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Review Paper

Regulation of Platform Work in the EU: A Comparative Analysis of the Draft Directive of 2021 and the Directive (EU) 2024/2831

Inva Kociaj[1]
Eneida Sema[2]

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Abstract: *This article aims to analyse the normative evolution from the initial proposal of the European Commission in 2021 on the regulation of work on digital platforms to the adoption of Directive (EU) 2024/2831. The 2021 draft was perceived as a step towards formalising the status of platform workers and establishing a legal presumption of the existence of an employment relationship. However, the interinstitutional negotiation process lasted over two years and resulted in significant changes in content and the balance between worker protection and the flexibility required by platforms. The article examines the main differences between the Draft Directive of the EU and the Directive of the EU 2024/2831. These two legal acts focus on provisions related to legal presumption, algorithmic management, transparency, and collective participation. By analysing the reasons that led to the final modifications and their expected impact on labour law at the European level, the paper aims to contribute to the debates about fair and effective labour regulation in the digital economy.*

Keywords: *Digital economy, Digital labour, Directive, Employment relationship, Algorithmic management.*

JEL Classification: K31 · K23 · J08 · J38 · L51

✉ inva.kociaj@fdut.edu.al
[1] Faculty of Law, University of Tirana, Albania
[2] Faculty of Law, University of Tirana, Albania

1. INTRODUCTION

The employment relationship is a social relationship regulated by legal norms, created between two parties: the employer and the employee. The employee offers their services in exchange for a reward, which are performed subject to and in accordance with the rules established by the employer. This concept has defined the legal employment relationship for decades, emphasizing that it involves two parties and is characterized by two key elements, subordination and remuneration. Over the years, under the significant influence and rapid development of digitization and artificial intelligence, we have observed a shift in the legal relationship of work. Determining who qualifies as being in an employment relationship has become increasingly complex in recent decades, due to significant transformations in the organization of work and the challenges faced by legal frameworks in keeping pace with these changes (Casale, 2011). Many countries today face challenges in legally defining the parties to an employment relationship, particularly in determining whether the worker performs their duties by the traditional model of employment that has long been the legal norm. Today's technology is bringing a real challenge to the work relationship, the first because it is being used to camouflage the work relationship by bringing an existing three-party work relationship, and the second is that national legislations are unprepared to create more the same pace with technological development, to draft legal provisions that regulate these tripartite work relationships.

This article addresses a work relationship that has emerged in recent years, particularly in the context of work on digital platforms. We encountered the first definition of this new form of work in the 2021 Eurofound report, where work on digital platforms was defined as "*the absorption of demand and supply of paid work through an internet platform using an algorithm*." In this labour relationship, three parties are involved: the client seeking work, the platform that manages the algorithm, and the person offering the work through the platform. This kind of work is based on completing individual tasks or projects rather than an ongoing employment relationship. A larger task is usually broken down into smaller sub-tasks, or 'micro-tasks', which are independent, homogeneous, and contribute to producing a specific product (Eurofound, 2021). Digital work platforms are reshaping employment relations and thereby redefining actors, their roles, and power in economic exchange. At the same time, the work opportunities they offer are characterized by precarious work and employment conditions, raising calls for appropriate regulatory responses (Piasna, 2024).

Working from digital platforms from the perspective of employees was seen as a good alternative to becoming part of the labour market, especially for people who found it difficult to exercise this right. We are talking here about individuals who were outside the labour market, such as disabled people, immigrants, women, and people who were dissatisfied with their salaries (Van Doorn, 2017). A very important element for working on digital platforms is the geographical position, or more precisely, the breaking of any geographical border. To be employed in a digital platform, it doesn't matter where in the world you are, you may have been born in country X, live in country Y, and work in country Z. This means that employers can find new workers anywhere in the world as long as the workers have the relevant information technology tools and internet connection (Wood et al., 2019). However, for workers, the combination of the global market and labour surplus (or at least the perception of labour oversupply) is experienced as something that significantly lowers the wages they can command (De Stefano, 2016).

One of the main driving factors for joining digital work platforms is the lack of established barriers to starting work, such as the absence of formal interviews or the requirement for prior work experience (Eurofound, 2018). According to Heeks (2017), there are approximately 70 million

platform workers registered globally in the labour market, and according to estimates by the World Bank, these figures were expected to reach $ 15-20 billion by 2020. Also referring to the economist Guy Standing, who has stated that by 2025, platforms will mediate a third of all work transactions. As a result, this new form of employment, which is undergoing significant development and broad involvement of people, definitely requires the attention of state bodies to regulate it in a way that does not violate the essential principles at work, as well as the rights of individuals.

2. THE EU'S NORMATIVE JOURNEY TOWARDS REGULATING WORK ON DIGITAL PLATFORMS

Platform work has rapidly become one of the most widespread and problematic forms of non-standard work in the European Union. The growth of this model, coupled with profound uncertainties in the legal classification of workers, has led to a regulatory vacuum that challenges the fundamental principles of European labour law. The most significant problems have focused on false self-employment, the lack of social protection, algorithms that decide on working conditions, and the inability to exercise collective rights.

On December 9, 2021, the European Commission proposed to the European Parliament a draft directive (European Commission, 2021). This draft directive is aimed at the legal regulation of labour relations on digital platforms. It must be said that this is the first legal initiative with a comprehensive regulation at the national level. This legal initiative, undertaken by the legislative and law enforcement institutions of the European Union, aimed to take measures to ensure the legal status of the employee in the legal work relationship created by digital platforms. Both of them aimed to guarantee the principle of justice, transparency, and accountability in the algorithmic management of the working relationship through digital platforms. That solved the regulation of the labour relationship in the digital platforms as a whole, including awareness, proper information of each party involved in this labour relationship, the implementation of rules, and the creation of appropriate standards to guarantee respect for workers' rights (De Stefano et al., 2021). The draft directive outlines a set of rights that will benefit workers engaged in non-standard forms of employment, rights that derive from existing labour law guarantees, as well as other rights in the context of the digital economy.

This legal proposal was based on three main objectives: first, establishing a legal presumption of the existence of an employment relationship; second, establishing rules for the transparency and oversight of algorithmic management; and third, strengthening the monitoring and enforcement capabilities of national authorities.

The definition of platform work is outlined in Article 2(1) of the Commission's 2021 proposal, as follows (European Commission, 2021):

> *Digital job platform" means any natural or legal person that offers a commercial service that meets all of the following requirements*:
>
> *a) is provided, at least in part, remotely via electronic means, such as a website or a mobile application;*
>
> *b) is offered at the request of a recipient of the service;*
>
> *c) includes, as a necessary component, the organization of work performed by individuals, regardless of whether that work is performed online or in a specific location.*

Article 2(4) of the Commission's 2021 proposal defines the subject of the employment relationship and who is considered a platform worker. It states that a platform worker is "*any person*

performing platform work who has an employment contract or is in an employment relationship, as defined by law, collective agreements or practice in force in the Member States, taking into account the case law of the Court of Justice." Furthermore, Article 2(1) and (3) distinguish between "*persons performing platform work*" and "*platform workers*." The term "*persons performing platform work*" refers to any individual who performs work through a platform, regardless of the legal or contractual nature of the relationship. In contrast, the term "*platform workers*" refers specifically to those individuals who have an employment contract or are deemed to be in an employment relationship, as determined by national law, collective agreements, or practice, in line with the case law of the Court of Justice. Regarding the classification of whether a person working on a digital platform is to be considered an employee or self-employed, the draft Directive proposes that where the platform exercises control over the performance of work and the working conditions, the individual should be considered an employee. However, this formulation allows for a broad and potentially inconsistent interpretation, which is not exhaustive. The legal qualification of a person as an employee is of critical importance, as it triggers entitlement to the full range of labour rights. Article 4(2) of the draft sets out several conditions, and fulfilling at least two of them is sufficient for a platform worker to be presumed to have employee status under this legal framework (European Commission, 2021a):

a. *It effectively defines, or sets upper limits on, the level of remuneration;*
b. *Requires the person performing the work on the platform to comply with specific binding rules regarding the appearance and behaviour towards the recipient of the service or the performance of the work;*
c. *Supervises the performance of work or verifies the quality of work results, including electronic means;*
d. *It effectively limits the freedom, including sanctions, to organize one's work, in particular, the freedom to choose working hours or periods of absence, to accept or refuse assignments, or to use subcontractors or substitutes;*
e. *It effectively limits the ability to build a client base or perform work for any third party.*

These are the criteria that determine whether a legal relationship of work exists on a digital platform. The draft directive stipulates that if only two of the above criteria are met in such a work relationship, it will be presumed that a work relationship exists. Therefore, this presumption can be rejected if only one or none of the criteria apply, or if the employment agreement does not constitute an employment relationship under the laws of a Member State, taking into account the case law of the CJEU (Buendia Esteban, 2023). In the opposite case, if this criterion is not met, the burden of proof to prove that we are not really in the conditions of a working relationship is also supported by the digital platform in article 5 of the draft directive. Article 5 of the draft directive also provides that even in cases where the employee raises claims that we are not facing an employment relationship, the digital platform is again charged with helping in the proper resolution of the procedures, especially by providing all the relevant information it holds.

However, the process of adopting this directive encountered considerable resistance from some member states and interest groups, particularly on the issue of automatic classification as employees, which was perceived as a threat to the flexibility and innovation of platforms (European Parliamentary Research Service [EPRS], 2022). After lengthy and tense negotiations between the Commission, Parliament, and Council, a political agreement was finally reached and Directive (EU) 2024/2831 was adopted on 24 April 2024, entering into force in May of the same year. It marks a historic turning point in the regulation of new employment relationships in the EU, combining the need for social guarantees with the preservation of an innovative climate for digital platforms. The Directive maintains the essence of the draft, but has been modified on several key

points to balance the interests of the parties better. Among them, objective criteria for assessing the employment relationship were established, the role of social partners was strengthened, and more powers were delegated to Member States to adapt the implementation to their national contexts. This period, 2021–2024, demonstrates not only technological developments in the labour market but also the adaptive capacity of European labour law in the face of a new reality.

3. KEY DIFFERENCES BETWEEN THE DRAFT DIRECTIVE AND THE FINAL PLATFORM WORK DIRECTIVE (EU) 2024/2831

The process from the European Commission's proposal for the adoption of a draft directive to the adoption of the 2024 Directive represents a delicate negotiation between the need to improve working conditions for digital platform workers and the concerns of Member States regarding the regulation of all the challenges of digital work. While the draft proposal aimed to create a uniform legal framework with clearly defined criteria, especially for determining the legal status and regulating algorithmic management, the Directive adopted a new approach, allowing Member States more discretion in drafting national legislation and providing a long timeframe for transposition, allowing it to be done gradually. The paper aims to compare the structures of both legal acts, highlighting their approaches to the main pillars of work on digital platforms, such as legal presumption, algorithmic management, trade union rights, and the role of member states in the transposition of the directive into national law.

Regarding the presumption of employment status, the draft directive proposed a direct legal presumption of employment if at least 2 out of 5 criteria set by the Commission are met. Regarding the burden of proof, it shifted the burden of proof to the platform to prove whether it had an employment or service relationship with its employees. The Directive supported the principle of legal presumption, but allows more flexibility for Member States to determine the criteria for its application, according to national conditions. The burden of proof remains with the platform, but the application is not automatic. Additionally, in determining the employment status, the control and direction that the platform had over the workers would be verified in each case. But the Directive did not propose any specific criteria as to which actions of the platform would be immediately considered an exercise of control or direction. This remains at the discretion of the Member States.

The legal freedom of the Member States will lead to more confusion and a lack of legal unity. When the control and direction exercised by the platform over digital platform workers is proven, they should automatically be classified as employees; this presumption is rebutted, and the platform is charged with proving the opposite. Members are obliged to ensure that this presumption is effectively applicable both in administrative proceedings and in those judgments. In the same clear legal points, it is up to the decision-maker to decide whether we are faced with an employment case or not. Article 5 does not establish a mandatory determination of employment status, but rather a procedural mechanism that shortens the path to recognition of the imposed sentence by setting the stage for examining the relevant law in each Member State. This is a balance between the principles of subsidiarity and the harmonisation of social protection at the European Union level (Aloisi et al., 2023).

Regarding algorithmic management, the draft directive was the first legal act to recognize it as a concept and to treat it legally. The draft directive aimed to increase transparency regarding algorithms that impact the employment, salary, and evaluation of employees. The draft directive also provided the right to information and human oversight of automated decisions, while the directive

further strengthened the obligation to inform employees about algorithms, extending its application to self-employed workers. The directive not only provided for the right to information but, above all, sanctioned the need for human supervision and the right to clarification after automated decisions (European Trade Union Institute, 2024).

Employees of digital platforms have the right to appeal any automated decision, and this appeal should be reviewed by a human being, not automatically. The provision of such a legal framework is crucial in today's times to create a safe working environment and implement the principle of decent work in the digital age. The directive also provided protection for the personal data of employees on digital platforms, highlighting that the GDPR is insufficient to protect the personal data of digital platform employees (Aloisi et al., 2023). As a result, member states are obliged to provide more specific rules in their national legislation aimed at protecting personal data in digital working conditions. Therefore, we note that the directive has had a more comprehensive approach in regulating algorithmic management.

The draft directive reaffirms the right to representation and participation in collective bargaining. Still, it does not provide detailed measures for the practical implementation of this right in the context of platforms. There is no precise legal provision to guarantee the right to organize in a fragmented employment relationship. The lack of a specific legal norm makes this right ineffective. While the directive provides for the right to organize, it accompanies it with concrete and effective provisions. The directive guarantees the right of platform workers to form or join representative organizations and to participate in collective bargaining, regardless of their status (employee or self-employed). This legal provision has broken the traditional rules of labour law, attributing the right to organize only to employees. In line with technological changes and the presence of bogus self-employment, this legal provision is necessary. The directive also provides for sanctions in cases of discrimination or prohibition from being part of existing trade union organizations, and obliges member states to take all necessary measures to ensure that digital platform employees enjoy trade union rights and collective representation. For the first time, the right to collective representation has been linked to algorithmic management, ensuring access to data and transparency for representative organizations, allowing them to protect the interests of their employees (European Commission, 2021).

The draft directive aimed to unify the legislation of all member states, rather than leaving them with significant power to draft new rules for work on digital platforms. The directive provides greater flexibility to member states in implementing and adapting the provisions of the directive within their national legislation. Taking into account the national specificities of the labour market, the directive left it to the discretion of member states to regulate work on digital platforms in a more specific way. It remains to be seen what member states will propose in their national legislation and whether confusion and cases of abuse of the employment status of digital workers will increase, or whether member states will follow each other's example in drafting legislation.

4. THE CHALLENGES FACING MEMBER STATES IN THE PROCESS OF TRANSPOSING DIRECTIVE (EU) 2024/2831

The transposition of Directive (EU) 2024/2831 on improving working conditions on digital platforms poses several challenges for EU Member States. This directive requires not only the adaptation of the legal framework for work, but also a new approach to technology, employment relations, and the protection of personal data. Among the main challenges for EU Member States is the provision of clear rules that should carefully predict who will be considered an employee of all digital platform workers.

Although the Directive refers to management and control as indicators for determining employment status, it does not define the material criteria of this relationship in detail**.** The legal provision regulating employment status should be drafted in such a way as to be based on a reversal of the burden of proof (European Commission, 2021). This will entail a review of national labour and social security legislation, as well as a change in procedural law to include this burden of proof mechanism in judicial or administrative proceedings (Aloisi et al., 2023). About algorithmic management, given that everything is new and unknown, this legal provision may find member states unprepared to provide the necessary technical capacity to control algorithmic management systems on platforms (De Stefano, 2016). Many member states may not yet have a technologically developed infrastructure to oversee algorithms and automated systems that manage workers. Another difficulty is that many states may not have the capacity to provide workers with the necessary tools to request information on the algorithms that affect them.

The transparency of algorithms means that workers should be able to understand and assess their impact on performance evaluation, the tasks assigned to them, and the opportunities for improvement. Without the necessary capacity to provide this, states may face gaps in legal aid and worker protection (European Commission, 2023). The protection of personal data under the General Data Protection Regulation (GDPR), but in the context of digital platforms, will face difficulties for EU member states. Member states face difficulties in balancing the need to protect workers' privacy with the requirement to monitor workers' performance and behaviour (European Union Agency for Fundamental Rights, 2024). Algorithms that monitor work activities may breach GDPR rules if they use data without obtaining proper consent or for purposes that are not clear and specified.

Work on digital platforms is characterized by flexibility, which can sometimes lead to difficulties in guaranteeing the right to organize and collective bargaining. Platform workers are often geographically dispersed, which hinders their organization. There are also other factors, such as the platforms themselves taking measures to prevent workers from organizing, or in other cases, they are afraid to organize (De Stefano & Aloisi, 2018). States are responsible for taking all appropriate legal steps to guarantee these workers the right to organize, to negotiate, to conclude collective agreements, and to have decent working conditions. Another important challenge that countries will face is the establishment of appropriate administrative mechanisms for monitoring in practice the legislation that guarantees the rights of digital platform workers. Establishing an inspectorate, providing qualified personnel, to implement and continuously monitor the implementation of administrative responsibilities for the supervision of platforms. Establishing supervisory structures requires significant investments in technological infrastructure, training for inspectors, and providing ongoing support to ensure the platform complies with legal requirements.

5. CONCLUSION

The legal development from the Draft Directive of 2021 to the adoption of the EU Directive 2024/2831 reflects not only the challenges faced by the legal bodies of the European Union, but also the challenges faced by legislation with technological developments. While the Draft Directive laid the first foundations with concrete proposals to protect the rights at work of digital platform workers, the Directive chose to provide for a legislative framework with a more flexible, more balanced character, seeking to build national sovereignty and the innovation brought by the digital economy.

The directive is the first legal act that focused on regulating rights under the influence of algorithmic management and expanding trade union rights for platform workers, marking a change of

fundamental importance to regulate the legal relationship of digital work. However, the real impact of the directive will depend on whether Member States implement it effectively and whether they will be able to address the ongoing risks posed by misclassification for the legal status of workers.

In conclusion, the Directive represents an important milestone in the approximation of social rights in a digital economy, but its success will always require the political will of member states and social dialogue.

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