Decent Crowdwork

Legal Strategies towards fair employment conditions in the virtual sweatshop

Martin Risak and Johannes Warter*

„Remember outsourcing? Sending jobs to India and China is so 2003. The new pool of cheap labor: everyday people using their spare cycles to create content, solve problems, even do corporate R & D. (...) For the last decade or so, companies have been looking overseas, to India or China, for cheap labor. But now it doesn’t matter where the laborers are – they might be down the block, they might be in Indonesia – as long as they are connected to the network. (...) The labor isn’t always free, but it costs a lot less than paying traditional employees. It’s not outsourcing; it’s crowdsourcing.”

A. The phenomenon

Developments in information and communication technology (ICT) are leading not only to fundamental changes in normal working relationships, but also to the emergence of new forms of employment. They often do not fit into the existing binary legal categories of dependent labour and self-employment and can be located in the grey area between employment contracts and freelance work. This is also the case with crowdwork, also known as crowdsourcing of labour or crowd employment. It is a new ICT-based form of organizing the outsourcing of tasks to a large pool of online workers, which would normally be delegated to employees.

The work, usually referred to as “tasks”, is offered to a larger number of people (the “crowd”) by means of an internet-based “crowdsourcing platform”. This process is referred to as

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2 Cf. Eurofound, New forms of employment (2015) 107. It also has to be mentioned, that in the former definition the “open call” was an important part of the definition. But there are crowdsourcing platforms, which are using a different mode of operation, for example the German platform Clickworker. Every “clickworker” has an own “working-desk” where different individual work offers are shown, depending on the skills, abilities and attributes of the Crowdworker. Although it is clearly crowdsourcing, there is no open call.

“crowdsourcing”⁴; employers are “crowdsourcers” for whom “crowdworkers” provide services. However, these parties usually do not enter into direct contact with one another. Instead, the relationship is managed through an intermediary: the crowdsourcing platform.⁵

Figure 1: Parties involved in the crowdsourcing of labour

Crowdsourcing in its broader sense is sometimes understood to include volunteer-based work and non-paid work, such as open source projects like Linux or Wikipedia. The main difference is that in open source projects the final result is available for everybody, at least for those who participated. Crowdwork though is not organized by a community but follows strict and concrete specifications set up by the crowdsourcer or the platform. Most of the time crowdwork is the performance of work within the value chain of profit-oriented organisations.⁶

Crowdsourcing can take place internally or externally, depending on whether the crowd comprises a company’s internal workforce or simply any number of individuals. With external crowdsourcing, the crowdsourcer generally uses crowdsourcing platforms, which already have an active crowd. This paper will look solely at external crowdsourcing, as internal crowdsourcing is generally linked to existing employment relationships, and therefore poses fewer fundamental legal problems.⁷ The platform can be operated by an independent enterprise or by the company itself, running the platform for its own recruitment or task fulfilment.⁸

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⁴ This term derives from a combination of the words “outsourcing” and “crowd”, and was used by Jeff Howe for the first time (The Rise of Crowdsourcing, Wired Mag 2006, 14.6, 1).
⁸ Cf. Eurofound, New forms of employment, 110.
The spectrum of tasks assigned to the external crowd is broad.\textsuperscript{9} It ranges from very simple, repetitive activities involving low pay and highly standardised or automated processes (e.g. labelling and creating descriptions for images, categorising data and products, translating or proofreading short texts), to somewhat more complex and time-consuming tasks such as testing software products or finding errors in websites, all the way to skilled activities such as writing program code or designing products. Depending on how the process is organized, crowdworking can be divided into two groups: microtasking and contest-based crowdwork.

1. Microtasking

Microtasking is the main category of crowdwork available to majority of the crowdworkers. Larger tasks are broken down into very small subtasks (microtasks), which can be worked on independently. They are posted on platforms, where a crowdworker can see and fulfill these tasks. For this reason we sometimes speak of “cognitive piece work”\textsuperscript{10} and “Neo-Taylorism”\textsuperscript{11}. Afterwards the microtasks are assembled. Examples for microtasking-platforms are Amazon Mechanical Turk or Clickworker. Survey research has shown that 25 % of the tasks offered at Amazon Mechanical Turk are valued at $\ 0.01, 70 \% offer $0.05 or less and 90 \% pay less than $0.10. This equals an average wage of about $2 per hour.\textsuperscript{12}

The reason for companies to use microtasking is that large quantities of work can be done in a short time for very little pay. Organisations also have access to skilled labour on a global virtual labour market, they can eliminate fixed costs and have a greater degree of flexibility. Due to this new form of organizing work a cheap external on-demand workforce is available. On the other side these monotonous and often very simple tasks are particularly susceptible to quality issues. Microtasking platforms often address crowdworkers like a computer-processor: nameless, faceless, exchangeable.

2. Contestbased Crowdwork

Contestbased crowdwork on the other hand is the main category in the ICT based creative economy, where tasks cannot be broken down into small tasks. Project work is generally awarded in the form of prizes for the best entry, the best logo, the best solution or the best software, whilst the other participants do not get any compensation. In contrast to the competition which has always been standard in the creative industry (e.g. architecture), the finished product (e.g. a logo or advertising text) is submitted rather than project proposals are being evaluated. The novelty is the existence of huge permanent-operating platforms for generating ideas and performing creative labour.\textsuperscript{13}

B. Implications for working conditions

The working conditions of this decentralized model of work appear to be poor. Global competition, dislocated physical workplaces and lack of workers’ organisation, the oligopoly of only a few platforms offering these jobs and legal insecurities result in a massive imbalance of bargaining


\textsuperscript{10} Schmidt, in Benner, Crowdwork 378.

\textsuperscript{11} Leimeister/Zogaj/Blohm, in Benner, Crowdwork 32.

\textsuperscript{12} Eurofound, New forms of employment, 115.

\textsuperscript{13} Schmidt, in Benner, Crowdwork 378.
power. As a consequence this leads to low remuneration as well as potentially unfair terms and conditions of work, letting some already talk about “digital slaves” and “virtual sweatshops”.

As mentioned above the average wage on the platform Amazon Mechanical Turk is less than $2 per hour\textsuperscript{14}, considerably less than the actual American minimum wage.\textsuperscript{15} Another negative aspect is insecurity about pay: In accordance with the general terms and conditions (T&Cs) of microtasking-platforms, crowdsourcers have the right to reject the work without having to give a reason or providing payment, nonetheless they are allowed to use the work.\textsuperscript{16} The payment in contestbased crowdwork is insecure as well, because just one or few winners get the award, so that the payment sometimes appears more or less like kind of a lottery.

Most crowdworking-platforms try to create a dependency on them via a system of “digital reputation”. Crowdworkers who work regularly and provide good results are awarded points, stars or other symbols of status. The more attractive and better paid tasks are assigned to those that have the best reputation – which is, however, not transferable between the individual platforms, which are in competition with one another. Some economic sectors often have just a few platforms due to the high infrastructure costs, so changing platforms often seems impractical.\textsuperscript{17}

But crowdwork offers also new possibilities. Crowdworkers can decide when to work, where to work and what kind of tasks to fulfill. As a consequence crowdwork is very compatible with other duties, such as childcare and older household members, and may provide extra income besides other traditional work. Crowdworkers themselves are also not a homogeneous group and may be categorized as follows:

- Fulltime workers: often people who do not have access to regular job markets due to handicaps, social exclusion or the place they live in, but also people who prefer crowdwork to regular types of employment.
- In the second group are part-time Crowworkers: people with other duties who want or need to add some extra income. Especially microtasking-platforms tend to attract this segment of Crowdworkers.\textsuperscript{18}

In this paper we want to follow up two possible legal avenues towards decent working conditions for crowdworkers: The first one is an analysis of the web of contractual relationships that constitute the crowdsourcing/crowdworking-process and the other is a look back into history, a look at a phenomenon not too different from crowdsourcing/crowdwork: the putting-out system. As we will describe below, this way of organizing work posed similar problems and in the end led to legislation regulating this relationship – the same may be appropriate for crowdwork.


\textsuperscript{15} In the US there are different minimum wages, depending on the Federal State. Cf. Department of Labor, Wage and Hour Division, available under http://www.dol.gov/whd/minwage/america.htm (05.06.2015).

\textsuperscript{16} E.g. like at Amazon Mechanical Turk, see Strube, Vom Outsourcing zum Crowdsourcing – Wie Amazons Mechanical Turk funktioniert, in Benner, Crowdwork – zurück in die Zukunft? (2014) 78 (83).

\textsuperscript{17} Cf. Risak, Crowdwork – Erste rechtliche Annäherung an eine “neue” Arbeitsform, ZAS 2015, 11 (13).

\textsuperscript{18} Cf. Eurofound, New forms of employment, 112. In Greece and Spain the recent increase is explained by the economic and financial crisis, which has resulted in lack of liquidity and the need to find alternative ways of income. Cf. Eurofound 111.
C. Contractual aspects of crowdwork

The prevailing opinion especially put forward by the terms & conditions of the crowdworking platforms as well as by the crowdsourcers considers (external) crowdworkers to be self employed meaning that especially minimum wages and other regulations of working conditions like working time laws or health and safety provisions do not apply. But is this really true? To at least bring a little bit of light into the rather muddled picture about the legal situation of crowdworkers we would like to discuss the following legal questions in this chapter of the paper:

Who are the contractual partners?

As pointed out above we have three parties (the crowdsourcer, the platform and the crowd) and it is often not clear between whom what kind of contract has been concluded. This, of course, can be a strategy to obstruct crowdworkers to enforce their legal rights, so clarity alone is a first step to a solution. Once the parties of the underlying contracts are detected the second question is:

What kind of contract exists between those parties?

For answering this an overall assessment of the actual situation has to be undertaken. It’s result may differ from what the crowdsourcer and/or the platform have written in their contracts as they may have been used them to disguise the true economic content and therefore the correct classification of the contractual relationships. This classification is not only of academic interest but of practical importance as, for example, minimum wages usually apply only to employment relationships.

But before we get into this the preliminary issue of the applicable law has to be solved.\footnote{For an analysis taking into account Austrian labour law see Martin Risak, Crowdwork, ZAS 2015, 11.}

1. Applicable law

In cases concerning cross-border contractual relationships Regulation (EC) No. 593/2008 on the law applicable to contractual obligations (Rome I Regulation)\footnote{OJ L 177, 4/7/2008 P. 6 – 16.} applies for the member states of the EU. According to this Regulation there is freedom of choice regarding the applicable law (Article 3). However, this is limited when it comes to consumer contracts (Article 6) and employment contracts (Article 8). In these cases the level of protection cannot fall below that which would be provided in the absence of choice.

However, a consumer contract does not exist in the case of crowdwork, as the associated contracts can be attributed to the crowdworker’s professional or commercial activity, thus not matching the legal definition of Article 6 of the Rome I Regulation.

In some cases presented below it can be argued that an employment contract exists. Because Article 8 of the Rome I Regulation stipulates that in this case, the parties’ choice of law cannot lead to the employee being deprived of the protection that he/she would have had in the event of absence of choice, the (relatively) mandatory provisions of the state’s labour law in which the work is normally rendered apply at the very least.
2. Contractual relationship between the crowdworker and the crowdsourcer

Figure 2: Contractual relationship between the crowdworker and the crowdsourcer

Sometimes, the crowdsourcing platform acts solely as a broker. In that case, a direct contractual relationship exists between the crowdworker and the crowdsourcer. This is generally a contract for services, the content of which – aside from the main performance obligations (performance description and remuneration) – is largely determined by the standard contractual forms and T&Cs provided by the crowdsourcing platform. The crowdsourcing platform acts as an agent for the crowdsourcer when contracting with the crowdworker.

Due to the strong influence of the crowdsourcing platform on these relationships, it can be argued that this construction of a direct contractual relationship between the crowdworker and the crowdsourcer is in reality a covert contractual relationship between the crowdworker and the platform. This may especially be the case when the platform does not make it clear in every step of the transaction that it is only acting as an agent and not on its own behalf.

The other legal construction is one where a contractual relationship only exists between the crowdworker and the crowdworking platform, and where there is no direct legal contractual relationship with the crowdsourcer. In this particular form, the end result is delivered to the platform, which also conducts the quality check and pays the crowdworker directly.\textsuperscript{21} Here there is merely a contractual relationship between the crowdworking platform and the crowdsourcer; practically speaking, the crowdworker is the platform’s sub-contractor.

\textsuperscript{21} According to Strube, \textit{supra} n. 2, at 84 for the German platform Clickworker.
3. Contractual relationship between the crowdworker and the crowdsourcing platform

The crowdworkers are registered with the platform and are therefore available for communication regarding any task; if the task is then taken on, the crowdsourcing platform’s general terms and conditions (T&Cs) apply. This is simply a framework agreement which does not obligate either of the two parties (whoever they may be) to activity or payment. When a task is taken on, the legal basis needs to be considered with the following possible options:

a. Placement of the task on the platform represents an offer to the crowd, which is subsequently accepted by means of performance. Still under the common T&C of the platforms the task may still be rejected without either having to give a reason nor to pay remuneration.

b. The placement of the task may also be considered only an offer to the crowd to make an offer. The crowdworker then only offers to enter into a contract by delivering the completed task to the platform. Not until the completed task is accepted by the platform (either as an agent for the crowdsourcer or on its own behalf) the contract is concluded.

c. In both cases the contractual partner, be it the platform or the crowdsourcer, shall have the right to reject the service.

d. The underlying contract can be classified as a contract of employment or a contract for services, depending on the intensity of the influence the contractual partner has on the work performed.

e. It may also be construed that the submission of the task represents an offer of reward, i.e., an invitation addressed to an undetermined group of people, entailing compensation in the event that action is taken (particularly, in the event of success).\(^22\) Either the first service provider is engaged or, in the case of a contest – which must include a deadline – the awarding party decides.

For both constructions, the crowdworker has the option to either perform the service offered on the platform or not without any legal obligation, and his contractual partner has the option to reject the service provided. The crowdsourcer is usually granted a lot of leeway in the T&Cs, which poses the

risk that the crowdworker will provide his service and the contractual partner will receive it, but does not have to pay for it.

If the crowdsourcing platform merely serves as the intermediary, only providing the infrastructure to allow a legal relationship in the above sense to take effect between the crowdworker and the crowdsourcer, this represents a placement service which, generally speaking, only the crowdsourcer pays for. One has to ask whether this represents temporary agency work; however, the lack of integration into the crowdsourcer’s business as well as the lack of managerial prerogative and control by the crowdsourcer contradict this notion.

If the work is provided for the crowdsourcing platform rather than for the crowdsourcer\(^{23}\), we should ask whether this legal relationship is to be deemed an employment relationship. For this to be the case, it is essential for the work to be rendered in a relationship of personal dependency. When working, the party performing the work must be integrated into an external operational body and be subject to the right to instructions on the part of the recipient of the service.\(^{24}\) In this arrangement, it should be remembered that the contractual relationship is very short in duration and that performance takes place at a separate location, over the internet. In my view, what is important is whether this takes place in a kind of “virtual workshop”, i.e., using an interface provided by the crowdsourcing platform, and whether it involves monitoring mechanisms.\(^{25}\) The opportunities for disciplining the crowdworker through ratings on the platform, which may affect the crowdworker’s chance of being assigned future tasks, should also be part of the evaluation, as should determination of work-related behaviour, e.g., through specification of allotted time. Together, this often results in determination of work related behaviour by the contractual partner that is so pronounced that it equals “classical” personal dependency necessary for an employment relationship.

What might be a problem in this context is the often extremely short duration of the contractual relationship as fulfilling the task often only takes some minutes. In my opinion this element untypical for an employment relationship can be compensated by a high level of external control like regular screenshots or the automated analysis of the workflow or even typing patterns. An overall assessment may therefore still result in an employment relationship.

If an employment contract is not concluded, we may also consider whether there is such a thing as an intermediate stage between independent and non-independent work – referred to as “employee-like status” (Arbeitnehmerähnlichkeit) in Austria and Germany, for example\(^ {26}\) – to which some provisions under labour law should apply.

In the event of an employment relationship, labour law (in particular, provisions on minimum wage, but also limitations on working time and rights to paid holiday) would apply; however, usually a chain of consecutive, very short (often only lasting a few minutes) temporary employment relationships is concluded. These would then need to be looked at from the perspective of prohibition of

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\(^{23}\) It is also possible to arrive at this estimation if it is concluded that, despite a bogus direct legal relationship between the crowdworker and crowdsourcer, the relationship actually exists between the crowdworker and the platform, due to the real economic content and the fact that the platform manages the relationship on its own behalf.


\(^{25}\) Platforms are said to take regular screenshots of the crowdworkers’ screens; cf. Aniket Kittur et al., Die Zukunft der Crowdarbeit, supra n. 2, at 200.

\(^{26}\) See ILO/ELLN, supra n. 21, at 23.
discrimination of temporary employees and the maximum duration of such temporary employment relationships. What is also problematic here is the question of shift of the economic risk of non-employment during times when crowdsourcers or platforms, whoever the contractual partner is, do not have tasks to offer. This issue is similar to that of on-call work or zero hours-contracts. If these types of unstable employment relationships are not permitted under national labour law and if the contractual relationships are considered employment relationships, crowdsourcing would presumably be far less attractive.

4. Contractual relationship between the crowdsourcer and the crowdsourcing platform

In the event of a direct relationship between crowdworkers and crowdsourcers, there is a brokerage contract which may include other services in addition to the provision of the platform, such as pre-selection of the crowd, division of tasks into smaller assignments, payment processing, provision of a framework contract or quality control.

If, however, no direct relationship exists between the crowdworkers and the crowdsourcer, the crowdsourcing platform itself is responsible for service provision. Accordingly, the contract between the platform and the crowdsourcer is generally a contract for services, utilising the crowd for the purposes of fulfilment.

C. Crowdwork as a come-back of the putting-out system?

We should not forget that in the past we already had similar forms of formally self-employed but economically very vulnerable persons in the putting-out system or home work. This form of subcontracting was widely used in early times of the industrialisation and even before, but also afterwards in times of economic difficulties: work was contracted by a central agent to subcontractors who completed the work in off-site facilities, either in their own homes or in workshops with multiple crafts(wo)men. In most jurisdictions at some point of time these systems

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have been regulated often introducing some kind of minimum wage to counter the negative effects of these work forms. The same consideration may be appropriate for crowdwork.

Historical research undertaken by Johannes Warter in the course of his PhD-thesis about the putting-out system in Austria and Germany led to the conclusion that crowdwork is in many aspects similar to these old forms of decentralized labour. This is shown by organizational similarities, similar problems and similar causes.

1. Organizational similarities

Comparing the forms of organization of the putting out-system with crowdwork, we notice that there are many similarities but also some differences. In both systems work is undertaken decentralized, usually in the workers’ homes.


In the putting out system though only operational work was contracted to homeworkers. Therefore most of the regulations of homeworking are describing homework as “the production, editing, processing and packaging of goods”. With crowdwork on the other hand, not only work, that can be categorised as operations, is outsourced to decentralized workers, but also other tasks of the value chain (e.g. technology development or marketing and sales). So crowdwork is not only about the production of goods but about other work within the whole entrepreneurial value chain.

Both forms of decentralized organization, the putting-out system as well as crowdsourcing, have some advantages for the entrepreneur. These include the greater degree of flexibility, the elimination of fixed costs (especially for supplying a workplace) and a more cost efficient production.

28 Germany and Austria: Heimarbeitsgesetz; Italy: Lavoro a domicilio; legge 18 dicembre 1973 n. 877; France: Loi sur le travail à domicile; etc.
29 For example § 2 of the Austrian Act on Home Work (Heimarbeitsgesetz).
The more homeworkers were involved, the more intermediaries or agents were needed. They fulfilled the task of distributing and receiving the work, keeping the work ready for the entrepreneur and to pay the remuneration to the homeworker.

In fact that is exactly what modern crowdsourcing platforms do. They exhibit or distribute suitable offers of tasks, collect results, manage the payment-process and send the results back to the crowdsourcer.

2. Similar Problems of homeworkers and crowdworkers (on microtasking-platforms)

When taking a closer look at the problems crowworkers on microtasking-platforms as well as homeworkers in the putting out-system were facing, we can detect similarities as well. Due to organizational parallels it is not surprising that the problems and issues, even the social composition of crowworkers is very similar to those of the homeworkers in the early 20th century. We are tempted to say that there are identical problems and thus require an identical need for protection.

Interestingly the social composition of this segment of the workforce is similar. In the early 20th century homeworking was to a large extend for additional income. Dall states that there are about six or seven part-time homeworkers to one full-time homeworker. If we take the demographics of AMT we see that after the case studies of Ross et al and Ipeirotis there are just about 9–12 % fulltime Crowdworker on AMT, so for the main of the crowworkers crowdwork provides an additional income.

As mentioned above the putting-out system (as well as crowwork) was very compatible to other duties. This seems to be an explanation why more women participated than men. The same is true for crowwork. Indeed more than 60 % of US-American crowworkers on AMT are female. Another group of people working in the putting-out system were people with disabilities and today they also compose a significant part of the crowworkers. Of course also unemployed try to make use of these decentralized forms of employment.

Characteristic for the putting out system is the piece wage. Nonetheless the worker is just entitled to remuneration in case of absence of defects and when providing the warranted quality. We find

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31 The following figures are from Amazon Mechanical Turk. Similar is particularly the social composition of western countries (in concreto from the US). Understandably workers from developing countries are working rather fulltime than part-time and they are rather males.
32 Cf. Gaebel, Die Heimarbeit (1913) 4.
33 Cf. Dall, Die Heimarbeit (1947) 7.
34 Cf. Ross et al, Who are the Crowdworkers alt CHI 2010, 10. Fulltime workers are worker with more than 30 hours per week on AMT.
36 Cf. Rigler, Frauenleitbild und Frauenarbeit (1976) 65; Gaebel, Die Heimarbeit 22 et seqq; P Arndt, Die wirtschaftliche und soziale Bedeutung (1932) 7, 10.
38 Cf. P Arndt, Heimarbeitereleend (1927) 21; Gaebel, Die Heimarbeit 51.
39 spamgirl in Benner, Crowwork 101 et seqq.
similar principles also on microtasking-platforms, where workers get a piece wage, for instance five Cents per task. Crowdworkers get their remuneration not just in case the result is flawless, but only if the crowdsourcer is satisfied with the completion of the task. Otherwise the T & Cs of the microtasking-platforms usually provide that the completed task may be rejected. This is an even worse situation than the one in the putting-out system.

The constant change of crowdsourcers as well as the short-term character of the working relationships is characteristic for microtasking, but also for crowdworking in general. The putting out-system also followed this principle as Lemberger states: „Auf diesem Heranziehen und Wiederabstoßen der jeweiligen Arbeitskräfte, ohne hieraus erwachsenden Schaden für die Arbeitgeber, beruht ja bekanntlich die große Elastizität der verlagsmäßig organisierten Großproduktion und sie bildet mit einen Grund für die Bevorzugung dieser Betriebsform.“ (translation by the authors: “The elasticity of the putting out-system is based on the call and the rejection of workers, without any disadvantages for the entrepreneur. This is one of the advantages of this system.”) This statement also very much reflects the advantages of the flexibility resulting from the crowdsourcing of labour.

In former times the distribution of work to different homeworkers made the division of labour possible. One of the decisive advantages of modern crowdsourcing is that it makes parallel work of many different workers possible and due to this advantage large quantities of tasks can be worked off in a short time.

Some experts express concerns that with the new form of organization it will be possible to avoid labour laws, unions and collective bargaining and that crowdsourcers might be used as strike-breakers. The past has shown that these concerns are not unfounded. The putting-out system was sometimes chosen to avoid the regulation of the factory system, which applied to factory workers but not to homeworkers. But not just labour law was avoided, but also unions and the effects of organized labour. Employers also tried put pressure on core workers threatening the outsourcing of their jobs to homeworkers to attain wage concessions. These historical examples are equal to the concerns that Klebe and Neugebauer express for the crowdsourcing of labour.

Crowdworkers often complain about the not-existing or at least difficult direct communication with the client, the crowdsourcer. Usually all communication has to be done via the platform.

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41 Cf. Point 3 lit. A of the Amazon Mechanical Turk Participation Agreement: „If a Requester is not reasonably satisfied with the Services, the Requester may reject the Services.“ https://www.mturk.com/mturk/conditionsofuse (21.06.2015).
42 Cf. Lemberger, Wiener Wäscheindustrie 100, quoted in Rigler, Frauenleitbild und Frauenarbeit 65.
43 Cf. the quotation of CrowdFlower CEO Lucas Biewald (loosely translated): „Before the times of internet it would have been really hard to find someone, who is willing to perform tasks for 10 minutes, and to fire him afterwards. But with this new technology it is possible to find people, which you pay a tiny wage, and to get rid of them, as soon as you don’t need them any more.“ Cohen, United States of Crowd Workers – Wie sich Crowdarbeiter organisieren lassen, in Benner, Crowwork – zurück in die Zukunft? 303 (304).
45 Cf. Eurofound, New forms of employment, 113.
47 Cf. Leuthier, Entstehung und Entwicklung 75.
Interestingly entrepreneurs in the putting out system tried to avoid direct contact with homeworkers and hired agents to channel the communication.\textsuperscript{51}

Just like in the putting-out system the tasks offered on microtasking-platforms are simple and can be performed with simple and cheap tools – a computer and the internet.\textsuperscript{52} The biggest problem of the putting-out system\textsuperscript{53} as well as of crowdwork\textsuperscript{54} is low remuneration. Therefore to main purpose of the first “Act on Home Work” in Austria in 1918 was the introduction of a minimum wage. The determination of remuneration was not longer left to the market, but to wage committees. They consisted of an equal number of employers’ and workers’ representatives, who had the task to set a minimum wage dependent on regional and branch sectoral factors.\textsuperscript{55}

3. Similar causes

The similar problems of homeworkers and modern crowdworkers shown above are not surprising because they have also similar underlying reasons. The lack of organization and isolation of the single worker as well as the lack of solidarity are causing dependency and pressure onto the homeworker\textsuperscript{56} and crowdworker\textsuperscript{57}. The permanent oversupply of labour and consequential irregularity of employment intensified the pressure.\textsuperscript{58}

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\textsuperscript{52} Cf. Gaebel, Die Heimarbeit 4 f; P Arndt, Die wirtschaftliche und soziale Bedeutung 7 6 f, 18; Risak, ZAS 2015, 12.
\textsuperscript{53} Cf. Leuthier, Entstehung und Entwicklung 48 et seqq.
\textsuperscript{54} Cf. Klebe/ Neugebauer, AuR 2014, 6; Risak ZAS 2015, 18; Leimeister/ Zogaj/ Blohm in Benner, Crowdwork 31; spamgirl in Benner, Crowdwork 105; Rio Antas Crowdsourcing von Arbeitsleistung – Ansätze für eine faire Vergütung in Benner, Crowdwork 323 (327).
\textsuperscript{55} Cf. ErlRV 21 BlgNR 7. GP 17.
\textsuperscript{56} Cf. Leuthier, Entstehung und Entwicklung 58 et seqq.
\textsuperscript{57} Cf. spamgirl in Benner, Crowdwork 104.
\textsuperscript{58} Cf. Rigler, Frauenleitbild und Frauenarbeit 65; Risak ZAS, 2015, 13.
4. Conclusion

As shown above there are many parallels and similarities between the putting-out system and crowdsourcing/crowdwork. It therefore seems possible that existing regulations of the putting out system also apply directly on crowdwork or they may be applied per analogiam. As shown above the crowdsourcing of microtasks is similar to the putting out system, where the problems and need for some minimum protection were very much alike. Of course the existing regulation of the putting out-system often is outdated as this form of organising work in its traditional form is not too frequent anymore. Where it exists the regulation of the putting out-system could be updated and adapted to the needs of the 21st centuries’ crowdworkers.

The basis for such a review may be the Home Work Convention 1996 (No. 177 – C177) that has been ratified only by a very small number of countries but that may serve as a guideline for decent working conditions for crowdworkers.

List 1: Ratifications of C177 - Home Work Convention, 1996 (No. 177)

<table>
<thead>
<tr>
<th>Country</th>
<th>Date</th>
<th>Status</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>24 Jul 2002</td>
<td>In Force</td>
<td></td>
</tr>
<tr>
<td>Argentina</td>
<td>31 Jul 2006</td>
<td>In Force</td>
<td></td>
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<tr>
<td>Belgium</td>
<td>02 Oct 2012</td>
<td>In Force</td>
<td></td>
</tr>
<tr>
<td>Bosnia and Herzegovina</td>
<td>18 Jan 2010</td>
<td>In Force</td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td>17 Jul 2009</td>
<td>In Force</td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>17 Jun 1998</td>
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<td></td>
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<tr>
<td>Ireland</td>
<td>22 Apr 1999</td>
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<td></td>
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<tr>
<td>Country</td>
<td>Date</td>
<td>Status</td>
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<tr>
<td>---------------------------------------------</td>
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</tr>
<tr>
<td>Netherlands</td>
<td>31 Oct 2002</td>
<td>In Force</td>
<td></td>
</tr>
<tr>
<td>Tajikistan</td>
<td>29 May 2012</td>
<td>In Force</td>
<td></td>
</tr>
<tr>
<td>The former Yugoslav Republic of Macedonia</td>
<td>03 Oct 2012</td>
<td>In Force</td>
<td></td>
</tr>
</tbody>
</table>

C177 includes a wide definition of home work in Article 1 (a) that may also include crowdworkers not qualified as working under an employment contract.

“the term home work means work carried out by a person, to be referred to as a homeworker,

(i) in his or her home or in other premises of his or her choice, other than the workplace of the employer;

(ii) for remuneration;

(iii) which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used,

unless this person has the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions;

(b) persons with employee status do not become homeworkers within the meaning of this Convention simply by occasionally performing their work as employees at home, rather than at their usual workplaces;”

Article 4 states that the national policy on home work shall promote, as far as possible, equality of treatment between homeworkers and other wage earners, taking into account the special characteristics of home work and, where appropriate, conditions applicable to the same or a similar type of work carried out in an enterprise. Section 2 provides that equality of treatment shall be promoted, in particular, in relation to – among others – remuneration. In our opinion Convention C177 may serve as a basis for the regulation of crowdwork ensuring the protection of crowdworkers in those cases that the underlying relationship is not considered an employment relationship.

D. The international dimension

What is definitively a new aspect of crowdwork is the fact that this form of work is undertaken in two different places at the same time: on the one hand the crowdworker may chose his/her place of work (usually his/her home) and on the other the work is done in the virtual world as crowdworkers use the interface of the crowdworking platform. Therefore the work can be done and delivered without the worker leaving his/her home and the platform and the crowdsourcer leaving their office. The link between these two places is the internet – this keeps the transaction costs and times low and does not make any difference to the crowdsourcer and/or the platform where the worker is actually located.

The competition between crowdworkers for tasks and jobs therefore takes place in the cyberspace – and puts those crowdworkers at a disadvantage that have higher living costs but who nonetheless deliver the same results. This situation is alleviated by the language barrier only to a certain extend. Differences resulting from different levels of minimum wages – if actually enforced – may result in crowdworkers from high cost countries to be crowded out by those in low cost countries or a race to
the bottom. And of course as in any cross-border cases the enforcement of rights is an important aspect especially when it comes to contracts for low wages and for very limited time.

These practical problems show the importance of an internationally co-ordinated approach to prevent a race to the bottom when it comes to crowdwork. The International Labour Organization is ideally positioned to promote discussions and actions on the development of a framework for establishing and enforcing legislation to ensure decent working conditions for crowdworkers that take into account the situation of the country they physically work in and to promote, as far as possible, equality of treatment between crowdworkers and other wage earners.