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Work has always been dangerous, and – most likely – will always be. All we can do is to minimise to what extent it is dangerous. What changes over time is the nature of the work, the nature of the risk, and so the legal protection regarding Health and Safety at Work.
During the 19th century, when people were working in mines what was in stake was their lives. They did not know if they were coming back alive at night. If you were lucky, a small monetary compensation could have been given to your family. Then in the 20th century and the development of factories – and the Taylorism – the risk was less to lose your life, but more to lose your hand. However, there was still an improvement of the working conditions but also the development, and the recognition, of new risks with the repetition of the same movement again and again. Then, in the 21st century, we moved from the factory to the offices with the development of new technology (e.g. the open space). Overall it was an improvement of the working conditions, but there was the development of the psychosocial risks, the musculoskeletal risks and all the risks linked with the new technology. Recently, for the past years, we have seen the new technology impacting the traditional way of performing work with the "gig economy"; which is hard to define and is challenging the evolution we had so far.

Legally, the evolution has been to take in consideration only the physical risk (i.e. working accident), to the physical risk with the working accident **and** the occupational disease. Later, the psychosocial risks, the musculoskeletal disorders have been taken into consideration. There is also the scientific progress with the improvement of knowledge on the nanoparticles for example. There was also an evolution of the approach of health and safety at work; at first, the priority was given to the individual compensation in case of a work accident, and then – from the middle of the 20th century – the focus was on a collective prevention of the risk.
The legal reforms that embodied these changes and are the current basis of our legal framework – at least in Europe and North America - happened in the 1970s. The reforms developed the general principles of prevention which are the cornerstone of the OHS legal framework. In my point of view, the development of the gig economy is challenging these approaches on three grounds. It is challenging: the **nature of the risks**, it is challenging **the approach of health and safety at work**, and it is challenging its **legal application**.

1- The Gig Economy as a challenge for the nature of the risks at work

It is important to underline that the gig economy does not necessarily add new physical risk while performing the work or the task. Indeed, these physical risks already existed because the job existed. For example, for the Deliveroo riders delivering with a bike existed before. The risk of riding a bike is not new. What is new is the "extra layer" of risk that the algorithm adds. Indeed, the fact to perform the work based on an app adds or increases the psychosocial risks.
In that respect, a report published last year by the INRS – *Institut National de Recherche et de sécurité* – called "Plateformisation 2027" illustrated this idea perfectly[1]. The authors of this report investigate the impact of the platform on the work, and in particular on occupational health and safety. They reported a few elements that increase the psychosocial risks.

[1] Accessible at: http://www.inrs.fr/media.html?refINRS=PV%208

First, they notice an intensification of the working time. Indeed, the working hours can be considered as unexpected because you never know when you are going to work or for how long. There is also an increase in the atypical working hours, most likely during evenings, nights and weekends. But what adds the pressure is the unrealistic or unclear goals set by the platforms such as the number of dishes or customers they expect you to serve, how fast you should be on a bike or with your car etc.. The AI imposes the rhythm, and that is the significant difference compared to what we have known so far.
Secondly, the authors of the report notice an increase in the emotional pressure. The gig workers have an obligation of being positive under every circumstance due to the notation and rating system. To some extent, we can find the same element in the retails sector. However, the major difference is that under the gig economy every customer rates the service, and the AI will analyse it. According to these data, the platform can log you off if your results are not good enough. It is a constant and intense phenomenon.
Thirdly, there is also the lack of autonomy which is noticeable and plays an important role. Everything is monitored and scanned by the AI. However, more importantly – when it comes to Uber and Deliveroo riders – it is the way, the routes they have to take, that sometimes can be quicker on the screen but it far more dangerous in real life. Most of us have already used Google Map to find their ways, and most likely some of us have experienced some surprising way that the app recommended. As users we can use our common sense and our appreciation of the environment to say no and take another route; the riders and drivers might have to justify themselves why they are not following the instructions.
Fourthly, there is also the lack of social interaction which plays an important factor in the increase of the psychosocial risks. Indeed, the gig workers are isolated in the sense where there is no close management in case of a problem, and no collective workforce (at least officially). If their bikes break down, they are on their own. Deliveroo won't help them. They have an accident on the road; they are on their own. Uber won't help them. There are informal networks that start to get more structured, but the platform does not organise them.
Finally, there is the insecurity of the work, also called the precarity of the work. The workers do not know how the platform is performing. They do not know if there are still going to have some work the day or the week after. The allocation of the work depends on the platform. Additionally, there is always the risk to be log off for no reason – or no official reason. It is the precarity of its highest, especially because so far these workers are mostly considered as self-employed, so they cannot benefit from any employment protection.

2- The Gig Economy as a challenge for the approach of Occupational Health and Safety

Beyond the additional risks that the platforms are creating, the way the platforms are organised is challenging the general approach of health and safety at work. The report put in perspective the general principles of OHS with the organisation of the platforms.
We can list the general principles as follow:

- Avoiding the risk – which means finding the source, the origin of the risk and suppressing it.
- Assessing the risk – also known as the risk assessment or evaluating the risk. Which is crucial in the legal framework; it is an obligation for the employer to assess the risk. It is the first step to prevent the risk. It is one fundamental element to prove the responsibility of a potential employer within the current legal framework.

- Acting at the origin of the risk – either to suppress it or to minimise it.
- Planning the prevention – it is what I said earlier; usually, the employer has to evaluate the risk to design the prevention.
- Taking collective protective measures – according to the European law[2], the focus has to be on collective measures, then individual measures and only if none of this is possible it would be possible to plan a system of monetary compensation.
- Giving precise instruction to the workers – which can also be found in the European obligations for the employer to inform, to consult and to train the workers and/or their representatives.

According to the report published by the INRS, it is complicated to suppress all the risks for the job performed via the apps. It is not possible for Uber or Deliveroo to avoid or to control the behaviours of other drivers on the roads, that can lead to an accident. Regarding the evaluation of the work, currently, the platforms tend to place the responsibility of the prevention (and the assessment) on the shoulders of the individual. However, the algorithms could integrate some aspect of prevention and start some mechanism of prevention. For example, if one Deliveroo rider notices a car accident somewhere, or if he/she has an accident because the road is dangerous; the rider can send the information to the platform that enters it into the algorithm and the other riders avoid this path. Same for the aggressions; Dr Karen Gregory reported that in Edinburgh some Deliveroo riders are attacked by teenagers in the street so they can have the food and the smartphones. If one rider notices such a group, it can be sent to the platform and be taken into consideration for the other riders. It means that it is possible even in the current context.
To summarise the observations, at the moment the general principles of prevention does not apply or are hardly applicable considering the functioning of the platform. One point is essential – the 4th bullet point in the observation – "*Platforms do not integrate the prevention in their organisation*". Sometimes they value the individual compensation of the risk. Indeed, when it is raining or particularly packed on the road, the platform might give the riders a bonus. It is an incentive to place the workers in a dangerous situation. However, it does not have to be this way. In terms of prevention, the platform could send some notifications such as "you have been riding X numbers of km; time to check the pressure of your wheels and to change your breaks", or something similar. Alternatively, even when they have an accident, having a button where the app can quickly provide them with a phone number of a place that fixes bikes, and potentially the contact of a doctor around. The platforms are constantly in touch with these workers for the moment only for the worst; we can try to use this connection for the best, or at least the better.

However, even if some solutions or improvements are possible, the real underpinning problem is the general lack of incentive for prevention. In the current or traditional system of health and safety at work, there is a system of responsibility/ of liability if there is a breach of prevention by the employers. Here, even if there is a working accident or the recognition of an occupational disease, the way by which the platform would be held responsible is uncertain. Even without taking in consideration the liability aspect of the problem; we can assume that employers would like to "invest" on the health and safety of their workers because it takes time to train someone, and they have an interest to keep them into their

[2] The main directive in EU law regarding OHS is the framework directive 89/391/EEC

business. It is not necessarily the case here; there is a high turnover; these workers arrived already skilled and with their own material. There are no needs to "take care of them" – the importance is given to the short-term benefice, where the prevention of health and safety at work focused on a long-term benefice.

3- The Gig Economy as a challenge for the Legal Framework of Occupational Health and Safety

Currently, individuals can be classified as "Employee", "Worker" or "Self-employed". Only if the individual falls within the two first categories, he can benefit from the protections under the OHS legal framework – and labour law to a certain extent. The self-employed are also concerned by the Occupational Health and Safety legal framework, but from the other side with duties and no major protection. It is the reason why I emphasise on the protective aspect. The employee and the worker are in a relationship with the "Employer", and they have mutual obligations. Then, these protections and duties are enforced by labour inspectorates (or the equivalent structure depending on the national legal systems), the courts and the workers' representatives and Trade Unions (variations might apply depending on the national legal systems). The problem is that the gig workers are at the border of this protective framework. It is crucial because if they are workers they benefit from the existing Occupational Health and Safety Frameworks, and if there are self-employed it is not the case.

Thus, we arrive at a more general question which is not specific to Health and Safety at work – but which impacts it: "What is the legal status of the « gig worker »? (i.e. Worker or Self-employed) and "Who is responsible for all the OHS Legal duties and consequences?". This contribution does not cover the details of these questions, it is highly debated, and it is not the point here[3]. There are jurisprudences going on everywhere on this question – in the UK with Uber[4], and in France with "Take it Easy"[5].
The problem is that the platforms try everything to escape the field of labour law, and so Health and Safety. They argue that they are connecting customers with self-employed individuals and they are providing a service. It touches to the more general problem of the definition of the gig-workers and the reality of their work. In that respect, there is a quote from an article published by Lobel[6] in 2017 which is really interesting.

> *"Gig workers are drivers, delivery-people, personal assistants, handymen, cleaners, cooks, dog-sitters, and babysitters but increasingly are also more specialised professionals, including nurses, doctors, teachers, programmers, journalists, marketing specialists and, well yes, lawyers too. For example, the rising startup InCloudCounsel, offers an army of lawyers providing on-demand, routine legal services.*
> *The technology is here: as long as you have the time, skill, knowledge, and empty couch, and unoccupied vehicle, or an idle lawnmower, you can swiftly become a*

[3]. *See for example*: Stewart, A. and Stanford, J., 2017. Regulating work in the gig economy: What are the options?. *The Economic and Labour Relations Review*, *28*(3), pp.420-437 ; Pinsof, J., 2015. A New Take on an Old Problem: Employee Misclassification in the Modern Gig-Economy. *Mich. Telecomm. & Tech. L. Rev.*, *22*, p.341 ; Lobel, O., 2017. The gig economy & the future of employment and labor law. *USFL Rev.*, *51*, pp.51-74 ; Aloisi, A., 2018. Facing the Challenges of Platform-Mediated Labour: The Employment Relationship in Times of Non-Standard Work and Digital Transformation.
[4] Uber v Aslam [2018] EWCA Civ 2748
[5] Cour de Cassation, Chambre sociale, arrêt n°1737, 28 Novembre 2018
[6] *See* Lobel, O., 2017. The gig economy & the future of employment and labor law. *USFL Rev.*, *51*, pp.51-74

corporation. The platform economy channels anything and everything sitting idle into the market and monetizes it."

This quote underlines that the challenge of the gig economy is not in the creation of new risks, or new jobs – but the way the traditional jobs are treated. The risks are known, and there is a legal framework to address most of these risks and these professions (with of course some flaws). However, the real challenge might not be to change in depth the approach but to find a way to apply it to this new "process" of the jobs.
We are facing the old problem of the misclassification of the workers – that we know for years with the sham-contract. It is just the proportion of the gig economy that makes it more complicated. Indeed, even if they are recognised as workers – how can we enforce the labour law and the health and safety standards to the gig workers? It might be possible to a certain extent for the "offline"/"grounded" workers who are physically performing somewhere. However, how do we ensure the application of the law to the "online"/"cloud" workers who are working exclusively online? The more general problem of the geographical competences of the labour inspectorates and the court that are facing the digital era have to be addressed.

CONCLUSION -
As a conclusion, I would like to come back on the three challenges that the labour law and the health and safety at work legal framework have to face with the development of the gig economy.
First, in terms of the risks; there are no new risks, but a new association of risks due to the functioning of the platform. Secondly, regarding the approach of OHS; the gig economy is challenging the general principle of prevention by focusing on the individual. However, there are ways that the platforms can use to improve and to prevent collectively the health and the safety of their workers/users. The question is the motivation and the willingness to do so. Finally, about the legal framework; there is the global challenge of the classification of the workers and its consequences in terms of protection. However, we need to think a step ahead and think about the conditions to enforce the legal framework if we find a way to make it applicable.

What can be done next? It might be possible to fight before the courts to obtain the classification of workers for the gig workers. It might be a solution, but it will be a case by case approach and might take some time. Of course, there is a high chance that the platform will try to adapt to the jurisprudence to avoid the classification[7]. Some researchers are trying to work on the general understanding and definition of the concept of "employer" and redefining the working relationship – which can be interesting. Some other researchers are also currently advocating for a "floor" of standards rights applicable to everyone regardless of the classification. All these approaches are interesting and worth further investigations. I just would like to say that the gig workers are putting in the light the working condition of the self-employed also called independent workers that existed before, just with a new dimension. One way might also for the States to improve the situation of the self-employed workers (which will make the "misclassification" less appealing). As an example, there has been a reform adopted in France last January – so in 2018 – regarding the independent workers (self-

[7] See the case of Deliveroo in M Ford, 'Pimlico Plumbers: Cutting the Gordian Knot of Substitution Clauses?', UK Labour Law Blog, 19th July 2018, available at https://uklabourlawblog.com/2018/07/20/pimlico-plumbers-cutting-the-gordian-knot-of-substitution-clauses-michael-ford-qc/

employed) and which merge them with the general system of social security. This led to an improvement of the compensation in case of working accident or occupational disease. It is compensation and not prevention, but it can be a way to pursue as well. I don't think one should be chosen and not the other; we need to work on every path to improve the situation.