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### How to cite

BONVIN, Jean-Michel, CIANFERONI, Nicola, PERRIG, Luca. Regulating the gig economy: promises and limits of social dialogue in Switzerland. In: Social Dialogue in the Gig Economy: A Comparative Empirical Analysis. Jean-Michel Bonvin, Nicolas Cianferoni and Marla Mexl (Ed.). Cheltenham : Edward Elgar, 2023. p. 67–89. doi: 10.4337/9781800372375.00009

This publication URL: <https://archive-ouverte.unige.ch/unige:167449>

Publication DOI: [10.4337/9781800372375.00009](https://doi.org/10.4337/9781800372375.00009)

# REGULATING THE GIG ECONOMY: PROMISES AND LIMITS OF SOCIAL DIALOGUE IN SWITZERLAND

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## Introduction

In Switzerland, labour market regulation takes place mostly through collective bargaining and social dialogue, based on decentralized and consensual relations between trade unions and employers' associations that are traditionally organized by economic sectors. Labour law provisions are minimalist, ensuring that actual working conditions are mainly regulated by actors closest to the ground. For instance, legal provisions stipulate a maximum weekly working time of 45 hours for most workers, while collective labour agreements at branch level most often require a shorter duration of the working week. In the Swiss context, workers' capacity to organize and to impact collective bargaining processes makes a real difference (Bonvin, 2006, Bonvin and Cianferoni, 2013). In sectors where trade unions are well organized at branch level, they are also able to negotiate better working conditions, most notably in terms of wages and working time, while in unorganized sectors working conditions are negotiated at the micro level between individual workers and employers, the only limitation being to comply with existing minimalist legal provisions. For a long time, this industrial relations configuration has proved beneficial for all stakeholders, as collective bargaining was characterized by a desire to find consensual or so-called "win-win" solutions, which could also guarantee social peace and stability: workers exchanged high work commitment against enhanced material security, thus contributing to a virtuous circle of economic prosperity and improved social justice that was also beneficial for employers.

This model is being challenged by financial and economic globalization and the ensuing tendency to deregulate labour markets. Win-win strategies are more difficult to implement under such circumstances. In many cases the workers' position has been weakened whereas the employers' bargaining power has increased (Widmer, 2007), leading trade unions to look for new structures and modalities of organizations to find a new momentum (Oesch, 2011). The emergence of the gig economy as a largely unorganized sector, where employers are not pushed to collectively bargain working conditions, comes as a further challenge to the Swiss model of social dialogue; such emergence is sometimes interpreted as a factor potentially disrupting the existing model of industrial relations. Working in the gig economy indeed implies significant differences compared to traditional sectors. The most obvious relates to the employment status, as gig workers are often hired as self-employed in sectors that traditionally employ their workers with an employee status. This impacts gig workers' access to labour rights and social protection (Pärli, 2019). Besides, the gig economy's reliance on automated management (Lee et al. 2015) also raises questions about the ability of established social dialogue and collective bargaining patterns to adequately tackle such issues. Against these trends, trade unions are experimenting new strategies: trying to shift labour disputes from the company-level to the political arena (Widmer, 2007; Oesch, 2011); inventing new ways to organize in order to involve gig workers in conventional organizations or, alternatively, to create new *ad hoc* organizations for them; or resorting to court litigation as a means to contest working conditions within the gig economy. In short, the gig economy appears as a field of political and ideological struggle, where a host of actors are involved.

Our paper investigates how the gig economy impacts the Swiss industrial relations model based on class consensus and the principle of subsidiarity and what strategies Swiss trade unions implement in this context. To answer these questions, our chapter takes a twofold perspective: first, a focus on the issue of digitalization in Switzerland and the overall debates it creates among social partners and policy-makers; second, a snapshot on three case studies in sectors where the gig economy seems to be particularly flourishing in Switzerland, namely the taxi industry, bike-deliveries and cleaning services. The first part of the chapter investigates the legal and political debates surrounding the emergence of the gig economy in Switzerland. Data were gathered from academic literature, official documents (notably reports produced by Swiss government agencies, often in reaction to MPs' postulates at the Swiss parliament), national and local media articles and public broadcast, as well as in-person interviews with key actors, namely five policy makers, five academics and five high-rank social partner representatives. The second part relies mostly on interviews with key actors of the investigated sectors, more specifically: seven drivers, three social partners (two trade-unionists and one representative of a traditional taxi drivers' association), as well as Uber's attorney and the founder of a local platform promoting itself as an ethical alternative to Uber in the ride-hailing sector; six bike couriers, three platform managers and three trade-unionists in the delivery sector, in parallel with participant observations as bike couriers within four platforms; interviews with a manager and four cleaners in the cleaning sector.

## **1. Digitalization and the gig economy in the Swiss public debate**

Few people seem to engage in platform-mediated gig work in Switzerland, at least those who fully depend on gig work for their living seem to be very limited in number (Federal Council, 2017a). Statistical data were for a long time scarce and very inconclusive, as definitions of what is the gig economy diverge and most of it goes undeclared. State reports underlined the small size of gig work and its limited contribution to overall GDP, emphasizing the high percentage of dependent work (85%) with no sign of decline (Federal Council, 2017a). The first representative survey conducted by the Swiss Federal Statistical Office confirmed these statements: in 2019, only 0.4% of the population said that they had carried out work via internet-mediated platforms in the past 12 months.<sup>1</sup> In this respect, the situation in Switzerland seems very close to that in other European countries (Ellmer et al. 2019), although the impact of the Covid-19 pandemic still needs to be thoroughly investigated.

Even though the precise size of the gig economy cannot be inferred from available research, it is possible to distinguish in which sectors gig work is most prominent in Switzerland, namely person transportation and delivery. A fierce competition is ongoing in both sectors since the arrival of digital platforms. Wages among gig workers seem to be considerably lower than local standards, and they often lack access to minimal social protection (Pärli, 2016b). In the transportation sector, Uber's arrival in Switzerland in 2014 boosted competition with implications for traditional taxi drivers too. Deliveries via online platforms are also gaining importance in Switzerland. Multinational companies such as Deliveroo, Foodora, Amazon or UberEats have been remarkably absent until November 2018, when UberEats announced its launch in Geneva. Meanwhile, multiple local platforms had emerged and the competition among them had become fierce. They mainly offer food deliveries, but many are trying to expand their services to groceries and parcel deliveries. Although their importance is not

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<sup>1</sup> "Internet-mediated platform work is not very common in Switzerland." Press release of the Swiss Federal Statistical Office, 19.5.2020.

precisely quantified, they are abundantly discussed in the media due to their high visibility in the public space. The extent of platform cleaning services is also difficult to evaluate. A lot of it is undeclared and takes place behind closed doors.

Despite the uncertainties about its size, and partly due to the high visibility of gig workers during the pandemic period (esp. bike deliveries in times of lockdown), the working conditions within the gig economy have attracted much public and media attention. The platform economy is indeed perceived by some, mostly trade unionists and members of left-wing parties, as a threat to the standard employment relationship (SER) that was set up after World War II and the guarantees it offers to workers in terms of employment security, material well-being and access to social protection. This is mainly related to the self-employed status granted to most gig workers until recent years, which questions the very foundation of labour law and social protection and their anchoring in the wage earner status. Opponents to the gig economy thus emphasize the precariousness that is often associated to so-called gig jobs. Working for digital platforms means that the regularity of wages and the duration of working time are not guaranteed. It is thus emphasized how gig workers can be highly exposed to demand fluctuations, although this exposure varies along the worker's qualification and the geographical place (Portmann & Nedi, 2015). Their undermined employment status also increases the difficulties faced by labour inspectors when trying to control the implementation of labour law and social policies in the platform economy. All in all, it coincides with a transfer of the social risks from the firm and the employer to the individual worker, which has significant consequences for the degree of protection against social risks and for the overall financing of the welfare state (Pärli, 2019). These critical views go in the direction suggested by Stanford (2017) of an erosion of the SER in the present context, to which the emergence of the gig economy further contributes. In the same critical line, some studies show that employment in the gig economy is motivated by the will to move out of unemployment rather than by the attractiveness of time flexibility, the interest in the gig activity or the possibilities to network or acquire new skills (Mattman and al. 2017). By contrast, others insist on the opportunities offered by the gig economy and its flexibility, emphasizing its potential for creating economic activities and jobs. They claim that an excessive regulation could prevent the benefits of the gig economy and advocate for solutions that would preserve the flexibility offered by the gig economy.

At the time of their emergence, platforms were employing workers as independent contractors with very limited access to social protection and protection from labour law. The public debate mainly focused on Uber and revolved around the key issue of the employee status, which in Switzerland also conditions to a large extent access to social benefits (Riemer-Kafka & Studer, 2017). On the one hand, many elements seem to go in the direction of a subordinate position of gig workers, which would justify the adoption of an employee status. For instance, the platform controls workers' performance via a rating system; the driver is dependent on the platform on the logistical and economic point of view; for most drivers Uber represents their sole ride provider. Other arguments point toward a self-employed status: three parties are involved in the contract (the customer, the platform and the worker), while only two parties are involved in a traditional labour contract; drivers are technically free to accept or decline the rides; they use a private car and are formally free to work whenever they want. These lines of argumentation are used by Uber to contest its employer status and be considered instead as a mere intermediary. They are however contested by many actors, such as trade unionists and left-wing policy-makers, who remind that historically, the independent contractor status has

been designed for highly qualified workers – lawyers, doctors, dentists, etc. – whose will is to remain free to choose for themselves their own social coverage without constraint by the State. This is not the case for gig workers because they are unqualified workers and they often depend on one provider. Even if they are formally free to organize their work, the platform actually controls their labour process. The similarities are strong with the “putting-out” system that existed before the industrial revolution (Stanford, 2017). Thus, the status of gig workers is at the core of the debate among Swiss policy makers, social partners and lawyers, which takes place along lines very similar to what can be observed in Germany or the UK (see chapters 1 and 4 in this volume).

The Swiss Government (“the Federal Council”) published various reports on the issue of digitalization and the gig economy, which can be considered as stepping stones in this debate (Federal Council 2017a, 2017b, 2021). The first two reports published in 2017 tackled the overall issue of digitization, respectively the general economic conditions and the opportunities and risks for employment and working conditions. In both reports, the gig economy is not identified as a key issue in the Swiss digitalization debate, but as a topic among others that contributes to the current transformations of the world of work. Other issues such as automation, digital skills, flexible working conditions and unemployment are considered more important. Indeed, they appear more likely to create structural labour market changes since automation, for example, can replace the workforce and deeply change the existing jobs profiles. Still, the second report pays more attention to the status of gig workers. It discusses the distinction between dependent and independent workers from the point of view of law, practices and jurisprudence. The role to be played by social partners is also mentioned, but only in broad terms and in connection with the general frame of digitization, i.e. without referring specifically to platform and gig work, and in connection with issues that are already part of the social partners’ competencies: vocational training, collective labour agreements and labour market control and surveillance. At this initial stage, there seems to be no need to consider gig work specifically and to develop *ad hoc* measures. Also, the Swiss Government tends to endorse an optimistic view about digitization and its potential, seeing it more as an economic opportunity than a risk of increasing workers’ precariousness and stating that the Swiss model of social dialogue is an adequate tool to tackle all these issues.

A report commissioned by the State Secretariat for Economic Affairs (SECO) argues that the gig economy creates opportunities that social partners could seize for engaging in social dialogue (Meier, Pärli, & Seiler, 2018). In particular, the following issues seem to become even more important for new forms of work organized through platforms: security and health at work, working time, flexibility and workers’ participation. Nevertheless, a social dialogue 4.0 does not seem to take place. Platform managers are notoriously silent, except for some very rare interviews in newspapers. In their narratives, they seek to legitimize their practices against regular accusations of illegality, emphasizing the benefits of the sharing economy for consumers and the inevitable reluctance met by disruptive business models at the time of their emergence. Most of them do not belong to any employer organization, while existing employers’ associations advocate for maintaining the *status quo* and not adopting new regulations in the digital sector in the name of business freedom. Instead, trade unions argue that the Swiss government does not adequately address the issue of stressfulness generated by the gig economy and that it rather takes the “sharing economy” as an opportunity to further deregulatory policies. They also accuse platforms to steal every year more than 60 million Swiss francs from gig workers through unpaid social contributions. At the time of writing

(February 2022), prospects for adopting new regulations at legislative level seem quite limited, which reflects the prevailing balance of power in the Swiss industrial relations configuration.

A tension is thus perceptible between potential opportunities and risks of the gig economy for the whole society. On the one hand, platforms create new jobs for people that have difficulties to find one and allow them to enjoy more flexibility. On the other hand, those new jobs could increase the precariousness in the labor market and create a new working underclass. The debate about the status is representative of this tension. In this context, trade unions are mostly focusing their action on obtaining that gig workers are considered as employed. They do not strive for a reform of existing labour law provisions, but struggle against what they perceive as a misclassification of gig workers as self-employed. To advance their views, they deploy new strategies that seem to be at odds with the traditional Swiss model of industrial relations characterized as peaceful and consensual. An open conflict escalated for instance in the canton of Geneva where in 2019 the local government decided to ban the services of UberX and UberEats. Such intervention of the State in labour market regulation is rare, but it has been advocated by trade unions as an alternative to collective bargaining, since very little negotiation was taking place either at firm or sector level in the gig economy. This was mainly due to difficulties to recruit members among gig workers and to the refusal of platforms to consider trade unions as legitimate stakeholders. This difficulty is further reinforced by the self-employed status which prevents collective organization in the name of competition law. Collective labour agreements, the traditional tool of social dialogue in Switzerland, are not yet used to regulate the gig economy, although few attempts can be observed in this direction. Trade unions were actively engaged in campaigns to denounce the gig economy and its working conditions, but with little impact as yet on grass-root actors.

The increasing awareness about the risks inherent to gig work (boosted by numerous media articles and TV and radio broadcasts), together with the augmented pressure from some MPs and social partners progressively led the Swiss Government to open a discussion about the issue of gig workers' employment status and its implications for society. The creation of a "third status", somewhere in-between that of independent and dependent worker, is at the center of a polarized right-left wing debate. Finally, it has not been adopted by the Swiss Government (Federal Council, 2021). It is worth mentioning that the confrontation around this issue mostly took place without associating platform managers and gig workers in a collective bargaining process, which is quite paradoxical in a model of industrial relations that considers subsidiarity as a key principle. Instead, it was deployed at the level of public declarations and legal debates. Trade unions and employers' associations commissioned legal scholars in order to bring evidence on the most appropriate employment status for gig workers, with a view to defending their respective positions (Pärli, 2016a, 2016b; Riemer-Kafka & Studer, 2017, Kahil-Wolff 2017). Legal scholars commissioned by trade unions emphasized that gig workers have a subordinate relationship with their platform and should thus be considered as workers and enjoy labour law protection and access to social rights. By contrast, scholars commissioned by employers' associations or directly by platforms insisted on the urgent need to update Swiss labour law in order to boost the gig economy potential for creating new jobs and new markets. They advocated for the adoption of a third and hybrid status moving beyond the outdated dichotomy wage earner/self-employed. Such status would ensure minimal and so-called adequate social protection, although inferior to that of wage

earners, while taking into account gig workers' desire for more flexible employment relationships.

Parallel to this political debate, there was also an increasing judicial activity about the status of gig workers and its implications. The main issues were the same as those discussed in the political debate. They include the employment relationship between a digital platform and a gig worker and its implications for social protection. In such court litigations, trade unions support workers' claims, but they do not have the most important role. Indeed, government agencies in the field of social insurances seem to play a more significant role in law cases. More specifically, the state pension fund (AVS) and the state accident insurance (SUVA) are entitled to decide whether a worker is dependent or independent according to his or her economic activity and the type of employment relationship with the employer. They thus are able to decide whether Uber for instance should be considered as an employer who has to fulfil its duties according to the labour law, i.e. to contribute to workers' old-age pensions and protect them against professional injuries. This decision also implies that the employer has to pay corresponding contributions, if the employee status is recognised. When such decisions are contested, the courts have to settle the dispute; otherwise their intervention is not required as the federal government has stated in its response to a parliamentary interpellation. In cases of contestation, decisions are then made by civil courts on the basis of the existing legislative provisions and this does not entail any discussion about reforming these legal provisions.

The judicial debate about Uber workers' employee or self-employed status is a main case in point; it went on for years and in the last two to three years many cantonal jurisdictions in the field of social insurances made decisions that Uber workers could not be considered self-employed (Pärli, 2022). Thus, case-law where legal arguments advanced by legal scholars working for both sides (trade unions and platform managers) were confronted, progressively resulted in decisions granting the employee status to many gig workers. However, these case-law decisions did not change the law itself, meaning that new decisions had to be made for each company so that employee status could be recognized for their workers. In other words, every case needs to be examined by courts in order to determine whether the concerned workers can be granted an employee status or not. This does not mean, however, that gig employers accept to comply with their duties as employers. Rather, they are experimenting new strategies to reduce production costs and avoid the costs represented by labour law and social rights, i.e. other than the self-employed status strategy, such as subcontracting or other forms of externalisation of labour costs.

Following the controversial political debate and the various court litigations that had taken place in the previous years, a report issued by the Swiss Government (Federal Council, 2021) stated that no adaptation of the labour law was necessary and that the existing provisions allowed settling all disputes concerning the status of gig workers. This also meant that the setting up of a unified social insurance for both wage earners and self-employed was not deemed appropriate. More specifically, a "flexi-test" can be implemented to decide, based on the criteria of the existing legislative provisions, whether a gig worker is an employee or a self-employed and to what social rights he or she is entitled. This solution is close to what the EU proposal directive, issued in December 2021, advocated in its strategy against worker misclassification as self-employed (EC, 2021). Switzerland, however, does not envision implementing an employment presumption in all platforms exercising control over their employees, but states that this issue is to be solved on a case-by-case basis, either via an agreement between social partners in line with the Swiss industrial relations traditions or,

failing such an agreement, via a judicial process. This implies that no legislative reforms or adjustments of the existing labour law are planned. .

All in all, the further labour market deregulation advocated by the partisans of the hybrid or third status (which would have increased job flexibility) was rejected, which opened access to labour law protection and social protection benefits for gig workers who are recognized as employees by social partners or by court decisions. This reinforcement of gig workers' rights did not coincide, however, with the adoption of specific *ad hoc* regulations as Swiss labour law was not adjusted. Thus, the outcome is ambivalent: on the one hand, further regulation was refused in the name of preserving business opportunities created by the gig economy; on the other one, it was recognized that gig workers who do not pass the "flexi-test" ought to be recognized as employees and enjoy the same protection and benefits as all other wage earners. This implies that the issues of job quality and working conditions have to be solved at sector and firm level, in line with the Swiss industrial relations configuration. It is thus important to investigate what happens at this meso (sector) and micro (firm) level. This is the objective of the next section.

## **2. Accommodating or refusing the gig economy? Practices of collective organization at local level**

As mentioned in the introduction, social dialogue at sector and firm-level plays a crucial role in the Swiss model of labour market regulation, where a significant part of the protection enjoyed by workers comes from collective labour agreements. However, such social dialogue is made difficult in the gig economy, both because the sector is largely unorganized due to the various forms of fragmentation at work (Heiland, 2020) and because gig workers have been (mis-)classified as self-employed workers (in Switzerland as in most other countries, legal provisions framing the right to social dialogue and collective bargaining are enshrined in labour law, which applies only to an employment relationship). Contrary to a traditional employer, platforms thus have no obligation to provide workers' councils for example. Some commentators even mentioned that gig workers' associations could be considered as forms of anti-competitive collusion that could be reprehensible under antitrust law (Cherry, 2016), since they would distort market competition. Nevertheless, we have seen in the first part of this chapter that both the Swiss government and civil courts consider that the issues of job quality and working conditions in the platform economy have to be solved at sector and firm level, which should involve the social partners according to the Swiss industrial relations configuration. This raises the question of how to create social dialogue from scratch in the absence of a legal framework supporting collective organization and representation.

The initial hesitations of some unions can be understood with regard to their tradition. Longstanding trade unions have little experience with self-employed workers and have traditionally been reluctant to promote this status (Joyce and Stuart, 2021). They are thus faced with a dilemma. On the one hand, if they build bridges towards self-employed workers they risk facing criticism for giving increased legitimacy to what many consider "grey zones" (Xhaufclair, Huybrechts, & Pichault, 2018). That could indeed imply that they recognize gig workers as self-employed. On the other hand, if they try to re-qualify these workers as employees, they must often do so without the workers' support. Indeed, many gig workers enjoy the flexibility provided by platforms; some prefer bearing the limitations linked to the self-employed status than seeing the platforms flee the city and lay off ("disconnect") their



workforce as it happened in many places already. These challenges related to the employment status exacerbate trade unions' difficulties in recruiting gig workers. As an alternative strategy, trade unions may choose to turn to policy-makers to ask for a reinforced regulation of the gig economy that would strengthen their power in the collective bargaining, for example by facilitating the conditions of a collective agreement whose application would be declared compulsory by the State.

At sector or firm level, social dialogue can take different shapes depending on the context in which the gig economy operates. One obvious example relates to the distinction between remote and on-location gig economy. Wood *et al.* (2018) showed for example that social dialogue in the remote gig economy emerges mainly through social networks. Regarding on-location platforms, Vandaele (2018) observes three main types of collective representation: a bottom-up approach (platform cooperatives or grassroots unions), longstanding unions based on existing structures, and freelancers' quasi-unions. In a similar line, Joyce and Stuart (2021) distinguish between longstanding mainstream unions, which tend to be politically moderate and privilege consensual social dialogue, and grassroots unions endorsing more radical views and more conflictual action repertoires. In Switzerland, two complementary strategies are implemented: while UNIA, the main trade union in the country, strives to recruit and involve gig workers themselves (see the Uber and notime cases below), Syndicom (trade union in the telecommunication and media sector) prefers social dialogue with traditional employers, trying to build a strategic alliance with them in order to counter the unfair competition by platforms (see the notime case below), hoping that this strategy will be supported by the State. We will see in our case studies, all concerned with location-based platform work, how the modalities and forms of collective action heavily depend on the existence (or not) of an already-established profession, and on the specific profile and motivations of gig workers.

The next subsections present three case studies in Switzerland. Our first case study focuses on a platform for cleaning services. This platform is considered by most of its workers as an opportunity to exit the precarious working conditions prevailing in the cleaning sector. It thus illustrates a case where the business model of the gig economy is not challenged by workers, despite an obvious need for enhanced social protection. It showcases that the absence of collective support for setting up collective bargaining mechanisms can result in the absence of social dialogue in unorganized sectors. Our second case study focuses on one food-delivery platform in the canton of Bern. This case illustrates the struggle of gig workers in a sector where traditional workers are poorly organized. They thus have to mobilise on their own, with limited help from existing organizations and in the absence of political support. This comes however with the advantage that they are able to address issues that are specific to platform work. This results in a bottom-up approach to social dialogue, with resulting difficulties to connect with existing organizations and to promote long-lasting regulation of the gig economy. Finally, our third case study addresses the launch of Uber in the canton of Geneva. It illustrates what happens when platforms impinge on the market of a well-established profession. Taxi drivers, living on their wages, joined forces with a longstanding trade union to ask for a re-qualification of gig workers as employees, finally resulting in an intervention of the State and a legislative reform. If existing trade unions succeeded in involving the State in the regulation of the gig economy, the challenge of connecting with grass-roots organizations and adequately tackling actual working conditions is not fully taken up.

## 2.1 The case of cleaning services in canton Vaud

For the last decade or so, the cleaning services sector has been invested by newly established platforms. SuperCleaner<sup>2</sup> has been operating since 2015. Its business model is different from other platforms in that the platform does not rely on a self-employed workforce. Indeed, all cleaners are regular dependent workers: they pay taxes, social insurance contributions and receive higher wages compared to traditional cleaning workers. The minimum net wage is 20 Swiss francs per hour which is higher than the traditional cleaning sector. The manager of the platform explains he plans to increase the salaries for the next ten years to keep the platform attractive. The platform is also negotiating a complementary private pension scheme for part-time workers.

Even though managers have regular meetings with public authorities and trade unions, social dialogue as such does not exist and the working conditions are not negotiated. The platform does not consider itself as an employer. Indeed, a trust company has been established that represents legally the platform and each customer as an employer toward the cleaners. On behalf of the platform and each customer the trust company pays salaries and social insurance contributions. Forty workers are directly employed by the platform (direction, IT developers, call center workers for the customer care, lawyers, administrative staff, etc.), but these do not include about one thousand cleaners working for or through the platform. These are mostly female and two thirds of them are immigrants. Most of them used to work for traditional cleaning companies. When they decided to change their employer, the main motivation was that they would receive higher wages, enjoy greater autonomy at work and the ability to choose their regular clients. The high degree of autonomy at work explains why the cleaners accept the lack of social protection. All in all, the cleaners interviewed seemed to consider that the platform was offering better working conditions than traditional cleaning companies and that it represented a significant improvement vis-à-vis undeclared work for private households that some of them were doing before joining SuperCleaner.

This does not mean that the cleaners were happy with the limited social protection provided by the platform. On the contrary, interviewees often complained about this, emphasizing for instance that they had to behave themselves carefully for not becoming ill and losing all their income. They also pointed to the pension issue, many of them stating that they would leave Switzerland after retirement to be able to make a living. However, this did not result in engaging in any form of collective action. In a poorly organized sector, cleaners felt that such collective claims would raise managers' discontent and they feared losing their job. In this case study, social dialogue did not play any role. There was no grassroots mobilization and very limited involvement of long-standing trade unions. Workers themselves did not seriously contest their working conditions, although they admitted that improvements would be welcome. This case shows the opportunities and limitations of the gig economy when the sector is unorganized and its functioning is left to market actors: despite the obvious need for enhanced protection, the absence of collective support impinges on the possibilities to organize collective action and negotiate working conditions.

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<sup>2</sup> The name of the platform is anonymized.

## **2.2 The case of bike delivery in canton Bern**

notime is active in the bike delivery sector. Since its creation in 2014, this platform offers delivery services to businesses, typically restaurants or parcel-delivery companies. The company started in Zurich before expanding to eight main cities in Switzerland and employing hundreds of couriers. Its workforce is composed mostly of young male students. It manages its workforce using the usual devices of algorithmic management: customer ratings, online shift-picking, financial incentives, and automated dispatching. At first, the company hired self-employed couriers on a piecework basis like most other platforms. Workers did not benefit from the social protection that comes with an employment status such as a pension fund, casualty, or unemployment insurance. Notably, they had to pay a value added tax (VAT) to the state instead of paying social contributions. At the same time, couriers had to follow strict rules related to time schedules, dressing code, handling of the goods, or behaviors toward the clients. Several couriers expressed grievances, but this did not lead to any collective action up to 2017. The mobilization only started, when the managers decided that workers would benefit from the wage earner status. This was part of a deal related to the takeover of the company by the state-owned Swiss Post, which was conditional upon the fact that notime managers would “regularize” or “legalize” their business model and comply with the regulatory requirements of the Swiss mail market.

At its beginning, the mobilization revolved around informal meetings among bike couriers who were concerned about the more flexible working schedules that the managers wanted to impose in connection with the new labor contracts. As dissatisfaction grew among the bike couriers, they started to hold regular meetings with the UNIA trade union local branch. Those meetings were a first step toward the organization of the mobilization. The creation of an instant messaging group, where supervisors were excluded, allowed gig workers to communicate freely and come together despite very individualized working conditions. These meetings allowed the workers to identify their main claims: being employed as dependent workers without wage reduction, being collectively represented through the creation of a workers’ council, and obtaining more transparency regarding the algorithmic management of the labor process. By asking for a workers’ council, they wanted to ensure that their collective voice could be heard within the platforms (Cianferoni, Perrig and Bonvin, forthcoming). Through such a council, the workers would have the opportunity to express their claims and to push the management to improve their working conditions. Specific emphasis was placed on the issue of the opacity of algorithmic management and the need for more transparency, especially with regard to how their performance was rated and how this impacted their access to shifts or their wage. Because they did not understand the logic underlying these management tools, the couriers could not adjust their behavior accordingly and asked that working guidelines be made more explicit and transparent.

The trade union had an important role at the early stage of the mobilization. Nonetheless, its importance declined at the turning point of the mobilization when notime’s managers refused to engage in negotiations with the trade union being part of the workers’ delegation. At first, bike couriers did not accept this and in an attempt to increase the pressure against the platform decided, together with the trade union, to organize a public demonstration. However, the strong reaction of the managers, who accused the trade union to manipulate the bike couriers for purposes disconnected from the dispute, pushed them to accept coming to the negotiating table without the trade union.

A definitive agreement was found between notime managers and couriers, which stated that all bike couriers would be considered dependent workers from January 1<sup>st</sup> 2018. Everybody would receive a fixed hourly minimum wage for every working shift, including extra compensations among others for the use of a private bike and mobile phone. Moreover, a more transparent ranking system was introduced while several working conditions related to uniform, communication, safety at work and app improvements were put on the agenda for further negotiations. Each worker had to sign a convention aimed at resolving the dispute over the backdated social contributions. The agreement also provided for the creation of a workers' council composed of elected bike couriers, which would be independent from the platform, but would not include the trade union. Its mandate consisted in negotiating new labour contracts providing higher salaries, implementing a more transparent performance-based bonus system, and finding an acceptable solution for the payment of all backdated social contributions.

Admittedly, the mobilization took place with the support of an established trade union, but from the beginning to the end it happened as a struggle led mainly by self-organized gig workers. All the same, bike couriers were satisfied with the collaboration with the trade union, although its role was not always clear in the negotiation process. The trade union gave the couriers more confidence about their claims and helped them build a strategy. However, the role of the union was challenged by the platform and no meeting happened with the trade union after the end of the mobilization. Inside notime, gig workers' actions look like a self-organized mobilization similar to those that took place among couriers from online food-delivery platforms in several European countries (Tassinari & Maccarrone, 2019). The case of notime is specific in that there was an initial attempt to combine grassroots and trade union action in order to improve working and statutory conditions. This was not entirely successful at the time of the mobilization and, significantly, it was not followed by long-lasting collaboration, which illustrates the challenges faced by trade unions when it comes to recruit and involve gig workers.

### **2.3 The case of Uber in canton Geneva**

Uber has been at the forefront of the debates about the gig economy in Europe, and Switzerland is no exception. Since its arrival in 2014, the company has raised numerous controversies. In this subsection, we focus on canton Geneva, whose government has been among the first to take action in this regard. When Uber arrived in Geneva, the transportation sector was composed of taxis and limousine drivers subjected to a common law, the Taxi Law, that establishes who has the right to engage in the business and under which conditions. Most taxi drivers were employed by taxi operators and some were independent, but all of them had to pass an exam with a success rate of only 50% in order to get a professional driver's license. This license granted them the right to use taxi lanes to conduct their business, but imposed also duties such as installing a tachometer on their vehicle, in order to keep track of their speed and activity and monitor their compliance with safety legislation. No official union existed at that time and the sector was not subjected to any collective labor agreement, but the competition within the profession was regulated by several provisions of the Taxi Law.

In spring 2014, Uber launched its service UberPop in Geneva, with prices about 25% cheaper than regular taxi rides. The first concern among the established taxi drivers revolved around

unfair competition and in September 2014, they asked the local government to take action against the platform under the claim that its drivers operated out of the Taxi Law. It is thus an issue of unfair competition that initiated a years-long struggle among traditional taxi operators and Uber lawyers to clarify the place of online ride-hailing services. Following a complaint from taxi operators, the local government stated that Uber drivers had to hold a professional drivers' license just like traditional drivers. The platform itself was considered a regular taxi operator and would have to ask for an appropriate license in order to continue its operations. Uber refused to ask for such a license and continued its operations, and the service gained hundreds of clients week after week. After facing growing discontent from taxi drivers, the government decided to draft a new legislation that would allow ride-hailing platforms to operate along traditional drivers. The so-called Lex Uber was devoted primarily to include platforms into the existing law regulating the market for taxi operators. It addressed questions such as the examinations required for platform drivers or the possibility to use taxi lanes. In its drafting, it had the potential to ban platforms, make enrollment of drivers difficult, or put a cap on its number of drivers in the canton.

Uber drivers themselves were remarkably absent from the debates surrounding the platform implementation in Geneva. One simple reason is that there was no collective organization at the time. It is only after the law passed that Uber drivers envisioned organizing. They started exchanging on numerous instant messaging group apps. On these chats, they discussed mainly about day-to-day issues such as traffic jams or radars, but they also sought help understanding the app. This resulted in the emergence of an Uber drivers' association, with the main objective to pressure Uber into implementing minimum fares for each ride that could compensate drivers for their trip on their way to the client. Another issue was related to customer ratings and their impact on drivers' eligibility to platform services. Drivers complained that their services were not consistently rated due to the diversity of practices from customers. All such issues, related to the day-to-day work of Uber drivers, could have been taken into account in the drafting of the new legislation, had the drivers been more vocal at the time. However, they were not taken up by the legislators whose main interlocutors in the Uber case were traditional taxi drivers.

This case study provides an example of a fragmented and disconnected collective action at local level. On the one hand, traditional taxi drivers defend their interests by calling for a ban on Uber activities; on the other hand gig workers organize mainly to improve their working conditions but without contesting their working status. After Uber's arrival in Geneva, the government took measures to create a legal space for its business to flourish, but was not able to anticipate issues arising from platform management, such as algorithmic accountability and personal data protection (van Doorn & Badger, 2020). To some extent, this case ran on two parallel tracks: on the one hand the discussion between taxi operators and legislative actors; on the other hand an emerging, but quite hesitant, collective action at grassroots level. Both are largely disconnected at this initial stage. This also translated into a twofold and to a large extent fragmented action by trade unions, which both tried to pressure government in adopting legislation in favor of gig workers and strove to recruit gig workers and involve them in collective mobilizations.

In the years following our empirical fieldwork, long-standing trade unions such as UNIA were able to better represent the gig workers' interests and enforce the employee status for them, while preserving working conditions for traditional taxi drivers. They thus were successful, to some extent, in creating a bridge between the two forms of collective action

taking place in canton Geneva. This was achieved mainly through public campaigning in order to push local government to take regulatory action in the field of the gig economy. If legal issues (worker status) could be successfully tackled in this way, solutions have not yet been found about the more practical issues raised by gig workers, such as customer ratings or algorithmic management. Thus the gap between longstanding unions and new grassroots movements has only been partially bridged in this case, as was confirmed by our interviewees.

### **3. Conclusion**

The case of Switzerland is characterised by a strong willingness to preserve the existing model of industrial relations, based on social dialogue and an emphasis on the principle of subsidiarity. There is a wide agreement that a labour law extension is not needed and that the existing provisions are appropriate to face the challenges represented by the gig economy. More specifically, the political debate on the gig economy mainly focused on the worker status and its conclusion was that no new regulation (enhanced rights for gig workers) or deregulation (adoption of a third status) was required; this issue could be solved within the existing legal framework, if necessary with the support of judicial courts. All other issues, related to the day-to-day work and actual working conditions of gig workers, are to be negotiated via collective bargaining at sector and firm level.

This raises the question whether the conditions for such fruitful social dialogue are met within the gig economy. In the past few years, new forms of collective organization and social dialogue started to emerge within the gig economy despite difficult conditions – especially individualized working conditions, high fragmentation and self-employed status, all factors impinging on the implementation of social dialogue and collective bargaining mechanisms. Nonetheless, the case studies highlighted in this chapter illustrate that social dialogue can develop at meso (sector) and micro (firm) level, though in varying forms and with more or less impact and success along the different sectors and platforms investigated. Trade union strategies are most visible in the bike-delivery sector, where couriers appear as pioneers in terms of collectively organizing and contesting working conditions. In this sector, we have observed two different trade union initiatives. On the one hand UNIA supported gig workers in their efforts but was not successful in establishing a long-lasting connection. On the other hand, Syndicom focused on collective bargaining at sector level and managed to build a strategic alliance with employers of couriers in the traditional, non-gig economy, sector. This move was meant to prevent unfair economic competition from the gig economy platforms.

This is the backdrop of the multiple social dialogue configurations identified in this chapter. In some cases longstanding trade unions were at the forefront, while in other cases the movement was more grass-roots; still other sectors saw no mobilization at all. These distinct forms of social dialogue in turn led to the gig workers being more or less included in the negotiation. The case of the cleaning workers shed light on the individual strategies gig workers themselves could deploy when social dialogue was absent. It is worth noting that no case study has shown a joint involvement of both gig workers and social partners playing a clear and successful role in the negotiation process. How then can we explain such a diversity and incompleteness of social dialogue configurations? Our case studies suggest three reasons.

First, the most obvious factor refraining gig workers from seeking help from longstanding trade unions is probably the economic dependency on the platform. Most platforms are aware

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

Second and closely related is the distinction between local and multinational platforms. The threat of withdrawal is mainly used by multinational platforms that can diversify their sources of income and raise large investments. In our case study about couriers, we focused on a mobilization that took place in a local platform. The threat of leaving the country was never an issue and this can maybe explain why some of these platforms are more likely to engage in social dialogue under the pressure of grass roots, trade unions or organized professions. This most probably would have been very different if the platform was a multi-national company.

Third, the existence of an organized profession or a trade-unionised workforce before the arrival of platforms allows longstanding trade unions or professional associations to have a firmer hold on the upcoming social dialogue. This was very clear in the transportation sector, where taxi drivers could unite with the help of trade unions in order to fight against the “uberisation” of their activity. It was much less the case for the delivery sector and it was most probably one of the main factors accounting for the lack of social dialogue in the cleaning services. Social dialogue in the cleaning sector has always been notoriously difficult to initiate in Switzerland. For this reason, the arrival of an alternative business model has not been met with any contestation from the cleaners in the traditional sector.

All in all, the Swiss model of industrial relations has shown high resilience in the face of potentially disruptive phenomena such as the emergence of the gig economy. The relevance of this model is strongly supported by most stakeholders. Our case studies suggest, however, that the successful implementation of this model in the gig economy faces some difficulties. Thus, the strong willingness to implement the existing model of industrial relations in emerging sectors is not sufficient in itself. It requires a stronger collective support from public authorities as well as innovative strategies from long-standing trade unions in the sense of enhancing gig workers’ capacity to organize and bargaining power. Such stronger collective support could be oriented toward both an empowerment of the gig workers (making it easier for their voices to be expressed and taken into account) and enhanced entitlement of the social partners (by encouraging their legitimacy to engage in collective bargaining).

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