

Platformwork: paradigm shift in labour law?

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**Universiteit
Leiden**
The Netherlands

Mapping the
gig-economy

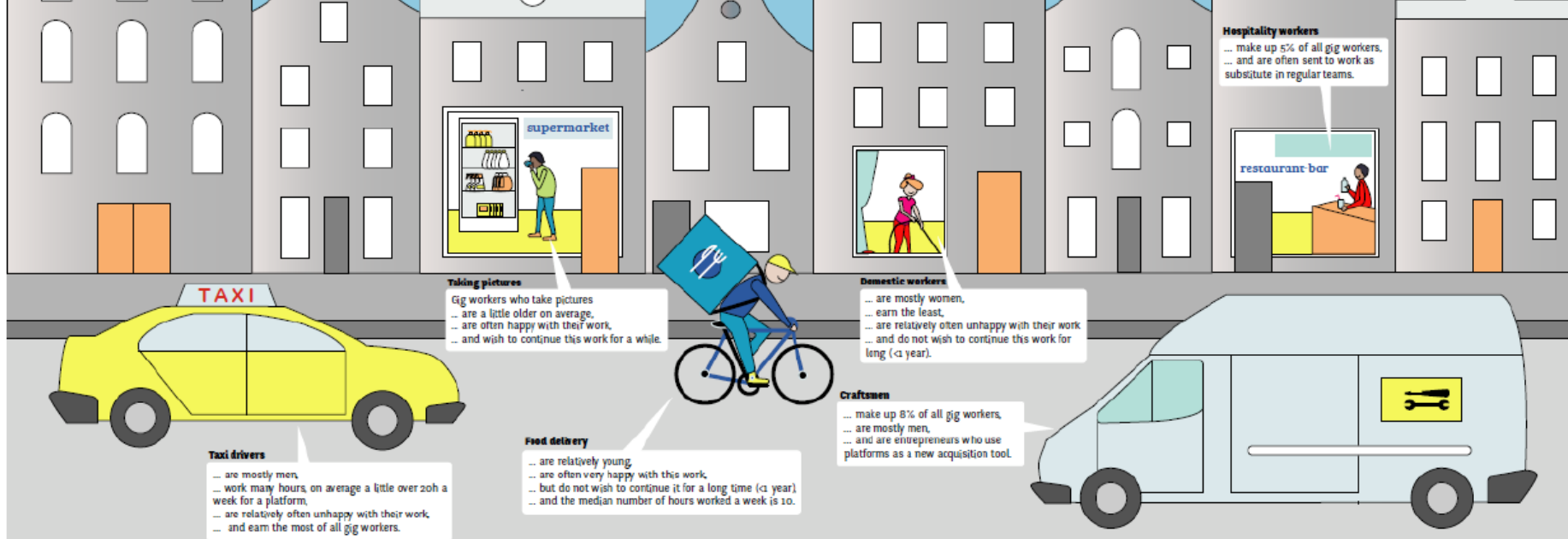
Collective
bargaining

Case law

Multiple
'employers'

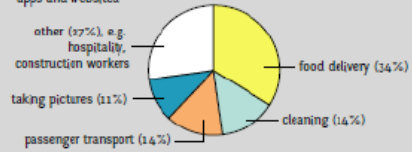
Social Pillar
initiatives

Labour is / is not
a commodity?



Size and income

Approximately **0.4%** of the working population (approximately **34,000** people) is a 'gig worker': they perform physical labour and gain assignments through apps and websites



The **average gig worker** works 11 hours a week and earns €300 per month. This means a median hourly rate of €13. However, there are big differences between the workers

seo amsterdam economics

This infographic is part of SEO Report 2018-20, 'The rise and growth of the gig economy in the Netherlands'.

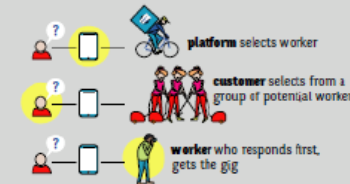
Growth and potential

Owing to the rise of the internet and smart phones, the gig economy has seen a strong growth.

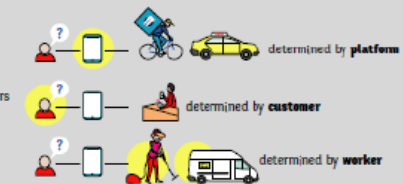


Most platforms are currently loss-making and try to gain market share: they strive to double in size in just a few years. If matching supply and demand becomes more expensive because of developments in laws and regulations, this could curb the growth.

Division of work: 3 forms



Determining rate: 3 situations



Implications

To what extent is working in the gig economy different than existing work, and what are its legal implications? Due to the diversity of the gig workers, not every gig worker experiences the same implications. Therefore, a theme has been identified for each type of gig worker. These are expounded in Chapter 5 of the accompanying report.

Implication themes: **Classification** **Employment intermediation** **Precarious work** **Fragmentation**

Case law I

European Court of Justice

- ECJ 20 December 2017 (C-434/15) Asociación Profesional Élite Taxi/Uber Systems Spain SL,
- ECJ 10 April 2018 (C-320/16) Uber France SAS

In short: Uber (pop) is a transportation service and not a technology service

- Main element of combining service is transport because:
 - Not only intermediating, but also making the transport accessible
- What if Uber expands to other services? (already: food delivery)

Case law II

Netherlands

Classification

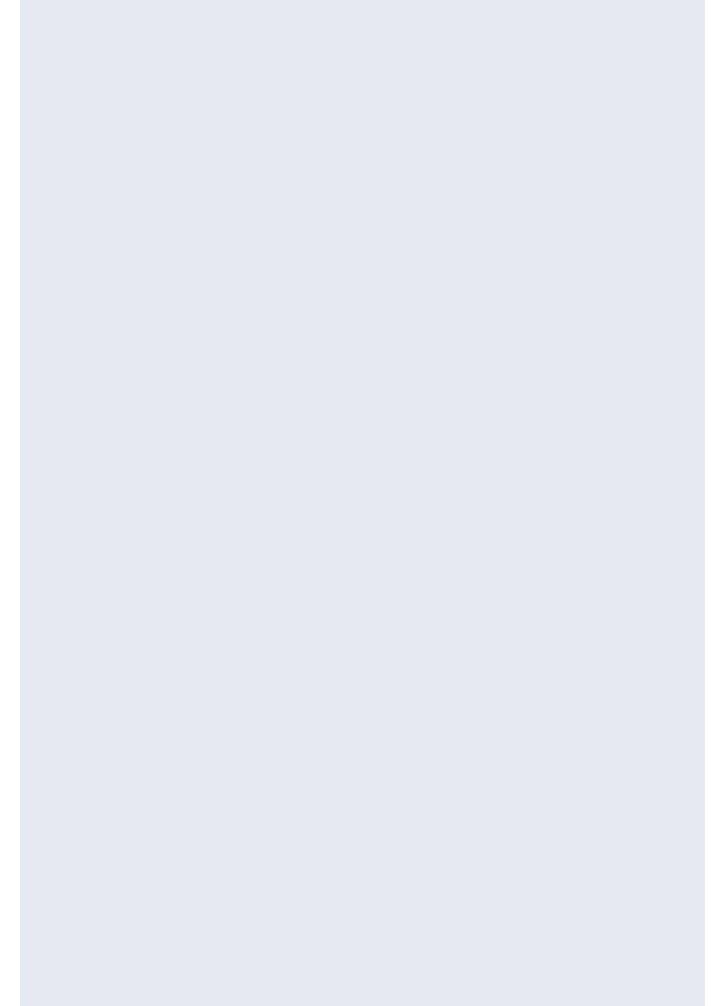
- Rb. Amsterdam 1 juli 2019, ECLI:NL:RBAMS:2019:4546 (*FNV/Helping*)
- Rb. Amsterdam 15 januari 2019, ECLI:NL:RBAMS:2019:198 (*FNV/Deliveroo*)
- Rb. Amsterdam 23 juli 2018, ECLI:NL:RBAMS:2018:5183 (*werker/Deliveroo*)

Branche

- Rb. Amsterdam 26 augustus 2019, ECLI:NL:RBAMS:2019:6292 (*Pensioenfonds vervoer/Deliveroo*)
- Hof Amsterdam 28 mei 2019, ECLI:NL:GHAMS:2019:1849 (*Stichting bedrijfstakpensioenfonds voor de reisbranche / Booking.com*)
- Rb. Amsterdam 15 januari 2019, ECLI:NL:RBAMS:2019:210 (*FNV/Deliveroo*)

Social Pillar initiatives I

- **Social Pillar** sets out 20 key principles & rights to support fair and well-functioning labour markets and welfare systems (2017)
- ‘Everyone’ is entitled to
 - Training
 - Active support to employment (transfer of rights)
 - Fair working conditions ‘regardless of the type of employment relation’
 - Social protection
 - Pension for self-employed

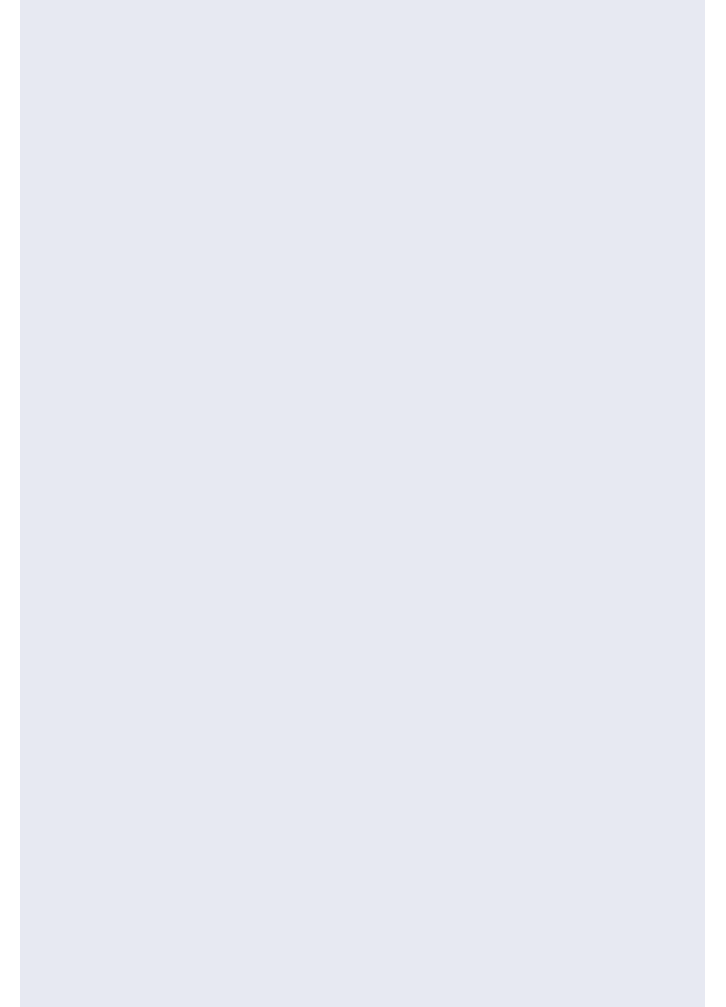


Social Pillar initiatives II

- Directive 2019/1152 of 20 June 2019 on Transparent and predictable working conditions
 - Scope (art. 1 (2)): This Directive lays down minimum rights that apply to every worker in the Union who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State with consideration to the case-law of the Court of Justice
- Proposal for a Council Recommendation on access to social protection for workers and the self-employed, 13 March 2018 (COM(2018) 132 final)
 - Benefits in case of maternity/paternity, unemployment, sick leave, occupational hazard, disability, old age

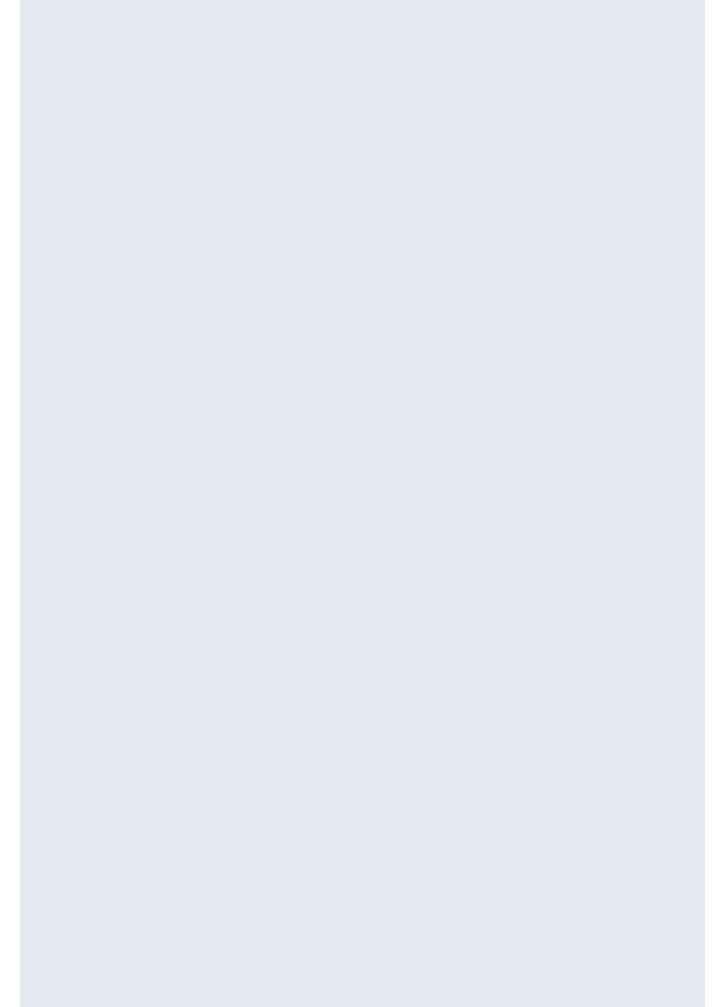
Collective bargaining

- Traditional institutions are not designed for a gig-based labour market
- Economic dependency on one or very few providers of gigs → equality of bargaining power?
 - Similar: franchise
- Competition law issues when the self-employed team up
- Role of trade unions replaced by other worker initiatives?



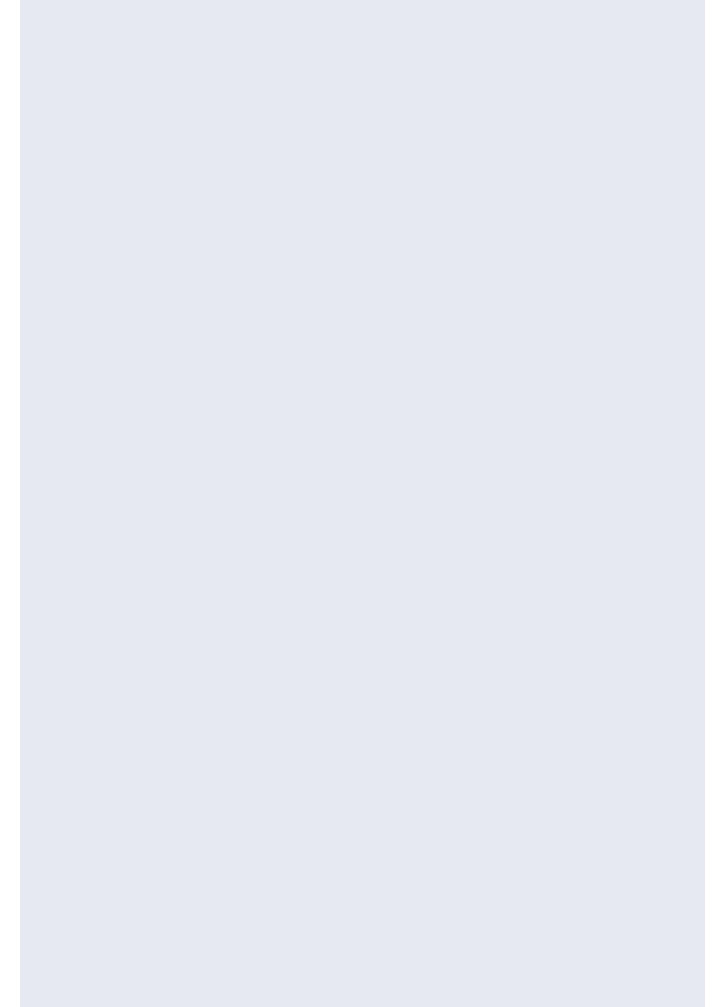
Multiple employers

- If it is accepted that gig-workers are not fully independent and social protection is advisable, how structure that ?
 - Working time
 - Portability of rights (and ratings!)
 - Vocational training



Labour is not a commodity?

- Should we accept that one can exploit its own labour force?





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