, Rapport sur les principales conditions-cadre pour l'économie numérique. Berne, 2017 ; Syndicom, op. cit.

3 The features of the debate in Switzerland

3.1 *The juridical debate*

The rise of the gig economy is challenging the traditional employment relation because gig jobs seem to confuse traditional work boundaries and delimitations inherited from the industrial revolution in the nineteenth century. Indeed, if work or performance supplied through digital platforms can be considered as a service, it does not imply working in an office or in a factory owned by the employer. The worker controls at least a part of the way he or she works and the digital platform plays a role of intermediary between the worker and the client. Indeed, the similarities are strong with the “putting-out” system that existed before the rise of capitalism as far as the following characteristics are taken in account: piece basis salary, no promise of re-engagement, triangular relationship, distribution of work and performance by using simple capital equipment (Stanford, 2017). In this context, a debate is taking place between lawyers in order to answer the following questions. Is labour law applicable to gig workers? What if those platforms are based in other countries? How far should social insurances based on the traditional employment relation apply to gig workers?

3.1.1 *Dependent and independent workers*

In order to answer this conundrum, legal scholar intervened in the debate in order to bring evidence on the character of the employment relation for gig workers. Kurt Pärli, from the University of Basel, produced a report ordered by Unia, one of Switzerland’s biggest trade-union. The report had a far-reaching impact on the debate and was widely relayed in the main medias. In this report, (Pärli, 2016a) argues that the main criterion for classifying the labour performance is to consider the subordinate relationship in so far this is the main characteristic that distinguishes a labour contract. In the traditional employment relation, the subordination is personal (a worker has to follow instructions given from his chief), organisational (a worker has to apply the company’s rules) and economical (a worker has an economic dependence from its job). For him, there are evidences of a labour contract for gig workers even if not all those three forms exist in a clear manner. Therefore, a gig worker should be considered as “similar to a worker” (*arbeitnehmerähnlichen Person*) and receive the protection provided by the labour law. This should be the case for Uber where the performance or service has to be done following strict rules given by the platform (Pärli, 2016b).

In an interview Mr Pärli (24.5.2018) argues that the political debate has something strange since because it makes no sense to create new rules while the existing ones are not applied at all. Uber achieved to convince a part of the policy makers that there is a problem with the existing rules, i.e. that those are not applicable and are too much for the gig economy. He added that the distinction between dependent and independent workers is a strong principle and constitutes the foundation of the existing Social Contract because for dependent workers, the employers contribute to finance the social insurances. Moreover, Uber drivers have to follow Swiss laws in relation to commercial transporting.

This point of view has been later contested by Bettina Kahil-Wolff who wrote a notice of right for Uber (Kahil-Wolff, 2017). In an interview (6.6.2018), she explains that the dichotomy between dependent and independent workers as inherited from the industrialization is outdated and should therefore be updated. Even prof. Kurt Pärli, whose legal advice suggests to consider gig workers as dependent, is based the idea that those are “pseudo-workers” – a concept that does not exist in the Swiss law. According to Prof. Kahil-Wolff, the updating of the Swiss labor is a strong issue for our societies because the gig economy has the potential to create new markets and new jobs that will benefit to the whole economy, which is central for financing the social security. The consumers will certainly take

advantage of that. In the transportation sector, the sudden emergence of Uber has reduced prices that were artificially high since the traditional taxis take benefit from their monopolistic position. Moreover, there are not only dispersed people who offer their performance through the platform, but also small Limited Liability Companies (LLC).

We should highlight here that these standpoints do not arise in a social void. Both discourses, even though their conclusions are opposite in many ways, refer to a broader and conflictual social context in which the gig economy is developing. As could be expected, the issue reveals to be not only a strictly legal one, but also always a political one. The aim of the juridical debate is not only to resolve a technical matter, but it embraces more broad political issues such as the reach of worker protection, the extent of the welfare state, or the creation of jobs, etc. It is only with these insights in mind that we can understand the positions of Prof. Pärli's and Prof. Kahil-Wolff.

2.1.2 Portage salarial

More complex is the situation for labour performance in the frame of the so-called “portage salarial” and “employee sharing” (Portmann & Nedi, 2015). The first one is related to the use of a third structure as an employer for managing social security contributions, taxes and administrative procedures on behalf of the worker. This kind of employment relation implies three actors and is more widespread in IT and finance industry. Moreover, it is not clear if the “portage salarial” is a traditional employment relation ruled by labour law. There are reasons in favour (working time is clearly defined in the contract and the work happen in an office or a factory owned by the employer) and against (the worker chooses which kind of job he or she wants and carries the risk of his or her business). The second one can be understood either in a large way (a part-time worker with several contracts or a worker who is engaged in several firms but has stipulated a contract only with one of them) or in a strict way (a worker whose contract implies more that has only one employer), but the Swiss law still does not regulate such kind of situations. If Uber is considered as a “de facto” employer, the Swiss labour law has to apply to its drivers according to the Lugano Convention and the Swiss private international law.

Social benefits and workers’ protection as key issues of the gig economy are stressed by Riemer-Kafka & Studer (2017). They argue that the qualification should not necessarily apply universally but could be applied differently for each case or platform. Thus, an Uber driver could be considered both as employed and self-employed. On the one hand, the platform controls the performance by a rating system and takes the risk associated to the payment. The driver is in this regard dependent from the platform – which can be considered as a private investment in capital – on the logistical and economic point of view. There is as well a ban of competition for the driver, this means that he cannot work at the same time for other platforms. For some drivers the performance delivered through Uber represents their only income. On the other side, three parts are involved in the contract instead of a traditional job. All drivers are free to accept or not to be part of the “drive” or “performance”. They have to use a private car and are free to work whenever they want. This means that Uber can be considered as only an intermediate platform needed for organizing the performance and the way used for the payment.

For Riemer-Kafka & Studer (2017), two options can be hold by policy makers in order to adapt the law and ensure both a social and workers’ protection. First, the repeal of the dual status between “employed” and “self-employed”, for instance by creating of a new status that could be called “autonomous active worker”. This should imply a universal social insurance, but it still raises questions about how to deal with the unemployment insurance, which is currently based on the previous employment relationships. Second, there would be possible to fill actual weaknesses of the law by unifying the existing social insurances and creating a

universal one. The creation of an internet social account could be a way to deal with those possibilities in a technical point of view.

3.2 *The political debate*

In this section, we are going to discuss the debates among policy makers revolving around the gig economy and the institutional responses that already emerged in this regard. A scientific adviser at the Swiss State Secretariat for Economic Affairs (SECO) explained in an interview (22.6.2018) that the gig economy represents both potential opportunities and risks for our societies. On the one hand, it creates new jobs for people that have difficulties to find an employment and allows them to benefit of flexibility. On the other hand, those new jobs could increase the precariousness in the labour market. The Federal Administration still has to address those challenges by adopting a "best way" public policy that avoids the rise of social precariousness, without diminishing the amount of atypical or part-time jobs requested by some workers.

In short, the main challenge for the State is to keep the foundations of the Welfare State by adapting its function to the new realities, but without stopping the digitisation process. The challenges are most important for the unemployment insurance. On one side, it would be impossible to avoid its abusive use in the field of the gig economy. On the other, the social coverage is clearly insufficient for gig workers as far as they are self-employed. This question has been tackled and resolved at the political level. Indeed, a part of the currently self-employed workforce is highly qualified (lawyers, doctors, dentists, etc.) and their will is to stay free to choose themselves their own social coverage without any constraint by the State.

The public administration is working in order to identify different scenarios and be able to suggest different public policies that are able to tackle the gig economy. Its composition is multi-departmental, but the lead is given to the Federal Department of Home Affairs (FDHA), headed by Mr Alain Berset. A workgroup *ad hoc* has been charged to develop following three scenarios. First, the maintain of the status quo. It corresponds to the actual federal policy since no data has yet been produced for monitoring the rise of the gig economy and its impacts on society. The federal administration decided however to introduce a new module in the Swiss Labour Force Survey (SLFS) for the 2019 wave whose aim is to produce data about the gig economy. Second, to give at each gig worker the choice to be considered as a dependent or an independent worker. Third, the creation of a new status for gig workers situated between the dependent and independent ones. It could be an interesting way to find a compromise, but there is no any certainty that it will make easier to protect gig workers.

Swiss MPs are dealing with gig economy issues since 2014. At that time, some of them started to urge the federal government to take action, worried about the social consequences of this emerging reality. Its first position was to maintain the *status quo* as showed in a response of a motion deposited by the Socialist MP Carlo Sommaruga.¹¹ *"On the whole, digital platforms active in Switzerland offer services that are free or chargeable. Their effects are not measurable yet and do not constitute any source of concern. The Swiss government estimates that it is not urgent to start an in-depth analysis or to examine the opportunity to change the law. However, it wants to follow this emergent phenomenon with attention and, if need be, will take the appropriate action."*¹² Nevertheless, the growth of the gig economy,

11 Rapport sur les conséquences et les mesures à prendre face aux plates-formes Internet d'échange de services, particulièrement dans le domaine du logement et du transport. Postulat 14.3658. MP Carlo Sommaruga. Swiss Parliament.

12 Original quotation : « Dans l'ensemble, les plates-formes Internet proposant en Suisse des services gratuits ou payants ont des effets qui restent pour l'heure mesurables et ne constituent guère une source d'inquiétude. Le Conseil fédéral estime donc qu'il n'est pas urgent de procéder à une analyse détaillée ni d'examiner l'opportunité

the public debate on this issue and the pressure of MP's and social partners led the Swiss government to review its initial position.

3.2.1 Transportation

The Swiss government accepted a motion posed by MP Philippe Nantermod in 2016, which asks to apply the Road Traffic Law and the compulsory rules for professional drivers to any taxi service, whether it is traditional or through an online platform.¹³ There is an important distinction between dependent and independent professional driver as the government argues in its response to the postulate of Regula Rytz in 2016.¹⁴ A dependent driver has to follow rules that establish maximal duration of work and duration of drive, whereas an independent driver follows only rules related to maximal duration of drive. The Ordinance n° 2, art. 3, of the Road Traffic Law defines "professional courses" those which happen at least 2 times in an interval of 16 days.

Still, only the cantons are responsible for legislation that regulate taxis' activities. The police are in charge of controls and not the local labour inspectorate. A professional driver has to ask a permission: at the federal level if his or her car has more than 9 places, at the local level if his or her car has less than 9 places; as the government explains to MP Lorenz Hess.¹⁵ In 2017, the tripartite commission of some cantons decided to put the taxis' labour market sector under observation, as the government explains in its answer to the postulate of MP Silvia Schenker.¹⁶ This allows cantons to introduce specific measures for regulating the labour market that are possible to introduce in case of social dumping. The Swiss government is also going to review the Road Traffic Law in order to take into account new challenges posed by digital platforms like Uber in response to a motion posed by MP Fathi Derder.¹⁷ This means in particular an update of the Ordinance n° 2 (ORT2) related to the use of a tachograph.

3.2.2 The case of transportation in Geneva

In Switzerland, the federal system dedicates much of the legislation to the cantons. For the sake of illustration, we chose Geneva as a useful case study for analysing a policy response to the growing importance of Uber. In 2014, Uber announced its arrival in Geneva. At this time, taxi drivers were not concerned and thought that the market was already saturated. After a few months of activity, resentment started growing and the taxi drivers' organization filed court cases against the company. They denounced the non-compliance to the professional law regulating the work of taxi drivers, such as the requirement to obtain a professional license, subject to a quota. Unwilling to impede in the development of a new disruptive company, the State planned to make a new piece of legislation that would include new rights for transportation platforms. Between the arrival of Uber in September 2014 and the adoption of the new law in October 2016, taxi drivers, Uber and the State engaged in a fierce controversy over the content of the law and over the right of Uber drivers to exercise before reaching any agreement.

de prendre des mesures sur le plan légal. Il suivra toutefois l'évolution de ce phénomène avec attention et, le cas échéant, prendra les mesures qui s'imposent. »

13 Taxis, VTC et Uber. Pour une concurrence plus loyale. Motion 16.3066. MP Philippe Nantermod. Swiss Parliament.

14 Le Conseil fédéral juge-t-il nécessaire de réglementer les services de transport d'Uber? Interpellation 16.3209. MP Regula Rytz. Swiss Parliament.

15 Taxis et voitures de tourisme avec chauffeur et covoiturage payant. Un combat à armes égales? Interpellation 14.3939. MP. Lorenz Hess. Swiss Parliament.

16 Uber. N'est-il pas temps de passer à l'action? Interpellation 17.3469. MP Silvia Schenker. Swiss Parliament.

17 Adapter la loi sur la circulation routière aux nouvelles offres. Motion 16.3068. MP Derder Fathi. Swiss Parliament. <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20163068>

The State of Geneva was explicitly seeking to accommodate the law to allow Uber to exercise. In the meantime, the State showed himself to be reluctant to implement the current law and ban the activity of Uber drivers. Taxi drivers lobbied for putting Uber drivers to the same requirements as taxi drivers, e.g. professional licenses and worktime regulations. Moreover, they denounced Uber for not paying taxes locally and engaging in wage dumping in order to squeeze taxis out of the market. They also strongly denounced the State for not implementing the law and allowing Uber drivers to continue exercising their activity even though the legislation was in negotiation. On their side, Uber representatives were concerned about having a law that could apply to the whole country in order to allow unregulated drivers from neighbouring cantons to exercise in Geneva. Communication was crucial in the negotiation of this law. Taxi drivers engaged in multiple “go slow” strikes and demonstrations. Some clashes even erupted among taxi and Uber drivers, leading to several injuries. On its side, Uber mobilized its large mass of followers on social media to gather 14’500 signatures in favor of its establishment among citizens.

In the end, the new taxi law included digital platforms. It sets a quota for official taxis but no restrictions for platform drivers, which was welcome by all parties. It also requires platform drivers to pass an examination in order to obtain a professional license. This last provision does not please Uber drivers, since it is an exam that is given by an organization of taxi drivers. The main point of controversy of this law resides in its implementation. Given that the aforementioned exam is required in Geneva, but not in its neighbouring Canton, Vaud, a lot of companies set themselves there and rent cars registered in Vaud, thus going over the Genevan regulation. Taxi drivers strongly denounce the State for not providing enough means for catching these illegal drivers. In December 2017, Uber drivers themselves went on strike in Geneva for the first time in Switzerland. With the support of a national union, they denounced intermediary companies, engaging them as employees but paying unacceptably low salaries and not paying their due social contributions.

3.2.2 Hospitality

The main topic on the centre of the debate concerning digital platforms in hospitality/accommodation is linked to the principle of price equality mentioned in the antitrust law. This means that hotels cannot offer different prices for a same product, for instance when they offer a room on both booking.com and their own website. However, the Swiss government argues, in its response to a motion deposited in 2016 by MP Pirmin Bischof¹⁸, that the price equality norm has to be interpreted in two sorts according to the Swiss Federal Competition Commission (COMCO). First, in a large sense, this means that hotels can never offer different prices between digital platforms like booking.com and its own website. Second, in a stricter sense, this means that hotels are able to contract different prices between digital platforms. This principle matters especially because it has consequences on their ability to be competitive in a market where digital platforms are becoming ubiquitous.

Another issue is related to the civil courts and laws that has to apply for digital platforms that are based in other countries. In a response to the interpellation of MP Carlo Sommaruga the Swiss government declares that in case of a dispute between a host and Airbnb, the purpose of the rent is determinant for the place of jurisdiction. According to the Convention of Lugano, the place of jurisdiction has to be Switzerland in case of a non-commercial rent and Netherlands (where Airbnb is legally located) in case of a commercial rent. Finally, in a

¹⁸ Interdire les contrats léonins des plates-formes de réservation en ligne dont l’hôtellerie fait les frais. Motion 16.3902. MP Pirmin Bischof. Swiss Parliament. Bischof, P.

response to a motion of MP Dominique de Buman¹⁹, the government reminds that local Councils and Cantons are sovereign for collecting taxes related to tourism. Thus, it is against a central collection of those taxes at the national level because it would be too complex and costly.

The Swiss government published a report whose goal was to examine if an update of the Federal Tenancy Law is needed following the rise of digital platforms in subletting practices on the hospitality/accommodation market.²⁰ Among the topics tackled by this report are the contractual relations between digital platforms, hosts and tenants, the rise of hosting taxes and the deal with possible disputes between neighbours. The rise of digital platforms has not created new accommodation forms, but tends to change the functioning of the market by increasing the transactions between private individuals. Those are becoming competitive in the accommodation market because they can fix prices, but without being under pressure for use the maximum of the accommodation capacity. In this perspective, the report does not deal with any possible impact of digital platform on house shortages, rent increasing and hosting workers.

The main statement of this report is that the Federal Tenancy Law is still appropriate for regulating digital platforms in the accommodation market. The report suggests that some updates are needed, but only in relation with subletting practices. This point of view is not shared by the actors involved in the market. On one side, lessors from the German and the Italian part of Switzerland do not want any further regulation. On the other one, lessors from the French part of Switzerland and the Association Habitat Durable Suisse are in favour to regulate the competition by introducing a "typical contract" for rental leases.

Nevertheless, the report suggests that the collaboration between the state and digital platforms should be enhanced in the three following ways: platforms should better communicate law disposals and constraints to the hosts, forward personal and financial (fiscal) data to the state, collect tourist tax and transfer the money to the state. Those measures need an update of the Federal Tendency Law because the legal obligations currently have to be followed not by the platforms, but by the hosts and their clients. Finally, the Swiss government is going to institute a permanent workshop / coordination at the federal level in which to discuss and debate matters related to digital platforms in the accommodation market.

According to Carlo Sommaruga, director of the French-speaking section of the Swiss Tenants Association, the current law is sufficient to prevent a worrying commercialisation of accommodation dedicated to local housing. The state just does not have sufficient means to enforce it. Faced with diffuse and hidden short-term rents, inspection is difficult or impossible. One solution he endorses would be to compel platforms to disclose relevant data to state authorities. In this way, short-term rents could be reduced to their legal maximum of two weeks per year and tourist taxes per night could be levied. This way of intervening in the market clearly breaks with the current way of proceeding, since it would require practices that are more intrusive into the platforms' business.

3.3 Social partners' positions

Social dialogue is quite tense in Switzerland with regard to the gig economy. On the one hand, trade unions are vigorously opposing the development of self-employed work and are demanding at the state not to dismantle the protections associated to the employment status.

19 Economie collaborative. Réduire la bureaucratie par un mode d'imputation national simplifié des taxes de séjour qui n'ont pu être perçues jusqu'à présent. Motion 16.3685. MP Dominique De Buman. Swiss Parliament.

20 La réglementation dans le secteur de l'hébergement, Conseil fédéral, Berne, 2017.

On the other hand, multinational platforms such as Uber and Airbnb are silent and do not take part in traditional employers' organisations. Their main weapon seems to be a de facto establishment.

3.3.1 Employers

As mentioned above, employers in the Swiss gig economy are quite silent. The only way to discern their intentions is through scarce interviews they give in newspapers. In their narratives, they often seek to legitimize their practices against regular accusations of illegality, promoting the benefits of the sharing economy for consumers and the inevitable reluctance of accepting disruptive business models.²¹ As of today, most of them are not part of any employer's organization.

3.3.2 Trade-Unions

Trade union were quick to denounce the working conditions of the gig economy. Multiple reports have been published, each illustrating different positions among workers' organizations. Travail.Suisse and UNIA denounce for example the Swiss government, arguing that it does not address the issues of stressfulness or that it takes the "sharing economy" as an opportunity to further policies of deregulation.²² Being federations of several workers' associations, they addressed the topic very broadly. More circumscribed associations have developed targeted arguments against the current situation in the different sectors.

3.3.3 Professional organisations

Many traditional taxi drivers are organized since 2014 in order to defend the regulation in their sector. According to them, Uber represents a case of social dumping threatening their status if the state were to consider them as legitimate to exercise without apply the rules. Many groups were created to specifically address this issue and multiple actions were led across the country including strikes and "go slow" protests. Their position is often that competition is welcome as long as it is subject to the same regulation as traditional taxis, which implies a professional licence, an employment status (if it applies) and paying taxes in Switzerland.²³ Uber drivers themselves have recently organized with the help of UNIA, one of Switzerland's largest trade union. For the first time in December 2017, Uber drivers went on strike in Geneva. They claim better working conditions and the regularization of their status regarding welfare benefits.²⁴ (UNIA, 2018).

3.3.4. Other associations

The Swiss Tenants Association (ASLOCA) is taking the rise of Airbnb and similar platforms very seriously. First, they fear that Airbnb could provoke a rise in rents in the city centres by allocating too much housing to short-term renting. Second, they mention also that a professional use of such platforms often does not comply with urban planning laws. Finally, an unreported professional renting puts the risk of creating a shortage of housing in some cities. However, they deem existing tenants' law to be sufficient to regulate the market. The one serious flaw in the current situation is the lack of means in order to apply the law. One

21 See as examples : Tribune de Genève, 07.03.2016; Le Temps, 06.03.2017

22 Travail.Suisse, Le Conseil fédéral embellit les effets de la digitalisation, 2017 ; UNIA. La numérisation du travail. Thèses syndicales pour un débat de société. 2017

23 Tribune de Genève, 3.10.2016

24 UNIA, Conflit Uber à Genève: La médiation n'a pas réglé le problème, 2.8.2018 (press release).

solution that is put in place by the organisation could be to force the platforms to report the rentals to the state in order to identifying any professional use of online renting.

4 The research of a new social compromise

4.1 Social dialogue between gig workers and digital platforms

The fact that gig workers are no longer concentrated in factories or offices, but geographically dispersed does not facilitate a social dialogue between gig workers and digital platforms. For two representatives of the Chamber for the Collective Employment Relations in Geneva²⁵ that we interviewed (4.6.2018), this is particularly obvious in the logistic sector. This situation weakens the bargaining power for gig workers and creates the need of an "e-Trade-Union", i.e. a trade-union that is mainly active on the internet. In Geneva, the gig economy led to multiple kinds of mobilizations those last years, mainly in the transportation sector (taxi vs. Uber), but also in the accommodation one (tenants vs. Airbnb). Those are not based mainly on industrial actions such as strikes or lockout, but they take place on courts judgments at the industrial tribunal.

The new digital platforms like Uber and Airbnb are not completely outlawed, but it seems that they are trying to bypass the rules at their own advantage. The last example related to Uber is the hiring of drivers by third parties. The issues are different in the accommodation sector, where it is not clear if there are any gig workers. The impacts of digital platforms are more related to the rise of rents in cities affected by a shortage of housing. An unanswered question is how to provide the State with the tools it needs for control the application of the law. Since the digital platforms are active online, an online intervention should be introduced, such as it is planned by the Gambling Act accepted by Swiss voters the 10th of June, 2018. Who should be in charge and the means of operation is an open issue. Indeed, the control of transportation and accommodation sectors is not a competence of the labour inspectorate, but of the police in charge of trade surveillance.

With regard to social dialogue, a slow change is taking place and is illustrated by two phenomena. First, the appeal of the Chamber for the Collective Employment Relations (CRCT) in Geneva changed its purpose during the last 7 years. In the past, the Trade-Unions requested often a mediation of the chamber for an improvement for the working conditions. Now, it appears that several multinational companies try to worsening the working conditions. Second, an intervention of the chamber tends to be requested very quickly compared to a few years ago. Indeed, the free labour market agreements I + II between Switzerland and the European Union, that are in force since 2002 (EU-15) and 2008 (EU-25), have been introduced by promoting the social dialogue. This has taken place around a three-party system in which the State, the employers and the Trade-Union are used to sit around a table to negotiate the regulation of the labour market.

4.2 Collective labour agreements in the gig economy

Among the sectors of the gig economy, bike deliveries appear as the most advanced in relation to the social dialogue, in so far it is the first one regulated by a collective labour agreement. As a head of the Syndicom Trade-Union explains (28.8.2018), the market for bike deliveries exists since a long time. It was small but stable, without any conflict between employers and couriers. The Federal Swiss Mail Act regulates both working conditions and wages for parcels deliveries since the liberalization of the mail market. Then, a few years

25 Chambre des relations collectives de travail (CRCT). Among its missions there are to rule as an industrial tribunal and to promote collective labour agreements in the canton of Geneva.

ago, the implementation of digital platforms created a disruption due to their high competitiveness on prices. This is the case in particular for couriers that deliver meals for restaurants.

The Syndicom Trade-Union has been engaged for five years in negotiations for reaching a collective labour agreement with the employer association SwissMessengerLogistics. Its aim was to regulate the market for bike delivers at the national level. An agreement was found at the end of 2018 and is based on following disposals:

- A minimum wage which has to increase until 2021 and to be applied differently according to the region of the country. A distinction is done between parcel and meal delivers. The formers are going to earn more than the latter.
- A duration of working time fixed to 42 ½ hours per week, four weeks holiday per year and the right to rake days off in case of particular situations.
- A financial compensation for overtime and the use of a bike, a scooter or a car.
- The organisation of work schedule at least two weeks in advance.
- The opinions are not unanimous among bike couriers on this new collective labour agreement. Indeed, it provides a minimum wage that is lower compared to those already existing in certain regions of the country. This is the case of the canton of Geneva where the bike delivers are organized by another Trade-Union (UNIA), which were able to negotiate better salaries at the local level. Moreover, some bike couriers claim that the minimum wage negotiated by Syndicom is not enough for being able to live decently in Geneva. At the same time, the implementation of a collective labour agreement at the national level should improve following aspects:
 - The revenue for 20% of the poorest couriers in the country is expected to increase until the year 2021.
 - The putting-out or piecework system will disappear by the generalization of an hourly wage.
 - The bike couriers will be considered as dependent workers and this recognition could benefit for gig workers that claim such status.

4.3 The judgements of Civil Courts and government agencies

The jurisprudence has an important role for the emerging gig economy. Until the laws are not updated, the actors challenge the current legislation by submitting new cases to the Civil Courts. Thus, the jurisprudence opens some ways in which the politics could deal with those new realities and contributes to the public debate. The main issues are the same as those in the juridical debate. They include the employment relationship between a digital platform and a gig worker and the social protection for the last one. Not only civil courts, but some government agencies play a role in law cases, because AHV's state pension fund and the SUVA state accident insurance are entitled to decide if the worker is dependent or independent according to his or her economic activity and the employment relation. Only in case of disagreement the justice has to decide from Local and Cantonal Civil Courts to the Federal Court, as the government explains in its response to an interpellation of MP Seiler Graf Priska in 2016.²⁶

The first sign has been given by the AHV and the SUVA when they decided to consider Uber drivers as dependent workers. This means that Uber has to be considered as an employer, follow its duties according to the labour law, contribute for the workers' rent, and guarantee

²⁶ Le réseau Uber est-il un employeur? Interpellation 16.3371. MP Seiler Graf Priska. Swiss Parliament.

protection against workers' professional injuries.²⁷ Afterwards, the Federal Court gave an important decision in 2017 when it decided that "444" traditional taxi's drivers (e.g. drivers whose work is organised by a call center called 444) have to pay social benefits and cannot to be considered self-employed.²⁸ The judgement will apply for 1500-2000 taxi workers, a number which includes the traditional taxi companies similar to the 444 one. However, this does not mean that it will apply automatically to new business models such as Uber. The CEO of a company similar to "444" said in an interview that the traditional business model is quite different from Uber in so far as the cash turnover is considered as a whole and it is not calculated for each driver. The "444" employer reacted negatively because it fears that the decision will undermine the taxi company's profitability and its ability to stay competitive since the prices felt down with the entry of Uber in the market.²⁹

More recently, the Swiss State Secretariat for Economic Affairs (SECO) wrote in a letter that has been sent to the social partners in a conflict pending in Geneva between Uber and about thirty drivers organized in the UNIA Trade-Union that the drivers have to be considered as employees.³⁰ The SECO suggests that the collective agreements for service providers negotiated between Swisstaffing and Unia should apply to them. However, this letter is not an official statement of the Federal State or the Swiss government; and therefore has not been communicated to the press.

4.4 A new status for dealing with the social protection of "gig workers"?

The gig economy challenges the standard employment relationship (SER) that rose up after World War II because of the precariousness that is often associated to the so-called gig jobs. Working through digital platforms means that the regularity of wages and the duration of working time are not guaranteed. Gig workers can be highly exposed to the fluctuation of the demand, but this exposure depends of the worker's qualification and the dependency of a geographical place (Portmann & Nedi, 2015). Moreover, it is impossible for factory inspectors to control the implementation of labour laws and social policies. In this perspective, Stanford (2017) suggests that *"both the rise of the SER as a benchmark for post-war employment relationships, and its subsequent erosion under neoliberalism, reflect the bigger shifts in the broad political-economic balance of power within the industrialised economies."* The risk to fall in a precariousness trap is undermined by the fact that according to a ILO study cited by Mattmann & al. (2017), unemployment is the main reason people start working in the gig economy (57% of respondents). Other incentives such as flexibility, interest in gig jobs, socialisation, creation of a network, and acquisition of new skills play only a secondary role.

According to what MP Philippe Nantermod told in an interview (31.5.2018), his proposal seeks to address swiss social policies – from workers protection to the social insurances – which he deems too complex, old, and fragmented. Moreover, the labour law should be updated and, in this regard, this new status for gig workers could echoes the proposals of MP Karin Keller-Sutter³¹ and of MP Konrad Graber³² to loosen the requirement to register working time for dependent workers. The first one suggests to no longer ask executives and

27 SRF, Rundschau, Grosser Druck auf Uber – Suva und AHV bitten Fahrdienst zur Kasse, 4.5.2016.

28 Neue Zürcher Zeitung, 22.11.2017

29 SRF, 10 vor 10, Bundesgericht pflügt die Schweizer Taxi-Branche um, 20.11.2017.

30 L'événement syndical, 28.3.2018.

31 Libérer le personnel dirigeant et les spécialistes de l'obligation de saisie du temps de travail. Motion 16.423. MP Keller Sutter. Swiss Parliament. 2016.

32 Introduire un régime de flexibilité partielle dans la loi sur le travail et maintenir des modèles de temps de travail éprouvés. Motion 16.414. MP Konrad Graber. Swiss Parliament. 2016.

to record their working time. The second one would allow workers of whole economic sectors to escape this requirement. Indeed, a deep societal evolution is happening that makes the labour law completely anachronistic, at least for workers employed in the services sector. The rise of the gig economy is part of this disruption. Today, service workers are usually able to organize the work themselves and they don't need any specific protection aimed at health preservation. However, this is not the case for workers engaged in the manufacturing sector or for the cashiers in retail.

In this respect, for MP Philippe Nantermod trade unions seem far away from those realities in that they defend only the workers that are affiliated to them and pay membership fees. They should accept that the rules of the labour law inherited from the Industrial Revolution are no longer up to date in the gig economy. He deposited in 2017 a motion³³ asking the government to study creation of a new status for them that tackles this challenge and takes into account the interests of the platforms, the gig workers and the costumers. This is why the new status for gig workers is presented as a compromise. On the one hand, it means that gig workers should have fewer social protections than the traditional ones, but still minimal and appropriate in order to avoid precariousness and poverty. On the other, it permits to avoid imposing the traditional employee status, in which the workers are supposed to renounce at the advantages given by the flexibility, while the companies have to deal with a lack of competitiveness and financial losses. Nevertheless, the political debate around this proposal shows how deep the polarization is in the political spectrum.³⁴ Moreover, the press undermines that a contradiction exists between jurisprudence, which tends to consider that the drivers have to be considered as employees, and the wish of the government to create a new but lower status for gig workers.

5 How can social dialogue contribute to the enhancement of gig workers' social protection?

Three case studies in Switzerland

This section illustrates the empirical finding with three case studies. The first one is related to the transportation sector in the canton of Geneva where the local council decided to change the law under the pressure of traditional taxis. The second one focuses on a collective action of bike couriers inside a platform. Through an unconventional mobilization, in which the platform has been bought by a state-owned company and the trade-union staid on the backstage, the bike couriers were able to negotiate an agreement that improves wages and working conditions. The third case questions instead the absence of social dialogue in spite of the workers' grievances in a platform for cleaning services. All those experiences show that the gig economy creates new spaces for social dialogue beyond the established frame inherited of the Swiss post-war industrial relations system. However, the case studies show that the involvement of traditional social partners appears difficult, while new multi-level actors such as professional organizations and policy makers want to negotiate the challenges posed by the gig economy. The final outcomes of bargaining (or its absence) depends of the ability of gig workers' and other social groups to mobilize themselves and express their voices in collective actions.

³³ Société numérique. Etudier la création d'un nouveau statut de travailleur. Postulat 17.4087. MP Philippe Nantermod. Swiss parliament.

³⁴ RTS, Forum, Quel statut pour les travailleurs des plateformes en ligne? Débat entre Philippe Nantermod et Matthias Reynard, 25.2.2018.

5.1 Transportation

The transportation services have been one of the first and most emblematic sector to see the development of platforms (Rosenblat, 2018). Because the well-established taxi drivers quickly considered it as competition, the issue quickly became a matter of concern in several European and North American cities. One platform, Uber, has been at the forefront of this phenomenon in Europe, and Switzerland is no exception. Since its arrival in 2014, the company has been at the origin of numerous debates that the media often depicted as crystallized around a “liberal vs protectionist” stance. In this section, we will focus on the canton of Geneva, whose government has been among the first to take action in this regard.

The transportation sector in Geneva before 2014 was composed of taxis and limousine drivers subjected to a common law, the Taxi Law, that establishes who has a right to engage in the business and under which conditions. A quota restricted the number of taxi drivers operating at about 1’300. Most of them were employed by taxi operators and some were independent, but all of them were required to pass a thorough procedure in order to gain access to a professional driver’s license. In order to obtain this license, drivers had to pass an exam that required a thorough knowledge of the city with a success rate of only 50%. This license granted them the right to use taxi lanes to conduct their business, but also duties such as installing a tachometer on their vehicle, a device that keeps track of their speed and activity and that serves to monitor their compliance to safety legislation that requires them observe maximum working shifts and rest every few hours. No official union existed at that time and the sector was not subjected to any collective agreement, but the competition among the profession was regulated by several disposal of the law. A typical consequence of the platforms arrival is to bypass the existing rules and render the regulations ineffective (Lejeune, 2018).

In spring 2014, Uber launched its service UberPop in Geneva, with prices about 25% cheaper than regular taxi rides. The first concern among the established taxi drivers revolved around unfair competition, but the overall sentiment was rather confident. Directors of taxi operators in the canton considered that the market was already well furnished and Uber would not be able to find a significant share of the market³⁵. The director of the main taxi operator also claimed that “We do not fear Uber, it will not work here,” adding that the mobile app that taxi drivers use is “clearly more sophisticated and efficient”³⁶. A few months would nevertheless suffice to bring a significant concern among the traditional sector. In September 2014, the professional drivers would take matters into hand and ask the local government to take action against the platform under the claim that its drivers operate out of the Taxi Law. It is thus an issue of unfair competition that will initiate a years-long struggle among traditional drivers, the government, and Uber lawyers to clarify the place of online ride-hailing services.

Following a complaint from taxi operators, the local department of economy stated that Uber drivers were operating illegally and were not authorized to operate in the canton. Indeed, in order to operate, Uber drivers would have to hold a professional drivers’ license just like the traditional drivers, and the department announced that it would break down the activity by asking for more controls on the streets. The platform itself was considered a regular taxi operator and would also have to ask for an appropriate license in order to continue its operations. The regional Uber manager denied this qualification, claiming it was “not a taxi operator, nor a limousine company, we merely match professional drivers with clients”³⁷. Uber refused to ask for such a status and continued its operations nonetheless, and the service

35 Tribune de Genève, 14.5.2014.

36 Idem, 5.9.2014.

37 Id.

gained hundreds of clients week after week. After facing growing discontent from the taxi drivers, the government decided it would draft a new legislation that would allow ride-hailing platforms to operate along the traditional drivers. It then inevitably ensued a long period of negotiation and political pressures that would lead to the “Lex Uber”. Three actors can be identified that contributed to shaping the law that would entrench the platform economy in this sector: the taxi drivers, the platform, and the government. Each one had a role in drafting this piece of legislation.

The taxi drivers are the leaders of the movement in the sense that they initiated the legal battle. However, they were only swiftly consulted in the process of building the piece of legislation. They were nonetheless in the minds of every legislators in the sense that ride-hailing platforms were always considered as similar to taxi operators and the law was designed with the objective of reconciling both actors of one same industry. In defending their jobs, taxi drivers acted with a twofold strategy. First, they wanted Uber to suspend its activity while its legitimacy was negotiated. Second, they wanted to participate to the negotiations in drafting the legislation. But the balance of power was not in their favor overall the struggle. The government did not stop Uber from operating, while the platform was doing this illegally. There never was a widespread repression of the activity even during the drafting of the legislation since state controls were difficult to put in practice. The Uber app was still available for people to use since the existing legal tools did not allow to compel the platform to withdraw.

Taxi operators came with several solutions, such as asking phone operators to stop providing GPS coordinates of Uber drivers, but this proved technically difficult. Their anger was thus directed towards the government, accused of being too permissive. In march 2015, more than 600 taxi drivers organized and took legal action against the government. They had three claims: stopping the Uber app to operate and punish any Uber drivers caught on the job by seizing their license. The government then reiterated its claim that Uber was operating out of the law, but it refused taking direct action such as seizing its computer, arguing that such a response would be disproportionate. The platform thus continued enrolling drivers and gaining clients during the whole time that the law was discussed. In response to this, taxi drivers organized numerous demonstrations in order to gain more visibility during the spring and summer 2015 by involving up to 200 taxi drivers. Overall, by trying to defend their jobs, even though they did not have the voice they sought in the political sphere, taxi drivers considerably contributed to framing the debate as a clash between a technological platform and a traditional sector defending their social rights.

The platform is the second involved actor in the issue. Uber’s strategy in Geneva is one that has been observed in many other cities in the world. As Alex Rosenblat (2018) observes, Uber gains access to its markets by operating out of the current legislation, appealing the rulings against its business model, waiting for a more lenient legislation to come into effect, and continuing its operations in the meantime, forcing its way by appealing to a growing body of clients. Soon after its arrival, Uber was operating illegally and saw the authorities stopping its drivers and asking fines to the ones that were working without proper professional license. One of its first moves was then to upgrade its services from UberPop, hiring private individuals, to UberX, and require that its drivers hold a professional driver’s license. This allowed them to partly comply with the law which would levy the burden on the drivers, but left many unaddressed, the most evident being the illegality of the platform itself. The company also led a massive PR campaign, with billboards across the city, multiple interviews in the major media outlets. It gained clients fast and once the situation was critical, it launched an online petition asking its clients to support the service. In April 2015, at the epitome of the tension between taxi drivers and Uber, the platform sent an e-mail to all its

customers asking them to show their support by endorsing a petition “supporting progress and mobility”.

The local government is the third actor. At that time, its department of Economy was led by a liberal government. From the beginning, its decisions were interpreted as favourable towards Uber. The taxi drivers even took legal action at the federal level to denounce the inaction of the cantonal administration for being “complicit and permissive”. On August 2015, the legislation was submitted to the parliament and on October 2016 it was approved with minor revisions. From July 2017, ride-hailing platforms would be legitimate ride providers. Its drivers would have to hold a professional license and the examination required to obtain it was revised and made much easier to pass.

The fourth actor, the Uber’s drivers, were the major absents from the debates surrounding the platform’s implementation in Geneva. One simple reason is that the platform was just starting its operations when the legal procedure was launched and its drivers were then few and illegitimate. It is only after the law passed that they could envision organizing. From this moment, the platform faced a second round of criticism, this time from its own drivers with concerns regarding their working conditions. The platform business model is notorious for impeding on the ability of workers to meet each other. It is important to keep in mind that the anti-union practices do not facilitate the expression of a gig workers’ collective voice while building a sense of community in the gig economy is a difficult task due to a specific organization of work and thus requires special skills.

The first contact with a colleague always comes on the streets, where they meet physically. After these first contacts, drivers continue exchanging on the numerous instant messaging group chats they open. On these chats, they discuss mainly about day-to-day issues such as traffic jams or radars, but they also seek help understanding the app or sharing their concerns about the working conditions. It is by sharing their insights and experiences that they manage to better comprehend the functioning of the app and the black box that are algorithms such as the dynamic pricing or the customer ratings. By exchanging screenshots of their rides along with their prices and ratings, drivers are able to somewhat reverse-engineer the pricing or matching algorithms and build beliefs about the functioning of the app. Shared concerns thus emerge from these discussions.

Three topics emerge as of particular concern for Uber’s drivers: the matching, the dynamic pricing, and the customer ratings. The matching of rides and drivers is supposedly based on the distance from the customer. This is what drivers are told when they attend the information session before taking the wheel. However, drivers noticed by talking to their colleagues that rides were actually based on very different criteria that are difficult – if not impossible – to determine by themselves. Some drivers thus managed to make tests with their colleagues in order to better understand the algorithm.

The managers say that the order is given to the driver closest to the client, but this is bullshit. I can prove it. I did some tests with two colleagues, one that plays the role of the client and the other one that plays a competitor driver that says 5 km away. They can say whatever they want. The driver that was further away got the order.

A possible explanation is that less rides are sent to the drivers for putting them under financial pressure. This supposedly secures their loyalty to the platform. The fact that the vehicle is used in the frame of a leasing contract can also play a role in the dispatching. Those kinds of discriminations are impossible to prove and further investigate, but they show at least the opacity inside the platform. Another matter of concern is the pricing mechanism. The price of a ride is not only fixed by the platform, it is also fluctuating during a given day, and depends on criteria that are not disclosed by the platform. Again, this fuels skeptical discourses around the underlying mechanisms.

My experience shows that price fixation is not linked to supply and demand. I knew situations where no any price increase happened while the app was ringing nonstop on the phone. Sometimes I was in a neighborhood without any demand but the prices were much higher. If the principle of supply and demand were applied, the prices would have been different in those situations.

One major action of the now emerging Uber drivers' associations is to negotiate prices minimum prices in order to avoid unilaterally revising the pricing scheme downward. Another issue is related to the customer rating. This is the last instance of algorithmic management raised by dissatisfied drivers. Ratings can have wide ranging consequences for drivers since they determine their eligibility to the platform services. For example, only drivers with a rating superior to 4.75 are eligible for UberBlack, the limousine service, and if their rating falls under this threshold, they cannot receive rides anymore, even though they might have invested in a limousine car in the meanwhile. This mechanism thus gives a great importance to the customer ratings, which is very controversial among drivers. In addition to the illegitimacy, drivers complain that their services are not consistently rated since there exist a diversity of practices from customers.

The platform never explained how use the rating system. Some clients tell me that they want to give me three stars because they are satisfied. What the fuck they want to give me only three stars if they are satisfied. If they do so my ratings will dramatically fall.

5.2 Deliveries

The creation of *notime* has to be analysed in the frame of this peculiar Swiss context. Since its creation in 2014, it offers delivery services to businesses, typically restaurants or parcel-delivery companies. The company is offering delivery services to businesses but has no platform itself. The involved restaurants typically rely on a website that aggregates the possible deliveries in the region. It started in Zurich before expanding to eight main cities in Switzerland and it now employs hundreds of couriers. Its workforce is composed of mostly young male students. It manages its workforce using the now usual devices of algorithmic management: customer ratings, online shift-picking, financial incentives, and automated dispatching. It makes no use of dynamic pricing, as the technology is still too costly to be implemented. In 2017, a struggle erupted among workers and managers of *notime* that lasted for over six months.

notime did not distinguish itself from any other conventional platform before the mobilization. It hired independent couriers on a piecework basis. Therefore, each bike courier did not benefit any of the social protection that comes with an employment status such as a pension fund, casualty, or unemployment insurance. Notably, he had to pay a Value Added Tax (VAT) duty to the state instead of paying social contributions. At the same time, couriers had to follow strict rules related to time schedules, dressing code, handling of the goods, or behaviors toward the clients. Several couriers started having concerns a few months after being hired as one of them explained:

The first three months we appreciated the flexibility without having any concern related to the social protection. Then each courier woke up and told himself: "Shit! Something is going wrong. I am not insured against the risk of accident". What does happen if I break a leg? Probably, I will have to pay for the health care and stay at home without any compensation. [...] The insurance against the risk of accident was the main concern for each worker because delivering is a dangerous job. [Interview 20181106]

Curiously, the grievances did not lead to any action while the bikers worked as independent workers. The mobilization only started at the beginning of the year 2017, when the managers decided that the bike couriers would benefit of the status of dependent workers. At that time,

the managers wanted to “regularize” or “legalize” its business model to avoid any potential trouble. This was a key issue since they were negotiating the takeover of the platform by the Swiss postal services. In a time where the Civil Courts have to decide about the legality of *Uber* hiring independent workers, *notime* worried about not having enough financial resources for battling in juridical fights.

At its beginning, the mobilization started just around informal meetings among bike couriers angry about the new working schedules that the managers wanted to impose with the new labor contracts. Indeed, a regularized employment relation in exchange of more working time flexibility was perceived as an unfair deal. As a wide dissatisfaction grew among the bike couriers, they started to have a meeting once a month with the trade-union. At that time, nobody knew each other very well, nor did they know how many people worked for the platforms. Another bike courier estimated at 30 the number of people that worked actively for the platform in his town. Those meetings allowed a first step to the building of the mobilization by creating a working team. The creation of two Whatsapp groups permitted to enlarge the mobilizations before the bargaining process. In one group, the supervisors were included, while in the second group only the couriers were permitted. This process allowed the gig workers to communicate undercover in the second discussion group.

All those meetings allowed to exchange on the main concerns of the bike couriers: being employed as dependent workers without any reduction in salary, being collectively represented beside the managers with the creation of a workers’ council and obtaining more transparency regarding to the algorithmic management of the labor process. The status of independent contractor was very early identified as the main source of concern. This status implied that their working conditions were not protected by the Labor Law, nor could they benefit from the usual social protection. By asking for a workers’ council, they wanted to ensure that their collective voice could be heard inside the platforms. Through these councils, the workers would have the opportunity to express their claims, to share their concerns and to force the management improving their working conditions. Finally, the claim of more transparency in management seem unusual and may reflect workers’ concern about the rise of algorithms in management, as explained in the frame below.

The bike couriers performance was measured by a ranking of all couriers based on to the average speed and number of deliveries for the last 30 days. Customers could also rate their services. However, they did not have access to any of the details regarding the measurements leading to these indicators and it raised numerous concerns. Those concerns had real effects as these performance indicators determined the moment of their access to the shift-picker and the amount money they were able to earn. Once every fortnight, the couriers would have access to this website where they could choose among the available slots. However, the exact hour of their access would depend on their performance. The better their grade, the sooner they gained access to the tool and the most shifts were available for them to choose. Because they were confronted to such opaque management tools, the bike couriers asked that they be made more explicit through detailed e-mails and that each update would be communicated.

Three different pay systems were practiced by the platform before the mobilization. All were based on a fixed hour pay but combined with a piece-bonus. However, for the same job, there were three different level. The kind of system depended on what time the worker was hired by the platform. It is difficult to know if the system was becoming better or worse because a lot of factors have to been taken in account for calculating the pay. The number of deliveries had as well a huge impact on this. [Interview 20181005]

The trade-union had an important role at the early stage of the mobilization for two reasons. First, it contributed to building a strategy for the mobilization from its experience in traditional sectors. In this specific case, the bike couriers were seeking help negotiating with

the managers. Any wrong step could have pushed the managers to react violently against the bike couriers and that could let dividing them and breaking the mobilization. Second, the trade-union gave some useful information to them, in particular related to the legal dimension of labour contracts. All this helped the bike couriers to increase their self-confidence. Nonetheless, the role of the trade-union changed at the turning point of the mobilization, when the bike couriers wrote a collective letter for the managers at the end of the Summer 2017. Other actions such as a strike or a picket in the bikers' rest room³⁸ have been discussed. The gig workers had to say at which step they feel at ease to struggle. At that time, not so many of them were ready to strike, but they agreed to write a letter including several arguments as indicated below.

LETTER TO THE MANAGERS

Grievances

- New workers are not properly introduced to the company;
- Communication is lacking (including what is mentioned in the contracts);
- No social insurance is provided in spite of the bikers' dangerous work;
- Bikers have to pay a deposit for working clothes;
- Bikers have to use their own tools such as the mobile phone and the bike;
- The shift-picking system is too competitive and stressful;
- Bikers are not able to fully manage and control the end their working shifts;
- Ranking system that measures the performance is not transparent;
- Stand-by shifts are not paid enough;
- Low salaries create wage dumping in the whole bike delivery sector.

Claims

- An employment relation based regular on labor contracts in line with the Labor Law regarding to the protection against abusive contract termination, to social protection, to protection against injury and to a pay compensation in case of illnesses or injuries.
- The payment of the whole working time, i.e. that includes overtime, time for cash depositing collection and for giving back work tools.
- A wage increase for stand-by shifts.
- Some payment for work tools and clothes.
- The end of the actual ranking system and the introduction of a new transparent one.
- The implementation of regular meetings with worker representatives during working time.

The management lacked of any bargaining experience and reacted highly surprised to this letter. It was unhappy to discover that a mobilization was taking place among the bike couriers. However, a meeting has been fixed by the managers, before cancelling just a few hours before the meeting. The management did not want to engage in negotiations with the trade-union since it was part of the delegation. Instead, the managers released a press release, which announced that every courier would receive new labour contracts by the next month. The managers aimed to prevent an escalation of the gig workers' mobilization.

³⁸ A rest room was available to the bike deliverers if they wanted a rest between deliveries. It was more close to a garage than a proper rest room according to one of them.

The trade-union claimed that the new labour contracts were insufficient regarding to low wages and backdated compensation. Moreover, the convention related to the backdated social contributions was rejected. Backdated indemnities that the gig worker is supposed to receive for his past working time were based on a wrong basis. The trade-unions claimed that the old pay check had to be considered as a net salary. This means that the backdated contributions had to include both the workers and the employer parts. The trade-union argued that therefore the platform had to pay the whole amount of the arrears. It protested towards the managers and suggested continuing the mobilization. Thus, the new labour contracts offered by the managers after having cancelled the suggested meeting did not pacified the dispute. On the contrary, it led to an escalation of the conflict.

The bike couriers decided in accordance with the trade-union to increase the pressure against the platform by organizing a public demonstration in the city centre. They distributed flyers in which they ask both the payment of all backdated social contributions and a collective labour contract with an acceptable minimum wage and improved working conditions. Again, a speaker underlined in his public speech the claim of a dependent labour contract. Even if only about ten bike couriers ultimately showed up, the press gave a large coverage of this event and this increased the pressure on the managers. According to a courier we interviewed, a great part of his colleagues chose not be part of the demonstration, fearing retaliation from the management, such as a lay off. The managers reacted even more strongly the day after. In an e-mail addressed to every worker, they accused the trade-union to manipulate the bike couriers for purposes disconnected from the dispute.

In the hope of defusing the tense relationship with their employers, the couriers decided to accept to come to the negotiating table without the trade-union in so far they are able to organize themselves inside a bike couriers council *ad interim*. This council was composed by a delegation of elected bike couriers and functions independently from the platform. Its mandate consisted to negotiate new labour contracts providing higher salaries, to introduce more transparency in the bonus system based on the performance and to find an acceptable agreement for the payment of all the backdated social contributions. The bike couriers required continuing to work without any retaliation during the negotiations.

The negotiations were a tough period for bike couriers. They wanted to put more pressure on the platform, but this was just not possible. The public demonstration was both the last and more powerful card they had available. In fact, the energy was no longer there to continue the mobilizations with new actions aiming to increase the pressure. Moreover, the gig workers had to deal with new organizational issues, such as establishing an adequate communication between the delegation and the workers. Concretely, the protocols of each step of the bargaining circulated for being discussed, but time was short and discipline lacked for doing this properly. Moreover, the bargaining process happened under a strong time pressure since the platform wanted to introduce new labour contracts by the end of the month. If the bargaining process lasted so long, it was mainly because of a disagreement regarding the amount of the backdated social contributions. Interestingly the couriers did not share the same point of view. A cleavage existed among the bike couriers depending on their personal and professional position, since those who are students do not project themselves as long-time workers for the platform. Ultimately, all gig workers united and backed the provisional bike council in the bargaining.

The couriers that worked as student joined the mobilization even if their wage was enough for them. They thought that the platform was cheating them: precisely because they are students, they were supposed to earn less than an older worker. [20181106]

This disagreement regarding the backdated compensations was finally resolved and a definitive agreement was found by all the parties. The agreement stated that all bike couriers

would be considered dependent workers from January 1st 2018. Everybody would receive a fixed hourly minimum wage for every working shift, while an extra compensation would be provided for each stand-by shift. In addition, they would receive a bonus for each delivery (from the first and not the third one) as well as an hourly compensation for the use of a private bike and mobile phone. A workers' council representative of the whole staff was constituted and recognized by the platform. Moreover, a more transparent ranking system has been introduced while several working conditions related to uniform, communication, safety at work and app improvements would be put to the agenda for further negotiations. Finally, each worker had to sign a convention aimed at resolving the dispute over the backdated social contributions. Ultimately, both managers and couriers seem to be satisfied with the new contract they negotiated at the platform's level. For the workers, the mobilization allowed them to obtain what they wanted, but how far were they able to improve their wages and working conditions compared to whole bike delivery and to other sectors?

Admittedly, the mobilization took place with the support of an established trade-union, but from the beginning to the end it happened mainly as a lonely struggle led by self-organized gig workers. This may explain why the mobilization changed the way in which the bike couriers see the platform. As one of them explained, at the beginning they thought that for a “start-up” some dysfunctions are part of the normality and have to be accepted. Then, they adopted a more negative or critical view of it. They thought that it looks more like a “big company” that was breaking the Law. They quickly felt the need of a support from the trade-union as an external but experienced player.

We thought that we needed a support from an organization that understand how bargaining works and how get in touch with the medias. The trade-union was able to offer those assets. [...] Some deliverers were scared of trade-unions, but the main trouble was another one. In fact, the trade-union asked right away to everyone to became a member. Instead, the deliverers wanted to see concrete results before going to pay expensive membership fees. (20181106)

Finally, the bike couriers were satisfied about the collaboration with the trade-union. This gave confidence to the bike couriers about their claims and helped building a strategy. This does not mean that all had the same feeling on this matter. Some of them thought that the trade-union had an instrumental relation to this mobilization – and to the bike couriers – and one trade-union secretary was too impressive. Curiously, no meeting happened with the trade-union after the mobilization and only some of the bike couriers heard about the new Collective Labour Agreement for Swiss for delivery that has been negotiated by another Swiss trade-union (Syndicom) without knowing its content.

5.3 Cleanings

The cleaning services sector is a field which has been invested by new coming platforms since a few years. The platform has been operating for 4 years. Its business model is different compared to other platforms such as Uber or the Deliveroo in so far that the platform does not consider independent work and does not practice undeclared work. Indeed, all the cleaners pay taxes, social insurances and receive higher wages compared to traditional cleaning workers. The minimum wage is 20 CHF per hour net (this means that the social insurances, extra salary for holiday and taxes have already been subtracted). The manager of the platform would like to increase the salaries of the cleaners for the next ten years. His motivation is that the effort and the time needed for a day-cleaning should be smaller than eight hours. The platform is also negotiating an occupational pension scheme for part time workers.

The manager explains in an interview (18.9.2018) that he has regular meetings with the Federal and Cantonal State Offices and the Trade-Unions. However, a social dialogue does not exist in so far as the contracts and the working conditions are not negotiated at all. The platform does not consider itself as an employer. Indeed, there is a trust company that represents legally the platform and each costumer as an employer toward the cleaners. In behalf of the platform and each customer, the trust company pays salaries, social insurances and take care of the cleaners. Four law cabinets are currently supporting the trust company as an intermediary on those activities. At the same time, it has a raw margin of 18%. It's less than a traditional company based on the cleaning sector, which has a raw margin situated between 23-25%. The competition between the cleaners is not based on the price, but the quality of the cleaner.

40 workers are directly employed by the platform (direction, IT developers, call center workers for the customer care, lawyers, admin, etc.) and are mostly based in the canton of Vaud. Around 1'000 cleaners work for or through the platform. They are mostly female and two third of them are not Swiss citizens. The research team interviewed four of them that are all based in Lausanne. All of them are women and qualified cleaners. They have to pass through a traditional HR-recruitment process before working for the platform. It is usual that they worked before for traditional cleaning companies. Often, when they decide to change their employer, the main motivation is that they receive higher wages, a great autonomy at work and the ability to choose the clients. The cleaner earns 22.95 CHF per hour (gross wage). However, this does not include a paid holiday leave. As she explains:

What I like by [working for the platform] is that I can choose where, when and how accept [my clients]. [This is the case for] each cleaning, each household. I am free to take my holidays when I want. Nobody says anything about my choses. It's really good. When I have a difficult customers and I feel that it is impossible to start the cleaning, I give a call to the managers and can just quit the place. It is not my task bringing any cleaning material or tools. If the client is unsatisfied, the platform organises another cleaning worker for him, that's it. (Cleaner A, 20.10.2018)

This is crucial to understand both the success of the platforms in recruiting its personnel in despite of a limited social protection that is provided. Workers usually do not have any idea about their pension plan. Instead, many of them know that no any compensation is provided in case of illnesses, since a compensation is given only for accidents, and that holidays leave are not paid. The high degree of autonomy at work explains why the cleaners accept the lack of social protection. It is not limited at the choice of the clients, but embraces the ability to choose the working schedules. Since this fully depends of the availability of the cleaner and the clients, it is becomes regular since most of the clients are the same. A cleaner explains that:

This job gives an entire freedom on fixing the working schedules and allows me to keep a part-time job as a teacher in private schools. I appreciate a lot working when I want according to my availability. The platform does not have enough workforce and is looking all time for cleaners. It asks me to do four cleanings per day. The quickest is about two hours, but usually for my cleanings I need three, four or even five hours. For instance, Thursday I do at first five hours cleaning in Epalinges, then a three hours cleaning in Pringins. In between I have to ride for 30 min with my car since the two villages are 45 km from each other. I work at least 7 hours each day. Usually, Tuesday and Sunday are my rest days. [...] I work 36 hours per week for the platform and 9 hours for the private schools. (Cleaner D)

This does not mean that the cleaners are happy about with the social protection provided by the platform. On the contrary, some of them express a personal complain without engaging any collective action, since trade-unionism does not exist neither in the platform or in the

sector. Social protection is already weak in the cleaning sector. Thus, a cleaner feels that such claims would not be warmly welcomed by the managers.

I complain the lack of an insurance that provide a revenue for me in case of illness. I did not demand that insurance at the boss of the platform because we should be more to mobilize and claim. I spoke with three colleagues and they agree, but we are not enough yet. Thus, we cannot get sick and we have to work whatever happen to our health. The boss explained that this is part of the contract. It looks like the platform adopts an American-style HR management. In the United States, no any revenue is provided for a sick worker. Moreover, the platform claims to be an intermediary and not a traditional employer. For this reason, the platforms established a salary sheet in behalf of each client. (Cleaner B)

The lack of an appropriate workers' and social protection raises three main problems for the cleaners. First, the workers have to behave themselves carefully for not becoming ill. One of them explained in an interview that she tries to keep herself fit by doing a lot of sport. Second, they have to leave the country once retired. Indeed, a lot of cleaner are foreign workers and plan to leave Switzerland once retired, where the cost of living would be too expensive compared to other European countries. They will just come back to the homeland where they come from. Third, the labour law does not apply to the cleaners. The managers of the platform do not impose any working week or working schedules. Every cleaner is able choose without the boundaries provided by the law. In other words, they are theoretically able to work seven days a week and twenty-four hours a day.

The interviews also provide several interesting information on the ways how the cleaners deal specifically with the lack of worker protection. Some workers say that the pension plan is not a concern because they plans to leave Switzerland and establish themselves in countries where the cost of living is much less expensive. On the other side, a full-time employment rate – which is by far not the majority of the cases since working for the platform often represents a complementary income for the worker's household – is estimated between 42 and 55 hours. The time for displacements between the cleaning shifts is not included in those hours since it is not considered as working time. A full time cleaner explains:

For earning 3900-4000 CHF net wage per month, I need to schedule between 45 and 50 hours a week. But the amount of the hours is not indicated in any contract and I am totally free to choose when and how many shifts to organize. Sometimes I ask to [the managers] to become one or two more shifts than those already planned. If there is a need, I become those more shifts. In my previous job I worked 44 hours a week. What matter now to me is being totally free. (Cleaner A)

The length of working time does not seem significantly different from the traditional cleaning sector, but the cleaners are fully responsible to ensure adequate rest periods for their activities. A high degree of autonomy does not automatically imply that they benefit minimal rest periods. The limits to the working day provided by labour law become null and the labour inspectorate could even not blame the platform since it not considers itself as an employer. What changes is rather that overtime does not exist and that the distribution of the working schedule sometimes include Saturday and Sunday without extra overpay. The cleaner and to the employer has to care for a minimum time.

I could work Sunday, but I don't. The platform allows working 24 hours a day and 7 days a week. We are very free to set our schedule. That depends on the capacity of each worker. Each cleaner is able to work longer hours for a given period if a higher earning is needed. Everyone has to fix his owns limits and knows how fix them according to her abilities. (Cleaner C)

A better social protection is wished by several cleaners even though the platforms already provides an improvement for all those who worked undeclared for private households. As this same cleaner explains:

On the long term, I think that the platform should become an employer and fully assume this role. This is not the case today. The platform organizes the transaction and provides only a minimal protection for the worker. This is not ideal, but the cleaner appreciate that minimum.

Conclusion

In the past few years, novel forms of social dialogue started to be identified in the gig economy despite difficult conditions. The jobs provided by the platforms are individualized, dispersed and have so far been considered an independent activity. The debate among social partners and policy makers revolves mainly around the status of the worker. Trade unions see the employment status as the most important issue and this situation implies that other issues are not collectively negotiated at branch level. This lack of collective regulation is fulfilled in different ways. Both the literature review and case studies highlighted in this chapter show that the forms of social dialogue that have developed emerged at a local level and are sector-specific. The current Swiss legal framework allows taking decisions upon the fate of gig workers and their legal status. The pending trials will provide with a decision that are not only technical, but define the extent of negotiations for social partners. What the emergence of the gig economy revealed is a traditional divide among policy makers between, on the one hand, the willingness to accommodate for what are considered flexible working conditions and, on the other hand, the willingness to prevent from what is considered precarious work. The main drivers of the gig economy will thus be political. The current power imbalance at the parliament does not allow for a conclusive forecast and the gig economy has never been clearly addressed in the agendas of Swiss political parties.

Our empirical case studies allow for a discussion of new forms of social dialogue that are emerging from the gig economy. One main observation is that in some cases longstanding trade unions are at the forefront while in other cases the movement is more grass-root. Still other sectors see no mobilization at all. These different forms of social dialogue will in turn bring more or less distance from its base, which can lead to important questions being left out. The gig economy brings a new form of management, which is hardly addressed when a top-down form of social dialogue prevails. Such questions related to the matching algorithm, the automation of schedules, dynamic pricing or customer ratings are nonetheless crucial, for at least two reasons. First, they are central indicators in the assessment of the dependency (degree of subordination) of gig workers when addressing the question of their status. Second, they are crucial in addressing the working conditions when establishing a regulatory framework that is framing the gig economy. How then can we explain that such conditions for social dialogue emerge? Our case studies suggest three reasons.

First, the most obvious factor refraining gig workers from seeking help from longstanding trade unions is probably the economic dependency on the platform. Most platforms know that well and thus they threaten to stop their operations if forced to employ their workforce. However, strong distinction has to be made between workers doing ride-hailing and those doing food deliveries in relation to economic dependency. Uber drivers typically rely heavily on their income from the platform and invest large amounts of money into the cars they use, whereas couriers engage in gig work for a shorter duration and invest almost no money in the process. This implies that mobilizing along a trade union as an Uber driver entails a much greater risk since it can possibly result in being laid off from one major source of income.

Second and closely related is the distinction between local and multi-national platforms. The threat of withdrawal is mainly used by important platforms that can diversify their sources of

income and raise large investments. In our case study about couriers, we focused on a mobilization that took place in a local platform. The threat of leaving the country was never an issue and this can maybe explain why some of these platforms are more likely to engage in social dialogue under the pressure of grass roots, trade unions or organized professions. This most probably would have been very different if the platform was a multi-national company. Third, the existence of an organized profession or a trade-unionised workforce before the arrival of platforms allows longstanding trade unions to have a firmer hold on the upcoming social dialogue. This was very pregnant in the transportation sector, where taxi drivers could unite with the help of trade unions in order to fight against the “uberisation” of their activity. It was much less the case for the delivery sector and it was most probably one of the main factors accounting for the lack of social dialogue in the cleaning services. Social dialogue in the cleaning sector has always been notoriously difficult to initiate for trade unions in Switzerland. For this reason, the arrival of an alternative business model has not been met with any contestation from the cleaners in the traditional sector.

This research thus allowed us to distinguish multiple forms of social dialogue that can emerge from the different conditions in place in the three different sectors. It shows that it is crucial to understand the peculiarity of each platform and its environment. These distinct forms of dialogue in turn lead to the gig workers being more or less included in the negotiation. At the same time, one case study brings to light which individual strategies gig workers can deploy for dealing with algorithmic management and the lack of social protection, when social dialogue is absent.

Bibliography

- Kahil-Wolff, B. (2017). *Der AHV-rechtliche Beitragsstatus von in der Schweiz tätigen Uber-Fahrern Gutachten zu Händen von Uber Switzerland GmbH*. Université de Lausanne.
- Lejeune, G. (2018). Les chauffeurs de taxi face à Uber. Une mise à l'épreuve économique et politique. *Politix*, 2(122), 107–130. Cairn.info. <https://doi.org/10.3917/pox.122.0107>
- Mattmann, M., Walther, U., Frank, J., & Marti, M. (2017). *Nachfolgestudie zu den Studien von 2003 und 2010, unter Berücksichtigung* (No. 48; Arbeitsmarktpolitik, p. 121). SECO.
- Pärli, K. (2016a). Neue Formen der Arbeitsorganisation: Internet-Plattformen als Arbeitgeber. *Arbeitsrecht*, 4, 243–254.
- Pärli, K. (2016b). *Questions de droit du travail et des assurances sociales dans le cas des chauffeuses et chauffeurs de taxis Uber* (P. Thomas, Trans.).
- Portmann, W., & Nedi, R. (2015). Neue Arbeitsformen – Crowdwork, Portage Salarial und Employee Sharing. In P. Breitschmid, I. Jent-Sorensen, H. Schmid, & M. Sogo, *Tatsachen – Verfahren – Vollstreckung*. Schulthess.
- Riemer-Kafka, G., & Studer, V. (2017). Digitalisierung und Sozialversicherung – einige Gedanken zum Umgang mit neuen Technologien in der Arbeitswelt. *Revue Suisse Des Assurances Sociales et de La Prévoyance Professionnelle*, 4/17, 354–384.
- Rosenblat, A. (2018). *Uberland: How algorithms are rewriting the rules of work*. University of California Press.
- Stanford, J. (2017). Historical and Theoretical Perspectives on the Resurgence of Gig Work. *Economic and Labour Relations Review*, 3(28), 328–401.