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Social and Employment Impact of 'Gig Work'

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Outline

- Hugely complex economic, political, social, and cultural implications
- But there are (some) ‘gig workers’, whose working conditions are precarious
- How can/should they be protected?
 - Collective bargaining?
 - Legal Change?
 - Enforcement of rights?

I. Collective Bargaining: Employment Status and Competition Rules

- Key issue is the employment status of ‘gig workers’
- ‘Employee’ status is crucial for access to labour law protections (unfair dismissal, annual leave, etc), as well as for tax/ social security



I. Collective Bargaining: Employment Status and Competition Rules

- Employee status is also crucial in relation to competition rules
- EU treaties prohibit cartels (Article 101 TFEU)



Collective Bargaining

- Designed to remedy the power imbalance in employment relations
- Collective bargaining process is based on combining workers in order to alleviate the pressure to undercut the price of each other's labour (wage cartels)



EU Competition Law and Collective Agreements

- *Albany* (C 67/96): collective agreements do not fall within the scope of Article 101 if:
 - (i) they are entered into in the framework of collective bargaining between employers and employees, and
 - (ii) they contribute directly to improving the employment and working conditions of workers
- So, no general exemption for collective agreements; only where they meet specified objectives

Orchestral Manoeuvres in the Dark...FNV Kunsten (C-413/13)

- self-employed musicians should “in principle ” be treated as “undertakings”
- Therefore, they cannot conclude collective agreements (under the *Albany* exception)



Spring Variations...FNV Kunsten (C-413/13)

- But... boundaries between the self-employed (as undertakings) and employees are not easy to determine in a fluid employment market
- The “false self-employed”, namely “service providers [who are] in a situation comparable to that of employees ” can benefit from an *Albany*-type exemption



Bringing it all back home

- **Competition (Amendment) Act 2017-** S 4 of the 2002 Act will not apply to - voiceover actors, session musicians and freelance journalists
- formal process set out to enable trade unions to apply to the Minister for a similar exemption for other groups of false or dependent, self-employed workers



‘False self-employed worker’

- (a) performs under a contract the same activity or service as an employee of the other person,
- (b) has a relationship of subordination in relation to the other person for the duration of the contractual relationship,
- (c) is required to follow the instructions of the other person regarding the time, place and content of his or her work,
- (d) does not share in the other person’s commercial risk,
- (e) has no independence as regards the determination of the time, schedule, place and manner of performing tasks
- (f) for the duration of the contractual relationship, forms an integral part of the other person’s undertaking

‘fully dependent self-employed worker’

- (a) performs services for another person under a contract (whether express or implied, and if express, whether orally or in writing), and
- (b) main income in respect of the performance of such services under contract is derived from not more than 2 persons

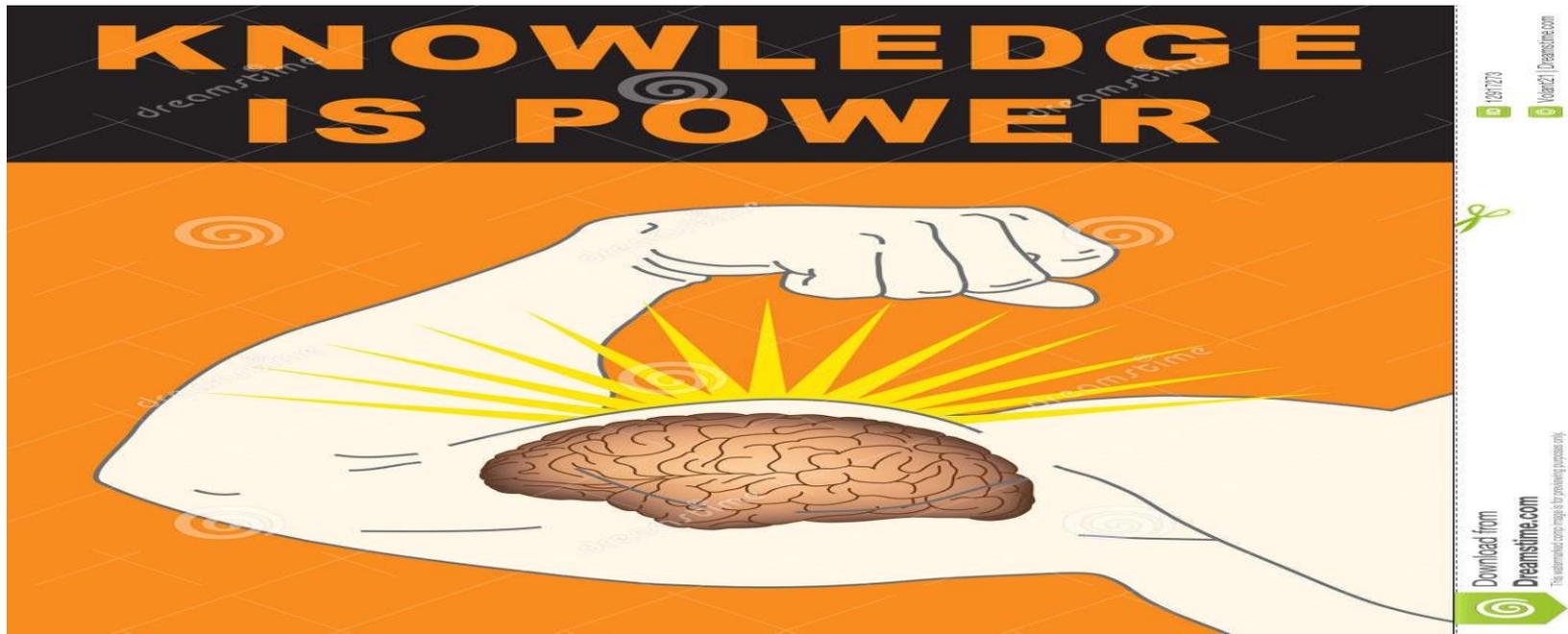
Collective Bargaining Autonomy

- Principle: collective representation should not be automatically denied to those who cannot satisfy traditional tests of employee status.
- Collective agreements should not be automatically subject to control of competition authorities (only abuses should be controlled)



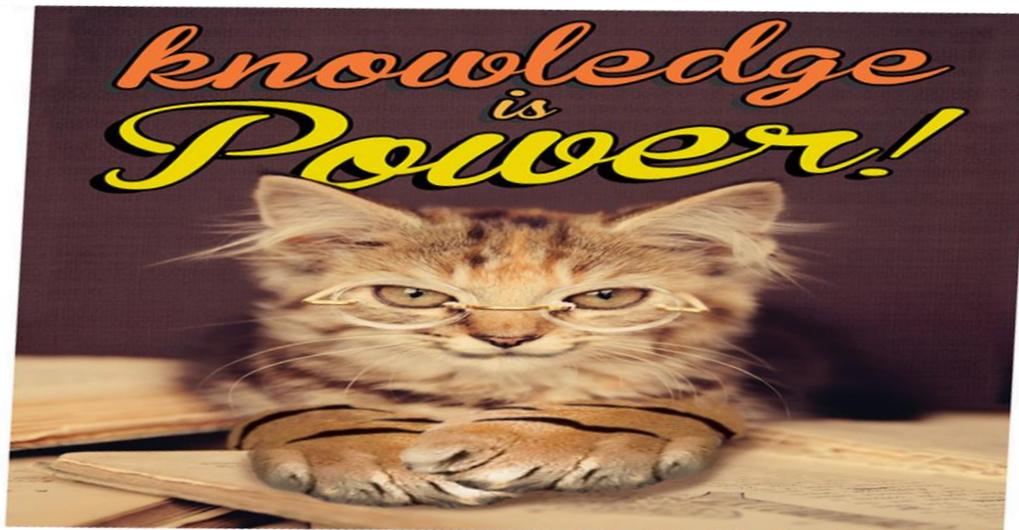
II. Legal Change: Knowledge is power...

- New legislation proposed by the European Commission on transparent and predictable working conditions in the EU (December 2017)



Knowledge is power...proposed legislation

- Applies to all employment relationships over 8 hours per month (NB 8-hour restriction cannot apply where hours are not pre-determined)
- Clarifies the concept of worker: person who for a certain period of time performs services for and under the direction of another person in return for remuneration



Knowledge is power...

- Art 3: Member States shall ensure that employers are required to inform workers of the **essential aspects of the employment relationship**
 - duration and conditions of probation (max. six months, unless justifiable reason);
 - training entitlement;
 - information about the social security system(s) receiving contributions



Knowledge is power...



- identities of the parties
- the place of work; where there is no fixed or main place of work, the principle that the worker is employed at various places or is free to determine his or her place of work
- key information about the determination of variable working schedules (reference hours and days; minimum advance notice the worker shall receive before the start of a work assignment)

Knowledge is power...

- Art 3: The information must be given on day one of the employment relationship
- must be easily accessible by the worker and can be stored and printed.



Knowledge is power...

- Art 5: Any change of the referred details must be given to the employee in written form at the earliest opportunity and at the latest on the day they take effect
- => NB... any changes of the Terms and Conditions of the platforms??



Knowledge is power...

- Art 9: here a worker's work schedule is entirely or mostly variable and entirely or mostly determined by the employer, the worker may be required to work by the employer only in line with the reference hours and with the minimum advance notice set out at day one



“I’m on a zero-hours contract.”

Knowledge is power...

- Art 10: after 6 months, a worker may request a form of employment with more predictable and secure working conditions
- Art 16: Protection against adverse treatment or consequences from trying to access rights under the legislation

III. Enforcement of Rights: Knowledge is power...

- Organise and empower individuals using technology
 - Portable ratings
 - Online remuneration calculators
 - Comparison of different intermediaries
 - Crowd unions?
- Digitalisation means data is generated and recorded....

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III. Enforcement of Rights: Knowledge is power...

- Regulators have extensive powers to gain access to physical workspaces in order to police employment standards.
- ‘virtual access’ to platforms, and the data that there reside, is key in order to police employment standards for ‘gig work’

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Thank you for listening

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