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## **New European Union regulations concerning work via digital platforms – Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work. Legal and social analysis**

### **Nowe regulacje Unii Europejskiej dotyczące pracy platformowej – dyrektywa (UE) 2024/2831 Parlamentu Europejskiego i Rady z dnia 23 października 2024 r. w sprawie poprawy warunków pracy za pośrednictwem platform cyfrowych. Analiza prawna i społeczna**

**Abstract:** The 2024 Directive on improving working conditions through platforms is the first European act on the use of algorithmic systems in the workplace. It regulates the employment status of platform workers. It assumes that people employed by platforms cannot be unjustifiably treated as self-employed. The Directive introduces a presumption of an employment relationship, particularly if there is evidence that workers are given instructions or are subject to the same control by their employer as in-house employees, in accordance with national law, EU case law and collective agreements. The burden of proof will lie with the platform, which means it will have to prove that the employment relationship does not exist. The directive also imposes an obligation on

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EU countries to establish appropriate regulations on the presumption of employment relationships on platforms. As EU legislators assure, this will allow “balancing the imbalance of power between the digital labour platform and the person performing the work”. The implementation of Directive 2024/2831 of 2024 will require a precise definition of the criteria for determining the status of workers through platforms. Member States will decide on the final shape of the adopted legal solutions. They will also decide whether to make changes to the applicable labour law regulations. Member states will also determine whether these rules will cover both digital platforms and other sectors, or whether they will develop new solutions in this regard. Certainly, precise criteria for the status of platform workers need to be developed, as this will be relevant to the forms of work currently used.

**Keywords:** digital labour platform, platform worker, EU regulations, Directive 2024/2831, labour law, social security law

**Streszczenie:** Dyrektywa z 2024 roku w sprawie poprawy warunków pracy za pośrednictwem platform cyfrowych jest pierwszym europejskim aktem prawnym regulującym stosowanie systemów algorytmicznych w miejscu pracy. Określa ona status zatrudnienia pracowników platformowych, zakładając, że osoby wykonujące pracę za pośrednictwem platform nie mogą być bezpodstawnie traktowane jako osoby samozatrudnione. Dyrektywa wprowadza domniemanie istnienia stosunku pracy – w szczególności, gdy istnieją dowody na to, że pracownikom wydawane są polecenia lub podlegają oni takiej samej kontroli pracodawcy jak pracownicy etatowi, zgodnie z prawem krajowym, orzecznictwem UE oraz układami zbiorowymi. Ciężar dowodu spoczywać będzie na platformie, co oznacza, że to ona będzie musiała wykazać, iż stosunek pracy nie istnieje. Dyrektywa nakłada również na państwa członkowskie obowiązek ustanowienia odpowiednich regulacji dotyczących domniemania istnienia stosunku pracy na platformach. Jak zapewniają unijni prawodawcy, ma to na celu „wyrównanie nierównowagi sił między platformą cyfrową a osobą wykonującą pracę”. Wdrożenie dyrektywy 2024/2831 będzie wymagało precyzyjnego określenia kryteriów ustalania statusu osób pracujących za pośrednictwem platform. Ostateczny kształt przyjętych rozwiązań prawnych zależeć będzie od decyzji państw członkowskich. One też zdecydują, czy zmieniają obowiązujące przepisy prawa pracy oraz czy regulacje obejmą wyłącznie platformy cyfrowe, czy również inne

sektory, a także czy opracują w tym zakresie nowe rozwiązania. Niewątpliwie konieczne będzie wypracowanie precyzyjnych kryteriów statusu pracowników platformowych, ponieważ będzie to miało istotne znaczenie dla obecnie stosowanych form zatrudnienia.

**Słowa kluczowe:** platforma pracy cyfrowej, pracownik platformowy, regulacje UE, dyrektywa 2024/2831, prawo pracy, prawo zabezpieczenia społecznego

## Introduction

The consequences of the collapse of the Fordist work order, globalisation, the development of the knowledge society, the increase in the share of the service sector in the economy, the development of modern information and communication technologies and many other demographic, economic and legal factors are the spread of atypical forms of work<sup>1</sup>.

The digital transformation, accelerated by the COVID-19 pandemic, is shaping the European Union's economy and its labour markets. Digital labour platforms have become a significant part of the socio-economic environment and are constantly evolving. Over the past five years, it is estimated that incomes in the digital economy of labour platforms in the EU have increased by around 500%<sup>2</sup>. Today, more than 28 million people in the European Union work through digital labour platforms. Their number is expected to reach 43 million in 2030<sup>3</sup>.

Digital labour platforms are present in various sectors of the economy. Some offer services such as ride sharing, delivery of goods, cleaning or care services. Others operate exclusively online, offering services such as data coding, translation, or design. Platform work differs in terms of

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<sup>1</sup> M. Matey-Tyrowicz, *Atypical forms of employment – EU directives and practice*, [in:] *Deregulation of the Polish labour market*, ed. Kazimierz W. Frieske, IPiSS, Warsaw 2003, pp. 153-166; K.W. Baran (ed.), *Labour law*, Wolters Kluwer Polska, Warsaw 2024.

<sup>2</sup> W. De Groen, Z. Kilhoffer, L. Westhoff, D. Postica, F. Shamsfakhr, *Digital Labour Platforms in the EU: Mapping and Business Models. Final report*, European Commission: CEPS and Directorate-General for Employment, Social Affairs and Inclusion, Publications Office of the European Union, Luxembourg 2021, <https://data.europa.eu/doi/10.2767/224624> (accessed 3.05.2025).

<sup>3</sup> E., Barcevičius, V. Gineikytė-Kanclerė, N. Klimavičiūtė, M. Ramos, *Study to support the impact assessment of an EU Initiative on improving working conditions in platform work*, European Commission: Directorate-General for Employment, Social Affairs and Inclusion, PPMI, Publications Office of the European Union 2021, pp. 5-6, doi: 10.2767/527749, <https://data.europa.eu/doi/10.2767/527749> (accessed 3.05.2025).

the level of skills required, how work is organised and controlled by platforms.

Digital labour platforms offer many opportunities for consumers and businesses. They can effectively match labour supply, demand and offer opportunities for subsistence or additional income, including for people facing barriers to accessing the labour market, such as young people, persons with disabilities, migrants, people belonging to racial and ethnic minorities or those with caring responsibilities.

Platform work offers opportunities to create or expand a supplier and customer base, sometimes across borders. It provides companies with much broader access to consumers, enabling diversification of income and therefore facilitating the development of these enterprises. For consumers, this means better access to products and more diverse range of services. However, digital labour platforms are introducing new forms of work organisation, which undermines existing rights and obligations related to labour law and social protection.

Although platform work allows for increased employment flexibility, people performing it are often deprived of any legal protection related to their employment. This is due to the lack of legal regulations relating to this form of work. According to estimates, up to 5.5 million people (out of 28 million) working in the EU through digital labour platforms may be at risk of misclassification of their employment status<sup>4</sup>. They are particularly vulnerable to poor working conditions and insufficient access to social protection<sup>5</sup>. Due to misclassification, they cannot enjoy the rights and protections to which they are entitled as employees. It should be added that these rights include: the right to a minimum wage, protection under working time legislation, health and safety at work, equal pay for men and women and the right to paid leave, as well as better access to social protection in relation to accidents at work, unemployment, sickness and old age<sup>6</sup>.

The aim of the article is to analyse the provisions of the new European Union regulation related to platform work – Directive (EU) 2024/2831 of the European Parliament and of the Council of 2024 on improving

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<sup>4</sup> Explanatory Memorandum to the proposal for a Directive of the European Parliament and of the Council on improving the working conditions of online platforms, COM(2021) 762 final, Brussels, 9.12.2021, <https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:52021PC0762> (accessed 3.05.2025).

<sup>5</sup> Ibidem.

<sup>6</sup> Ibidem.

working conditions through platforms<sup>7</sup> (Directive 2024/2831) and to assess their application in the Member States in terms of the labour market and social security.

In this study, the research problem consists of the legal analysis of EU regulations on the right to work of people moving within the EU, taking into account new forms of work, such as platform work. These are innovative analyses of subjects not yet explored in Polish literature. In order to examine how new regulations respond to major changes in the nature of work, the type of employment on the labour market, including work on platforms.

### Unusual forms of work

The concepts of unusual, non-standard, flexible forms of work or employment refer to a certain norm set by labour law – existing and developed for a long time in many countries. According to this standard, work should generally be performed based on an employment contract for an indefinite period of time under the direction of the employer, with appropriate remuneration rules, working conditions, including occupational health and safety, and training. The durability of the employment relationship, employee rights and the possibility of creating employee representation should be protected. Such work should be covered by social protection, in particular the social security system.

The catalogue of non-standard forms of work is open. These forms include<sup>8</sup>:

- temporary employment (for a definite period),
- part-time employment,
- work in different time systems (evenings, weekends),
- remote work (or telework),
- casual or on-call work (casual, *on-call*, *zero-hours work*),

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<sup>7</sup> Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions through platforms, Official Journal of the European Parliament and of the Council UE L of 11.11.2024.

<sup>8</sup> See E. Kryńska, *The use of non-standard forms of employment and work organization in Polish enterprises*, [in:] *Labour market in Poland at the threshold of the 21st century. Macroeconomic and Regional Aspects*, eds. R. Horodeński, C. Sadowska-Snarski, Institute of Labour and Social Affairs, Higher School of Economics in Białystok, Białystok-Warsaw 2003, pp. 143-154; E. Kryńska, *Dilemmas of the Polish Labour Market*, IPiSS, Warsaw 2001, pp. 93-116; ed. K.W. Baran, *Labour Law*, op. cit.

- work through an employment agency (multilateral employment in which there is an employee, an employer – an employment agent and an entity that is a user of the work),
- job-sharing,
- dependent self-employment (e.g. when services are provided only for one client) or hidden employment (formally disguised as self-employment),
- work through digital platforms.

The development of atypical forms of work can contribute to innovation in the labour market and make it more attractive to employers and potential employees. However, there is also a danger of labour market segmentation<sup>9</sup>, especially for casual work and similar work with low incomes and limited social protection.

According to the theory, labour market segmentation is based on the fact that there are two parallel segments of the labour market in the economy – primary and secondary.

The core market is the domain of large national and international enterprises operating in sectors of the economy with stable development and favourable legal regulations. The working conditions offered in this segment are favourable to employees and ensure a fair income, personal growth and social protection.

The secondary market, on the other hand, is an unstable area of operation for small and medium-sized companies with an uncertain future, which offer work with completely different characteristics – low-paid, casual, non-developmental and with a low level of social protection. Taking up a job in this worse segment stabilises the person in it. Moving to the basic segment is difficult.

The literature on the subject indicates<sup>10</sup> that segmentation produces a population of people balancing on the verge of unemployment and making a living from low-paid, determined mainly by market forces,

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<sup>9</sup> See M. Bednarski, Ł. Arendt, W. Grabowski, I. Kukulak-Dolata, *Segmentation of the labour market in Poland*, IPISS, Warsaw 2020. A. Musiał-Paczkowska, *Segmentation of the labour market*, Lodz University of Technology, Łódź 2012, [https://www.academia.edu/24372696/Alicja\\_Musia%C5%82\\_Paczkowska\\_Katedra\\_Ekonomii\\_i\\_Marketingu\\_Politechnika\\_%C5%81%C3%B3dzka\\_SEGMENTACJA\\_RYNKU\\_PRA-CY\\_1\\_Wprowadzenie#loswp-work-container](https://www.academia.edu/24372696/Alicja_Musia%C5%82_Paczkowska_Katedra_Ekonomii_i_Marketingu_Politechnika_%C5%81%C3%B3dzka_SEGMENTACJA_RYNKU_PRA-CY_1_Wprowadzenie#loswp-work-container) (accessed 3.05.2025).

<sup>10</sup> A. Gurgul, A. Piątek, *Market segmentation*, [in:] *Encyclopedia of Management*, [https://mfiles.pl/pl/index.php/Segmentacja\\_ryнку#google\\_vignette](https://mfiles.pl/pl/index.php/Segmentacja_ryнку#google_vignette), accessed 3.05.2025; A. Musiał-Paczkowska, *Segmentation of the labour market*, op. cit.; E. Kryńska, *Deregulation and segmentation of the labour market*, [in:] *Deregulation of the Polish labour market*, ed. Kazimierz W. Frieske, IPISS, Warsaw 2003, pp. 93-102; E. Kryńska, *Segmentation of the labor market. Theoretical Foundations and Statistical Analysis*, University of Lodz Press, Łódź 1996.

casual work of a temporary nature, migrating in search of work, having no prospects for professional development, as well as deprived of a sense of professional identity, belonging to a professional community based on permanent practices, ethical codes and norms of behaviour tags<sup>11</sup>. There is a lack of employee solidarity in their professions. They work with a sense of alienation and instrumental treatment.

Income and employment instability are transferred to personal and family situations. Due to low wages, these people are at risk of the so-called *working poor*<sup>12</sup>, i.e. poor people, despite the fact that they work full-time or more. It is said that the cure for poverty is work. What if poverty occurs despite hard work from morning to night? These people have difficulty living on their own and are deprived of access to the mortgage market and other important financial and social institutions. As a result, they often live with their parents. Due to the lack of financial, professional and life stability, these people do not plan for the future. They do not save money for old age, but they postpone creating their own family.

## Platform work

Digital platforms, modern tools based on information and communication technologies (the Internet, computers, mobile devices) drive the development of *the gig economy*.

The concept of *the gig economy* can be translated as a market for casual, temporary or fixed-term, usually short, work for a specific project, performed outside the traditional, stable employment relationship in a flexible manner by independent contractors or service providers. From the entrepreneur's point of view, *the gig economy* provides access to simple, but also highly specialised services without the need to incur high fixed costs.

Platform work refers to work performed through digital platforms. Digital labour platforms are private online companies that facilitate the

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<sup>11</sup> E. Kryńska, *Segmentation of the labour market*, op. cit.; A. Musiał-Paczkowska, *Segmentation*, op. cit.

<sup>12</sup> D.K. Shipler, *The Working Poor: Invisible in America*, reprint edition (January 4, 2005), Vintage, New York 2005; M. Bednarski, *Segmentation of the labour market in Poland*, Warsaw 2020; M. Wójcik-Zołądek, *The poverty of the working. The Working Poor Phenomenon in Poland*, "Studia BAS" 2013, No. 4(36), pp. 159-178.



matching of people or companies that have a need for a specific service for those who are ready to perform it. These services can be performed:

- a) remotely (*web-based*), e.g. programming, text translation, graphic design, data entry, verification of applications in social media,
- b) physically in a specific place (*location-based*), e.g. ride sharing, delivery of goods, care services.

Platforms naturally form at least a three-entity system, which includes people in need of the service, people offering it, and an intermediary, i.e. the platform operator.

The market for digital platforms is growing rapidly. Between 2016 and 2020, the revenues of approximately 500 digital platforms operating in the European Union increased from EUR 3 to 14 billion. Platform work is primarily performed by young and well-educated people. Over 90% of these people's earnings come from on-site, local service platforms, including 39% – taxi, 24% – delivery of goods, 22% – services and housework, 7% – professional services, e.g. accounting. Usually, people who perform platform work have an education that exceeds it. More than half earn less than the applicable minimum wage rates. A significant part of the working time of these people is dedicated to activities not paid for in any way<sup>13</sup>.

The business model of digital platforms is based on the collection, analysis and exploitation of data from users of their applications. Among the benefits, it is indicated that these are innovative services and business models that create many opportunities for consumers (better access to more diverse services and at a lower price) and for companies (better access to consumers, diversification of income, lower labour costs, business development, new services). Digital platforms effectively match labour supply with demand like never before. They provide opportunities for people who would otherwise have no access to the labour market to make a living and earn additional income.

An ordinary customer of a digital platform orders a service by phone or application. He does not think about how it is possible that this service is implemented instantly. Therefore, it is crucial to see in digital platforms not only a mechanism for matching customers with service providers, but also a mechanism for organising work – assigning it, monitoring,

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<sup>13</sup> De Groen W., Kilhoffer Z., Westhoff L., Postica D., Shamsfakhr F., *Digital Labour Platforms in the EU*, op. cit.



controlling, evaluating results (including through algorithms – “algorithmic management”). And this, as we know, is what employers do. The work of these people is associated with different levels of subordination to platforms and customers. Meanwhile, over 90% of people performing platform work are considered entrepreneurs (self-employed).

As automated systems are used to organise work and make decisions for platform workers (access to further tasks, bonuses, sanctions, account suspension or restriction), this can hide the existence of subordination and control by the digital labour platform, as well as, for example, lead to gender bias based on gender. Meanwhile (as it is stated in the literature), the employer cannot hide behind technology by claiming that since it is the algorithm that makes decisions about the employee, he is not the employer. The employer is responsible for operating the algorithm<sup>14</sup>.

As stated in the literature on the subject, the main challenge related to platform work is the unregulated legal status of people performing platform work<sup>15</sup>. The uncertainty stems from the lack of a clear definition of a worker and the fact that platform work escapes the traditional divisions between dependent and self-employed work (tripartite legal relationship, high degree of flexibility and autonomy in the performance of tasks).

Platform work can result in unpredictable working hours, blurring the lines between employment and self-employment, as well as between the responsibilities of employers and employees. Such work also results in an inequality of opportunity for companies that correctly classify their workers and has an impact on the industrial relations systems of the Member States, their tax base and the scope and sustainability of social protection systems.

The lack of regulation translates into a lack of employee and social protection, no guarantee of a stable income, and no responsibility for

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<sup>14</sup> E. Brameshuber, Ł.M. Pisarczyk, J.M. M. Boto (eds.), *Collective bargaining and the digital platform market. A traditional tool for new business models*, Wolters Kluwer Polska, Warsaw 2022.

<sup>15</sup> “The main task (...) is to regulate the legal status of platform workers. The explanatory memorandum to the draft directive provides for only two items for platform workers. The first is the role of an employee, while the second is the role of a sole proprietor. The dichotomous division refers to the previous dispute that existed and still takes place between the employed and the self-employed. In the opinion of the EU Commission, the legal and economic problem currently occurring between entrepreneurs responsible for a fair and justified division of employees into online employees resulted from an illegible, inconsistent with the actual facts, and thus deeply unjustified division of employment into employees and the self-employed”. See: A.M. Świątkowski, *Proposal for a Directive of the European Parliament and of the Council on improving conditions through online platforms*, “Labour and Social Security” 2022, No. 10, pp. 33-41, DOI: 10.33226/0032-6186.2022.10.7.

digital platforms. This produces communities of people driven into a state of permanent uncertainty, having to constantly strive for employment, living under constant pressure in conditions of high competition, low wages and incomes.

## **Directive 2024/2831 on platform work**

Given the wide range of risks to employment and working conditions arising from platform work, the European Parliament and the Council of the European Union adopted the Directive on improving working conditions through platforms on 14 October 2024.

Directive 2024/2831 aims to increase employment protection for people who provide services through digital platforms. Due to the fact that this model of employment is not reflected in the applicable legal regulations, “platform workers” usually establish cooperation on various civil law grounds (contract of mandate, specific work, etc.). This translates into no or very limited social or employee rights.

This would not be a problem if it were not for the fact that “platform workers” are often formally employed under civil law contracts, while in practice they work on a “classic” full-time basis. This means that such people should have an employment contract and be able to benefit from this legal relationship. This applies to access to various social security benefits.

Directive 2024/2831 on improving the conditions of platform work aims to enable platform workers to obtain the status of a workforce in line with reality, thereby gaining access to workers’ rights and social protection.

Member States’ regulations on platform work are not uniform and usually apply to specific industries, such as ordering rides or food delivery. Therefore, the most crucial solution proposed in the directive is the introduction of a rebuttable presumption of employment relationship concerning persons working through digital labour platforms who meet certain conditions for being considered as an employee (including the transfer of the burden of proof to the employer – the digital platform will have to prove that the relationship between it and the employee does not bear the hallmarks of a classic employment contract).

For the purposes of the Directive, Article 2(1) adopts the following definitions:

- “(a) ‘digital labour platform’ means a natural or legal person providing a service that meets all of the following requirements:
  - (i) is made available, at least in part, at a distance by electronic means, such as a website or mobile application;
  - (ii) is provided at the request of the service recipient;
  - (iii) it includes, as a necessary and essential element, the organisation of work carried out by individuals for remuneration, regardless of whether that work is carried out online or in a specific place;
  - (iv) involves the use of automated monitoring systems or automated decision-making systems;
- (b) ‘platform work’ means work organised through a digital labour platform and carried out in the Union by a natural person based on a contractual relationship between a digital labour platform or intermediary and a natural person, whether or not there is a contractual relationship between the natural person or the intermediary and the recipient of the service;
- (c) ‘platform worker’ means a natural person who performs platform work, irrespective of the nature of the contractual relationship or the definition of that relationship by the parties concerned;
- (d) ‘platform worker’ means a platform worker who is bound by an employment contract or an employment relationship as defined by the law, collective agreements or practice in force in the Member States, taking into account the case-law of the Court of Justice, or who is considered to be bound by such a contract or in such an employment relationship;
- (e) ‘intermediary’ means a natural or legal person who, in order to make work available through a digital labour platform or through a digital labour platform:
  - (i) it establishes a contractual relationship with that digital labour platform and a contractual relationship with the person performing work through the platforms; or
  - (ii) is in a chain of subcontracting between that digital labour platform and the person performing work through the platforms;
- (f) ‘workers representatives’ means representatives of platform workers, such as trade unions, and representatives who are freely elected by platform workers, in accordance with national law and practice;

- (g) ‘platform workers representatives’ means workers’ representatives and, to the extent provided for in national law and practice, platform workers’ representatives other than platform workers;
- (h) ‘automated monitoring systems’ means systems used to monitor, supervise or evaluate or to support, by electronic means, the performance of persons performing work through platforms or activities performed in the work environment, including through the collection of personal data;
- (i) ‘automated decision-making systems’ means systems used to take or support by electronic means decisions that have a significant impact on platform workers, including the working conditions of platform workers, in particular decisions affecting their recruitment, access to tasks and organisation of tasks, their earnings, including the valuation of individual tasks, safety and health, working hours, access to training, promotion or equivalent, and contractual status, including restriction, suspension or deletion of their account”.

Directive 2024/2831 clarifies that the correct determination of employment status should be based on the principle of the primacy of facts, i.e. based primarily on facts related to the actual performance of work and remuneration. The use of algorithms in platform work should be taken into account when determining employment status, not how the employment relationship is defined in the contract. In the case of an employment relationship, the applicable procedures should clearly define who is to take over the employer’s obligations (Article 5 of the Directive).

This legal presumption would apply to all judicial and administrative proceedings<sup>16</sup>.

According to the European Commission<sup>17</sup>, a comprehensive framework to address the misclassification of employment status in platform work will benefit both bogus self-employed and genuine self-employed working through digital labour platforms<sup>18</sup>.

Correct determination of employment status will be beneficial for the person considered an employee. It will benefit from improved working conditions, including health and safety at work, employment protection, statutory minimum wage or wage negotiated in collective agreements,

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<sup>16</sup> E. Barcevičius, V. Gineikytė-Kanclerė, L. Klimavičiūtė et al., *Study to support...*, op. cit.

<sup>17</sup> Explanatory memorandum to the proposal Directive of the European Parliament and of the Council on improving working conditions through online platforms, op. cit.

<sup>18</sup> Ibidem.

and access to training opportunities. They will also have access to social protection in accordance with national legislation.

By contrast, genuine platform workers will indirectly benefit from greater autonomy and independence as a result of adapting the practices of digital labour platforms to avoid the risk of reclassification.

Digital labour platforms will also benefit from greater legal certainty, including concerning potential judicial redress. Other companies that compete with digital labour platforms in the same sector will benefit from a level playing field in terms of the cost of social protection contributions. Member States will benefit from increased revenues in the form of additional taxes and social protection contributions.

Directive 2024/2831 contains provisions (Article 9) to ensure fairness, transparency and accountability in algorithmic governance in the context of platform work. It introduces new substantive rights for platform workers. These include the right to transparency – concerning the use and operation of automated monitoring and decision-making systems – which sets out and complements existing rights on the protection of personal data.

Digital labour platforms differ from other online platforms in that they use automated monitoring and decision-making systems to organise the work carried out by individuals at the request of a single or repetitive request from the recipient of the service provided by the platform. Automated monitoring and decision-making systems process the personal data of people performing work through the platform and make or support decisions that affect, among other things, working conditions. These features make digital labour platforms a distinct form of organisation of the provision of services by the liberal professions compared to more traditional forms of organisation of the provision of services, such as conventional forms of booking arrivals or dispatching transport services.

Digital labour platforms must therefore inform platform workers about the use and key features of automated monitoring systems that are used to monitor, supervise or evaluate the work of platform workers by electronic means, and about the use of automated decision-making systems that are used to take or support decisions that have a significant impact on the working conditions of platform workers.

Directive 2024/2831 also aims to ensure that human monitoring of the impact of automated systems on working conditions is carried out, with

a view to protecting fundamental workers' rights and health and safety at work.

To ensure the fairness and accountability of relevant decisions taken or supported by automated systems, Directive 2024/2831 includes the establishment of appropriate channels for discussing such decisions and requesting their review. With some exceptions, these rules apply to all platform workers, including those who are genuinely self-employed.

Regarding workers, Directive 2024/2831 aims to develop social dialogue on algorithmic management systems by introducing collective rights to information and consultation on material developments related to the use of automated monitoring and decision-making systems. As a result, all platform workers and their representatives will benefit from greater transparency and understanding of algorithmic management practices, as well as more effective access to remedies against automated decisions, leading to improved working conditions.

The processing of personal data by means of automated monitoring and decision-making systems used by digital labour platforms may result in a high risk of violation of the rights and freedoms of persons performing work through these platforms.

Directive 2024/2831 enshrines rights that will build on existing safeguards with regard to the processing of personal data by automated decision-making systems, as set out in the General Data Protection Regulation<sup>19</sup>, as well as on the proposed transparency and human oversight obligations of providers and users of artificial intelligence (AI) systems, set out in the EU legislation<sup>20</sup>.

The General Data Protection Regulation establishes a general framework for the protection of individuals with regard to the processing of personal data. However, the European Union considers that in the future it is necessary to establish specific rules to address specific problems related to the processing of personal data as a result of the use of automated monitoring and decision-making systems in the context of platform work.

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<sup>19</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). EU L 119/1 of 4.5.2016.

<sup>20</sup> Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act). EU L 2024/1689 of 12.7.2024.

The aim of these rules is to ensure a higher level of protection for people who work through platforms.

One of the objectives of Directive 2024/2831 was to increase transparency, traceability and awareness of changes in platform work and to improve the enforcement of existing rules for all platform workers, including those operating across borders. National authorities do not always have sufficient access to data on digital labour platforms and the people working through them, such as the number of people regularly performing platform work, employment status or working conditions. The problem of traceability is particularly relevant for cross-border platforms, which makes it unclear where and by whom platform work is carried out. This, in turn, makes it more difficult for national authorities to enforce existing obligations, including those related to social security contributions.

In accordance with Article 16 of Directive 2024/2831, Member States require digital labour platforms to report the work carried out by platform workers to the competent authorities of the Member State where the work is carried out, in accordance with the rules and procedures laid down in the law of the Member States concerned.

Directive 2024/2831 will increase the level of awareness of labour offices and social protection authorities on which digital labour platforms operate in their Member State, ensuring that they have access to relevant basic information on the number of people working through digital labour platforms, their employment status and standard working conditions.

These measures will help these authorities to ensure that workers' rights are respected and to pay social security contributions, thereby improving the working conditions of platform workers.

Member states will have 2 years to implement Directive 2024/2831 into their national legal systems. The Directive can be transposed by means of a separate legal act on digital platforms or by amending labour law.

In accordance with Article 153(3) TFEU, Member States may entrust management and labour with the implementation of a directive.

Five years after the entry into force of Directive 2024/2831, the European Commission will review its implementation. If appropriate, it can propose changes in the law.



## Summary

Directive 2024/2831 on improving working conditions through platforms of 2024 is the first European act on the use of algorithmic systems in the workplace. It regulates the employment status of platform workers. It assumes that people employed by platforms cannot be unjustifiably treated as self-employed.

Directive 2024/2831 introduces a presumption of an employment relationship, especially if there is evidence indicating, in accordance with national law, EU case law and collective agreements, that employees are given official instructions or are subject to the same control by the employer as full-time employees. The burden of proof will lie with the platform, which means that it will have to prove that the employment relationship does not exist. The directive also imposes an obligation on EU countries to establish appropriate regulations on the presumption of employment relationships on platforms. As EU legislators assure, this will allow “balancing the imbalance of power between the digital labour platform and the person performing the work”.

The adoption of Directive 2024/2831 may necessitate changes to the rules governing cooperation between service providers and digital labour platforms.

Directive 2024/2831 is also the basis for analyses and research on the following issues.

The main challenge is how to guarantee the right to social security according to the different forms of work and employment. It is necessary to ensure adequate, or at least minimal, social protection for these people. You definitely need to start by defining what is considered work and what is not.

This is particularly important in the context of social insurance, which is built on the concept of replacing income from work with benefits. In their classic form, they have difficulties in covering such persons with their protection, primarily due to difficulties in determining the fundamental rights and obligations of the parties to the insurance relationship, among other things the amount of contributions and benefits due, the period of insurance coverage, but also difficulties in the possible control of the correctness of reporting such forms of work to insurance.

However, the contribution burden should also be considered in the context of labour costs and the tax and contribution wedge. Entrepreneurs

who pay premiums for their own insurance perceive premiums through the prism of operating costs (here and now), and not security in the event of illness, accident (uncertain events) or old age (distant future). Various actions must be taken in this regard, primarily educational and informational.

Solving these problems requires bold policy and ingenuity of the legislator, who will want to understand what is typical for an atypical employee in order to cover them with social security or other protection.

Social security systems must be universal and compulsory; then, thanks to economies of scale, the state can guarantee decent benefits. This is also provided for by international regulations (ILO, RE, EU). These regulations determine the objective and subjective scope of social security systems and the amount and principles of their financing (contributions, taxes). Therefore, they *de facto* set legal and economic minimum standards of social security (ILO Convention No. 102<sup>21</sup>) or higher third-generation standards, such as those in the field of social security<sup>22</sup>. These social security standards are referred to by the European Parliament and the Council of the European Union in documents related to the work on the draft Directive 2024/2831.

EU countries have the opportunity to draw on many solutions from international law. However, the increase in atypical employment requires the establishment of a new scope of protection in the labour and social security law system.

The implementation of Directive 2024/2831 of 2024 will require a precise definition of the criteria for determining the status of workers through platforms. Member States will decide on the final shape of the adopted legal solutions. They will also decide whether to make changes to the applicable labour law regulations. Member states will also determine whether these rules will cover both digital platforms and other sectors, or whether they will develop new solutions in this regard.

Certainly, precise criteria for the status of platform workers need to be developed, as this will be relevant to the forms of work currently used.

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<sup>21</sup> Convention No. 102 of the International Labour Organization concerning minimum standards of social security, O.J. 2005, No. 93, item 775.

<sup>22</sup> G. Uścińska, *Social Security Law*, C.H. Beck, Warsaw 2021; G. Uścińska, *Social Security of Persons Exercising the Right to Free Movement in the European Union*, Wolters Kluwer Polska SA, Warsaw 2013; G. Uścińska, *European Social Security Standards and Contemporary Polish Solutions*, IPiSS, Warsaw 2005.

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