

**The compatibility of offline labour platforms of the gig economy  
with Europe's social market model: Addressing policy gaps in a  
quasi-federal *bloc***

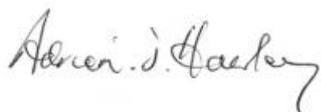
**Ph.D thesis of Adrian J.Hawley, School of Management, co-supervised in  
Dept. of Politics and International Relations, Royal Holloway, University of  
London**

**Final version after post-Viva corrections**

## **Declaration of Authorship**

I, Adrian J. Hawley, hereby declare that this thesis and the work presented in it is entirely my own. Where I have consulted the work of others, this is always clearly stated.

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**Abstract** An interest in the completion of services in the Single Market and the growing presence of digitally intermediated on-location labour platforms in daily life justifies an examination of the literature and empirical evidence of the so-called 'sharing', 'collaborative' or 'gig' economy model. From this arise two principal research questions about 'compatibility' and 'policy' in the context of the EU's social market model.

Labour platforms, such as Uber, are situated with reference to historical theories of organisation and management. Paradigms of political economy and cultural response to change are compared which may inform public policy towards them and the EU's competence in this context reviewed. Evidence is analysed of the significant amounts of information on which labour platforms depend, the conditions of those who work on them and of the conflicted response of the EU institutions, member states and the social partners.

The research covers the period from November 2014 to February 2018. It makes use of a qualitative methodology of documentary data collection and analysis, from institutional, academic, industrial and media sources with a clear justification of the criteria for doing so. From the evidence, a state of *anomie* (lack of rules) is observed in which labour platforms are not currently compatible with the EU's social market mode. By contrast, however, both a turn by the European Commission from a focus on the market aspects of labour platforms towards the social impact of all 'atypical' work, and a growing awareness by one of its main exponents (Uber) of the needs of social protection of those working on it were detected during the research period,

There are theoretical and practical implications for the management of firms (as business enterprises) who organise work in this new way and for the future of 'social Europe'. Informed by the theory of division of labour in society by the sociologist Emile Durkheim, some emerging solutions are proposed and questions raised for further research.

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## LIST OF ACRONYMS AND TERMS

AI	Artificial intelligence
API	Application program interface
CAC	Central Arbitration Committee
CEEC	Central and Eastern European countries
CEPS	Centre for European Political Studies
CESA	EP Committee on Employment and Social Affairs
CIPD	Chartered Institute of Personnel and Development
CIRE	EP Committee on Industry, Research and Energy
CJEU	Court of Justice of the EU (also known as ECJ or ‘the Court’ – see below)
CoOP	Country of Origin Principle
CoR	EU Committee of the Regions
CPUC	California Public Utilities Commission
CME	Coordinated Market Economy
CNN	<i>Conseil National Numérique</i> , National Digital Council in France
CSRs	Community Support Representatives
CR	Critical Realism
DG	Directorate-General
DSM	Digital Single Market
EC	European Commission
EEA	European Economic Area
EH	Enhance Cooperation
EME	European Market Economy
EMPL	EP Employment Committee
EMU	Economic and Monetary Union
EP	European Parliament
EPSR	European Pillar of Social Rights
ESDP	European Security and Defence Policy
ETUC	European Trades Union Congress
ETUI	European Trades Union Institute
European	
Agenda	‘A European agenda for the collaborative economy’
FEPS	Foundation of European Progressive Studies
GDPR	General Data Protection Regulation
GMO	Genetically modified organism
ICT	Information and communications technology
ILO	International Labour Office
IMCO	EP Internal Market Committee
JURI	EP Committee of Legal Affairs
LME	Liberal Market Economy
MEP	Member of the European Parliament
MME	Mixed Market Economy
MNC	Multinational corporations
MS	Member state(s)
MRP	Mutual Recognition Principle
NGO	Non-Governmental Organisation
NMW	National Minimum wage

OECD	Organisation for Economic Cooperation and Development
OMC	Open Method of Coordination
ONS	Office of National Statistics
'Parliament'	Refers to the European Parliament unless otherwise stated
P2P-4P	Peer-to-peer for-profit model of the sharing economy
RSA	Royal Society for the Encouragement of Arts, Manufactures and Commerce
SD	Services Directive
SEA	Single European Act
SHEC	(Public) Safety, Health, Environment, Consumer protection
SM	Single Market
SMIC	<i>Salair minimum de croissance</i> , National minimum wage in France
SME	Social Market Economy
STR	Short Term Rental
TEC	Treaty of Rome (Treaty of the European Economic Community, 1957)
TEU	Treaty of Maastricht (Treaty on European Union, 1992)
TFEU	Treaty of Lisbon (Treaty on the Functioning of the EU, 2009. Otherwise referred to as 'the Treaty')
'The Council'	The European Council
'The Court'	As above (CJEU, ECJ)
EESC	EU European Economic and Social Committee
TNC	Transportation Network Company
UBI	Universal basic income
VoC	Varieties of Capitalism
WSD	Written Statement Directive
WTD	Working Time Directive

## CHAPTER 1. INTRODUCTION

This thesis is about a perpetual tension between the concept and practices of the ‘liberal’ and the ‘social’ in the conduct of free market capitalism, specifically within the European Union. It concerns a new form of organising work, namely the so-called sharing, collaborative or ‘gig’ economy and specifically the offline performance of physical services such as driving and delivering intermediated by online platforms. This form of work could, on the one hand, be considered exploitative or, on the other hand, to create jobs and boost income for those who otherwise cannot find adequately paid employment. The terms and conditions under which participants labour has attracted the attention of the European Union which both strives for economic efficiency and the fulfilment of a social market model to which it is committed by the Treaty. The chief characteristic at the present time appears to be one of *anomie* (lack of rules).

An interest in the completion of services in the Single Market and the growing evidence of labour platforms in daily life led to an examination of the literatures outlined in the following sections. From these arose two principal research questions for this thesis.

- RQ.1 Are labour platforms of the gig economy compatible with the European social market model?
- RQ.2 How are the perceived policy gaps in the social protection of gig workers being addressed in a quasi-federal *bloc* such as the EU?

The concepts of ‘compatibility’ and ‘policy gaps’ raised a number of subsidiary questions which relate to the specific issues of:

- Benefits and entitlements (in-work and out of work)
- Work quality
- Taxation

This introduction gives an overall view of the content and structure of the thesis and the timescale covered by the research. Chapters 2 and 3 are devoted to a review of literatures specific to an understanding of the conceptual and theoretical bases from which such questions arise. The labour aspects of the gig economy matter for the EU, and this is demonstrated with respect to the EU’s prevailing regulatory context and its implications for further integration (Chapter 4). A qualitative methodology for answering the research questions is explained in Chapter 5 which shows how sources of data were selected and

analysed. That analysis reveals three critical features of labour platforms which are examined in the empirical evidence presented in Chapters 6, 7 and 8. These chapters refer respectively to the hidden nature of gig work management, the terms and conditions under which service providers on platforms work, and the policy debate at industry, national and EU level. Findings are presented in Chapter 9 with theoretical reflections on the state of anomie that they reveal, leading to conclusions with some prospective solutions and topics for further research in Chapter 10.

The intention of the whole is to make two connected contributions, both theoretical and practical, to knowledge in the fields of management and EU studies. The first is about the evolution and societal effects of firms operating as digital offline labour intermediaries. The second is about the procedure by which the EU promotes a specific ideological pillar in order to progress its integrationist objective. This introductory chapter starts, however, with some further definitions of the two areas of interest, namely the so-called 'gig' economy and the EU's social market.

### **1.1 The gig economy**

There is no precise definition of the gig economy in the literature or documentation which makes it difficult to measure, as will be shown in later chapters. The EU still refers to it by the loose, catch-all term 'collaborative economy' which could include both for-profit and not for-profit models and those where only the expenses of providing the service are recovered plus a small percentage (e.g. Blablacar). The subject of this thesis, however, is the for-profit model which appears to be the main focus of attention in the Commission's 'European agenda for the collaborative economy' (EC 2016a:38) which states,

Collectively these findings suggest that the collaborative economy is mainly serving as a supplementary source of income for most participants and that many participants are using the collaborative economy as an occasional source of income

and from the reference in its accompanying press release (see Annex II) to 'these new business models' (EC 2016a:1). Nor is it the 'sharing' economy in the altruistic sense of the word. As Gümüşay (2018:2) puts it, 'Platform companies are not sharing their resources, but share other people's resources. In these cases, resources that were private like a home or car become goods or services'.

The literature, particularly when the collaborative economy first started to attract attention, referred to 'peer-to-peer' to signify individuals using their under-used cars, bicycles, spare rooms, tools, time and know-how, to provide services to other individuals for a little extra money on an occasional basis. From this the term 'gigs' came to be adopted. This peer-to-peer model, however, has proved to be inaccurate in the case of Uber and other labour platforms in the driving and delivering sectors. 'Gigs' are very often neither 'peer-to-peer' nor in the case of Uber occasional. Many, for example, of Uber's drivers in Europe are now engaged in the so-called UberX model which requires prospective drivers to acquire a private hire licence after completing a period of training, sometimes prolonged, at their own expense as is the case in France. Uber promotes the option of acquiring their vehicle through Uber's own credit-broking subsidiary. According to the Opinion of the Advocate General of the European Court (CJEU (2017a:§47), 'it has become apparent that most trips are carried out by drivers for whom Uber is their only or main professional activity'. In this way many Uber drivers' activities look more like business-to-consumer than peer-to-peer.

A similar development is true of Airbnb where a large proportion of properties have been bought solely for renting out or are managed for potential lessors using Airbnb or other short term letting platforms by third parties such as Hostmaker. The term 'gigs', however, generally refers in the literature to labour rather than accommodation platforms. 'Gigs' or 'gig work' is used to describe services performed by individual workers dependent for part or all of their livelihood upon platform intermediaries, sometimes several, to which they are connected by a smartphone or computer app, typically poorly paid and sometimes less than the national minimum wage (CIPD 2017:47,49), capable of being 'deactivated' at any time, without a collective voice, and lacking in either any of the work-related benefits enjoyed by workers classified as 'employees' or full access to statutory state entitlements when they need them. Despite these deficiencies, surveys show that gig workers like the flexibility that such work brings (Taylor 2017; CIPD 2017; Calo and Rosenblat 2017; Schmidt 2017). For some there is little choice. For others it promises independence and freedom for which they think worthwhile sacrificing job security and employment benefits. Such autonomy, "being your own boss", however, could be illusory locking them into the

disadvantages outlined above and offering few opportunities to acquire new skills and transition to regular work (OECD 2016).

Work in the gig economy can be online 'mind' services ranging from simple, repetitive tasks (as in Clickworker) to those requiring higher skill levels (as in Upwork) or offline physical services (such as ride-hailing or delivering), also known as 'on-location' services. Labour platforms depend upon the business model of owning no equipment for providing the service itself and having no direct employees (except for management, technical and back-office staff). They earn revenue from retaining a percentage of the fee charged for the service. The difference between them and agencies intermediating services such as tickets, accommodation and recruitment lies, I believe, in the degree of control they exercise over the service provider amounting to that of an employer over an employee.

Specific reference, among others, will be made throughout this thesis to Uber, Deliveroo and Airbnb, especially to Uber, which is selected by Calo and Rosenblat (2017: 1634) 'for its unique visibility among sharing economy firms and its apparent willingness to push normative boundaries'. None is treated as a case study but only, as evidence from the public space suggests, as some of the best known and most commonly encountered exponents of the gig economy throughout Europe. There are many other variants but Uber is taken as the most complete example of what has also been called the 'labour platform economy' (Kuhn and Maleki 2017) because it handles the whole three-way transaction between platform, service provider and consumer, and comes closest to the conception of a traditional employer. People who use Airbnb to let spare accommodation in their homes do not generally offer a service in any way similar to hoteliers, whereas Uber drivers offer one which is all but indistinguishable from traditional taxi drivers and on which they depend for a greater part of their income compared with other providers in the gig economy (Landier, Szomoru and Thesmar 2016:6,7; CJEU 2017a§47; Balaram, Warden and Wallace-Stephens 2017:29).

Each variant of the gig economy raises different societal issues but it is the employment aspects of labour platforms which are the focus of this thesis.

## **1.2 The Social Market**

Europe's social market has been described by Burrow (2018) as a 'fundamental social model that ensured people's rights, inclusion to social protection, a good wage model that shared

productivity through collective bargaining and social dialogue' and, specifically, 'the creation of a world of work that is humane, socially balanced and sustainable' (Jürgens, Hoffmann and Schildmann 2017:222). A concise understanding of what 'social protection' means for member states and the EU may be gained from Forde et al. (2017:15) and from the Consultation question on the European Pillar of Social Rights (EPSR) issued by the Commission (see Annex I.).

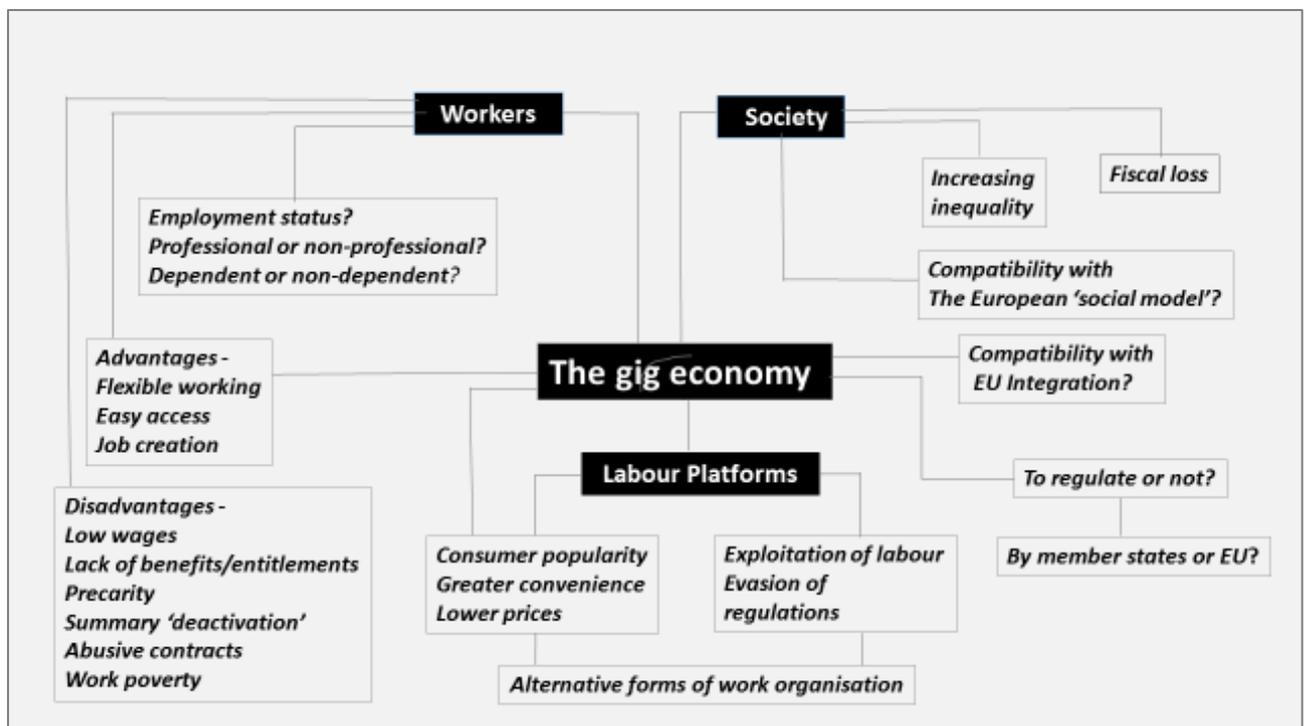
Taylor (2017) reflects the social market model with his concept of 'good work' in the gig economy which he measures against a number of criteria such as, 'employment quality, working conditions, consultative participation and collective representation in addition to wages'. The same theme is demonstrated in the description of 'good gigs' by Balaram, Warden and Wallace-Stephens (2017) and of '*Gute Arbeit*' in Germany (German Federal Ministry of Labour and Social Affairs 2017). The social market is a mantra which is proclaimed in the founding and subsequent Treaties of the EU, repeated by the Commission (EC 2010) and is the guiding spirit of the European Pillar of Social Rights (EC 2017a, 2017b, EC2017c) which has recently been proclaimed. The EPSR is a set of principles, a statement of policies, which are not binding in law but which could give rise to legislative certainty through consensus and rulings by the European Court of Justice. Implementation will be for the main part up to member states under the guidance of the EPSR but the expectation is an accelerated convergence towards a 'social' Europe in accordance with the integration project. The advent of the EPSR is not the first time that 'social' Europe has been re-launched. The Commission's legislative and non-legislative output since the banking crisis of 2007/8 and the euro-crisis which followed, suggests that a focus on economic recovery, growth and global competitiveness have claimed greater attention than the realisation of 'social' Europe. Therefore it is timely to ask if the gig economy in its current form is compatible with the ideals of social solidarity and how severally and collectively member states and the EU might oversee it through legislative or normative measures. These are the considerations which are the inspiration for the research questions for this thesis.

The issues raised in section 1.1 and 1.2 are explained in Figure 1.1 which outlines the issues of the gig economy for social solidarity in the EU. They give rise to a dichotomy which is well summed up by Adler (2016:128) as a 'fork in the road',

On the one side, in the shape of Uber, for example, these technologies lead to a dystopia in which we are all reduced to contingent employees, permanently on call, perhaps bidding for jobs and perhaps even bidding against more desperate peers in poorer countries - allowing those who monopolize the underlying technology platform to reap the profits. On the other side these same technological capabilities, by dramatically lowering economies of scale, lead to the possibility of a viable communal economy composed on [sic.] flexible networks of cooperative enterprises.

The outcome, he says, will depend not on the technology but on regulating how it is used which is the chief interest for this thesis, specifically in an EU context.

**Figure 1.1 The issues of the gig economy for social solidarity in the EU**



### 1.3 Research period

Research for this thesis covers a period of broadly three years (see Figure 5.1, Chapter 5) starting from late 2014 until the beginning of 2018. This starts from the time that questions were being raised about the gig (or collaborative) economy in the European Parliament. A mid-point is the publication of the Commission's 'European agenda for the collaborative economy' in June 2016 (EC 2016a; EC 2016b; EC 2016c. See also Annex II). It finishes with the ruling of the European Court (CJEU) on regulatory competence for Uber's activities under the *acquis*, confirmation after appeal on the employment status of some Uber drivers by a London tribunal, the proclaiming of the EPSR (EC 2017a; EC 2017b; EC 2017c) and the

subsequent publication of Uber's own White Paper on Work and Social Protection in Europe (Uber 2018). The latter all occurred, coincidentally, within a few months of one another between September 2017 and February 2018. The evolution that took place during the research period in the role of the labour market platform and its implications for 'social' Europe are discussed in the final chapter.

The sections above defined the topics of research and situated them in a timescale. The following sections outline the conceptual, theoretical and contextual bases for them in the opening chapters of the thesis.

#### **1.4 Literature, theory and context**

This section explains in more detail the origins of the specific research questions, going beyond the author's general interest in the completion of services in the Single Market. In short, these arose from a reading of the literatures which inform two, possibly conflicting, models of economic activity, namely gig platforms and the social market. These are discussed in Chapters 2 and 3. Two strands of literature relating to the gig economy are visited in Chapter 2. The first strand is the new literature which the gig economy has specifically engendered. Most of such literature dates from the period when the present research began. There was very little before with the notable exception of Botsman and Roo (2010) who first exposed the new paradigm of the sharing (or collaborative) society, followed by Rifkin (2014) who expanded his long-held concept of the 'commons' in the exchange of goods and services. The corpus has greatly expanded since then as will become evident in subsequent chapters.

The second strand draws on the canonical literature of organisation and management to which we might refer for some explanations of the rise and practice of the gig economy. From this we can see that that the gig economy owes its origins to the long established practices of entrepreneurialism and innovation which have been given exceptional new impetus by the digital revolution. Absent the idea of not-for-profit sharing in the altruistic sense, there is little that is new about the gig economy except the scale of possibilities opened up for a very familiar and old-fashioned expression of free market capitalism by the latest developments in ICT. The gig economy is still sometimes conflated with the term 'sharing economy'. This is misleading because, while it suggests using assets both for personal and payment-seeking purposes, platforms mediate an 'economic

exchange' like any other commercial relationship but one in which the fixed costs and, often, regulation associated with traditional service are avoided by the use of casual labour (Edelman and Geradin 2016: 296).

For many Uber drivers transporting fare paying passengers (rather than the owner's personal transport needs) is now the main purpose of their vehicle. Organising work of this nature, through the platform, has reached a scale that has generated shocks to Europe's social model, threatening the traditional model of employment, namely the salaried worker with in-work benefits, access to statutory entitlements and making social security contributions. Such new forms of work, where participants are *de facto* employees but without benefits, seems to regress to the laissez-faire capitalism of the early industrial revolution with regard to workers' rights and social protection (Schmidt 2017: Fabio, Karanovic and Dukova 2017) and be incompatible with the EU's social market model. There may also be environmental costs from increased traffic emissions and losses to the exchequer from non-payment of taxes. So great a change leads Kenney and Zysman (2016:62) to assert that,

Indeed, we are in the midst of a reorganization of our economy in which the platform owners are seemingly developing power that may be even more formidable than was that of the factory owners in the early industrial revolution

These new 'owners' seem to pay little attention to the humanitarian orientation of the modern human relations school of management which traces its origins to the Hawthorne Studies conducted by Elton Mayo nearly a century ago. Algorithmic control and panoptic surveillance carry the Taylorist doctrine of scientific management to an extreme degree but without retaining the sense of responsibility for workers that accompanied it.

A third strand of literature (Chapter 3) exposes sources of conflict between the two models of the gig platform and the social market. There are contrasting perceptions of the priorities of economic activity both from a political aspect, namely 'Pro-market/pro-laissez-faire' versus 'Pro-values /pro-social justice' and from a cultural or philosophical one, namely the price versus the value to society of rapid and profound technological change. These polarities permeate discussion of the social market model throughout this thesis and its prospects in relation to the gig economy. Following on, logically, is the literature on Varieties of Capitalism and there is, as will be shown, a strong correlation between those EU

member states where Uber, for example, is permitted and those where it is not (the majority) and where the concept of 'social' Europe is most strongly embedded. France is, or rather has become an exception, a regulatory hybrid, evidence for which will be shown in Chapter 6 and whose innovative solutions are discussed in the concluding chapter.

Chapter 4 explains the regulatory context within which labour platforms operate in the EU and the wider significance of the social market model to EU integration. The relevance to the compatibility of labour platforms with 'social Europe' is two-fold. Firstly, labour law is mainly a national competence (Codagnone, Biagi and Abadie 2016a:11; Forde et al. 2017a:92). Secondly, the principles of the EPSR are, for the most part non-binding, and therefore greater compatibility will have to depend on their normative power to influence member states towards a convergent position on 'social Europe' with regards to the gig economy.

'Normative' also explains the relevance of the literatures referred to in this section to the research questions because they are about attitudes towards the practices of contemporary free market capitalism, how wealth is created and how workers should be treated. Attitudes such as these will be shown to influence positions taken by industry, national governments, the European Commission and in the European Parliament. Regulations affecting the gig economy already exist throughout member states as evidenced by the restrictions on Uber and Airbnb, and particularly in the case of the former, outright bans (see Annex III. for examples in the EU). Additionally, there are EU directives regulating the provision of services (such as the Services Directive and eCommerce Directive), but these and others only refer to market aspects such as freedom to provide a service, right of establishment, consumer rights and data protection. They do not refer to working conditions and in any case the transportation services intermediated by Uber are not covered by legislation under the *acquis*.

Context is important in answering the research questions (Chapter 4). Labour law, as stated above, mostly is a national competence and the Commission has stated, 'There is no single approach on how to qualify employment status across Member States in the collaborative economy' (EC 2016a:35). The Commission, however, has shown its awareness of the employment issue and the social protection of workers in the gig economy (EC 2016b; EC2016c). Committees of the EP on employment, social affairs and the internal market, and

EU consultative committees on economic, social and regional affairs, have also expressed their opinions.

Following the summary of theory, concept and context discussed above, this chapter now outlines the methodology (Chapter 5) used for collecting and analysing the empirical evidence relating to the research questions presented in Chapters 6-8.

### **1.5 Methodology**

The last sections explained the background for the research questions. The following section summarises how evidence was gathered and analysed (Chapter 5) using a qualitative methodology of, mainly, documentary analysis. The research was further informed by what I learnt through observation and participation in a bi-monthly interest-group forum at which relevant topics were discussed.

Explanations are given in Chapter 5 as to what documents were used and why, how they were found and how they were critically analysed to provide evidence for the research questions. Sources were the Commission and the EP, research institutes, think tanks, interest groups (such as industry representatives and trade unions), the media and in the (unique) case of Uber, its own White Paper. I refer to my stance on gaining knowledge (my epistemology) which is related to my understanding of what is 'real' (my ontology) and to a self-critical reflexivity in order to reduce bias as far as possible. How this applies to the treatment of the subjects for research is specified.

Analysis started with assembling all the evidential material referred to above and iteratively examining it for the major themes and sub-themes that were relevant to the specific research questions, the unit of analysis being the offline labour platform of the gig economy. Analysis is not simply categorising or describing but requires 'interpretation, understanding and explanation' (Gray 2009:493-522 in Frenz, Nielsen and Walters 2011:201). It means asking what the data are telling us, in this case about labour platforms, work performed on them and the EU's policy-making process in respect of 'social' Europe. This second stage of analysis is combined with the presentation of empirical evidence in Chapters 6 to 8.

The principal research questions in this thesis, namely compatibility with a social market model and the formation of public policy, are about norms, beliefs and values. The

subsidiary questions, namely benefits, entitlements and job quality, are more to do with material outcomes. It is helpful, therefore, when interpreting the evidence to distinguish between the types of knowledge that may be gained about them. According to a critical realist taxonomy proposed by Fleetwood (2005) there are differing, non-exclusive ways of experiencing what we take to be 'real' - the term 'real' meaning 'it has causal efficacy; has an effect on behaviour; makes a difference' (Fleetwood 2015: 199). Thus, the questions of compatibility, policy formulation and regulation could be described as 'ideally' or 'socially' real while the subsidiary issues of benefits, working conditions and taxation might be considered as 'materially' real. These distinctions apply to the kind of knowledge reviewed in the first case to the literature, conceptual and contextual chapters outlined in the preceding section and, in the second, to the empirical evidence of later chapters. A further mode of experience for Fleetwood is 'artefactually' real, that is, physical but man-made, which directly refers to the gig economy because it could not exist without the technological developments of ICT. Computers, algorithms, smartphones and apps evoke Taylor's concept of 'scientific management'. Newlands, Lutz and Fieseler (2017:13) refer to 'Algorithmic reality'.

The principal results of knowledge gained of all types are summarised in the next section.

### **1.6 Empirical evidence**

Chapters 6 to 7 show that there is an abundance of survey data about the demographics of participants and consumers in all their forms online and offline but less data on the working conditions experienced on labour platforms. Such data are largely anecdotal or from unreliable sources. An enquiry into 'working conditions' might presuppose that the evidence is of a mainly negative character, revealing only the disbenefits. Evidence, however was found of claims for the opposite, namely the benefits. The sources for these came, not unexpectedly, from the platforms themselves and researchers supported by them. There was ambivalence to be found, however, in some of the same sources, as cited, for the disadvantages, particularly the Commission itself but not in the case of workers' representatives who were found to be consistently negative.

The evidence in Chapter 8 reveals more about differing positions with regard to regulating the gig economy both within the EU institutions and the social partners, namely

industry and the trade unions. The latter divide evenly against or in favour of new regulations as might be expected. In both the Commission and the EP, by contrast, an ambivalence was found between the priorities of economic growth and social protection, namely perceived opportunities for job creation and greater competitiveness on the one hand and the welfare of workers on platforms and in other new forms of work on the other.

A renewed impulse to create social Europe is revealed in the Commission epitomised by the proclamation of the EPSR. Analysis suggests this is mainly a soft power initiative and consistent with the Commission's history of pursuing this objective almost back to the founding Treaty. Despite its twenty recommendations, only one revised directive has been proposed.

These findings suggest that neither the principal question of the compatibility of labour platforms with social Europe, nor the subsidiary issues of access to benefits, working conditions and payment of taxes have been resolved. These are indicative of the early stage of public administration responding to a new economic phenomenon.

The Commission has chosen the EPSR to persuade member states themselves to close the policy gap. The most striking finding of all, however, is the failure to acknowledge in the *acquis* or the labour law of member states that labour platform workers are in many cases *de facto* employees of platforms rather than self-employed contractors and therefore entitled to the same terms and conditions of service as any other employee. Who protects them if not? This is hardly surprising given that the gig economy is a very recent phenomenon and is perhaps the main topic for discussion that emerges from the findings of this research. These are informed, as will be shown below, by a sociological theory from a former age of rapid technological transformation.

### **1.7 Findings and an overlooked theory**

From evidence presented in Chapters 6 and 7, Chapter 9 finds that labour platforms are not currently compatible with the European social model, as described above (Burrow 2018) and defined in Art.3 TEU (Treaty of Maastricht) and Art.9 TFEU (Treaty of Lisbon) which are referred to in Chapter 8, section 1 of this thesis. Attention is then turned to Durkheim's ([1893] 1984:291-309) theory of Anomie and the Division of Labour. In the opening remarks of this introductory chapter, the labour platform economy was characterised by a state of anomie, namely the lack of usual social norms and standards. Durkheim's theory reveals

underlying causes and effects that are consistent with the progressive development of later theories of organisation and management outlined in Chapter 2 and goes beyond the paradigms of political economy that are contrasted in Chapter 3. Durkheim's theory, which is not without its critics, seeks to address the decline of social cohesion in the rapidly developing industrial economy of his own day and is taken as a reference point with which to gauge desirable improvements in the conditions of work and the social protection of all people doing atypical work, including gig workers, in our own times.

### **1.8 Conclusions and further research**

Based on the evidence presented, each of Durkheim's solutions to the abnormal or 'pathological' forms of the division of labour is applied in Chapter 10 to actions by the EU (namely through the EPSR), member states and the platforms themselves in order to relieve the present incompatibility of labour platforms with the EU's social market model. Regulation at government level may not find agreement nor be sufficient due to the diversity of industrial and commercial specialisation, as Durkheim predicted. Therefore it may fall to platform themselves to make changes that most improve gig workers' conditions. The business model of platforms may be in doubt if they do not.

A growing threat to social solidarity is technological unemployment on a potentially significant scale. Displaced workers are deprived in this case of income and the welfare state deprived of social security contributions - although these and the collection of regular income tax are already lacking in the case of many gig workers (see Chapter 7, sections 7.2.1 and 7.3). The public discourse is discussed about the concept of universal basic income (UBI) to which such prospects are giving rise. Alternatives may be new taxation arrangements on digital companies or requiring those that continue to employ gig workers to pay national insurance contributions and collect those due from earnings on their platforms.

Chapter 10 concludes with a number of public recommendations, further empirical research that they might indicate and finally the contribution that this thesis aims to make both to labour and to EU studies.

### **1.9 Summary**

The purpose of this chapter has been to introduce the research questions, explain their origin and show the structure of the thesis by which they are answered. What is meant by

the 'gig' economy, specifically offline labour platforms in this case, and the EU's 'social market model' was defined. Reference was made to a number of different literatures in the opening chapters which have served as the theoretical, conceptual and contextual base for framing the research questions and which may help to account for the contradictions in public policy and discourse that they reveal. The methodology was explained for collecting the contrasting empirical evidence presented in later chapters and analysing it for what it tells us about the issues raised by these questions. Particular attention was paid to the author's epistemological and ontological stance towards the phenomena examined in this thesis. The indications of the evidence and principal findings were summarised, an earlier sociological theory introduced that has explanatory power for the contemporary malaise of offline labour platforms, and for some solutions that can be applied to it and questions for further research raised.

The next chapter (Chapter 2) starts with a review of the literature relating to the gig economy and to the wider concepts of organisation and management for the insights they may give us in order to better understand the specific characteristics of this new phenomenon.

The UK has been treated as a full member of the EU during the time of writing, with withdrawal originally scheduled for 29 March 2019, as prescribed by Art. 50 of the Treaty of Lisbon (TFEU). Whatever the subsequent arrangements vis-à-vis the EU, many of the same social issues and possible outcomes applicable to the labour platforms of the gig economy are likely to be equally applicable to the UK.

## **CHAPTER 2. THE GIG ECONOMY MODEL: HISTORICAL AND ORGANISATIONAL ASPECTS**

This chapter refers to three strands of literature to achieve three purposes. The first is to make precise the subject matter of this thesis. It locates the 'gig' economy within what is generally described as the 'sharing' economy, also known as the 'collaborative' (the term used by the European Commission), 'conciierge', 'on-demand', or 'platform' economy. It explains the relationship to another much used term, namely 'peer-to-peer'. It specifies 'labour' platforms and those of a particular type. In this way the relevance will become apparent of the subsequent sections and the empirical evidence of later chapters. The second purpose is to account for the provenance of the phenomena through recent technological, organisational and entrepreneurial developments. The third is to assess how the practices of labour platforms of the gig economy relate to principles of human relations management whose effects give rise to the research questions introduced in Chapter 1.

### **2.1 'Gig' v. the 'sharing' or 'collaborative' economy**

'Sharing' properly takes three different forms according to Belk's (2010:271) prototypes and characteristics, namely sharing, gift giving and commodity exchange. The 'sharing economy', as it has come to be known, is a recent phenomenon. Botsman and Roo (2010) brought it to popular attention under the title 'collaborative consumption', followed by Rifkin (2014), whose theme was 'the collaborative commons' but it has now become the object of wider scholarly research. It is a broad subject with a number of definitions (Goudin, 2016:5,9; Lilico and Sinclair, 2016:42f,173). 'Sharing', as conceived and described by Botsman and Roo and Rifkin means not-for-profit redistribution, promoting access over ownership with a reduction in ever-increasing consumption of physical goods and consequent gains in environmental sustainability. Bardhi and Eckhardt (2012:882) referred to the distinction between access (instead of ownership) and sharing but remarked that the former 'is not necessarily altruistic or prosocial but can be underlined by economic exchange and reciprocity'. In their case study of a car-sharing model (Zipcar) set up primarily for access rather than profit (costs of operation covered) with benefits for sustainability, they found that it failed to gain brand recognition loyalty.

Slee (2015) in a riposte to Botsman and Roo drew attention to the ambiguity of the term 'sharing' used by them to promote altruistic re-distribution when many of the best known examples given such as Lyft, Uber, Airbnb, Task Rabbit and Deliveroo have been

driven by the profit motive from the outset, or have now become so like Couchsurfing which started out as a non-profit but was later sold to a for-profit organisation. Martin (2016) has drawn attention to the co-option of the 'sharing' ideal by 'the market'.

Constantiou, Marton and Tuunainen (2017:232) identify four different models of the 'sharing economy' according to the degree of 'rivalry between platform participants' or 'control exerted by platform owner'. In all but one of these, however, the maximisation of profit is the chief objective. By contrast, for-profit has a role in only the last of Belk's three prototypes. It can be seen, therefore, that conflating the term 'sharing economy' with the gig economy is misleading. It suggests using assets both for not-for-profit and profit-seeking purposes. Gig platforms mediate an 'economic exchange' like any other commercial relationship but one in which the fixed costs and, often, regulation associated with traditional service are avoided by the use of casual labour (Edelman and Geradin 2016:296)

Another inaccurate implication of 'sharing' is indiscriminately applying the term 'peer-to-peer' to the sharing economy which is explained in the following section.

## **2.2 'Gig' v. 'peer-to-peer'**

Assets such as vehicles and homes are now often acquired for the express purpose of offering a commercial service by *de facto* professionals resembling a business to consumer model rather than peer-to-peer. This is especially the case where labour (such as crowdwork, driving and delivering, domestic cleaning and maintenance) is sold, rather than the use of an asset (such as accommodation) although it may also require the use of the provider's assets such as vehicles and tools in some cases. 'Gigs' is the term used to describe work on labour platforms such as these. It is often done on a casual basis, a fill-in between jobs or to boost income, but sometimes participants rely on it for a large part of their livelihood.

## **2.3 'Physical' v. mind' labour platforms**

The term 'platform' is taken to denote any IT-enabled service using apps to match providers with customers. The first reference to the term 'platform economy' that I encountered in my research was that by Kenney and Zysman (2016). I later found that it had already been used by Evans (2015; research project started in 2014), who also referred to 'platform economics' (Evans 2011). The literature abounds with terms with varying nuances such as

‘digital platforms’, ‘the network economy’, ‘software platforms’, ‘platform ecosystems’ and ‘platform world’ but ‘platform economy’ now appears to be a widely used term when applied to gig work. Many labour platforms connect individuals with business for whom they carry out mind tasks, ranging in order of complexity, online (known as crowd work or click work). This thesis, however, is specifically concerned with the provision of physical services to consumers, intermediated online (by mobile phone and apps), but performed offline, notably driving and delivering, also known as location-based digital labour (Schmidt 2017). A fundamental pillar of the business model of such organisations is their use (or misuse) of human resources and its social effects. It is the extent to which it may, on the one hand, be considered exploitative or, on the other hand, creates jobs and boosts income for those who otherwise cannot find adequately paid employment, which is of interest in this thesis. In so far as evidence suggests that it tends towards the former, then, it is asked whether such practices are compatible with the EU’s commitment to the social protection of workers envisaged by a social market model and how by regulatory or non-regulatory measures it might be extended to include them in this case.

From the explanations in the above sections it becomes clear that the term ‘sharing’ is misleading and ‘may be becoming meaningless and divorced from any notions of community and solidarity as platforms focus on selling cheaper versions of existing services, such as short-term rentals, sublets and temporary work provided by people in need of money’ (Constantiou et al 2017:236). It is a misnomer when applied to labour platforms and the ‘gigs’ that workers perform on them as is often, also, the description ‘peer-to-peer’.

Technological explanations for the rise of the gig economy are examined in the next section.

## **2.4 Technological and organisational perspectives**

The gig economy as a component of the wider platform economy derives from what is described as the latest phase in a series of technological revolutions, namely the ‘information society’. What this means will be considered in more depth in a subsequent sub-section. The smart phone in particular, an internet-enabled mobile device, has enabled consumers to avail themselves of services at any time and in almost any place. According to the Pew Research Centre (2016) 68 per cent of adults globally report owning a smart phone and 87 percent of all adults using the internet in the ‘advanced economies’. The latter term

defines those such as OECD members with a high degree of industrialisation, a developed service sector and high GDP per capita. The figures for China, however, not yet classified as an 'advanced economy', are noteworthy, with smartphone ownership reported at 58 per cent and internet usage at 65 per cent.

In addition to shopping online and communicating by social media, consumers now have, due to the ubiquity of smartphones and the development of software 'platforms' and apps, near instant and direct access to individuals willing to exploit their assets to offer mobility, accommodation, household and personal services. What is meant by the 'information society', what sort of organisations inhabit it and some of the effects they have produced will be discussed in the following sub-sections.

#### **2.4.1 Technology change - the information society**

Such technological changes are commonly described as 'the information' or 'digital' revolution. Nye (2014:2) says 'it has also sometimes been called "the third industrial revolution"' while Nagirnaya (2014:1) regards it as the latest round in a series of revolutionary inventions, namely the telephone, radio, wireless telegraphy and television.

The effects of revolutions are profound although it is by no means clear what they are at the time. First, therefore, consideration will be given to some of the issues that arise in the provision of services in the 'information society' and specifically in the gig economy, taking ride-hailing and, specifically, Uber as one of the most widely encountered examples. This activity, in its commercialised for-profit form is also known as ride-sourcing or, more loosely as ride-sharing, but for the sake of accuracy and simplicity, the term ride-hailing will be retained in this thesis.

The significance of such changes for gig workers on labour platforms is how their work is organised and how they are managed even though they are not employees. Uber, for example, refers to them variously describes as 'entrepreneurs', 'customers' or more latterly 'partners', as though they were equals. It is the degree of control exercised over them which is of interest. This becomes clearer in the next section.

#### **2.4.2 The business model**

Business models such as offline labour platform are distinct from strategy or value chains in a number of ways. Fundamentally, Uber, for example, can be seen as a type of ecosystem, 'a term borrowed from biology referring to a group of interacting firms that depend on each

other's activities' (Jacobides, Cennamo and Gawer 2019: 2270), and cooperate 'in a web of interdependent yet autonomous activities'. For 'firms' in the present case, can be substituted ride-hailing drivers, with Uber as the hub or 'central actor'. Unlike in a supply chain, firms are not 'fully controlled hierarchically' by the hub (i.e. the buyer) determining what is supplied, in what quantity and at what cost, although, some coordination of rules and standards is required.

Types of ecosystems are diverse, and what is of interest, are the particular characteristics that apply to ride-hailing and similar labour platforms. As will be shown in this thesis Uber workers are subject to a high degree of control. They can choose to work 'wherever and when they want to work' (as Uber proclaims) but they are under continual managerial surveillance, both algorithmically and physically, and liable to be sanctioned with deactivation or loss of wages due an arbitrary rating system or declining to accept a gig. For many who depend on the platform for the greater part of their income, there is little choice in the quality of service they offer or their availability. Nor can they set the price for their services which is, moreover, liable to constant change.

Connecting to an ecosystem requires complementarity which may not be 'fully fungible' (Jacobides, Cennamo and Gawer 2019: 2265) involving investment that cannot be redeployed elsewhere. For instance, Uber specifies vehicles of a certain category and age. Uber drivers who avail themselves of Uber's finance options to acquire a vehicle may be impeded from using them elsewhere. They also disbenefit from Uber's use of surge-pricing and constant changes to its terms of service (see Chapter 2, section 2.4.3). Such withholding of information and other examples quoted above are among the 'tools that hubs use to discipline and motivate ecosystem members' (Jacobides, Cennamo and Gawer 2019: 2259).

Labour platforms such as Uber can also be seen as ecosystems that bring up to date a perennial form of economic activity, namely a two-sided market such as defined by Rochet and Tirole (2006). Uber derives income from both the providers of a service (the drivers) and the consumers (the passengers), charging the end user 100% but only remitting 80% (or less) to the driver while retaining the balance as payment for connection to the 'dispatching' app. and algorithm. Its innovation lies in applying sophisticated digital intermediation to operating the model within its ecosystem, intensified by network effects.

Kenney and Zysman (2016:65) sum up the double aspects of the Uber phenomenon when they say,

Uber, so far as we know, does not yet provide a platform upon which others can establish businesses, such as organizing a pizza delivery fleet. Nevertheless, as an algorithmic structure providing a digital market and potentially an ecosystem, albeit one it controls, Uber should be considered as a firm operating a platform.

Such aspects of control are demonstrated in the next section.

### **2.4.3 Information and power asymmetries**

Calo and Rosenblat (2017) apply a theory of digital market manipulation to the behaviour of platforms taking Uber as their case study. With the 'tremendous volume and variety of information' that Uber collects and analyses for its algorithm, the 'invisible architectures of power' as Newlands et al. put it (2017:13), both consumers (passengers) and service providers (drivers) can be subject to abuse. It is specifically how this affects the latter which is of interest here. The opportunity for manipulation arises from the great advantage the platform's informational asymmetry confers over those who perform the service, an asymmetry that has been viewed as an intentional instrument of control (Rosenblat and Stark (2015: 4; 2016:3772)). The determining factor in the exercise of such power is the high level of economic dependence by the latter on the former. Where a worker has more choice, the greater the appeal of 'freedom', 'flexibility' and 'being one's own master', often portrayed as the greatest benefit of gigwork. Where he or she has less, that is to say where there is greater dependence (Calo and Rosenblat 2017:1638 citing Lehdonvirta 2017 and Rosenblat 2016), then 'flexibility' may be an occasion for exploitation.

Some examples of the unequal power relationship due to informational asymmetry are presented as follows. Contracts are 'dizzily' complex and the terms of service constantly changing (Calo and Rosenblat 2017:1630). Newlands, Lutz and Fieseler (2017: 8, citing Bar-Gill 2012, and Horton 2010) refer to such complexity as a 'a purposeful attempt to exploit the human limitations of processing information, so as to maintain a powerful information asymmetry between platforms and providers'. Surge pricing and the practical inability on some occasions to comply with inscrutable operational rules leads drivers to make profitless journeys or payment by the platform to be withheld. Whether such practices are the product of user error, poor design, or intent is speculative (Calo and Rosenblat 2017:1682).

Failure to meet rates for ride-acceptance and cancellation, and passenger ratings can lead to 'deactivation' (temporary suspension or permanent exclusion by Uber). Platforms are empowered 'to dissuade exit by retaining control over a provider's entire "professional career" due to ownership of data about ratings' (Newlands et al. 2017:8, citing Prassl and Risak 2016). Uber also 'locks-in' its drivers with auto-loans and conditions for eligibility and continuing participation (Newlands et al. 2017:8-9). Their complaints and queries are further constrained by Uber's outsourcing communications to 'Help Community Support Representatives', that some perceive as 'Uber's robots' (Rosenblat and Stark 2015:7; 2016: 3771).

Uber's panoptic mapping of every ride undertaken by its drivers contributes to its ambitions for driverless vehicles. In this way, 'Uber participants may be unwittingly training their replacements' (Calo and Rosenblat 2017:1669). Uber's advantage and its co-founder Travis Kalanick's indifference is amplified by his remarks quoted in Chapter 6, section 6.9.

Finally drivers and gig workers generally lack the power of collective action vis-à-vis platforms. They inhabit an atomised world in which they are largely on their own, occasionally assisted by trade unions in some EU member states. Consequently, as Graham and Woodcock (2017:244) note, 'in almost all types of platform-mediated work, workers themselves have found it extremely challenging to exert any sort of power to bargain with the platform itself, change policies, or articulate an effective voice'.

This section has shown how control over information affects the balance of power between platforms and workers in terms of wage-earning potential, job mobility, communications and representation. Such asymmetry gives rise to questioning the compatibility of labour platforms with a European social market model. According to Calo and Rosenblat (2017:1670) the specific role of such asymmetry and 'the new capabilities that accompany it' still remains undertheorised,

The problem is not simply that Uber has access to detailed information about its ecosystem; the problem is that only Uber does. This access, coupled with its vantage as a digital intermediary, permits Uber to shape outcomes to its advantage.

The evidence for the problematic way in which platforms exploit their power specifically with regard to service providers is presented in more detail in the empirical chapters (Chapters 6,7 and 8) of this thesis and the implications analysed for regulatory policy under

labour law, the social protection of workers, the sharing of data and the role of the EU in the formulation of public policy.

The information revolution now being experienced has been predicted but some of its effects are only now becoming apparent. Both aspects are considered in the following section.

#### **2.4.4 Looking back and forward**

Recognition of the importance of information asymmetry and the centrality of reputation and accountability in acquiring knowledge well predates the gig economy. Stiglitz (2000) showed how the economics of information had led to an intellectual revolution over the previous fifty years, changing the way we think and undermining many of the economic and sociological assumptions originating in the eighteenth and nineteenth centuries, particularly the concepts of perfect markets and scarcity in restoring equilibrium. There are many other informational problems beyond scarcity. For example, employers will want to know about their workers' strengths and weaknesses and how hard they work – a preoccupation of the school of scientific management of the early twentieth century, and also demonstrated in the case of the labour platforms of the gig economy. The breakthrough (Stiglitz 2000:1448f) has been understanding how the economy processes information, its characteristics and behaviour which are fundamentally different from other 'commodities'. Information in a commercial exchange is always 'new information' and subject to imperfections. Hence the centrality of reputation mechanisms 'which played no role at all in traditional competitive theory'.

The technological developments that have occurred since 2000 present new possibilities of market failure and issues of governance of service providers that are yet to be resolved. Stiglitz (2000:1471) was prophetic when he foresaw more rapid advances in

how and how well organisations and societies absorb new information, learn, adapt their behaviour and even their structures, and how different economic and organisational designs affect the ability to create, transmit, absorb and use knowledge and information.

The rise of offline labour platforms is one example of a new organisational model where both tangible assets such as plant and equipment and intangibles such as skills training and human resources management are replaced by an algorithm and employees by

independent, self-employed contractors. The social and economic value of such forms or their durability, however, are yet to be assured in either a national or an EU context which is the subject of this thesis.

Such changes have led some to observe that we tend to think about technology as though it is an external phenomenon 'out there', autonomous and 'found' rather than created by humans. As a result, they are relieved in some degree of the capacity or responsibility of dealing with its societal effects.

Orlikowski (2009:4), for instance, describes the treatment of technology in the management literature as 'absent presence', or 'exogenous force' in which it is either ignored or regarded as a foreign reality presenting a challenge with which the organisation finds itself confronted. In both cases, technology is treated as a black box. Alternatively it is treated as an 'emerging process' in which the black box is opened and technology is continuously being socially constructed and interpreted by human beings. From the 'exogenous force' perspective, technology is perceived as a largely autonomous phenomenon with the power to change the way our personal lives and the world of work are organised.

Both 'exogenous force' and 'emerging process' are characterised in Orlikowski's view as a mistaken 'ontology of separateness' - that is, separating technology in some way from what it is to be human. 'We (human beings) have become thoroughly hybrid beings, cyborgs through and through' (Introna 2009:26) with organic, biochemical, mechanical and electronic attributes and faculties in a 'relational ontology' in which the technical and the social are combined in 'an entanglement in practice' (Orlikowski, 2009:12,13). One way of looking at 'relational ontology' is 'sociomateriality' which, she says, 'focuses on how meanings and materialities are enacted together in everyday practices' (citing Barad, 2007; Introna, 2007; Suchman, 2007).

What does this human-to-machine entanglement now mean, for example, for the Uber driver? Taxi driving means conveying fare-paying passengers in a vehicle. Starting with the horse-drawn hackney carriage, the vehicle became a machine in the industrial age generally powered by a technological rather than a human or animal source – although the pedal-powered rickshaw continues to exist and has even made a comeback, for example, in the traffic-congested streets of London. Licenced taxi drivers have long been in radio

contact with their base and have taximeters which calculate the fare. Like Uber drivers they also have smart phones and increasingly use apps like Hailo and Get to summon a taxi to supplement the traditional non-technological way of flagging one down in the street. Ride-hailers such as Uber, however, are distinctive in two ways. The original concept (in the USA) was to provide the opportunity for any member of the public with a vehicle and a driving licence to participate. Where ride-hailing is permitted in Europe, a private-hire licence is required. Acquiring one is much less onerous in the UK and Ireland, for example, than in France or Spain, and a simple step compared with gaining a Hackney-carriage licence required by traditional cabbies in London. Secondly, ride-hailing is exclusively app driven – no street-hailing or phoning a mini-cab office. The journey is continuously monitored and both driver performance and passenger conduct are rated with the possibility until very recently (Uber 2018:21) of summary deactivation of the driver without appeal.

In this model of the platform economy, technology reduces the social role of the taxi driver to little more than steering the vehicle and responding to the (sometimes misleading or possibly deceitful) directions of a piece of web-based software. For workers like these, every part of the job (with the exception of the physical labour of driving or pedalling in the case of food delivery) is continuously directed and overseen by technology. Uber has made no secret of its plans to dispense with the driver altogether with the eventual introduction of fully automated vehicles. Even if, as expected, regulations will initially require a human ‘minder’ to be present in the vehicle, the social aspect of a traditional, economic activity will have been entirely displaced by the technological.

In his theory of ‘regulation by code’, Lessig (2006:31) rejects treating information technology or, specifically, cyberspace (now more commonly referred to, simply, as digitalisation) as ‘nature, essence, innate, the way things are’. On the contrary, it is man-made, a product of computer code - the instructions embedded in the software or hardware. Code is the ‘built environment’ of social life in cyberspace – its ‘architecture’. Cyberspace can be made to reflect any set of values that we think important and this can be achieved by changing the architecture rather than by law, social norms or the market. We are committed to regulating an emerging technical world but we do not know how, by whom or which values are the correct ones. Consequently we may treat the ‘emerging architecture of the panopticon’ as the product of something alien which we must simply

accept, as it invades and transforms our lives. If we are incapable of regulating at all, then control will be taken by the 'most powerful of special interests'.

Some may feel we have already reached this stage in the gig economy. Others are more interested in theorising the development of the phenomenon from an organisational aspect. How they account for start-ups that have now grown into world-wide behemoths is the subject of the next two sections.

## **2.5 Innovation**

Innovation is a logical place to begin. Sundararajan (2017:22) drawing on Ranchordàs (2015) comments on how platforms both spur innovation and challenge existing regulations which may be slow in being updated to accommodate them. Innovative is especially a characteristic of the technology start-ups like Uber or Airbnb. Shane (2001:208) asserted that existing firms were incentivised to maximise the technologies in which they had invested and slow to absorb new, and possibly disturbing, information based on radical inventions which are not the 'logical extension of internal information'. A contemporary example is the slowness of most carmakers to embrace electric technology and relinquish the internal combustion engine in which they have innovated and invested for over a century.

Radical innovation was more likely to come from new firms started by inventors and entrepreneurs. An example is Uber's use of a sophisticated algorithm and app which directly connects ride-hailing drivers and passengers with one another and manages the transaction. This is a new departure from using the smart phone merely to make existing taxi hailing or dispatching more efficient with which the incumbent industry has latterly responded. Airbnb's founding myth was to put peers in touch with one another and promote experiencing each other's neighbourhoods. In this way it sought to offer something beyond a more efficient form of a short-term accommodation agency. These are radical changes. Surprisingly, however, Shane later revised his view of start-ups claiming that 'the typical start-up is not innovative, creates few jobs, and generates little wealth' (Shane 2009:141). He qualified this somewhat surprising assertion by saying (Shane 2009:142) that 'You might be startled by this position, going, as it does, against the grain of most popular arguments'. He refers to Google and other 'wildly successful start-ups', and goes on to explain that while 'EasyJet and Walmart were start-ups not so long ago' - he could also have included

Facebook, Amazon and Netflix - the majority of start-ups in the USA were founded on small amounts of capital and modest ambitions for return, being more akin to self-employment than the creation of high-growth companies. Most start-ups, he says, disappear within five years and create few jobs compared with established firms. Nor do government incentives attract the 'best entrepreneurs'. More important for survival and success is being supported by venture capital and he asks us (Shane 2009:147) to choose whom to back between,

A personal cleaning business that is started by an unemployed high school drop-out, that is pursuing the customers of another personal cleaning business, and is capitalized with \$10,000 of the founder's savings.

or

An Internet company that is started by a former SAP employee with fifteen years of experience in the software industry, an MBA and a master's degree in computer science, that is pursuing the next generation of Internet search, and is capitalized with \$250,000 in money from the founder and a group of business angels.

concluding that it would be the latter. I do not find Shane's binary options entirely convincing because while Uber, Apple, Microsoft and Facebook eventually attracted large amounts of venture capital, their founders started with very modest funds. Each also happened to be a college drop-out which may be associated with a certain type of entrepreneur. Whatever their origins, the literature reviewed above is supported by Colombelli, Krafft and Vivarelli (2016) who say that start-ups that are truly 'innovative' are more likely to survive than 'simple start-ups' and those based on radical process rather than product innovation.

The 'innovation premium' (Cefis and Marsili 2005, 2006) in survival patterns of newborn firms is accounted for by the 'Knowledge Spillover Theory of Entrepreneurship' (Audretsch 1995; Audretsch and Lehmann 2005; Acs et al. 2009; Modrego et al. 2015). Sources of knowledge are incumbent firms, universities, research institutions as well as incubators and science parks (Krafft 2004; Ter Val and Boschma 2011; Boschma and Fornahl 2011; Colombelli, Krafft, Quatraro 2014; Crespi et al. 2015; Hanley et al. 2015; Boschma, 2015) and a local cluster of similar technologies. Two additional key determinants for survival are the personal and social characteristics of the entrepreneur which will be considered in the next section and the availability of venture capital.

The relevance for exponents of the platform economy such as Uber and Airbnb is twofold. Firstly, process innovations, which are described as ‘a safe competitive driver, able to increase the chances of survival’ (Colombelli, Kraft and Vivarelli 2016:21), generally refer to services while product refers to goods. Secondly, they show ample evidence of the determinants specified in the innovation literature referred to above. These could be summed-up as an ecosystem known universally as ‘Silicon Valley’. At its core is a type of high risk-taking, often failing, entrepreneurship. How it can be ‘conducive of a genuine Schumpeterian destruction’ (Colombelli et al. 2016:16) and what its wider societal implications might be for the offline labour platforms of the gig economy are considered in the next section.

## **2.6 The entrepreneur factor**

Most business start-ups, of any sort, fail. The number has been estimated at up to 90 per cent in the USA (Griffith 2014, 2015) and over 50 per cent in the UK (Anderson 2014). There is no agreement on an exact figure but ‘failure’ is taken to mean not surviving beyond the first five years. The important point is that start-ups are risky and it is worth looking at how those who last longer, such as Uber and Airbnb, have managed to do so. This may also tell us something about their conduct with regard to wider socio-economic issues such as those raised in this thesis.

In order to succeed, a start-up’s founder or founders need an exceptionally high degree of determination and appetite for risk in addition to business acumen. These are the attributes of the successful entrepreneur which are widely explored in the literature (see for example Schumpeter 1942; Alvarez and Busenitz 2001; Holland and Shepherd 2011; Bahmani et al. 2012; Galindo and Méndez-Picazo 2013). Determination is required just as much of the social entrepreneur not seeking to enrich him or herself as of the profit-driven entrepreneur but it is the latter with which we are concerned in the gig economy. It is not merely why a particular entrepreneur succeeds but the effects for society in this case that is of interest and, specifically, regarding employment conditions and Europe's social market model.

Failures, false steps and persistence are the mark of the innovative entrepreneur as demonstrated by Uber and its co-founder Travis Kalanick who is reported (Feloni 2014) as filing for bankruptcy in 2000 after his first venture Scour, a file-sharing service which pre-

dated Napster, was sued for \$250 billion. Subsequently he had to pay a fine of \$110,000 to the Internal Revenue Service (IRS) for withholding taxes from his second attempt named Red Swoosh or face going to prison. He eventually sold the business in 2007 to Akamai, a content delivery network (CDN) and cloud service provider, for \$19 million. His first foray into the transportation business was a chauffeured limo service in 2010 called UberCab.

Rather than being shameful, such reverses are described by Mejia (2015:296-297) as being considered a badge of honour in the culture of tech start-ups in the USA. By contrast, this is generally not the case in Europe. In a sample of one hundred entrepreneurs tested for their motivations to persist despite setbacks, Holland and Shepherd (2013:344) reported that 65 percent had previous new venture experience.

Schumpeter (1942:13) is famous for his theory of 'creative destruction' in which incumbents are continually displaced unless they can adapt. For Schumpeter the sole relevant criterion of the entrepreneur is his or her willingness to pursue innovative activity. This is the characteristic which demarcates him or her from other economic agents and requires persistence and resilience in the face of resistance. Schumpeter seeks to account for economic growth through innovation and entrepreneurialism which require a favourable social climate in which the entrepreneur operates, although he is not sufficiently clear about the variables that might affect it (Galindo and Méndez-Picazo 2013:505). A proxy for social climate is income distribution. A reduction in inequality will lessen 'the social stress and the opposition to innovation'.

An assumption of neo-classical economic theory is that 'where the firm's behavior enhances economic growth and therefore there is higher employment and more goods and services produced and consumed, there would be higher welfare in society', or more concisely, 'market forces are sufficient to achieve greater welfare' (Bahmani et al. 2012:271,272). Such an assumption is challenged in this thesis from evidence to be presented of the gig economy. Neither can a more equal distribution of income be assumed. According to theory, innovation leads to entrepreneurialism and higher economic growth – innovation being exemplified by algorithmic taxi dispatching combined with peer-to-peer service providers in the case of Uber. Innovation destroys existing jobs as well as creating new ones. These, it will be shown, may pay lower wages and be less secure. Levels of welfare have declined in many EU countries due to austerity measures following the

recession after the banking and Euro crises. The decline in welfare does not appear, so far, to have been relieved by the rise of the digital economy. These effects may have more salience in the public discourse of the EU than in the USA due to the former's commitment to a social market model.

Schumpeter did not claim the entrepreneur for a genius or benefactor to humanity, only as leading the means of production into new channels and optimising the efficient allocation of resources (Bahmani et al. 2012:273 citing Schumpeter 1911:89, 90ff). 'Creative destruction' entails destruction nonetheless implying socially negative consequences. James Steuart (1767) claimed that mechanization would not have a positive effect on price reduction but would have a negative effect on employment and Marx was not optimistic about the innovation effects on workers (Galindo and Méndez-Picazo 2013:503).

Both aspects of the Schumpeterian analysis are apparent to Mejia (2015:295). On the one hand there is Schumpeter's view that the entrepreneur is that rare individual who has the confidence to 'operate beyond the range of familiar beacons and to overcome that resistance through aptitudes that are present in only a small fraction of the population' (citing Schumpeter, 1942:132). On the other, in a critical analysis of the Google Fiber case in Kansas City, which is reviewed in Chapter 3 in this thesis, Mejia draws attention to the disruptive effects of entrepreneurialism on vulnerable populations that may gain little or nothing from it.

Innovative digital start-ups that have now grown very large such as Amazon, Google, Facebook and Uber tend towards monopolies and a 'winner-takes-all' outcome. In the Schumpeterian perspective 'profit is an income derived from a monopoly power position' (Galindo & Mendes-Picazo 2013:504 citing Oakley, 1990:139), and this position is obtained 'through the innovation process'. First-mover advantage, network effects and sophisticated algorithms are barriers for new entrants, which, if they succeed or pose a threat, are rapidly acquired by the dominant players. The way the latter use their powerful position, and specifically Uber in this case, gives rise to questioning their societal value and whether they should be further regulated. The question is not a new one. It is what led to action being taken against some of the most famous entrepreneurs of all – the 'robber barons' of late nineteenth century America. With their railways they opened up the country, with their steel they propelled the USA to the status of leading industrial nation but with their

monopolies they bankrupted many and caused widespread joblessness. Eventually, anti-trust regulation was enacted to limit them culminating in the Sherman Act (1890) which led to the break-up of Standard Oil of Ohio, followed by the Clayton Act and establishment of the Federal Trade Commission, both in 1914.

The nature of innovation and entrepreneurialism has been discussed in the foregoing section and how they have contributed to the rise of the gig economy. For Baumol (1990: 894) it is not the expansion of entrepreneurship that benefits society but the roles that entrepreneurs play, some of which may be 'parasitical' and 'actually damaging to the economy'. The gig economy, it will be shown, is not simply a product of entrepreneurialism but of a particular form of it, theorised as 'evasive entrepreneurialism' (Elert and Henrekson 2016), which is discussed in the following section.

## **2.7 Evasive entrepreneurialism and regulatory arbitrage**

The gig economy obtains advantage by the application of Schumpeterian-type exploitation of new technology and organisational forms to the circumventing of regulations. Elert and Henrekson (2016:95,96) show how evasive entrepreneurialism, specifically, can be 'productive, unproductive or destructive'. Outcomes can be unfavourable for entrepreneurs if regulators are stricter in enforcing or reforming current laws or favourable where they either do not enforce them or legalise evasive activity through new laws. Three exemplary settings are presented by Elert and Henrekson, among them the 'so-called' (*original apostrophes*) sharing economy and within it the cases of ride-hailing (Uber and Lyft) and accommodation (Airbnb). For-profit entrepreneurs such as these, operate in grey areas where the rules for particular activities are not clear, or even non-existent, and may not be suited to deal with novel forms of service provision in traditional industries (taxis and hospitality). These entrepreneurs perceive an institutional deficiency as a potential for profit and act in response to this opportunity (Elert and Henrekson 2016:99). That is why Uber has claimed that it is an information service, not a taxi service, and consequently covered by the right of establishment and freedom to provide a service under the EU's services directive (EC 2006. See also Annex IV). It is also why Uber and other labour platforms are able to behave much like employers while denying that they have any such responsibility. Airbnb's founding proposition was that as room letting is a private arrangement in its home-market jurisdiction, its participants do not typically pay taxes or comply with the zoning and safety

regulations that firms in the hotel industry face (Elert and Henrekson 2016:100). More recently, responding to the take-up by commercial operators, its position is that it relies on its users to follow local laws (Elert and Henrekson 2016: 102; Airbnb 2016). Moreover, as international businesses they practice regulatory arbitrage in selecting the jurisdictions that are most amenable and where they are successful enough (by having made enough money) to 'take on' the regulators. For example, as reported by Elert and Henrekson (2016: 105),

The District of Columbia Taxicab Commission has been criticized for being beholden to incumbent taxi companies. Notably, in 2012 the Commission proposed the literally named Uber Amendment that would force sedan services to charge substantially higher prices, explicitly with the purpose to prevent Uber from competing with taxi companies (Eldon 2012).

By contrast, they also give two transportation examples in the US where their activities have led to rule changes such as a new legal code for transportation network companies (TNCs). In these cases, 'regulatory capture' by incumbents has been challenged and institutional change taken place benefitting the local economy and preventing innovation being stifled.

Those who have made substantial investments in gaining taxi licences and other providers of traditional services such as small hoteliers whose industry is affected by new platform-based operations are popularly described in the media as 'disrupted'. Christensen (1997) proposed a theory of 'disruptive innovation' but what he describes in the 'Innovator's Dilemma' is not a new insight but rather an illustration of an iterative process that is familiar to the marketing strategist. His argument is that as firms progressively introduce higher quality products and services and earn higher profit margins, such products overshoot the needs of low-end customers and many mainstream customers. This space is filled by new entrants who themselves gradually offer higher quality. Incumbents who ignore them or eventually try to adapt frequently find themselves excluded altogether. Christensen's theory has met with criticism (Daneels 2004, Weeks 2015, King and Baatartogtokh 2015) and the examples he has given of 'disrupted' firms discredited, their downfall being due to other commonplace causes of business failure. Christensen has responded by redefining his theory distinguishing 'disruptive innovation' from 'sustaining innovation' (Christensen, Raynor and McDonald 2015). He reserves the former for a category he describes as 'new-market footholds' where 'disrupters create a market where none existed. Put simply, they find a way to turn non-consumers into consumers'.

Christiansen puts Uber in the 'sustaining innovation' category because it does not primarily set out to open up a new market sector of customers by offering a lower quality service than traditional licensed taxis. Rather, it uses innovation to make more attractive offerings to existing customers. Christiansen concedes 'that Uber has quite arguably been increasing total demand - that's what happens when you develop a better, less-expensive solution to a widespread customer need' and Uber has claimed (Botec 2015) that it is bringing mobility to ethnic groups shunned by traditional taxi services and residents of less privileged districts ill-served by taxis or public transport. In its report, Botec (2015:2) admits that its research was funded by Uber but states that Uber had no influence or editorial control on its creation.

Markman et al. (2016: 677) say that, 'New ventures based on the "sharing" or "peer" economy offer the prospect of sizeable reductions of environmental impacts via dramatically more efficient use, reuse, and repurpose of resources and social benefits that can include less expensive access to important services (e.g., Airbnb, Cohealo, Snapgoods, and TaskRabbit)'. Given that these are all for-profit examples, it seems surprising that they omit Uber (or other ride-hailers) which claim to do likewise. In its public statements, Uber claims that it reduces car usage and hence pollution but no reliable supporting evidence has been found in the present research.

Elert and Henrekson (2016: 106) seek to address both sides of the argument over evasive entrepreneurialism in the ride-hailing sector. Regulation may be justified on welfare and safety grounds but widespread evasive activities and large rents earned through them might indicate the need for government to focus rather on improving the governance system of such firms while relaxing 'stifling entry regulations' which protect incumbents. Removing them 'can lead to 'increased consumer choice and welfare'. By the latter, it is assumed they are referring to lower prices and greater convenience - but to whose welfare? Not necessarily that of workers. The outcomes of evasive entrepreneurialism, however, are fraught with difficulty and depend on 'factors such as the strength of incumbent competitors, the existing legal code, and the tenacity of lobby groups, political activists, and politicians' (Elert and Henrekson 2016:107).

The regulatory challenge by evasive entrepreneurialism is of particular relevance to the Single Market in the case of services made available by the gig economy. Such digital, data-driven services 'cut across industries and/or national borders' and 'are especially prone

to run into institutional contradictions and difficulties to comply with several different or fragmented sets of regulations' (Elert and Henrekson 2016:108). On the other hand, evasive entrepreneurialism may, as has been proposed, act as a spur to institutional reform resulting, for example, in a level-playing field for incumbents and new entrants resulting in widespread benefits but 'other moral and ethical considerations must also be reckoned with when evasive actions are judged' (2016: 109, drawing on Warren 2003).

The relevant question for the current thesis is whether such 'benefits' apply to labour platform workers with which a social market economy is concerned. Little attention was paid by regulators to the evasive entrepreneurialism of the gig economy until 2015. Few were aware, however, of the impact that it would have on market activity and still less on its wider societal effects. As has been observed, 'start-ups, at least in developed economies, tend to jump ahead of regulation and the regulation catches up' (The Economist 2017a).

In this and the preceding section, theories have been examined that might account for the relationship between entrepreneurialism, the gig economy and society at large. It has been shown how evasive entrepreneurialism in particular allows new forms of work organisation to evade responsibilities to their workers. To sum up, 'the more entrepreneurial a capitalist economy is, to phrase it in Durkheimian terms, the more of its orders will be in a state of transition, with economic anomie as a result' (Knudsen and Swedberg 2009:20). The relevance of the latter to the findings of the present thesis is demonstrated in Chapter 9.

An overview of the literature of entrepreneurialism is shown in Table 2.1.

Four further organisational concepts are reviewed in the remaining sections of this chapter which might account for its behaviour with respect to the gig economy.

**Table 2.1 Key literature of entrepreneurialism**

FOCUS	Proponent	Theory/focus	Sub-themes
ECONOMIC	Schumpeter (1934, 1939, 1942)  Knudsen and Swedberg (2009)  Galindo & Méndez-Picazo (2013)  Bahmani et al. (2012) Alvarez & Busenitz (2001) Morris et al. (2012) Holland & Shepherd (2013)	'Creative' destruction  Bringing back the 'sociological' into Schumpeter's economic theory  Opposition, finding cooperation  <i>as above</i> Personal traits  <i>as above</i> Previous experience	Willingness to innovate Three causes of resistance  Regulatory anomie Competing 'down' and 'up'  Determination, resilience
INNOVATIVE	Shane (2001) Shane (2009) Colombelli, Krafft & Vivarelli (2016)  Christensen (2015)	Radical changes from new firms Start-ups – a myth. Innovative? 'True' innovation v. 'simple start-ups'  'Sustaining' innovation	Financial backing A change of view Process v. product  Better offering for all!
DESTRUCTIVE (non-'creative')	Sennett (2006, 2008)  Mejia (2015) Baumol (1990) Djellal & Gallouj (2007)	Flexible capitalism  Unfettered neo-liberalism Parasites The look-out for employment	End of craftsmanship, spurious meritocracy Wastefulness Emotional labour
EVASIVE	Elert & Henrekson (2016)	Exploiting 'grey' areas	Outcomes for welfare and/or institutional reform?
DISRUPTIVE	Christensen (1997)	'Disruptive' innovation	Incumbents 'forced out'

## 2.8 A good corporate citizen?

Corporate social responsibility (CSR) has been described as occurring where,

an organisation seeks to meet or exceed legal and normatively mandated standards, by considering the greater good of the widest possible community within which it exists, both in local and global terms, with regard to the environmental, social, economic, legal, ethical and philanthropic impact of the organisation's way of conducting business and the activities it undertakes. (Clegg, Kornberger and Pitsis 2011:405)

Where it fails to do so it may cause 'negative externalities' meaning that it results in harm in any of the ways referred to above without cost to itself. In another definition CSR is, 'behaviour by firms that voluntarily take account of the externalities caused by their market behaviour' (Crouch 2006:1534). According to neo-classical economic theory, however, firms have no duty towards 'society', except in so far as they obey the law, but only towards maximising profits for their shareholders (Friedman 1970). If that means playing by the rules, a problem with this argument in respect of the new phenomenon of the gig economy, in the present author's view, is that there either are no rules - anomie - or that they are, as has been seen, evaded.

Evidence to be presented in Chapters 6 and 7 suggests that the activities of labour platforms such as Uber and others may conform more closely with Friedman's model. This is hardly a new development among firms but such behaviour seems to be particularly marked in the gig economy by the circumvention of regulations (exploiting loopholes in the law) exemplified by evasive entrepreneurialism. The interest in this thesis, as contained in the research questions, is specifically about the conditions of workers on labour platforms but Uber has shown a wider disregard for social responsibility. In September 2017, Transport for London, the capital's transportation authority, declared Uber as 'not fit and proper to hold a private hire operator licence in London' (Burgess 2017), citing,

its approach to reporting criminal offences to police, how medical certificates are obtained, how it runs Disclosure and Barring Service checks, and that it may have run a 'Greyballing' software scheme that could block officials from using its app. [i.e. to check the legality of Uber's operation]

On appeal, Uber was granted a fifteen-month probationary period (Topham 2018a). In November 2017, Uber admitted failing to disclose a large scale security leak in 2016 of the

personal data of 57 million of its users and drivers worldwide, of whom 2.7 million in the UK (Davies 2017).

Reputation, building trust among users and wider society, is of prime importance to a service operation depending on network effects for its viability. This section has revealed failures of responsibility for consumer safety and data protection by Uber despite frequent PR messages on its website under the title 'Under the hood'. This thesis, however, is concerned with the how a platform organisation intermediating the provision of physical services such as Uber treats its workers. Therefore the degree of management responsibility it accepts for them will be considered in the next sections, starting and closing with a historical perspective.

## **2.9 Management perspectives**

It was widely believed in the closing decades of the last century that information technology would herald radical changes in the world of work with gains in efficiency and productivity but also requiring new skills. Networking capability in particular, and also information producing facilities, were seen as crucial enablers of a new, inseparably and harmoniously connected form of work organisation (Kuutti 1995:186). Rather than happening automatically, however, such a development would take place 'in a turbulent environment in which actors will have to make sense of unforeseen situations and redirect and reorganize their work as the process goes on'. Two decades later, the platform economy appears to be the outcome of both Kuutti's predictions, namely the technological with its apps and algorithms and the organisational with its precarious employment, ill-paid, emotionally laborious, sometimes physically dangerous and lacking in benefits and entitlements among the least skilled in the workforce. It has also provided monopolistic opportunities for some platform companies which could be viewed as a logical extension of standard capitalism free from existing regulatory or normative checks.

The ability of the digital revolution to manage vast amounts of information quickly and efficiently combined with the savings in costs afforded by evasive entrepreneurialism confers competitive, and as those in disrupted industries see it, unfair advantage on the gig economy. But, as Habermas tells us (2001:95) 'markets are deaf to information that is not expressed in the language of price'. Evidence to be presented in Chapter 7 of this thesis shows that Uber frequently lowers its prices while retaining up to 30 per cent of the fare

charged per ride and that in London drivers working twelve hour days, six days a week still earn less than the equivalent national minimum wage after accounting for expenses such as fuel, fixed penalty charge notices, parking fees and wear and tear on their vehicle (Quora 2016). Additional constraints experienced by drivers, mainly imposed by management, are described in the next section.

### **2.10 Risks, ratings and emotional labour**

Transporting passengers in the gig economy exposes both riders and drivers to risk, or as Slee (2015:91) puts it, to 'strangers trusting strangers'. The model differs substantially from the regulated (i.e. licensed) taxi trade where there are multiple quality signals for an *a priori* information-seeking passenger. Taxis are often recognisable in EU member states from a standard colour or other distinguishing mark and in London by a special-purpose vehicle with an additional licence-to-operate plate or badge. 'Black cab' drivers in London have to acquire the renowned 'knowledge' - a formal test of the city's road system. Comparable training is required in many other large cities elsewhere in the UK and further afield.

Reputational systems on which drivers' livelihoods may depend have been criticised for the 'fragile relationship between quality and ratings' which Slee (2015:100) describes as 'no substitute for regulation. Instead they are a substitute for a company management structure, and a bad one at that'. Here, Slee illustrates a clear example of the information asymmetry, discussed earlier in Section 2.4.2, derived from the relationship between the intermediary and the service provider in the gig economy. In the Uber case, passengers are required to award up to five stars at the end of a ride. A driver who fails to maintain an average of at least 4.7 stars is warned and then 'deactivated' if necessary (see Annex V). Until recently, drivers have not been informed as to reasons for low scoring nor have been able to appeal against it. As Slee puts it, 'A reputation system is the boss from hell: an erratic, bad-tempered and unaccountable manager that may fire you at any time, on a whim, with no appeal' (Slee 2015:101). Another view, however, might be that the reciprocity of drivers and riders rating each other goes some way to mitigating the subordination of the former in their role of 'independent but economically dependent worker' (Ménascé 2015:16,44). This, if transparent and reliable, would support the democratisation of the employment relationship suggested by the peer-to-peer concept.

Uber does not disclose any information about its reputational scoring, therefore its effectiveness in terms of quality assurance is unknown. Yet, drivers, are constantly obliged to perform emotional labour. Raval and Dourish (2016) drawing on the concept of 'Body Work and Affective Labor' (2016: 99,101) have surveyed ways in which its drivers are obliged to 'earn' their ratings under a reputation system to which most of them object, including, for example, 'tolerating rude behavior, racial slurs, offensive remarks or even refraining from any discussion that might lead to disagreement including movies, music tastes, preferred sports players and so on'. This signals, they say (2016:102), that,

each driver is constantly contextually performing for their customer as well as for the surrounding environment to execute every ride. This performance requires a combination and alternation of positive and negative emotional display, empathy generation, building one's social capital as well as taking bodily risks.

Drivers reported inexplicable drops in their ratings and the possibility of ethnic, gender or any other type of bias which needs further research.

Uber's model headlines 'freedom, flexibility, and entrepreneurship' but these are not borne out in the experience of Uber drivers, according to Rosenblat and Stark (2015:14) 'in large part due to the information asymmetries and controls that Uber exerts over driver behaviors through performance metrics, behavioral nudges, unreliable dynamic rates, scheduling prompts, and design' (See also Annex V). Their analysis leads them to conclude that further research is required into 'the social and technical dynamics of distributed work systems . . . in a semi-digital workplace' leading to changes to the app and operational structure which would be useful to regulators as well as Uber and its drivers and passengers.

The examples shown in this and the preceding section reveal a management style which has much in common with historical antecedents as illustrated next.

### **2.11 Reversion to an older model**

Forms of employment where *de facto* employers only pay minimum wages and abnegate a wider sense of management responsibility for the wellbeing of their workers seem to be inspired by a theory of scientific management or regress to the laissez-faire capitalism of the early industrial revolution with regard to workers' rights and social protection (Schmidt 2017: Fabo, Karanovic and Dukova 2017). They also seem to pay little attention to the humanitarian orientation of the modern human relations school of management which

traces its origins to the Hawthorne Studies (Henderson with Mayo 2002 [1936]) conducted nearly a century ago. They are scarcely compatible with the EU's social market model.

F.W.Taylor (1967 [1911]) is known as the theorist of 'scientific management'. This holds that by systematically identifying every operation a worker undertakes in the production process and measuring the time it takes, maximum efficiency will be achieved. Knowledge is effectively taken away from the individual worker where it has previously resided and transferred to a new class of managers. It also requires thorough training of the individuals in their specifically allotted tasks and physical resources of appropriate plant and equipment to be on hand. Inculcating such a regime, however, would not be quick. Taylor assumed that wages would be commensurate with the greatest efficiency of output but the impetus was the quest for maximum return on capital for the least expenditure in resources, material and human. The essential management characteristic is control.

Taylor's principles did not lead, however, to worker satisfaction, although in the form adapted by Henry Ford, much higher wages were paid, for a while, than in other manufacturing companies. Absenteeism and industrial action increased despite other advocates of the scientific method. Henri Fayol (1917, 1949), an engineer, assumed the authority of enlightened management in planning, directing, controlling and organising work. Already, we can see that the other actor in this enterprise is somewhat left out – the human being. His (mainly) work was to be remorselessly planned and measured through superior knowledge unknown to him and without consultation. To Max Weber (1948:214) by contrast, it seemed that bureaucracy - the one best way for the achievement of order (*ordnung*) - brought security and dignity to the work person through its regulation of almost every conceivable aspect of work, compartmentalised according to specialisation, hierarchical but anonymous, without fear or favour (*sine ira ac studio*), and providing career progression on merit. He also had a foreboding, however, that the assiduous application of bureaucratisation to the entire social order would lead to an "iron cage" of rationalisation and the petrification of the human spirit (Weber [1904/5], 1930:123,128).

Others took a different view of the organisation of work. The sociologist Emile Durkheim (1982[1895]), to whom I will return in Chapter 9, distinguished formal and informal organisation, cultures and social needs while the social reformer Mary Parker Follet (1924, 1941) drew attention to employee involvement and democratic self-government of

groups and anticipated later interest in workplace democracy and workers' rights. A change began to appear with the rise of the large conglomerates and the economic slump of the Thirties. Chester Barnard (1936), who had served as Chief Executive Officer of New Jersey Bell Telephone, perceived organisations as cooperative social systems requiring the communication of goals and attention to workers' motivation. It was the psychologist Elton Mayo, however, who took individuals into account for the first time, namely their well-being and psychological dimension, which led to the Human Relations school of management. The famous Hawthorne Studies (Henderson with Mayo 2002 [1936]) with which he is associated suggested that it was the beneficial psychological (or perhaps, simply, 'moral') effect on employees' behaviour of management paying attention to their working conditions rather than any environmental improvements which led to higher performance. For decades following the Second World War, Human Resource Management (HRM) has been a senior management function of medium and large-sized corporations, preoccupied not only with the planning, recruitment and training of staff but especially with their motivation and retention.

Uber shares the principle of scientific management with its algorithmic control and panoptic surveillance of every task undertaken by its workers. Its aim is the same - to achieve the greatest possible return for the minimum outlay using new developments in technology and in this respect and others it goes well beyond Taylor and Fayol. It appears to treat its workers as instrumental, merely a commodity, a factor of production to be acquired at the lowest possible cost. It seems to exemplify Marx's conception of 'the reserve army of unemployed labour' (Braverman 1974 [1998]:265-276) which is made available for low paid, unskilled service jobs first by mechanisation, then automation, and now (latterly) digitalisation.

Marsden (2004:662,663) described the emergence of the network economy in which teams collaborated in project-based work. He observed 'more transient forms of relationship' lacking the 'successful articulation of the psychological, economic/incentive, and legal aspects of the standard employment relationship'. By this he meant the open-ended, long duration employment contract which we are now seeing replaced by the short term and atypical contracts of new forms of work such as the gig economy. The innovation of the long-term employment contract was to replace the 'drive' system, 'whereby

contractors had little incentive to train workers, share information or improve quality, and bargaining entered into every point in the relationship between the business and the human resources it mobilized'. This seems highly applicable to today's offline labour platforms of the gig economy. The long-term employment contract reconciled in some way (citing Mottez 1966) the 'eye of the master at every point in the transaction' with 'the risk that the haggling of the market would intervene at every point, making control of complex production systems extremely difficult'. The greater efficiency afforded by the internalisation of transactions within the firm (Coase 1937), did not mean an end to conflict and opportunism, but rather,

the employment relationship has developed a platform of rules that helps to contain these so that both parties can achieve a reasonably effective degree of cooperation despite divergent interests. In doing so, it has transformed the firm from a co-ordinator of market contracts into an employing organization. Around this platform has developed a set of employee expectations and beliefs, systems of incentives and a system of legal rules that reinforce its operation and effectiveness.

Given the rise of a more highly educated workforce in developed economies, Marsden concluded, 'Hence the search for new contractual models of employment cannot simply go back to the nineteenth century'. This cannot be taken for granted, however, in the case of workers on labour platforms in the gig economy as will be shown in Chapters 7 to 10. This applies to both the unskilled providers of services such as driving, delivering and cleaning and to those engaged in highly skilled forms of mind work. It has implications for their sense of being fairly treated and also the prevailing and possibly future regulatory regimes affecting the social protection of workers throughout the EU which is proposed by the EPSR as is described in Chapter 8 and discussed in the final chapter.

A mid-range theory building on three Human Relations themes to connect gigworkers through organisational identification is developed by Jabagi, Audebrand, Croteau and Marsan (2018, unnumbered paper). They propose *inter alia* that,

'Intrinsic motivation is positively related to organizational identification'

'Perceived autonomy is positively related to intrinsic motivation'

'Perceived external prestige is positively related to organizational identification'

The evidence, however, presented in this thesis does not suggest that gigworkers identify in a positive way with platforms. Autonomy is shown to be a motivation but such work is not perceived as prestigious.

By contrast, the peer-to-peer nature of gig work could be seen as a democratisation of labour by eliminating the traditional hierarchies of both Taylorism and the HR school and fostering flexible work, wherever and whenever liked. A claim of this nature seems to exemplify a libertarian point of view and one which accordingly is systematically opposed to regulation. Offline labour platforms, however, as has been argued, have substituted an often mythic peer-to-peer claim for bogus self-employment. Moreover, there is evidence (Rose 2017; Codagnone and Martens 2016:18) that net rates of pay quoted by Uber and other platforms are dubious and very long hours (virtually limitless) are required to make a living or top-up another source of income. A data deficit, however, is revealed in Chapter 6 of this thesis showing that there are few empirical studies of the impact of this type of work, notably within the EU. A more truly peer-to-peer relationship might be established by offline labour platform cooperatives but, except for SMart (2017) originating in Belgium, these have not so far made headway in Europe. A de-centralised system such as blockchain promises its complete fulfillment if it were to materialise.

The world of work has greatly changed since the days of the earlier management theorists. They were addressing themselves chiefly to a production environment. Today most work is carried out providing services. Workers, however, still have the same requirements, often unmet. The repetitive and low-skilled task of driving a car for Uber is not far removed from the tasks done on the factory floor at Ford or Bell Telephone in the early part of the last century. The attention paid to the whole person in the employment situation by the HR school and its descendants appears to have been ignored by the exponents of the gig economy. It has been called 'Uberisation' and one possible dystopian outcome described by Codagnone et al. (2016:7) is a new 'barbarisation' where algorithmic intermediation results in 'dis-embedding and dis-empowerment' of workers leading to unemployment and inequality. The evidence in Chapter 8 will show that the European Commission and at least half of all MEPs who have raised questions about it believe there is a role for government intervention, that is, regulation. On a historical note, the same claim to 'scientific management' was the basis for the 'Humanisation of Work' programme funded

by the (West) German federal government between 1973 and 1989 but with a very different objective in mind, namely 'to lay the scientific foundations for a world of work designed with people in mind' (Jürgens, Hoffmann and Schildmann 2017:223).

## **2.12 Summary**

This chapter has referred to a number of strands of literature in order to fill three purposes. The first has been to define more specifically 'offline labour platforms', the second to account for their provenance and the third to identify some of the effects for those that work on them. To this end, recourse was made to a number of theories from organisation and management science, including an historical perspective. These covered the ICT revolution, asymmetries of information and power, Schumpeterian disruption through innovation and entrepreneurialism, corporate social responsibility, scientific management and the employment contract. It was shown that the idea behind the gig economy is not new, rather a new way of outsourcing which has a long history but its effects and scale have generated severe shocks to Europe's social model, threatening the traditional model of employment, namely the salaried worker with in-work benefits and access to statutory entitlements.

This chapter has sought to understand why labour platforms may not be compatible with Europe's social market (the first research question). The empirical evidence of the practical effects of such a business model on the lives and livelihoods of gig platforms and the conduct of firms operating it is shown in Chapters 6 and 7.

The next chapter (Chapter 3), by contrast, seeks to understand conflicts in addressing policy and regulatory gaps with regard to the gig economy throughout the EU (the second research question) which may be informed by diverging paradigms of political economy and cultural outlooks. The empirical evidence for these is shown in Chapter 8 which reveals the conflicting preferences and priorities in the European Commission, in the European Parliament, among member states and the social partners. In Chapters 9 and 10, it will be seen that these remain, so far, unresolved.

### **CHAPTER 3. THE SOCIAL MARKET MODEL - PARADIGMS OF POLITICAL ECONOMY AND RESPONSE TO CHANGE**

The gig economy attracts both supporters and opponents (sometimes vociferously). Following on from the organisational theories of the previous chapter, this chapter is about contrasting perceptions of the priorities of economic activity in so far as they contribute to how the gig economy should be regulated, if at all, within the EU's social market model. Chapter 2 theorised the entrepreneurial exploitation of the digital revolution, its effect on the evolution of new forms of work, and some of the consequences for labour. In other words, it was about the nature and provenance of a new phenomenon such as the gig economy. Where the literature referred to in Chapter 2 asks 'What is it?' and 'Where did it come from?', the literature of this chapter (Chapter 3) asks 'How is it to be treated?', and possibly, 'Where is it going?', theorised in normative concepts of public policy and culture. Both chapters review theory from a historical perspective but this is far more recent as might be expected in Chapter 2. The salience of norms is enduring and is applied to every new social or technological development as will be shown in the present chapter. The purpose of both chapters is to serve as a theoretical basis on which to reflect on the evidence to be presented and analysed in Chapters 6, 7 and 8 from which some answers to the research questions are proposed in Chapters 9 and 10.

Kuhn (1970), a physicist and philosopher of science, described paradigms as a set of assumptions, ways of doing things, problem-solving, and a unitary package of beliefs. Science and non-science are demarcated, not by empirical observation or an accumulation of knowledge so much as by what is meaningful within a community derived from culture and tradition. Two pairs of contrasting paradigms are examined in this chapter relating to support for or reservations about the gig economy and how to deal with it in terms of public policy. The arena for the first pair, with which the chapter starts (section 3.1), is political economy which compares a paradigm of 'pro-market/pro-laissez-faire' against one of 'pro-values/pro-social justice'. These, it will be shown, are well-articulated positions by opinion-formers which inspire political action, sometimes described as 'tribal', at national level as will become apparent later in the chapter. They will also shape action at EU level as shown in Chapter 8. The arena for the second pair (section 3.2) is a cultural one which compares price versus the cost of rapid and profound technological change. These arise from more fundamental feelings people at large have about what is assumed to be 'progress'. They are

illustrated in the public discourse, for example, by the dichotomy between ubiquitous 'free' social media services and private data, and between near-instant access to gig services and the conditions under which those that provide them might be working.

The present thesis is about how the labour platforms of the gig economy are, or might be, treated in the context of the EU's social market model. Therefore, paradigms such as these lead on to the taxonomy of Varieties of Capitalism (section 3.3) which are characterised by modes of corporate governance and types of welfare provision. A strong correlation will be shown between those EU member states where Uber, for example, is permitted and those where it has been restricted (the majority) in which the concept of 'social' Europe is most strongly embedded. Standing out from these paradigms is an unresolved tension within the EU about promoting economic gains and spreading social justice. Should response to the new forms of organising work in the zero-hours or gig economy be through regulation or 'left to the market' and, in the case of the former, at EU, national or sub-national level. These are questions with which the chapter closes (section 3.4).

From the empirical evidence of Chapter 8, it is clear that such questions remain far from resolved despite the good intentions of the EPSR (EC 2017a). In his diagnosis of the deviant forms of the division of labour, summarised in Chapter 9, Durkheim ([1893]1984: xxii; Giddens 1971:103-4) showed that specialisation was too diversified in the modern industrialised economy for the state, alone, to be capable of regulation and had to be shared, with non-state actors. As will be shown, the legally defined entities of occupational groups or 'corporations' that he saw as the chief remedy to anomie, have not, so far, come to fruition.

### **3.1 Change or stasis? The political dimension**

The first pair of contrasting paradigms (Table 3.1) that has animated opinion formers is an orientation in broad terms towards a 'liberal' or alternatively a 'regulated' market economy. In this context, liberal is taken to mean a public policy orientation towards choice in education and health, relatively low taxes for individuals and corporations, private provision of public utilities. Regulated is taken to mean higher taxes, generous welfare, and public provisions of essential goods, and, in some cases, a higher level of state intervention in industries deemed to be of 'strategic' importance. In the EU there are a number of

variations in these models as will be shown later in the chapter. One version of the regulated model is the social market economy which is inspired by the view that there is more to a human being than '*homo economicus*'.

**Table 3.1 Contrasting paradigms of political economy (1)**

Theorists associated with 'Pro-market/pro-laissez-faire' paradigm	Relevant theory with which each is associated
Adam Smith* von Mises Hayek von Wieser Friedman	The 'invisible hand', the Division of Labour Equilibrium, <i>homo economicus</i> The price mechanism Self-interest Money supply

\* Associated with the market but also with his moral work

**Table 3.2 Contrasting paradigms of political economy (2)**

Theorists associated with 'Pro-values/pro-social justice' paradigm**	Relevant theory with which each is associated
Hamilton Polanyi Sennett Habermas Keynes	Social psychology Commodification Precarity, 'flexible' capitalism The 'language of price' is not enough State intervention

\*\*This does not imply a wholly anti-market stance but rather an awareness of its limitations for promoting social solidarity

These contrasting socio-economic theories equate in broad terms to the right and left in political terms with corresponding priorities in the creation and re-distribution of wealth. In this taxonomy, the pro-market/pro-choice paradigm would support the gig

platform model, while the pro-values/pro-justice paradigm would support the social market model. Such divisive and fundamental questions are relevant in the present context for what they might tell us about the compatibility of the gig economy with Europe's social market. For this it is appropriate to have a better understanding of the thought processes which animate them. The first for consideration will be the political dimension.

Those on the political right are assumed to want as little intervention as possible and then only where it is consistent with non-discrimination, proportionality, necessity and least restrictive measures. For them the gig economy may be seen as a promising new form of economic activity and they will not want to see it stifled. If so, their position would generally align with that of the theorists illustrated in Table 3.1. For them, it can be left predominantly to market forces to resolve possibly damaging effects to society in some cases, should they occur. They might consider that there are sufficient safeguards within existing national and EU legislation not to warrant any more. Their view may resonate with Margaret Thatcher's (1990) remarks, 'There is no way you can buck the markets' and Hayek's theory of free markets, or the 'price-mechanism', which held that a competitive system, free of all 'interference' by government or monopolistic combinations, of capital or of labour, would easily find an 'equilibrium' (Hicks 1982:3 quoted in Wapshott 2011:140).

The contrary position taken by those on the political left of centre, illustrated in Table 3.2, is that government has a duty to intervene and they may consider that further regulation is the way to curb the excesses of the gig economy. Few, in governing circles in the EU or member states, will be hostile to business but many will be suspicious of the power of big capital in relation to economic policy making. Their fears can be summarised in four potentially adverse effects namely 1) 'commodification', 2) 'flexible capitalism', otherwise known as 'precarity', 3) waste and 4) 'regulatory capture'.

### *1) Commodification*

It was Polanyi ([1944] 2001:75-6) who drew attention to the first,

Labor, land and money are obviously *not* commodities; the postulate that anything that is bought and sold must have been produced for sale is emphatically untrue in regard to them. In other words, according to the empirical definition of a commodity they are not commodities. Labor is only another name for a human activity which goes with life itself, which in its turn is not produced for sale but for entirely different

reasons, nor can that activity be detached from the rest of life, be stored or mobilized.

Actual markets, he says, are organised with the help of this fiction but,

to allow market mechanisms to be sole director of the fate of human beings and their natural environment, indeed, even of the amount and use of purchasing power, would result in the demolition of society.

## 2) *'Flexible capitalism' (or 'precarity')*

This is a term used by Mejia (2015:291), recalling Sennett (2006), to critically imply discrimination towards those who do not serve the interests of 'big capital'. In his case study of the installation of a super-fast broadband network, which will be considered in more detail below, Mejia (2015:291) explores how a privileged and dominant market actor can alter a city region's economic priorities in terms 'amenable to flexible capitalism' engendering precarity and damaging its social cohesion. The term 'precarity' is synonymous for Sennett and Mejia with the ever greater pressure for 'flexibility' imposed on workers by multi-national corporations which aim to satisfy investors' and shareholders', expectations - often short-term - through world-wide, rather than local or regional operations. 'Flexibility' is Uber's (2018:6) justification for not granting employee rights to its workers.

## 3) *Waste*

In his case study Mejia gives his account of how such a corporation aims to profit by using new ICT to privilege a small number of well-off residents at the expense and disruption of a much greater number of socially and economically deprived ones. The latter are treated, in his words, as 'waste', which is 'a euphemism for referring to those populations whose usefulness has run its course' (2015:297-8). 'Non-entrepreneurial' populations are treated as 'political economic trash' (2015:291). Their losses are ignored. They are a price worth paying for the anticipated gain.

In Mejia's case study, the city authority, had insufficient funds to pay for an amenity which it believed would bring in much needed investment and raise economic activity. As a result it struck a deal with Google Fibre to relax rights of way in return for being an incubator of the technology at the latter's cost. In other words, regulations were relaxed. Pursuing such a policy might be seen as consistent with a view inherited by Hayek from von Wieser (1914:396-7) who referred to 'thousands and millions of human beings, seeing with thousands and millions of eyes, exerting as many wills' and that no central power could ever

be 'informed of the countless possibilities' and that, 'the private constitution of the economy is what is needed to enlist the tremendous force of self-interest in the service of economic life'. This is the argument of conditional egoism famously summed up by Adam Smith in the *Wealth of Nations* (Smith 1776, Book 1, Chapter 2),

It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantage

Consistent with this principle, Google Fibre, for Mejia, is a case of altering regulations to suit powerful business corporations. Others see the need for new regulations to curtail the damaging social effects of a new form of ICT-enabled market activity such as the gig economy, while incumbents who fear for their livelihoods wish to maintain existing regulations as their only protection.

#### *4) Regulatory capture*

This is where businesses are able to bring undue influence on government (central, regional or municipal) to achieve their own interests. Examples are the Kansas City case described by Mejia and that of the District of Columbia (see Chapter 2, section 2.7).

It is not only, however, at the political level that such polarised views about the activities of markets, especially in radically novel forms, find their voice. More fundamental questions about respecting what it means to be human have continually been asked since the start of the industrial age - an answer to which has been largely neglected by scientific management. These are reflected in the second pair of contrasting paradigms illustrating differing attitudes towards change. In this case, 'progress' might inspire the gig platform model, while 'consolidation' might apply to the social market model. These contrasting notions are considered next.

### **3.2 Change or stasis? The cultural dimension**

Doing things differently can be a shock. For some fears of the gig economy and where it might lead could also be explained as an objection to modernity - Ludditism - as has happened many times before with the arrival of a technological innovation. It has been described as the rejection of 'the tyranny of rational choice solutions, alienated from concrete social practices' (Strong and Sposito 1995:268). It is what critical theorists like

Adorno and Horkheimer have exposed as 'the discrepancy between the growth of technically exploitable knowledge, on the one hand, and the absence of any worthwhile form of social life, on the other' (Finlayson (2005:67). A dichotomy is exposed which Adler (2016: 128) sees as a 'fork in the road',

On the one side, in the shape of Uber, for example, these technologies lead to a dystopia in which we are all reduced to contingent employees, permanently on call, perhaps bidding for jobs and perhaps even bidding against more desperate peers in poorer countries - allowing those who monopolize the underlying technology platform to reap the profits. On the other side these same technological capabilities, by dramatically lowering economies of scale, lead to the possibility of a viable communal economy composed on [*sic.*] flexible networks of cooperative enterprises.

The outcome, he says, will depend not on the technology but on regulating how it is used which is the chief interest for this thesis, specifically in an EU context. His reference to cooperative enterprises suggest an alternative form of governance which will be considered in Chapter 7 and of which Marx too was aware (Giddens 1971:238).

'Flexible', as referred to by Adler suggests opportunity for social benefit but it is a Janus-faced description that can equally apply to the precarity of 'flexible capitalism' to which Sennett and Mejia draw attention. Habermas (2001:87) points to a trade-off between the benefits to society of 'organized modernity' and the 'flexibilization' of career paths which hides a deregulated labour market and a heightened risk of unemployment,

the "individualization" of life projects conceals a sort of compulsory mobility that is hard to reconcile with durable personal bonds; the "pluralization" of life forms also reflects the danger of a fragmented society and the loss of social cohesion.

He speaks of the 'shocking price that a reckless monetarization of the lifeworld would demand' (2001:87). Already, for example, Uber drivers in the USA and, most recently in the UK, have pressed for legal recognition of their status as employees with basic entitlements on which they can rely, rather than that of day labourers in an on-demand or 'gig' economy.

Habermas (2001:146) describes the 'attack on the "spirit of modernity"' as a reaction to the excessive pressures imposed by the anticipation of too many possibilities. In the case of ride-hailing, scarcely are we getting used to an entirely new form of a traditional industry (taxis or minicabs) but the prospect of driverless taxis already awaits us. Spheres of life, he says 'that are functionally dependent on value orientations, binding norms and

processes of understanding' are monetized and bureaucratized leading to alienation and he recalls Weber's vision of a dark future lacking meaning and freedom conjured by the spectre of the 'iron cage' (Weber [1904/5], 1930:123,128). In this, individuals are trapped by teleological efficiency, rational calculation and control - the bureaucratisation of social order - and from which Weber concludes,

'Not summer's bloom lies ahead of us, but rather a polar night of icy darkness and hardness, no matter which group may triumph externally now' (1946/1958:128).

and which he referred to as the 'disenchantment' (Greisman and Ritzer 1981:35) of the world. Today it is given popular voice, for example, by Michael Sandel (2012) who draws attention to the 'market society' in which we now live rather than simply the 'market economy', and in which non-market values are 'crowded out'. Bauman (2013) refers to the interface between time and technology as 'liquid modernity' as we shift from off-line to on-line by which we now divide the conduct our lives in order to make mundane tasks ever easier, eliminate inconveniences, catch the moment and save time. 'We are living in a world made of one's wishes alone; of my and your wishes, of our - the purchasers, consumers, users and the beneficiaries of technology - wishes' (Bauman 2013:6).

The contrasting pairs of paradigms discussed in the preceding sections are clearly visibly in the *bloc* of heterogeneous societies which comprise the EU. The guiding impulse of the supranational institutions is towards integration - which is shared to a large degree in the public discourse of most, but not all, leaders and political parties of member states. The social market is an imperative of integration as will be shown in Chapter 8 (section 8.1) but the questionable compatibility of the gig economy may not be contributing to it. It is relevant, therefore, to understand something more about the differing social policies of member states as exemplified in the Varieties of Capitalism (VoC) typography and how they relate to the protection of workers in the EU. This is the subject of the next section and subsection starting with an explanation of VoC, the governance of firms with which it is associated, and subsequently, differing regulatory priorities. Despite the UK's imminent departure at the time of writing, it has been a full member of the EU during the data gathering period of this research.

### 3.3 Varieties of Capitalism (VoC) and corporate governance

The EU serves as a laboratory for observing the disparities in the practices of contemporary capitalism typified in the pioneering work of Hall and Soskice (2001).

**Table 3.3 Varieties of Capitalism in the EU**

Source: Author's compilation based on the typologies of Hall & Soskice 2001; Esping Anderson (1990)

Liberal Market Economy	Hybrid	Co-ordinated Market Economy
<b>1. Corporate Governance</b>		
<u>Shareholder model:</u> - Incomplete contracting - Impatient capital - <b>Radical innovation</b>	<u>Mixed:</u> - Works councils - Disruptive but weak unions - High level of state intervention	<u>Stakeholder model:</u> - Two-tier boards inc. workers, unions - <b>Strong industry associations</b> - Dense networks of long-term shareholders and cross-shareholding - <b>Incremental innovation</b>
<b>2. Labour market</b>		
<u>Flexible labour market:</u> - <b>Low employment protection</b> - Moderate unemployment protection	<u>Inflexible labour market:</u> - <b>Very high employment protection</b> - <b>High unemployment protection</b>	<u>More rigid labour market:</u> - Moderate to high employment protection - Moderate to high unemployment protection
<b>3. Welfare state</b> <i>(after Esping Anderson)</i>		
- Liberal w -	- Conservative (statist)	- Conservative (corporatist) or social democratic
<b>4. EU Member States</b> <i>(examples)</i>		
- UK - Ireland - Poland - Estonia - Lithuania	- France - Belgium - Italy (for contracted workers) - Spain (low employment protection)	- Germany - The Netherlands - Sweden -- Finland - Denmark ('Flexicurity')
<b>5. Gig economy</b>		
- Uber permitted with minor restrictions	- UberX (only) permitted in France, Airbnb permitted	- Banned (Uber) - Heavily restricted (Airbnb)

*(The effects most relevant to regulation of the gig economy are in **bold type**)*

Known as Varieties of Capitalism, it has been since been nuanced by others (for example, Menz 2005; Hanké, Rhodes and Thatcher 2007; Allen and Aldred 2009; Schneider and Paunescu 2012). The VoC typology and how it relates in broad terms to corporate governance and social welfare are summarised in Table 3.3. LME denotes the liberal market economy (or 'Anglo-Saxon' model), typified in the EU by the UK and Ireland, CME denotes the coordinated market economy ('Continental', 'Rhenish' or 'Nordic' model) and Hybrid denotes a mixed model (or MME). LMEs are associated with the 'shareholder' model, while CMEs (and to a lesser extent MMEs) with the 'stakeholder' model. The former is portrayed as characterised by asymmetry of information between agent (the manager) and principal (shareholders), incomplete contracting in which managers have wide freedom to decide future ownership and funding by impatient capital looking for short term gains. The latter is described as typified by collegiate management (operational and supervisory boards, worker directors), coordinated involvement of the social partners (owners, employees and unions), dense networks of cross-shareholding and long-term debt financing by local banks and, in some cases, regional authorities. Such distinctions, their effects on innovation, the possibilities of convergence and indeed their robustness are amply discussed in the literature, notably by Shleifer and Vishny (1997), Mayer (1998) and Gilson (2001). To the extent that these typographies are still plausible, the shareholder model is associated with firms originating in 'Anglo-Saxon' commercial environments, namely the USA, the UK and Ireland, and the stakeholder with those in some continental ones, particularly Germany, The Netherlands and the Nordic countries.

The correlation between VoC, corporate governance and social welfare is the subject of the next section. The relevance for the gig economy is that full access to social protection generally depends upon being classified as 'employed'. Evidence of this crucial condition and its interpretation for labour platform workers is presented in Chapter 7.

### **3.4 Diversity of regulatory and welfare policies**

LMEs are believed to foster radical innovation, while CMEs privilege incremental innovation. In this respect, gig economy intermediaries such as Uber and Airbnb fit well with the LME model and conform with virtually all the dominant recent and well-established information-technology innovators like Amazon, Apple, Google, Yahoo, e-Bay, Facebook, Instagram, YouTube, Twitter, Snapchat, all of USA origin. A notable exception is BlaBlaCar in

France, a not-for-profit platform in which only expenses plus a small premium are recoverable. The relevance for the present research is how such a radical-incremental distinction applies to social welfare, the labour market, and specifically working conditions.

Sapir (2006:369,380) distinguished four economic models in the EU, 'each with its own performance in terms of efficiency and equity', namely Nordic, Continental, Mediterranean and Anglo-Saxon. Sapir's typography (Figure 3.1) is particularly apposite because it refers to the distinction between economics ('efficiency') and social justice ('equity') which recalls the contrasting paradigms discussed earlier in this chapter and the EU's ambiguity towards responding to the gig economy which will become evident in Chapter 8.

Not only do most EU member states fall geographically into the first three models but they are also broadly typified as conforming to a social or regulated market model in contrast to the liberal orientation of the UK and Ireland and some Central and Eastern European (CEEC) member states of the EU. Lijphart (2012:274,288) has drawn attention to 'the kinder, gentler' form of consensual democracy, evident in the provision of social welfare, with which EU members such as Germany, the Netherlands, Denmark, Sweden, Belgium and the EU itself (Lijphart 2012:45), are associated than the Anglo-Saxon majoritarian form. Such kindness does not generally extend, however, to people working on gig platforms.

**Figure 3.1 The four European welfare typologies**  
(Sapir 2006:380)

		EFFICIENCY	
		Low	High
EQUITY	High	Continental	Nordic
	Low	Mediterranean	Anglo-Saxon

A defining difference is the protection and support given to workers (classified as employees) in employment or unemployment, resulting in a relatively rigid or flexible labour market. Some members like Sweden, Finland have both high employment and unemployment protection while Denmark is especially noted for its innovation of 'flexicurity' (modest employment protection but high unemployment protection with the emphasis on re-training and generous benefits during unemployment). Germany and The Netherlands have moderate protection in both cases while France and Belgium have the highest levels of protection in each and the UK has low employment protection and moderate unemployment protection. Levels of protection against unemployment or benefit support during a period of unemployment become particularly important at a time of when a 'job-for-life' model has largely been replaced by a series of career changes and precarity of unskilled jobs.

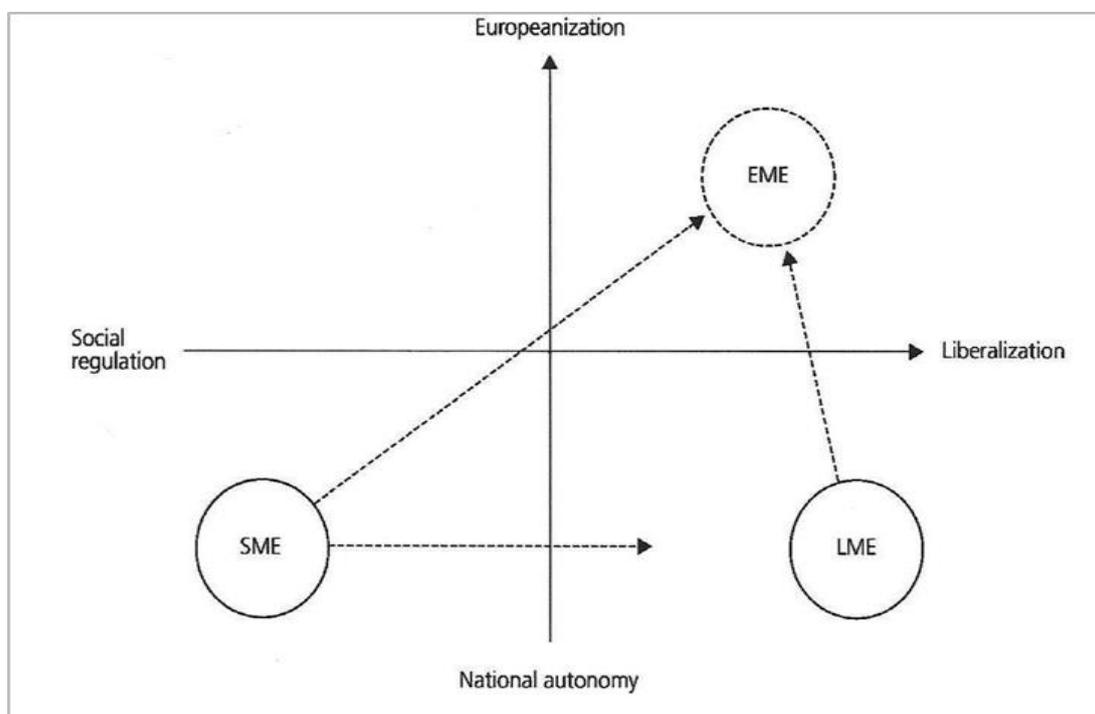
Esping-Anderson (1990) rejected the concept of a uniform welfare state model, instead observing three distinct trajectories arising out of a state's nation-building political history which will affect how they seek to regulate both public and private services. These are typified as:

- 1) 'liberal' (which in this context means universal benefits, minimal and means-tested paid out of general taxation), a cluster in which he placed the Anglo-Saxon nations namely the USA, Canada, Australia and the UK.
- 2) 'conservative' (which means contributory systems involving obligatory individual insurance in a corporatist or statist context) namely Austria, France, Germany and Italy.
- 3) 'social democratic', which combines 'a universal, inclusive second-tier earnings-related insurance scheme on top of a flat rate egalitarian one' [1990:26] comprising the Scandinavian countries.

'Liberal' echoes Hayek's view that reliance on the welfare state is dangerous because it cripples freedom and efficiency, and 'social democratic' echoes Polanyi who views social rights in terms of their capacity for 'market embeddedness' and 'de-commodification', that is, the degree to which they reduce citizens' status as 'commodities' and permit them to make their living standards independent of pure market forces.

The VoC typography and those of Sapir and Esping-Anderson demonstrate the wide disparity in welfare models and in categorising them across the EU. Consequently Sapir (2006: 370,375) finds the notion of *the* ‘European social model’ misleading and ‘social Europe’ rather dubious. Yet the former is the term that appears in the Treaty and is defined by the European Parliament (Chapter 8) and the latter quoted at the proclamation of the EPSR in chapter 19 (EC 2017d). The concept of a ‘social market’ is also clearly defined in the Introduction to this thesis (section 1.3). Sapir also doubted the sustainability of those economic models categorised in his matrix as high in equity but low in efficiency, recalling Scharpf (2010) who did not believe that a European social model was possible given the liberalising, de-regulatory judgements of the CJEU. In this way, he says, Hayek’s prophecy ({1939}1948) is being proved right. He foresaw European integration but predicted that states with the greatest commitment to welfare entitlement would be obliged to abandon them in the face of competition despite their ideological aspirations. It is only taking a little longer than he expected. The trajectory he foresaw towards an emerging European market economy is illustrated in Figure 3.2.

**Figure 3.2 The effect of Europeanisation on SME, LME and the emerging EME models (Scharpf 2010:235)**



As Figure 3.2 shows, the tendency among social market economies (SMEs), according to Scharpf, has been away from social regulation in towards liberalisation and from the

influence of national autonomy towards that of Europeanisation, and among both SMEs and liberal market economies (LMEs) towards an emerging 'European' market economy (EME).

The gig economy presents a further challenge to 'equity' versus 'efficiency'. It is evident from the present research (see Chapter 7) that workers in the on-demand or 'gig' economy such as Uber have little protection in most member states as they are classified as self-employed or excluded altogether. Even re-classification of some Uber drivers as 'workers' in the UK will not entitle them to unemployment benefit as the classification only permits very limited statutory work entitlement in British labour law. These are listed in Chapter 7, Table 7.1. In France, however, the *micro-entrepreneur* law permits ride-hailing and other gig workers to qualify for a degree of social security, as is the case in Spain. In Belgium, a recent change allows bicycle food deliverers to inclusion in social security subject to a fixed level of earnings.

The Varieties of Capitalism typology contains many sub-variations and alternative classifications as shown above and by other scholars mentioned in the preceding section. It seems, however, to systematically demonstrate two contrasting conditions relevant to the gig economy. One is a wide variation in regulating operations such as ride-hailing in Europe, where liberal market economies such as the UK, Ireland and some Baltic and Central European countries are more permissive than Coordinated or Social Market economies such as Germany, The Netherlands and the Nordic countries (see Annex III). The other is the widespread exclusion of gig workers from social protection at all. The VoC analysis also shows that the persistence of national institutional traditions and powerful social partners has shaped 'a complex patchwork pattern' of re-regulatory responses to counter the EU's pervasive top-down de-regulatory agenda in the field of services (Menz 2005:5). It is contended in Chapters 8 and 10 that the recently proclaimed EPSR (EC 2017a) serve three purposes. Firstly it acknowledges that the EU has somewhat neglected social Europe, especially since the Great Recession after 2008 and thereby renews its commitment to it under the Treaty. Secondly, it shows respect for national labour law and social welfare policy with a set of soft power principles which foresee little in term of additions to the *acquis*. Finally, it is a response to all new forms of work including, specifically, labour platforms of the gig economy.

### 3.5 Summary

The purpose of this chapter has been to theorise two pairs of contrasting political and cultural paradigms, mainly in Europe, about the conduct of a free market economy, namely a right to left spectrum and one that divides over response to rapid technological change. These are directly relevant to how the EU responds to new forms of organising work and specifically the labour platforms of the gig economy. It matters because the EU is committed by Treaty (Article 3 TEU, Maastricht 1992; Article 9 TFEU, Lisbon 2009) to creating a social market economy whose dimensions were outlined in Chapter 1. The literature review in Chapter 2 showed that the conceptual basis of the business model of offline labour platforms did not accord with such a model (the focus of the first research question), the empirical evidence for which will be shown in Chapters 6 and 7. The present chapter has shown how the conceptual bases enshrined in divergent paradigms of political economy (exemplified by the VoC taxonomy with different treatments of labour markets and welfare systems) and cultural outlooks in the EU impede addressing the policy and regulatory issues raised by such incompatibility as a *bloc* (the focus of the second research question). There also appears to be a long-standing tension within the European Commission itself about promoting economic growth and achieving a high level of social welfare including the protection of workers. The empirical evidence is presented in Chapter 8.

The existence of such diversity should not surprise us for four reasons. Firstly, the Single Market is composed of sovereign states each with its own traditions, language(s) and legal order(s) and, following enlargement, widely varying stages of economic development. A further degree of variation is provided by devolution to regions and cities in some cases. Secondly, the Single Market, is a unique and highly ambitious experiment, in modern times, as an economic, political and juridical confederation. Perhaps we have to go back to the Hanseatic League in early modern Europe or the Zollverein in nineteenth century Germany for anything resembling a free trade area in northern parts of the Continent albeit on a limited scale in geographic coverage and scope of activity. The Roman Empire would stand a better comparison, except that participation was through conquest, not voluntary accession. Thirdly, the Single Market is not old in historic terms - having been formalised by the Single European Act of 1986/7 and established by the Treaty of Maastricht, coming into effect on 1 November 1993. Therefore it should be seen as a work-in-progress. Finally, the

gig economy exemplified by Uber is a very recent innovation that challenges the prevailing socio-economic order and particularly the social market model with its free-riding and evasive entrepreneurialism. What is clear is the broadly similar exclusion of gig workers from social protection across the Union.

Establishing the social market is a cardinal principle of the EU and convergence towards it a driving impetus of integration. An EU that neglected it would revert to little more than a common market with which it started, or the European Economic Community as it was formerly known. In short, without progress towards a social market, there is little progress towards integration. Both processes, however, have been constrained by the political heterogeneity of its members referred to above. The EU promotes common objectives of public policy through directives and regulations where it is within its competences and by guidelines and recommendations which it intends will be accepted by member states. The EU's scope, however, for effecting change in these policy areas is limited by the present *acquis*. The extent of its formal (or 'hard') power, so far, in respect of labour platforms of the gig economy is discussed in the next chapter. The effect of its normative (or 'soft') power and the opportunities for additions to the *acquis* are discussed in Chapters 8 and 10. These, however, will be shown not to be without opposition.

## CHAPTER 4. THE REGULATORY CONTEXT AND EU INTEGRATION

This thesis researches two specific questions, introduced in Chapter 1, about a new form of organising work in the delivery of services and the EU. The current chapter sets the scene by which to understand some findings and answers set out in Chapters 9 and 10, following the empirical evidence of Chapters 6,7 and 8. Its purpose therefore, is to explain the regulatory context within which the policy gaps exposed by offline labour platforms have been addressed at EU level. At the outset of the research period for this thesis, it was observed that the EU institutions were mainly concerned with economic/market issues such as licensing, insurance, taxation and competition. In this sense, the EU conformed to a pro-market/pro-laissez faire paradigm described in Chapter 3. As the research period progressed, it was observed that the perception by the institutions of incompatibility with the social market model gradually developed and assumed an importance culminating in the policy, and potentially regulatory changes, of the EPSR as shown in Chapter 8. In this sense there has been an evolution in the EU towards the contrasting pro-values/pro-social justice paradigm described in Chapter 3. The significance of an EU response as a *bloc* (as indicated in the second research question) is considered in the current chapter and the implications for the integration project if it is not achieved. The prospects of its success are weighed in Chapter 10.

The present chapter is arranged as follows. The first section explains the confusion over the status of ride-hailing operations such as Uber under the existing *acquis*, namely the eCommerce or Services Directive. The conduct of such operations, however, goes beyond ignoring or evading taxi licensing rules leading them to be restricted or banned altogether in some member states. A second section, therefore, examines the EU's competence in deciding public policy about how workers in these new types of organisation should be treated. A third section reveals a general unwillingness by the Commission to introduce legislation specific to the 'collaborative economy'. A fourth section situates the latter in the EU's integration process. A fifth section considers the hypothesis of 'differentiated integration' where competence is lacking or consensus is prevented by paradigmatic positions such as those discussed in Chapter 3.

#### 4.1 Confusion and controversy

For most of the period of research for this thesis, it was unclear whether ride-hailing platforms such as Uber enjoyed right of establishment and freedom to provide a service under the Services Directive (EC2006). The Court eventually decided (CJEU 2017b) that it did not. It was a transportation service (which includes taxis) and therefore was subject to national regulations under which, in some cases, it was, and remains, banned. Doubts still remain, however, as the case referred to an earlier form of Uber's operation, now largely superseded. What is clear, however, is that there is a patchwork of labour practices in 'atypical work' throughout the EU that are perceived to be incompatible with the social model.

The Court also rejected Uber's claim that it was an information service rather than a transportation service and therefore enjoying freedom under the eCommerce Directive (EC 2000). From an examination of Treaty provisions and the case law of the CJEU, Geradin (2015a; 2015b), a scholar in international competition law, finds the legality of the granting of exclusive rights to licenced taxi operators by national regulations in the EU to be far from clear. He believes that 'ride-sharing' services (as he calls them) offer benefits of cost and convenience to consumers and that new regulatory measures need to be established to promote a level playing field for competition. Uber should be treated as an information service matching vehicle owners with spare capacity with potential passengers rather than a transportation service and hence should be included in the freedom to provide services (see Annex IV). He does not suggest, however, that 'ride-sharing' should be entirely unregulated but only what is consistent with and proportionate to protecting objectives of public interest, in the same way that is required of incumbents. Specifically, he refers to two categories of regulations. The first is to correct market failures, namely safety and insurance requirements and provision for wheelchair access which may not be met without state intervention. The second comprises 'horizontal legislation', for instance on employment and taxation but he does not expand on the latter (Geradin 2015b:7).

Geradin's second category is the one that specifically concerns the research questions of this thesis and is indicative of an evolution observed during the course of the present research in the public discourse in EU member states about the ride-hailing platform. At the outset it was mainly about whether, notably, Uber should be restricted or

not because it broke local transportation rules. It was banned, for example, in Germany, France, Spain and some other MS at that time, but not in the UK or Ireland (see Annex III). By the end of the research period, the discourse had changed to one of whether its labour practices were exploitative of vulnerable groups of society.

If they are so, in other words if they are incompatible with the EU's social market model, the second research question is in what way the EU, as a quasi-federal *bloc*, is responding. This is discussed in the next section in this chapter but Light (2016:389) makes a relevant point in her work on regulating the gig economy in the USA when she recognizes 'the importance not just of regulatory policy diversity, but "regulator" diversity as well. Not only do we not always know *ex ante* whether regulatory action or inaction will lead to greater risks or greater enhancements of welfare; we also do not always know whether a single regulator, or a combination of regulators will best serve those ends'. In the EU, is the regulator to be the Commission, member states, regions, cities, a combination of each, or even none? This is a crucial issue for addressing incompatibility of labour platforms with the social model for which evidence is presented and discussed in Chapter 8. To what Light is referring by 'welfare' is unclear as she, like Geradin, does not expand on it. In the current discourse it would be taken to mean the wellbeing of those working in the gig economy. For Miller (2016:154), also writing in the USA, the sharing economy disrupts regulations that were never designed for this new form of activity. Instead of 'brushing them away' he advocates revisions to ensure similar levels of appropriate governance for both incumbents and new entrants. Whether such governance is confined to market access and consumer protection or might also embrace the treatment of labour is not specified. The voice of all stakeholders, however, needs to be heard (Miller2016:172). That surely includes gig workers who generally lack representation (see Chapter 7, section 7.4).

This section has demonstrated a confusion about how to regulate the gig economy in the EU (and elsewhere) and the lack of attention to the treatment of labour. Both aspects are greatly affected by the EU's competence in these fields which is considered in the next section.

#### **4.2 The EU's competences**

Response to the gig economy at EU level is conditioned by three factors. The first is the limited reach of existing EU directives, the second is that labour law is for the most part a

national competence (Codagnone, Biagi and Abadie 2016a:11; Forde et al. 2017a:92) and third that, 'There is no single approach on how to qualify employment status across Member States in the collaborative economy' (EC 2016a:35). Each will be taken in turn.

As has been shown, the Court has decided that ride-hailing is not covered either by the Services or the eCommerce directives and that it is up to individual member states to decide how to regulate 'in conformity with the general rules of the TFEU Treaty' (CJEU 2017b:§46,47). Directives such as these, however, are concerned with free movement within the Single Market. They do not address the social protection of workers. Other directives concern labour issues on working time, written contracts, temporary, part-time and posted workers but they do not apply, so far, to gig workers as will be discussed in the final chapter.

Of greater importance is that labour and welfare are shared competences between the EU and MS, although the 'promotion of a high level of employment and the guarantee of adequate social protection' is a provision with general application under Treaty (TFEU Title 11 Art. 9). This means that the Commission cannot introduce legislation for the EP and Council to consider on in-work or out-of-work benefits or on setting the national minimum or living wage in member states.

These benefits depend upon the existence at law of an employment relationship. Although the Court has given its definition of the meaning of 'work', for example in case C428/09 (CJEU 2010),

§28 'The essential feature of an employment relationship, however, is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration'

no such basis has been accepted in the case of the gig economy throughout the EU. As the Court stated,

§29 'It is for the national court to apply that concept of a 'worker' in any classification, and the national court must base that classification on objective criteria and make an overall assessment of all the circumstances of the case brought before it, having regard both to the nature of the activities concerned and the relationship of the parties involved'

The absence of a common understanding across the EU of the employment relationship of gig workers is the principal constraint on addressing incompatibility with the social market model and its impact is considered in more depth in Chapter 7.

### **4.3 No new legislation**

The Commission has stated that it considers existing regulations such as those referred to above, as well as Treaty principles like Article 49 on the freedom of establishment, apply to the collaborative economy and that it does not propose to bring forward any new ones (e.g. Bieńkowska 2017a; b; Bulc 2017). As has been shown, however, the social protection of workers is not addressed by them. Instead, the Commission published its 'European agenda for the collaborative economy' (EC2016b. See also Annex II) comprising a set of guidelines for MS to follow, inviting them 'to review and where appropriate revise existing legislation according to this guidance'. *Inter alia*, the agenda asks,

When does an employment relationship exist? Labour law mostly falls under national competence, complemented by minimum EU social standards and jurisprudence. Member States may wish to consider criteria such as the relation of subordination to the platform, the nature of the work and remuneration when deciding whether someone can be considered as an employee of a platform.

The Commission's recourse to guidelines and recommendations follows from the regulatory constraints outlined in the previous two sections and will be amplified in Chapters 8 with particular reference to the EPSR. The outcome should not be seen in isolation as the social market is a Treaty commitment of 'ever closer union' from which its application to labour platforms is discussed in the next section.

### **4.4 Implications for integration**

Free movement in the EU means that goods and services which are legally available in one member state should not face barriers to entry in any of the others. To make this possible, businesses should be able to operate under broadly similar conditions. Tariffs on goods have long been removed and are not applicable to services. Non-tariff barriers still remain, however, for both. In the case of goods, these arise from differing product standards despite the provisions of the Mutual Recognition Regulation (EC 2008. See also Hawley 2014 for a further explanation). In the case of services, they arise from differing professional qualifications and prior authorisations despite the Services Directive (SD). Moreover, some

ubiquitous services such as ride-hailing are excluded from the SD and subject to differing national regulations.

By contrast, digitally intermediated labour platforms are perceived as having an unfair advantage because they evade regulations and shirk responsibilities to their workers which is not compatible with the European social model. The EU institutions are keen to promote the collaborative economy (EC 2016a; EC 2016b; EC2016c; EP 2016a; EP2017d; EP2017e) but look for a 'level playing field' between platforms and traditional service providers.

From the above, it is clear that similar operating conditions do not currently prevail for labour platforms in the EU due to differences in country regulations or the exploitation of loopholes in them. Therefore in this sector, like others, the integrative objective of free movement of services has yet to be achieved. Viewed from an overall perspective of EU integration, it appears to belong to the domain of multi-level governance by regions and cities as well as member states, displaying a post-functionalist change 'From Permissive Consensus to Constraining Dissensus' (Hooghe and Marks 2009). In this account, those that increasingly feel they do not benefit from what they perceive as an elitist, big-capital, internationalist project may see the nation state as their only protector. For some, a dominant on-line platform like Uber may typify such a project while for others it may offer welcome opportunities to boost their incomes.

The integration of services has long proved more difficult than of goods and digitally intermediated labour platforms are but the most recent case. The Service Directive itself, an ambition of the Lisbon Strategy of 2000 which aimed to make the EU by 2010 'the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion', was the product of tortuous negotiation in the Commission and the EP. In the resulting compromise, the country of origin principle (CoOP) on which mutual recognition was based was dropped and free movement was replaced by 'freedom to provide a service'. Free movement was established by the Dassonville judgement (CJEU 1974) but was made subject to overriding reasons of public interest (ORPI) by the Cassis de Dijon ruling (CJEU 1979). In principle, ORPI covers mandatory requirements for public safety, health, the environment and consumers (SHEC), but its scope is subject to wide interpretation. There are 'sensitive political stakes' to

which Hatzopoulos refers (2012:279) when he says that 'Services regulations are more of a social and environmental nature than purely technical/SHEC' (Safety, Health, Environment and Consumer Protection). For Scharpf (2010:241) the Cassis formula 'cannot accommodate the diversity of normative and politically salient national concerns. The "mandatory requirements of public interest" that might be invoked to justify national impediments are, of course, defined by the Court in general terms. How could what is not mandatory for the UK be mandatory for Sweden?'

The conclusion from the forgoing is that neither regulating ride-hailing as a transportation operation nor embedding it in the social market model is essentially achievable by EU legislation. Instead, the EU's response to integrating the gig economy appears to be explained by cultivated spillovers, an aspect of neo-functional theory (Stone Sweet and Sandholtz 1998) by promoting new 'soft power' measures such as its European Agenda and the EPSR that aim to nudge MS to extend or fill in gaps in existing regulations, specifically in this case in accordance with the social market model. Another determinant might be the changing behaviour of Uber and other platforms which is discussed in the concluding chapter. These are subjects for further research as the platform economy expands. At the present time and as long as the regulatory *impasse* described above prevails, then the gig economy resists integration. It is by no means the only policy area that exhibits such a feature of the EU as will be shown in the next section but it is how, in the case of labour platforms, it impedes the social market commitment that is of particular interest.

#### **4.5 'Differentiated', 'flexible' - or, simply, *non-integration*?**

There is no concerted response among member states to work on labour platforms because most aspects of employment and welfare policy are national competences.

Diversity is not a new characteristic of the EU despite the intention towards ever closer union contained in the first line of the Treaty of Rome, a common internal market established by the Single European Act (SEA) of 1986/7, economic and monetary union (EMU) planned in the Treaty of Maastricht (TEU) and the replacement of national currencies by a common currency in a majority of member states from 2002.

Stubbs (1996) drew attention to a 'two- or multiple-speed', 'à la carte', or 'variable geometry' Europe. Holzinger and Schimmelfennig (2012:292) refer to 'flexible' forms, while

Schimmelfennig and Winzen (2014:360) find that 'more than 90 per cent of all differentiations belong to three policy fields and 40 per cent relate to the internal market: the four market freedoms, competition and taxation policy'. For Howarth and Sadeh (2010: 923) the completed Single Market is an essentially contested concept and what is acceptable in the different member states is in constant evolution. Thus, the SM is an incomplete project and it is difficult to envisage its completion.

Differentiated integration occurs when MS choose to formulate their own policies as far as they are permitted by opt-outs, non-signatories and varying degree of cooperation under the *acquis*. Examples can be found in health, education, welfare and employment, justice and home affairs, cross-border cooperation (such as Prüm and Schengen Treaties), banking supervision, taxation, the common currency and common foreign, security and defence.

The treatment of those working on labour platforms in the gig economy is different throughout the EU as evidence in Chapter 7 shows. One aspect which is consistent, however, is their exclusion from full access to work and state entitlements with the effect of distancing the Single Market from the social market model, a core objective of EU integration. The labour and welfare policies of most MS have yet to respond to this new form of organising work and new legislation by the EU is for the most part beyond its competences. It will be shown in Chapter 8 that the objective of the EPSR is to bring consistency to this sector through the EU's normative powers of agenda-setting, recommendations and principles.

#### **4.6 Summary**

This chapter has presented and analysed the regulatory context in the EU within which any changes to address the incompatibility of labour platforms will have to take place. Obstacles were shown to be regulatory confusion about ride-hailing and a belated awareness of its effects for workers, the EU's limited competences vis-à-vis those of the MS and the Commission's reluctance to introduce new legislation. The consequences of the *impasse* were discussed for the wider integration project with the effect that the labour and welfare issues of the labour platforms of the gig economy exemplify a further form of differentiated integration.

This thesis is about two principal issues, namely incompatibility between labour platforms and the EU's social market model, and, addressing it in a quasi-federal *bloc*. The purpose of the first four chapters has been firstly to explain a perception of incompatibility through contrasting models within the conceptual literature of political economy and cultural values, and secondly the context of EU integration within which it within applies.

Chapters 6 and 7 provide the empirical evidence for such incompatibility and the way it is beginning to be addressed in the EU (Chapter 8) followed by a presentation of findings (Chapter 9) with some insightful theoretical reflections on them informed by Durkheim's theory of the Division of Labour in Society (Durkheim ([1893] 1984). Some solutions and the outlook for their success are presented in Chapter 10.

The next chapter (Chapter 5) explains how the evidence has been collected and analysed.

## **CHAPTER 5. METHODOLOGICAL CONSIDERATIONS**

This thesis takes an inductive approach in which some answers to two principal research questions emerge from the evidence to be presented and the philosophical concepts and contextual circumstances considered in the previous chapters. These questions are about the compatibility of labour platforms with the social market and the EU's response to addressing it in conditions of diversity. They flow logically from the first to the second but they are quite different in character. Therefore the type of evidence to be presented and analysed in the empirical Chapters 6, 7 and 8 will differ. These chapters refer respectively to data transparency, experience of working on labour platforms and the regulatory debate. The first, data, means in this case reports of what is known and what is missing about labour platforms, the second means reported terms and conditions of work, and the third means reports in industry and government, national and EU, as to whether to regulate or not.

Taking the questions consecutively, this chapter explains in each case why specific sources of evidence have been selected. The timescale over which evidence was collected is explained and finally, the criteria by which both types of evidence were analysed.

Qualitative methods based on collected documents have been used throughout. Very little quantitative data of relevance have been found which would be of explanatory value for the specific research questions. My own approach towards acquiring knowledge and self-reflection can be described as that of a critical realist as will become apparent throughout the chapter.

### **5.1 Evidence about compatibility**

The first research question (RQ.1) is about compatibility of labour platforms with a European social market model. This is largely a question, as has been said, of perception. While a generalised description of what is meant by the 'social market model' has been given in the Introduction (Chapter 1), and is specifically defined as an EU treaty commitment in Chapter 8, it is more delineated by ideology and aspirations (as is shown in both Chapters 8 and 10, conditioned by the contrasting paradigms of Chapter 3) than a set of measurable parameters. Therefore the evidence will be drawn more from the perceptions of authors in reports and commentaries (Chapter 7) than the limited amount of relevant information found in published surveys (Chapter 6). This does not mean advocacy for an already assumed incompatibility but rather an attempt to observe and understand the effects on

providers (and also in some cases consumers) of a new form of service provision which has become widespread but about which all that is known for sure is the available facts of labour law and the scope of welfare entitlements in EU member states. These provide some answers for the subsidiary questions about specific working conditions listed in the Introduction (Chapter 1). The sources selected and criteria for doing so will be presented in a subsequent section of this chapter but the objective has been to give space to as many shades of informed opinion as possible. This was considered the best way to make an assessment of whether labour platforms are compatible or not, or, perhaps of greater value, to what extent they are or are not. Ethnographic studies of Uber drivers in the USA such as those referred in Chapter 2 were consulted but rejected as a method for understanding what working on platforms means for the EU's commitment to social Europe. This is a very different question that does not appear so far to have received specific scholarly attention.

## **5.2 Evidence about addressing incompatibility**

The second principal research question (RQ.2), which flows logically from the first, is about public policy response to addressing perceived incompatibility and, because it is located in a quasi-federal *bloc* such as the EU, it entails diversity. Evidence of this nature goes beyond perceptions - it is about actions. It is a question of process, of political will and power in the EU. The evidence in this case comes from diverse treatment of labour platforms in members states but particularly from the positions taken towards regulating them by groups within the European Parliament and the position taken by the European Commission. Not only do positions in the EP differ, but there is ambivalence in the position of the Commission, the latter alone having the prerogative to bring forward legislation which so far has been confined to two successive sets of guidelines and principles for MS to follow. The sources of evidence therefore are of a formal nature contained in documentary output from the EP committees and the Commission. Contributions of this type are also made by MS, the social partners and at least in one case, a platform operator. As above, the sources selected and criteria for doing so will be presented in a subsequent section. In Chapter 8, however, it will become evident that not all share the EU's rhetoric of addressing incompatibility in all forms of contemporary work, including labour platforms. The objective of the methodology is to show how action at EU level has been generated. Its effects are among the subjects for further research discussed in the concluding chapter (Chapter 10).

It will be shown that analysis of the secondary data in this chapter derives from contrasts within two related premises. The first is between the economic value and social value of labour platforms which is evidenced in the diverging paradigms of political economy and cultural values referred to Chapter 3. The second is the ontological contrast, after Fleetwood (2016), between two perceptions of the real, namely what is experienced as 'materially/artefactually real' and the 'socially/ideally 'real'. Chapter 2, section 2.4.4 referred to a 'relational ontology' in which the technical and the social are combined in 'an entanglement in practice' (Orlikowski 2009:12,13). One way of looking at 'relational ontology' is 'sociomateriality' which, she says, 'focuses on how meanings and materialities are enacted together in everyday practices' (citing Barad 2007; Introna 2007; Suchman 2007).

De Vaujany, Fomin, Haefliger and Lyytinen (2018) describe how regulating information technology is a process deriving from a relationship of three necessary elements namely of 'rules, IT artifacts, and practices (behaviors in local context)'. Changes in any of these will affect the relationship and the overall outcome. The use by de Vaujany et al. of the term 'trifecta' for these elements suggests, intriguingly, not only their effects but also a bet on their order as if finishing in a race (as per Shorter Oxford Dictionary 2003: 3348). The phenomenon of gig work in the platform economy has derived particularly from the application of recent, rapid developments in information and communications technology, in other words from IT artifacts. The visible effects on social compatibility, are studied in this thesis, especially information asymmetry and resulting anomie in the division of labour to which Durkheim, relating to his own times, refers. In the case of offline, on-location labour platforms, I consider rules as the relevant current national law and the *acquis* of the EU which may not be appropriate for effectively regulating them, IT artifacts as the apps and algorithms (data analytics) of platforms, and practices as the terms and conditions under which the service providers work. The sources for what I have found about each of these in my research from the documentary evidence collected are explained and analysed in the following sections. Moments of simultaneous change in these relationships are described as 'regulatory episodes' (de Vaujany et al. 2018:29) which emerge as 'selective' epistemic windows into regulatory practices that help capture the simultaneous change in all three regulatory relationships and make them transparent'. IT artifacts are

introduced globally with disruptive regulatory effects locally and Uber is an example in the case of labour markets and transportation (de Vaujany et al. 2018:34).

### 5.3 Types of document

Documents relevant to both types of evidence emerged from a reading over the course of the research period of material about the collaborative economy in general and about labour platforms in particular. The author’s attention focussed on a number of specific areas of the public discourse because it became apparent that they regularly provided rich amounts of information throughout the research period. These are shown in in Table 5.1.

**Table 5.1 Evidence for empirical chapters**

Chapter	Evidence	Main source(s)	Types of documents
‘Data transparency’ (Chapter 6)	Surveys	- EU institutions - EC and EP Directorates and research centres - Third parties (universities and other research centres) Uber’s own PR	- Surveys, reports, in-depth studies, white papers, commissioned by government
‘Terms and conditions of work’ (Chapter 7)	Reports	- EU institutions - EC, EP and CJEU - Media	- EC and EP communications: policy reports, briefings, in-depth studies, press releases - EU Horizon 2020 project - Third party surveys - EU foundations - Eurobarometer and stakeholders responses to consultation - Academic papers - Third party surveys
‘The regulatory debate’ (Chapter 8)	Opinions Resolutions Votes Open letters Advocacy	- Europarl (daily website digest of proceedings in the EP) - MS governments - Industry - Trade unions	- Parliamentary questions and answers - Output from Committees of the EP - EP and EC press releases - The EU <i>acquis</i> - Working papers

Seventeen separate areas of this kind were identified on this basis and from these more than one hundred individual documents which informed the principal research questions were found. The criteria on which these were analysed for their contribution to them are explained in a subsequent section of this chapter but, overall, some gave estimates of demographic data about users and providers of services intermediated by platforms

throughout Europe, others of their economic impact. Most acknowledged the advantages in cost and convenience to consumers and the flexibility offered by work on platform work. As the public debate proceeded, however, documents increasingly observed opportunities for exploitation and the generally poor pay, lack of benefits and entitlements, and job precarity.

Most documents referred to Uber as the exemplar of the gig economy in its most complete sense because it is a labour platform which handles the entire transaction including setting the price, payment by the consumer and remittance to the driver. A few also mentioned Deliveroo riders, who have been frustrated in their attempt to be recognised through collective action and are subject to algorithmic control and surveillance much like Uber drivers. Some of these documents will be referred to in Chapters 6 and 7 as evidence of incompatibility with the social market model (RQ1). Other documents sourced from the EP and EC will serve as evidence in Chapter 8 of the EU's response to address it (RQ2).

The documentary evidence for the present research is diverse and addressed to different audiences as is clear from Figure 5.1. They were selected for what they said about the collaborative economy from all aspects including advantages for consumers and work flexibility for providers, as well as poor conditions of the latter. These documents, therefore, have been taken to be the basis for analysis whose results inform the findings in Chapter 9 and the Conclusions in Chapter 10. The research has been further informed by the author's regular participation in a digital labour interest group forum in which relevant topics have been discussed and attendance as an informal observer at a public rally about unfavourable employment conditions of gig workers in London.

#### **5.4 Timescale**

Documentary evidence was gathered between late 2014 and early 2018 which coincided with a period during which the gig economy received growing attention. The key events which took place during the research programme are shown in Figure 5.1

The reasons for these starting and stopping points will be explained in more detail as follows. Parliamentary questions about Uber were being raised by MEPs towards the end of 2014 but the Commission (EC 2015) first formally referred to the rise of the platform economy in its Digital Market Strategy for Europe in May 2015. This was followed by a Public Consultation running from September 2015 to January 2016 with first results

published at the end of that month in January and a synopsis (EC 2016c) in May 2016. The EP's first formal involvement (EP 2015) was in October 2015. Early legal milestones were the referral by the Spanish government to the Court (CJEU 2015) for a ruling on the status of Uber's activities, the decision by the High Court in the UK that Uber's smart-phone app was

**Figure 5.1 Key events during the evidence gathering period**



*Note: Uber launched in Paris in 2011 and in London in 2012*

not a taximeter and therefore did not breach licencing regulations (Transport for London 2015), decisions against Uber by senior courts in Germany, France and Belgium and the decision in 2016 of the London Employment Tribunal on the status of some Uber drivers as 'workers' and the subsequent dismissal of Uber's appeal in September 2017. For the EU a defining moment was the publication by the Commission of a 'European agenda for the collaborative economy' (EC 2016b) which was followed by a proliferation of analytical reports both internally generated and commissioned from third parties by the EC and EP. Of still greater impact as discussed in Chapters 8 and 10 was the proclamation of the EPSR (EC 2017a). The recent publication of Uber's White Paper (Uber 2018) may also be a turning point and its potential both for the employment aspects of the social market and the future of labour platforms as new forms of organising work will be discussed in Chapter 10.

To sum up, the research covers a period from November 2014 to February 2018 with three turning points being the two initiatives of the Commission (the Agenda and the EPSR) and the ruling of the CJEU. These show that the Commission views regulation of the gig economy as an EU issue of specific importance for the Single Market and its social market model but that it is for member states to decide specific measures as they see fit.

How the large corpus of documentary evidence was analysed in order to answer the research questions is explained in the next section.

### **5.5 Strategy for analysis**

Graebner, Martin and Roundy (2012:281, drawing on Bitektine, 2008; Yin, 2003) say that 'some researchers draw certain constructs or theoretical frames from the existing literature before gathering data and build these ideas into their data collection efforts', while others (citing Graebner 2009) 'begin with no specific constructs or theories in mind, but realize during data analysis that some definitions or frameworks can be drawn from the existing literature'.

The latter of these two approaches appears to resonate with the one followed in the present case. This sequence seems a logical and conscious choice for the present investigation. It also fits well with the author's critical realist stance because the subject matter concerns paradigms of political economy, values and culture which lend themselves to what might, if we follow Fleetwood's (2005:199) model of four non-exclusive modes of experiencing reality, be considered as 'socially' and 'ideally' rather than 'materially' real, but also 'artefactually' real as they concern services exploiting the latest developments in science and technology.

Analysis has been an iterative process of reducing the documentary evidence to reveal in a plausible and trustworthy way the currents that are driving forward the response to the phenomenon of the gig economy, specifically labour platforms exemplified by ride-hailing and delivering, throughout the EU. This process is outlined below.

#### **5.5.1 Categorising by document type**

A list of specific sources (Table 5.2) was created from the principal sources (Table 5.1) on the basis of the criteria explained above. Within each source and using the same criteria, documents were then listed by author, type and date, title and a brief summary of the

subject matter, broadly following the example of Codagnone, Biagi and Abadie (2016a:77-115).

**Table 5.2 List of specific sources**

EU Legislation
EU Policy
EP Committees
Parliamentary Questions and Answers
EU Consultative Committees
Reports generated by EC Directorates General
Reports generated by EP Directorates General
Reports commissioned by DGs from third parties
Rulings of the CJEU
Documents from non-EU institutional sources
Interest groups
Other research centres
Media reports about the collaborative economy
Media reports about Uber
Media reports about Deliveroo
Uber's own reports
Alternatives - cooperatives and taxi alliances

Every document within these sources was read again throughout and analysed for what it tells us about work on labour platforms and EU and national regulations that could be relevant to them. The results were compiled in a single document that ran to over 130 pages.

### 5.5.2 Categorising by themes and sub-themes

The high volume of information thus generated was further analysed for the recurring themes and sub-themes in referenced documents that make a specific contribution to answering the research questions. They were categorised under the headings in Table 5.3.

**Table 5.3 Thematic analysis**

Theme	Sub-theme
Employment	Low wages Precarity Flexibility Autonomy ('One's own master') Classification of work Distinguishing professionals from occasionals Rating systems Portable benefits (Personal activity account) The role of the firm
Wider society	Size and demographics Consumers protection Environmental planning Universal service (social cohesion)
Big data	Algorithmic management Shared, delegated, co-regulation (digital audit) Environmental (traffic, planning, pollution monitoring) Privacy
Alternative solutions	Platform cooperatives, union support, collective bargaining
EU or national decisions	More EU legislation No more EU legislation
Political dimension	Anti-Uber Pro-Uber

These themes and sub-themes support the evidence to be presented in the empirical chapters for compatibility or incompatibility with the EU's social market model and the scope for addressing the latter. Three features of the platform economy stand out from an analysis of these themes and sub-themes. Firstly, there is a lack of data about certain aspects of its operation which is continually observed by authors. Secondly, working

conditions are generally poor and thirdly, in an EU context, there is ambivalence about how such work should be regulated. Evidence of these characteristics are the subject of Chapters 6, 7 and 8.

## **5.6 Summary**

The present chapter explained why a qualitative method of documentary analysis was employed and how material of relevance to labour platforms and the EU was collected over a specified period. Criteria for selection from an increasingly wide output on the collaborative or gig economy were shown to be the evidence relating to two principal research questions with which this thesis is concerned. The material was further analysed in a two-step procedure for themes that stood out for their specific insight.

A qualitative methodology provides greater opportunity than quantitative methods for a rich, descriptive and analytical account of a specific socio-economic issue such as offline labour platforms and the EU's social market model. Rigour, however, is equally important. Attention has been paid to the relevance and applicability of the material throughout the thesis to the research questions introduced at the outset but also care in order to avoid them being self-fulfilling. Consequently I have taken a reflexive stance, aware of the 'subtle ways in which bias might creep into researchers' practice through the influence of their personal background and belief systems' (Gray 2009:120). I explained my epistemological/ontological stance as being that of a critical realist because its conceptualisation, for example by Fleetwood (2005:199), of what is 'real' in a material or ideological/social sense seem highly appropriate in the present case. On this basis I referred to Orlikowski's theory of 'sociomateriality' (discussed in Chapter 2), the diverging paradigms of political economy and cultural values (discussed in Chapter 3) and to the ontological relationship between rules, IT artifacts and practices in a regulatory organisation discussed above (de Vaujany et al. 2018).

I explained that I have taken an inductive approach to finding answers to my research questions with the result that the overall findings of Chapter 9 and the conclusion that I draw in Chapter 10 are that the present issues of offline labour platforms and the European social market model are a contemporary manifestation of the division of labour with the consequent diverging effects of exchange and social value.

Among the outstanding features of the operation of offline labour platforms which were revealed, is a dearth of reliable information. This is the subject of the next chapter.

## CHAPTER 6. THE HIDDEN DATA OF THE GIG ECONOMY

In this chapter and the two succeeding ones, Chapters 7 and 8, the empirical evidence is presented and analysed for the two principal research questions introduced in Chapter 1, theorised in Chapters 2 and 3 and contextualised in the case of the EU in Chapter 4.

I start with the documentary evidence, selected on the basis referred to in the previous chapter, about the use or misuse of data itself in the platform economy. The chapter is based on the premise that gig firms depend on the collection and manipulation of information, a valuable commodity, on a grand scale but that their failure to share it impedes policy-making for regulations that could improve working conditions.

A paradox in the digital and Internet economy is that never before has so much data been collected, and never before has it been so difficult to access. The value of this data is likely to be much higher for social and public policy purposes than it is for private purposes of the platform operators. (Codagnone, Biagi and Abadie 2016:60,61)

Such super-abundance imposes certain responsibilities on both policy-makers and platforms themselves to avoid the anomic state to which reference was made in the opening remarks of this thesis and to which I will return in Chapter 9. The opening sections of the present chapter refer to the invisibility, and in some cases unreliability, of the accounts that gig firms give of their operations. This is shown to be a hindrance to the formulation of public policy on the social protection of gigworkers. Some thoughts follow on how the 'Big Data' locked-up inside labour platforms might be 'daylighted' (Miller 2016:154) and how they might contribute to better regulation. From the firms' side, there are signs of a dawning sense of awareness by Uber, as a leading exponent, of its responsibilities to its stakeholders. Finally, and to return to the social model, incompatibility means lack of what is widely accepted to be 'good work' for which either by regulation or best industry practice, the current anomie might be alleviated

Businesses have always used data - or information by which they have been more commonly known - for the strategic management of employees and market opportunities (e.g. price, product, promotion and place). Traditionally such use has been mediated by human managers. In the platform economy they have been replaced by algorithms. This entirely changes the nature of data because, by their very design, they become opaque,

locked in a black box, inaccessible to those affected by what it contains. This chapter examines the evidence for the absent data - or 'hidden' if it is purposeful - and its consequences for regulators. Instead of 'daylighting' their operations by sharing information, platforms promote the 'flexibility' which their model offers workers, leaving aside some of the essentials required for 'good work' as understood by the social market model.

The 'sharing economy' is a very wide term comprising many different types of digitally intermediated for-profit and non-profit activity as explained in Chapter 2, sections 2.1, 2.2 and 2.3. I am concerned specifically with labour platforms to which Frenken (2017:4) refers as the 'on-demand economy or gig economy', giving examples such as platforms for home improvement (HomeAdvisor), home cleaning (Helping) and taxi-rides ('ride-hailing') platforms (Uber, Lyft, Didi). As I have shown throughout my thesis, however, such examples have more often come to resemble business to consumer models rather than ordinary citizens providing freelance services to other citizens.

Of the studies on the 'sharing economy' found during the research period for this thesis (November 2014 until February 2018), only a few have been specifically concerned with the working conditions on offline, on-location labour platforms. Others, including some later studies, are of more general interest for the research questions. The contributions of all types of relevant research demonstrating the extent of the published knowledge which I found are revealed in the following sections.

### **6.1. Methodologies**

Surveys by Hall and Krueger (2015, 2016) in the United States and by Landier, Szomoru and Thesmar (2016) in France relate exclusively to Uber while others such as CIPD (2017), Balaram, Warden, and Wallace-Stephens (2017) and Taylor (2017) in the UK, and by Huws, Spencer and Joyce (2016) and Huws, Spencer, Joyce, Syrdal and Holts (2017) throughout Europe relate to labour platforms both on and offline. Alex Rosenblat's ethnographical and digital fieldwork research on the experiences of ride-hailing drivers in the USA from 2014 to 2017 contributed to the studies by Rosenblat and Stark (2016) and Calo and Rosenblat (2017) referred to in Chapter 2, section 2.4.2 in my thesis.

In order to assess the market size of the collaborative economy Vaughan and Daverio (2016) carried out desk-based research which included case studies, a review of

secondary data sources and ‘qualitative and quantitative sense-checks’. A study for the EC (2017e) on consumer issues screened nearly five hundred peer-to-peer platforms in addition to a survey, focus groups and case studies.

Arcidiacono, Gandini and Pais (2018:279) used ‘a classificatory methodology that locates existing studies, selects and evaluates contributions, analyses and synthesizes data, and reports the evidence in such a way as to enable reasonably clear conclusions to be reached about what is and is not known’ about the current state of research on the sharing economy.

A ‘literature review on the topic of power’ in the sharing economy is carried out by Newlands, Lutz and Fieseler (2018:5) showing that the appropriation of information technology by gig platforms results in ‘winner takes all’ behaviour.

## 6.2 Sampling

A number of surveys, online or by telephone followed up in some cases by a small number of interviews, provide indications of working conditions on labour platforms (Table 6.1).

**Table 6.1 Surveys of the ‘sharing economy’**

Survey	Area	Samples (approx.)	Focus
CIPD (2017)	UK	5,000	Work on all gig platforms
Balaram et al. (2017)	UK	8,000	Work on all gig platforms
Taylor (2017)	UK	1,400	All forms of atypical work
Huws, Spencer and Joyce (2016), Huws, Spencer, Joyce, Syrdal and Holts (2017)	Europe	2,000	Work on all gig platforms
EC (2016d)	Europe	14,000	Demographics of ‘sharing economy’ consumers and providers
Andreotti et al. (2017)	Europe	6,000	Demographics of ‘sharing economy’ consumers and providers
Landier, Szomoru and Thesmar (2016)	France	6,300	Uber drivers
Hall & Krueger (2015; 2016)	USA	600	Uber drivers

Additionally, Schor and Cansoy (2018:3) carried out participant observation and 300 in-depth interviews ‘with sharing economy participants, including members of sharing sites, consumers, and people who are earning on the platforms (i.e., providers)’. Rosenblat researched online forums ‘in which many tens of thousands of [ride-hailing] drivers gather to compare notes on their work’ (Calo and Rosenblat 2017:1629 fn.28). Pelzer, Frenken and Boon (2019:4) conducted ‘five interviews with key stakeholders and six interviews with journalists and experts’ in a single case study of Uber in The Netherlands.

### 6.3 Findings

There was general consensus among findings as to the characteristics of gig work (Table 6.2).

**Table 6.2 Agreement on Findings**

<b>ADVANTAGES</b>
Flexibility - work whenever and wherever you want to (appreciated by many)
Employment for some hitherto excluded groups (e.g disabled)
<b>DISADVANTAGES</b>
Lack of transparency of transactions,
Unreliability of rating systems,
Exclusion of platform responsibility
Lack of representation, redress and data protection
A fragmented regulatory framework across Europe
Lack of a consistent employment classification
Lack of benefits and social protection
Precarity

It was also found that ride-hailing drivers (such as for Uber) in Europe depend for a greater part of their income on this activity than workers on other labour platforms and those earning their living by sharing (particularly Uber drivers) tended to be less educated, less skilled and at the lower end of the income spectrum. This cohort is most susceptible to precarious work and poor living conditions.

There was agreement that gig work still represented only a small fraction of overall economic activity in Europe but estimates differed as to its exact size (Table 6.3).

**Table 6.3 Size of the gig economy in Europe as percentage of working population**

Source	Percent	Countries surveyed	Cohort surveyed
Huws et al. (2017:10)	1.6% to 5.1%	UK, Sweden, Germany, Austria, NL, Italy	'Persons earning > half their income from all crowd work'
Balaram et al.( (2017:13)	2%	Great Britain (ex. Northern Ireland)	Engaged in 'Work on all gig platforms'
Dept. of Business, Energy & Industrial Strategy (2018:13)	4.4%	UK	'All persons defined as gig economy consumers or providers'
Vaughan and Daverio (2015:9), based on a study by ING (2015)	5%	Thirteen EU countries	'Consumers declared having participated in the collaborative economy in the past year'
Andreotti et al. (2017:96)	9.1%	Twelve European countries	Persons 'having provided something on a digital sharing platform (of which many have also consumed sharing services)'

Estimates of the number of Uber drivers were more exact. Landier et al. (2016:2,6) put the total number of Uber driver-partners in France at around 14,000 and riders at about 125,000, and that 81 percent of these drivers have no professional activity other than driving with Uber and expected to continue to do so for at least two years. Balaram et al. (2017:14,18,29) estimated Uber drivers in the UK at 40,000 and Deliveroo riders at 8,000 out of a total of 176,000 involved in gig work in the transportation and delivering sectors (see Annex VIII).

The findings of Landier et al. and Hall and Krueger, as will be shown in section 6.2 of this chapter, are more favourable to Uber in terms and conditions of work than other surveys referred to above. It is to be noted, however, that Hall and Krueger and Landier et al. received support from Uber. The results of surveys specific to Uber and other labour platforms are discussed in detail in sections (6.2 and 6.3) of this chapter.

The qualitative findings of other studies are relevant to the research questions of this thesis. The steady increase in publications on the sharing economy between 2013 and March 2018 is observed by Arcidiacono et al. (2018). Moreover, they find (2018:278) that the “sharing economy” represents the most extreme manifestation of the evolution of the relationship between society and the market – a question that has always been central to sociological thought, and that goes back to authors such as Polanyi, Marx and Sombart’. In Chapter 9 of this thesis I show how Durkheim’s theory of the Anomic Division of Labour (Durkheim ([1893] 984) has much to tell us about the current state of offline labour platforms of the gig economy.

A research paper by Eichhorst and Spearman (2016) draws attention to the need for greater oversight of taxation and unfair competition - specifically discussed in Chapter 7, section 7.2.1 of this thesis. Miller’s ‘Ten Principles’ (2015) argue for ‘creating a regulatory framework for all forms of the sharing economy’, noting, inter alia., ‘daylighting’, response to anti-competitive disruption, avoiding ‘harmful remedies’ and engagement of all stakeholders. Pelzer, Frenken and Boon (2019:10) find that Uber’s failure in between 2014 and 2015 to get its original UberPop service permitted in The Netherlands was due to its ‘act now, ask permission later attitude’, which denied it ‘pragmatic legitimacy’ in the face of the incumbent taxi industry who successfully lobbied to maintain the status quo. The

publication of Uber's (2018) White Paper on Work and Social Protection in Europe discussed in Chapter 10, section 10.1.2, suggests a change of strategy in the light of experience.

As is noted throughout the present chapter, Frenken (2017:7,12) finds that platforms are reluctant 'to share usage data for scientific research or policy evaluation purposes. Hence, the little empirical data that is publicly available, is of poor quality' and he does not expect this will change. He sees, however, an increasing role for platform cooperativism for the 'social sustainability of sharing economy platforms'. Schneider (2018:325) favours 'portable benefits' to secure 'fair work-lives on platforms that do not rely on any one employer, but better suit the promiscuous connectivity of a platform economy'. He shares a belief in cooperatives but finds that so far they have made little headway and the obstacles they face require further research (2018:337). Evidence for platform cooperatives is presented at greater length in Chapter 7, section 5 of this thesis, while the principle of portability' is discussed in Chapter 10, sections 10.1.3 and 10.9.1.

Newlands et al. (2017:8,28 ) find evidence of 'a powerful information asymmetry between platforms and providers'. The latter's bargaining power is unequal and their representation lacking. Power struggles between platforms and regulators lead to an unresolved dilemma between the need for regulation versus its stifling effect on innovation and economic activity.

What is missing in our knowledge of the activities of Uber and other on and offline labour platforms, beyond the evidence reviewed above, is the subject of the following section.

#### **6.4 Invisibility**

There is a general perception across the EU of the dearth of information about the platform economy and also how to define it (Codagnone et al. 2016a; Codagnone and Martens 2016; Huws, Spencer and Joyce 2016; *Danmarks Statistik* 2016; Spanish National Markets and Competition Commission 2016; Newlands, Lutz and Fieseler 2017; Taylor 2017; German Federal Ministry of Labour and Social Affairs 2017). For example, Huws, Spencer, Syrdal and Holts (2017:10) find that,

Whether it's known as the 'sharing economy', 'gig economy', 'platform economy' or 'crowd work' there is no disputing the exponential growth of online platforms for managing work across Europe. But surprisingly little is known about the realities of

‘gig work’. Is it a liberating new form of self-employment or a new form of exploitation? How many workers are doing it? Who are they? Is it their main source of income or a top-up to other kinds of work? What is the reality of their working lives? And what are the implications of these new realities for public policy in Europe?

To this one might add the implications of atypical work for fiscal regimes.

It is the lack of data about working conditions experienced on labour platforms which has been the most noticeable in Europe. They are for the most part invisible. By contrast there have been a number of surveys about the demographics of participants and consumers in all forms of the gig economy in Europe (for example Huws, Spencer and Joyce 2016; EC 2016d; Vaughan and Daverio 2016; CIPD 2017; Balaram, Warden and Wallace-Stephens 2017; EC 2017e; Andreotti et al. 2017). In this respect, the subsequent work of Huws, Spencer, Syrdal and Holts (2017) is an exception, building on earlier demographic work to report on the specific perceptions and experiences of gig workers in seven EU countries including the UK. The biggest problem reported by interviewees were difficulties in communicating with platforms ‘when things go wrong’. There is ‘no one to talk to’ in case of arbitrary decisions by platforms leading to withholding of earnings and deactivation, unpaid time spent waiting or bidding for work, abusive customers and unfair user ratings, dangers to health and safety. By contrast, the one thing that was valued was flexibility, ‘no one above you to tell you what to do’ (Huws et al. 2017:41) and the ability to work whenever you want. This could mean, however, having to work unsociable hours.

Huws et al. found that gigworkers who were dissatisfied with their current employment status also lacked knowledge of their rights. Existing regulations needed to be clarified but also ‘adapted to make them fit for purpose in relation to the protection of vulnerable crowd workers’ (2017:40). Surveys and reports in the UK by CIPD (2017) and Taylor (2017) also found that gig workers were anxious about availability of assignments, security of pay, their eligibility for employment rights and the National Minimum Wage. Pay is low, there is little opportunity for upskilling and a minority of gig economy workers are exploited by labour platform intermediaries (CIPD 2017:50). These findings have direct relevance to the principles enshrined in the EPSR which are reviewed in Chapter 8.

## 6.5 What gig firms say

Generally not much data is shared by platforms (OECD 2016:38). When it is, it may be partial as shown below. Net rates of pay quoted by Uber and other platforms are dubious and very long hours are required to make a living or top-up another source of income. Such data have been transmitted by a small number of researchers who have collaborated with firms. As Codagnone, Biagi and Abadie (2016a:60,61) explain,

In many cases, the use of scientific advice from the 'pure scientist' (disinterested in policy making process and simply providing neutral information) or the 'science arbiter' (adjudicating claims through scientific research as part of panels or advisory boards) would amount to 'stealth issue advocacy'. It is worse when the legitimacy of a scientist is used to reduce the scope of choices available for policy, as seen in some of the reports commissioned by Airbnb and Uber. This actually turns scientific work into issues advocacy.

Codagnone et al. refer specifically to the type of reports and surveys that appear to be disinterested and impartial works of scientific research but which use highly selective data to effectively lobby for an organisation to which they have privileged access, denied to other researchers, and from which they may, in some cases, be receiving financial support. Examples, specifically on working conditions, are reports in the USA by Hall and Krueger (2015, revised in 2016, see below) and Botec (2015) and in Germany by Justus Haucap and DIW Econ (Uber 2015). In France data by Landier, Szomoru and Thesmar (2016) were based on an IFOP survey for Uber, and by Boston Consulting Group on 'data recovered from Uber' (Uber 2016) while estimates as to the number of drivers, their earnings and passengers made by the French *Sénat* (2015) and reported in the FT (Chassany 2016) mostly used data originating from Uber itself. Two notable claims about the earnings of ride-hailing drivers in the USA are dismissed by Codagnone and Martens (2016:18). According to the surveys by Hall and Krueger, supported by Uber, their drivers earn more after costs than licensed taxi drivers - whereas hourly wages are 'only just above the minimum wage'. The second published by Uber and Lyft on their websites is that the annual income of their driver' is \$70,000 and \$90,000 which Codagnone and Martens assert 'is an utter misrepresentation of the reality'.

A consultancy working for Airbnb (2015) was the source of the assertion by the *Sénat* (2015:18 fn.1) that '42 per cent of people who let on Airbnb were doing so in order to earn a

little more to stay in their homes'. Conflicting data from *Libération*, a centre-left newspaper, cited by the *Sénat* (2015:19,26) showed that 20 per cent of properties advertised on Airbnb in the Paris area had been acquired specifically for commercial purposes, with 'professional or quasi-professional' lessors owning multiple sites. Some private individuals have also bought property with the express purpose of letting them on the internet, while professional letting agencies and intermediaries acting for owners have been drawn in and 'real' professionals have exploited these platforms for the black economy.

Whether the claims of these surveys are valid or not, the issue is that the data do not come from independent sources nor are peer reviewed. By contrast, some data may be more substantiated. The Boston Consulting Group study (Uber 2016a) estimated that the new ride-hailing platforms (TNC's - transportation network companies) such as Uber, Chauffeur-Privé and Heetch had led to an increase in GDP growth in the Paris area by 6 percent and through non-related businesses (such as tourism) to about 2 percent of nationwide growth (See Annex VI). They were responsible for one out of four new jobs in Paris in the first quarter of 2016, that up to half of Uber's 22,000 drivers had been (previously) jobless and that 77 percent of drivers were 'happy' to be driving. Thomson Reuters Datastream (Rose 2017) suggested that the transport sector throughout France has been a motor for entrepreneurs and jobs and that since mid-2015 it had created 20 new companies for each one that failed, compared with nine firms for each bankruptcy in the broader economy' (see Annex VII).

Uber's claim that ride-hailing is making a significant contribution to reducing unemployment in some of the poorest *banlieue* in Paris was endorsed by Emmanuel Macron when he was the presidential candidate in April 2017 who said, 'All those who became self-employed drivers, what did they do before? They weren't taxi drivers; they were unemployed. They were on benefits, or even sometimes dealing drugs' (Rose 2017). It would be instructive to know if there had been a drop in the employment of traditional taxi drivers in Paris over the same period - and also the number of drug dealers - with which it might be correlated.

## **6.6 What firms do not say**

The evidence from the sources referred to above may not be reliable. Such results have been described as 'stealthy' (Codagnone et al. 2016a:60,61) as they may mask their true

nature, suggesting an ulterior motive or a hidden agenda. Is this what labour or asset platforms do? Do they provide cover for exploitative business enterprises that have little regard for adverse societal effects? The lack of transparency among gig firms in permitting access to data that could be independently verified would suggest that they fear it would damage them. From all the reasons why it might be, three seem the most likely. The first would be reputational loss, from which Uber, for example, has already suffered due to covering up criminality among drivers, gender discrimination at its head office and the use of software to deter enforcement agencies. Airbnb has been suspected of driving up rental costs in cities with a shortage of affordable accommodation. The second reason might be competitive disadvantage, yet both Uber and Airbnb already enjoy monopolistic positions in some EU member states. A third reason, which is possibly the most important, would be tighter regulatory control. In the case of a labour platform such as Uber, this means being required to treat their workers more like employees with corresponding rights and benefits, which is inimical and possibly fatal to their business model.

Labour platforms of the gig economy do not see themselves having employee responsibilities. They claim to be labour market intermediaries, matching potential service providers with potential consumers. They could be more likened to dating or estate agencies than traditional personnel agencies. Uber argued that it was 'an intelligent telephone and technological platform' interface and software application enabling supplier and consumer to connect with one another. The issue before the Court (CJEU 2015) was whether this was so or whether it should be considered to be a transport service. The Court (2017a, 2017b) ruled that it was the latter and consequently subject to national regulations but Uber continues to see itself as electronic intermediary service or an information society service. Moreover, current regulatory regimes in the EU fail to define the employment status of workers on labour platforms and do not prescribe customary standards of social protection for them. Consequently, Uber does not accept the obligations of an employer or provide its participants with the support of a traditional human resources department. Yet labour platforms like Uber also share at least two of the functions of traditional HR departments. Firstly, they are assiduous recruiters ever seeking to expand the network effect on which they depend, and secondly they are subordinators through setting the terms and conditions of work, assessing performance and behaviour and summarily

withholding pay when they choose to. Uber's ride-hailing app has even been described as a temporary work agency but without the licences and authorisations required by agencies under the law (De Stefano 2016:8 fn.5). It is the control they exert over participants and the latter's inaccessibility to human management that demarcates them from other types of labour market intermediary. This is facilitated by, and due to, the algorithm. Management of this sort is by the storage and manipulation of data alone, without subsequent human intervention. It does not, however, eliminate errors and bias because it is the product of human intelligence. The manager is replaced by the invisible, impersonal manager of the cyber sphere against whom there is little appeal (Slee 2015:100,101). Labour platforms are perceived as constructing the algorithm in such a way that it always benefits them and not the service provider. From this arise some of the complaints of workers referred to above.

Labour platforms of the gig economy are primarily markets for information. Their asset is data, not tangibles, but the power of their algorithm gives them command and control over their participants resembling hierarchical management structures pre-dating the advent of the Human Relations school. Without the employment responsibilities that have come to be taken for granted since then, some on the political left liken them to sweat shops. As Labour MP Frank Field, Chairman of the UK House of Commons Work and Pensions Select Committee, put it in his evidence to Taylor (2017:70),

Clearly there is an incentive for companies in the 'gig economy' to engage with working people in this way, but that incentive, in the form of heavily reduced or no employer obligations, has to be paid for by somebody. That somebody is the worker. It is also paid for by us, the taxpayers.

The information revolution, in this case, has engendered a new type of firm permitted to organise work unfettered by current labour law. The data they gather and process on both service providers and consumers is kept to themselves and consequently the paid work that they mediate lacks 'traceability' (Forde, Stuart, Joyce et. al. 2017:100). What it tells us is that the use of data on a scale hitherto unknown is a phenomenon with which public policy in the EU, or perhaps anywhere, has yet to catch up. For example, Uber tracks the movements of drivers and passengers on every ride as well as details of the transaction. It collects licence, insurance and background checks (medical and criminal records) on each of its drivers as well as credit card details and mobile phone numbers for every rider. This raises concerns as to reliability, misuse and errors resulting from 'total' surveillance leading to

false connections, incorrect interpretation of variables or unwarranted implications of clarity and 'feedback effects once people begin to adjust their behaviour in response to analysis tools, for example to receive the best possible ratings' (German Federal Ministry 2017:64). All such data are relevant to working conditions but of most interest is what they would tell us, if revealed, about aggregated pay, hours and instances of deactivation.

Social justice is best served when relevant data are exchanged between the parties they affect so that each side can make the most fully informed choice when negotiating a bargain or abiding by its terms. Where the law is written down in a way that only the most privileged can read or understand it, the majority may break it without even knowing. Such was the case when most people were illiterate and communications were poor. The data that are of relevance to labour platforms are those which could be shared by the platform operators with those who work on them and with government. 'Good policy requires good evidence' (Forde et al. 2017:99). Policy in this case refers to the social protection of gig workers.

### **6.7 Missing data in the public domain**

The absence of data is not only due to the unwillingness of platforms to share them. The statistical agencies of member states are not organised to collect them. This reflects both the newness of the phenomenon and the lack of standardised ways of defining it and thus of measuring it (see for example ONS 2016a; Coyle 2016:7; *Danmarks Statistik* 2016:16; CNMC 2016:168-169; EC 2016b:15 and fn 56,57; German Federal Ministry of Labour and Social Affairs 2017:57). Agencies such as these are unable to separate gig work from all forms of casual or temporary work, conflating them altogether under the description 'atypical' work (CIPD 2017:50,51). The use of this term suggests that they have not yet fully appreciated the effects on employment of the algorithmic revolution. What has been thought of as 'atypical' is becoming typical through the prevalence of zero hours contracts and the gig economy. According to Huws et al. (2017: 10,55),

Whether it's known as the 'sharing economy', 'gig economy', 'platform economy' or 'crowd work' there is no disputing the exponential growth of online platforms for managing work across Europe.

although they admit that 'little or nothing is known about the total population of crowd workers'. There is nothing new in the slow pace at which government reacts to radical

changes in economic activity, in this case the digitally-intermediated provision of physical services such as transportation, delivery and household cleaning. The employment effects, however, are becoming increasingly evident and are pressing for attention.

For business, data are a fundamental strategic resource. For labour platforms of the gig economy they are the *core* resource. For government, data are equally important but in this case they take on a political aspect. Decisions on regulation require agreement on what data are to be collected, for what purpose and by what means. Good regulation, as has been shown above, needs good data. What constitutes 'good' regulation is not universally agreed in the case of labour platforms as will be discussed in Chapter 8. Therefore what data to collect and on what basis, for example by law or voluntarily supplied by platforms, remains undecided. The Commission, for its part, has identified a number of issues including employment and the outline of measures for the social protection of platform workers is beginning to become clearer with the proclamation of the European Pillar of Social Rights (EPSR) discussed in Chapter 8.

In its 'European agenda for the collaborative economy', the Commission believes that new business models can contribute to growth in the wider economy such as those referred-to above. Therefore they should not be stifled by regulation. This is will be shown in Chapter 8 to be strongly held by some in the EP and representatives of industry. According to the Agenda (EC2016b), however,

Labour law mostly falls under national competence, complemented by minimum EU social standards and jurisprudence. Member States may wish to consider criteria such as the relation of subordination to the platform, the nature of the work and remuneration when deciding whether someone can be considered as an employee of a platform.

The Commission's statements illustrate the tension between market and social priorities at EU and national level. The evidence presented in this thesis suggests that such tension cannot be resolved under current regulations. Government has a part to play but to what extent regulating the gig economy should be left to the market is a political decision. A general state of indecision has been observed throughout the EU during the research period and is a consequence of the lack of data and how to obtain it which is analysed in the next section.

## 6.8 Unlocking the black box

The evidence suggests that what is missing at this stage for both labour platforms and government are the 'rules of the road'. In their absence, anomie prevails. Standards may be formally enshrined in regulation or informally through reputation expressed in public opinion. The power of the algorithm has given platforms a 'winner-takes-all' advantage unrestrained by the bargain of the employment contract referred to by Marsden in Chapter 2. The response of the EU is mainly restricted to normative statements as shown in Chapter 8 and national governments have generally shown little interest in taking measures to control the consequences. It is hardly surprising given the newness of the gig economy phenomenon. Innovation and entrepreneurial exploitation have historically run ahead of regulation. Firms typically will maximise their opportunity without fear of being caught by current rules which cannot be interpreted as applying directly to them. Adverse public opinion may eventually influence their behaviour as shown later in this section.

Forde et al. (2017) suggest that sharing of data with government can lead to a fairer outcome for their workers. In that case what steps might be taken so that they do so? Are platforms to be monitored? Is it to be mandatory or voluntary? And what data? Treasuries are losing tax revenue and social security contributions from workers on platforms and two member states (Estonia and France) have made or will shortly make changes in the reporting of their liabilities, one of which is voluntary, the other mandatory. An opt-in system in place in Estonia since 2016 allows drivers working on ride-hailing platforms Uber and Taxify to register their willingness for their earnings to be transmitted to the tax office which is then added to their tax return. Further research would be required to know to what extent this change has been successful or popular. In France the problem of tax losses was raised by the *Sénat*, the upper house of the French parliament, alluding to platforms' 'exhaustive and instantaneous knowledge' (*Sénat* 2015:32-33). A new law will now require platforms to report their users' earnings to the relevant authorities over a secure link from 2019. The data will include identification, email address, private individual or professional status, total gross income received by the user during the calendar year in return for activities on the online platform, or paid through the platform (EP 2018a:21). Already, from 2018, a new right under the *Compte personnel d'activités* (Personal activity Account) gives all workers access to all their payslips. Organisations are required to provide these in a familiar

electronic form at any time requested. Having oversight of their pay and hours over a period in an easily communicable way would help gig workers to determine the hourly rate for the work they have done. This is not necessarily clear given their irregular hours and multiple gigs, and may even be less than the national minimum or living wage.

These are examples of one-way transmission of data by the platform, for one specific purpose, and only the French system is designed to catch all platform workers, who may, also, be working on several platforms. A more ambitious development would be the two-way question and reply procedure proposed by Sundararajan (2017). Here the platform's database would be interrogated by any legitimate state authority for, presumably, any data which it is authorised to access. This would be achieved by the use of application programming interfaces (that is, computers talking to computers). In this decentralised system data remain inside platforms, no commercially sensitive data are released to third parties and only queried for the attainment of public policy objectives. The process is described as 'digital audit' which might suggest either an obligation on the part of the platform to comply with minimum employment entitlements or only, at least at first, a data gathering exercise for policy formulation within an ethos of best practice. Uber has on more than one occasion declared itself willing to make data on the earnings of its drivers available for tax purposes. Travis Kalanick, its co-founder and former CEO, offered to do so in France (Escande and Jacquin 2015) if an agreement was reached with government, and most recently Uber's White Paper on Work and Social Protection in Europe (Uber 2018:21) featured a screen shot on its app of pay out and hours worked over a period which could be shared directly with the tax authorities. In voluntarily making this data offer, Uber strenuously denies acting as an employer - this runs wholly counter to its business model - and its drivers can choose whether to use the option or not. The reception of such data might be useful if also made available to social policy makers, but this raises the issue of data protection under the EU's new General Data Protection Regulation (GDPR) which came into force in May 2018 with supremacy over national law and immediate effect. Nor could they depend on it for a complete picture as Uber drivers might also be working on other platforms without a similar option.

In Sundararajan's model which he calls 'data-driven regulation', regulatory responsibility is 'delegated to the party that naturally has the data' (Sundararajan 2017:24).

He compares this favourably with two other forms of self-regulation such as rating systems ('peer-regulation'), and transportation network companies ('TNCs', or 'Self-Regulatory Collectives') where government sets standards with which drivers working on a platform registered as TNC must comply. Rating systems, however, have been much criticised for being faked and lack of transparency while the standards with which TNCs such as Uber need to comply are primarily concerned with consumer protection. In both cases the aim is promoting trust. This is undeniably important but neither of these forms of regulation address the central issue of worker entitlements and social benefits. On the contrary, they are aimed at 'market' issues. Where the profit interests of platforms do not co-incide with the wellbeing of their workers - and they evidently may not as they deny responsibility for them as employees - then a regulatory authority with the power of enforcement needs to step in.

Platforms already hold all the data that regulators might need to know and data analytics can present a picture of demographics (age, ethnicity, gender, family status), motivations and any other aspects that might be of interest for social cohesion in addition to pay, hours, leave and representation. Here, there are several operative issues. Firstly, each government, particularly those member states within the eurozone to which EPSR is primarily addressed, needs to decide on the objectives of its employment and social policies, secondly the data it needs to achieve them, thirdly whether platforms are to be mandated or consensual on the basis of best practice and finally, what are the privacy issues. On the first two, it is intended that member states will be guided by accompanying actions prescribed by the EPSR (EC 2017c) which will be discussed in Chapters 8 and 10. On the third, a dialogue between government and an industry association such as SEUK (Sharing Economy UK) might be constructive as referred to in Chapters 9 and 10. Privacy is of concern to both platforms and to their workers. The former need to be assured that there is no possibility of commercially sensitive data being leaked to competitors and the latter that the privacy of their personal data is protected in conformity with the GDPR. Digital audit using APIs as proposed by Sundararajan would reassure platforms on the first score.

The concept of the national hourly minimum wage (NMW) presents us with one example of a standard or a threshold relating to working conditions. This is not harmonised and varies greatly among EU member states, ranging in January 2018 from €11.55/hr in

Luxembourg to €1.57 in Bulgaria (ETUI 2018:58). The cost of living varies likewise in a such a diverse group of economies, even somewhat among those with broadly similar per capita incomes. But even the NMW is not applicable on a statutory basis to gig workers. Policy makers do not have any standardised or reliable data as to typical pay, working hours or contractual arrangements in the labour platform market (or wider gig economy) and therefore lack a basis for setting a threshold for them at national or at EU level supposing that the political will exists to establish them. The NMW is difficult to apply in the case of labour platform workers who can log-on and log-off whenever they want and who may work on several platforms with different pay rates and ways of determining them (for example by time, journey, delivery). The important objective for public policy is ensuring that platform workers earn a living wage, defined as 'as a wage above the legal minimum that reflects the cost of living families face' and meets the condition that 'the living wage should be based on an up-to-date basket of goods and services, reflecting social consensus as to what constitutes a decent standard of living' (D'Arcy and Finch 2016:5). In the UK, the national minimum wage (NMW) has been 're-branded' by government as the national living wage (NLW). The government's intention is to increment it annually to reach £9 an hour by 2020 but it is widely regarded as falling short of what is required to meet this definition. According to the UK government website (Gov.UK 2018), it is only fully available for workers aged 25 and over and neither NMW or NLW apply to the self-employed. Hence people working on labour platform workers are excluded. The rise of the platform economy presents a further complication and that is why access to current data held by platforms in an era of non-standard employment is now required in setting a rate for an adequate living wage as defined above.

It has been shown in this and preceding sections that an absence of data is impeding 'a critical assessment of the net balance between positive and negative impacts of the sharing economy' and that this is required 'to support appropriate regulation' (Newlands, Lutz and Fieseler 2017:3). What is 'appropriate' is not universally agreed. Data are necessary but not sufficient alone. Political will is required. Despite the negative aspects of algorithmic control already referred to, the advent of Big Data, as will be shown in the next section, may in future assist policy makers to go beyond merely being aware but to have some degree of

control over working conditions should member states implement the principles of the European Pillar of Social Rights.

## **6.9 'Big Data'**

First of all, a reminder of what 'Big Data' means. The term refers to the immense amount of data that platforms collect and hold in their databases. It is the commodity used in the sophisticated algorithms (data analytics) that have been constructed that match providers and consumers of services, calculate the pay of the former and rate their performance (reputation systems). Work 4.0 (German Federal Ministry 2017:62) defines it as a 'gigantic and rapidly growing volume of unstructured mass data produced by numerous decentralised sources' and describes how, through the use of data mining, conclusions ('smart data') can be drawn about the behaviour of behaviours and preferences.

The use by firms of these stores of data and some of the consequences are discussed in this section. They might offer societal benefits such as more and better jobs, worker empowerment and environmental planning. Markets, however, are chiefly concerned with competitiveness, reducing costs, increasing variety and convenience for consumers, while attracting big investment funds for platforms with the possibility of high profits and rents to come.

Platforms justify collecting large amounts of information from individuals for security reasons. Uber, for example, collects licence, insurance and background checks (medical and criminal records) on each of its drivers as well as credit card details and mobile phone numbers for every rider. This raises a number of concerns. Firstly, reporting in its London headquarters of criminal behaviour by some drivers has recently been shown to be unreliable. Secondly, there are fears of misuse resulting in loss of privacy or a breach in security of personal details such as has occurred at Uber and referred to in Chapter 2. Thirdly, there is 'total' surveillance which may lead to errors leading to false connections, incorrect interpretation of variables or unwarranted implications of clarity and 'feedback effects once people begin to adjust their behaviour in response to analysis tools, for example to receive the best possible ratings' (German Federal Ministry 2017:64). In effect the human manager is replaced by the invisible, impersonal manager of the cyber sphere against whom there is little appeal (Slee 2015:100, 101). Such a saving in the cost of human

resources is an inherent component of the platform business model together with the use of the assets of those who provide the service.

Privacy is also at stake. This is as much part of the social model as any other working conditions. Under Principle 10 of the EPSR (EC 2017a), 'Workers have the right to have their personal data protected in the employment context'. This may be compromised. As Lashinsky (2017:140) puts it, 'Uber holds the key to the digital identities of its millions of contractors and customers'. It can also track their movements on every ride. The issue is twofold. Firstly, it is about what Uber and other platforms do with the data in compliance with the new GDPR. Secondly what data might be shared with regulators relating to specific aspects of employment, namely wages, maximum hours, paid leave, work contract, ratings in addition to the tax liability of platform workers. To what extent this would be permitted, however, under GDPR is a subject for further research.

Representation is another requirement of a social market (EC2017a; Taylor 2017; Burrow 2018). Big Data has the potential to empower platform workers. That means bringing them together and making their voice heard in an environment that is highly atomised and where they do not have the right to negotiate collective agreements. 'WorkerTech' refers to technology designed to enhance worker representation, participation and engagement in organisations but its main value (Balaram et al. 2017:59) lies in,

enabling members' associations to find ways of easily connecting gig workers to one another, breaking down what is naturally siloed work. They can also support gig workers in other ways, for example, by insuring them or investing in technology (i.e. WorkerTech) that further empowers gig workers on the job.

Such models already exist for crowdworkers such as the networking website [www.fair-crowdwork.org](http://www.fair-crowdwork.org) developed by the trade union IG Metall in Germany, an advice platform ('I'm worth more') operated by another German union Ver.di, and the 'Turkopticon' tool to assess work providers on 'Amazon Mechanical Turk' (Jürgens, Hoffmann and Schildmann 2017:39). For O'Reilly (2015 cited by Balaram et al. 2017:35) data are instrumental to worker wellbeing and he presents two alternative scenarios,

There are two different approaches to using technology to manage labor. One provides data and control solely to managers, disempowering workers and

minimizing their costs to improve company profits; the other offers data to both managers and workers, giving workers agency, the freedom to work when and how much they want.

Under the first approach, workers are employees under the second they are independent contractors. Labour platforms like Uber fall into the latter. The distinction is a key one relating to benefits and entitlements compatible with a social market model and the evidence will be analysed in great depth in Chapter 7. The central point to which O'Reilly draws our attention is the transformative nature of the digital revolution in organising work.

Blockchain, best known for the bitcoin currency, has the potential to put peers offering services in touch with another directly and eliminate the platform intermediary completely. Balaram et al. (2017: 54) explain that,

Through a 'trusted ledger', blockchain-based platforms create a public record of transactions and facilitate direct payments between workers and their customers. No commission is taken as the platform is collaboratively managed.

They consider, however, that the 'the jury is still out on whether blockchain-based platforms may one day "disrupt the disruptors" and that 'early efforts do not come close to competing with the likes of more established platforms' (2017:61). Nor has any evidence been found in the present research of any discussion of the regulatory issues that would still need attention.

The business of labour platforms such as Uber is the manipulation of data on a grand scale. They have a duty of care towards all those who supply them with this valuable commodity. In 'Cybertariat, Taskification and Datification of Work', Casilli (2017) gives some examples of the surveillance that drivers experience and the feedback they receive. These are reproduced in the Annex V from which can be seen the high degree of control exercised by the platform. The extent to which platforms such as Uber honour their responsibilities towards gigworkers and wider society is discussed in the following section.

### **6.10 Duty of care**

Platforms are accused of lack of transparency about what they do with the data they collect (Taylor 2017: 38). Contractual terms may be unenforceable at law - for example a clause in the Deliveroo contract (since removed) that banned riders from challenging their terms at an employment tribunal. If they do, they must pay the company's costs (Osborne 2016). Like

other internet transactions, the privacy of personal data is not assured. Consumers' data may be sold on to third parties. The transactions that occur and are recorded on for-profit platforms carry tax liabilities for individuals providing services of various kinds but platforms for the most part do not accept any responsibility for ensuring they are met. As De Groen and Maselli (2016:10,21) put it,

The tax authorities currently have limited oversight of the activities that are performed through the collaborative economy platforms. Many of the (international) platforms do not provide data to the authorities on the intermediated activities and many of the workers do not declare the earnings themselves. There are therefore no reliable data on the undeclared income yet . . .

This means, *inter alia*, that the platforms are currently not responsible for paying personal income tax and social security contributions. There is, however, no guarantee that workers declare their earnings as they are supposed to. For example, only 15% of the participants in a market survey conducted by TNS Sofres in France reported the income obtained through the collaborative economy. This phenomenon is not entirely new.

Consequently, the welfare of platform workers, unless they are also in a standard form of employment elsewhere, ultimately falls on the state. Based on a tax lawyer's estimate, Balaram et al. (2017:40) estimate that Uber, for example, would accrue costs of around £13 million per month (or roughly £156 million annually) if it had to pay employer National Insurance Contributions (NICs) in the UK. With regard to non-payroll taxes, Airbnb is a partial exception in collecting tourist taxes which are due in some EU cities (and in the US). In Greater London, however, Airbnb has recently limited entire home listings to ninety nights a year, unless the hosts confirm that they have the required permission to share their space more frequently (Airbnb 2017). In Berlin, people can be prosecuted under the *Zweckentfremdungsverbot* law (The Guardian 2016) for buying or renting properties specifically for letting on platforms such as Airbnb, Wimdu and 9Flats. Fiscal issues of the gig economy, particularly the payment of income tax on employment and social security contributions, are discussed in more depth in Chapter 7.

Platforms' innovative use of Big Data to match service providers with prospective consumers has societal effects that have raised the issue of regulation at regional, national and EU level. This is a familiar occurrence in the treatment of labour under conditions of radical technological change, as the historical perspective shows in the next section.

## 6.11 Regulation

From Fleetwood's critical realist perspective, the conceptual basis for a regulation (whether through 'hard' or 'soft' law as discussed in Chapter 8) can be experienced as 'ideally' or 'socially' real, whereas the algorithm is 'artefactually' real, being the product of an electronic process with clearly visible material effects for consumers and workers. The delay in passing new regulations to control such effects, some of which may be adverse for workers, is not a new development following the introduction of new technologies. It took decades after the start of the first industrial revolution in the early part of the nineteenth century to bring in the Factory Acts in the UK, 'a practical remedy for a proved wrong' (Webb 1910:ix,x) and a century to fully recognise trade unions. Meanwhile industrial accidents, especially among children in textile mills, went unchecked and many workers experienced poor conditions and lacked benefits of any kind until the start of the twentieth century. The conditions of most workers have steadily improved in Western-style economies as they have industrialised over the past two centuries together with the level of social protection provided for them in most EU member states but they only came about gradually, promoted through the efforts of social innovators and sometimes in the face of great resistance. For platform workers, conditions seem to have regressed. Labour platform workers still only have limited union support and are not permitted collective bargaining rights because under EU competition law they are classed as self-employed. It is not suggested here that the conditions of platform workers in the EU are as bad, nor certainly as widespread, as those evoked above. The problem is that we do not know for sure under what terms and conditions they labour nor, despite a number of widely differing estimates, how many of them there are. Facts are in short supply, empirical evidence is limited and much of the evidence anecdotal (Codagnone, Biagi and Abadie 2016a:55,56).

For sure, labour platform workers are as much 'under the eye of the master' as their forbears, although, unlike them, they are able to work when they want to - assuming they have a practical choice. Judging from the literature, some of which is referred to in Chapter 2, there is a perception that they are not treated fairly by the standards of contemporary capitalism in advanced Western-style economies. In other words platforms seem to break accepted *norms* of industrial enterprise, even if they do not break current regulations. Again, this corresponds to a social or ideological sense of reality. The EU does not have the

legal competence under the Treaty to pass modern-day factory acts though it is clearly concerned by the lack of social protection of workers in new forms of ‘atypical work’ including labour platforms. National governments, notably the UK and Germany, have commissioned research, as has been shown, but so far only France has made substantial changes to the rules for platform workers (see Chapters 7 and 10). Normative measures such as the guidelines, principles and recommendations taken by the EU may, however, exert a powerful influence as the gig economy becomes ever more typical, rather than ‘atypical’.

There is a debate in the EP, as shown in Chapter 8, as to whether further regulations are necessary. The Commission, while drawing attention to employment and other areas arising from the collaborative economy, declined initially to bring forward new measures except for proposals already under consultation to revise the existing directive on contracts, re-interpret the directive on working time and make both applicable to all workers regardless of the ‘employment relationship’ (see Chapter 10). Instead it has promoted the guidelines for member states to follow contained in the ‘European Agenda’ and the recommendations and principles contained in the EPSR. This seemed like a pragmatic approach for three reasons. Firstly, member states are marked by the heterogeneity of their labour laws and tax and social welfare regimes and secondly it acknowledges the wide variety of gig economy models. Thirdly, as referred to in an earlier section of this chapter, data are lacking as to the practices of labour platforms. They are not transparent. Yet they lend themselves to traceability as every transaction leaves an electronic footprint. They offer far greater capacity for data collection than offline systems. Edelman and Geradin (2016:325,326) comment that,

Uber reports the number of pickups by their drivers, total amount earned, starting locations, ending locations, and even rates of speed, facilitating all manner of legal investigations and proceedings. In contrast, offline intermediaries typically receive much less information about the activities of suppliers and customers.

From this they conclude that software platforms are likely to be more amenable to regulation than offline, rather than less.

If the objective is to improve terms and conditions, especially among vulnerable groups dependent on the platform and with little choice but to work this way, then some

minimum standards might be set. An example would be for a minimum hourly wage given that platform workers are not covered by collective agreements or the national legal minimum wage (De Grown, Kilhoffer, Lenaerts and Mandl 2018:63-65) and that 'earnings are highly uncertain for most types of platform work'. They could also include 'working time arrangements (regarding lengths of shifts or breaks, for instance), access to training, or health and safety measures common in the traditional labour market'.

Clearly such standards depend upon adequate data. Access is complicated where people are doing a number of gigs on different platforms, whether topping up their regular income or as their only employment. Gathering data, however, would seem much easier in an age of electronic data and instant communication than for the social reformers who laboriously gathered information for their campaigns in the early and mid-nineteenth century. De Groen et al. (2018:65) have proposed 'extended monitoring of developments in the platform economy and a provision of a one-stop for information on platform work'. It will require either political will by regulators, or willingness by platforms or both. Benchmarking and industry best-practice as alternatives to formal regulation might be relevant. Evidence presented in the next section of this chapter suggests a recent turn by Uber towards a growing awareness of responsibility towards its workers and hence societal acceptance for its model.

Sundararajan (2017) identifies the emergence of three approaches for obtaining data from platforms, namely self-regulatory collectives (for example TNC's, professional associations, cooperatives), peer regulation (for example reputation systems) and data-driven delegation. He believes the latter is particularly promising in which regulation is delegated to the party that naturally has the data, especially when combined with audits facilitated by means of application programming interfaces (APIs) that provide an interface for the government to query the data and ensure compliance (2017:24). In this decentralised model, data remain inside platforms, no commercially sensitive data are released to third parties and only queried for the attainment of public policy objectives.

Airbnb's collection of tourist taxes in some European cities is given as an example of data-driven delegation. It is more likely to be effective than requiring hosts to register directly with the authorities and also avoids the platform handing over users' personal data. Accuracy could be ensured through digital audit by APIs which 'would not provide access to

raw data but could allow a government to run “queries” to verify compliance' (Sundararajan 2017:24,25). As no data are handed over, 'government does not have to struggle to enforce the laws through its own analysis or ask Airbnb to remove offending hosts'. Non-compliant hosts can simply be 'de-activated' by the platform itself.

Digital audit of the type described could also help to ensure platforms pay the national minimum wage if this were extended to platform workers (Taylor 2017:37). Platforms would have to ensure (The Economist 2017:21) 'perhaps through analysis of their own data, that an average individual, working averagely hard, would earn at least the minimum wage. A version of this arrangement already exists for firms that pay their employees a "piece rate", for instance for each shoe they stitch'. Data obtained through digital audit could help platform workers topping up their income or earning their living entirely from several gigs to be sure they were receiving the national minimum wage and any other statutory benefits to which they were entitled. Currently they are excluded from such minima due to the uncertainty of the employment relationship. Once established, such audits, it is assumed, would need to be mandatory on platform operators and subject to the same degree of legal accountability as any other financial audits.

This section has shown the connection between obtaining data and addressing the policy, and hence, regulatory gaps exposed by the current incompatibility of the labour platforms with the European social model. It has presented some of the ways proposed for obtaining such data. The objectives of improved conditions for dependent workers such as wages, hours and in-work benefits may be achieved through best-practice but entitlements to the full range of social protection for workers classified as self-employed will require statutory changes in member states. Giving them voice may be assisted in future by the use of Big Data.

Regulation depends not only on government policy but also on firms themselves. Evidence to be presented in the next section suggest an evolution on their part over the course of the research period due to reputational loss and fear of greater cost, possibly fatal, to their business model through formal regulation. A gradual shift can be observed in their priorities from only maximising network effects towards the welfare of their service providers. Justification of 'flexibility' remains, however, as a critical determinant of viability of the labour platform model.

## 6.12 Response by firms

During the earlier part of the present research Uber proclaimed its economic benefits (Uber 2015, 2016a) and its convenience and safety advantages for consumers (Uber 2016b). Litigation involved Uber (Employment Tribunal 2016; Employment Appeal Tribunal 2017) in defending itself, unsuccessfully, against claims for employee-like benefits by some of its drivers, while Deliveroo (Central Arbitration Committee 2017) rejected, successfully, claims for union representation by its deliverers. Uber improved accessibility of ratings to drivers (Uber 2017a), permitted tipping of drivers on its app, paid waiting time and a no-thanks button to instantly reject a trip (BBC 2017) but lost its licence to operate in London, suspended on appeal (Butler and Topham 2017), due to failures to report serious criminal offences, in obtaining medical certificates and driver background checks and its use of Greyball software to block regulatory enforcement. Greyball, it will be recalled (see Chapter 2, section 2.8) is a software tool developed by Uber to lock out riders misusing its services but found in some cases to use fake interfaces to thwart city law enforcement officers from detecting Uber's activity where it is not permitted.

In France Travis Kalanick was reported to have offered to make drivers' earnings transparent to the tax authorities (see Chapter 7) while in the UK, in its evidence to the Taylor Review (Taylor 2017:78) Uber is reported as submitting that,

We are interested in exploring how technology can further support tax compliance. For example, through our API we enable third party developers to build services that can help partner drivers.

and another labour platform (Hermes) stating that,

Hermes would be glad to provide guidance and advice to couriers about keeping their tax affairs in order. Hermes would welcome comfort from DWP and HMRC in this respect confirming that providing such guidance to its couriers does not put at risk their self-employed status. (Taylor 2017:79)

As is clear, however, the legal definition of employment status is a fundamental obstacle to improving the conditions of labour platform workers

A turn towards greater compliance with norms expected of firms with dependent workers was taken with publication of Uber's (2018) 'White Paper on Work and Social Protection in Europe'. This document, which announced new offers for its drivers and food deliverers, fulsomely endorsed the principles of the EPSR and acknowledges power

imbalances and information asymmetries. More data on pay, hours and tax liability of its workers will be made available, for those that wish it, to the authorities.

In its White Paper Uber qualified its mantra of flexibility by which it has justified its operation, saying surprisingly,

Flexibility for whom? . . . It's important to understand that a large number (indeed most workers) may not and in fact do not actually value flexibility that much and want schedules and more certainty on wages. Traditional work options will continue to exist and dominate well into the future. What we do anticipate is a changing mix of work options and increased diversity in choice. Not everyone is the same and flexible, independent work isn't for everyone. (Uber 2018:10,19-20)

It should not be forgotten, however, that Uber plans to introduce driverless vehicles as soon as technically possible and where regulations will permit. When most of its drivers are eliminated, working conditions as an issue will be less relevant. As Travis Kalanick said when he was still Uber's chief executive (Newton 2014),

When there's no other dude in the car, the cost of taking an Uber anywhere becomes cheaper than owning a vehicle. So the magic there is, you basically bring the cost below the cost of ownership for everybody, and then car ownership goes away.

What becomes of all the other 'dudes' is not Kalanick's concern. That day was still a long way off. But it's also inevitable,

I'd say "Look, this is the way of the world, and the world isn't always great". We all have to find ways to change with the world.

But how Uber treats its workers is of concern for Europe's social model, both for those that are displaced and those that will go on driving for the platform for even longer, perhaps, than Kalanick imagined. Moreover, it is in Uber's and other types of platforms' interest in treating their workers well as they are 'the underlying force' of the network effect on which their success depends (Balaram et al. 2017:52).

Uber's recent *démarche* however suggests that at least one leading labour platform is responding to the normative influences of the EPSR. The firm's new management, after Kalanick's departure, appear to be more sensitive to the court of public opinion. Uber had already suffered extensive reputational damage – but could this be a strategic change due more to the threat of unwelcome regulation being imposed? It serves as an example of where a firm's founding genius has proved to be lacking in the transformative, leadership

skills required to adapt it to a different operational environment from the one in which it started. The labour platform model it has pioneered is now challenged by competitors while traditional players have also used technological innovations to update their offer to consumers. Uber (2018:24) speaks of a 'vision for good work' specifying 'flexibility', 'opportunity and access', 'security' and 'growth'. It foresees a future of independent work with a portfolio of jobs to suit people's needs at their discretion. It is not 'against regulations' but they should be reconfigured, specifically labour law to allow anyone who wants to work in this way without prejudicing welfare and personal development. The insistence that it is not an employer remains (Uber 2018:30),

On the legal side, in many places there is a perverse incentive in employment law which means that the more a platform does to protect those using its app to find work, the more likely it is that they are seen as an employee of that app. This would put at risk the very flexibility and independence that our model provides which, our drivers and couriers say is the reason they choose to partner with Uber.

'Flexibility' or 'flexible capitalism' has different meanings depending upon perceptions in the left-right political or laissez-faire versus social justice spectrum discussed in Chapter 3. For Sennett and Meija it means precarity for individuals incapable of fitting-in to an economy in which success is sharply delineated by meritocracy and bargaining power with big business. For Habermas it means a constant mobility in which it is not possible to establish enduring bonds. For Adler, on the other hand, it might present opportunities for a more communal economy of cooperative enterprises than the dystopia of the Uber model.

The UK is already acknowledged as having one of the most flexible labour markets in the world. The advantage is participation, that is, comparatively high rates of employment compared with most other EU member states. A danger observed by Taylor (2017:42) is a one sided view of flexibility by employers in order to 'simply reduce costs'. Uber's argument appears partial as cost-savings are made by the rejection of responsibilities as an employer. In this lies its competitive advantage which some see as unfair. On the other hand flexibility can work both ways 'by providing opportunities for those who may not be able to work in more conventional ways' (Taylor 2017:110). This cohort, comprising for example carers or the disabled, has had to rely on state support which in the recent years of 'austerity' has declined in some member states and may continue to do so. The question is whether working on labour platforms can make up for the difference.

Firms and whole industries only survive by adaptation. They are subject to Schumpeterian disruption. In this case it is the algorithmic revolution. Flexibility, also known as 'nimbleness' or 'agility', is closely associated with adaptation but there are losses, to individuals and society as a whole.

In the next section it will be shown how the view of employment revealed by Uber has not satisfied some of the current norms and expectations of what 'good work' should offer an individual. Despite its support for the EPSR and its 'Vision for good work' (Uber 2018:24), it still does not seem compatible with the objectives of the social market model as set out in the Introduction to this thesis. Independent surveys in the UK by CIPD (2017) and Balaram et al. (2017) find that, by a small majority, gig workers are motivated by the autonomy it offers but feel disadvantaged in terms of in-work benefits, non-work statutory entitlements, and work quality. Nor does the greater freedom offered by gig work 'necessarily mean that platforms are exemplary in terms of providing workers freedom and control' (Balaram et al. 2017:23).

Contingent jobs such as driving and delivering on labour platforms may suit part time workers seeking to top up their income or as a fill-in between jobs but, 'they provide something very far from the kind of long term stability that constitute what we would call "a good job"' (O'Reilly 2015). What the latter is taken to mean is explained more fully below.

### **6.13 'Good work'**

Good or 'decent' work is defined by the ILO (2016:247) as,

Work that is productive and delivers a fair income, with a safe workplace and social protection, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.

to which the EP (2017c:§7) added 'a living wage' and asked the Commission and member states to use with regard to any developments in employment legislation.

This section analyses the evidence of surveys and reports in the UK and Germany for what they tell us about the lack of good work, or 'good gigs' in the platform economy. Outstanding features are shown to be the absence of statutory in-work or out-of-work entitlements, precarity, poor prospects of transiting to regular work and loss of revenue to

the state. It raises questions about the value of platforms and their contribution if any to a social market model but also the whether the latter is achievable when there is momentum in Europe for a 'smaller state' and firms are reducing costs through automation in production and algorithmic management in service provision.

Taylor (2017) aims is to measure the quality of work in the gig economy against a number of criteria based on an ongoing EC project to develop a model of job quality (QUINNE 2015-2018). These are mainly qualitative constructs (such as, 'employment quality; 'working conditions', 'consultative participation and collective representation' in addition to 'wages'). Taylor draws on a range of range of data (ONS, OECD, CIPD, Balaram et al.) and finds that that all forms of employment should be entitled to a basic level of protection, with additional support for those working on platforms classed as 'dependent contractors' who should be distinguished from those who are legitimately self-employed. The salaries of low paid workers should be upgraded to the national living wage from the national minimum wage. Taylor recommends, however, 'responsible corporate governance' rather than national regulation to achieve better work. This means firms 'being seen to take good work seriously and are open about their practices and that all workers are able to be engaged and heard' (Taylor 2017:111). From the evidence referred to in previous sections of this chapter (and in Chapter 7) the practice of norms such as these is not, so far, observable the case of labour platforms across the EU.

The underlying question for CIPD (2017:52) was 'To gig or not to gig'. Their definition of gig economy workers is clearer because it only includes workers who have performed a physical service (such as driving, delivering, household tasks) through an online platform at least once during the preceding twelve months. CIPD (2017:2f) puts the number of gig workers in the UK at 1.3 million (4 per cent of all in employment). A high proportion (60 per cent) are topping up income from a permanent job and 40 percent (about 500,000) of these depend on it for their income. Wages are often less than the national minimum wage (2017:47) and more gigworkers say they are finding conditions 'quite' or 'very' difficult compared with other workers (2017:16). A majority, however, say they are satisfied with their work although they would like to have more hours.

A survey by CIPD (see Table 6.1) is consistent with others referred to as evidence for this thesis. It suggests that that gig work is stratified. Only a small minority of workers rely

**Table 6.4 Perceptions of gigworkers**

Source: adapted from CIPD 2017

Perceptions of gigwork		All gig workers	Driving/delivering
Is gigwork your main job?		Yes 25% No 67%	
Getting enough hours?		Yes 26% No 60%	
Income from gigwork: 5-20% 20-50% >50%			56% 42% 25%
Satisfied with income?		51%	
Feel exploited? Platforms should be regulated?		57% 63%	
Lack financial safety net of other employees?		70%	
Satisfied with in-work benefits?		Yes 31% No 28%	
Satisfied with income security?		Yes 31% No 30%	
Should provide a pension scheme?		50%	
Finding conditions difficult (compared with other workers)?		51%	
Those 'living comfortably' - is gigwork your main job?		Yes 31% No 60%	

largely or wholly on gig work and those that do tend to come from a vulnerable cohort, especially Uber drivers and from ethnic backgrounds in the UK and France. This is instructive both about the overall changing nature of work in the economy and also about the integration of immigrants. Those with skills, both native-born and immigrants, are adapting well but a minority lacking in skills may be open to exploitation by having no alternative but to work on labour platforms providing physical services where hours are long and pay and conditions poor. Evidence presented in a survey by Huws et al. (2017:40-47) is graphic. Interviewees desperate for income feared wages being continually changed, withheld or

work being deactivated without the possibility of putting their side of the case. They felt alienated being treated as ‘metrics in an ongoing experiment not as individuals’ with no one to listen to their complaints.

In a survey entitled 'Good Gigs, A fairer future for the UK’s gig economy', Balaram et al. (2017:6) drew attention to the longer term uncertainty about gig work which 'is making people feel uneasy about whether they will still have a decent standard of living in the wake of ‘disruption’. Pensions are not specifically mentioned but the impact on gig workers' prospects should be a subject for further research as platforms do not make contributions on their behalf and they may not do so themselves unless they are formally self-employed or in regular, salaried employment at the same time. Balaram et al. urged the government to support platforms in the UK, but warned that 'it can no longer remain agnostic about the different business models used by platforms' and called for the establishment of a 'Charter for Good Work in the Gig Economy'.

By contrast with the French government, I have found no evidence of measures planned so far by the government in the UK in respect of labour platforms. In France, new legislation is intended to provide every citizen with ‘a portfolio of portable social rights and in case of incapacity’ (CNNum 2016a: 92f). These will be attached to the person, not to their employment status (see Chapter 10, sub-section 10.1.3). Everyone will be entitled to support for training at any stage of their career whether they qualify as employees or as ‘independent workers’ (*travailleurs indépendants*) from 2018 (Gouvernement.fr.2016). Platform workers can already register as *micro-entrepreneurs* with access to social security at reduced contribution rates.

The theme of good work is to be found in the White Paper Work 4.0 by the German Federal Ministry of Labour and Social Affairs with the reference to '*Gute Arbeit*' (2017:83). Of particular relevance to the compatibility of labour platforms with the social market model is situating it in the wider European context.

The question of what “*Gute Arbeit*” looks like in the digital world should be discussed not just at national level but at European level as well . . . .

Many experts believe that the project of European integration is currently experiencing one of the most difficult phases in its history . . . Against this background, a broad consensus in society is needed, including in Germany, about what kind of Europe we want and what we are willing to do to achieve it. This also

means that labour and social policy must not be discussed solely in the national framework; a shared European level must be found. Work 4.0 can become a joint project for the future, not just in Germany but at European level as well: because it promises progress which benefits everyone. (German Federal Ministry 2017:183,184)

The German White Paper anticipates the EPSR but as will be shown in Chapters 8 and 10 there are few hard legislative proposals to be found among the twenty principles of which it is comprised. The need to think about ‘good work’ at this time, nationally or at an EU level arises from the global, technological changes that are rapidly taking place. Historically, there has always been good and bad work – more of the latter further back in the developing industrial revolution. Since then a continual succession of radical changes have affected the character of employment generally leading, with the exception of periods following financial crises, to greater employment and improved conditions, in developed economies. Underpinned by the rise of the welfare state, this is what is meant by ‘good work’ and has become taken for granted for the majority. Whether the same will be the case with the digital revolution is speculative. Labour platforms are only a part of such changes but good work applies to all work affected by them. We don’t know how large a part it is as reliable data are unavailable as noted earlier. History tells us that when radical technological change occurs, minorities are frequently overlooked and the most vulnerable benefit least.

The German White Paper indicates concern for the preservation of good work under new conditions. Europe’s social model depends heavily on it and the EPSR shows a renewed respect for it.

#### **6.14 Summary**

A defining characteristic of labour platforms is that their business model is primarily based on the manipulation of data, now widely referred-to as ‘algorithmic management’. Only secondarily is it applied to transportation, delivery, cleaning or the provision of any other service. This chapter has presented the evidence for what is known about how labour platforms collect information, what they do with it and the implications for regulating them at member state and EU level. The analysis tells us that these considerations are directly applicable to the concepts of organisation and management, laissez-faire economics or values of social justice within the context of EU integration reviewed in earlier chapters.

The available data on labour platforms were reviewed in the opening sections (1-3) but it was shown in section 4 that they are secretive about the information they collect because it is their unique competitive asset, only releasing what they want to be known through public relations 'spin' and trusted researchers whose work is not peer-reviewed and hence not reliable. For stakeholders such as service providers, consumers and governments, and the majority of researchers who do not have privileged access, the data which might be of interest are secreted in a black box. Objectives given for unlocking it were analysed in the next four sections (5-8) and approaches that have been suggested for doing so. The principal aim is to establish the 'rules of the road' which are so far conspicuously missing, otherwise known as *anomie*. Labour platforms seem to operate like Orlikowski's 'absent presence' or 'exogenous force', which are treated by digital firms like a 'black box' beyond the control of outsiders, as referred to in Chapter 2. Labour platforms have, similarly, been largely ignored by policy makers and regulators or regarded as a foreign reality presenting a new and so-far unresolvable challenge with which they are confronted.

Platforms display the attitude that they are a new way of organising service work using technological developments, whose details are their business alone. If it is popular with consumers and welcome to some providers then there is no need to look any further. 'Big Data', which Labour platforms use to perform their operations, is defined and the possibility of sharing some information without damaging competitiveness was introduced (section 9). The position of autarchy adopted by labour platforms may not, however, be justified for reasons discussed, such as a duty of care towards both service consumers and providers and payment of taxes (section 10). Platforms' data are needed for example to ensure that all workers receive the national minimum wage.

The connection was established between the use of Big Data and calls for its regulation to address some of the unintended consequences for wider society (section 11). In the case of labour, the effects of technological transformation were situated in a historical context. Some forms of self-regulation in a digital era that have been proposed were shown. Whether feasible or not, the important insight is that regulation of labour platforms depends largely on the response of the firms themselves (section 12). If they continue to regard themselves as essentially free agents with little responsibility for their workers, rather than the alternative of Orlikowski's 'emerging process', in which the 'black

box' is opened and technology is 'continuously being socially constructed and interpreted by human beings' (Orlikowski 2009:4), they may risk being regulated out of existence. Evidence was presented of a recent degree of movement in this direction by Uber but the *impasse* of 'flexibility' remains. This relates to the founding tenet of the labour platform's business model, namely that they are not employers and that their service providers are free to work when and wherever they want. Some see 'flexibility' as little more than a euphemism for a form of forced labour imposed on vulnerable employment-seeking groups, others as bringing liberating opportunities for work where they did not previously exist.

Data inform public policy which can lead to employment rights regulation with the aim of improving working conditions. This chapter has shown that there is a lack of data from the platforms as to the basis on which they engage with their workers. This is consistent with a lack of rules in this new form of organising work.

A literature review in Chapter 2 cast doubts on the value to workers of the business model from which arises its questionable compatibility with the European social model. Empirical evidence of working conditions on offline platforms is presented in the next chapter (Chapter 7). Data alone, however, are insufficient to improve them. Regulation is required which is a political choice. From the evidence to be presented in Chapter 8, the contrasting paradigms in Chapter 3 and the regulatory context of the EU in Chapter 4, policy decisions towards regulating employment in gig economy may be difficult to make and meet with resistance. Nor can their implementation by member states or their effectiveness be relied upon as concluded in Chapter 10.

In the opening paragraphs of this thesis, the intention of the European social market was understood to be the ensuring of 'inclusion in social protection and a good wage' (Burrow 2018) and work that is 'humane, socially balanced and sustainable' (Jürgens, Hoffmann and Schildmann 2017:222). In other words, this means what has been described in section 13 of this chapter as 'good work', or specifically referring to labour platforms, as 'good gigs'. Perceptions among participants vary, but doubts have been raised, in member states and in the EU institutions, as to whether it is.

The evidence on which such reservations are based is analysed in the next chapter which is about specific conditions of work in the gig economy, namely in-work and out-of-work statutory entitlements, work quality and taxation. These are the subsidiary questions

introduced at the start of Chapter 1. Improvement in working conditions, especially where they appear to be deteriorating, and re-training in the face of job loss through automation, are causes promoted by the representatives of labour, wherever they are permitted, throughout industrialised economies. They have specific significance in the EU because 'good work' is indissociable from commitment to a social market model which is a principle of ever-closer union.

In the next chapter it will be shown that governments, with the exception of France, have not yet taken measures to provide some social protection for workers on labour platforms. The EU has recently paid greater attention, as it will be shown in Chapters 8 and 10, although its effect is confined to recommendations and principles rather than directives or regulations. Until they are acted upon, it will be shown that workers and their representatives will have to find some means of redress on their own. It will become evident, however, that the proclamation of the EPSR goes some way to providing answers to the two principle questions researched in this thesis. It gives proof of a perceived incompatibility of labour platforms with the European social market model to which the EU aspires and gives guidance on how it might be addressed in a quasi-federal *bloc*.

## **CHAPTER 7. EXPERIENCE OF WORKING IN THE GIG ECONOMY**

In the previous chapter It was shown that the absence of transparency has contributed to a lack of compatibility with the EU's social market model. Gaps in data lead to gaps in policy formulation to address it. Both conditions implied by the research questions are seen to be present. Only a small amount of information about the earnings of workers is released which may be selective and unreliable. Little else is shared with regulators.

The purpose of the current chapter is to present and analyse a much wider range of evidence which is available about employment on labour platforms. A picture of what 'good work' means for a social market model has already been presented. Therefore it is logical to evaluate the terms and conditions of those working on labour platforms against this ideal in order to reach some conclusions as to their compatibility. We know, for example, what access workers have to benefits and statutory entitlements compared with other employed people. In other words, we can observe the effects of labour platform work on service providers even when we do not have access to sufficient quantifiable data.

From the literature reviewed in Chapter 2, the origins of the gig economy lie in the opportunities for old-fashioned entrepreneurialism (including the 'disruptive' and 'evasive' genres) afforded by the information (now the 'digital') revolution, austerity and the effect on jobs, following the banking and financial crises of 2007/2008. Management was shown to revert to an older model where labour was treated largely as a commodity like any other resource with little concern for the well-being of the individual. Chapter 3 conceptualised contrasting paradigms of economic and social value while the EU's competence to act in the employment field was contextualised in Chapter 4. The two principal research questions introduced in Chapter 1, namely the compatibility of labour platforms with the social market model and policy gaps by the EU in addressing it, are tested by the evidence for the practical effect of these factors in the present and following chapter (Chapter 8). The former is planned as follows.

Firstly, the terms and conditions are specified under which platform workers are reported to labour. These reveal a trade-off, chosen through life-style or necessitated by lack of alternatives, between flexible employment and the advantages of regular work. The new possibilities of 'flexibility' afforded by digital intermediaries challenge the concept of 'employment' itself, traditionally imagined and underwritten in law as a dependable basis

for the attainment of life chances. Secondly, the role of these new firms is analysed for some of the effects that have been observed and thirdly the response of governments to them. An evolution is beginning to be discernible in both cases. Fourthly, the representation of platform workers is shown to be very limited. The final picture that emerges from this chapter shows that some distance still remains between labour platforms and compatibility with the EU's concept of the social market model. Filling the gap requires implementation by member states of the recommendations and principles of the EPSR which is the subject of Chapters 8 and 10.

## 7.1 Terms and conditions

**Table 7.1 Terms and conditions of labour platform workers**

<i>Advantages</i>	
Flexibility	Work anywhere, any time. Not bound to any single employer or type of employment. Free to combine gigs at will, sometimes with a regular job.
Autonomy	'One's own boss'. No managerial hierarchy.
<i>Disadvantages</i>	
Low wages	May not earn national minimum wage (NMW). Need for long, possibly dangerous hours while, in some cases also doing other 'gigs' or part-time or even full-time salaried jobs.
Precarity	May be summarily 'deactivated' or 'timed' out through unchallengeable rating scores.
Contracts	Absent or unclear, constantly variable or even legally enforceable.
Entitlements	Exclusion from statutory benefits - NMW, contracted minimum or maximum hours, annual holidays, appeal against unfair dismissal, unemployment, occupational injury, sick pay and parental leave.
Training	Lack of opportunity to improve skills, transition to better jobs. Danger of being 'locked in'.
Insurance	Extent of cover by insurers or platforms for ride-hailing drivers unclear when travelling to a pick-up and conveying a passenger. Physical dangers to bicycle deliverers.
Emotional labour	Pressure on drivers to appease and placate passengers and put up with bad or dangerous behaviour for fear of risking a bad score (see Ravel and Dourish 2016, and Rosenblat and Stark 2015 in Chapter 2. Section 2.10).
Representation	Not recognised by platforms and collective bargaining by self-employed persons not permitted by EU competition rules.

The evidence of what it means to work on labour platforms in the gig economy is imprecise and sometimes anecdotal. The main features, which are widely reported are sharply divided between those claimed as advantages and those regarded as disadvantages (see Table 7.1). Their implications for workers, firms, government and the EU are analysed in succeeding sections. The most contentious of the features, positive and negative, claimed for gig work are the implications for flexibility and autonomy and will be examined first. Levels of remuneration are also often disputed.

### **7.1.1 Flexibility - an opportunity or a trap?**

Many workers like the flexibility (Taylor 2017:14) but complain of precarity, low pay, lack of entitlements and training opportunities. They generally say they need it to make ends meet but would not choose if they didn't have to with some considering it worthwhile sacrificing job security and workers' benefits for the flexibility it brings (CIPD 2017:34f,48). For many there is little choice and they may be working on several gigs to make ends meet. From this a conclusion might be drawn that labour platforms have been the beneficiaries of social security cuts under austerity.

In principle, labour platform workers can choose to accept a gig or not and work whenever they like. This is the basis for platform operators' refusal to accept the role of employers and the responsibilities in terms of employee entitlements that go with it. As has been shown, some participants are reported to have benefitted such as Uber drivers from the French *banlieue*, to which can be added students defraying the cost of university through delivering for Deliveroo and small restaurants gaining access thereby to a wider market.

Contrary to much publicised criticisms of the gig economy, especially from the left of the political spectrum, and protests by some gig workers, surprising evidence from CIPD's survey in the UK (2017:41,42) suggests that they are generally more satisfied than other workers with 'their level of empowerment and fulfilment . . . their opportunities to develop skills and knowledge . . . and about their physical and mental well-being experienced through work'. For this, CIPD offers as a possible explanation that they are less stressed because of the autonomy that greater control over their working hours brings. Perhaps they have lower expectations. Or are these the expectations assumed for them by a more fortunate commentariat that does not have to work on labour platforms? Possibly, the

sampling is faulty and has not been found to be corroborated by other surveys. Such evidence contrasts with generally negative attitudes towards gig work that are widely expressed in the literature and media. Working conditions for service providers who are not in control of their time and have to respond to on-demand requests may be worse than in traditional employment (OECD (2016:21,26f). Flexibility leading to multi-jobbing may be too great for some and 'can easily turn into stress and unpaid waiting time for the provider'. In that case it might be more accurate to describe autonomy as 'illusory'. As O'Reilly comments (2015), 'If you are an on-demand worker, not all hours are equal. Schedules that allow workers to maximize their income are, to a large extent, still driven by marketplace demands'. Calo and Rosenblat (2017) showed Uber drivers constantly expressing fear of being penalised if they did not accept rides. Preserving a work-life balance is one of the principles of the EPSR.

Moreover, comparative wages, training and transitioning to standard work are almost entirely negative for temporary workers which 'has to be seen in contrast to the popularity of flexibility which is often quoted'. Rather than freedom, economic pressure may drive some into easy entry platform work, while doing several other jobs (OECD 2016). CIPD's evidence, however, is somewhat at variance and is the only survey found in the present research that presents substantial empirical data on workers' attitudes to gig work - how a sample of them feel about it (Chapter 6, Table 6.1) - rather than focussing on demographics, frequency, type and conditions of employment. This may be explained by the fact that of all the surveys examined, it is the only one conducted by a not-for-profit professional body specialised in 'HR and people development' as proclaimed on its website. From surveys carried out by other UK organisations (namely the Office of National Statistics [ONS], UK Commission for Employment and Skills, the Royal Society of Arts [RSA] and the Resolution Foundation) as well as its own, CIPD conclude that up to a third of all people engaged in atypical work do so because it suits them, not because they could not get work with a regular employer. This was the case, however, in just 14 per cent of their own survey of gig workers.

Evidence from a credible source such as CIPD is required to counter the possibility of a negatively biased view of the gig economy. Three comments need to be made however. Firstly, their survey, like others, refers to the gig economy as a whole. No surveys have been

found relating exclusively to offline labour platforms which make up only a part of the whole, though its size in the UK has been estimated by Balaram et al. (2017, see Annex VIII). Secondly, other evidence such as by Huws et al. (2017) suggests that the proportion of gig workers who do not choose to do so out of choice is associated with the most vulnerable groups. It is the latter which raises the question of compatibility with the EU's social market model and with which this thesis is most concerned. Finally, while Balaram et al. find that nearly two-thirds (63 percent) of respondents liked the greater freedom offered by gig work, they note (2017:36) that 'this does not necessarily mean that platforms are exemplary in terms of the freedom and control that they allow workers' and also that 'there is still a considerable minority of gig workers who do not agree that they now have more freedom and control'.

### **7.1.2 Disjunction between 'work' and 'employment'**

Most of the gaps in employment terms described above are the direct result of gig workers being classified in labour law as self-employed, independent contractors. Platforms such as Uber and Deliveroo do not have any 'employees', only 'customers' or 'driver-partners' as Uber prefers to call them, with minimal duty of care towards them. Deliveroo has recently withdrawn performance monitoring and a requirement for riders to wear or carry its branded clothing and bag in order to avoid the implication of an employee relationship (Butler 2017). This classification has recently been contested at the London Employment Tribunal (Employment Tribunals 2016; Employment Appeal Tribunal 2017) resulting in a ruling that Uber drivers are 'workers', not self-employed, which is a category specific to UK law under Section 230 of the Employment Rights Act 1996. Under this classification workers at Uber have minimum statutory entitlements such as, 'the NMW, protection against unlawful deductions from wages, minimum level of paid holiday, minimum length of rest breaks, the right to not work more than 48 hours on average per week or to opt out of this right if they choose, protection against unlawful discrimination, protection for 'whistleblowing' - reporting wrongdoing in the workplace - and not be treated less favourably if they work part-time' (Gov.UK:1; EP 2017d:9). Unlike employees, however, they do not receive statutory redundancy pay, protection against unfair dismissal or the right to request flexible working (De Stefano, 2016:20), nor to sick leave or maternity or paternity leave or to the right to collective bargaining. Deliveroo workers, however, were not

successful in their appeal (Butler 2017; CAC 2017) because the platform changed its contract to permit riders to substitute another person to do a job, unlike for example, Uber or CitySprint.

The right of a labour platform driver or deliverer to choose whether or not to work more than 48 hours will be constrained by personal necessity in some cases which is a further example of the asymmetry of power relations between the firm and the individual discussed in Chapter 2.

The most significant problem for gig workers stems from a disjunction between a definition of 'work' and 'employment'. As Taylor (2017:35) puts it, 'all employees are workers, but not all workers are employees'. CESA, the EP's Committee on Employment and Social Affairs (EP 2017g:4/5) asserts that all professional, remunerated services in the platform economy should be recognised as work, regardless of whether they are called 'gigs', 'tasks' or 'giving rides', but that does not address the confusion over the employment problem which is even more precisely illustrated by the Commission's 'European agenda for the collaborative economy' when it says (EC 2016b:12),

EU law guaranteeing rights to workers is only applicable to people who are in an employment relationship, i.e. who are considered 'workers'.

This is unsatisfactory because if those who labour in the gig economy are defined broadly as 'workers' (or specifically as such under UK law) it does not *ipso facto* mean that they are 'employees'. Firstly, then, by what criteria might they be defined as 'workers' and secondly what are the implications for them? The Court, for the purposes of EU directives in the social field, defines work as having three essential characteristics, namely 'the existence of a subordination link, the nature of work and the presence of a remuneration' (EP2016c:3§2; EC2017f:9, referring to Judgment in case C-428/09, *op. cit.*, para. 28). With reference to the collaborative economy (the Commission's preferred term), 'subordination' means that 'the service provider works under the direction of the platform, the latter determining the choice of the activity, remuneration and working conditions'. The 'nature of work' means that the service has genuine economic activity and remuneration means that it is paid rather than voluntary work. The conditions of algorithmic management, panoptic surveillance and emotional labour referred to in earlier chapters, under which gigwork drivers and deliverers labour, would seem to leave little doubt as to their compliance with the Court's definition.

The problem remains, however, because the Court only defines them as 'workers', not as 'employees'. There is no clear interpretation of 'employment'. As the Commission says in the supporting analysis of its European Agenda (EC 2016a:35),

There is no single approach on how to qualify employment status across Member States in the collaborative economy.

This is left to member states to decide. Entitlement to benefits ('rights to workers' as in the Commission's assertion above) depends, however, as has been shown, upon being in an 'employment relationship' which the platforms reject.

The Commission (EC 2016b:13), appears to be aware of the disjunction between employment and work that arises in the gig economy and that member states need to re-examine their labour laws. In this respect, the UK seems to be better placed than other member states in already enshrining in its labour law a definition of 'worker' which also, at the same time, serves as an employment classification bearing minimum entitlements. The current Uber case, however, appears to be the first time it has been tested in relation to the gig economy and is still under appeal, Uber having given notice that it will seek to overturn the London Employment Tribunal's judgement, and the Employment Appeals Tribunal (EAT) which subsequently confirmed it, at the UK's Supreme Court. The tribunals did not agree (Forde et al. 2017a:97) that there was an inherent agent and principal relationship between Uber and its driver-partners (as it terms them) and held that its true nature was that they were workers for Uber. The distinction, however, for an individual between worker and self-employment 'will inevitably be case and fact sensitive'. Hence, the tribunal judgements only refer to a particular case (the two Uber drivers who brought the complaint), are not binding on other tribunals and thus may not apply to a wider workforce (Taylor 2017:63). For this there would have to be fines and costs for firms that routinely ignored judgements against them ('aggravated breaches') in similar circumstances. Nonetheless, the UK's stance might be seen as ironical given that its labour market is held to be one of the most flexible in the world based on OECD data (Taylor 2017:17) and much more so than other leading economies in the EU. Protection is lighter for individuals relative to France and Germany and less strict for temporary workers than France and Spain. We need not be surprised, however, given that the gig economy has taken root in the UK's concept of free market capitalism more than in any of its Continental neighbours, as noted by the Spanish Markets and Competition Commission (CNMC 2016:161),

The UK accounts for 10% of collaborative economy business worldwide, more than the sum of total activity in Germany, France and Spain combined.

Whatever the eventual outcome of the Uber appeal, and other similar cases such as Deliveroo, CitySprint, Hermes and Pimlico Plumbers, the onus is on gig workers themselves to challenge their status. These are early cases of litigation 'which suggest that terms and conditions of significant numbers of platform workers may in fact not represent the true agreement between platforms and workers' (Forde et al. 2017a:91,101). This is a key issue but not an efficient way to address it because challenging powerful companies over the misclassification of employment or getting decisions enforced is beyond the means of most workers (there were fees for employment tribunals in the UK up to July 2017 when they were abolished) and their general lack of access to legal expertise may lead to injustice. It is even beyond the resources of trade unions to proceed against numerous companies in similar cases.

Evidence such as this shows that employment law in the UK has yet to accommodate the new form of organising work introduced by labour platforms. This is also the case in many other EU member states as there is no universally accepted distinction between the status of a 'worker' and an 'employee' which is generally essential for their access to benefits and entitlements. The main beneficiaries are platforms who profit from not having to bear the responsibilities of traditional firms. Possibly a change in the law will eventually mean they have to, but that may render them unviable. Underlying the present gap is a further distinction which is the subject of the next section to which some look as a solution for filling it.

### **7.1.3 Dependent or not dependent**

The gig economy is a new environment within which work is organised. It will be shown that it undermines the structure of social protection that has become established in varying degrees throughout the EU and some other industrialised economies. The reason for this breakdown is explained in this section but a solution will require change to the social contract between government and job providers that is not universally agreed. Gig firms cannot stand aside without their value to society being called into question.

Deciding on employment status has generally been a binary option between employed or self-employed, with the former entitled to a full range of benefits and the

latter not. In the EU, taxi drivers are for the most part self-employed or 'independent contractors' but some are salaried, 'depending on whether they sign a contract with the transport operator, the number of hours they work and the type of subordination relationship in place' (EC 2016a:35). The gig economy has brought to greater attention a third consideration which already exists in Germany and Spain, namely that of economic dependence. In France CNNum (2016:80,113) proposed the creation of a third category of 'non-salaried independent workers' but who find themselves 'in a relationship of economic dependence'. In Spain, such workers have already had basic rights since 1973, and in Germany they have social welfare entitlements like salaried employees if they have been dependent upon a single entity for at least half their income during the preceding six months (CNNum 2016:116). In the German social market model personal dependence is seen as the,

essential criterion in determining whether an individual should be classified as an employee under social insurance law. Indications of personal dependence include the individual acting on instructions and being integrated into an external work organisation. It seems that the question of whether this criterion is met has to be examined on a case-by-case basis for platform-based activities and crowdworking. (German Federal Ministry of Labour and Social Affairs 2017:171)

Increased dependency in new forms of digitally-organised work which fall outside both the established employer-employee relationship and the self-employed status may, however, require revisions to Germany's social security system. For example, Germany also identifies 'employee-like persons' (*arbeitnehmerähnliche Personen*) in law. These are described (Forde et al. 2017b:27) as persons who are self-employed but who are economically dependent on one client (for at least 50 percent of their income, 30 percent in the media sector). With respect to social security, they are considered to be self-employed. Normally, this would mean exclusion from the state pension scheme and the statutory accident insurance scheme but an exception is made. Platform workers, however, are neither considered employees nor employee-like persons but rather as self-employed persons and consequently have significantly less social protection. For health care a minimum contribution is expected (Forde et al. 2017b:28).

Taylor (2017:9,110) believes that the definition 'worker' should be replaced with 'dependent contractor' to make a clear distinction from the genuinely self-employed and

that those to whom it applies should enjoy a basic set of employment rights. De Stefano (2016:19,21) is not convinced, however, by the addition of another category because legal definitions are always 'slippery' in practice and can lead to regulatory arbitrage, while Hill (2015:9,14) speaks about shutting down the 'independent contractor loophole', in a way that makes it 'unnecessary to argue over whether the worker is actually an employee of that company or an independent contractor'. O'Reilly (2015) rejects 'the moral and financial calculus that segregates workers into privileged and unprivileged classes'. Referring to part-time as well as gig workers, he believes, however, that, 'It will take much deeper thinking to come up with the right incentives for companies to understand the value of taking care of all their workers on an equal footing'.

As working in the gig economy becomes increasingly common (less 'atypical'), labour platforms are increasingly confronted with the expectations of public opinion to comply with norms of 'taking care' and recognising 'dependency' to which all firms have had to respond in some way in modern industrialised societies. If labour platforms ignored such norms when they started, which is very recently by historical standards, they may not be able to continue to do so indefinitely without danger to their business model. A 'safety net' for workers is a requirement, in varying degrees of protection, in many developed economies, to whatever extent they follow a socialised form of free market capitalism. It is a backstop generally shared between the state and firms and to a lesser extent with the self-employed. For the latter that is the risk they take for being autonomous. In gig work there is no one with whom to share provision of the safety net. Gig firms essentially do not have employees (except core, headquarters staff) and gig workers may not always register themselves and pay contributions as self-employed. The social contract, therefore that exists between stakeholders, namely firms, workers and government, is broken. Self-employment has worked well for those well-qualified to buy social protection for themselves such as the professions, but the least qualified gigworkers, those for whom such work is not a lifestyle choice, are left with only the most basic subsistence support offered by the state. It is demonstrably not compatible with Europe's social market model.

The original concept of gigwork was between peers - private individuals using under-used assets on an occasional basis and for a little extra cash to provide services to other individuals. By contrast, many providers are reported to be participating as a regular

way to secure their income. No reliable estimates of the proportion have been found in the course of the present research but surveys suggest it is generally higher in the ride-hailing sector than elsewhere. This represents a change of status and raises the question of how they should be treated for taxation and employment purposes which is examined in the next sub-section.

#### **7.1.4 'Professionals' or 'non-professionals'**

As has been shown, the Commission's 'European agenda for the collaborative economy' conflates work with employment without defining what employment means. One of its responses to the new forms of work is to try to distinguish between 'professionals' and 'non-professionals' admitting (EC 2016b:5) that,

EU legislation does not establish expressly at what point a peer becomes a professional services provider in the collaborative economy.

Under article 4(2) of the Services Directive (EC 2006) any self-employed person who offers a service for remuneration is considered a service provider regardless of the frequency or whether the person acts as a 'professional'. They may also be regarded as a 'trader' under the Consumer *acquis* which is characterised as 'any person acting for the purposes relating to his trade, business, craft or profession'. The greater the frequency, the greater the likelihood of being termed a 'trader' but there is no specific threshold and the description can only be determined on a case-by-case basis. Member states have treated the distinction between 'peers' and professional services providers very differently (EC 2016a:27). For regulatory purposes the Commission believes (EC2016b:7) that 'private individuals offering services via collaborative platforms on a peer-to-peer and occasional basis should not be automatically treated as professional service providers'. In some MS, for example, the annual amount that can be earned through peer-to-peer services is capped, beyond which, full regulatory compliance, notably authorisations, consumer protection and taxation apply. In a growing number of European cities, the number of nights per year in which the letting of short-term accommodation between 'peers' is limited (for example in Berlin and London).

Whether service providers in the new economy are designated 'professionals' or 'peers' does not, however, resolve the employment puzzle. This can be explained by the misappropriation of the peer-to-peer concept to the gig economy as is seen from the way it has rapidly evolved. In recent years, 'ride-sharing' and accommodation 'sharing' had been

portrayed principally as a casual peer-to-peer activity (e.g. UberPop) by the ordinary citizen using his or her underused car or spare living space to make a little extra cash. Both assumptions have proved to be far from the truth. Surveys referred to in Chapter 6 (Balaram et al. 2017; CIPD 2017) suggest that 30 to 40 percent of Uber drivers are working long hours and depend upon it for the major, if not entire part, of their income (81 percent in France according to IFOP as reported by Landier et al., 2016:6). Uber drivers in the UK (reported at 40,000) are generally professional drivers and wholly so in France (reported at 14,000). Uber's business model in Europe has morphed from the earlier concept of peer-to-peer (UberPop) which was widely banned or severely restricted (see Annex III) to a professional service (UberX and other transportation models, see Annex IX). In this form it has recently been readmitted in Spain and together with the UK and France, these are the only major EU economies where Uber (in the form of UberX, or the limo service UberBlack) is permitted to operate subject to some private hire licencing conditions. These are much stricter in France than the UK and there is a limitation on the number of licences in Spain (CNMC 2016). The peer-to-peer principle is diluted in the case of short-term accommodation with multiple lets owned or managed by commercial enterprises, for example in Paris, as described in Chapter 6.

What we are seeing with labour platforms in the gig economy may often be a case of bogus self-employment. This is for two reasons. Firstly, this is because such work may be closer to real employment than is currently admitted by platforms or recognised in labour law, as has been shown. Secondly, some Uber drivers, in Paris for example, belong to commercial firms and are salaried, while others there and in the UK have an additional job which in some cases may be salaried. It is difficult to both accurately measure the size of undeclared or bogus self-employment 'given caveats inherent to all methods used. Country information tends to be scarce, irregular and results partially questionable' (EP2017g:1) and also 'to distinguish workers from those that are legitimately self-employed' (Taylor 2017:9,110).

The peer-to-peer concept of the gig economy seemed to represent a blurring of the division between 'work' as traditionally thought of and the 'domestic'. For Raval and Dourish (2016:104) the 'sharing economy' sought,

to bring many aspects of non-monetized engagement - engagements between friends, family members, citizens, and members of society, engagements typically not marked by labor relations or financial exchange - within the sphere of monetary transactions . . . to disrupt and redefine the nature of everyday social engagements in order to incorporate them into economic life in the terms already given.

This was true when neighbours gave occasional lifts for neighbours and occupiers of homes welcomed strangers into their spare rooms for a night or two, earning thereby small sums of money. Now, both types of gigs have become 'business'. Platforms finance vehicles and properties let on Airbnb and other sites, sometimes acquired solely for this purpose, are managed by specialist firms. Gig workers are still mainly treated, however, as though they were engaged in a peer-to-peer environment which has implication for taxation on which the provision of the safety net for all depends as will be shown in the next section. Some, for example those that do not also have regular jobs as employees, may continue to see themselves in this way and fail to register with the authorities for tax and national insurance contributions, or make pension provisions. Others might be unable to afford to do so.

## **7.2 Effects of gig firms**

From the evidence above, it can be seen that working on platforms suits some people but not others. Uber (2018:19,20) does not deny it. There are, however, wider effects which run counter to the promotion of a social market model. Two of the most salient are examined below.

### **7.2.1 Fiscal impact**

Government treasuries in the EU, many of whom already hard pressed by austerity measures and the slow recovery from the Great Recession, are losing tax revenues from gig work.

In 2016, approximately £100bn was paid out in the UK in benefits funded by National Insurance Contributions (NICs), around 94 percent of which was on the State Pension (Taylor 2017:70). Platforms, however, because they do not have any 'employees' (except internal staff) do not pay the employer's national insurance contributions at 13.8 percent on top of workers' pay. Based on a tax lawyer's estimate, Balaram et al. (2017:40) estimate that Uber, for example, would accrue costs of around £13 million per month (or roughly £156 million annually) if it had to pay employer NICs in the UK. Deliveroo claim it would add around £1 to the cost of each hour (Pitas and Holden 2017). Moreover, the rate of NIC for

the self-employed is less (9 per cent of their income plus, currently, £2.85 per week) but people engaging regularly in gig work may not always see themselves as genuinely 'self-employed' and consequently may fail to pay their contribution which would enable them to gain access to state benefits. Even reclassifying Uber drivers (in the UK) as workers will not 'automatically' entitle them, as shown above, to sick pay 'or any other statutory payments' according to the Chartered Institute of Taxation (CIT 2017), because they are paid gross, not net after deductions through the PAYE (Pay As You Earn) tax system in the UK through which it is administered and part financed by employers' NIC contributions. Hence, according to the Institute, entitlement 'would require not only a change in the worker's employment law status but a change in the worker's tax status as well'. Taylor (2017:71) says that the government is estimated to lose £5.1bn a year from the lower rates of NICs paid by the self-employed.

Platforms have generally shared very little data (OECD 2016:38) and tax authorities have limited oversight of the activities that are performed through them (De Groen and Maselli 2016:10,21). Workers do not declare the earnings themselves and 'only 15 percent of the participants in a market survey conducted in France reported the income obtained through the collaborative economy'. Therefore it is somewhat surprising to read that the *Sénat* (2015: 32), the upper house of the French parliament, reported that platforms had expressed themselves willing to cooperate provided the limits of their responsibilities are clearly defined. Even more so in the light of subsequent behaviour, are remarks attributed by the *Sénat* (2015:42-43) to Travis Kalanick, the co-founder and then CEO of Uber, in an interview with *Le Monde* (Escande and Jacquin 2015) to the effect that,

If we reach an agreement with a government, we can immediately transmit to them the earnings of all our drivers as this is entirely in digital form. Every euro paid to Uber is a taxable euro!

Airbnb has shown some appreciation of its responsibilities to the local community by making voluntary agreements with cities in five EU member states and throughout the United States to collect and pass on tourist taxes (Airbnb 2018). The convenience of not having to organise their own tax payments might be welcomed by some landlords. Others may not otherwise have collected or passed on the tax due.

Uber (2018:20,21) says that it already has arrangements in Sweden, Estonia and Lithuania to make the earnings of its drivers and deliverers available, should they desire it, to government. Wherever they work, they are informed of the prevailing tax rules and Uber says it provides tax planning advice through third parties 'in most European countries'.

The implications drawn from the above are that workers on labour platforms of the gig economy are not exempt from contributing to the costs of social protection like all other workers and that platforms have a duty to ensure that they do so. It has been proposed that platforms pay social insurance contributions (EP 2018a:51; EP 2018b: policy option 5). In a historical perspective, the Bismarckian welfare state and its descendants in the various forms seen today in Europe (and elsewhere) developed, and have continued to do so, at times of rapid technological change, no less radical than the present digital revolution. The burden of paying for social welfare has long fallen on both firms and workers through payroll and general taxes on their profits and earnings. Firms, unlike workers, have greater facilities for reducing or even evading their liabilities and platforms such as Uber have been no different (Bower 2016). They are not burdened with payroll taxes and under the business model of gig firms engaged in the delivery of physical services most of the earnings from their operations (at least 80 percent) are paid directly to their workers and declaring them to the tax authorities has been regarded as the responsibility of their workers and not the platform. Similarly, unlike traditional firms, they have not felt liable for the wellbeing of those working on them. They have seen themselves more like intermediaries such as estate agencies who have no more responsibility for the condition of the properties for which they facilitate the rental or sale beyond a truthful and accurate description. People, however, are not the same thing as property. Labour, as shown in Chapter 3, Section 3.1, is not a commodity, which calls into question the value of gig firms because of this categorical difference. Labour platforms are now facilitating the livelihood, in part or in some cases the whole, of large numbers of workers, not merely a lifestyle choice for some as has been claimed. Moreover, livelihood cannot be separated from the wider frame of wellbeing. Workers lose their jobs or become unable to work for other reasons. They need breaks and have to think about income in retirement even though it seems a long way off. Many wish to move on to better jobs and therefore need further training. All these needs go with being employed in the practical, physical sense if not always in the legal sense. Such needs are

captured by the EPSR and platforms who continue to ignore them can hardly be compatible with the social model that inspires it. Meanwhile net median earnings after expenses and waiting time for gig workers are low, typically between £6 and £7.70 per hour in the UK, sometimes for a 50 hour week. Twenty percent of them, for whom it is not a choice, find it quite or very difficult to manage financially (CIPD 2017:16,47).

### **7.2.2 In-work poverty**

With low rates of pay and precarity, doing a gig (or several gigs) in the gig economy does not necessarily mean escaping from what is termed as poverty in work. Eurofound (2017:5) reports that the EU considers individuals 'to be at risk of in-work poverty when they work for over half of the year and when their equivalised yearly disposable household income is below 60% of the national household median income level'. In-work poverty is stated to be 'a genuine problem across Europe that requires specific policy attention' (2017:48).

This section starts with an example in the UK of in-work poverty which it is alleged is exacerbated by the presence of Uber in a closely associated industry. Eliminating work poverty is one of the objectives of the EPSR but, as is shown in sub-sections that follow, strategies to deal with it differ sharply among member states, revealing a further correlation with their individual practice of free market capitalism which was observed in Chapter 3. Labour platforms it is observed appear to benefit where getting people back to work is the main priority.

### **7.2.3 A 'Wild West Workplace'**

Work poverty is not limited to the 'new' jobs offered for example by labour platforms in ride-hailing and delivery but can have effects on others. A report and survey by Network Rights and the United Private Hire Drivers Association (UPHD 2016) refers to 'sweat-shop conditions' resulting from London's 'booming minicab trade'. The presence of forty to fifty thousand private hire drivers working for Uber has had the effect of driving down wages for all of them, both new entrants and existing participants, with Uber being able to offer lower costs to consumers through unfair competition by evading regulations and its social responsibilities. The survey found that '81 percent say they no longer earn enough to meet basic family needs. 95 percent have seen their pay decrease in the past 6 months'. London's 111,000 private hire drivers are described as 'the working poor', the majority of whom are reported as having to work 90 hours a week or more 'just to survive'. Drivers have to bear

the costs of financing and running a vehicle, additional insurance, parking and bus lane fines 'before scraping out enough to feed their families'. It is what Frank Field MP has called the 'Wild West Workplace of the gig economy' (Field and Forsey 2016).

The drivers' association blames Transport for London (TfL), the capital's transport authority, for new regulations 'to punish the working poor. . . The truth of the matter is the poor take the brunt of the cost in a race to the bottom' (UPHD 2016:12). Meanwhile, they allege, Uber is licenced to ignore workers' rights and deploy a 'brutally exploitative' business model, a description used in evidence to the Greater London Assembly Transport Committee by the policy director of London's largest mini-cab operator. The drivers' case (UPHD 2016:39) is that,

From 9am to 5pm TfL license drivers into poverty and misery while reaping windfall profits in license fees. From 5pm to 9am TfL then rushes out to help write penalty charge notice for drivers who have parked in the wrong place, stopped in a prohibited zone to pick up or discharge – all as a result of congestion and a lack of operating infrastructure.

TfL denies that it has any control over drivers' hours because the self-employed are not covered by the EU's Working Time Directive (EC 2003). This may be contestable, however, under the recent clarification of the directive (2017f:5) during the consultation for the EPSR (EC 2017g:4).

UPHD, it needs saying, is a pressure group like any other. Its data are no more verified than the reports of drivers' earnings sponsored by Uber as quoted in Chapter 6, section 6.2. From the evidence of the present chapter, however, and the intentions of the European Pillar of Social Rights (Chapter 8), a response by government to gig work and the taking of greater responsibility by labour platforms are overdue for the reasons given in the next section.

### **7.3 The response of government**

Several EU member states are reported (Remeur 2018) to have made adjustments to the maximum that gig workers can earn before being taxed at the standard marginal rates of income tax. In the UK the tax authorities have been granted powers to obtain data from digital platforms (Remeur 2018:19) but no evidence has been founded in the present research of their having done so in the case of labour platforms intermediating physical

services. France and Estonia, however, have gone much further in facilitating payment not only from individuals but also with the cooperation of the platforms.

Tax losses were raised by the *Sénat* (2015). Private citizens (*particuliers*) earning small sums in the gig economy on a casual basis often did not in reality correspond to that description. These '*faux particuliers*' (falsely private people, in fact professionals) were earning larger sums and evading income tax and social welfare contributions through undeclared work. Even those who worked on an occasional basis and in good faith did not know what their obligations were or how to meet them. Official checks were non-existent and there was no simple and standard way of collecting what was due. Fiscal administration was described (*Sénat* 2015:27,35) as 'deprived', 'not geared-up' for the growth in such peer-to-peer commercial exchanges, faced with a flight from traditional tax assessment and incapable of checking every transaction, person and platform. The result was two-fold - both a loss of tax receipts to government and unfair competition with established businesses who paid their dues. With regard to the latter, no data has been found in the documents researched showing evidence of the damage done to such businesses (notably taxi firms, hotels and bed and breakfasts) in EU member states. How many jobs have been lost as a direct result of the gig economy? How many have been gained, or is it a case of transfer from one type of employment to another? As has been shown in Chapter 6, the transport sector is said to have been a motor for entrepreneurs and jobs throughout France with new ride-hailing jobs created in the Parisian *banlieue* (Rose 2017), but at the cost of how many regular taxis? These are subjects for further research.

The *Sénat* set itself the task of finding a way to allow space for the gig economy while at the same time ensuring government receipts. For this, it proposed two solutions. Firstly, there would be a threshold (€5,000 representing some of the costs of running a city car or maintaining an apartment) below which earnings from all types of peer-to-peer for profit work in the gig economy would be exempt and secondly the establishment of a '*Centrale*', an independently administered agency who would receive data on an automatic basis from the platforms and inform gig workers on what they owed. Beyond the threshold, earnings would be treated as 'income arising from a commercial activity, otherwise called eCommerce in the traditional sense of the term' and liable for income tax and social security contributions (*Sénat* 2015:36). Implementing such a measure would require

mandatory data sharing by gig firms which is likely to be strongly resisted, particularly by labour platforms such as Uber which does not accept the role of employer (but see Chapter 10, section 10.1.2 for its further response in this direction).

The proposals of the *Sénat* set some benchmarks for subsequent measures which were adopted following developments in the gig economy, particularly in the case of ride-hailing. Among the '*faux particuliers*' identified by the *Sénat* were UberPop drivers and landlords renting out multiple sites on Airbnb. UberPop was banned shortly afterwards, however, by the French courts and replaced by UberX in which all its drivers hold or are covered by a variety of professional private hire licence offering different permissions to operate and requiring different levels of qualification and compliance (see Annex IX). At that stage, Uber responded by obligating its drivers to register themselves as a company or as '*auto-entrepreneurs*', a fiscal category corresponding somewhat to 'self-employed' in the UK and benefitting from reduced social welfare contributions. This shows how the business model of Uber, and to some extent also Airbnb, has morphed, as mentioned above, from a peer-to-peer to a more traditional business-to-consumer model. Nor, according to the recent Opinion of the ECJ's Advocate General (ECJ 2017a) confirmed by the Court's Preliminary Ruling (ECJ 2017b) can Uber be considered as an eCommerce service but rather as a transportation service - a view not shared by some, for example Geradin (2016:1,11) who had 'no doubt that UberPOP is an information society and is not a transport service' (see Annex IV).

The second proposal of the *Sénat* for a '*Centrale*', however, remained relevant and novel because it engaged for the first time the involvement of platforms themselves, 'the keystone of the collaborative economy' (*Sénat* 2015:32), in the fiscal obligations of their workers. They are not asked to collect tax themselves or make social welfare contributions - the same problem as with National Insurance Contributions in the UK as discussed above. Where service provision entails labour, they will not undertake such a burden because they do not accept that they are employers and in the case of accommodation letting they are merely agents. What is at stake is data. As has been noted above, platforms hold 'exhaustive and instantaneous knowledge' (*Sénat* 2015: 32) of their users' earnings such as gross and net earnings after deduction of commission (for example in the case of ride-hailing) or the commission deducted where the transaction is between the platform user and his or her

client (as in the case of accommodation letting) which they would transmit to an independent agency (*le Centrale*). An individual's aggregated income from these sources would be calculated by the latter and uploaded to the tax authorities on an annual basis so as to create a pre-filled tax return. An arrangement of this sort has since been introduced between ride-hailing platforms and the tax authority in Estonia (Reuters 2016a). In the proposal of the *Sénat*, the upload would not take place if total earnings from the platforms were less than the €5,000 threshold. Such a system would, if it could be effected, overcome several problems. Firstly as the *Sénat* (2015:30) certifies, individuals do not generally declare earnings from platforms, secondly checks by tax inspectors are 'very rare' and thirdly, the platforms currently accept no responsibility for ensuring or even facilitating the fiscal obligation of their users - particularly where labour is involved in the provision of a service and platforms do not consider their workers as 'employees'.

Sharing such information with '*le Centrale*' might be facilitated for example by digital audit as discussed in Chapter 6 but gaining access to it unilaterally would go well beyond the State's current powers of fiscal intervention known as '*droit de communication*' (*Sénat* 2015:26). In principle, this enables the government to obtain a range of information from collaborative platforms about transactions but it suffers from a major weakness, namely it lacks 'extra-territoriailty', meaning that it cannot access data stored in platforms registered abroad which is the case with Uber (in the Netherlands) and Airbnb (in Ireland). In any case it raises a question of the protection of private data.

The changing and unforeseen circumstances discussed above illustrate the speed with which the gig economy is developing and the variability of the form it takes. The *Sénat*, however rejected a sectoral approach and preferred an across-the-board fiscal regime based on 'professional activity' following the example of UberX drivers. In the case of accommodation, this would apply to any platform or person letting more than one site.

Such a requirement was subsequently adopted in 2016 and following a further change in French law, platforms will be required from 2019 to report their users' earnings directly rather than through a third party to the social security and tax administrations (Remeur 2018:21).

The evidence in this section indicates a start on the part of government, and in the case of Uber, to bringing a new form of widescale economic activity within the framework of

fiscal responsibility. Measures to mitigate them have been taken in a number of EU member states, two of which are shown to have taken a lead. Firms are shown to have certain responsibilities anchored in a historical evolution.

### **7.3.1 Varied responses in the EU**

In-work poverty is estimated to affect 10 percent of European workers (Eurofound 2017, based on latest Eurostat data). It is more likely to affect the self-employed than any other group and within that category those that work on their own and do not employ anyone else. The gig economy with its low pay, precarity and lack of employee benefits provides ample opportunities for in-work poverty, an example of which has been shown above (Section 7.2.3). It is not only low wages that are a contributing factor but the household situation. The larger the number of children to support, the greater the exposure to work poverty. Single people without dependents, or households with another breadwinner, or with just one child, are less vulnerable than where there are more children and only one breadwinner.

The incidence of work poverty and public policy response towards it vary throughout the EU which it seeks to address in the recently proclaimed EPSR (EC 2017a:26). In finding solutions, the division of labour between the centralising influence of the supra-national institutions in their pursuit of a European social model, and the diversity of member states' legal orders and socio-economic priorities, will be discussed in Chapter 8. The discussion, for now, will be confined to differences in approaches to social protection of self-employed workers in Europe, including (increasingly) gig workers, that reflect a Varieties of Capitalism typology (as discussed in Chapter 3) and even more distinctly differences between the UK and the rest in terms of 'getting people into (or back to) work'.

Several key institutional factors, therefore, contribute to in-work poverty - low wages, work intensity (employed, self-employed, part-time) and household situation. Social policies to address them are described by Eurofound (2017:12) as 'decommodification' (wages) and 'defamilialisation' (household situation). In the Eurofound analysis, these differ in ways associated with VoC. Decommodification refers to the degree to which the individual does not rely on the labour market to provide for their welfare, while defamilialisation refers to the extent to which the individual does not rely on the family for their welfare. Higher levels of both are correlated with lower levels of in-work

poverty and conversely lower levels of both with higher levels of in-work poverty. In the case of both de commodification and defamilialisation, the UK (typified with Ireland as Anglo-Saxon/Liberal) has the lowest levels of each among the five clusters of the VoC typology (Eurofound 2017:13) hence the highest level of in-work poverty. The Nordic model has the lowest level with its universal and family-friendly benefits that do not depend entirely on being in work. The Continental model (Germany, France) also tends to favour those already in work 'at the expense of labour market outsiders such as young people, women and migrants'. An exception appears to be the case of the Parisian *banlieue*, as has been noted in Chapter 6 (section 6.2), where it is claimed that Uber has had a positive effect in creating jobs, especially for migrants. The evidence from surveys (Landier et al. 2016; Rose 2017) suggest, however, that drivers have to work very long hours (and well beyond the statutory 35 hour week) to earn the national minimum wage. A living wage that more accurately reflected costs such as transport and housing in cities such as London (as discussed in Chapter 6) would help to both reduce work poverty and promote a work-life balance (also a stated objective in the EPSR) that respected the roles of workers as parents and members of the community. Little consideration, however, is paid to its effect on employment and employers (Eurofound (2017:39).

### **7.3.2 The 'back-to-work' mantra**

Getting people into work is the objective of most EU member states but is not in itself a remedy for in-work poverty and other measures taken for social protection diverge among them. The UK stands out, though it is not alone, in prioritising getting people into (or back to) work - characterised by the government's often repeated mantra of ensuring that 'people will never be better off out of work than in work'. In France a work welfare benefit is known as *Revenu de solidarité active* (RSA) and in Belgium as '*Revenu d'intégration sociale*'. Both are aimed at encouraging people to find work and top up low wages so that they are not in the position of earning less through employment than unemployment. Less attention, however, is paid to the terms and conditions of such work. This is of particular relevance to the gig economy as discussed in earlier sections of this chapter and which, as has been noted, took off more quickly in the UK than in any other member state. In the UK, where in-work benefits are quite substantial (at least for those with status as employees) but unemployment and other social entitlements more meagre, opting out of the labour market

is not an option and for workers who can obtain only very low-paid work, this increases in-work poverty (Eurofound 2017). In other words, the unemployed need to seek work at almost any cost which results in a lower headline rate of unemployment at the expense of job quality, as is often the case of workers in the gig economy (who may also be excluded from in-work benefits). By contrast, where labour market opt-outs are more privileged by social policies in other member states, unemployment is higher, for example in France, Italy and Sweden.

Labour platforms could be expected to attract workers where unemployment support is less generous and barriers to entry are low, which may have been a contributing factor to the pre-eminence of Uber in the UK. Its relative popularity in France might be explained by its concentration among immigrants in the poorer *banlieue* of Paris and other major cities and new regulations favourable to such work under certain conditions. With unemployment presently declining throughout Europe, however, platforms are finding themselves competing for labour which is acknowledged in Uber's latest offers (Uber 2018:35).

Firms are increasingly coming under pressure by gig workers to improve their terms and conditions. Seen from the historical perspective of industrial relations, there is nothing new about this. Change came about, gradually, through the strengthening voice of labour expressed in collective action, continually resisted by employers and not permitted by law in the early stages of the industrial revolution. There are parallels with the condition of the labour platform workers of today as will be shown in the next section.

#### **7.4 Representation**

When the platform model of ride-hailing started less than a decade ago, it was conceived as a peer-to-peer activity between individuals earning a little extra money on an occasional basis. It has now become an industry and for many participants a part, or for some the whole, of their employment on which their income depends. As their numbers have grown, whether in the USA where the phenomenon started or in those EU countries where it is popular and where regulations allow, they have come to see themselves to a large extent as employees, and hence with claims for fair treatment by the platform. This has been exacerbated for several reasons. Firstly, the platform treats them as such, if not in the legal sense, with its algorithmic form of management, continuous surveillance and demands on

affective labour (See Annex V). Secondly, the wages they earn have been continually decreased through competitively lower rates for fares and higher rates of commission as the platform has sought to make the enterprise profitable. Thirdly, the growing numbers of participants in this type of work have, like their industrial forbears, have made them aware of their growing bargaining power. Nor are these reasons confined to the ride-hailing example. A similar development has happened in the case of delivery platforms.

It is observable that most of the evidence for this thesis has come from ride-hailing and delivering platforms in Europe (and the USA). Little information has been found about other types of labour platforms where physical work is performed (rather than mind work). The form which has most in common might be care work, that is, performing domestic chores such as cleaning. This relative 'silence' might be explained by the profile of the participants, having or taking less opportunity to protest their conditions through gender, cultural background or any other reason - though the author was present at one such protest at the Senate House by University of London cleaners organised by the recently formed Independent Workers Union of Great Britain (IWGB 2018). It is noteworthy that a common characteristic among other forms of labour platform work and which is lacking to cleaners or carers is the use of a tangible asset such as a vehicle (car, van, bicycle, scooter) or a set of tools and the specialised knowledge of how to use them. The group from whom little or nothing has been heard or discovered have only the 'sweat of their brow' to offer.

While work on a labour platform is 'only' temporary between regular jobs or an income top-up for some, it is a way of life for others. These are using their collective strength through strikes and association with unions to obtain better conditions. This is true even in the case of food deliverers such as Deliveroo and Foodora where many (but not all) of their workers are students paying their way through university. In the UK, some Uber drivers gained the right to be reclassified as workers with the help of the GMB, a powerful union, and drivers, deliverers and cleaners have joined the IWGB. In France, ride-hailing drivers have formed the SCP/VTC union (*Société Civile Professionnelle/Voitures de Tourisme avec Chauffeur*) affiliated with the association of independent unions UNSA (*Union Nationale des Syndicats Autonomes*). In Germany, the two largest unions Ver.di and IG Metall have recently opened up their membership to self-employed people.

Labour platforms, however, have not recognised the right of their workers in these cases to bargain with them collectively. They have responded to court action, demonstrations and strikes informally organised through social media exemplified by Uber's new offer to its workers (Uber 2018). EU member states differ as to the right of the self-employed to collective bargaining but generally they are not permitted to do so under EU competition law because they are treated not as 'workers' but as a as a one-unit company and 'any attempt to organise these individuals and collectively negotiate higher unit-costs (i.e. pay) will be seen as cartel building and hence be illegal' (Röthig 2016a:205/6). This may not apply if they are shown by local courts to have been mis-classified (Forde et al. 2017a:81).

In the USA, under settlement agreements in employee misclassification law-suits in California and Massachusetts, Uber has agreed to the formation of driver associations provided they are clearly designated as 'independents' without any implication of an employee relationship. In New York, under an agreement brokered by the International Association of Machinists (IAM) union, drivers belonging to a newly formed affiliate group within IAM known as the Independent Drivers Guild can meet Uber managers on a regular basis and have the right to a deactivation-appeals panel (Bhuiyan 2016). The IAM also provides drivers with access on preferential terms to legal and insurance services, education courses, roadside assistance, and access to an online call centre for workers, but 'the driver associations created through both the IAM agreement and the settlement agreement stop just short of being unions: Drivers still can't collectively bargain for changes in fares'.

Representation is a key element in the social market model (De Stefano 2016:9; Burrow 2018), of 'good work' (ILO 2016:247; Taylor 2017) and a principle of the EPSR (EC 2017a). The lack of voice is a further manifestation of the rejection by gig firms of being employers in either the legal or the normative sense with which the term is associated. In the early years of the first industrial revolution employers, in the full sense, provided a minimal degree of care for the safety and wellbeing of their workers and were gradually obliged to provide more by acts of parliament, relieved, in some cases, by a degree of paternalism and philanthropy and eventually by union recognition. Later as the modern industrial complex evolved and social scientific attitudes towards managing it evolved, the provision of better terms and conditions became associated with greater efficiency and

productivity. From the evidence above, the labour platforms of today show evidence of still being at a pre-paradigmatic stage consistent with a theory of anomie to be presented in Chapter 9. They appear to be largely unaware of the growing expectations of those employed on them caused by the very success of their model. Like their forebears, however, they may be obliged to become so. Labour platforms have exploited, in a typical entrepreneurial way, an opportunity in a deindustrializing economy to act as intermediaries in the provision of services, detached from the burdens of employers. Starting with the peer-to-peer myth, they justify their value to society on grounds of flexibility for workers, often dispossessed from traditional work, and low cost and convenience for consumers.

In the new industrial order exploiting digitalisation, labour platforms have a role to play, but as Forde et al. (2017b:30) assert, 'Platforms should also be held accountable for being employers not only mediators, paying into the social security systems, via taxes or into security funds'. The example they give comes from the German Artists' Social Welfare Fund (*Künstlersozialkasse*) 'a social security fund for artists and freelancers in the media'. Participants pay lower contributions than workers in regular employment but the most important difference is that consumers are also required to contribute when they buy a product or use a service. This would mean ride-hailing passengers or those receiving deliveries or having their house cleaned, paying a surcharge on top of the current rate. Whether the labour platform model would remain viable under such conditions is speculative but the concept draws attention to the unsatisfactory employment relationship in which platforms and workers currently find themselves. The inheritance of the progressive acts of legislation over a long period in Europe that characterised the regulation of the employment relationship informs and inspires the principles of the EPSR. The intention of the EU is to see them applied to the gig economy.

Replacing the gig firm with an alternative form of organising labour platform work in order to ensure an income stream and employment benefits for workers is an objective of social progressives both in Europe and the USA but, as will be shown in the next section, it has so far had very limited success.

### **7.5 Platform cooperatives**

Cooperativism brings together two conflicting market roles, namely those of owners or employers on the one hand and users or employees on the other (Jürgens et al. 2017:77). It

is not a new idea. Cooperatives have been around for a very long time and are now being seen as a way of delivering physical services through platform intermediation without exploitation of those who work on them.

Loconomics <https://www.shareable.net/blog/how-loconomics-empowers-gig-workers> for example, is a platform coop covering a wide range of domestic and personal services that is owned and run by its workers and not financed by outside investors. The evidence of the research for this thesis suggests, however, that setting up a cooperative is problematical. Convincing the licencing authorities that the project is a fit and proper enterprise to run a regulated service, such as ride-hailing, for example, whether it is in Denver, Paris or London involves significant start-up costs which are generally beyond the means of individuals. A case in point, for example, is the attempt by the New Economics Foundation, a think tank, to crowdfund a cooperatively run alternative to Uber in the area regulated by Transport for London <http://www.crowdfunder.co.uk/faircab>. In the US nearly five hundred drivers initially pledged \$500 each to start Transunion and eight hundred drivers each committed \$2,000 at Green Taxi, while the London project has so far raised just £30,000. Such sums pale into insignificance compared with seed money for platforms such as Uber and Lyft, not to mention rounds of ongoing venture capital to expand them. Uber's highly developed algorithm and network effects are serious challenges for start-ups to compete with. Achieving critical mass for commercial success might mean making choices beyond worker welfare (Balaram et al. 2017:55).

Setting-up a platform cooperative requires both organising and managing the cooperative and also creating the platform. The assistance of a union is not the only way. The mission statement of Platform Co-ops <https://platform.coop/> is 'to connect cooperatives with the digital economy' and the benefit claimed by the model is that 'platform coops respond to the market failures of the online economy'. SMart is a not-for-profit cooperativist umbrella organisation, whose aim is to provide a measure of social protection for its independent worker members and which claims to have 11,500 cooperatives as members in nine EU countries, employing 120,000 individuals, 85,000 of them in Belgium (SMart 2017). As a result of joining SMart, Deliveroo's four thousand riders in Belgium gained a number of benefits, namely an employment contract, sick pay, social insurance, payment guarantees and training (European Freelancers Week 2017) for which

riders contributed 6.5 percent of their income. In October 2017, however, Deliveroo pulled out just as negotiations with three Belgian unions looked close to gaining collective bargaining rights. The reasons have not been fully explained (Kilhoffer and Lenaerts 2017) but it coincided with the introduction by the Belgian government of a new status of 'self-employed students', offering tax concessions and social welfare benefits. Riders would not be eligible, however, as 'student salaried employees' of SMart. Deliveroo preferred the new status claiming that it allowed more flexible time arrangements to riders as they would be able to work by delivery instead of having to work at least three consecutive working hours as required of salaried employees. Whether the change in status proves a net benefit to Deliveroo riders in terms of income and social protection is as yet unknown but it shows the importance of flexibility as the 'unique selling proposition' which platforms have to offer workers, possibly at the cost of statutory benefits. It may even collide, as in this case, with a progressive concession to a needy group by government.

Trebor Scholz (2014), described as an 'emissary' of the Platform Cooperativism Consortium, a worldwide interest group, wrote that collectively owned, democratically controlled platform cooperatives are a viable alternative to commercial platforms backed by 'big money' venture capital. Together taxi drivers working with technologists can create apps that are equal to or more effective than those of Uber and Lyft. The middleman is cut out and the welfare of workers is prioritised. In his view platform cooperativism can serve as a 'remedy for the corrosive effects of capitalism'. So far, however, from the evidence for this research, examples remain very isolated, and 'simply being cooperative does not mean that the platform is necessarily the most efficient for consumers' (Balaram 2017: 55). This is not its main objective but in the market economy the desirable aim of improving the conditions of platform workers is unlikely to be achieved unless value is also created for the former.

## **7.6 Summary**

This chapter set out to provide some empirical evidence of experience of working on labour platforms in the gig economy and to situate it within a historical context of the treatment of labour at times of rapid technological transformation. Ten areas of specific interest were observed, one of which seems to be not only the most relevant but also a defining characteristic of present times, namely flexibility. As has been stated in Chapter 6, section 6.8, the conditions of most workers have steadily improved in Western-style economies as

they have industrialised over the past two centuries. A greater element of choice - whenever and wherever to work - appears to be a new characteristic of working life for many, made possible by the rise of digital intermediaries, that is to say, labour platforms. Like previous changes due to technological developments, the benefits have, initially, accrued disproportionately to firms at the cost of the workers. Flexibility, it was shown, comes at the price of precarity, low wages, long hours, one-sided or unclear contracts, new physical dangers and emotional pressures while firms abrogate traditionally accepted, and costly, responsibilities of providing benefits and training - the 'social wedge' - for their workers who now also fall outside the regulatory state's 'safety net'. This, it was shown, was due to its inability to fit them, in many cases, into any formal category of employment, dependency or professionalism.

Evidence for the appeal of flexibility for workers was acknowledged but also its effects in terms of fiscal losses to state treasuries already constrained through austerity measures in supporting their welfare systems and the persistence of in-work poverty.

Flexibility was shown to have emerged not so much as a welcome choice for many but rather as a last resort for some, dispossessed of their livelihoods and by factors wholly beyond their control, namely globalisation, automation and recession.

As might be expected, it is the most vulnerable who bear the brunt, that is, the cohort who have the least education, skills, physical abilities or are unable for any other circumstances to compete for the remaining jobs in traditional industry. They cannot participate in the new, well-paid and supported jobs created by the new technologies but only in the poorer versions created by the latter such as labour platforms. As Varoufakis (2016) asks, 'And the weak suffer what they must?'

The relegation of a still unknown number of people to the marginal work, unsupported by social protection, evidenced in this chapter provides the answer to the question of its compatibility with the EU's commitment to a social market model asked in this thesis.

Signs of response in varying degrees were shown on the part of gig firms, governments and workers themselves. Taking Uber as an example, its new offers to its workers reveal an awareness of the imbalance between 'flexibility' and conformity with

some societal norms traditionally expected of employers while defending its status as an intermediary, not as an employer. Two governments in the EU were shown to have taken measures to recover the tax loss but wider differences were revealed on the emphasis placed upon 'earning' welfare support through work. Skills training was a common priority. The popularity of labour platform work in the UK (and the USA) suggest that gig firms have profited by attracting workers where unemployment protection is low or inaccessible to some groups (the self-employed), or for example in the poor French *banlieue*.

An evolution, therefore, was discernible in the response by two of the principal stakeholders in the gig economy (specifically labour platforms providing physical services such as driving and delivering), namely the firms themselves and government. A leading example of the former was seen to act for predominantly defensive reasons, while the latter for fiscal and social cohesion objectives. The response of workers themselves was characterised by noisy protests, occasional withdrawal of labour and faltering attempts to organise themselves in order to bargain with platforms. Big, traditional unions lent some support in the UK and Germany but were more interested in extending their membership than promoting new independent ones unaffiliated with them. In a historical context, they may come to be absorbed by them in due course.

Another historical development looked to by gig workers or those interested in their social protection was shown to be the cooperative movement. Some examples of organising in this way were given in Europe and the USA but these were shown to be few in number, limited in their achievements and not, necessarily, enduring as was seen in one case in the EU. Labour platform cooperatives in the ride-hailing and delivering sector are notably absent in the EU but, as with unionisation, they may develop with time.

Improving the conditions of labour platform workers referred to above, as of all those participating in what is described as 'atypical work', is the objective of the EPSR. The inspiration is the social market model but past history suggests that turning its principles and recommendations into concrete regulation in a heterogeneous group of member states such as the EU is far from certain, nor likely to happen quickly. It will be determined, as shown in the next chapter (Chapter 8), by the political and cultural paradigms theorised in Chapter 3 and the regulatory context of Chapter 4. Therefore the compatibility of labour platforms remains in doubt.

The evidence of the terms and conditions of workers on offline labour platform in the present chapter supports a view of a partial regression to earlier models of organisation and management and later developments theorised in Chapter 2. Instances of ‘flexibility’ and ‘freedom’ refer back to the liberal, pro-market/pro-choice paradigm of Chapter 3. These factors and the lack of transparency in the operation of platforms revealed in Chapter 6 are consistent with the doubt expressed in the first research question as to the compatibility of such labour platforms with the European social model. The unresolved legal status of platform workers on which depend their statutory benefits and social protection relates to the limitations of EU *acquis* in the field of employment to which attention was drawn in Chapter 4.

New forms of atypical work organisation demand that such incompatibility is addressed, but there is uncertainty of finding a unified response at EU level. This is expressed in the second research question and the evidence is presented in the next chapter (Chapter 8). It will be shown in Chapters 9 and 10, however, that a fuller understanding of the theory of the division of labour in society, as proposed by Durkheim, can transcend those of organisation and management and the competing paradigms referred to above and lead to solutions to both research questions. I believe that the literatures of Chapters 2 and 3 do not pay sufficient attention to the influence of the division of labour, as theorised and developed over the past two and half centuries, in accounting for the social effects of the issues of the gig economy. The dichotomy between exchange (or utility) value and social value in the division of labour was recognised, with differing weights by Adam Smith and others from the start but as will be shown in Chapters 9 and 10, insights from Durkheim’s theory of the Division of Labour in Society (Durkheim [1893]1984) are particularly prescient in both explaining the contradictions of the today’s gig economy and how they might be relieved.

## CHAPTER 8. POLICY FORMULATION IN A QUASI-FEDERAL *BLOC*

The purpose of this chapter is to substantiate the EU's supranational claims on the conduct of the gig economy and to show what it reveals about the EU's capacity to influence the outcome consistent with the social model vis-à-vis member states. The limitations of the EU to act in a concerted manner were shown by the contextual evidence of Chapter 4, and specifically, in relation to the *acquis* in the field of employment, in Chapter 7. Evidence that digitally intermediated platforms organise work in a new way which compromises the social protection of those who work on them was presented Chapter 6 and also in Chapter 7. The origins of such incompatibility, and its alternatives, were theorised in Chapters 2 and 3. In this way, the issues that lie behind the two research questions have, so far, been treated in this thesis.

Some think that the market is performing its proper role in creating new and 'flexible' jobs by harnessing technological developments, a classic example of the 'invisible hand' efficiently allocating resources. Any more than that is the role of government but with the warning that regulation carries the danger of stifling them. Others perceive a sharp decline in the quality of employment embodied in 'a race to the bottom', which only government can correct. This is a political decision. The alternatives, however, are not as binary as they appear. Firstly, gig firms, for reasons given in the previous chapter may go further in their offers to their workers and secondly, when we speak of government in an EU context, we have to ask to which government we are referring. It has already been said that the EU itself is a stakeholder as well as national governments in the future conduct of the gig economy for reasons both of economic growth and social solidarity. Thirdly, to which institutions of the EU do we refer? The same differences about *laissez-faire* or intervention are found in the EP and the EU's consultative committees.

The chapter is arranged as follows. It starts with evidence for the EU's claims and for the advocacy observed for and against regulating the gig economy within the Commission, the EP and among the social partners. A tension between 'economic' Europe and 'social' Europe' prevails throughout the discussion which comes down to political decisions. The limitations of the Commission's capacity to pursue its policy objectives are revealed and its customary turn to instruments of 'soft' rather than 'hard' power where issues of national competence such labour law and welfare policy prevail, leading to an

investigation of the principles and recommendations of the EPSR in so far as they directly concern the gig economy. Analysis of the interests of labour platform stakeholders reveals those for whom resolving incompatibility with the social model has, so far, been ignored.

The last section summarises the evidence and finds a renewed imbalance in the gig economy, ever present between business and wider society, as to understanding the purpose of work. The EU has a role in restoring it but economic activity of this type is a very recent phenomenon, even if its antecedents go back a long way. Subsequent chapters (Chapters 9 and 10) reflect respectively on a state of anomie which is revealed and discuss the outlook for emerging solutions.

### **8.1 Why the gig economy is an EU issue**

The social protection of workers is a core commitment derived from the Treaties which state that,

The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress . . . It shall combat social exclusion and discrimination, and shall promote social justice and protection. . . . (Article 3 of the Consolidated Version of the Treaty on the European Union (TEU))

and

In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health. (Article 9 of the Treaty on the Functioning of the European Union (TFEU))

Further confirmation of the EU's role is provided by the EP (Forde et al. 2017a:69),

Therefore the issue of the social protection of platform workers is relevant throughout the EU's response to the rise of the platform economy. The EU has the competence to support and complement the activities of the Member States in the field of social security and social protection (as set out in Article 153 of the TFEU).

Secondary legislation, namely directives and regulations whose purpose is to implement the Treaties fall short, however, of fulfilling this function when applied to the recent phenomenon of the gig economy. The Services Directive, like its counterpart in the case of goods, the Mutual Recognition Regulation, were designed for a different purpose - namely the free movement of goods and services throughout the Union and the right of

establishment and likewise the eCommerce Directive for the free movement of data. The fact that Uber is excluded from both only lays the responsibility for regulating it firmly at the door of national governments and where powers are devolved to regional and local government. The Data Protection Directive was not designed to protect platform workers or consumers from the intrusive or exploitative opportunities of Big Data on which such operations depend. It has now been replaced by the General Data Protection Regulation (GDPR).

Consequently, there is a regulatory gap, which, in the case of the gig economy denotes a deeper policy gap. Some believe as will be shown, that it can and should be filled by further EU legislation and by this means requirements for a European social market will be met. Many do not.

## 8.2 Advocates of more EU legislation

The evidence suggests that there are two different motivations for wanting action at supranational level, one being a sense of tackling problems together inspired by an integrationist ideology, and the other to promote pro-market or pro-social justice agendas. Both are essentially political responses but each places a somewhat different priority on a social Europe, or perhaps envisages differing paths by which it might be achieved. These divisions are clarified in Table 8.1.

### 8.2.1 Committees

**Table 8.1 Regulatory objectives of Committees in relation to the collaborative economy**

<b>‘Fair working conditions’</b>	<b>Core text (ref.)</b>	<b>‘Level playing field for business’</b>	<b>Core text (ref.)</b>
EP Committee on Employment and Social Affairs ( <b>CESA</b> )	EP 2016a EP 2016c EP 2017e	EP Committee on the Internal Market and Consumer Protection ( <b>IMCO</b> )	EP 2016b
European Employment and Social Committee ( <b>EESC</b> ), an EU consultative committee	EESC 2016	EP Committee on Industry, Research and Energy ( <b>CIRE</b> )	EP 2017a EP 2017b
Committee of the Regions ( <b>CoR</b> ), an EU consultative committee	CoR 2016a CoR 2016b	EP Committee on Transport and Tourism ( <b>TRAN</b> )	EP 2015

It is hardly surprising that committees of the EP and EU advisory committees should see a role for the EU being as it were already 'inside the tent' but the focus of their support reflects their particular functions and priorities varying through references to recurring themes such as 'fair working conditions' for employed and self-employed alike, as well as 'creating a level playing field' and 'legal certainty' for business. For example, in its draft Opinion on the 'European agenda on the collaborative economy', the Employment and Social Affairs Committee (EP 2016a:3) called for,

a framework directive on working conditions in the platform economy in order to guarantee the legal situation of platform workers and to ensure that all platform workers have the same social and employment rights and health and safety protection as workers in the traditional economy.

The Committee was particularly concerned with social security for self-employed workers in the digital labour market, freedom of association and collective action (described as 'fundamental rights applicable to all workers') and the 'right to log off' for platform workers who are subject to constant accessibility. Subsequently CESA (EP 2017e:6) called on member states and the social partners to extend collective bargaining 'to empower workers in the platform economy'. The reference to social partners refer to gig firms such as Uber and Deliveroo on the one hand and unions on the other but as has been shown in Chapter 7, these firms do not accept any form of union or collective representation of their workers because that would put them in the position of employers. Digital labour intermediaries pose legal and regulatory problems for the employment relationship which have yet to be overcome.

In a draft report on the forthcoming European Pillar of Social Rights (EPSR), which was in the consultation phase at the time, CESA (EP 2016c:5,7) called for a directive on fair working conditions for all forms of employment and that the EU *acquis* be updated accordingly. Minimum standards should be set for precarious forms of employment, the latter being defined in a way that is 'less dependent on full cumulation of the relevant criteria'. Every worker should have a personal activity account to keep them aware of their social entitlements. This is an initiative to which reference has been made in Chapter 7 and which is already being implemented in France (see Chapter 10, section 10.1.3). In case of conflict over implementing EPSR, the Commission should invoke Art.7 TFEU, the horizontal social clause ensuring consistency between policies and activities in the Union.

EESC (2016:9,10) specifically called for the legal *acquis* to be revised in the context of the EPSR 'to ensure fair working conditions and adequate social protection, based on the - cumulative - criteria of subordination of the person offering the service, the nature of the work, and the salary'. National competences should be respected but 'a legal framework should be established for workers that precisely specifies the relevant employment statuses: a decent wage and the right to take part in collective negotiations, protection against arbitrariness, the right to log out'. The term 'arbitrariness' suggests loss of pay, timing-out or deactivation without redress and a specified limit to maximum hours worked during a period.

CoR (2016a:31) made the prescient observation that 'the SE [sharing economy] could give birth to a new social class, the collaborative class, that needs social and economic safeguards'. In a later opinion (CoR 2016b: 3,7,8) it regretted the Commission's failure to follow-up its European Agenda with the consolidation of legislation particularly for contracts between platforms and those who use or work on them but it is was also concerned about upholding the principles of fair competition and called for a European statute for collaborative platforms and EU-wide thresholds to define market access requirements for non-traders and peers.

### **8.2.2 Shifting positions**

An evolution is observable over the research period towards more inclusive opinions by committees. The Transport Committee (EP 2015:5,6) originally failed to see the need for any legislation in the case of ride-hailing described as 'Transportation Network Companies'. The Internal Market and Consumer Committee (EP 2016b) believed that EU rules were required to avoid Single Market fragmentation and help companies 'to scale up to the sharing economy'. It also drew attention to the social issues previously raised by CESA of safeguarding workers' rights to fair working conditions and adequate social protection under law. IMCO acknowledged that economic arguments for regulation, namely creating a level playing field between traditional industries and platforms and avoiding 'fragmentation of the Single Market', are insufficient to prevent platforms from 'passing on their risks to workers with no entrepreneurial responsibilities' (EP 2016a:7).

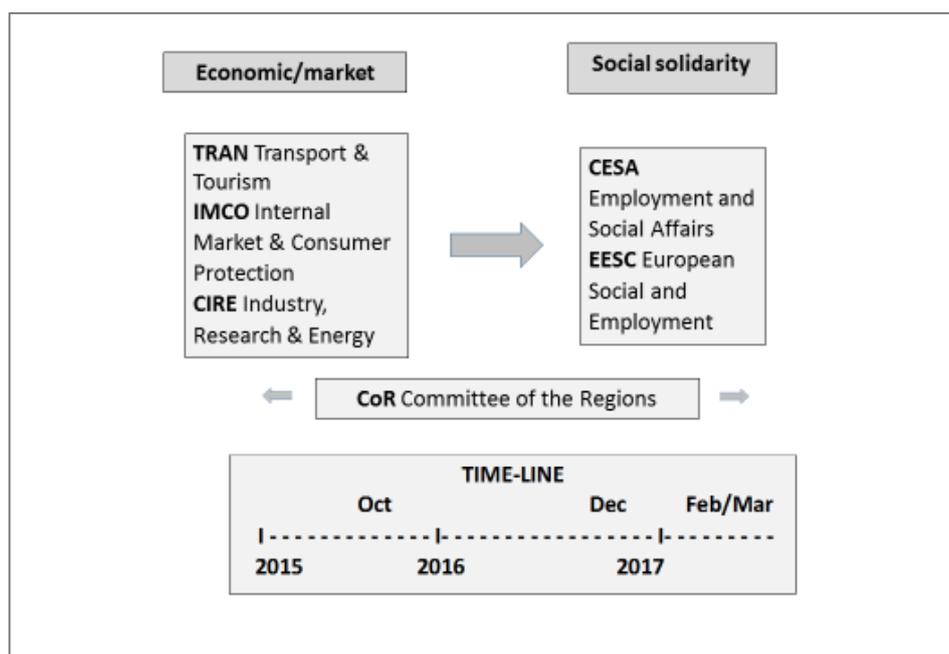
IMCO's position epitomises the question of the compatibility of labour platforms with the values of a social market. The denial of responsibilities for their workers by gig

firms was observed in a previous chapters but to what extent the EU should intervene remained controversial. For business-orientated committees like CIRE and IMCO (EP 2017a), the priority has been promoting EU competitiveness in the new platform economy. Of concern was the small market share of European platforms and obstacles that hamper their growth which recalls remarks by Jyrki Katainen, Commissioner for Jobs, Growth, Investment and Competitiveness (EC 2016c) who looked to the possibility that 'Europe's next unicorn could stem from the collaborative economy', revealing pressure from big groups such as Uber and Airbnb (ETUC 2016).

An opinion by CIRE for IMCO (EP 2017b:5) focuses on the creation of 'a clear-cut and level playing field' in respect of responsibilities, liabilities and competition law, 'fair and innovation-friendly environment' and 'regulatory certainty'. The economic and social priorities are balanced, however, by calling on the Commission 'to make it easier for Member States to ensure adequate social protection for both employees and the self-employed in sharing economies'. The 'level playing field' is also to extend *inter alia* to workers' rights in the EU which anticipates the EPSR.

The qualified shift of these committee outputs (see Figure 8.1) reveals both a growing awareness of the unsocial consequences of gig firms but also hesitation over the efficacy of regulation at EU level to prevent them.

**Figure 8.1 Shifting positions of Committees**



Europe is seen to be lagging behind competitors in the field of digitalisation from the USA and Asia but its social market values remain to be respected. The 'uneven playing field' exposed here is the one between those market players in the rest of the world who traditionally have less respect, or none at all, for such values and the EU - 'old Europe' - for whom it is a fundamental principle. It brings disadvantages which are not readily countered in the pursuit of jobs and prosperity, a realisation that is evident throughout the evidence presented in this chapter and observable from questions asked by members of the European Parliament (MEPs) as shown in the next section.

### **8.2.3 Parliamentary questions and answers**

A daily digest of proceedings in the EP, parliamentary questions and answers to and from the Commission, output from the EP's committees and directorates (briefings, reports, in-depth studies and press releases) is available on Europarl, the official website of the European Parliament. By subscribing to this source I have kept a log of all questions raised by MEPs and answered by the Commission about the collaborative or sharing economy throughout the research period. A total of fifty pairs of questions and answers was recorded on all principal aspects (Table 8.2).

Analysis reveals trends that are relevant to the present research. Questions were raised fairly regularly across the research period (November 2014 to February 2018) but as Table 8.2 shows, the composition changed from a majority in 2014 to 2016 about whether ride-hailing, delivering and accommodation platforms should be regulated to those concerning the social protection of workers in 2017 (and the beginning of 2018). From the total number of all questions asked and per subject (Table 8.2), and the size of the groupings in the Parliament (Table 8.3), it can be seen that most questions on regulation, proportionately, were asked by ENF/ENL (at a ratio of 14:1), followed by ALDE (9:1) with S&D (4:1) and PPE (3:1). On social protection of labour, both S&D and ALDE each, proportionately, asked the most questions at a ratio of 4:1. This is perhaps consistent with the latter's political orientation while the high ratio of questions on regulation asked by ENF/ENL may demonstrate this grouping's reservations about the extent of supranational control.

**Table 8.2 Qs and As in the EP***Source: Europarl*

Subject	No. of questions	Origin (no).	2014-16	2017
<b>Regulation</b>	27	PPE (7), S&D (6), ALDE (6), ENL/ENF (5), NI (1), ECR (1), EFDD (1)	20	7
<b>Social protection of labour</b>	15	S&D (7), ALDE (3), ENL/ENF (1), ECR (1), PPE (1), GUE/NGI (1), all-party (1)	3	12
<b>Data Privacy</b>	4	PPE (3), S&D (1),	1	3
<b>Taxation</b>	4	ECR (1), PPE (1), S&D (2)	2	2
<b>Total</b>	50		26	24

**Table 8.3 Parties of the 7<sup>th</sup> European Parliament (2014-2019)**

		No. of seats as at 28 June 2018
<b>PPE</b>	European Peoples Party	219
<b>S&amp;D</b>	Progressive Alliance of Socialists and Democrats	189
<b>ECR</b>	European Conservatives and Reformists	71
<b>ALDE</b>	Alliance of Liberals & Democrats for Europe	68
<b>G/EFA</b>	Greens/European Free Alliance	52
<b>GUE-NGL</b>	European United Left - Nordic Green Left	51
<b>EFDD</b>	Europe of Freedom & Direct Democracy	45
<b>ENF/ENL</b>	Europe of Nations & Freedom	35
<b>NI</b>	Unaffiliated	21

The decline, however, in the overall number of questions on regulation, and the increase in those about social protection over the research period clearly indicates growing concern about the effects of working on labour platforms. This means less on whether, for example, they should be permitted under the right of establishment, free movement of services, and their status under the Services and eCommerce directives and more on their compatibility with the social market model. In an answer to an earlier question Commissioner Bieńkowska for the Internal Market commented that ‘the collaborative economy offers new opportunities for employment, flexible work and additional sources of income’ but that ‘Europe's social safety nets must take account of the changing realities of the world of work’ (Bieńkowska 2017a). The change in the concerns of MEPs is consistent with the evolution in the opinions of EP committees observed in the previous section, also with a greater awareness of the social consequences of its employment model shown by Uber as noted in the previous chapter.

The questions about regulation at EU level, however, continue to reveal tension as to whether it is the best way to bring such new forms of organising work within the safety net of social protection. Different positions are examined in the next section.

### **8.3 Views from outside the EP**

The case for supranational action and its relevance for the integration project is summed up very clearly in the White Paper 'Reimagining Work', Work 4.0 published by the German Federal Ministry for Labour and Social Affairs (2016:12,182),

Today, the interplay between work and the welfare state can only be developed further when the broader European context is taken into account. This also applies to the consequences of the digital transformation, which must therefore also be discussed at the European level . . . The third challenge for the welfare state can be found in European integration. Social policy is primarily organised at national level. In view of the EU's economic and legitimacy crises, however, a recurring debate is taking place about whether the EU needs to become more tangible for EU citizens, and in particular to become “more social”, and if so, how.

This extensive document resulting from a survey and dialogue in Germany with the social partners, interest groups, academia, and the general public is permeated with a sense that the integration project 'is currently experiencing one of the most difficult phases in its

history' (German Federal Ministry 2016:184), with the consequences of Brexit, the so-far unresolved problems of the eurozone, the refugee crisis and security threats.

The White Paper finds that new forms of work in the digital age are potentially so disruptive to traditional work and social cohesion that dealing with them is beyond the capacity of individual member states alone and requires EU coordination. Labour and social policy must be discussed at both national and EU level with a broad consensus about 'what kind of Europe we want and what we are willing to do to achieve it'. Work 4.0 sees the digital transformation as an opportunity to boost support for the EU provided that minimum standards of social protection and better working conditions are established and a contribution made to greater prosperity. For Germany this would mean achieving two objectives of public policy with which it is closely associated, namely deepening both the social market model and closer EU integration. One proposal, however, for a European unemployment insurance scheme by László Andor, former Commissioner for Employment, Social Affairs and Inclusion, was overwhelmingly rejected by those questioned.

Nevertheless, the EU's Digital Single Market strategy is too narrow, according to Work 4.0, being preoccupied primarily with training and re-training in order to provide a skilled workforce. It does not address the wider issue of what 'decent digital work' (*Gute Arbeit*) means and what is required to achieve it. This implies a criticism of the EU for focussing on the economic aspects of new forms of digital work and neglecting the social aspects - a criticism that is shared by other stakeholders as will be shown below. By contrast, the EU could set legally-binding, minimum standards for worker protection without damaging economic cost for member states, covering, for instance, national minimum wage, social security systems and labour mobility within the EU. The Digital Agenda (comprising all the initiatives initiated by the launch by the EU of the Digital Single Market in 2015 and to which I refer later in this chapter) is an insufficient forum to plan a response to the terms and conditions of work in the new digitally-organised environment. Instead, Work 4.0 looks to the European Pillar of Social Rights which 'is based on the fundamental idea that the world of work will be transformed by current and future megatrends, especially the digitalisation of society and the economy' (2016:184).

#### **8.4 A trade union view**

A similar theme inspires the European Trades Union Confederation (ETUC 2016) which urges the Commission to reinforce existing regulation to protect workers in the new digitally organised economy. New rules, if necessary, should ensure that they receive at least minimum remuneration while 'the European legislator has to intervene to ensure that workers get more bargaining power and are treated fairly'. Self-employed and economically dependent workers should have full access to social security systems and there should be a new directive on privacy at work including the personal data of workers, commenting, 'a worker does not give up his or her right to privacy when working'. The ETUC attributes the Commission's slowness to act to its paying more attention to removing barriers in order to create a digital single market able to compete with the US and South East Asia. Trade unionists such as Oliver Röthig (2016) of UNI Europa (which describes itself as The European Services Workers Union) have called for 'inclusive European frameworks for the fair treatment of workers in the gig economy including the right to unionise and to collective bargaining' while Huws believes that they should be brought 'within the scope of formal regulations right across the EU' (Huws 2016).

A progressive view, however, might also allow that the EU is by no means the only actor in achieving the desired regulatory objectives. The Commission's European Agenda sets a general framework (with its non-binding guidelines) for the gig economy but does not, at least so far, address the problems of low pay, unlimited hours, precarity and a race to the bottom which prevail in a laissez-faire environment reminiscent of the nineteenth century capitalism (Fabo, Karanovic and Dukova 2017:171). This might take concerted action by all the stakeholders, namely workers' representatives, national governments, and gig firms themselves as well as the EU. Even then, there are formidable obstacles of fixing minimum pay and conditions when dealing with international organisations registered in different member states from where they perform physical work and determining employment status and worker representation. Some believe that platforms like Uber and Airbnb 'basically suck value out of the local economy by trying to work around social laws and other regulations but simply banning them would be short-sighted' (Bauwens 2016). This should only be a last resort as mentioned in the Agenda guidelines (EC 2016c).

Many share this view, examples of which are shown in the next section. This tells us that while there is widespread concern that the social protection of workers which has become associated with the European model is neglected by the new digitally intermediated forms of work, there is less agreement on how it might be restored.

### **8.5 Advocates of no further legislation**

Among the actors who did not believe in taking the legislative route, ironically, was the Commission itself which has repeatedly stated (e.g. (Bieńkowska 2017a; Bieńkowska 2017b; Bulc 2017) that it does not intend 'at this stage' to introduce any new legislation to regulate the platform economy. This position however, has since been modified following the proclamation of the EPSR as will be shown below. The stance taken by the Commission exemplified 'a certain regulatory reluctance' (EP2017d:3) and a preference for 'creating the right framework conditions and the right environment' which will be seen to be applied to the social protection of workers in all forms of 'atypical' work by the use of 'soft' power rather than 'hard' power which has precedents in both the social and other fields. Herein lies the evidence for an answer to the question of addressing policy gaps in a quasi-federal *bloc* as asked in this thesis.

Some actors, or former actors, have arguments based more on the laissez-faire, market-reliant paradigm conceptualised in Chapter 3. Neelie Kroes, for example, former Vice President of the European Commission responsible for the Digital Agenda for Europe expressed her 'outrage' at the decision by a Brussels court to ban Uber. Her explanation (Kroes 2014) was that,

The court says Uber drivers should have €10,000 fines for every pick-up they attempt. Are they serious? What sort of legal system is this? This decision is not about protecting or helping passengers – it's about protecting a taxi cartel.

No-one is saying that Uber drivers should not pay taxes, follow rules, and protect consumers.

Kroes went on to express her satisfaction with Uber as safe and saving taxpayers money and that 'Uber is 100% welcome in Brussels and everywhere else as far as I am concerned'. She also said that she had met the founders and investors in Uber and her remarks are consistent with her joining the company as a competition and regulations advisor after she left office. Presenting the European Agenda, Jyrki Katainen, Commissioner for Jobs, Growth,

Investment and Competitiveness, warned against imposing stricter regulations on sharing economy companies but neither should they operate free of regulation (Kollowe and Davies 2016). His more nuanced remarks also referred to the possible abuse of labour and tax avoidance.

#### **8.5.1 Some 'neo-liberal' member states**

Antipathy towards legislation at EU level is more observable among some member states than others and among industry at large. With regard to the former it is a political choice (EP2017d:1,8). Eleven MS wrote to Commissioner Asnip responsible for the Digital Single Market with the view that platforms are already subject to significant regulation and that existing legislative and non-legislative instruments, such as data protection law, competition law and consumer law, are sufficient (UK Dept. for Business, Innovation and Skills 2016). Cumbersome regulations should not be applied to platforms which might damage innovation, competitiveness and economic growth of the European digital industries and put us 'at a disadvantage in relation to global competition'. A dynamic and competitive environment rather than further regulation, it is asserted, will encourage growth of European platforms and thus 'fulfil the ambition of the Commission's strategy to set free the entrepreneurial potential of European start-ups and foster economic growth and competitiveness in the EU'. Here, the economic argument is quite explicit and the composition of the signatories (including the UK, the Baltic states and some Central and Eastern European ones who see further social legislation as a threat to their competitiveness) looks much like a roll-call of most of those MS with a more liberal approach to the market economy than a social one. Estonia is the first member to create a legal status ('negotiated passenger transport company') for ride-hailing platforms such as Uber and Taxify (The Baltic Course 2016; Mardiste 2016; ERR 2017) while Poland (Ujhelyi 2015) has benefitted from Uber investment as has Lithuania (Norkūnas 2015).

#### **8.5.2 Industry**

Industry is a traditional opponent of regulation. In his study of auto firms' response to proposed EU emission limits, Anastasiadis (2014) found a spectrum of behaviours ranging from a 'liberal-minimalist' approach inspired by 'the notion of individual freedom to pursue self-interest', to a cooperative one acknowledging a 'competent partnership' with the Commission. A survey of industry views for the platform economy (European Collaborative

Economy Forum 2016a:14) found that 'No additional European regulation is necessary; but rather, just the proper enforcement of existing EU law', namely the right of establishment and freedom to provide services under the Services Directive and E-Commerce Directive. On the contrary, members were looking for de-regulation of outdated laws conceived for services in a pre-digital age and varying across member states with which they had to comply. Meanwhile, incumbents in traditional industry were (unfairly) protected by lack of enforcement of existing national and EU laws. They are not averse, however, to measures that lighten their administrative burden even if this is implemented at EU level, for example harmonisation of VAT regulation. As has been shown, however, the existing laws (including the associated freedoms) referred to do not cover, for example, the case of ride-hailers. Forum members may not have been aware of this when forty seven of them signed an open letter (European Collaborative Economy Forum 2016b), addressed to the rotating Council presidency, commending to MS the guidance given by the Commission in its European Agenda and urging the European Competitive Council (a formation of the European Council) to acknowledge the contribution of the collaborative economy. One of the topics discussed at a subsequent Council meeting (European Council 2016) was 'Competitiveness mainstreaming: the digital single market'. The record shows that among the 'overarching conditions' to take the strategy forward were 'balancing diverging national situations to obtain a European level playing field' and 'establishment of a future-proof regulatory framework which is simple, effective and provides legal certainty'. Although 'Competitiveness mainstreaming' allows Ministers to discuss legislative proposals outside their specific remit, no further evidence has been found of the Council's contribution to the issues of the platform economy. It appears to be left to the Commission and the EP. Were new legislation to be proposed at some time in the future, then the Council's approval would be required as a co-legislator.

What is strikingly lacking from the evidence from actors cited above is little if any reference to the social aspects of the gig economy and specifically the welfare of workers, the preoccupation being almost entirely with the economic aspects of growth and competitiveness. Moreover, recourse to 'just leaving it to existing EU law' is not likely to lead to better conditions for those employed on platforms because it is either inapplicable or does not address social issues. Correcting for market failures or protecting consumers are

worthy causes but do little for lowly paid, precarious and unrepresented employment. Firms taking the minimalist-liberal approach 'seek legislation only as a last resort, and to promote voluntary and/or market-based solutions' (Anastasiadis 2014:266). Uber's White Paper (Uber 2018) presents such an example. The offer of freedom to work anywhere at any time, otherwise known as 'flexibility', is its *leitmotif*, unconstrained by regulations and the management responsibilities of traditional industry. A crisis due to adverse reputational effects, including the replacement of its co-founder, and growing competition may have led to the firm telling itself, in Anastasiadis' terms (2014:288), a different or perhaps simultaneous story, which is driving it towards some degree of cooperation with the norms of the social market.

The evidence presented so far shows that 'good work' on labour platforms, as defined by a social market model is for the most part lacking, but that the political will for further legislation at EU level is absent. Although some within the EP and trade union movement have called for it, the Commission's own 'reluctance' and the shared nature of its competence in the fields of labour law and social security, necessitate a turn towards filling the policy and consequent regulatory gaps exposed in this thesis by the use of 'soft' rather than 'hard' power. The significance of these terms is explained in the next section and how it leads on to its practical expression in the EPSR.

### **8.6 The EU's hard power or soft power?**

The EU's capacity for achieving its policy objectives are constrained. There are policy areas where the EU has full competence meaning directives, which must be transposed into national law within a certain period of time, and regulations, which have supremacy over national law and immediate effect. There are others such as employment law and welfare policy that are shared competences, although they are mostly regulated at national level. The alternatives to directives and regulations ('hard power', 'hard law') are nudges through statements of policy objectives, principles, recommendations and non-binding guidelines ('soft power', 'soft law').

Hatzopoulos (2012:318) describes four modes in the EU policy process, namely agenda setting, policy formulation, policy decision and policy implementation. In the case of the gig economy the process seems to be largely confined, so far, to the first three stages only. This is due to the limited options open to it in this case for exercising hard and soft

power and to the lack of access to credible data as discussed in Chapter 6. First, however, we need to define more fully what is covered by hard and soft power. The former means EU directives and regulations. Rulings of the Court, by definition, also serve as hard power as their interpretation of the Treaty and secondary legislation (i.e. directives etc.) is followed by national courts in reaching their judgements. Soft power means policy coordination and benchmarking, for example, Communications from the Commission (staff working documents), Handbooks or Guides, for example the Handbook on the Implementation of the Services Directive, the Guide to the application of Treaty provisions governing the free movement of goods (Mutual Recognition Regulation) and Recommendations and Guidelines, for example, in the fields of competition and state aids. Soft power, or rather soft or hybrid law as Hatzopoulos puts it (2012:344), enriches the 'Classic Community Method' (the way in which the Council, Commission and EP interact) by changing the behaviour of actors rather than constraining their behaviour. Two areas, among others, in which it has been applied are employment and inclusion policies and fundamental rights, both of which are pertinent to the gig economy.

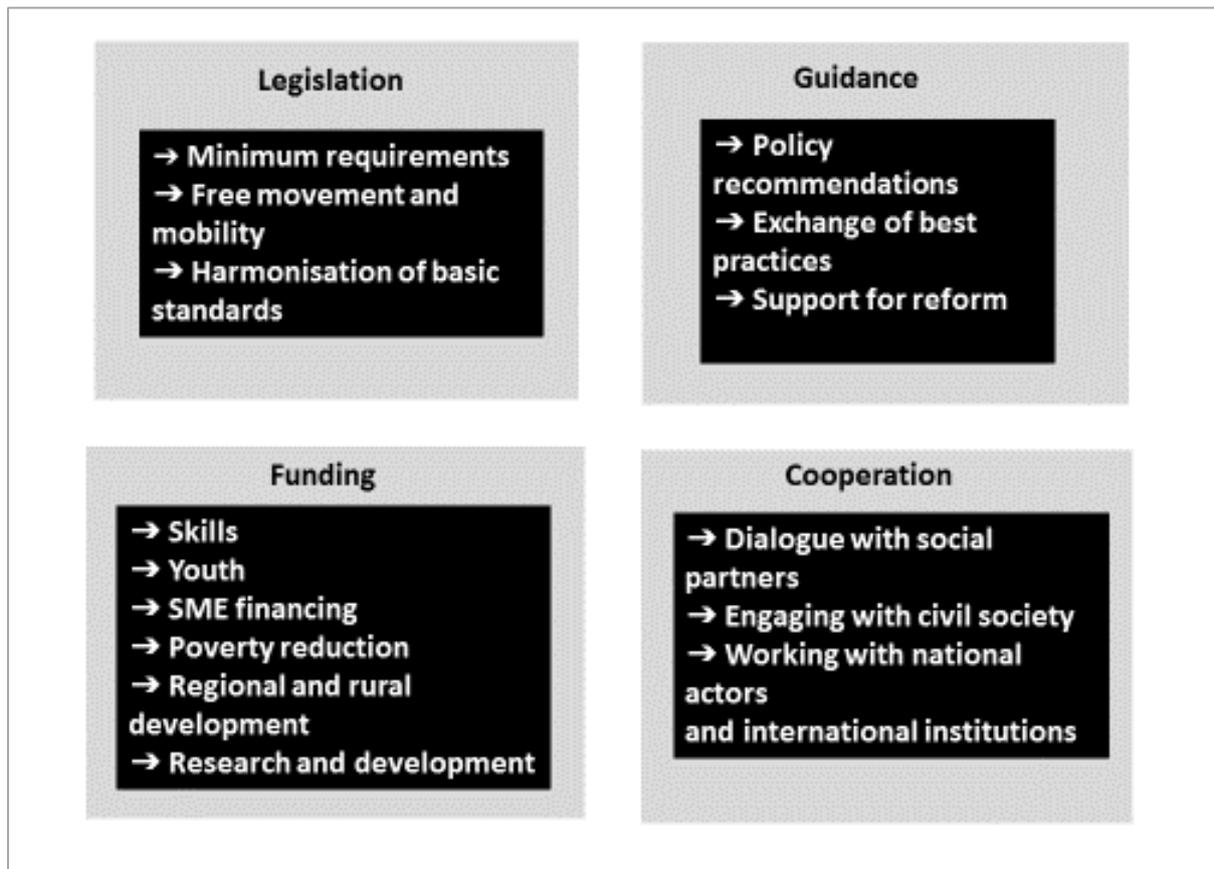
According to Hatzopoulos (2012:346) the Services Directive does not 'introduce rules allowing or prohibiting specific measures and practices' but rather 'sets the institutional framework for the exchange of information, mutual learning, and for self- and mutual evaluation'. Hence he regards the SD as 'a framework text establishing the necessary mechanisms for the adoption of substantive rules of law, at the national level first (through implementation) and subsequently at the EU level (through evaluation and revision)'. The latter, namely mutual assistance and exchange of information between MS, are specifically referred in Arts. 28/29 of the SD. Following the ruling of the Court, however, a regulated service of the gig economy such as ride-hailing is not covered by the SD but the directive remains an example of a mix of hard and soft power that could, possibly, be brought forward by the Commission at some time in the future. Such a possibility is discussed in relation to the EPSR in the concluding Chapter of this thesis (Chapter 10).

### **8.7 Policy modes**

Meanwhile, the EU has 'limited but significant tools' (EC 2017h:24) and the functions they cover are illustrated in Figure.8.2.

Legislation qualifies as 'hard power' and takes its commonest form as directives which have to be transposed into the national law of member states within a certain period and regulations which have supremacy over national law and have immediate effect. The Commission alone has the right to initiate legislation but can only do so or take action against alleged infringements in policy areas which are within the EU's competence.

**Figure 8.2 Policy modes of the EU.** *Source: EC 2017*



The drafting of directives is often ambiguous allowing a degree of interpretation in transposing into national law resulting in 'gold-plating' in some cases (Schomberg 2016). It is ironic that this is exemplified in some aspects of UK social and employment legislation which are more generous than the minima specified by EU rules. These do not, however, apply to platform workers because they are classed as self-employed. The application of existing directives to a new form of economic activity like the gig economy, and specifically, in the case of ride-hailing, has been contested. Referral may then be made for interpretation by the Court with a preliminary ruling following the Advocate General's Opinion. Even then it is for national courts, following the ruling, to decide on the legality of a specific case though

they are unlikely to vary from the Court's ruling. Counsel for Uber had strenuously argued that it had a right to establishment and to provide services under the Services Directive. The Court decided that it did not and that it was subject to regulation by the governments of member states but even if, as some jurists (e.g. Geradin 2016) expected, it had decided otherwise, this would not have resolved the current issue, namely the working conditions of its 'driver-partners'. Uber would simply have been freer to operate in member states where it is currently subject to bans or heavy restrictions. Even without these it would not necessarily be beyond the reach of regulation (see Annex IV). Court-led judgements such as these fail to take into account strongly held concerns in member states. As Scharpf (2010:230,241) puts it, 'European law has no language to describe and no scales to compare the normative weights of the national and European concerns at stake'. This has implications for integration, since 'the Court has no criteria for dealing with and assessing the "legitimate diversity" of the socio-economic institutions and policy legacies that are affected by its decisions'.

All that the Court has achieved in the Uber case is to confirm that it is not covered by a directive that in any case does not address the social aspects of employment in the gig economy. For Scharpf, the Court has played a crucial role in the integration process by removing obstacles (deregulation, liberalisation, 'negative integration') but this has threatened welfare systems where they are most advanced (e.g in Scandinavia) leading him to doubt that Europe can ever be a social market economy. Economic integration has proceeded at the cost of social integration. The dichotomy is even more acute now with the advent of new forms of work organisation on a massive scale which successfully evade established norms and regulations. Following the Court's ruling, member states are free to regulate ride-hailers as they see fit but this does little for a Single Market aspiring to a model of social inclusiveness and the welfare of those employed in it.

Funding is intended to promote policy goals but the EU's budget is limited to a little more than 1 percent of total annual Gross National Income (GNI) of the member states. Support for social cohesion has come from infrastructure spending in the most economically disadvantaged regions with mixed results. There is an implication in the EPSR that funding could be curtailed where progress as recorded henceforward on the European Semester is deemed to be insufficient.

Non-binding guidance is a form of soft power regularly used by the EU in its coordinating role and most pertinently to the gig economy in its 'European agenda for the collaborative economy'. Its press release (EC 2016c) referred to the guidance it was providing to operators and public authorities on how existing EU law should be applied to 'these new business models'. Member states should review their regulations but guidance could be followed up by further action (EC 2016b:2,3). Subsequently, however, Commissioner Bieńkowska has repeatedly ruled out new EU regulation on the collaborative economy in parliamentary answers referred to above.

The unsatisfactory consequences are that a ubiquitous gig economy enterprise such as Uber continues to have an unresolved, contentious and variable relationship with regulations throughout the EU. As has been shown, it has been ruled by the CJEU to be outside either the Services or the eCommerce directives and, furthermore, subject to the exception to the freedom to provide services under Article 58(1) TFEU and governed by the provisions of Art.90 *et seq.* TFEU which relate specifically to transport policy (for detail see Annex IV which also shows that there is still confusion as to the 'professional' status of Ubers' drivers). To change Art.90 would require an amendment to the Treaty for which there is little support at present. This shows that the use of 'hard power' instruments by the Commission, to which reference has been made above, are inappropriate due to issues of competence and subsidiarity (see Annex X), to deal with one of the most important examples of the gig economy and specifically with the social issues it raises. When the Commission uses its soft power to 'invite' member states to review their regulations in this case it has mainly economic (that is to say, market) perspectives in mind such as reducing restrictions, including licensing and compliance requirements and creating a level playing field for business without stifling growth and innovation.

Three further 'soft-power' policy initiatives have been taken by the Commission with respect to the platform economy. The first is a work programme (EC 2017i) undertaken by national governments during 2017/2018 following the Decision by the EP and the Council adopted in March 2016 for a European Platform to tackle undeclared work and bogus self-employment (EP 2017f). The second is the Opinion of the European Data Protection Supervisor (EDPS 2016), an independent institutional advisor within the EU, on 'coherent enforcement of fundamental rights in the age of 'Big Data' proposing a coordinated 'Digital

Clearing House' to review consumer protection and data protection on an international basis, which had its first meeting in May 2017. His recommendations have contributed to the drafting of the General Data Protection Regulation (a major addition to the EU's hard law) which became effective from 25 May 2018. The third, which is the most far-reaching in scope, is the European Pillar of Social Rights (EPSR) proclaimed by the Council, the Commission and the EP on 17 November 2017 at the Gothenburg Social Summit for Fair Jobs and Growth (EC2017a, EC2017b, EC2017c).

During the course of the research for this thesis, the Commission has begun to respond to a new form of organising work that challenges its conception of a social market economy. Gig work such as ride-hailing evades or breaks rules for the safety and fairness of all participants, namely consumers, workers and competitors, but which are beyond the Commission's competence to control. Evidence was given in this section of a range of policy modes in which the Commission operates but it was shown that those of guidance and cooperation are the ones most readily at its disposal in achieving its policy objectives in this area and that these have culminated in the EPSR. Its principles and recommendations are presented in the next section and analysed for their chances of effectiveness in restoring compatibility with social market norms.

### **8.8 The European Pillar of Social Rights**

The European Commission regards itself as the guardian of the Treaties, one of whose most enduring commitments is to the achievement of social solidarity throughout the Union. It has been responsible for many initiatives over the past six decades, some of which have resulted in new regulations for better conditions for working people. Others, however, have left a meagre legacy. The gig economy, and specifically labour platforms of the current age whose practice and effects have been described and analysed in preceding chapters, are a radically different way of organising work that seems to bypass existing arrangements and dismantle hard-won improvements. The EPSR, whose gestation has taken place throughout the research period for this thesis, is a response to all forms of 'atypical' work (notably zero hours and fixed term contracts), not only gig work. It is beyond the institutions of the EU to restore compatibility with the social model enshrined in the Treaty. Only member states can do this, if they choose, but the spirit of its norms is given new life by the EPSR. Rhetoric will need to be translated, painstakingly, into new rules with detailed, tangible benefits. The

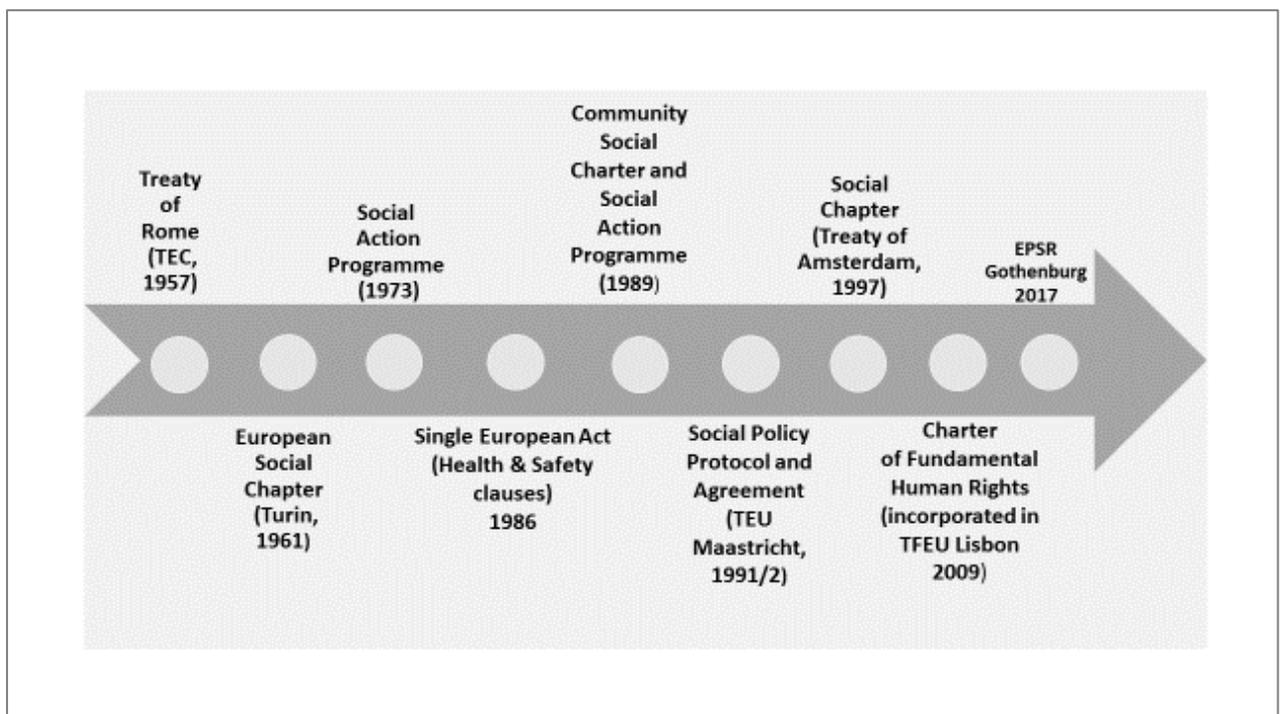
antecedents of the EPSR are traced in the following section and those of its terms located that relate directly to the employment practices of labour platforms that have been identified in previous chapters. Finally the strengths and weaknesses of this latest, and perhaps most ambitious, and certainly most timely, of the Commission’s social initiatives are analysed for answers they bring to the research questions.

### 8.8.1 History and rationale

The EPSR is a collection of twenty principles or policy recommendations (EC 2017a) relating to jobs and welfare resulting from a consultation period with national governments and civil society from March to December 2016. It aims to make social provision a right and to modernise Europe’s social market economy thereby achieving, in Commission president Juncker's expression, a ‘social triple A’ for Europe (EC2017d). The EPSR builds on the legacy of mainly soft-power interventions in social policy dating back to the Treaty of Rome (TEC, 1957) outlined in Figure 8.3 (below).

**Figure 8.3 A chronology of EU social policy**

*Source: Author's compilation*



It is aimed primarily at eurozone members because 'a stronger focus on employment and social performance is particularly important to increase resilience and deepen the Economic and Monetary Union. For this reason, the European Pillar of Social Rights is notably conceived for the eurozone but it is addressed to all Member States' (EC 2017b:5). It

aims to accelerate convergence among these MS, while respecting the principle of subsidiarity (EC 2017j:6. See also Annex X) and therefore contributes towards the integration project. Other MS are invited to take part but since they are not formally included it could also be seen as a step towards differentiated integration.

For each of the twenty principles, the provisions of the existing *acquis* are set out followed by the scope for changes that members states are invited to make to go further - an admission that current provisions do not adequately address the needs and rights of people in non-standard work and new forms of self-employment. The principles and rights contained in the EPSR are not directly enforceable and 'will require a translation into dedicated action and/or separate pieces of legislation, at the appropriate level' (EC 2017c:3). They are a shared responsibility between member states and the Union and do not extend any of the powers of the latter. MS are invited to implement these by adapting their employment and social rules 'to the emergence of new forms of work', while at Union level, the EU will complement and support them through consultation with the social partners on initiatives in accordance with Arts. 153,154 and 155 in Title X (Social Policy) of TFEU. Those that have the greatest implications for the gig economy are contained in Chapter II of the EPSR (Fair Working Conditions, Principles 5-10) and Chapter III (Social protection and inclusion, Principles 11-20). These are shown in Table 8.4 (p.180). A fuller treatment of all twenty principles is to be found in the Commission staff working document (EC 2017c).

The over-arching principle of the EPSR is that its provisions will apply to all workers regardless of the type and duration of employment. This requires some qualification, however, in the case of platform workers. Principle 7 (Contracts) and 12 (Social Protection) will depend on changes in the labour law of most MS to have effect. Principle 8 encourages representation and collective bargaining but if this implies some legal basis it is at variance, as has been shown in Chapter 7, with EU competition law which denies collective bargaining rights to self-employed people.

**Table 8.4 How EPSR relates to labour platform workers**

Source: EPSR in 20 Principles (EC 2017a)

Principle	Provisions	Main objectives
No.5 Secure and adaptable employment)	- Right to fair and equal treatment for all workers with respect to working conditions	- Prevention of precarity
No.6 Fair wages	- Right to fair wages for a decent standard of living with particular respect to the NMW	- Prevention of in-work poverty through employment traps
No.7 Contracts	- Right to written contract at start of employment	- Prohibition of abusive contracts - Fair dismissal procedures
No.8 Representation	- Worker associations - Union recognition - Collective agreements or collective bargaining where legally permissible	- Encouragement of social dialogue and involvement - Right to be heard
No.10 Data privacy	- Implementation of the GDPR	- Protection of workers' personal data
No.12 Social protection	- Right to social protection and training regardless of the type and duration of the employment relationship	- Equal rights for gig workers currently classified as self-employed and/or on non-standard contracts

The only new EU legislation envisaged by the Commission following the EPSR has been a proposal for a 'Directive on transparent and predictable working conditions in the European Union' (EC 2017j) which would update the existing Written Statement Directive (91/533/EEC) and give all workers details of their terms and conditions at the start of their employment, 'regardless of their employment relationship' (EC2017a: Ch. II, Clause 5; EC 2017c:21,23,24). The difficulty with this recurring assertion, however, is that currently there is no accepted definition in EU or national law as to the employment relationship of gig workers. Some jurisdictions in the EU recognise the concept of the 'self-employed but economically dependent' worker as discussed in Chapter 7, but in most cases they do not have access to the full range of statutory entitlements. In the UK, deciding on the status of

'worker' and to which benefits they are entitled has so far been left to a number of local court cases. This haphazard approach and the failure, so far, to arrive at a legally enforceable EU definition carrying some inalienable rights with it, leads to doubts about the likely effectiveness of the ESPR.

### **8.8.2 Policy bias or 'blind spots'?**

The EPSR could be seen as a response to the criticism that two of the principal policy initiatives that currently exist, namely the Digital Single Market (DSM) Strategy and the 'European agenda for the collaborative economy' focus too narrowly on consumer choice, growth and competitiveness while neglecting the social aspect. Trade unions and left wing progressives, for example, call for the creation of what Torben Schenk (2016:141-144) calls a 'Digital Agenda for Social Europe', rather than merely a 'Digital Agenda for Europe'. Europeans need to be empowered as economic *and social* agents in the digital age. Others conceive of a *European Social Union*, meaning 'a European Union that is not itself a welfare state, but supports and facilitates the development of flourishing national welfare states' (Vandenbroucke 2017). European citizens and social partners need to manage the changes that digitalisation is bringing to the labour market in order to promote good work, general interest, social justice and innovation (Röthig 2016a:209,2010).

What this is telling us is that the Single Market formulates the economic aspect but the wider EU project requires attention to the social justice element and specifically at the moment of the digital revolution.

Noteworthy is Röthig's reference to 'good work' which is a recurring theme in reports and analyses of the effects of the digital organisation of online and offline work already referred to in this thesis (especially in Chapter 6, section 6.10), namely 'Good Work' (Taylor), 'Good gigs' (Balaram et al.) and '*Gute Arbeit*' (German Federal Ministry) while, 'The biggest challenge in the field of employment is to shape an inclusive transition towards fair and good work' (ETUC 2016). Good work is surely synonymous with the welfare of workers in the gig economy and an essential component of a social market.

The Commission addressed the advent of the 'collaborative economy' (the term it has used throughout to describe all models of digital platform-based services) in its Communication on Upgrading the Single Market (EC 2015a:3,4) but according to Schenk (2016:144) it 'exhibits little evident concern' for social issues such as those of workers in the

sharing economy deprived of the 'formal employee status, social rights and protections of their peers in the "traditional" economy'. Röthig (2016a:201,203), refers to the 'missing social dimension' in the Digital Market Strategy, specifically 'the provision of social and labour rights to workers participating in the on- and offline workforce'. He anticipates the spread of the gig economy alongside a net decrease in jobs in all EU member states in coming decades but notes 'there is not even the slightest attempt aimed at setting a policy framework to provide social and labour rights to workers participating in the gig economy'. This seems, however, an excessively one-sided judgement as working conditions in the gig economy are among the issues for non-binding guidance set out in the Commission's European Agenda, namely determining when an employment relationship exists. Despite Commissioner Katainen's preoccupation with European competitiveness quoted above (section 8.2.2) he also saw the Commission's role as 'protecting consumers and ensuring fair taxation and employment conditions' (EC 2016c). It is noticeable, however, that in creating a regulatory environment that encourages new business models, the protection of workers features towards the end of the list.

This conclusion is reinforced by a repetitively encountered theme in the Commission's communications of 'creating a level playing field'. By this is understood removing unfair competition between new, disruptive platforms intermediating the provision of services and traditional industries. As operations such as Uber began to make an impact, this was taken to mean evading passenger transportation laws but more recently attention has moved towards the exploitation of workers, fictitiously classified as self-employed, paying them low wages and denying them any of the in-work benefits expected from employers. Removing unfair competition is seen as a regulatory objective at national or supranational level. Few would argue with that but it is not just a question of licensing arrangements, for example, in the case of a regulated industry such as taxi services. Achieving a level playing field in a social market also requires the restoration of worker's rights on the platform side, which, as has been demonstrated by its critics, appears to have been a lower priority for the Commission. The term 'restoration' is used here because the evidence presented in this thesis suggests that work in the gig economy has regressed to a condition last seen in Europe before the rise of trade unions and before employers had generally developed a sense of responsibility towards their workers beyond providing the

barest essentials to keep them available for work. It is what De Stefano (2016:4,6) refers to as 'extreme forms of casualization, demutualisation of risks' and 'Humans-as-a-service', which 'perfectly conveys the idea of an extreme form of commodification of human beings'.

Scharpf (2002, 2010) did not believe that the development of a European social model was compatible with the market-opening legislation brought forward by the Commission and the judgements of the Court. There was an asymmetry between integration (understood as removing barriers) and a social Europe intensified by the increasing diversity following the most recent waves of enlargement. By social Europe, Scharpf was referring to welfare states which he expected to be constrained by deregulation and liberalisation - and such has proved to be the case. To be specific, the gig economy is related to the welfare state in two important respects. The first is redefining what employment means for gaining full access to its benefits by workers marginalised by a new form of work organisation unimagined less than a couple of decades ago, and the second is the loss of tax revenues which underpin it. Thus the same tension observed by Scharpf is echoed in the critique of Commission policy initiatives presented in this section. It would have been entirely consistent with the market-opening agenda had the Court decided, as Uber strenuously argued and some jurists (such as Geradin 2015a, 2015b, 2016 and in Annex IV) expected, that Uber was free to provide services under the eCommerce directive. By contrast the Court ruled that it was a transportation company and hence subject to national regulations, which as has been shown, differ widely. This judgement has several effects. It does little for further integration and 'completion' of the Single Market for services and might protect the privileges of cartels achieved through regulatory capture. On the other hand it may give member states greater opportunity to manage the social consequences of such platforms than they would have had and to respond more freely to the normative influence of the EPSR should they be inclined to.

These are legal arguments leading to theoretical or counterfactual outcomes. The pragmatic issue for this thesis is compatibility with employment terms and conditions that are regarded in social market terms as 'good work' or 'good gigs'. Can these be delivered by the EPSR? This is the next question.

### 8.8.3 Aspirational or enforceable?

The evidence suggests that market issues of access, liability, consumer protection and fiscal failures that have emerged from the platform economy are more amenable to regulation than the social ones of workers' rights. It has been shown that social issues are more 'political' than those concerning competition, licensing, insurance, contract law, universal service and tax collection, also that labour law is, for the greater part, a competence of member states. The EPSR, it can be argued, and as is hoped by its promoters, goes beyond mere guidance. It is sanctioned by social clauses in the Treaties and agreed at heads of government level by nineteen members of the eurozone. New directives and changes to the existing *acquis* may emerge as result, and future Opinions of the Advocate General and Preliminary Rulings of the Court may give legal weight to the principles of the EPSR in specific cases.

In an earlier section the objections were presented of those who do not advocate further legislation at EU level. That, however, does not necessarily mean they are opposed to further EU involvement for reasons, for example, of loss of autonomy, except perhaps in the case of extreme Eurosceptic positions taken by MEPs such as Joëlle Mélin and Mylène Troszczynski of the Europe of Nations and Freedom (ENF) group. The motion (EP 2017I) proposed by them was critical of the Commission for its,

attempts to deregulate the collaborative economy . . . which is already depriving regulated professions of earnings and leading to casualisation . . . in a move which disregards national sovereignty . . . and wants fiscal and social standards to be established at EU level.

For them, only member states have the authority to 'implement their own legislation in an effort to provide a framework for collaborative economies'. The motion was not carried but referred to IMCO.

Nor is the opposite the case, that those who call for specific EU legislation to regulate platforms do so with an expressly integrationist perspective. The issue is what kind of involvement at EU level might be effective in gaining social justice for gig workers, and one tangible outcome has been the establishment, after public consultation with the social partners, citizens and member state authorities, of the EPSR. Up to this point, there had been very little EU regulation in this field - 'a certain regulatory reluctance' has been

mentioned (EP 2017d:3) - which is confirmed by the repeated denial of further legislation by the Commission referred to above. As matters stand, however, existing directives fail to accommodate the 'specific nature' of the platform economy or provide adequate normative coverage. Among those to which this refers and which have been mentioned throughout this thesis are the e-Commerce Directive, Services Directive, Written Statement Directive, Working Time Directive and others relating to consumer rights but these, as has been shown explicitly in the case of ride-hailing, do not address the social aspects or, to a great extent, any of the issues of the platform economy despite assertions that there is no need for any new rules, only the enforcement of existing ones. The question then arises how are the principles laid down in the EPSR to be enforced? How are minimum wage levels and conditions of employment to be imposed on international companies or reclassification of workers that might make their business models unviable? A response might be, why not do without such firms if they cannot provide decent working conditions? Such a possibility, however, would run counter to the allegedly burgeoning contribution to the EU economy by the gig economy, variously estimated, for example, up to a third of a trillion dollars globally over the period to 2025 (Vaughan and Daverio 2016:4), also to its popularity among consumers and workers (at least in respect to its flexibility) and job creation (or replacement). As I have shown, curtailing it would not suit the Commission's policies for Single Market jobs, competitiveness and growth.

Only the Commission has the right to bring forward legislation, formulated exclusively until TFEU through a dense system of committees and experts known as Comitology. An independent project, for a draft directive on Online Intermediary Platforms was started in 2016 by the University of Osnabrück and the Jagiellonian University in Krakow under the auspices of the European Legal Studies Institute and first presented to the Commission and the EP in 2017. The Directive would apply 'where contracts for the supply of goods, services or digital content which are concluded between a supplier and a customer with the help of an online intermediary platform' (European Legal Studies Institute 2016). It seeks to define a range of aspects of the triangular relationship between platforms, consumers and providers which may serve as model rules 'that set a balance between conflicting policy options, and demonstrate what potential regulation at EU or national level could look like'. These could become 'a European frame of reference for the law of internet

platforms and thereby contribute to the formulation of a value-based European approach to platforms' (European Law Institute 2016). What is missing in the draft, however, is a specific reference to the employment relationship. There is no mention of how the social responsibilities of labour platform such as Uber, Deliveroo, Foodora, City Sprint, Hermes and many others towards those who provide services should be defined at law either nationally or at EU level.

This seems to be the predominant cause of the incompatibility of labour platform work. Why does it persist? Who benefits? And what if anything is being done to relieve it? Some reflections from the evidence gathered are presented in the next section.

### **8.9 *Cui bono?***

To answer, we need to consider the interests of the stakeholders in the platform economy, namely consumers, workers and their representatives, gig firms and governments, taking each in turn. Consumers (individuals or other businesses) are not concerned. As long as the service offered remains cheap, convenient, efficient and (for consumers) safe, there is little to concern them. For workers, the position is mixed. For those who have regular jobs and for whom gigwork is no more than a useful top-up, their employment status is not likely to weigh heavily. Many of these according to the CIPD (2017) survey do not wish to be considered employed by platforms. CIPD and other surveys (for example Huws et al. 2017; Schmidt 2017) find, by contrast, that for those who have little choice and depend upon one or more gigs, the combination of low wages, unlimited hours and the loss of benefits due to the undefined employment relationship makes for poverty and precarity. For their representatives, to the extent that they are represented at all, the lack of definition runs counter to all they stand for in the organisation of labour. It denies them their traditional bargaining power as one of the social partners to obtain better working conditions in the perpetual struggle of industrial relations which characterises the capitalist model.

For gig firms, it is the essential advantage of their business model. They are content with the current classification of their workers, in most cases, as independent, self-employed contractors. They benefit because it relieves them of any traditional management responsibility to their workers and puts the welfare burden back on the state. Meanwhile, they continue to exercise high levels of control, *as though* they were employers.

As to governments in the EU, the trend over the past decade has been to lower the cost of the safety net with reduced benefits, known as 'austerity', while, welcoming the creation of new jobs through gig work. The rise of non 'full-time' jobs needs, however, to be seen in proportion. Between 2008 and 2017, temporary employment for the age group 20-64 (both male and female) in the EU has risen from 13 percent to 13.4 percent and part-time work from 16.8 percent to 18.7 percent while total employment rose from 70.3 percent to 72.1 percent (Eurostat 2018). Reliable data is lacking on the proportion of the total attributable to all forms of gig work as noted in Chapter 6. Huws et al (2017:10) estimated 1.6 per cent to 5.1 percent (a very broad range in statistical terms) of the adult population earning more than half their income from crowd work (which includes labour platforms of all types) in five member states and Switzerland. Of greater importance for government and perhaps more pressing than reclassification of the employment relationship would be ensuring that gig workers are paid the national minimum wage and that social security contributions are made by them, supported by the firms.

In Chapter 6 it was noted that very little information is shared by gig firms. In fact, the only public statements or media reports that have been found in this research have come from or been about a handful of platforms, namely Uber, Hermes, Deliveroo, Foodora and Airbnb. By far the most prolific has been Uber while Airbnb is of less interest in this case because there is no labour issue. As to the future, Uber was unique (during the research period) in beginning to address the social protection of workers, aligning itself in its White Paper with the EPSR. It continued, however, to repudiate an employment relationship with its workers.

### **8.10 Summary**

In answer to the first research question, Chapters 6 and 7 provided evidence of the incompatibility of offline labour platforms with the European social mode. The present chapter has been concerned with the second research question, namely how the policy gaps exposed by it are being addressed at EU level. Chapters 2 and 3 theorised the reasons for incompatibility, with contrasting visions of entrepreneurship, the management of labour, and priorities of economic or social value in the practice of contemporary capitalism. Chapter 4 set the scene for the EU's regulatory context within which it has sought to establish a concerted approach in the current chapter.

The EU's legitimacy in doing so was seen to be a Treaty commitment. How this might be achieved was shown to be conflicted because of advocacy both for and against regulatory solutions at EU level. There was a sharp divide in the EP's Committee system consistent with their roles of promoting business growth or social justice but what became apparent from the evidence in both cases was an evolution over the course of the research period away from a preoccupation with the conformity of the 'collaborative economy' with existing regulations (for example did it enjoy right of establishment and the right to provide a service or was it profiting from unfair competition) towards greater scrutiny of working conditions. The latter became increasingly prominent in the later stages of research. In this they were joined by the trades union movement, both at national and EU level. Those within the EP and outside, namely industry at large and some governments, who believe that existing rules are sufficient, showed a reluctance to allow Leviathan to crush new well-springs of economic activity in the form of additional legislation. Even the Commission, which has the privilege of bringing forward new measures has shown itself cautious of over-reaction and has repeatedly said that it has no plans to do so. By contrast, it has followed up on consultation already in progress for a proposed new directive on working conditions in the EU (EC2017j). Differing positions evident in this chapter on achieving fair terms, conditions and social protection for labour platform workers are summarised in Table 8.5 (p.189).

Dealing with decisions about the compatibility of labour platforms in the EU provided an opportunity to reflect on the nature of its power, or more specifically, as the prime-mover, the power of the Commission. Contrary to the long-held Eurosceptic fear of 'rule by Brussels', issues such as the social protection of workers, are still for national governments to decide and, as has been shown in Chapter 3, there are varieties of capitalism and different version of the social model. The evidence throughout this thesis suggests that attention needs to be paid by opinion formers and policy makers to the terms and conditions of those working on labour platforms, especially those for whom 'flexibility' is not a choice, even if they are in the minority, on whichever side of the ideological divide broadly characterised in Chapter 3 as 'pro-market' or 'pro-values', they reside. The Commission shows both an awareness of its own limitations but also faith in its normative influence by the adoption of soft power measures exemplified in the EPSR.

The gig or ‘sharing’ economy is too recent and varied a phenomenon for any predictions to be made on past evidence. It is ‘still in the pre-paradigmatic discovery stage and has not yet converged on a specific set of theories on which to base the empirical analyses’ (Laamanen, Pfefer, Rong and Van der Ven 2018:213). In the present thesis, some characteristics have been identified in one ubiquitous form of this new economy, namely

**Table 8.5 A totality of policy views**

<p><b>Requires</b> specific regulation</p>	<p><b>EU Committees:</b></p> <ul style="list-style-type: none"> <li>- EP Committee on Employment &amp; Social Affairs (CESA)</li> <li>- European Employment and Social Committee (EESC)</li> </ul> <p><b>Members of the European Parliament (MEPs):</b></p> <ul style="list-style-type: none"> <li>- S&amp;D group</li> </ul> <p><b>Government:</b></p> <ul style="list-style-type: none"> <li>- German Federal Ministry of Labour &amp; Social Affairs</li> </ul> <p><b>Non-Government:</b></p> <ul style="list-style-type: none"> <li>- European Trades Union Congress (ETUC)</li> <li>- European Trades Union Institute (ETUI)</li> </ul>
<p><b>Does not require</b> specific regulation</p>	<p><b>EP Committees:</b></p> <ul style="list-style-type: none"> <li>- On the Internal Market &amp; Consumer Protection</li> <li>- On Industry, Research &amp; Energy (CIRE)</li> <li>- On Transport &amp; Tourism (TRAN)</li> </ul> <p><i>Note: migration towards regulation (see Ch.8 Figure 8.1)</i></p> <p><b>Government:</b></p> <ul style="list-style-type: none"> <li>- The European Commission (EC)</li> </ul> <p><i>Note: proposal for a revised Written Statement Directive was already under consultation</i></p> <ul style="list-style-type: none"> <li>- UK Department for Business, Innovation &amp; Skills (BIS), representing a group of ‘liberal market economies’ (LMEs) in the EU</li> </ul> <p><b>Industry:</b></p> <ul style="list-style-type: none"> <li>- European Collaborative Economy Forum</li> </ul>
<p><b>Achievable</b> outside the EU <i>acquis</i></p>	<p><b>The EU institutions (EC, European Council, EP)</b></p> <ul style="list-style-type: none"> <li>- The European Pillar of Social Rights (EPSR)</li> </ul>

labour platforms intermediating physical, on-location services. The effects of its principal exponent, Uber, have been analysed throughout this thesis for their effects in relation to some enduring concepts of the practice, purpose and value of free market capitalism and how these effects might be contained or shaped in a quasi-federal *bloc* such as the EU which aspires to the social market model.

The findings of the current research are presented in the Chapter 9. I believe that the quest for solutions to both the research questions lies in transcending the sterile confines of the polarised dialectics and taxonomy of Chapters 2 and 3. A malaise has been revealed in the employment relationship in the gig economy which is best accounted for, in my view, by Durkheim's theory of anomie in the division of labour. Its relevance to present conditions is explained in Chapter 9 and the extent to which the application of its insights might bring relief, or is already doing so some cases, is gauged in Chapter 10.

The theoretical and practical implications for management and the EU of the present incompatibility of offline labour platforms with good work and the social protection of workers, together with some solutions for alleviating it within the *bloc* are thus the major contributions of this thesis.

## CHAPTER 9. FINDINGS AND A THEORY OF ANOMIE

This chapter draws on the literature, context and empirical evidence presented in previous chapters for two purposes. The first is to summarise what has been found in response to the research questions as posed. The second is to examine a somewhat neglected theory that offers arguably profounder insights from a quite different perspective in the light of these findings.

To start with, however, it would be useful to recap on the two principal questions and explain why they were asked in the first place.

### 9.1 The research questions revisited

Two principal questions were asked, namely:

- RQ.1 Are labour platforms of the gig economy compatible with the European social market model?
- RQ.2 How are the perceived policy gaps in the social protection of gig workers being addressed in a quasi-federal *bloc* such as the EU?

The concepts of ‘compatibility’ and ‘policy gaps’ raised a number of subsidiary questions which relate to the specific issues of:

- Benefits and entitlements (in-work and out of work)
- Work quality
- Taxation

What is meant, for the purposes of this research, by the constructs ‘labour platforms’, and ‘gig economy’ was explained at the outset with greater specificity as to the ‘gig’ v. the ‘sharing’ or ‘collaborative’ economy, ‘gig’ v. ‘peer-to-peer’ and ‘physical’ v. ‘mind’ labour platforms. Similarly, the ‘social market’ was explained and what is covered by the EU under ‘social protection’ (see Annex I). An overview of the issues for social solidarity raised by labour platforms was mapped graphically in Chapter 1, Figure.1 and the period of research was defined.

The question of compatibility of labour platforms had two origins. The first arose from a reading of the literature about the technological and organisational aspects of the gig economy referred to in Chapter 2. From this a picture of the phenomenon began to emerge. It revealed a deep change both in the nature and purpose of the firm from the Coasian model and modern management practices. Extreme casualisation of labour replaced the

integrated form with its enduring culture of responsibility for the wellbeing of workers as well as achieving competitive efficiency. Human management was replaced by algorithms and panoptic surveillance. New asymmetries of information and power altered the balance of risk and return in the relationship between a firm's owners and its workers - now no longer called employees. This had a direct effect on benefits, wage-earning potential, job security and mobility, communications and representation. Digitalisation presented new opportunities for entrepreneurs to both create jobs but also to ignore or evade industry regulations and norms of employment. Control remained through ratings that could not be challenged and affective labour. In effect, it was a reversion to a much older and more restricted model of management going back to the early industrial era but persisting into the twentieth century with day-labourers like London dockers fighting for work. A complaint still heard from gig workers is 'not enough hours' (for example CIPD 2017:47).

The second origin from which the question of compatibility arose was from the literature of political economy (Chapter 3). This introduced a normative divide in priorities for wealth generation in a capitalist economy between a laissez-faire view, leaving it to the market and one for whom solidarity - that is social justice and re-distribution - were more pressing. These poles equated to the right-left cleavage in politics but also to a cultural divide in accepting and exploiting change, or resisting it and questioning its value. The theory of varieties of capitalism and corporate governance exemplified heterogeneous welfare priorities in Europe which revealed that most, but by no means all, member states of the EU adhered more closely to regulating the market to ensure social protection, than leaving the market freer to produce wealth and security for all. The former was confirmed as the mantra of the EU and it became clear from reading the Treaty and communications from the Commission that the social market commitment to it was a principle of integration. The literature of the gig economy and empirical evidence from Chapters 6 and 7 suggested that labour platforms fall short of compatibility with this model.

From a perceived incompatibility with one of its core tenet (the first research question), there follows the logical question of the EU's response namely how to address it (the second research question). The evidence (Chapter 8) shows that the answer is conditioned by the same political and philosophical divides within the Commission, among MEPs, member states and the social partners, but an additional factor is the EU's

competence to act which is anticipated in the contextual setting reviewed in Chapter 4. The attention of the EU to the gig economy, which is reserved almost entirely to the Commission, the EP, and a landmark ruling by the CJEU, grew steadily throughout the research period. It also coincided, perhaps not accidentally, with an initiative led by Commission president Juncker to re-invigorate the EU's commitment to the social model, culminating in the EPSR. Its capacity to achieve it by this means was shown in Chapter 8 to be confined mainly to the use of soft power rather than hard power instruments.

What the evidence tells us about both research questions is summarised in the next section.

## **9.2 Findings**

The main findings are that gig firms, and specifically labour platforms, exemplify a radical transformation in the nature of organising paid work in the digital era that has consequences for the distribution of wealth and the preservation of the welfare state in Europe (and elsewhere). An evolution on the part of Uber, a chief exponent, was noted during the latter part of the research period towards legitimising its operations where it is permitted in Europe. It still emphatically rejects, however, the role of employer. At the same time, there was an evolution in the attention of EU policy shapers and formers from regulating platforms such as Uber in the operational sense (namely taxi licensing and passenger transportation laws) to responding to their social consequences. Put another way, the Commission turned from an economic (or market) focus towards a social one. Member states, however, still preserve their autonomy in labour and welfare policy making and the EU's powers to affect change are more of a normative nature than additions to the *acquis*.

In short, this research suggests that labour platforms are, for the most part, not compatible with a social market model with both practical and theoretical consequences for both firms and the EU. That model itself has been somewhat neglected, especially during a decade of 'austerity' by the EU which is now re-committing itself through its limited powers to improve the social protection of workers in all forms of 'atypical' employment. Questions, for further research, however, remain as will be shown in the concluding chapter (Chapter 10).

The effects of gig work are still little understood - is it, for example a net creator or destroyer of jobs, how sustainable is it for a growing cohort as a 'typical' rather than 'atypical' means of earning livelihood, how viable is the gig firm's business model if it is mandated to take on some of the responsibilities of an employer? How will social security benefits be paid for if they do not? These are some of the subjects discussed in Chapter 10. Before that, however, some theoretical insights from an earlier age but with many similarities to our own may help us to understand the findings of the current research and provide us with some guiding principles in calibrating potential answers to the new questions that they raise. They are discussed in the following sections.

### **9.3 Anomie and the division of labour**

Durkheim ([1893]1984: 291,304) accepts Adam Smith's theory of the division of labour as an evolutionary societal development which normally produces 'social solidarity' but argues that it can also have 'entirely different or even opposite results'. He identifies these as 'deviant', 'abnormal', 'pathological' or 'morbid' forms where the relationship between the 'organs' (namely the individuals and groups of which it is composed) is in a state of *anomie*. This is a term defined as 'Lack of the usual social standards in a group or person' (Shorter Oxford English Dictionary, fifth ed. 2002). For Durkheim, 'The division of labour cannot operate without regulation' (Durkheim ([1893]1960: 181). His theory, though less well-known perhaps than those of Marx and Weber, is relevant, more than a century later, to the compatibility of labour platforms and to the attainment of the European social model. Coser, In his Introduction to Durkheim ([1893]1984:xxi), describes Durkheim's view that,

The division of labour, as one encounters it in modern industry is an 'abnormal division of labour', a division that springs not from spontaneity but from forceful imposition. When coercive constraints replace spontaneously given consent, the whole human enterprise is weakened.

The gig economy, as encountered in our own age could be considered as the ultimate division of (unskilled) labour because everyone or anyone is doing, or can be doing, everything and anything, including holding down several jobs at the same time. But in many cases, and for a certain number of people, it has become a necessity, rather than a choice - in other words it is forced. The evidence of the current research has shown how the commodification of labour, demoralisation and the alienation of already marginalised gig workers exemplify such an abnormal division of labour.

The most relevant parts of Durkheim’s theory for the compatibility of the gig economy are summarised in Table 9.1. How they can be applied to labour platforms are presented in the sections which follow.

**Table 9.1 Durkheim’s theory of Anomie and the Division of Labour in Society**

Source: Based on Durkheim ([1893]1984)

<b>The Division of Labour</b>	<ul style="list-style-type: none"> <li>- The predominant source of social solidarity in its normal form</li> <li>- ‘Anomie’ in its abnormal form</li> <li>- Economic utility is only one part of its function</li> </ul>
<b>Regulation</b>	<ul style="list-style-type: none"> <li>- Required to prevent anomie</li> <li>- Creates freedom, not constraint</li> </ul>
<b>Moral force of society (conscience collective, or moral individualism)</b>	<ul style="list-style-type: none"> <li>- The source of regulation</li> </ul>
<b>Solutions</b>	<ul style="list-style-type: none"> <li>- Non-governmental occupational groups or corporations</li> </ul>

### 9.3.1 Abnormal forms

Durkheim identified three such abnormal forms, each of which can be perceived in the offline labour platforms of the gig economy. The first was where workers feel like a ‘lifeless cog’ in a vast machine (Durkheim [1893]1984:306) and do not personally feel they are of any use. They perform the same repetitive task and do not feel part of the overall project thereby losing self-esteem and personal identity. Making a living is the only value and enriching a remote employer the only result. This was applicable to Fordism (the first era of mass production) and began to change with the advent of the Human Relations school in which the worker was considered as a whole person with corresponding needs. The gig economy, as has been shown, seems to revert to the earlier model in which commodification, extreme forms of casualisation of labour and ‘humans-as-a-service’ (De Stefano 2014:4,6) prevail once more.

The second, which is called the ‘forced division of labour’ and applies, ‘if one class is obliged in order to live, to take any price for its services, while another is absolved from

such a necessity - thanks to resources which it possesses . . . ' (Durkheim [1893]1984: 312). This is an argument for the abolition of inherited wealth (or any external inequalities, particularly lack of educational advantages) but it is also where employees do not have enough work and where it is 'badly coordinated and operations are carried out without concertation: in short solidarity relaxes its hold and incoherence and disorder appear' (Durkheim [1893]1984:378). Both conditions appear to be present in the case of offline labour platforms of the gig economy. An instance of the latter is what happens at times of Uber's surge pricing at which drivers may be incentivised to relocate themselves to an area of high demand which may be, possibly purposively, spurious thus costing them wasted fuel and income earning time. One of the complaints of gig workers recorded in surveys is 'too little hours' (CIPD 2016:3,5,11,47).

The third is the inadequacy of contracts. Marsden (2004:662,663; see Chapter 2 of this thesis) asserted that the innovation of the long-term employment contract was the embodiment of the employment relationship and its conditions that 'has developed a platform of rules that helps to contain these so that both parties can achieve a reasonably effective degree of cooperation despite divergent interests . . . around this platform has developed a set of employee expectations and beliefs, systems of incentives and a system of legal rules that reinforce its operation and effectiveness'. Durkheim ([1893] 1984:316-321) goes beyond this transactional functionality,

In any given society, every object of exchange has, at any moment, a fixed value that might be called its social value. A contract is not fully agreed to unless the services exchanged are equivalent in social value'. . . . '[Finally], common morality condemns more severely still any kind of contract where one party gets the lion's share, where one is exploited by the other because he is the weaker, so that he does not receive the fair price for his pains.

Fair contracts for atypical work, are one of the principles of the EPSR (See Chapter 8, Table 8.4) and the Commission has since proposed a new Written Statement Directive as will be shown in Chapter 10.

If the gig economy tends towards being unbounded by the 'usual social standards' and largely unfettered by existing labour law, what is the explanation for it and secondly how might it change? These question, to which Durkheim gave thought in the context of the

rapidly developing industrial and consumer society of his own time, are considered next and what they might mean for ours.

### **9.3.2 Egoism, economic utility, dependence and freedom**

Durkheim commented on the propensity of human beings to indulge their appetites to the utmost, regardless of the harm to themselves or fellow humans, unless restrained by superior force (cf. Leviathan), self-preservation, the law, and, in developed industrial societies, regulation. The result was an anarchic state of disequilibrium, the unchaining of economic interests accompanied by a decline in public morality and uncontained *laissez-faire* (Lukes 1973:266). Without moral discipline, the division of work cannot operate productively. Durkheim asked, what is the source of legitimacy for regulation? For him it can only come from society itself which he conceives as the ‘moral force’ or ‘moral authority’ which arises wherever a group is formed. It regulates the life of its members and is also ‘a source of life *sui generis*’ (Durkheim [1893]1984: lii). This was provided in earlier forms of society by the *conscience collective* as he put it, the French term denoting ‘awareness’ as much as moral promptings (Giddens 1971:67). He is indifferent as to whether it arises from religious or secular inspiration although it was increasingly from the latter in the society of his time - a trend that has only continued in most industrialised societies since then.

The focus of the European Commission on the economic (or market) aspects of the gig economy rather than the social has been noted in the evidence for the current research. This too would have been familiar to Durkheim. He is critical of economists for failing to appreciate that the division of labour it is not only a means of increasing ‘social productivity’ but also a ‘source of solidarity . . . because it creates between men a whole system of rights and duties joining them in a lasting way to one another’ (Durkheim [1893]1984:338). It is not based merely on usefulness or providing a novel service enabled, in our time, by new technology such as ride-hailing or delivering from which profit can be extracted by evasive entrepreneurialism. Solidarity also comes from an acknowledgement of mutual dependence, namely that of the employer and employee which is resisted by labour platforms, even though some gig workers are clearly ‘economically dependent’ as acknowledged in Chapter 7, section 7.1.3, of this thesis. For Durkheim (1893]1984:320-322),

‘Freedom’ is spontaneous and natural but denies the presence of dependence in the division of labour that requires an ‘outside’ agency to avoid strife between and

among parties and that agency is the moral force of society itself (the *conscience collective*) whose task is a 'mission for justice'.

Such a sentiment seems to be consistent with aspirations of the social market model enshrined in the EU Treaty. Such freedom 'from' (economic oppression) is very different from that of freedom 'to' (maximise any economic opportunity) of neo-liberal and libertarian conception. Both interpretations are to be found, as has been shown, in the policy statements from the Commission. Those opposed to regulating the collaborative society, for example, have argued that it would stifle innovation. For Durkheim, this is a misunderstanding:

Yet, apart from the fact that it is incorrect to say that any form of regulation is the product of constraint, it so happens that liberty itself is the product of regulation. Far from being a type of antagonist to social action, it is the resultant.

Such freedom is synonymous, as has been shown, with 'flexibility' as the mantra of gig firms, namely the freedom to work wherever and whenever you want. It displays an 'anomic hyper-individualism' (Wilson 2018:63) and while Durkheim was a strong supporter of the 'cult of the individual' he emphasised the need for the moderating influence of the regulatory process.

### **9.3.3 Solutions and legacy**

In a modern, highly diversified, industrialised society, moral individualism is more relevant according to Durkheim rather than the *conscience collective* of earlier societies. This is because as the intensity of collective beliefs (as in tribal or religious affiliation) lessens, the more 'ambiguously and vaguely defined are the rules of conduct which stem from them: the individual must 'interpret' how they apply to any concrete situation which he is confronted with'(Giddens 1972:5). Moral individualism or the 'cult of the individual' needs, however, to be moderated by norms relating to specific occupations. These are to be achieved by the creation of occupational groups or corporations, which Durkheim believed would be a counter to anomie in the division of labour. The task of regulation is not entirely for the state. He is not against state intervention but the diversity of different forms of industry and local and regional economic conditions are beyond the capacity of central government to legislate for them for social solidarity. Durkheim, unlike Marx, or one of his more recent followers such as Braverman referred to earlier in Chapter 2, section 2.11, does not see the

social ills of a rapidly developing industrial economy in terms of class warfare. Nor, unlike Weber, does he see 'order' through rational-legal bureaucratic efficiency as the prevailing (inevitable) trajectory for modern society. The division of labour, however, is the common preoccupation of all three writers. Instead, Durkheim has the concept of autonomous non-state, but public corporations or occupational groups per industry, composed, on a basis of equality, of representatives of the social partners and professional bodies taking a commonly generated regulatory position on working conditions somewhere between the state and the workforce. In this way workers will derive meaning and value from what they do and *organic* solidarity can be achieved in a modern, highly specialised and differentiated industrialised society as opposed to the *mechanical* solidarity of earlier pre-industrial forms.

Durkheim's theory of anomie and the division of labour is a salutary antidote to the effects of distinctly *amoral* theories about firms that succeeded him such as those, discussed in Chapter 2, of 'creative destruction' (Schumpeter 1942:13), 'evasive entrepreneurialism' (Elert and Henrekson 2016), 'disruptive innovation' (Christensen 1997) and 'profit and shareholder value first' (Friedman 1970). A contemporary theory, to which reference will be made in Chapter 10, is that of the 'fluidity of organisational boundaries' (Constantiou, Marton and Tuunainen 2018) which seems to contribute to anomie with its blurring of traditional demarcations between insourcing and outsourcing, employees and customers, the domestic and work environment, particularly evident in the digital economy. By contrast, Polanyi, Meija and Sennett, referred to in Chapter 3, strike a similar moral and ethical note to that of Durkheim. In the same chapter, the opposing poles of pro-market/pro-laissez-faire and pro-values/pro-social justice were compared for the influence they might have in explaining or influencing public policy towards the new forms of atypical work organisation of the digital age. Durkheim's sociological insights go beyond the boundaries of political orientation and show that meeting social needs is compatible with the competitive instinct provided that self-restraint is exercised under the only legitimate authority, formerly the *conscience collective*, and now in transition to moral individualism, realised through his concept of occupational groups or corporations.

Durkheim has been criticised for a lack of methodological rigour in typifying as 'abnormal' and claiming as scientifically proven theories those aspects of the divisions of labour that do not accord with the pre-determined moral and idealistic judgement that he

holds of them. Anomie has been interpreted by some as 'normative strain' rather than 'normlessness' (Giddens 1978:108). The present incompatibility of the gig economy demonstrated in this thesis could equally encompass both descriptions. According to Durkheim, as Giddens explains (*ibid*), 'if the division of labour produces conflict, it is either because society is in a transitional state of development, or it denotes the existence of a pathological condition of the social order'. Moreover, the division of labour may not necessarily be the source of social solidarity as held by Durkheim but rather the endemic division of interests of competing groups or classes in advanced societies. As has been shown in the case of EU institutions, there is a tension in policy-making between economic and solidaristic priorities despite the clear commitment to the social market model. The latter is scarcely shared by gig firms themselves but surely it is arguable that the asymmetries of information and power exercised by them (see Chapter 2, section 2.4.3) needs to be restrained according to the Durkheimian analysis.

Durkheim's use of analogies from evolutionary biology to analyse modern industrial society has also come under question for typifying societies on the basis of likeness or complementarity while demarcating primitive hunter-gatherer societies as exponents of penal or retributive justice (that is the impositions of sanctions) while restitutive justice is the mark of modern societies. This categorisation has been rejected in the light of more recent anthropological research which has found that both types of justice exist in societies, primitive (such as Australian totemism) and modern (Christianity). Nonetheless, in respect of understanding policy gaps regulating the labour platforms of the gig economy, perhaps it is time re-visit Durkheim and bring him into the twenty-first century.

In order to do that, however, we need to take into account two principal limitations of Durkheim's analysis. The first has already been mentioned, namely his disputed view that the division of labour is inherently harmonious and secondly, that new forms of occupational associations are destined to emerge in contemporary society (Giddens 1978:14). Durkheim looked for a secular morality to balance the unrestrained egotistical tendencies that were evident in the division of labour in highly individualised and specialised modern industrial societies. From a historical perspective, such a moral force had originally come from the tribe and later from religion. Now, the rules were to come through the state, particularly through the oversight of education and through non-state actors, namely

'occupational corporations or associations'. The latter seemed to seek the re-establishment in some way of the ancient guilds - the arbiters and maintainers of rules - of the ancien régime which were swept away in the eighteenth century. It would be an exaggeration to claim this role for today's civil society. The occupational groups proposed by Durkheim would be perhaps most akin to the regulatory bodies of the traditional professions and also to those created more recently for a much wider set of highly-skilled activities. These hardly seem appropriate for generating a set of rules for offline labour platforms. Yet, they are not so far from the codes of conduct and self-regulation proposed by Sundararajan (see Chapter 6, section 6.8).

Durkheim's solution, however, where non-state bodies regulate specific work activities has not yet been applied to offline (or even online) labour platforms. This has been proposed in the UK, as referred to in Chapter 6 by Sharing Economy UK (SEUK), an industry association. An analogy might be the non-departmental Gangmaster and Labour Abuse Authority (GLAA) set up in the UK in 2006 to protect 'vulnerable and exploited workers' in the agricultural, horticultural and shellfish industries following a disaster in which a number of illegal immigrant labourers were drowned. In its survey of gigwork CIPD (2017:49,50) suggested that the GLAA is given sufficient resources to 'enforce compliance with existing employment rights across the economy where there are abuses and ensure people are not being falsely categorised as self-employed, for example'. It also recommended a stronger role for Acas (The Advisory, Conciliation and Arbitration Service) 'to improve working practices, which in many cases will be a better solution for all stakeholders than enforcement activity and fines' and concluded that,

There is more scope for professional associations, trade unions, trade bodies such as SEUK and individual organisations to work together to not only develop better ways of representing the views of gig economy workers, but also develop robust codes of conduct and collective support packages in areas such as insurance and training and development, where the costs of individual provision may be prohibitive.

A co-ordinated approach in public policy towards the gig economy might be promoted by the collaboration with the Commission of the social partners and social stakeholders ('peak-level civil society') in implementing the EPSR. This is for three reasons (Vanhercke et al 2018:170),

Firstly, working ‘on the ground’, social stakeholders are able to detect changes in the social situation before these are revealed by research and official statistics.

Secondly, on the one hand, they are often directly involved in the implementation of social policies, including the most innovative ones (Sabato and Verschraegen 2016). Moreover, social stakeholders can push national governments to implement the Pillar (including at the time of the forthcoming European elections), requiring them to respect the solemnly proclaimed principles.

Thirdly, social stakeholders can contribute to the debate about the Pillar among their members and the public at large: improving awareness is fundamental to increasing the legitimacy of the initiative, and to show that the idea of a ‘Caring EU’ is not an elusive concept (Friends of Europe 2015).

Civil society in this case includes NGOs and innumerable trade bodies, charities, think tanks and academia, for example the Resolution Foundation (D’Arcy and Finch 2016) referred to in Chapter 6 and the Centre for Research on Employment and Work (Newsome, Heyes, Moore, Smith and Tomlinson 2017). Neither of the social partners, however, was considered by Durkheim to be a contributor to achieving his concept of work corporations because ‘there is no common organisation which brings them together, where they can develop common forms of regulation which will determine the relationships between them in an authoritative fashion, without either of them losing their own autonomy. Consequently, it is always the rule of the strongest which settles conflicts, and the state of war is continuous’ (Durkheim [1893]1960: pp. xxxiv-xxxv, 360-2, vi-viii and xxvii-xxx in Giddens 1971:186-7). This lack of common cause is demonstrated by their response to the proposed changes to the Written Statements Directive (see Chapter 10, section 10.6).

By contrast, Durkheim might have appreciated the emergence in the mid-twentieth century of the corporatist or co-ordinated market economies of Germany and some other northern European countries, but not in his native France, nor the UK. Germany, in particular, has had a reputation for *Ordnungspolitik* or an ordo-liberal state in which the economic actors - firms, workers, trade associations, unions and local and regional communities - come together and do, to a greater extent than elsewhere, avoid anomie in industrial relations. It is noteworthy that while gig economy platforms flourish in these countries - both those intermediating labour and those that do not - the Uber ride-hailing model specifically has been heavily restricted or not permitted. Anomic conditions in this

case have been avoided by simply disallowing altogether a new form of work organisation in a particular sector.

Despite the limitations referred to above, there are lessons which I think we can learn from Durkheim that will alleviate such anomie. These are threefold. The first is that the division of labour is not merely concerned with exchange value but also with social value. The latter seems to have been lost in the latest technological revolution that has provided new opportunities, perhaps on a scale previously unimagined, for entrepreneurialism and consumerism. The European Commission and the EP's ambivalence in this respect has been demonstrated throughout this thesis. Marx looked to the eventual elimination of the division of labour altogether when the epoch of bourgeois capitalism was transcended by the collective of communism. Weber feared that the petrifying iron cage of bureaucracy would only reinforce the division of labour. By contrast, Durkheim tells us that the latter is inherently solidaristic - it *is* the source of social value - but needs to be cured of some pathological tendencies which are a symptom of the transition towards an increasingly technological and global economy. The second lesson is that these tendencies produce anomie in individuals. Here, Durkheim would have had in mind, for example, the anarchistic behaviour of Souvarine in Zola's *Germinal* or the increased rate of suicide that he studied in contemporary France. Such a loss of 'moral integration' was a result of socially disruptive conditions due to the forced division of labour. Alienation, if not on this scale, is also evident among labour platform workers of today with protests and strikes. The third lesson is that regulation to prevent anomic working conditions that breed an anomic response in those that suffer them is not a constraint on liberty. On the contrary it makes the functioning of a free market economy sustainable.

#### **9.4 Summary**

This chapter recapitulated the research questions, why they were posed in the first place and presented some conclusions drawn from the empirical evidence presented. The findings, it was observed, could be further explained by a theory of which less is heard than some others in the contemporary public discourse about the promotion of social justice in a highly developed industrial and consumer society undergoing a profound technological transformation. Such a theory was shown to be surprisingly prescient about the compatibility of the offline labour platforms of the gig economy and about addressing policy

and regulatory gaps exposed by them. Theories of organisation and management, concepts of political economy, cultural paradigms, and the EU regulatory context referred to in earlier chapters set the background against which to study such issues, while theories of entrepreneurialism explained the behaviour of disruptive new forms of organising work, including those enabled most recently by digitalisation. A different theory, however, by Durkheim stood outside business, operational or political-economic considerations to take a sociological view of the effects on solidarity when radical technological transformations overwhelm, at least in a transition period, hitherto accepted models of conduct between workers, employers and the state.

This chapter has two important implications. Firstly, the findings of Chapters 6 to 8 answer the research questions, namely whether offline platform are compatible with the social market model and how the EU is addressing policy gaps in response. Secondly, it introduces an original way of looking at them which, in my view, has more potential in solving the problems exposed by them than the theoretical and paradigmatic discussions in Chapters 2 and 3 or the contextual confines of Chapter 4. Durkheim's theory, already over a century old, transcends the classic literature of political economy explicated in them. Instead, it finds answers in the fundamental driving force of modern industrialised societies namely the division of labour. In this, Durkheim, was standing on the shoulders of pioneers from the Scottish enlightenment such as Adam Smith and Adam Ferguson, as was Marx a generation earlier and a contemporary of his own time Max Weber. Unlike either of the latter, however, Durkheim's innovation was to show how its pathologies, very evident then and now, could be alleviated without sweeping it away altogether in the upheaval of the Communist revolution or accepting its inevitable apotheosis in the 'iron cage'.

The limitations were exposed of applying Durkheim to contemporary conditions but his theory, though not fully accepted by his contemporaries or later critics, and his solutions for regulating work remaining unfulfilled, can serve as much more than a useful heuristic for perceiving and addressing the present incompatibility of the offline labour platforms of the gig economy with the European social model. Durkheim remains associated with the concept of anomie and its social consequences and his lasting legacy is well summarised by Isaiah Berlin (1998:600) in relation to national sentiment and aggressive nationalism,

What, I think, was ignored was the fact which only, perhaps, Durkheim perceived clearly, namely, that the destruction of traditional hierarchies and orders of social life, in which men's loyalties were deeply involved, by the centralisation and bureaucratic 'rationalisation' which industrial progress required and generated, deprived great numbers of men of social and emotional security, produced the notorious phenomena of alienation, spiritual homelessness and growing anomie, and needed the creation, by deliberate social policy, of psychological equivalents for the lost cultural, political, religious bonds which served to maintain the older order.

Anomie, a lack of rules, has been shown to characterise a new form of organising work (of course, neither the first nor unique) lacking in the social and psychological grounding referred to above and to which 'social Europe' has yet to fully respond. A dawning awareness by Uber of the present dysfunctionality has emerged in the latter course of the present research while it became apparent to the Commission somewhat earlier.

Three lessons were drawn from Durkheim's analysis which, if followed, would go some way, I believe, in alleviating the present social incompatibility of labour platforms. Measures taken by the EU, some member states and Uber itself to this end are presented in the concluding chapter (Chapter 10) and the extent to which such lessons have been learnt. The state alone, as Durkheim predicted, is unable to effect the changes needed to correct for the pathological forms of the division of labour. It has been shown that there is more that can and should be done by non-state actors.

## CHAPTER 10. CONCLUSIONS: LOOKING TO THE FUTURE

This chapter has four purposes. The first is to summarise what has been learnt in previous chapters, the second to apply it to the future, the third consists of a number of policy recommendations and further research which they might indicate, and the fourth is to summarise the contribution of this thesis to both labour and EU studies. To recap, the research questions were:

RQ.1) Are offline labour platforms of the gig economy compatible with the European social market model?

RQ.2) How are policy gaps exposed by them addressed in a quasi-federal *bloc*?

The thesis started with an Introduction (Chapter 1) in which two potentially conflicting models of economic activity, namely gig platforms and the social market, were explained and the purpose of succeeding chapters indicated. A literature reviews in Chapter 2 accounted for the rise of the gig economy business model, namely the digital revolution, its entrepreneurial exploitation and the new ways it organises work and manages labour. A literature review in Chapter 3 accounted for political, philosophical and cultural ambivalence towards the social market model. A historical perspective was taken in both cases. Chapter 4 situated the EU's response within its regulatory context. Answering the research questions by means of a qualitative methodology of documentary collection and analysis was the subject of Chapter 5 together with my own critical approach to acquiring knowledge and experiencing what I take to be 'real'. The empirical evidence gained, thereby, was presented and analysed in Chapters 6 to 8. From these it was learnt that:

- platforms fail to share internal data on how they engage their workers which impedes policy making (Chapter 6)
- the terms and conditions of platform workers do not constitute what, in our times and in advanced Western-style economies, is generally regarded as 'good' work (Chapter 7)
- the policy response of the EU is conflicted despite its Treaty commitment to the social market model (Chapter 8).

Reflecting on these findings led to an alternative theory in Chapter 9 based on a sociological account of the division of labour (as opposed to a political or economic one as in Chapters 2, 3 and 4) with potential for alleviating the anomie revealed by the research questions. It was shown how Durkheim theorised a societal malaise in the division of labour

which is still relevant today. The occupational groups or corporations proposed in his solution have not (yet) come to fruition but despite this limitation his diagnosis is constructive and how it might be applied, and in some cases already has begun to be, is assessed in the rest of this concluding chapter. The outcome will affect gig workers, gig firms and the integrity of the EU itself.

Should the very existence of such work, whether ‘good’ or otherwise, be threatened by artificial intelligence (AI), it will be shown that a replacement income for those permanently displaced by digitalization, namely universal basic income (UBI), has become a topic of public discourse. Finally, offline labour platforms are a recent business phenomenon and their place within an evolving public policy response raises questions for further research.

I start by taking each of the three ‘abnormal’ or pathological forms of the division of labour in turn and assessing how each might be relieved in respect of offline labour platforms by one or more recent developments. These are, respectively, the EPSR, policy changes by individual member states and Uber’s new offers to its workers.

### **10.1 Meaning and value of work**

Changes from any of these sources that bestow a greater sense of meaning and value on work for the individual can be summarised as ‘empowerment’ - not in a confrontational sense but rather, as Durkheim intended, so that anomic conditions of work can be relieved for gig workers and, consequently, anomic feelings they might themselves be induced to feel as a result.

A decent living wage, work-life balance and access to social protection are highly relevant and all are recommended in the EPSR (see Chapter 8, Table 8.4). Representation (the right to be heard, Principle no.8), however, may require a change to EU competition law (except where it can be shown that workers’ status as self-employed is misclassified). Of equal importance are skills training and, especially, the portability of an individual’s track record, ratings and accrued statutory benefits. These are more controversial. Training is not mentioned in the EPSR, and the concept of portability is a novel departure beyond the EPSR’s remit. For these, therefore we need to turn to the platforms themselves, specifically Uber, and to member states, and, principally to one in particular, namely France. It is also by no means assured that the recommendation of the EPSR will be implemented by member

states or realised through additions to the *acquis* as will be shown in a later section. We will, however, start with these.

### **10.1.1 Changes recommended by the EPSR**

Changes to three specific areas of employment policy are at stake in the gig economy. Firstly, these will be recapped, secondly how they are treated in the EPSR (as shown in Table 8.3).

The first set of changes concerns fair working conditions. These are contained in Principle 5 ('Secure and adaptable employment'), Principle 6 ('Fair Wages'), Principle 7 ('Contracts') and Principle 12 ('Social protection'). Each is premised on its applicability to all forms of work, 'regardless of the type and duration of their employment relationship'. It is unclear, however, how they will benefit gig workers because an employment relationship is assumed in every case and this is what is precisely denied by labour platforms. It is hard to see them being applied to gig workers until their status is reclassified under national labour law or through the courts. Currently they are generally classed as self-employed with some exceptions among EU member states.

The second change is the right, currently denied, to representation contained in Principle 8. Currently, however, as has been shown, collective bargaining is not permitted under EU competition law to 'self-employed' workers, or those considered to be so.

The third change is revealed in an accompanying Communication on the establishment of the EPSR (EC 2017c:24) in which member states are invited to adapt their social policies in the light of 'the emergence of new forms of work'. It aims to make social provision a right, rather than a recommendation and that it should 'cover the whole range of non-standard contracts for the provision of work which are increasingly prevalent in today's labour market' (EC 2017c:49,50). A 'right' suggests that failure by government to provide social provision in a specific case could be challenged at law. Social provision, moreover, 'should be extended to the self-employed' and, perhaps of greatest relevance to gig workers to 'people employed as workers and people working as self-employed'. Commissioner Thyssen for Employment, Social Affairs and Inclusion described Principle 12 of the EPSR as 'a compass for convergence of living and working conditions', and to this end she announced a consultation initiative 'Access to social protection' for self-employed and non-standard workers (EP 2017g).

These changes depend on the implementation of the EPSR which is not assured as will be shown in a later section. Meanwhile, changes at platform level that would promote the value of work performed on them are reviewed in the next section.

### **10.1.2 Changes by platforms**

I will start with Uber. Three months after the proclamation of the EPSR, Uber released a White Paper (Uber 2018) with further offers to its workers that is couched in terms that resemble those of government publications or from the Commission. It is addressed to 'Work and Social Protection in Europe' and 'supports the goals underpinning the EU Pillar of Social Rights'. It promotes equal access to the social safety net (as per the EPSR) but also to other requirements promoting a sense of value among workers, namely, lifelong learning, representation for independent workers and portable entitlements.

Uber is the only labour platform that has been found in this research to have made proposals of this kind (or in fact public statements by gig platforms of any type except for Airbnb and evidence to Taylor by Hermes). It suggests a timely awareness of the need for legitimacy in the eyes of policy makers both to improve a tarnished reputation and to counter changes in employment law that would undermine its business model. It continues, however, to resist its role as an employer (Uber 2018:30),

On the legal side, in many places there is a perverse incentive in employment law which means that the more a platform does to protect those using its app to find work, the more likely it is that they are seen as an employee of that app. This would put at risk the very flexibility and independence that our model provides which, our drivers and couriers say is the reason they choose to partner with Uber.

This statement echoes evidence quoted in Chapter 6 given by Hermes to Taylor (2017:79) of its willingness to help its couriers with their tax affairs 'providing such guidance does not put at risk their self-employed status'.

Both Uber and Deliveroo have recently offered their workers throughout Europe subsidised insurance cover in case of loss of work due to accident or illness, including maternity in Uber's case. The latter has gone further with the provision of access to tax and financial planning advice, optional transmission of its 'partners' earnings to the tax authorities (mandatory in France from 2019), representation in the form of roundtables, expo events and podcasts, driver appeals panels, support for skills and English language

training and an achievement summary letter (Uber 2018). Skills training is in the interest of labour platforms like Uber who claim that transitioning between jobs is facilitated by the flexibility of their model, while in-work poverty and precarity can be alleviated by higher-skilled workers able to transition with a recognised track record and accumulated entitlements irrespective of their employment relationship. Uber (2018) says that it recognises the importance of life-long learning in an era where automation and robotisation are likely to obsolete existing skills and has offered its drivers in the UK free English language training in speaking, listening, reading and writing, and paying for them to gain a qualification through an online learning platform. Although Uber strenuously contested the level of English necessary for its ride-hailing service (Rodionova 2017), greater fluency could prove instrumental in their moving on to better, regular jobs, given that a survey found that only 20 percent were 'white British' (Uber 2018:26). It is observable, however, that Uber offers its training on a strictly voluntary basis so as to avoid any semblance of 'employer' status.

It has been suggested that platforms should be required to make social security contributions on behalf of their workers (EP2018a:51) and that they should be brought within health and safety regulations. Uber has made no secret of its push towards driverless vehicles thereby reducing current costs and avoiding any more onerous employment burdens in the future. Its latest offers, as it acknowledges, also reflect an increasing competition for drivers. This would detract from the network effects on which the model depends and lead to the ever-diminishing cost of a ride and hence income for firms and drivers. A date, however, for wide-scale licensing of autonomous vehicles for taxi services is still a matter of speculation. In this respect, Uber's use of replacing humans by artificial intelligence (AI) follows a trend that many fear will threaten employment on a much wider scale than merely the gig economy. Does this mean therefore jobs at any cost so long as they last?

A further policy shift has been suggested in taxation from a diminishing labour force as the main source of revenue towards the added value and capital assets which firms derive from automation and digitalization. Changes in fiscal policy such as these by member states towards platforms would help to raise the value of work done on them. In Durkheim's terms, it would promote platforms' 'moral integration'. As has been shown, for Durkheim,

the division of labour, *is* the source of social solidarity, not the cause of class struggle. Individuals (which in this case also means firms like gig platforms) can be thought of as organs of the body and each can contribute to the healthy functioning of the organism as a whole providing that that each one conducts itself on a moral basis. If this seems overly idealistic (and optimistic), at least the evidence shows us that Uber (and others) are learning that treating their workers more humanely is in their own self-interest. It suggests a dawning sense of responsibility for an emerging 'new social class, the collaborative class, that needs social and economic safeguards' (CoR 2016a:31) that is not simply to be exploited for all it is worth as the embodiment of flexible capitalism and extreme commodification of labour. It also shows an acknowledgement by these platforms that work done on them is not merely on a casual basis.

A contrary effect, however, might be to drive labour platforms such as Uber away from member states favouring new fiscal or sustainability policies such as measures to reduce emissions and restore air quality to levels required under EU legislation. For this reason Uber has announced its intention that all its rides in London will be in electric cars from 2025 (Topham 2018b). The profitability of offline labour platforms has been doubtful from the start. Uber, for example, has consumed great amounts of venture capital in repeated funding rounds without being able to disclose a global profit. The continuity, therefore of the labour platform model, and specifically ride-hailing and delivering is not assured. Yet platforms are popular with consumers and many workers like the flexibility they offer despite the insecurity with which it is accompanied. Major changes in public policy followed by regulations take time and, so far, policy consensus for them is generally lacking among member states. France, however, is an exception which has gone further than the UK or Germany (where it has also been proposed) in introducing the value-affirming concept of portability during working life.

### **10.1.3 Changes by member states**

An effect of gig work for participants who rely on it for the greater part of their income is being locked into jobs that offer few prospects of transition to better work. They have little to show for their labour which would make them more attractive for regular employment or more eligible for statutory entitlements. They need to be able to accumulate personal credit that can be used elsewhere. This is due to the absence of skills training and the benefit

system being tied exclusively to the worker as an employee or an ex-employee. The definition of 'employment' when applied to many gig workers has been shown to be unresolved which leaves them disadvantaged. Good work in a social market model implies sustainability and mobility through self-improvement underpinned by a safety net when it is needed. Achieving it means empowering the individual through skills training and the principle of portability of a personal track record.

For government, ensuring access to training is an important part of the approach to empowerment of the individual. Programmes have been proposed, and in the case of France are now being enacted, to counteract the economic dependency of the gig worker to which reference has been made by giving the individual the assurance of basic self-sufficiency regardless of his or her employment status at any one time. This is based on the principle of portability. Linking a number of entitlements to individuals rather than the job and making them portable and cumulative is now being introduced in France and the concept was 'often mentioned' in the consultation for the EPSR 'as an example of how principles of this kind could be made operational in an organisation of social protection and related employment services' (EC 2017g:11/12).

From January 2017 every salaried worker in France has had access to the initial roll-out of a Personal Activity Account (*Compte personnel d'activité, CPA*) with those classed as 'independent' (that is, self-employed) eligible from the beginning of 2018. The purpose of the CPA according to the French Digital Council, *Conseil National du Numérique*, an independent advisory commission established by the Presidency, is 'a tool of individual empowerment and security when changing jobs' and would (eventually) offer the possibility of creating for oneself a portfolio of portable social rights and in case of incapacity (CNNum 2016a:92f). The intention (Gouvernement.fr 2016) is to give everyone the means to plan for a changing world of work and to get by between jobs. The arrival of the internet and the digital age have given rise to transformations in both product and service offerings all 'stamped with the mark of digitisation'. Job changes are more frequent - not to say the rule. This means that many more people are alternating between work and looking for work, they have several jobs at a time, they are no longer locked into a single type of work, and are often moving from one employment category to another, for example from salaried to self-

employed and vice versa. As a result they are losing entitlements due to what has been called 'job lock' (OECD 2016:31).

The basic principle of the CPA is that rights are attached to the person - not their job or employment status. As the French Ministry of Labour (*Ministère du Travail*, 2017) puts it,

CPA is for everyone. For all workers, those in precarity or in stable circumstances, independents, salaried, in the private or public sectors, in small or large organisations. (*author's translation*).

In the UK, Taylor (2017:76) in his report for Government on the future of work, has a concept of a portable benefit platform as a 'third-party vehicle supporting gig economy businesses to make payments on behalf of an individual working through them. This might cover benefits such as sick leave, holiday leave, occupational illness or injury, pension plans, and further training'. He cites the example of such platforms in the US, where, however, they are concerned with benefits that are normally administered by private companies rather than by either national or local government. In his concept, portable benefit platforms could be linked to state-based welfare rights and entitlements. Linking and enabling the accrual of entitlements and benefits to and by the individual simultaneously empowers the individual to make decisions on which job opportunities they take up. In the US, Hill (2015:9) conceives an 'Individual Security Account' (ISA) based on the multiemployer plans that exist in many US industries and cover a very wide range of benefits. The current problem raised by Hill is that such plans are the result of hard fought negotiations with employers by strong craft or occupation unions with sufficient 'muscle'. Workers on labour platforms like Uber, Task Rabbit or Elance-Upwork do not have collective bargaining rights. Hill (2015:10) proposes that platforms such as these should be legally required to 'pay a few dollars' into a worker's personal safety net, pro-rated according to the number of hours worked or as a percentage of gross wages. Additionally,

The ISA and the funds in it, would be tracked with a personal ID number (such as a Social Security number) and overseen by the government (much as it does for an individual's Social Security account today) or private entities (regulated by the government).

For Hill this is better way than seeking redress through the Courts as has happened on many occasions, for example in the case of Uber drivers, or reclassifying the employment status of workers.

Procedures for gaining proof of the acquisition of new skills are slow, cumbersome and need simplification (CNNum 2016b: 2). Taylor refers to 'digital badges' (2017: 87,88) as a form of flexible online accreditation which employers and education providers could award to individuals enabling them to more easily demonstrate their skills and experience. Balaram et al. (2017:51) recommend that the recently formed trade body Sharing Economy UK (SEUK) collaborate with platforms and institutions (such as trade unions or Human Resource specialists like the Chartered Institute of Personnel and Development, CIPD) in a sector-wide training strategy to help gig workers upskill. CNNum (2016a:152f; 2016b:2) suggests that skills verification could be provided by non-commercial platforms set-up for the purpose. In Germany a portable 'personal employment account' for better social protection is proposed (German Federal Ministry of Labour and Social Affairs 2017:12) in which 'every young person is given a capital stock that could be used for qualification, sabbaticals, or as a subsidy for a start-up. Employees might have the chance to put money into that account as well so that it becomes sustainable over the life course' (Forde et al. 2017b:29). While this echoes France's CPA it appears to be more modest in scope since it uses the term 'employment' account - which, as has been shown, limits the extent of social protection available to the self-employed or employee-like persons. By contrast the CPA uses the wider, non-specific term 'activity' account.

Another aspect of portability for gig workers that is proposed is that they should be able to carry their verified approval ratings with them when they move from the platform and to share them with third parties. Some (for example, De Stefano 2016: 21; Balaram et al. 2017:60) maintain that gig workers' ratings should be independently verified in the light of losing work ('deactivation') through ratings failing to meet an arbitrarily set level against which they have no redress (see, for example, reference to 'emotional labour' in Chapter 2, section 2.10 and Chapter 7, section 7.1). Balaram et al. (2017:61) suggest that independent peer review hearings could be supervised in the UK by the industry trade association SEUK (Sharing Economy UK) and a civil society organisation. Initiatives such as these suggest an affinity with the occupational groups proposed by Durkheim. Uber (2018:21) claims it has set up a 'Driver Appeals Panel' where unfavourable ratings that might lead to deactivation are heard by other drivers. In France, for example, it says it has followed the panel's

recommendation in every case. To what extent, it may be asked, however, is such peer review independent when most drivers will be economically dependent on Uber?

The OECD (2016:32), however, is concerned at the possibility of falsehood, misuse and also whether inter-platform ratings can really be comparable. The European Parliament (EP 2017d:7/8) reports that reputational systems are as susceptible to corruptive measures as any other market phenomena and need to function in a fair and transparent manner in order to create a level playing field for all market participants.

A right provided under CPA which could be of specific advantage to gig workers is gaining access to all their payslips. Organisations are required to provide these in a familiar electronic form at any time requested. Having oversight of their pay and hours over a period in an easily communicable way would help gig workers to determine the hourly rate for the work they have done. This is not necessarily clear given their irregular hours and may even be less than the national minimum wage (NMW) as has been mentioned in Chapter 6. In this respect, the provisions of CPA are an alternative to digital audits of the type proposed by Taylor (2017:37) and Sundararajan (2017:24). According to Uber (2018:21), its app now permits drivers, should they wish it, to share their fare and 'other information' directly with tax authorities.

The right to training and lifelong learning, which is a principle of the EPSR (EC 2017a), the attachment of social protection to the individual rather than employment status (*Sénat* 2016:41; Taylor 2017:76) and the independence and portability of ratings and personal achievements, are directly relevant to the compatibility of labour platforms with the social market model. Those who work on them, especially the least skilled, are currently locked in to a form of labour that few would choose as 'good work'. Such reforms would set them free without necessarily re-categorising them as employees or gig firms as 'employers'. On the contrary, dependency works both ways and it could be expected to add to the latter's ability to retain the workers they need.

## **10.2 The 'forced division of labour'**

The second of Durkheim's abnormal or anomic states arises from the apparently ceaseless intensification of the market economy in which production (of goods or services) is largely decoupled from specific demand. Financed by the stock market, debt and venture capital, workers are hired or laid off speculatively according to the unpredictability of demand which

is generally underpinned by a pool of unemployed labour. Workers are detached from traditional occupations and environments (the 'expropriation of the worker from his means of production' in Marxian terms) and forced (rather than 'spontaneously') to labour wherever they can make a living, leading to a breakdown in social cohesion. Precarity results which is experienced most keenly by those most affected by 'external inequalities' (Durkheim [1893]1960:373-4), namely the least qualified or most vulnerable sections of society. Its relevance for offline labour platforms and how it might be relieved are outlined as follows.

The prevention of precarity in atypical work is an objective of the EPSR (Principle no. 5) but is only supported by the rhetorical statements of Principle 5 ('Secure and adaptable employment') and Principle 6 ('Fair wages'). As has been shown (Chapter 9, section 9.3.1), Durkheim refers to the inequity in the balance of rewards for those who employ and those that have no option but to accept the most meagre returns into order to survive. Not only does this mean low wages but also insufficient hours. In the case of Uber we have seen the wasteful effects of surge pricing. New York has recently taken a lead in legislating to cap the number of ride-hailers allowed in the city which has grown very rapidly in the past three years and in mandating a minimum hourly rate for Uber and Lyft drivers (Campbell 2018). Uber has announced a cash bonus to high frequency drivers and an allocation of reserved shares for them in its forthcoming stock market flotation (The Economist 2019:61). This shows a further awareness by the platform of resentment by its workers at their treatment which leads to the third of Durkheim's abnormal forms in the division of labour and its possible relief. This is the subject of the next section.

### **10.3 Inadequate contracts**

It will be recalled (in Chapter 9, section 9.3.1) that Durkheim asserted that all objects of exchange have a social value and that common morality condemned contracts in which the weaker party is exploited at the expense of the stronger which gains the lion's share. Principle 7 of the EPSR is very specific about the need for clearer and less abusive contracts in atypical work. To this end, the Commission has taken the initiative (EC2017j) for a legislative change despite previous denials, already referred to, of making any specific additions to the *acquis* in respect of the collaborative economy. Such a change, as part of its REFIT programme for better regulation, had already been under consideration during a

consultation period and would apply to all forms of work, typical or atypical. The proposed changes seem to have been given added momentum by the EPSR. The current Written Statement Directive (91/533/EEC) requires all employees to be provided with a written contract at least two months after they start work. Due to the absence, however, of a universally accepted definition of the employment relationship, an estimated 2-3 million workers are currently excluded. Three major changes are recommended. Firstly, that it should be available at the outset, secondly that procedures in case of dismissal should be both fairer and more transparent and thirdly, of particular importance to the gig economy, that it should apply to all employees or workers. Under the proposals, employers will be required to inform workers about social security protection that might arise from their relationship but currently, labour platforms do not recognise any employment relationship. So far, reaction from industry, by contrast with the unions, as might be expected, has not been favourable (see for example Chapter 8, section 8.4.1, UK Dept. for Business, Innovation and Skills 2016; section 8.4.2 European Collaborative Economy Forum 2016a:14 and 2016b).

The proposed changes are criticised for introducing further expense and hindering flexibility which recalls the discussion about contrasting priorities and values in Chapter 3. The REFIT process is perceived by some to favour business rather than workers' rights. It is viewed as deregulatory in nature and 'rather than improving protection with its objective of cutting the 'red tape' is injurious to the very existence of the EU-level social *acquis*' (Rasnača 2017:31, drawing on Van den Abeele 2014). They see it as 'underpinned by a cost–benefit analysis which does not yield easily to a satisfactory assessment of social rights and social values'.

The proposed directive on transparent and predictable working conditions (EC 2017j) appears to be an exception. It would be particularly beneficial to Uber drivers and Deliveroo riders if it prevented their terms of service being changed at will. Examples are Uber's increase in its commission or reduction in the price of a ride and consequently of the hourly rate for its drivers, constantly changing 'small print' rules (see Chapter 2, section 2.4.2), or Deliveroo's summary change from hourly rate to pay per delivery. The new directive would also prevent adverse treatment in case of a legal challenge such as imposed by Deliveroo until it revised its contract (Booth 2017). A further advantage for labour platform workers would be clarification and interpretation of the Working Time Directive (WTD). Although it

has implications for both health and safety and work-life balance there is no mention of it in the final text of the EPSR. The Commission's intention was that it should be applicable to all workers according to the Court's definition of work but, as with other changes, it is national labour law that prevails. Significantly, some Uber drivers won the right to a cap on their maximum hours when they were ruled to be 'workers' by a London Employment Tribunal suggesting that local activism supported by a major trade union (the GMB in this case) may be more effective in some cases than the non-binding principles of the EPSR's rhetoric.

In the sections above, the present incompatibility of offline lab platforms with the European social model has been illustrated with reference to Durkheim's three abnormal or pathological forms of the division of labour, and how these might be alleviated by the EU, member states and platforms themselves. Much might be achieved in this way. There is little evidence, so far, however, of the devolution as Durkheim proposed, to non-state occupational groups or corporations of regulating working conditions in the gig economy, although the prospect of a measure of participation by them has been raised (see Chapter 9, section 9.3.3). Durkheim, it will be remembered, held that regulation was a necessity for liberty, not a constraint. This means restraining, voluntarily or involuntarily, the anomic tendencies of today's gig firms. Failure by them to take heed may have existential consequences because their value to the wellbeing of society - their 'moral integration' in Durkheimian terms - will come under serious doubt. The decision to regulate, however, as has been shown throughout this thesis and particularly in Chapter 8, is a highly controversial issue. Obtaining social justice has been an objective of the EU from the outset and the EPSR is only the latest attempt and some might fear the last chance, to achieve it. Moreover, the intentions of the EPSR are couched in general terms of public policy, and in any case, will rely on implementation by member states should they wish to, unless required to by new directives. The prospects for its implementation are reviewed in the following sections.

#### **10.4 Social Europe - last chance or a 'social triple A'?**

The convergence of the gig economy with the aims and practices of the social market is still in doubt and may yet be frustrated. The EPSR is the latest of a series of intermittent social policy initiatives since the Founding Treaty as outlined in Chapter 8, Figure 8.2. Vanhercke, Ghailani and Sabato (2018:154) draw attention to the fact that '60 years on demonstrates the EU's social dimension is truly at a crossroads'. Viewed from the aspect of adherents to a

pro-values/pro-social justice paradigm as presented in Chapter 3, the overall picture is that the social dimension has been either neglected or measures taken have been somewhat ineffectual compared with other aspects of EU law combined with what Rasnača (2017:6) in a report for the ETUI calls 'a concerted attack on Social Europe over the last decade or so'. This has been attributed to two causes. The first is to the continuing pressure of deregulatory measures in the Single Market as referred to by Scharpf and discussed in Chapters 4 and 8. The second, and more recently, is due to austerity measures imposed since the financial crises following the banking collapse of 2007/8. The recession following the latter may also be partly responsible for the rise of the gig economy - combined with ICT innovations that have made it possible. Consequently the EPSR 'has been treated as the last hope in re-establishing a belief in a genuinely social Europe' (Rasnača 2017:37). Viewed, by contrast, from the aspect of a pro-market/pro-laissez-faire paradigm, however, the social market, and specifically EU labour market legislation has impeded economic growth by imposing additional burdens on business and reducing flexibility.

Germany has for long been regarded as the exemplar of the social market in Europe but cracks have appeared. The Hartz reforms of the first decade of this century limited unemployment benefits and many companies have opted out of industry-wide collective agreements. Yet these changes have coincided with, or arguably been responsible for, Germany's strong economic performance despite the financial crises following the banking collapse by which it was relatively unaffected. In France, which suffered worse, attempts to reform its high level of employment protection were blocked, while in the UK zero hours contracts and austerity cuts in welfare entitlements prevailed. Is there a future for the social market model in a world of global competitiveness? Only the smaller Nordic countries following Denmark's flexicurity model appear to be successfully managing to maintain it. Yet the social market model is a cardinal principle of the EU and convergence towards it a driving impetus of integration. An EU that abandoned it would revert to little more than a common market with which it started, or the European Economic Community as it was formally known, the emphasis being on economic rather than social. It is doubtful in any case that such a separation is sustainable without increasing levels of inequality and long term decline that will eventually have to be addressed in order to maintain social cohesion.

The digital revolution, referred to in Chapter 2 and which has given rise to the gig economy, is transforming the world of work. Managing this transformation while adhering to the social market model will require 'trade-offs between what is possible and what is socially desirable . . . between those new technologies which we regard as improving our quality of life . . . and, on the other hand, innovations which have destructive potential or violate rights regarded as the basis for social coexistence' (Jürgens et al. 2017:203, 2017, 2019). In Germany, the welfare state is seen to play a key protective role 'in maintaining social cohesion in the transformation process and hence in ensuring its success. . . . The social partnership and codetermination are central pillars of the social market economy'. Codetermination is described as 'the trade mark of the social market economy and a guaranteed right'. The term generally refers to works councils and collective bargaining by the social partners which have been outstanding features of the German economy. But this has, so far, applied only to manufacturing, not to services which could be described as a 'codetermination desert'. Gig workers fall into this category and have no such opportunities as discussed in Chapter 7. Some evidence was found for union support for platform workers in Germany and the UK and the potential for cooperatives elsewhere but so far they have made very little impact in the gig economy. The right to collective bargaining occurs regularly throughout the evidence for this thesis but gig workers do not have access to it as long as they are classed as self-employed which runs counter to EU competition law. The transformation required by the digital revolution is no less than the transformation of the social market into what has been described as the 'digital social market' (Jürgens et al. 2017:222) or a 'digital agenda for social Europe' (Schenk 2016:151).

With the proclamation of the EPSR, however, Commission president Juncker is ambitiously aiming at achieving a 'social triple A' in the EU (EC2017d). By contrast with the long and inconclusive history of 'social Europe', the gig economy is a new arrival and a radical departure from standard forms of employment, one that could without exaggeration be described as shock to a project that is still (and possibly always) in a state of evolution. The implications of Juncker's objective in this area of public policy are discussed below.

It has to be questioned, however, to what extent such policy-making will have a material effect on improving the working conditions and social protection of labour platform workers, at least in the near term. Not only, as will be shown, are there practical difficulties,

in implementing some of its recommendations which so far remain unresolved. There is also opposition to them. The EPSR could turn out to be yet another set of good intentions to add to the long list of similar 'social' initiatives referred to above and in Chapter 8. These doubts are the subject of the next two sections.

### **10.5 Is the EPSR enough?**

The EPSR draws attention to 'gaps between the current EU social *acquis* and recent developments on the labour market' (EC 2017k:2). The present research suggests that these have been overlooked while more attention has been paid to areas of economic, that is to say market, policy. While the principles of the EPSR are non-binding, they may, indirectly, have, or come to have, some legal basis. The proclamation of the EPSR is intended primarily to stimulate a political response in the member states of the eurozone and thereby promote convergence. They (and all members) are enjoined to respect the social clause in Article 9 TFEU (Treaty of Lisbon),

In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.

Giving weight to this objective, the principles of the EPSR will from now on be monitored on the EU Scoreboard and form the basis of the country specific recommendations (CSRs) made in the half-yearly progress report known as the European Semester of economic policy coordination. These are soft power instruments which are not legally enforceable except in the case of some areas of economic policy (such as the so-called 'Six Pack' and 'Two Pack' [EP 2014] - legislative measures to strengthen the Stability and Growth Pact following the financial crisis of 2007/8). They could, however, possibly establish binding benchmarks in future, provided that 'statistical information delivered to the Scoreboard is relevant and has binding character in the Semester' (Rasnača 2017:27). This recalls the dearth of robust data discussed in Chapter 6 of this thesis. Further doubt has been expressed by Piasna (2017:5) over the appropriateness of the indicators particularly with reference to employment issues and the quantity (for example upskilling of the workforce) rather than quality of work. Moving social policy to the Scoreboard, with its preoccupation with the common currency and the internal market, may have the consequence of displacing it ('moving it elsewhere,

threatening or hollowing it out') as an autonomous policy area (Dawson 2018:192). Nor is the use of soft power new as an instrument of governance in this field. It was introduced in the form of Open Market Coordination under the 2000 Lisbon Strategy but subsequently eroded in its 2004 revision and effectively abolished in its relaunch in 2010.

It is hard to see how the unfavourable employment conditions of the gig economy can be addressed at EU level unless a breach in the existing social *acquis* can be demonstrated (a technical question), or, failing that, new directives are brought forward, or ultimately, a revision to the Treaty (political questions). In this respect, the Commission's noted 'regulatory reluctance' in this field seems to be changing with the EPSR. Following its proclamation, the Commission has brought forward a proposal for a directive, which was already under consultation, on 'transparent and predictable working conditions in the European Union' (EC 2017j). This suggests an evolution in attention towards the social impact of new forms of work rather than the market aspects that it maintained were adequately covered by existing regulation. Under the new directive, gig workers would benefit from the proposed changes to the existing Written Statement Directive and clarification or re-interpretation of the Working Time Directive.

These, however, may not be the only ways that influence is brought to bear on member states that may lead to a legally enforceable basis. Firstly is the emergence of a political consensus for action at EU or national level. Secondly, soft law instruments have been interpreted in judgements by the CJEU and thus acquired a harder legal basis. An example is the EU's Charter of Fundamental Human Rights proclaimed in 2000 and eventually given legal effect in the Lisbon Treaty (TFEU) in 2009. Thirdly, the EPSR is seen by some (ETUI 2018:66; Müller and Schulten 2017:95; Rasnača 2017:33) as a shield against the Commission bringing forward any legislation that would prevent member states from implementing its principles. If this seems at first sight inconsistent, even counterintuitive, it should not be given the Commission's tendency, as has been demonstrated in this thesis, towards prioritising market issues, namely deregulation, competitiveness and growth, ahead of the social protection of workers in the platform economy.

Despite the proclamation of the EPSR, it has its opponents as will be shown in the next section. Not everyone is agreed that changes in public policy are required or that the practices of labour platforms need to be brought within the ambit of the social model.

## 10.6 Pushback?

A question that is asked is whether 'the EPSR a light at the end of the tunnel, a sign of a paradigm shift and the beginning of a more serious development of the EU social dimension, or is it merely an ineffectual distraction?'(Rasnača 2017:8). Might it eventually instrumentalise the social clause (Article 9) in TFEU? Whatever legislative mechanisms might be available, an inescapable conclusion is that it depends upon political will which is informed by the contrasting paradigms discussed in Chapter 3 of this thesis. This is illustrated by two aspects of employment that could improve the conditions of gig workers but which are nevertheless contested. Firstly, the social partners are not on the same side in the case of the Written Statement Directive has been shown above, and, secondly, the economic imperative of competition sets the agenda for collective bargaining. Moreover, some do not believe that controlling the gig economy is a matter for jurisdictions and statutory regulation. Beyond protecting consumer safety, this should be left to market forces. This position is expressed by Niemietz and Zuluaga (2016) in their discussion paper on the UK's taxi industry for the Institute of Economic Affairs (IEA), a neo-liberal think tank. For them competitive pressures and trial and error will eventually determine what is tolerated through 'private' regulation and the emergence of 'regulatory brands' related to reputation, services offered and the suitability of their regulatory mechanisms (2016:37). There is no reference here, however, to the terms or quality of employment. The reports referred to, in the case of the ETUI and the IEA respectively, reveal a cleavage in political orientation with regard to the gig economy which was observed among some MEPs in Chapter 8. As noted above, proponents of the pro-market/pro-laissez-faire paradigm criticise EU labour law for over-regulation with particular attention to what they see as the largely perverse effects of measures such as the WTD and directives relating to agency, temporary and part time workers and those preventing discrimination against minority groups. None of these, however, materially affect the conditions of gig workers except possibly for a broader interpretation of the WTD.

Germany has been referred to as the exemplar of the European social market and whose loyalty to the process of further EU integration has been assumed not to be in doubt. The latter is now challenged by the rise of the *Alternative für Deutschland* (Alternative for Germany) party which recently won 17 percent of a poll of the most supported parties

(Reuters 2018). More significantly for the gig economy and its social effects are remarks made by the then federal finance minister Wolfgang Schäuble at his first meeting in 2015 with Yanis Varoufakis at that time finance minister of Greece. Schäuble is reported (Varoufakis 2017:211,212) as presenting his theory that the 'over-generous' European social model was no longer sustainable and had to be 'ditched'. Comparing welfare states in Europe with India and China where no social safety net exists at all, he argued that 'Europe was losing competitiveness and would stagnate unless social benefits were curtailed *en masse*'. Hans Kundnani (2018) argues that a 'competitive Europe' has now become the model for the Commission and of pro-Europeans led by Angela Merkel, which 'bears little resemblance to the one of the "pro-European" imagination with its emphasis on the "social market economy"'. In becoming more "competitive", suggests Kundnani, 'the EU may be hollowing out the model for which it once stood'. I would agree with this view in so far as it relates to treatment of labour platforms of the gig economy. Support comes from the evidence in Chapter 8 with the Commission's references to growth, competitiveness and creating a 'level playing field' for business. Moreover, the proclamation of the EPSR suggests an awareness of correcting a bias towards 'economic' or 'market' solutions, especially in the last decade, and a re-commitment to the principles of the social market model.

According to Durkheim, treating the abnormal forms of the division of labour could not be achieved by the state alone. The diversity of specialisation in an industrialised market economy was beyond its powers to regulate. In the above sections, I have drawn attention to initiatives by the EU and some member states to bring the gig economy (and all new forms of atypical work) more into line with the aspirations of the social market model. Their effectiveness for a number of reasons, however, was shown to be far from assured. We have also seen a growing awareness, perhaps yet only at an early stage, of a sense of responsibility by platforms themselves. In the absence of the devolution to non-state occupational groups or associations, or a so far unrealised intensification of the cooperative model, then it remains perhaps for the platforms themselves to provide more far-reaching solutions. Where these might lead to is imagined in the following section.

### **10.7 'Uberisation' - a new form of capitalism?**

Subsidised services offered to their workers by platforms and provided through third parties (such as insurance, tax and pension planning, training) may only be further opportunities for

making profit but taking these offers in the round, could this presage the advent of digital intermediaries eventually filling to some extent the policy gaps in social protection of workers demonstrated throughout this thesis and highlighted by the EPSR? Such an outcome leads to the envisioning of labour platforms as an intermediate form of management between traditional hierarchy and self-employment, and between monopolistic capitalism and cooperativism. They still exercise command and control over their workers, however, replacing the human manager with the algorithmic one. Slee (2015:101) referred to the latter as the manager from hell and fears of error without appeal have been expressed. Others have suggested their neutrality and lack of bias but algorithms are not exempt from the preferences and prejudices of those who create them (O'Neill 2016). The outcome might be determined by two contrasting factors. Firstly that, despite the good intentions of the EPSR, political will within and among member states will remain broadly insufficient to sanction costly policies for inclusive social protection and secondly that the business model of labour platforms will become unviable if they are obliged to treat their workers as employees.

The alleged peer-to-peer relationship between service providers and consumers and their description as platform 'partners' rather than employees implies a democratic departure from traditional subordination in this new in-between form of management but would only be substantiated where individuals working on their own account are not subject to precarity and abusive contracts and can rely on minimum in-work benefits, statutory entitlements and respectful treatment available to employees. Social protection would seem a requirement for those for whom 'flexibility' - the watchword of labour platforms - is a necessity, not for those for whom it is a lifestyle choice. If the state cannot or will not pay to ensure 'good work' - in the sense of the social market model and as defined by the ILO (2016:247) - then possibly platforms might go some way to doing so. Uber's latest offers could be seen in two ways. Firstly as a defensive response to an existential threat to its survival by the EPSR even though the Commission fulsomely supports the 'collaborative' economy, and secondly as a new sense of responsibility for a vulnerable 'new social class, the collaborative class' (CoR 2016a:31) that is emerging which needs social and economic protection as mentioned above (section 10.1.2).

It has been observed that Uber is the only labour platform providing physical services that has been found in the course of this research to have, albeit latterly, begun to address itself to the social implications of its form of employment. This silence itself raises a question given the frequent references to labour platforms engaged in ride-hailing, delivering, cleaning and caring in the literature although no estimate of the total has been found. In their analysis of different models of the sharing economy Constantiou, Marton and Tuunainen (2018) list thirty seven platforms in their database of which fifteen are platforms providing paid physical services. Of these Uber alone is categorised as 'global'. An impression is created from the media and Uber's own publicity that it has more participants than any other on-location labour platform in the EU, although it is confined to a minority of member states. Uber is the chief exponent of one of the four models identified by Constantiou et al. but the whole genre is characterised by them as gaining competitive advantage through 'mixing organizational and market coordination mechanisms' in a growing 'fluidity of organisational boundaries' achieved by a mastery of ICT. As Constantiou et al. put it (2018:233),

Traditionally, organizational boundaries are very rigid, strictly demarcating the internal workings of an organization from the external environment (e.g. insourcing from outsourcing, or employees from customers). In the digital economy, these boundaries are becoming increasingly fluid, and sharing economy platforms exploit this fluidity as a strategic asset that gives them considerable competitive advantages.

This raises, however, social and regulatory issues which are researched in this thesis, particularly the blurring of employees and non-employees, responsibilities towards them, the demarcation between work and the domestic environment and the possibility of exploitation.

What is at stake here is the compatibility of these new fluid forms, specifically those enacted by offline labour platforms, with a social market model. A growing awareness of this disjunction has been observed by the response of the Commission, following a period of public consultation, in the form of the EPSR. How much effect will it have? The impact of its principles and recommendations on member states is, ultimately, a political question and not all stakeholders are agreed on the necessity for them.

Should the solutions, informed by a Durkheimian diagnosis of the abnormal forms of the division of labour outlined in this chapter be undermined by the large-scale elimination of jobs that gig workers might perform along with many others classed today as 'regular' jobs, has led to speculation about the possibility of a Universal Basic Income. The next section presents an outline of the present discourse.

### **10.8 The end of work?**

Some fear that the collaborative economy will bring an end to labour as we know it today. (De Groen and Maselli 2017:17)

Francis Fukuyama (in)famously imagined the end of history with the disintegration of the Soviet empire and the abandonment of communism, his premise simplistically misconstrued as the final triumph of Western liberal democracy. Does the rise of the gig economy herald the end of work 'as we know it'? Will it undermine 'the foundation of social and economic security that underpins society and enables a decent life' (Balaram et al. 2017:34). To be able to provide these, the state depends on taxes and national insurance contributions from people in regular employment and their employers. These are now being eroded by the gig economy as discussed in Chapter 7. Unless a proportionate number of decently paid new jobs are created by the digital economy, then some other way needs to be found to provide a basic means of subsistence. That is why the concept of Universal Basic Income (UBI) is now a matter of debate. This would be complementary to paid work where available, not instead of it. Some believe that the battle for redistributive social justice is already lost due to the tax loss accompanying the rise of the digital economy (CNum 2016a:178,179).

A perennial accusation of capitalism is that to make profit reliably necessitates the continuing availability of a pool of unemployed workers whom it can hire (and fire) when required at the lowest possible cost. It reduces labour to the status of a commodity. The application of automation and artificial intelligence (AI), and specifically to a labour platform such as ride-hailing, extends this effect on a wider scale than ever previously imagined. AI may bring benefits to society - for example it may be a cogent argument that driverless cars will be safer than human drivers. If we are to enjoy this and other benefits such as lower cost and greater convenience, however, then there is also an argument for compensating workers dispossessed of their livelihood, namely by a Universal Basic Income. Already small

scale trials, supported by the EU, have been conducted in Finland, Spain and The Netherlands but UBI raises two fundamental questions.

The first is purely instrumental - how to pay for it. The burden of taxation might be shifted from employment to taxing platforms as referred to above on 'capital and value added' but it might make them less viable and cause further damage to the economy. It would require political will of which there is currently little indication. Conversely, it might reduce welfare costs by lowering stress and incentivising unemployed people to look for work. The two-year Finnish trial was described as 'too short a period to be able to draw extensive conclusions from such a big experiment' (Henley 2018) but the indications were that it did not improve employment levels though it did appear to make people happier (Nagesh 2019).

The second question is perhaps even far-reaching, namely the value of work for the individual in terms of identity and self-esteem. Again, Germany might give us a lead. There is no 'active discussion' about UBI in Work 4.0 (German Federal Ministry 2017:180) because the authors believed that there was no need and found little support for such a fundamental change of system among the participants in their consultation. It would risk a new division between those, a minority, who still found well-paid jobs provided by the new technology and the majority dependent on the basic income. Nor could the latter turn to the state to help them find work. The result would be 'an exclusive labour market for the privileged' or, as the unions in Germany see it, 'a neoliberal redistribution mechanism that disadvantages those who are really in need of support' (Forde et al.2017b:30). Instead they favour a minimum wage for platform workers linked to the minimum wage for wage labour. Greater inequality is also foreseen by Henning Meyer (2018:91). Given the possible absence due to technological unemployment of 'just working for a few days' to earn more money than basic income provides, the digital economy would result in a split between a new underclass and an economic elite. Responsibility would be lost for those left behind, replaced by 'flat taxes and the abolition of public welfare provisions'.

In my view, UBI is a fruitless distraction. Firstly, the scale of the predicted losses in regular jobs is speculative (Autor and Salomons 2017). Secondly, how to pay for it remains unresolved. Most importantly, however, it undermines the value of work *per se* and thereby risks reinforcing the anomie referred to in Durkheim's first abnormal condition of the

division of labour. As Durkheim put it in *L'éducation morale* (1925: 4-6 and 13-15, cited in Giddens 1972:218),

Idleness is a bad counsellor for collectivities as well as for individuals. When individual activity does not know where to aim at, it turns against itself. . . . Just as work is the more necessary to man as he is more civilised, similarly the more advanced and complex the intellectual and moral organisations of societies, the more it is necessary that they provide new substance for their increased activity.

Work, equitably regulated, requires adherence to rules both by employers and the employed. Under these conditions, according to Durkheim ([1893]1984:333) the division of labour is the source of social solidarity. It is a moral force. Both are lacking in UBI.

More immediate, more practical and more consistent with the Durkheimian analysis than UBI, is how pay for the social protection of workers still employed when labour platforms do not treat them as such and platform workers themselves may not contribute their full share of social security contributions like employed (or even self-employed) people. Here, there is a case for requiring labour platforms to pay the employers' share of contributions and to ensure that they collect and pass on the workers' share. This, however, poses several questions. Firstly, labour law would need to be changed to make platforms take on a responsibility currently imposed on employers. Uber strenuously rejects such a role but has taken a lead in offering guidance and advice to its workers on their tax liabilities - of which surely social security contributions ('national insurance' in the UK) are one. So long as competitive price reduction in the service offered compared with 'traditional' incumbent business is the unchallenged objective, then labour platforms will refuse to accept such an imposition. If obligated to do so, they will either have to pass it on to consumers or retain a higher percentage of the price charged thereby disbenefitting service providers. It might mean less jobs for disadvantaged, minority and vulnerable groups who are unable to participate in the 'regular' labour market. A new recession could make the retention of labour platform jobs even more important.

UBI, therefore, may not be the panacea advocated by some and may be more conducive to anomie rather than less. For Meyer (2018:95) 'The core idea of the basic income is based on a libertarian view of society. Implementing it would individualise many aspects of our daily lives that are currently organised collectively'. Wilson (2018:63) calls UBI a fad but rejects the 'something for nothing' claim of its opponents,

[And] there is nothing socialist about encouraging a ‘society that owes me a living’ mindset. On the contrary, socialism is about being willing to go the extra mile for one’s fellow citizens, even in the absence of personal reward and indeed sometimes at great personal sacrifice. That runs counter to the hyper-individualistic anomie which decades of neoliberal economics have fostered - and universal basic income would not go against that strain.

The maintenance of the social model depends upon jobs that pay tax which includes welfare contributions. There seems to be little political will among member states to make such changes, although France has gone further than most with its status of *micro-entrepreneur* and new tax collection requirements on platforms from 2019. Instead, we might look to the platforms themselves, led by Uber, to go beyond the changes in its White Paper and apply the same ‘fluidity of organisational boundaries’ (Constantiou, Marton and Tuunainen 2018) to contributing voluntarily to the social protection of its workers who cross the border between ‘employees’ and ‘non-employees’ rather than being obliged to do so by law with the possibly unfavourable consequences for all. The assumption here is that there will still be labour platforms with employees, even some in ride-hailing, despite automation and AI.

The proclamation of the EPSR may turn out to be a defining moment in the development of ‘social Europe’ but, in my view, conditions for labour platform workers seem more likely to be improved, and more rapidly, by changes by gig firms themselves responding to reputational and competitive pressures as well as the threat of regulatory initiatives (see for example Anastasiadis 2014 in Chapter 8, section 8.5.2 and Niemietz and Zuluaga 2016 in this chapter, section 10.6). Nevertheless, changes in public policy that would seem pivotal are discussed in the following sections.

## **10.9 Policy recommendations and further research**

Recommendations in six areas of policy stand out from the foregoing and the analysis of the findings of this thesis.

### **10.9.1 Portability**

The first is extending the concept of the portability of benefits which, as has been shown in sections 10.1.2 and 10.1.3 of this chapter, is being pioneered in France and under consideration elsewhere. The idea is well captured by Schneider (2017:325) according to whom,

Part of securing fair work-lives on platforms is the development of ‘portable benefits’ that do not rely on any one employer, but that better suit the promiscuous connectivity of a platform economy

As has been argued above, enabling workers to retain some lasting value from gig work by building up transferable social security benefits seems a promising way to avoid the present disjunction between regular work and ‘atypical’ work, particularly if, as present trends suggest, gig work is to become more prevalent. In this way, gig workers could avoid being ‘locked-in’ to low-paying, precarious work. Two further components of portability are a written track record of performance and achievement which also includes the strengthening of existing skills and the acquisition of new ones.

### **10.9.2 Training**

The second is the right to training and re-training both for transitioning to new and better job, possibly while working on a labour platform, in which France also leads with the introduction of the Personal Activity Account (*Compte personnel d'activité, CPA*) which is explained in section 10.1.3. Elsewhere, as in the UK and Germany, a development of this kind is still at the conceptual stage.

Future research indicated for both portability benefits and training will be comparable evidence from a longitudinal study for their effectiveness for gig workers in jurisdictions such as France where they have been implemented and where they have not yet been. Although In the former case the reforms were initiated for standard employment in 2017, they have only applied to atypical work on labour platforms since the beginning of 2019. A further question will be the effect on gig firms themselves, whether for example, they have been encouraged or deterred in their operations or *modus operandi*.

### **10.9.3 Co-operatives**

A third policy recommendation is increased support for the democratically controlled and owned platform cooperative which, as has been shown in Chapter 7, section 7.5 has generally made very limited progress in the Europe. Indeed there is no mention of it in the EPSR. Nor may scaling-up be an insuperable problem ‘as long as it satisfies a local user base. Instead, the cooperative model can diffuse by replication instead of by scaling. Particularly, with the use of open source software, local initiatives can benefit from platform architectures tested elsewhere’ (Frenken 2017:12). Networking and cooperative federations

of small to medium sized cooperatives sharing functions under an umbrella structure are recommended by the New Economics Foundation (2018:13), an interest group in the UK.

Moreover, the promotion of education, as Schneider (2018:331) reminds us 'has been a pillar of cooperative enterprise at least since the Rochdale Society of Equitable Pioneers' famous store in mid-nineteenth-century England, and it remains a basic principle for the global cooperative movement', a principle notably promulgated by Durkheim. In short, 'platform cooperativism gestures toward a new set of options to consider, toward something policymakers can say 'yes' to' (Schneider 2018:333).

As I have demonstrated in Chapter 7, sections 7.5 and 7.6, platform cooperativism is still at an early, experimental stage. The future of 'any platform economy' will depend on the development of more democratic ownership' (Schneider 2018:335, 337) but so far research has been neglected 'on Internet cultures and economies' and he asks,

How are platforms owned and governed, and how could they be owned and governed differently? How does their ownership shape the platforms' structures of accountability? How do ownership models organize and limit the kinds of technologies available to people?

According to the New Economics Foundation (2018:20), platforms which at present 'undermine the employment relationship and the rights that go with it, and extract significant amounts of value' could be supplanted by co-operative platforms with benefits for users and workers provided the technical, financial and legal infrastructures were in place. This would imply that coops are, or will be, capable of replicating the digital technology of today's platforms. Coops are more widely established in continental Europe than the UK, among them in the traditional taxi sector in Germany and recently established collectives of bicycle food deliverers in several countries. Studies of their progress to date would assess their wider applicability to offline, on location labour platforms.

#### **10.9.4 Occupational associations**

Echoing Durkheim, a fourth policy recommendation is the creation of self-regulating non-state occupational associations for atypical blue collar workers on labour platforms. Such institutions, similar possibly to trade associations such as SEUK (see Chapter 9, section 9.3.3) or occupational bodies which represent and in some cases regulate the professions, would set industry best practice for working terms and conditions, including training and

transitioning to other jobs. They could be formally acknowledged or even approved by the state but would not simply be the locus for collective bargaining between the social partners - expressly identified by Durkheim as an endless conflict zone in which either unequal power relations triumph or anomie reigns. I have suggested (in Chapter 9 as above) that a model for such an institution for specific groups of offline, location-based labour platform workers (for example, in transport, delivery, caring) might be along the lines of the Gangmaster and Labour Abuse Authority (GLAA). This is classified as a 'non-departmental public body (NDPB) governed by an independent Board' (GLAA ) whose remit is to check that labour providers meet its licensing standards for health and safety, accommodation, pay, transport and training.

Evidence for feasibility of such models whether initiated by civil society or at arm's length by the state might be researched in the UK with the collaboration of independent actors such as the Chartered Institute for Personnel and Development (CIPD) and the Resolution Foundation to which reference has been made in Chapter 9.

Labour platform workers have used social media throughout Europe to protest at their terms and conditions. Echoing Rosenblat, more extensive fieldwork might be conducted for evidence in Europe of the extent to which informal work groups or 'alt-' (alternative) unions are being formed among themselves. Further data will be required to assess the development of more formal self-regulatory work associations, possibly supported by government and recognised by platforms.

#### **10.9.5 Collective bargaining**

Collective bargaining rights should be extended to platform workers to whom they are currently denied as they are treated as independent and self-employed under EU competition law (see Chapter 7, section 7.4), unless their status can be shown to be misclassified.

Three recent developments invite further research to assess their replicability (see Table 10.1).

**Table 10.1 Developments in collective bargaining**

Contracting parties	Date	Location	Sector	Benefits
Trade unions, riders collectives, Sgnam-MyMenu and Domino's Pizza Italia platforms	May 2018	Bologna, Italy	Food delivery	Min.wage, overtime, holidays, bad weather, bicycle maintenance, accident and sickness insurance, union rights
3F Union and Hilfr.dk platform	July 2018	Denmark	Home care services	Min wage, holiday, sick pay, pension and 'welfare' contributions.
GMB Union and Hermes platform	Feb 2019	UK	General courier services	Min wage, holiday pay, union representation

The development in Denmark was described as 'ground-breaking' (Uni Global Union 2018) and as the 'world's first collective agreement for a platform company' (HILFR 2018). In the UK, the GMB, has offered gig workers benefits under a new, optional status 'of self-employed plus' (O'Connor 2019).

The novelty of these developments lies in treating self-employed people engaged on labour platform as workers. So far collective agreements for the latter have largely been regarded as breaching competition law in Europe but as Aloisi (2019) puts it,

Collective agreements can introduce flexible measures to offset imbalances resulting from this [digital] transformation in a way that is faster and more accurate than through legislative reforms and individual litigation.

### **10.9.6 Taxation**

The possibility should be considered of platforms making social security contributions for their workers (EP2018b:51; EP2018c; Option 5). Currently this is not the case as the latter are treated as self-employed. The effects on the viability of the former, however, would need to be observed. France and Estonia have made it easier for platform workers to meet their income tax liabilities and the effectiveness in reducing fiscal losses by such measures should be researched.

To counter the problem of profits of platforms not being fully declared in the territory where they are made has led to considering taxing their capital and added value (EP2018c: Option 6). To avoid platforms choosing to operate in more favourable regimes,

however, will require 'EU-wide and international cooperation'. What are the implications for such a policy change and the available evidence?

### **10.10 Contribution of thesis**

I make two principal contributions in this thesis interrelated through the concept of compatibility with Europe's social market model.

The first is to labour studies. My thesis deepens our understanding of the gig economy, and more specifically, what are defined as digitally intermediated, offline, location-based, labour platforms (such as Uber, Deliveroo, City Sprint and Hermes), by situating the phenomenon in the historical perspective of the division of labour. My analysis goes beyond the current literature of the 'sharing economy' which is limited to an account of the disruption to regulation and employment practices of such platforms. I show that the organisation and algorithmic management of employment by them exemplifies an extreme form of the division of labour that justifies a re-assessment of its characteristic ambiguity between exchange value and social value. The 'gig' or 'platform' economy is in a state of transition and therefore predicting its trajectory is problematical. Informed, however, by a Durkheimian analysis, and evoking de Vaujany et al.'s 'trifecta of regulatory organisation', I have proposed some policy steps to be taken at supranational, national, local and firm level by which it might be reconciled and outlined a research agenda to find new solutions, among them self-organisation by workers themselves.

The second contribution is to EU studies. My thesis shows how regulation by the 'regulatory state, a fourth branch of government' as the EU has been described (Majone 1999) may not be effective in advancing the reconciliation referred to above. The findings point to the greater relevance in this case of normative values (such as enshrined in the recent EPSR), otherwise described as 'soft power', for problem solving in the quest for ever closer union than legislating for a level playing field for business or extending competences in the fields of employment and social protection. Nor might it be achieved through reclassifying of gig workers' employment status at supranational level as employment law is a national competence with a variety of different treatments which may not be readily susceptible to modification.

### **10.11 Summary and Epilogue**

The purpose of this chapter has been to draw some conclusions about the social incompatibility of offline labour platforms at the present time and present my own views about their future informed by a Durkheimian analysis of their malaise. Gig firms themselves bear a prime responsibility, if not purely for their own self-interest. The prospects for implementation of the EPSR were weighed. Improvements, however, in the terms and conditions of workers on offline labour platforms were shown to be likely to be realised sooner by specific policy changes by individual member states and the platforms themselves. These derived especially from opportunities for training, representation and the concept of portability of personal skills and statutory benefits, summed up as 'empowerment'. Further avenues of research in these areas were indicated.

In this thesis evidence has been presented and analysed of a phenomenon of our time, the gig economy and specifically the offline labour platform model, situated within the ongoing issues of Europe's social market model and the integration project. The evidence has suggested that it is not compatible in its present form with the aspirations that underpin the former, but also that the aspirations themselves are both far from being realised despite the longevity with which they have been held and are liable to resistance. The EU is making a renewed EU attempt at addressing the policy gaps, which have become more urgent as a result of the digital intermediation of labour markets and the looming threat of job losses due to AI and the platforms themselves are now faced with cooperating or perhaps risking oblivion.

This thesis has questioned the possibility of achieving Europe's cherished 'competitive, social market economy' at a time of exceptionally rapid technological transformation and proposed some solutions for doing so in respect of offline labour platforms. In this way, it has sought to fulfill its overall purpose of making a practical and theoretical contribution to management studies of a new form of work organisation and to the formulation of policy by the EU in response to it.

The perpetual friction, well documented in the literature, between economic utility (the reduction of human conduct to market exchange in Durkheimian terms) and social value (a moral concept) ever present in a free market capitalist system, however it is regulated, is highly visible in the present anomic state of the gig economy.

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**Note: All hyperlinks open 22 Feb 2019**

## **ANNEXES**

### **Annex I. EU Consultation question for EPSR**

‘Which branches of social protection and employment services do you consider to be most relevant for an EU initiative covering access for workers in non-standard forms of employment or self-employment?’

#### **a. Social Protection**

- i. unemployment benefits
- ii. sickness benefits
- iii. benefits in respect of accidents at work and occupational diseases
- iv. old-age benefits
- v. invalidity benefits
- vi. survivor's benefits
- vii. maternity and equivalent paternity benefits,
- viii. family benefits
- ix. healthcare
- x. long-term care

#### **b. Employment services:**

- i. guidance, counselling and placement
- ii. training and updating
- iii. rehabilitation and re-insertion measures

*Source:* EC 2017 C(2017)2610, ‘First phase consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges of access to social protection for people in all forms of employment in the framework of the European Pillar of Social Rights. See p.13.

## Annex II. 'A European agenda for the collaborative economy'

Accompanying press release for guidance of member states (edited for main issues ):

European Commission - Press release, A European Agenda for the Collaborative Economy  
Brussels, 2 June 2016

'The European Commission today presented guidance aimed at supporting consumers, businesses and public authorities to engage confidently in the collaborative economy.

These new business models can make an important contribution to jobs and growth in the European Union, if encouraged and developed in a responsible manner.

The Communication "A European agenda for the collaborative economy" provides guidance on how existing EU law should be applied to this dynamic and fast evolving sector, clarifying key issues faced by market operators and public authorities alike:

- **What type of market access requirements can be imposed?** Service providers should only be obliged to obtain business authorisations or licenses where strictly necessary to meet relevant public interest objectives. Absolute bans of an activity should only be a measure of last resort. Platforms should not be subject to authorisations or licenses where they only act as intermediaries between consumers and those offering the actual service (e.g. transport or accommodation service). Member States should also differentiate between individual citizens providing services on an occasional basis and providers acting in a professional capacity, for example by establishing thresholds based on the level of activity.
- **Who is liable if a problem arises?** Collaborative platforms can be exempted from being held liable for information they store on behalf of those offering a service. They should not be exempted from liability for any services they themselves offer, such as payment services. The Commission encourages collaborative platforms to continue taking voluntary action to fight illegal content online and to increase trust.
- **How does EU consumer law protect users?** Member States should ensure that consumers enjoy a high level of protection from unfair commercial practices, while not imposing disproportionate obligations on private individuals who only provide services on an occasional basis.
- **When does an employment relationship exist?** Labour law mostly falls under national competence, complemented by minimum EU social standards and jurisprudence. Member States may wish to consider criteria such as the relation of subordination to the platform, the nature of the work and remuneration when deciding whether someone can be considered as an employee of a platform.
- **Which tax rules apply?** Collaborative economy service providers and platforms have to pay taxes, just like other participants in the economy. Relevant taxes include tax on personal income, corporate income and Value Added Tax. Member States are encouraged to continue simplifying and clarifying the application of tax rules to the

collaborative economy. Collaborative economy platforms should fully cooperate with national authorities to record economic activity and facilitate tax collection.

The Communication invites EU Member States to review and where appropriate revise existing legislation according to this guidance. The Commission will monitor the rapidly changing regulatory environment as well as economic and business developments. It will follow trends on prices and quality of services, and identify possible obstacles and problems arising from divergent national regulations or regulatory gaps’.

### Annex III. Differing regulatory responses to Uber among EU member states

Source: Author's compilation

Most - least restrictive	History
GERMANY	March 2015 banned by Frankfurt District Court June, 2016, decision upheld by a Higher Regional Court <i>Sources: Frankfurter Allgemeine, Reuters</i> June 2017 German court refers licenced taxi drivers working for Uber to ECJ
FRANCE	June 2015 banned by French gov. (following <i>Loi Thévenoud</i> 14 Oct 2014) Sept 2015 decision confirmed by Conseil Constitutionnel, <i>Source: FT</i> . UberX allowed for licenced drivers from 2016. <i>Source: Conseil National Numérique</i>
SPAIN	Dec 2014 banned by Madrid court July 2015 Barcelona judge refers case to ECJ for ruling on whether Uber is a taxi or an eCommerce service. <i>Sources: BBC News, FT</i> UberX allowed from 2016 for licenced drivers, <i>Source: El País</i>
NETHERLANDS	April 2015 Uber liable to fines up to €1m, drivers criminalised Nov 2015 withdraws service <i>Source: Dutch News.nl</i>
BELGIUM	Sept 2015 banned by Brussels court. <i>Source: EurActiv</i> . UberX allowed from 2016 for licenced drivers with T-plate registered vehicles, <i>Source: Quora</i>
ITALY	May 2015 banned by Milan court. <i>Sources: Reuters, The Guardian</i>
SWEDEN	May 2016 withdrawn after drivers prosecuted. <i>Source: The Local</i>
DENMARK	July 2016 Uber declared illegal by Copenhagen City Court and confirmed Nov 2016 by Court of Eastern Denmark. <i>Source Reuters and the Mailonline</i>
UK	Oct 2015 The High Court has ruled that Uber's app. is not a taximeter and therefore does not break licencing laws. <i>Source: The Guardian</i> Sept 2017 Uber suspended in London on appeal. <i>Source: The Guardian</i> . June 2018 Uber given 18 month probationary period. <i>Source: The Guardian</i>
IRELAND	May 2016 Allowed provided drivers have a taxi licence <i>Source: Irish Times</i>
FINLAND	Allowed provided drivers have taxi permit. <i>Source: Bloomberg Technology</i> 16 Aug 2016. Government deregulation proposals blocked in parliament. <i>Source: Fortune</i> 21 Sept 2016
POLAND	May 2016 The Polish competition authority sees no grounds for intervention regarding Uber's activities <i>Source: International Law Office</i>
ESTONIA	June 2017 New law passed to legalise ride-hailing and relax some regulation for traditional taxis <i>Source: ERR News</i>
LITHUNAIA	Sept 2016 Ride-sharing legally formalised by government <i>Source: StartUp Lithuania</i>

#### **Annex IV. Treaty provisions relating specifically to Uber cited by the Court**

*The Court found that Uber, despite its contrary argument, was a transportation company which is not covered by the Services Directive.*

TFEU Chapter 3 Services, Article 58 (ex. Article 51 TEC):

1. Freedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport.

TFEU Title VI Transport, Article 90 (ex. Article 70 TEC):

The objectives of the Treaties shall, in matters governed by this Title, be pursued within the framework of a common transport policy.

Note: Geradin (2016:15) has argued that UberPop should not be treated as a transport service within Title VI TFEU. If it is, however,

it would not mean that national authorities would be entirely free to regulate the service as they wish

Geradin holds, for example, that under the Court's case law, discrimination against Uber on grounds of nationality would only be justified for overriding reasons of public interest 'provided that it is appropriate for ensuring attainment of the objective pursued and does not go beyond what is necessary for attaining that objective'. These would be either health, safety and the environment or to correct market failures, neither of which in his view are objectified in the Uber case. If Uber were considered to come under the Service or eCommerce directives, it could still be regulated in a proportional manner as exemplified by the innovative regulatory status of the transportation network company (TNC) in the US and the negotiated passenger transport company in Estonia.

The reference to UberPop seems to apply, so far, equally to UberX which has, as explained in the Introductory Chapter of this thesis, largely replaced the former in Europe. The Court ruling (Case C-434/15) refers throughout to 'non-professional' drivers using their own vehicles (i.e. peer-to-peer as originally envisaged by UberPop) even though according to the Opinion of the Advocate General, 'it is apparent that most trips are carried out by drivers for whom Uber is their only or main professional activity' (Analysis paragraph 47). No drivers are 'employed' by Uber but many (and all in France) are people who drive, or have driven, for their living in some capacity.

**This confusion illustrates the difficulty presented to regulatory systems by a new and still evolving form of economic activity enabled by digitally intermediated labour platforms and the nature of work by those participating in it. The concepts of the TNC and negotiated passenger transport company show, however, that they can be accommodated in an orderly manner.**

The status of UberX which aims to use licenced professional taxi drivers in Germany is currently awaiting the ruling of the Court (Case C-371/17)

# Annex V. Driver feedback and surveillance from Uber

Source: Casilli 2017



4.77★

## DRIVER RATING

Unfortunately, your driver rating last week was below average.

## PROBLEMS REPORTED

There were a few things riders in your city commonly reported. Here are some tips on how to improve:



### City Knowledge

Riders want to be sure you're following the best route. It helps to:

- Ask if the rider has a preferred route
- Always use GPS until you know the city well (remember to press BEGIN TRIP after you enter the destination)



### Car Quality & Cleanliness

Riders give higher ratings to drivers who:

- Make sure the car is always clean and smells nice
- Offer bottled water, gum, candy or mints
- Ask if they want to charge their phones, choose music and adjust the heat or A/C

## RIDER FEEDBACK

On the bright side, you received **49** five-star reviews out of 58 rated trips in the past two weeks. We wanted to share what some of these riders had to say.

*"great driver"*

← DITES-NOUS-EN PLUS

**Je souhaiterais connaître ma note**

À la fin de chaque trajet, chauffeurs et passagers sont invités à donner une note concernant l'expérience qu'ils ont vécu lors de la course.

Le système de notation permet de s'assurer que passagers comme chauffeurs sont respectueux les uns des autres. Seules les notations moyennes sont communiquées, la note individuelle donnée par un chauffeur ou un passager reste confidentielle pour un trajet donné.

Vous pouvez obtenir votre note moyenne en cliquant sur le bouton "Envoyer" ci-dessous.

Envoyer

**MERCI**

Votre note moyenne est de 5.0 étoiles.

OK

TELL US MORE

**I would like to know more about my mark**

At the end of each journey, drivers and passengers are requested to mark the experience that they have had ('vécu') during the ride.

The marking system serves to reassure both Passengers and drivers that that they are respectful of one another. Only average marks are made known, the individual mark given by a driver or a passenger remains confidential for a given ride.

You can obtain your average mark by clicking on the button 'Send' underneath.

SEND

**THANK YOU**

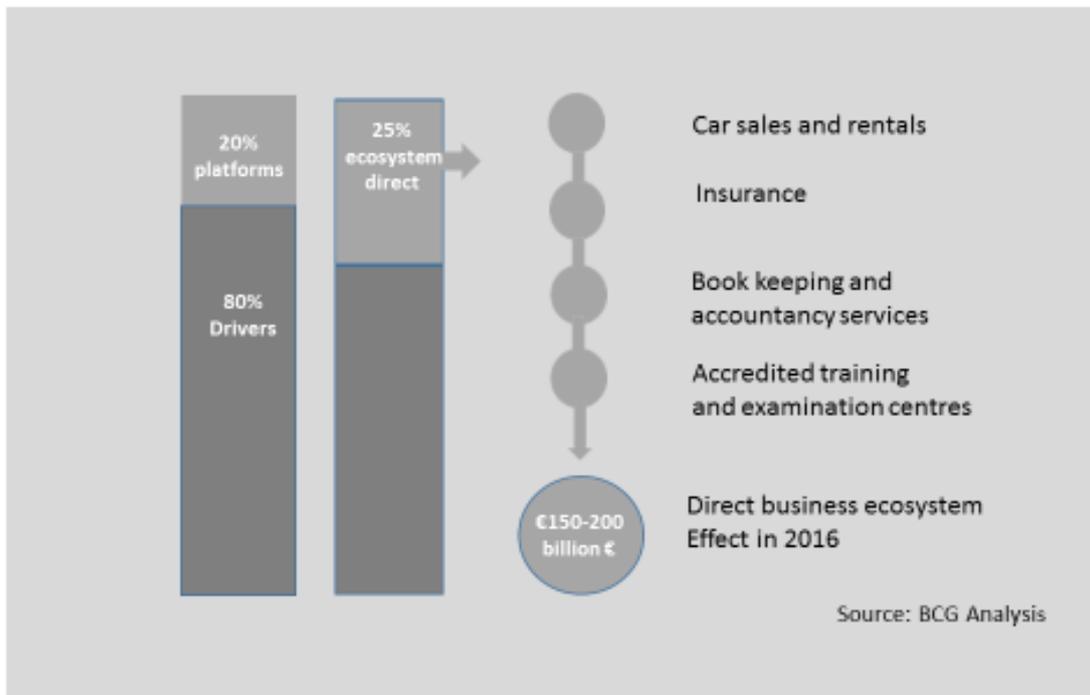
Your average mark is 5.0 stars

OK

(Author's translation. In a nice irony, the French verb 'vécu' is used which generally conveys the meaning of 'lived through' or 'gone through' an experience!)

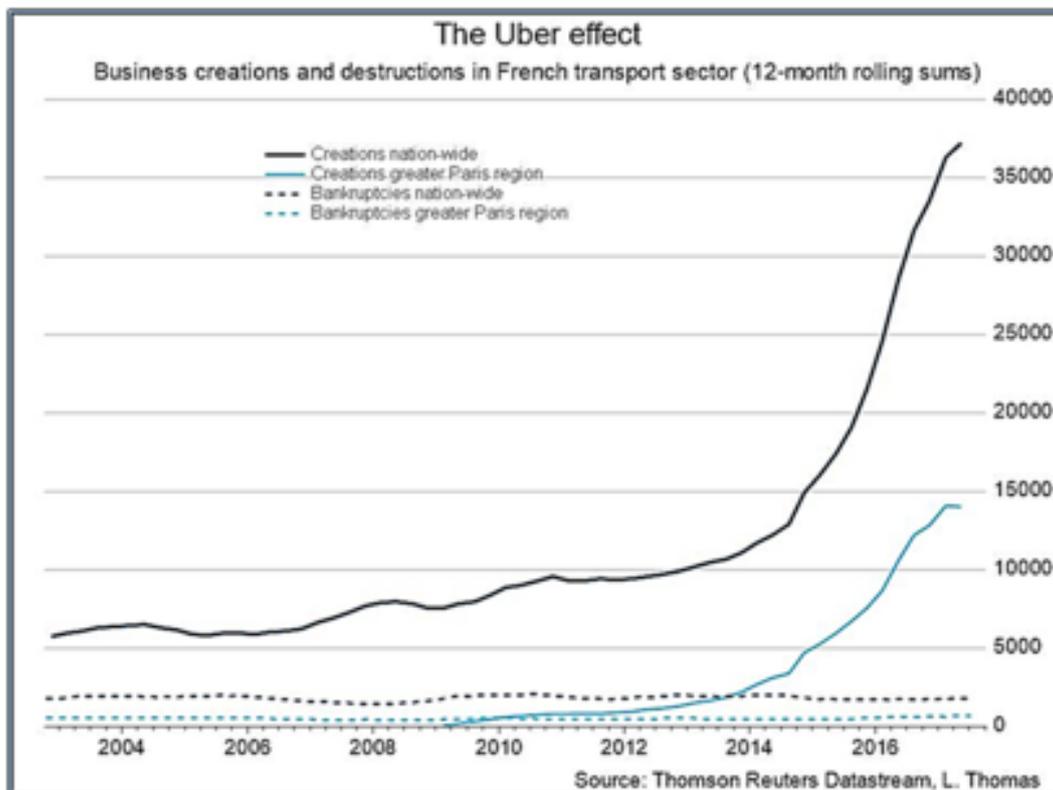
## Annex VI. Economic effect of ride-hailing in France

Source: BCG



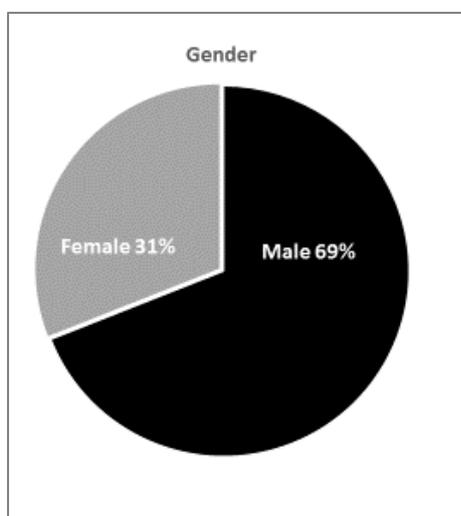
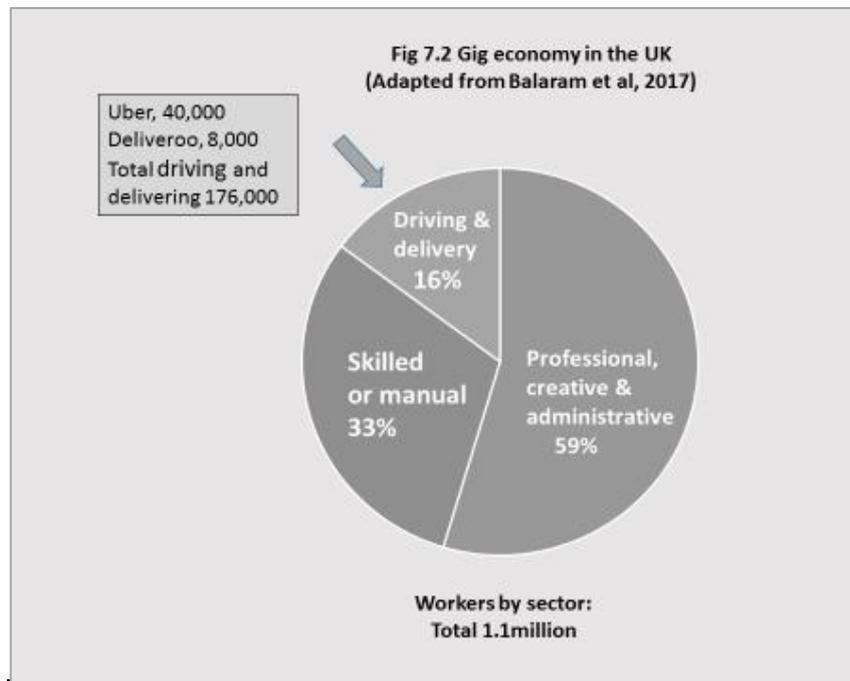
## Annex VII. The wider economic effect of Uber in France

(Source: Thomson Reuters Datastream)

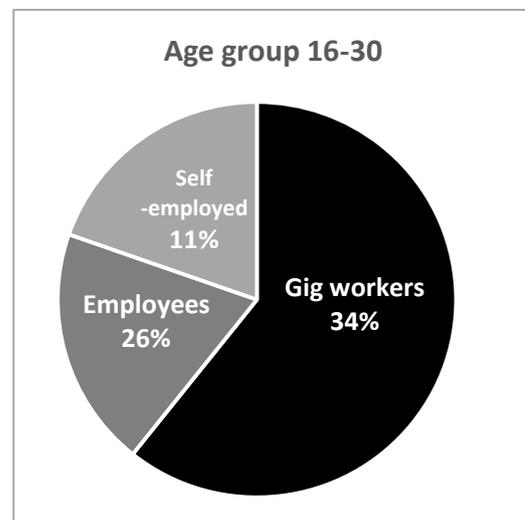


## Annex VIII. Summary gig economy statistics in the UK

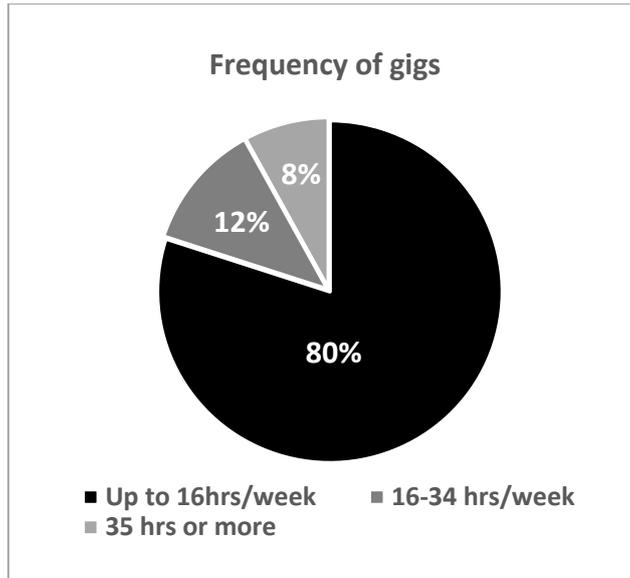
(adapted from Balaram et al., 2017)



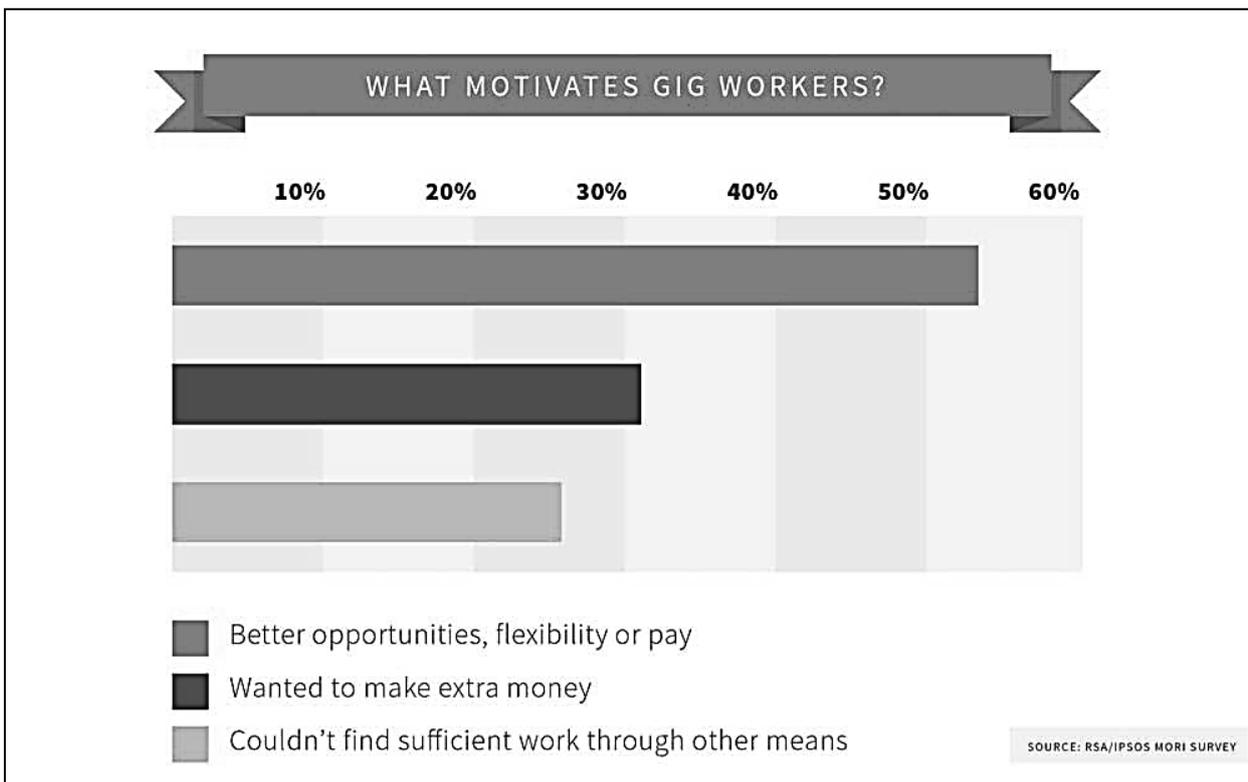
Women are half as likely as men to have tried some form of gig' work



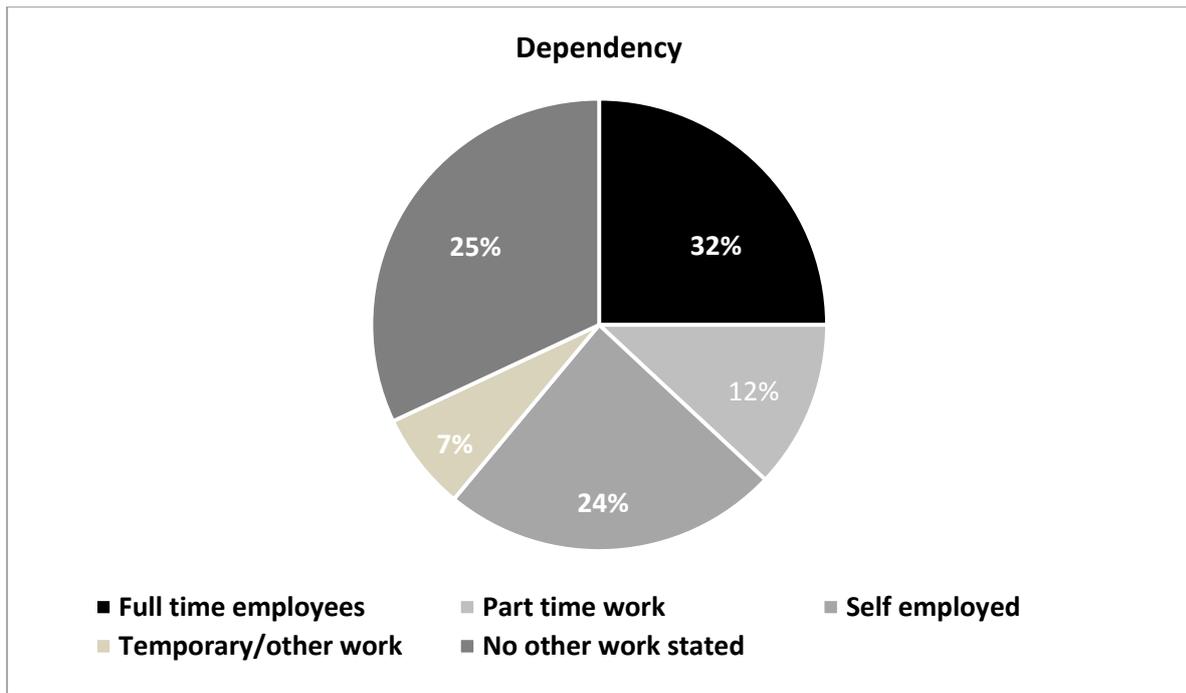
86% of gig workers are under the age of 55



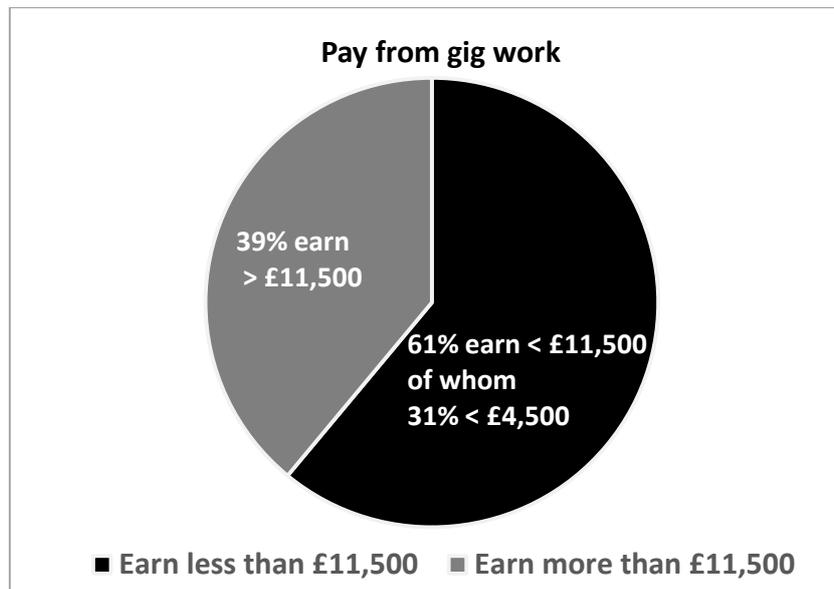
Those working 35 hours or more amount to 88,700 workers. Uber drivers (95% male) are among those who work the most hours and are in the 35-44 age group. Deliveroo riders (94% male) average 15 hrs/week and are mostly between 16 and 25



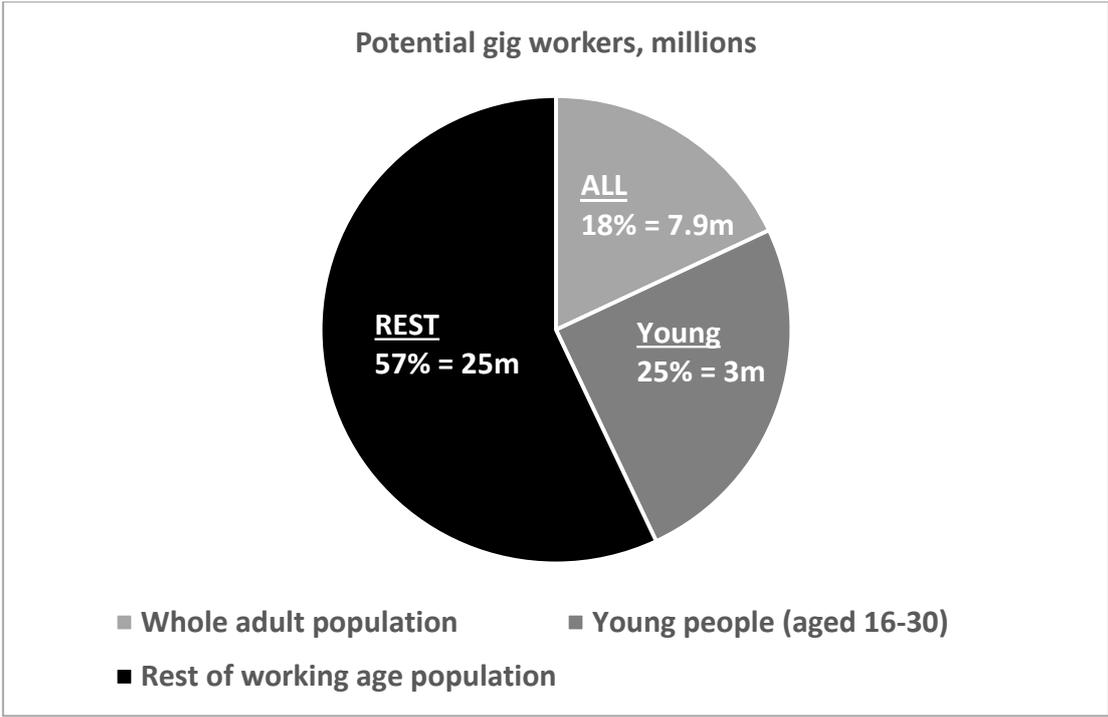
(Balam et al. 2017:22)



Given overlap due to some gig workers being both self-employed as well as temporary, Balaram et al. (2017) estimate that nearly 40% of gig workers are solely using platforms to source work



£11,500 - taxable threshold/personal allowance. Of all gig workers, roughly a third earn less than £4,500 from gig work (alone).



1 in 4 young people would consider gig work, a third of whom have a degree

## **Annex IX. Uber's operations in France**

### **A licensing entanglement**

The Uber story in France is a tale two halves - up to and after July 2015 when Uber suspended its standard UberPop service after it had been banned seven months before. According to the French *Sénat* (2015), the number of Uber drivers was 10,000, with 4,000 active the week before suspension. Their average earnings per annum were reported as €8,200 (although 87 percent had additional employment) and the number of regular passengers as 500,000. The service was replaced by the UberX model in which professional drivers ('*entrepreneurs*', not private individuals as the *Conseil National Numérique* puts it [2016: 58]), were permitted to work after obtaining a '*Véhicule de tourisme avec chauffeur*' (VTC) licence and using rented (sometimes luxury) vehicles. Conditions are fairly onerous for obtaining the VTC licence and many have opted instead for the easier LOTI licence (*Loi d'Orientation des Transports Intérieurs*) but which has the added disadvantage of only permitting two to nine passengers to be carried - a legal requirement that has largely been ignored so far but which the traditional taxi industry is pressing for strict implementation. Alternatively about half are salaried drivers working for transportation firms holding a DRE licence (Landier et al. 2015:3). The number of UberX drivers throughout the country was estimated at 12,000 (FT 2016), 80 percent of whom were working full time with many new drivers in the Paris area coming from the *banlieue* where high unemployment prevails.

### **Demographics**

The survey by the *Institut Français d'Opinion Publique (IFOP)* found that Uber's French drivers are also much younger than their counterparts in the USA. Uber workers in France are more likely to continue working on the platform with 64 percent seeing it as a long-term career and only 19 percent expecting to quit within two years. In the USA only 35 percent were still working within two years and no comparable data has been found for the UK. Flexibility is equally attractive in all three countries but the profile of the Uber driver-partner in France (and especially the Paris area) supports the view of Landier et al. that it is above all a route out of the poor *banlieue* in an EU member state (though not the only one) where youth unemployment is very high. Transitioning to employment could be further jeopardised if the rules of the LOTI licence on which UberX depends are strictly enforced. A quarter of Uber workers were previously unemployed (43 percent for more than two years)

and such a 'shock' could leave 40 percent of Uber workers unemployed after one year and 20 percent still without a job after two years (Landier et al. 2016: 17). By contrast only 10 percent of ride-hailing drivers were previously out of work in the USA while in the UK 14 percent of gig workers in the CIPD survey (2017:36) gave their reason for doing so as 'only because I couldn't find a traditional job with an employer'.

## **Annex X. The Principle of Subsidiarity**

Art.5(3b) TEU stated that,

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member states and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty

The principle of subsidiarity was endorsed by an interinstitutional agreement by the Council, Parliament and the Commission in 1993 and subsequently confirmed at various intervals and most recently in a clearer definition of the respective legislative roles of the EU and national parliaments (OJEU 2016).