

STRADDLING TWO HORSES: DIGITAL OR SOCIAL REGULATION? BEHIND, WITHIN AND BEYOND THE EU PLATFORM WORK DIRECTIVE

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Abstract

The adoption of the Platform Work Directive 2024/2831 marks the end of a seven-year-long, tense political debate on the regulation of platform-mediated work in the EU. The Directive presents a complex piece of legislation, uniquely combining digital and social regulation. This article critically traces the evolution of its drafting process and contextualizes it against the architecture of the EU acquis. It offers an in-depth analysis of the Directive's provisions, focusing in particular on the presumption of employment and workers' digital rights vis-à-vis automated systems, while also discussing transparency of platform work and its collective dimension. It is argued that, despite its sector-specificity, the Directive bears salient implications for EU law, especially for the regulation of the ever-spreading algorithmic management in work contexts, and the improvement of the working conditions in atypical work arrangements. The assessment unveils several open questions about the future of the regulation of work in the digital age.

1. Introduction

A triumph. A fiasco. Historic. Innocuous. Momentous. Modest. When a new phenomenon and conflicting interests are at stake, it is neither surprising nor unprecedented for a piece of EU legislation to provoke such polarized assessments. The EU Directive 2024/2831 on improving working conditions in platform work,¹ commonly known as the Platform

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1. Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work (Text with EEA relevance).

Work Directive (hereinafter referred to as PfWD), is no exception. It pursues two strictly interrelated goals – improving working conditions and protecting workers’ personal data in this expanding labour market segment.² Its significance, though, extends far beyond the platform economy, influencing the business, social, and policy arenas at the international and national levels.

Dated 23 October 2024 and in force since 1 December 2024, following over two years of inter-institutional pushes, unexpected setbacks, and perilous dead ends, the PfWD now stands as the latest ‘deliverable’ – pun not intended – of a seven-year effort to revitalize the EU social agenda.³ This shared endeavour characterized both the Juncker and Von der Leyen I Commissions that inaugurated and later sustained the (non-binding) European Pillar of Social Rights⁴ along with its Action Plan,⁵ securing a rich set of landmark legislative and non-legislative achievements.⁶ At the same time, the PfWD could find its place within the expansive pool of legislation emerging from the broader ‘Digital Single Market’ initiative – now rebranded as digital or platform regulation.⁷

Such a liminal identity is reflected in the PfWD’s personal and material scope, articulated along a dichotomous matrix: (i) platform workers (re) classified as employees versus all individuals performing platform work; and (ii) provisions aimed at facilitating the determination of an employment status versus provisions improving the protection of personal data in platform work. The labour-related provisions primarily take on a procedural character, aiming to anchor platform work to the social *acquis* through a presumption of employment. In contrast, provisions on automated monitoring and decision-making function as a sector-specific refinement of the

2. *ibid.*, Art 1.

3. Amandine Crespy and others, ‘The EU Compromise Machine and the Politicisation of Social Policy: Lessons from the Regulation of Platform Work’ (2025) *Journal of European Social Policy*, doi: 10.1177/09589287251345912.

4. European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Establishing a European Pillar of Social Rights, COM(2017) 250 final.

5. European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Pillar of Social Rights Action Plan, COM(2021) 102 final.

6. Claire Kilpatrick, ‘The Roaring 20s for Social Europe: The European Pillar of Social Rights and Burgeoning EU Legislation’ (2023) 29 *Transfer* 203, doi: 10.1177/10242589231169664.

7. See <commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age_en> (all websites last visited 8 August 2025). Cf Dariusz Adamski, ‘Lost on the Digital Platform: Europe’s Legal Travails with the Digital Single Market’ (2018) 55 *CML Rev* 719, doi: 10.54648/cola2018068.

General Data Protection Regulation's (GDPR) gold standard,⁸ whose effectiveness in work environments remains imperfect.

Loaded with promises and expectations, the PfWD can be likened to a Rorschach test, where individuals are presented with a series of symmetrical inkblots and asked to describe what they see. In this sense, unsurprisingly, any evaluation of this legal tool reveals more about the observer than about the regulatory object itself. In political terms, the PfWD delivers a bold message. After rivers of ink have been devoted to the alleged exceptionalism of platform work, the veil of platform 'imaginaries'⁹ has been lifted, and EU institutions are championing the normalization of the platform ecosystem.

The PfWD's dual character influences its reception and interpretation, and the preliminary assessment of its impact, which can vary significantly depending on whether it is viewed through the lens of EU social or digital legislation. On balance, the Directive's most tangible advances lie in the digital rights arena, where it breaks new ground in embedding and strengthening digital rights *vis-à-vis* algorithmic management systems within work environments. In contrast, its social ambitions risk being 'lost in translation' – literally – as the presumption of employment faces the risk of dilution in the challenging process of domestic transposition and enforcement.

Looking through a longitudinal lens, one cannot help but appreciate the Kabbalistic symbolism of this journey. Around 2014, app-based companies began flourishing in the European market, promising to disrupt services such as transport, food delivery, domiciliary care, household chores, and professional activities. City streets were peacefully overtaken by legions of workers, their visibility enhanced by the fluorescent colours of their uniforms.¹⁰ A decade later, the EU takes a decisive step to address (one of) the transformative shifts reshaping the European labour market, driven by long-standing trends of flexibilization and standardization, further intensified by the affordances of digital technologies.¹¹

8. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L119/1.

9. Niels van Doorn, 'At What Price? Labour Politics and Calculative Power Struggles in On-demand Food Delivery' (2020) 14 *Work Organisation, Labour & Globalisation* 136, doi: 10.13169/workorglaboglob.14.1.0136; Steven Vallas and Juliet B Schor, 'What Do Platforms Do? Understanding the Gig Economy' (2020) 46 *Annual Review of Sociology* 273, doi: 10.1146/annurev-soc-121919-054857.

10. Jeremias Adams-Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (OUP 2018).

11. Brishen Rogers, *Data and Democracy at Work: Advanced Information Technologies, Labor Law, and the New Working Class* (MIT Press 2023).

In the meantime, dozens of employment tribunals have been called upon to address challenges related to defining the key aspects of this ostensibly new form of work.¹² Initially, issues of unfair competition in regulated sectors emerged at the forefront, culminating in the first case decided by the Court of Justice of the EU (CJEU) in 2017 in the *Elite Taxi v Uber Spain* case.¹³ Almost concomitantly, though, more ‘social’ questions have taken centre stage,¹⁴ namely the issue of the correct classification of individuals working through digital platforms, followed by questions regarding compliance with data protection frameworks, safety and health provisions, and working time legislation. These developments have ignited a far-from-settled debate on how to ensure adequate protection and good quality work for highly atypical forms of work.¹⁵

Amidst this embroiled legal battle, national authorities frantically scrambled to address gaps in legal frameworks.¹⁶ While several countries introduced measures such as presumptions of employment for all or certain categories of platform workers¹⁷ or, conversely, adopted a model of presumed self-employment,¹⁸ most EU countries refrained from any specific regulation, leaving this phenomenon in a grey zone. As a result, the EU institutional intervention easily finds justification in the lack of harmonization and extreme fragmentation – both judicial and regulatory – which, in turn, breeds uncertainty, hampers attempts by small and medium enterprises to scale up, and facilitates jurisdiction shopping.¹⁹

Given all this eventfulness, telling the full story of this decade of ‘interesting times’ would demand a literary genre far from a legal essay.

12. Silvia Rainone and Christina Hießl, ‘Judicial Creativity in the Platform Economy: Normative Insights for Broadening the Scope of Labour Law’ in Kurt Vandaele and Silvia Rainone (eds), *The Elgar Companion to Regulating Platform Work: Insights from the Food Delivery Sector* (Edward Elgar 2025).

13. Case C-434/15, *Asociación Profesional Elite Taxi v Uber Systems Spain, SL*, EU: C:2017:981 (*Elite Taxi*).

14. Vassilis Hatzopoulos, *The Collaborative Economy and EU Law* (Bloomsbury 2018).

15. International Labour Organization, *Non-Standard Employment Around the World: Understanding Challenges, Shaping Prospects* (International Labour Office 2016).

16. Vassilis Hatzopoulos and Sofia Roma, ‘Caring for Sharing? The Collaborative Economy under EU Law’ (2017) 54 CML Rev 81, doi: 10.54648/cola2017004.

17. Eg Spain, Italy, Portugal, Belgium, Croatia.

18. Eg France, Greece. For an overview of national regulatory responses to platform work in the EU, see eg ISSA, ‘Platform Workers and Social Security: Recent Developments in Europe’ <www.issa.int/analysis/platform-workers-and-social-security-recent-developments-europe>.

19. European Commission, Commission Staff Working Document Impact Assessment Report Accompanying the Proposal for a Directive of the European Parliament and of the Council to improve the working conditions in platform work in the European Union, SWD (2021) 396 final/2, <op.europa.eu/en/publication-detail/-/publication/48491c8f-59bb-11ec-91ac-01aa75ed71a1>.

Documentaries, not commentaries; perhaps novels, rather than legal notes, might better capture the episodes of behind-closed-doors negotiations, corporate lobbying, national reforms seizing first-mover advantage, market concentration strategies, and bankruptcies along the road to decline. In this article, mindful of its scope limitations, a careful selection is made of the most socio-legally relevant chapters of a saga, discussing the behind, the within, and the beyond of the PfWD.

The analysis proceeds as follows. Section 2 starts with the portrayal of the regulatory prelude, looking at the final text as a virtuous compromise – better than any alternative. Section 3 disentangles the Directive’s key provisions, focusing on the presumption of employment, the rules on algorithmic management, platform work’s collective dimension, as well as transparency and implementation. Section 4 elaborates on the most critical aspects of the Directive, namely: (i) the consequences of relying on the reclassification of platform workers as the main instrument for their protection; and (ii) the integration of the PfWD in the broader digital EU agenda. Finally, Section 5 concludes by arguing that the dualism embodied by the Directive’s architecture bears significant consequences both in terms of interpretation and fundamental rights efficacy. It further stresses that the PfWD should be seen as the beginning, rather than a conclusive step in regulating algorithmic management at work and ensuring decent working conditions in the digital age, both at the EU and international levels.

2. The behind: Tracing the prelude

The process leading to the adoption of the PfWD commenced well in advance of the publication of the Proposal for a directive aimed at improving working conditions in platform work in December 2021.²⁰ In 2016, the Commission addressed to the Member States a commitment to assess the ‘adequacy of their national employment rules considering the different needs of workers and self-employed people in the digital world as well as the innovative nature of collaborative business models’ and to ‘provide guidance on the applicability of their national employment rules in light of labour patterns in the collaborative economy’.²¹ In May 2017, following

20. Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work COM(2021) 762 final.

21. European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A European Agenda for the Collaborative Economy* (COM/2016/0356 final) (Brussels 2016).

a report from its Committee on the Internal Market and Consumer Protection, the European Parliament adopted a resolution urging the Commission to take action to resolve the legal uncertainties surrounding work performed through digital platforms.²² It quickly became evident that the specific regulatory challenges associated with platform work could not be effectively addressed through a mere adaptation of the existing EU legal framework on the provision of services.

Preparatory studies suggested initiating a legislative intervention with the aim of improving the working conditions of platform workers.²³ On such a basis, in February 2021, the Commission started a consultation process pursuant to Article 154 TFEU²⁴ on a number of issues concerning platform work, including transparency and predictability of working conditions, surveillance and performance appraisal, earnings and working time, and health and safety at work. In its second phase (June 2021), the consultation process further sharpened the idea of a regulatory intervention.²⁵

In December 2021, the Commission published its Directive Proposal,²⁶ aimed at fulfilling three main objectives: (1) ensuring the correct employment status for people working through platforms; (2) ensuring fairness, transparency and accountability in algorithmic management; and (3) improving enforcement of the applicable rules for all people working through platforms, including those operating across borders.²⁷ Two regulatory aspects of the Commission's proposal stood out as particularly innovative.²⁸ First, the Proposal was constructed on a dual legal basis – namely Article 153(2)(b) TFEU on working conditions and Article 16(2) TFEU on data protection. Second, a five-factor presumption of employment was introduced, aimed at facilitating the judicial assessment and providing

22. European Parliament, 'European agenda for the collaborative economy', 2017/2003 (INI).

23. European Commission, Study to support the impact assessment of an EU initiative to improve the working conditions in platform work. Final Report (Luxembourg, 2021); CEPS, EFTHIEA, and HIVA-KU Leuven, Study to gather evidence on the working conditions of platform workers (Luxembourg 2020).

24. European Commission, Consultation Document 'First phase consultation of social partners under Art. 154 TFEU on possible action addressing the challenges related to working conditions in platform work' (C (2021) 1127 final).

25. European Commission, Consultation Document 'Second-phase consultation of social partners under Art. 154 TFEU on possible action addressing the challenges related to working conditions in platform work' (C(2021) 4230 final).

26. Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work COM(2021) 762 final.

27. *ibid*, Explanatory Memorandum, 3.

28. Luca Ratti, 'A Long Road Towards the Regulation of Platform Work in the EU' in José Maria Miranda Boto and Elisabeth Brameshuber (eds), *Collective Bargaining and The Gig Economy. A Traditional Tool for New Business Models* (Hart Publishing 2022) 50–51.

certainty to digital labour platforms. Major controversies arose immediately after the publication of the Commission's proposal, in particular with regard to the employment presumption.²⁹

The text underwent significant changes during the legislative process. In February 2023, the European Parliament approved amendments based on the report from the Committee on Employment and Social Affairs (EMPL), thus setting its negotiating position with the Council. The draft proposed by Parliament³⁰ introduced several substantial improvements, including the replacement of the five-factors test with a more general rebuttable presumption of employment, measures to strengthen enforcement and redress mechanisms, expansion of the catalogue of rights related to algorithmic management, and a specific provision concerning intermediaries and subcontractors.

The Parliament draft was received with scepticism by the Council,³¹ which, *inter alia*, proposed an alternative draft introducing a seven-factor presumption. Despite the efforts of the Spanish presidency towards the end of 2023 leading to a provisional approval in the trilogue,³² the fanfares of a provisional agreement were drowned out by the screech to a sudden halt by the subsequent COREPER I.³³ Finally, under the Belgian presidency, a compromise text was agreed by the Parliament and the Council between February and April 2024 – though failing to convince Germany and France in the Council.³⁴ After a significant language revision,³⁵ the PfWD was eventually published in the Official Journal in November 2024.³⁶

29. Valerio De Stefano, 'The EU Commission's Proposal for a Directive on Platform Work: An Overview' (2022) 15(1) Italian Labour Law E-Journal 1, doi: 10.5040/9781509953219.

30. European Parliament, Report on the proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work 2021/0414(COD). In fact, the Parliament played a crucial role in reframing and supporting the presumption of employment. Cf Crespy and others (n 3).

31. See <data.consilium.europa.eu/doc/document/ST-10107-2023-INIT/en/pdf>.

32. See <www.consilium.europa.eu/en/press/press-releases/2023/12/13/rights-for-platform-workers-council-and-parliament-strike-deal/>.

33. See <www.consilium.europa.eu/en/meetings/mpo/2023/12/coreper-1-permanent-representatives-committee-(332445)/>.

34. Théo Bourgery-Gonse, 'Member states deal heavy blow to platform work deal' (*Euractiv*, 22 December 2023) <www.euractiv.com/section/economy-jobs/news/member-states-deal-heavy-blow-to-platform-work-deal/>.

35. Conducted on the basis of Rule 251 of the European Parliament's Rules of Procedure. See European Parliament, Corrigendum to the position of the European Parliament adopted at first reading on 24 April 2024 with a view to the adoption of Directive (EU) 2024/... of the European Parliament and of the Council on improving working conditions in platform work (P9_TA(2024)0330) (4 July 2024), <www.europarl.europa.eu/doceo/document/TA-9-2024-0330-FNL-COR01_EN.pdf>.

36. Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work [2024] OJ L2831 <data.europa.eu/eli/dir/2024/2831/oj>.

EU institutions in Brussels framed the Directive as a win for Social Europe, achieved at the photo finish of a parliamentary tenure nearing its expiration at the time of the Directive's adoption.³⁷ Some platform operators managed to spin the outcome as a 'business as usual' result,³⁸ predicting minimal changes compared to the status quo. Labour advocates welcomed the text, emphasizing its strengths while cautioning about the pitfalls lurking in the details.³⁹

From a legal standpoint, the PfWD has been adopted under a dual legal basis, which is not unprecedented in either the digital⁴⁰ or social field.⁴¹ The PfWD relies on Article 153(1)(c) and (2)(b) TFEU (social policy) and Article 16(2) TFEU (data protection). A consideration of the above-discussed dual objective of the PfWD reveals that the two legal bases are not incidental to each other. It is established case law that recourse to a two-fold legal basis is not possible where the procedures laid down for each legal basis are incompatible with each other.⁴² In the case of the PfWD, since both Article 153(1)(c) and Article 16(2) TFEU require an ordinary legislative procedure, the choice of a dual legal basis is fully compatible with EU law.

The intricate political compromise surrounding the final approval of the PfWD may reveal the fragility of some regulatory mechanisms – particularly those featured in Chapter II on the employment status and Chapter III on algorithmic management – which, partly relying on Member States' implementation, reflect different aspects of an increasingly complex set of rules that might be qualified as 'the law of the digital age'.⁴³ The high level of politicization of the PfWD adoption process proved to be both a driver

37. European Parliament, 'Parliament adopts Platform Work Directive' Press Release, 24 April 2024 <www.europarl.europa.eu/news/en/press-room/20240419IPR20584/parliament-adopts-platform-work-directive>.

38. Javier Espinoza, 'Europe's Gig Workers See Limited Impact from New Rules' *Financial Times* (13 December 2023) <www.ft.com/content/97bda226-c200-4240-bd8e-ba1924d8c613>.

39. Ludovic Voet, 'Platform Work Directive – Delivering Rights for All' (*Social Europe*, 29 March 2024) <www.socialeurope.eu/platform-work-directive-delivering-rights-for-all>.

40. The AI Act combines the goal of internal market harmonization, grounded in Art 114 TFEU, to address 'divergences hampering the free circulation, innovation, deployment, and uptake of AI systems and related products and services' (Recital 3), with Art 16 TFEU, which focuses on the protection of individuals with regard to the processing of personal data.

41. Cf eg Directive (EU) 2019/1158 on Work-Life Balance for Parents and Carers grounded in Arts 153(1)(i) and (2)(b) TFEU (social policy) and Art 157(3) TFEU (gender equality).

42. Case C-300/89, *Commission v Council (titanium dioxide)*, EU:C:1991:244, paras 17–21.

43. Eva Kocher, *Digital Work Platforms at the Interface of Labour Law. Regulating Market Organisers* (Hart Publishing 2022) 20–27.

and an inhibitor: the revival of the EU social agenda did not come without significant watering down of the initial ambitions.⁴⁴

3. The within: Dissecting the Directive's core chapters

3.1. *Employment presumption*

The PfWD dedicates its entire Chapter II to the employment status of people performing platform work. Its central provision, namely the rebuttable employment presumption, has been the key to improving their working conditions and, at the same time, the bone of contention throughout the negotiation process.

In terms of its *ratio legis*, Recital 30 of the PfWD refers to evidentiary hurdles experienced by platform workers, namely the lack of access to tools enabling them to prove the actual nature of their relationship with the platform, and the intransparency of algorithmic management (AM) systems. While information asymmetries do play a significant role, the core question goes to the notion of a subordinate employment relationship, the existence of which is difficult to determine in platform-based work arrangements, typically characterized by an intricate mix of factors hinting at independence with those indicating subordination.

The Directive tackles the classification conundrum by, first, reaffirming the primacy of facts principle, according to which the actual work performance, not the description of the relationship by the parties, is decisive for the employment classification (Article 4(2)). This principle is already well-embedded in national legal systems,⁴⁵ in the CJEU case law,⁴⁶ and at the international level.⁴⁷ The use of AM is explicitly mentioned as a factor that should not be overlooked when determining employment status, which underscores the important yet obfuscating role of algorithms at work.

Article 4(3) specifies that if an employment relationship is established, 'the party *or parties* responsible for the obligations of the employer' (emphasis added) shall be clearly identified. The use of this expression instead of, simply, the 'employer' can be read as a recognition of the problems with assigning legal responsibilities when the employment prerogatives are dispersed among various parties in 'variable geometry'

44. Crespy and others (n 3).

45. Cf Bernd Waas and Guus Heerma van Voss (eds), *Restatement of Labour Law in Europe. Volume I. The Concept of Employee* (Hart Publishing 2017).

46. Eg Case C-232/09, *Dita Danosa v LKB Līzings SIA*, EU:C:2010:674, para 41.

47. International Labour Organization, *Employment Relationship Recommendation* (No 198, 2006), Chapter II.

settings.⁴⁸ This is crucial, especially in sectors beyond the food delivery and transport platforms that typically overtake some, but not all, employer prerogatives, leaving relatively much discretion for clients, and increasingly use subcontractors and intermediaries. The allocation of the employers' obligations may turn out to be even more complicated than determining the worker status.⁴⁹

The core mechanism of addressing the perennial classification issue under the PfWD is the presumption of an employment relationship with platforms. The legal presumption shall apply to contractual relationships entered into after 2 December 2026, in all relevant administrative or judicial proceedings where the determination of the correct employment status of a person performing platform work is at issue. Tax, criminal or social security matters are excluded from this presumption, unless Member States decide also to cover these ambits (Article 5(3)). It is worth noting that the final text of the Directive refers not to *ensuring* the correct determination of their employment status (as was the case with the original proposal) but to *facilitating* it (Article 1(1)). This linguistic shift is symptomatic of a step back and a political compromise. The PfWD expressly qualifies the presumption as a *procedural facilitation*, which shall be favourable for people performing platform work (Article 5(2)). Proceedings concerning the determination of the employment status can be initiated by people performing platform work and their representatives (Article 5(4)), as well as by national authorities (Article 5(5)).

Article 5(1) formulates the legal presumption as follows:

‘The contractual relationship between a digital labour platform and a person performing platform work through that platform shall be legally presumed to be an employment relationship where facts indicating direction and control, in accordance with national law, collective agreements or practice in force in the Member States and with consideration to the case-law of the Court of Justice, are found.’

The presumption shall be rebuttable, as expressed in the second part of that provision:

‘Where the digital labour platform seeks to rebut the legal presumption, it shall be for the digital labour platform to prove that the contractual relationship in question is not an employment relationship as defined by

48. Recital 20 of the PfWD.

49. Christina Hiebl, ‘The Legal Status of Platform Workers: Regulatory Approaches and Prospects of a European Solution’ (2022) 15(1) Italian Labour Law E-Journal 17–18, doi: 10.2139/ssrn.3982738.

the law, collective agreements or practice in force in the Member States, with consideration to the case-law of the Court of Justice.’

It may be convenient to analyse this provision by starting with what it does *not* do, rather than with what it does.

First, it does not automatically reclassify all people performing platform work as employees. The presumption is conditional upon the existence of ‘facts indicating direction and control’, which requires a case-by-case (or group-by-group in case of standardized conditions) assessment. The juridical nature of the employment relationship of people performing platform work is not predetermined, and rightly so, since such a ‘one size fits all’ approach would be neither possible due to constitutional limitations nor desirable given the sheer heterogeneity of the platform business model.

Second, Article 5(1) does not introduce any specific employment tests tailored for platform workers. A platform worker is defined in Article 2(1) (d) as ‘any person performing platform work who has or is deemed to have an employment contract or an employment relationship as defined by the law, collective agreements or practice in force in the Member States with consideration to the case-law of the Court of Justice’. The Directive, therefore, does not standardize the employment classification in the platform work cases across EU Member States.

Third, it does not reinvent the employment classification wheel. By referring to ‘direction and control’, it does not go beyond the key requirement of an employment relationship in the CJEU case law and national labour law systems, namely subordination. It does not (re)define or further characterize the ‘direction and control’ that must be in place to trigger the presumption. Nor does it specify over what or whom the direction should be exercised, which invites a broad interpretation. Only Recital 30 hints at the relevance of both direct and indirect forms of direction and control, such as the application of sanctions or ‘other forms of adverse treatment or pressure’.⁵⁰ Overall, the wording of Article 5(1) is rather laconic, which can be read as a move for the sake of political compromise and a response to the substantive criticism leveraged against the previous drafts of the PfWD.⁵¹

50. This presents a major difference from the Commission’s Proposal, which provided a legal definition of ‘control of the work performance’, as fulfilling at least two of five listed criteria. Likewise, the criteria for the rebuttal of the employment presumption are not specified, unlike in the version of the Directive proposed by the EU Parliament.

51. Eg it has been subject to widespread criticism for creating the risk of an easy circumvention or even increasing the classification threshold (cf De Stefano (n 29)).

Still, there is a lot to unpack from Article 5(1) to understand the legal implications of the employment presumption and to answer the key question: will it be an effective means of countering misclassification and improving platform workers' conditions?

The first step in this analytical exercise is to comprehend the meaning of the 'hybrid formula' of direction and control, which refers to national law with consideration of CJEU case law. This wording is familiar from other recent EU directives in the social field,⁵² which use the 'crossbreed' notion of worker to denote their personal scope of application. On the face of it, Article 5(1) brings hardly any novelty, since even without the explicit reference to the CJEU jurisprudence, the Member States' obligation to consider it stems from the autonomous meaning of worker for the purposes of application of EU law.⁵³ The main point of reference is the so-called 'Lawrie-Blum formula', according to which a worker is any person who 'for a certain period of time performs services for and under the direction of another person in return for which he receives remuneration'.⁵⁴ Direction, which refers typically to the restriction of freedom to choose the time, place and content of work,⁵⁵ has been a quintessential feature of the employment relationship since that landmark judgment.⁵⁶ It is also clear from the CJEU case law that the classification of a self-employed person under national law does not prevent that person from being classified as a worker within the meaning of EU law 'if that person's independence is merely notional, thereby disguising an employment relationship'.⁵⁷

The CJEU has not taken a clear stance on how to interpret the nature of work arrangements of platform workers. Yet, two cases may provide some guidance: *Elite Taxi* and *B and Yodel Delivery Network Ltd* ('*Yodel*'). In the first case, on the occasion of determining the nature of Uber's services,⁵⁸ the

52. Eg 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; Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

53. Case 53/81, *D.M. Levin v Staatssecretaris van Justitie*, EU:C:1982:105.

54. Case 66/85, *Deborah Lawrie-Blum v Land Baden-Württemberg (Lawrie Blum)*, EU:C:1986:284, para 17.

55. Case C-256/01, *Debra Allonby v Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional and Secretary of State for Education and Employment*, EU:C:2004:18, para 72.

56. Case 66/85, *Lawrie Blum*, para 55.

57. Case C-413/13, *FNV Kunsten Informatie en Media v Staat der Nederlanden*, EU:C:2014:2411, para 35, and Case C-692/19, *B v Yodel Delivery Network Ltd* (Order of the Court (Eighth Chamber) of 22 April 2020 (*Yodel*), EU:C:2020:288, para 30; as recalled in Recital 28 of the PfWD).

58. Providing transportation services rather than electronic intermediary services or information society services, as defined by Art 1(2) of Directive 98/34.

Court famously held that ‘Uber exercises decisive influence over the conditions under which that service is provided by those drivers’. The second case, *Yodel*, concerned the employment classification of a parcel courier for the purposes of the Working Time Directive.⁵⁹ The Court followed a rather conservative approach, suggesting that the courier had a great deal of latitude concerning his putative employer, and that his autonomy was genuine. The final assessment on employment status rested with the referring court, which had to decide whether the courier’s independence was not merely notional.⁶⁰ The *Yodel* order faced considerable criticism and sparked concerns among commentators alarmed that such a formalistic stance could impede the reclassification of bogus self-employed platform workers.⁶¹

A joint reading of the *Elite Taxi* and *Yodel* cases allows us to distil some hints regarding the interpretation of ‘direction and control’ in the context of the PfWD. Such factors as the determination of the conditions under which the service is provided, setting out the maximum charge for the service, and exercising control over the quality of equipment or worker performance and conduct, indicate employment status.⁶² In contrast, the possibility of using subcontractors, accepting or refusing the various tasks offered by the platform, or providing services to a third party and to fix hours of work would point to a self-employment relationship.⁶³ The problem remains that a handful of these factors typically characterize platform-mediated work relationships in a contradictory manner, which triggers the hard-to-resolve classification dilemma.

In addition, it is crucial to consider that ‘the organisation of work performed by individuals’ is a definitional feature of a digital labour platform (Article 2(1)(a)(iii) of the PfWD). Recital 20 explains that the

59. Case C-692/19, *Yodel*.

60. Similar reasoning was found in *Iraklis*, in which the Court found that the President of the Port Authority could not be regarded as an independent service provider given his lack of ‘leeway in terms of choice of the type of work and tasks to be executed, of the manner in which that work or those tasks are to be performed, and of the time and place of work, and more freedom in the recruitment of his own staff.’ See Case C-270/13, *Iraklis Haralambidis v Calogero Casilli*, EU:C:2014:2185, para 40.

61. See eg Elena Gramano, ‘On the Notion of “Worker” under EU Law: New Insights’ (2021) 12 ELLJ 1, doi: 10.1177/2031952521998812; Antonio Aloisi, ‘“Time Is Running Out”: The Yodel Order and Its Implications for Platform Work in the EU’ (2020) 13 Italian Labour Law e-Journal 1, doi: 10.1177/20319525211062557.

62. Case C-434/15, *Elite Taxi*, para 39. Cf also AG Szpunar’s Opinion in this case, reasoning that ‘the fact that control is not exercised in the context of a traditional employer-employee relationship does not exclude the existence of indirect control based on financial incentives and decentralised passenger-led ratings’.

63. Annika Rosin, ‘Towards a European Employment Status: The EU Proposal for a Directive on Improving Working Conditions in Platform Work’ (2022) 51 Industrial Law Journal 478, 485, doi: 10.1093/indlaw/dwac011.

organization should involve at least a ‘significant role in matching the demand for the service with the supply of work by an individual who has a contractual relationship with the digital labour platform or an intermediary’, going beyond a mere provision of the means by which service providers can reach the end-user. Moreover, ‘organizational subordination’,⁶⁴ which is also an important factor of an employment relationship, is not sufficient in itself to presume that an employment relationship is at stake. Yet, the line between work organization and the exercise of directional power may be extremely thin.

A few nuances need to be considered as regards the rebuttal of the employment presumption under Article 5(1) of the PfWD. First, it is only the platform that can rebut the presumption, which stands in contrast with the Commission’s Proposal, which granted such an option both to the platform and to platform workers who did not consider themselves in an employment relationship with a platform. While it is clear that rebutting the presumption is primarily in the interest of platforms rather than other actors, it is hard to see the rationale of such a legislative move towards the end of the negotiation process.

Second, to rebut the presumption, platforms are required to prove that the criteria of an employment relationship are not met, again in light of the ‘hybrid’ formula. All relevant factors showing that there is no disguised self-employment should be considered.⁶⁵ One should wonder whether there is any difference between proving the ‘lack of employment relationship’ and the ‘lack of direction and control’, which would mean simply disproving the circumstances that led to the employment presumption in the first place.

As discussed above, direction and control are primary indicia of a subordinate employment relationship. However, the CJEU and national courts alike increasingly take into account other factors when determining employment status. In a nutshell, while the ‘classical’ *Lawrie Blum* formula is still relied upon, the CJEU pays increasing attention to criteria such as the assumption of business risks.⁶⁶ In *FNV Kunsten Informatie en Media (FNV)*, the Court found that a service provider who is considered a self-employed person can lose this status if he ‘does not determine independently his own conduct on the market, but entirely depends on his principal, because he does not bear any of the financial or commercial risks arising out

64. Adalberto Perulli, ‘The Legal and Jurisprudential Evolution of the Notion of Employee’ (2020) 11 ELLJ 117, doi: 10.1177/2031952520905145.

65. Rosin (n 63) 485.

66. Despoina Georgiou, ‘Business Risk-Assumption as a Criterion for the Determination of EU Employment Status: A Critical Evaluation’ (2022) 51 Industrial Law Journal 109, 112, doi: 10.1093/indlaw/dwaa031.

of the latter's activity'.⁶⁷ The Court provided concrete guidance on how to detect false self-employment: (i) lack of freedom to choose the time, place and content of work; (ii) having a share in the employer's commercial risks; and (iii) forming an integral part of the employer's undertaking for the duration of the relationship. In light of this judgment, platforms would need to prove that people working through them not only are not directed and controlled by them, but also that they do not assume business risks and do not form part of their undertaking.

Particularly in cases concerning food delivery platforms, where the success rate of reclassification claims has been relatively high,⁶⁸ courts across Member States have also referred to a broad set of criteria going beyond the control and direction tests, carefully reflecting on the complex dynamics between workers and platforms. Such arguments included, among others, workers' integration into the business organization of the platform; the work performance in a personal capacity; or the information asymmetry between the worker and platform.⁶⁹ Therefore, rebutting the employment relationship with platform workers may require proving elements that go beyond direction and control.

Empirical studies on litigation in employment classification across the EU show that cases where the platforms successfully fought back, managing to overturn the judgment to their benefit, are extremely rare.⁷⁰ At the same time, platforms have proven to be 'institutional chameleons', able to adjust their infrastructural power to the changing regulatory frameworks, developing various forms of work organization and reconfiguring control mechanisms.⁷¹ Platforms will, expectedly, continue to explore ways to tweak their business models in such a way as to challenge the employment presumption without compromising on the hyper-flexible mode of their operation.⁷²

67. Case C-413/13, *FNV Kunsten Informatie en Media*, para 33.

68. Nastazja Potocka-Sionek, 'Easier Done Than Said? An Empirical Analysis of Case Law on Platform Work in the EU' (2023) *Hungarian Labour Law E-Journal* 1, doi: 10.2139/ssrn.5161650; Christina Hiebl, 'The Classification of Platform Workers in Case Law: A Cross-European Comparative Analysis' (2022) 42 *Comparative Labour Law & Policy Journal* 465, doi: 10.2139/ssrn.3982738; see also the Eurofound database on platform work at <apps.eurofound.europa.eu/platformeconomydb/>.

69. Rainone and Hiebl (n 12).

70. *ibid.*

71. Vallas and Schor (n 9); Tiago Vieira and Pedro Mendonça, 'The Times, Are They Changing? Examining Platform Companies' Chameleonic Labour Process as a Response to the Spanish Ley Rider' (2024) *Socio-Economic Review* mwae066, doi: 10.1093/ser/mwae073.

72. Hannah Johnston and others, 'Employment Status and the On-Demand Economy: A Natural Experiment on Reclassification' (2024) 22 *Socio-Economic Review* 169, doi: 10.1093/ser/mwad047.

Moreover, the widespread practice of externalising responsibility through subcontracting is particularly troubling from the regulatory and compliance perspective.⁷³ Introducing subcontractors may have the effect of obscuring responsibility for potential labour law violations downstream, not least due to the lack of effective supervision mechanisms.⁷⁴ The Directive only marginally addresses this issue in Article 3 by introducing an equal treatment principle of platform workers providing services through intermediaries⁷⁵ with those providing services directly for platforms. Assuming that an employment presumption is triggered in such an intricate architecture, it is unclear who would bear the employment responsibilities. It seems that rebutting the existence of the employment relationship will be much easier in subcontracting than in the case of a direct contract between the worker and the platform. Much like platforms, intermediaries are known for their capability to find creative ways of avoiding legal responsibility, for example, by making platform workers capital owners within their structures. The lack of a more detailed consideration of this risk of legal circumvention by intermediaries is an Achilles heel of the PfWD's provisions on the employment classification.

Against this background, the Directive's provisions on the enforcement mechanisms are particularly important. Article 6 of the PfWD details the framework of measures to be designed by Member States to ensure the effective implementation of and compliance with the legal presumption. Member States are called to develop appropriate guidance for platforms, platform workers and social partners, which is key to ensuring legal certainty. National authorities should be provided with effective control mechanisms, especially for platforms where the employment relationship was ascertained, and with adequate training. Moreover, collective agreements may contain 'measures with regard to the determination of the correct employment status of platform workers' (Article 25). Overall, the PfWD provides no details on what the effective implementation of the employment presumption at the national level should entail, leaving great leeway in this regard to the Member States. Indubitably, designing a comprehensive

73. Christina Hiessl, 'Multiparty Relationships in Platform Work: Cross-European Case Law Developments and Points of Departure for (Supranational) Regulation' (2023) 14 ELLJ 5140, doi: 10.1177/20319525231208637.

74. For evidence on these practices in Poland, where intermediaries are the default model in the transportation and food delivery sectors, see Fairwork Poland Ratings 2024: Intermediation Undermining Workers' Rights in the Platform Economy <fair.work/wp-content/uploads/sites/17/2024/12/202410_Report_Poland-2024_ANG-popr-v2.pdf>.

75. This term covers a natural or legal person that, to make platform work available to or through a platform, establishes a contractual relationship between the platform and the person performing platform work, or is in a subcontracting chain between them (Art 2(1)(e)).

framework of enforcement measures remains a crucial challenge that Member States are faced with.⁷⁶

3.2. *Algorithmic management*

A notable legacy of digital labour platforms lies in the development, almost *in vitro*, of a set of tools and functions that scholars have later collectively referred to as AM.⁷⁷ This term is commonly used to describe the partial or full automation of functions typically carried out by managers, employers and principals. Critical decisions – from hiring and firing to task allocation, work scheduling, instructions, provision of incentives or nudges, wage determination, control, and appraisal – can be delegated to software that either supports or entirely replaces human beings.

Even though AM has long lost its initial platform-specificity, it is in this context that the EU legislator intervened for the first time with a set of AM-specific provisions, complementing other instruments in the digital regulation field. Indirectly, the regulation of AM helps to combat of platform workers' misclassification, since it helps to unpack the 'alternative ways' of exercising managerial prerogatives. Directly, the protection of data in the context of AM has a self-standing purpose of protecting fundamental rights of anyone performing work through digital labour platforms.

The PfWD breaks this sociotechnical phenomenon down into two interrelated components: (i) 'automated monitoring systems' (AMS), understood as infrastructures 'used for or which support monitoring, supervising or evaluating, by electronic means, the work performance of person performing platform work or the activities carried out within the work environment, including by collecting personal data'; and (ii) 'automated decision-making systems' (ADMS), defined as digital systems used 'to take or support decisions that significantly affect the person performing platform work' (Article 2(1)(h) of the PfWD). Regarding ADMS, a list of use cases is included, covering access to or organization of work assignments, earnings and pricing, working time allocation, promotion and contractual status, as well as account restriction, suspension, or termination.⁷⁸

76. Konstantinos Zografidis, 'Implementing the Presumption of Employment of the Platform Work Directive' (*Global Workplace Law & Policy*, 23 April 2025) <global-workplace-law-and-policy.kluwerlawonline.com/2025/04/23/implementing-the-presumption-of-employment-of-the-platform-work-directive/>.

77. Alex J Wood, 'Algorithmic Management: Consequences for Work Organisation and Working Conditions' (2021) JRC Working Papers Series on Labour, Education and Technology No 2021/07; David Stark and Ivana Pais, 'Algorithmic Management in the Platform Economy' (2020) 14 *Sociologica* 47, doi: 10.17323/1726-3247-2021-3-71-103.

78. A similar wording can be found in Art 4 of the Platform to Business Regulation.

If AM is a legislative *hapax legomenon* – that is, a concept that occurs only once within a context of EU legislation – automated decision-making is far from unheard of.⁷⁹ This shows the interconnectedness between the PfWD and the GDPR, which regulates (or better prohibits) some ‘automated individual decision-making, including profiling’ under Article 22.

In this regard, the data protection provisions laid down in the PfWD begin with a long list of red lines,⁸⁰ namely limitations on personal data processing via AMS or ADMS, which can be divided into three main categories (Article 7).

First, there are ‘content-related’ limitations as regards the emotional or psychological state of individuals working through a digital labour platform, as well as on data that can infer protected grounds broadly understood (ethnic origin, migration status, political opinions, disability, state of health) and biometric data.⁸¹ To this group must be added a prohibition on AMS and ADMS practices that exacerbate safety and health risks for platform workers or that ‘put undue pressure’ on them (Article 12(3)), and the ban on the automation of decisions to restrict, suspend, or terminate the contractual relationship or the account – along with any similarly detrimental decisions (Article 10(5)).

Second, temporal limitations prevent platforms from processing personal data when the individual is not ‘offering or performing platform work’ (Article 7(1)(c)).

Third, there are restrictions designed to uphold collective labour rights, including limits on processing personal data to infer trade union membership, in relation to private conversations, even with representatives, as well as data processing to infer the exercise of fundamental rights such as association, collective bargaining, and information and consultation.

The PfWD manages to compensate for the GDPR’s vagueness and lack of clarity in several important aspects. While Article 22 GDPR elaborates on a ban on decisions ‘based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her’, there has always been a lack of clarity regarding the notions of ‘solely’, ‘legal effects’ and ‘significance’. At the same time, the predominantly individualistic exercise of data protection rights has been recognized as a limitation, further exacerbated by the

79. Cf Herwig CH Hofmann and Felix Pflücke, *Governance of Automated Decision-Making and EU Law* (OUP 2024).

80. Jeremias Adams-Prassl and others, ‘Regulating Algorithmic Management: A Blueprint’ (2023) 14 ELLJ 124, doi: 10.1177/20319525231167299.

81. As defined by Art 4(14) of the GDPR. These provisions partially overlap with some prohibited AI practices under Art 5 of the AI Act.

structural imbalance of contractual power in platform work and compounded by a lack of awareness, which may have a chilling effect on formulating specific data requests. Similarly, the well-known ‘contractual necessity’ exception undermines the force of Article 22 of the GDPR, constraining the provision’s ability to trigger essential safeguards such as *ex post* human intervention and contestation. In turn, Recital 39 of the PfWD echoes the impossibility of relying on consent as a legal basis, as previously stated by the WP29,⁸² the ancestor of the European Data Protection Board.

Yet another confirmation of the interconnectedness between the GDPR and the PfWD, Article 8 of the latter qualifies data processing in platform work as ‘likely to result in a high risk to the rights and freedoms of natural persons’, in line with Article 35(1) of the GDPR and mandates that digital labour platforms shall seek the views of persons performing platform work and their representatives. Additionally, digital labour platforms shall provide the assessment to workers’ representatives. As highlighted, one drawback with this approach is that by placing the responsibility for evaluation on the platforms themselves, rather than mandating a public audit, the PfWD – like the AI Act – overlooks the enforcement challenges associated with black-box systems,⁸³ namely algorithmic or AI-based tools whose decision-making processes are opaque, inaccessible, or difficult to interpret owing to their complexity or proprietary nature.

The PfWD deconstructs algorithmic transparency into various forms, ranging from disclosure to impact assessments, and extending to both ‘global’ and ‘local’ explanations, respectively, on the whole model and a punctual decision.⁸⁴ In general, information must be shared in a ‘transparent, intelligible, and easily accessible form, using clear and plain language’ (Article 9(2)). Two main categories of right holders are identified, each with corresponding notions and content of transparency safeguards: (i) individuals performing platform work, who must receive information in a concise form, or in a comprehensive and detailed form if requested; (ii) their representatives, who must be granted information in a ‘comprehensive and detailed form’. For both groups, meaningful information must be disclosed at the latest on the first working day, before the introduction of relevant

82. Art 29 Working Party, *Guidelines 05/2020 on Consent under Regulation 2016/679*, Version 1.1, adopted on 4 May 2020.

83. Venna Dubal, ‘Data Laws at Work’ (2025) 134 *Yale Law Review Forum* (31 January 2025), doi: 10.2139/ssrn.5135393.

84. Michael Veale, Michael ‘Six’ Silberman and Reuben Binns, ‘Fortifying the Algorithmic Management Provisions in the Proposed Platform Work Directive’ (2023) 14 *ELLJ* 308, doi: 10.31235/osf.io/7jyhe.

changes, or at any time upon request. Moreover, national competent authorities must receive information in a comprehensive and detailed form if they demand it. The goal is to transform transparency from a mere objective into a tool that facilitates the exercise of a variety of workers' rights, while compelling companies to implement systems that are not only efficient and mechanistic but also documentable and accessible.⁸⁵

In addition, the PfWD establishes an *ex ante* 'human oversight' mechanism. Article 10 mandates that digital labour platforms oversee and assess the impact of AMS and ADMS, with the involvement of workers' representatives (Article 10(1)). To this end, platforms are required to employ sufficient human resources, endowed with the necessary competence, training, and authority, as well as protection against retaliation, to oversee and, where necessary, override decisions made by machines. When internal auditors identify risks or harms such as discrimination or rights-infringement, they should intervene, modify, or discontinue the system.

Once an automated decision has been made, the right to an explanation arises. Note that this intervention also serves to clarify the ambiguities surrounding the right to explanation within the GDPR, which is mentioned only in the Preamble (Recital 71) but not in the main text.⁸⁶ Justifications must be provided by platforms in 'a transparent and intelligible manner, using clear and plain language' (Article 11(1)), and in written form for the most critical decisions. Following a due process model, individuals must have the opportunity to defend themselves against an adverse decision before a contact person designated by the platform. In tandem with the right to an explanation⁸⁷ comes the right to rectification when individual rights are infringed, or compensation for damages if the harm is irreversible, together with the endeavour to modify or discontinue the flawed ADMS (Article 11(3)).

All in all, AM is not only a constitutive hallmark of digital labour platforms (Article 2(1)(a)(iv) of the PfWD); it is also identified as a key driver of precarious working conditions in the platform economy. Its centrality to the organization of platform work makes the need for transparency, accessibility, scrutiny, and contestability all the more urgent – not merely as

85. Antonio Aloisi, 'Regulating Algorithmic Management at Work in the European Union: Data Protection, Non-discrimination and Collective Rights' (2024) 40 *International Journal of Comparative Labour Law and Industrial Relations* 37, doi: 10.54648/ijcl2024001.

86. Andrew D Selbst and Julia Powles, 'Meaningful Information and the Right to Explanation' (2017) 7(4) *International Data Privacy Law* 233, doi: 10.1093/idpl/ix022; Sandra Wachter, Brent Mittelstadt and Luciano Floridi, 'Why a Right to Explanation of Automated Decision-making Does Not Exist in the General Data Protection Regulation' (2017) 7(2) *International Data Privacy Law* 76, doi: 10.1093/idpl/ix005.

87. Cf also Art 86 of the AI Act.

procedural safeguards, but as structural levers to redress the power asymmetries embedded in algorithmically work environments. By and large, this chapter of the PfWD boldly and programmatically encodes key principles of EU law into algorithmic governance systems, turning them into concrete design obligations and actionable rights.

3.3. *The collective dimension*

Reconstructing the collective dimension of the PfWD presents an intriguing task, as collective rights are dispersed across various provisions throughout the chapters. In addition to the aforementioned restrictions on data processing intended to predict the exercise of collective rights or infer trade union membership, there is a continual emphasis on collective representation, as defined in line with the dyadic personal scope of the PfWD. Article 1 distinguishes, based on the employment status of the represented, between ‘workers’ representatives’ (which can include trade unions or worker representation bodies, depending on the industrial relations system at the national level) and ‘representatives of persons performing platform work’ (a category that also encompasses organizations representing self-employed workers).

Provisions with a collective dimension can be categorized into four groups: (1) information and consultation; (2) collective personal data rights; (3) collective bargaining rights; and (4) enabling measures.

3.3.1. *Information and consultation*

Safety and health provisions serve as an example of the first cluster. Under Article 12, platforms are required to assess the risks associated with AMS and ADMS, including, but not limited to, occupational hazards, psychosocial, and ergonomic risks; evaluate mitigation strategies; and implement adequate preventive and protective measures. In relation to these requirements, digital labour platforms shall ensure effective information and consultation and the participation of platform workers and/or their representatives.

Building on the relevant social *acquis*,⁸⁸ information and consultation rights are provided for workers’ representatives as regards ‘decisions likely

88. Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community; Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure

to lead to the introduction of or substantial changes' in AMS or ADMS (Article 13(2)). In the absence of representatives, platform workers themselves are the direct holders of these rights.

3.3.2. *Collective personal data rights*

Certain collective data protection prerogatives are reserved for workers' representatives, such as the disclosure of the data protection impact assessment under Article 8(2) of the PfWD. Other rights are extended to representatives of persons performing platform work, including the right to information about AMS and ADMS, as well as their features (Article 9(3) of the PfWD), or the *ex ante* transparency rights under Article 10, along with the right to request a review of a decision made or supported by ADMS. The range of personal data protection measures available to representatives of persons performing platform work is listed in Article 15.

3.3.3. *Collective bargaining rights*

Article 25 of the PfWD boldly compels Member States, with due regard to their traditions, to 'promote the role of social partners and encourage the exercise of collective bargaining', including in establishing measures to facilitate the determination of correct employment status or the exercise of data protection rights. Similarly, Article 28 encourages Member States to provide for 'more specific rules to ensure the protection of the rights and freedoms in respect of the processing of the personal data of persons performing platform work' by law or by collective agreements. By the same agreements, however, social partners can establish arrangements that, without contradicting the level of protection, differ from the provisions on safety and health and information and consultation.

Collective bargaining agreements have been identified in the literature as an effective response to the far-reaching issues raised by the emergence of platforms, despite the barriers presented by EU antitrust law.⁸⁹ Such agreements can be negotiated at the decentralized level, taking into account the specific needs of workers, the company, and the particularities of a given sector.⁹⁰ It has long been the subject of much discussion whether EU

in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast).

89. Victoria Daskalova, 'Regulating the New Self-Employed in the Uber Economy: What Role for EU Competition Law?' (2018) 19 GLJ 461, doi: 10.1017/s207183220002277x.

90. Tamás Gyulavári, 'Collective Rights of Platform Workers: The Role of EU Law' (2020) 27 MJ 406, doi: 10.1177/1023263x20932070.

competition law could have prevented the full exercise of these rights among genuinely self-employed workers.⁹¹

The Commission's Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons,⁹² issued in September 2022, provide much-needed clarification in this regard.⁹³ This instrument clarified that certain categories of collective agreements covering solo self-employed workers fall outside the scope of Article 101 TFEU, thereby specifying the ambit of the labour antitrust immunity originally reserved for 'workers'.⁹⁴ The Guidelines go well beyond the so-called *Albany* exemption,⁹⁵ which refers exclusively to collective agreements aiming to improve the working conditions of subordinate employees. They focus in particular on three categories of persons: those who provide services exclusively or predominantly to a single undertaking; those who perform the same or similar work with workers of the same undertaking; and *those who provide their services through a digital labour platform*.⁹⁶ In all such cases, according to the Guidelines, any collective agreement concerning the working conditions of solo self-employed persons and reflecting a significant bargaining imbalance will not fall under the enforcement prerogatives of the Commission, which will thus refrain from intervening in its role as the antitrust authority in the EU.⁹⁷

91. Nicola Countouris, Valerio De Stefano and Ioannis Lianos, 'The EU, Competition Law and Workers' Rights' in Sanjukta Paul, Shae McCrystal and Ewan McGaughey (eds), *The Cambridge Handbook of Labor in Competition Law* (CUP 2022) 280.

92. Communication from the Commission Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons, [2022] OJ C374

93. On the debate preceding the introduction of the guidelines, cf Claudia Schubert (ed), *Economically-dependent Workers. A Handbook* (Hart/Beck/Nomos 2022); Ioannis Lianos, Nicola Countouris and Valerio De Stefano, 'Re-thinking the Competition Law/Labour Law Interaction: Promoting a Fairer Labour Market' (2019) 10(3) ELLJ 291, doi: 10.1177/2031952519872322.

94. Case C-67/96, *Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie*, EU:C:1999:430. This applies also, in a circular way, to falsely classify self-employed workers: Case C-413/13, *FNV Kunsten Informatie en Media*.

95. Countouris and others (n 91) 280–297.

96. Ciara Denihan, 'Collective or Collusive Agreements? An Examination of the Position of Solo Self-Employed Persons under Article 101 TFEU' (2023) 43(3) World Competition 317, doi: 10.54648/woco2023019.

97. Giorgio Monti, 'Collective Labour Agreements and EU Competition Law: Five Reconfigurations' (2021) 17(3) European Competition Journal 714, doi: 10.1080/17441056.2021.1930452.

3.3.4. *Enabling measures*

In the category of enabling measures, one can place a crucial provision that confers *locus standi* upon representatives of persons performing platform work, as well as legal entities with a legitimate interest, allowing them to engage in judicial and administrative proceedings to enforce the rights and obligations enshrined in the PfWD. This is achieved by acting on behalf of one or more individuals working through platforms (Article 19 of the PfWD). A notable and tech-savvy provision mandates platforms to adjust their infrastructure to provide a channel for ‘private and secure’ contact and communication between individuals and their representatives, without the interference of the platforms. Following the same logic, robust guarantees of protection against adverse treatment for both individuals and their representatives are also included (Article 22). Representatives are also empowered to support claims of re-qualification (Article 5(2) and 5(4)), data protection impact assessment (Article 8(1)), and information and consultation on safety and health (Article 12(2)). In the area of data rights, platform workers’ representatives can be assisted by technical experts who support them in the context of information and consultation prerogatives (Article 13(3)). In the case of a platform employing more than 250 workers, the proportionate costs for engaging the expert must be covered by the platform.

In conclusion, the PfWD’s provisions reflect a strong commitment to ensuring that people performing platform work, whether classified as workers or self-employed, are not left alone. Collective rights serve as a means to pursue the ‘twin’ goals of the PfWD. By ensuring access to data protection rights, collective bargaining rights, and measures for information and consultation, the Directive strengthens the capacity of platform workers to ‘relationally’⁹⁸ assert their rights, both in terms of accurate classification and protection against algorithmic abuses. This is a tribute to the dedication and commitment to the cause of workers’ collective bodies, trade unions, and social partners.⁹⁹ Their pivotal role in keeping focus on critical issues – particularly through strategic litigation¹⁰⁰ – has resulted in significant

98. Salomé Viljoen, ‘A Relational Theory of Data Governance’ (2021) 131 *Yale Law Journal* 573, doi: 10.2139/ssrn.3727562.

99. Jean-Michel Bonvin, Nicola Cianferoni and Maria Mexi (eds), *Social Dialogue in the Gig Economy: A Comparative Empirical Analysis* (Edward Elgar 2023); Boto and Brameshuber (n 28).

100. Ruth Dukes and Eleanor Kirk, ‘Legal Change and Legal Mobilisation: What Does Strategic Litigation Mean for Workers and Trade Unions?’ (2024) 33 *Social & Legal Studies* 479, doi: 10.1177/09646639231204942; Venera Protopapa, ‘It’s Strategic! Riders, Unions, and Litigation in Italy’ (2024) 40 *International Journal of Comparative Labour Law and Industrial Relations* 347, doi: 10.54648/ijcl2024014.

victories in courts and with data protection authorities. Nevertheless, collective bargaining remains constrained by practical and legal obstacles, including high turnover, ambiguous legal status, linguistic barriers, and a lack of class identity, compounded by the tenuous influence of collective forces in precarious contexts.¹⁰¹ Even setting the competition law obstacles aside, the mere allowance of collective bargaining for solo self-employed (platform) workers is unlikely to suffice to put substantial bargaining activities in practice, given the systemic features of the industrial relations systems, which were designed around the ‘traditional’ worker paradigm.¹⁰² The extent to which trade unions will be able to embrace new constituencies and integrate their campaigns within a ‘platform’ of demands and priorities is promising, provided they can leverage these new provisions.

3.4. *Transparency and implementation*

In its Chapter IV, the PfWD refers to the concept of transparency in how digital labour platforms are organized, which forms of contractual relations they use, and what kind of activities they carry out.

Transparency in EU law takes different meanings, spanning from the GDPR and AI Act, to the Platform to Business (P2B) Regulation, the Digital Market Act (DMA) and the Digital Services Act (DSA). In the field of EU labour law, three main instruments enhance the transparency principle: Directive 2019/1152 on Transparent and Predictable Working Conditions;¹⁰³ Directive 2023/970 on pay transparency in ensuring equal pay for men and women;¹⁰⁴ and finally, the PfWD. Transparency of working conditions in general (Directive 2019/1152) and transparency of pay in particular (Directive 2023/970) serve as a means to tackle information inequality and to avoid unfair labour practices that would otherwise risk going unnoticed.¹⁰⁵

101. Virginia Doellgast, Nathan Lillie and Valeria Pulignano (eds), *Reconstructing Solidarity: Labour Unions, Precarious Work, and the Politics of Institutional Change in Europe* (OUP 2018).

102. Charalampos Stylogiannis, ‘The Effective Application of the Right to Collective Bargaining for Self-employed (Platform) Workers: “Not Such an Easy Task”’ (2023) 14 ELLJ 494, doi: 10.1177/20319525231194278.

103. 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.

104. Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.

105. Despoina Georgiou, ‘The New EU Directive on Transparent and Predictable Working Conditions in the Context of New Forms of Employment’ (2022) 28 European

The function of transparency in the PfWD is twofold. On the one hand, it ensures that digital labour platforms do not violate labour law, in particular if they are established in a Member State other than the one in which the platform worker is performing work or in a third country.¹⁰⁶ On the other hand, transparent information on platforms' activities contributes to preventing unfair competition between them and to ultimately reinforcing the role of the European Labour Authority.¹⁰⁷ As a result, the impact of transparency obligations as laid out in the PfWD is to be measured in terms of the well-functioning of the labour market as such, both within a single Member State and cross-border.

An overall consideration of Articles 16 and 17 of the PfWD allows the identification of at least three layers of transparency obligations, to be distinguished according to the different addressees of the information provided.

The first layer comprises national labour authorities and draws an equation between digital labour platforms and any other employer operating in a Member State. Exactly like the latter, digital labour platforms must 'declare work performed by platform workers to the competent authorities of the Member State in which the work is performed' (Article 16(1)). The main aspects of this first obligation concern the personal scope – limited to work activities carried out by platform workers with an employment status, excluding those working on a self-employed basis as per Article 2(1)(c) – and the territorial scope, guided by the *lex loci laboris* rule, which may prove extremely difficult to enforce, especially when work is performed entirely online.¹⁰⁸

A second layer of transparency obligations concerns the information that platforms are required to provide to national authorities whenever their activities are of a cross-border nature. The rationale of this obligation (Article 16(2)) relates specifically to EU law inasmuch the trans-national provision of platform work may trigger not only the application of Regulation 883/2004 and Regulation 987/2009 on social security coordination, but also Directive 96/71 (as amended in 2018) and Directive 2014/67

Journal of Industrial Relations 193, doi: 10.1177/09596801211043717; Victoria E Hooton and Henry Pearce, 'As Clear as Mud: Assessing the Relationship between Proposed Pay Transparency Mechanisms and Data Protection Obligations in EU Law' (2023) 14 ELLJ 628, doi: 10.1177/20319525231178985.

106. Recital 56 of the PfWD.

107. *ibid*, Recitals 56 and 57.

108. Miriam A Cherry, 'A Global System of Work, A Global System of Regulation? Crowdwork and Conflicts of Law' (2019) 94 Tulane Law Review 1, doi: 10.1007/s41020-019-00094-1.

on the posting of workers,¹⁰⁹ as well as any other EU law instrument concerned with cross-border work activities.¹¹⁰ Given the frequent use of intermediaries in the platform sector, specific attention should be paid to platform work performed as a type of temporary agency work, for instance, when a platform is based in a Member State and operates as an intermediary according to Recital 24 of the PfWD.¹¹¹ This may suggest making use of Directive 2008/104 on temporary agency work¹¹² and the CJEU ‘*Betriebsrat* test’,¹¹³ at least whenever the platform worker concerned carries out their activities in a different Member State and/or for the benefit of a recipient based in a different Member State.¹¹⁴

Transparency acquires a completely different significance in a third layer of obligations, provided by Article 17 of the PfWD. The distinctive features of the provision relate, first of all, to the wide range of information that platforms are required to provide.¹¹⁵ This extends significantly beyond the obligations ordinarily imposed on employers to provide information to competent labour authorities and reflects the need for enhanced surveillance over the operation of digital labour platforms, concerning both platform workers and persons performing platform work. A second distinctive aspect of the obligations laid down in Article 17 concerns the fact that they are to be addressed not only to the competent public authorities but also to ‘representatives of persons performing platform work’ (Article 17(1)). The reason why representatives should be given access to all the information derives from the overall approach undertaken by the EU legislature in the PfWD, set to empower not only platform workers and persons performing platform work, but also ‘their

109. Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (the IMI Regulation).

110. Cf also Recital 5 of the PfWD.

111. *ibid*, Recital 20.

112. *ibid*, Recital 26.

113. Case C-216/15, *Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH*, EU:C:2016:883.

114. Cf Luca Ratti, ‘Online Platforms and Crowdwork in Europe: A Two-Step Approach to Expanding Agency Work Provisions?’ (2017) 38(2) *Comparative Labor Law and Policy Journal* 477, doi: 10.1017/9781839702006.009; Annika Rosin, ‘Applying the Temporary Agency Work Directive to Platform Workers: Mission Impossible?’ (2020) 36(2) *International Journal of Comparative Labour Law and Industrial Relations* 141, doi: 10.54648/ijcl2020009.

115. Eg the number of persons performing platform work through the platform concerned; the general terms and conditions determined by it; the average duration of activity; and the intermediaries with which the platform has a contractual relationship.

representatives' to claim specific rights, autonomously or on behalf of the former. The role of representatives proves to be substantially more fundamental. Since Article 19 of the PfWD does not make express reference to Article 14 of the P2B Regulation concerning the right of organizations to initiate judicial proceedings,¹¹⁶ it may be argued that the representatives of platform workers and persons performing platform work will play a more active role in supporting individuals' claims. Certainly, since they are not subject to the requirements of Article 14 and do not necessitate recognition by public authorities, the actions initiated by representatives are more in line with the traditional collective autonomy, typical of trade union movements acting independently from the state.

The implementation of the transparency obligations concerning platform work will have to be tested against the systemic limits deriving from general principles of EU law. At the constitutional level, an issue may arise insofar as a platform invokes Article 16 of the Charter of Fundamental Rights (CFR) on contractual freedom and the freedom to conduct a business, against the administrative burdens deriving from the transparency obligations laid down in Articles 16 and 17 of the PfWD.¹¹⁷

4. The beyond: Challenges and implications

The following sections trace how the PfWD tries to ride its two horses at once. Section 4.1 grips the social rein, interrogating the Directive's reliance on the worker/self-employed binary and the risks that flow from that firm stance. Section 4.2 takes the digital rein, positioning the PfWD within the widening constellation of EU tech rules, and asking whether the Directive can chart a new path without losing its seat.

116. This provision requires that: '(a) they are properly established in accordance with the law of a Member State; (b) they pursue objectives that are in the collective interest of the group of business users or corporate website users that they represent on a sustained basis; (c) they are of a non-profit making character; (d) their decision-making is not unduly influenced by any third party providers of financing, in particular by providers of online intermediation services or of online search engines.'

117. A clear indication in this direction comes from Recital 70 of the PfWD, according to which Member States should avoid imposing unnecessary constraints holding back the creation and development of small and medium-sized enterprises (SMEs). Mirroring this principle, Art 17(4) of the PfWD allows Member States to provide that the information arising from the transparency obligations may be updated at least once every year instead of every six months in the case of platforms that are SMEs.

4.1. *A firm binary option with non-negligible risks*

With no ifs, ands, or buts, the PfWD affirms that a platform-based business model is not inherently at odds with the employment relationship. The rhetoric surrounding the incompatibility between existing rules and the novel business model seemed exaggerated and has been amply demystified. Employment status can indeed uphold organizational flexibility and increase the firm's ability to match scheduled and actual working time, indicating greater operational efficiency, as empirical research has demonstrated.¹¹⁸

What tangible legal and practical outcomes does the presumption, the cornerstone of the PfWD, truly accomplish? First, at the risk of stating the obvious, it makes all Member States introduce platform-specific legislation into their legal systems, facilitating the determination of the employment status. It also prevents Member States from setting a higher threshold for employment classification than the one stemming from their national laws and the CJEU case law.

Second, the PfWD sends a clear message: *tertium non datur*.¹¹⁹ In other words, by relying on the binary divide between employees and the self-employed, the Directive excludes the possibility of classifying platform workers as third genus workers (that is, quasi self-employed). The EU notion of worker is broad enough to include a third category of workers existing in some Member States.

The hybrid formula, referring to the national notion of worker 'with consideration to' the CJEU case law, has been interpreted as an attempt to broaden the scope of the notion of worker, whose autonomous meaning centres on a softer version of subordination,¹²⁰ and is prone to 'bypass' national definitions when in contrast with the principle of *effet utile*.¹²¹ Indeed, we claim that this wording will have an added value in countries where the interpretation of the notion of worker is restrictive, anchored in the narrow understanding of control and hierarchical work relationships. In this sense, Article 5(1) may have an indirect, partial harmonization effect as regards the platform workers' status criteria.¹²² That said, courts in some EU countries have already demonstrated a dynamic and creative

118. Johnston and others (n 72).

119. In logic, the law of the excluded middle: Antonio Aloisi and Miriam A Cherry, 'Tertium Non Datur: Intermediate Employment Categories' in Guy Davidov, Brian Langille and Gillian Lester (eds), *The Oxford Handbook of the Law of Work* (OUP 2024).

120. Case C-232/09, *Dita Danosa v LKB Lizings SIA*, EU:C:2010:674.

121. Case C-393/10, *Dermod Patrick O'Brien v Ministry of Justice, formerly Department for Constitutional Affairs*, EU:C:2012:110.

122. Maria Carinci and Filip Dorssemont, *Platform Work in Europe: Towards Harmonization?* (Intersentia 2021).

interpretation of subordination, expanding upon the *Lawrie Blum* formula and adopting a more progressive stance than that of the CJEU in *Yodel*.¹²³ In fact, the correlation between the CJEU and national jurisprudence can go either way. If the national case law is more conservative, strongly relying on the traditional concept of worker, the EU interpretation should prevail. If, on the other hand, national law is more progressive, the EU law should not present an obstacle to a broader, national interpretation.

Only time will reveal the true efficacy of the employment presumption. At this stage, it may be contended that the PfWD engenders a potentially contentious interplay between the criterion of ‘organization of work’, a defining element of a digital labour platform, and the construct of ‘direction and control’, which must be substantiated in court through plausible, albeit not definitive, evidence. This dynamic will necessitate a bifurcated inquiry:¹²⁴ first, demonstrating the tangible exercise of organizational prerogatives – an aspect which, in some jurisdictions, suffices to trigger the extension of employment protections; and second, pursuing the ‘holy grail’ of subordination, albeit interpreted *à la européenne*, that is, in a more expansive and less formalistic-technical manner.¹²⁵ The conditional nature of the PfWD’s presumption makes its success highly contingent on the breadth of domestic traditions and judiciary discretion as regards the level of evidence expected. The abstract nature of the phrase ‘facts indicating control and direction’ lends itself to multiple interpretations.

The most significant recognition of the limitations of the rigid binary divide between employment and self-employment comes in the form of the PfWD’s approach to digital rights. By embracing a universalistic framework, the Directive extends protections against algorithmic risks without distinction based on employment status, recognizing that many challenges affect individuals regardless of their contractual classification. Overall, by reaffirming the binary divide between the self-employed and employed workers and opening it up only for the digital stream of rights, the PfWD automatically reinforces

123. Nicola Kountouris, ‘The Concept of “Worker” in European Labour Law: Fragmentation, Autonomy and Scope’ (2018) 47(2) *Industrial Law Journal* 192, doi: 10.1093/indlaw/dwx014.

124. Adalberto Perulli, ‘La presunzione di subordinazione: profili di diritto comparato’ (2024) 2 *Rivista Italiana di Diritto del Lavoro* 173, doi: 10.3280/dt2020-030027.

125. Guy Davidov, ‘The Concept of “Employee”’ in Davidov and others (n 119); Orsola Razzolini, ‘The Need to Go Beyond the Contract: Economic and Bureaucratic Dependence in Personal Work Relations’ (2009) 31 *Comparative Labour Law & Policy Journal* 267, doi: 10.1093/oxfordhb/9780192870360.013.14.

the long-standing problems of labour law being too rigidly attached to the ‘subordination as a gate to the employment protection’ paradigm.¹²⁶

The Directive establishes an *implied* equality principle between people working through a platform and conventional workers not engaged via a platform by encouraging the passage through the definition of ‘worker’ – the common entryway to employment protection legislation.¹²⁷ Nevertheless, upon closer inspection, crossing such a ‘portal’ does not necessarily guarantee effective employment protection. Several idiosyncratic features of work organization within platformized ecosystems complicate the enforcement of provisions related to working time and adequate wages, making it, at best, an uphill battle. A likely scenario is one where platform workers manage to enter the walled garden of employment protections, only to find that they are left with only the low-hanging fruit (that is, the most easily accessible entitlements). All in all, the presumption should be viewed not as an end in itself, but as a means towards achieving effective labour protection and improved job quality.

A vast bulk of labour-specific rights remain status-dependent, thereby reserved for those considered to be in an employment relationship. The design of the health and safety protection under the PfWD is a case in point. Article 12 provides for progressive and overall well-designed protection against health and safety risks related to AM, but targets only platform workers, in line with the personal scope of the Framework Directive on Occupational Safety.¹²⁸ Social protection is likewise excluded for people performing platform work who do not meet the employment criteria. The Directive fails to universalize the personal scope of social rights. In addition, it expressly stresses that the employment presumption does not apply to social security matters, unless Member States decide otherwise (Article 5 (3)). Therefore, the PfWD remains silent on one of the main sources of platform workers’ precarity.

Moreover, the fact that the employment classification grants direct access to the ‘full inventory’ of the employment rights triggers a number of intricate questions. Perhaps the most pertinent one concerns the application of the

126. Critically cf Sandra Fredman and others, ‘Fair Work for Platform Workers: Lessons from the EU Directive and Beyond’ (2025) *Industrial Law Journal*, dwaf018, 10–11, doi: 10.1093/indlaw/dwaf018.

127. The legislative technique mirrors a strategy adopted with more traditional forms of atypical employment. Cf Nicola Kountouris, ‘EU Law and the Regulation of “Atypical” Work’ in Alan Bogg, Cathryn Costello and Anna CL Davies (eds), *Research Handbook on EU Labour Law* (Edward Elgar 2016) 246.

128. Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

working time rules,¹²⁹ and understanding what constitutes a compensable working time¹³⁰ in the context of ‘atomized’ working time¹³¹ and piece-rate payment schemes, not least in the context of the Adequate Minimum Wages Directive.¹³² Given the scope of this article, we are able only to signal the examples of the opening of the Pandora’s box of the problems that are likely to arise when applying the traditional standard employment relationship model to platform-based work arrangements.

4.2. *The PfWD and the medley of digital regulations*

Data has progressively become a central focus of EU regulation.¹³³ Accordingly, the architecture of EU data law is growing ever more complex.¹³⁴ Using an astronomical metaphor to describe the multipolar galaxy of data law, one could venture to say that the PfWD is a satellite of the GDPR, a star around which multiple planets orbit, including the P2B Regulation,¹³⁵ the Data Act,¹³⁶ and the Data Governance Act¹³⁷ and, while the link is less apparent, also the AI Act,¹³⁸ the Digital

129. Tammy Katsabian and Guy Davidov, ‘Flexibility, Choice, and Labour Law: The Challenge of On-Demand Platforms’ (2023) 73(3) *University of Toronto Law Journal* 348, doi: 10.3138/utlj-2021-0113.

130. Venna Dubal, ‘The Legal Uncertainties of Gig Work’ in Davidov and others (n 119) 800; Anna CL Davies, ‘Wages and Working Time in the “Gig Economy”’ (2020) 31 *King’s Law Journal* 250, doi: 10.1080/09615768.2020.1790820.

131. Agnieszka Piasna, ‘Algorithms of Time: How Algorithmic Management Changes the Temporalities of Work and Prospects for Working Time Reduction’ (2024) 48(1) *Cambridge Journal of Economics* 115, doi: 10.1093/cje/bead017.

132. Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union.

133. Michèle Finck, ‘The Maturation of European Data Law: From Fundamental Rights to Economic Rights’ in Jeremias Adams-Prassl and others (eds), *The Internal Market Ideal: Essays in Honour of Stephen Weatherill* (OUP 2024).

134. Thomas Streinz, ‘The Evolution of European Data Law’ in Paul Craig and Gráinne De Búrca (eds), *The Evolution of EU Law* (3rd edn, OUP 2021) 902.

135. Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services.

136. Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonized rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Act).

137. Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act).

138. Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonized rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139

Services Act¹³⁹ and the Digital Market Act.¹⁴⁰ The fundamental right to data protection acts as a magnetic force,¹⁴¹ drawing these pieces of legislation into its orbit, despite the centrifugal forces pulling the AI Act and the GDPR, albeit to a lesser extent, toward a market liberalization trajectory.

The PfWD is to be seen as *lex specialis vis-à-vis* the GDPR. It establishes more specific safeguards in the platform work context, complementing the GDPR rules on the use, disclosure and transparency of automated decision-making systems. As discussed above, it applies more than one laser-sharp fix to the GDPR.¹⁴² It also shares some analogies with other planets in this galaxy, precisely because of its regulatory target, a subset of digital platforms. In fact, both the DSA and the DMA address platforms, though of a different nature. In short, the DSA covers different types of intermediary services, including platforms such as online marketplaces, app stores, collaborative economy platforms, video sharing and adult platforms and social media. The DMA sets objective criteria to qualify a large online platform as a ‘gatekeeper’ and ensures that they act fairly and leave room for contestability. As for the P2B Regulation, it may cover genuinely self-employed platform workers who fall under the definition of ‘business users’ under that instrument. This is the case for people performing platform work as long as they are self-employed and offer services to consumers for purposes relating to their trade.

As regards the AI Act, the PfWD contains no reference whatsoever to it – not even in the recitals – suggesting an apparent lack of coordination between the two instruments, at least from a policy-drafting perspective, and leaving considerable ambiguity as to how they

and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act).

139. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act).

140. Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).

141. Gabriela Zafir-Fortuna, ‘Follow the (Personal) Data: Positioning Data Protection Law as the Cornerstone of EU’s “Fit for the Digital Age” Legislative Package’ in *Two Decades of Personal Data Protection. What Next?* (EDPS 2024) 207.

142. Cf Annex 8, under the heading ‘Overview of complementarities of the preferred option with the proposed AI Act and GDPR’, highlighting a series of gaps in the GDPR regarding automated decision-making. Cf Commission staff working document, impact assessment report, accompanying the document Proposal for a directive of the European Parliament and of the Council to improve the working conditions in platform work in the European Union, SWD(2021) 396 final/2.

should operate in tandem.¹⁴³ Still, if the AMS or ADMS used by platforms fall under the definition of an ‘AI system’ in Article 3(1) of the AI Act, then platforms would assume the role – and responsibilities – of ‘deployers’ as defined in Article 3(4).

There are notable points of both synergy and friction between the AI Act and the PfWD. To point out just a few examples, the red lines set out in Article 7(1)(a), (e), and (f) of the PfWD echo the prohibited AI practices¹⁴⁴ listed in Article 5(1)(f) and (g) of the AI Act, creating a largely coherent regulatory scheme – albeit one partially disrupted by the AI Act’s medical or safety exception, which permits the use of AI systems to infer human emotions in the workplace under specific circumstances. Moreover, the information and consultation duties of digital labour platforms are in accord with the much less developed information obligations of employers acting as deployers under AI Act. Further, according to point 4 Annex III of the AI Act, AI-powered AMS or ADMS qualify as high-risk AI systems when used in contexts such as employment, workforce management, or access to self-employment, particularly for tasks like recruitment, selection, or decisions affecting the conditions of the work relationship. In such cases, the AI Act prescribes a far more comprehensive risk management framework than the one outlined in the PfWD (Article 10 and Article 12(1)). Crucially, the regulatory point of gravity is placed differently: while the AI Act places the main burden on the providers, the PfWD does so on the deployers (that is, platforms). The intricate, yet imperfect, overlap between these two instruments is unlikely to be fully resolved by legislative text alone; only time, practical implementation, interpretative guidelines and case law will gradually untangle their complex interplay. It is worth underscoring that Article 2(11) of the AI Act explicitly allows the EU and Member States to maintain or adopt more protective laws for workers concerning employers’ use of AI. Additional layers of protection may also stem from collective bargaining agreements.

The PfWD offers a remarkably comprehensive approach towards the protection of personal data of all individuals performing platform work. In terms of expanded material scope, it is noteworthy that some provisions apply also during the recruitment or selection procedure (Articles 7(2) and 9(5)) and cover decisions that affect persons performing platform work ‘in

143. Only Recital 57 of the AI Act explicitly states that ‘work-related contractual relationships should involve employees and persons providing services through platforms,’ thereby reinforcing – albeit loosely – the connection between the two instruments.

144. See also European Commission (2025) Annex to the Communication to the Commission Approval of the content of the draft Communication from the Commission – Commission Guidelines on prohibited artificial intelligence practices established by Regulation (EU) 2024/1689 (AI Act) <<https://digital-strategy.ec.europa.eu/en/library/commission-publishes-guidelines-prohibited-artificial-intelligence-ai-practices-defined-ai-act>>.

any manner' (Article 7(3)), thereby capturing any kind of consequence for individuals. It also introduces new measures to broaden protection when decisions on platforms are made or supported by ADMS, thereby encompassing cases where human decision-makers validate a pre-determined decision at the final stage of the process.

It is argued here that the PfWD's chapter on AM represents the first tangible outcome in the long chain of failed attempts to regulate workers' data rights,¹⁴⁵ particularly when considering the (platform) work-specific interventions it introduces for data protection regimes. It both enhances the protection of personal data of those working through platforms, and establishes several new safeguards, compensating for the GDPR's vagueness and inadequacy. The catalogue of data rights has considerably expanded during the drafting process of the Directive, which speaks for the consensus among stakeholders on the need to intervene substantively in this area. The information, notification, explanation, and data access rights are essential for reclaiming control over the work process and asserting labour rights.

The analysis above has demonstrated that the PfWD goes beyond a mere transparency-based approach, as it provides for a duty to evaluate the impact of algorithmic decisions on platform workers (Article 10) and health and safety (Article 12), as well as the human review of algorithmic decisions (Article 11). These provisions represent a powerful set of safeguards, ensuring platforms' accountability for the AM application. That said, the PfWD does not go so far as to establish a fully-fledged due diligence system, with strict monitoring and public reporting requirements. Article 10 obliges platforms to take the steps necessary, which may include the modification or discontinuation of the AM system to avoid harmful decisions in the future. However, the provision is silent on the remediation of the adverse impact of AM decisions on individuals. Neither is there any mention of the platform's duty to take appropriate measures to prevent or, if that is not possible, to mitigate potential adverse impacts of AM on individuals.

Looking at the broader picture, the main drawback of the AM regulation under the PfWD lies in its potential to create a double standard between workers in the platform economy and those in conventional industries. This could undermine the integration of these provisions into domestic law and limit their broader impact, as it risks treating workers unequally based on the sector in which they operate. Much like the AI Act, the PfWD is anything but technology-neutral: it

145. Recommendation No R (89) 2 of the Committee of Ministers to Member States on the Protection of Personal Data Used for Employment Purposes (1989); Recommendation CM/Rec(2015)5 of the Committee of Ministers to Member States on the Processing of Personal Data in the Context of Employment; European Commission, 'Second-Stage Consultation of Social Partners on the Protection of Workers' Personal Data' (2002).

intervenes in automated actions only within specific contexts – specifically, when digital labour platforms serve as the vehicles for such decisions. The merit of the ‘tech-agnostic’ GDPR lies instead in its focus on data processing functions rather than their source or location (Recital 15 of the GDPR).¹⁴⁶

Whether the PfWD blueprint will be used by the future legislature for AM beyond platform work is still uncertain, despite some timid political indications in that direction. In the mid- to long-term, an EU action on AM is expected,¹⁴⁷ yet the Union’s competitiveness agenda could still stall – or at least slow – the path to such reforms. In the meantime, Member States could seize the opportunity presented by transposition to adopt Chapter III of the PfWD as a framework for shaping and reinforcing workers’ data protection, beyond platform work.

AM provisions can serve as a template for future legislation in the field of digital regulation for several reasons. First, such provisions are assisted by an articulated enforcement mechanism enshrined in Chapter V of the Directive. Second, Articles 18, 19, and 20 on the right to individual and collective redress constitute the natural complement to the fundamental right to an effective remedy as per Article 47 of the CFR, particularly in the light of the innovative approach undertaken recently by the CJEU.¹⁴⁸ Third, Member States are required to introduce measures for the protection against any form of adverse treatment (Article 22 of the PfWD) or retaliation (Article 23 of the PfWD). Finally, national authorities extend their supervisory mandate also to enforce the application of AM provisions (Article 24 of the PfWD).

5. Conclusion: Broader implications of the PfWD for EU law and global practices

The significance of the PfWD for EU law mainly derives from its blending of two ‘regulatory domains’,¹⁴⁹ that is, the social and the digital, in an

146. Paul Nemitz, ‘Constitutional Democracy and Technology in the Age of Artificial Intelligence’ (2018) *Philosophical Transactions of the Royal Society A* 376, 20180089; Mireille Hildebrandt and Laura Tielemans, ‘Data Protection by Design and Technology Neutral Law’ (2013) 29 *Computer Law & Security Review* 509, doi: 10.1016/j.clsr.2013.07.004.

147. In her mission letter to Roxana Minzatu, Executive Vice-President for Social Rights and Skills, Quality Jobs and Preparedness, President von der Leyen remarked on the ‘focus on the impact of digitalisation in the world of work’, with specific references to ‘an initiative on algorithmic management’. Cf Ursula Von der Leyen, ‘Roxana Minzatu – Mission Letter’, European Commission, 17 Sept 2024 <commission.europa.eu/document/27ac73de-6b5c-430d-8504-a76b634d5f2d_en>.

148. Case C-715/20, *K.L. v X sp. z o.o.*, EU:C:2024:139, paras 77–82. Cf Sophie Robin-Olivier, ‘The Power of the Right to an Effective Remedy to Horizontalize Directives. Comment on Case C-715/20, X (Absence de motif de résiliation) 20 February 2024’ (2025) 32 *MJ* 1.

149. Kocher (n 43).

unprecedented way. All in all, the PfWD promotes the protection of fundamental workers' rights well beyond the scope of traditional labour legislation. Not only do some of its provisions extend to the self-employed, but also the coverage of 'workers' digital rights' extends beyond the traditional labour rights scope.

On the social side, the Directive is an important, albeit not final, step in countering the precarious working conditions of platform workers. Even though the final text is a more timid intervention than the original proposal tabled by the Commission, the PfWD is a testimony to the resilience of the (broadly understood) concept of subordination in the context of digital and highly atypical work arrangements. It provides a powerful defence of the vitality of labour law in the digital age, countering the narrative of the alleged obsolescence of this field. The introduction of the presumption of employment is a useful tool for facilitating the accommodation of platform workers within existing categories. Yet, the questions about how to react to blurring lines between labour categories and the ever-increasing escape from the standard employment relationship remain unresolved.

While celebrating the PfWD as a milestone in the EU Social Agenda, it must not be forgotten that platform workers are only a fraction of the non-standard, un(der)declared, highly precarious workforce with ambiguous employment status. Those who saw the platform economy regulation as an opportunity to take bold steps towards greater inclusiveness in labour law coverage will be left unsatisfied with the PfWD as an instrument that holds on to the classical paradigm.

On the digital side, the PfWD is a monumental piece of 'targeted' data protection, complementing and enhancing the GDPR's framework. It represents the long-invoked first-ever EU-wide attempt to intervene directly in the area of workers' data rights.¹⁵⁰ It ensures data protection not only by increasing transparency and fairness but also by mandating human oversight and review, safety, and accountability of decisions made or supported by algorithms. Importantly, it recognizes that algorithmic risks affect all individuals performing platform work, regardless of their employment status. Chapter III of the PfWD promises to become a 'pilot program' for the regulation of algorithmic management, hopefully to be implemented also in 'non-platformized' workplaces.

In essence, in straddling these two horses – social *acquis* and digital governance – the Directive shows both daring ambition and built-in tension. The PfWD thus stands as a flagship instrument that marries two seemingly unrelated domains, offering a glimpse of a future where social and digital

150. Mark Freedland, *Data Protection and Employment in the European Union: An Analytical Study of the Law and Practice of Data Protection and the Employment Relationship in the EU and Its Member States* (EC 1999) 1.

regulation are inextricably intertwined. Yet, some of the Directive's achievements cannot be clustered into the 'digital' or 'social' boxes. Questions about its horizontal effect and its enforcement mechanisms go beyond this duality.

Three main points can be pulled out from the legal analysis conducted on the text and context of the PfWD.

First, the PfWD's dual legal basis may be considered as yielding systemic consequences not only in terms of balancing those rights vis-à-vis economic freedoms,¹⁵¹ but also when questioning EU law's direct effect. All obligations contained in Chapters III and IV of the PfWD, based on Article 16(2) TFEU, are to be referred to as the fundamental right to data protection, enshrined in Article 8 CFR. Several other fundamental rights are mentioned in the PfWD Preamble: the right to fair and just working conditions which respect workers' health, safety and dignity (Article 31 CFR); the right to information and consultation (Article 27 CFR); the right to freedom of assembly and association (Article 12 CFR); freedom to conduct a business (Article 16 CFR); and prohibition of discrimination (Article 21 CFR). Only implicitly, Chapter V of the PfWD on remedies and enforcement relies on Article 47 CFR. This triggers the question about the extent to which the express (and implied) references to the Charter allow for deriving the *Drittwirkung* of the relevant fundamental rights.

With regard to Article 27 CFR, the CJEU has held that a provision contained in Directive 2002/14 and addressed to the Member States cannot 'be inferred as a directly applicable rule of law either from the wording of Article 27 CFR or from the explanatory notes to that article'.¹⁵² Conversely, significant weight has been put on Article 21 CFR, not only for its clear, precise, and unconditional character, but also and especially because it carries a fundamental principle of EU law.¹⁵³ Unlike Article 31(2) CFR, the significance of Article 31(1) CFR on health and safety at work is so far underdeveloped in the CJEU case law. While the Court has not ruled on its horizontal direct effect, Article 31(1) is seen as an interpretative tool to

151. Claudia Schubert, 'European Labour Law as Part of an Economic Union, Monetary Union and Community of Values – between Harmonization and Subsidiarity' (2025) Yearbook of European Law.

152. Case C-176/12, *Association de médiation sociale contre Union locale des syndicats CGT e.a.*, EU:C:2014:2, para 49.

153. Case C-555/07, *Seda Küçükdeveci v Swedex GmbH & Co. KG*, EU:C:2010:21, para 50; Case C-414/16, *Vera Egenberger v Evangelisches Werk für Diakonie und Entwicklung e. V.*, EU:C:2018:257, para 76; Case C-68/17, *IR v JQ*, EU:C:2018:696, para 69; Case C-193/17, *Cresco Investigation GmbH v Markus Achatzi*, EU:C:2019:43, para 76.

support workers' rights in disputes involving EU directives¹⁵⁴ and more generally to reinforce the fundamental nature of health, safety, and dignity at work.¹⁵⁵ In a similar vein, Article 8 CFR has not been explicitly conferred horizontal direct effect, but rather used as an interpretative guide for secondary EU law (including the GDPR).¹⁵⁶

In light of this case law, the PfWD constitutes an ideal testbed for Charter rights to be given direct effect. The context is propitious to find in the Directive a means to 'reflect and give effect' to the fundamental right to data protection.¹⁵⁷ In the context of the 'varieties' of data law and platform regulation, the AM section of the PfWD emerges as a tool that deftly integrates data protection – typically consumer or data-subject-oriented¹⁵⁸ – with a distinct focus on workers, who are often inadequately addressed by 'omnibus' frameworks like the GDPR.¹⁵⁹ This is due to the exceptions and carve-outs within the GDPR that undermine its most protective provisions, tipping the balance of fundamental rights in favour of corporate freedom to operate in a structural condition of information asymmetries and unbalanced bargaining powers. The PfWD somewhat leverages the opportunity afforded to Member States by the 'opening clause'¹⁶⁰ of Article 88 of the GDPR to introduce more specific rules protecting the rights and freedoms in respect of the processing of employees' personal data in the employment context.¹⁶¹

Second, much of the employment presumption's effectiveness will depend on its concrete implementation in the Member States. The date of 2 December 2026, which marks the deadline for the transposition of the Directive, will be the moment of truth. It will be essential that a broad

154. Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time; Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

155. Cf Case C-792/22, *MG*, EU:C:2024:788, para 50.

156. Case C-817/19, *Ligue des droits humains ASBL v Conseil des ministres*, EU:C:2022:491, paras 86, 94 and 97. However, see the Opinion of AG Jääskinen in Case C-212/13, *František Ryneš v Úřad pro ochranu osobních údajů*, EU:C:2014:2072, paras 26–29.

157. Case C-233/20, *WD v job-medium GmbH*, EU:C:2021:960, paras 24–25.

158. Einat Albin, 'The Three-Tier Structural Legal Deficit Undermining the Protection of Employees' Personal Data in the Workplace' (2025) 45(1) *Oxford Journal of Legal Studies* 81, doi: 10.1093/ojls/gqae033.

159. Halefom H Abraha, 'A Pragmatic Compromise? The Role of Art. 88 GDPR in Upholding Privacy in the Workplace' (2022) 12 *International Data Privacy Law* 276, doi: 10.1093/idpl/ipac015; Paul De Hert and Hans Lammerant, 'Protection of Personal Data in Work-Related Relations' (European Parliament's Committee on Civil Liberties, Justice and Home Affairs 2013).

160. Abraha (n 159) 277.

161. On the concept of 'more specific rules' cf Case C-34/21, *Hauptpersonalrat der Lehrerinnen und Lehrer beim Hessischen Kultusministerium v Minister des Hessischen Kultusministeriums*, EU:C:2023:270.

interpretation of the notion of ‘direction and control’ is followed, and that account is taken of the varieties of platform business models, including their operation through intermediaries. Platforms are notorious for misclassifying their workers despite countless lost court battles and billions of fines imposed on them. A case in point is Spain, where delivery platforms adopted various organizational responses to the general employment presumption introduced in *Ley Rider*. These responses ranged from the direct hiring of couriers (Just Eat) or outsourcing the activity by hiring third-party companies (Uber Eats) to a sheer continuation of the self-employment model (Glovo, until December 2024).¹⁶² Hence, the mere establishment of an employment presumption is not sufficient to make platforms comply with it.

The final point to take away from this article concerns the global race to regulate platform work: such a race is not over. Further legislative perspectives unfold at the international level, with the International Labour Organization (ILO) pursuing a new labour standard in this regard. The first standard-setting discussion on decent work in the platform economy, held during the International Labour Conference (ILC) in June 2025, marked a crucial step. The tripartite constituents concluded that platform work should be regulated by means of a Convention supported by a Recommendation. This combination allows for balancing the need for a binding, principle-based instrument providing for legal certainty and mandatory minimum standards closing protection gaps, with the need for a flexible framework taking account of different national contexts. The second and final discussion, with a view to adopting the new instruments, is set to take place at the 114th Session of the ILC in 2026.¹⁶³

Much work lies ahead for the tripartite constituents to reach consensus on the substance of the instruments.¹⁶⁴ The draft Convention and Recommendation¹⁶⁵ reflect the highly ambitious substantive scope of the new international labour standard in this regard. Some of the provisions under discussion include: reassurance of the applicability of fundamental rights and principles at work to platform work; protecting platform workers against health and safety risks and violence and harassment; ensuring adequate remuneration and security protection on terms no less favourable

162. Vieira and Mendonça (n 71).

163. ILC.113/Record No 6C <www.ilo.org/sites/default/files/2025-07/ILC113-Record-6C-%5BRELMEETINGS-250613-015%5D-Web-EN_0.pdf>.

164. Most of the points of the proposed Convention and Recommendation have not yet been agreed upon, and are subject to revision during the second discussion in 2026. See ILC.114/Report V(3) <<https://www.ilo.org/sites/default/files/2025-08/ILC114-V%283%29-%5BWORKQ-250714-001%5D-Web-EN.pdf>>.

165. *ibid.*

than those applicable to other workers in a comparable situation; and ensuring access to fair dispute resolution systems. While the importance of a correct employment classification is reaffirmed, much more is done to ensure decent working conditions for all platform workers, regardless of their employment status.

This approach promises to offer a more comprehensive protection than the one relying on the employment-centred approach followed by the EU legislature. At the same time, there is a risk that the conflicting interests of the constituents may lead to a significant watering down of the prospective global standard. While it is still premature to evaluate the linkages between the European and international regulation, it is to be expected that the two levels of intervention will be mutually reinforcing, creating a synergy towards upward convergence, where social and digital rights are reconciled to build a more sustainable future of work.

