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THE NOTION OF DIGITAL LABOUR PLATFORMS AND THE EUROPEAN INCENTIVE FOR IMPROVEMENT OF THE WORKING CONDITIONS OF THE PLATFORM WORKERS

This paper is generating an overview on the development of the current proposed EU Directive on improving working conditions in platform work. The work performed on/through digital labour platforms has been so far delicate to be legally qualified within the existing theoretical and normative legal framework, since, according to the first theoretical position, this type of work engagement has been contextualized and treated under the veil of self-employment, while, according to the second theoretical position, the working engagement on digital labour platforms is represented and treated as a tripartite and new form of employment relationship, between the platform worker, the user of the platform and the digital labour platform. Digital transformation and technological innovation, as well as the use of algorithms on digital labour platforms, have enabled the establishment of the tripartite working relationship and the creation of the European legal framework for decent working conditions within the platform economy.

Key words: *New forms of work. – Digital labour platforms. – EU law. – Labour digitalization. – Platform economy.*

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1. INTRODUCTION

The contemporary digital age lived by humanity postulates new forms of work, as well as new working models for undertaking and performing the work-related engagements that are influenced by the digitalization. Information technology, which contributed to a large extent to the development of the digital economy, as perceived through the prism of the employment relationship, intensifies the needed focus to address and set acceptable standards for digital workers, specifically on legal issues related to teleworkers, platform workers and any other digitally-assisted work and practice that stretches the notion of digital flexibility incorporated in the non-standard and new forms of employment. Nevertheless, this notion of digital flexibility should tend to underline the need of asserting work-related rights and subjective security of workers who use digital tools and platforms to access work-related engagement. The premise of the abovementioned should be scoped towards including the health of workers as a factor under their professional exposure to information technology, for the purpose of advancing a certain ‘standardization’ of the non-standard forms of employment that arise on the digital labour markets. This in fact, is instrumenting the impacts of digital technology on work with the development of an appropriate perception of strengths and weaknesses of the technological processes of innovation in the structural genesis of the employment relationship.¹ This, in turn, enables the formation of new ways of approaching the initiation of work engagement, i.e. among other possibilities, the conceptions for generating work-related engagements which occurred in-between a crowd of potential undertakers and performers of the work-related tasks. These workers have been covered under the veil of ‘crowdworkers’. The term ‘crowdwork’ describes a new form of digital work that is organized and regulated by internet-based platforms.² This typology of work is usually performed online and is not related to a specific geographical location, with individuals that are performing this type of digitally-assisted working

1 S. Melián-González, *The Impact of Digital Technology on Work*, 2019, 2.

2 C. Gerber & M. Krzywdzinski, “Brave New Digital Work? New Forms of Performance Control in Crowdwork, in *Work and Labor in the Digital Age*”, (eds. S. P. Vallas, A. Kovalainen), 2019, 121–143, <https://www.emerald.com/insight/content/doi/10.1108/S0277-283320190000033008/full/html>, last visited 7 August 2022.

engagement while potentially being physically dispersed around the entirety of the globe.³

Furthermore, the notion of crowdsourcing the work-related engagement, as a non-traditional way of digitally acquiring and selecting potential workers to perform certain tasks or to provide a certain service via platforms, is conceptualizing the capacity to integrate a kind of virtualization of the work-related engagement on a vertical and on a horizontal level, which in fact, remodifies the basis of the way of doing work, as it includes the possibility of initiating the working engagement remotely by using digital tools to connect on digital platforms, that is giving access to information and shared knowledge. Given the above, from a technical point of view, there are certain perceptions that the mobile platforms for crowdsourcing, in relation to the possibility of embodiment of digital operations in heterogeneous environments, are prone to the creation of a certain potential for economic viability for establishing crowdsourcing platforms.⁴

In order of creating crowdsourcing or work on-demand digital labour platforms in the world of the gig economy, which manifests itself as an economic system that uses online platforms to digitally link the demand of independent or part-time workers by users/clients, for the purpose to perform certain work-related tasks at a given period of time.⁵ This type of work engagement also draws attention to the fact that it is formed as a work-related engagement that involves three parties, out of which, the first party is the user of the service provided and offered by the platform, the second party is the platform worker who provides the fulfilment of the requested engagement demand, while the third party is the platform itself. In this tripartite relationship, the platform, by combining the supply and demand for labour engagement, finally connects the user/client of the platform as an ordering factor within the work-related engagement, with the platform worker who provides a work-related completion on tasks for the ordering client. The process is being

3 *Ibid*, 123.

4 M. Chopra et al., “Exploring Crowdsourced Work in Low-Resource Settings, Proceedings of the 2019 CHI Conference on Human Factors in Computing Systems”, 2019, 1–13, <https://dl.acm.org/doi/10.1145/3290605.3300611>, 5. August 2022.

5 J. Duggan et al., “Work in the Gig Economy: A Research Overview”, Routledge 2021, 2. <https://www.taylorfrancis.com/books/9780429351488>, last visited 5 August 2022.

mediated by the platform for the sake of the client's task-completeness needs, in order to finalize the required work by the client as an ordering demand factor of the work-related engagement.⁶ This in fact is in contrast of the binary model of the employment relationship,⁷ since the digital transformation enables the integration of a third party in relation to the way how the digital contracting and management practices of the digital labour platforms work. In this direction, having in mind that, as noted by the Study requested by the European Parliament's Committee on Employment and Social Affairs regarding precarious work, the platform workers typically have no written contract similar to an (employment or service) contract, platforms unilaterally impose (changes to) the terms and conditions for accessing work on the platform workers, without any prior information or consultation, when displaying their general terms and conditions,⁸ thus making the platform work a tripartite non-standard form of employment. The tripartite 'contractual' relationships in platform work is presented below.

Having in mind that the platform work is facing precarious risks regarding the income from work, the working conditions, the health and safety components and regarding the right of adequate usability of social protection for the platform workers,⁹ the platform work is shaping itself under the veil of a non-standard, precarious and digital form of employment. The non-standard forms of employment differ from standard ones based on several parameters such as: the duration of the working engagement, the duration and organization of the working hours and the location of the workplace.¹⁰ Hence, there are noticeable remarks that, this crowdsourcing model that is shaping the platform

6 J. Prassl & M. Risak, "Uber, Taskrabbit and co: Platforms as employers? Rethinking the legal analysis of crowd work", *Comparative Labor Law & Policy Journal*, 37/2016, 619.

7 T. Kalamatiev, A. Ristovski, "The Binary Model of Labour Relations and the Criteria for Distinguishing between Employment Agreements and Service Agreements", *Yearbook of the Faculty of Law 'Iustinianus Primus' in Skopje*, 2021, 59.

8 H. Hauben *et al.*, The Platform Economy and Precarious Work, EMPL, 2020, 27–28, https://op.europa.eu/publication/manifestation_identifier/PUB_QA0420460ENN, last visited 6 September 2022.

9 *Ibid.*, 29–48.

10 T. Kalamatiev, A. Ristovski, "Temporary Agency Employment in North Macedonia's Labour Legislation", *Journal for Theory and Practice of Labour and Social Law*, 1/2019, 34.

economy, in certain development scenarios, faces a lack of predictability and security of acquiring work-related engagements, including that, in difficult times, the workers may face a loss of remuneration earnings, as well as lacking and inability to use certain social rights, such as the right to sick leave,¹¹ thus consequently following the impossibility to receive salary supplements, given that the platform workers are treated as persons who have not established a standard employment relationship by concluding an employment contract that sets out the whole scale of workers' rights that are, from a traditional standpoint of view, guaranteed on a particular labour market through the constitution, the applicable laws and thorough collective agreements.

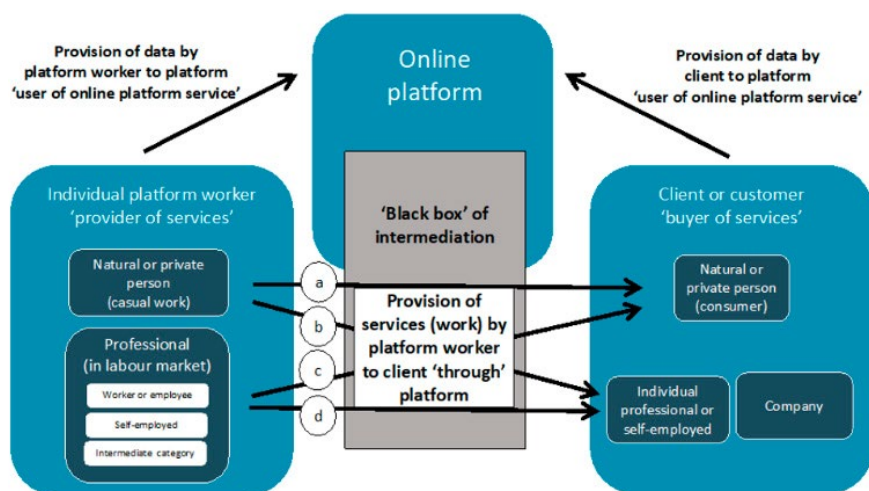


Figure 1– Contractual relationships in platform work
(Harald Hauben et al., 2020)

Consequently, the companies that operate within the gig economy, i.e. the creators of the digital labour platforms, in many cases avoid classifying the platform workers under the veil of 'workers' because it would develop the need to provide a spiral of guaranteed rights and obligations that arise under the standard employment relationship, such as payments for overtime work, trade union organization, salary deductions and taxation, usability of unemployment benefits, compensation of workers' costs that incurred during work, disability insurance,

11 J. Duggan et al. *op cit.*, 3.

as well as the entire array of social security rights.¹² This in fact, although similar, should be separated from the concept of false self-employment, i.e. bogus self-employment, where the main reason for concluding a simulated contract, in that case, is sought in the effort of employers to reduce labour costs and avoid obligations enforced by the tax, social and, especially, labour legislation.¹³ By doing an observation on the conditions that are laid out of the above-mentioned situation, followed by the algorithmically inclined progression of processes that mitigate the digital labour structure of enabling new ways of establishing working relations, it should be noted that new challenges of regulating platform work are emerging. As a consequence, a necessity arises to regulate the working conditions and the working ambient on the digital labour platforms, as well as in regards to the need of establishing a fair amount of platform workers' security in relation to respecting their basic working rights and working conditions on the platforms.

2. TYPES OF DIGITAL LABOUR PLATFORMS AND CLASSIFICATION OF THE PLATFORM WORKERS

2.1. The notion of digital labour platforms

In general, the digital platforms and the necessary usage that they can provide are usually covered under several components of services that can be offered through the platforms, which are namely consisting upon: platforms for providing services for the individual user, platforms for mediating work arrangements between interested parties, platforms for facilitation and mediation in business exchange and hybrid digital platforms for mediation and providing other set of services.¹⁴ The subsequent subject of interest for this paper refers to

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- 12 J. Frost, "Uber and the Gig Economy: Can the Legal World Keep Up?", 13 SciTech Lawyer, https://www.americanbar.org/groups/science_technology/publications/scitech_lawyer/2017/winter/uber_and_gig_economy_can_legal_world_keep_up/, last visited 5 September 2022.
 - 13 Lj, Kovacevic, "Personal Area of Application of Labour Legislation – (un)reliability of the Criteria for the Qualification of Subjects of Labour Protection", *Zbornik Matice srpske za društvene nauke*, 152/2015, 511.
 - 14 Regarding the aforementioned, the International Labour Organization underlines that these following types of generic services that are being provided by

the second category of platforms for mediating work arrangements between interested parties, meaning the online-based and location-based digital labour platforms.

the digital platforms are segmented into the four groups above-mentioned. In addition, within this group their specific modularity and landscape of digital platforms, aspires to classify them as:

1. Platforms for providing services for the individual user of the platform, from where the types of platforms are divided into:
 - 1.1. social media platforms;
 - 1.2. electronic payment platforms;
 - 1.3. crowdfunding platforms;
 - 1.4. platforms for providing other digital services.
2. Digital labour platforms:
 - 2.1. online web-based platforms:
 - 2.1.1. freelance and contest-based platforms;
 - 2.1.2. microtask platforms;
 - 2.1.3. competitive programming platforms;
 - 2.1.4. platforms for medical consultation.
 - 2.2. location-based platforms:
 - 2.2.1. platforms for providing taxi services;
 - 2.2.2. platforms for providing delivery services;
 - 2.2.3. platforms for providing domestic work services;
 - 2.2.4. platforms for providing care services.
3. Business exchange facilitation and intermediation platforms (B2B platforms), where the types of platforms are divided into:
 - 3.1. platforms for providing services in the scope of retail and wholesale trade;
 - 3.2. platforms for providing services in the field of production market and analytics;
 - 3.3. platforms for providing services in the field of agricultural market and analytics;
 - 3.4. platforms for providing services in the field of financial lending and analytics.
4. Hybrid digital platforms for intermediation and provision of services (targeting delivery, taxi, retail, entertainment industry and electronic payment).

For detail overview regarding the above-mentioned types of generic digital platforms, as classified by the respected authors, see: International Labour Organization, *World Employment and Social Outlook 2021: the role of Digital Labour Platforms in Transforming the World of Work*, International Labour Office, 2021a, 40.

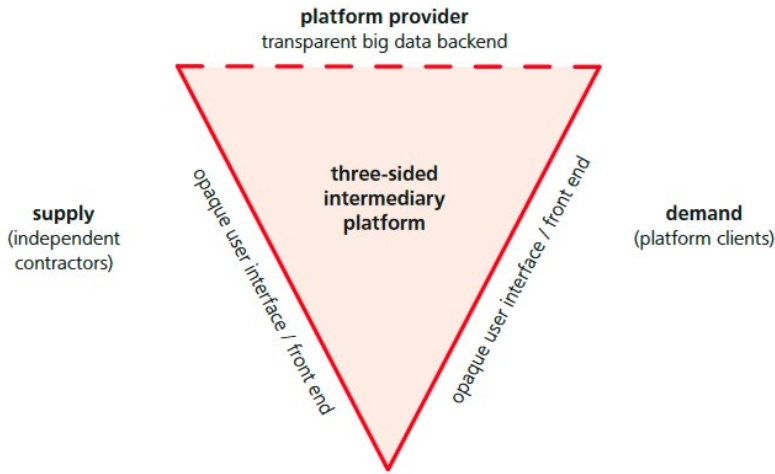


Figure 2– Three-sided platform architecture (Schmidt, 2017)

Furthermore, the contemporary practical-applicability of the digital advancement in the technological progress is enabling the development of various models out of which the foundations of the digital labour platforms arise from. The digital labour platforms themselves, can also be seen as profit-oriented companies that use technology to facilitate and intermediate the fulfillment of immediate short-term labour needs, either remotely or in person, with workers who are formally considered as independent contractors of the work venture for which they agree to be engaged under the algorithmic auspices of the platforms.¹⁵ Practically, there are two kinds of digital labour platforms: online-based and location-based platforms. Moreover, there are two types of working relations that are being manifested within the ways of acquiring labour demand through the digital labour platforms, that within each, platform workers are either directly engaged to take a specific working engagement by the platform (bilateral working relationship) or their working engagement acquirement is mediated through the platform (trilateral working relationship).¹⁶ The platform provides

15 K. M. Kuhn, A. Maleki, “Micro-entrepreneurs, Dependent Contractors, and Instaserfs: Understanding Online Labor Platform Workforces”, 31 *Academy of Management Perspectives*, 2017, 183–200 <http://journals.aom.org/doi/10.5465/amp.2015.0111>, last visited 5 September 2022.

16 International Labour Organization, *Digital platforms and the world of work in G20 countries: Status and Policy Action*, 2021b, 7, <https://www.ilo.org/wcmsp5/>

the basic infrastructure for mediation between different groups that have the same or similar interest, i.e. hiring labour to perform certain tasks. The advantages of this model of digital spot-market purchasing of labour, assisted by highly developed clusters of databases prone to datafication of the digital labour platform engagements, enables the platform to be positioned on two layers in the distribution of information arising from the data:¹⁷

1. Between the users of the platform; and
2. as a basis on which the activities occurred (regarding the working engagements) and recording the underlined work-related activities (including the working engagements history of the users).

In terms of how the companies that run the digital platforms are managed, they are divided into:¹⁸

1. Innovation platform companies;
2. Transaction platform companies (multilateral or intermediary platform that provides a fast channel for transaction between several different parties or that provides third party access to products and services on the Internet);
3. Integrated platform companies (that offer software services to facilitate the communication channel using computer operating systems and communication networks).

groups/public/---dgreports/---ddg_p/documents/publication/wcms_829963.pdf, last visited 8 June 2022.

17 Regarding the generic types of platforms, some have noted that “... Just like oil, data are a material to be extracted, refined, and used in a variety of ways. The more data one has, the more uses one can make of them... Google, as the platform for searching, draws on vast amounts of search activity (which express the fluctuating desires of individuals). Uber, as the platform for taxis, draws on vast amounts of traffic data and the activities of drivers and riders. Facebook, as the platform for social networking, brings in a variety of intimate social interactions that can then be recorded. And as more and more industries move their interactions online (e.g., Uber shifting the taxi industry into a digital form), more and more businesses will be subject to platform development... Platforms are, as a result, far more than Internet companies or tech companies, since they can operate anywhere, wherever digital interaction takes place.” For more details, see: N. Srnicek, *Platform Capitalism*, Polity 2017, 24–25.

18 *Ibid.*

In addition, as mentioned above, the digital labour platforms are divided into location-based and web-based platforms, depending upon whether the task is given to a crowd or to selected individuals.

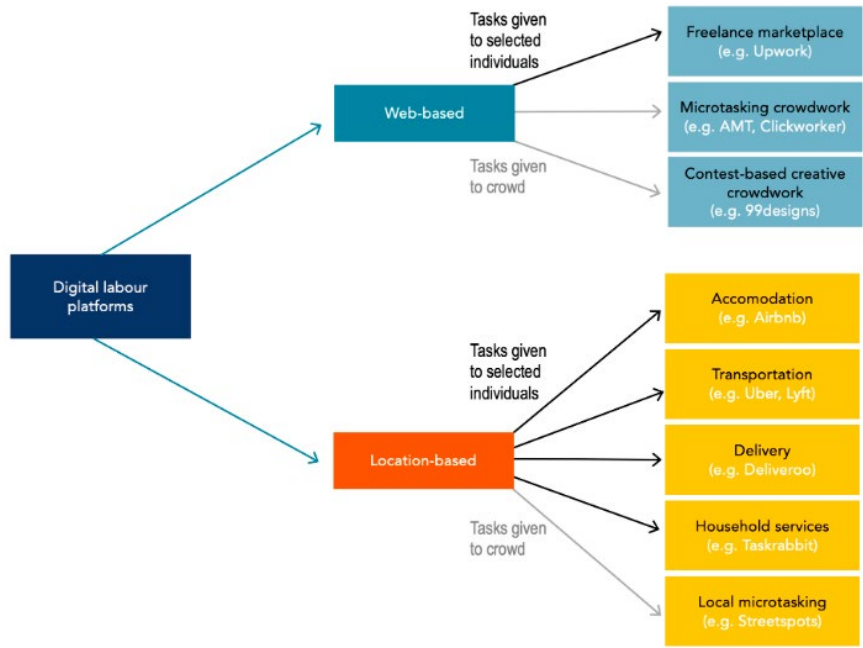


Figure 3– Classification of digital labour platforms
(Nicola Lettieri et al., 2019)

While in terms of the degree of complexity of the work that needs be undertaken due to the need to perform the specified working engagement, there are noticeable divisions that differentiate the digital labour platforms into micro-tasking platforms and macro-tasking platforms.¹⁹ Other observations suggest that digital labour platforms operate

19 As precisely pointed out by the authors who have elaborated this type of division in a more detailed manner, namely, it is pointed out that: “**Microtasks** are highly standardized routine tasks (e.g., picture classification, verification of lead data, and short audio transcriptions) or tasks that do not require specific professional knowledge (e.g., surveys, app testing, and writing short texts). The nature of these tasks allows them to be disassembled into short, highly standardized units with clearly defined outputs and that can be completed within a few seconds or minutes. Each subtask is tailored in such a way that it can be performed independently by one worker, anytime and anywhere, from a com-

on two functional mechanisms: (1) easy access to the service by the platform users; and (2) regulation of the employment relationship between the platform and the employee, which is most often qualified under the veil of self-employment.²⁰ The independence of the workers on the digital labour platforms, whereupon the individuals can have a more notable status of self-employed persons, depending on the policy representation by the digital platform, is generally expressed when they have more autonomy to decide on their nature of employment relationship, the working conditions under which their labour engagement will be performed and the process for engaging them to perform the work, while the workers who are more comprehensively approached and prone to accept different conditions imposed by the platform, develop a closer capacity to be treated as employees.²¹

puter, tablet, or smartphone. **Macrotasks**, conversely, are more complex and require a higher degree of creativity and specific, often professional knowledge (e.g., design, software programming, medical diagnosis). Such tasks cannot be broken down into pieces and are therefore organized as multi-day or multi-week projects. Moreover, quality matters rather than quantity: usually the goal is to crowdsource the best solutions among many good ones. Due to these very different logics, the competition and remuneration modes differ greatly. Microtasks are usually remunerated piece by piece for a few cents or euros/dollars. Competition is time-based: instead of individual skills or subjective criteria, that crowdworker who comes first gets the job. Macrotasks are, in comparison, much better paid in order to attract and activate (highly) qualified persons. In return, competition is fiercer and highly subjective. On so-called “marketplace” platforms (e.g., Upwork and Fiverr), clients usually select the crowdworker directly and upfront, and negotiate the payment bilaterally. Depending on the job and length of the project, it can vary from a few hundred to thousands of euros/dollars. On so-called “contest platforms” (e.g., 99designs and Jovoto) hundreds of crowdworkers submit their solutions (e.g., designs, product concepts, etc.), and the client, the platform, or the crowd itself selects the winning contributions. The prize money can range from a few hundred (especially in the relatively standardized design competitions) up to the higher tens of thousands of euros/dollars. Remuneration is, however, entirely unreliable as only one or a few contributions receive prize money. In order to retain high-performing crowdworkers a number of microtask and macrotask platforms have decided to offer hourly payment models for selected individuals.”

For more information on this, see: C. Gerber & M. Krzywdzinski, M. *op. cit.*, 123–124.

20 See: E. Gramano, “Digitalisation and work: challenges from the platform-economy”, *Contemporary Social Science*, 4/2019, 4.

21 K. M. Kuhn. A. Maleki, *op. cit.*, 193.

In summary, since the main component of digital labour platforms is the trading (buying and selling) of labour supply and demand, the main characteristics related to identifying the working engagement on digital labour platforms, are, as it follows:²²

1. Paid work is organised through an online platform;
2. Three parties are involved in this type of digitally-assisted labour engagement: the online platform, the client and the worker;
3. The aim of the working engagement is to perform specific tasks or to solve specific problems;
4. The work is outsourced or contracted out;
5. Jobs are broken down into tasks;
6. Services are provided on-demand.²³

2.2. Classification of the platform workers

Although certain eminent researchers suggest that ‘coming straight to common arrangements of the platform economy, it has to

22 Eurofound, Employment and working conditions of selected types of platform work, Publications Office of the European Union, 2018, 9.

23 It is worth noting that at EU level, in terms of the so-called on-demand working engagement, through Directive 2019/1152, additional measures are introduced to the EU Member States regarding the on-demand contracting for performing work, which in an extensive interpretation, they can be applied to workers working on a digital labour platform. Namely, as the Directive points out, in order to avoid abusive practices and at the same time to ensure legal certainty and protection of workers when Member States allow on-demand working engagement, the EU states should take the indicated set of measures to ensure:

- limitations to the use and duration of on-demand or similar employment contracts;
- a rebuttable presumption of the existence of an employment contract with a minimum amount of paid hours based on the average hours worked during a given period;
- other equivalent measures that ensure effective prevention of abusive practices.

For this, see: Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union. *Official Journal of the European Union*, L 186, 11.7.2019, Article 11, 105–121.

be acknowledged that a critical assessment of the worker classification is rather problematic' (De Stefano & Aloisi, 2018), the categorization of the contractual relationships that are underlying platform work, as pointed above, is a tripartite and non-standard form of employment which includes the user/client on the platform, the platform worker and the digital labour platform. Hence, it is rather complex to establish an universal legal definition of platform work and incorporating a simple and unique approach to resolve the status of the platform worker, by circulating between employee or self-employed platform worker. In order to adequately classify the platform workers, as Risak (2018) points out, it is needed to be addressed the classification exercise out of which it should be readdressed the existence of: a) contractual relationships between users and platform workers; b) Contractual relationships between platforms and platform workers; c) Contractual relationships between the user and the platform; or (d) treating the platform work as a special form of agency work.

In relation to dividing the platform workers based on their education and skill set, one of the main parameter that should be taken into consideration on the basis of which the platforms essentially differ from each other is the way in which the remuneration is being paid, i.e. the fee for performing a certain job or task by the platform worker. In this regard, the platform workers' personification regarding their working engagement through platforms, is encompassing by two selective types of platform workers, the first refers to lower-income workers who are comprised as part of the socially-skilled layer of less educated workforce, essentially meaning, workers who find it challenging to find work on the traditional labour market and to make a living, whereas in the absence of acquiring a regular employment relationship arisen from the conclusion of a working contract, the digital labour platforms enable them to secure their main source of income. While the second personification and profile of platform workers, is referring to workers who generate higher incomes prior to engaging in the platform economy and belong to the socially-skilled layer of workforce whose education is on a higher level, essentially meaning, platform workers who have already established a regular employment relationship with a certain employer on the traditional labour market outside of the platform economy, out of which they can generate their basic and higher incomes, whereupon, in the realm of the platform economy, this type

of platform workers are engaging on a platform in order for them to get involved into generating an additional income.²⁴

Regarding the density and frequency of the working engagement on the platform, the main aspects that are taken into account are the intersection of the factor of income generated from work on the digital platform with the factor of the weekly number of hours dedicated to work through the digital labour platform, as the second COLLEEM survey has classified the platform workers, they have been divided in the following groups:²⁵

1. Sporadic platform workers – workers who have offered labour services (and have been engaged in work activity) through platforms less than once a month over the past year;
2. Marginal platform workers – workers who have offered labour services (and have been engaged in work activity) through platforms at least on a monthly basis, but who spend less than 10 hours per week working on the platform and who earn less than 25% of their total personal income through platforms from the engagement on the platform;
3. Secondary platform workers:
 - 3.1. workers who have offered labour services (and have been chosen to perform or engaged in work activity) through platforms at least on a monthly basis, allocating between 10 and 19 hours per week for working operations on the platform or receiving between 25% and 50% of their income through the working operations that they undertake on the platforms;
 - 3.2. workers who spend more than 20 hours a week working on a platform but who earn less than 25% of their personal income through the platform-generated working engagement;

24 M. Radović-Marković *et al.*, 'The Transformation of Work in a Global Knowledge Economy', *Entrepreneurship and Work in the Gig Economy: The Case of the Western Balkans* (ed. Mirjana Radović-Marković), Routledge 1, 2021, 63–64, <https://www.taylorfrancis.com/books/9781000381054>, last visited 6 September 2022.

25 European Commission *et. al.*, *New evidence on platform workers in Europe.: results from the second COLLEEM survey*, Publications Office of the European Union, 2020, 9, <https://data.europa.eu/doi/10.2760/459278>, last visited 5 September 2022.

- 3.3. workers who spend less than 10 hours a week working on a platform and earn more than 50% of their income through the working operations that they undertake on the platforms.
4. Main platform workers – workers who have offered labour services (and have been chosen to perform or engaged in work activity) through platforms at least once a month, who work on platforms at least 20 hours per week, or generate at least 50% of their income through platform work.

Therefore, defining the platform work and the platform workers' status based on income and hours worked, by the COLLEEM 2017–2018 data, for platform workers who provided services at least on a monthly basis in the last 12 months, has been addressed and classified as in the bellow-compiled table.

	Less than 10 hours a week	Between 10 and 19 hours a week	More than 20 hours a week	No answer
Less than 25% of personal income	Marginal	Secondary	Secondary	Marginal
25% – 50% of personal income	Secondary	Secondary	Main	Secondary
More than 50% of personal income	Secondary	Main	Main	Main
No answer	Marginal	Secondary	Main	(missing)

Table 1– Defining platform work based on income and hours worked
(Results from the second COLLEEM survey, 2020)

It should be additionally emphasized that according to surveys that have been done for nearly half of the EU member states,²⁶ the results show that in most countries, nine out of ten platform workers combine their earned income with other sources of income they belong to the group of secondary workers on the platforms, perceived from the aspect that they have already established another (regular) working engagement (with employment contract in the traditional labour market) from which they generated their main source of income. Whereby, their presence and availability on the platform to perform work activities, provide them with additional income from the regular income. In addition, according to the results gathered from the 13 EU countries, the number of main platform workers does not exceed 12% of the total number of people who use the platform for generating work-related engagement. On the other hand, the traditional conception of a marginal working engagement related to the standard marginal workers that have concluded an employment contract with an employer, usually covers the organization of work of up to 19 working hours per working week and the marginal work can be determined on the grounds of fixed and variable organization of the working hours (Kalamatiev, 2012), while the second COLEEM survey essentially offered a subtraction of the working hours as a lower qualification premise for a platform worker to be classified as a marginal platform worker, thus essentially outlining that the platform workers can diversify their time spend on the platform in a more detached approach that is with higher flexibility capacity of arranging their own tasks, in comparison with the main platform workers whose working time on the platform usually exceeds 20 working hours per week. This means that there is a difference in classification of workers on the traditional labour market vis-à-vis the platform economy, based on hours worked and income generated.

26 U. Huws et al., *The Platformisation of Work in Europe: Results from research in 13 European countries*, FEPS, 2021, 12–15, <https://feeps-europe.eu/wp-content/uploads/downloads/publications/the%20platformisation%20of%20work%20in%20europe%20-%20final%20corrected.pdf>, last visited 8 June 2022.

3. MULTILAYERED NOTIONS OF APPROACHING LEGAL FRAMEWORK SOLUTIONS REGARDING THE IMPROVEMENT OF PLATFORM WORKERS' RIGHTS

In hindsight, working on digital labour platforms offers a wide range of working opportunities that are constantly moving upwards and are becoming more and more attractive to a huge number of people (Jovevski, 2021). Therefore, having in mind that such trends are currently undergoing in the world of work, the traction of establishing global framework and international governance of digital labour platforms, as well as an EU legislative framework that regulates the working condition on the digital labour platforms, is creating opportunities to think about how, in what way and which set of guaranteed rights from the working engagement generated through a digital labour platform, should be prone subject of regulation. One should not ignore the perception that from a pragmatic point of view, the interaction between the employees of the platform and the platform itself as a business organization is shaped from a position of power but in a mutual interdependent position,²⁷ which in fact is also outlining that, when there are organizational gaps between platform workers and the platform itself, the digital platform workers take the initiative in applying a kind of self-completing of the organizational gaps that fail to fully cover the platforms respectively.²⁸ The organizational gaps can also lead to legal gaps which might result to deteriorating of the working conditions on the platform, due to the inability to address governance issues and engaging into resolute improvement of platform workers' rights. Some EU countries have started scoping the regulatory framework for regulating platform work and the working conditions on the digital labour platforms or have been using other direct legal instruments to address this type of platform problematics in order to comprise a certain set of legal predictability.²⁹ This type of regulatory rights tends to address

27 J. Karanović *et al.*, "Regulated Dependence: Platform Workers' Responses to New Forms of Organizing, *Journal of Management Studies*", 2021, 1070–1106, <https://onlinelibrary.wiley.com/doi/10.1111/joms.12577>, last visited 5 September 2022.

28 *Ibid.*

29 More precisely, regarding the legal positions that have introduced a certain initiatives regarding the regulation of working conditions and the operation of

the rights for collective bargaining of the platform workers, as well as considering the possibility of introducing legal standards pertaining to minimum wage, regulating working hours, facilitating the possibility of resolving disputes arising within the working engagement, improving security and occupational health of self-employed workers on the platform, strengthening social protection rights of platform workers, transferring the self-employed workers from the informal to the formal economy and protection of workers on the platform from discrimination. Moreover, the legal enhancement of platform workers' rights is directing the digital labour platforms to step up their social responsibility role, due to the possibility of the platforms' operators to undertake commitments to improve the working conditions on the digital platforms, manifested through introducing active job seeker programs for the platform workers, thus appropriating a potential legal framework development that will encourage the platforms to conduct training of active job seekers in relation to outlining the opportunities for people that will be choosing to work on a digital platform.³⁰ Further on, it will be outlined the International Labour Organization stance regarding the question of international governance of digital labour platforms, as well as the European incentive for enacting a Directive on improvement of the working conditions of the platform workers.

the digital platforms, as well as the classification and legal treatment received towards the platform workers (self-employed or employed) and the started addressing of the national approach for covering this specific type of operation within a certain legal framework in Belgium, France, Italy, Portugal, Spain, Austria, Germany, the Netherlands, Denmark, Sweden, Poland and Slovenia, see: See De Stefano *et al.*, "Platform Work and the Employment Relationship", ILO Working Paper 27, 2021, 18–27. https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_777866.pdf, last visited 5 September 2022.

30 M. Lane, "Regulating Platform Work in the Digital Age", OECD, 2020, 8–14, <https://goingdigital.oecd.org/toolkitnotes/regulating-platform-work-in-the-digital-age.pdf>, last visited 8 June 2022.

4. THE INTERNATIONAL LABOUR ORGANIZATION POLICY RESPONSE TO NEW FORMS OF WORK REGARDING INTERNATIONAL GOVERNANCE OF DIGITAL LABOUR PLATFORMS

According to the above-cited report assembled by the International Labour Organization regarding the role of Digital Labour Platforms in Transforming the World of Work, the main components of the digital economy are: (1) asset-lightness (easy access to hardware components and the use of software tools, including cloud service infrastructure); (2) the network effects generated by the digital platforms to attract a sufficient number of users from all sides of the market (clients and workers); (3) datafication of information, which essentially can be used for myriad purposes and managing workers via algorithms; (4) and business mobility which uses Cloud infrastructure services to allow platform businesses to conduct their regional or global operations virtually from any location on the globe.³¹ This kind of digital interactivity of the possibility to mobilize the approach and interconnect the virtual supply and demand of labour has been adherent within the countries that are the representatives of the top twenty largest global economies in the period 2010–2020, essentially prompting the number of active digital labour platforms by fivefold, thus resulting in 2021 that the top twenty dominant economies accumulate 79% of the total volume of digital platforms that have been developed, have been operational and have been introduced worldwide.³² Hence, among other aspects, a due need is awakened for relevant legislative stakeholders to think and act in a way that will develop a satisfactory degree of legal regulation regarding the way the digital platforms work, as well as engaging into the manner and scope of the rights and obligations that should be assembled regarding the working conditions of the platform workers, which as a premise should be generated based within the moment of entering the platforms' establishment of the semi-closed digitally-assisted labour markets. In line with the above, the International Labour Organization has visualized the proposing commitment of establishing a Global Commission on the Future of Work, as a sort of

31 International Labour Organization 2021a, *op. cit.* 34–35.

32 International Labour Organization 2021b, *op. cit.* 6.

an international management system that would set minimum standards, including action to develop the necessary infrastructure to facilitate the payment of funds to social security systems and establishment of a representative board to resolve disputes between platforms, clients and platform workers, as noted from the International Labour Organization's policy responses to new forms of work inlined with the operationalization of an international governance of digital labour platforms, addressing that 'legal systems developed for an analogue era may not have the capacity to address web-based digital labour platforms, where transactions are virtual and extra-territorial. If we are to ensure decent work for all, including those working on digital labour platforms, then we must devise mechanisms that respond to this new form of work.'³³

5. EUROPEAN INCENTIVE FOR IMPROVEMENT OF THE WORKING CONDITIONS OF THE PLATFORM WORKERS

Within the EU, the working engagements that are being initiated as *modus operandi* on the digital labour platforms, as of 2021, have undoubtedly become an applicable practice for 28 million EU platform workers. Their numbers are envisaged to reach 43 million platform workers as soon as in 2025.³⁴ In view of the above, there are insights and efforts that point to the importance of improving the working conditions of workers who engage into working engagements through digital labour platforms in order to acquire skills and appropriate education for the tectonics that occur in the labour markets under the influence of digital transformation.³⁵

33 International Labour Organization, Policy Responses to New Forms of Work: International Governance of Digital Labour Platforms, 2019a, 8, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_713378.pdf, last visited 8 June 2022.

34 PPMI, "Study to Support the Impact Assessment of an EU Initiative to Improve the Working Conditions in Platform Work: Final Report, Publications Office of the European Union", 2021, 96, <https://data.europa.eu/doi/10.2767/527749>, last visited 6 August 2022.

35 Directorate-General for Communication (European Commission), U. von der Leyen, "A Union that strives for more: My agenda for Europe: Political Guidelines for the next European Commission 2019–2024", Publications Office of

First and foremost, the preamble to the European Pillar of Social Rights clearly notes that the rapid development of societies and labour markets is swiftly changing the European social model, as seen through the new opportunities arising from globalization, the digital revolution, the changing ways in which work is conceived and performed, and the challenges posed by the EU member states in facing significant inequality, long-term youth unemployment, and intergenerational solidarity.³⁶

Secondly, the European Pillar of Social Rights Action Plan emphasizes the need for digital transformation processes to increase the need for the European labour market to show readiness to modify the standard notions of what is meant by a new form of labour relations and labour organizations, in order to establish a European legislative framework whose regulatory scope will take into account the Europe's prerogative achievement of prevailing conditions aimed at achieving full employment. Moreover, the European Pillar of Social Rights Action Plan is recognizing the importance that it is not appropriate to only take into account the significant increase the participation rate of active participants in the labour market, but also taking into account the provision of appropriate working conditions for the development of quality jobs. The underlined has been noted in the Action Plan, while at the same time it is emphasizing that the rapid pace of digitalization of work, as it manifests the labour spotlight of the new forms of labour relations is raising issues related to surveillance, data usage and the application of algorithmic management tools, out of where it is noted that working remotely (teleworking) in pandemic circumstances has become a visible practice in the current circumstances and likely to become a common occurrence and regular way of working in the future.³⁷ Notably from the action plan, the European Commission undertakes the efforts to present, as it has been the case, by the last quarter

the European Union, 2019, 10, <https://data.europa.eu/doi/10.2775/018127>, last visited 6 August 2022.

36 Official Journal of the European Union, "Interinstitutional Proclamation on the European Pillar of Social Rights", <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017C1213%2801%29>, last visited 6 August 2022.

37 These particular aspects are outlined in the segment of the Action Plan in the segment that included the creation of work standards that fit the future of work. See: European Commission, *The European Pillar of Social Rights Action Plan*, Publications Office of the European Union, 2021, 18–20.

of 2021, a draft Directive on improving the working conditions of workers on digital labour platforms,³⁸ whereby the proposed Directive has been drafted and published in the indicated period,³⁹ which is currently undergoing through the internal procedural mechanisms in the European Parliament which is leading to its' adoption and enactment into circulation in the European normative legal traffic.⁴⁰

5.1. Detailed overview of the proposed EU Directive for improving working conditions in platform work

The proposed Directive on improving the working conditions of people working through digital labour platforms is regulating a set of issues that are of relevant interest for the operational mechanic of the digital labour platforms, i.e. to improve the working conditions of the people working on the platform by ensuring proper determination of their employment status, by promoting transparency, equity and accountability in algorithmic management of the platform and by improving transparency in the operation of the platform, including in cross-border situations, while supporting the conditions for sustainable

38 *Ibid.*

39 As of 09.12.2021, the European Commission has proposed a set of measures to improve the working conditions on the digital labour platforms. As part of this set of measures, the following were announced:

- Communication setting out the approach and EU measures on platform work;
- A Proposal for a Directive for improvement of the working conditions on platform work; and
- Draft Guidelines to clarify the application of EU competition law to collective agreements of self-employed persons seeking to improve their working conditions, including those working through digital labour platforms.

See: European Commission Press Corner, “Commission proposals to improve the working conditions of people working through digital labour platforms”, https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6605, last visited 8 June 2022.

40 Procedure 2021/0414/COD. See: European Commission, Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Improving Working Conditions in Platform Work, 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2021:762:FIN>, last visited 8 June 2022.

growth of digital labour platforms within the European Union.⁴¹ The proposed Directive seeks to establish the minimum rights applicable to any person working on a platform within the European Union which has, or which, on the basis of fact-findings, is considered to have an employment contract or employment relationship such as it is defined by the laws, collective agreements or practice in force in the Member States, while taking into account the judgement of the Court of Justice of the European Union (the three plus one formula).⁴² In addition, the draft-Directive states that its' application refers to the protection of individuals with regard to the processing of personal data in the context of algorithmic management, which in turn applies to any person working on a platform in the European Union, whether or not it has established an employment contract or an employment relationship.⁴³ Whereas, in terms of its applicability, the proposed Directive will apply to the digital labour platforms that organize work on a platform that is operating within the Union, regardless of their place of establishment and regardless of the already applicable (national) laws where the platforms operate.⁴⁴

As can be seen from the content, the proposed Directive adopts a kind of definitional terminology, whereby it indicates that under the term of a digital labour platform is covered any natural or legal person who provides a commercial service that meets all of the following conditions:⁴⁵

1. (the service) is provided, at least in part, remotely by electronic means, such as a website or mobile application;
2. (the service) is provided at the request of the recipient of the service (client);
3. (the service) includes, as a necessary and essential component, the organization of the work performed by individuals,

41 COM (2021) 762 final: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Improving Working Conditions in Platform Work, 2021, article 1 paragraph 1. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2021:762:FIN>, last visited 8 June 2022.

42 *Ibid.*, article 1 paragraph 2.

43 *Ibid.*

44 *Ibid.*, article 3.

45 *Ibid.*, article 2 paragraph 1 item 1.

whether that work is performed online or at a specific location.

The proposed Directive also defines the term ‘platform work’ as ‘any work organized through a digital labour platform and performed in an (digital) alliance (on a platform) by an individual on the basis of a contractual relationship between the digital labour platform and the individual, whether or not there is a contractual relationship between the individual and the recipient of the service’.⁴⁶ As a ‘person performing platform work’ is defined each individual who works on the platform, regardless of the contractual designation of the relationship between that individual and the digital labour platform by the parties involved.⁴⁷ A ‘platform worker’ is defined as any person who works on a platform and has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in the Member States, plus taking into account the judgement of the Court of Justice of the European Union (the three plus one formula).⁴⁸ Under the term ‘representatives’ have been covered workers’ organizations or representatives provided for by national law or practice, or both,⁴⁹ while micro, small and medium-sized enterprises are defined as micro, small and medium-sized enterprises as defined in Annex to Commission Recommendation 2003/361/EC.⁵⁰ The proposed Directive also includes an exemption-descriptive provision which stipulates that the definition of digital labour platforms, does not include the providers of a service whose primary purpose is to exploit or share assets, where there are limitations that the scope applies to service providers for whom the organization of the work performed by the individual constitutes not just a small and purely ancillary component.⁵¹

With regard to the proper determination of employment status, the proposed Directive makes a position which indicates that the Member States of the European Union should have appropriate procedures to verify and ensure the proper determination of the employment status of persons working on a platform in order to establish the existence

46 *Ibid.*, article 2 paragraph 1 item 2.

47 *Ibid.*, article 2 paragraph 1 item 3.

48 *Ibid.*, article 2 paragraph 1 item 4.

49 *Ibid.*, article 2 paragraph 1 item 5.

50 *Ibid.*, article 2 paragraph 1 item 6.

51 *Ibid.*, article 2 paragraph 2.

of an employment relationship as defined by law, collective agreements or a practice in force in the Member States of the Union, taking into account the judgement of the Court of Justice of the European Union and guaranteeing the possibility of exercising the rights arising from Union law applicable to workers (the three plus one formula).⁵² In addition to the above, it is further specified that when determining the existence of employment relationship, a proper due notice should be taken on primarily from the facts relating to the actual performance of the work, taking into account the use of algorithms in the organization of work on the platform, regardless whether the relationship is being identified in any contractual arrangement that can be agreed between the parties involved, so that when the existence of an employment relationship is established on the basis of facts, the party assuming the responsibilities of the employer will be clearly identified in accordance with the national legal systems.⁵³

A step further, the draft Directive introduces a mechanism of legal presumption which should help to establish the legal presumptions that the person is employed, arising from the contractual relationship between the digital labour platform that controls the performance of the work and the person working on the platform, so that the legal presumption can be applied in all relevant administrative and legal proceedings, followed by the possibility that the competent national authorities certifying compliance with the relevant legislation or applying the relevant legislation will be able to rely on that presumption.⁵⁴ Basically, the rebuttable presumption means that platform workers, including those working on online platforms for data coding or graphic design, as well on on-location platforms such as ride-hailing and food delivery will have a status of employees, entitling them to social benefits such as the right to use sick leave (Karanovic, 2021). In line with the above, the need for Member States to approach the establishment of framework measures to achieve these objectives in accordance with their national legal and judicial systems is also pointed out.

As a control of the performance of the work, the proposed Directive further clarifies that the control of the performance will be

52 *Ibid.*, article 3 paragraph 1.

53 *Ibid.*, article 3 paragraph 2.

54 *Ibid.*, article 4 paragraph 1.

considered when the fulfillment of at least two of the following components is determined:⁵⁵

- effectively determining, or setting upper limits for the level of remuneration;
- requiring the person performing platform work to respect specific binding rules with regard to appearance, conduct towards the recipient of the service or performance of the work;
- supervising the performance of work or verifying the quality of the results of the work including by electronic means;
- effectively restricting the freedom, including through sanctions, to organise one's work, in particular the discretion to choose one's working hours or periods of absence, to accept or to refuse tasks or to use subcontractors or substitutes;
- effectively restricting the possibility to build a client base or to perform work for any third party.

Due to the undertaking of support measures in ensuring the effective implementation of the mechanism for legal presumption mechanism developed by the proposed Directive, taking into account the new (start-up) enterprises and the avoidance of covering the genuine self-employed persons and indicating support for the sustainable growth of digital labour platforms, EU Member States will be geared toward:⁵⁶

- ensuring that information on the application of the legal presumption is made publicly available in a clear, comprehensive and easily accessible way;
- developing guidance for digital labour platforms, persons performing platform work and social partners to understand and implement the legal presumption including on the procedures for rebutting it in accordance with article 5 of the Directive which regulates the possibility to rebut the legal presumption;
- developping guidance for enforcement authorities to proactively target and pursue non-compliant digital labour platforms;

55 *Ibid.*, article 4 paragraph 2.

56 *Ibid.*, article 4 paragraph 3.

- strengthening the controls and field inspections conducted by labour inspectorates or the authorities responsible for the enforcement of labour law, while ensuring that such controls and inspections are proportionate and non-discriminatory.

With regards to the possibility to rebut the legal presumption, the proposed Directive requires EU Member States to provide an opportunity for any of the parties involved to refute the legal presumption in legal or administrative proceedings, thereby:⁵⁷

- when the digital labour platform claims that the contractual relationship in question is not an employment relationship as defined by the law, collective agreements or case law of the Member State concerned, as in the light of the case law of the European Court of Justice, the burden of proof will be on the digital labour platform and such a procedure will not have a suspensive effect on the application of the legal presumption;
- when the person working on the platform claims that the contractual relationship in question is not an employment relationship as defined by the law, collective agreements or practice in force in the Member State concerned, taking into account the court judgement decisions of the European Court of Justice, the digital labour platform will be required to assist in the proper resolution of the proceedings/requests, in particular by providing all relevant information in its possession.

The proposed Directive, having in mind that it refers to the digital way of connecting the working engagement, further regulates the algorithmic management of the platform. In this segment dedicated to transparency and the use of automated monitoring and decision-making systems, it clearly notices that without violating the obligations and rights of digital labour platforms and platform workers under Directive 2019/1152 on transparent and predictable working conditions in the European Union, the member states should request from the digital labour platforms to inform the platform workers about:⁵⁸

- automated monitoring systems which are used to monitor, supervise or evaluate the work performance of platform workers through electronic means;

57 *Ibid.*, article 5.

58 *Ibid.*, article 6 paragraph 1.

- automated decision-making systems which are used to take or support decisions that significantly affect those platform workers' working conditions, in particular their access to work assignments, their earnings, their occupational safety and health, their working time, their promotion and their contractual status, including the restriction, suspension or termination of their account.

Furthermore, with regard to the above-noted, as stated in the proposed Directive, the information-processing and storing of platform workers' data, relate to:⁵⁹

- automated monitoring systems:
 - o the fact that such systems are in use or are in the process of being introduced;
 - o the categories of actions monitored, supervised or evaluated by such systems, including evaluation by the recipient of the service;
- automated decision-making systems:
 - o the fact that such systems are in use or are in the process of being introduced;
 - o the categories of decisions that are taken or supported by such systems;
 - o the main parameters that such systems take into account and the relative importance of those main parameters in the automated decision-making, including the way in which the platform worker's personal data or behaviour influence the decisions;
 - o the grounds for decisions to restrict, suspend or terminate the platform worker's account, to refuse the remuneration for work performed by the platform worker, on the platform worker's contractual status or any decision with similar effects.

Therefore, the proposed Directive states that the above information should be provided by the digital labour platforms in the form of a document, which may be in digital form, i.e. that the platforms should provide that information no later than the next first business

59 *Ibid.*, article 6 paragraph 2.

day and in case of substantial changes and at any time at the request of the platform staff, the information should be submitted in a concise, transparent, comprehensible and easily accessible form, using clear and simple comprehensible language. In addition to that, the same information from the digital labour platforms should be made available to representatives of the platforms' workers and to the national labour authorities upon request.⁶⁰

With regard to the protection of the personal data of the workers on the digital labour platforms, an additional obligation is being introduced to the platforms in a manner that they will not process any personal data regarding the employees of the platform that are not essentially related and strictly necessary for the execution and fulfillment of the contract between the worker on the platform and the platform, or as it is particularly emphasized, that the platforms will not:⁶¹

- process any personal data about the emotional or psychological state of the platform workers;
- process any personal data related to the health of the platform workers, except in the provided exceptions;
- process any personal data related to private conversations, including exchange (of information) with representatives of the platform workers;
- collect any personal data until the platform worker does not engage into offering its' labour (availability) on the platform in line with the work-related engagement or with the readiness of the worker to perform work on the platform (figuratively, until it is back "online" or connected to the application of the platform, i.e. ready to engage its' labour services on the platform).

As towards the regulation of human monitoring of automated systems, the proposed Directive regulates the issue of occupational safety and health. In doing so, Member States are required to ensure that digital labour platforms monitor and assess the impact of individual decisions made or supported by automated monitoring and decision-making systems on working conditions. The platforms should not use automated monitoring and decision-making systems in any

60 *Ibid.*, article 6 paragraph 3 and paragraph 4.

61 *Ibid.*, article 6 paragraph 5.

way that puts undue pressure on platform workers or otherwise endangers the physical and mental health of platform workers without prejudice to the standards established by the Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work and other related directives in the field of occupational safety and health. In this effort, as duly referenced, the digital labour platforms are encouraged to aspire to:⁶²

- evaluate the risks of automated monitoring and decision-making systems to the safety and health of platform workers, in particular as regards possible risks of work-related accidents, psychosocial and ergonomic risks;
- assess whether the safeguards of those systems are appropriate for the risks identified in view of the specific characteristics of the work environment;
- introduce appropriate preventive and protective measures.

Consequently, on the issue of human resources for monitoring occupational safety and health, the proposed Directive directs Member States to require the digital labour platforms to provide sufficient human resources to monitor the impact of individual decisions made or supported by the automated monitoring and decision-making systems, as well as the persons in charge of the digital labour platforms for performing the monitoring function, extending to the need of their acquirement with necessary competence, training and authorization to perform that function and at the same time instructing them that they should enjoy protection from dismissal, disciplinary measures or other negative treatment for overriding the automatic decisions or decision suggestions.⁶³

In addition, the proposed Directive also regulates the issue of human review of decisions of a more significant nature, i.e. that Member States should ensure that platform workers should have the right to receive an explanation from the digital labour platform of any decision taken or supported by an automated decision-making system which significantly affects the working conditions of the platform worker. The proposed Directive also incorporated a provision aimed at digital labour platforms to provide platform workers with access to a contact

62 *Ibid.*, article 7 paragraph 1 and paragraph 2.

63 *Ibid.*, article 7 paragraph 3.

person designated by the platform to discuss and clarify the facts, circumstances and reasons that led to the decision, consequently on the platform's obligation to provide the platform worker with a written statement of the reasons for any decision made or supported by an automated decision-making system to restrict, suspend or terminate the platform's user profile, as well as any decision to deduct compensation for work performed by a platform worker, or any decision on the contractual status of a platform worker or any decision having similar effects.⁶⁴ Additionally, when the decision violates the rights of the platform worker, the platform should correct that decision without delay or, where such correction is not possible, should offer appropriate compensation. When the platform workers are dissatisfied with the explanation or written statement of reasons or consider that the decision violates their rights, they have the right to ask the digital labour platform to consider that decision, while the platform has an obligation to respond to such request that the platform worker is given a justified response without undue delay and in all circumstances, within one week of receiving the request, whereas in the case of digital labour platforms that are being treated as micro, small or medium-sized enterprises, the Member States should ensure that the specified response period may be extended to two weeks.⁶⁵

With regard to the issue of collective rights of platform workers, it is worth noting that, in accordance with the proposed Directive, representatives of platform workers or affected platform workers can be assisted by an expert of their choice, if necessary to examine the work being the subject of information and consultation and to formulate an opinion, whereas when the digital labour platform has more than 500 platform workers in a given EU Member State, the costs for the expert are borne by the platform provided that they to be proportionate.⁶⁶

A step further in the area of transparency regarding the platform work, the proposed Directive steers the Member States to require that digital labour platforms should report the work performed by the platform workers to the competent authorities for labour and social protection of the Member State in which the work is carried out and to share the relevant data with those authorities, in accordance with

64 *Ibid.*, article 8 paragraph 1 and paragraph 3.

65 *Ibid.*, article 8 paragraph 2.

66 *Ibid.*, article 9 paragraph 3.

the rules and procedures laid down by the law of the Member States concerned.⁶⁷ Consequently, in terms of access to relevant information about the work performed through digital labour platforms, when the competent authorities in the field of labour and social protection perform their functions to ensure compliance with the legal obligations applicable to the employment status of the persons working on platform and when the representatives of the persons working on the platform perform their representative functions, the EU Member States should impose on the digital labour platforms to provide the information that are referring to:⁶⁸

- the number of persons who regularly work on the platform through the affected digital labour platform, as well as their contracted or working status;
- the general provisions and conditions that apply to those contractual relationships, provided that those conditions are unilaterally determined by the platform and apply to a number of contractual relationships.

As stated in the proposed Directive, the information should be updated every six months for each Member State in which the persons are working on digital labour platforms, with the exception of digital labour platforms which are micro, small or medium-sized enterprises. where Member States may establish an update once a year, whereas, labour and social security authorities and representatives of those working on the platform have the right to request further clarifications and details from the digital labour platforms regarding any of the data provided, for which digital labour platforms will respond to such a request within a reasonable period of time by providing a justified response.⁶⁹

The proposed Directive also regulates issues related to the right to compensation, which essentially means that Member States should ensure that the persons working on a platform, i.e. the platform workers, including those whose employment or other contractual relationship is terminated, have access to effective and impartial dispute resolution and the right to compensation, including adequate compensation, in the event of a breach of their rights guaranteed by the

67 *Ibid.*, article 11

68 *Ibid.*, article 12 paragraph 1

69 *Ibid.*, article 13 paragraph 2, paragraph 3 and paragraph 4.

proposed Directive. Whereas, with regard to conducting proceedings on behalf of or in support of the platform workers, Member States have been encouraged to provide a legal framework from which the representatives of platform workers or other legal persons are having a legitimate interest in defending the rights of persons working on the platform. Moreover, the representatives of platform workers may act on behalf of or in support of a person operating on a platform in the event of a breach of any right or obligation that is arising out of the proposed Directive, if they get an approval of that person individually. The representatives of platform workers are also being incentivized by the proposed Directive to act collectively on behalf of, or for support for multiple people working on the platform, with the approval of those people.⁷⁰

With regard to personal data protection, the proposed Directive outlines to the EU Member States the need to take appropriate measures into ensuring that digital labour platforms will provide an opportunity for the people working on the platform to contact and communicate with each other, as well as to be contacted by the representatives of the platform workers through the established communication infrastructure on the platforms themselves, taking into account the refusal to access or monitor those contacts and communications in line with the obligations arising from the EU Regulation on Personal Data Protection 2016/679 (GDPR).⁷¹

With regard to the issue of access to evidence, Member States are required to ensure that in proceedings concerning the proper determination of the employment status of persons working on the platform, national courts or competent authorities can instruct the platform to disclose all relevant evidence in its control, while empowering national courts to issue disclosure orders that contain confidential information that would be deemed relevant to the claim, whereby issuing In order to disclose such information, national courts should have effective measures in place to protect that information.⁷²

In view of the need to protect workers on digital work platforms from adverse treatment or malicious consequences, EU Member States should introduce measures necessary to protect the persons working

70 *Ibid.*, article 13 and article 14 paragraph 1 and paragraph 2.

71 *Ibid.*, article 15.

72 *Ibid.*, article 16 paragraph 1 and paragraph 2.

on the platform, including those who are representing them, from any adverse treatment by the platform itself and any adverse consequences arising from a complaint lodged with the digital platform or as a result of any proceedings instituted in order to comply with the rights provided for in the proposed Directive.⁷³

The last covered segment of the proposed Directive addresses the issues of protection against dismissal, supervision and the penalties for non-compliance with the standards established by the Directive, as well as the final provisions relating to non-regression and the more favorable provisions that are already in place within the member states, transposing and comparing the established standards of the Directive and stating a sort of a ‘reproducible review’ by the European Commission with its social partners and other key stakeholders in the implementation of the provisions on the impact that they will have on the micro, small and medium-sized enterprises that have been digitally ‘platforming’ the work engagement.⁷⁴

6. CONCLUSION

The particularity of the European vision for 2030 is stating that ‘digitalization can become a decisive enabler of rights and freedoms, allowing people to reach out of certain territories, social positions or groups in the community and opening new opportunities for learning, fun, work, research and fulfilling one’s ambitions’,⁷⁵ which is followed upon with the European strategic priorities for improving digital skills and competencies for digital transformation with the envision that acquiring workers and jobseekers in Europe with digital skills, will be critical to the European green and digital economic consolidation, with an emphasis of acquiring additional skills such as adaptability, communication and collaboration skills, problem solving, critical thinking, creativity, entrepreneurship and willingness to learn.⁷⁶ In this regard,

73 *Ibid.*, article 17.

74 *Ibid.*, article 18, article 19, article 20, article 21 and article 22.

75 European Commission, 2030 Digital Compass: The European way for the Digital Decade, 2021, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52021DC0118>, last visited 8 June 2022.

76 European Commission, “Digital Education Action Plan 2021–2027: Resetting Education and Training for the Digital Age”, 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0624>, last visited 8 June 2022.

the establishment of an effective legislative legal framework at an EU level will undoubtedly play a major role and help the Member States, as well as the Candidate Countries of enlargement of the European Union, to intensify the national legislative framework in a manner of achieving the goals and transposition of the proposed Directive of improving working conditions in platform work when enacted. The importance of the abovementioned is due to establishing a set of guaranteed security of platform workers' rights, but also in relation to establishing guaranteed obligations to which the digital labour platforms will have to subdue in relation to the workers' rights and to the national authorities role of the Member States, as well as the Candidate Countries of enlargement of the European Union, thus contributing to the development of decent working conditions for the platform workers.

Nevertheless, there are visible efforts to set institutional predictability and trust as one factor that distinguishes the work engagement that have been trilaterally 'spot-marketed' on the digital labour platforms, as opposed to the traditional ways of concluding an independent and bilateral work contract between the employer and the worker.⁷⁷ On a national level, there has been a certain neediness for shaping up transparency and accountability of ensuring decent working conditions for the platform workers through social dialogue and the tripartite mechanism (governments, employers and workers) to coordinate the development of the digital future of work, while taking into account the humane-centric approach in promoting sustainable and inclusive economic growth that takes into account the full range of opportunities for productive work and providing decent working conditions for all participants in the labour markets.⁷⁸

77 K. M. Kuhn, A. Maleki, A. *op. cit.*, 9.

78 In June 2019, at the 108th Session of the ILO International Conference, it has been adopted the Centenary Declaration on the future of work, which in the framework of the declaration encourages these goals, which is indicating that in promoting the efforts to provide conditions for decent work and productivity of work, a due notice should be taken into consideration the need of addressing "... policies and measures that ensure appropriate privacy and personal data protection, and respond to challenges and opportunities in the world of work relating to the digital transformation of work, including platform work." See: International Labour Organization, "Centenary Declaration for the Future of Work", 2019b, https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_711674.pdf, last visited 8 August 2022.

In conclusion, the proposed EU Directive that is aiming to regulate decent working conditions of platform work, is laying out the foundation of creating a certain European platform equilibrium for enacting the basic working rights of the platform workers and their wellbeing (Murdzev, 2022). This platform equilibrium basis is developed under the incentive that workers who invest their time and their working potential on the digital labour platforms for collecting a certain remunerating benefit while performing certain work-related tasks, as well as for the organizations that manage the platforms, will be able to obtain a higher degree of legal predictability in relation to the two ongoing platform dilemmas. The first dilemma is stretched in terms of whether the platform workers are covered under the veil of self-employed or employed persons,⁷⁹ and consequently, the second one in terms of whether platform workers are considered as persons who have established a new form of digital employment relationship to which they are entitled all guaranteed rights as from the standard employment relationship. Laying down the normative structural premise for regulating working conditions of platform workers, for *bona fides* circumstances but also *mala fides* circumstances that arise from the digitalization of the labour relations, the platform workers will be able to legally refer to the decent platform working conditions whose roadmap is paving the way to be established by the proposed Directive. Certain noteworthy perceptions that the power imbalance between the digital labour platforms and the platform workers, regarding that the positioning of their own influence in the ‘platformed’ digital labour market must be resolved through social dialogue and collective bargaining, and that unfair market practices should be addressed to the need to resolve issues related to payments, information, rights, duties and re-

79 Regarding the best practices for regulating the work engagement on the platforms, seen through the prism of establishing a predictable legal environment, there are views that indicate that the gray area between self-employment and employment must be minimized, while taking into account standardization and clarification of both types of definitions as much as possible and acting towards it in order to reduce the degree of uncertainty and indefiniteness status for both the new forms of workers and employers.

For the above, see: European Economic and Social Committee, “Fair Work in the Platform Economy (Exploratory opinion at the request of the German presidency)”, 2020, <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/fair-work-platform-economy-exploratory-opinion-request-german-presidency>, last visited 6 August 2022.

sponsibilities, in order to develop a practice for more transparent operation of digital labour platforms,⁸⁰ are well-mannered and justified and should be taken into account and analyzed in the creation of more strictly-based and appropriate national legislative solutions to regulate the working conditions of the platform workers and the operational complementarity of the digital labour platforms with the rights that are incorporated in the proposed Directive, as integral part of the EU secondary legislation. Whether the proposed Directive will be a subject of further fine-tuning of its' normative structure, it is certainly laying out one of the currently most important European legal foundations towards regulating platform work, which manifested itself as a new form of a non-standard form of employment, which has grown with the development of digitalization processes and the mass adoption of digital tools that are being used by the people in their daily living routines, which ultimately, the enactment and further transposition of the proposed Directive on a national level will have an influence regarding the spread out and development of decent working conditions for the platform workers.

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POJAM DIGITALNIH PLATFORMI RADA I EVROPSKI PODSTICAJ ZA POBOLJŠANJE USLOVA RADA PLATFORMSKIH RADNIKA

Rezime

Rad daje pregled predložene Direktive EU o poboljšanju uslova rada na digitalnim radnim platformama. Rad koji se obavlja na/kroz digitalne radne platforme je do sada bio delikatno pitanje u smislu

80 *Ibidem*, Section 6.1.2 and 6.1.2.1.

kako da se pravno kvalifikuje u postojećem teorijskom i normativnom pravnom okviru, jer je prema prvom teorijskom stanovištu ova vrsta radnog angažovanja kontekstualizovana pod okriljem instituta samozapošljavanja, dok je prema drugom teorijskom stanovištu radno angažovanje na digitalnim radnim platformama predstavljeno i tretirano kao nova forma rada, koja nastaje između platformskog radnika, korisnika platforme i digitalne radne platforme. Digitalna transformacija i tehnološke inovacije, kao i korišćenje algoritama na digitalnim platformama rada, omogućili su uspostavljanje tripartitnog radnog odnosa i stvaranje Evropskog pravnog okvira za obezbeđivanje pristojnih uslova za rad u okviru platformске ekonomije.

Ključne reči: *Novi oblici rada. – Digitalne radne platforme. – Pravo EU. – Digitalizacija rada. – Platformska ekonomija.*

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