



Universität  
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# «Platform Work Directive»

**New Employment Relations: Untying the Knot(s),  
Seminar of the Western Europe Associations of the ISLSSL,  
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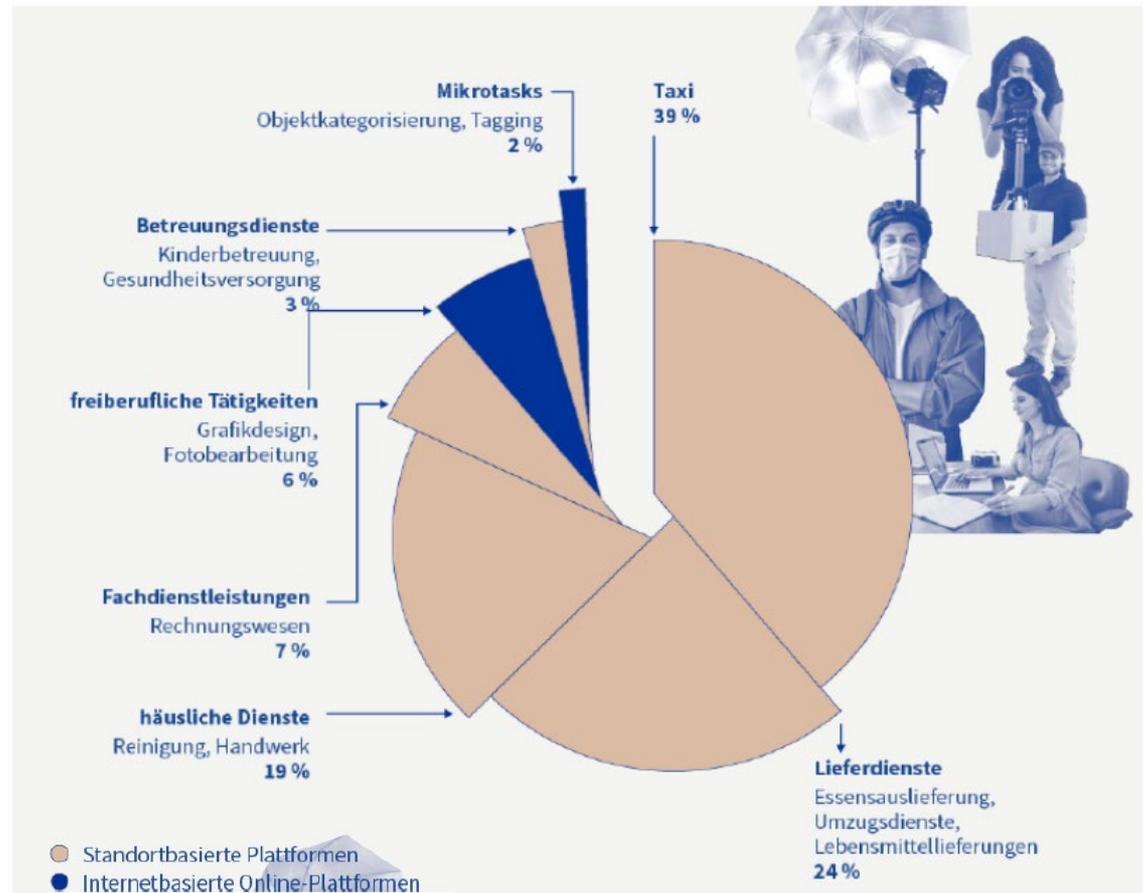
# I) Digital platform economy in the European Union

## Distribution in the EU:

- Approx. 500 platforms
- 28 Million employees in 2022, 43 Million in 2025

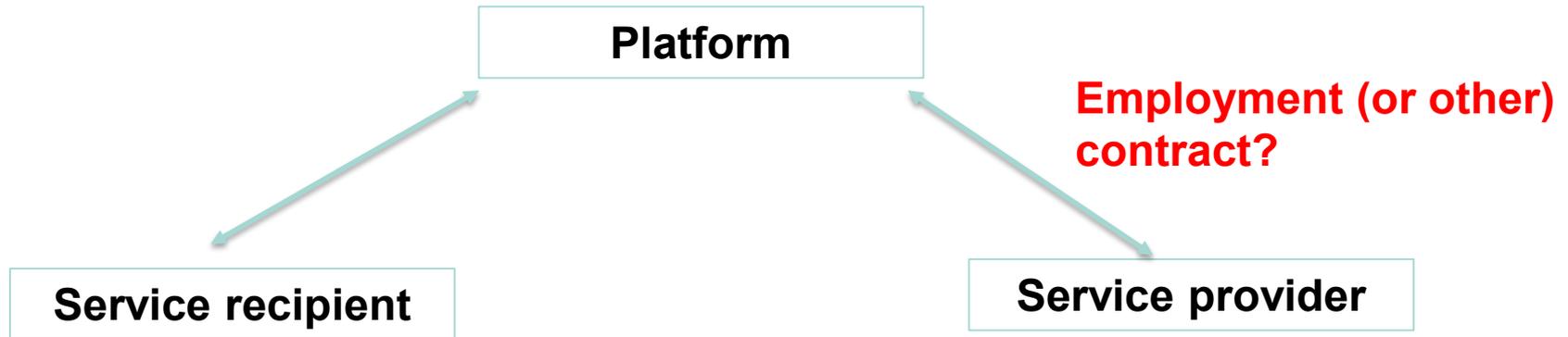
## Income, status, social security

- 55% earn less than the net minimum wage
- 41% of working time is unpaid
- 7% employed, 93% «self-employed»
- 5 Million are incorrectly categorised (almost 1/5th)



Source: <https://www.consilium.europa.eu/de/infographics/digital-platform-workers/>

# How does the platform business work?



## Further questions:

- Tax law? Social security law? Public labour law? Agency work?
- Unfair competition law?
- Which forum (jurisdiction) / applicable law / arbitration clauses

# What are the problems?

- «false self-employment»
  - No protection against dismissal
  - No paid holidays etc.
  - No collective agreements (e.g. antitrust problems)
  - No application of labour protection law (maximum working hours, health protection, etc.)
  - No or insufficient social security
- Problems regarding place of jurisdiction and applicable law for internationally active platforms (e.g. with Uber: arbitration clause, permissible or not?)
- «Algorithmic management»
  - Lack of transparency
  - Surveillance
  - No possibility to contest automated decisions

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# II) EU-measures in the field of platformwork

## Regulations

- Regulation on artificial intelligent (algorithmic management as «high risk»)
- General regulation on data protection (Art. 22, automated decision)
- Regulation about fairness and transparency in platform business (p2b)

## Directives

- Directive 2019/1152/EU on transparent and predictable working conditions
- **Directive on improving working conditions in platform work**

## Softlaw (selection)

- European Commission: Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons
- European Pillar of Social Rights (EPR)
- Council Recommendation on access to social protection for workers and self-employed

## Legislative projects

- «Initiative» of the parliament for a directive on the right to disconnect

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# III) History and content of the platform directive

legislative process:

- Draft directive of the Commission of 9th December 2021
- Council Decision of 12/06/2023 on the opening of negotiations with the EU Parliament
- strong opposition in the Council, especially from France and Germany (The presumption rule was particularly controversial)
- Compromise found on 11th March 2024
- Formal adoption by Parliament and Council probably before June
- Afterwards, the two-year period for transposition into the national law of the Member States starts

# Legal basis and recitals of the directive

Legal basis:

- Art. 153 (2) b in conjunction with 153 (1) TFEU (= competence for a directive regarding working conditions)
- Art. 16 (2) TFEU (legal basis for data protection measures))

73 Recitals, hints (among others) to ...

- Art. 3 TEU (EU is more than just market ...)
- Charter of Fundamental Rights
  - Art. 31 (Fair working conditions)
  - Art. 27 (Right to information and consultation)
  - Art. 12 (Freedom of assembly)
  - Art. 16 (Business freedom)
  - Art. 8 (Data protection)
- European Pillar of Social Rights
  - Principles Nr. 5 (fair working condition «for all») 7 (right to be informed about working conditions), 10 (right to a high level of health and safety at work)

# Overview of the directive

Chapter	Articles	Content (Keywords)
I) General Provisions	1-3	Subject matter and scope, definitions, intermediaries
II) Employment status	4-6	Determination, legal presumption, supporting measures
III) Algorithmic management	7-15	Limitations of process data, impact assessment, transparency, human oversight of automated systems, human review, health & safety, information, consultation, representation
IV) Transparency	16-17	Declaration of platformwork, access to relevant information
V) Remedies and enforcement	18-24	Right to redress, support for persons performing platform work, communication channels, access to evidence, protection from dismissal and against adverse treatment, supervision and penalties
VI) Final provisions	25-32	Promoting of collective bargaining, non-regression and more favourable provisions, dissemination of information, collective agreements on processing personal data, transposition and implementation

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# IV) Purpose, scope and definitions of the platform directive

## **Purpose:**

- Correct determination of the employment status of «persons performing platform work»
- Promoting fairness in algorithmic management
- Improving transparency

## **Scope:**

- Minimum rights for employees
- Rules to improve dataprotection-rules of natural persons (employee and selfemployed)
- Applies to digital labour platforms organising platform work performed in the Union

## **Definitions:**

- Digital platform, Platform work
- Person performing platform work, Platform worker
- Intermediary
- Worker representatives, Representatives of persons performing platform workers
- Automated monitoring systems
- Automated decision-making systems

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# V) Employment status and presumption rule

The main compromise elements revolve around a legal presumption which will help determine the correct employment status of persons working in digital platforms Chapter II of the directive:

## Art. 4

- Some rules about the correct determination of the employment status
- Member states shall have effective procedures in place
- Once an employment relationship is identified, it has to be clarified who the employer is

Art. 5 (presumption rule, see next slide)

## Art. 6

- Member states will provide guidance to digital platforms and national authorities when the new measures are being put in place

# Art. 5 (legal presumption)

- Member states will establish a legal presumption of employment in their legal systems, to be triggered when **facts indicating control and direction** are found
- Those **facts** will be determined according to national law and collective agreements, while taking into account EU case-law
- Persons working in digital platforms, their representatives or national authorities may invoke this legal presumption and claim they are misclassified
- It is up to the digital platform to prove that there is no employment relationship
- The legal presumption rule **shall not apply** in – among others – social security matters (but, member states may apply legal presumption in these proceedings as a matter of national law)

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# VI) Regulating algorithmic management

## Chapter III, Art. 7 – 15 of the directive

- Workers are duly informed about the use of automated monitoring and decision-making systems regarding their recruitment, their working conditions and their earnings, among other things (Art. 9)
- The use of automated monitoring or decision-making systems for the processing of certain types of personal data of persons performing platform work, such as biometric data or their emotional or psychological state is forbidden (Art. 7)
- Link to the general data protection regulation
- Human oversight and evaluation are also guaranteed as regards automated decisions, including the right to have those decisions explained and reviewed (Art. 10 – 11)
- Health and safety risks of algorithmic management systems are addressed (Art. 12)
- Information and consultation rights for workers and representatives (Art. 13 – 15)

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## VII) Analysis and assessment (1)

- The increased spread of platform work and the poor labour conditions there justify regulation at EU level
- Both the platform industry and the trade unions have strong lobbies in the EU decision-making bodies
- The finally founded compromise is an important step towards improving working conditions

## VII) Analysis and assessment (2)

- The presumption of employment = not a automatic reclassification as employees rule, but ...
  - Procedural tool to facilitate the determination of employment status
  - Facts indicating control and direction are the base for the prove of employment status
    - Courts will have to verify concretely the working conditions of platform workers when deciding on employment status, irrespective of how the relationship is classified in any contractual arrangements agreed upon by the parties
    - see ILO Recommendation 198
- The regulations on algorithmic management are innovative, but they should not only apply to platform work



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# Thank you for your attention.

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