The economic and social situation of crowd workers and their legal status in Europe

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Abstract

This article summarises the economic and social situations of crowd workers in Europe, defined as workers carrying out paid work managed by online platforms.

It begins by reviewing the existing definitions of crowd work and summarises the existing evidence on its extent and the characteristics of crowd workers before going on to present the results of a pioneering survey of crowd work in four European countries: UK, Germany, Sweden and the Netherlands. The analysis of this first random population survey of crowd workers groups them into three broad categories: those whose work is carried out online, independent of location; those who work on the premises of clients or customers; and those who do driving work. However it finds that many crowd workers engage in more than one type of work, seeking an income by any means possible.

The article then goes on to examine the regulation of crowd work and the legal situation of crowd workers, identifying a number of unresolved issues. One question is which national regulation should apply when workers, clients and platforms are based in different countries. There is also uncertainty about the legal status of online platforms, which in turn affects how they should be regulated. The employment status of crowd workers emerges as a critical issue for determining the obligations of platforms and clients and the rights of crowd workers in relation to a range of issues including the right to challenge customers’ quality rating, rights to privacy and data protection, the right to payment for work that has been completed, the right to be paid promptly, and rights related to intellectual property, such as the right to be cited as the author of a particular text, or the right to copyright in work for which the customer has not paid. Other issues relate to the health and safety not just of crowd workers but also of their customers and the general public.

Finally, the article raises some broader questions about the implications of crowdsourcing at a societal level, including the implications for national tax and social security systems,
Introduction

The phenomenon of ‘crowd work’ has taken policymakers and statisticians by surprise. When the concept of the ‘sharing economy’ first emerged, it was not even seen as relating to employment. The development of platforms that allowed users to share rooms in their homes, rides in their cars, tools or even household chores was initially regarded as an extension of social media: a development in which online enterprises were able to build businesses on the basis of providing secure platforms enabling the exchange of services between strangers. Increasingly, however, it has become clear that many of these services involved the provision of labour, and questions began to be asked about how these new labour relations differ from more traditional forms of employment.


Second, these terms are rarely linked to precise definitions. They cover a range of different overlapping activities and business models and cannot always be differentiated easily from more traditional forms of service provision. The labour that is exchanged on them may be paid or unpaid, carried out online or offline, involved in producing goods or services, to individual consumers or to businesses. The worker may be doing it to supplement other types of employment or as a main source of income, and could be working in a variety of different types of location, domestic or public.

Third, it is very difficult to differentiate crowd work from other kinds of work mediated by Information and Communications Technologies, such as teleworking, freelancing or offshore outsourcing.

In such a situation it is not surprising that there is very little hard evidence concerning the extent of crowd working or the characteristics of crowd workers. While there is general
agreement that it has been growing exponentially, this growth has not been quantified with any precision.

At the University of Hertfordshire, funded by the Foundation for European Progressive Studies (FEPS) and the trade union confederation UNI, and with fieldwork conducted by Ipsos MORI, we carried out the first survey designed to estimate the extent of crowd working in the general working-age population. Starting in the UK, in January 2016, the Hertfordshire Business School (HBS) Crowd Work Survey has now also been carried out in Germany, the Netherlands and Sweden.

In the next section we present the results of the HBS Crowd Work Survey in these four European countries before going on to discuss the social, economic and regulatory issues raised by the rapid growth of this new employment model.

The extent of crowd work in Europe

The survey was designed to identify people using online platforms to sell their labour for money. This made it necessary to differentiate them from people using online platforms to generate other sources of income (for instance by renting out rooms in their homes or selling goods). It was also necessary to distinguish between those doing paid and unpaid work as well as to differentiate the seeking of work organised via an online platform from other sorts of job search that might be carried out online (for instance, using an online recruitment agency to look for conventional employment).

By collecting information separately on all these variables it was possible to identify crowd workers – i.e. people earning an income from selling their labour to personal or business clients via an online platform. The results were surprising.

In each of the for European countries surveyed, a significant proportion of the adult population had used online platforms to look for paid work, ranging from a high of 24% in Sweden to a low of 18% in the Netherlands, with 22% in Germany and 21% in the UK saying they had sought work in this way. The proportion who had ever worked in this way was 11% in the UK, 12% in the Netherlands and Sweden and 14% in Germany.
The numbers actually succeeding in earning an income in this way were, of course, lower, though still significant. The percentage who said that they worked in this way at least weekly ranged between 3% and 4%, rising to between 4% and 6% for those who did so at least once a month.

For most of these crowd workers, this work is done in order to supplement income from other sources. Not all respondents were prepared to disclose information about their earnings but, nevertheless, between 2% (in Germany) and 6% (in the Netherlands) said that it was their only source of income. It represented more than half for substantially more: 14% in the Netherlands, 18% in Germany, 22% in Sweden and 24% in the UK.

Crowd work can be divided into three broad categories.

The first of these is work that is carried out online and can be done from anywhere where there is an Internet connection and a worker equipped with the appropriate skills. This may range from high-skill work involving advanced professional qualifications (for example in law, accountancy or IT development) to low-skill ‘click work’ that may involve little more than making a single mouse click (for example to ‘like’ a social media story, verify a number or classify an image as happy or sad). Since this work can be done from anywhere, these crowd workers are in a global labour market, perhaps competing with workers in South or East Asia, Eastern Europe, the Americas or other parts of the world.

The second category is work that has to be carried out on the customer’s premises, whether domestic or commercial. This work is managed online but executed offline. It may involve a range of different manual or clerical jobs, such as cleaning, gardening, household repair, filing or running errands. Although the companies managing the process of matching workers to customers may be global, this type of work requires the workers to be based within travelling distance, so they are competing with each other in local, rather than global labour markets.

The third category, close to the second in many respects, is driving work, brought to public attention in many cities by clashes between supporters of online platforms and traditional taxi services, which have often been tightly regulated. Sometimes referred to as ‘uberisation’ after
the best-known platform, Uber, this is sometimes taken as a model for the encroachment of online platforms into other parts of the labour market.

Of these three forms, the first is the most popular in all countries, sought by 21% of the adult population in Sweden, 18% in the UK and Germany and 15% in the Netherlands. In Sweden, 15% were looking for work outside the home, compared with 12% in Germany and the UK and 9% in the Netherlands. Driving work was the least popular, sought by 7% in the UK, 8% in the Netherlands and Sweden and 12% in Germany. One of the most striking findings from the survey, however, was that many people look for – and find – work in more than one of these categories.

The picture that emerges is of people seeking to earn an income by any means possible, regardless of their main occupation. This raises questions about how well qualified they may be for the tasks for which they are offering their services, and how well-informed they may be about the relevant risks, standards and regulations.

Regulation of Crowd Work

Like any new phenomenon, crowd working is largely unregulated. It has many features in common with more traditional forms of work and service provision but until very recently little systematic effort has been made to establish how existing regulations should apply. There are now early signs that this is beginning to be addressed in certain fields, including taxi services and the provision of bed-and-breakfast accommodation, but formidable obstacles remain to be addressed, especially where digital services are being provided by online workers.

Which national laws should apply?

Online platforms are, by their very nature, accessible from anywhere in the world with an Internet connection. It is thus entirely possible that a platform may be physically based in one country, with a registered office in another and an Internet Service Provider in a third. It may have workers located in any country working for clients who may also be located anywhere. It is thus extraordinarily difficult to establish which country’s laws should apply in the event
of any dispute or malpractice or, indeed, which labour regulations should apply to the platform, the clients or the workers.

What is the legal status of online platforms?

Even if it could be established which national laws apply to an online platform, there remains a puzzle about which regulations should apply in any given state and which body should be responsible for inspecting it. This is because online platforms have no recognized legal status.

Many platforms were founded in the 21st Century as IT start-up companies and might regard themselves as part of the IT industry. However most of the services they supply have their antecedents in much older industries and it is arguable that they should be bound by the same regulations. For example, if they are providing taxi services, then should they be regulated in the same way as other taxi companies? Or if they are putting people needing care services in touch with workers who supply them should they be regulated like care agencies?

Some platforms argue that they are only putting would-be workers in touch with potential customers and their responsibilities stop there. Does this mean that they should be treated like telephone directory services, advertising agencies, or markets?

Another alternative would be to regard online platforms supplying labour as temporary work agencies or private employment agencies. Bodies such as these are covered by ILO conventions and a variety of different national regulations and European Directives but so far there have been no clear rulings that this status should apply. While the question of which national jurisdiction is relevant remains open, it is difficult to see an easy solution to this problem. But until it is solved, online platforms will remain beyond the scope of many of the regulatory requirements that apply to other employers in the territories in which their workers are based.

Who is the employer?

One of the most contentious issues relating to crowd work is the employment status of the workers. Should they be regarded as self-employed? As employees of the platform? As employees of the client? Or employees of some other intermediary?
There have been a few cases in the USA where platforms have decided to confer employee status on their workers, in the interests of achieving greater reliability and reassuring customers that workers who will be visiting their homes are trustworthy. But these are exceptional. Generally speaking, platforms go to great lengths to avoid this, insisting that the workers, often referred to by titles such as ‘associates’, ‘partners’ or ‘providers’, are freelancers or independent contractors. Sometimes, they are engaged through third-party organisations, such as umbrella companies, self-employment agencies or co-employment agencies, increasing the distance between the platform and the worker.

Practices and payment methods vary considerably between platforms. There are some cases where workers might be deemed to be genuinely self-employed if national rules were applied. However there are many common practices which might contradict such a view. In some cases rates of pay are set by the platform, which may also carry out estimates of how long a task should take, suggesting that workers have limited autonomy. Furthermore, platforms often attach conditions such as requirements for all financial transactions to be processed via the site, and ‘satisfaction’ clauses which legitimate the rejection of 'unsatisfactory' work without justification. In many cases it is stipulated that ownership rights, including intellectual property, remain with the ‘requester’ (the client) even if the work has been rejected. Platforms may also claim the right to ‘terminate’ workers, barring them from further participation in the platform. The chances of getting work on any given platform, and the rates of pay that can be commanded, depend strongly on workers’ reputations, often established by such things as star ratings from former clients. It is a common complaint by crowd workers that these reputations are not transferrable from one platform to another, thus locking them into a relationship with a single platform.

Such conditions suggest a level of control that goes beyond the mere provision of an introduction between two independent parties acting autonomously. Nevertheless, a number of conditions apply that make it difficult to establish definitively that crowd workers should be regarded as employees, including the fact that they may work for multiple platforms and supply their own equipment.

Employment status is an important gateway to other rights. Workers who are denied it thus face a number of disadvantages. They are, for example, unable to claim paid holidays, maternity, paternity or parental leave or sick leave. They are also deprived of the pensions
contributions their employer would make if they were recognised as employees. In some European countries, employment rights are also linked to national or sectoral level collective agreements that establish other rights; for example to health services, childcare, access to training or agreed pay rates. The need for clear rulings on employment status is therefore also important for determining the availability of other rights in specific national contexts.

Other rights
In addition to rights related to employment status, there are a number of other rights that crowd workers would like to be able to claim.

These include a number of rights that are specific to the practices of particular online platforms, such as the right to challenge customers’ quality rating, rights to privacy and data protection, the right to payment for work that has been completed, regardless of whether the client accepts its quality, the right to be paid promptly, and rights related to intellectual property, such as the right to be cited as the author of a particular text, or the right to copyright in work for which the customer has not paid.

Other rights are more general. These include the rights of freedom of assembly and the right to engage in collective bargaining. The latter right is particularly problematic when workers are regarded as independent contractors or freelancers. If they combine to try to increase their rates of pay or establish ground-rules for fair treatment they are regarded under many jurisdictions as having formed a cartel, which is illegal under anti-competition laws.

Working conditions
Crowd workers work on many different types of task, in a wide variety of locations, both public and private, so it is difficult to generalise too broadly about their working conditions. Nevertheless, the lack of regulation means that they (and sometimes their clients, or the general public) may be exposed to a diverse range of risks. These risks can be broadly broken down into direct physical risks related to the labour process itself and the environment in which it is carried out; indirect physical risks related to the cumulative impact of these; and broader psychosocial risks. The physical risks can in turn be broadly grouped into two categories: those relating to online work, carried out a distance from the client; and those
relating to offline work, carried out on the premises of clients (whether corporate or individual) or in public spaces.

Unlike workers with clear employee status, working on their employers’ premises, most crowd workers working online have to take personal responsibility for any health risks associated with their work, whether these are linked to poorly-designed equipment, inappropriate working environments or the need to work for long periods without a break.

Offline workers are exposed to a wide range of additional risks, including accidents that may take place because of inadequate tools or safety equipment, exposure to toxic chemicals, dangerous working environments, lack of training and supervision or distraction or harassment by customers or bystanders.

Such hazards may be exacerbated by lack of certification (or understanding of what certification should exist) for the skills provided, lack of knowledge or understanding of the relevant regulations (by either workers or clients) or lack of clarity in work specification, leading to situations where the worker (or client) cannot predict what tasks are required or what tools, equipment or materials should be provided or brought to the job.

Crowd work also carries a range of psychosocial risks, often linked to stresses related to the precariousness and unpredictability of the work, and the strain of managing daily life while having to juggle many different tasks and sources of income. The intensity of work is another factor: online crowd workers may be working to tight deadlines or on low piece-rates for micro-tasks while offline workers are under pressure to complete fixed-fee jobs and move on to the next, all of which encourage a rapid pace of work without breaks and contribute to stress.

Protection of consumers and the general public

The lack of regulation of crowd work does not just have repercussions for crowd workers, but also for the customers they serve and for the general public. Issues of worker protection, consumer protection and public safety are closely intertwined. If a crowd worker is involved in an accident in a public space, or on private premises, who is liable? And which agencies
should be responsible for safety inspections and ensuring compliance with the relevant regulations?

A similar confusion arises in relation to responsibilities for other matters, such as insurance, professional liability and certification.

At a broader societal level, the growth of crowd work raises other important questions. In the context of economic globalization, what responsibilities do platforms have to contribute to national income in the countries in which they operate? And what kinds of social protection system can provide a basic level of security to crowd workers and their dependents in a situation where they may not know from one moment to the next when or whether they will next have work?

Could it be that the spread of crowd working will become the trigger for radically reforming welfare systems in Europe and elsewhere?

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_2016_

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