



ILERA AFRICA

10TH REGIONAL CONGRESS

3 – 4 APRIL 2024

“The regulation on platform work in the European Union: An innovative approach – but will it work (and how)?”

Prof. Dr. iur. Kurt Paerli

Overview

- I) Introduction**
- II) EU measures for platform workers**
- III About the platform directive**
- IV) Analysis and assessment**

I) Digital platform economy in the European Union

Distribution in the EU:

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

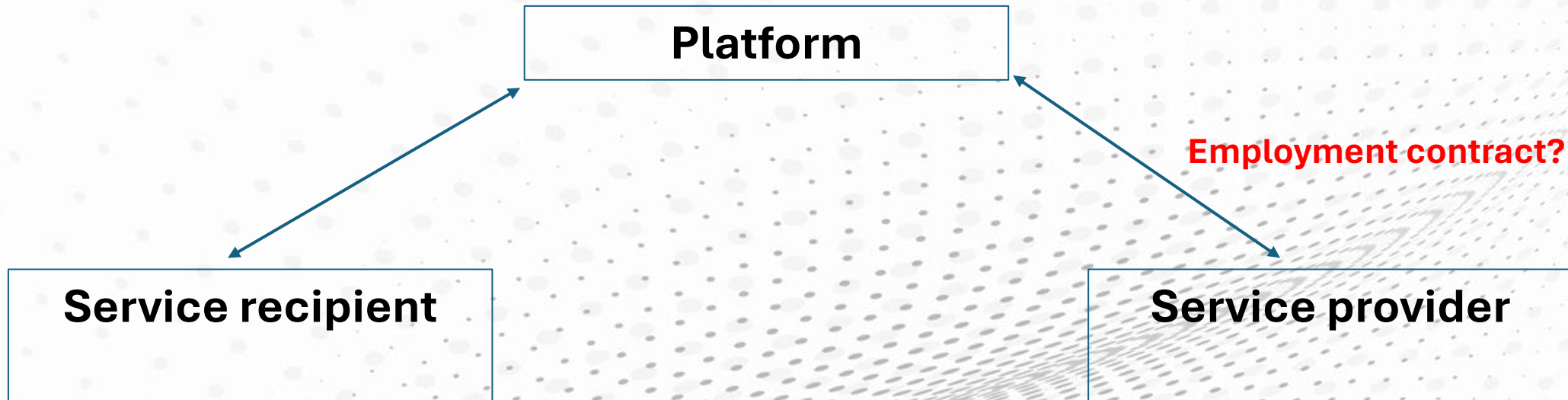
Which kind of work is organised via platforms?

- 39% Taxi, 26% deliver services, 22% cleaning, carework, 13% other tasks

Income, status, social security

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

How does the platform business work?



Further questions:

- Tax law? Social security law? Public Labour law? Agency Work?
- Unfair competition Law?
- Which forum (jurisdiction) / applicable law

What are the problems?

- **«false self-employment»**
 - No protection against dismissal
 - No paid holiday, no application of labour protection law
 - No collective agreements (e.g. antitrust problems)
 - No or insufficient social security
- **Jurisdiction and applicable law**
 - Arbitration clauses in some contracts (problem of access to labour justice)
- **"Algorithmic management"**
 - Lack of transparency
 - surveillance
 - No possibility to contest automated decisions

Overview

-
- I) Introduction
 - II) EU measures for platform workers**
 - III About the platform directive
 - IV) Analysis and assessment
-

II)EU measures for platform workers

Regulations

- Regulation on artificial intelligent
- General regulation on data protection

Directives

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

Softlaw (selection)

- European Commission: Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons
- Social protection for the self-employed Principle 12 of the Pillar of Social Rights

Legislative projects

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

Directive 2019/1152/EU on transparent and predictable working conditions

Contents

- Duty to provide information on key aspects of the employment relationship (in particular also working hours)
- Minimum requirements for working conditions (among others)
 - No probationary period longer than 6 months, no new probationary period for fixed-term employment contracts
 - Permissibility of multiple employment
 - Restrictions on the use of on-call employment contracts
- Ban on "revenge dismissals"

What is the impact of this directive on platform workers?

- Transparent working conditions and guarantee of minimum rights
- But protection only if labour contract exist

Overview

-
- I) Introduction**
 - II) EU measures for platform workers**
 - III About the platform directive**
 - IV) Analysis and assessment**
-

III) About the platform directive

legislative process:

- Draft directive of the Commission of 9 December 2021, EU-Parliament supplemented the proposal
- Council Decision of 12/06/2023 on the opening of negotiations with the EU Parliament
- strong opposition in the Council, especially from **France and Germany** (The presumption rule was particularly controversial)
- Compromise found in March 2024

Content:

- Legal **presumption of employee status**
- Class actions for platform employees
- Protection against dismissal, if claiming platformworkers rights
- Some **rules concerning the algorithmic management**
- Some collective rights (Participation rights and the right to consult experts)

The presumption rule (1)

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

Chapter II of the directive:

Art. 4

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

Art. 5 (presumption rule, see next slide)

Art. 6

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

The presumption rule (2)

Art. 5 (legal presumption)

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

Regulating algorithmic management (1)

Chapter III, Art. 7 – 15 of the directive

- Workers are duly informed about the use of automated monitoring and decision-making systems regarding their recruitment, their working conditions and their earnings, among other things (Art. 9)
- The use of automated monitoring or decision-making systems for the processing of certain types of personal data of persons performing platform work, such as biometric data or their emotional or psychological state is forbidden (Art. 7)

Regulating algorithmic management (2)

- Link to the general data protection regulation
- Human oversight and evaluation are also guaranteed as regards automated decisions, including the right to have those decisions explained and reviewed (Art. 10 – 11)
- Health and safety risks of algorithmic management systems are addressed (Art. 12)
- Information and consultation rights for workers and representatives (Art. 13-15)

Overview

-
- I) Introduction**

 - II) EU measures for platform workers**

 - III About the platform directive**

 - IV) Analysis and assessment**

IV) Analysis and assessment (1)

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

IV) Analysis and assessment (2)

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

Thank you for your attention.

Contact:

Prof. Dr. iur. Paerli
Faculty of Law at University of Basel
Peter Merian-Weg 8
CH-4002 Basel
Kurt.paerli@unibas.ch

