ON DEMAND ECONOMY: 10 KEYS TO UNDERSTANDING FROM A LABOR PERSPECTIVE.

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Abstract

This article tackles the main key factors of the provision of services through the so-called on-demand platforms, from a continental labor law perspective. This kind of platforms do not define a unique model of relationships or provision of services' requirements. However, the following pages analyze the minimum common denominator elements underlying in the new economy, which entail an unquestionably significant challenge for our legal labor institutions: the company's digitalization and consequent company dematerialization; the relevance of software to the company's activity and decision-making; the services provider's dependence and freedom to connect; or the incentive-based managerial power. The author highlights the position of France, which has been the first country to establish specific conditions for services providers through electronic platforms, and concludes by proposing an alternative to deal with this issue from our legal reality.

Title: On-demand economy: 10 keys to understanding from a labor perspective.

Palabras clave: tecnologías disruptivas, economía on-demand, gig economy, software, digitalización, desmaterialización, test de laboralidad, software, dependencia
Key words: disruptive technologies, on-demand economy, gig economy, software, digitalization, dematerialization, labor relationship test, dependence

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Summary

1. Not an univocal concept.

Technological progress has facilitated the emergence of new forms of marketing and of consuming goods, of providing and receiving services, and has altered the way in which the supplier and the consumer interact. In short, the various advances have promoted the emergence of new forms of economy.

Among the most recent to be highlighted is the on-demand economy; or sharing/collaborative economy, gig economy, crowd-based economy …

Although there are certain differences between these forms of exchange, the fact is that all of them share common features which allow them to be included in a single concept: that of economies which, through a digital platform, allow individuals, following registration on that platform, to offer products and/or services to recipients who, also having registered on that platform, receive the goods or services which comply, to a greater or lesser extent, with certain needs previously defined on that platform.

The definition of on-demand economy, as shown in the previous paragraphs, includes in itself the idea of multiplicity, meaning an economy which also includes multiple variations.

Goods, services, or both at the same time, can be offered on such platforms. If the platform offers goods, such goods may also be new, used, fungible, or non-fungible.

If, on the other hand, services are offered, such services may require concurrence in the time and the space of the provider and customer or, on the other hand, services can be found which are provided indiscriminately from anywhere in the world.

Furthermore, platforms can be classified according to who determines the characteristics of the goods or of the services and their respective price, whether it is the platform or the supplier. Also depending on who establishes the principal instructions for the execution of the service or the transfer of the goods, which may be the platform itself, the customer or the provider of the service.

Finally, another way of classifying these platforms can take into account the greater or lesser degree of freedom offered by the platform to those who provide services or transfer goods to third parties through such platform, with a view to the performance of the supply itself. To be specific, we refer to the greater or lesser degree of freedom which is given to the provider of the service to be available for the performance of services through the

platform, or the greater or lesser degree of autonomy of the provider of services to carry out the supply.

In short, the concept of this new class of economy cannot be considered univocal since there is a great variety of platforms which, although complying with the definition provided above of on-demand economy, differ notably from each other, which opens up a wide range of possibilities as far as their legal classification is concerned.

It is this absence of a single meaning which is leading certain institutions to take the first steps with a view to avoiding differing opinions which give rise to contradictory positions adopted by the different jurisdictions. Even more so if one takes into account the cross-border nature of this kind of platforms.

At European level, the European Commission, as part of its Digital Single Market Strategy, is carrying out a series of initiatives aimed at, among other sectors, that of the collaborative economy. The Commission itself acknowledges the need to address the obstacles and regulatory uncertainties which hinder the growth of these new business models.

Proof of the importance acquired by these new forms of economy for the European Commission is the European Agenda for the Collaborative Economy, of June 2016, or the public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy, which was conducted between September 2015 and January 2016.

However, these intentions, for the moment, have not been converted into legislation which minimizes or eliminates the legislative and case-law uncertainty which these new economies involve[2]. As usually occurs in these situations, the slow capacity of reaction of the law to social or technological progress is shown again in this case.

2. Digitalization - Dematerialization.

The idea of offering a product or a service meeting the final customer's needs is in itself the basis of the capitalist economy. Every capitalist economy has been and is an "on demand" economy. The existence of a business without customers who demand its services is inconceivable.

[2] The only exception is France, with its reform of August 2016, which we will discuss later.

However, the emergence of the term "on-demand economy" is due to three new elements arising from the evolution of technological capabilities:

a) The first is the disruptive element of **digitalization.** This digitalization involves the **dematerialization** of the supplier of goods or services in the sense that the latter does not necessarily need to occupy a certain physical space in order to be able to carry on his activity.

b) The second and an essential element, which is a consequence of the previous element, consists of the technological capacity to instantaneously match the demander of certain goods or services to a pool of potential suppliers who act with greater or lesser freedom.

   This new fundamental element means that certain businesses are not required to have an estimated number of workers in order to be able to meet the ongoing supply of services and to adjust their workforce to the variation in demand in certain periods. On the contrary, it will be sufficient for them to have a pool of potential providers of services whom they connect in real time with the recipients of such services by complex technological means.

   Thus, the "on-demand" economy would not refer so much to the conditioning factors of the demand of customers, but rather to the conditioning factors of demand in relation to suppliers.

c) The third consists of delegating business decision making to computer programs which, equipped with huge capabilities, among them those of geolocation, activity tracing and payment systems, are also capable of making programmed reasoning of performance and quality of service, by means of algorithms, and of executing these decisions on the platform, with contractual consequences for the platform, the provider and the recipient.

3. The employment relationship in a digitalized-dematerialized environment.

The defining elements of an employment relationship were conceived (i) in a purely physical environment, in which persons were required to physically meet in order to work as a coordinated whole, and (ii) in a very basic environment for the education and training of the individual in general, which has been completely outpassed.

The evolution of computer technology has promoted digitalization, and the consequent loss of the physical references on which the premises of the concept of employer and of

the classification as an employment contract have been based. Consequently, the physical premises on the basis of which the consideration of a relationship of provision of services as an employment relationship has been maintained are altered.

Attending a certain place to provide services for a specific number of hours is no longer necessary by any means in order to perform the same economic activity which a short time ago did require these obligations. Nor is it essential for individuals who engage in team work to be synchronized in the same time and place.

Moreover, the educational development of society has given rise to the appearance of more knowledge workers. The content of these workers' employment activity is of an intellectual nature, which involves greater autonomy in the provision of certain services which are not limited to executing an order which has been given, but rather consist of devising something in an essentially independent manner, since what forms the provision of services is the ideas which may be developed by the worker.

In addition, social evolution has proven the suitability of new forms of management and guidance which essentially advocate the greater advisability from numerous perspectives of a role of guidance more reliant on the encouragement of the conduct required, than on punishment, understood as punitive action, in relation to undesired conduct.

The latter, which can be easily observed in the evolution of teaching and child and juvenile education techniques which advise, in terms of efficacy, the use of positive actions to encourage the desired conduct instead of the use of punitive actions, which is an essential part of the most highly-regarded business management techniques at present. It involves the economic analysis of conduct.

These factors have emphasized the factual bases on which to analyze the existence of the defining elements of the employment relationship – labor relationship test – especially of those that are reliant on the concept of "dependence[3]"

4. The status as an employment relationship of the relationship between the providers of services and the on-demand economy platforms on trial.

Labor courts in several jurisdictions have had the opportunity to apply their labor relationship tests in order to ascertain the nature of the legal relationship between the

[3] Also the concept of working for another: the essential tangible resources for the provision of a service are also subject to the confusion of digitalization and the balance between the purely tangible resources (vehicle, tools, material infrastructure) as opposed to the intangible resources (software, know-how of the activity, or image) creates uncertainty.

providers of services and the electronic intermediation platforms for goods and services through which they contacted customers.

The analysis is being conducted without the existence of specific legislation in this respect. The courts adapt the characteristics of the digital supply to the requirements of working for another and dependence, deciding whether, in this new environment, we are faced with a supply of services for an employer on a subordinate basis.

Among the rulings which we have managed to analyze, we will focus on one, since it contains a remarkable range of details concerning the characteristics of the *de facto* relationship between the provider of services and the platform[4]. It is the Ruling of October 28, 2016 of the Central London Employment Tribunal, case number 2202551/2015 and others.

By this ruling the Tribunal settled at first instance a dispute between the well-known "Uber" platform and a group of British drivers, located in the London metropolitan area.

The drivers –so-called "partners"– demanded to be considered employees of Uber, on the grounds that the treatment of them as "contractors" accepted in their contracts was contrary to English employment law. The Tribunal considered the drivers to be "workers" of Uber[5].

In fact, the Tribunal considered that Uber does not confine itself to acting as a mere digital platform for bringing together independent service providers (the drivers) and potential customers (the passengers). On the contrary, it considers Uber's activity to be that of transporting persons by means of private vehicles.

The judgment applied the traditional labor relationship test by analyzing the elements of the relationship between Uber and its drivers, so as to reach the conclusion that the relationship is in between the contractor's relationship and that of employee. In fact, the "worker" has a series of typically employee rights, which include an adequate salary or payment for work, but he does not have others, such as the right to be indemnified in certain cases of termination of the contract.

[4] Also interesting in relation to this same service, is the judgment of February 13, 2017, of 33ª Vara do Trabalho, de Belo Horizonte, do Tribunal Regional do Trabalho, Brazil.

[5] In Switzerland, along the same line, in January 2017 an insurance company refused to treat a driver of Uber as a self-employed worker, obliging the platform to pay that country's social security contributions for that driver. The insurance company reached that conclusion after verifying that the driver accepted a series of consequences if he failed to comply with the rules established by the platform and because, in addition, it was not the driver who decided the price or the terms of payment of the service.

In particular, the English tribunal found that Uber has the personal data of the passengers and of the journeys, which it does not share with the drivers, and also assumes the risk of the activity, since the price of the journey is paid to Uber, which also calculates in advance and shows to the passengers an estimate of the price.

It also took into account the fact that the driver can agree a lower price with the passenger, but provided that he pays to Uber the percentage of the price calculated by the application. However, the driver cannot agree a higher price than that estimated by the application. Other signs of that assumption of risk by Uber are the fact that it is the technological platform which bears the costs arising from the cleaning of the vehicle when the passenger dirties it, or costs caused by fraudulent conduct of customers (for example, identity theft by the passenger).

It also considered relevant the fact that Uber bears the costs arising from complaints by customers, although it can deduct those costs from the amounts which it pays to the drivers on a weekly basis; and that it handles those complaints sometimes without consulting the driver concerned on the matter.

In relation to the payment of rates to the drivers for the journeys made, the Tribunal's attention was drawn to the fact that Uber came to implement the weekly payment of a minimum amount, regardless of the number of journeys actually made.

It was proven that the company established the transport conditions (routes and price) and the requirements for the cancelation of journeys by drivers, penalizing those who failed to observe those requirements, for example, by temporarily denying them access to the App. The technology company established a route for each journey which the driver had to follow, and could deduct part of the amount which it pays to the driver for failing to follow the route.

The judges considered that Uber interviewed and selected its drivers, and instructed them regarding how to do their work, using for this purpose imperative language and not mere recommendations. In addition, it subjected them to a rating system which, in reality, in the tribunal's opinion, constituted a system of evaluation of performance, and a disciplinary system.

As a final point, the Tribunal cited public statements of representatives of Uber in which they prided themselves before the Greater London Authority Transport Scrutiny Committee on creating employment opportunities and potentially creating tens of thousands of jobs in the United Kingdom.

5. Software as an enterprise.

This type of disputes involves two areas of recurring and relevant analysis to determine whether an employment relationship exists. The first is to determine whether, due to the characteristics of the electronic platform, such platform is the provider for third parties of the services which customers demand or whether, on the other hand, it is a mere electronic intermediary between the providers of the services and the recipients of such services[6].

The court must decide to what extent between the electronic platform and the recipients of services there is a genuine supply of final services, or certain commitments determining the characteristics of the final services, or to what extent the subject-matter of the supply of services between the recipient and the platform is confined to providing contact with a provider, without commitments or responsibility on the part of the platform in relation to the characteristics of the services, beyond mere information. The scope of the supply of services between the operator and the customer is a "preliminary issue" of a commercial nature which must be analyzed by the labor courts so as to subsequently apply employment law between the platform and the provider.

For this purpose, the courts are determining the concept of ***software as an enterprise***, or organized set of resources capable of being exploited as a business. Of course, the set of integrated systems and software, equipped with geolocation and payment systems, which operate in hyperconnected environments in which users and providers are digitalized, allows an "app" to provide the same service as a short time ago required a combination of human and material resources acting in a coordinated manner. Sometimes, they constitute the most important element of the business activity.

This idea of **software as an enterprise** is what underlies judgment number 8/2017 of the Superior Court of Justice of Asturias, of March 21, when holding that a set of software and computer developments constitutes an independent production unit for the purposes of applying Article 44 of the Workers Statute.

[6] In Spain, in the civil and commercial area, the reasoned ruling of Mercantile Court no. 2 of Madrid, of December 9, 2014 (Rec. núm. 707/2014), ordered on an interim basis the cessation and the prohibition of Uber at national level since it failed to comply with public transport legislation and due to a possible infringement of the Unfair Competition Law. This platform had already been previously prohibited in Belgium and the Netherlands for similar reasons.
However, that same Court, by means of a judgment of February 2, 2017, unlike in the case of Uber, held that Blablacar was a platform for intermediation between private individuals who wish to embark on a trip together and share certain costs, rejecting any possible infringement of the Unfair Competition Law.

The Labor Chamber of the Superior Court of Justice of Asturias accepted the claim for collective dismissal filed by the workers on the grounds that a transfer of undertaking had occurred under Art. 44 of the Workers Statute and ordered the Municipal Authority to reinstate the workers assigned to the tax collection service. It did so on the basis of the following arguments:

a) The fact that a significant part of the material resources with which the business activity is carried on which forms the business unit are those which the company awarded the service makes available to its successive contractors is not an obstacle for the existence of a transfer of a production unit which maintains its identity.

b) That the assets transferred by the company to the Municipal Authority –i.e. the software and computer products, improved by the company, as well as the files and the information necessary to carry on the activity–, "constitute a production unit capable of being operated or managed separately since they provide a sufficient basis to keep alive the previous business activity".

c) That "the essential items have been transferred to allow the continuity of the business activity, of a production unit existing prior to the transfer equipped with sufficient autonomy at functional level which maintains its identity after such transfer".

It is an unprecedented judgment in Spain which recognizes the existence of an independent production unit on the basis of an organized set of software, databases and files, regarding the transfer thereof as a transfer of an undertaking for labor purposes and pointing out the priority of the computer resources over personnel, or other tangible items, such as facilities or hardware.

6. Software as an employer.

Together with the above, the capacity of computer programs to take decisions through algorithm programming of the consequences which will be involved in the occurrence of certain acts performed by the providers of the services, and the delegation of business decisions to these programs also alter the traditional idea of the employer as an individual who takes direct decisions which affect the employee.

Business decisions in relation to the providers of services through electronic platforms are taken not directly by a network of persons who agree and apply the consequences of the decision, but rather by a computer system which has programmed a series of possible premises and the consequences for the performance of the contract, of the occurrence of one or other events.

This system allows one to show with a degree of transparency unknown up to now the factors and to what extent they are taken into account for each decision: the analysis of algorithms is possible and is much more accessible than the analysis of the reasons of the human mind on a day-to-day basis.

This is the underlying idea which shapes judicial decisions in relation to the on-demand economy. The courts are discovering how to convert the physical world into the digitalized world in a rather complex task. For example, among many other aspects, they have considered that the fact that a platform adopts the approach that the number of "likes" or customer reviews influences his possibility of providing a service, is equivalent to designing a system of evaluation of performance based on the customers' opinion which conditions the provider's professional development[7].

The delegation of decisions to the combination of algorithms and big data opens up a new possibility for discriminatory practices within a company. Automated decisions on the basis of these two elements – algorithm and big data – involve the (high) risk of decisions with discriminatory connotations. The seriousness of this situation was exposed in the report drawn up by the U.S. Administration in May 2014: "Big Data: Seizing Opportunities, Preserving Values", in which this was announced as one of the major risks associated with big data, the principal source of information for decision-making on platforms such as Uber, TaskRabbit or Lyft.

For the purposes of this analysis, once it has been decided that the technological platform is a provider of a certain service, the Courts must establish whether these services are provided by the platform by means of the collaboration of independent contractors or whether it does so through the collaboration of employees.

It is on this aspect that the analysis of each platform focuses in greater detail and also where programming allows us to analyze precisely to what extent the signs of an employment relationship exist determined by the existence of the characteristics of dependence, working for another, freedom and remuneration.

[7] Another very relevant aspect from a legal perspective is the risk that the delegation of business decisions to "automated decisions" on the basis of algorithms and big data, involve a high risk of a discriminatory element. Obviously it will depend on the programming of the source of decisions, but the seriousness of this situation was exposed in the report drawn up by the U.S. Administration in May 2014: "Big Data: Seizing Opportunities, Preserving Values", in which this was announced as one of the major risks associated with big data, the principal source of information for decision-making on platforms such as Uber, TaskRabbit or Lyft.

The difficulties arising from the novelty in the manner of determining the service are offset by the possibility of proof derived from the fact that every activity is recorded and that every decision is taken on the basis of programed premises equivalent to forms of reasoning.

7. Freedom of connection and dependence.

The major challenge faced by the labor relationship test in the digital environment in general and, in particular, in that of services which are provided through electronic platforms is related to determining the observance of the requirement of dependence in the relationship between the provider and the platform[8].

The factor of establishing whether certain services are provided on a subordinate basis is being complicated as a consequence of the great degree of freedom and self-organization which is provided by electronic resources.

These elements cannot be assessed in general since their existence is intrinsically linked to the characteristics of the services which must be provided and clearly interconnected with the greater or lesser objective possibility of technical autonomy in the performance of the tasks by the provider, and how this autonomy is limited by the platform.

However, there is one characteristic which exists on certain platforms which means that the provider of services cannot fit within the employment contract as we know it.

The employment contract in Spain coincides with a simple reciprocal formula: the worker's obligation to provide certain services for a certain number of hours, in exchange for remuneration.

This unavoidable requirement, consisting of the fact that the worker undertakes to work a number of hours in a certain time, so that the employer can demand that the worker is carrying out his duties during the period contracted, is essential so that two parties can be said to be bound by an employment contract.

[8] We focus almost exclusively on the element of subordination/dependence and to a limited extent on the element of working for another. The lack of balance is deliberate. It is sufficient merely to point out that it is possible to argue that on many platforms the element of working for another can exist in its various aspects: a) In the means, since the app and virtual platform are considered the most important element for performing the service; b) In the fruits, to the extent that it is the platform which receives the amounts for the service and decides the provider's remuneration; c) In the risks of the activity, to the extent that it is the platform which bears the consequences of the damage or of the errors; and d) In the market by accepting the policy of the services, their characteristics and having the direct relationship with the customers.

This evidence is contained in Articles 12, 8 and 5.A) of the current Workers Statute:

Article 12 of the Workers Statute, when regulating the part-time contract, provides:

1. *An employment contract shall be deemed to be entered into on a part-time basis when there has been agreement on the provision of services for a number of hours per day, per week, per month or per year, lower than the working hours of a comparable full-time worker.*

2. *For the purposes of the provisions of the previous paragraph, «comparable full-time worker» shall mean a full-time worker of the same enterprise and work center, with the same kind of employment contract and who performs identical or similar work. If there is no comparable full-time worker in the enterprise, the full-time working hours provided in the collective bargaining agreement applicable or, in the absence thereof, the maximum legal working hours shall be taken into account.*

The legislation draws a distinction between two types of employees: those who provide their services on a full-time basis, and part-time workers. The former are those who undertake to provide their services for the maximum period allowed by the legislation governing working time (a weekly average of 40 hours calculated on an annual basis, unless the collective bargaining agreement establishes a greater limitation on the maximum hours). The latter are those who undertake to provide their services for a shorter number of hours than that of full-time workers.

Under the legislation in Spain – and in continental Europe[9] – there is no possibility of signing an employment contract which does not establish this first and essential obligation. A contract whereby a provider of services does not undertake to provide services for a certain number of hours is not an employment contract.

In accordance with Articles 5 and 8 of the Workers Statute, if the employment contract does not expressly indicate a number of hours which must be worked per week or per

[9] By contrast, zero-hours workers under the Common Law system, devised to include jobs on a one-off basis or on demand.
Under this type of contract, the employer is not obliged to provide the worker with employment on an ongoing basis, and may call him only when it is necessary. However, the employer will be subject to the legislation on prevention of occupational risks in relation to this type of workers.
On the other hand, the worker reserves the right to accept or reject the service entrusted, will be entitled to the vacation established by law and his remuneration must comply with the minimum salary applicable under the same conditions as the rest of the workers with an ordinary employment relationship. Furthermore, zero-hours workers are entitled to look for or accept work from another employer.

month or per year, the contract is deemed to be entered into on a full-time basis, which means that the provider of services is obliged to work the maximum working hours provided. If he fails to do so, he is in breach of the contract and may be dismissed.

The contractual ties between certain platforms and the providers of services are completely different. Such platforms envisage the absolute freedom of the provider to provide his services for the number of days and the number of hours that he wishes, there being no minimum service obligation. We consider that, in this case, it cannot be said that the providers are employees since the relationship is based on the absolute freedom (unconditional power) of the providers to provide their services when they wish, and if they wish. They enjoy total freedom to be or not to be active on the platform, i.e. to connect or not to connect at their sole discretion.

The freedom to work when and if one wishes completely eliminates the requirement of dependence – inherent in the employment relationship – from its premise: in Spain there is no possibility of an employment relationship being activated or deactivated at the wish of the worker. The employment contract either exists or does not exist, but if it exists, it must necessarily define the characteristics of the service in terms of time, i.e. for how long in a certain period must the worker provide his services or, in other words: how long can the employer require the worker to devote to his services.

8. The power to manage through incentives.

The establishment of pecuniary incentives or of professional promotion is one of the tools of human resource management and has a very extensive historical tradition in employment law.

Ranging from productivity bonuses, Bedaux and similar systems, to stock options and phantom shares, and including an entire range of remuneration and promotion formulas of different kinds, the management of a business by incentives is nothing new.

This is an essential aspect to be taken into account in the new environment. As we pointed out at the beginning of this article, the cultural and political evolution has promoted the replacement in western societies of the protective or punitive element by another positive incentive element, since it has proven to be more effective to guide conduct by incentives than by penalties.

This "turnaround" is one of the keys to understanding why it is considered that the incentives established in the computer programs which form the electronic platforms of

the on-demand economy are an element of the power of management (dependence) of platforms.

The rulings set an equivalence between the employer's orders and the effect of the incentives, proceeding on the premise of lack of economic freedom of the provider of the service. The economic dependence of the provider of the service means that the latter attends to and behaves in the provision of his service in accordance with the programmed pecuniary incentives, which ultimately leads to the provision of a service coordinated and managed by the platform and eliminates the *de facto* differences between this provision of services and work on a subordinate basis.

9. The French solution.

We have already pointed out the increase in the difficulty involved in adjusting the traditional signs of the labor relationship test to the characteristics which exist for the provision of services through platforms. The flexibility in the times of provision or the dematerialization of the place of provision of the service, as has been seen, raises the uncertainty and even causes confusion.

This has motivated various experts to advocate the appropriateness of creating a third[10] category of specific workers for the case where services are provided through electronic platforms.

France has taken a step in this direction. In its employment reform of August 2016, it has introduced certain specific obligations for independent workers who carry out their activity in France for companies which, irrespective of where they are physically located, connect persons by electronic means so as to sell goods to them, supply services to them or exchange goods or services.

The French legislature has not opted for a new employment category in the strict sense, but rather to provide a series of rights[11] for independent workers who work through certain platforms.

Thus, all platforms which establish the essential characteristics of the business activity, such as the characteristics of the goods or of the service, as well as their price, will also owe the obligation to these independent workers to: (i) bear the cost of coverage equivalent to that established for occupational accidents by the relevant social security legislation, and (ii) to be liable for the right to their ongoing occupational training,

[10] In Spain it would be a fourth category, if we take into account the dependent Self-employed Worker.

[11] And their corresponding burdens for the enterprise

provided that the technological platform involves a certain level of income for the provider.

In any case, regardless of the level of income obtained through the platform, independent workers who provide their services for such platforms will be granted: (i) the right to agree collectively on the interruption of their provision of services for the purpose of defending their professional interests, without the possibility of this behavior, unless it is abusive, giving rise to liability for breach of contract for the individual, the termination of his contract or any penalty, and (ii) the right of association.

The solution is intelligent. It clears up the first field of analysis, consisting of deciding whether it is the platform which provides a service, since it is the platform that determines its characteristics and its price; afterwards it detects a certain economic dependence of the provider assessed according to legal criteria; and confers certain economic and employment rights on the providers of services.

In any event, it allows the providers of services to improve their conditions by providing them with collective tools, which involves strengthening this group's position for a better guarantee of its rights.

10. Final keys.

We are conscious of the debate concerning the advisability of establishing a special legal relationship for the providers of services through electronic platforms. In order to choose an option, we would have to take into account these final considerations.

The current contractual range is quite broad. We have the employment relationship, various special employment relationships, the relationship of the dependent self-employed worker and the contractor's purely commercial relationship.

The analysis of the legal nature of the relationships of the providers of services through platforms in order to adjust it to the existing categories involves a particular complexity at the time of deciding whether the requirement of dependence is observed, especially that arising from the flexibility which is required by these business models and which is sought by many of the providers of services[12]. If this characteristic is not complex, the

[12] The regulation of time is inappropriate to meet the needs of many players of this economic model, both the platform and the providers.

difficulty of adaptation of some of the relationships already in existence falls within the manageable challenges.

In addition, work through platforms is developing and will evolve considerably in the coming years. Technological development, platforms and cloud systems, together with the evolution of the content of work of an increasingly intellectual nature, together with the aspiration to a working life better adapted to personal life, will mean that this type of solutions will go beyond their current scope and shape the organization of ever more enterprises and business models.

For these reasons, at the present time we would focus the debate on analyzing the advisability of three specific guarantees: (i) the establishment of a minimum salary range for the providers of services, (ii) an adequate risk prevention framework and (iii) the conferral on providers of services through platforms of collective rights to defend their professional interests.

11. Bibliography

GINÈS I FABRELLAS, A., Y GÁLVEZ DURÁN, S., "Sharing economy vs. uber economy y las fronteras del Derecho del Trabajo: la (des)protección de los trabajadores en el nuevo entorno digital", *InDret* [en línea], nº 1, 2016, [Fecha de consulta: 30/03/2017], Disponible en: http://www.indret.com/pdf/1212_es.pdf

PODESTA, J., PRITZKER, P., MONIZ, E.J., HOLDREN, J., Y ZIENTS, J., "*Big Data: Seizing Opportunities, Preserving Values"*, The White House, Washington (EE.UU.), 2014.

SCHMID-DRÜNER, M., "The situation of workers in the collaborative economy", *Employment and Social Affairs*, European Parliament, 2016.

SUNDARARAJAN, A., "The Sharing Economy: The End of Employment and the Rise of Crowd-Based Capitalism", The MIT Press, Cambridge, Massachusetts (EE.UU.), 2016.

TODOLÍ SIGNES, A., "El impacto de la "Uber economy" en las relaciones laborales: los efectos de las plataformas virtuales en el contrato de trabajo", *IusLabor*, nº 3, 2015.

WEIL, D., "*The Fissured Workplace: Why Work Became So Bad for So Many and What Can be Done to Improve it*", Harvard University Press, Cambridge, Massachusetts (EE.UU.), 2014.