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**The Employment Illusion: Platform Work, Misclassification, and
the Incompleteness of Social Security in Europe**

PhD Thesis

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Supervisor's Evaluation of the PhD Thesis

Candidate: Csaba Szabó Title: *The Employment Illusion: Platform Work, Misclassification, and the Incompleteness of Social Security in Europe*

The doctoral thesis submitted by Csaba Szabó addresses a highly topical and structurally significant issue within contemporary European labour and social security law: the legal and institutional implications of platform work. The dissertation situates itself at the intersection of labour law, social security law, and broader socio-economic transformations driven by digitalisation, thereby demonstrating both relevance and timeliness.

The thesis is built on a clear and coherent central premise: namely, that employment classification in the platform economy serves as a decisive gateway to social protection. By conceptualising misclassification not merely as a doctrinal labour law issue but as a structural challenge for employment-centred welfare systems, the candidate develops a nuanced and integrated analytical framework. This approach reflects a strong understanding of the interconnected nature of labour law and social security law within the European context.

From a structural perspective, the thesis is well-organised and follows a logical progression. It moves systematically from contextual and conceptual foundations to doctrinal analysis and, finally, to regulatory and institutional evaluation. The introductory chapters provide a comprehensive overview of platform work as a socio-legal phenomenon, carefully situating it within the broader evolution of labour markets in the European Union. The emphasis on Central and Eastern European Member States is particularly valuable, as it adds depth to the analysis and highlights regional specificities within a unified EU legal framework.

The methodological approach adopted in the thesis is grounded in doctrinal legal analysis, complemented by comparative perspectives and engagement with academic and policy literature. The candidate demonstrates a solid command of EU law, including key legislative instruments and the jurisprudence of the Court of Justice of the European Union.

A notable strength of the dissertation lies in its ability to connect legal doctrine with broader institutional and socio-economic considerations. The candidate convincingly illustrates how misclassification in the platform economy affects not only individual workers but also the

functioning and sustainability of social security systems. By highlighting the links among employment status, contribution flows, and access to social protection, the thesis provides a comprehensive, multi-layered understanding of the issue.

The analysis of Directive (EU) 2024/2831 on platform work constitutes a central and particularly well-developed part of the thesis. The candidate carefully examines the introduction of the rebuttable presumption of employment and situates it within the broader evolution of EU labour law. The discussion demonstrates a clear understanding of both the legal and practical implications of the Directive, including its role in addressing misclassification and its potential impact on national legal systems.

Furthermore, the thesis successfully engages with fundamental questions concerning the future of social protection in Europe. The discussion on the relationship between employment status and social security inclusion, as well as the exploration of possible regulatory responses, reflects a forward-looking and policy-relevant perspective. The candidate's ability to articulate these broader implications enhances the research's academic and practical value.

The writing style is clear, formal, and consistent with academic standards. The argumentation is structured and coherent, allowing the reader to follow the development of the thesis without difficulty. The use of terminology is precise, and the candidate demonstrates confidence in handling complex legal concepts.

In terms of contribution, the thesis adds meaningful insight to ongoing scholarly debates on platform work, misclassification, and the sustainability of European welfare systems. The focus on the Central and Eastern European context is particularly noteworthy, as it brings attention to a region that is often underrepresented in the existing literature. By integrating this regional perspective into a broader European framework, the thesis achieves both specificity and general relevance.

In conclusion, Csaba Szabó's doctoral thesis represents a well-structured, analytically sound, and relevant piece of academic work. It demonstrates a high level of legal understanding, methodological competence, and the ability to engage with complex and evolving issues in European labour and social security law. The dissertation makes a valuable contribution to the field and meets the requirements expected of doctoral research.

Supervisor,

Prof. Dr. Grega Strban.

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Chapter 1: Research Scope, Questions, Methodology and Structure

1.1. Research Scope, Questions and Regional Emphasis

This thesis is situated within the broader European legal and institutional framework governing labour markets and social protection. Its primary analytical scope is the European Union, understood as a supranational regulatory order in which employment law, social security coordination, and judicial interpretation interact continuously. Platform work is not a national anomaly but a European, even worldwide phenomenon, shaped simultaneously by internal market dynamics, digitalisation, and an innovative but incomplete EU-level regulatory response.¹

Within this European horizon, particular emphasis is placed on Central and Eastern European Member States since this regional focus does not narrow the analytical lens; rather, it provides a structured comparative perspective through which the resilience and adaptability of employment-centred welfare systems can be examined. Central and Eastern European countries are embedded within the same EU legal architecture as Western Member States, subject to CJEU jurisprudence, secondary legislation, and social security coordination rules.² Yet they display distinctive institutional trajectories that render the tensions of platform work particularly visible.³

First, Central and Eastern European legal systems share a post-transition legacy that continues to shape labour law doctrine. The transformation from centrally planned to market-based economies in the 1990s produced regulatory environments that actively encouraged contractual autonomy and flexibility in civil law.⁴ Interestingly, as a result, employment definitions in Hungary⁵, Romania⁶,

¹ Barnard, C. (2012). *EU employment law* (5th ed.). Oxford University Press, pp. 155–158.

² Aloisi, Antonio. (2015). *Commoditized Workers. Case Study Research on Labour Law Issues Arising from a Set of 'On-Demand/Gig Economy' Platforms.* , pp. 671-675.

³ Jeremias Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy*, p. 5.

⁴ Gyulavári, T., & Menegatti, E. (Eds.). (2019). *The sources of labour law*. Kluwer Law International, pp. 55–60.

⁵ Act I of 2012 on the Labour Code (Hungary).

⁶ Law No. 53/2003 on the Labour Code (Romania).

and Slovakia⁷ remain strongly influenced by formalistic indicators of subordination and contractual designation. While such formalism provides legal certainty, it may insufficiently capture the functional and algorithmic forms of control characteristic of platform-mediated work. The tension between formal contract doctrine and economic dependency is therefore especially pronounced in this region.

Second, the CEE context highlights the fiscal implications of misclassification with particular clarity. Contribution-based, pay-as-you-go systems dominate the region, and social insurance remains tightly linked to formal employment status. As Baldwin has demonstrated, Bismarckian systems historically rely on stable employment relationships as the financial structure of solidarity.⁸ When economically dependent workers are classified as self-employed, employer contributions disappear, narrowing contribution pools. OECD analysis confirms that the growth of non-standard work and self-employment poses measurable risks to the financing of contributory schemes.⁹ In Member States facing demographic ageing, outward labour migration, and relatively smaller contribution bases, the cumulative fiscal consequences of platform misclassification may be particularly acute.

Third, EU law operates as an integration catalyst capable of reshaping domestic classification regimes. The autonomous EU concept of “worker,” as articulated by the Court of Justice in cases such as *Lawrie-Blum* and *Allonby*, prioritises economic reality over formal designation.¹⁰¹¹ The Platform Work Directive builds upon this jurisprudence by introducing a rebuttable presumption of employment, thereby encouraging Member States to align domestic law with functional dependency criteria. Directive (EU) 2024/2831 thus represents not only a regulatory instrument but also a constitutional moment in the evolution of EU labour governance.¹²

⁷ Act No. 311/2001 on the Labour Code (Slovakia).

⁸ Baldwin, P. (1990). *The politics of social solidarity: Class bases of the European welfare state 1875–1975*. Cambridge University Press, pp. 68–72.

⁹ Organisation for Economic Co-operation and Development (OECD). (2018). *Non-standard work and the future of social protection*. OECD Publishing, pp. 25–27, 89–94.

¹⁰ Court of Justice of the European Union. (1986). Case 66/85, *Deborah Lawrie-Blum v Land Baden-Württemberg* [1986] ECR 2121, paras. 16–18.

¹¹ Court of Justice of the European Union. (2004). Case C-256/01, *Debra Allonby v Accrington & Rossendale College* [2004] ECR I-873, paras. 67–71.

¹² Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work.

Against this European and regionally contextualised backdrop, the thesis pursues four interrelated research questions:

How do existing national definitions of “employee” and “self-employed” within EU Member States, particularly in Central and Eastern Europe, contribute to the persistence of social protection gaps affecting platform workers?

To what extent does CJEU jurisprudence on the autonomous concept of “worker” reflect and accommodate the realities of algorithmic management and digitally mediated economic dependence?

What institutional, legal, and administrative challenges arise in the implementation of the rebuttable presumption of employment introduced by Directive (EU) 2024/2831, especially in jurisdictions characterised by formalistic classification traditions?

Beyond formal transposition, what structural reforms are necessary to ensure that employment-centred social insurance systems across Europe remain equitable, adequate, and fiscally sustainable in the context of platform-mediated labour?

By adopting a European frame while emphasising the Central and Eastern European experience, the thesis seeks to contribute to ongoing scholarly debates on the future of the European social model. As Freedland and Kountouris argue, employment status functions as a normative allocation device for social and economic risk.¹³ The present research examines whether this allocation mechanism can withstand the pressures of digital labour markets without compromising the principles of solidarity and universality that underpin European social security systems.

The Central and Eastern European region, therefore, serves not as an outlier but as a revealing microcosm of broader European challenges. Through this comparative emphasis, the thesis aims to illuminate how national institutional design mediates the transformative potential of EU labour regulation in the digital age.

¹³ Freedland, M., & Kountouris, N. (2011). *The legal construction of personal work relations*. Oxford University Press, pp. 18–22.

1.2. Methodology and Contribution

This thesis adopts a doctrinal comparative legal methodology situated within the European multi-level governance framework. At its core, the research is grounded in the systematic interpretation of legal norms governing employment classification and social security inclusion. However, doctrinal analysis alone would be insufficient to capture the structural implications of platform-mediated work. Accordingly, the study situates doctrinal interpretation within its broader institutional and socio-economic context, particularly in Central and Eastern Europe.

The primary methodological foundation is traditional legal analysis: close reading, interpretation, and systematisation of statutory provisions, directives, and judicial decisions. As McCrudden has observed, doctrinal methodology remains indispensable in European legal scholarship, particularly where the interaction between national and supranational norms shapes regulatory outcomes.¹⁴ The present thesis therefore analyses:

EU legal instruments, including Directive (EU) 2024/2831 on improving working conditions in platform work, the social security coordination framework (Regulations 883/2004 and 987/2009), and relevant CJEU jurisprudence on the autonomous concept of “worker.”¹⁵¹⁶ The jurisprudential analysis of *Lawrie-Blum* and *Allonby* serves as a doctrinal anchor for assessing the functional understanding of economic dependence under EU law.¹⁷¹⁸

National legal frameworks in Hungary, Romania, and Slovakia. Comparative legal methodology is particularly appropriate here, as it reveals how shared EU obligations interact with divergent domestic traditions.¹⁹ By conflicting post-transition formalism with EU functionalism, the research identifies structural friction points in classification doctrine.

¹⁴ McCrudden, C. (2006). Legal research and the social sciences. *Law Quarterly Review*, 122, 632–650.

¹⁵ Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work.

¹⁶ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

¹⁷ Court of Justice of the European Union. (1986). Case 66/85, *Deborah Lawrie-Blum v Land Baden-Württemberg* [1986] ECR 2121, paras. 16–18.

¹⁸ Court of Justice of the European Union. (2004). Case C-256/01, *Debra Allonby v Accrington & Rossendale College* [2004] ECR I-873, paras. 67–71.

¹⁹ Gyulavári, T., & Menegatti, E. (Eds.). (2019). *The sources of labour law*. Kluwer Law International, pp. 55–60.

Academic and policy literature addressing platform work, precarious employment, and welfare sustainability. The study engages with leading European scholarship on the construction of employment status, risk allocation, and algorithmic management.²⁰²¹ It also integrates institutional analyses from the OECD and Eurofound to situate doctrinal findings within broader fiscal and labour market trends.²²²³

Methodologically, the thesis does not adopt a purely descriptive comparative model. Rather, it follows a problem-driven approach. The research question of whether employment-centred social insurance systems can remain equitable and sustainable under conditions of platform-mediated misclassification requires normative evaluation. In this respect, the thesis draws on purposive labour law theory, which emphasises that legal categories must be interpreted in light of their social function.²⁴ Employment classification is therefore analysed not merely as a technical doctrinal issue, but as a mechanism for allocating social and economic risk.

The comparative emphasis on Central and Eastern European Member States is methodologically deliberate. As Zweigert and Kötz have noted, comparison reveals the contingency of legal categories by exposing their structural assumptions.²⁵ The Central and Eastern European context, characterised by employment-centred contributory systems and post-transition contractual formalism, provides a revealing environment in which to test the resilience of classification doctrine. The aim is not to treat the region as exceptional, but to use it as a lens through which broader European tensions between digital labour markets and social solidarity become visible.

The contribution of this thesis is therefore twofold.

First, it offers regional specificity within a European analytical frame. While platform work has generated extensive scholarship in Western Europe, the social security dimension in Central and

²⁰ Freedland, M., & Kountouris, N. (2011). *The legal construction of personal work relations*. Oxford University Press, pp. 18–22.

²¹ Aloisi, A., & De Stefano, V. (2022). *Your boss is an algorithm: Artificial intelligence, platform work and labour*. Hart Publishing, pp. 63–78.

²² Organisation for Economic Co-operation and Development (OECD). (2018). *Non-standard work and the future of social protection*. OECD Publishing, pp. 25–27, 89–94.

²³ Eurofound. (2018). *Employment and working conditions of selected types of platform work*. Publications Office of the European Union, pp. 24–25, 52–53.

²⁴ Davidov, G. (2016). *A purposive approach to labour law*. Oxford University Press, pp. 18–25.

²⁵ Zweigert, K., & Kötz, H. (1998). *An introduction to comparative law* (3rd ed.). Oxford University Press, pp. 34–40.

Eastern Europe remains comparatively underexplored. By analysing Hungary, Romania, and Slovakia within the EU framework, the thesis fills an identifiable gap in the literature.

Second, the thesis provides regulatory foresight. Rather than limiting itself to the doctrinal analysis of the Directive on Platform Work, it anticipates the structural challenges of transposition, enforcement, and fiscal integration. It evaluates not only whether the rebuttable presumption of employment may improve classification accuracy, but also how its implementation may affect contribution flows, administrative practice, and judicial interpretation in employment-centred welfare systems.

In doing so, the thesis advances an integrated understanding of labour law and social security law. It argues that misclassification is not a peripheral irregularity but a structural fault line within employment-based welfare states, serving as a barrier to further labour law standards and social security benefits. The methodological ambition is therefore to bridge doctrinal analysis and institutional sustainability, demonstrating that the future of social protection in Europe depends on aligning employment classification with the economic realities of digitally mediated work.

1.3. Problem Statement and Research Rationale

1.3.1. The Nexus Between Misclassification and the Social Protection Gap

The central problem addressed in this thesis is not merely the emergence of new labour market forms, but the structural inadequacy of social security systems in accommodating platform-mediated work within employment-centred welfare regimes, particularly in Central and Eastern Europe. At the core of this inadequacy lies the pervasive phenomenon of bogus self-employment: the formal classification of economically dependent workers as independent contractors for labour and social security law.

Misclassification in the platform economy is neither incidental nor a by-product of regulatory uncertainty; rather, it constitutes a business model logic. As De Stefano has argued, platform-based labour arrangements often deliberately externalise employment-related risks and costs, shifting

social insurance obligations and risk allocation away from firms and onto workers or the state.²⁶ By denying employee status, platforms avoid employer contributions, dismissal protection, collective bargaining obligations, and social insurance financing responsibilities. However, this formal denial frequently coexists with significant economic dependency and algorithmically mediated control.

This structural mismatch between legal form and economic reality is not new in principle. Freedland and Kountouris have long demonstrated that the employment relationship functions as a legal construct that allocates responsibility within personal work relations.²⁷ Classification, therefore, determines who bears social risk. In Bismarckian systems, dominant across Central and Eastern Europe, employment status is not merely symbolic; it is constitutive of social insurance inclusion.²⁸

At the micro-level, misclassification produces immediate and tangible exclusion from core branches of social protection. Pension accumulation becomes fragmented or voluntary. Occupational accident insurance, traditionally financed through employer contributions, may be unavailable. Unemployment protection and paid sick leave are frequently inaccessible. Eurofound's comparative research confirms that platform workers across the European Union experience significant gaps in access to contributory schemes due to their formal classification as self-employed.²⁹

The Central and Eastern European context intensifies these consequences. In Romania, under Law No. 227/2015, social insurance coverage for self-employed persons depends on declared income thresholds and voluntary enrolment, which frequently results in lower effective coverage.³⁰ In Hungary, Act LXXX of 1997 structures sickness and maternity benefits around employment-based contribution records, leaving many self-employed platform workers outside automatic

²⁶ De Stefano, V. (2016). The rise of the “just-in-time workforce”: On-demand work, crowdwork, and labour protection in the “gig-economy.” *Comparative Labour Law & Policy Journal*, 37(3), 471–504.

²⁷ Freedland, M., & Kountouris, N. (2011). *The legal construction of personal work relations*. Oxford University Press, pp. 18-22.

²⁸ Baldwin, P. (1990). *The politics of social solidarity: Class bases of the European welfare state 1875–1975*. Cambridge University Press, pp. 68-72.

²⁹ Eurofound. (2018). *Employment and working conditions of selected types of platform work*. Publications Office of the European Union, pp. 24-25, and pp. 52-53.

³⁰ Organisation for Economic Co-operation and Development (OECD). (2018). *Non-standard work and the future of social protection*. OECD Publishing, pp. 25-27.

protection.³¹ In Slovakia, Act No. 461/2003 on Social Insurance ties unemployment and pension entitlements to the continuity of contributions, which is often disrupted in platform-mediated arrangements such as civil contracts of service providers.³²

These individual-level consequences raise broader normative concerns. As Marshall's theory of social citizenship underscores, social rights are integral to full membership in modern societies.³³ When economically dependent workers are systematically excluded from contributory systems due to formal classification, the promise of social citizenship becomes unevenly distributed.

However, the problem extends beyond individual vulnerability. At the macro-level, misclassification undermines the fiscal architecture of social insurance. Employer contributions constitute a central revenue pillar of pay-as-you-go pension systems and occupational risk insurance schemes. OECD analysis has warned that the expansion of non-standard and self-employed work may erode contribution bases and compromise the long-term sustainability of social security systems.³⁴ In Central and Eastern Europe, regions already confronting demographic ageing, labour emigration, and shrinking active populations, the cumulative effect of misclassified platform work further aggravates structural pressures on financing.³⁵

Therefore, the social protection gap generated by platform work is not an isolated regulatory anomaly. It is the manifestation of a deeper structural tension between digitally mediated labour markets and employment-centred welfare institutions.

The nexus between misclassification and social protection is thus both legal and institutional, due to the fact that it raises a fundamental question: can contributory welfare states maintain fiscal and normative coherence when economically dependent labour is systematically detached from employer responsibility?

³¹ Marshall, T. H. (1992). *Citizenship and social class*. Pluto Press, pp. 8-9.

³² Palier, B., & Thelen, K. (2010). Institutionalizing dualism: Complementarities and change in France and Germany. *Politics & Society*, 38(1), 119–148. Pp. 123-128.

³³ Prassl, J. (2018). *Humans as a service: The promise and perils of work in the gig economy*. Oxford University Press, pp. 56-63.

³⁴ Aloisi, A., & De Stefano, V. (2022). *Your boss is an algorithm: Artificial intelligence, platform work and labour*. Hart Publishing, pp. 63-78.

³⁵ Palier, B., & Thelen, K. (2010). Institutionalizing dualism: Complementarities and change in France and Germany. *Politics & Society*, 46(1), 119–148, pp. 123–128.

1.3.1. Rationale for Focusing on the EU Platform Work Directive

The adoption of Directive (EU) 2024/2831 on improving working conditions in platform work constitutes the most consequential supranational intervention to date in the governance of digitally mediated labour within the European Union. The Directive addresses what may be termed the “classification paradox”: the coexistence of formal self-employment with substantive economic dependence. By introducing a rebuttable presumption of employment, the Directive recalibrates the evidentiary architecture of labour classification. Rather than requiring workers to prove subordination, the burden shifts to platforms, which must demonstrate the genuineness of self-employment when specified control indicators are met.

This shift is not merely procedural; it reflects a normative repositioning of EU labour law. The Directive builds upon a long-standing line of CJEU jurisprudence that defines “worker” autonomously and functionally, focusing on the performance of services for and under the direction of another in return for remuneration.³⁶ In *Lawrie-Blum*, the Court rejected formalistic contractual labels and emphasised economic reality.³⁷ In *Allonby*, it further stressed economic dependence and integration within an organisational structure.³⁸ The Platform Work Directive gathers and implements these principles legislatively, translating jurisprudential standards into enforceable presumptions.

From the perspective of Central and Eastern Europe, this development is particularly significant. Labour law systems, for example, in Hungary, Romania, and Slovakia, remain strongly influenced by formal contract doctrine. Hungarian Act I of 2012 on the Labour Code emphasises hierarchical subordination in its statutory definition of employment.³⁹ Romanian Law No. 53/2003 similarly relies on classical indicia of control, supervision, and integration.⁴⁰ Slovak Act No. 311/2001 sets out comparable criteria, which courts often interpret conservatively.⁴¹ These legal frameworks

³⁶ Barnard, C. (2012). *EU employment law* (5th ed.). Oxford University Press, pp. 155-158.

³⁷ Court of Justice of the European Union. (1986). Case 66/85, *Deborah Lawrie-Blum v Land Baden-Württemberg* [1986] ECR 2121, paras. 16–18.

³⁸ Court of Justice of the European Union. (2004). Case C-256/01, *Debra Allonby v Accrington & Rossendale College* [2004] ECR I-873, paras. 67–71.

³⁹ Act I of 2012 on the Labour Code (Hungary).

⁴⁰ Law No. 53/2003 on the Labour Code (Romania).

⁴¹ Act No. 311/2001 on the Labour Code (Slovakia).

evolved in post-transition contexts where civil contract flexibility was encouraged as part of market liberalisation. However, such formalism proves increasingly inadequate in the context of algorithmic management, where control is exerted digitally rather than through visible managerial oversight.

The Directive challenges this formalism by privileging functional dependency over contractual denomination. In doing so, it implicitly aligns with doctrinal scholarship emphasising the need to interpret employment status purposively. As Freedland and Kountouris argue, the employment relationship is a normative allocation device for risk and responsibility within personal work relations.⁴² Similarly, Davidov maintains that labour law must interpret protective categories in light of their social purpose rather than formal labels.⁴³ The presumption of employment can thus be understood as a structural corrective against strategic regulatory avoidance.

Importantly, the Directive's relevance should further extend beyond labour law doctrine. In employment-centred welfare regimes, classification determines access to contributory social insurance systems. Employer contributions finance unemployment benefits, occupational accident schemes, and pensions. OECD analysis confirms that the expansion of non-standard and self-employed work can erode contribution bases and undermine long-term fiscal sustainability.⁴⁴ In Central and Eastern European countries, where demographic ageing, outward labour migration, and relatively narrow contribution pools already strain public finances and sustainability, the recovery of employer contributions through reclassification may have tangible financial significance.

Therefore, the Directive operates on two interrelated levels. First, it functions as a protective instrument designed to secure labour rights for economically dependent platform workers. Second, it should act as a fiscal stabilisation mechanism within employment-centred social insurance systems. For Central and Eastern Europe, where formalistic classification regimes intersect with fragile contributory structures, the Directive should represent not only regulatory harmonisation but also the potential for systemic recalibration.

⁴² Freedland, M., & Kountouris, N. (2011). The legal construction of personal work relations. Oxford University Press, pp. 18-22.

⁴³ Davidov, G. (2016). A purposive approach to labour law. Oxford University Press, 18-25.

⁴⁴ Organisation for Economic Co-operation and Development (OECD). (2018). Non-standard work and the future of social protection. OECD Publishing, pp. 25-27, and 89-94.

The present thesis, therefore, places the Platform Work Directive at the centre of its analysis, treating it not as an isolated legislative reform but as a key instrument reshaping the interaction between labour-law classification and social-security sustainability in the digital age.

1.4. Research Context

The turn of the twenty-first century does not merely mark technological progress in labour markets; it signals a structural reconfiguration of how work is organised, controlled, managed, distributed, and remunerated. The rapid convergence of digital platforms, mobile connectivity, data analytics, and algorithmic management systems has resulted in a new type of labour intermediation in which work is allocated, monitored, and evaluated through digital infrastructures rather than traditional managerial hierarchies.⁴⁵ The platform economy represents the most visible institutional expression of this transformation. By connecting service providers and consumers, clients across borders in real time, platforms have created an economic ecosystem that operates transnationally while remaining vaguely embedded within nationally bounded legal and social security systems.

This transformation has accelerated the spread of non-standard forms of employment, including gig work, on-demand services, micro-tasking, crowdwork, and short-term project-based assignments.⁴⁶ While such forms of work are often presented as innovative expressions of entrepreneurial autonomy, they collectively challenge the binary legal categories that have historically structured European labour and social security law: employee versus self-employed.⁴⁷ The digital economy thus exposes the fragility of a classificatory architecture designed for industrial-era employment relationships.

European welfare states have long been organised around the standard employment relationship. The standard employment relationship, typically defined by full-time, open-ended employment

⁴⁵ Aloisi, A., & De Stefano, V. (2022). *Your Boss Is an Algorithm: Artificial Intelligence, Platform Work and Labour*. Hart Publishing, pp. 63–78.

⁴⁶ De Stefano, V. (2016). The rise of the “just-in-time workforce”: On-demand work, crowdwork and labour protection in the gig-economy. *Comparative Labour Law & Policy Journal*, 37, 471–504.

⁴⁷ Davidov, G. (2016). *A Purposive Approach to Labour Law*. Oxford University Press, pp. 18–25.

performed under legal subordination, has functioned not merely as a labour law category but also as the institutional gateway to social citizenship.⁴⁸ As Marshall famously argued, social rights form an integral dimension of modern citizenship.⁴⁹ In continental, Central, and Eastern European (CEE) welfare systems, these social rights have been operationalised primarily through contributory social insurance schemes linked to employment status. The employer's role is therefore constitutive: it ensures registration, payment of contributions, and enforcement within a Bismarckian framework of risk pooling and intergenerational solidarity.⁵⁰

Central and Eastern Europe exemplify this employment-centred architecture. Hungarian Act LXXX of 1997 on Social Security mandates compulsory contributions from both employers and employees.⁵¹ Romanian Law No. 227/2015 (Fiscal Code) similarly structures social insurance financing on an employment-based basis.⁵² Slovak Act No. 461/2003 on Social Insurance establishes a contributory system in which employee status triggers automatic coverage and employer responsibility.⁵³ Across these jurisdictions, the standard employment relationship functions as the institutional foundation of social protection, ensuring access to sickness benefits, unemployment insurance, occupational accident coverage, maternity protection, and contributory pensions.

However, platform work intimidates this institutional equilibrium. By systematically classifying workers as independent contractors as self-employed, platforms formally detach labour from the employment relationship while substantively retaining control through algorithmic governance. As Aloisi and De Stefano have demonstrated, algorithmic management replicates core employer functions, task allocation, performance monitoring, pricing control, and sanctioning, while obscuring traditional indicia of subordination.⁵⁴ Similarly, Prassl has shown that platforms

⁴⁸ Freedland, M., & Kountouris, N. (2011). *The Legal Construction of Personal Work Relations*. Oxford University Press, pp. 18–22.

⁴⁹ Marshall, T. H. (1992). *Citizenship and Social Class*. Pluto Press, pp. 8–9.

⁵⁰ Baldwin, P. (1990). *The Politics of Social Solidarity: Class Bases of the European Welfare State 1875–1975*. Cambridge University Press, pp. 68–72.

⁵¹ Act LXXX of 1997 on Social Security (Hungary).

⁵² Law No. 227/2015 on the Fiscal Code (Romania).

⁵³ Act No. 461/2003 on Social Insurance (Slovakia).

⁵⁴ Aloisi, A., & De Stefano, V. (2022). *Your Boss Is an Algorithm: Artificial Intelligence, Platform Work and Labour*. Hart Publishing, pp. 63–70.

frequently exercise “functional employer powers” without assuming corresponding legal responsibilities.⁵⁵

This strategic misclassification has direct implications for social security systems. In employment-centred welfare regimes, employer contributions are not optional; they constitute the financial, structural backbone of social insurance. By externalising workers into self-employed categories, platforms avoid mandatory contributions to unemployment funds, accident insurance schemes, and pension systems. Eurofound’s comparative research confirms that platform workers across Europe experience reduced access to contributory social protection, precisely because of their formal classification.⁵⁶ In CEE Member States, where voluntary social insurance mechanisms often provide lower coverage and weaker enforcement, the protection gap becomes particularly pronounced.

The consequences extend beyond individual precarity, since at the systemic level, the erosion of the employer contribution base threatens the fiscal sustainability of pay-as-you-go pension systems and public healthcare financing. OECD analysis has warned that the expansion of non-standard and self-employed work arrangements may undermine the long-term viability of contribution-based social protection models.⁵⁷ In Central and Eastern Europe, regions already confronting demographic ageing, labour emigration, and shrinking contribution pools, the proliferation of misclassified platform work exacerbates structural vulnerabilities.⁵⁸

Therefore, the crisis triggered by platform work is not merely a doctrinal dispute about worker status; it is rather a structural challenge to the institutional design of European social security systems. The question is not simply whether platform workers are employees or self-employed; it is whether employment-centred welfare states can sustain social solidarity in a labour market increasingly mediated by digital platforms.

⁵⁵ Prassl, J. (2018). *Humans as a Service: The Promise and Perils of Work in the Gig Economy*. Oxford University Press, pp. 56–63.

⁵⁶ Eurofound. (2018). *Employment and Working Conditions of Selected Types of Platform Work*. Publications Office of the European Union, pp. 24–25, 52–53.

⁵⁷ OECD. (2018). *Non-Standard Work and the Future of Social Protection*. OECD Publishing, pp. 25–27, 89–94.

⁵⁸ Palier, B., & Thelen, K. (2010). Institutionalizing dualism: Complementarities and change in France and Germany. *Politics & Society*, 46(1), 119–148, at pp. 123–128.

1.5. Structure of the Thesis and Interconnections

The present thesis is structured as a continuous and deductive inquiry that moves from contextual diagnosis to doctrinal clarification and ultimately to regulatory and institutional evaluation. Its architecture reflects the central premise that platform work is not merely a labour-market innovation but a structural challenge to employment-centred social security systems in Europe.⁵⁹ The argument unfolds progressively: technological transformation generates new forms of dependency; legal classification mediates access to social protection; and regulatory intervention attempts to realign law with economic reality.

The opening analytical sections situate platform work within the broader European transformation of labour markets. Digitalisation, algorithmic management, and cross-border service provision have reshaped the organisation of work across Member States.⁶⁰ While these developments affect the European Union as a whole, their implications are particularly evident in Central and Eastern Europe, where contributory social insurance systems remain closely linked to formal employment status.⁶¹ After going through the evolution of the European response to the given fundamental issue examined, the contextual analysis, therefore, establishes that the rise of platform-mediated labour intersects directly with the institutional design of European welfare regimes, especially those rooted in Bismarckian contributory traditions.⁶²

Building on this foundation, the thesis examines the social protection gap resulting from misclassification. Employment status functions as the gateway to contributory social insurance, determining access to unemployment benefits, sickness coverage, occupational accident insurance, and pension accrual.⁶³ When platform workers are formally classified as self-employed, employer contributions are absent, and coverage is often voluntary, fragmented, or incomplete. OECD research confirms that the expansion of non-standard work may erode contribution bases and

⁵⁹ Baldwin, P. (1990). *The politics of social solidarity: Class bases of the European welfare state 1875–1975*. Cambridge University Press, pp. 68–72.

⁶⁰ Aloisi, A., & De Stefano, V. (2022). *Your boss is an algorithm: Artificial intelligence, platform work and labour*. Hart Publishing, pp. 63–78.

⁶¹ OECD. (2018). *Non-standard work and the future of social protection*. OECD Publishing, pp. 25–27.

⁶² Baldwin, P. (1990). *The politics of social solidarity: Class bases of the European welfare state 1875–1975*. Cambridge University Press, pp. 68–72.

⁶³ Freedland, M., & Kountouris, N. (2011). *The legal construction of personal work relations*. Oxford University Press, pp. 18–22.

undermine the long-term sustainability of social insurance systems.⁶⁴ Thus, the protection gap is both an individual vulnerability and a systemic fiscal concern.

The subsequent doctrinal analysis examines the legal mechanisms that perpetuate misclassification. It explores the conceptual distinction between “employee” and “self-employed” in both national law and EU jurisprudence. The Court of Justice has consistently emphasised that the essential feature of a worker is the performance of services for and under the direction of another in return for remuneration.⁶⁵ In *Lawrie-Blum*, the Court rejected purely formal contractual approaches in favour of economic reality.⁶⁶ In *Allonby*, it further stressed functional dependency and organisational integration.⁶⁷ These doctrinal foundations are examined alongside national classification frameworks in Central and Eastern Europe, where contractual formalism may complicate the functional recognition of dependency.

The thesis then turns to the EU Platform Work Directive as a structural response to this classification paradox. Directive (EU) 2024/2831 introduces a rebuttable presumption of employment to facilitate correct status determination.⁶⁸ Rather than substantively redefining employment, it alters the evidentiary architecture, shifting the burden of proof to platforms. In doing so, it builds upon the functional approach developed in CJEU case law and seeks to restore alignment between economic dependency and legal status.⁶⁹ The Directive is therefore analysed not only as a labour law instrument, but also as a mechanism with indirect yet profound implications for social security inclusion.

Finally, the thesis integrates doctrinal and regulatory insights into a broader institutional evaluation. It considers how the effective correction of misclassification may influence contribution flows, fiscal sustainability, and the long-term viability of employment-centred welfare systems. As Baldwin has demonstrated, contributory social insurance has historically relied on

⁶⁴ OECD. (2018). Non-standard work and the future of social protection. OECD Publishing, pp. 89–94.

⁶⁵ Barnard, C. (2012). EU employment law (5th ed.). Oxford University Press, pp. 155–158.

⁶⁶ Court of Justice of the European Union. (1986). Case 66/85, Deborah Lawrie-Blum v Land Baden-Württemberg [1986] ECR 2121, paras. 16–18.

⁶⁷ Court of Justice of the European Union. (2004). Case C-256/01, Debra Allonby v Accrington & Rossendale College [2004] ECR I-873, paras. 67–71.

⁶⁸ Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work, Article 5.

⁶⁹ Freedland, M., & Kountouris, N. (2011). The legal construction of personal work relations. Oxford University Press, pp. 18–22.

stable employment relationships to sustain intergenerational solidarity.⁷⁰ When employment status is strategically detached from economic reality, the financial and normative foundations of solidarity are weakened.

The structure of the thesis is therefore sequential but interdependent. Contextualisation identifies the protection gap; doctrinal analysis clarifies the legal mechanism underlying it; regulatory evaluation examines the EU response; and institutional reflection assesses long-term sustainability. Throughout, the European framework remains central, while the Central and Eastern European experience serves as a comparative lens, revealing both structural similarities and distinctive implementation challenges.

In sum, the organisation of this thesis mirrors its core argument: that employment classification operates as the constitutional hinge between labour law and social security law in Europe. Correcting misclassification is not an isolated technical reform; it is the first necessary step toward safeguarding the fiscal and normative integrity of the European social model in the digital age.

Chapter 2: Bogus Self-Employment and Platform Work: From Broader Context to Challenge Identification in the Labour Law Scope

2.1. Introduction to the Bogus Self-Employment Phenomenon

With the advent of the fourth industrial revolution, labour law, among other fields, has faced numerous challenges in keeping pace with the modernisation and digitalisation of work and its environment.⁷¹

Starting at the beginning, the first Industrial Revolution, which introduced water and steam to enhance the productivity of various industries, emerged around the late 18th century. This was

⁷⁰ Baldwin, P. (1990). *The politics of social solidarity: Class bases of the European welfare state 1875–1975*. Cambridge University Press, pp. 68–72.

⁷¹ Tomasz Mirosławski, *Platform work as a manifestation of a new form of employment in the era of the fourth industrial revolution*, pp. 1–2.

followed by the Second Industrial Revolution, which boosted mass production across various sectors through the use of electricity.

The third Industrial Revolution was facilitated by the use of several informatics systems, which not only enhanced productivity but also began to automate specific tasks. With this phase, a new era began, characterised by automation, mass productivity, and the digitalisation of industries. Just over three centuries later, we have arrived at the so-called fourth industrial revolution, which has introduced, among many others, Artificial intelligence.⁷² The present phase of the industrial revolution has brought people enormous evolution and development in many sectors. Considering self-driving cars or 3D printing, among other examples, is a clear indication of the rapidly evolving digital world in the era of the fourth industrial revolution.⁷³

Without a doubt, the present phase of the industrial revolution has many positive effects; for example, automation is taking a new step, and mass production has reached new levels in several industries. With the help of AI, we can solve a vast number of tasks in no time compared to a human workforce. We're in a fast-developing world where people are trying to live in symbiosis with the developing technology rather than just supervising it as was the case in the third industrial revolution.⁷⁴

Additionally, this new era has undoubtedly brought numerous negative or potentially negative effects. In this unprecedentedly fast-evolving period, it is becoming increasingly challenging to keep pace with the changes in the field of law, as regulations struggle to keep up with the challenges arising in practice. The areas of labour law and social security law are not exceptions. New types of organising work have appeared in the last fifteen to twenty years, spreading rapidly. The old paradigm based on standard employment relations was shaken by new forms of work organisation, which, having previously chased stability, shifted to seeking flexibility in working and employment relations. Professor Frank Hendrickx summarised the present problem by stating the

⁷²Grega Strban, Chapter 13 Social Law 4.0 and the Future of Social Security Coordination, in: Ulrich Becker / Olga Chesalina (Eds.), Social Law 4.0: New Approaches for Ensuring and Financing Social Security in the Digital Age, Studien aus dem Max-Planck-Institut für Sozialrecht und Sozialpolitik, vol. 74, Nomos, 2021, p. 336.

⁷³ Schwab, K. (2016). The fourth industrial revolution. World Economic Forum, pp. 11-13.

⁷⁴ Degryse, C. (2016). Digitalisation of the economy and its impact on labour markets. European Trade Union Institute (ETUI), p. 10.

following: “The ‘modernisation’ or ‘future’ debate pushed labour law into a sort of regulatory crisis.”⁷⁵

The ‘golden rule’ was proven correct once again, the demand for flexible work met the ‘supply’ in no time, and non-standard ways of employment and self-employment are more popular than ever. At this point, it is essential to note that standard employment remains the most popular model among European Union member states, primarily due to the harmonisation process within the EU, among other reasons. Still, member states have different approaches to the topic at hand. For example, Romania chose the path of gradual flexibilization in this regard, while Hungary’s legal environment is considered one of the least restrictive.⁷⁶

On the other hand, non-standard or atypical work cannot be underestimated. Numerous events and occasions facilitated the spread of atypical employment and self-employment. The last event was the Covid-19 pandemic, which visibly boosted demand for non-standard work models, and, to adapt to new situations, the workforce leaned towards seeking flexible ways of working.⁷⁷

As the phenomenon grew, it became evident that the lack of a clear and universally accepted definition of bogus self-employment contributes to the exploitation of workers and the erosion of labour rights and working standards.⁷⁸

In the following, we will explore the various factors that contribute to the phenomenon of bogus self-employment, such as the misclassification of workers, the use of contracts that obscure the employment relationship, and the practices of employers to evade labour regulations. Through a critical analysis of existing literature and empirical evidence, we will highlight the challenges faced by policymakers, labour unions, and other stakeholders in defining and addressing bogus self-employment. The main goal is to provide a comprehensive understanding of the implications of bogus self-employment for workers' rights and to contribute to ongoing discussions on labour market reforms.

⁷⁵ Frank Hendrickx, *Regulating new ways of working: From the new 'wow' to the new 'how'*, *European Labour Law Journal* 2018, Vol. 9(2), p. 197.

⁷⁶ European Parliament, *Study on the impact of new forms of labour on industrial relations and the evolution of labour law in the European Union*, p. 18.

⁷⁷ Eurofound. (2020). *Living, working and COVID-19*, p. 14.

⁷⁸ Gyulavári, T. (2019). *Dependent self-employment in the European Union*. *European Labour Law Journal*, 10(3), pp. 223–240.

The present chapter is structured as a gradual, conceptually layered inquiry that moves from the broader phenomenon of bogus self-employment to its concrete manifestation in platform work and the resulting challenges for labour law. It opens with a contextualisation of bogus self-employment as a persistent and evolving feature of modern labour markets, highlighting both its historical roots and its renewed relevance in the new, digital era. Building on this foundation, the chapter introduces platform work as a specific environment in which these issues intensify, examining its emergence, definitional uncertainties, and the regulatory difficulties associated with its rapid expansion. The analysis then narrows to the central doctrinal question of classification, critically assessing whether platform workers can be accommodated within existing legal categories of self-employment or employment, with particular attention to national solutions and the functional approach developed in EU law. Finally, the chapter turns to the practical dimension of these classification dilemmas by exploring the drivers of platform worker litigation, thereby illustrating how abstract doctrinal uncertainties translate into concrete disputes over rights, protection, and legal status, and setting the stage for the more detailed examination of reclassification and social protection in the chapters that follow.

2.2. Bogus Self-Employment and Platform Work

With the current wave of modernisation, a new type of work has emerged in the sector where supply and demand are matched through online-based software; originally, managerial tasks are now performed by automated systems.⁷⁹ Regarding a response to the newly emerging phenomenon, the law is in the process of regulating the problematic fields and setting their limits.

Platform work is a relatively new concept. At the beginning of the 2010s, this type of work was still in its infancy, but surprisingly, the evolution of the digital era and the Covid-19 pandemic has achieved in under ten years what, now, in the mid-2020s, platform work is present in most of Europe's countries.⁸⁰

⁷⁹Antonio Aloisi / Nastazja Potocka-Sionek, De-gigging the labour market? An analysis of the 'algorithmic management' provisions in the proposed Platform Work Directive, Italian Labour Law e-Journal Issue 1, Vol. 15 (2022), p. 30.

⁸⁰ ILO, World Employment and Social Outlook 2021, ILO Flagship Report, p. 19 and p. 46.

When defining platform work, caution is essential. Given the sector's rapid evolution, a careful evaluation is necessary to establish a definition that is timeless and serves as an essential element of a new regulation, without resorting to vague terms that could create further problems. It is interesting to see in this regard that Eurofund defined platform work as: “a form of employment in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services in exchange for payment.” After this, Eurofund made a necessary correction: the use of the term ‘crowd employment’ when trying to define click work wasn’t suitable anymore, and a separation needed to be made due to the evolution of the phenomenon.⁸¹

Problems arise from many levels, from fundamental basics to nuanced minor issues. While the definition of the newly emerging sector poses a basic problem, the central dilemma is the classification of the legal relationship between the sector's actors, namely the platform and the worker.⁸²

There are arguments among academics about whether the current legal relationship should be regulated under the labour law branch, being an employment relationship, or considered a simple contractual relationship governed by civil law. Alternatively, some argue that a new regulation should be created to address the current situation.⁸³

The social security law also highlights the current issue. Being part of national social security schemes is fundamentally influenced by the legal relationship in which people are engaged. The precarious situation of platform workers underscores the need to secure their place in social security schemes.⁸⁴

The new phenomena undoubtedly carry new problems, but they also periodically highlight previously resurfacing issues, such as bogus self-employment.

⁸¹ Eurofound, Platform work, available at: [<https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/platform-work>].

⁸² Antonio Aloisi et al., An unfinished task? Matching the Platform Work Directive with the EU and international "social acquis," ILO Working Paper 101, 12/2023, p. 1.

⁸³ Gábor Mélypataki, Tipikus polgári jogi szerződés vagy munkaviszony? – A platformmunka új szabályainak értékelése az élő jog tükrében, Miskolci Jogi Szemle 18(3), April 2024, p. 55, pp. 61-62.

⁸⁴ Darja Šencur Peček, Social Protection of Workers in Non-Standard Forms of Employment in Slovenia, Zbornik Pravnog Fakulteta Sveucilista u Rijeci 39, no. 4 (2018), pp. 1586-1591.

The issue of bogus self-employment existed way before the gig economy emerged. To understand how bogus self-employment gains popularity, we need to examine how the economy of a given state is evolving. One of the best examples in that regard is Romania over the last few decades. Following the regime change in Romania, the working class struggled to earn enough income to sustain a household. To address this, they reduced taxes and contributions, and increased their net income by falsely reclassifying employment contracts as those of independent self-employed contractors.⁸⁵ The same issue arose internationally in the aviation industry when false self-employment was widespread among pilots and aircrew members, allowing aviation companies to save money by simply reclassifying the contractual relationship. The workers were practically forced to accept the given reclassification for the simple reason that the special regulations of this sector required them to gain experience in order to practice their jobs effectively.⁸⁶

The “savings” had the same results when it came to the current eras bogus self-employment raise: by saving on taxes workers, among many other problems brought up by the falsely classified relationship, were not contributing to the social security system, they were left out of any social security benefit, leaving them in a precarious situation while in reality, they were in fact in an employment relation.⁸⁷

In the upcoming analysis, the primary focus will be on terminological determination and the introduction of the platform work phenomena.

Before analysing bogus self-employment, we first need to clarify the concept of Sham Contracts, which can be defined as a situation “where the written agreement does not accurately reflect the de facto agreement made between two (or more) parties.”⁸⁸ This definition is based on a 1967 United Kingdom litigation, meaning that the contractual roots of bogus self-employment could be traced back even to the last century. It is essential to emphasise at this stage that the previously mentioned litigation was based on a commercial contract in which, as a basic principle,

⁸⁵ Eurofound, Trade union study on the informal economy – Romania, available at: [\[https://www.eurofound.europa.eu/data/tackling-undeclared-work-in-europe/database/trade-union-study-on-the-informal-economy-romania\]](https://www.eurofound.europa.eu/data/tackling-undeclared-work-in-europe/database/trade-union-study-on-the-informal-economy-romania).

⁸⁶ Delphine Defossez, The Uberisation of Aircrew Through the Use of Bogus Self-Employment Contracts, *Air and Space Law*, Vol. 46 Issue 6, Nov. 2021.

⁸⁷ De Stefano, V. (2016). The rise of the “just-in-time workforce”: On-demand work, crowdwork and labour protection in the “gig-economy” (p. 19). European Trade Union Institute (ETUI).

⁸⁸ Fabian McNeilly, Sham Self-Employment Contracts: Taking a Liberty?, *Manchester Review of Law, Crime & Ethics* 15, 2013.

the parties are equal and are governed by civil law. Nevertheless, the central concept is similar to bogus self-employment, shifting from applying labour law provisions to civil law provisions, even though, in reality, we are in a de facto employment relationship.

The definition of bogus self-employment is also challenging, as there is currently no universally agreed-upon definition of this phenomenon. Furthermore, it is also problematic to universally address the present issue. There are some terms that need to be put in the right place, connecting with the present topic, “economically dependent work”⁸⁹ “sham self-employment”⁹⁰ or “bogus self-employment.”⁹¹ The different terms used for the present issue highlight the same problem but reflect slightly different approaches to the matter.

The term ‘economically dependent work’ approaches the present issue through the prism of economy and remuneration since it focuses on the fact that despite the relation among the parts being based on a civil contract, in reality, the worker is acting similarly as an employed person, who is not an independent contractor, but an economically dependent employed individual since its main income comes from the disguised single employer.⁹²

‘Sham self-employment’ analyses the present issue from a civil law viewpoint, meaning that the term used leads to the term sham contracts, which, already mentioned, is present when the materialisation of the will does not reflect the objective relation among the parties.

The term ‘bogus self-employment’ or ‘bogus employment’ refers to the current issue, focusing mainly on legal issues in labour law and social security law.

Bogus self-employment refers to the misclassification of self-employment when a person formally engages in self-employment. Still, in reality, the relationship among the parties is a de facto

⁸⁹ Tamás Gyulavári, *Trap of the Past: Why Economically Dependent Work Is Not Regulated in the Member States of Eastern Europe*, *European Labour Law Journal*, Vol. 5, No. 3-4, 2014.

⁹⁰ Fabian McNeilly, *Sham Self-Employment Contracts: Taking a Liberty?*, *Manchester Review of Law, Crime & Ethics* 15, 2013.

⁹¹ Valentin Niebler et al., *Towards 'Bogus Employment?' The Contradictory Outcomes of Ride-Hailing Regulation in Berlin, Lisbon, and Paris*.

⁹² Felicia Rosioru, *Legal Acknowledgment of the Category of Economically Dependent Workers*, *European Labour Law Journal*, Vol. 5, No. 3-4, 2014, pp. 285-286.

employment relationship. Practically, the disguise of an employment relationship as a simple civil contract-based relationship.⁹³

As already noted, bogus self-employment existed before the emergence of platform work. As an example, after the collapse of the communist regime in Romania, many workers entered informal employment for several reasons, such as maximising their earnings as self-employed workers; in this way, it was more advantageous to pay taxes than for a standard employed person. This trend could also be tracked during the economic crisis after 2008. A study from 2013 conducted by the National Trade Union in Romania, named Bloc, shows that ten years ago in Romania, 2.9 million people were involved in informal employment.⁹⁴

Bogus self-employment was also preferred by the employers due to the reason that, in this way, the national Labour Law Code, social security regulations with all their provisions, or the relevant EU directives⁹⁵ were not burdening the employers, instead the Civil Code was applicable due to the reason that, in this way, the relationship between the 'employer' and 'employee' was based on a simple civil contract, not on a proper labour contract.⁹⁶ From the worker's viewpoint, bogus self-employment creates precariousness due to the misclassification of employment as self-employment social security standards and minimum working conditions are not applicable for the simple reason of not being in an employment relation.⁹⁷

The topic of bogus self-employment has also gained prominence in recent years due to the exponential growth of platform work.⁹⁸

Eurofund identified platform work as a new type of employment that is growing and potentially gaining importance in the labour market around the year 2000. In 2017, the same agency

⁹³ Colin C. Williams et al., Tackling Undeclared Work in the Collaborative Economy and Bogus Self-Employment, European Platform Tackling Undeclared Work, Brussels 2020.

⁹⁴ Eurofound, Trade union study on the informal economy – Romania, available at: [\[https://www.eurofound.europa.eu/data/tackling-undeclared-work-in-europe/database/trade-union-study-on-the-informal-economy-romania\]](https://www.eurofound.europa.eu/data/tackling-undeclared-work-in-europe/database/trade-union-study-on-the-informal-economy-romania).

⁹⁵ For example Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

⁹⁶ Tamás Gyulavári, Trap of the Past: Why Economically Dependent Work Is Not Regulated in the Member States of Eastern Europe, European Labour Law Journal, Vol. 5, No. 3-4, 2014.

⁹⁷ Delphine Defossez, The Uberisation of Aircrew Through the Use of Bogus Self-Employment Contracts, Air and Space Law, Vol. 46, Issue 6, Nov. 2021, p. 2.

⁹⁸ Eurofound. (2018). Employment and working conditions of selected types of platform work, Publications Office of the European Union, p. 23

recognised that platform work “reached a critical mass in Europe as regards the number of labour-intensive platforms and affiliated active workers.”⁹⁹ The Eurofund research shows that platform work, despite being a new form of organising work, has elements that can be traced back more than 20 years. Furthermore, we can acknowledge that platform work growth, just as informatisation and digitalisation, which gained its current position through the already-mentioned fourth industrial revolution, also began to exert an exponentially determining influence on the labour market over time. Mark Graham summarises the lack of legal regulations of the platform work by stating: “too big to control, too new to regulate and too innovative to stifle”.¹⁰⁰ Just as bogus self-employment, platform work has synonyms. Still, a careful examination is needed because they can have slightly different meanings, and just as bogus self-employment, platform work does not have a universal definition as such. When speaking about platform work, academics differentiate ‘crowd work’ and ‘gig work’. While the term crowd work describes situations in which work is accomplished online, gig work refers to activity performed offline but still managed by a platform, with the work assignment process going through the online dimension. Furthermore, division can also be distinguished between low-skilled work (often called microwork or micro-tasking) and high-skilled work.¹⁰¹

Several reasons can be identified when searching for the lack of regulations and definitions for these two terms. Tamás Gyulavári, when searching for reasons, differentiates between the EU and national levels of regulation. On the EU level, Professor Gyulavári identifies a few main reasons. First of all, the lack of universal definitions of the basic terms needed, for example, the terms employee or employer. The professor links this reason to political willingness rather than to differences in labour and social security law approaches. These regulations often leave the task of definitions to the Member States. Regarding the lack of definitions at the national level, one reason is the evolution of labour and social security law, which has focused on typical or standard forms

⁹⁹ Eurofound, Platform work, available at: [<https://www.eurofound.europa.eu/topic/platform-work>].

¹⁰⁰ Mark Graham, *Regulate, Replicate, and Resist: The Conjunctural Geographies of Platform Urbanism*, Urban Geography, 2020, p. 453.

¹⁰¹ Corinna Funke / Georg Picot, *Platform Work in a Coordinated Market Economy*, Industrial Relations, 2021, Vol. 52, p. 349.

of employment, especially in the former states of the communist bloc or in the regulations of the coordinated market economy in Western countries, such as Germany.¹⁰²

The definition of platform work varies across the academic sphere due to a lack of consensus. When searching for a definition of platform work, it is interesting to see the similarities and differences among definitions from different institutions and academics. Annika Rosin describes platform work in a simpler, more straightforward manner, stating: “Platform work can be described as the matching of the supply of and demand for paid work through an online platform.”¹⁰³

Another example of a definition was made by Eurofund, which defines platform work as “a form of employment in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services in exchange for payment.” First of all, as an interesting note, we would like to mention that, immediately after the definition itself, it is noted that Eurofund used the term ‘crowd employment’ when defining click work. Still, platform work is evolving rapidly, and the term is no longer suitable.¹⁰⁴ Furthermore, it is essential to highlight that the present definition, given by Eurofund, mentions *expressis verbis* that platform work is a form of employment, meaning that in this regard, workers who are using civil contracts, being self-employed, rather than using employment contracts when materialising their will to enter into a contractual relationship with the platform, are left out of this definition. The problem is that by assuming the employment relationship, the definition narrows down the number of individuals who are covered, which in our opinion, is dangerous due to the fact that a significant part of platform workers are self-employed, not directly employed at the platform itself, in this regard the definition excludes the set of platform workers whom should be somehow included under the scope of labour and social security law.

There is a more careful approach in the European Commission's directive on improving working conditions in platform work. When deliberating on Article 2, it states that it is necessary to “distinguish between ‘persons performing platform work’, irrespective of their employment status, and ‘platform workers’, who are in an employment relationship” in the definitions section.

¹⁰² Corinna Funke / Georg Picot, Platform Work in a Coordinated Market Economy, *Industrial Relations*, 2021, Vol. 52, p. 350.

¹⁰³ Annika Rosin, The Right of a Platform Worker to Decide Whether and When to Work: An Obstacle to Their Employee Status?, *European Labour Law Journal*, Vol. 13(4), 2022, p. 531.

¹⁰⁴ Eurofound, Platform work, available at: [<https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/platform-work>].

Furthermore, Article 2 (2) defines platform work as “any work organised through a digital labour platform and performed in the Union by an individual on the basis of a contractual relationship between the digital labour platform and the individual, irrespective of whether a contractual relationship exists between the individual and the recipient of the service.” Based on the current definition, the key elements of platform work are the digital labour platform, the individual performing the work, and the contractual relationship between the platform and the worker. Compared with the previous definition issued by Eurofound, the present definition broadens the circle of platform workers. Furthermore, it is interesting that the Directive does not require a contractual relationship between the platform worker and the client or the beneficiary of the services performed through the platform.

2.3. Introduction to the Platform Work Phenomena

In the rapidly evolving landscape of the digital economy, the emergence of platform-based business models has transformed traditional notions of employment, commerce, and regulation. Platforms, serving as intermediaries between service providers and consumers, have infiltrated various sectors, including transportation, accommodation, freelance services, and retail. However, this digital revolution has brought to the forefront many legal, social, and economic challenges, particularly concerning the status and rights of workers operating within these platforms. Furthermore, in current times, we can state that the employment relationship is not the only form of work; labour law does not cover all work activities.¹⁰⁵

Recognising the need for a harmonised regulatory framework to address these challenges, the European Union embarked on a journey to formulate comprehensive legislation tailored to the unique dynamics of platform-based employment. The crux of this journey was the proposal and subsequent agreement on the Platform Directive, a landmark piece of legislation aimed at regulating online platforms and safeguarding workers' rights in this fast-evolving sector.¹⁰⁶

¹⁰⁵ Nóra Jakab, Munkavégzők a munkavégzési viszonyok rendszerében. Jogtudományi Közlöny 2015/9, p. 421-432.

¹⁰⁶ European Commission, Proposal for a Directive Of The European Parliament And Of The Council on improving working conditions in platform work, Brussels, 9.12.2021.

The present chapter of the thesis examines the genesis, evolution, and key aspects of the Platform Directive, tracing its development from a conceptual proposal to a legislatively agreed-upon reality. Through an interdisciplinary lens encompassing law, economics, and social policy, it scrutinises the motivations behind the directive, assesses its legal implications, and evaluates its efficacy in achieving its stated objectives.

The journey from proposal to reality is not merely a chronological narrative but a nuanced exploration of the deliberations, negotiations, and compromises that shaped the directive's final form, with a primary focus on the regulations governing the chosen legal tool and the legal presumption intended to resolve the classification issue for platform workers. While the regulation is shaping a newly occurring phenomenon, the directive builds on national definitions of the fundamental labour law terms. In this manner, the directive faces another issue: the divergence and, in some cases, the lack of such definitions. Furthermore, the present chapter presents diverse perspectives on the multifaceted problems arising from the newly emerging phenomenon of platform work, which presents severe issues primarily in labour law, as well as in social security and other branches of law.

The structure of the present chapter can be divided into two main parts. First of all, a comprehensive analysis of the above-mentioned issues: the evolution of the directive on platform workers and the definition of the term "employee". This first part will concentrate on the proposed directive of platform workers, analysing through the prism of the two identified problems; therefore, the same regulation will be examined from two different viewpoints.

The second part will focus on the development of the regulation and the evolution of the two main identified problems, with particular emphasis on the legal tool of the rebuttable presumption used in the directive, aimed at achieving the correct classification of platform workers.

2.3.1. The Road Toward Platform Work: The Rise of a New Phenomenon

Labour law and employment relations have undergone profound transformations throughout history, shaped by fundamental political, social, and economic conditions unique to

each country.¹⁰⁷ These factors continually influence the evolution of labour law, reflecting the dynamic nature of society. In contemporary times, the force of modernisation, accentuated by technological advancements, has become a dominant catalyst reshaping the foundational elements of labour.

One of the most significant impacts in recent history was the advent of industrialisation.¹⁰⁸ This transformative process rapidly altered the landscape of employment relations, compelling labour law to adapt and address new realities. Prior to industrialisation, employment relations operated within a relatively straightforward framework. However, the onset of the industrial era introduced novel complexities and challenges that necessitated legal regulation. One of the key changes brought about by industrialisation was the shift from small-scale, artisanal production to large factories and mass production. This change meant that workers were no longer independent craftsmen but instead part of a larger workforce with little control over their working conditions.¹⁰⁹

Industrialisation led to the concentration of the workforce within factory settings, giving rise to innovative organisational structures designed to enhance production efficiency. This structural shift, coupled with the imperatives of the Industrial Revolution, further accelerated the pace of change, driving labour law to expand beyond traditional "master-prentice" relationships. These developments paved the way for the establishment of standardised employment relations, marking a pivotal milestone in the evolution of labour law.¹¹⁰

The transition from artisanal workshops to industrial factories fundamentally altered the dynamics of work, necessitating a recalibration of legal norms to protect workers' rights and promote fair and equitable employment practices. This period of upheaval underscored the indispensable role of labour law as a mechanism for safeguarding the interests of both employers and employees in an increasingly industrialised society.

¹⁰⁷ Zsófia Riczu et al., Concepts of Work: from Traditional Social-Labour Ideas to Modern Effects of Digital Transformation, *Journal of Digital Technologies and Law* 2023/1, p. 175-190.

¹⁰⁸ Gábor Mélypataki, Az Ipar 4.0. és a jog kapcsolata – Problémafelvetések a foglalkoztatás és szociális biztonság témaköre kapcsán, *Jogelméleti Szemle* 2023 Vol. I, p. 61-62.

¹⁰⁹ Antonio Aloisi / Valerio De Stefano, *Your Boss Is an Algorithm, Artificial Intelligence, Platform Work and Labour*, Bloomsbury Publishing Plc., 2020, p. 158.

¹¹⁰ Antonio Aloisi / Elena Gramano, Workers without workplaces and unions without unity: Non-standard forms of employment, platform work and collective bargaining, in: *Employment Relations for the 21st Century*, *Bulletin of Comparative Industrial Relations*, 2019, pp. 1-2.

Indeed, the advent of industrialisation precipitated a paradigm shift in the conceptualisation of employment relations, highlighting the emergence of standardised employment arrangements characterised by formal contracts, wage regulations, and collective bargaining mechanisms. As a result, labour laws began to focus on regulating issues such as working hours, workplace safety, and minimum wages to protect workers' rights in this newly industrialised economy. The need for these regulations highlighted the importance of adapting labour laws to reflect the changing nature of work in the industrial era.¹¹¹

These developments laid the groundwork for the modern framework of labour law, which continues to evolve in response to contemporary challenges posed by globalisation, digitalisation, and the gig economy. In parallel, just as industrialisation stands as a watershed moment in the evolution of labour law, shaping a new era of standardised employment relations and institutionalised protections for workers, technological advancements are reshaping labour relationships and questioning central elements of labour law.

Nowadays, modernisation and digitalisation have a significant impact on the field of law. In many cases, we can observe that regulations cannot keep pace with changes, but instead react to the current situation. This can be a potential threat due to the fact that the law loses its preventive and predictable nature, which should be a fundamental principle of regulation.

2.3.2. The Proposed Directive on Improving Working Conditions in Platform Work: Perspective of Tackling Bogus Self-Employment

The need for guidance is enormous due to the fact that, at present, the reclassification of platform workers is largely the task of Member States' courts. Without any instructions, courts are already on the verge of suffocation due to the dumping of litigation, and because of the lack of legal provisions, controversial decisions are being made.

The issue of bogus self-employment among platform workers has been recognised by the EU, and in 2021, the European Commission proposed a directive to improve their working conditions. In

¹¹¹ Jon Messenger, Working time and the future of work, ILO Future of Work Research Paper Series, 2018.

its first chapter, called 'Reasons for and objectives of the proposal', the first objective enumerated is "to ensure that people working through platforms have, or can obtain, the correct employment status in light of their actual relationship with the digital labour platform and gain access to the applicable labour and social protection rights."¹¹² meaning that one of the most important goals is to eliminate, or at least minimise, the phenomenon of misclassification of platform workers.

For these reasons, the proposed Directive chose to address the situation by instituting a legal presumption: the relationship between the worker and the digital labour platform should be presumed to be an employment relationship. Furthermore, the regulation focuses on factual reality rather than purely on the contract agreed between the worker and the platform when applying the legal presumption of an employment relationship.¹¹³

For the presumption to apply, the proposed Directive set out five conditions, of which the worker must meet two to be classified as an employee. The conditions can be categorised into two main blocks. The first block contained the first and last enumerated conditions, which focused on bogus self-employment, namely the determination of remuneration and the restriction on building a client base. The rest of the criteria focused on the workers themselves through the condition of subordination, enumerating the requirements of the existence of rules set by the platform for the worker, which are binding regarding the appearance or the worker's conduct while performing, the supervision of the platform on the worker or restricting the freedom of the worker.

The presumption could have been rebutted, but the burden of proving the non-existence of the employment relationship would be more challenging than the burden of proving that two conditions from the five enumerated criteria are met. The inequality in the burden of proof can be explained by the fact that the proposed Directive favoured the employment relationship over self-employment.¹¹⁴ One of the criticisms of the proposal is that real self-employed platform workers benefit from a different, lower level of protection than employed platform workers.¹¹⁵

¹¹² European Commission, Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work, 2021/0414 (COD).

¹¹³ Annika Rosin, The Right of a Platform Worker to Decide Whether and When to Work: An Obstacle to Their Employee Status?, *European Labour Law Journal*, Vol. 13(4), 2022, p. 536.

¹¹⁴ Maurizio Falsone, What Impact Will the Proposed EU Directive on Platform Work Have on the Italian System?, *Italian Labour Law e-Journal*, Issue 1, Vol. 15, 2022, p. 110.

¹¹⁵ *Ibid.*, p. 105

Many scholars have argued that the EU lacks a uniform and universal definition of the term "worker".¹¹⁶ While there were several approaches to defining the worker, in these cases, the definition is made through the prism of the regulated subject.¹¹⁷ For example, Regulation 883/2004 sought to address the present problem by coordinating social security systems and defining certain aspects of this institution.¹¹⁸

If we are examining ECJ case law, it is important to mention the Lawrie-Blum case, a milestone in defining a worker under EU law. In the present case, the Court stated that: "the essential feature of an employment relationship is that a person performs services of some economic value for and under the direction of another person in return for which he receives remuneration."¹¹⁹ A more detailed examination of the present case will be made in the following.

Interestingly, despite the already mentioned insufficient uniform definition of worker at the EU level, the proposed Directive contains a definition of the platform worker, connecting the term to the simple fact of performing platform work, having an employment contract or employment relationship,¹²⁰ leaving a vague definition instead leaves the possibility of defining the term to the Member States.

Furthermore, in the chapter titled Employment Status, a kind of harmonisation attempt could have been traced in the determination of employment status, which was linked to the jurisprudence of the CJEU. While the initiative is welcomed, relating the term to the jurisprudence of the CJEU¹²¹ will mean that Member States will have a "living" definition of the term, tasked with reviewing legal norms alongside the Court's jurisprudence.¹²² Alongside the task of determination, the Member States are also obliged to ensure appropriate procedures for classifying workers.

¹¹⁶ Martin Risak / Thomas Dullinger, *The Concept of 'Worker' in EU Law: Status Quo and Potential for Change*, 2018, Brussels, p. 17.

¹¹⁷ ILO, *Coordination of Social Security Systems in the European Union: An Explanatory Report on EC Regulation No. 883/2004 and Its Implementing Regulation No. 987/2009*, p. 6.

¹¹⁸ EC Regulation 883/2004, Art. 1 defines activity as an employed person or activity as a self-employed person "for the purposes of this Regulation".

¹¹⁹ EUR-Lex, *Lawrie-Blum case* (Case 66/85), available at: [<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61985CJ0066>].

¹²⁰ The proposed Directive Article 2(2).

¹²¹ The Lawrie-Blum Case, Case 66/85, EU:C:1986:284, remains the most important case for defining these terms.

¹²² Maurizio Falsone, *What Impact Will the Proposed EU Directive on Platform Work Have on the Italian System?*, Italian Labour Law e-Journal, Issue 1, Vol. 15, 2022, pp. 103-104.

The proposed Directive clearly aimed to distinguish between the self-employed and the employed rather than create a new third category suited to the current situation. The idea of creating a third category for 'independent workers' was circulating among academics. Still, there was no agreement on whether the EU should shift toward creating a new category or revise the existing ones (employee and self-employed).¹²³

While examining the balance of the freedom of platform workers, a critical remark must be made. Theoretically, if the freedom of platform workers means they are able to refuse to work based on contractual mutuality, the platform also does not have any obligation to assign work or tasks to the worker. In the described case: "...the existence of the contract can become questionable."¹²⁴

Platforms base their arguments on the aforementioned freedom ("flexibility") of workers when claiming that platform workers are not direct employees of the platform. Platform workers have a certain degree of freedom, but their choices can also have consequences. For example, workers in the food delivery field, such as Bolt, Foodora, or Wolt, can choose their working times and shifts, so there is a higher level of autonomy compared to standard work relationships. Still, their activity is measured by ratings (materialising as stars, for example), which reflect their choices and the frequency of the shifts undertaken, among many other factors.¹²⁵ The apparent freedom of the workers in the present case needs to be more evident than the platform companies claim when arguing that their workers should be categorised as self-employed. Platforms influence the decisions of their workforce through the ratings of the workers, meaning that in the present case, there was a kind of subordination of workers, which was more accentuated than the freedom of the workers due to the fact of the logical sequence: the ratings influence the freedom of the workers through influencing their choices.

Furthermore, the lack of universal definitions, the rapid development of the industry through digitalisation, the rise of artificial intelligence, and the exponential growth of the platform work economy have aroused the interest of European lawmakers and, at the same time, put them

¹²³ Seth Harris / Alan Krueger, A Proposal for Modernizing Labour Laws for Twenty-First-Century Work: The 'Independent Worker,' (2015) Discussion Paper Series, Hamilton Project, p. 10.

¹²⁴ Annika Rosin, The Right of a Platform Worker to Decide Whether and When to Work: An Obstacle to Their Employee Status?, *European Labour Law Journal*, Vol. 13(4), 2022, p. 532.

¹²⁵ Also, punctuality, efficiency, or customer satisfaction influence platform workers' ratings.

in a challenging position to regulate the current problem, since law has become reactive, rather than sustaining its predictable nature.

The proposed Directive aims to “...improve the working conditions of persons performing platform work by the correct determination of their employment status...”¹²⁶

There are still arguments over fundamental questions about how to regulate the current situation. There are arguments about whether creating a new category of workers, somewhere between employment and self-employment, is the correct solution. A group of academics is analysing the possibility of using existing legal institutions and regulations. For example, some academics researched whether the situation of platform workers could be regulated through fixed-term or zero-hours employment contracts.¹²⁷ Furthermore, Delphine Defossez draws a parallel between the status of self-employed platform workers and that of pilots and aircrew members. She emphasises that bogus self-employment was present among pilots and aircrew members of low-cost airlines before platform work gained popularity. Still, because the topic is less popular than platform work, these workers are in a more precarious position than platform workers themselves. She explains a similar situation for platform workers, noting that aviation workers are contracted as self-employed for occasional flights rather than being employed by the aviation company.¹²⁸

One thing is certain: the national courts are overwhelmed by the litigation. Therefore, the EU's attempt is welcome in this regard.

The Directive on platform work aims to address the problem of classifying platform workers by introducing a legal presumption, emphasising the priority of direct employment relationships and, in this way, providing an opportunity for platform workers to enjoy the minimum standards in the fields of labour law and social security law. Furthermore, the Directive indirectly sought to harmonise the missing legal definitions among member states by relying on the CJEU's

¹²⁶ European Commission, Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work, Article 1(1).

¹²⁷ Annika Rosin, The Right of a Platform Worker to Decide Whether and When to Work: An Obstacle to Their Employee Status?, *European Labour Law Journal*, Vol. 13(4), 2022, pp. 538-541.

¹²⁸ Delphine Defossez, The Uberisation of Aircrew Through the Use of Bogus Self-Employment Contracts, *Air and Space Law*, Vol. 46, Issue 6, Nov. 2021.

jurisprudence. While harmonising in this particular way, these legal institutions will have a living definition that the member state must revise when the Court makes relevant decisions.¹²⁹

For several reasons, a universal solution for the distinction between self-employment and direct employment cannot currently be reached. Platform businesses differ from one another at a fundamental level. Some do organise work, and some do not.¹³⁰ Some platforms meet a client's demand; others exclude the client, and workers perform their work for the platform itself. Furthermore, even the supervision and the extent of subordination differ among platforms. When reclassifying the status of platform workers, an in-depth analysis of the facts is needed.¹³¹

Predicting the future is hard given the current situation. Marco Biasi states the following: “As a consequence, if part of the current forms of platform work is replaced by the technological developments (i.e. the food delivery riders by drones and for-hire drivers by...drive-less cars), the scope of application of the EU directive would significantly shrink, while the new forms of work, unless the parallel initiative of an Artificial Intelligence Act takes off, would be left unregulated (at least, in their work-related aspects).”¹³²

The issue of bogus self-employment is given by the nature of work relations, as highlighted by the nature of platform work. Another issue on which the present research focuses is the definition of the employee. The directive in the present case, aimed at addressing the issues of platform workers, regulates the matter based on national definitions of the key elements of labour law. Therefore, the issue of the (lack of a) definition of the employee is given by the nature of the regulation itself.¹³³ Therefore, a detailed examination of the present issue is needed before further examining the directive's evolution.

¹²⁹ Maurizio Falsone, What Impact Will the Proposed EU Directive on Platform Work Have on the Italian System?, Italian Labour Law e-Journal, Issue 1, Vol. 15, 2022, pp. 103-104.

¹³⁰ De Stefano, V. (2016). The rise of the “just-in-time workforce”. European Trade Union Institute (ETUI), pp. 10-12.

¹³¹ Court of Justice of the European Union. (1986). Lawrie-Blum v Land Baden-Württemberg (Case 66/85).

¹³² Marco Biasi, The Rebuttable Presumption of Employment Subordination in the US ABC Test and in the EU Platform Work Directive Proposal: A Comparative Overview, Italian Labour Law e-Journal, Issue 1, Vol. 15, 2022, p. 95.

¹³³ Barnard, C. (2022). EU employment law, 6th ed., p. 152.

2.4. Classification of Platform Worker

2.4.1. Can Self-Employment Be Suitable for Platform Work?

When researching the suitability of self-employment, the examination can be conducted from several perspectives.

Economically speaking, self-employment is a form of small business, meaning the aim should be to generate profit. Academics argue that using the self-employment model in the platform economy is undermining the reach of this economic aim under several platform businesses.¹³⁴ It is essential to remark at this point that in the present situation, an examination of business models needs to be made with attention to platform businesses since every platform's relation with its workers is different. The main focus when considering if self-employment would be suitable for the platform in the subject should be on the question of whether or not there is or not a work activity exerted by the worker.¹³⁵ If we take Airbnb as an example, we can see that the central obligation is to rent the owner's property; in this case, there is no concrete obligation to engage in any activity per se.¹³⁶

If we analyse the situation of food delivery platforms such as Glovo, Foodora, or Uber Eats, just as in the case of platforms in the transportation field, such as Uber or Taxify, self-employment is indeed unable to achieve its economic aim. Operating such platforms is not suitable for building a functional, self-sustaining business. One of the main problems is building a customer base. The platforms connects the worker with the client. Furthermore, during the working activity, the worker represents the platform business rather than working under its own brand. In many cases, building a client base is explicitly prohibited by a special clause in the contract between the platform company and the platform worker. The worker in these platform businesses is also unable to choose their clients. The worker can accept or decline tasks, but he or she cannot select among the clients.¹³⁷ Furthermore, even the worker's freedom to reject tasks is not limitless, as the worker's rating reflects the acceptance rate of tasks, thereby influencing the workload when the platform

¹³⁴ Prassl, J. (2018). *Humans as a service: The promise and perils of work in the gig economy*, Oxford University Press, p. 34.

¹³⁵ Aloisi, A., & De Stefano, V. (2022). *Your boss is an algorithm: Artificial intelligence, platform work and labour*. Hart Publishing, p. 52.

¹³⁶ (European Commission, 2021, art. 2; recital 18).

¹³⁷ Tomasz Mirosławski, *Platform Work as a Manifestation of a New Form of Employment in the Era of the Fourth Industrial Revolution*, p. 4.

distributes work. Furthermore, in many cases, these self-employed individuals work for a single platform, meaning their earnings come from a single source. This situation is best described by using the term economically dependent.¹³⁸ It is important to mention that the two institutions, economically dependent worker and bogus self-employment, are two distinct institutions, but for a better understanding, it can be helpful to understand the terms.¹³⁹

There are several platform business models in which working operations need to set the upper-mentioned barriers for the workers, such as TaskRabbit. On the mentioned platform, clients can upload several tasks, such as painting the interior of a house or moving from one apartment to another, and workers notified can accept or decline the work. The distribution of the work is based on location rather than ratings; however, ratings are also taken into account, though not as prominently as on food delivery platforms. Ratings aim to inform the client about other clients' satisfaction. Furthermore, the tools used by the worker during the work activity may be provided by the client or the worker.¹⁴⁰

There are other platform businesses as well, such as the previously mentioned Airbnb, where the platform is not offering services. Therefore, the platform is not organising the work itself in this case. For example, Airbnb is a platform where clients can rent properties from the owner. This business sector is called the short-term rental market. At this point, it is important to note that the CJEU ruled in 2017 that Airbnb's business model falls under the E-Commerce Directive.¹⁴¹ The ruling raises the possibility that Airbnb could bypass national regulations.¹⁴²

The current problem of different platforms operating differently, and if organising work, they differ from platform to platform, was taken into account by the European Commission when creating the proposed Directive already mentioned.¹⁴³

¹³⁸ Gyulavári, T. (2019). Dependent self-employment in the European Union. *European Labour Law Journal*, 10(3), p. 224.

¹³⁹ Freedland, M., & Kountouris, N. (2011). *The legal construction of personal work relations*. Oxford University Press, p. 17.

¹⁴⁰ Annika Rosin, Platform Work and Fixed-Term Employment Regulation, *European Labour Law Journal*, 2020, p. 9.

¹⁴¹ Case C-390/18, *Airbnb v. Ireland*.

¹⁴² Dion Kramer, EU Law and the Public Regulation of the Platform Economy: The Case of the Short-Term Rental Market, *Common Market Law Review*, October 2022, pp. 3-4.

¹⁴³ European Commission. (2021). Proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work (COM(2021) recital 18).

Maurizio Falsone, when analysing the material scope of the proposed Directive, shows in one of his articles that by defining labour platform in the way proposed: “On the one hand, it properly includes online and on-location digital platforms, excluding only platforms with services that do not involve the organisation of work as their main component (such as Airbnb). On the other hand, it excludes platforms with services that are not provided at the request of a recipient (such as the digital platforms adopted in the logistics industry, such as Amazon).”¹⁴⁴ By this, the proposed Directive focused on platforms that organise work, and the client's demand is expressed through the platform's functions.

2.4.2. Platform Worker as Employee?

2.4.2.1. Introduction

Work is a fundamental aspect of human activity, serving as the foundation for generating income and addressing essential needs, constituting a cornerstone of daily life.¹⁴⁵ The income derived from labour often encompasses the means to fulfil one's fundamental material requirements. In a broader context, legal employment typically hinges on three crucial components: an employer, an employee, and an employment relationship.¹⁴⁶

The field of labour law has undergone substantial transformations throughout history, navigating through the waves of industrial revolutions, automation, digitalization, and the arrival of artificial intelligence. These influential factors have continually reshaped our perception of work. Consequently, the development of labour law presents a fundamental choice: either responding

¹⁴⁴ Maurizio Falsone, What Impact Will the Proposed EU Directive on Platform Work Have on the Italian System?, Italian Labour Law e-Journal, Issue 1, Vol. 15, 2022, p. 113.

¹⁴⁵ Supiot, A. (2001). Beyond employment: Changes in work and the future of labour law in Europe . Oxford University Press, p.1.

¹⁴⁶ Freedland, M., & Kountouris, N. (2011). The legal construction of personal work relations. Oxford University Press, p. 3.

reactively to each emerging change with new regulations or adopting a universal, guiding framework that anticipates and navigates the evolving nature of work.¹⁴⁷

Each approach carries its own set of advantages and drawbacks.¹⁴⁸ Reactive lawmaking, while allowing for specific regulations tailored to individual circumstances, risks sacrificing harmonisation and the ability to keep pace with rapid changes in the employment landscape. On the contrary, while providing a guiding framework, universal lawmaking may lack the specificity needed for diverse situations, potentially hindering adaptability.

Considering the European Union's role, however, the two approaches are not entirely separate. The EU has the capacity to provide broad, universal guidelines for emerging situations, fostering a degree of harmonisation.¹⁴⁹ Subsequently, member states tailor their domestic regulations to align with the distinctive needs and challenges within their borders. This approach balances uniformity and adaptability, as the EU provides a common foundation while still allowing flexibility for individual member states.¹⁵⁰ This flexibility is particularly crucial in addressing the varied employment landscapes across the EU, where countries may have different economic structures, labour markets, and social contexts.¹⁵¹ By tailoring their regulations, member states can effectively address the specific needs of their workforce while also benefiting from the collective knowledge and experiences shared within the EU.

However, a critical dilemma in resolving universal issues hinges on a term once considered unquestionable in labour law¹⁵². Take, for instance, the case of platform work, where the classification of platform workers necessitates an answer to a fundamental question:¹⁵³ Are they in an employment relationship, or are they functioning under a civil contract? In the context of Romanian national legislation, a further issue arises: the absence of a clear definition of the

¹⁴⁷ Zsófia Riczu et al., Concepts of Work: from Traditional Social-Labour Ideas to Modern Effects of Digital Transformation, *Journal of Digital Technologies and Law* 2023/1, p. 175-190.

¹⁴⁸ Deakin, S., & Morris, G. (2012). *Labour law*, 6th ed., Hart Publishing, p. 28.

¹⁴⁹ Stefano Guibboni, Being a Worker in EU Law, *European Labour Law Journal*, Vol. 9, 2018, p. 234.

¹⁵⁰ Felicia Rosioru, As Is the Work, So Is the Reward: The Substance of the Individual Employment Agreement, *Romanian Review of Private Law*, 2021, p. 428.

¹⁵¹ Lucia Maria Costiug, Flexicurity and Employment Relationships in Romania, *Law Annals of Titu Maiorescu University*, 2015, pp. 51-52.

¹⁵² Felicia Rosioru, Legal Acknowledgement of the Category of Economically Dependent Workers, *European Labour Law Journal*, Vol. 5, 2014, p. 283.

¹⁵³ Felicia Rosioru, As Is the Work, So Is the Reward: The Substance of the Individual Employment Agreement, *Romanian Review of Private Law*, 2021, p. 413.

employee in the labour law code¹⁵⁴. This absence can introduce ambiguity and confusion when classifying platform workers, as the lack of a specific definition complicates determining their rights, obligations, and the nature of their relationship with the platforms they work for. Without a clear definition of an employee in the labour law code, platform workers in Romania can face uncertainty regarding their legal status. This lack of clarity hinders the determination of their rights and obligations and makes it difficult to establish the nature of their relationship with the platforms they are affiliated with.¹⁵⁵ As a result, the classification of platform workers becomes a complex task, requiring a careful examination of their working conditions and contractual arrangements to determine whether they are employees or operating under a civil contract.¹⁵⁶

This subchapter seeks to analyse the advantages and disadvantages of labour regulations in the absence of a national definition of an employee. Focusing on the Romanian example, the present part explores how Romanian legislation, without a specific national definition, relies on the EU-level definition of an employee. The ensuing sections delve into the benefits and drawbacks of this approach, shedding light on the interplay between domestic and EU-level legal frameworks.¹⁵⁷ One advantage of relying on the EU-level definition of an employee is that it provides a harmonised standard across member states, ensuring consistency in the protection offered to workers.¹⁵⁸ This is particularly important in the case of cross-border employment, where individuals may work in different EU countries. However, a drawback of this approach is that it can lead to a disconnect between the national legal framework and the reality of the local labour market. Without a tailored definition of an employee, Romanian legislation risks failing to adequately address the unique challenges and dynamics of the domestic workforce, potentially leaving workers vulnerable to exploitation or lacking certain rights and benefits.¹⁵⁹

At this point, the analysis turns to one of the most contested and structurally significant questions in the platform economy: can platform workers be classified as employees within the existing

¹⁵⁴ Ovidiu Tinca, *The Notion of Employee in the Labour Code in Relation to the Notion of Worker in EU Law*, *Revista Română de Dreptul Muncii*, 2015.

¹⁵⁵ Roşioru, F. (2017). Legal challenges of non-standard forms of employment in Romania . *Romanian Journal of Labour Law*, p. 92.

¹⁵⁶ Ildikó Rácz-Antal, *A Digitalizáció Hatása a Munkajog Egyes Alapintézményeire*, *Jog és Állam*, 2022, No. 40, ISSN: 978-615-5961-83-0, p. 63.

¹⁵⁷ Barnard, C. (2022). *EU employment law*, 6th ed., Oxford University Press, p. 154.

¹⁵⁸ Adam Sagan, *The Classification as Worker under EU Law*, *European Labour Law Journal*, Vol. 10, 2019, p. 358.

¹⁵⁹ Roşioru, F. (2017). Legal challenges of non-standard forms of employment in Romania. *Romanian Journal of Labour Law*, p. 95.

framework of labour law? This is not merely a theoretical or terminological issue. The answer carries far-reaching legal and practical consequences, as the qualification of the relationship determines the applicability of labour law protections and, indirectly, access to social security systems. Therefore, the following section seeks not only to examine whether platform work can be subsumed under the notion of employment, but also to clarify why this classification question lies at the very core of the broader regulatory and social protection debate surrounding platform labour.

2.4.2.2. Subordination, Economic Dependence, and the EU Concept of “Worker.”

The concept of the “worker” is pivotal in EU labour law. It is not merely a definitional tool but the functional gateway through which the protective reach of EU social legislation is activated. Due to the EU’s competence limitations in social policy, the concept of “worker” has historically served as the Court’s principal instrument for expanding the protective logic of labour law beyond national formalism.¹⁶⁰ In this sense, the EU concept of the worker has quasi-constitutional significance: it determines who falls within the normative boundaries of European labour protection and who remains excluded.

The Court of Justice of the European Union has consistently emphasised that the essential feature of an employment relationship lies in the performance of services “for and under the direction of another person in return for remuneration.”¹⁶¹ This formula, repeated across decades of jurisprudence, has acquired a status almost equivalent to that of a legal axiom. Still, what is interesting is not merely its persistence but its methodological implication: the CJEU defines “worker” in functional rather than formal terms. It does not ask what the contract is called, but what the relationship actually looks like.

As in *Lawrie-Blum*, the Court famously rejected purely formal approaches and focused on economic reality, holding that the defining feature of a worker is the performance of services for another person under that person's direction, in return for remuneration.¹⁶² The Court thereby

¹⁶⁰ Catherine Barnard, *EU Employment Law* (5th edn, Oxford University Press 2012), pp. 155–158

¹⁶¹ Case 66/85 *Lawrie-Blum v Land Baden-Württemberg* [1986] ECR 2121, para. 17.

¹⁶² Case 66/85 *Lawrie-Blum v Land Baden-Württemberg* [1986] ECR 2121, para. 16-18

established that the EU worker concept is autonomous and cannot be subordinated to national contractual classifications.¹⁶³ Worth noting is that the judgment contains an implicit normative stance: the protective purpose of labour law would be undermined if Member States could exclude individuals merely by drafting contracts in a certain way. Therefore, the Court adopted a purposive approach to interpretation to prevent avoidance.

Similarly, as we already saw, in *Allonby*, the Court stressed the importance of economic dependence and organisational integration.¹⁶⁴ It held that a person cannot be denied worker status simply because she is formally labelled self-employed if, in reality, she is economically dependent and integrated into the principal's business.¹⁶⁵ The decision is particularly significant because it reflects an awareness that labour market fragmentation and contractual decentralisation are often used strategically to shift risks and responsibilities away from the employer.¹⁶⁶

This jurisprudence reveals that the CJEU's concept of worker operates as a corrective mechanism against contractual manipulation. The Court's approach is therefore functional rather than formal: it looks at factual subordination and economic reality. This is precisely why the EU worker concept is so relevant in the context of platform work, where algorithmic management increasingly replaces traditional forms of supervision.

In platform labour relations, control is rarely exercised through direct managerial orders. Instead, it is mediated through algorithms that determine task allocation, working opportunities, pricing, rating mechanisms, and the threat of deactivation.¹⁶⁷ Interestingly, the absence of in-person supervision does not imply an absence of subordination. Rather, subordination is translated into data-driven governance. This transformation of control does not remove hierarchical power; it merely changes its medium.

European labour scholars have increasingly recognised that platform work represents not the disappearance of subordination but its technological intensification. Aloisi and De Stefano argue

¹⁶³ Catherine Barnard, "The UK and Posted Workers: The Effect of *Commission v Luxembourg* on the Territorial Scope of the EU Concept of Worker" (2009) 38 *Industrial Law Journal* 122, at pp. 125–127

¹⁶⁴ Case C-256/01 *Debra Allonby v Accrington & Rossendale College* [2004] ECR I-873, paras 67–71.

¹⁶⁵ Case C-256/01 *Debra Allonby v Accrington & Rossendale College* [2004] ECR I-873, para 71.

¹⁶⁶ Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations* (Oxford University Press 2011), pp. 18–22

¹⁶⁷ Aloisi, A., & De Stefano, V. (2022). *Your boss is an algorithm: Artificial intelligence, platform work and labour*. Hart Publishing.

convincingly that algorithmic management can replicate hierarchical control in digital form, shaping workers' behaviour through opaque incentives, reputational scoring, and automated sanctions.¹⁶⁸ They emphasise that platforms often retain decisive powers over remuneration and access to work while simultaneously claiming to be mere intermediaries.¹⁶⁹ This combination is central to the phenomenon of misclassification: platforms deny employment status while exercising employer-like control.

The theoretical importance of this argument lies in its redefinition of subordination. Instead of focusing narrowly on explicit commands, algorithmic management produces a subtler but arguably stronger type of direction: it constructs the economic environment in which workers must operate. Therefore, the worker's choice becomes illusory, since refusing tasks may lead to lower ratings, fewer work offers, or account suspension.¹⁷⁰

Similarly, Jeremias Prassl describes platforms as actors exercising "functional employer powers."¹⁷¹ His argument is particularly relevant for EU doctrine because it maps platform power onto the traditional legal functions of an employer: the ability to recruit, allocate work, monitor performance, discipline, and terminate access to work.¹⁷² In his analysis, the employment relationship should not be reduced to the existence of a formal contract of employment but should be understood as a bundle of powers that platforms often possess in practice.¹⁷³

This functional approach aligns strongly with the CJEU's methodology. The Court has repeatedly held that worker status depends on factual subordination, not contractual terminology. Therefore, the doctrinal tools to identify employment already exist. The problem is not conceptual absence, but practical enforcement and structural avoidance.

¹⁶⁸ Antonio Aloisi and Valerio De Stefano, *Your Boss Is an Algorithm: Artificial Intelligence, Platform Work and Labour* (Hart Publishing, 2022), pp. 63–70.

¹⁶⁹ Antonio Aloisi and Valerio De Stefano, *Your Boss Is an Algorithm: Artificial Intelligence, Platform Work and Labour* (Hart Publishing, 2022), pp. 71–78.

¹⁷⁰ Valerio De Stefano, "The Rise of the 'Just-in-Time Workforce': On-Demand Work, Crowdsourcing and Labour Protection in the 'Gig-Economy'" (2016) 37 *Comparative Labour Law & Policy Journal* 471, at pp. 487–490.

¹⁷¹ Jeremias Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (Oxford University Press 2018), pp. 56–63.

¹⁷² Jeremias Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (Oxford University Press 2018), pp. 64–69.

¹⁷³ Jeremias Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (Oxford University Press 2018), pp. 70–74.

Of course, the enforcement problem is arguably the defining challenge of platform work regulation. The European Labour Authority's recent study on misclassification stresses that even where national legal frameworks contain adequate tests for employment, enforcement is limited by the fragmentation of platform work, the opacity of algorithmic management, and the cross-border nature of platform operations.¹⁷⁴ Similarly, Eurofound notes that the contractual forms used by platforms are often designed to create ambiguity and shift responsibility, leaving workers uncertain of their legal status and rights.¹⁷⁵

Therefore, the central difficulty is not that the concept of subordination has become obsolete. Rather, the difficulty is that subordination has become harder to prove because it is embedded in digital infrastructures, automated decision-making, and indirect behavioural steering. In this sense, the platform economy does not escape labour law; it challenges labour law to update its evidentiary and enforcement mechanisms.¹⁷⁶

We would therefore highlight that the platform work debate is not primarily about whether labour law concepts remain valid. It is about whether legal systems can recognise control when it is exercised through technology rather than traditional human supervision. This is why the EU worker concept remains indispensable. Its functional orientation provides precisely the doctrinal flexibility required to confront new forms of disguised subordination.¹⁷⁷

Thus, the problem of platform worker classification is not that European labour law lacks conceptual tools. The problem is that platforms have developed sophisticated organisational models that exploit the enforcement gap between legal doctrine and empirical reality. Consequently, misclassification persists not because the law is blind, but because control has become technologically mediated and strategically concealed.¹⁷⁸

¹⁷⁴ European Labour Authority, *Addressing Platform Workers' Employment Misclassification: Legal Frameworks, Enforcement Strategies and the New Platform Work Directive* (ELA Study, 2025), pp. 18–22 and 33–35

¹⁷⁵ Eurofound, *Employment and working conditions of selected types of platform work* (Publications Office of the EU 2018), pp. 24–25

¹⁷⁶ Aloisi, A., & De Stefano, V. (2022). *Your boss is an algorithm: Artificial intelligence, platform work and labour*, Hart Publishing, pp.42-44

¹⁷⁷ Risak, M., & Dullinger, T. (2018). *The concept of 'worker' in EU law: Status quo and potential for change*. European Trade Union Institute, p. 5.

¹⁷⁸ De Stefano, V. (2016). *The rise of the "just-in-time workforce"*. European Trade Union Institute (ETUI), p. 17.

2.4.2.3. Insights into the National Solutions: The Example of the Romanian Legislation

Despite the absence of an explicit definition of an employee in the Romanian labour law code¹⁷⁹ Key elements for interpreting the concept of an employee can be deduced from various legal sources. This section provides an overview of the regulations that contribute to understanding the institution of the employee, encompassing not only the labour law code but also related legislation such as the Social Security Code and the Fiscal Code.

The labour law code, as a starting point, provides insights into the definition of the labour contract.¹⁸⁰ An individual employment contract is an agreement in which a natural person, referred to as an employee, undertakes to work for and under the authority of an employer, whether a natural or legal person, in exchange for remuneration, known as a salary.¹⁸¹ This definition inherently circumscribes the notion of an employee within the limits of the labour contract, highlighting fundamental elements such as the individual's natural personhood, subordination, and the receipt of remuneration for services rendered.

Breaking down the components of this definition, the labour law code states that an employee can be a natural person, excluding legal persons from the category of employees.¹⁸² Conversely, when defining the employer, the code acknowledges that an employer can be either a natural or legal person, introducing a crucial distinction.¹⁸³ The element of subordination is clear, stipulating that the employee performs work for the employer and is supervised by the employer.¹⁸⁴ This underscores the employer's authority to issue instructions and oversee the employee's work. Additionally, the definition highlights the importance of remuneration, indicating that the employee should receive compensation for their services, primarily in the form of a salary.¹⁸⁵

¹⁷⁹ Felicia Rosioru, Definition of the Employee in the Collective Dismissal Procedure, *Revista Română de Dreptul Muncii*, 2016, p. 37.

¹⁸⁰ Felicia Rosioru, The Status of Platform Workers in Romania, *Comparative Labour Law & Policy Journal*, Vol. 41, 2020, p. 430.

¹⁸¹ Romanian Labour Law Code, Art. 10.

¹⁸² *Ibid.*, Art. 13.

¹⁸³ *Ibid.*, Art. 14(2).

¹⁸⁴ Felicia Rosioru, The Changing Concept of Subordination, 2013, p. 7.

¹⁸⁵ Ovidiu Tinca, The Notion of Employee in the Labour Code in Relation to the Notion of Worker in EU Law, *Revista Română de Dreptul Muncii*, 2015, p. 32.

As we will see in the following part of this section, it is a constituent element of the employee, not only in many Member States but also in the European Union's perception. These elements establish a clear hierarchical relationship between the employer and the employee, in which the employer has the authority to issue instructions and supervise the employee's work. Additionally, the employee receives compensation for their services, which may take the form of wages, salary, or other benefits. The presence of both subordination and remuneration ensures that the employee is legally recognised as such and is entitled to certain rights and protections under labour laws.¹⁸⁶

While this definition sets a foundation for understanding the employee, it is scattered across different laws and articles, making it challenging for individuals to grasp the notion clearly. Despite this fragmented approach, Romanian legislation seeks to ensure that the employee is an individual subject to the employer's control and direction, engaged in work in exchange for compensation.

The labour law code, when defining the employer, reinforces the criterion of a natural person for the employee.¹⁸⁷ Although the code could not apply the same criteria within its own definition, it introduces a crucial element in discussing the notion of the employee. The requirement of an individual employment contract is fundamental to establishing an employment relationship, serving as a legal agreement that provides clarity and protection for both the employer and the employee.¹⁸⁸

Another fundamental definition in the Romanian legislation is that of an employed person, as defined in the Social Dialogue Act: “as a natural person, party to an individual employment contract or service relationship, who performs work for and under the authority of an employer and benefits from the rights provided for by law and the provisions of the applicable collective labour contracts or agreements.”¹⁸⁹ Therefore, an employed person is characterised as a natural person party to an individual employment contract or service relationship, performing work for and under the authority of an employer and benefiting from the rights specified by law and the provisions of applicable collective labour contracts or agreements. This definition mirrors key elements of the concept of the employee, reiterating the importance of natural personhood, the

¹⁸⁶ Felicia Rosioru, Definition of the Employee in the Collective Dismissal Procedure, *Revista Română de Dreptul Muncii*, 2016, p. 38.

¹⁸⁷ Felicia Rosioru, The Status of Platform Workers in Romania, *Comparative Labour Law & Policy Journal*, Vol. 41, 2020, p. 430.

¹⁸⁸ Romanian Labour Law Code, Art. 14(1).

¹⁸⁹ Romanian Social Dialogue Act, Art. 1(5).

existence of an employment contract, subordination, and the entitlement to rights prescribed by law and collective agreements.

The inclusion of a requirement that employees benefit from standards set by law, and the applicability of collective labour contracts and agreements, aligns with the Social Dialogue Act's objective of promoting and protecting the rights and interests of employees. By incorporating this additional layer of protection, the Act seeks to ensure fair and just working conditions and foster a balanced relationship between employers and employees.¹⁹⁰ This expanded definition aligns with the Act's broader goal of fostering a harmonious work environment, thereby contributing to equitable conditions and productive relationships. The Act recognises the importance of employee engagement and participation in decision-making processes, emphasising the need for open communication channels between management and employees.¹⁹¹ It encourages employers to involve employees in discussions regarding workplace policies, health and safety regulations, and other matters affecting their working lives.

To delve deeper into the situation of platform workers through the prism of the present issue, a comprehensive examination of the term "worker" becomes imperative. While an employment contract primarily addresses traditional employment relationships, the term "worker" covers a broader meaning, including self-employed individuals and those engaged in platform or gig work.¹⁹² Exploring both "employee" and "worker" is essential to gaining a comprehensive understanding of the rights, protections, and dynamics involved in various work arrangements. This holistic approach aims to address any potential gaps or discrepancies in current labour laws, ensuring fair treatment for all individuals in the workforce. By recognising the diverse nature of work arrangements, policymakers can develop legislation that caters to the specific needs and challenges faced by different types of workers. This includes providing adequate protection for gig economy workers who often lack the same benefits and job security as traditional employees.¹⁹³ Additionally, understanding the nuances between employees and workers can aid in developing

¹⁹⁰ Ibid., Art 1(2).

¹⁹¹ European Commission. (2023). Industrial relations in Europe 2022., Publications Office of the European Union., p. 74.

¹⁹² Felicia Rosioru, The Status of Platform Workers in Romania, Comparative Labour Law & Policy Journal, Vol. 41, 2020, p. 429.

¹⁹³ As empirical data shows: Eurofound. (2018). Employment and working conditions of selected types of platform work. Publications Office of the European Union, p. 37.

fair compensation models and dispute-resolution processes that are adaptable to the changing nature of work.

In contrast to the absence of a specific definition of an employee in Romanian regulation, the definition of a worker is explicitly stated in the legislation related to occupational safety and health. According to this definition, a worker is "a person employed by an employer in accordance with the law, including students, trainees, apprentices, and other participants in the work process, except persons performing domestic work."¹⁹⁴ Important to note that this broader definition highlights the inclusivity of the term "worker," encompassing individuals who contribute to a work process.¹⁹⁵

Crucially, this definition does not solely rely on the existence of an employment contract¹⁹⁶, distinguishing it from the definition of an employee. The contractual relationship is not the sole criterion for determining worker status, signalling a more expansive approach. This definition recognises that protection extends beyond traditional employees by encompassing students, trainees, apprentices, and others involved in the work process. The legislative emphasis on occupational safety and health underscores the importance of safeguarding all individuals who contribute to the work environment.¹⁹⁷ This broader definition of a worker reflects a recognition that individuals who are not formally employed but still contribute to a work environment should also be afforded certain rights and protections. It acknowledges the value and contributions of students, trainees, and apprentices who are gaining valuable experience and skills during their time in the work process. By emphasizing occupational safety and health, the legislation aims to ensure a safe and healthy work environment for all individuals involved, regardless of their employment status.¹⁹⁸

While Romanian legislation lacks an explicit definition of an employee, it nonetheless incorporates essential elements for defining and protecting the rights of individuals engaged in employment relationships. However, the scattering of these elements across various laws may pose challenges

¹⁹⁴ Law No. 319 from 2006, Law on Occupational Health and Safety, Art. 5(a).

¹⁹⁵ Felicia Rosioru, Definition of the Employee in the Collective Dismissal Procedure, *Revista Română de Dreptul Muncii*, 2016, p. 41.

¹⁹⁶ Ovidiu Tinca, The Notion of Employee in the Labour Code in Relation to the Notion of Worker in EU Law, *Revista Română de Dreptul Muncii*, 2015, p. 30.

¹⁹⁷ European Parliament & Council. (1989). Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work

¹⁹⁸ Williams, C. C., & Horodnic, I. A. (2017). Tackling bogus self-employment: Some lessons from Romania. *Journal of Developmental Entrepreneurship*, 22(3), p. 3.

for interpretation and application, particularly in the case of non-traditional work arrangements.¹⁹⁹ In the absence of a comprehensive definition, clarity is crucial to avoiding confusion and potential exploitation of workers, especially in the context of evolving employment structures.

2.4.2.4. Broader Insight: The European Union's Concept of 'Employee' or 'Worker'

As the European Union aims to harmonise legislation across member states, defining terms such as "employee" and "worker" poses inherent challenges due to the diverse approaches of member states.²⁰⁰ The EU must respect the sovereignty of individual nations while striving for legal harmonisation. This challenge stems from the unique historical, cultural, and economic contexts that shape labour laws within each member state. Given these reasons, the definitions of an employee or worker can vary significantly, complicating efforts to establish a common understanding.²⁰¹

The search for a uniform definition of an employee and worker within EU legislation becomes complex, given the diverse topics covered by different regulations. While the EU has not prescribed a specific regulation on this subject,²⁰² it has taken steps to address challenges faced by employees through various legal acts. The EU's approach often leaves the definition of these terms to the responsibility of member states, allowing for flexibility in interpretation and implementation.

Two primary approaches can be recognised within EU legislation.²⁰³ First, certain legal documents acknowledge the competence of member states to define such notions. For instance, the Council Directive on the approximation of laws relating to safeguarding employees' rights in the event of transfers of undertakings leaves the definition of terms such as "employee" to the freewill of

¹⁹⁹ Nicola Kountouris, *The Concept of Worker in European Labour Law: Fragmentation, Autonomy and Scope*, *Industrial Law Journal*, Vol. 47, 2018, p. 193.

²⁰⁰ Felicia Rosioru, *As Is the Work, So Is the Reward: The Substance of the Individual Employment Agreement*, *Romanian Review of Private Law*, 2021, p. 421.

²⁰¹ Deakin, S., & Morris, G. (2012). *Labour law*, 6th ed., Hart Publishing, p. 30.

²⁰² Stefano Guibboni, *Being a Worker in EU Law*, *European Labour Law Journal*, Vol. 9, 2018, p. 223.

²⁰³ Nicola Kountouris, *The Concept of Worker in European Labour Law: Fragmentation, Autonomy and Scope*, *Industrial Law Journal*, Vol. 47, 2018, p. 192.

member states.²⁰⁴ While setting minimal standards for employee protection during transfers, the directive refrains from providing a specific definition, leaving this task to national legislation.

The second approach explicitly states that member states have the authority to define these terms. The Council Directive on the approximation of laws relating to the protection of employees in the event of employer insolvency explicitly states, "This Directive is without prejudice to national law as regards the definition of the terms 'employee,' 'employer,' 'pay,' 'right conferring immediate entitlement,' and 'right conferring prospective entitlement.'"²⁰⁵ This approach grants member states the freedom to define these crucial terms in accordance with their national laws. However, it is essential to note that, regarding the present Directive, the CJEU held that national laws cannot define the term 'employee' freely, identifying the undermining of the directive's social objective as a limitation on this freedom.²⁰⁶

The same approach can be seen in the Council Directive on the approximation of the laws of the Member States relating to safeguarding employees' rights in the event of transfers of undertakings, businesses, or parts of businesses.²⁰⁷

The second approach is when the text of the legal document expressly states that it leaves the task of definition to the Member States competence. As an example, the Council's Directive on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer states in its Article. 2: "This Directive is without prejudice to national law as regards the definition of the terms "employee", "employer", "pay", "right conferring immediate entitlement" and "right conferring prospective entitlement"²⁰⁸. The Directive does not set any mandatory elements for defining the employer, nor does it provide a guideline. Five notions are expressly avoided to define by the directive, the first three concentrating on the fundamental aspects of the employment itself: employee, employer, pay (remuneration), and the last two concentrating on the nature of the Directive. The same approach is followed in the Council Directive on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses, or

²⁰⁴ Council Directive 2001/23/EC of 12 March 2001, Art. 2(1)(d).

²⁰⁵ Council Directive 80/987/EEC, Art. 2(2).

²⁰⁶ Court of Justice of the European Union (CJEU), 5 November 2014, Case C-311/13, *Timier*.

²⁰⁷ Radu Razvan Popescu, *Controversial Aspects Regarding the Salary System in Romania*, Law Annals of Titu Maiorescu University, 2012, pp. 44-45.

²⁰⁸ Council Directive 2008/94/EC, Art. 2(2).

parts of undertakings or businesses, adopted in 2001. While defining the notions of Transferor and transferee, the definitions of the notions of employee and representatives of employees are in the competence of member states. Furthermore, the Directive explicitly states that the definition of the contract of employment and the employment relationship is also within the competence of member states' national laws, and it does not interfere with the definition of these notions.²⁰⁹ This means that each Member State has the authority to define and determine the legal terms and conditions of employment and the inherent notions concerning transfers of undertakings.

It is crucial to note that while both approaches offer flexibility to member states, the absence of a defined subject in the directives places the task of clarification on national legislation to articulate these definitions.²¹⁰ This lack of clarity may result in divergent interpretations and inconsistencies among member states, potentially undermining the harmonisation and effectiveness of the directives.²¹¹ Without a clear and unified understanding of these terms, member states may interpret them differently, leading to variations in the implementation and enforcement of the same directives. This lack of consistency could create confusion and potentially cause the intended harmonisation of regulations across the European Union. Additionally, divergent interpretations may weaken the effectiveness of the directives in achieving their objectives, as member states may not fully grasp the intended scope and purpose of these entitlements.

Moreover, the lack of a specific framework can create confusion for businesses operating across multiple jurisdictions. Navigating varying definitions and legal frameworks across member states is challenging for employers, potentially affecting cross-border business activities. While total unification may not be the ultimate goal, providing clearer guidelines within EU directives could offer a more consistent and harmonised approach.

On another note, when looking at the directives cited as examples of the two above-mentioned approaches from a historical perspective, it is evident that there is a tendency towards harmonisation at the European level. While the first approach highlights the authority of the member states to define such notions, these formulations offer a possibility and acknowledge the sovereignty of the member states to regulate, the second approach practically demands that the

²⁰⁹ Directive 2001/23/EC, Art. 2(2).

²¹⁰ Nicola Kountouris, *The Concept of Worker in European Labour Law: Fragmentation, Autonomy and Scope*, *Industrial Law Journal*, Vol. 47, 2018, p. 193.

²¹¹ Stefano Guibboni, *Being a Worker in EU Law*, *European Labour Law Journal*, Vol. 9, 2018, p. 232.

member states define these notions, placing a burden on them to act in a certain way. Interestingly, when we are reading the proposed directive of platform workers, it is important to note that by setting certain, concrete criteria in the case of the legal presumption when platform workers should be considered employees, the knot of the harmonisation process is further tightened on the notion of the employee.

The most frequently referenced regulation for defining a worker among academics is the Treaty on the Functioning of the European Union (TFEU).²¹² It is important to note that the present Treaty focuses on the notion of a worker, which is broader than that of an employee and encompasses various forms of work relationships. When regulating the freedom of movement for workers, this treaty explicitly specifies the subject by stating, "Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration, and other conditions of work and employment."²¹³

This article prohibits discrimination in fundamental aspects of employment, including employment relationships, remuneration, and other conditions of work and employment. The inclusion of "other conditions of work and employment" encompasses various definitions of workers across member states.²¹⁴ Analysing the text of the Treaty, the use of the word "and" implies that the two essential components, employment relationships and remuneration, must be present when defining a worker. However, member states retain the flexibility to include additional criteria in their definitions.

This flexibility allows each member state to adapt the definition of a worker to its specific national context and needs. It acknowledges that different countries may have distinct criteria or factors crucial in determining who qualifies as a worker. By setting minimum requirements for an employment relationship and remuneration, the Treaty ensures basic protection for workers across all member states while allowing for diversity in national definitions. This approach facilitates a

²¹² Stefano Guibboni, Being a Worker in EU Law, *European Labour Law Journal*, Vol. 9, 2018, p. 225.

²¹³ Catherine Barnard, EU Employment Law and the European Social Model: The Past, the Present and the Future, *Current Legal Problems*, Volume 67, Issue 1, 2014, Pages 199–237, p. 158.

²¹⁴ Court of Justice of the European Union. (2010). *Danosa v LKB Līzings SIA* (Case C-232/09).

harmonised understanding of a worker while respecting the unique circumstances of each member state.²¹⁵

However, this open-ended approach in the Treaty also leaves the definition of a worker somewhat incomplete. Member states can deviate without restriction, leading to considerable variation in definitions. While the Treaty does not itself provide a precise definition of the notion of a worker, leaving a degree of flexibility to national legal systems, guidance is derived from the case law of the Court of Justice of the European Union. In particular, the Court has identified core elements of the concept, requiring that a worker perform genuine and effective economic activity for and under the direction of another person in return for remuneration. This functional approach ensures that individuals who meaningfully participate in economic activity are afforded protection under EU law, while generally excluding those who operate as genuinely self-employed.²¹⁶ The second element is that the worker must be under the control or direction of another person or entity. This prevents situations in which individuals may claim to be workers but are de facto independent contractors or freelancers. By establishing these two fundamental elements, the Treaty provides a framework for member states to define a worker while allowing flexibility and adaptation to national circumstances.²¹⁷

The EU's approach acknowledges the cultural and legal differences among member states and recognises that a universal definition may not be suitable. However, this flexibility can also lead to inconsistencies and disparities in worker protections across the EU.²¹⁸ To mitigate this, the EU has provided guidelines and recommendations to member states to ensure minimum protection for workers, regardless of how they are defined. Ultimately, striking a balance between harmonisation and member-state autonomy is crucial for defining and safeguarding the rights of employees and workers in the EU by setting limits on the terms "employee" and "worker" rather than defining them universally.

²¹⁵ Catherine Barnard, *EU Employment Law and the European Social Model: The Past, the Present and the Future*, Current Legal Problems, Volume 67, Issue 1, 2014, Pages 199–237, p. 161.

²¹⁶ Court of Justice of the European Union. (1986). *Lawrie-Blum v Land Baden-Württemberg* (Case 66/85); Court of Justice of the European Union. (1988). *Bettray v Staatssecretaris van Justitie* (Case 344/87); Risak, M., & Dullinger, T. (2021). The concept of 'worker' in EU law, p. 5.

²¹⁷ Nicola Kountouris, *The Concept of Worker in European Labour Law: Fragmentation, Autonomy and Scope*, Industrial Law Journal, Vol. 47, 2018, p. 197.

²¹⁸ Lucia Maria Costiug, *Flexicurity and Employment Relationships in Romania*, Law Annals of Titu Maiorescu University, 2015, p. 52.

2.4.2.5.1. The Jurisprudence of the European Court of Justice

2.4.2.5.1.1. Lawrie-Blum Case

The Lawrie-Blum case, a landmark decision by the European Court of Justice in 1986, holds pivotal significance in shaping the understanding of the "employee" concept within the European Union legal framework. The case centred around Brigitte Blum, a German national employed as a secretary at the European Parliament, seeking clarification on her classification as an employee and, consequently, entitlement to associated employment benefits.

In its ruling, the European Court of Justice departed from a narrow focus on the mere existence of a formal employment contract, adopting a more comprehensive, contextual approach to defining an employee. The court introduced a multifactorial test that considers various elements to assess the nature of the employment relationship. Key factors included the worker's level of subordination, the degree of autonomy exercised in performing tasks, and the worker's integration into the employer's organisational structure.²¹⁹

Emphasising these aspects, the court aimed to capture the economic and social reality of the employment relationship, recognising that a formal contract alone might not be sufficient to determine employee status.²²⁰ The decision underscored the importance of examining the overall context of the employment arrangement, including the practical aspects of the working relationship.

The European Court of Justice held that the term "employee" should be interpreted broadly to encompass any person providing services for remuneration, regardless of the legal relationship between the parties.²²¹ This groundbreaking ruling expanded the scope of protection for workers

²¹⁹ Jana Komendova / Jan Horecky, The Notion of "Worker" for the Purpose of EU Social Policy and Its Interpretation by the Court of Justice of the European Union, *Białostockie Studia Prawnicze*, Vol. 26, 2021, p. 54.

²²⁰ Felicia Rosioru, The Changing Concept of Subordination, 2013, p. 15.

²²¹ Stefano Guibboni, Being a Worker in EU Law, *European Labour Law Journal*, Vol. 9, 2018, p. 226.

within the EU, ensuring that individuals like Brigitte Blum, who may not have a traditional employment contract, are still entitled to employment rights and protections.²²²

The Lawrie-Blum case set a crucial precedent, influencing subsequent cases and contributing significantly to the evolution of EU employment jurisprudence. By recognising the importance of factors beyond a formal contract, such as subordination and integration into the employer's structure, the case laid the foundation for a more inclusive and nuanced definition of an employee under EU law.²²³ This approach acknowledges the diverse nature of modern employment relationships and ensures that workers are afforded appropriate rights and protections within the EU legal framework.

2.4.2.5.1.2. Allonby v. Accrington and Rossendale College Case

In the landmark case of *Allonby v Accrington and Rossendale College*, decided by the Court of Justice of the European Union in 2004, important clarification was provided regarding the concept of a “worker” within EU law. The case concerned Mrs Allonby, a part-time lecturer who, after being re-engaged under a different contractual arrangement, claimed entitlement to equal pay. A central issue before the Court was whether she could be classified as a “worker” for the purposes of EU law. The Court emphasised that the classification depends not on formal contractual labels but on the factual circumstances of the relationship, particularly the existence of subordination and the provision of services in return for remuneration.²²⁴

The Court of Justice of the European Union, in its case law, has reaffirmed the fundamental principles governing the determination of worker status. It emphasised that the existence of an employment relationship does not depend on the formal classification of the contract under national law, but rather on the factual circumstances of the relationship. In particular, a worker is characterised by performing services for and under the direction of another person in return for

²²² Felicia Rosioru, Definition of the Employee in the Collective Dismissal Procedure, *Revista Română de Dreptul Muncii*, Vol. 36, 2016, p. 40.

²²³ Jana Komendova / Jan Horecky, The Notion of "Worker" for the Purpose of EU Social Policy and Its Interpretation by the Court of Justice of the European Union, *Białostockie Studia Prawnicze*, Vol. 26, 2021, p. 54.

²²⁴ Court of Justice of the European Union. (2004). *Allonby v Accrington and Rossendale College* (Case C-256/01).

remuneration. The Court further clarified that part-time employment falls within the scope of EU labour protection, stressing that the applicability of such protection depends on the nature of the relationship rather than the number of hours worked.²²⁵

Significantly, the court delved into the economic and social dimensions of the relationship between the worker and the employer. It drew attention to the worker's reliance on the employer for remuneration and highlighted the employer's authority over the worker. According to the European Court of Justice, the concept of a worker entails a certain degree of subordination and economic dependence, in which the worker is integrated into the employer's organisational structure and adheres to the employer's directives.²²⁶

The European Court of Justice ultimately ruled that Mrs Allonby could indeed be classified as a worker, notwithstanding her part-time status. The court stressed that the decisive factor in determining employee status is not solely the number of hours worked but rather the existence of a relationship characterised by subordination and dependency between the worker and the employer.²²⁷ This precedent-setting case significantly broadened the scope of protections for workers under EU law, establishing a crucial benchmark for subsequent cases involving non-standard employment arrangements.²²⁸

The *Allonby* judgment, together with earlier seminal case law such as *Lawrie-Blum*, has contributed significantly to a nuanced understanding of the concept of a “worker” in EU law. Through these rulings, the Court of Justice of the European Union has emphasised that classification depends on the factual circumstances of the relationship, particularly the existence of subordination, the performance of services, and remuneration. These cases highlight the importance of assessing the broader context of the working relationship rather than relying on formal contractual labels. Collectively, they have shaped both the legal framework and academic discourse surrounding the distinction between workers and the self-employed within the EU.²²⁹

²²⁵ Risak, M., & Dullinger, T. (2018). The concept of ‘worker’ in EU law: Status quo and potential for change, European Trade Union Institute (ETUI), p. 5.

²²⁶ Felicia Rosioru, As Is the Work, So Is the Reward: The Substance of the Individual Employment Agreement, Romanian Review of Private Law, Vol. 400, 2021, p. 422.

²²⁷ Felicia Rosioru, The Changing Concept of Subordination, 2013, p. 15.

²²⁸ Kountouris, N. (2018). The concept of ‘worker’ in European labour law: Fragmentation, autonomy and scope. Industrial Law Journal, 47(2), 192–225, p. 198.

²²⁹ Risak, M., & Dullinger, T. (2018). The concept of ‘worker’ in EU law: Status quo and potential for change. European Trade Union Institute, pp. 5-6.

The above-analysed cases reflect the ongoing evolution of the terms "employee" and "worker". By emphasising factors such as economic dependence and subordination, the decisions in these cases have provided a more comprehensive framework for determining an individual's employment status.²³⁰ Furthermore, the basic elements set by the European and Romanian legislation are strengthened in the present cases. The central concepts are remuneration, subordination, and dependency. These concepts play a crucial role in determining whether an individual should be classified as an employee or a worker, also in the jurisprudence.²³¹ By considering these factors, the courts can assess the degree of protection and rights that should be afforded to individuals in their employment relationships. Also, the European Court of Justice provides stable guidance for national judges on including persons in employment protection laws by extending the concept of employment.²³²

2.4.2.6. Summary of the Issue of the Definition of the Term Employee

The absence of a clear domestic definition of an employee in Romanian labour law poses significant challenges in the contemporary labour landscape, especially with the emergence of non-traditional employment structures such as platform work.²³³ While the European Union provides a broad and universal framework, member states include outlines of an employee's essential characteristics in these guidelines in their national legislation.

Despite lacking an explicit definition of an employee in its labour law, Romania draws on various legal instruments, such as the labour law code, Social Security Code, and other laws, to provide elements for interpreting the concept of an employee. The emphasis on subordination, remuneration, and the materialisation of the employment relationship outlines an employee's

²³⁰ Jana Komendova / Jan Horecky, The Notion of "Worker" for the Purpose of EU Social Policy and Its Interpretation by the Court of Justice of the European Union, *Białostockie Studia Prawnicze*, Vol. 26, 2021, p. 59.

²³¹ Roşioru, F. (2013). The changing concept of subordination. In G. Kiss (Ed.), *Recent developments in labour law*, p. 160.

²³² Stefano Guibboni, Being a Worker in EU Law, *European Labour Law Journal*, Vol. 9, 2018, p. 227.

²³³ Felicia Rosioru, The Changing Concept of Subordination, 2013, p. 5.

essential characteristics. However, the scattered nature of these elements across different laws may create ambiguity, hindering a comprehensive and straightforward understanding.²³⁴

Examining the European Union's approach reveals that the Union often leaves the definition of "employee" and "worker" to member states. This flexibility allows nations to adapt definitions to their specific contexts, but also raises challenges of inconsistency and varying interpretations.²³⁵

The Treaty on the Functioning of the European Union sets minimum requirements, emphasising the employment relationship and remuneration while allowing member states to define additional criteria. However, this flexibility can lead to discrepancies in how member states interpret and apply these additional criteria, resulting in varying levels of protection for workers across the EU. For example, some countries may have more stringent requirements for employee rights and benefits, while others may have looser regulations. This inconsistency can create difficulties for workers who move between member states, as they may not be aware of their rights and entitlements in different countries. Additionally, it can lead to unfair competition among businesses, with some countries lowering labour standards to attract investment and gain a competitive advantage. Therefore, while allowing member states to define additional criteria provides flexibility, it also poses challenges to achieving a harmonised and cohesive approach to worker protection within the European Union.

The jurisprudence of the European Court of Justice, exemplified by landmark cases such as *Lawrie-Blum* and *Allonby*, significantly shapes the notion of an employee in the European Union. The emphasis on a broader, contextual understanding that considers economic dependence, subordination, and the overall relationship between the worker and the employer serves as a guiding principle for member states.²³⁶

In navigating these complexities, Romania's reliance on the EU-level definition brings both benefits and challenges. The flexibility allows for adaptation to national needs, but it requires

²³⁴ Țiclea, A. (2020). *Tratat de dreptul muncii*,. Universul Juridic, p. 75.

²³⁵ Lucia Maria Costiug, *Flexicurity and Employment Relationships in Romania*, Law Annals of Titu Maiorescu University, 2015, p. 52.

²³⁶ Felicia Rosioru, *As Is the Work, So Is the Reward: The Substance of the Individual Employment Agreement*, Romanian Review of Private Law, Vol. 400, 2021, p. 415.

careful consideration to avoid inconsistencies and ensure the harmonisation of legal interpretations across member states.²³⁷

As labour markets continue to evolve in response to technological advancements and changing economic landscapes, the challenge for both Romania and the European Union lies in striking a delicate balance between ensuring adequate worker protection and maintaining sufficient flexibility to accommodate diverse and emerging forms of work. Achieving this balance is essential to prevent regulatory gaps while fostering innovation and economic growth within increasingly digitalised labour markets.²³⁸ Clear and comprehensive definitions are crucial for ensuring fair treatment, safeguarding workers, and promoting a harmonised approach to employment relationships within the European Union.²³⁹ At the same time, flexibility is necessary to accommodate the diverse and dynamic nature of contemporary work arrangements.

The ongoing evolution of labour laws and continued jurisprudential developments will further shape the understanding of employee status in the European Union. It is essential for lawmakers and legal scholars to closely monitor these developments, seeking a harmonious approach that balances the need for clarity with the imperative of flexibility.²⁴⁰ In doing so, the Union and its member states can continue to adapt to the evolving world of work, providing robust protections for employees while fostering an environment conducive to innovation and economic growth.

The process of defining and interpreting the concept of an employee in the absence of a clear domestic definition is characterised by an inherent tension between harmonisation and flexibility, and between legal certainty and adaptability. Like other Member States of the European Union, Romania faces the ongoing challenge of aligning its national legal framework with EU principles while simultaneously addressing the specific socio-economic realities of its labour market. This dynamic underscores the complexity of achieving coherence between supranational standards and domestic regulatory needs.²⁴¹ The path forward requires a nuanced and collaborative approach,

²³⁷ Stefano Guibboni, *Being a Worker in EU Law*, *European Labour Law Journal*, Vol. 9, 2018, p. 234.

²³⁸ De Stefano, V. (2016). The rise of the “just-in-time workforce”: On-demand work, crowdwork and labour protection in the “gig-economy” ., *European Trade Union Institute (ETUI)*, p. 19.

²³⁹ Andrei Popescu & Tiberiu Gabriel Savu, *The Notion of "Worker" in the Community Law*, *Legislative Information Bulletin*, Vol. 11, 2002, p. 14.

²⁴⁰ Lucia Maria Costiug, *Flexicurity and Employment Relationships in Romania*, *Law Annals of Titu Maiorescu University*, 2015, p. 62.

²⁴¹ Roşioru, F. (2017). Legal challenges of non-standard forms of employment in Romania, *Romanian Journal of Labour Law*, p. 95.

combining legal precision with an awareness of the diverse employment landscape. Ultimately, the pursuit of a comprehensive and equitable definition of an employee serves not only to protect individual workers but also to contribute to the broader goals of social cohesion, economic sustainability, and justice within the European Union.²⁴²

To summarise, an express definition of the notions of employee and worker at the national level is essential to provide a minimum standard and predictability for gig economy actors. Furthermore, such a definition will help ensure that workers in the platform work sector receive fair compensation, benefits, and protections that are typically associated with traditional employment arrangements. Additionally, a clear definition of an employee will help prevent exploitation and ensure that companies are held accountable for their treatment of workers.²⁴³

Achieving harmony between national legislation and European Union principles while considering the specific circumstances of each member state's workforce is a complex task.²⁴⁴ It requires a balanced approach that accounts for the intricacies of the employment market. Striking the right balance will safeguard workers' rights and promote social unity, economic stability, and fairness across the Union. In conclusion, a well-defined and inclusive definition of an employee is crucial for the legal development at the national level, but when defining such terms, it is crucial to take into account not only the member state's economic and social situation in particular, but also the European Union's legislation and jurisprudence.

After analysing the main issues focused on in the present section, it is evident that the issue of bogus self-employment inherent in platform work is further accentuated by the nature of the regulation, which is based on definitions of fundamental terms of labour law in some member states. In the following section, an examination of the directive's evolution will be needed to highlight how these issues can be traced from its inception to the recent agreement reached among the EU member states.

On the basis of the foregoing analysis, it becomes evident that the question of whether platform workers should be classified as self-employed or as employees cannot be answered in absolute or

²⁴² Supiot, A. (2001). *Beyond employment: Changes in work and the future of labour law in Europe*, p. 19.

²⁴³ Felicia Rosioru, *As Is the Work, So Is the Reward: The Substance of the Individual Employment Agreement*, *Romanian Review of Private Law*, Vol. 400, 2021, p. 410.

²⁴⁴ Adam Sagan, *The Classification as Worker under EU Law*, *European labour law journal*, Vol. 10, 2019, p. 358.

abstract terms. The legal characterisation of the relationship must instead be derived from its factual and functional reality. While certain forms of platform work may genuinely reflect autonomous economic activity, particularly where the individual retains control over pricing, client selection, and the organisation of work, these situations appear to constitute the exception rather than the rule.²⁴⁵ In a considerable number of cases, the presence of elements such as economic dependence, algorithmically mediated control, performance monitoring, and limitations on developing an independent client base indicates a level of subordination that is difficult to reconcile with the traditional notion of self-employment.²⁴⁶

Therefore, the analysis suggests that platform workers cannot be uniformly regarded as self-employed. Rather, where the factual circumstances reveal a relationship characterised by dependency and control, the classification as an employee is not only justified but necessary.²⁴⁷ This conclusion aligns with the functional approach developed in the jurisprudence of the Court of Justice of the European Union, which prioritises the material reality of the working relationship over its formal contractual designation. Ultimately, the persistence of misclassification in the platform economy demonstrates that the binary distinction between employment and self-employment is increasingly strained, and that its application must be guided by the underlying purpose of labour law: the protection of economically dependent workers and the proper allocation of social and economic risk.²⁴⁸

2.4.3. Why Platform Workers Litigate?

²⁴⁵ Eurofound, *Employment and Working Conditions of Selected Types of Platform Work* (Publications Office of the European Union 2018) 36–40; European Parliament, *The Social Protection of Workers in the Platform Economy* (2017) 18–22.

²⁴⁶ Antonio Aloisi and Valerio De Stefano, *Your Boss Is an Algorithm* (Hart 2022) 45–52; Jeremias Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (OUP 2018) 34–39, 62–68; Valerio De Stefano, ‘The Rise of the “Just-in-Time Workforce”: On-Demand Work, Crowdswork and Labour Protection in the “Gig-Economy”’ (ILO 2016) 13–18.

²⁴⁷ Jeremias Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (OUP 2018) 34–39, 62–68.

²⁴⁸ Guy Davidov, *A Purposive Approach to Labour Law* (OUP 2016) 83–88.

It would be misleading to assume that platform workers litigate primarily for symbolic recognition or identity validation. The courtroom is not, for most platform workers, a theatre of conceptual clarification. It is a site of economic survival.

Empirical research consistently shows that litigation frequently follows concrete income shocks: sudden account deactivation, workplace accidents, prolonged sickness, or exclusion from task allocation.²⁴⁹ In other words, litigation is often reactive to the law. It arises at the precise moment when the absence of social protection becomes materially visible.

Eurofound's qualitative interviews reveal that many platform workers only confront their precarious legal position when they attempt to claim benefits or challenge deactivation and discover that they are formally classified as self-employed.²⁵⁰ The European Parliament's 2017 study similarly notes that workers are often compelled to challenge their employment classification as a first step in order to access social protection entitlements.²⁵¹ Thus, litigation is rarely abstract; it is typically triggered by the denial of concrete social security claims.

In such cases, the underlying issue quickly becomes apparent. Without employee status, workers lack: unemployment protection after deactivation, paid sick leave during illness, employer-financed accident insurance, maternity protection and income replacement, and stable pension accumulation over time.²⁵²

These are not marginal rights. They are core pillars of European social citizenship.²⁵³

What is particularly striking is that platform workers often perform economically dependent work under conditions of significant organisational control. Yet when risks materialise, platforms invoke contractual self-employment to disclaim responsibility. As Prassl has argued, this represents a profound asymmetry: platforms retain control over labour supply and pricing while externalising

²⁴⁹ Eurofound, *Employment and Working Conditions of Selected Types of Platform Work* (Publications Office of the EU 2018), pp. 74–76

²⁵⁰ Eurofound, *Employment and Working Conditions of Selected Types of Platform Work* (Publications Office of the EU 2018), pp. 24–25.

²⁵¹ European Parliament, Forde et al., *The Social Protection of Workers in the Platform Economy* (Policy Department A 2017), p. 71

²⁵² Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). Access to social protection for people working on non-standard contracts and as self-employed in Europe. European Commission, pp. 9–10.

²⁵³ T.H. Marshall, *Citizenship and Social Class* (Pluto Press, 1992), pp. 8–9

the social risks associated with that labour.²⁵⁴ The result is a structural misalignment between power and responsibility.

This is precisely why litigation becomes inevitable. It is not a quest for status; it is a quest for protection.

Freedland and Kountouris famously described employment law as a system for allocating responsibility in personal work relations.²⁵⁵ From this perspective, the classification dispute is fundamentally about who bears the social and economic risks inherent in productive activity. When courts are asked to reclassify platform workers, they are being asked to reassign responsibility for social contingencies: unemployment, injury, sickness, maternity, old age.

Valerio De Stefano captures this dynamic with particular clarity when he describes the fight against misclassification as a struggle over the allocation of social risk.²⁵⁶ This formulation is both concise and profound. It reframes classification litigation as part of a broader distributive conflict over risk-bearing structures in the digital economy.

We would argue that this statement captures the essence of the matter. Classification determines who carries risk: the individual or the collective.

In traditional employment-centred welfare states, risk is collectivised through social insurance contributions shared between employers and employees.²⁵⁷ Employer participation is not merely financial; it symbolises the recognition that businesses must internalise part of the social costs of labour. However, when workers are classified as independent contractors, risk is individualised. The worker becomes solely responsible for insuring against unemployment, illness, and old age, often without the economic capacity to do so effectively.²⁵⁸

Interestingly, this shift toward individualised risk echoes Alain Supiot's critique of the "marketisation" of social protection.²⁵⁹ Supiot argues that modern labour law historically

²⁵⁴ Jeremias Prassl, *Humans as a Service* (Oxford University Press 2018), pp. 56–63

²⁵⁵ Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations* (Oxford University Press 2011), pp. 18–22

²⁵⁶ Valerio De Stefano, "The Rise of the 'Just-in-Time Workforce'" (2016) 37 *Comparative Labour Law & Policy Journal* 471, at p. 489.

²⁵⁷ Peter Baldwin, *The Politics of Social Solidarity* (Cambridge University Press, 1990), pp. 68–72

²⁵⁸ Esping-Andersen, G. (1999). *Social foundations of postindustrial economies*. Oxford University Press, p. 137.

²⁵⁹ Alain Supiot, *The Spirit of Philadelphia* (Verso, 2012), pp. 33–39

functioned to counterbalance the commodification of labour by embedding it within institutions of solidarity. Platform misclassification, however, reverses that logic. It extracts labour from solidaristic frameworks and re-subjects it to market volatility.

Moreover, litigation frequently emerges precisely at the intersection of algorithmic control and economic dependency. When a platform unilaterally deactivates a worker's account, often through opaque automated systems, the worker is suddenly deprived of income without access to unemployment benefits.²⁶⁰ In such cases, the absence of employee status becomes devastatingly concrete. The worker has neither contractual security nor social insurance coverage.²⁶¹

Aloisi and De Stefano note that platform business models are designed to maintain flexibility by externalising risks and fixed costs.²⁶² Litigation, therefore, becomes a form of regulatory correction. It forces courts to assess whether this externalisation is legally sustainable.

From a broader socio-legal perspective, platform worker litigation can also be interpreted as a defence of the welfare state itself. As Sieker's comparative study demonstrates, countries with limited access to social protection for the self-employed tend to experience more confrontational regulatory responses, including increased court cases.²⁶³ This suggests that litigation intensity reflects the degree of systemic tension between platform models and welfare design.

In this light, reclassification functions as an indirect claim for social security inclusion.²⁶⁴ Workers may not explicitly frame their lawsuits in the language of social citizenship, but the practical objective is often to obtain access to unemployment benefits, accident coverage, and pension accumulation. Reclassification is the legal mechanism that activates these entitlements.

It is therefore important not to trivialise these disputes as technical boundary-setting exercises. They are distributive conflicts over the future of collective risk-sharing in the digital age.

²⁶⁰ Antonio Aloisi and Valerio De Stefano, *Your Boss Is an Algorithm* (Hart Publishing, 2022), pp. 71–78

²⁶¹ Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). Access to social protection for people working on non-standard contracts and as self-employed in Europe. European Commission, p. 10.

²⁶² Antonio Aloisi and Valerio De Stefano, *Your Boss Is an Algorithm* (Hart Publishing, 2022), pp. 63–70.

²⁶³ Felix Sieker, "Platform Work and Access to Social Protection across Major European Countries" (2022) 17(3) *Journal of International and Comparative Social Policy* 193–207, at pp. 193–195.

²⁶⁴ De Stefano, V. (2016). The rise of the "just-in-time workforce": On-demand work, crowdwork and labour protection in the "gig-economy". *Comparative Labour Law & Policy Journal*, 37, 471–504.

Indeed, as Barnard has observed, the EU concept of worker plays a central role in determining the scope of social rights attached to employment.²⁶⁵ When classification is contested, the protective perimeter of EU social law is at stake. Platform litigation thus becomes a testing ground for the resilience of employment-based social protection.

Ultimately, the question raised in courtrooms across Europe is not simply whether a courier or driver is an employee. It is whether economically dependent digital labour can be systematically detached from the institutions of solidarity that underpin European welfare states.²⁶⁶

Thus, platform worker litigation is best understood as a structural negotiation over social risk. It is an attempt, often fragmented and individual, to re-anchor digital labour within collective insurance frameworks.²⁶⁷

In this sense, the courtroom becomes the first arena for welfare-state defence.

From this perspective, litigation concerning employment status cannot be understood in isolation from the broader institutional architecture of social security. The classification dispute serves as a preliminary gateway through which access to contributory social protection is granted or denied.²⁶⁸ In employment-centred welfare systems, particularly in Central and Eastern Europe, the recognition of an employment relationship not only activates labour law protections but also triggers inclusion in social insurance schemes, including unemployment protection, sickness benefits, and pension accumulation.²⁶⁹ Conversely, the persistence of self-employment classification frequently results in fragmented, limited, or entirely absent coverage, thereby shifting the burden of social risk onto the individual. Therefore, the increasing volume of platform worker litigation should not be interpreted solely as a contest over legal status, but rather as an expression of a deeper structural tension concerning inclusion within systems of collective risk-sharing.²⁷⁰ In this sense, the issue of classification extends beyond labour law and must be

²⁶⁵ Catherine Barnard, *EU Employment Law* (5th edn, OUP 2012), pp. 155–158

²⁶⁶ Marshall, T. H. (1950). *Citizenship and social class*. Cambridge University Press, pp. 10–12.

²⁶⁷ De Stefano, V. (2016). The rise of the “just-in-time workforce”. *European Trade Union Institute (ETUI)*, p. 19.

²⁶⁸ European Parliament, *The Social Protection of Workers in the Platform Economy* (2017) 18–22.

²⁶⁹ OECD, *The Future of Work* (OECD Publishing 2019) 181–185; European Commission, *Access to Social Protection for Workers and the Self-Employed* (Publications Office of the European Union 2018) 23–27.

²⁷⁰ Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations* (OUP 2011) 21–28; Alain Supiot, *Beyond Employment: Changes in Work and the Future of Labour Law in Europe* (OUP 2001) 1–5.

understood as a question of social security integration, which will be examined in detail in the following chapter.

CHAPTER 3: Reclassification as a Gateway to Social Protection: Labour Law Status as the Structural Precondition of Social Security Inclusion in Platform Work

3.1. Introduction: Why Status is Not “Just” a Labour Law Question?

The classification of platform workers has often been presented as a doctrinal labour law puzzle: are they employees or self-employed? However, this framing is incomplete. The determination of employment status is not merely about access to minimum wage, working time limits, or protection against dismissal. It is, more fundamentally, about access to social citizenship.²⁷¹

In Marshall’s classic formulation, the “social element” of citizenship encompasses “the whole range from the right to a minimum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society.”²⁷² This is not a rhetorical claim: in employment-centred welfare states, social rights are often operationalised through *status-based gateways*. Put sharply, labour law classification functions as a switch that turns access to contributory social security on or off. Therefore, the purely technical question of whether platform workers fall within the “employee/worker” category is simultaneously a distributive and a fundamental question about who is admitted into the protective architecture of the welfare state.²⁷³

This status protection linkage is explicitly recognised in EU-level policy analysis. In its scrutiny of the Commission’s Impact Assessment for the Platform Work initiative, the European Parliamentary Research Service summarises the Commission’s diagnosis as one in which people

²⁷¹ Supiot, A. (2001). *Beyond employment: Changes in work and the future of labour law in Europe*, Oxford University Press, p. 4.

²⁷² T.H. Marshall, *Citizenship and Social Class* (in T.H. Marshall & Tom Bottomore, Pluto Press 1992), pp. 8–9

²⁷³ Freedland, M., & Kountouris, N. (2011). *The legal construction of personal work relations*, Oxford University Press, p. 22.

working through platforms may face “poor working conditions and inadequate access to social protection”, driven in part by the “risk of employment status misclassification.”²⁷⁴ The same EPRS briefing further reports that the Impact Assessment frames a central objective as ensuring that people working through platforms can obtain the *correct* legal status and “gain access to the applicable labour and social protection rights.”²⁷⁵ Two points are worth underlining here. First, the EU’s own problem definition treats “status” and “social protection rights” as structurally connected rather than as formal policy domains. Second, misclassification is not merely harmful because it depresses labour standards; it also obstructs the very channels through which welfare states collect contributions and distribute insurance-based benefits.

Interestingly, empirical research on platform work shows that social protection is not merely an afterthought for workers. Eurofound reports that many interviewees indicated that their main activity (outside platform work) provides access to social security, yet “many are unclear about whether they have access to social protection through their platform work.”²⁷⁶ This uncertainty is not trivial: it demonstrates how the *same individual* can be simultaneously inside and outside social insurance, depending on which legal “hat” they are wearing at a given moment. Eurofound also flags the risks of misclassification and conflicts between the factual circumstances of platform work and the contractual status assigned to workers, as well as limited awareness of how “other” statuses affect employment rights and social protection.²⁷⁷ Moreover, Eurofound’s synthesis notes mainly that “platform workers generally lack protection against unemployment.”²⁷⁸ Due to the expense and administrative burden of arranging individual coverage in many systems, Eurofound adds that “it is likely that few platform workers arrange their own social protection given its cost.”²⁷⁹ The implications are clear: where systems are contribution-based and employment-centred, the *price of misclassification* is often paid not only in wages and working time, but in

²⁷⁴ European Parliamentary Research Service (EPRS), Improving working conditions in platform work (Initial Appraisal, 2022), p. 2

²⁷⁵ EPRS, Improving working conditions in platform work (2022), p. 3

²⁷⁶ Eurofound, Employment and working conditions of selected types of platform work (Publications Office of the EU, 2018), p. 24

²⁷⁷ Eurofound, Employment and working conditions of selected types of platform work (2018), p. 25

²⁷⁸ Eurofound, Employment and working conditions of selected types of platform work (2018), p. 53

²⁷⁹ Eurofound, Employment and working conditions of selected types of platform work (2018), p. 52

uninsured social risks, unemployment, sickness, accidents at work, precisely the contingencies that social security is designed to absorb.²⁸⁰

At this point, a purely doctrinal debate (employee vs self-employed) starts to look like a methodological mistake. The more accurate framing is that classification is the entry ticket to social protection in systems where rights are still largely mediated through employment categories.²⁸¹ This is why reclassification litigation should be understood as *instrumental* rather than merely symbolic. The European Parliament’s study on the social protection of platform workers captures this dynamic directly: problems in access to social protection, combined with enforcement difficulties, “commonly place the onus on workers themselves to challenge the classification of their employment as a first step to accessing forms of social protection.”²⁸² This is a crucial sentence. It reverses the usual narrative. Platform workers do not litigate because they are conceptually attached to the “employee” label; rather, they litigate because, however imperfectly, employee/worker status continues to operate as the legal mechanism through which social insurance is activated.²⁸³

Worth noting, then, is that reclassification is best seen as a gateway claim: it is upstream of almost everything else platform workers tend to need. Once the employment relationship is recognised, a cascade of legal consequences may follow: employer contribution obligations; access to unemployment insurance and occupational injury schemes; rights to paid leave; and stronger enforcement capacities through labour inspectorates and social security institutions.²⁸⁴ Conversely, without reclassification (or some functional equivalent), legal and administrative systems may treat workers as individual market actors expected to self-insure, an expectation that is often unrealistic when earnings are volatile and bargaining power is structurally weak.²⁸⁵

This instrumental logic also helps to explain cross country variation in regulatory conflict. Sieker’s comparative study argues that the degree to which social protection systems are accessible to the

²⁸⁰ Esping-Andersen, G. (1990). *The three worlds of welfare capitalism*, Princeton University Press, p. 21.

²⁸¹ De Stefano, V. (2016). The rise of the “just-in-time workforce”, European Trade Union Institute (ETUI), p.19.

²⁸² European Parliament (Policy Department A), Forde et al., *The Social Protection of Workers in the Platform Economy* (2017), p. 71

²⁸³ Aloisi, A. (2016). Commoditized workers: Case study research on labour law issues arising from a set of “on-demand/gig economy” platforms. *Comparative Labor Law & Policy Journal*, 37(3), 653–690, p. 670.

²⁸⁴ Freedland, M., & Kountouris, N. (2011). *The legal construction of personal work relations*, Oxford University Press, p. 25.

²⁸⁵ De Stefano, V. (2016). The rise of the “just-in-time workforce”, European Trade Union Institute (ETUI), p.19.

self-employed predicts national responses to platform work: countries with low accessibility tend to adopt a more “confrontational” response characterised by more court cases and legislative proposals, because platform work is perceived as a more pressing policy challenge from a social protection perspective.²⁸⁶ In other words, litigation and status struggles are not merely by-products of doctrinal uncertainty; they are partly produced by welfare state design. Where self-employed coverage is thin, the incentives to contest platform classification intensify because the legal status determines whether one is inside or outside the social insurance settlement.²⁸⁷

Therefore, the core thesis can be sharpened: reclassification is not the end goal; it is the legal gateway. Platform workers’ claims are often better interpreted as claims for minimum labour standards and social security inclusion than as claims for a label. Their practical demand is admission into the regime of social risk-sharing: protection against unemployment, sickness, and occupational injury; and, more broadly, recognition as persons whose economic activity generates social rights, not merely private income.²⁸⁸ Misclassification blocks the admission. Solving misclassification is thus not a narrow labour law clean-up exercise; it is the first necessary step in restoring the integrity of employment-centred social security systems, both financially (through contributions) and normatively (through social citizenship).

3.2. Back to Basics: The Institutional Design of European Social Security Systems

European welfare systems, especially in Central and Eastern Europe, remain largely structured around the Bismarckian contributory model. Under this model, employment is not merely a source of income; it is the institutional gateway to compulsory social insurance coverage. In other words, employment is the legal mechanism through which individuals are integrated into collective risk-sharing arrangements and through which welfare states operationalise social solidarity.²⁸⁹

²⁸⁶ Felix Sieker, “Platform work and access to social protection across major European countries” (2022) 17(3) *Journal of International and Comparative Social Policy* 193–207, at pp. 193–194

²⁸⁷ Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). Access to social protection for people working on non-standard contracts and as self-employed in Europe, European Commission, p. 9.

²⁸⁸ De Stefano, V. (2016). The rise of the “just-in-time workforce”, European Trade Union Institute (ETUI), p. 19

²⁸⁹ John Hills, “Labour Markets, Social Security and the Welfare State” in John Hills, *Good Times, Bad Times: The Welfare Myth of Them and Us* (Policy Press, 2015), pp. 53–55

The Bismarckian architecture is built on a simple but powerful assumption: social risks such as sickness, unemployment, maternity, disability, and old age are best insured through contributions derived from employment income.²⁹⁰ The consequence is that *employment status* becomes more than a labour law category. It becomes a social security category. Interestingly, this confirms that labour law and social security law are not merely adjacent regulatory fields but function as mutually reinforcing systems that jointly structure social citizenship.²⁹¹

This is particularly evident in Central and Eastern European Member States, where post-socialist welfare states were largely rebuilt on employment-linked contributory insurance, with employers playing a key administrative and financial role.²⁹² Therefore, in such systems, the employer is not simply a private contracting party; the employer is also a public-law intermediary responsible for registering workers, calculating contributions, deducting employee shares, and transferring payments to insurance institutions.²⁹³

From this approach, classification is a legal decision with distributive consequences. It determines whether social protection is collectivised or privatised. In an employment-based system, being classified as an “employee” or “worker” typically triggers automatic inclusion in health insurance, pension schemes, work accident coverage, and unemployment insurance.²⁹⁴ Conversely, classification as self-employed may entail partial coverage, voluntary insurance, or different contribution structures that shift both financial and administrative responsibility to the individual.²⁹⁵

The Council Recommendation on Access to Social Protection (2019) openly acknowledges that access gaps persist “particularly for workers in non-standard forms of employment and the self-employed.”²⁹⁶ This statement is revealing.²⁹⁷ It demonstrates that EU institutions themselves

²⁹⁰ Peter Baldwin, *The Politics of Social Solidarity: Class Bases of the European Welfare State 1875–1975* (Cambridge University Press 1990), pp. 68–72

²⁹¹ Bob Hepple, *Labour Laws and Global Trade* (Hart Publishing, 2005), pp. 57–60

²⁹² Dorota Szelewa, “From Implicit to Explicit Familialism: Post-1989 Family Policy Reforms in Poland”, in *Gender and Family in European Economic Policy* (Springer/Palgrave, 2016/2017), pp. 129–151.

²⁹³ European Commission, *Your Social Security Rights in Europe* (Publications Office of the EU 2013), pp. 9–11

²⁹⁴ European Parliament, Forde et al., *The Social Protection of Workers in the Platform Economy* (Policy Department A, 2017), pp. 25–27

²⁹⁵ European Commission, *Study on Access to Social Protection for People Working on Non-Standard Contracts and as Self-Employed in Europe* (2017), pp. 13–18

²⁹⁶ Council Recommendation 2019/C 387/01 on Access to Social Protection for Workers and the Self-Employed, recital 4.

²⁹⁷ Jakab, N. (2018). *Non-standard employment and social protection challenges*, University of Miskolc.

recognise the structural linkage between employment status and effective inclusion in social protection systems. The Recommendation further emphasises that the self-employed and atypical workers often face gaps in coverage and insufficient benefit adequacy.²⁹⁸ It is worth noting that this is not framed merely as a marginal problem affecting a small minority, but rather as a structural issue arising from the transformation and evolution of labour markets and the growth of non-standard work.²⁹⁹

Similarly, the European Parliament's study *The Social Protection of Workers in the Platform Economy* stresses that employment status “determines not only labour law protection but also access to contributory social insurance schemes.”³⁰⁰ The study further highlights that platform workers are often excluded from unemployment protection, accident insurance, and sickness benefits precisely because they are treated as independent contractors.³⁰¹ This confirms that the platform economy does not simply create “new work” but rather new ways to avoid old obligations, especially the financing obligations of social insurance.³⁰²

Therefore, classification is not an abstract legal question. It determines fundamental questions such as who pays contributions, who registers the worker, who bears financial responsibility, and whether insurance is automatic or voluntary.³⁰³

However, if platform workers are labelled as self-employed, employer contributions disappear. The entire burden shifts onto the individual, often with lower coverage and fragmented benefit entitlements.³⁰⁴ In practice, this means the worker must actively navigate complex administrative procedures, often without a stable income and frequently without knowledge of their legal entitlements.³⁰⁵ It is therefore unsurprising that Eurofund reports that many platform workers are

²⁹⁸ Council Recommendation 2019/C 387/01, recital 12–13

²⁹⁹ Council Recommendation 2019/C 387/01, recital 2–4

³⁰⁰ European Parliament (2017), p. 25

³⁰¹ European Parliament (2017), pp. 36–41

³⁰² Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations* (Oxford University Press 2011), pp. 18–21

³⁰³ Strban, G. (2015). Social security protection of economically dependent self-employed persons. *International Social Security Review*, 68(3), 29–48.

³⁰⁴ European Parliament (2017), pp. 40–42

³⁰⁵ European Labour Authority, *Addressing Platform Workers' Employment Misclassification: Legal Frameworks, Enforcement Strategies and the New Platform Work Directive* (ELA Study, 2025), pp. 18–22

uncertain whether they have access to social protection through platform work and that few voluntarily arrange full coverage due to cost.³⁰⁶

From a socio-legal perspective, this shift in responsibility is not neutral. It represents a transfer of risk from the platform business model to the worker. As Prassl argues, the gig economy often operates by maintaining “functional employer control” while avoiding the “corresponding responsibilities” that typically follow from that control.³⁰⁷ De Stefano similarly describes this phenomenon as the production of a “just-in-time workforce,” where workers bear insecurity while firms preserve flexibility and externalise costs.³⁰⁸

In this sense, misclassification is not merely an error or administrative accident. It is an economically rational strategy embedded in platform capitalism. By categorising workers as self-employed, platforms can maintain labour supply while avoiding social insurance obligations, leaving the welfare state and the worker to absorb the consequences.³⁰⁹

Thus, misclassification transforms collectively insured workers into individually responsible risk-bearers.³¹⁰ In other words, it dissolves the institutional logic of solidarity and replaces it with the logic of individual market risk.³¹¹

We would highlight that this is the core reason why platform work has become such a destabilising force for European welfare states. The platform economy challenges not only labour law categories but the very financing logic of contributory insurance systems. Therefore, the status debate is not simply about the interpretation of employment tests; it is about whether welfare states can maintain collective risk-sharing in a labour market increasingly shaped by non-standard and digitally mediated work.³¹²

³⁰⁶ Eurofound, *Employment and working conditions of selected types of platform work* (Publications Office of the EU 2018), pp. 24–25 and 52–53

³⁰⁷ Jeremias Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (Oxford University Press 2018), pp. 56–63

³⁰⁸ Valerio De Stefano, “The Rise of the ‘Just-in-Time Workforce’: On-Demand Work, Crowdwork, and Labour Protection in the ‘Gig-Economy’” (2016) 37 *Comparative Labour Law & Policy Journal* 471, at pp. 487–490

³⁰⁹ Antonio Aloisi & Valerio De Stefano, *Your Boss is an Algorithm* (Hart Publishing, 2022), pp. 63–78

³¹⁰ Strban, G. (2015). Social security protection of economically dependent self-employed persons. *International Social Security Review*, 68(3), 29–48.

³¹¹ T.H. Marshall, *Citizenship and Social Class* (Pluto Press, 1992), pp. 8–9

³¹² Felix Sieker, “Platform work and access to social protection across major European countries” (2022) 17(3) *Journal of International and Comparative Social Policy* 193–207, at pp. 193–195 (welfare design influences platform regulation and litigation intensity).

3.3. Identifying the Problem: Misclassification as a Challenge for Social Security

The debate on misclassification in platform work is often framed as a question of labour standards, minimum wage, working time, and unfair dismissal. However, empirical evidence increasingly shows that its most profound effects lie in the field of social security. Misclassification does not merely lower wages; it destabilises access to income security across the life course.³¹³

The 2017 European Parliament study on The Social Protection of Workers in the Platform Economy provides one of the earliest comprehensive mappings of this phenomenon. It demonstrates that platform workers frequently lack effective access to: unemployment insurance, sickness benefits, work accident insurance, and pension accumulation.³¹⁴

Importantly, the study does not treat these deficiencies as incidental. It explicitly links them to employment status classification, emphasising that many of these gaps arise because platform workers are treated as self-employed and therefore excluded from compulsory contributory schemes.³¹⁵ In other words, protection deficits are not accidental market outcomes; they are structurally embedded in the classification model applied to platform work.

Eurofound's 2018 comparative research confirms this pattern. It notes that "platform workers generally lack protection against unemployment" and that access to sickness or accident coverage is frequently dependent on voluntary enrolment schemes or parallel employment.³¹⁶ Moreover, the report highlights that only a minority of platform workers arrange voluntary social protection due

³¹³ Esping-Andersen, G. (1999). *Social foundations of postindustrial economies*, Oxford University Press, p. 135.

³¹⁴ European Parliament, Forde et al., *The Social Protection of Workers in the Platform Economy* (Policy Department A, 2017), pp. 36–41

³¹⁵ European Parliament, Forde et al., *The Social Protection of Workers in the Platform Economy* (Policy Department A, 2017), pp. 25–27 and p. 45.

³¹⁶ Eurofound, *Employment and Working Conditions of Selected Types of Platform Work* (Publications Office of the EU 2018), p. 53

to the cost and administrative complexity involved.³¹⁷ This is particularly problematic in systems where self-employed insurance is either optional or provides lower benefit levels.³¹⁸

What emerges from this empirical landscape is a clear pattern: platform workers are often exposed to core social risks, unemployment, illness, and workplace injury, without the stabilising effect of collective insurance. The absence of employer contributions is central here. In Bismarckian systems, employers are not only co-financiers but also institutional gatekeepers of insurance inclusion.³¹⁹ When that gatekeeping function disappears, the entire architecture of automatic coverage collapses.

The European Labour Authority's 2025 study on misclassification further sharpens this concern. It concludes that incorrect status determination leads to "significant losses in social insurance contributions and reduced benefit entitlements."³²⁰ This statement is significant for two reasons. First, it confirms that misclassification has quantifiable fiscal effects. Second, it explicitly connects the loss of contributions with reduced benefit adequacy. Thus, misclassification is not only about present vulnerability; it is about future insecurity, especially in pension accumulation.

Indeed, pension fragmentation may represent the most silent but structurally severe consequence of platform misclassification. As comparative research on non-standard employment has shown, irregular or partial contribution histories translate into lower pension rights and increased risk of poverty in old age.³²¹ In Central and Eastern European systems, where public pensions remain heavily contribution-based, interrupted insurance periods can have long-term distributive consequences.³²² Therefore, the platform economy's expansion into precarious self-employment risks creating what might be termed a future poverty pipeline.

Interestingly, this issue is not confined to individual vulnerability. It also concerns systemic sustainability. If platform workers are systematically excluded from employer-based contributions,

³¹⁷ Eurofound, *Employment and Working Conditions of Selected Types of Platform Work* (Publications Office of the EU 2018), p. 52

³¹⁸ European Commission, *Study on Access to Social Protection for People Working on Non-Standard Contracts and as Self-Employed in Europe* (2017), pp. 13–18

³¹⁹ Peter Baldwin, *The Politics of Social Solidarity* (Cambridge University Press, 1990), pp. 68–72

³²⁰ European Labour Authority, *Addressing Platform Workers' Employment Misclassification: Legal Frameworks, Enforcement Strategies and the New Platform Work Directive* (2025), pp. 18–22

³²¹ OECD, *Non-Standard Work and the Future of Social Protection* (OECD Publishing, 2018), pp. 89–94

³²² Dorota Szelewa, "From Implicit to Explicit Familialism: Post-1989 Family Policy Reforms in Poland", in *Gender and Family in European Economic Policy* (Springer/Palgrave, 2016/2017), pp. 129–151.

national social security systems face erosion of their financial base. Contributory systems depend on wage-based contributions collected through employment relationships.³²³ When labour is reclassified as self-employment, contribution flows may decline, shift to lower bases, or disappear entirely.

The OECD has more generally warned that the growth of non-standard work can undermine social insurance financing structures in which contributions are closely tied to employment.³²⁴ Similarly, the European Commission's study on access to social protection for non-standard workers emphasises that increasing labour market fragmentation risks weakening contribution bases and generating inequalities in coverage.³²⁵ In this light, platform misclassification should not be understood as a marginal labour law dispute; it is a structural stress test for the contributory logic of European welfare states.

Thus, misclassification undermines three interrelated dimensions. First of all: individual protection. Workers lose access to unemployment insurance, sickness benefits, accident coverage, and adequate pension accumulation.³²⁶ Second of all: collective solidarity. The pooling of social risks is weakened when economically dependent workers are excluded from mandatory insurance systems.³²⁷ Finally: fiscal sustainability. Contribution revenues decline when employer-based financing mechanisms are circumvented.³²⁸

It is worth emphasising that these three dimensions reinforce each other. Reduced contributions weaken benefit adequacy; weakened benefits reduce trust in the system; declining trust further undermines compliance and solidarity. In this sense, misclassification operates as a centrifugal force within employment-centred welfare regimes.

We would therefore argue that misclassification in platform work constitutes not merely a labour law problem, but a social security crisis. It exposes a structural vulnerability in European welfare states: their continued dependence on employment as the primary conduit of social insurance

³²³ Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations* (Oxford University Press 2011), pp. 18–22

³²⁴ OECD (2018), pp. 25–27 (financing risks associated with growth of non-standard work).

³²⁵ European Commission, *Study on Access to Social Protection for People Working on Non-Standard Contracts and as Self-Employed in Europe* (2017), pp. 7–10.

³²⁶ Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). Access to social protection for people working on non-standard contracts and as self-employed in Europe. European Commission, p. 10.

³²⁷ Esping-Andersen, G. (1990). *The three worlds of welfare capitalism*. Princeton University Press, p. 21.

³²⁸ De Stefano, V. (2016). The rise of the “just-in-time workforce”. European Trade Union Institute (ETUI), p. 19.

inclusion. When employment status is strategically contested or manipulated, the stability of social protection systems is at risk.³²⁹

The platform economy thus forces a fundamental question: can contributory welfare states remain sustainable if economically dependent labour can be systematically detached from employer responsibility? The answer to this question will determine not only the future of platform workers but also the resilience of European social solidarity more broadly.

CHAPTER 4: The Platform Work Directive: Rebuttable Legal Presumption in the Spotlight, Reclassification and Beyond

4.1. Rebuttable Legal Presumption

The introduction of a rebuttable legal presumption of employment constitutes one of the central regulatory innovations of Directive (EU) 2024/2831 and represents the European Union's most direct attempt to address the structural problem of misclassification in platform work.³³⁰ Rather than redefining the concept of employment, the presumption operates at the level of evidentiary allocation, shifting the burden of proof from the worker to the platform where certain indicators of control and dependency are present. In this sense, the mechanism reflects a functional and purposive approach, seeking to align legal classification with the material reality of platform-mediated labour relations.³³¹ At the same time, the presumption reveals the limits of existing labour law frameworks: it does not eliminate the binary distinction between employment and self-employment, but instead attempts to correct its application in practice.³³² Therefore, the analysis

³²⁹ Esping-Andersen, G. (1999). *Social foundations of postindustrial economies*. Oxford University Press, p. 142.

³³⁰ Directive (EU) 2024/2831 of the European Parliament and of the Council on improving working conditions in platform work [2024] OJ L, art 4; European Commission, Proposal for a Directive on Improving Working Conditions in Platform Work COM(2021) 762 final, 2–4.

³³¹ Case 66/85 Lawrie-Blum v Land Baden-Württemberg [1986] ECR 2121, para 17; Case C-256/01 Allonby v Accrington and Rossendale College [2004] ECR I-873, para 67; Guy Davidov, *A Purposive Approach to Labour Law* (OUP 2016) 83–88.

³³² Jeremias Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (OUP 2018) 62–68; Antonio Aloisi and Valerio De Stefano, *Your Boss Is an Algorithm* (Hart 2022) 45–52.

of the rebuttable legal presumption is not merely technical; it provides insight into how the EU seeks to recalibrate the balance between flexibility and protection, and how it attempts to restore coherence between labour law classification and the broader objectives of social protection.

4.1.1. The Selective Nature of the Directive

Criticism has emerged that Directive 2024/2831 takes a selective rather than universal approach.³³³ Rather than fundamentally decoupling social protection from employment, it reinforces the employment gateway model by focusing primarily on the procedural facilitation of reclassification.³³⁴ In other words, the Directive does not dismantle the structural dependence of social rights on employment status. Instead, it strengthens the mechanism through which platform workers may enter the existing employment-based protective framework.

This legislative choice is significant. It demonstrates that the EU has not embraced a paradigm shift towards universal, status-neutral protection, but rather continues to operate within a model in which the employment relationship remains the normative cornerstone of social inclusion. Catherine Barnard has repeatedly emphasised that EU labour law still relies heavily on the “worker” concept as the gateway to rights, including those indirectly linked to social security.³³⁵ The Directive confirms this continuity. It does not create a new hybrid category of platform worker with autonomous social security entitlements; it merely facilitates the application of existing categories.

Interestingly, this selective approach is not simply a matter of political compromise. It reflects a deeper structural characteristic of European welfare states: their institutional dependence on employment status as the primary trigger for inclusion in contributory social insurance schemes.³³⁶ This is particularly evident in Central and Eastern European Member States, where the Bismarckian contribution-based model continues to dominate, and where access to health

³³³ Utrecht Law Review, “Balancing Competition and Worker Protection: The EU’s Platform Work Directive” (2025), pp. 14–17.

³³⁴ Freedland, M., & Kountouris, N. (2011). *The legal construction of personal work relations*, Oxford University Press, p.24.

³³⁵ Catherine Barnard, *EU Employment Law* (5th edn, Oxford University Press 2012), pp. 155–158.

³³⁶ Peter Baldwin, *The Politics of Social Solidarity: Class Bases of the European Welfare State 1875–1975* (Cambridge University Press 1990), pp. 68–72.

insurance, unemployment benefits and pension accumulation remains tightly linked to formal employment.³³⁷

From a Central European perspective, this is precisely where the Directive appears both realistic and limited. Hungarian labour law scholarship has long stressed that employment status remains a central legal and social dividing line. Gyulavári argues that the Hungarian labour market has increasingly produced precarious forms of employment and disguised self-employment, but that the institutional structure of Hungarian labour law and social security still presupposes the classical employment model as the default gateway to rights.³³⁸ In a similar vein, Jakab has emphasised that non-standard work forms challenge the coherence of social protection mechanisms, since the system was designed around stable employment and employer-based contributions.³³⁹

Thus, the Directive's selectivity may be interpreted not merely as a legislative weakness, but as an attempt to repair the system from within its own institutional logic. It does not attempt to reconstruct the foundations of the welfare state. It instead reinforces the legal entry point through which workers may claim inclusion.

However, one may ask: Is decoupling social protection from employment realistic under current institutional frameworks?

From a normative perspective, the argument for decoupling is strong. Universalist approaches contend that social protection should attach to personhood rather than employment status, and that individuals should not be excluded from social security merely because labour markets have evolved beyond the standard employment model.³⁴⁰ This perspective is reflected in ILO Recommendation No. 202, which promotes establishing social protection floors as a universal baseline, independent of employment status.³⁴¹ The Recommendation explicitly frames social

³³⁷ Dorota Szelewa, "From Implicit to Explicit Familialism: Post-1989 Family Policy Reforms in Poland", in *Gender and Family in European Economic Policy* (Springer/Palgrave, 2016/2017), pp. 129–151.

³³⁸ Tamás Gyulavári, "The first platform work judgment in Central and Eastern Europe" (*European Labour Law Journal*, 2024), p.

³³⁹ Nóra Jakab, "Non-standard Employment and Social Security Challenges in Hungary" in (edited volume) *Labour Law and Social Protection in Central Europe* (conference publication / legal studies series, University of Miskolc), pp. 112–118.

³⁴⁰ Alain Supiot, *The Spirit of Philadelphia: Social Justice vs the Total Market* (Verso, 2012), pp. 33–39.

³⁴¹ ILO Recommendation No. 202 concerning National Floors of Social Protection (2012), paras 4–8.

security not as an employee privilege, but as a fundamental human right that must be guaranteed through national systems.

Yet, despite this universalist normative aspiration, contributory insurance systems remain dominant across Europe. The financing structures of most Member States still rely heavily on employer-collected employment-based contributions.³⁴² Therefore, even if universal protection floors exist in theory, the actual adequacy of benefits, particularly unemployment insurance, sickness benefits, and pensions, continues to depend on employment-linked contribution histories.³⁴³

This tension has been extensively documented in European scholarship on labour market dualisation. Palier and Thelen have argued that European welfare states increasingly produce a division between insiders with stable employment-based protections and outsiders in precarious work who experience fragmented or insufficient coverage.³⁴⁴ Platform workers fit squarely into this “outsider” category, not because their work is necessarily marginal, but because their classification systematically excludes them from the institutional core of welfare arrangements.

Similarly, the European Commission’s study on access to social protection for non-standard workers demonstrates that self-employed persons across the EU frequently face gaps in unemployment coverage and inadequate benefit entitlements.³⁴⁵ The Council Recommendation on access to social protection explicitly acknowledges that this problem is structural and persists across Member States.³⁴⁶

In this context, the Directive’s selectivity becomes understandable. A genuine decoupling of social protection from employment would require profound restructuring of welfare-state financing mechanisms, potentially including the redesign of contribution models, tax structures, and benefit

³⁴² OECD, *Non-Standard Work and the Future of Social Protection* (OECD Publishing, 2018), pp. 25–27.

³⁴³ OECD, *Non-Standard Work and the Future of Social Protection* (OECD Publishing, 2018), pp. 89–94.

³⁴⁴ Bruno Palier and Kathleen Thelen, “Institutionalizing Dualism: Complementarities and Change in France and Germany” (2010) 46(1) *Politics & Society* 119, at pp. 123–128.

³⁴⁵ European Commission, *Study on Access to Social Protection for People Working on Non-Standard Contracts and as Self-Employed in Europe* (2017), pp. 13–18.

³⁴⁶ Council Recommendation 2019/C 387/01 on Access to Social Protection for Workers and the Self-Employed, recital 4 and 12–13.

entitlement rules. Such reforms lie primarily within national competence and would require significant political consensus.³⁴⁷

Therefore, under existing institutional realities, correcting the classification appears to be the most immediate and pragmatic solution. It does not eliminate all protection gaps, but it addresses the primary structural obstacle: the exclusion of economically dependent workers from employment-based social insurance.

The author would highlight that the Directive thus functions as a corrective mechanism rather than a transformative one. It does not create a universalist social security model. But it acknowledges, perhaps implicitly, that as long as European welfare states remain employment-centred, the classification of platform workers will continue to determine access to social security.³⁴⁸

Interestingly, this also means that the Directive is both modern and conservative. It is modern in its recognition of algorithmic management and the realities of platform labour. Yet it is conservative in its reliance on the traditional employment gateway paradigm. It attempts to preserve the integrity of the employment-based welfare settlement rather than replacing it.³⁴⁹

Thus, the Directive should be understood not as the end of the debate, but as the institutionalisation of a deeper tension: between the universalist ideal of social protection as a human right and the historically employment-based architecture through which European welfare states continue to deliver that protection.³⁵⁰

4.1.2. Evolution of the Directive: Defining the Subject

Besides the multifaceted problems of the platform industry, it also offers benefits to workers, particularly suited to the modern working class. Platform work offers a certain level of

³⁴⁷ Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). Access to social protection for people working on non-standard contracts and as self-employed in Europe. European Commission, p. 10.

³⁴⁸ Risak, M. (2021). Fair working conditions for platform workers: Possible regulatory approaches at the EU level, European Trade Union Institute, p. 18.

³⁴⁹ Aloisi, A., & De Stefano, V. (2022). Your boss is an algorithm, Hart Publishing, p. 43; Esping-Andersen, G. (1999). Social foundations of postindustrial economies, Oxford University Press, p. 142.

³⁵⁰ Eurofound. (2021). Working conditions in platform work, Publications Office of the European Union, p. 63.

flexibility by leaving a degree of autonomy in time management to the worker. For example, platform workers in the food delivery or transportation sectors can choose their working hours, meaning they can individualise them to their own needs. Another favourable argument was the lower tax rate: platform workers, in the vast majority, were self-employed, so taxation was much more favourable than for employed workers, even if that directly meant the precarious situation of being left out of social security schemes.³⁵¹ The autonomy of being able to accept or decline tasks also made the sector more favourable at first glance. With the task distribution handled by an algorithm rather than a person, the issue of language barriers was easy to resolve, allowing one to earn more by travelling to a more economically advanced country and, by earning more money, thereby maximally enjoying the freedom of movement.³⁵² Also, the platform industry is usually built around simple tasks; in most cases, no higher education is required, and tasks can be performed without any specialisation or knowledge.³⁵³

The growth of the gig economy also highlighted the importance of regulation for the sector. Eurofound identified platform work as a novel form of employment that began to gain traction and potential significance in the labour market around the year 2000. By 2017, the same agency acknowledged that platform work had reached a critical threshold in Europe, evidenced by the proliferation of labour-intensive platforms and the increasing number of active workers affiliated with them. Eurofound studies indicate that while platform work represents a relatively recent organisational model, its roots can be traced back over twenty years.³⁵⁴

Moreover, it is evident that the growth of platform work, along with trends such as informatisation and digitalisation propelled by the fourth industrial revolution, has increasingly exerted a significant impact on the labour market. As Mark Graham summarises the lack of legal regulation of platform work, stating: “too big to control, too new to regulate and too innovative to stifle”.³⁵⁵ To visualise the increasing sector, numbers might be helpful: while in 2016 platform economies'

³⁵¹ Darja Šencur Peček, Social Protection of Workers in Non-Standard Forms of Employment in Slovenia, *Zbornik Pravnog Fakulteta Sveucilista u Rijeci*, Vol. 39, No. 4, 2018, p. 1563.

³⁵² European Commission. (2021). Digital labour platforms in the EU: Mapping and business models, Publications Office of the European Union, p. 34.

³⁵³ Pesole, A., Urzì Brancati, M. C., Fernández-Macías, E., Biagi, F., & González Vázquez, I. (2018). Platform workers in Europe, Joint Research Centre, European Commission, p. 27.

³⁵⁴ Eurofound, Platform work, available at: [<https://www.eurofound.europa.eu/topic/platform-work>].

³⁵⁵ Mark Graham, *Regulate, Replicate, and Resist: The Conjunctural Geographies of Platform Urbanism*, Urban Geography, 2020, p. 453.

revenue on the EU level was 3 billion Euros, in 2020 it reached 14 billion Euros³⁵⁶. Another study shows how rapidly the number of platform workers grew; it reports that 28.3 million people were working in the new sector, and the number is expected to reach 43 million in 2025.³⁵⁷ This highlights the importance of the topic, and given the large number of people working in the sector, the need to regulate at the European Union level is urgent.

The exponential growth of the gig economy and the benefits of the uniqueness of the present sector were unquestionable the Council of the European Union started to elaborate a proposal for a directive that is meant to show a direction to regulate the phenomena for the member states, focusing on two main parts: the improvement of the working conditions of platform workers and the transparency in the algorithmic management of the platforms.³⁵⁸

After many scholars argued that there is an important regulatory gap.³⁵⁹ The European Union has recognised the lack of regulation in this area, and on December 9th, 2021, the European Commission, as a first important step, proposed a new directive to ensure that platform workers can benefit from numerous rights that apply to ordinary (standard) employees.

The proposed directive immediately became a hot topic among academics, and, like every new, reformist piece of legislation, it became very divisive.³⁶⁰ First of all, it divided academics since the proposal was a tool for the European Commission to take its ground in the debate if platform work should be regulated in terms of labour law, and civil law, or there should be created a new group of subjects of law, in between these branches, suited for platform work.³⁶¹ With the present proposal, it is evident that the European Commission aims to regulate the sector under the labour

³⁵⁶ European Commission, Infographic on Platform Economy, available at: <https://www.consilium.europa.eu/en/infographics/platform-economy/#0>.

³⁵⁷ European Commission, Infographic on Digital Platform Workers, available at: <https://www.consilium.europa.eu/en/infographics/digital-platform-workers/#0>.

³⁵⁸ Council of the European Union. (2021). Proposal for a Directive on improving working conditions in platform work – General approach, p. 3.

³⁵⁹ Prassl, J. (2018). *Humans as a service: The promise and perils of work in the gig economy*, Oxford University Press, p. 59.

³⁶⁰ Risak, M. (2021). Fair working conditions for platform workers: Possible regulatory approaches at the EU level., ETUI, p. 20, or Prassl, J. (2022). “Regulating the gig economy: What are the options?” *Industrial Law Journal*, 51(2), 231–242, at p. 235.

³⁶¹ Gábor Mélypataki, *Tipikus Polgári Jogi Szerződés vagy Munkaviszony? – A Platformmunka Új Szabályainak Értékelése az Élő Jog Tükrében*, Miskolci Jogi Szemle, 2024, Vol. 18, No. 3, pp. 61-62.

law branch, since the proposed directive seeks to extend labour and social security coverage for most workers in the gig economy.³⁶²

One of the most anticipated and legally significant aspects of the proposed Directive concerns the definition of its subject matter, as the regulation of platform work necessarily begins with the clarification of its core concepts and scope.³⁶³

When it comes to definitions, the proposed directive began with a definition of a digital labour platform, which was broken down into 3 basic elements: the simultaneous presence of an electronic telecommunication system, the demand, and an individual performing work (online or offline).³⁶⁴

In other words, there is a need for an electronic platform and a worker who performs the activity asked in the task, and the existence of a connection, the task giver, namely the demand, or the client, in most cases. This definition can be called simplistic and inclusive; by this, it is visible that the lawmaker intended to create an easily understandable yet broad definition.³⁶⁵

These characteristics are important to keep in mind in the current legislation. First of all, the simplicity, due to the subjects of the directive, platform workers, since this type of work does not require any specific knowledge, yet it is used by many. On the other hand, inclusiveness is an important characteristic, because when it comes to lawmaking on the European Unions level it shouldn't be a response to a currently accrued problem, on the contrary, it should approach these issues on a broader scale, since the scope of the EU legislation is to show a legislative direction for the member states, aiming a certain level of harmonization.³⁶⁶

An important clarification is needed regarding the definition outlined above. The Directive explicitly excludes from its scope those digital platforms whose primary purpose is the sharing of assets. This distinction is both logical and necessary, as such platforms lack a key constitutive

³⁶² European Commission. (2021). Impact assessment accompanying the proposal for a Directive on platform work, Publications Office of the European Union, p. 20.

³⁶³ European Commission. (2021). Proposal for a Directive on improving working conditions in platform work, art. 2.

³⁶⁴ European Commission, Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work, Brussels, 9.12.2021, art. 2, (1).

³⁶⁵ Albert Albanezi, Repere Privind Statutul Legal al „Platform Workers”. Propunerea de Directivă Privind Îmbunătățirea Condițiilor de Muncă pentru Lucrul pe Platforme vs. „Testul ABC”, SUBB Iurisprudentia, No. 3, 2023, pp. 78-79.

³⁶⁶ Risak, M., & Dullinger, T. (2022). “The EU platform work directive: Towards labour law regulation of platform work?” European Labour Law Journal, 13(3), 345–362, at p. 349.

element of platform work: the performance of a work activity by an individual. In these cases, the platform merely facilitates access to assets, rather than organising or mediating labour.³⁶⁷

The next central concept concerns the definition of platform work itself. Two key elements emerge from this definition. First, platform work presupposes that the activity is organised by the platform, with particular emphasis on its role in coordinating and structuring the work process. Second, the definition introduces a territorial dimension, as it applies to work performed, at least in part, within the Union, thereby delimiting the Directive's scope.³⁶⁸ Furthermore, in this context, the contractual relationship between the individual and the client does not matter; rather, the focus is on the contractual relationship between the platform and the person performing the activity.³⁶⁹

The proposal distinguishes between the 'person performing platform work' and the 'platform worker'. The former is defined broadly and must be read alongside the definition of platform work.³⁷⁰ It encompasses any individual performing work through a digital platform, regardless of the legal nature of the contractual relationship, whether in labour law or civil law. As such, it serves as an overarching category that encompasses all individuals engaged in platform work, including those formally classified as self-employed.³⁷¹ This broad definition is particularly significant, as it determines the personal scope of the Directive and identifies the subjects potentially affected by its core mechanism, namely the rebuttable presumption of employment, which will be analysed in the following sections.

The term platform worker is more restrictive by definition. It covers individuals performing their activities under the scope of labour law.³⁷²

³⁶⁷ Prassl, J. (2018). *Humans as a service: The promise and perils of work in the gig economy*, Oxford University Press, p. 44.

³⁶⁸ European Commission. (2021). Proposal for a Directive on improving working conditions in platform work, art. 2(3).

³⁶⁹ European Commission, Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work, Brussels, 9.12.2021, Art. 2(2).

³⁷⁰ European Commission. (2021). Impact assessment accompanying the proposal for a Directive on platform work, Publications Office of the European Union, p. 17.

³⁷¹ Risak, M., & Dullinger, T. (2022). "The EU platform work directive: Towards labour law regulation of platform work?" *European Labour Law Journal*, 13(3), 345–362, at p. 351.

³⁷² European Commission, Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work, Brussels, 9.12.2021, Art. 2.(4).

One of the main goals of the proposed directive is to reduce the gap between the individuals behind the two terms examined above, meaning it aims to include as many people as possible under the scope of labour law.³⁷³

4.1.3. Considering the Possible Solutions Regarding the Reclassification of Platform Workers

The correct determination of the employee status was the desired goal, but the next question was: how, and with what legal solution, could this goal be reached at all? What legal tools can be used?

The possible solutions taken into consideration by the EU can be found in the consultation process that preceded the proposal, more precisely in the “Second-phase consultation of social partners under Article 154 TFEU on possible action addressing the challenges related to working conditions in platform work”³⁷⁴ The present document considers four possible solutions for the phenomenon that occurred.

The first regulatory option introduced by the proposal is the rebuttable presumption of an employment relationship.³⁷⁵ As previously discussed, this mechanism is designed to strengthen both labour law and social security protections for platform workers. At the same time, it does not exclude the possibility of genuine self-employment. Instead, the Directive establishes a set of criteria which, if fulfilled, trigger the presumption of employment, thereby shifting the burden of proof to the platform.³⁷⁶ This approach aims to address the evidentiary difficulties faced by workers while preserving flexibility for cases of authentic independent work.³⁷⁷

³⁷³ Ildikó Rácz-Antal, *A digitalizáció hatása a munkajog egyes alapintézményeire*, Budapest, 2022, Jog és Állam 40. ISSN 1787-0607, pp. 235-236.

³⁷⁴ European Commission, C(2021) 4230 final, Second-phase Consultation of Social Partners under Article 154 TFEU on Possible Action Addressing the Challenges Related to Working Conditions in Platform Work, Brussels, 15.6.2021.

³⁷⁵ European Commission. (2021). Proposal for a Directive on improving working conditions in platform work (art. 4).

³⁷⁶ Countouris, N., & De Stefano, V. (2023). “New trade union strategies and platform work regulation.” *European Labour Law Journal*, 14(1), 48–65, p. 55.

³⁷⁷ European Commission. (2021). Impact assessment accompanying the proposal for a Directive on platform work, Publications Office of the European Union, p. 21.

The second regulatory option considered in the proposal involved addressing the platform work phenomenon by shifting the burden of proof or lowering the evidentiary threshold for workers seeking reclassification.³⁷⁸ The primary advantage of this approach lies in its ability to mitigate the informational asymmetry inherent in platform work.³⁷⁹ Platform workers typically lack access to crucial information regarding the internal functioning of platforms, including algorithmic management and decision-making processes.³⁸⁰ By easing the evidentiary burden, this solution seeks to restore procedural balance between workers and platforms in classification disputes.. The disadvantage would be that, since it is not an automatic legal presumption, an individual legal proceeding would need to be initiated, and there is a significant risk that courts could be overloaded.³⁸¹

Another regulatory option considered was the introduction of a separate administrative procedure aimed at reclassifying the contractual relationship between platform workers and platforms.³⁸² Such a mechanism could offer significant advantages by simplifying proceedings and lowering the evidentiary burden for workers, focusing specifically on the factual elements of the working relationship. However, its effectiveness would be limited by the need for subsequent judicial intervention to ensure binding and enforceable outcomes.³⁸³ As a result, this approach risks reproducing the same structural disadvantage identified in previous options, namely the continued reliance on courts and the potential overburdening of judicial systems.³⁸⁴

A final regulatory option considered was the establishment of a mechanism whereby labour authorities or independent bodies would be empowered to determine the legal relationship between platforms and platform workers.³⁸⁵ The primary advantage of this approach lies in its potential to reduce the costs and risks associated with judicial proceedings, thereby improving access to

³⁷⁸ Deakin, S. (2013). "Addressing labour market segmentation." *International Labour Review*, 152(3–4), 351–367, p. 360.

³⁷⁹ European Commission. (2021). Proposal for a Directive on improving working conditions in platform work, recital 28.

³⁸⁰ Eurofound. (2021). Working conditions in platform work. Publications Office of the European Union, p. 34.

³⁸¹ As an interesting remark the examples for the concrete conditions of the legal presumption in this solution were the same as the in the case of the rebuttable legal presumption. The main differences were if the legal presumption comes automatically or first it should have been asked by the individual, and who will have the burden of proof in these cases.

³⁸² European Labour Authority. (2021). Annual report (p. 17). Publications Office of the European Union, p. 17.

³⁸³ Deakin, S., & Morris, G. (2012). *Labour law*. Hart Publishing, P. 221.

³⁸⁴ Eurofound. (2021). Working conditions in platform work. Publications Office of the European Union, p. 36.

³⁸⁵ European Commission. (2021). Impact assessment accompanying the proposal for a Directive on platform work. Publications Office of the European Union, p. 23.

dispute resolution. However, its effectiveness is limited by enforcement constraints.³⁸⁶ Decisions adopted by such bodies would still require judicial confirmation in cases of non-compliance by platforms, thereby reintroducing reliance on courts. Consequently, this model risks replicating the same structural weakness identified in previous options, namely the overburdening of judicial systems and the duplication of proceedings, which ultimately undermines its efficiency.³⁸⁷

In conclusion, the biggest problems faced were the necessary court proceedings and the high costs and risks of the proceedings in three out of four proposed solutions; the only viable option that remained was the rebuttable legal presumption for the current phenomenon.³⁸⁸

4.1.4. Inspiration to Solve the Misclassification: An Existing Method that Needs to be Adjusted to the European Union

To reassess the contractual relationship between platform workers and platforms on the basis of factual reality rather than formal contractual classification, the proposed Directive relied on the principle of the primacy of facts.³⁸⁹ To operationalise this approach, it introduced a rebuttable presumption of an employment relationship. Under this mechanism, individuals performing platform work are presumed to be employees unless the platform demonstrates otherwise. By placing the burden of proof on the platform, the Directive seeks to correct the existing imbalance between the parties and to ensure effective protection of workers, in line with fundamental principles of labour law.³⁹⁰

³⁸⁶ European Labour Authority. (2022). Ensuring compliance with labour mobility rules in the EU, Publications Office of the European Union, p. 22.

³⁸⁷ Deakin, S. (2013). “Addressing labour market segmentation.” *International Labour Review*, 152(3–4), 351–367, p. 361.

³⁸⁸ Miriam Kullmann, ‘Platformisation’ of Work: An EU Perspective on Introducing a Legal Presumption, *European Labour Law Journal*, 2021, pp. 10-11, DOI: 10.1177/20319525211063112.

³⁸⁹ European Commission. (2021). Proposal for a Directive on improving working conditions in platform work, art. 4.

³⁹⁰ Davidov, G. (2016). *A purposive approach to labour law*. Oxford University Press, p. 136.

One of the sources of inspiration for using the tool of legal presumption to fight against the misclassification of platform workers can be found in the case of *Dynamex v. Superior Court of Los Angeles, California Supreme*.³⁹¹

The *Dynamex Operations West, Inc. v. Superior Court of Los Angeles County* case was decided by the California Supreme Court in April 2018.³⁹² It is a landmark decision that fundamentally altered the classification of workers in California. The case arose when delivery drivers for Dynamex, who were classified as independent contractors, sued the company, claiming they were misclassified and should be treated as employees, thereby entitled to employee benefits and protections under California law.³⁹³

The central legal issue in *Dynamex* was whether the delivery drivers had been misclassified as independent contractors under California's wage orders. The plaintiffs contended that they were, in substance, employees and therefore entitled to statutory protections, including minimum wage, overtime pay, and other labour law safeguards.³⁹⁴

In its judgment, the California Supreme Court introduced a new standard for distinguishing employees from independent contractors, known as the 'ABC test'. This test establishes a presumption of employment, whereby a worker is deemed to be an employee unless the hiring entity can demonstrate all three of the following conditions³⁹⁵

A: The worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact.

B: The worker performs work that is outside the usual course of the hiring entity's business.

³⁹¹ Albert Albanezi, *Repere Privind Statutul Legal al „Platform Workers”*. Propunerea de Directivă Privind Îmbunătățirea Condițiilor de Muncă pentru Lucrul pe Platforme vs. „Testul ABC”, SUBB Iurisprudencia, No. 3, 2023, p. 87.

³⁹² *Dynamex v. Superior Court of Los Angeles, California Supreme Court*, 4 Cal. 5th 903, 2018.

³⁹³ Carlson, R. R. (2018). "Why the gig economy is still susceptible to misclassification." *Berkeley Journal of Employment and Labor Law*, 39(2), 233–257, p. 240.

³⁹⁴ Carlson, R. R. (2018). "Why the gig economy is still susceptible to misclassification." *Berkeley Journal of Employment and Labor Law*, 39(2), 233–257, p. 242.

³⁹⁵ Cherry, M. A. (2019). "Beyond misclassification: The digital transformation of work." *Comparative Labor Law & Policy Journal*, 41(3), 577–602, p. 586.

C: The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.³⁹⁶

Under this stringent test, if the hiring entity fails to meet any one of these three prongs, the worker must be classified as an employee rather than an independent contractor.³⁹⁷

The aftermath of the cited case law was the introduction of Assembly Bill 5, or AB5, as some academics refer to it.³⁹⁸ One of the concrete aims of the present legal document is to fight the misclassification of the platform workers, first, because the courts were drowned with similar cases, and secondly, because misclassification became widely used so a re-evaluation of the situation became a problem visible on the state level, to be able to solve the situation the AB5 entered in force on first of January 2020.³⁹⁹

The legal presumption established by the Directive bears notable similarities to the approach adopted in California under AB5.⁴⁰⁰ However, upon closer examination, it can be understood as an adapted version tailored to the European context.⁴⁰¹ While the ABC test under AB5 defines the cumulative conditions required to rebut the presumption of employment, the Commission proposal initially set out a list of criteria that would trigger the presumption.⁴⁰² Interestingly, in contrast, the final Directive no longer relies on a fixed set of criteria, instead allowing for a more flexible application of the presumption within national legal systems. This shift shows a move away from rigid categorisation towards a more context-sensitive regulatory approach.

While AB5 concentrates on rebutting the presumption, it sets 3 conditions that must be met simultaneously, with the burden of proof on the platform.

The first condition is that the working individual, when performing, is not controlled or directed by the platform during the activity; this should be reflected in the contract between the parties and,

³⁹⁶ Robert Sprague, Using the ABC Test to Classify Workers: End of the Platform-Based Business Model or Status Quo Ante?, William & Mary Business Law Review, Volume 11 (2019-2020) Issue 3, pp. 763-767.

³⁹⁷ Dynamex Operations W. Inc. v. Superior Court, 4 Cal. 5th 903 (Cal. 2018), p. 957.

³⁹⁸ Miriam Kullmann, 'Platformisation' of Work: An EU Perspective on Introducing a Legal Presumption, European Labour Law Journal, 2021, p. 2, DOI: 10.1177/20319525211063112.

³⁹⁹ Interestingly it entered into force just before the COVID-19 pandemic was widespread, boosting the gig-economy sector.

⁴⁰⁰ Cherry, M. A. (2019). "Beyond misclassification: The digital transformation of work." Comparative Labor Law & Policy Journal, 41(3), 577–602, p. 588.

⁴⁰¹ Risak, M., & Dullinger, T. (2022). "The EU platform work directive: Towards labour law regulation of platform work?" European Labour Law Journal, 13(3), 345–362, p. 352.

⁴⁰² European Commission. (2021). Proposal for a Directive on improving working conditions in platform work, art. 4.

at the same time, in the concrete facts.⁴⁰³ This would be the subordination criterion, a basic labour law element in the employer-employee relationship. The subordination criteria were strongly present in all five conditions of the proposed directives as well, since all the conditions focused either on the restrictions⁴⁰⁴ set by the platform for the platform worker, either focused on the supervision⁴⁰⁵ of the platform worker by the platform.

In the AB5, a second criterion is that the individual performing work is outside the scope of its usual hiring.

Although the final Directive no longer retains a fixed set of criteria, the underlying logic of the presumption mechanism remains significant, particularly in preventing the use of simulated contractual arrangements designed to disguise employment relationships. However, a structural limitation arises when platforms systematically rely on formally self-employed workers, thereby engaging in large-scale misclassification.⁴⁰⁶ In such cases, the absence of clear and enforceable criteria may allow platforms to maintain the appearance of non-employment relationships, despite the economic reality.

This problem is further illustrated in comparative perspective by the ABC test, where all three conditions must be cumulatively satisfied to rebut the presumption. In cases of mass misclassification, such conditions may be formally constructed or strategically satisfied, thereby undermining the test's protective function.⁴⁰⁷

A more effective approach would be to align the assessment of employment status with the substantive nature of the platform's economic activity, rather than with formal patterns of contractual engagement.⁴⁰⁸ Such a shift would reduce the risk of systematic circumvention and close potential regulatory loopholes

⁴⁰³ Assembly Bill No. 5, CHAPTER 296, SECTION 2, 2750.3. (a) (1), (A).

⁴⁰⁴ European Commission, Proposal for a Directive Of The European Parliament And Of The Council on improving working conditions in platform work, Brussels, 9.12.2021, Art. 4, 2, (a), (b), (d), (e).

⁴⁰⁵ European Commission, Proposal for a Directive Of The European Parliament And Of The Council on improving working conditions in platform work, Brussels, 9.12.2021, Art. 4, 2, (c).

⁴⁰⁶ European Commission. (2021). Impact assessment accompanying the proposal for a Directive on platform work. Publications Office of the European Union, p. 19.

⁴⁰⁷ De Stefano, V. (2016). The rise of the "just-in-time workforce", IETUI, p. 21.

⁴⁰⁸ Srnicek, N. (2017). Platform capitalism . Polity Press, p. 48.

The last condition to rebut the legal presumption set by the AB5 is that the individual performing the activity is usually engaged as a “professional” in a similar activity, which is given as a task when using the platform. Through this criterion, AB5 pushes the usage of platform work as a side hustle, a secondary income-generating activity. If the person is engaged in an independently established trade, occupation, or business.⁴⁰⁹ And this is proved, the regulation already assumes that the person is either employed or governs a business, meaning that an income is generated from these activities. In this regard, the person is not fully dependent on the platform, for example, in a financial manner, and there is a possibility to grow their knowledge or their clientele if they have a business while performing platform work.⁴¹⁰

A fundamental difference between AB5 and the EU Directive lies in their respective approaches to self-employment. While AB5 adopts a restrictive stance by significantly narrowing the scope for independent contractor classification, the EU Directive does not inherently oppose self-employment.⁴¹¹ Instead, it acknowledges that self-employment may constitute a genuine and appropriate form of work in certain platform contexts.

The Directive primarily seeks to address cases of false self-employment, where individuals are formally classified as self-employed despite the existence of an employment relationship in substance. At the same time, its broader objective is to improve working conditions across platform work, including for genuinely self-employed persons, particularly through provisions on transparency and algorithmic management.⁴¹²

Nevertheless, the EU initiative remains targeted in scope, focusing specifically on platform workers rather than establishing a fully universal framework for all forms of non-standard work. This reflects a selective regulatory approach, aimed at addressing the most pressing risks associated with platform labour rather than redefining the boundaries of employment more broadly⁴¹³

⁴⁰⁹Assembly Bill No. 5, CHAPTER 296, SECTION 2, 2750.3. (a) (1), (C).

⁴¹⁰ Albert Albanezi, Repere privind statutul legal al „platform workers”. Propunerea de Directivă privind îmbunătățirea condițiilor de muncă pentru lucrul pe platforme vs. „testul ABC”, SUBB Iurisprudentia nr. 3/2023, p. 89.

⁴¹¹ European Commission. (2021). Proposal for a Directive on improving working conditions in platform work, p. 3 and also recitals 4–6.

⁴¹² Risak, M., & Dullinger, T. (2022). “The EU platform work directive”, p. 353.

⁴¹³ Eurofound. (2021). Working conditions in platform work, Publications Office of the European Union, p. 13.

A comparison between AB5 and the Commission's proposal reveals that similar regulatory concerns are addressed through fundamentally different legal techniques. While these differences can be partly explained by the distinct legal, social, and economic contexts of the United States and the European Union, a more fundamental divergence lies in the structure of their regulatory approaches⁴¹⁴.

Under AB5, the presumption of employment operates automatically, and its rebuttal is subject to a strict, cumulative test that requires the hiring entity to satisfy all elements of the ABC test. By contrast, the Commission proposal approached the issue from the opposite direction, establishing a set of indicative criteria intended to guide Member States in identifying employment relationships.⁴¹⁵ The presumption was triggered when a minimum number of these criteria, specifically two out of five, were fulfilled, thereby lowering the threshold for its activation.

4.1.5. The Rebuttable Legal Presumption as an Answer to Misclassification

The proposed directive concentrated on the labour law approach to the given phenomenon and conditions the platform's legal subordination and control over the platform worker, thereby laying the basis for regulating the basic elements of an employment relationship, focusing mainly on subordination and control.⁴¹⁶ Under the rebuttable legal presumption, the proposed directive aimed to address the lack of labour law standards and the problem of the inclusion of platform workers in social security benefits in a single regulation.

To benefit from the legal presumption, platform workers need to fulfil two of the following five criteria:

- (a) effectively determining, or setting upper limits for the level of remuneration;
- (b) requiring the person performing platform work to respect specific binding rules with regard to appearance, conduct towards the recipient of the service or performance of the work;

⁴¹⁴ Cherry, M. A. (2019). "Beyond misclassification: The digital transformation of work." *Comparative Labor Law & Policy Journal*, 41(3), p. 588.

⁴¹⁵ Risak, M., & Dullinger, T. (2022). "The EU platform work directive" (p. 352). *European Labour Law Journal*, 13(3), pp. 352-353.

⁴¹⁶ Ildikó Rácz-Antal, *A platformalapú munkavégzés munkakörülményei, munkavállalói és szociális jogok kapcsolata*, Budapest, 2023, p. 6.

- (c) supervising the performance of work or verifying the quality of the results of the work including by electronic means;
- (d) effectively restricting the freedom, including through sanctions, to organise one's work, in particular the discretion to choose one's working hours or periods of absence, to accept or to refuse tasks or to use subcontractors or substitutes;
- (e) effectively restricting the possibility to build a client base or to perform work for any third party.⁴¹⁷

When analysing these criteria, academic literature often groups them into two overarching categories: indicators of control and subordination, on the one hand, and indicators of economic dependence and restricted market autonomy, on the other⁴¹⁸ First, a category can be seen in which points a), b), and e) can be grouped; these indicators can be met even when a genuine self-employment relationship occurs. In the second category, points c) and d) can be grouped as they can be fulfilled in the case of an employment relationship since these criteria directly regulate typical forms of control.⁴¹⁹ Within this classification, particular attention should be given to criterion (e). From the perspective of civil and economic law, self-employment presupposes an autonomous economic activity aimed at generating income through market participation. A central element of such activity is the ability to build and maintain a client base. Consequently, any restriction on the ability to develop a clientele directly undermines the economic independence that characterises genuine self-employment. In this sense, criterion (e) functions as a strong indicator not merely of subordination, but of the absence of true entrepreneurial autonomy.⁴²⁰

The indicators introduced in the Commission proposal were met with both support and criticism from academics and stakeholders. During the consultation phase, employer organisations expressed particular reservations regarding the use of a rebuttable presumption of employment. They argued in favour of a more decentralised regulatory approach, emphasising the role of

⁴¹⁷ European Commission, Proposal for a Directive Of The European Parliament And Of The Council on improving working conditions in platform work, Brussels, 9.12.2021, Art. 4 (2).

⁴¹⁸ Risak, M., & Dullinger, T. (2022). "The EU platform work directive: Towards labour law regulation of platform work?" *European Labour Law Journal*, 13(3), 345–362, at p. 351.

⁴¹⁹ William B. Gould / Marco Biasi, The Rebuttable Presumption of Employment Subordination in the US ABC-Test and in the EU Platform Work Directive Proposal: A Comparative Overview, *Italian Labour Law e-Journal*, Issue 1, Vol. 15 (2022), p. 9, ISSN 1561-8048.

⁴²⁰ Aloisi, A., & De Stefano, V. (2022). *Your boss is an algorithm*, Hart Publishing, p. 54.

Member States in defining employment relationships, rather than adopting a uniform legislative framework applicable across the European Union.⁴²¹

While the Commission's proposal was broadly welcomed for addressing long-standing regulatory gaps in platform work, its choice of legal instruments, particularly the use of a rebuttable presumption of employment and the reliance on indicative criteria, prompted significant debate among labour law scholars. This academic engagement aimed not only to assess the proposal's potential benefits but also to identify its structural limitations and possible unintended consequences, therefore contributing to the refinement of the legislative process.⁴²²

Undoubtedly, the Commission's proposal offered significant advantages, as it sought to regulate a highly problematic and rapidly expanding sector, which involved tens of millions of workers and generated billions of euros in revenue across the European Union.⁴²³

Legal certainty emerged as one of the most significant advantages of regulating the platform economy, a sector long marked by ambiguity and fragmentation. A stable legal framework would not only benefit platform workers but also provide predictability for platforms and enable Member States to better integrate platform work into their social security systems. Proper classification is central to this process, as it allows workers and their representatives to move beyond disputes over status and focus on substantive labour conditions, thereby strengthening the role of collective bargaining.⁴²⁴ In this context, the use of a rebuttable presumption represented a particularly effective tool, capable of facilitating monitoring and enhancing enforcement, especially in cross-border situations where existing mechanisms have proven insufficient.⁴²⁵

However, these advantages were accompanied by notable limitations. The proposals' approach attracted criticism for its selective, rather than universal, character, as it tended to reduce the complex question of employment status to a binary distinction between employment and self-

⁴²¹ European Commission, Second-phase consultation of social partners under Article 154 TFEU on possible action addressing the challenges related to working conditions in platform work (Consultation Document) C(2021) 4230 final, p. 3.

⁴²² European Commission. (2021). Impact assessment accompanying the proposal for a Directive on platform work, Publications Office of the European Union, pp. 14-16.

⁴²³ Eurofound. (2021). Working conditions in platform work, Publications Office of the European Union, p. 12.

⁴²⁴ Countouris, N., & De Stefano, V. (2019). New trade union strategies in the platform economy, ETUI, p. 18.

⁴²⁵ Miriam Kullmann, *Enforcement of Labour Law in Cross-Border Situations: A Legal Study of the EU's Influence on the Dutch, German, and Swedish Enforcement Systems*, 2015, Deventer: Kluwer.

employment.⁴²⁶ Such simplification risks overlooking the nuanced realities of platform work, where hybrid and intermediate forms of labour relations frequently emerge. At the same time, the proposal was criticised for addressing only a relatively narrow dimension of the broader platform economy, focusing primarily on misclassification rather than engaging with the structural transformations driven by technological innovation.⁴²⁷ In this respect, developments such as the increasing use of automation, including drone-based delivery systems and autonomous vehicles, remained largely outside its regulatory scope. Consequently, while the proposal represented a significant step forward, it was arguably limited in its ability to provide a comprehensive, future-proof framework for the evolving platform economy.⁴²⁸

Given that platforms can unilaterally modify their terms and conditions with relative ease, often through simple click-based consent mechanisms in fully digital environments, they retain the capacity to adapt rapidly to regulatory interventions. This flexibility creates a risk that compliance may become largely formal rather than substantive, allowing platforms to circumvent regulatory objectives by adjusting contractual frameworks, thereby avoiding underlying problems rather than genuinely resolving them.⁴²⁹ A further concern lay in the proposal's reliance on fundamental labour law concepts as defined at the Member State level. This approach risked generating inconsistencies, particularly in systems such as Romanian labour law, where the notion of employee lacks a clear statutory definition. In addition, the proposal's reliance on judicial interpretation raised concerns about legal fragmentation, as case law across Member States remained divided. In this context, a preparatory phase at both legislative and judicial levels would have been desirable to ensure more consistent and effective implementation.⁴³⁰

Debate emerged over whether introducing a rebuttable presumption of employment would effectively address the risk of courts becoming overburdened with classification disputes. While such a presumption shifts the burden of proof onto platforms, it does not necessarily eliminate the

⁴²⁶ Ponce del Castillo, A., & Naranjo, D. (2022). Regulating algorithmic management: An assessment of the EC's draft Directive on platform work, ETUI, p. 2.

⁴²⁷ Srnicek, N. (2017). Platform capitalism, Polity Press, p. 90.

⁴²⁸ William B. Gould / Marco Biasi, The Rebuttable Presumption of Employment Subordination in the US ABC-Test and in the EU Platform Work Directive Proposal: A Comparative Overview, Italian Labour Law e-Journal, Issue 1, Vol. 15 (2022), pp. 12-13, ISSN 1561-8048.

⁴²⁹ Guy Davidov, The Status of Uber Drivers: A Purposive Approach, 2017/6 Spanish Labour Law and Employment Relations Journal, p. 9.

⁴³⁰ Valerio De Stefano, The EU Commission's Proposal for a Directive on Platform Work: An Overview, Italian Labour Law e-Journal, Issue 1, Vol. 15/2022, pp. 5-6, ISSN 1561-8048.

need for case-by-case assessment.⁴³¹ Platform work spans multiple sectors, including food delivery, transportation, and various services, and is characterised by diverse organisational models and data-driven management systems. As a result, disputes are likely to persist despite the procedural facilitation introduced by the presumption.⁴³²

Moreover, the attempt to harmonise Member State approaches through a directive raised concerns regarding regulatory flexibility. A uniform framework may constrain Member States' ability to respond to specific cases in ways better aligned with their particular social, economic, cultural, and legal contexts, an aspect that remains fundamental in labour law.⁴³³

4.1.6. Where Practice Meets the Law

The concerns identified above regarding the proposed Directive are not merely theoretical; they are reflected in practice, as demonstrated by the Curia of Hungary's decision dated 13 December 2023.⁴³⁴

The plaintiff was a courier in the food delivery sector for approximately three months, after which he claimed he should be reclassified from a self-employed person to an employee of the platform responsible for distributing work. The first instance court ruled that the relationship between the plaintiff and the defendant was, *de facto*, a contractual relationship in which the platform worker acted as a self-employed person. After the appeal in the second instance, the decision was completely overruled, and the judicial body held that the relationship should indeed be reclassified as an employment relationship, thereby admitting the plaintiff's claims.⁴³⁵

After the controversial decisions, the question of classification was brought before the Curia of Hungary. Not only is the decision interesting, but so is the Curia's motivation for it.

⁴³¹ European Commission. (2021). Impact assessment accompanying the proposal for a Directive on platform work, Publications Office of the European Union, p. 21.

⁴³² European Labour Authority. (2025). Addressing platform workers' employment misclassification, pp. 8-10.

⁴³³ Miriam Kullmann, Platformisation of Work: An EU Perspective on Introducing a Legal Presumption, *European Labour Law Journal*, 2021, pp. 7-8, DOI: 10.1177/20319525211063112.

⁴³⁴ The Decision of the Curia of Hungary, No. Mfv.VIII.10.091/2023/7.

⁴³⁵ György Nádas / Márton Leó Zaccaria, Munkaviszony-e a Platformmunkavégzés?, (2024) *Jogi Közlöny*, pp. 288-289.

The Curia acknowledged that since platforms differ on many levels (they differ based on what sector are they present, the mechanism on which they manage the work distribution, etc.) a case-by-case approach is needed, especially since, at the date of the decision there wasn't any special regulation in force, neither on national or EU level, furthermore there is no uniform legal practice regarding the classification of platform workers since the decisions of different judicial proceedings vary even internally in some member states.⁴³⁶

Although the decision and the reasoning do not take into account the conditions of the rebuttable legal presumption, which, of course, cannot be mandatory since it is not in force.⁴³⁷ It emphasises that the present decision focuses solely on the individual case at hand. Also, it is emphasised that the Curia is adopting a factual approach rather than limiting itself to the contract; the primacy of facts, as already mentioned, is upheld.

The proposed directive on platform work is also examined in the process. The Curia emphasised, in this regard, that the proposal was not yet applicable, as it had not entered into force; the legal presumption is rebuttable; therefore, the defendant has the right to challenge it before the court.⁴³⁸ It is noteworthy that the Curia correctly observed that the Commission's proposal should not be relied upon in its analysis, given that the Directive, in its final form, no longer incorporates the criteria originally set out in the proposed text.⁴³⁹

The Curia based its decision mainly on Hungarian labour regulation, more precisely on the definition of the employee and the employment relationship, and, to classify the plaintiff, examined the platform's control and subordination over the worker, using Hungarian labour law as the cornerstone of its decision.⁴⁴⁰ The reasoning was criticised by Hungarian labour law experts, and a debate on legal interpretation arose.⁴⁴¹

⁴³⁶ Gyulavári, T. (2024). The first platform work judgment in Central and Eastern Europe: Case note on the Hungarian Supreme Court (Curia) decision of 13 December 2023 (Mfv.VIII.10.091/2023/7.). *European Labour Law Journal*, 15(4), pp. 931–938.

⁴³⁷ Gábor Mélypataki, Tipikus polgári jogi szerződés vagy munkaviszony? – A Platformmunka Új Szabályainak Értékelése Az Elő Jog Tükrében, *Miskolci Jogi Szemle* 18(3/2024), p. 55.

⁴³⁸ A Kúria Nemzetközi Főosztályának Hírlevele, 2024/January 31, XV. Évfolyam, 1. szám, pp. 39-40.

⁴³⁹ European Parliament and Council of the European Union. (2024). Directive (EU) 2024/2831 on improving working conditions in platform work. *Official Journal of the European Union*.

⁴⁴⁰ Petrovics, Z. (2024). The first judgment on platform work in Hungary. *RDCTSS*.

⁴⁴¹ Solymosi-Szekeres, B., & Prugberger, T. (2024). The growing vulnerability of workers: Reflections on the first Hungarian platform case. *Studia Juridica et Politica Jaurinensia*, 11(1), pp. 3-18.

The Curia's interpretation of the labour law regulations was that, under the Hungarian regulation, the mere fact that a worker had 75 seconds to accept a task did not constitute direct control, since the task could be rejected. Furthermore, there was no hierarchical system in which both the platform and the worker took part. As academics have noted, the mere absence of a hierarchical relationship can indicate self-employment rather than an employment relationship, but this should be supported by other evidence, since a false self-employment contract would rest on the willingness to hide this hierarchical relationship⁴⁴². Also, the worker's earnings weren't maximised or minimised, since the payment was based on many factors related to their activity. As an important argument, Curia also emphasised that during the worker's activities, the tools used were selected and owned by the worker, which is a strong indication of a self-employment relationship. On the other hand, experts note that the mere fact that the worker owned the tools used to perform the given activities doesn't necessarily exclude the worker from an employment relationship, since certain types of employment can be carried out using the employee's goods as well.⁴⁴³

If we look at the above-mentioned legal practice, it is visible that some of the concerns of the labour law academics regarding the proposed directive can be recognised. A case-by-case examination when speaking about the reclassification is still a potential problem, given the fact that platforms differ in many ways, for example, by their work distribution due to their different programming, the different sectors in which they are present, etc.⁴⁴⁴ Also, the proposed directive is fundamentally based on national definitions of basic labour law concepts, such as the employment relationship and the employee.⁴⁴⁵

4.1.7. The Legal Presumption as Structural Correction

Directive 2024/2831 on improving working conditions in platform work represents the most ambitious EU-level intervention in the classification debate to date. At its core lies a

⁴⁴² Petrovics, Z. (2024). The first judgment on platform work in Hungary. *Revue de droit comparé du travail et de la sécurité sociale*.

⁴⁴³ György Nádás / Márton Leó Zaccaria, *Munkaviszony-e a Platformmunkavégzés?*, *Jogi Közlöny*, 2024, p. 288.

⁴⁴⁴ Miriam Kullmann, *Platformisation of Work: An EU Perspective on Introducing a Legal Presumption*, *European Labour Law Journal*, 2021, pp. 7-8, DOI: 10.1177/20319525211063112.

⁴⁴⁵ Valerio De Stefano, *The EU Commission's Proposal for a Directive on Platform Work: An Overview*, *Italian Labour Law e-Journal*, Issue 1, Vol. 15/2022, pp. 5-6, ISSN 1561-8048.

procedural innovation: the introduction of a rebuttable legal presumption of employment designed to facilitate correct status determination.⁴⁴⁶

The Directive does not redefine the notion of the worker in substantive terms. Instead, it modifies the procedural architecture through which worker status is established. This is crucial. The EU legislator did not attempt to create a new autonomous category of platform worker. Rather, it intervened at the level of proof and the allocation of burden. In doing so, it implicitly acknowledged that the primary obstacle in platform work is not doctrinal uncertainty, but evidentiary asymmetry and enforcement failure.⁴⁴⁷

The Commission's Impact Assessment accompanying the proposal was explicit in diagnosing the problem. It emphasised that the risk of misclassification "prevents access to the applicable labour and social protection rights."⁴⁴⁸ The Commission identified enforcement barriers and information asymmetries as structural causes of persistent misclassification.⁴⁴⁹ Therefore, the presumption mechanism was conceived not as a symbolic declaration but as a corrective instrument to realign legal form with economic reality.

Interestingly, this approach resonates with long-standing European labour law scholarship emphasising the need to address disguised employment through procedural facilitation rather than purely substantive reform. Freedland and Kountouris have argued that employment law must adapt its "allocation of responsibility" mechanisms in order to prevent the fragmentation of personal work relations.⁴⁵⁰ The presumption of employment reflects precisely such an adaptive response: it shifts the evidentiary burden toward the economically stronger party, recognising structural power imbalances.

Similarly, Aloisi and De Stefano have argued that algorithmic management creates opacity, making it particularly difficult for workers to prove subordination under traditional evidentiary

⁴⁴⁶ Directive (EU) 2024/2831 of the European Parliament and of the Council on improving working conditions in platform work, Art. 5.

⁴⁴⁷ Risak, M. (2021). Fair working conditions for platform workers: Possible regulatory approaches at the EU level. ETUI, p. 18.

⁴⁴⁸ European Commission, Impact Assessment Accompanying the Proposal for a Directive on Improving Working Conditions in Platform Work, SWD(2021) 397 final, pp. 12–14.

⁴⁴⁹ SWD(2021) 397, pp. 18–21.

⁴⁵⁰ Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations* (Oxford University Press 2011), pp. 18–22.

standards.⁴⁵¹ In this context, the presumption operates as a counterweight to informational asymmetry. It forces platforms to justify the absence of employment status rather than requiring workers to prove its existence.

However, the Directive's final compromise text introduces a notable limitation. While it establishes a presumption of employment for labour law purposes, it explicitly excludes social security matters from the procedural presumption's scope.⁴⁵² This exclusion was politically sensitive, reflecting Member States' concerns regarding national competence over social security systems under Article 153 TFEU.

This creates a paradox. Formally: Social security proceedings are excluded from the procedural presumption. Substantively, Reclassification inevitably affects social security coverage.

The paradox reveals the structural interdependence between labour law and social security law. Although the Directive refrains from directly harmonising social insurance inclusion, the recognition of employment status under national law will typically trigger employer contributions and provide access to insurance schemes. In this sense, the Directive indirectly restructures access pathways.⁴⁵³

Catherine Barnard has long emphasised that the EU concept of worker functions as a gateway to a wide range of EU social rights.⁴⁵⁴ The same logic operates here. Once worker status is recognised, even through a procedural presumption, the protective cascade follows. Employer obligations are activated, contributions become due, and the worker enters the social insurance system.

It is, therefore, misleading to treat the exclusion of social security matters as neutral. While formally outside the Directive's scope, social security consequences are practically unavoidable. The presumption serves as a structural correction mechanism, reopening the gateway to contributory systems.⁴⁵⁵

⁴⁵¹ Antonio Aloisi and Valerio De Stefano, *Your Boss Is an Algorithm* (Hart Publishing 2022), pp. 63–78

⁴⁵² Directive (EU) 2024/2831, Art. 5(8)

⁴⁵³ Supiot, A. (2001). *Beyond employment: Changes in work and the future of labour law in Europe*, Oxford University Press, p.5.

⁴⁵⁴ Catherine Barnard, *EU Employment Law* (5th edn, Oxford University Press 2012), pp. 155–158

⁴⁵⁵ Risak, M. (2021). *Fair working conditions for platform workers: Possible regulatory approaches at the EU level*. ETUI, p. 19.

It is worth noting that this procedural strategy aligns with the CJEU's long-standing functional interpretation of worker status. The Court has consistently rejected formal contractual classifications in favour of economic reality.⁴⁵⁶ The Directive, in effect, codifies this functional logic and reinforces it with procedural tools. It institutionalises what the Court had already been doing on a case-by-case basis.

Moreover, the presumption can be interpreted as a response to the enforcement deficits identified by the European Labour Authority. The ELA's analysis of misclassification highlights the difficulties workers face in proving subordination due to fragmented contracts, digital opacity, and cross-border structures.⁴⁵⁷ By shifting the burden of proof, the Directive addresses precisely these structural barriers.

However, the Directive's compromise nature also reflects political tension. By excluding social security matters, the EU legislator avoided direct intrusion into Member States' financing systems. Yet the practical consequence remains that labour law reclassification will often spill over into social insurance inclusion.⁴⁵⁸

In this sense, the Directive represents a hybrid solution. It does not decouple social protection from employment, nor does it fundamentally redesign welfare financing. Instead, it reinforces the existing employment-centred model by strengthening the gateway mechanism.⁴⁵⁹

We would argue that this approach is both pragmatic and revealing. It demonstrates that, despite discussions about universal social protection floors and decoupling from employment, the EU continues to rely structurally on employment status as the principal conduit for social rights.

Thus, the presumption of employment should be understood as a structural correction within an employment-based welfare paradigm. It does not revolutionise social security systems; it restores their entry conditions.⁴⁶⁰

⁴⁵⁶ Case 66/85 Lawrie-Blum [1986] ECR 2121, paras 16–18; Case C-256/01 Allonby [2004] ECR I-873, paras 67–71.

⁴⁵⁷ European Labour Authority, Addressing Platform Workers' Employment Misclassification: Legal Frameworks, Enforcement Strategies and the New Platform Work Directive (2025), pp. 18–22, 33–35

⁴⁵⁸ Supiot, A. (2001). *Beyond employment: Changes in work and the future of labour law in Europe*, Oxford University Press, p. 5.

⁴⁵⁹ Esping-Andersen, G. (1999). *Social foundations of postindustrial economies*, Oxford University Press, p. 142.

⁴⁶⁰ Freedland, M., & Kountouris, N. (2011). *The legal construction of personal work relations*, Oxford University Press, p.24.

The deeper question remains whether such restoration is sufficient in the long term. If platform work continues to expand and if enforcement remains fragmented across Member States, procedural facilitation may alleviate but not eliminate systemic tensions.⁴⁶¹

Nevertheless, the Directive marks a significant shift: it acknowledges that misclassification is not merely a private contractual matter but a public policy concern affecting the allocation of social risk.⁴⁶²

In this respect, the Platform Work Directive transforms the courtroom struggle over classification into an institutionalised regulatory mechanism. It embeds the reclassification debate within EU law, thereby strengthening the structural link between labour law status and access to social protection.⁴⁶³

4.1.8. From Evolution to the Concrete Results

The negotiation process for the Platform Directive proved to be a complex and contentious journey. The European Commission, the European Parliament, and the Council of the European Union entered into a series of debates and discussions to refine the directive's proposals.⁴⁶⁴

Member States approached the negotiations with diverse and often conflicting priorities, reflecting the heterogeneity of their economic structures and labour market regimes. States with well-established traditions of labour protection tended to advocate for stronger safeguards for platform workers, including more robust mechanisms to address misclassification. By contrast, other Member States, concerned about the potential impact on business models, labour market

⁴⁶¹ De Stefano, V., & Aloisi, A. (2019). European legal framework for digital labour platforms, European Commission, p. 23.

⁴⁶² Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). Access to social protection for people working on non-standard contracts and as self-employed in Europe, European Commission, p. 9.

⁴⁶³ Freedland, M., & Kountouris, N. (2011). The legal construction of personal work relations., Oxford University Press, p.24.

⁴⁶⁴ European Parliament. (2024). Platform Work Directive: Legislative train schedule.

flexibility, and innovation, favoured a more cautious and less interventionist regulatory approach.⁴⁶⁵

Reaching an agreement among Member States on the final text of the proposed Directive constituted a crucial step towards its adoption. However, this stage proved far more contentious than initially anticipated. Several Member States raised concerns that the proposed text infringed the principle of subsidiarity,⁴⁶⁶ arguing that it unduly interfered with core labour law concepts and encroached upon areas traditionally governed by national legislation.⁴⁶⁷

Not surprisingly, the chapter governing the rebuttable legal presumption was considered the most sensible by the Committee of Permanent Representatives from a political standpoint.⁴⁶⁸ Furthermore, the 5 enumerated criteria of the rebuttable legal presumption were divided, meaning that in the new proposal, there were 7 criteria instead of 5, and to benefit from that, 3 criteria should be present. The new classification hadn't introduced new criteria to the list; it had only further divided the already existing ones.⁴⁶⁹

Industry stakeholders, including platform companies, argued that too much regulation could stifle innovation and reduce the flexibility that makes platform work appealing to many individuals.⁴⁷⁰ Meanwhile, labour unions and workers' rights groups pushed for the directive to offer protections equivalent to those in traditional employment, emphasising the need to prevent exploitation and ensure fair working conditions.⁴⁷¹ As platform companies lobbied during the negotiations, a possible agreement was slipping further away.

⁴⁶⁵ European Commission. (2021). Impact assessment accompanying the proposal for a Directive on improving working conditions in platform work (SWD(2021) 396 final). Publications Office of the European Union, pp. 14–16.

⁴⁶⁶ Barnard, C. (2019). *The substantive law of the EU: The four freedoms* (6th ed.). Oxford University Press, pp. 30–33.

⁴⁶⁷ European Commission. (2021). Impact assessment accompanying the proposal for a Directive on improving working conditions in platform work (SWD(2021) 396 final). Publications Office of the European Union, pp. 14–15.

⁴⁶⁸ Committee of Permanent Representatives, Reference number: 2021/0414(COD), 7 June 2023, Brussels, p. 4, available at: <https://data.consilium.europa.eu/doc/document/ST-10107-2023-INIT/hu/pdf>.

⁴⁶⁹ György Nádás / Márton Leó Zaccaria, *Munkaviszony-e a Platformmunkavégzés?*, *Jogi Közlöny*, 2024, p. 290.

⁴⁷⁰ European Commission. (2021). Impact assessment accompanying the proposal for a Directive on improving working conditions in platform work (SWD(2021) 396 final). Publications Office of the European Union.

⁴⁷¹ Ponce del Castillo, A., & Naranjo, D. (2022). *Regulating algorithmic management: An assessment of the EC's draft Directive on platform work*. ETUI, pp. 3–4.

Multiple votes aiming for an agreement on the directive failed since member states simply couldn't agree with the text of the directive, mostly on the wording of the rebuttable legal presumption, since approaches differed in tackling the phenomena of platform work.

Firstly, during the Czech presidency of the Council of the EU, a compromise text was proposed, but unfortunately, because the chapter on the legal presumption remained controversial among member states, it became clear that a vote would serve no purpose, as an agreement could not be reached.⁴⁷²

In the meantime, the Swedish presidency further amended the proposed text.⁴⁷³ Unfortunately, the newly worded proposed directive again failed to pass a vote of the member states' representatives on the 16th of February 2024.

A breakthrough in the negotiations was ultimately achieved under the Belgian Presidency of the Council of the European Union, which succeeded in securing agreement following further amendments to the proposed text.⁴⁷⁴ This development marked a decisive turning point in a previously stalled legislative process. In its aftermath, labour law scholars and practitioners closely awaited the publication of the Directive's final wording. Even prior to its formal adoption, however, the emerging compromise could be tentatively assessed on the basis of the Permanent Representatives Committee's Analysis of the final compromise text with a view to agreement, published shortly before the political agreement was reached.⁴⁷⁵

When considering the possibilities of amendments that could lead to an agreement, the proposed directive, especially focusing on the rebuttable legal presumption, a new perspective was surfacing:

“The modalities of the legal presumption, should be set out by the Member States, in so far as those ensure the establishment of an effective rebuttable legal presumption of employment that constitutes a procedural facilitation to the benefit of persons performing platform work, and do not have the effect of increasing the burden of requirements on persons performing platform work,

⁴⁷² 15338/1/22 REV 1, Brussels, 7 December 2022, pp. 6-8, available at: <https://data.consilium.europa.eu/doc/document/ST-15338-2022-REV-1/en/pdf>.

⁴⁷³ 0107/23, Brussels, 7 June 2023, available at: <https://data.consilium.europa.eu/doc/document/ST-10107-2023-INIT/hu/pdf>.

⁴⁷⁴ Council of the European Union. (2024). Platform work: Council and Parliament reach provisional agreement, p. 1.

⁴⁷⁵ Council of the European Union. (2024). Analysis of the final compromise text with a view to agreement. Brussels.

*or their representatives, in proceedings ascertaining their employment status. The application of the legal presumption should not automatically lead to the reclassification of persons performing platform work.*⁴⁷⁶

Furthermore, Article 5 of the final Directive, which governs the legal presumption of employment, no longer contains the list of criteria that had been included in the original Commission proposal.⁴⁷⁷ Instead, the presumption is grounded in the application of national law, collective agreements, and established practices within the Member States, while also taking into account the case law of the Court of Justice of the European Union. In this respect, the Directive adopts a more flexible, framework-based approach.⁴⁷⁸

At the same time, it provides certain guiding principles for national implementation. In particular, it clarifies that the application of the presumption must not impose an increased burden of requirements on persons performing platform work. Moreover, the presumption is intended to apply across all relevant administrative and judicial proceedings concerning the correct determination of employment status, subject to specific exceptions.⁴⁷⁹

A major deficiency arises when examining the concrete exceptions to the application of the legal presumption in proceedings: “The legal presumption shall not apply to proceedings which concern tax, criminal and social security matters.”⁴⁸⁰ One of the central challenges associated with the expansion of platform work has been the exclusion of many platform workers from social security systems, thereby exposing them to significant forms of precarity.⁴⁸¹ In this context, the decision to exclude social security matters from the scope of the agreed Directive further intensifies this structural vulnerability. As a result, the question of social protection for platform workers remains largely unresolved, leaving a critical gap in the regulatory framework.⁴⁸²

⁴⁷⁶ 7212/24 ADD 1, Brussels, 8 March 2024, (32).

⁴⁷⁷ Council of the European Union. (2024). Analysis of the final compromise text with a view to agreement, pp. 2–3.

⁴⁷⁸ European Parliament and Council of the European Union. (2024). Directive (EU) 2024/2831 on improving working conditions in platform work. Official Journal of the European Union, art. 5.

⁴⁷⁹ Risak, M., & Dullinger, T. (2022). The EU Platform Work Directive. *European Labour Law Journal*, 13(3), 345–362, pp. 351–352.

⁴⁸⁰ European Parliament and Council of the European Union. (2024). Directive (EU) 2024/2831 on improving working conditions in platform work. Official Journal of the European Union, art. 5.(3).

⁴⁸¹ De Stefano, V. (2016). The rise of the “just-in-time workforce”. *ETUI*, p. 21.

⁴⁸² Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). Access to social protection for people working on non-standard contracts and as self-employed in Europe. European Commission, pp. 9–10.

As can be observed, the final text no longer contains any predefined criteria for the application of the rebuttable presumption of employment. Instead, it requires Member States to establish an 'effective' presumption within their respective legal frameworks. In this respect, the detailed list of criteria originally included in the Commission's proposal appears to have been relinquished in the course of negotiations, arguably as part of a political compromise aimed at securing agreement and ensuring the Directive's adoptability and practical applicability⁴⁸³

In this regard, some could argue that, under the present wording, member states could have the freedom to establish this legal institution in a manner that fits their nation's social, economic, and cultural situation, and to address the present situation in different ways.⁴⁸⁴ On the other hand, the biggest concern would be that, if the directive enters into force, it will not have the desired effect, since member states may differentiate their regulations, as they do now.⁴⁸⁵

Another concern would be the directive's dependence on national regulations, since Romania does not have a definition of the employee, or because Hungary's labour regulations can be interpreted differently from what the directive represents. Therefore, the current text of the directive has the potential to limit the legal certainty initially intended by the original proposal.⁴⁸⁶

Since the member states have a considerable margin of appreciation when implementing the present directive, differences between the member states would also pose considerable difficulties in the process of monitoring and enforcement.⁴⁸⁷

While the proposed directive on platform workers presented a comprehensive framework with specific criteria for assessing employment status, criteria such as the degree of control exerted by the platform company over the work performed, the level of integration of the worker into the platform's business model, and the control, subordination, and dependency of the worker on the platform for income were delineated.⁴⁸⁸ These concrete criteria provided an arguably solid

⁴⁸³ Risak, M., & Dullinger, T. (2022). The EU Platform Work Directive. *European Labour Law Journal*, 13(3), 345–362, pp. 351–352.

⁴⁸⁴ European Parliament and Council of the European Union. (2024). Directive (EU) 2024/2831 on improving working conditions in platform work, art. 5, pp. 18–20.

⁴⁸⁵ European Commission. (2021). Impact assessment accompanying the proposal for a Directive on platform work, pp. 14–16.

⁴⁸⁶ Antonio Aloisi et al., *An Unfinished Task? Matching the Platform Work Directive with the EU and International "Social Acquis"*, ILO Working Paper 101, 2023.

⁴⁸⁷ Miriam Kullmann, *Enforcement of Labour Law in Cross-Border Situations: A Legal Study of the EU's Influence on the Dutch, German, and Swedish Enforcement Systems*, 2015, Deventer: Kluwer.

⁴⁸⁸ Davidov, G. (2016). *A purposive approach to labour law*. Oxford University Press, pp. 136–138.

foundation for determining employment relationships, offering guidance to both platform workers and companies while ensuring fairness and transparency in the application of labour laws.⁴⁸⁹

In contrast, the final Directive on platform work lacks the level of specificity and operational detail that characterised the Commission's original proposal with regard to employment classification criteria. Although the agreed text refines the language surrounding the assessment of employment status, it does not retain a comparable set of concrete indicators. Instead, it relies on broader and more abstract references to national legal definitions, established practices, and general concepts such as autonomy and entrepreneurial risk.⁴⁹⁰ While these notions remain central to labour law, their open-ended nature may limit the Directive's capacity to ensure consistent and predictable application across diverse national contexts.⁴⁹¹

The absence of concrete criteria in the agreed directive raises concerns regarding the clarity and effectiveness of the classification process for platform workers. Without clear guidance, stakeholders may struggle to interpret and apply the directive, potentially leading to inconsistencies in the classification of employment status.⁴⁹² Moreover, the absence of concrete criteria may exacerbate existing inequalities and vulnerabilities among platform workers, particularly regarding access to social security protections and collective bargaining rights.⁴⁹³

Concrete criteria serve as essential benchmarks⁴⁹⁴ for evaluating the nature of the relationship between platform workers and platform companies. These criteria provide clarity and consistency in determining whether a worker should be considered an employee entitled to labour and social security protections or an independent contractor operating under different arrangements. Without clear and specific criteria, the classification process becomes subjective and open to interpretation, leading to potential inconsistencies and inequalities in the treatment of platform workers.⁴⁹⁵

⁴⁸⁹ European Commission. (2021). Impact assessment accompanying the proposal for a Directive on platform work, pp. 20–21.

⁴⁹⁰ Council of the European Union. (2024). Analysis of the final compromise text with a view to agreement, pp. 2–3.

⁴⁹¹ Raitio, J. (2018). The principle of legal certainty based on the case law of the Court of Justice, pp. 187–188.

⁴⁹² Countouris, N., & De Stefano, V. (2019). New trade union strategies in the platform economy, p. 18.

⁴⁹³ Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). Access to social protection for people working on non-standard contracts and as self-employed in Europe, pp. 9–10.

⁴⁹⁴ Raitio, J. (2016). Legal certainty. In *Encyclopaedia of the Philosophy of Law and Social Philosophy*, pp. 397–402

⁴⁹⁵ Davidov, G. (2016). *A purposive approach to labour law*. Oxford University Press, pp. 136–138.

On a more optimistic note, to the agreement, the lack of a concrete list of criteria can be beneficial as well, and it shouldn't be considered a total failure, experts say⁴⁹⁶. If a case-by-case factual approach is needed to classify platform workers, platforms would hardly avoid an employment relationship by simply updating their terms and conditions of work for platform workers, while still retaining the right to rebut the legal presumption in proceedings.⁴⁹⁷ However, it will be important to monitor the evolution of the situation, as this may result in the need to involve the national courts to clarify the classification issue.

It will also be important for the EU to monitor the implementation process of the directive⁴⁹⁸ Since the basis of the directive remains the national law and case law, furthermore, the monitoring of the implementation process shouldn't be limited to the laws that regulate the current phenomena, but the scope should also include the preparation of the labour authorities as well, since they will have a crucial role in tackling the issues of classification.⁴⁹⁹

4.2. Reclassification as a Necessary First Step

It would be normatively attractive to design social protection systems fully independent of employment status, yet realistically not probable. Indeed, one of the most influential contemporary debates in European social policy concerns whether welfare states should detach social rights from the employment relationship and re-anchor them in personhood, residence, or universal citizenship.⁵⁰⁰ Such a reform would align with the idea that social security is a human right rather than a privilege attached to a particular contractual category.

However, despite these normative ambitions, European social security systems remain historically employment-centred. Their institutional design continues to reflect the classical Bismarckian

⁴⁹⁶ Luigi Di Cataldo, Improving Working Conditions in Platform Work. A Comment about the Agreement Reached on the European Directive, Italian Labour Law e-Journal, Issue 1, Vol. 17 (2024), pp. 140-141, ISSN 1561-8048.

⁴⁹⁷ Gig Workers in Europe: The New Platform of Rights, Social Europe, available at: <https://www.socialeurope.eu/gig-workers-in-europe-the-new-platform-of-rights>.

⁴⁹⁸ European Commission. (2021). Impact assessment accompanying the proposal for a Directive on improving working conditions in platform work (SWD(2021) 396 final). Publications Office of the European Union, pp. 21–22.

⁴⁹⁹ European Labour Authority. (2025). Addressing platform workers' employment misclassification, pp. 8–10.

⁵⁰⁰ Alain Supiot, The Spirit of Philadelphia: Social Justice vs the Total Market (Verso, 2012), pp. 33–39.

logic, in which the employment relationship serves as the principal trigger for inclusion in compulsory insurance schemes.⁵⁰¹ This remains particularly true in Central and Eastern European welfare states, where post-transition reforms largely preserved contribution-based structures linked to formal employment and employer responsibility.⁵⁰² Therefore, while universalism may be attractive in theory, it is institutionally constrained in practice.

The human rights framework affirms the universality of social security entitlements. The International Covenant on Economic, Social and Cultural Rights explicitly recognises “the right of everyone to social security, including social insurance.”⁵⁰³ Moreover, the Committee on Economic, Social and Cultural Rights has clarified that States must guarantee availability, accessibility, adequacy, and coverage of social security schemes without discrimination.⁵⁰⁴ Yet, interestingly, the ICESCR does not prescribe a single institutional model. It allows States to implement this right through different combinations of contributory and non-contributory systems, tax-financed benefits, and mixed welfare arrangements.⁵⁰⁵

This flexibility is important, but it also reveals a structural dilemma: although the right is universal in principle, access remains conditional in practice. In most European welfare states, the most comprehensive and adequate protection continues to be provided through employment-based insurance mechanisms.⁵⁰⁶

This point is strongly emphasised in Eastern European labour and social security scholarship. Romanian academic analysis has repeatedly highlighted that social insurance in Romania remains highly dependent on formal employment and on the employer’s role as a contributor and administrator. Prof. Felicia Roşioru, in her work on Romanian labour relations and social protection, highlights that employment status serves not only as a labour law category but also as

⁵⁰¹ Peter Baldwin, *The Politics of Social Solidarity: Class Bases of the European Welfare State 1875–1975* (Cambridge University Press 1990), pp. 68–72.

⁵⁰² Dorota Szelewa, “From Implicit to Explicit Familialism: Post-1989 Family Policy Reforms in Poland”, in *Gender and Family in European Economic Policy* (Springer/Palgrave, 2016/2017), pp. 129–151.

⁵⁰³ International Covenant on Economic, Social and Cultural Rights (ICESCR), Art. 9.

⁵⁰⁴ Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: The Right to Social Security (Art. 9) (2007), paras 4–6 and 11–14.

⁵⁰⁵ CESCR General Comment No. 19 (2007), paras 18–24 (State discretion in design of social security systems).

⁵⁰⁶ OECD, *Non-Standard Work and the Future of Social Protection* (OECD Publishing, 2018), pp. 25–27, also 89–94

the legal gateway to inclusion in social insurance.⁵⁰⁷ Her analysis of Romanian labour market transformations further accentuates that precarious work and disguised, bogus employment arrangements generate structural vulnerability precisely because they remove individuals from compulsory contribution schemes.⁵⁰⁸

This is particularly relevant in the platform economy. Under current conditions, if platform workers remain self-employed, employer contributions are absent, coverage is fragmented, benefits are reduced, and enforcement is individualised.⁵⁰⁹

Each of these consequences is structurally predictable in an employment-centred system.

First, where platform workers are classified as self-employed, the platform is not obliged to contribute to social insurance. In practice, this means the financial burden of social protection is entirely borne by the worker.⁵¹⁰ This shift is not merely quantitative; it is qualitative. It transforms social insurance from a collectively financed institutional mechanism into an individual responsibility. Yet, as Eurofound has demonstrated, most platform workers do not voluntarily arrange full coverage due to cost and lack of information.⁵¹¹

Second, coverage becomes fragmented. In many Member States, self-employed persons may have partial access to certain benefits (for example, pensions), but may be excluded from unemployment insurance or occupational accident schemes.⁵¹² Fragmentation is especially harmful in the platform economy, where income volatility is the norm. Workers often move between multiple forms of income generation, sometimes combining platform work with casual employment, thereby producing discontinuous contribution histories. This creates what may be described as an

⁵⁰⁷ Felicia Roşioru, “The social protection of platform workers in Romania: Meeting the growing demand for affordable and adequate coverage?” (2021) 74(3–4) *International Social Security Review* (Special Issue on platform workers).

⁵⁰⁸ Felicia Roşioru, “The status of platform work in Romania” (2020) 41(2) *Comparative Labour Law & Policy Journal*, pp. 423–442.

⁵⁰⁹ Prassl, J. (2018). *Humans as a service: The promise and perils of work in the gig economy*, Oxford University Press, p. 58.

⁵¹⁰ European Commission, *Study on Access to Social Protection for People Working on Non-Standard Contracts and as Self-Employed in Europe* (2017), pp. 13–18.

⁵¹¹ Eurofound, *Employment and Working Conditions of Selected Types of Platform Work* (Publications Office of the EU 2018), pp. 52–53

⁵¹² European Parliament, Forde et al., *The Social Protection of Workers in the Platform Economy* (Policy Department A 2017), pp. 36–41

“insurance patchwork,” where individuals are intermittently covered but never securely protected.⁵¹³

Third, benefit adequacy is reduced. Even where self-employed persons are formally insured, benefit levels often depend on declared income and contribution capacity. Platform workers, however, frequently experience volatile earnings and may under-declare income for financial reasons or due to administrative burdens, survival strategies.⁵¹⁴ As a result, even if insured, their benefits may be minimal. This is especially alarming for long-term pension adequacy, where fragmented contribution histories translate into structural old-age poverty.⁵¹⁵

Fourth, enforcement becomes individualised. Under employment-based systems, the employer is responsible for registration, contribution payments, and administrative compliance. In self-employment models, the burden falls on the individual worker, who must navigate complex administrative requirements and often lacks legal knowledge and bargaining power.⁵¹⁶ The European Parliament’s 2017 study highlights that workers are often forced to challenge their status in order to gain access to protection, thereby making litigation a prerequisite for inclusion.⁵¹⁷

Thus, the platform economy does not merely create new work opportunities; it also creates new pathways of exclusion from social security.

We would argue that this explains why reclassification is such a central issue. Reclassification is not simply about being an employee. It is about restoring the institutional chain through which European welfare states distribute social rights. In employment-centred systems, reclassification activates: employer contribution obligations, automatic inclusion in insurance schemes, enforceable labour standards, and access to benefits during social contingencies.⁵¹⁸

⁵¹³ Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations* (Oxford University Press 2011), pp. 18–22 (fragmentation of work relations and risk allocation).

⁵¹⁴ Antonio Aloisi and Valerio De Stefano, *Your Boss Is an Algorithm* (Hart Publishing, 2022), pp. 71–78.

⁵¹⁵ OECD, *Non-Standard Work and the Future of Social Protection* (OECD Publishing, 2018), pp. 25–27 and 89–94.

⁵¹⁶ European Labour Authority, *Addressing Platform Workers’ Employment Misclassification: Legal Frameworks, Enforcement Strategies and the New Platform Work Directive* (2025), pp. 18–22 and 33–35.

⁵¹⁷ European Parliament, Forde et al., *The Social Protection of Workers in the Platform Economy* (Policy Department A 2017), p. 71.

⁵¹⁸ Davies, A. C. L. (2012). *Perspectives on labour law*, Cambridge University Press, p. 84.

This is why reclassification must be understood as the first structural step. Without it, even well-intentioned reforms of social security law risk remaining incomplete, because the principal entry mechanism remains blocked.⁵¹⁹

From a Central European perspective, this argument is especially strong.⁵²⁰ In Hungarian scholarship, Vallasek Magdolna has emphasised that precarious employment and non-standard forms of work pose serious challenges to the coherence of social security inclusion, particularly in systems where contribution-based insurance remains dominant, and enforcement relies heavily on employer reporting.⁵²¹ Her work highlights that the legal categorisation of work is not merely theoretical; it directly shapes whether individuals are practically insurable. This observation is highly relevant for platform workers, whose classification often produces precisely the type of “invisible labour” that contributory systems fail to capture.

Therefore, without correcting classification, social security reform remains structurally incomplete.

Reclassification is not sufficient, but it is a necessary first step.

It is not sufficient because even employee status does not automatically guarantee full social protection if contribution thresholds, minimum-hours requirements, or short-term contracts create gaps. Yet it is necessary because without employment recognition, the worker remains outside the institutional logic of solidarity that still defines most European welfare systems.⁵²²

In this sense, the platform economy has exposed a fundamental truth about European welfare states: while social security is declared universal as a human right, access remains heavily mediated by employment status. As long as this institutional design persists, correcting

⁵¹⁹ European Labour Authority. (2025, April). Addressing platform workers' employment misclassification: Legal frameworks, enforcement strategies and the new Platform Work Directive, pp. 8-9.

⁵²⁰ Gyulavári, T. (2024). The first platform work judgment in Central and Eastern Europe. *European Labour Law Journal*. <https://doi.org/10.1177/20319525241260869>

⁵²¹ Magdolna Márta Vallasek and Gábor Mélypataki, “Rules on Home Office Work and Telework in Romania and in Hungary”, *Central European Journal of Comparative Law* 1(2) 177–191 (2020), doi:10.47078/2020.2.177-191

⁵²² Eurofound. (2019). Access to social protection for workers in non-standard forms of employment, Publications Office of the European Union, p. 41.

misclassification is the most immediate and pragmatic step toward restoring social citizenship for platform workers.⁵²³

4.2.1. Normative Position

In our view, the debate about misclassification in platform work is ultimately a debate about the boundaries of social solidarity in the digital age. It is not simply a technical dispute about contractual categories; it is a structural conflict about who bears social risk and how collective protection is organised in increasingly fragmented labour markets.⁵²⁴

European welfare states were historically built upon an institutional compromise: economic productivity would be linked to social protection through the employment relationship.⁵²⁵ Employment became the legal and administrative gateway through which workers entered systems of collective risk-sharing. As Baldwin demonstrates in his historical analysis of European welfare states, contributory social insurance systems were explicitly designed to integrate wage earners into solidaristic insurance communities financed through employer and employee contributions.⁵²⁶

Thus, employment status functions as the gatekeeper of social citizenship. This is not merely a symbolic role. In most European systems, access to unemployment insurance, occupational accident coverage, sickness benefits, and pension accumulation is structurally mediated by formal employment and employer participation.⁵²⁷ As Freedland and Kountouris have argued, the legal construction of personal work relations determines how responsibility and risk are allocated within labour markets.⁵²⁸

⁵²³ European Commission. (2020). Access to social protection for all: Improving coverage in the EU, Publications Office of the European Union, p. 4.

⁵²⁴ Ferrera, M. (2005). The boundaries of welfare: European integration and the new spatial politics of social protection, Oxford University Press, p. 46.

⁵²⁵ T.H. Marshall, *Citizenship and Social Class* (Pluto Press 1992), pp. 8–9

⁵²⁶ Peter Baldwin, *The Politics of Social Solidarity: Class Bases of the European Welfare State 1875–1975* (Cambridge University Press 1990), pp. 68–72.

⁵²⁷ European Commission, *Study on Access to Social Protection for People Working on Non-Standard Contracts and as Self-Employed in Europe* (2017), pp. 7–18.

⁵²⁸ Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations* (Oxford University Press 2011), pp. 18–22.

Due to the contributory design of European welfare systems, exclusion from employment status often means exclusion from collective risk-sharing. This is particularly visible in the context of platform work. When platform workers are classified as self-employed, they are frequently excluded from unemployment insurance and employer-financed accident coverage, or they must rely on voluntary insurance schemes that are less adequate and impose higher individual burdens.⁵²⁹⁵³⁰ The OECD has similarly warned that the growth of non-standard work risks creating inequalities in access to social protection, particularly in contribution-based systems.⁵³¹

However, the normative claim that reclassification is necessary must be articulated carefully. It would be overly simplistic to suggest that employee status automatically guarantees full social protection. Even workers formally recognised as employees may experience fragmented contribution histories, especially in sectors characterised by short-term contracts, intermittent work, or volatile earnings.

Eurofound's research on platform work explicitly notes that even those classified as employees may face fragmented coverage due to unstable income patterns and part-time arrangements.⁵³² In other words, formal status does not eliminate structural precarity.⁵³³ The problem of fragmented social security entitlements is not limited to misclassification; it is also linked to broader labour market dualisation and the rise of non-standard employment.⁵³⁴

Scholars such as Palier and Thelen have demonstrated that European welfare states increasingly produce insider-outsider divides, in which those in stable employment enjoy comprehensive protection, while those in atypical or precarious work experience limited or discontinuous coverage.⁵³⁵ Platform work intensifies this dynamic. It does not invent precariousness, but it magnifies it through digital management and income volatility.

⁵²⁹ European Parliament, Forde et al., *The Social Protection of Workers in the Platform Economy* (Policy Department A 2017), pp. 36–41.

⁵³⁰ Roşioru, F. (2021). The social protection of platform workers in Romania: Meeting the growing demand for affordable and adequate coverage? *International Social Security Review*, 74(3–4), 87–106.

⁵³¹ OECD, *Non-Standard Work and the Future of Social Protection* (OECD Publishing 2018), pp. 25–27.

⁵³² Eurofound, *Employment and Working Conditions of Selected Types of Platform Work* (Publications Office of the EU 2018), pp. 88–91.

⁵³³ Vallasek, M. M., & Mélypataki, G. (2020). Rules on home office work and telework in Romania and in Hungary. *Central European Journal of Comparative Law*, 1(2), 177–191.

⁵³⁴ OECD, *Non-Standard Work and the Future of Social Protection* (OECD Publishing 2018), pp. 89–94.

⁵³⁵ Bruno Palier and Kathleen Thelen, “Institutionalizing Dualism: Complementarities and Change in France and Germany” (2010) 46(1) *Politics & Society* 119, at pp. 123–128.

Therefore, reclassification must be understood as the first structural step, not the final reform.

It is the first step because, within employment-centred welfare systems, it reopens access to the institutional machinery of collective insurance. It restores employer contribution obligations and activates legal enforcement mechanisms that are otherwise unavailable to independent contractors.⁵³⁶

Yet it is not the final reform because deeper structural questions remain: How can social protection systems accommodate intermittent work patterns? How can pension accumulation be stabilised in volatile labour markets? How can adequacy be guaranteed even where contribution levels fluctuate?

As Alain Supiot has argued, the challenge of the digital economy is not merely to regulate contracts, but to preserve the institutional foundations of social justice against the pressures of marketisation.⁵³⁷ Reclassification contributes to this preservation by preventing the erosion of employer responsibility. But it does not, by itself, resolve the broader transformation of work and risk.

We would therefore argue that misclassification debates should not be framed as binary disputes between employees and self-employed. They should be understood as institutional stress tests for employment-based solidarity. The platform economy exposes the fragility of welfare systems that remain structurally dependent on stable employment relationships.⁵³⁸

Reclassification is necessary because it prevents the immediate exclusion of economically dependent workers from social insurance systems.⁵³⁹ However, it is insufficient because the sustainability of social solidarity in the digital age ultimately requires deeper reforms that address fragmentation, income instability, and enforcement capacity.⁵⁴⁰

⁵³⁶ Prassl, J., & Risak, M. (2016). “Uber, TaskRabbit, and Co.: Platforms as employers? Rethinking the legal analysis of crowdwork.” *Comparative Labor Law & Policy Journal*, 37(3), p. 643.

⁵³⁷ Alain Supiot, *The Spirit of Philadelphia: Social Justice vs the Total Market* (Verso 2012), pp. 33–39.

⁵³⁸ Davidov, G. (2016). *A purposive approach to labour law*. Oxford University Press.

⁵³⁹ European Commission. (2018). *Council Recommendation on access to social protection for workers and the self-employed*, Publications Office of the European Union, p. 2.

⁵⁴⁰ Vandenbroucke, F. (2017). *The idea of a European social union: A normative introduction*, European Commission, p. 10.

In this sense, the normative position is twofold: Reclassification is indispensable within the current institutional architecture of European welfare states. But long-term resilience requires complementary reforms that adapt social protection to new forms of work without abandoning collective risk-sharing.

Thus, the struggle over employment status in platform work is not only about labour law doctrine. It is about the future configuration of social solidarity in Europe.

4.3. Conclusion

The advent of platform work represents a fundamental shift in the nature of employment relationships, challenging traditional labour law frameworks and creating a complex regulatory landscape.⁵⁴¹ The Platform Directive, as proposed by the European Union, seeks to address these challenges by providing a more structured and equitable framework for platform workers. However, the absence of concrete criteria in the agreed directive underscores the inherent difficulty of regulating such a dynamic and rapidly evolving sector.⁵⁴²

One of the primary advantages of platform work is the flexibility it offers, along with the relatively lower taxation compared to traditional employment. However, this flexibility is a double-edged sword, as it often comes at the cost of job security and stable income. Platform workers frequently find themselves in precarious situations, with limited access to the rights and protections afforded to traditional employees.⁵⁴³ This precariousness has sparked widespread calls for legislative action to close the gap between platform work and traditional employment, ensuring that all workers receive similar protections and benefits.

⁵⁴¹ Zsófia Riczu et al., Concepts of Work: From Traditional Social-Labour Ideas to Modern Effects of Digital Transformation, *Journal of Digital Technologies and Law*, 2023/1, pp. 175-190.

⁵⁴¹ Gábor Mélypataki, Az Ipar 4.0. és a Jog Kapcsolata – Problémafelvetések a Foglalkoztatás és Szociális Biztonság Témaköre Kapcsán, *Jogelméleti Szemle*, 2023 Vol. I, pp. 61-62.

⁵⁴² Jon Messenger, *Working Time and the Future of Work*, ILO Future of Work Research Paper Series, 2018.

⁵⁴³ Darja Šencur Peček, Social Protection of Workers in Non-Standard Forms of Employment in Slovenia, *Zbornik Pravnog Fakulteta Sveucilista u Rijeci* 39, no. 4 (2018), pp. 1586-1591.

The Platform Directive aims to address these concerns, representing a significant attempt by the European Union to strike a balance between the flexibility of platform work and workers' need for security. By proposing to classify platform workers more clearly, the directive aims to remove the ambiguity surrounding their employment status, ensuring that those who function as *de facto* employees are treated as such.⁵⁴⁴ This should include not just the provision of minimum wages, working time protections, and paid leave, but at the same time also access to social security benefits, aligning the rights of platform workers more closely with those of traditional employees.⁵⁴⁵ Unfortunately, social security is excluded from the scope of the directive; this still remains an unsolved question among platform workers.⁵⁴⁶

With the rise of the platform work sector, new problems emerged, and some long-standing questions resurfaced. Bogus self-employment has existed in the past, and, as with the situations in which it gained popularity, we can see that the labour force's precariousness and vulnerability were the main reasons for masking an employment relationship as a civil contract.⁵⁴⁷ The directive aims to clarify the situation regarding the misclassification of platform workers, already categorising them based on their genuine contractual relationship in defining the subject of the directive. Moreover, the directive introduces a presumption of employment, which shifts the burden of proof from the worker to the platform. This is a critical step in addressing the power imbalance inherent in the platform economy, where platforms typically hold a stronger bargaining position. By requiring platforms to justify their classification of workers as independent contractors, the directive seeks to protect workers from misclassification and the denial of essential rights.

Despite these significant advancements, the directive is not without its challenges. The lack of concrete criteria, sacrificed to reach agreement among member states on the directive, leaves room for interpretation, potentially leading to inconsistencies in its application across the European Union.⁵⁴⁸ Further clarification and guidance will be necessary to ensure that the directive is

⁵⁴⁴ Miriam Kullmann, *Platformisation of Work: An EU Perspective on Introducing a Legal Presumption*, *European Labour Law Journal*, 2021, p. 3, DOI: 10.1177/20319525211063112.

⁵⁴⁵ Grega Strban, Chapter 13 *Social Law 4.0 and the Future of Social Security Coordination*, in: Ulrich Becker / Olga Chesalina (Eds.), *Social Law 4.0: New Approaches for Ensuring and Financing Social Security in the Digital Age*, *Studien aus dem Max-Planck-Institut für Sozialrecht und Sozialpolitik*, vol. 74, Nomos, 2021, p. 336.

⁵⁴⁶ 7212/24 ADD 1, Brussels, 8 March 2024, art. 5(3).

⁵⁴⁷ Fabian McNeilly, *Sham Self-Employment Contracts: Taking a Liberty?*, *Manchester Review of Law, Crime & Ethics* 15 (2013).

⁵⁴⁸ Stefano Guibboni, *Being a Worker in EU Law*, *European Labour Law Journal*, Vol. 9, 2018, p. 232.

implemented in a way that consistently and equitably protects the rights of platform workers across all member states.

The manner of the regulation leaves the definition of basic notions of labour law to the member states, in line with the principle of subsidiarity. Labour law, as such, is strongly dependent on the individual economic, social, and political situation of each member state; unification cannot be achieved in this branch. However, the directive aims to achieve a certain level of harmonisation, setting a direction and showing a path for national lawmakers and judicial bodies dealing with such litigation.⁵⁴⁹ Unfortunately, the directive's reliance on a national definition of such notions leaves the possible effects unexplored. The example of Romanian labour regulations highlights the difficulty of such regulations at the level of the European Union, since member states' approaches differ even on the very ground of labour law.

The Platform Directive marks a pivotal moment in the evolution of labour law, reflecting the European Union's recognition of the need to adapt its regulatory frameworks to the realities of the digital economy. However, it is not the end of the journey. As the nature of work continues to evolve, so too must the laws and regulations that govern it.⁵⁵⁰ Policymakers must remain vigilant in safeguarding the rights and interests of all workers, including those engaged in platform work. This will require ongoing dialogue, innovation, and a willingness to refine and adjust regulatory frameworks as necessary to keep pace with the rapid changes in the world of work. On the same note, the directive has now entered the implementation process. Member states agreed on the wording of the regulation, but the monitoring of the implementation will be a pivotal task since national legislation has a difficult task regulating platform work, and the directive itself does not state the concrete solutions to the resurfaced problems; rather, it shows a collective way of regulation for the member states.⁵⁵¹

In conclusion, the Platform Directive represents a significant and necessary step towards achieving fair and equitable work conditions for platform workers. It reflects an important recognition of the

⁵⁴⁹ Valerio De Stefano, The EU Commission's Proposal for a Directive on Platform Work: An Overview, Italian Labour Law e-Journal, Issue 1, Vol. 15 (2022), pp. 5-6, ISSN 1561-8048.

⁵⁵⁰ William B. Gould / Marco Biasi, The Rebuttable Presumption of Employment Subordination in the US ABC-Test and in the EU Platform Work Directive Proposal: A Comparative Overview, Italian Labour Law e-Journal, Issue 1, Vol. 15 (2022), pp. 12-13, ISSN 1561-8048.

⁵⁵¹ Lucia Maria Costiug, Flexicurity and Employment Relationships in Romania, Law Annals Titu Maiorescu University 51 (2015), p. 62.

unique challenges posed by platform work and the need for a firm and detailed regulatory response. However, the path towards a fully inclusive and protective labour framework for the digital economy is ongoing, and the Platform Directive, while pivotal, is only one step in that broader process. The future of work will continue to be shaped by both innovation and regulation, and the European Union must ensure that its policies remain responsive to the needs of all workers in this evolving landscape.

Misclassification in platform work is not merely a technical labour law defect, nor is it simply an unfortunate by-product of regulatory delay. It is a structural mechanism through which social risk is redistributed away from collective insurance and towards individual vulnerability. In this sense, misclassification functions as an institutional strategy of cost externalisation: it allows platforms to benefit from labour without assuming the legal and financial responsibilities traditionally associated with the organisation of work.⁵⁵²

This conclusion is consistent with the broader diagnosis offered by European labour scholarship. Aloisi and De Stefano convincingly argue that platform business models are frequently built around the systematic avoidance of employer obligations, enabled by algorithmic management and contractual design.⁵⁵³ This avoidance is not limited to labour standards; it extends to the contribution-based financing of welfare systems. Thus, the misclassification of platform workers must be understood as an issue of social security architecture rather than as an isolated labour law dispute.

The empirical evidence supports this structural interpretation. Eurofound's comparative research demonstrates that platform workers frequently lack protection against unemployment and face significant insecurity regarding sickness coverage and other social security entitlements.⁵⁵⁴ Similarly, the European Parliament's study on the social protection of platform workers shows that the classification of employment status directly determines access to contributory schemes and that platform workers often experience significant gaps in accident insurance, unemployment

⁵⁵² Alain Supiot, *The Spirit of Philadelphia: Social Justice vs the Total Market* (Verso 2012), pp. 33–39.

⁵⁵³ Antonio Aloisi and Valerio De Stefano, *Your Boss Is an Algorithm: Artificial Intelligence, Platform Work and Labour* (Hart Publishing, 2022), pp. 63–78.

⁵⁵⁴ Eurofound, *Employment and Working Conditions of Selected Types of Platform Work* (Publications Office of the EU 2018), pp. 52–53 and 88–91.

benefits, and pension accumulation.⁵⁵⁵ Therefore, the costs of misclassification are not abstract. They are measurable in exclusion from social insurance and in increased exposure to life-course risks.

This is why platform workers litigate not for a label, but for the substantive protections attached to that label: unemployment protection, sickness benefits, accident coverage, pension accumulation, and income security.⁵⁵⁶

The courtroom struggle over status is thus not a conceptual identity dispute. It is a material claim for inclusion into systems of solidarity. This aligns with De Stefano's argument that the fight against misclassification is ultimately "a struggle over the allocation of social risk."⁵⁵⁷

Our standpoint is that this formulation captures the core reality of platform work. The employment relationship has historically served as the institutional bridge between productive labour and collective social protection. When that bridge is removed, workers are not merely deprived of labour rights; they are excluded from the social citizenship settlement embedded in European welfare states.⁵⁵⁸

This insight is particularly important in Central and Eastern Europe, where welfare systems remain strongly employment-centred. In Hungarian scholarship, Gyulavári has highlighted that labour law continues to function as the key gateway to rights, and that the spread of precarious and non-standard work forms threatens the coherence of protective regulation.⁵⁵⁹ Similarly, Professor Jakab's work on non-standard work and its consequences emphasises that employment classification remains a decisive dividing line between inclusion and exclusion, particularly in post-transition systems that were not designed for fragmented labour markets.⁵⁶⁰

⁵⁵⁵ European Parliament, Forde et al., *The Social Protection of Workers in the Platform Economy* (Policy Department A 2017), pp. 36–41 and 45.

⁵⁵⁶ Cherry, M. A., & Aloisi, A. (2017). "Dependent contractors in the gig economy: A comparative approach." *American University Law Review*, 66(3), p. 662.

⁵⁵⁷ Valerio De Stefano, "The Rise of the 'Just-in-Time Workforce': On-Demand Work, Crowdsourcing and Labour Protection in the 'Gig-Economy'" (2016) 37 *Comparative Labour Law & Policy Journal* 471, at p. 489.

⁵⁵⁸ T.H. Marshall, *Citizenship and Social Class* (Pluto Press, 1992), pp. 8–9.

⁵⁵⁹ Tamás Gyulavári & Emanuele Menegatti (eds), *The Sources of Labour Law* (Kluwer Law International / Wolters Kluwer, 2019), p.

⁵⁶⁰ Nóra Jakab, "Non-Standard Employment and Social Security Challenges" in Csilla Lehoczky (ed), *Labour Law and Social Protection in Central Europe* (University of Miskolc Press 2019), pp. 112–118.

A comparable conclusion emerges from Romanian scholarship. Roşioru's analysis of Romanian labour law and social protection underscores that social insurance inclusion remains structurally tied to formal employment and employer responsibility, and that precarious work produces vulnerability precisely because it interrupts contribution-based coverage.⁵⁶¹ This is consistent with broader comparative social policy research demonstrating that contribution-based welfare states struggle to protect workers whose labour market position is unstable or formally categorised outside employment.⁵⁶²

Thus, reclassification functions as the legal key that unlocks protection. It does not merely assign a label; it activates a chain of institutional consequences: employer contributions, compulsory insurance coverage, access to unemployment benefits, and enforceable social rights. Freedland and Kountouris have shown that the legal construction of personal work relations plays a decisive role in the allocation of responsibility.⁵⁶³ In platform work, reclassification litigation forces the legal system to decide whether the platform must assume responsibility for the social costs generated by its economic activity.

From this perspective, Directive 2024/2831 is best understood not as a purely labour law directive but as a structural attempt to restore the integrity of employment-based welfare systems. By introducing a presumption of employment, it strengthens the procedural pathway through which workers may obtain correct status determination.⁵⁶⁴ Even though the Directive formally excludes social security proceedings, its substantive effects inevitably spill over into social insurance, since employment recognition triggers contribution obligations in most Member States.⁵⁶⁵

However, it is equally important to recognise that reclassification alone does not solve all protection gaps. Platform work is characterised by volatility, intermittent working patterns and fragmented earnings, and even workers classified as employees may experience discontinuous contribution histories. Eurofound notes that unstable work patterns may still produce gaps in

⁵⁶¹ Felicia Roşioru, "Precarious Work and Social Security Vulnerability in Romania" (2020) *Romanian Journal of Labour Law* 17, pp. 22–28.

⁵⁶² OECD, *Non-Standard Work and the Future of Social Protection* (OECD Publishing, 2018), pp. 25–27 and 89–94.

⁵⁶³ Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations* (Oxford University Press 2011), pp. 18–22.

⁵⁶⁴ Directive (EU) 2024/2831 on improving working conditions in platform work, Art. 5.

⁵⁶⁵ European Commission, *Impact Assessment accompanying the Proposal for a Directive on Improving Working Conditions in Platform Work*, SWD(2021) 397 final, pp. 12–14 and 19–21.

effective coverage, particularly where access depends on minimum contribution thresholds.⁵⁶⁶ Therefore, reclassification should not be treated as a final solution, but rather as the first structural step.

Nevertheless, without correcting misclassification, social security reform remains institutionally blocked. This is because European welfare states remain structurally dependent on employment status as the principal gateway to solidarity. Baldwin's historical account demonstrates that the welfare state's contribution-based logic was designed around wage labour, and this design remains deeply embedded in contemporary institutions.⁵⁶⁷ Therefore, as long as the employment relationship remains the dominant mechanism through which social insurance is financed and administered, exclusion from employment status will continue to mean exclusion from the most effective forms of protection.

In the architecture of European welfare states, employment status is not symbolic; it is constitutive.

This is why solving misclassification is the first necessary step toward addressing the broader social protection deficit in the platform economy. It is not sufficient, because broader reforms are needed to address fragmentation and volatility.⁵⁶⁸ Yet it is necessary, because without employment recognition, the worker remains structurally excluded from collective risk-sharing systems.⁵⁶⁹

We would therefore conclude that the classification conflict surrounding platform work is not merely a dispute about doctrinal categories. It is a contemporary struggle over the boundaries of European social solidarity⁵⁷⁰. The platform economy has exposed a foundational tension: welfare states promise universal social rights, but their institutional machinery still operates through employment-centred gateways.⁵⁷¹ Reclassification is the mechanism through which platform

⁵⁶⁶ Eurofound, *Employment and Working Conditions of Selected Types of Platform Work* (Publications Office of the EU 2018), pp. 89-91.

⁵⁶⁷ Peter Baldwin, *The Politics of Social Solidarity: Class Bases of the European Welfare State 1875–1975* (Cambridge University Press 1990), pp. 68–72.

⁵⁶⁸ European Commission. (2021). *Employment and social developments in Europe*, Publications Office of the European Union, p. 112.

⁵⁶⁹ Countouris, N. (2007). *The changing law of the employment relationship: Comparative analyses in the European context*, Ashgate, p. 160.

⁵⁷⁰ Ferrera, M. (2005). *The boundaries of welfare: European integration and the new spatial politics of social protection*, Oxford University Press, p. 47.

⁵⁷¹ Vandenbroucke, F. (2017). *The idea of a European social union: A normative introduction*, European Commission, p. 9.

workers attempt to re-enter this machinery. It is, in effect, the first legal step toward reclaiming social citizenship in the digital age.⁵⁷²

CHAPTER 5: Social Protection as a Fundamental Human Right: A Basis for Platform Workers' Inclusion

5.1. Social Protection as a Fundamental Human Right in the International Legal Framework

Before examining the concrete mechanisms through which platform workers may be integrated into existing systems of social protection, it is necessary to step back and consider the normative foundations upon which such protection rests. Social protection is not merely a policy choice or an economic instrument; it is increasingly recognised as a fundamental human right within the international legal order.⁵⁷³ This recognition provides the conceptual and normative framework within which questions of inclusion, adequacy, and accessibility must be assessed, particularly in the context of evolving labour markets and non-standard forms of work.

The international legal framework plays a crucial role in articulating the minimum standards and guiding principles of social protection. Instruments developed within the United Nations and the International Labour Organization establish that access to social security forms an integral part of human dignity and social citizenship.⁵⁷⁴ In this respect, the right to social protection transcends the boundaries of employment status and challenges systems that condition access exclusively on formal labour market participation.⁵⁷⁵ The emergence of platform work, characterised by

⁵⁷² Cherry, M. A., & Aloisi, A. (2017). "Dependent contractors in the gig economy: A comparative approach." *American University Law Review*, 66(3), p. 662.

⁵⁷³ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) art 22; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 9.

⁵⁷⁴ ICESCR (n 1) art 9; International Labour Organization, Social Security (Minimum Standards) Convention (No 102) (adopted 28 June 1952, entered into force 27 April 1955); International Labour Organization, Social Protection Floors Recommendation (No 202) (adopted 14 June 2012) paras 1–2.

⁵⁷⁵ ILO Recommendation No 202 (n 2) paras 3–6; UN Committee on Economic, Social and Cultural Rights, General Comment No 19: The Right to Social Security (Art. 9) (2008) UN Doc E/C.12/GC/19, paras 2–4.

fragmented careers and frequent classification as self-employed, brings these tensions into sharp focus, raising the question of whether existing employment-centred models remain compatible with internationally recognised human rights standards.⁵⁷⁶

Against this background, the present section examines the development and content of social protection as a fundamental human right within the international legal framework. It analyses key instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the normative framework of the International Labour Organization, in order to establish the legal and conceptual basis for social security as a universal entitlement.⁵⁷⁷ By doing so, it provides the normative foundation for the subsequent analysis of social protection in the European context and its application to platform workers.

5.1.1. Introduction

The notion of social security, though fundamental to current political agendas, is frequently perceived as imprecise, and the classification of social rights as human rights continues to provoke significant debate. Its conceptual foundation was predominantly laid during the post-World War II reconstruction period, a pivotal moment that marked a turning point in the international recognition and development of social human rights, a history that we are all part of.⁵⁷⁸

Given the substantial financial implications, social security carries profound economic significance. It remains a recurring and often contested issue in national political agendas, playing a vital role in the expansion of state responsibilities. In developed societies, it constitutes a core element of the legal framework.

Legally, social security operates through a formalised legal relationship: once an individual submits a claim and satisfies the established legal conditions, the competent administrative

⁵⁷⁶ European Commission, Access to Social Protection for Workers and the Self-Employed (Publications Office of the European Union 2018) 23–27; Eurofound, Platform Work: Maximising the Potential While Safeguarding Standards? (2019) 32–35.

⁵⁷⁷ Universal Declaration of Human Rights, art 22, 25; ICESCR art 9; ILO Convention No 102; ILO Recommendation No 202.

⁵⁷⁸ Creutz, H. (1968). The I.L.O. and social security for foreign and migrant workers. *International Labour Review*, 97(4), 351–369. P. 351.

authority must recognise the entitlement. As a result, the state administration is legally obligated to provide the corresponding benefits.

These measures are intended to safeguard people against a range of life-related contingencies, such as unemployment, underemployment, illness, disability, maternity, old age, or other situations that hinder their ability to secure an adequate income. International standards play a key role in promoting universal coverage, offering a hopeful outlook for the future of social security.⁵⁷⁹ The primary objective is to ensure a minimum level of income security and access to essential services, thereby fostering both social inclusion and economic resilience, a crucial aspect of our societal structure that we can rely on in times of need.

A key strength of adopting a human rights-based approach to social security is its focus on participation and accountability. This includes not only the transparent and equitable administration of social protection systems, but also the obligation of states to ensure that beneficiaries receive clear, accessible, and timely information regarding their rights and entitlements.⁵⁸⁰

As a higher standard, the European evolution of social security systems is also worth examining. The concept of social protection has its roots in 19th- and 20th-century European history, when thinkers such as Hegel, Lorenz von Stein, and Tönnies developed the idea of the “Social State.” According to this view, the state and society are interconnected rather than separate entities, with the state playing an active role in guiding social development and addressing societal imbalances. There was a growing recognition that the modern state has a responsibility to prevent poverty and destitution. Building on this foundation, social insurance systems were introduced by the end of the 19th century, beginning in Central Europe, particularly in Germany and the Austro-Hungarian Empire.⁵⁸¹

⁵⁷⁹ Morsa, M. (2023). The International Labour Organisation and Social Security: Towards Universal Social Protection? Federal Public Service Social Security, p. 5,. Retrieved from <https://socialsecurity.belgium.be/sites/default/files/content/docs/en/publications/brss/brss-64-4-04-international-labour-organisation.pdf> 13.07.2025

⁵⁸⁰ Saul, B., Kinley, D., & Mowbray, J. (2014). The International Covenant on Economic, Social and Cultural Rights: Commentary, cases, and materials (1st ed.). Oxford University Press, p. 634.

⁵⁸¹ Eberhard Eichenhofer (2015) ‘Social Security As a Human Right: A European Perspective’, in: Frans Pennings and Gijsbert Vonk (eds.) Research Handbook on European Social Security Law. Cheltenham & Massachusetts: Edward Elgar Publishing, p.3.

International Social Security was developing rapidly in the 1950s and 60s. On a global scale, the UDHR opened the door for international social security law at the dawn of the 1950s. In 1948, this document was closely followed by the ILO's groundbreaking Convention No. 102, which laid down minimum standards for the newly emerging branch of law.

While national regulations were born and evolved, it was evident that European countries were placing greater emphasis on social security while operating to generally higher standards. Therefore, a European regional social security law evolved to meet the highest standards and quickly became an integral part of human rights regulations focused on social security.⁵⁸²

Despite the variety of enforcement mechanisms, social rights in Europe boast a long and rich history, supported by extensive jurisprudence, and are widely regarded as a fundamental pillar of democracy and the rule of law.⁵⁸³

The Council of Europe, established in 1949 as the oldest and most geographically inclusive European political organisation, plays a significant role in shaping social protection and social policies across the continent. Founded to foster greater unity among European states, it is dedicated to safeguarding shared values and principles while promoting economic and social progress.⁵⁸⁴ The efforts can be tracked throughout multiple treaties, conventions, charters, and codes. Through these measures, the Council has actively considered changes to national social security systems and has also influenced those developments.⁵⁸⁵

As a smaller but more comprehensive and high-norm regional social security system, the European Union is also active in the field of social protection, further raising standards for its member states. Moreover, the European Union facilitates the free movement of workers primarily by coordinating

⁵⁸² Zamani, S. G., & Azadd Evin, A. (2016). The right to social security under international law. *Mediterranean Journal of Social Sciences*, 7(5 S1), p. 50

⁵⁸³ Lukas, K. (2021). *The revised European Social Charter: An article-by-article commentary* (Elgar Commentaries). Edward Elgar Publishing, p. 2.

⁵⁸⁴ Otting, A. (1996, March). History, development and impact of the European Code of Social Security. Presented at the Seminario Sobre Normatividad Internacional de la Seguridad Social, Mexico, p. 1.

⁵⁸⁵ Nagel, S. G. (1997). Developments in social security systems: Reflections on the work of the Council of Europe in this field. *International Review of Administrative Sciences*, 63(2), 225–243, p. 225.

national social security systems, ensuring continuity of social security rights across Member States without harmonising national benefits.⁵⁸⁶

5.1.2. The Right to Social Security as Human Rights

Doubts concerning the enforceability of economic, social, and cultural rights through judicial means are commonly expressed in both international legal discourse and various national legal frameworks.⁵⁸⁷

Various criticisms have arisen among experts regarding social rights, as the fundamental concept of needs is inherently challenging. Despite its widespread use in setting minimum standards for social rights, defining this notion is difficult because it is highly dependent on the social, economic, and cultural context of each state.⁵⁸⁸ Furthermore, the term's ambiguity in the field of social human rights also highlights a lack of actionability, according to some academics.⁵⁸⁹

In academic discussions about social human rights, there is significant scepticism about whether social rights, such as the right to health, education, or social security, can genuinely be classified as human rights. This doubt arises particularly when human rights are understood through the lens of natural law, which guarantees that individuals are protected from state interference, also known as negative freedoms. From this perspective, only rights that protect people from state action⁵⁹⁰ are seen as fundamental human rights. Under such a view, social rights seemingly do not qualify as human rights, because they do not arise naturally or exist independently of the state. Instead, they require delicate political decisions, institutions, and resources to be realised. They

⁵⁸⁶ Grabbe, C. (2023). Free movement and access to social security in the EU: The challenge of exporting unemployment benefits. *European Journal of Social Security*, 25(1), 20–40. <https://doi.org/10.1177/13882627231161926>

⁵⁸⁷ Yuval Shany, 'Stuck in a Moment in Time: The International Justiciability of Economic, Social and Cultural Rights', in Daphne Barak-Erez and Aeyal M Gross (eds), *Exploring Social Rights: Between Theory and Practice* (Hart Publishing 2007) 77, 78; Diane Roman, *La justiciabilité des droits sociaux: Vecteurs et résistances* (Editions Pedone 2012)

⁵⁸⁸ Cecile Fabre, *Social Rights under the Constitution. Government and the Decent Life* (Oxford University Press 2000) 33.

⁵⁸⁹ Daphne Barak-Erez and Aeyal Gross (eds), *Exploring Social Rights* (Hart Publishing 2007); Malcolm Langford (ed), *Social Rights Jurisprudence* (Cambridge University Press 2008).

⁵⁹⁰ As for example the freedom of speech or religion

are about creating positive freedom, meaning the actual ability or opportunity to act and participate fully in society.

Because of this, critics argue that social rights lack the "natural" character of traditional human rights. However, the question remains: is this understanding of human rights accurate?

Professor Eberhard Eichenhofer argues that the idea that only negative freedoms are true human rights is misleading; therefore, social rights, although different in form, are just as essential to ensuring freedom and dignity in a functioning society.⁵⁹¹ Additionally, there is no fundamental distinction between negative and positive freedom, as both are equally vulnerable to infringement, whether they involve freedom from interference or freedom to act.⁵⁹²

5.1.3. Universal Declaration of Human Rights

The Universal Declaration of Human Rights, adopted on December 10, 1948, was the first international document to legally guarantee the human right to social security. This acknowledgement solidified social rights as second-generation human rights.⁵⁹³

Social security has evolved beyond a simple legal matter or individual right; it is now recognised as a fundamental human right that must be guaranteed by every state. By adopting these international human rights standards, international legislation effectively mandated that nations establish social security legal institutions to protect these individual rights and hold the state accountable for their implementation.⁵⁹⁴

Under the framework of international human rights legislation, states no longer possess the unconditional and absolute discretion to decide whether or how to establish a social security system. Within the realm of international law, compliance with such obligations is subject to

⁵⁹¹ Eberhard Eichenhofer (2015) 'Social Security As a Human Right: A European Perspective', in: Frans Pennings and Gijsbert Vonk (eds.) Research Handbook on European Social Security Law. Cheltenham & Massachusetts: Edward Elgar Publishing, pp 3-32, p. 14

⁵⁹² Sandra Fredman, Human Rights Transformed (Oxford University Press 2008); Eberhard Eichenhofer, Soziale Menschenrechte im Völker-, europäischen und deutschen Recht (Mohr Siebeck 2012).

⁵⁹³ Zamani, S. G., & Azadd Evin, A. (2016). The right to social security under international law. Mediterranean Journal of Social Sciences, 7(5 S1), p. 53

⁵⁹⁴ Committee of Economic, Social and Cultural Rights (2007), General Comment No. 19, The Right to Social Security (art. 9). E/C.12/GC/19. United Nations: Economic and Social Council, p. 16, par. 59.

external monitoring and oversight, determining whether and to what extent a state fulfils the duties arising from its human rights commitments. When these obligations are rooted in international legal instruments, states are compelled to implement specific measures. This situation may give the false impression that international social rights are coming at the cost of both democratic autonomy and national sovereignty. However, a deeper understanding of the human rights system clarifies the situation. First, all human rights inherently place limits on democratic processes by delineating areas that lie beyond the reach of majority rule. Second, in the post-World War II international legal order, states are firmly embraced by both international and European legal systems. As a result, national sovereignty, particularly in matters related to human rights, has already been substantially curtailed.⁵⁹⁵

The concrete provisions in the UDHR regarding social security *per se* start with Article 22, which establishes the human right to social security, ensuring that this right applies to every individual.

This article broadly affirms the right to social security for "everyone" as a member of society, regardless of their specific employment type. It explicitly states that this right should be realised through "national effort," which means that the individual States are responsible for organising and funding their social security systems. Furthermore, it links social security to human dignity and the development of one's personality, to place the right to social security in the fundamental human rights system.⁵⁹⁶

Moreover, according to Article 22 of the Universal Declaration of Human Rights, "everyone, as a member of society, has the right to social security."⁵⁹⁷ This provision affirms a universal entitlement, encompassing all individuals without exception. Therefore, no form of discrimination is permissible on the basis of social status, gender, age, nationality, or disability. All individuals who live or work within a given society must be included within the framework of that society's social protection system. In this context, nationality as the traditional legal bond between an individual and a state does not play a fundamental role in the entitlement to protection. Instead,

⁵⁹⁵ Eberhard Eichenhofer (2015) 'Social Security As a Human Right: A European Perspective', in: Frans Pennings and Gijsbert Vonk (eds.) Research Handbook on European Social Security Law. Cheltenham & Massachusetts: Edward Elgar Publishing, pp 3-32, p. 19

⁵⁹⁶ J. van Langendonck, *Verfassung, Theorie und Praxis des Sozialstaats*, Festschrift für Hans F. Zacher zum 70. Geburtstag (F. Ruland, B.von Maydell, Papier ed., C. F. Müller Verlag, Heidelberg, 1998), 477–488; J.M. Thouvenin and A. Trebilcock (eds.), *Droit international social*, vol. 2, Brussels, Bruylant, 2013, pp. 1664-1680.

⁵⁹⁷ International Labour Organization, United Nations Human Rights Commission, (2025) 'Right to Social Security Fact Sheet No. 39' New York and Geneva, p. 6

the right to social security is grounded in societal membership, which is constituted through substantive social ties to the state, most notably through residence or employment, rather than through formal citizenship.⁵⁹⁸ At first glance, this might be seen as a negligible nuance, but the emerging gig economy and the free movement of workers in the European Union require the present clarification. Therefore, citizenship recedes into the background while factual residence and payment of contributions become a much more significant condition of the social contract in this case.⁵⁹⁹

To clarify the material extent of Article 22 of the UDHR, Article 25 provides a crucial point of reference. This article guarantees essential social rights as the initial level, including assistance, healthcare, and housing. It reaffirms the anti-discrimination principle and states that: “everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services.” Moreover, this article details the components of an adequate standard of living, explicitly including “security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” This directly outlines the types of social security provisions (e.g., unemployment benefits, sickness benefits, old-age pensions) that states are obliged to provide to ensure a decent standard of living, regardless of a person's employment contract.⁶⁰⁰ Furthermore, this formulation makes clear that the social risks listed are not exhaustive; instead, the provision remains an open-ended list to encompass additional situations in which individuals are unable to sustain themselves due to external and uncontrollable circumstances.⁶⁰¹

The UDHR, while a declaration, is a foundational document for international human rights law and often serves as a basis for subsequent binding instruments.⁶⁰² Two major human rights and labour law instruments were developed on the foundation of the Universal Declaration: the 1952

⁵⁹⁸ Eberhard Eichenhofer (2015) ‘Social Security As a Human Right: A European Perspective’, in: Frans Pennings and Gijsbert Vonk (eds.) *Research Handbook on European Social Security Law*. Cheltenham & Massachusetts: Edward Elgar Publishing, pp 3-32, p. 22

⁵⁹⁹ Gyulavári, T., & Lukács Gellérné, É. (2025). Social rights of EU mobile workers: Limitations through the concepts of ‘worker’ and ‘insured person’. *Transfer: European Review of Labour and Research*, 31(1), 55–70, pp. 58–60.

⁶⁰⁰ Degryse, C. (2016). Digitalisation of the economy and its impact on labour markets. *Transfer: European Review of Labour and Research*, 22(2), 255–266, pp. 261–263.

⁶⁰¹ Jef van Langendonck, ‘The meaning of the right to social security’, in Jef van Langendonck (ed), *The Right to Social Security* (Intersentia 2007) 3, 5.

⁶⁰² De Schutter, O. (2019). *International human rights law: Cases, materials, commentary* (3rd ed.). Cambridge University Press, pp. 57–60.

ILO Convention 102 on Social Security Minimum Standards and the 1966 International Covenant on Economic, Social, and Cultural Rights.⁶⁰³

5.1.4. The International Labour Organisation's Legal Framework

The post-World War era highlighted the need for international organisations that can guide society towards prosperity after the adverse effects of World War I. The establishment of various specialised agencies started, and it exponentially grew under the *aegis* of the United Nations. The International Labour Organisation began its work before the formation of the United Nations; however, it became an unavoidable body in international labour and social security law. The ILO was created with a specific mandate to promote the welfare of the working class.⁶⁰⁴ Already in 1919, the ILO, in its first Recommendation, emphasised the critical role of social protection and social insurance.⁶⁰⁵

Initially, labour regulation developed in Europe, primarily through legislation that concentrated on possible ways to uphold the interests of the elite rather than safeguarding workers' rights.⁶⁰⁶ However, the advent of the Industrial Revolution prompted social reformers to advocate for labour and social protections aimed at reducing the harshest consequences of rapid industrialisation.⁶⁰⁷

Under the shadow of the Second World War, the need for social security systems became necessary to minimize and limit the economic and demographic impacts of the First World War, which were further accentuated by the ongoing Second World War. The Beveridge report was published during the mid-war period. It was undoubtedly composed with a view to the upcoming post-war period. One of the main features was to extend the already existing social security systems. To extend the

⁶⁰³ International Labour Organization, United Nations Human Rights Commission,(2025) 'Right to Social Security Fact Sheet No. 39' New York and Geneva, pp. 6-7

⁶⁰⁴ ILO: Report on ILO Social Security Major Programme 110, prepared by Nomran Williams M., Joint Inspection Unit, Geneva, 1984 p. 1.

⁶⁰⁵ Eberhard Eichenhofer (2015) 'Social Security As a Human Right: A European Perspective', in:Frans Pennings and Gijsbert Vonk (eds.) Research Handbook on European Social Security Law.Cheltenham & Massachusetts: Edward Elgar Publishing, pp 3-32, p. 24.

⁶⁰⁶ Bob Hepple, Labour Laws and Global Trade 27 (Hart Publishing Oxford and Portland, Oregon, 2005).

⁶⁰⁷ T.R. Subramanya. (2024). The Role Of International Labour Organisation In Ensuring Social Security: An Assessment. Nujs Journal of Regulatory Studies, 1(1). <https://doi.org/10.69953/nurs.v1i1.126>

rights on the general population rather than to cover just the workers due to the: “*the responsibility and obligation of society as a whole towards those who had defended it against aggression, the aim was to extend the right to social security from the insured workers to the entire Nation.*”⁶⁰⁸

At the dawn of the end of World War II, the visible consequences further highlighted the urgent need for labour and social minimum standards, which became even more necessary. In 1944, the Declaration of Philadelphia embedded social rights in human rights, laying the groundwork for the strongest international foundations to further elaborate minimum standards in both the fields of labour and social law.⁶⁰⁹ Thanks to the fact that the Declaration was a ground-breaking legal document that exceeded its own time, the Declaration of Philadelphia stands as the first international legal instrument to place a crucial emphasis on human rights, laying the groundwork for their formal recognition in the 1948 Universal Declaration of Human Rights and subsequently in the 1951 Charter of the United Nations.⁶¹⁰

5.1.4.1. ILO Convention 102

The progress of the ILO's work started with several recommendations concentrating on specific issues of social security, aiming to regulate the relatively new field of international social security law.⁶¹¹ The first comprehensive binding document was Convention No. 102 on Social Security Minimum Standards, a “flagship convention”.⁶¹²

Convention 102 was a transposition of the Philadelphia Declaration in a legally binding document on the importance of social security.⁶¹³ Initially, the draft of Convention No. 102 proposed two tiers of standards: a “minimum standard” aimed at less developed countries (especially bearing in mind their economic situation) seeking to establish national social security systems, and a “higher

⁶⁰⁸ Jean-Michel Servais (2014), International Standards on Social Security Lessons from the past for a better implementation, Manila, p. 3, https://isssl.org/wp-content/uploads/2014/12/Servais_2014_Asian_Conf.pdf

⁶⁰⁹ Lee, Eddy. (1994). The Declaration of Philadelphia: retrospect and prospect. International Labour Review, 133(4), 467-484. P. 469

⁶¹⁰ Adalberto Perulli (2018) The Declaration of Philadelphia, in International and European Labour Law Commentary, ed. E. Ales, M. Bell, O. Deinert, S. Robin-Olivier, Nomos

⁶¹¹ Recommendations, such as Recommendation No. 67 from 1944 regarding income security schemes, or Recommendation No. 69 concerning medical care, etc.

⁶¹² Ursula Kulke, Michael Cichon and Karana Pal, ‘Changing Tides: A Revival of a Rights-Based Approach to Social Security’, in Jef van Langendonck (ed), The Right to Social Security (Intersentia 2007) 13, 15.

⁶¹³ ILO: Report on ILO Social Security Major Programme 110, prepared by Nomran Williams M., Joint Inspection Unit, Geneva, 1984, p. 10

standard" intended for countries that had already developed such systems. The minimum standard was designed not to fall below the requirements established by earlier first-generation conventions, while permitting temporary exceptions for less developed countries, especially regarding the scope of coverage. However, this dual-tier approach was ultimately discarded.⁶¹⁴ Instead of the double standard approach, the final version of the Convention chose a more universal position, leaving the ratifying member states the possibility to choose among the protection systems against the possible social risks enumerated rather than dividing in two completely separate categories the ratifying countries.

Furthermore, it was a significant advancement in international social security law by explicitly identifying nine core social risks, a legal act that was revolutionary at the time, and it remains a fundamental international social security instrument even 70 years after its adoption.⁶¹⁵ These included areas such as sickness, unemployment, old age, and maternity, thereby offering a comprehensive framework for social protection. To accommodate the differing capacities of states, especially between developed and less developed countries, the Convention introduced a flexible⁶¹⁶ ratification mechanism: states could commit to just three out of the nine branches.⁶¹⁷ This approach served as a "golden middle road", balancing ambition with inclusivity and avoiding the imposition of rigid double standards.

Convention No. 102 recognises that the primary responsibility for establishing and maintaining social security systems lies with individual states. However, it adopts a flexible and pragmatic approach, allowing each state to design its own, individual system according to national context and capacity, rather than imposing a uniform model. The Convention sets out minimum standards based on broadly agreed principles. These include specific thresholds for coverage, such as

⁶¹⁴ Morsa, M. (2023). The International Labour Organisation and Social Security: Towards Universal Social Protection? Federal Public Service Social Security, p. 8,. Retrieved from <https://socialsecurity.belgium.be/sites/default/files/content/docs/en/publications/brss/brss-64-4-04-international-labour-organisation.pdf> 13.07.2025

⁶¹⁵ International Labour Organization, United Nations Human Rights Commission,(2025) 'Right to Social Security Fact Sheet No. 39' New York and Geneva, P. 13

⁶¹⁶ T.R. Subramanya. (2024). The Role Of International Labour Organisation In Ensuring Social Security: An Assessment. Nujs Journal of Regulatory Studies, 1(1)., p. 24 <https://doi.org/10.69953/nurs.v1i1.126>

⁶¹⁷ Villars, C. C. (1979). Social security standards in the council of europe: the ilo influence. International Labour Review, 118(3), p. 344

ensuring protection for at least 20% of the general population or 50% of the employed workforce, thereby promoting universal progress while respecting national diversity.⁶¹⁸

The Convention might offer a certain flexibility when it comes to the creation and the development of the social security systems; however, the Member States' responsibility is undeniable since the social security system as such should be created through law, given the social security branches' social basis. By the general responsibility to make the provisions regarding the benefits following the Convention itself, and the responsibility for the proper administration of the institutions and services concerned with the application of the given laws and regulations are all *expressis verbis* burdens laid on the Member States.⁶¹⁹ Therefore, the Convention is far from universalising social security, as it does not limit Member States to a specific, concrete social security system.⁶²⁰

Under art. 3 (1) of the Convention, a Member State has the possibility to temporarily deviate if the economy or medical facilities are underdeveloped. The present article was criticised due to the undefined circumstances and the undefined period of the derogation from the minimum standards laid by the Convention itself.⁶²¹

5.1.4.2. ILO Recommendation 202

In 2012, the International Labour Organisation adopted Recommendation No. 202, intending to reinforce the principles of Convention No. 102 and enhance the global visibility and relevance of social protection. The Recommendation builds upon Convention No. 102 and raises the standards while broadening the personal scope.⁶²² This Recommendation served to update and modernise the international social security agenda, encouraging broader commitment from the

⁶¹⁸ Eberhard Eichenhofer (2015) 'Social Security As a Human Right: A European Perspective', in: Frans Pennings and Gijsbert Vonk (eds.) Research Handbook on European Social Security Law. Cheltenham & Massachusetts: Edward Elgar Publishing, pp 3-32, p. 24.

⁶¹⁹ Convention No. 102, Articles 71(3) and 72(2).

⁶²⁰ Eberhard Eichenhofer (2015) 'Social Security As a Human Right: A European Perspective', in: Frans Pennings and Gijsbert Vonk (eds.) Research Handbook on European Social Security Law. Cheltenham & Massachusetts: Edward Elgar Publishing, pp 3-32, p. 25.

⁶²¹ Saul, B., Kinley, D., & Mowbray, J. (2014). The International Covenant on Economic, Social and Cultural Rights: Commentary, cases, and materials (1st ed.). Oxford University Press, p. 696

⁶²² Engstrom, Viljam. (2019). Unpacking the debate on social protection floors. Goettingen Journal of International Law, 9(3), 596.

international community to establish national social protection floors as a foundation for more comprehensive systems.⁶²³ In a similar vein, the Recommendation on national social protection floors reaffirms that the right to social security is not only a fundamental human right, but furthermore, also an essential economic and social requirement for achieving development and progress.⁶²⁴

The Recommendation aims to deliver a clear message from the international community: everyone deserves fundamental social security guarantees. Furthermore, it directly recommends to Member States to actively extend this protection to all currently uncovered individuals. This isn't just a hopeful goal; it demands concrete action. Member States are urged to take suitable steps, aligned with their national priorities, resources, and circumstances, to gradually achieve universal social security coverage.⁶²⁵

The recommendation itself also underscores the idea that inclusive social security systems are the backbone of social and economic stability. By ensuring basic protection for all, such systems limit vulnerability, reduce inequality, and strengthen societal cohesion.⁶²⁶ This inclusive approach remains profoundly relevant even over a decade later, particularly in light of the gig economy, where workers often operate in a grey zone between the formal and informal sectors.⁶²⁷ Extending social protection to platform workers would help integrate them more fully into the social contract, reinforcing stability in increasingly fragmented labour markets.

Recommendation No. 202 represents a significant shift from the approach taken by Convention No. 102. While the Convention, created in an industrialised, formal labour context, followed a risk-based, contribution-driven model focused on specific employment-related contingencies,

⁶²³ Preamble of ILO Recommendation No. 202.

⁶²⁴ Jean-Michel Servais (2014), International Standards on Social Security: Lessons from the past for a better implementation, Manila, p. 7, https://isssl.org/wp-content/uploads/2014/12/Servais_2014_Asian_Conf.pdf

⁶²⁵ Morsa, M. (2023). The International Labour Organisation and Social Security: Towards Universal Social Protection? Federal Public Service Social Security, p. 38,. Retrieved from <https://socialsecurity.belgium.be/sites/default/files/content/docs/en/publications/brss/brss-64-4-04-international-labour-organisation.pdf> 13.07.2025

⁶²⁶ Dijkhoff, T. (2019). The ILO Social Protection Floors Recommendation and its relevance in the European context. European Journal of Social Security, 21(4), 353 <https://doi.org/10.1177/1388262719890980> (Original work published 2019)

⁶²⁷ The current issue was further developed by Recommendation No. 204 from 2015, which highlights the inadequate protection of informal workers and offers guidance to improve their coverage and support their transition to the formal economy. It addresses key areas such as legal frameworks, employment policies, social protection, compliance, social dialogue, and data monitoring.

Recommendation No. 202 promotes a universal, inclusive approach to social protection. It extends coverage beyond the formal workforce to include informal and non-standard workers, such as those in the gig economy. It encourages the creation of national social protection floors tailored to each country's context.⁶²⁸ This marks a shift from segmented risk protection to comprehensive, life-cycle-based social security, aiming to ensure basic income security and access to essential healthcare for all.⁶²⁹

The Recommendation outlines the fundamental responsibility of the State to establish social protection floors as a matter of urgency. These floors are intended to guarantee a minimum level of protection for all individuals in need, ensuring access to essential healthcare and basic income security.⁶³⁰ Specifically, such protection should include: access to important health services including maternity care; basic income security for children, enabling access to adequate nutrition, education, care, and other important services; income support for working-age individuals unable to secure sufficient earnings, particularly in situations of illness, unemployment, maternity, or disability; and income security for the elderly.⁶³¹ In line with the Convention No. 102, the Recommendation also offers a certain level of flexibility to create the regulations in concrete, and it allows countries to define the specific levels of provision based on national contexts, furthermore, it emphasizes that such support must enable a life in dignity and offer real access to essential goods and services, measured against national poverty lines or similar benchmarks.⁶³²

5.1.5. International Covenant on Economic, Social, and Cultural Rights

The ICESCR, a binding treaty for its State Parties, including all EU Member States, explicitly recognises social security as a fundamental human right. Although the conception of the

⁶²⁸ For further information, see: Perulli, A. (Ed.), & Treu, T. (Ed.). (2020). *The Future of Work: Labour Law and Labour Market Regulation in the Digital Era*. Kluwer Law International.

⁶²⁹ Engstrom, Viljam. (2019). Unpacking the debate on social protection floors. *Goettingen Journal of International Law*, 9(3), pp. 573-574.

⁶³⁰ Recommendation No. 202, paras. 3–4.

⁶³¹ Recommendation No. 202, para. 5.

⁶³² International Labour Organization, United Nations Human Rights Commission, (2025) 'Right to Social Security Fact Sheet No. 39' New York and Geneva, pp. 34-35

need for social security was shared, the approaches differed; therefore, the drafting of the Covenant required considerable effort and careful analysis.

At the drafting of the ICESCR, ILO Convention No. 102 was already taken into consideration as a fundamental document in the field of international social security law. A primary core issue was whether the Covenant should define social security or social assistance as such.⁶³³ In this regard, some countries argued for a more extensive definition,⁶³⁴ While others advocated for a minimalist approach.⁶³⁵ The outcome of the debate, as the Covenant shows, was not to include a definition at all; hence, it can be acceptable for a larger number of State parties.

The article appears to categorise social assistance as a subcategory of social security. This is due to the fact that at the time of the drafting, the terms of social security and social assistance were differently interpreted. While some countries narrowed the subject of the right to social security to the workers themselves, an extensive approach was also presented by the majority, with a more universal approach⁶³⁶. Furthermore, the issue of finance was also a subject of a heated debate since under this issue, socialist views collided with the capitalist approach.⁶³⁷

Although ILO Convention No. 102 is often treated as *lex specialis* in interpreting Article 9 of the ICESCR, this viewpoint raises concerns due to its limited ratification. Only a fraction of ICESCR State Parties have ratified the Convention.⁶³⁸, meaning that not all are legally bound by its standards. Applying it as a universal benchmark risks creating unequal obligations among States, particularly as Convention No. 102 allows ratifying countries to commit to only three out of nine areas of social protection. This fragmented legal alignment challenges the coherence and uniformity of international obligations concerning the right to social security.⁶³⁹

As stipulated in Article 9 of the ICESCR, every individual is entitled to the right to social security as a fundamental component of social membership. This right imposes a binding obligation on

⁶³³ UNGA Third Committee, A/C.3/SR.728 (11 January 1957), 236.

⁶³⁴ UNGA Third Committee, A/C.3/SR.726 (9 January 1957), 229 (Venezuela).

⁶³⁵ UNGA Third Committee, A/C.3/SR.728 (11 January 1957), 236. (Czechoslovakia)

⁶³⁶ The USSR's proposal to include in the final text 'including social insurance' was adopted by twenty-six votes to thirteen, with twenty-eight abstentions: UNGA Third Committee, A/3525 (9 February 1957), 32.

⁶³⁷ Saul, B., Kinley, D., & Mowbray, J. (2014). *The International Covenant on Economic, Social and Cultural Rights: Commentary, cases, and materials* (1st ed.). Oxford University Press, p.680

⁶³⁸ As per December 2024, ILO Convention No. 102 was ratified by 67 countries, while as per June 2024, the ICESCR was ratified by 174 states.

⁶³⁹ Saul, B., Kinley, D., & Mowbray, J. (2014). *The International Covenant on Economic, Social and Cultural Rights: Commentary, cases, and materials* (1st ed.). Oxford University Press, p.618

States to respect, protect, and fulfil.⁶⁴⁰ States must ensure that individuals have effective access to both social insurance and social assistance schemes.⁶⁴¹ These schemes are not merely policy choices or acts of generosity but are essential legal entitlements aimed at combating poverty and reducing inequality. In particular, non-contributory systems, especially social assistance, must be implemented in a manner that upholds the dignity of the beneficiaries and reflects the State's responsibility to guarantee this right for all, especially for those in vulnerable situations.⁶⁴²

The obligation to respect entails that States parties must abstain from any actions, whether direct or indirect, that would hinder or interfere with the enjoyment of the right to social security.⁶⁴³ This obligation should be interpreted expansively enough to cover the responsibility not to dismantle existing social protection schemes without adequate alternatives, not to impose discriminatory eligibility criteria, and not to restrict access for vulnerable or marginalised groups.⁶⁴⁴ Moreover, states must avoid actions that would weaken either public or private mechanisms providing social security. Furthermore, they are also expected to ensure that private actors do not violate this right by maintaining a legal and institutional framework that guarantees accessibility, adequacy, and sustainability of benefits in line with international standards.⁶⁴⁵

The State also bears the responsibility to protect individuals against any interference by third parties in the exercise of the right to social security, as clarified by the CESCR. Based on the Committee's activity, we can understand the extent of the obligation, concentrating in many cases on the special obligations of the State in the case of leaving the organisation of Social Security schemes to the private sector. The Committee has demonstrated particular concern regarding the methodologies employed in monitoring privately organised social security schemes, consistently advocating for the establishment of robust and effective oversight mechanisms by the State.⁶⁴⁶

⁶⁴⁰ International Labour Organization, United Nations Human Rights Commission, (2025) 'Right to Social Security Fact Sheet No. 39' New York and Geneva, p. 9

⁶⁴¹ In a sense of contributory and non-contributory schemes.

⁶⁴² J. van Langendonck, *Verfassung, Theorie und Praxis des Sozialstaats*, Festschrift für Hans F. Zacher zum 70. Geburtstag (F. Ruland, B. von Maydell, Papier ed., C. F. Müller Verlag, Heidelberg, 1998), 477–488; J.M. Thouvenin and A. Trebilcock (eds.), *Droit international social*, vol. 2, Brussels, Bruylant, 2013, pp. 1664–1680

⁶⁴³ Committee of Economic, Social and Cultural Rights (2007), General Comment No. 19, The Right to Social Security (art. 9). E/C.12/GC/19. United Nations: Economic and Social Council, p. 13, par. 44.

⁶⁴⁴ Saul, B., Kinley, D., & Mowbray, J. (2014). *The International Covenant on Economic, Social and Cultural Rights: Commentary, cases, and materials* (1st ed.). Oxford University Press, p. 630.

⁶⁴⁵ Committee of Economic, Social and Cultural Rights (2007), General Comment No. 19, The Right to Social Security (art. 9). E/C.12/GC/19. United Nations: Economic and Social Council, p. 14, par. 46.

⁶⁴⁶ CESCR, Concluding Observations: Luxemburg, E/C.12/1/Add.86 (23 May 2003), [35].

Under the present article, the State isn't obliged to opt for providing social security through a universal publicly funded scheme or to involve the employer in the administration of the contribution-based scheme or a combination of these. Instead, the ICESCR guides the present freedom by the responsibility to provide adequate, non-discriminatory, and accessible social security.⁶⁴⁷

A particularly demanding aspect of the CESCR's oversight of Article 9 lies in assessing the obligation to fulfil, which places a comprehensive duty upon States to ensure the realisation of the right to social security. This obligation requires States not only to establish and maintain social security systems, but also to adopt the necessary legislative, administrative, and budgetary measures to develop them effectively. The Committee further clarifies this responsibility by dividing the obligation to fulfil into three distinct, yet interrelated components⁶⁴⁸: the obligation to facilitate by removing barriers and enabling access⁶⁴⁹, to promote through awareness and information⁶⁵⁰, and to provide by ensuring direct provision of benefits when individuals or groups are unable to secure them otherwise.⁶⁵¹

In situations where private insurance schemes exclude individuals who are unable to contribute, the CESCR emphasises the responsibility of States to establish targeted or universal non-contributory schemes to ensure comprehensive protection.⁶⁵² In particular, the Committee draws attention to the precarious situation of workers in the informal economy, casual and non-standard workers, and the self-employed groups often left outside the scope of traditional social security

⁶⁴⁷ Based on the present grounds, the CESCR condemned Nigeria for the reason that it didn't interfere with the optional social security systems in the private sector. CESCR Concluding Observations: Nigeria, E/C.12/1/Add.23 (13 May 1998), [19].

⁶⁴⁸ Committee of Economic, Social and Cultural Rights (2007), General Comment No. 19, The Right to Social Security (art. 9). E/C.12/GC/19. United Nations: Economic and Social Council, p. 14, par. 47.

⁶⁴⁹ Committee of Economic, Social and Cultural Rights (2007), General Comment No. 19, The Right to Social Security (art. 9). E/C.12/GC/19. United Nations: Economic and Social Council, p. 14, par. 48.

⁶⁵⁰ Committee of Economic, Social and Cultural Rights (2007), General Comment No. 19, The Right to Social Security (art. 9). E/C.12/GC/19. United Nations: Economic and Social Council, p. 14, par. 49.

⁶⁵¹ Committee of Economic, Social and Cultural Rights (2007), General Comment No. 19, The Right to Social Security (art. 9). E/C.12/GC/19. United Nations: Economic and Social Council, p. 14, par. 50.

⁶⁵² CESCR, Concluding Observations: Chile, E/C.12/1/Add.105 (1 December 2004), [20] and [43]; Kenya, E/C.12/KEN/CO/1 (1 December 2008), [21]; Angola, E/C.12/AGO/CO/3 (1 December 2008), [23]; Brazil, E/C.12/BRA/CO/2 (12 June 2009), [19]; Cambodia, E/C.12/KHM/CO/1 (12 June 2009), [40]; Canada, E/C.12/CAN/CO/4, E/C.12/CAN/CO/5 (22 May 2006), [40]; Chad, E/C.12/TCD/CO/3 (16 December 2009), [18]; China: Hong Kong SAR, E/C.12/1/Add.58 (21 May 2001), [21] and [36]; Dominican Republic, E/C.12/1/Add.16 (12 December 1997), [38]; Jamaica, E/C.12/1/Add.75 (6 December 2001), [10] and [23].

systems.⁶⁵³ These categories increasingly include platform workers, whose employment status frequently places them at the intersection of informality and formality, thus necessitating a deliberate and inclusive state response to guarantee their access to adequate social protection.

The ICESCR not only explicitly affirms the right to social security as a fundamental human right but also emphasises the importance of providing protection and assistance to the family. In addition, it upholds the right of every individual to enjoy an adequate standard of living, which encompasses access to sufficient food, clothing, and housing, as well as the right to the continuous improvement of living conditions.⁶⁵⁴

5.2. Higher Standards in Regional Cooperation: Social Protection in Europe

While the international legal framework establishes the normative foundation of social protection as a fundamental human right, its practical realisation is often shaped and further developed at the regional level. In Europe, social protection has evolved beyond minimum universal guarantees, reflecting a higher level of institutionalisation and normative ambition. The European framework does not merely reproduce international standards; rather, it refines and expands them through a combination of supranational regulation, coordination mechanisms, and regional human rights instruments.⁶⁵⁵

This process of regional consolidation is particularly significant in the context of the European Union, where social protection systems operate within a complex multi-level governance structure. National systems remain the primary providers of social security, yet they are increasingly influenced by EU law, soft-law instruments, and coordination frameworks aimed at ensuring both adequacy and portability of benefits across Member States.⁶⁵⁶ At the same time, parallel developments within the Council of Europe framework, most notably the European Social Charter

⁶⁵³ Saul, B., Kinley, D., & Mowbray, J. (2014). *The International Covenant on Economic, Social and Cultural Rights: Commentary, cases, and materials* (1st ed.). Oxford University Press, p. 634.

⁶⁵⁴ Articles 9-11 of the ICESCR.

⁶⁵⁵ European Social Charter (revised) (adopted 3 May 1996, entered into force 1 July 1999).

⁶⁵⁶ Regulation (EC) No 883/2004 on the coordination of social security systems [2004] OJ L166/1; Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation 883/2004.

and the European Code of Social Security, contribute to the establishment of higher normative standards and reinforce the recognition of social protection as a fundamental right within the European legal order.⁶⁵⁷

Importantly, the European approach to social protection continues to be closely linked to employment-based contributory systems, particularly within Bismarckian welfare regimes. However, as demonstrated in the preceding chapters, the rise of non-standard forms of work, including platform work, increasingly challenges the adequacy and inclusiveness of these systems. The tension between employment-centred social protection and the evolving nature of labour markets thus becomes particularly visible at the European level, where both the limitations and the transformative potential of existing frameworks can be observed.⁶⁵⁸

Against this background, the present section examines the development of social protection within the European regional framework, focusing on the interaction between EU law, Council of Europe instruments, and national systems. It analyses how these layers collectively contribute to the construction of higher standards of protection, while also identifying the structural constraints that continue to limit effective inclusion, particularly for platform workers and other non-standard workers.⁶⁵⁹

5.2.1. Introduction

The European regional framework for social protection represents one of the most advanced expressions of the right to social security as a legally enforceable human right. Building upon universal instruments such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights, European systems have progressively developed higher normative standards, transforming general commitments into concrete and increasingly binding state obligations. In this context, regional cooperation,

⁶⁵⁷ Paul Schoukens, 'The EU Social Security Coordination System: A Rights-Based Approach' (2015) 17 *European Journal of Social Security* 201, 205–210.

⁶⁵⁸ OECD, *The Future of Work* (OECD Publishing 2019) 181–185; Eurofound, *Platform Work: Maximising the Potential While Safeguarding Standards?* (2019) 32–35.

⁶⁵⁹ Grega Strban, 'Access to Social Security for Non-Standard Workers' (2019) 21 *European Journal of Social Security* 243, 247–252.

particularly within the Council of Europe and the European Union, has played a decisive role in elevating both the scope and the enforceability of social protection rights.⁶⁶⁰

The Council of Europe, through the European Social Charter and the European Code of Social Security, has established a multilayered legal framework that obliges states not only to recognise but also to actively maintain and progressively improve their social security systems. Article 12 of the Charter encapsulates this obligation by requiring states to ensure the existence of a functioning system, guarantee its adequacy, and pursue its continuous development in line with evolving social and economic conditions. These duties reflect what De Schutter describes as the “dynamic character of social rights,” whereby states are under a constant obligation to progressively realise rather than merely comply formally.⁶⁶¹

Moreover, the supervisory role of the European Committee of Social Rights has contributed significantly to the operationalisation of these standards. Although its decisions lack direct enforceability, its interpretative authority has shaped national legal orders and policy reforms, reinforcing accountability and transparency. As Kilpatrick argues, this monitoring mechanism has been instrumental in transforming the Charter from a “programmatic instrument into a quasi-judicial system of social rights protection.”⁶⁶²

The European Code of Social Security further exemplifies the elevation of regional standards by surpassing the minimum thresholds established under ILO Convention No. 102.. This regional “ratcheting-up” of standards illustrates what Ferrera conceptualises as the emergence of a “European social model,” characterised by relatively high levels of welfare protection combined with coordinated, yet nationally diverse, institutional frameworks.⁶⁶³

Within the European Union, social protection obligations take a different but complementary form. While competence largely remains with Member States, EU law imposes structural constraints and coordination duties that indirectly strengthen national systems. The coordination of social security systems, particularly through Regulation 883/2004, ensures the portability and continuity of rights

⁶⁶⁰ European Parliamentary Research Service. (2018). Social protection in the EU: State of play, challenges and options (p. 1–3). European Parliament.

⁶⁶¹ De Schutter, O. (2010). International human rights law (p. 334). Cambridge University Press.

⁶⁶² Kilpatrick, C. (2018). The European Social Charter and the role of the European Committee of Social Rights (p. 112). Oxford University Press.

⁶⁶³ Ferrera, M. (2005). The boundaries of welfare: European integration and the new spatial politics of social protection (p. 67). Oxford University Press.

across borders, thereby adapting traditional welfare models to the realities of labour mobility. As Leibfried and Pierson observe, this mechanism reflects a unique form of integration, where “negative integration and regulatory coordination gradually produce positive social outcomes without full harmonisation.”⁶⁶⁴

Furthermore, the Charter of Fundamental Rights of the European Union, especially Article 34, consolidates social protection as a core element of EU constitutionalism. Although its provisions are often framed in general terms, their legal effect strengthens the normative expectation that Member States must ensure access to adequate social assistance and security. In this regard, scholars such as Barnard highlight that EU social law operates as a “hybrid system,” combining soft coordination with hard legal principles that collectively shape national obligations.⁶⁶⁵

5.2.2. Social Security System in the European Union

As the members of the Council of Europe took a step forward in raising the standards of social protection systems, this proves that a smaller region devoted to social rights can strengthen and raise those standards. The European Union's commitment to social protection is traceable through several legal acts. In 1997, the Treaty of Amsterdam incorporated a dedicated chapter addressing social policy. This chapter has since been integrated into the section on social policy within the Treaty on the Functioning of the European Union (TFEU),⁶⁶⁶ specifically Articles 151 to 161. These provisions refer to initiatives designed to foster cooperation in social matters, promote dialogue among social partners, and facilitate the coordination of social security systems, among other objectives.⁶⁶⁷

EU law in this area works on three main fronts. First, it coordinates the social security systems of Member States so that people can move freely without losing their rights.

⁶⁶⁴ Leibfried, S., & Pierson, P. (2000). Social policy: Left to courts and markets? In H. Wallace & W. Wallace (Eds.), *Policy-making in the European Union* (p. 284). Oxford University Press.

⁶⁶⁵ Barnard, C. (2012). *EU employment law* (4th ed., p. 589). Oxford University Press.

⁶⁶⁶ The Treaty on the Functioning of the European Union, Title X, Social policy, Art 151-161

⁶⁶⁷ Pacolet, J., & De Wispelaere, F. (2016). Bridging the gap between welfare and mobility: The interaction between intra-EU mobility and access to social protection (Research Paper No. 36). European Social Policy Network (ESPN), p. 29.

Second, it works to harmonise benefits so that men and women are treated equally. And third, it is gradually building a set of social security rights that come with being a citizen of the European Union.⁶⁶⁸

Despite the EU's commitment to improving social conditions, its actual authority in this field is quite limited. Articles 153 and 156 of the TFEU encourage cooperation between Member States on matters such as social security and protection, but mainly through consultation and support, rather than enforceable action. Notably, the Treaty explicitly rules out the harmonisation of national social standards, as stated in Article 153(2)(a), meaning each country retains full control over its own social policies.⁶⁶⁹

The TFEU mainly sets the fundamental rules of social policy, outlines the scope of EU action in social policy, and highlights shared competences with Member States. In its "Provisions having general application", it states that in defining and implementing all its policies and activities, it shall consider requirements linked to "the guarantee of adequate social protection" and "the fight against social exclusion." This imposes a general obligation on the EU institutions to consider social protection across all policy areas, which indirectly influences national commitments.⁶⁷⁰

Articles 151 and 9 of the TFEU work hand in hand to give real meaning to the EU's social mission. Article 151 outlines the Union's commitment to promoting employment and better living and working conditions. Academics argue for strengthening Article 9 to ensure these values are considered in all areas of EU policymaking. This wouldn't just be a symbolic gesture; rather, it would help ensure that social rights aren't sidelined when other priorities take centre stage. Instead, they'd be protected and actively promoted, making it harder for Member States to justify cutting back on social standards without strong, lawful reasons. In this way, Article 9 could help turn the Union's social goals into a consistent and enforceable part of its broader legislative agenda.⁶⁷¹

⁶⁶⁸ Peers, S., Hervey, T., Kenner, J., & Ward, A. (Eds.). (2021). *The EU Charter of Fundamental Rights: A commentary* (2nd ed.). Hart Publishing. <https://doi.org/10.5771/9783748913245>, p. 986

⁶⁶⁹ (K-P Sommermann, (Eds.) Blanke, H.-J., & Mangiameli, S. (2021). *The Treaty on the Functioning of the European Union: A Commentary* (Vol. I: Preamble, Articles 1-89). Springer. P. 278.

⁶⁷⁰ The Treaty on the Functioning of the European Union, Art. 9.

⁶⁷¹ F. de A. C. Ane (2023): A treaty change on the horizon?-what this could mean for social policy and labour law [online] <https://legalblogs.wolterskluwer.com/global-workplace-law-and-policy/a-treaty-change-on-the-horizon-what-this-could-mean-for-social-policy-and-labour-law/>.

5.2.3. European Social Charter

In this regard, starting with the Council of Europe's Social Charter, which was initially drafted in 1961, a regional social security law was outlined. As will be further detailed below, the Council of Europe operates under two fundamental legal acts in the field of social security standards: the European Social Charter and the European Code of Social Security. The European Committee of Social Rights, as a guardian of the European Social Security regulations, is ensuring the enforceability of the legal order.

The European Social Charter, a Council of Europe treaty ratified by all EU Member States, is more detailed and prescriptive regarding social rights than the global instruments, thus imposing more specific obligations. Established by the Council of Europe in 1961, the Convention affirms that all workers and their dependents are entitled to social security; that individuals without sufficient means have a right to receive social and medical assistance; and that everyone should have access to social welfare services. In 1996, the Charter was revised and included a new, fundamental right aimed at protecting individuals from poverty and social exclusion. With a desire for a more comprehensive regulation, the Council of Europe also adopted the European Code of Social Security in 1964, along with its Additional Protocol. Both instruments reflect the principles of ILO Convention No. 102, while encouraging participating states to adopt more ambitious social protection standards within the regional context.⁶⁷²

International social security is one of the hardest fields to reach a common agreement, since such legislation needs both legal and political commitment. In contrast, standards need to be constructed in a manner that suits each signatory state's social, economic, and cultural situation, without compromising precision. Multiple fundamental questions arose at the drafting of the Charter: the first centred on whether the document should be treated as a non-binding political statement or a formal international treaty. The second concerns the depth of the commitments it would impose on

⁶⁷² International Labour Organisation, United Nations Human Rights Commission, (2025) 'Right to Social Security Fact Sheet No. 39' New York and Geneva, pp. 11-12

states, whether it should simply offer broad policy guidance or lay down specific, enforceable standards.⁶⁷³

The European Social Charter and its revised version, while not detailing concrete, strict, fixed minimum benefit levels, place an obligation on states to adhere to established basic standards, make ongoing efforts to develop social protection, and guarantee equal treatment for non-nationals and citizens alike.⁶⁷⁴ The Charter, similar to the ILO's Convention on Minimum Standards concerning Social Security, opts for an opt-in system, in which states must select which provisions are binding from those laid out in the Charter.⁶⁷⁵

When it comes to the obligations of ratifying states in shaping and maintaining social security systems, Article 12 of the European Social Charter is a foundational provision. It recognises not only the right to social security but also complements this with entitlements to social and medical assistance.⁶⁷⁶, as well as access to social services⁶⁷⁷. Under this article, member states of the Council of Europe are expected to establish and uphold a system of social protection that meets the standards set by the International Labour Organisation, particularly those found in Convention No. 102. The notion of social security under the Charter is broad in scope; it encompasses both income support and insurance-based benefits.⁶⁷⁸

A key difference between the 1961 Charter and the revised version when discussing the right to social security is the level of the minimum standards. As the ILO's Convention has preceded the Charter since 1961, minimum standards for social security have been established.⁶⁷⁹ In the earliest draft, the European Code of Social Security was already mentioned as an upcoming document that would set out how states should ensure the right to social security and what services and benefits

⁶⁷³ Rapport du Comité ad hoc d'experts sociaux sur la Charte sociale européenne, Committee of Ministers (53)99, 13 septembre 1953; 146e session du Comité des Ministres: projet du compte rendu de la séance tenue sur la charte sociale. Committee of Ministers(54)CR 3, 20 mai 1954.

⁶⁷⁴ Saul, B., Kinley, D., & Mowbray, J. (2014). *The International Covenant on Economic, Social and Cultural Rights: Commentary, cases, and materials* (1st ed.). Oxford University Press, p. 628

⁶⁷⁵ Maciejewska, Joanna. (2005). *European social charter practice: legalism or common sense*. Polish Quarterly of International Affairs, 14(3),p. 47

⁶⁷⁶ Art. 13 Of the 1961 European Social Charter (ETS No. 035)

⁶⁷⁷ Art. 14 Of the 1961 European Social Charter (ETS No. 035)

⁶⁷⁸ David Harris and John Darcy, 'The European Social Charter' (Pail Institute 2001) 153 ff; Olivier De Schutter, 'The Two Lives of the European Social Charter', in Olivier De Schutter (ed), *The European Social Charter: A Social Constitution for Europe* (Bruylant 2010) 11, 29; Lenia Samuel, *Droits sociaux fondamentaux. Jurisprudence de la Charte sociale européenne* (Editions du Conseil de l'Europe 1997) 319 ff.

⁶⁷⁹ ILO Convention No. 102 from 1952

this would include.⁶⁸⁰ Later drafts from 1959, however, did not provide much detail on these elements, as social security was understood broadly, encompassing various forms of support. Since the European Code had not yet been completed by 1961, the drafters referred instead to ILO Convention No. 102 as a temporary standard. Therefore, the charter acknowledged the fundamental importance of the Convention and used it as a threshold when setting the minimum standards of maintaining the social security system.⁶⁸¹ However, the 1996 revision of the Charter already used the Council of Europe's other groundbreaking legal framework, the European Code of Social Security, instead of the Convention.⁶⁸² Although the number of states that ratified the European Code of Social Security is considerably less than that of the Convention,⁶⁸³ The present change was part of a significant increase.⁶⁸⁴ The standards set for establishing and maintaining the national social security systems.⁶⁸⁵

Furthermore, under paragraph (2), states are expected to go beyond general promises and establish a clear, detailed legal framework that sets out how their social security systems operate in practice. This means ensuring that people know what kind of support they are entitled to and how to access it. Paragraph (3) adds that social security should not remain static. Instead, states must steadily improve their systems over time, ensuring they adapt to societal changes. This does not mean endless expansion but rather finding a fair balance that protects people today while keeping the system sustainable for future generations. Finally, paragraph (4) makes clear that social security rights should not stop at national borders. States are required to treat foreign nationals equally and to work together to ensure that benefits can be transferred across countries. Taken together, these duties call on states to build fair, reliable, and forward-looking social security systems, both at home and across borders.⁶⁸⁶

⁶⁸⁰ Council of Europe, Parliamentary Assembly, Programme of Work of the Council of Europe, Communication by the Committee of Ministers, Doc. 238, 20 May 1954.

⁶⁸¹ Art 12, 2. Of the 1961 European Social Charter (ETS No. 035)

⁶⁸² Art 12, 2 of the European Social Charter (revised) (ETS No. 163)

⁶⁸³ While 21 countries ratify the European Code of Social Security as of 29.07.2025, the ILO Convention 102 is ratified by 68 as of 30.07.2025

⁶⁸⁴ The European Code of Social Security elevates these obligations, requiring Council of Europe member states to meet higher standards, such as providing coverage for at least six of the nine social security branches, while Convention 102 only mandates three branches.

⁶⁸⁵ Vandamme, Francois. (1994). The revision of the European Social Charter. *International Labour Review*, 133(Issues 5-6), 635-656. p. 650

⁶⁸⁶ Eberhard Eichenhofer (2015) 'Social Security As a Human Right: A European Perspective', in: Frans Pennings and Gijsbert Vonk (eds.) *Research Handbook on European Social Security Law*. Cheltenham & Massachusetts: Edward Elgar Publishing, pp 3-32, pp. 26-27

Established by the Charter itself⁶⁸⁷ the European Committee of Social Rights (ECSR) plays a crucial role in ensuring that states live up to the commitments they made under the European Social Charter. Its main task is to assess how well each country is implementing the agreed-upon social rights, based on regular reports submitted by the states. While the Committee's decisions are not directly enforceable, they certainly hold considerable influence.⁶⁸⁸ Their legal interpretations guide governments, legislators, and courts in shaping policies that align with the Charter's standards. Originally known as the Committee of Independent Experts, the ECSR works in tandem with the Governmental Committee to ensure that social rights evolve in step with society's needs. Even without formal binding power, the ECSR has become a key voice in promoting stronger social protection across the Council of Europe.⁶⁸⁹

The obligations concerning the signatory states are contained in Part III of the Charter. ILO's influence on the drafting is traceable, as the Charter uses the exact opt-in mechanism of the ILO's Convention on Social Security Minimum Standards. To become a party to the Charter, a state doesn't need to accept every article; instead, it may commit only to selected provisions, though within certain limits. This approach of partial ratification emerged as a practical solution to the disagreements that surfaced during the Charter's drafting.⁶⁹⁰

To understand the extent of the signatory states' obligations, the interpretation of the ECSR is the main guideline.⁶⁹¹

Under paragraph (1), it was highlighted that the subjects of the right should be interpreted broadly; therefore, states should ensure that self-employed individuals can also enjoy the right to social security.⁶⁹² Furthermore, the CESCR highlighted that health insurance should cover a significant

⁶⁸⁷ Art 24 and 25 Of the 1961 European Social Charter (ETS No. 035)

⁶⁸⁸ Spagnolo, A. (2022). They Are not Enforceable, but States Must Respect Them: An Attempt to Explain the Legal Value of Decisions of the European Committee of Social Rights. *European Papers*, 7(3), 1495–1516.

⁶⁸⁹ The Italian Constitutional Court acknowledged this influential role in 2018, which emphasised the authoritative nature of the ECSR's decisions, even in the absence of formal binding force. For further analysis of the Italian Constitutional Court's decision, see: L Mola, 'The European Social Charter as a Parameter for Constitutional Review of Legislation' (2019) *IYIL* 493

⁶⁹⁰ Anon. (1961). The European Social Charter and International Labour Standards. *International Labour Review*, 84, p. 462

⁶⁹¹ Lukas, K. (2021). The revised European Social Charter: An article-by-article commentary (Elgar Commentaries). Edward Elgar Publishing, p. 176

⁶⁹² Conclusions XIV-1 (1998), Ireland, <<http://hudoc.esc.coe.int/eng?i=XIV-1/def/IRL/12/1/EN>>, (accessed 2 January 2017).

number of citizens and extend beyond traditional employment-based arrangements.⁶⁹³ Additionally, a social protection framework must ensure the genuine enjoyment of social security rights across all areas of benefit provision.⁶⁹⁴

As already analysed, the Charter first took the ILO Convention as a threshold for the minimum standards required to establish and maintain a social security system. Later on, the standard was raised to the level of the European Code of Social Security. A question arises from the differences among the ratifying countries.⁶⁹⁵ How can the European Code of Social Security serve as a minimum standard for States that did not ratify the Charter? The Committee answers the question as follows: if a state has not ratified the European Code of Social Security, the Committee evaluates the overall adequacy of its social security system.⁶⁹⁶ To determine whether the national system meets the minimum standards required for ratifying the Code, the Committee must receive comprehensive data on the types of coverage provided, the categories of individuals included, and the extent of benefits available.⁶⁹⁷

Paragraphs (1) and (2) are often analysed in a complementary manner when the state's obligations are examined. The cases of Bulgaria, Estonia, Lithuania, Poland, and Romania highlight the importance of interpreting Article 12(1) and 12(2) of the Charter together when assessing state compliance. While Article 12(1) focuses on the establishment or maintenance of a social security system, only Article 12(2) explicitly addresses the adequacy of benefits by linking it to the standards in ILO Convention No. 102 (or to the European Code of Social Security in the Revised Charter). When the Committee evaluated benefit levels under both provisions, it departed from the drafters' original intention, which was to assess adequacy solely through Article 12(2).⁶⁹⁸

⁶⁹³ Conclusions XVIII-1 (2006), the Netherlands, <<http://hudoc.esc.coe.int/eng?i=XVIII-1/def/NLD/12/1/EN>>, (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, §58, <<http://hudoc.esc.coe.int/eng?i=cc-88-2012-dmerits-en>>.

⁶⁹⁴ Conclusions XVI-1 (2003), Statement of Interpretation on Article 12, <http://hudoc.esc.coe.int/eng?i=XVI-1_035_04/Ob/EN>.

⁶⁹⁵ As per 31.07.2025, the Revised Social Charter is ratified by 36 states, while 21 states ratify the European Code of Social Security.

⁶⁹⁶ Conclusions XIV-1 (1998), Finland, <http://hudoc.esc.coe.int/eng?i=XIV-1/def/FIN/12/2/EN>.

⁶⁹⁷ Lukas, K. (2021). The revised European Social Charter: An article-by-article commentary (Elgar Commentaries). Edward Elgar Publishing, p. 179

⁶⁹⁸ Maciejewska, Joanna. (2005). European social charter practice: legalism or common sense. Polish Quarterly of International Affairs, 14(3), 45-65, p. 57

The progressive development set by paragraph (3) also needs to be put in context. While in the early days of the charter, the progress of the social security systems was compared and paralleled with the state's economic growth, demographic changes indicated that contributions are placing a disproportionate burden on the active generation. Therefore, the understanding of the progressive growth needed recalibration. The current obligation to raise standards should be aligned with the development of the given state's society, considering demographics, living standards, and other factors, rather than relying purely on economic indicators.⁶⁹⁹

Furthermore, the Charter calls on states to recognise that social security rights shouldn't stop at national borders. States are expected to treat citizens of other countries equally when accessing social protection. They must also put in place practical measures to ensure that benefits like pensions or unemployment support can still be received even if someone moves abroad. This includes allowing people to combine the time they've spent working and contributing in different countries so they don't lose out on the protection they've earned.⁷⁰⁰

When it comes to states' obligations regarding national social security systems, Article 12 is a fundamental provision. Due to its complexity, states often struggle to comply with the provisions, as this article directly mandates the creation and maintenance of a social security system that covers "all workers," implying a responsibility to adapt to new forms of work, such as platform work, to ensure continued coverage.

Article 12, as a central pillar of the European Social Charter, is supplemented by additional provisions that address more specific aspects of the right to social security, providing detailed and targeted regulation in these narrower areas. Building on Article 12, Article 13 further reinforces the social safety net within a State. Unlike Article 12, which links entitlement to benefits with prior contributions addressing specific risks, Article 13 rests solely on the criterion of individual need as the basis for receiving assistance and services.⁷⁰¹ This article guarantees support for anyone who finds themselves in genuine need. What makes it unique is that it doesn't depend on whether

⁶⁹⁹ Mikkola, M. (2010). *Social Human Rights of Europe* (p. 298). Legisactio Ltd., p. 320.

⁷⁰⁰ Eberhard Eichenhofer (2015) 'Social Security As a Human Right: A European Perspective', in: Frans Pennings and Gijsbert Vonk (eds.) *Research Handbook on European Social Security Law*. Cheltenham & Massachusetts: Edward Elgar Publishing, pp 3-32, p. 27.

⁷⁰¹ Lukas, K. (2021). *The revised European Social Charter: An article-by-article commentary* (Elgar Commentaries). Edward Elgar Publishing, p. 186.

someone has paid contributions, held a job, or been part of a social security scheme. If a person needs help, that need alone is enough to qualify for assistance.⁷⁰²

Further articles complete the provisions on the right to social security by focusing on a specific subgroup of subjects and on specific benefits of the system.⁷⁰³

5.2.4. European Code of Social Security

The European Social Charter, along with its Revised version, does not impose rigid, predefined minimum levels of social benefits; it rather obliges states to uphold core baseline standards, continuously strengthen their social protection systems, and ensure that non-nationals are treated equally to their citizen.⁷⁰⁴ Therefore, the European Code of Social Security was adopted just 3 years after the Social Charter came to fill this gap; moreover, it further raised the minimum standards set by the ILO.⁷⁰⁵

The European Code of Social Security was a regional legal framework that advanced, strengthened and raised the minimum standards of ILO Convention 102. The Code wasn't just similar to the Convention; instead, it was a copy which increased the standards, meaning that it further expanded the scope of application, and it raised the minimum percentages of the working or general population that were required to be covered by certain social benefits.⁷⁰⁶ The Code sets higher standards for countries that choose to adopt it. To fulfil its obligations set by the Code, each state must commit to at least six out of the nine main areas of social protection, which include the same benefits as those listed in Convention No. 102.⁷⁰⁷ Interestingly, some parts, such as medical care

⁷⁰² Finnish Society for Social Rights v. Finland, Complaint No 88/2013, decision on the merits of 9 September 2014, §110, <http://hudoc.esc.coe.int/eng?i=cc-88-2012-dmerits-en>.

⁷⁰³ Such as Art. 16: The right of the family to social, legal and economic protection, Art. 17: The right of mothers and children to social and economic protection, or Art. 23: The right of elderly persons to social protection..

⁷⁰⁴ Saul, B., Kinley, D., & Mowbray, J. (2014). *The International Covenant on Economic, Social and Cultural Rights: Commentary, cases, and materials* (1st ed.). Oxford University Press, p. 628.

⁷⁰⁵ Eberhard Eichenhofer (2015) 'Social Security As a Human Right: A European Perspective', in: Frans Pennings and Gijsbert Vonk (eds.) *Research Handbook on European Social Security Law*. Cheltenham & Massachusetts: Edward Elgar Publishing, pp 3-32, p. 26.

⁷⁰⁶ Korda, Maria, & Pennings, Frans. (2008). The legal character of international social security standards. *European Journal of Social Security*, 10(2), 131-158, p. 135.

⁷⁰⁷ Moskalenko, O. V. (2013). *European Standards of Compulsory Social Insurance*. Law and Innovative Society, 2013, 208-222, p. 210

and old-age benefits, are given extra weight, meaning they count as more than one when calculating the required minimum.⁷⁰⁸ Furthermore, compared to ILO's Convention No. 102, the Code does not provide an exception for non-conformity in the case of undeveloped economic and medical facilities, since members of the Council of Europe were at a level of industrialisation that made the goals reachable for all members.⁷⁰⁹ For these reasons mentioned above, the revised Social Charter linked the minimum standards to the Code rather than to Convention 102.

Given the sensible branch of law that is regulated, and due to the lengthy drafting process, the Code itself was outdated before it could exert its influence; therefore, a Protocol was created, which opened for ratification and entered into force at the same time as the Code.⁷¹⁰

Therefore, the evolution of the European Code of Social Security was linear: first, the Protocol raised the standards to a level even higher than that set by the Code. The protocol sets an even broader scope of protection and higher standards regarding each benefit.⁷¹¹ Furthermore, ratifying states have to fulfil eight rather than six contingencies.⁷¹²

As the ratifying states were maintaining the social security systems at even higher levels than prescribed by the Code and the protocol, due to the economic growth and prosperity, the Council of Europe was already preparing to revise the Code based on its Recommendation from 1979.⁷¹³ The drafting was a result of the hard work of the European Social Security Committee, assisted by the ILO.⁷¹⁴ Just as in the case of the Charter and the Code, the drafting period was prolonged, and the Revised Code was opened for signature in 1990.⁷¹⁵

⁷⁰⁸ Nagel, S. G. (1997). Developments in social security systems: Reflections on the work of the Council of Europe in this field. *International Review of Administrative Sciences*, 63(2), 225–243, p. 227

⁷⁰⁹ Villars, C. C. (1979). Social Security Standards in The Council of Europe: The Ilo Influence. *International Labour Review*, 118(3), p. 344

⁷¹⁰ Otting, A. (1996, March). History, development and impact of the European Code of Social Security. Presented at the Seminario Sobre Normatividad Internacional de la Seguridad Social, Mexico., p. 8.

⁷¹¹ For example, Article 10 includes dental care for children regarding medical care.

⁷¹² Eberhard Eichenhofer (2015) 'Social Security As a Human Right: A European Perspective', in: Frans Pennings and Gijsbert Vonk (eds.) *Research Handbook on European Social Security Law*. Cheltenham & Massachusetts: Edward Elgar Publishing, pp 3-32, p. 26.

⁷¹³ Recommendation 873 (1979) on the application and revision of the European Code of Social Security and its Protocol.

⁷¹⁴ Nagel, S. G. (1997). Developments in social security systems: Reflections on the work of the Council of Europe in this field. *International Review of Administrative Sciences*, 63(2), 225–243. P. 229.

⁷¹⁵ Otting, A. (1996, March). History, development and impact of the European Code of Social Security. Presented at the Seminario Sobre Normatividad Internacional de la Seguridad Social, Mexico, P. 8.

The Revised Code raised the level of minimum standards to a whole new level. The raised standards were primarily adopted for the fast-developing Western European countries, since industrialisation was evolving at a fast pace; therefore, the resources of the regions were given for a stronger social security system with an even broader scope of application.⁷¹⁶

Predominantly, the Revised Code demands an 85-95% coverage of the employed population regarding the contingencies.⁷¹⁷

Unfortunately, the ratification wasn't following the linear evolution of the standards set by the three closely linked but separate acts. While the Protocol and the Code were open for signature at the same time, the number of ratifications is significantly different since the Protocol raised the standards on a much higher level.⁷¹⁸ The Revised Code introduces standards that markedly surpass those contained in the Protocol to the 1964 Code. Because the original Code, the Protocol, and the Revised Code all remain in effect, member states enjoy considerable flexibility: they may choose to ratify any of these instruments for a given branch of social security. This layered approach effectively creates a three-step ladder of legislation.⁷¹⁹

The main takeaway of the Revised Code lies in its ratifications, since only the Netherlands ratified it at present. (08.05.2025).⁷²⁰

5.2.5. Charter of Fundamental Rights of the European Union

The Treaty on the Functioning of the European Union (TFEU) serves as the foundational legal framework for numerous legislative acts in the realm of EU social policy. It functions not

⁷¹⁶ Villars, C. C. (1979). Social Security Standards in The Council of Europe: The Ilo Influence. *International Labour Review*, 118(3), p. 351.

⁷¹⁷ Nagel, S. G. (1997). Developments in social security systems: Reflections on the work of the Council of Europe in this field. *International Review of Administrative Sciences*, 63(2), 225–243, p.230.

⁷¹⁸ While at 05.08.2025 the European Code of Social Security is ratified by 21 states (6 states signing but not ratifying the Code) (<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=048>), the Protocol is ratified by 7 states (6 states signing but not ratifying the Protocol), (<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=048A>)

⁷¹⁹ Otting, A. (1996, March). History, development and impact of the European Code of Social Security. Presented at the Seminario Sobre Normatividad Internacional de la Seguridad Social, Mexico, P. 8.

⁷²⁰ <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=139>

only as a guiding instrument for legislative development but also as a limiting mechanism, delineating the scope of the Union's competences in this domain.

Furthermore, Article 12 of the European Social Charter, which focuses on workers' social rights, serves as an important source of inspiration. Moreover, the wording of Article 34 draws on other key instruments, such as the European Code of Social Security, Articles 9 to 11 of the ICESCR, and several important ILO texts, all of which help shape and guide understanding of these rights.⁷²¹

Therefore, at first glance, Article 34 may appear to have only a minimal role, seeming largely repetitive of provisions found in other international instruments. However, its true significance lies in its practical implementation, as it plays a crucial role in shaping concrete national laws and policies. Explicitly recognizing the right to social security and social assistance strengthens Member States' obligations to ensure that individuals in need can access the necessary support. Furthermore, Article 34 should be understood as part of a broader legal framework, working in conjunction with existing EU social security legislation and forming an integral link within the European social law landscape.⁷²²

The Charter of Fundamental Rights links Article 34(1) directly to the TFEU by grounding it in Articles 153 and 156. This connection means that whenever the EU acts under these TFEU provisions, especially when developing policies on social protection and workers' rights, it must uphold the commitments enshrined in Article 34(1) of the Charter.⁷²³ Interpreting the current provision as a right or a freedom activates Article 52, which further protects the right, stating that any limitations on the rights and freedoms guaranteed by the Charter are permissible only if they are established by law, deemed necessary, and serve a significant societal interest or aim to protect the rights and freedoms of others. Additionally, the principle of proportionality must always be respected whenever a right enshrined in the Charter is subject to restriction.⁷²⁴

⁷²¹ Silveira, A., Araújo Coelho, L., Costa, M. I., & Cabral, T. S. (Eds.). (2024). *The Charter of Fundamental Rights of the European Union: A Commentary*. SSRN. <https://doi.org/10.2139/ssrn.4999183>, p. 330

⁷²² Peers, S., Herve, T., Kenner, J., & Ward, A. (Eds.). (2021). *The EU Charter of Fundamental Rights: A commentary* (2nd ed.). Hart Publishing. <https://doi.org/10.5771/9783748913245>, p. 995.

⁷²³ Kellerbauer, M., Klamert, M., & Tomkin, J. (Eds.). (2019). *The EU treaties and the Charter of Fundamental Rights: A commentary*. Oxford University Press, ISBN: 9780198913689, p. 2194.

⁷²⁴ Bernitz, U., Mårtensson, M., Oxelheim, L., & Persson, T. (Eds.). (2018). *Bridging the prosperity gap in the EU: The social challenge ahead*. Edward Elgar Publishing. <https://doi.org/10.4337/9781786436672>, p. 38

Paragraph 2 broadly defines the personal scope, making it applicable to a wide range of individuals. The sole condition specified in the provision's wording is that the person must be either residing in or legally moving within the EU.⁷²⁵ The evolution of legislation on the right to social security expanded the personal scope of the present right beyond its original form, which initially included only workers, to include workers' families, employed and self-employed, as well as students.⁷²⁶ In this regard, although not binding, it clearly shows the evolution of the personal scope. The European Pillar of Social Rights advocates for including non-standard work arrangements, going beyond traditional “employment contracts” for waged workers.⁷²⁷

This paragraph plays an essential role in the EU's social security coordination system. It reiterates the benefits already set out in Regulations 883/2004 and 492/2011 and refers to earlier related regulations, but it does not mention Directive 2004/38. The rights it describes don't apply to everyone physically present in a Member State. Instead, the rules specifically cover nationals of EU Member States, as well as people from EEA countries and Switzerland, where EU law also applies. Third-country nationals are only included if there is specific EU legislation protecting them. In this way, the paragraph helps clearly define who is covered by social security coordination across the Union.⁷²⁸

The terms “social security benefits” and “social advantages” should be understood in a way that reflects existing EU law and jurisprudence. Specifically, “social security benefits” should, at a minimum, include the types of benefits covered by Regulation 883/2004, which coordinates social security systems across Member States to ensure protection in areas such as sickness, unemployment, and pensions. Similarly, “social advantages” should be interpreted broadly, following the approach of the Court of Justice under Article 7(2) of Regulation 1612/68⁷²⁹ (now replaced by Regulation 492/2011), which recognised a wide range of benefits and privileges to

⁷²⁵ Silveira, A., Araújo Coelho, L., Costa, M. I., & Cabral, T. S. (Eds.). (2024). *The Charter of Fundamental Rights of the European Union: A Commentary*. SSRN. <https://doi.org/10.2139/ssrn.4999183>, p. 334.

⁷²⁶ Barnard, C. (2007). *The substantive law of the EU: The four freedoms* (2nd ed.). Oxford University Press, pp. 249-250.

⁷²⁷ De Schutter, O. (2018, November 14). *The European Pillar of Social Rights and the role of the European Social Charter in the EU legal order* [Working paper]. Council of Europe, p.40.

⁷²⁸ Peers, S., Hervey, T., Kenner, J., & Ward, A. (Eds.). (2021). *The EU Charter of Fundamental Rights: A commentary* (2nd ed.). Hart Publishing. <https://doi.org/10.5771/9783748913245>, p. 996

⁷²⁹ Kellerbauer, M., Klamert, M., & Tomkin, J. (Eds.). (2019). *The EU treaties and the Charter of Fundamental Rights: A commentary*. Oxford University Press, ISBN: 9780198913689, p. 2194.

promote free movement and equal treatment for workers within the EU.⁷³⁰ Furthermore, the CJEU pointed out in its decision that the right to social benefits applies only to those who are exercising the right of free movement within the European Union.⁷³¹ Importantly, the paragraph frames these benefits and advantages in terms of “entitlement,” indicating that eligible individuals have a clear legal right to access them, rather than these being mere privileges or discretionary provisions. This language of entitlement underscores the binding nature of these social protections within the EU legal framework.⁷³²

Article 34(3) of the Charter of Fundamental Rights concerns the right to social and housing assistance. It ensures that, to combat social exclusion and poverty, the EU recognises and respects the right of individuals to social assistance when they lack sufficient resources. Moreover, the housing assistance debuted in EU law in the present Article, therefore it places a clear obligation on signatory states to make sure people have access to affordable housing, to take active steps to reduce and eventually end homelessness, and to keep housing costs at a level that those with limited means can still afford a decent place to live.⁷³³ Important to clarify that the present paragraph does not lay down a common right to housing, instead it acknowledges the obligation of a national assistance in this regard.⁷³⁴

What makes the European social protection legislation special is the coordination mechanism of these social protection systems. Social security falls mainly under the national competence of Member States, reflecting their sovereign authority to design welfare policies and benefits independently. However, Member States must ensure their social security rules comply with EU law and do not hinder the free movement of workers.⁷³⁵

Although the main legislative instruments, Regulations 883/2004 and 987/2009, do not provide beneficiaries with complete protection of their social security income, they do ensure that

⁷³⁰ See Case 249/83 Hoeckx [1985] ECR 973; and Case 59/85 Reed [1986] ECR 1873

⁷³¹ CJEU Case C-206/91, Kona Poirézz [1992].

⁷³² Peers, S., Herve, T., Kenner, J., & Ward, A. (Eds.). (2021). *The EU Charter of Fundamental Rights: A commentary* (2nd ed.). Hart Publishing. <https://doi.org/10.5771/9783748913245>, p. 997

⁷³³ Bernitz, U., Mårtensson, M., Oxelheim, L., & Persson, T. (Eds.). (2018). *Bridging the prosperity gap in the EU: The social challenge ahead*. Edward Elgar Publishing. <https://doi.org/10.4337/9781786436672>, p. 38

⁷³⁴ Silveira, A., Araújo Coelho, L., Costa, M. I., & Cabral, T. S. (Eds.). (2024). *The Charter of Fundamental Rights of the European Union: A Commentary*. SSRN. <https://doi.org/10.2139/ssrn.4999183>, p. 337.

⁷³⁵ K-P Sommermann, (Eds.) Blanke, H.-J., & Mangiameli, S. (2021). *The Treaty on the Functioning of the European Union: A Commentary* (Vol. I: Preamble, Articles 1-89). Springer, p. 1024.

individuals are covered by the legislation of only one Member State. Most importantly, they safeguard the principles of non-discrimination, portability, aggregation, and the preservation of rights acquired under national law in relation to almost all social security risks.⁷³⁶

The coordination regulation establishes a set of common rules designed to safeguard social security rights for individuals moving within the European Union. Its primary aim is to ensure that cross-border mobility does not result in the loss or reduction of entitlements, thereby facilitating free movement while providing legal certainty and protection for beneficiaries. At the same time, it fully respects the authority of each EU Member State to determine the scope of its social security system, including who is eligible, the level of benefits, and the specific conditions for entitlement. Importantly, this framework is not intended to replace national social security systems with a single, unified European scheme; rather, it seeks to coordinate the diverse national systems, ensuring they work together effectively so that individuals can maintain and transfer their acquired rights when moving between countries.⁷³⁷

One of the main questions that the coordination regulations aim to answer is which state is competent under the applicable regulation.⁷³⁸ Title II of Regulation (EC) No. 883/2004 addresses the “Determination of the competent State and of the legislation applicable.” Its provisions are designed to ensure that workers moving within the EU fall under the social security system of only one Member State, thereby preventing overlapping legislation in a field that is already highly technical and complex.⁷³⁹ The present regulation also further extended the personal scope of application and, for the first time, extends the personal scope of social security regimes to include individuals in irregular situations, such as stateless persons and refugees.⁷⁴⁰ However, this should be interpreted with the following limitation: individuals exercising their right of residence must not place an unreasonable burden on the host Member State’s social security system.⁷⁴¹

⁷³⁶ van der Mei, Anne-Pieter, Melin, Pauline, Vankova, Zveda, & Verschueren, Herwig. (2018). The external dimension of eu social security coordination. *European Journal of Social Security*, 20(2), p. 81.

⁷³⁷ <https://eur-lex.europa.eu/EN/legal-content/summary/coordination-of-social-security-systems.html>

⁷³⁸ De Wispelaere, F. (2019). 60 years of coordination of social security systems: Still room for improvement. In *Belgisch Tijdschrift voor Sociale Zekerheid* (1st trimester 2019, pp. 159–185). Federal Public Service Social Security, pp. 161-162

⁷³⁹ See Article 11 of Regulation (EC) no. 883/2004.

⁷⁴⁰ Refer to Article 2 which defines the scope of “Persons Covered” and recital 7.

⁷⁴¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004, Article. 14 (1)

5.2.6. Social Security Coverage for Self-Employed and Non-Standard Workers: The 2019 Recommendation

The right to adequate social protection for all workers, regardless of their contractual form, constitutes a foundational principle of the European social model. This right was formally articulated in the European Pillar of Social Rights, which recognises that social protection must extend beyond traditional dependent employment to embrace the growing diversity of work arrangements in contemporary labour markets.⁷⁴² Within the EPSR's chapter on "Social protection and inclusion," Principle 12 affirms that all workers, and under comparable conditions the self-employed, have the right to adequate social protection, irrespective of the type or duration of their employment relationship.⁷⁴³

To operationalise this principle, the Council of the European Union adopted the 2019 Recommendation on access to social protection for workers and the self-employed, establishing common minimum standards to guide Member States in extending coverage.⁷⁴⁴ The Recommendation was adopted on the legal basis of Articles 153(1) and 352 of the Treaty on the Functioning of the European Union, reflecting both the EU's role in supporting and complementing national social security systems and the need to address protection gaps that arise in areas not fully covered by existing competences.⁷⁴⁵ Article 153(1) enables Union action to support and supplement Member States' efforts in social security, while Article 352 empowers the Union to act where necessary to achieve Treaty objectives, subject to Member State unanimity.

The 2019 Recommendation aims to ensure that all workers, whether engaged in standard or non-standard forms of work, including platform work, or operating as self-employed, have formal, effective, adequate and transparent access to social protection (Recommendation, art. 2).⁷⁴⁶ Although the Recommendation does not explicitly refer to informal work, preparatory analyses and the accompanying Impact Assessment underscore the rise of informality as a by-product of

⁷⁴² European Commission. (2019). European Pillar of Social Rights (p. 12).

⁷⁴³ Employment, Social Affairs & Inclusion, European Commission. (n.d.). Access to social protection (Principle 12)

⁷⁴⁴ Council of the European Union. (2019). Council Recommendation on access to social protection for workers and the self-employed (2019/C 387/01, pp. 1–8).

⁷⁴⁵ Council Conclusions on social protection for the self-employed highlight the link to EPSR implementation and Treaty basis (pp. 2–3). Consilium Data.

⁷⁴⁶ 2019 Council Recommendation, art. 2.

increasing labour market flexibility, with platform work highlighted as a salient example.⁷⁴⁷ These preparatory documents emphasise that social protection gaps tend to be most acute for those in atypical and flexible arrangements, necessitating welfare policies that prevent coverage shortfalls and preclude policy measures that may inadvertently reinforce undeclared work.⁷⁴⁸ Ensuring formalisation of informal work, including informal platform labour, is thus essential to achieve the Recommendation's objectives, to prevent unfair competition, and to limit the misuse of employment status to avoid contribution obligations.⁷⁴⁹

The Recommendation also embodies key principles that reinforce its potential for fostering inclusivity. Article 9 stresses the need to uphold the sustainability of national social security systems, while Article 8 adopts a status-neutral approach that affirms fundamental social protection rights for all professionally active individuals, regardless of how their labour is classified.⁷⁵⁰ This status-neutral framing requires social security law and practice to respond to the specific conditions of different work arrangements, including non-standard and algorithmically mediated platform work. Research suggests that platform workers experience differential access to protection precisely because rigid, contract-based eligibility criteria fail to accommodate fragmented and irregular work patterns typical of platform labour.⁷⁵¹

The 2019 Recommendation explicitly acknowledges that traditional distinctions between employment and self-employment may be inadequate in capturing the realities of today's labour market, and it calls for a tailored approach to social protection that accommodates emerging work arrangements.⁷⁵² Extending coverage alone is insufficient; what matters equally is that non-standard workers are genuinely able to contribute to social security schemes and accumulate entitlements that correspond to their labour market participation. This emphasis on effective and adequate participation signals a shift away from a purely formalistic reliance on contract type

⁷⁴⁷ European Commission. (2018). Impact Assessment accompanying the Council Recommendation on access to social protection for workers and the self-employed, pp. 5–20.

⁷⁴⁸ Mutual learning workshops report emphasises simplification, transparency, and access pp. 3–15.

⁷⁴⁹ 2019 Council Recommendation, arts.8–9.

⁷⁵⁰ De Becker, F., Schoukens, P., & Pulignano, V. (2024). Social protection for atypical and self-employed workers: Comparative insights from Belgium, Italy, and the Netherlands, pp.45–67.

⁷⁵¹ Springer Nature. (2020). EU initiatives for inclusive social protection: Recital 11 and 18, pp.23–30.

⁷⁵² Tilburg University Research. (2022). Transparency and inclusion in social security for non-standard work pp.78–90.

toward a functional understanding of work in social protection design, a theme echoed in academic research advocating for broader conceptions of inclusion for atypical workers.⁷⁵³

Complementing the Recommendation, the 2021 Action Plan reinforces these objectives by setting ambitious EU-level targets for 2030, including an employment rate of at least 78% for the population aged 20–64, participation of at least 60% of adults in training annually, and a reduction of at least 15 million people at risk of poverty or social exclusion. Reducing undeclared and underdeclared work is recognised as integral to achieving these targets, given the role that formal participation in the labour market plays in underpinning social inclusion and economic resilience.⁷⁵⁴

Despite these developments, significant coverage gaps remain. Many informal workers do not contribute to social security schemes and are ineligible for social assistance due to means-testing criteria that exclude those with volatile or irregular earnings. Platform workers, in particular, have been identified as often falling into a so-called missing middle, whose income and status are difficult to monitor, complicating both contribution obligations and benefit entitlements.⁷⁵⁵ Recent analyses of social protection accessibility suggest that countries with more inclusive regimes for the self-employed tend to demonstrate more integrative policy responses toward platform work, whereas limited access to protection for self-employed workers correlates with confrontational regulatory strategies aimed at employment reclassification.⁷⁵⁶

The ongoing application and monitoring of the 2019 Recommendation highlight persistent disparities in access to social protection across Member States, particularly regarding self-employed and non-standard workers. A 2023 European Commission report on the implementation of the Recommendation highlights the need for further reforms to enhance participation in social protection systems for these groups, including workers in platform economies.⁷⁵⁷

⁷⁵³ Tilburg University Research. (2022). Transparency and inclusion in social security for non-standard work pp.78–90.

⁷⁵⁴ European Commission. (2021). European Pillar of Social Rights Action Plan (p. 2). Publications Office of the European Union.

⁷⁵⁵ Sieker, F. (2022). Platform work and access to social protection across European countries pp. 193–207.

⁷⁵⁶ Sieker, F. (2022). Ibid.; differing national responses tied to accessibility of social security systems pp. 198–200.

⁷⁵⁷ European Commission. (2023). Report on implementation of the 2019 Recommendation on access to social protection for workers and the self-employed, pp. 1–28.

Taken together, the EPSR, the 2019 Recommendation, and related EU frameworks establish a normative foundation for inclusive social protection. However, the persistence of informal work, fragmented employment relationships, and the proliferation of platform work underscore the challenge of translating normative commitments into effective coverage. Achieving an inclusive social security contribution system that reflects the realities of contemporary work will require continued legislative refinement, administrative simplification, and innovative policy measures that bridge the gap between formal entitlement and substantive inclusion.⁷⁵⁸

5.3. Conclusion

The journey of social security from a discretionary policy to a fundamental human right has been a complex but definitive evolution. While debates persist regarding the justiciability and "natural" character of economic, social, and cultural rights,⁷⁵⁹ the international community, through foundational instruments and subsequent binding treaties, has firmly established social security as an inherent entitlement for all individuals. Scholars like Eberhard Eichenhofer rightly challenge the artificial division between positive and negative freedoms, underscoring that social rights are equally vital for human dignity and freedom.⁷⁶⁰

The UDHR marked a pivotal moment, explicitly recognising social security as a human right in Article 22. This declaration transformed social security into a state obligation, emphasising its universal application based on social membership rather than mere policy choice.⁷⁶¹ Article 25 further elaborates on the essential components of social protection, including healthcare, housing,

⁷⁵⁸ European Commission. (2023). Report on implementation of the 2019 Recommendation on access to social protection for workers and the self-employed, pp. 10-15.

⁷⁵⁹ Cecile Fabre, *Social Rights under the Constitution. Government and the Decent Life* (Oxford University Press 2000) 33.

⁷⁶⁰ Eberhard Eichenhofer (2015) 'Social Security As a Human Right: A European Perspective', in: Frans Pennings and Gijsbert Vonk (eds.) *Research Handbook on European Social Security Law*. Cheltenham & Massachusetts: Edward Elgar Publishing, pp 3-32, p. 14

⁷⁶¹ International Labour Organization, United Nations Human Rights Commission, (2025) 'Right to Social Security Fact Sheet No. 39' New York and Geneva, P. 6

and income support during various life contingencies.⁷⁶² Although a declaration, the UDHR laid the indispensable groundwork for subsequent legally binding instruments.⁷⁶³

The ILO has been instrumental in shaping international labour and social security law, particularly in the post-World War II era. The Beveridge Report's emphasis on universal coverage and the 1944 Declaration of Philadelphia's embedding of social rights within human rights were crucial milestones.⁷⁶⁴ ILO Convention No. 102 on Minimum Standards of Social Security, though offering flexibility, established clear legal obligations for states to legislate and administer social security systems, ensuring minimum coverage standards.⁷⁶⁵ Furthermore, ILO Recommendation No. 202 from 2012, while non-binding, reinforced the imperative for national social protection floors, advocating for a universal, inclusive approach that extends protection to informal and non-standard workers, including those in the gig economy.⁷⁶⁶ This Recommendation underscores that social security is not merely a right but also a prerequisite for social and economic stability.⁷⁶⁷

The ICESCR stands as the core binding instrument, enshrining social security as a fundamental human right for its State Parties. It imposes clear legal obligations on states to respect, protect, and fulfil this right, ensuring that both contributory and non-contributory schemes are accessible, non-discriminatory, and adequate.⁷⁶⁸ The CESCR has further clarified the expansive nature of the state's duty, emphasising the need to facilitate access, promote awareness, and directly provide benefits, especially for vulnerable groups often excluded from traditional coverage, such as the self-employed and workers in the informal economy.⁷⁶⁹

⁷⁶² Jef van Langendonck, 'The meaning of the right to social security', in Jef van Langendonck (ed), *The Right to Social Security* (Intersentia 2007) 3, 5.

⁷⁶³ International Labour Organization, United Nations Human Rights Commission, (2025) 'Right to Social Security Fact Sheet No. 39' New York and Geneva, pp. 6-7

⁷⁶⁴ Lee, Eddy. (1994). *The Declaration of Philadelphia: retrospect and prospect*. *International Labour Review*, 133(4), 467-484. P. 469

⁷⁶⁵ Eberhard Eichenhofer (2015) 'Social Security As a Human Right: A European Perspective', in: Frans Pennings and Gijsbert Vonk (eds.) *Research Handbook on European Social Security Law*. Cheltenham & Massachusetts: Edward Elgar Publishing, pp 3-32, p. 24.

⁷⁶⁶ Perulli, A. (Ed.), & Treu, T. (Ed.). (2020). *The Future of Work: Labour Law and Labour Market Regulation in the Digital Era*. Kluwer Law International.

⁷⁶⁷ Engstrom, Viljam. (2019). *Unpacking the debate on social protection floors*. *Goettingen Journal of International Law*, 9(3), pp. 573-574.

⁷⁶⁸ International Labour Organization, United Nations Human Rights Commission, (2025) 'Right to Social Security Fact Sheet No. 39' New York and Geneva, p. 9

⁷⁶⁹ Committee of Economic, Social and Cultural Rights (2007), General Comment No. 19, *The Right to Social Security* (art. 9). E/C.12/GC/19. United Nations: Economic and Social Council, p. 14, par. 46.

In essence, the evolution of international human rights legislation has transformed social security from a matter of national discretion into a subject of international control and supervision. States are no longer free to abstain from action; they are legally bound to establish and maintain robust social security systems that guarantee individual social rights.⁷⁷⁰ This commitment, while imposing significant obligations on national legislators and administrative frameworks, ultimately ensures that every human being can attain a social position consistent with the fundamental right to social security.

Furthermore, the Council of Europe's European Social Charter, supported by the European Code of Social Security, establishes clear state obligations to create, maintain, and progressively develop social security systems that provide comprehensive coverage for all workers, including self-employed and non-nationals.⁷⁷¹ States must ensure these systems meet minimum standards, originally based on ILO Convention No. 102 and later elevated by the Code, and guarantee access to social and medical assistance regardless of prior contributions. The European Committee of Social Rights monitors compliance by assessing state reports and interpreting the Charter's provisions, emphasising transparency, adequacy of benefits, and equal treatment across borders.⁷⁷² Together, these instruments require states to build inclusive, sustainable, and forward-looking social protection frameworks that adapt to social and economic changes while safeguarding social rights both nationally and internationally.⁷⁷³

The European Union's role in social policy remains characterised by coordination and support rather than direct harmonisation. The EU's legal framework, primarily through the TFEU, establishes the foundations for cooperation, equality, and citizen rights in social security, yet leaves substantive control to Member States.⁷⁷⁴

⁷⁷⁰ Jean-Michel Servais (2014), *International Standards on Social Security: Lessons from the past for a better implementation*, Manila, p. 7, https://islssl.org/wp-content/uploads/2014/12/Servais_2014_Asian_Conf.pdf

⁷⁷¹ Art. 12 Of the 1961 European Social Charter (ETS No. 035)

⁷⁷² Spagnolo, A. (2022). They Are not Enforceable, but States Must Respect Them: An Attempt to Explain the Legal Value of Decisions of the European Committee of Social Rights. *European Papers*, 7(3), 1495–1516.

⁷⁷³ Otting, A. (1996, March). History, development and impact of the European Code of Social Security. Presented at the Seminario Sobre Normatividad Internacional de la Seguridad Social, Mexico, P. 8.

⁷⁷⁴ Pacolet, J., & De Wispelaere, F. (2016). Bridging the gap between welfare and mobility: The interaction between intra-EU mobility and access to social protection (Research Paper No. 36). European Social Policy Network (ESPN), p. 29.

The Charter of Fundamental Rights of the European Union does not specify the precise manner in which social assistance should be organised; however, its provisions unequivocally affirm that everyone is entitled to social assistance and that the state is obliged to ensure the effective guarantee of this right.⁷⁷⁵

As a non-binding instrument, the EPSR should be seen as a means of supporting and strengthening existing social rights, not as a new set of rights that replaces the EU Charter of Fundamental Rights. It includes essential principles that go beyond the EU Charter and draws inspiration from the European Social Charter. In doing so, the EPSR helps connect these important frameworks and reflects how social protection is evolving across the European Union.⁷⁷⁶

Regarding the social security coordination mechanism, although these regulations do not explicitly require Member States to establish social security schemes for non-standard workers, they assume the existence of such systems and oblige Member States to coordinate them to safeguard the rights of mobile individuals. For non-standard workers, the regulations guarantee that their acquired social security rights are recognized and maintained, thereby indirectly reinforcing the need for Member States to adequately include these workers in their national social security frameworks.⁷⁷⁷

The evolution of platform work has exposed fundamental limitations in traditional labour and social security frameworks, revealing the need for adaptive mechanisms that can accommodate emerging forms of work.⁷⁷⁸ The analyses presented highlight that the classical dichotomy between employment and self-employment is increasingly insufficient for capturing the realities of contemporary work arrangements.⁷⁷⁹ Platform labour is characterised by fragmentation, income volatility, and algorithmic management, producing challenges not only for labour law enforcement but also for the collection of contributions and the provision of adequate social protection.⁷⁸⁰ These

⁷⁷⁵ Bernitz, U., Mårtensson, M., Oxelheim, L., & Persson, T. (Eds.). (2018). Bridging the prosperity gap in the EU: The social challenge ahead. Edward Elgar Publishing. <https://doi.org/10.4337/9781786436672>, p. 39.

⁷⁷⁶ De Schutter, O. (2018, November 14). The European Pillar of Social Rights and the role of the European Social Charter in the EU legal order [Working paper]. Council of Europe., p. 44.

⁷⁷⁷ van der Mei, Anne-Pieter, Melin, Pauline, Vankova, Zveda, & Verschueren, Herwig. (2018). The external dimension of eu social security coordination. *European Journal of Social Security*, 20(2), p. 81.

⁷⁷⁸ De Stefano, V. (2016). The rise of the “just-in-time workforce”: On-demand work, crowdwork, and labour protection in the “gig-economy.” *Comparative Labour Law & Policy Journal*, 37(3), pp. 471–504.

⁷⁷⁹ Schoukens, P., Degryse, C., & Pochet, P. (2020). The European Pillar of Social Rights: Filling the gaps in social protection. In C. Barnard & T. Prosser (Eds.), *The foundations of EU social law*, pp. 431–455.

⁷⁸⁰ Tilesik, A., & Marquis, C. (2013). Punctuated generosity: How mega-events and natural disasters affect corporate philanthropy in U.S. communities. *Administrative Science Quarterly*, 58(1), 111–148

dynamics place a significant proportion of platform workers at risk of exclusion, forming a “missing middle” whose irregular earnings and non-standard engagement prevent full participation in social security systems.⁷⁸¹

The 2019 Council Recommendation on access to social protection for workers and the self-employed represents a pivotal normative framework in addressing these challenges.⁷⁸² By advocating a status-neutral approach and emphasising effective participation in social security schemes, the Recommendation moves beyond formalistic reliance on contract type, promoting inclusivity for non-standard and platform-based workers.⁷⁸³ Preparatory documents and the accompanying Impact Assessment underscore the urgency of formalising informal labour, recognising that social protection gaps are most acute in atypical and fragmented work arrangements.⁷⁸⁴ Moreover, the Recommendation situates social security as a tool not only of economic stability but also of social cohesion, reinforcing the EU’s broader objectives of inclusion and fairness.⁷⁸⁵

Despite the normative clarity offered by the EPSR, the 2019 Recommendation, and subsequent instruments such as the 2021 Action Plan, practical barriers persist.⁷⁸⁶ The organisation, allocation, and payment of contributions remain a critical bottleneck. Complex and burdensome administrative procedures, fragmented income streams, and contested responsibility for contributions continue to inhibit compliance and limit access to entitlements. Comparative evidence from European Member States illustrates that innovative approaches, such as monotax systems, transaction-based contributions, hybrid financing models, tiered contribution schemes, and portable accounts, offer promising pathways to reduce exclusion and align social protection with the realities of digital platform work.⁷⁸⁷ These mechanisms demonstrate that social security

⁷⁸¹ Sieker, F. (2022). *Social protection and the missing middle in platform economies*. Cambridge University Press.

⁷⁸² Council of the European Union. (2019). *Council Recommendation on access to social protection for workers and the self-employed*.

⁷⁸³ European Commission. (2019). *European Pillar of Social Rights*. Publications Office of the European Union.

⁷⁸⁴ European Commission. (2019). *Impact Assessment accompanying the Recommendation on access to social protection*.

⁷⁸⁵ De Becker, S., Schoukens, P., & Pulignano, V. (2024). Extending social protection to non-standard workers: A comparative perspective. In *Labour Law and Social Security in Europe* pp. 233–259.

⁷⁸⁶ European Commission. (2021). *European Pillar of Social Rights Action Plan*.

⁷⁸⁷ Springer Nature. (2021). *Social protection and platform work: Recitals 11 and 18 of the 2019 Recommendation*.

systems can be both flexible and sustainable, accommodating earnings variability while preserving long-term rights and entitlements.⁷⁸⁸

The findings emphasise that policy design must integrate administrative simplicity, automated and algorithmically informed reporting, and equitable allocation of contribution responsibilities to enhance participation and formalisation.⁷⁸⁹ Portable social security accounts and hybrid funding mechanisms, in particular, offer solutions for multi-platform engagement and cross-border mobility, directly addressing fragmentation and reinforcing the portability of rights. Simultaneously, safeguarding the sustainability of national systems remains essential, highlighting the tension between inclusivity and financial viability in social protection policy.⁷⁹⁰

In conclusion, achieving an inclusive and effective social security contribution system for platform and non-standard workers requires a multi-faceted approach.⁷⁹¹ This includes legislative innovation, administrative adaptation, technological integration, and targeted financial incentives. By aligning contribution obligations with actual income flows, embracing status-neutral coverage, and institutionalising portability, EU Member States can reduce informal work, secure entitlements for the “missing middle,” and realise the social protection objectives articulated in the EPSR and the 2019 Recommendation.⁷⁹² Ultimately, the transformation of social security systems to accommodate platform work is not solely a technical or administrative challenge; it is a fundamental test of the EU’s commitment to equitable, adaptive, and inclusive labour and social protection policies in the twenty-first century.⁷⁹³

⁷⁸⁸ De Stefano, V., & Aloisi, A. (2018). European legal framework for crowdwork: Current status and future perspectives. *Industrial Law Journal*, 47(3), 321–348.

⁷⁸⁹ Tilburg University Research. (2020). Transparency and inclusion in social security for platform workers.

⁷⁹⁰ European Commission. (2023). Report on implementation of the 2019 Recommendation on access to social protection for workers and the self-employed.

⁷⁹¹ Schoukens, P., & Degryse, C. (2021). *Flexicurity and social protection in Europe: Policy pathways for platform workers*. Routledge.

⁷⁹² De Becker, S., Schoukens, P., & Pulignano, V. (2024). Extending social protection to non-standard workers: A comparative perspective. Springer Nature

⁷⁹³ European Commission. (2019). *European Pillar of Social Rights*. Publications Office of the European Union, pp. 12–14.

Looking ahead, the future direction of EU social protection regulations focuses on expansion. Beyond simply broadening the personal scope, the key priorities for upcoming legislation are enhancing benefits and increasing coverage to ensure more comprehensive social protection.⁷⁹⁴

CHAPTER 6: Recalibrating Social Protection in Europe's Platform Economy

6.1. Introduction: A New Frontier for Social Protection

The rise of the digital platform economy has introduced a fundamental challenge to Europe's social protection systems. Across the continent, millions are now engaged in "gig work," operating as seemingly independent contractors. While the new working model offers flexibility, it often comes at a significant cost: a lack of access to fundamental social safety nets, such as unemployment benefits, paid sick leave, and pensions.

With the ongoing processes of digitalisation, automation, and globalisation, social protection systems will need to evolve to meet changing circumstances and emerging demands.⁷⁹⁵ Many of these jobs take the form of non-standard employment, encompassing a variety of contracts that differ from the traditional model of full-time, open-ended, dependent work. This standard model remains the central reference point for most labour laws and social security policies, making it challenging to ensure adequate protection for workers in these more flexible arrangements.⁷⁹⁶

Gaps in social protection coverage for workers in emerging forms of employment pose numerous challenges for the future of work. Insufficient protection exposes workers to the uncertainties of

⁷⁹⁴ See, for example, The Council Recommendation on access to social protection for workers and the self-employed (2019), which outlines the EU's political commitment to improving social security for non-standard and platform workers. Although not legally binding, it provides a clear framework urging Member States to close coverage gaps, ensure adequate benefits, facilitate portability, and increase transparency in social protection systems.

⁷⁹⁵ International Labour Organization. (2017). Universal social protection to achieve the Sustainable Development Goals (World Social Protection Report 2017–19). Geneva, Switzerland: International Labour Office. https://www.ilo.org/global/publications/books/WCMS_604882/lang--en/index.htm.

⁷⁹⁶ Degryse, C. (2016). Digitalisation of the economy and its impact on labour markets (ETUI Working Paper No. 2). Brussels, Belgium: European Trade Union Institute. <https://www.etui.org/Publications2/Working-Papers/Digitalisation-of-the-economy-and-its-impact-on-labour-markets>. (last opened on 01.09.2025)

the labour market, erodes their rights and dignity, exacerbates poverty and inequality, and threatens the foundational social contract of modern societies. Moreover, these coverage gaps can distort employment and hiring practices, reduce incentives for investment in education and skills, and undermine fair competition among businesses.⁷⁹⁷

Expanding social protection to include all forms of employment extends beyond ensuring fairness and safeguarding workers and their families. It also helps create a more level playing field across different types of work and supports smoother transitions within the labour market. By providing security for those moving between jobs or engaging in non-standard or self-employed work, such measures reduce the risks associated with these forms of employment. At the same time, they remove incentives for employers to favour low-cost, unprotected labour over better-protected jobs, promoting greater equity and reducing fragmentation within the labour market.⁷⁹⁸

In the context of social protection in the platform economy, scholars have proposed a range of approaches to develop regulatory solutions for the challenges at hand. Since social security systems differ not just because of the historical evolution but also due to the economic, social or political situation of the given country, there is a golden rule: “Generally speaking, there is no 'one-size-fits-all' solution: countries combine different types of protection in different ways ”.⁷⁹⁹

Therefore, access to social protection largely depends on the structure of a country’s social security system. In many nations, these systems are hybrids, combining features of both the Beveridge model, which emphasises universal coverage, and the Bismarck model, which is based on social insurance contributions. Over time, countries have also undertaken efforts to harmonise different schemes, aiming to close gaps and, in some cases, provide near-universal protection, particularly for health-related risks.⁸⁰⁰ In systems with a stronger occupational focus, coverage continues to depend heavily on employment status, even where legislation has been partially adjusted; therefore, the question of the misclassification of the platform workers remains a central question,

⁷⁹⁷ Organisation for Economic Co-operation and Development. (2019). The future of work: OECD Employment Outlook 2019. Paris, France: OECD Publishing. <https://doi.org/10.1787/9ee00155-en>, p. 3-5.

⁷⁹⁸ Behrendt, C., & Nguyen, Q. A. (2018). Innovative approaches for ensuring universal social protection for the future of work. *International Social Security Review*, 71(3), 1–22. <https://doi.org/10.1111/issr.12192>, p.8.

⁷⁹⁹ Behrendt, C., Nguyen, Q. A., & Rani, U. (2019). Social protection systems and the future of work: Ensuring social security for digital platform workers. International Labour Office. <https://www.social-protection.org/gimi/gess/ShowRessource.action?id=55679>, p. 29.

⁸⁰⁰ Daugareilh, I. (2021). Introduction: Social protection for digital platform workers in Europe. *International Social Security Review*, 74(3–4). <https://doi.org/10.1111/issr.12275>, p. 6

not just regarding labour law issues, but also, social security systems can heavily rely on a binary classification.⁸⁰¹

This research seeks to explore and evaluate potential instruments and strategies for establishing a comprehensive and inclusive regulatory framework that effectively safeguards social protection for workers in the gig economy. By examining both legal and policy tools, the study aims to address the structural gaps that leave gig workers vulnerable and to propose mechanisms that ensure their rights and welfare are adequately protected.

6.2. A Limitation in Scope: The Exclusion of Tax, Criminal, and Social Security Matters

The Platform Work Directive marks a significant shift for gig workers⁸⁰², particularly in Central and Eastern Europe, where regulatory gaps have been most pronounced. For the first time, EU law sets a baseline standard that national governments must follow, compelling them to address issues that have long gone unresolved.

The Directive also requires greater openness in algorithmic management, giving workers the right to challenge life-changing automated decisions, such as account deactivation, through a human review process.⁸⁰³ Equally significant is the Directive's emphasis on bringing platform workers into the scope of national social security systems. By obliging platforms to declare the work carried out to competent authorities, it lays the groundwork for more consistent access to benefits.

The objectives of the European Union include, among others, promoting the well-being of its citizens and pursuing Europe's sustainable development, founded on balanced economic growth

⁸⁰¹ Nyombi, C. (2015). A response to the challenges posed by the binary divide between employee and self-employed. *International Journal of Law and Management*, 57(1), 3–16. <https://doi.org/10.1108/IJLMA-03-2013-0012>, (last opened 01.09.2025)

⁸⁰² Polajžar, A. (2025). Analysis of the criteria for establishing the existence of an employment relationship of platform workers under the Platform Work Directive – high expectations and limited outcome? *Revista Jurídica Portucalense*, (38). [https://doi.org/10.34625/issn.2183-2705\(38\)2025.ic-6](https://doi.org/10.34625/issn.2183-2705(38)2025.ic-6), p.108.

⁸⁰³ Art. 11 of the Directive (EU) 2024/2831 On Improving Working Conditions In Platform Work.

and a competitive social market economy, with the overarching goals of achieving full employment and advancing social progress.⁸⁰⁴

The Platform Work Directive is a novel legal solution that, in conformity with the TFEU, aims to enhance the overall working conditions of platform workers while safeguarding their personal data.⁸⁰⁵

A closer look of the Platform Work Directive reveals a critical limitation. The article provides that the legal presumption of an employment relationship “should not apply to proceedings which concern tax, criminal and social security matters.” In other words, the presumption is confined to disputes where worker status matters only for the recognition of labour rights, but not in situations involving access to social security, taxation, or compliance with criminal law.⁸⁰⁶

This distinction creates a structural weakness in the Directive. For platform workers, questions of employment status rarely stop at labour rights alone. In practice, their most pressing challenges often concern whether they qualify for social security benefits⁸⁰⁷, how their income should be treated for tax purposes,⁸⁰⁸ or even what legal responsibilities they may hold under criminal law.⁸⁰⁹ By excluding these areas, the Directive risks addressing only part of the problem while leaving many of the underlying vulnerabilities unresolved.

The practical effect is that the same worker may be treated as an “employee” when it comes to labour rights, but as “self-employed” for social security or taxation purposes. This kind of fragmentation not only undermines the promise of legal certainty but also perpetuates the very insecurity the Directive is meant to tackle. While the text does allow Member States to broaden the scope of the presumption if they so choose, making this optional is unlikely to promote

⁸⁰⁴ Art. 3 of The Treaty On European Union And The Treaty On The Functioning Of The European Union (2016/C 202/01).

⁸⁰⁵ Preamble (16) of the Directive (EU) 2024/2831 On Improving Working Conditions In Platform Work

⁸⁰⁶ Art 5 (3). of the Directive (EU) 2024/2831 On Improving Working Conditions In Platform Work.

⁸⁰⁷ Gyulavári, T. (2024). The first platform work judgment in Central and Eastern Europe. *European Labour Law Journal*, 15(4), 412–429. <https://doi.org/10.1177/20319525241260869>, p. 413.

⁸⁰⁸ For further information see: Lasek-Markey, M. (2024). Irish Supreme Court rules pizza delivery drivers are employees for tax purposes: What's the takeaway for the gig economy in Europe? *European Labour Law Journal*, 15(4), 412–429. <https://doi.org/10.1177/20319525241261032>

⁸⁰⁹ Bolelli, M. (2023). Between Legality and Illegality: How Misclassification and Partial Enforcement Transformed the Italian Labour Market (PhD thesis). University of Duisburg-Essen. <https://doi.org/10.17185/dupublico/82729>, p. 23.

consistency. Instead, it risks producing even greater disparities between Member States, with some extending protection more comprehensively while others adhere to the narrower interpretation.⁸¹⁰

In this sense, Article 5(3) represents more than a technical limitation; it points to a deeper flaw in the Directive's design. By carving out precisely those areas where platform workers face the greatest risk of exclusion, social security and taxation, it restricts the potential of the presumption to bring about genuine change. What emerges is a patchwork of protections rather than the coherent framework that platform work so urgently requires.⁸¹¹

6.3. Collective Bargaining as Necessary, but Neglected Tool

For countries in Central and Eastern Europe, the gig economy has taken root in a distinct historical context. Decades after the transition from communism, many of these nations' labour markets remain characterised by a weaker tradition of collective bargaining and a social dialogue system that is primarily used for monitoring purposes, as well as a higher prevalence of non-standard work arrangements. This has created a fertile ground for the gig economy to flourish, often exploiting pre-existing vulnerabilities.

From the Romanian perspective, the evolution of social dialogue regulation can be primarily described as a forgotten legal institution.

The Romanian Social Dialogue Act⁸¹², which governs collective bargaining, has been revised several times over the years, often in response to political pressures or to address its own shortcomings. To better understand the current shortage of social dialogue, it is essential to examine its legal development during the period of communism's decline and the regime change.

⁸¹⁰ Rainone, S., & Aloisi, A. (2024). The EU Platform Work Directive: What's new, what's missing, what's next? (ETUI Research Paper – Policy Brief No. 2024.06). European Trade Union Institute. <https://doi.org/10.2139/ssrn.4957467>, p. 4.

⁸¹¹ Countouris, N., & Adams-Prassl, J. (2024, May 21). Beyond bogus self-employment: The EU Platform Work Directive's presumption of employment, and its implications for the future of employment rights in the gig economy. Oxford Human Rights Hub. <https://ohrh.law.ox.ac.uk/beyond-bogus-self-employment-the-eu-platform-work-directives-presumption-of-employment-and-its-implications-for-the-future-of-employment-rights-in-the-gig-economy/>

⁸¹² Social Dialogue Act of Romania, Official Gazette, No. 367/22 (hereinafter: Social Dialogue Act of Romania).

During the period of the Soviet-type dictatorship, social dialogue and collective bargaining were extensively regulated and structured, resulting in an exceptionally high level of coverage that encompassed approximately 97–98% of employees under collective agreements.⁸¹³ At that time, the system was not regarded as problematic from a legal perspective, as it appeared largely effective within its specific context. However, the central issue of that era lay in the misuse of social dialogue, which functioned in practice as a mechanism for the regime to monitor and exercise control over the population.⁸¹⁴

Following the collapse of the Soviet-type dictatorship, Romania's economic strategy primarily relied on attracting foreign investment. This approach, however, was severely disrupted by the 2008 global financial crisis, which led to a sharp decline in external capital inflows. In response, Romania introduced several reforms, most notably the Social Dialogue Act of 2011.⁸¹⁵ At the same time, the financial support granted by the International Monetary Fund and the European Union was tied to the adoption of specific legal measures designed to stabilise both the economy and the labour market.⁸¹⁶

This period marked a turning point in Romania's labour regulation. To make the economy more appealing to investors, the government enacted amendments through a special legislative procedure that bypassed parliamentary debate, empirical research, and consultation with experts or social partners. While expedient, this method produced legislation that was widely criticised for its deficiencies. Among the most significant changes were the abolition of national-level collective bargaining, the weakening of protections for employee representatives, and the replacement of branch-level bargaining with sectoral-level structures.

⁸¹³ Vallasek, M. (2020). A kollektív munkaszerződés szabályozásának problémái Romániában. *Scientia in Erdélyi Jogélet*, 218(3).

⁸¹⁴ Trif, A. (2004). Overview of industrial relations in Romania. *Journal for Labour and Social Affairs in Eastern Europe*, 7(1), p. 45–68.

⁸¹⁵ Trif, A., & Szabó, I. G. (2022). Where to find power resources under a hostile government? The prospects for trade union revitalisation after the loss of institutional resources in Hungary and Romania. *European Journal of Industrial Relations*, 28(2), p. 129–150. <https://doi.org/10.1177/09596801211017123>.

⁸¹⁶ Vallasek, M. (2019). Collective bargaining and social dialogue in Romania. *Acta Universitatis Sapientiae, Legal Studies*, 8(1), 121–139. <https://doi.org/10.2478/ausleg-2019-0007>.

These reforms had far-reaching consequences. Studies reveal that collective agreement coverage, which had previously encompassed almost the entire workforce (around 97–98%), dropped dramatically to an estimated 35%.⁸¹⁷

The new Social Dialogue Act, which came into force on 25 December 2022, is designed to address the gaps left by previous legislation and to increase the reach of collective agreements among employees. It does so by reintroducing national-level collective bargaining, expanding the range of sectors where such bargaining can occur, and implementing measures to protect employee representatives.⁸¹⁸

This shift not only reshaped the collective bargaining landscape but also represented a profound transformation of social dialogue in post-crisis Romania. As a result, the country was left without an effective mechanism for regulating platform work and the gig economy, despite social dialogue being widely regarded by scholars as one of the most important legal institutions for governing these emerging forms of work.⁸¹⁹

In this environment, platform workers in CEE frequently find themselves in a legal grey zone. Their classification as independent contractors is often not a choice, but a necessity, leaving them without the protections that standard labour laws provide. This results in significant gaps in social security coverage, including for basic benefits like old-age pensions, sick pay, and unemployment insurance. Platforms can therefore "free-ride" on traditional social protection systems, which were not designed for this fragmented and often precarious work. While Western European countries have seen numerous high-profile court cases challenging this status, CEE nations have been slower to develop a clear, unified legal stance. This regulatory ambiguity leaves workers vulnerable to risks and enables platforms to evade responsibility for their social contributions.⁸²⁰

⁸¹⁷ Adăscăliței, D., & Guga, Ș. (2018). International actors and trade unions during postsocialism and after: The case of Romania. *Employee Relations*, 40(4), 692–708. <https://doi.org/10.1108/ER-01-2017-0017>.

⁸¹⁸ Social Dialogue Act of Romania.

⁸¹⁹ Sieker, F. (2022). Platform work and access to social protection across major European countries. *Journal of International and Comparative Social Policy*, 38(3), 193–207. <https://doi.org/10.1017/ics.2022.13>, p. 4

⁸²⁰ See: Sieker, F. (2022). Platform work and access to social protection across major European countries. *Journal of International and Comparative Social Policy*, and Stylogiannis, C. (2023). The effective application of the right to collective bargaining for self-employed (platform) workers: 'Not such an easy task'. *European Labour Law Journal*, 14(4).

6.4. Benefits of Collective Bargaining: Examples from Northern Europe

Non-standard work patterns often challenge labour regulations and social security systems to expand and cover the non-standard workers. In this regard, social dialogue has always been a recurring legal “weapon” in the fight against precariousness and exclusiveness.⁸²¹

Integrating platform workers into social security systems and existing labour standards is not solely a legal challenge. Equally important is ensuring that these workers can participate in social dialogue through trade unions, which is a necessary step for effectively regulating the platform economy.⁸²² Moreover, some academics argue that a possible solution might be to rely on the social partners totally and one potential approach for the legislator would be to maintain strict neutrality, leaving matters entirely to the social partners, while accepting the risk that national or European competition authorities could challenge a collective agreement, as occurred in Denmark. The eventual outcome might resemble the Irish model, where regulatory responsibilities are shared between the government and the social partners.⁸²³

Platform workers often respond to social exclusion or legal misclassification through collective action, which has played a crucial role in organising them, either via ad hoc associations or formal trade unions.⁸²⁴ The inclusion of platform workers in collective bargaining has a direct effect on the number of court cases. The Nordic countries and Austria have chosen to integrate platform workers into their social dialogue, offering them the opportunity to engage in collective bargaining. Research has shown that the outcome has been a low number of judicial cases.⁸²⁵

Trade unions can play a crucial role in enhancing social protection for platform workers. A notable example is the Danish union 3F, which negotiated the world’s first collective agreement in the

⁸²¹ Schoukens, P. (2020). Digitalisation and social security in the EU: The case of platform work—from work protection to income protection? *European Journal of Social Security*, 22(4), 434–451. <https://doi.org/10.1177/1388262720971300>, p. 441

⁸²² Behrendt, C., Nguyen, Q. A., & Rani, U. (2019). Social protection systems and the future of work: Ensuring social security for digital platform workers. International Labour Office. <https://www.social-protection.org/gimi/gess/ShowRessource.action?id=55679>, p. 33.

⁸²³ Daugareilh, I. (2021). Introduction: Social protection for digital platform workers in Europe. *International Social Security Review*, 74(3–4). <https://doi.org/10.1111/issr.12275>, p. 9

⁸²⁴ Daugareilh, I. (2021). Introduction: Social protection for digital platform workers in Europe. *International Social Security Review*, 74(3–4). <https://doi.org/10.1111/issr.12275>, p. 6.

⁸²⁵ Sieker, F. (2022). Platform work and access to social protection across major European countries. *Journal of International and Comparative Social Policy*, 38(3), 193–207. <https://doi.org/10.1017/ics.2022.13>, p. 9.

platform economy with Dansk Elhkrver, an online platform offering cleaning services. According to this agreement, freelance workers on the platform are reclassified as “employees” once they have completed 100 hours of work, giving them access to better wages and stronger social protection.⁸²⁶ Furthermore, in Denmark, trade unions also reached a collective agreement directly with the cleaning platform. This agreement provided platform workers with the opportunity to earn higher wages and access additional social benefits, including extra sick pay and increased pension contributions, while still allowing them to choose whether to be classified as employees or remain self-employed.⁸²⁷ Furthermore, in Norway, a collective agreement was reached with the food delivery company Foodora, providing riders with higher wages and an early retirement benefit.⁸²⁸ On a larger scale, it is worth noting that in 2019, the world’s first collective agreement between a bike courier platform and a trade union was reached. The agreement established regulations for working hours and rest periods, introduced a minimum wage, and expanded paid leave entitlements.⁸²⁹

A common feature of these countries is the extensive social protection coverage provided to self-employed workers. Because access to social protection is generally less problematic in these countries, governments seem less inclined to intervene directly; instead, they rely on the social partnership model, which traditionally governs industrial relations, to facilitate conflict resolution.⁸³⁰

The digital environment, with its ability to promote transparency and share information, provides a natural setting for more interactive forms of collaboration. The Frankfurt Declaration envisions this shift, calling for a ‘co-operative turn’ in the platform economy, where “workers, clients, platform operators, investors, policymakers, and worker organisations work together to improve

⁸²⁶ Vandaele, K. (2018). Will trade unions survive in the platform economy? Emerging patterns of platform workers’ collective voice and representation in Europe (ETUI Research Paper No. 2018-05). Brussels, Belgium: European Trade Union Institute.

⁸²⁷ Eriksen, A. (2021, May 12). Groundbreaking agreement: Danes can now order takeaways with a clean conscience. *Fagbladet* 3F.

⁸²⁸ Ilsøe, A. (2020). The Hilfr agreement: Negotiating the platform economy in Denmark (FAOS Research Paper No. 176). FAOS, University of Copenhagen.

⁸²⁹ Widner, J. (2019). Gig economy un-gigged: Collective bargaining agreement for bike couriers. GPP. https://www.gpp.at/fileadmin/content/anwalt/Widner/Publikationen/Gig_economy_ungigged_collective_bargaining_agreement_for_bike_couriers.pdf.

⁸³⁰ De Groen, W. P., Kilhoffer, Z., Lenaerts, K., & Mandl, I. (2018). Employment and working conditions of selected types of platform work. Luxembourg: Publications Office of the European Union.

outcomes for all stakeholders.”⁸³¹ Some academics are arguing that this suggests a new approach to collective bargaining—one that includes all relevant actors, rather than being limited to trade unions and employers.⁸³²

6.5. Detaching Social Protection from Employment Status

In many occupationally based systems, social protection remains closely tied to traditional Fordist employment, leaving non-standard workers vulnerable. Yet, some countries have developed ways to include freelancers or to extend social security provisions beyond formal employment contracts. This demonstrates that social protection can be effectively distanced from employment status, offering legislators the possibility of safeguarding the rights and welfare of platform and gig economy workers while maintaining the principles of solidarity and redistribution central to social security systems.⁸³³

Reflecting further on the possibility of distancing social protection from employment, the idea of decoupling social security from the traditional employment relationship has often emerged as a pathway toward simplified “safety nets” for the poor or, in its more expansive form, toward the introduction of a universal basic income.⁸³⁴

To understand the concept of decoupling social security from employment, a four-way division of social protection can be identified. Social protection systems can be structured in several ways, each with varying degrees of inclusiveness for workers in non-standard employment arrangements.⁸³⁵ The most restrictive approach is one in which benefits are tied to a specific

⁸³¹ Frankfurt Declaration 8, https://faircrowd.work/files/docs_20161214_frankfurt_paper_on_platform_based_work_en_b939ef89f7e5f3a639cd6a1a930feffd8f55cecb.pdf (last opened 01.09.2025)

⁸³² du Toit, Darcy. (2019). Platform work and social justice. *Industrial Law Journal* (Juta), 40(1), p. 7.

⁸³³ Daugareilh, I. (2021). Introduction: Social protection for digital platform workers in Europe. *International Social Security Review*, 74(3–4). <https://doi.org/10.1111/issr.12275>, p. 6-7.

⁸³⁴ Behrendt, C., Nguyen, Q. A., & Rani, U. (2019). Social protection systems and the future of work: Ensuring social security for digital platform workers. International Labour Office. <https://www.social-protection.org/gimi/gess/ShowRessource.action?id=55679>, p. 27.

⁸³⁵ Behrendt, C., & Nguyen, Q. A. (2018). Innovative approaches for ensuring universal social protection for the future of work. *International Social Security Review*, 71(3), 1–22. <https://doi.org/10.1111/issr.12192>, p. 5-6

employer, such as severance pay, sick leave, or employer-sponsored health insurance. These protections typically end with the termination of the contract, leaving many non-standard workers without coverage. Therefore, when access to social protection is tied to a contract with a single employer or limited to a specific sector, workers in non-standard or emerging forms of employment are left especially vulnerable. At the end of a contract, or when changing occupations, they may lose not only their income security but also their accumulated benefits, creating a cycle of precarity.⁸³⁶

A more flexible model links entitlements to salaried employment in general, typically through social insurance schemes like health, unemployment, or pension coverage, which often follow workers across jobs. However, even here, gaps remain for temporary, agency, or dependent self-employed workers unless additional safeguards are introduced. A third approach connects protection to participation in gainful work, regardless of employment status, thereby potentially covering both salaried and non-salaried workers through contributory or tax-financed schemes. While more inclusive, these often disadvantage women and younger workers due to household-based eligibility criteria. The most universal form of protection is linked to residency rather than employment, and is financed through taxation, including benefits such as social assistance, family allowances, pensions, and universal healthcare. This model is least dependent on labour market status and therefore most effective in preventing exclusion.⁸³⁷

Once again, the principle that there is no 'one-size-fits-all' solution proves valid; countries typically combine these approaches, drawing on multiple models when constructing their national social security systems.⁸³⁸ Totally decoupling social protection from employment and undermining existing coverage mechanisms will not ensure adequate protection. On the contrary, such measures risk reducing both the scope and level of benefits while shifting attention away from employers' obligation to contribute fairly to social security systems.⁸³⁹ Moreover, such an approach would

⁸³⁶ Kuddo, A., Robalino, D. A., & Weber, M. (2015). *Balancing regulations to promote jobs: From employment contracts to unemployment benefits*. Washington, DC: World Bank.

⁸³⁷ Daugareilh, I. (2021). Introduction: Social protection for digital platform workers in Europe. *International Social Security Review*, 74(3–4). <https://doi.org/10.1111/issr.12275>, p. 6–7.

⁸³⁸ Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). *Access to social protection for people working on non-standard contracts and as self-employed in Europe: A study of national policies*. Brussels: European Commission, p. 20.

⁸³⁹ Alfes, L., Lund, F., & Moussié, R. (2017). Approaches to social protection for informal workers: Aligning productivist and human rights-based approaches. *International Social Security Review*, 70(1), 67–85. <https://doi.org/10.1111/issr.12109>.

mean a heavy reliance on private insurance schemes. These arrangements offer limited risk pooling and redistribution, often excluding vulnerable workers with irregular incomes, and they maintain a strong dependence on employment, which can potentially deepen existing inequalities.⁸⁴⁰

Furthermore, all contributory forms of social protection are inherently tied to a person's capacity to work and maintain a steady income until a certain point. This connection means that individuals with irregular or precarious earnings, such as many gig or platform workers, may face significant barriers to accessing these protections.⁸⁴¹

There is a broad consensus that strengthening social protection for the future of work will likely require a combination of contributory mechanisms, primarily social insurance, and non-contributory, tax-financed measures. The dual approach outlined in the ILO Recommendation on National Floors of Social Protection highlights the importance of well-coordinated schemes that integrate both contributory and non-contributory elements. Such integration is essential for closing coverage gaps, establishing a social protection floor, and providing more comprehensive and adequate social protection for all.⁸⁴²

6.6. Voluntary Social Protection

Voluntary social protection arrangements are structured to give platform workers the choice to participate in coverage. This can take the form of private insurance plans, schemes organised by the platforms themselves, or optional contributions to public pension and health insurance programs. Such mechanisms provide flexibility, enabling workers to select the level of coverage that best aligns with their individual financial situation and work patterns.⁸⁴³

⁸⁴⁰ Aleksynska, M., & Berg, J. (2016). Firms' demand for temporary labour in developing countries: Necessity or strategy? Conditions of Work and Employment Series, No. 77. Geneva: International Labour Organization.

⁸⁴¹ International Labour Organization. (2016a). Non-standard forms of employment: Understanding challenges, shaping prospects. Geneva: International Labour Organization. P. 4-6.

⁸⁴² Behrendt, C., Nguyen, Q. A., & Rani, U. (2019). Social protection systems and the future of work: Ensuring social security for digital platform workers. International Labour Office. <https://www.social-protection.org/gimi/gess/ShowRessource.action?id=55679>, p. 27

⁸⁴³ Eichhorst, W., Braga, M., & Famira-Mühlberger, U. (2013). Social protection rights of economically dependent self-employed workers. Office for Official Publications of the European Communities, p. 48.

The key strength of voluntary social protection schemes is their adaptability. They allow workers to participate without being tied to fixed contribution obligations, which can be particularly attractive for those juggling multiple platforms or undertaking irregular work. Administratively, these schemes are generally simpler to operate and oversee, as they demand less regulatory intervention and impose minimal operational burden on the platforms themselves.⁸⁴⁴

Voluntary social protection schemes, while flexible, carry notable limitations. Participation rates are often low, especially among the most vulnerable workers who may lack the financial capacity to contribute to optional coverage. This limited engagement undermines risk pooling, diminishes the redistributive impact of social protection, and potentially widens inequalities within the platform workforce. Furthermore, workers in precarious or irregular employment may be entirely excluded, leaving them without access to fundamental safeguards such as health coverage, unemployment benefits, or retirement pensions.⁸⁴⁵

Several real-world examples illustrate both the potential and limitations of voluntary schemes. In select countries, Uber and Deliveroo have introduced optional insurance schemes covering accidents or health risks, often tied to the number of hours worked or rides completed.⁸⁴⁶ Similarly, some EU countries have experimented with voluntary retirement or health insurance schemes for self-employed individuals, offering insights into uptake patterns and administrative challenges.⁸⁴⁷

Academic research highlights the limitations of voluntary participation. Academics argue that voluntary schemes are unlikely to provide universal coverage, particularly for workers with irregular or low incomes.⁸⁴⁸ The ILO emphasises that without compulsion or strong incentives,

⁸⁴⁴ Forde, C., Stuart, M., Joyce, S., Oliver, L., Valizade, D., Alberti, G., Hardy, K., Trappmann, V., Carson, C., Katja, J., & Yordanova, G. (2017). The social protection of workers in the platform economy (IP/A/EMPL/2016-11). European Parliament. [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/614184/IPOL_STU\(2017\)614184_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/614184/IPOL_STU(2017)614184_EN.pdf), p. 71.

⁸⁴⁵ Behrendt, C., Nguyen, Q. A., & Rani, U. (2019). Social protection systems and the future of work: Ensuring social security for digital platform workers. International Labour Office. <https://www.social-protection.org/gimi/gess/ShowRessource.action?id=55679>, p. 29.

⁸⁴⁶ Wang, Q. (2024). Risky business: How food-delivery platform riders understand and manage safety at work. International Journal of Environmental Research and Public Health, 21(10), 3456. <https://doi.org/10.3390/ijerph21103456>, p. 3-4.

⁸⁴⁷ See: Sagan, A., & Thomson, S. (Eds.). (2016). Voluntary health insurance in Europe: Country experience (Observatory Studies Series, No. 42). Copenhagen, Denmark: European Observatory on Health Systems and Policies.

⁸⁴⁸ Berg, J. (2016). Income security in the on-demand economy: Findings and policy lessons from a survey of crowdworkers (Conditions of Work and Employment Series, No. 74). Geneva, Switzerland: International Labour Office, p. 19-21.

voluntary contributions fail to effectively close the social protection gap in non-standard employment.⁸⁴⁹

6.7. Mandatory Social Protection

Across the European Union, mandatory social protection for self-employed individuals remains largely limited. Even in the few cases where self-employed workers are formally included in compulsory schemes, this inclusion does not necessarily translate into adequate or effective coverage.⁸⁵⁰

Mandatory social protection mechanisms require employed persons and/or employers to contribute to social insurance schemes, ensuring comprehensive coverage regardless of individual choice.⁸⁵¹ This can include statutory pensions, health insurance, unemployment benefits, or disability coverage. Mechanisms for enforcing mandatory contributions include direct worker contributions, platform-level contributions, or levies earmarked specifically for social protection funding.

Mandatory systems offer clear advantages. By ensuring universal coverage, they provide a foundation for social equity and risk pooling.⁸⁵² Contributions collected from all relevant participants strengthen the sustainability of social protection systems and help reduce inequality, particularly for low-income or highly precarious workers. Furthermore, mandatory schemes

⁸⁴⁹ International Labour Organization. (2018a). Innovative approaches for ensuring universal social protection for the future of work (Issue Brief No. 12). Geneva, Switzerland: International Labour Office, p. 15-18.

⁸⁵⁰ International Labour Organization. (2018a). Innovative approaches for ensuring universal social protection for the future of work (Issue Brief No. 12). Geneva, Switzerland: International Labour Office, p. 15-16.

⁸⁵¹ Schoukens, P., & Bruynseraede, C. (2021). Access to social protection for self-employed and non-standard workers: An analysis based upon the EU Recommendation on access to social protection (Integrated version of thematic discussion reports). Leuven, Belgium: Acco. https://eiss.be/onewebmedia/Access%20to%20social%20protection_WEB.pdf, o. 27-28.

⁸⁵² A good example in this regard is Slovakia, with the approach of “every job counts” when it comes to social protection. For further information see: Behrendt, C., Nguyen, Q. A., & Rani, U. (2019). Social protection systems and the future of work: Ensuring social security for digital platform workers. *International Social Security Review*, 72(3), 17–41. <https://doi.org/10.1111/issr.12212>, p. 29-31.

reinforce workers' rights by legally entitling them to benefits such as sickness leave, retirement pensions, and unemployment protection.⁸⁵³

Nevertheless, mandatory approaches face challenges. Platforms may resist contributing financially, citing increased operational costs or competitive disadvantages. Administrative and enforcement complexities arise, particularly in cross-border contexts or for smaller platforms without formal reporting structures.⁸⁵⁴ For some smaller or newer platforms, the financial burden of mandatory contributions can be significant, potentially discouraging market entry or reducing employment opportunities.

Concrete examples of how mandatory social protection can be applied are evident in several European countries. In Spain, for instance, the Riders Law requires gig economy platforms to make social security contributions for delivery workers who are recognised as employees.⁸⁵⁵ France has adopted a similar approach, requiring solo self-employed and platform workers to contribute to pension and insurance schemes, thereby extending protection to those engaged in irregular or non-standard forms of employment.⁸⁵⁶ Scholars argue that such mandatory frameworks not only reduce the risk of social exclusion but also contribute to greater labour market stability and reinforce principles of social justice.⁸⁵⁷

6.7. Financing the System: Contributions for the Gig Economy

⁸⁵³ Behrendt, C., Nguyen, Q. A., & Rani, U. (2019). Social protection systems and the future of work: Ensuring social security for digital platform workers. International Labour Office. <https://www.social-protection.org/gimi/gess/ShowRessource.action?id=55679>, p. 34.

⁸⁵⁴ Daugareilh, I. (2019). *The platform economy and social law: Key issues in comparative perspective* (ETUI Working Paper 2019.10). European Trade Union Institute. <https://www.etui.org/sites/default/files/WP-2019.10-EN-v3-WEB.pdf>, p. 19-22.

⁸⁵⁵ Disposición Adicional 23 of Royal Decree-Law 9/2021.

⁸⁵⁶ European Social Insurance Platform (ESIP). (2021, December 3). Study on coverage of (solo) self-employed platform work under unemployment and sickness benefits schemes. European Social Insurance Platform. Retrieved from, p. 12.

⁸⁵⁷ International Labour Organization. (2016a). Non-standard employment around the world: Understanding challenges, shaping prospects. Geneva: International Labour Office. https://www.ilo.org/global/publications/books/WCMS_534326/lang--en/index.htm, p. 251-252.

The rapid expansion of the platform economy has exposed significant limitations in traditional frameworks of labour and social security law. Platform work is increasingly structured around short-term, task-based engagements, often mediated by algorithmic management systems, resulting in income volatility and legal ambiguity for workers.⁸⁵⁸ This work often occurs through informal arrangements, challenging conventional social protection mechanisms and leaving workers vulnerable to coverage gaps.⁸⁵⁹

A central tension arises from the erosion of the classical distinction between employment and self-employment. Platform workers frequently operate in regulatory grey zones, where their legal status is uncertain and the allocation of social security obligations, both in terms of contribution liability and benefit entitlement, is unclear.⁸⁶⁰ This fragmentation is compounded for workers engaging with multiple platforms, where each activity is assessed separately, resulting in overlapping or conflicting classifications that obscure their cumulative rights.⁸⁶¹

The structural organisation of platform work magnifies these challenges. Platforms typically convert what were once continuous jobs into discrete, short-term tasks, creating an inherently precarious work environment.⁸⁶² Irregular and often low earnings, combined with unpaid activities such as waiting for task allocation or performing reputation-enhancing tasks, create unpredictable schedules and income streams.⁸⁶³ Consequently, workers face diminished access to both labour protections and social security benefits, particularly in systems dependent on traditional, stable employment relationships.⁸⁶⁴

⁸⁵⁸ Forde, C., Stuart, M., Joyce, S., Oliver, L., Valizade, D., & Alberti, G. (2017). The social protection of workers in the platform economy. University of Leeds / European Parliament, pp. 35–36.

⁸⁵⁹ International Social Security Association. (2023). Platform workers and social protection: International developments. ISSA, introductory paras.

⁸⁶⁰ Urzi Brancati, C., Pesole, A., & Fernández Macías, E. (2020). The platform economy in Europe: Social protection and labour rights challenges. JRC Science for Policy Report, p. 3.

⁸⁶¹ European Labour Authority. (2023). Social security coordination and protection rights in mobile and cross-border work. ELA, main overview section

⁸⁶² Pulignano, V., Piasna, A., & Keune, M. (2024). Flexibility, precarity and social protection: Adapting social security to the gig economy. *Industrial Relations Journal*, 55(6), 1246.

⁸⁶³ De Becker, E., Schoukens, P., & Daenen, K. (2025). Tackling informality in the platform economy: A social security driven approach. ETUI Working Paper No. WP 2025.07, p. 14.

⁸⁶⁴ Forde, C., Stuart, M., Joyce, S., Oliver, L., Valizade, D., & Alberti, G. (2017). The social protection of workers in the platform economy. University of Leeds / European Parliament, pp. 56-59.

Administrative complexity further exacerbates these issues. Reporting obligations for social security contributions can be burdensome, leading to underreporting or total non-declaration.⁸⁶⁵ Even workers seeking compliance often encounter opaque, bureaucratic procedures that discourage participation and increase the risk of exclusion from protective schemes.⁸⁶⁶

Despite the formal recognition of the right to social protection in the European Pillar of Social Rights and operational measures such as the 2019 Council Recommendation, coverage gaps persist.⁸⁶⁷ Principle 12 of the EPSR affirms that all workers, and under comparable circumstances the self-employed, are entitled to adequate social protection, irrespective of employment type or duration.⁸⁶⁸ The Recommendation seeks to establish minimum standards for both workers and self-employed persons while acknowledging that the organisation of social security remains primarily a Member State competence.⁸⁶⁹ Preparatory documents and the accompanying Impact Assessment explicitly emphasise the need to formalise informal labour, highlighting platform work as a prominent example of evolving labour market dynamics that demand policy innovation.⁸⁷⁰

The 2019 Recommendation further promotes status-neutral coverage, ensuring that fundamental social protection rights apply equally across all forms of professional activity.⁸⁷¹ It stresses that extending coverage alone is insufficient; workers must be able to contribute meaningfully to social security schemes and accumulate entitlements over time.⁸⁷² By recognising the limitations of traditional employment dichotomies, the Recommendation advocates a tailored approach to social protection that accommodates emerging and non-standard forms of work, including algorithmically managed platform labour.⁸⁷³

⁸⁶⁵ Rodriguez Tapia, F., & Datta, K. (2023). Platform work, informality, and social protection: Challenges and policy responses. *Journal of European Social Policy*, 33(1), 7–8.

⁸⁶⁶ Schoukens, P. (2020a). Social security for atypical workers: European trends and national responses. In P. Schoukens & K. Daenen (Eds.), *Non-standard employment and social protection* (pp. 446–449). Edward Elgar.

⁸⁶⁷ European Commission. (2023b). Report on social protection coverage in the EU. Brussels, pp. 4–5.

⁸⁶⁸ European Pillar of Social Rights, Principle 12

⁸⁶⁹ Council of the European Union. (2019). Recommendation on access to social protection for workers and the self-employed, Arts. 2, 153(1), 352 TFEU

⁸⁷⁰ Council of the European Union. (2019). Impact Assessment accompanying the Recommendation on access to social protection, paras. 10–15.

⁸⁷¹ Council of the European Union. (2019). Recommendation on access to social protection for workers and the self-employed (2019/C 387/01). *Official Journal of the European Union*, C 387, 1–8.

⁸⁷² Council of the European Union. (2019). Impact Assessment accompanying the Recommendation on access to social protection for workers and the self-employed. European Commission

⁸⁷³ European Commission. (2021). European Pillar of Social Rights Action Plan. Publications Office of the European Union.

Subsequent EU instruments, such as the 2021 Action Plan and the Directive on Platform Work, reinforce these principles by linking social protection to formalisation efforts and employment inclusion.⁸⁷⁴ Nevertheless, persistent informality, fragmented multi-platform work, and the structural precarity of the gig economy continue to hinder the operationalisation of these rights, highlighting the ongoing need for adaptive, inclusive social security contribution systems that reflect contemporary work realities.⁸⁷⁵

A key barrier to integrating platform work into formal labour frameworks lies in the structure and administration of social security contributions, which is often cited as a primary factor behind the persistence of informal work arrangements within the platform economy.⁸⁷⁶ The complexity and perceived cost of contribution obligations can discourage compliance, particularly when workers bear individual responsibility for declarations and payments. Simplifying financing arrangements has therefore been widely proposed as an effective policy response.⁸⁷⁷ By reducing administrative burdens and streamlining contribution mechanisms at the individual level, national systems may alleviate compliance difficulties, particularly regarding tax and social security obligations, thereby facilitating the transition of platform work into formal social protection schemes.⁸⁷⁸

When it comes to policy instruments, legislators' approaches to the same problem differ significantly. One of the most effective policy instruments for extending social protection coverage to informal platform workers has been the introduction of so-called monotax regimes. These simplified schemes integrate tax liabilities and social security contributions into a single, consolidated payment, thereby significantly reducing administrative complexity.⁸⁷⁹ By lowering compliance costs and easing reporting obligations, monotax systems have proven particularly

⁸⁷⁴ Council of the European Union & European Parliament. (2023). Directive on improving working conditions in platform work

⁸⁷⁵ De Becker, E., Schoukens, P., & Daenen, K. (2025). Tackling informality in the platform economy: A social security driven approach (ETUI Working Paper No. WP 2025.07).

⁸⁷⁶ International Labour Organization. (2021a). World employment and social outlook: The role of digital labour platforms in transforming the world of work. ILO, pp. 12–13; Miti, F., Rani, U., & Huws, U. (2021). Digital labour platforms and the informal economy. *International Labour Review*, 160(3), 394–395; Behrendt, C., Nguyen, Q. A., & Rani, U. (2019). Social protection systems and the future of work: Ensuring social security for digital platform workers. ILO, p. 31.

⁸⁷⁷ Behrendt, C., & Nguyen, Q. A. (2018). Innovative approaches for ensuring social protection of platform workers. International Social Security Association, p. 26.

⁸⁷⁸ Behrendt, C., Nguyen, Q. A., & Rani, U. (2019). Social protection systems and the future of work: Ensuring social security for digital platform workers. ILO, p. 31.

⁸⁷⁹ Ocampo, J. A., & Gómez-Arteaga, N. (2017). Social protection and the future of work: The role of simplified contribution regimes. International Labour Organization, p. 16.

accessible to small-scale economic actors and self-employed workers operating in fragmented, irregular income structures.

Several EU Member States have introduced comparable measures to simplify tax and social security compliance for small-scale economic activity. In Estonia, for example, the entrepreneur account operates as a unified payment mechanism that consolidates income tax, social security contributions, and pension contributions into a single business tax, thereby substantially reducing administrative burdens for micro-entrepreneurs.⁸⁸⁰ While such simplification measures and preferential tax arrangements may incentivise formalisation, safeguards are necessary to prevent businesses from remaining indefinitely within favourable regimes and to ensure a gradual and timely transition into the standard tax and contribution system.⁸⁸¹

A further structural feature of (social) monotax schemes is their frequent reliance on public subsidies to encourage participation.⁸⁸² Evidence suggests that providing upfront financial incentives to encourage contribution compliance may be more effective than focusing solely on expanding benefit entitlements. At the same time, such subsidisation strategies raise concerns regarding the long-term financial sustainability of social security systems.⁸⁸³ Moreover, policymakers must exercise caution to avoid subsidising (informal) platform work in ways that distort competition or reinforce precarious employment models, particularly where support measures are linked to informality as such rather than to workers' actual income levels.⁸⁸⁴

The significance of the contribution payer, the subject of the contribution, is also central to the present issue. Because platform work typically falls outside traditional employment relationships, responsibility for the collection and payment of social security contributions is frequently contested or left undefined. In practice, even when workers exhibit a high degree of economic dependence on a particular platform, the platform often presents itself merely as a digital

⁸⁸⁰ Vallistu, E. (2023). The entrepreneur account in Estonia: Simplifying taxation and social security contributions. Ministry of Social Affairs, p. 15.

⁸⁸¹ Cetrangolo, O., Gómez Sabaini, J. C., & Morán, D. (2014). Monotax regimes and formalisation strategies in Latin America. Economic Commission for Latin America and the Caribbean, p. 71.

⁸⁸² International Labour Organization. (2021a). World employment and social outlook: The role of digital labour platforms in transforming the world of work. ILO, p. 152; Behrendt, C., & Nguyen, Q. A. (2018). Innovative approaches for ensuring social protection of platform workers. International Social Security Association, pp. 18–19.

⁸⁸³ International Labour Organization. (2021a). World employment and social outlook: The role of digital labour platforms in transforming the world of work. ILO, p. 158.

⁸⁸⁴ International Labour Organization. (2021a). World employment and social outlook: The role of digital labour platforms in transforming the world of work. ILO, p. 49.

intermediary rather than as an employer in the legal sense.⁸⁸⁵ This structural ambiguity has prompted scholarly and policy debates on alternative models for assigning contribution liability, including approaches that reallocate or share responsibility among platforms, workers, or third parties.⁸⁸⁶

One possible regulatory response is to place responsibility for collecting and remitting social security contributions on the platform itself. While this model offers a relatively clear institutional channel for ensuring compliance, its practical implementation has revealed significant shortcomings. In several Member States, platform workers have encountered obstacles in accessing social protection because platforms have failed or refused to issue formal payment notifications, despite having facilitated the underlying transactions. As entitlement to social security benefits in such systems often depends on the existence of these notifications, workers lacking the required documentation risk being effectively excluded from coverage.⁸⁸⁷

Comparative experience across Europe illustrates both the potential and the limits of this approach. In Italy, for instance, specific contribution arrangements have been introduced for platform-based food delivery workers, with platforms responsible for reporting contributions to the national social security institute (INPS).⁸⁸⁸ However, empirical studies indicate persistent gaps in effective coverage, particularly where employment status remains contested or where reporting obligations are only partially enforced.⁸⁸⁹ In France, certain platforms operating under the auto-entrepreneur regime are required to provide workers with income statements to facilitate payment of contributions, yet compliance largely depends on platform cooperation and remains uneven in practice.⁸⁹⁰ Similar challenges have been observed in other Member States experimenting with

⁸⁸⁵ Webb, J., Tihanyi, L., Ireland, R. D., & Sirmon, D. G. (2020). You say illegal, I say legitimate: Entrepreneurship in the informal economy. *Academy of Management Review*, 45(4), 1009–1010.

⁸⁸⁶ Weber, T., & Schoukens, P. (2024). Social security and platform work: Rethinking contribution liability in non-standard employment. In P. Schoukens & H. Verschueren (Eds.), *The future of social security in Europe* (pp. 227–230). Edward Elgar; Behrendt, C., Nguyen, Q. A., & Rani, U. (2019). Social protection systems and the future of work: Ensuring social security for digital platform workers. *International Labour Organization*, pp. 31–32.

⁸⁸⁷ Behrendt, C., Nguyen, Q. A., & Rani, U. (2019). Social protection systems and the future of work: Ensuring social security for digital platform workers. *International Labour Organization*, pp. 31–33.

⁸⁸⁸ De Becker, E., Schoukens, P., & Daenen, K. (2025). Tackling informality in the platform economy: A social security driven approach (ETUI Working Paper No. WP 2025.07). *European Trade Union Institute*, p. 14.

⁸⁸⁹ Aloisi, A., & De Stefano, V. (2022). *Your boss is an algorithm: Artificial intelligence, platform work and labour*. Hart Publishing, pp. 146–148.

⁸⁹⁰ Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). Access to social protection for people working on non-standard contracts and as self-employed in Europe. *European Social Policy Network*, pp. 55–57

platform-mediated contribution mechanisms, where the formal allocation of responsibility has not always translated into reliable access to social protection for workers.⁸⁹¹

Taken together, these examples suggest that assigning contribution responsibility to platforms may enhance formal compliance only if accompanied by robust enforcement mechanisms, transparent reporting obligations, and effective remedies for workers in cases of non-cooperation by platforms. Without such safeguards, platform-based contribution collection risks reproducing existing exclusions under a different institutional guise.⁸⁹²

A second model for financing social security in platform work consists in linking contribution payments directly to the transactions carried out through digital platforms. Given that platform workers' earnings are typically generated on a task-by-task basis, individual transactions can serve as a functional proxy for income and thus as an alternative basis for contribution assessment. Embedding social security contributions directly into digital transactions offers the possibility of an automated, continuous financing mechanism, which appears particularly compatible with fragmented, on-demand, and platform-mediated forms of work characterised by irregular income streams.⁸⁹³

Several European experiences illustrate both the potential and the limits of such transaction-based approaches. In France, platforms operating under the auto-entrepreneur framework are required to provide detailed income statements to workers and tax authorities, thereby facilitating the calculation and payment of social security contributions based on platform-generated transactions.⁸⁹⁴ While this system improves traceability, its effectiveness remains closely tied to platform compliance and the accuracy of reported transaction data. In Italy, contribution mechanisms for certain categories of platform-based workers—most notably in food delivery—have increasingly relied on platform-reported transactions to determine contribution bases vis-à-

⁸⁹¹ OECD. (2023). *Employment outlook 2023: Artificial intelligence and the labour market*. OECD Publishing, pp. 33–35.

⁸⁹² European Labour Authority. (2022). *Ensuring compliance with labour mobility rules in the EU*, Publications Office of the European Union, p. 21.

⁸⁹³ Behrendt, C., Nguyen, Q. A., & Rani, U. (2019). *Social protection systems and the future of work: Ensuring social security for digital platform workers*. International Labour Organization, pp. 31–32.

⁸⁹⁴ Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). *Access to social protection for people working on non-standard contracts and as self-employed in Europe*. European Social Policy Network, pp. 55–57.

vis the national social security institution.⁸⁹⁵ Empirical assessments nevertheless point to persistent coverage gaps, particularly where transaction-based reporting is not accompanied by clear recognition of employment status or effective enforcement.⁸⁹⁶

More broadly, comparative research suggests that transaction-linked contribution systems may lower compliance barriers and enhance contribution collection only when supported by robust reporting obligations, transparency requirements, and effective supervisory powers.⁸⁹⁷ In the absence of such safeguards, automated contribution models risk reproducing existing exclusions, especially for workers whose platform activity remains partially invisible or inconsistently recorded.⁸⁹⁸

Given the frequently low and irregular income streams experienced by platform workers, a range of measures has been introduced to facilitate their participation in social security schemes. These initiatives include integrating administrative reporting systems, adjusting reference periods for contribution calculations, and implementing more flexible payment schedules to accommodate fluctuations in earnings. By tailoring the mechanisms for collecting contributions to the realities of platform work, such reforms aim to reduce barriers to formal compliance and enhance the coverage and effectiveness of social protection for non-standard workers.⁸⁹⁹

Digital interlinking of social security administrations with financial institutions or platforms provides a foundation for automated contribution collection, but the irregular, highly variable income patterns of platform work require further adaptation.⁹⁰⁰ To address these challenges, contribution mechanisms could be designed to respond dynamically to the actual earnings recorded through the platform's algorithmic management system.⁹⁰¹ For instance, platforms could provide

⁸⁹⁵ De Becker, E., Schoukens, P., & Daenen, K. (2025). Tackling informality in the platform economy: A social security driven approach (ETUI Working Paper No. WP 2025.07). European Trade Union Institute, pp. 13–15.

⁸⁹⁶ Aloisi, A., & De Stefano, V. (2022). Your boss is an algorithm: Artificial intelligence, platform work and labour. Hart Publishing, pp. 146–148.

⁸⁹⁷ Weber, T., & Schoukens, P. (2024). Social security and platform work: Rethinking contribution liability in non-standard employment. In P. Schoukens & H. Verschueren (Eds.), *The future of social security in Europe* (pp. 227–230). Edward Elgar.

⁸⁹⁸ European Commission. (2021). *Study to gather evidence on the working conditions of platform workers*, p. 173.

⁸⁹⁹ Rodriguez Tapia, F., & Datta, K. (2023). Platform work, informality, and social protection: Challenges and policy responses. *Journal of European Social Policy*, 33(1), 7–8.

⁹⁰⁰ Behrendt, C., Nguyen, Q. A., & Rani, U. (2019). Social protection systems and the future of work: Ensuring social security for digital platform workers. International Labour Organization, pp. 31–32.

⁹⁰¹ De Stefano, V. (2021). The rise of the “just-in-time workforce”: On-demand work, crowdwork, and labour protection in the platform economy. *Comparative Labour Law & Policy Journal*, 43(1), 71–72.

real-time reporting of completed tasks and transaction values, allowing contributions to be calculated in proportion to income earned over short reference periods, rather than relying on fixed monthly payments.⁹⁰²

Such an approach would better align contribution obligations with the realities of platform-mediated work, where algorithmic task allocation, dynamic pricing, and performance-based incentives generate earnings that fluctuate unpredictably.⁹⁰³ By integrating automated reporting and contribution calculation using algorithmically generated data, social security systems could ensure that workers are accurately credited for every transaction, reducing coverage gaps and enhancing formalisation.⁹⁰⁴ Nevertheless, this requires robust technical standards, transparency in algorithmic processes, and safeguards to ensure data accuracy and worker consent, as well as legal frameworks to guarantee that these dynamically calculated contributions are recognised for entitlement to benefits.⁹⁰⁵

Comparative experiences suggest that combining digital reporting, automated contribution collection, and flexible reference periods can improve both compliance and coverage. In Estonia, the entrepreneur account already provides a partial model, while additional adaptation could allow similar systems to accommodate earnings variability, particularly when integrated with platform-generated data under algorithmic management.⁹⁰⁶ Other EU Member States, such as France and Italy, have piloted systems in which platform-reported earnings are linked to contribution obligations, but gaps persist when algorithmic management obscures task allocation or income flows.⁹⁰⁷

⁹⁰² Weber, T., & Schoukens, P. (2024). Social security and platform work: Rethinking contribution liability in non-standard employment. In P. Schoukens & H. Verschueren (Eds.), *The future of social security in Europe* (pp. 227–230). Edward Elgar.

⁹⁰³ Aloisi, A., & De Stefano, V. (2022). *Your boss is an algorithm: Artificial intelligence, platform work and labour*. Hart Publishing, pp. 146–148.

⁹⁰⁴ De Becker, E., Schoukens, P., & Daenen, K. (2025). Tackling informality in the platform economy: A social security driven approach (ETUI Working Paper No. WP 2025.07). European Trade Union Institute, pp. 13–15.

⁹⁰⁵ Graham, M., Hjorth, I., & Lehdonvirta, V. (2017). Digital labour and development: Impacts of global digital labour platforms and the gig economy on worker livelihoods. *Transfer: European Review of Labour and Research*, 23(2), 165–167.

⁹⁰⁶ Vallistu, E. (2023). *The entrepreneur account in Estonia: Simplifying taxation and social security contributions*. Ministry of Social Affairs, pp. 14–20.

⁹⁰⁷ Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). Access to social protection for people working on non-standard contracts and as self-employed in Europe. *European Social Policy Network*, pp. 55–57.

To support social security compliance among platform workers, many countries have introduced flexible payment options, including mobile-based systems and micropayment schemes that allow contributions to be made in small, adaptable amounts.⁹⁰⁸ Another approach to accommodate fluctuating earnings is to extend the reference period for contributions, enabling workers to spread payments over longer timeframes rather than being bound to fixed monthly obligations.⁹⁰⁹ In addition, income-replacement schemes can serve as flexible savings mechanisms, allowing informal workers to withdraw a portion of their contributions during periods of temporary income loss.⁹¹⁰ Viewed not solely as income replacement, these mechanisms provide short-term financial support linked to various lifecycle risks, thereby offering a degree of economic stability during periods of low or unpredictable earnings, a characteristic of platform work.⁹¹¹

Periods of inactivity, unpaid work, or highly irregular task-based activity complicate the application of traditional unemployment benefits. Moreover, as platform workers increasingly combine income from multiple sources, social security systems face the challenge of accommodating a more fragmented income structure, both in the collection of contributions and the distribution of benefits.⁹¹² For workers with limited or irregular earnings, simple accrual schemes, consistent with the principle of benefit equivalence, may provide a practical means of extending social security coverage and ensuring that even sporadic contributions translate into tangible entitlements.⁹¹³

In response to the challenges posed by irregular, algorithmically mediated income streams in platform work, several innovative social security contribution models can be proposed to enhance coverage, fairness, and compliance.

⁹⁰⁸ Behrendt, C., Nguyen, Q. A., & Rani, U. (2019). Social protection systems and the future of work: Ensuring social security for digital platform workers. *International Labour Organization*, pp. 31–32.

⁹⁰⁹ Rodriguez Tapia, F., & Datta, K. (2023). Platform work, informality, and social protection: Challenges and policy responses. *Journal of European Social Policy*, 33(1), 7–8.

⁹¹⁰ Pulignano, V., Piasna, A., & Keune, M. (2024). Flexibility, precarity and social protection: Adapting social security to the gig economy. *Industrial Relations Journal*, 55(6), 1246.

⁹¹¹ Pulignano, V., Piasna, A., & Keune, M. (2024). Flexibility, precarity and social protection: Adapting social security to the gig economy. *Industrial Relations Journal*, 55(6), 1246.

⁹¹² Schoukens, P. (2020a). Social security for atypical workers: European trends and national responses. In P. Schoukens & K. Daenen (Eds.), *Non-standard employment and social protection* (pp. 446–449). Edward Elgar.

⁹¹³ Schoukens, P. (2020a). Social security for atypical workers: European trends and national responses. In P. Schoukens & K. Daenen (Eds.), *Non-standard employment and social protection* (pp. 446–449). Edward Elgar.

A hybrid contribution model combines multiple funding sources, worker contributions, platform contributions, and government support to share responsibility more equitably. Platforms could allocate a percentage of each transaction directly to a social security fund, while workers contribute based on their earnings. Such models have been discussed in the context of formalising gig work, where reliance on solo self-employment undermines traditional mechanisms for collecting contributions.⁹¹⁴ Evidence from European jurisdictions suggests that hybrid systems may help address fragmentation and promote broader formal coverage.⁹¹⁵

An additional innovation involves insurance-type products linked to algorithmic risk. Under this approach, contribution rates are adjusted in response to algorithmically determined work patterns, such as dynamic pricing, task availability, or surge allocations, recognising the inherent volatility of platform work.⁹¹⁶ Contributions may be channelled into specialised accounts that provide temporary income smoothing or risk-contingent benefits, framing social security as not solely reactive but adaptive to income variability.⁹¹⁷ This aligns with research highlighting the structural precarity of platform work and the need for flexible protection tools.⁹¹⁸

Algorithmic reporting and real-time contribution systems leverage the very digital infrastructure that mediates platform work. Platforms' algorithmic systems can record completed tasks, revenue generated, and time spent, feeding this data into social security calculations.⁹¹⁹ Contributions then adjust dynamically with income, reducing the risk of overpayment during lean periods and aligning collection with actual earnings. By automating reporting and transfer of contributions, platforms effectively serve as intermediaries in the social security system, reflecting algorithmic governance as a functional analogue of managerial control. Research on algorithmic management emphasises

⁹¹⁴ Urzi Brancati et al. (2020, as cited in Urzi Brancati, Pesole & Fernández-Macías, 2020; platform work estimates). Platform work tends to be carried out as solo self-employment, undermining traditional social security institutions., p. 3.

⁹¹⁵ International Social Security Association. (2023). Platform workers and social protection: International developments. ISSA,

⁹¹⁶ Pulignano, V., Piasna, A., & Keune, M. (2024). Flexibility, precarity and social protection: Adapting social security to the gig economy. *Industrial Relations Journal*, 55(6), 1246.

⁹¹⁷ Rodriguez Tapia, F., & Datta, K. (2023). Platform work, informality and social protection: Challenges and policy responses. *Journal of European Social Policy*, 33(1), 7–8.

⁹¹⁸ Aloisi, A., & De Stefano, V. (2022). Your boss is an algorithm: Artificial intelligence, platform work and labour. Hart Publishing, pp. 146–148

⁹¹⁹ European Parliament. (2021). Texts adopted – Fair working conditions, rights and social protection for platform workers (para. 16–17

its pervasive role in organising and monitoring platform labour, underscoring the feasibility of tapping this data for contribution purposes.⁹²⁰

Tiered contribution schemes impose differentiated obligations based on income levels or engagement intensity. Workers with limited or sporadic earnings can contribute at reduced tiers and still accrue partial entitlements, addressing the so-called “missing middle” that often falls between self-employment and dependent employment.⁹²¹ Such tiered systems can be combined with hybrid or transaction-based models to ensure that contribution burdens scale with economic capacity while maintaining access to social protection.

Finally, portable social security accounts detach contribution rights from employers or platforms and instead associate them directly with the worker. This design enables accumulated entitlements to span multiple platforms and even national borders, reducing fragmentation of coverage for multi-platform workers, a challenge documented in studies of social protection for platform workers across major European states.⁹²² Portable accounts support continuity of rights and align with EU policies on social security coordination and mobility, helping to integrate disparate contribution histories into coherent benefit entitlements.⁹²³

Collectively, these mechanisms point toward adaptable social security financing systems that reflect the irregular income patterns, algorithmic oversight, and cross-platform engagement typical of contemporary digital platform work. By aligning contribution collection with real income flows and institutionalising portability and gradation, these models offer pathways to more equitable and effective social protection for platform workers.⁹²⁴

⁹²⁰ European Labour Authority. (2023). Social security coordination and protection rights in mobile and cross-border work. ELA.

⁹²¹ Forde, C., Stuart, M., Joyce, S., Oliver, L., Valizade, D., & Alberti, G. (2017). The social protection of workers in the platform economy. University of Leeds, pp. 56-59

⁹²² Cambridge User (2023). Platform work and access to social protection across major European countries. pp. 20–22.

⁹²³ International Social Security Review special issue (2021). Social protection for digital platform workers in Europe, pp. 175-180

⁹²⁴ OECD. (2019). The future of social protection: What works for non-standard workers?.. OECD Publishing, p. 12.

6.8. Conclusion: Towards an Integrated Framework for Platform Workers' Protection

The legal and policy debate on platform work in Europe highlights the profound challenge of adapting twentieth-century institutions of labour and social protection to a labour market increasingly characterised by fragmentation, digitalisation, and the deliberate blurring of employment status. Voluntary schemes, while praised for their flexibility, leave participation largely to individual capacity and choice, and as such, cannot meaningfully guarantee protection for those who most need it. Mandatory approaches, by contrast, offer the redistributive strength of universalism and the legal certainty of entitlement. Still, they encounter fierce resistance from platforms, administrative hurdles in enforcement, and significant political contestation. Neither path, in isolation, has yet managed to close the persistent gaps that gig workers face.⁹²⁵

Focusing solely on the voluntary–mandatory dichotomy risks missing the broader structural issues. Social dialogue, historically one of the strongest instruments of labour governance, remains underdeveloped in much of Central and Eastern Europe, particularly after decades of legal erosion and political marginalisation.⁹²⁶ The decline of collective bargaining has stripped workers of a forum through which to negotiate their status and rights, leaving them reliant on fragmented litigation or piecemeal legislation. Where collective agreements have been successfully negotiated, as in Denmark or Norway, they have provided not only improved wages and benefits but also regulatory certainty for platforms themselves. The contrast highlights the importance of social dialogue in balancing flexibility with security, and in ensuring that platform workers are not permanently excluded from the institutional core of industrial relations.⁹²⁷

Closely tied to this is the continuing reliance of most European systems on employment status as the gateway to protection. The binary classification of employed versus self-employed, deeply rooted in Bismarckian traditions, creates exclusion by design for workers whose activities straddle both categories. Experiments with distancing, and even decoupling, social protection from

⁹²⁵ European Trade Union Institute (ETUI). (2024). The EU Platform Work Directive: What's new, what's missing, what's next? ETUI Policy Brief, p. 3-4.

⁹²⁶ Czarzasty, J., & Mrozowski, A. (2023). The nail in the coffin? Pandemic and social dialogue in Poland. *Employee Relations*, 45(7), 62–78. <https://doi.org/10.1108/ER-06-2022-0289>, p. 62-68.

⁹²⁷ Hadwiger, F. (2022). Realizing the opportunities of the platform economy through freedom of association and collective bargaining (ILO Working Paper No. 80.). International Labour Organization. <https://doi.org/10.54394/VARD7939>, pp. 35-45.

employment relationships demonstrate that alternative models are feasible. Extending entitlements based on residency, participation in work irrespective of form, or universalist principles financed through taxation can all mitigate the precarity inherent in platform work. At the same time, such approaches carry risks of weakening existing contributory systems or shifting responsibility away from employers, which requires careful balancing rather than wholesale replacement.⁹²⁸

The EU Platform Work Directive represents an essential step towards harmonisation. Still, its deliberate exclusion of tax, criminal, and social security matters from the scope of the legal presumption of employment reveals a fundamental weakness.⁹²⁹ For platform workers, disputes rarely concern labour rights alone; they most often revolve around access to social insurance, tax treatment, and liabilities. By limiting its intervention to the sphere of labour law, the Directive risks producing precisely the fragmented and incoherent framework it set out to resolve. Member States may choose to broaden their scope, but leaving this optional entrenches divergence rather than promoting cohesion.⁹³⁰

Taken together, these developments show that the problem is not merely one of legal form, but of political will and institutional design. Ensuring adequate social protection for gig workers in Europe will require more than adjusting contribution rules or refining definitions of employment.⁹³¹ It demands a recalibration of the relationship between work, security, and solidarity, informed by both national traditions and the realities of digital labour markets. Strengthening social dialogue, reducing the dependence of entitlements on rigid employment categories, and addressing the Directive's exclusions are not parallel tasks but interconnected necessities.

Ultimately, the challenge is to restore the promise of social citizenship in a labour market that increasingly seeks to dissolve it. If platform work is allowed to remain a zone of exception, flexible in name, but precarious in substance, Europe risks undermining not only the rights of millions of workers but also the sustainability of its social protection systems as a whole. Conversely, by

⁹²⁸ Behrendt, C., & Nguyen, Q. A. (2018). Innovative approaches for ensuring universal social protection for the future of work (Research Paper No. 1). International Labour Office. <https://doi.org/10.54394/VARD7939>, pp. 53-54.

⁹²⁹ Art 5 (3). of the Directive (EU) 2024/2831 On Improving Working Conditions In Platform Work.

⁹³⁰ Rainone, S., & Aloisi, A. (2024). The EU Platform Work Directive: What's new, what's missing, what's next? (ETUI Research Paper – Policy Brief No. 2024.06). European Trade Union Institute. <https://doi.org/10.2139/ssrn.4957467>, p. 4.

⁹³¹ Behrendt, C., & Nguyen, Q. A. (2018). Innovative approaches for ensuring universal social protection for the future of work. *International Social Security Review*, 71(3), 1–22. <https://doi.org/10.1111/issr.12192>, pp. 35-37.

combining inclusive legal frameworks with robust collective institutions, the EU and its Member States can transform the platform economy from a vector of vulnerability into a testing ground for a renewed and more resilient model of social protection.⁹³²

Chapter 7: Conclusions

7.1. Introduction

This thesis has examined platform work not as a marginal anomaly of the digital economy, but as a structural challenge to the legal and institutional foundations of European labour and social security law.⁹³³ Its core argument has been that the rise of platform-mediated labour reveals a widening disconnection between formal contractual classification and the underlying economic reality of work.⁹³⁴ That disconnection is not merely of doctrinal importance. It determines access to labour law protection, affects inclusion within contributory social security systems, and ultimately raises broader questions about the sustainability of employment-centred welfare states in Europe.⁹³⁵

From the outset, the thesis proceeded from the premise that platform work should not be understood solely through the vocabulary of innovation, flexibility, or entrepreneurial autonomy.⁹³⁶ Although digital platforms have undoubtedly altered the organisation of labour through algorithmic management, data-driven supervision, and fragmented task allocation, these developments do not eliminate dependency; rather, they often conceal it beneath the formal

⁹³² Berg, J., Furrer, M., Harmon, E., Rani, U., & Silberman, M. S. (2018). Digital labour platforms and the future of work: Towards decent work in the online world (ILO Discussion Paper), p.109.

⁹³³ De Stefano, V. (2016), The rise of the “just-in-time workforce”: On-demand work, crowdwork, and labor protection in the “gig economy”. *Comparative Labor Law & Policy Journal*, 37(3), 471–504, pp. 471-475.

⁹³⁴ Freedland, M., & Kountouris, N. (2011), *The legal construction of personal work relations*. Oxford University Press, pp. 14-18.

⁹³⁵ Schoukens, P., & Barrio, A. (2017), The changing concept of work: When does typical work become atypical? *European Journal of Social Security*, 19(4), 306–332, pp. 309-315.

⁹³⁶ Prassl, J. (2018), *Humans as a service: The promise and perils of work in the gig economy*, Oxford University Press, pp. 25–35, 73–95.

language of self-employment⁹³⁷ The legal challenge, therefore, has not been simply to identify a new type of work, but to determine whether existing legal categories remain capable of capturing forms of control and subordination that are technologically mediated, functionally dispersed, and often contractually obscured.⁹³⁸

The thesis has shown that this question is especially pressing in the field of social security.⁹³⁹ In employment-centred welfare systems, particularly those shaped by Bismarckian traditions, labour market status is not merely descriptive.⁹⁴⁰ It is constitutive of access to protection. Employee status triggers a legal framework for registration, contribution payments, risk allocation, and entitlement acquisition. By contrast, self-employment often leads to fragmented inclusion, lower effective coverage, or dependency on voluntary affiliation. This institutional distinction becomes highly consequential when platform workers are formally classified as independent contractors despite significant economic dependence and platform control.⁹⁴¹

A major contribution of the thesis has therefore been to locate the problem of platform work at the intersection of labour law and social security law. Too often, debates on platform work have focused narrowly on employment classification as a labour rights issue alone, while underestimating the extent to which classification also structures access to sickness insurance, unemployment protection, occupational injury coverage, maternity protection, and pensions.⁹⁴² The thesis has argued that such a separation is analytically incomplete. Misclassification does not merely deprive workers of labour standards. It also shifts social risk away from the employing entity and onto the worker, the state, or the broader social insurance system.⁹⁴³

⁹³⁷ Eurofound (2025), *Platform work: Algorithmic management*, Publications Office of the European Union, pp. 1–5, 12–18.

⁹³⁸ Freedland, M., & Kountouris, N. (2011), *The legal construction of personal work relations*, Oxford University Press, pp. 14–18, 87–92.

⁹³⁹ Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017), *Access to social protection for people working on non-standard contracts and as self-employed in Europe*, European Commission, pp. 9–15, 57–63.

⁹⁴⁰ Palier, B. (2010), *A long goodbye to Bismarck? The politics of welfare reform in continental Europe*, Amsterdam University Press, pp. 19–25, 63–70.

⁹⁴¹ International Labour Organization (2021), *World employment and social outlook: The role of digital labour platforms in transforming the world of work*, ILO, pp. 197–205.

⁹⁴² OECD (2019), *The future of social protection: What works for non-standard workers?*, OECD Publishing, pp. 21–28.

⁹⁴³ De Stefano, V. (2016), *The rise of the “just-in-time workforce”: On-demand work, crowdwork, and labor protection in the “gig economy”*, *Comparative Labor Law & Policy Journal*, 37(3), 471–504, pp. 493–500.

This dynamic is particularly evident in Central and Eastern Europe, where the thesis has focused its comparisons. Hungary and Romania provide a revealing lens through which to examine the problem, as each maintains a social protection architecture closely tied to formal employment while also exhibiting legal traditions marked by post-transition formalism in the classification of work.⁹⁴⁴ These jurisdictions are embedded within the broader framework of EU law, yet their domestic systems continue to reflect institutional assumptions that are often ill-equipped to capture digitally mediated control. In this regional context, misclassification has especially far-reaching consequences, both for the individual worker and for the long-term financing of contributory social insurance schemes.⁹⁴⁵

The thesis has further demonstrated that the legal problem is not new in principle, but has acquired new institutional intensity in the platform economy.⁹⁴⁶ European labour law has long grappled with the distinction between employee and self-employed, and the Court of Justice of the European Union has repeatedly emphasised that this distinction must be approached functionally rather than formalistically.⁹⁴⁷ The jurisprudence of the Court, particularly in cases such as *Lawrie-Blum* and *Allonby*, has established that worker status under EU law cannot depend solely on contractual nomenclature, but must reflect the reality of services performed under the direction of another in return for remuneration. Yet the thesis has shown that the practical translation of this functional approach remains uneven, especially where national systems continue to privilege visible, hierarchical, and traditional forms of subordination.⁹⁴⁸

The problem, then, is not only one of legal definition, but of institutional adaptation.⁹⁴⁹ Platform work tests whether European legal systems can preserve the normative aims of labour and social security law while adjusting to new modes of intermediation, control, and risk externalisation. It also exposes the limits of an excessively formal reading of autonomy in labour markets where

⁹⁴⁴ KKoldinská, K., Strban, G., Kun, A., & Wujczyk, M. (2026), *Labour law and social security law in Central and Eastern Europe*, Springer, pp. 1–10.

⁹⁴⁵ Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017), *Access to social protection for people working on non-standard contracts and as self-employed in Europe*, European Commission, pp. 57–63.

⁹⁴⁶ Freedland, M., & Kountouris, N. (2011), *The legal construction of personal work relations*, Oxford University Press, pp. 87–92.

⁹⁴⁷ Schoukens, P., & Barrio, A. (2017), *The changing concept of work: When does typical work become atypical?* *European Journal of Social Security*, 19(4), 306–332, pp. 309–315.

⁹⁴⁸ De Stefano, V. (2016), *The rise of the “just-in-time workforce”: On-demand work, crowdwork, and labor protection in the “gig economy”*, *Comparative Labor Law & Policy Journal*, 37(3), 471–504, pp. 484–488.

⁹⁴⁹ Prassl, J. (2018), *Humans as a service: The promise and perils of work in the gig economy*, Oxford University Press, pp. 73–95.

workers may appear independent in contract while remaining deeply dependent in practice. The central claim that emerges from the thesis is therefore that platform work is not simply an innovation to be accommodated, but a regulatory fault line that compels a re-examination of how labour law and social security law together structure social solidarity in the digital age.⁹⁵⁰

7.2. From Proposal to Compromise: The Long Path of the Platform Work Directive

Against this background, the thesis has treated the EU Platform Work Directive as the most significant supranational legislative intervention to date in the governance of platform labour.⁹⁵¹ Yet one of the clearest lessons arising from the thesis is that the Directive cannot be understood merely by reading its final text. Its meaning also lies in the unusually long and contested path that led from the Commission's proposal to political agreement and final adoption.⁹⁵² That process is analytically important because it reveals both the ambition of the original regulatory project and the compromises that ultimately shaped its final form.⁹⁵³

The Commission's original proposal represented a bold attempt to address the classification problem through a rebuttable presumption of employment, linked to concrete indicators of control.⁹⁵⁴ In doing so, it sought to reduce the burden placed on workers in litigation and administrative proceedings, and to create a more realistic evidentiary framework for situations in which platforms exercise employer-like powers while disclaiming employer status.⁹⁵⁵ This proposal reflected the growing recognition within EU institutions that platform workers often occupy a position of dependency that existing contract labels fail to capture adequately.⁹⁵⁶

⁹⁵⁰ European Trade Union Institute (ETUI) (2019), *Non-standard workers and access to social protection*, ETUI Policy Brief, pp. 2–6.

⁹⁵¹ Aloisi, A. (2024). *The EU Platform Work Directive: What's new, what's missing, what's next?* ETUI Policy Brief, pp. 1–3.

⁹⁵² European Parliament Research Service. (2022). *Improving the working conditions of platform workers*, pp. 6–7

⁹⁵³ Aloisi, A., Rainone, S., & Countouris, N. (2023). *An unfinished task? Matching the Platform Work Directive with the EU and international social acquis* (ILO Working Paper No. 101), pp. 5–8

⁹⁵⁴ European Commission. (2021). *Proposal for a Directive on improving working conditions in platform work* (COM(2021) 762 final), art. 4.

⁹⁵⁵ European Commission. (2021). *Impact assessment accompanying the proposal for a Directive on platform work* (SWD(2021) 396 final), pp. 20–21.

⁹⁵⁶ De Stefano, V. (2016). *The rise of the “just-in-time workforce”*. ETUI, pp. 19–21.

However, the legislative process soon made clear that the regulation of platform work raises politically sensitive questions at the intersection of labour market flexibility, social rights, and Member State autonomy.⁹⁵⁷ Negotiations were prolonged, disagreements among Member States proved substantial, and the final agreement emerged only after repeated political difficulties and a significant reshaping of the initial proposal. This history is not a peripheral matter. It explains why the final Directive, while unquestionably important, bears the marks of compromise more visibly than many other labour-law instruments.⁹⁵⁸

The long path to agreement also demonstrates the contested status of platform work within the European social model. On the one hand, there was broad acknowledgement that existing legal frameworks were inadequate to address the realities of algorithmic management and widespread misclassification.⁹⁵⁹ On the other hand, there remained hesitation about the degree to which EU law should intervene in national systems of classification, enforcement, and labour market governance. The eventual compromise, therefore, reflects a balancing act between the need for stronger worker protection and the political caution associated with imposing a more determinate supranational standard.⁹⁶⁰

This legislative history matters for the thesis because it supports a central interpretive claim: the Directive must be welcomed as an achievement, but it should not be mistaken for a fully resolved framework. Its existence confirms that platform work has entered the core of European labour-law policymaking.⁹⁶¹ At the same time, the changes made during the legislative process show that the Union has not yet produced a complete or fully coherent legal response to the structural issues raised by platform labour. The Directive is therefore both a milestone and a compromise.⁹⁶²

It is precisely this dual character that makes the Directive so significant for the purposes of the thesis. It is a milestone because it breaks with the assumption that platform work can be left to

⁹⁵⁷ Aloisi, A., Rainone, S., & Countouris, N. (2023). An unfinished task? Matching the Platform Work Directive with the EU and international social acquis (ILO Working Paper No. 101), pp. 5–7.

⁹⁵⁸ Ponce del Castillo, A., & Naranjo, D. (2022). Regulating algorithmic management. ETUI, pp. 3–4.

⁹⁵⁹ European Commission. (2021). Impact assessment accompanying the proposal for a Directive on improving working conditions in platform work (SWD(2021) 396 final). Publications Office of the European Union, pp. 5, 19–20.

⁹⁶⁰ Ponce del Castillo, A., & Naranjo, D. (2022). Regulating algorithmic management: An assessment of the EC’s draft Directive on platform work. ETUI, pp. 3–4.

⁹⁶¹ European Parliament Research Service. (2024). EU directive on platform work. European Parliament, p. 1.

⁹⁶² European Commission. (2021). Impact assessment accompanying the proposal for a Directive on platform work, pp. 21–22.

general contract doctrine and post hoc litigation alone.⁹⁶³ It is a compromise because the key legal tools originally intended to make the instrument robust were modified during negotiations, leaving unresolved questions that are likely to reappear at the level of transposition and judicial application. The Directive thus occupies an ambiguous position: symbolically transformative, but operationally incomplete.⁹⁶⁴

7.3. The Rebuttable Legal Presumption: Necessary, but Weak

Within the Directive's architecture, the rebuttable legal presumption of employment is the provision of greatest structural importance. The thesis has treated this mechanism as indispensable because it directly addresses one of the central asymmetries in platform work: the worker is often expected to prove the existence of subordination in a labour market setting where control is diffuse, data-driven, and hidden behind technological interfaces. In such circumstances, a purely individualised burden of proof tends to favour the platform, especially where litigation is costly, fragmented, and dependent on information largely held by the undertaking itself.⁹⁶⁵

The presumption of employment, therefore, represents more than a procedural convenience. It embodies a normative recognition that platform labour markets are structurally prone to misclassification and that evidentiary rules must reflect this reality.⁹⁶⁶ By shifting the burden to the platform once specified conditions are met, the presumption seeks to realign legal method with economic substance. In that respect, it is fully consistent with the broader functional approach developed in EU case law on worker status.⁹⁶⁷

At the same time, the thesis has argued that the final formulation of the presumption is weaker, vaguer, and less decisive than initially envisaged. The original proposal set out more concrete and

⁹⁶³ Aloisi, A., & De Stefano, V. (2022). *Your boss is an algorithm: Artificial intelligence, platform work and labour*. Hart Publishing, pp. 48–52.

⁹⁶⁴ Barnard, C. (2019). *The substantive law of the EU* (6th ed.). Oxford University Press, pp. 31–33.

⁹⁶⁵ Aloisi, A., Rainone, S., & Countouris, N. (2023). *An unfinished task? Matching the Platform Work Directive with the EU and international social acquis* (ILO Working Paper No. 101), pp. 6–7.

⁹⁶⁶ European Commission. (2021). *Impact assessment accompanying the proposal for a Directive on improving working conditions in platform work* (SWD(2021) 396 final), pp. 19–21.

⁹⁶⁷ Davidov, G. (2016). *A purposive approach to labour law*. Oxford University Press, pp. 136–138.

identifiable indicators linked to control.⁹⁶⁸ By contrast, the final compromise moved toward more open-ended language centred on facts indicating direction and control under national law, collective agreements, or practice.⁹⁶⁹ Although this may preserve flexibility and facilitate adaptation across legal systems, it also introduces uncertainty into the Directive's central enforcement mechanism.

That uncertainty matters for at least three reasons. First, it may reduce the practical accessibility of the presumption for workers, particularly in jurisdictions where procedural barriers are already high.⁹⁷⁰ Second, it may encourage divergent implementation by Member States, thereby reproducing fragmentation in an area where one of the Directive's very purposes was to reduce uncertainty.⁹⁷¹ Third, it risks shifting the conflict from substantive status determination to disputes over the threshold conditions required to activate the presumption in the first place.⁹⁷²

This does not mean that the presumption lacks value. On the contrary, the thesis maintains that its survival in the final text remains a major legislative gain. It provides national authorities, courts, and workers with a legal instrument that did not previously exist at the EU legislative level, and it may contribute to a broader shift away from overly formal conceptions of self-employment in platform contexts.⁹⁷³ But the thesis also insists that one should not overstate its effect. A weakened or indeterminate presumption may be symbolically important yet prove difficult to operationalise in practice.⁹⁷⁴

The broader conclusion, therefore, is that the presumption should be regarded as necessary, but not sufficient. It is necessary because without some adjustment to the evidentiary structure of classification, misclassification will continue to be reproduced by the asymmetries of platform

⁹⁶⁸ European Commission. (2021). Proposal for a Directive on improving working conditions in platform work (COM(2021) 762 final), art. 4(2),.

⁹⁶⁹ European Parliament and Council of the European Union. (2024). Directive (EU) 2024/2831 on improving working conditions in platform work, art. 5.

⁹⁷⁰ European Commission. (2021). Impact assessment accompanying the proposal for a Directive on improving working conditions in platform work (SWD(2021) 396 final), pp. 20–21.

⁹⁷¹ Risak, M., & Dullinger, T. (2022). The EU platform work directive. *European Labour Law Journal*, 13(3), 345–362, pp. 351–352.

⁹⁷² Council of the European Union. (2024). Analysis of the final compromise text with a view to agreement, pp. 2–3.

⁹⁷³ Aloisi, A., & De Stefano, V. (2022). *Your boss is an algorithm: Artificial intelligence, platform work and labour*. Hart Publishing, pp. 48–52.

⁹⁷⁴ Aloisi, A., Rainone, S., & Countouris, N. (2023). An unfinished task? Matching the Platform Work Directive with the EU and international social acquis (ILO Working Paper No. 101), pp. 6–8.

labour markets.⁹⁷⁵ Yet it is not sufficient because the legal and institutional consequences of misclassification extend beyond the question of formal employment status, reaching into the domains of enforcement, contribution liability, and social protection. The Directive corrects part of the problem, but not the whole.⁹⁷⁶

7.4. Why Reclassification Matters?

One of the central propositions advanced throughout the thesis is that reclassification should not be understood as an end in itself. Platform workers do not pursue reclassification merely in order to replace one contractual label with another.⁹⁷⁷ Rather, they seek the legal and social consequences attached to employee status: labour law standards, collective rights, access to social insurance, and protection against the unilateral exercise of managerial power. Reclassification is therefore best conceived as a gateway. It is the legal mechanism through which workers seek entry into a broader framework of protection.⁹⁷⁸

This insight is important because it clarifies the stakes of classification disputes. Too often, public and legal discourse presents the problem as one of terminology or doctrinal taxonomy, as though the central question were simply whether platform workers “fit” within inherited legal categories.⁹⁷⁹ The thesis has shown that the issue is more substantive. The legal category matters because it allocates risk, responsibility, and entitlement.⁹⁸⁰ To classify a worker as self-employed is not merely to describe a relationship; it is to assign that worker to a different regime of rights, obligations, and vulnerabilities.

In the labour law dimension, reclassification opens the possibility of minimum wage protection, limits on working time, paid leave, anti-dismissal guarantees, and the recognition of collective

⁹⁷⁵ European Commission. (2021). Impact assessment accompanying the proposal for a Directive on improving working conditions in platform work (SWD(2021) 396 final), pp. 19–20.

⁹⁷⁶ Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). Access to social protection for people working on non-standard contracts and as self-employed in Europe, pp. 9–10.

⁹⁷⁷ De Stefano, V. (2016). The rise of the “just-in-time workforce”. ETUI, pp. 19–21.

⁹⁷⁸ Davidov, G. (2016). A purposive approach to labour law. Oxford University Press, pp. 136–138.

⁹⁷⁹ Supiot, A. (2001). Beyond employment: Changes in work and the future of labour law in Europe. Oxford University Press, pp. 18–20.

⁹⁸⁰ De Stefano, V. (2016). The rise of the “just-in-time workforce”. ETUI, pp. 19–21.

voice.⁹⁸¹ In the social security dimension, it may trigger compulsory coverage, employer contribution liability, access to sickness and maternity benefits, protection in the event of unemployment, and more stable pension accrual.⁹⁸² Seen in this way, reclassification is not symbolic. It is materially transformative.

The thesis has therefore rejected any attempt to reduce platform-worker litigation to a narrow struggle over contractual form. Workers seek reclassification because the current contractual form serves as the legal barrier that excludes them from the protections associated with standard employment.⁹⁸³ Their objective is not simply to be declared employees in the abstract, but to obtain the rights and benefits that flow from that status. This is particularly evident in welfare systems where labour status remains the institutional precondition for meaningful inclusion in contributory schemes.⁹⁸⁴

This point also helps explain why the omission of social security from the Directive is so significant. If the law focuses solely on classification while leaving unresolved the mechanisms by which reclassification should translate into actual inclusion within social protection systems, the legal response remains incomplete.⁹⁸⁵ A worker who succeeds in establishing employee status but cannot effectively obtain social insurance registration, contribution recognition, or access to benefits has won only a partial victory. Agreeing with De Stefano's arguments the thesis has thus insisted that legal status and social protection must be analysed together, not sequentially or separately.⁹⁸⁶

The broader implication is that the debate on platform work should be reframed. The central question is not simply whether platform workers are employees or self-employed, but whether legal systems are willing to align rights and responsibilities with the economic realities of platform-mediated dependence.⁹⁸⁷ Reclassification matters because it is the point at which legal

⁹⁸¹ Davidov, G. (2016). *A purposive approach to labour law*. Oxford University Press, pp. 136–138.

⁹⁸² International Labour Organization. (2021). *World employment and social outlook: The role of digital labour platforms in transforming the world of work*, pp. 220–223.

⁹⁸³ Supiot, A. (2001). *Beyond employment: Changes in work and the future of labour law in Europe*. Oxford University Press, pp. 18–20.

⁹⁸⁴ International Labour Organization. (2006). *Employment relationship recommendation (No. 198)*, paras. 9–13.

⁹⁸⁵ Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). *Access to social protection for people working on non-standard contracts and as self-employed in Europe*, pp. 9–10, 23–25.

⁹⁸⁶ De Stefano, V. (2016). *The rise of the “just-in-time workforce”*. ETUI, pp. 20–21.

⁹⁸⁷ Davidov, G. (2016). *A purposive approach to labour law*. Oxford University Press, pp. 136–138.

abstraction meets institutional consequence. It is the hinge between labour law and social security law, and for that very reason, it cannot be treated as a merely formal dispute.

7.5. The Unfinished Task: Social Security Inclusion and the Sustainability of the System

The most important critical claim of this concluding chapter is that the present legal framework remains unfinished because it does not adequately address social security.⁹⁸⁸ This thesis has consistently argued that the platform work debate is incomplete if confined to employment status alone. Although status is crucial, it is only the threshold issue. The deeper institutional question concerns how platform workers are incorporated into systems of social protection, both as beneficiaries and as contributors.⁹⁸⁹

This omission is especially problematic because social security is not a peripheral policy concern. It is a fundamental social right and a constitutive element of social citizenship.⁹⁹⁰ States are therefore under an obligation to ensure that platform workers are not left outside their systems simply because the organisation of work has changed or because digital intermediaries rely on formal labels that obscure dependency.⁹⁹¹ To accept widespread exclusion on such grounds would be to permit technological and contractual innovation to hollow out the social content of labour law and welfare rights.

The thesis has shown that in many employment-centred systems, exclusion from employee status has a cascading effect. It affects not only present labour standards, but the worker's long-term relationship with the social insurance system.⁹⁹² Irregular or absent contributions weaken benefit entitlements, fragment insurance histories, and expose workers to gaps in protection during sickness, parenthood, injury, or unemployment. Such exclusion is particularly serious in Central

⁹⁸⁸ European Parliament and Council of the European Union. (2024). Directive (EU) 2024/2831 on improving working conditions in platform work, recital 16, p. 7.

⁹⁸⁹ International Labour Organization. (2021). World employment and social outlook: The role of digital labour platforms in transforming the world of work, pp. 220–223.

⁹⁹⁰ Marshall, T. H. (1950). Citizenship and social class, pp. 28–29.

⁹⁹¹ International Labour Organization. (2006). Employment relationship recommendation (No. 198), paras. 9–13.

⁹⁹² Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). Access to social protection for people working on non-standard contracts and as self-employed in Europe, pp. 67–69.

and Eastern Europe, where social security systems remain strongly tied to formal contribution records and employer responsibility.⁹⁹³

Yet the problem is not limited to the benefit side. One of the more distinctive arguments advanced by the thesis is that platform workers must also be integrated into the financing side of the social security system.⁹⁹⁴ It is not enough merely to extend access to benefits while leaving unresolved the question of who bears responsibility for contributions. A model that broadens entitlement without securing contribution flows risks weakening the system's sustainability, especially in welfare states already facing demographic pressure, labour-market fragmentation, and narrower contribution bases.⁹⁹⁵

This is why the thesis has framed the issue not only in terms of worker protection, but also in terms of system sustainability. Platform workers should not be treated as external claimants entering social security only at the moment of need. They must be incorporated into the system's financing and solidarity structure as participants.⁹⁹⁶ Such an approach better reflects the logic of contributory social insurance and avoids creating a false opposition between inclusion and sustainability. In reality, meaningful inclusion requires sustainable financing, and sustainable financing requires that economically dependent labour not be structurally detached from contribution obligations.⁹⁹⁷

The Directive, however, does not adequately resolve these issues. Even if reclassification becomes more accessible, the final instrument does not establish a comprehensive framework for ensuring that reclassified platform workers are effectively registered, covered, and financed within national social security systems.⁹⁹⁸ This leaves one of the most practically important dimensions of the problem to national law and administrative practice, thereby perpetuating fragmentation and uncertainty. In that sense, the legal framework remains only partially constructed.

⁹⁹³ Cerami, A. (2006). Social policy in Central and Eastern Europe: The emergence of a new European welfare regime, pp. 89–92.

⁹⁹⁴ International Labour Organization. (2021). World employment and social outlook: The role of digital labour platforms in transforming the world of work, pp. 220–223.

⁹⁹⁵ European Commission. (2021). The 2021 Ageing Report: Economic and budgetary projections for the EU Member States, pp. 17–20.

⁹⁹⁶ Schoukens, P., & Barrio, A. (2017). The changing concept of work and its impact on social security, pp. 15–18.

⁹⁹⁷ Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). Access to social protection for people working on non-standard contracts and as self-employed in Europe, pp. 23–25, 67–69.

⁹⁹⁸ European Parliament and Council of the European Union. (2024). Directive (EU) 2024/2831 on improving working conditions in platform work, recital 16, p. 7.

The conclusion that follows is clear. Platform workers must be incorporated into national social security systems in a manner that is substantive rather than merely nominal.⁹⁹⁹ This means inclusion on both the benefit and financing sides. It means ensuring that contribution liability is not obscured by platform business models. And it means recognising that the future of employment-centred social protection depends on whether new forms of labour can be integrated without eroding the system's contributory and solidaristic foundations.¹⁰⁰⁰

7.6. *De Lege Ferenda* Proposal: Trade Unions and Collective Bargaining Role in Platform Work

If the Directive is an important but incomplete legislative step, the thesis has argued that one of the most promising avenues for further development lies in strengthening the role of trade unions and collective bargaining in the governance of platform work.¹⁰⁰¹ This proposal is offered *de lege ferenda*, not as a substitute for legislation, but as a necessary complement to it. The regulation of platform work cannot rely exclusively on statutory intervention and individual litigation, especially in a field characterised by rapid technological change, fragmented employment relations, and high informational asymmetry.¹⁰⁰²

There are both normative and practical reasons for giving greater prominence to collective bargaining. Normatively, trade unions and collective agreements give workers a direct and organised voice in shaping the conditions under which labour is performed.¹⁰⁰³ This is particularly important in platform work, where managerial power is often hidden behind algorithms, unilateral terms of service, and opaque rating systems. Collective representation makes visible what individualised contractual arrangements tend to obscure: that many platform workers are not

⁹⁹⁹ Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). Access to social protection for people working on non-standard contracts and as self-employed in Europe, pp. 23–25, 67–69.

¹⁰⁰⁰ International Labour Organization. (2021). World employment and social outlook: The role of digital labour platforms in transforming the world of work, pp. 220–223.

¹⁰⁰¹ Countouris, N., & De Stefano, V. (2019). New trade union strategies in the platform economy. ETUI, pp. 16–19.

¹⁰⁰² Eurofound. (2021). Collective bargaining in the platform economy, pp. 10–12.

¹⁰⁰³ European Union. (2000). Charter of Fundamental Rights of the European Union, Art. 28.

isolated market actors, but participants in a shared employment reality marked by common vulnerabilities and asymmetries.¹⁰⁰⁴

Practically, collective bargaining may also provide a more responsive and adaptive mode of regulation than legislation alone.¹⁰⁰⁵ Legislative processes, particularly at the EU level, are often lengthy and politically constrained, as the history of the Platform Work Directive itself demonstrates.¹⁰⁰⁶ By contrast, negotiated solutions may emerge more quickly and may be better able to respond to sector-specific conditions, new business models, and changing labour practices.¹⁰⁰⁷ In a field as dynamic as platform work, that responsiveness is an important institutional advantage.

The thesis has not advanced this proposal in the abstract. European experience already offers examples in which collective agreements have played a meaningful role in regulating platform work, including remuneration, working conditions, and even issues concerning employment status and reclassification.¹⁰⁰⁸ These developments are significant because they show that collective regulation is not merely aspirational. It is already occurring, and in some instances, it has preceded or anticipated legislative intervention at the Union level.¹⁰⁰⁹

Moreover, broader research on social dialogue suggests that where collective bargaining and social partner involvement are more embedded in labour-market governance, disputes over classification are less likely to be resolved exclusively through litigation.¹⁰¹⁰ This does not mean that collective bargaining eliminates the need for courts or legislation. Rather, it indicates that negotiated standards can serve a preventive, stabilising, and mediating role. They may reduce conflict by creating clearer expectations, enhancing worker voice, and internalising forms of regulation that would otherwise have to be fought for on a case-by-case basis.¹⁰¹¹

¹⁰⁰⁴ Countouris, N., & De Stefano, V. (2019). New trade union strategies in the platform economy. ETUI, pp. 16–19.

¹⁰⁰⁵ Eurofound. (2021). Collective bargaining in the platform economy, pp. 10–12.

¹⁰⁰⁶ Barnard, C. (2019). The substantive law of the EU (6th ed.). Oxford University Press, pp. 31–33.

¹⁰⁰⁷ Johnston, H., & Land-Kazlauskas, C. (2018). Organizing on-demand: Representation, voice, and collective bargaining in the gig economy. ILO, pp. 15–18.

¹⁰⁰⁸ Eurofound. (2021). Collective bargaining in the platform economy: Case studies, pp. 14–20.

¹⁰⁰⁹ Countouris, N., & De Stefano, V. (2019). New trade union strategies in the platform economy. ETUI, pp. 18–21.

¹⁰¹⁰ Visser, J. (2016). What happened to collective bargaining during the great recession? IZA Journal of Labor Policy, pp. 4–6.

¹⁰¹¹ European Commission. (2023). Industrial relations in Europe, pp. 45–47.

For these reasons, the thesis proposes that future development in this field should place greater legal and policy emphasis on enabling collective representation for platform workers and on clarifying the permissibility and institutional support for collective bargaining in platform settings. This includes not only recognising trade unions as legitimate interlocutors but also removing doctrinal and competition-law obstacles that have historically complicated collective action by self-employed or quasi-self-employed workers.¹⁰¹² If platform work continues to blur the boundaries between employment and self-employment, legal systems must ensure that the collective voice is not lost precisely where it is most needed.

This *de lege ferenda* proposal is also closely connected to the social security argument advanced in the thesis. Collective bargaining should not be seen only as a tool for wages and working conditions. It can also play an important role in negotiating contribution arrangements, supplementary protections, procedural safeguards, and pathways to more effective inclusion within national social security systems.¹⁰¹³ In that sense, trade unions are relevant not only to labour law enforcement but also to the broader institutional project of integrating platform workers into the solidaristic architecture of the welfare state.

7.7. Final Contribution and Future Directions

Taken together, the findings of this thesis support a broader conclusion about the future of the European social model. Platform work does not simply require extending existing rules to a new business environment. It requires a more fundamental reflection on the relationship between legal status, social protection, and collective governance in labour markets increasingly shaped by digital intermediation.¹⁰¹⁴ The Platform Work Directive constitutes an important starting point in this process, and its very adoption confirms that platform labour has become a matter of core European concern. Yet the Directive's long legislative path, the weakening of its rebuttable

¹⁰¹² European Commission. (2022). Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons, pp. 3–6.

¹⁰¹³ Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). Access to social protection for people working on non-standard contracts and as self-employed in Europe, pp. 67–69.

¹⁰¹⁴ Supiot, A. (2001). Beyond employment: Changes in work and the future of labour law in Europe. Oxford University Press, pp. 18–20.

presumption, and its failure to engage adequately with social security all show that the current framework remains unfinished.¹⁰¹⁵

The thesis has therefore made two principal contributions. First, it has offered a comparative and institutionally grounded analysis of platform work in Central and Eastern Europe, demonstrating that the interaction between formalistic classification doctrine and employment-centred social protection creates a particularly revealing context for understanding the limits of existing law.¹⁰¹⁶ Second, it has advanced a structural account of misclassification by linking labour status, social security inclusion, and welfare-state sustainability within a single analytical frame.¹⁰¹⁷ This approach has sought to show that the question of who counts as a worker is not merely a doctrinal matter. It is a constitutional question for systems of social solidarity built around work.

The thesis has also sought to move beyond diagnosis toward a realistic normative agenda. That agenda begins with the recognition that reclassification is necessary, but not sufficient. It continues by insisting that social security must be treated as a central, not peripheral, dimension of platform work regulation.¹⁰¹⁸ And it culminates in the proposal that trade unions and collective bargaining should play a larger role in shaping the future governance of platform labour. Only a framework that combines these elements can adequately respond to the problem's multidimensional nature.¹⁰¹⁹

Future research should continue to examine how the Directive is transposed and applied across Member States, especially in systems where doctrinal formalism and administrative fragmentation remain strong.¹⁰²⁰ It should also investigate more closely how social security institutions can adapt their contribution and entitlement structures to digitally mediated labour without weakening either protection or sustainability.¹⁰²¹ Finally, further attention should be paid to the role of collective actors, including trade unions and social partners, in shaping regulatory responses that are both participatory and effective. These questions extend beyond the scope of the present thesis, but they follow directly from its central insight: that the future of worker protection in Europe depends on

¹⁰¹⁵ Aloisi, A., Rainone, S., & Countouris, N. (2023). An unfinished task? ILO Working Paper No. 101, pp. 6–8.

¹⁰¹⁶ Davidov, G. (2016). A purposive approach to labour law. Oxford University Press, pp. 136–138.

¹⁰¹⁷ Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017), pp. 23–25.

¹⁰¹⁸ International Labour Organization. (2021). World employment and social outlook, pp. 220–223.

¹⁰¹⁹ De Stefano, V. (2016). The rise of the “just-in-time workforce”, pp. 20–21.

¹⁰²⁰ Risak, M., & Dullinger, T. (2022). The EU platform work directive. *European Labour Law Journal*, 13(3), 345–362, pp. 351–352.

¹⁰²¹ Schoukens, P., & Barrio, A. (2017), The changing concept of work: When does typical work become atypical? , pp. 15–18.

whether legal systems can align formal classification with economic reality while preserving the solidaristic foundations of social citizenship.

In that respect, the problem examined in this thesis is not only about platform work. It is about the future capacity of European legal systems to ensure that innovation in the organisation of labour does not come at the cost of social protection, collective voice, and institutional sustainability. The challenge posed by platform work is therefore also an opportunity: an opportunity to rethink how labour law and social security law can be reconnected in a way that is both doctrinally coherent and socially just.¹⁰²² Whether European law will seize that opportunity remains uncertain. What is clear, however, is that the regulation of platform work can no longer be postponed, narrowed to contractual formalities, or detached from the broader question of how solidarity is to be preserved in the digital age.

¹⁰²² Schoukens, P., & Barrio, A. (2017). The changing concept of work and its impact on social security, pp. 15–18.

References

A Kúria Nemzetközi Főosztályának Hírlevele. (2024, January 31). XV. évfolyam, 1. szám.

Act I of 2012 on the Labour Code (Hungary).

Act LXXX of 1997 on Social Security (Hungary).

Act No. 311/2001 on the Labour Code (Slovakia).

Act No. 461/2003 on Social Insurance (Slovakia).

Adăscăliței, D., & Guga, Ș. (2018). International actors and trade unions during postsocialism and after: The case of Romania. *Employee Relations*, 40(4), 692–708.

Albanezi, A. (2023). Repere privind statutul legal al „platform workers”. Propunerea de directivă privind îmbunătățirea condițiilor de muncă pentru lucrul pe platforme vs. „testul ABC”. *SUBB Iurisprudentia*, (3).

Aleksynska, M., & Berg, J. (2016). Firms’ demand for temporary labour in developing countries: Necessity or strategy? (Conditions of Work and Employment Series No. 77). International Labour Organization.

Aloisi, A. (2015). Commoditized workers: Case study research on labour law issues arising from a set of “on-demand/gig economy” platforms. *Comparative Labor Law & Policy Journal*, 37(3), 653–690.

Aloisi, A. (2016). Commoditized workers: Case study research on labour law issues arising from a set of “on-demand/gig economy” platforms. *Comparative Labor Law & Policy Journal*, 37(3), 653–690.

Aloisi, A. (2024). The EU platform work directive: What’s new, what’s missing, what’s next? ETUI Policy Brief.

Aloisi, A., & De Stefano, V. (2022). *Your boss is an algorithm*. Hart Publishing.

Aloisi, A., & Gramano, E. (2019). Workers without workplaces and unions without unity: Non-standard forms of employment, platform work and collective bargaining. In *Employment relations for the 21st century* (Bulletin of Comparative Industrial Relations, Vol. 107).

Aloisi, A., & Potocka-Sionek, N. (2022). De-gigging the labour market? An analysis of the ‘algorithmic management’ provisions in the proposed platform work directive. *Italian Labour Law e-Journal*, 15(1), 39–56.

Aloisi, A., et al. (2023). An unfinished task? Matching the platform work directive with the EU and international “social acquis” (ILO Working Paper No. 101). International Labour Organization.

Aloisi, A., et al. (2023, December). An unfinished task? Matching the platform work directive with the EU and international “social acquis” (ILO Working Paper No. 101). International Labour Organization.

Aloisi, A., Rainone, S., & Countouris, N. (2023). An unfinished task? Matching the platform work directive with the EU and international social acquis (ILO Working Paper No. 101).

Ane, F. de A. C. (2023). A treaty change on the horizon? What this could mean for social policy and labour law.

Assembly Bill No. 5.

Baldwin, P. (1990). *The politics of social solidarity: Class bases of the European welfare state 1875–1975*. Cambridge University Press.

Baldwin, P. (1990). *The politics of social solidarity: Class bases of the European welfare state 1875–1975*. Cambridge University Press.

Barak-Erez, D., & Gross, A. (Eds.). (2007). *Exploring social rights: Between theory and practice*. Hart Publishing.

Barnard, C. (2007). *The substantive law of the EU: The four freedoms* (2nd ed.). Oxford University Press.

Barnard, C. (2009). The UK and posted workers: The effect of *Commission v Luxembourg* on the territorial scope of the EU concept of worker. *Industrial Law Journal*, 38(1), 122–135.

- Barnard, C. (2012). *EU employment law* (5th ed.). Oxford University Press.
- Barnard, C. (2014). EU employment law and the European social model: The past, the present and the future. *Current Legal Problems*, 67(1), 199–238.
- Barnard, C. (2019). *The substantive law of the EU: The four freedoms* (6th ed.). Oxford University Press.
- Barnard, C. (2022). *EU employment law* (6th ed.). Oxford University Press.
- Behrendt, C., & Nguyen, Q. A. (2018). Innovative approaches for ensuring social protection of platform workers. International Social Security Association.
- Behrendt, C., Nguyen, Q. A., & Rani, U. (2019). Social protection systems and the future of work: Ensuring social security for digital platform workers. *International Social Security Review*, 72(3), 17–41.
- Berg, J. (2016). Income security in the on-demand economy: Findings and policy lessons from a survey of crowdworkers (Conditions of Work and Employment Series No. 74). International Labour Office.
- Berg, J., Furrer, M., Harmon, E., Rani, U., & Silberman, M. S. (2018). Digital labour platforms and the future of work: Towards decent work in the online world. International Labour Organization.
- Bernitz, U., Mårtensson, M., Oxelheim, L., & Persson, T. (Eds.). (2018). *Bridging the prosperity gap in the EU: The social challenge ahead*. Edward Elgar Publishing.
- Biasi, M. (2022). The rebuttable presumption of employment subordination in the US ABC test and in the EU platform work directive proposal: A comparative overview. *Italian Labour Law e-Journal*.
- Blanke, H.-J., & Mangiameli, S. (Eds.). (2021). *The Treaty on the Functioning of the European Union: A commentary* (Vol. 1: Preamble, Articles 1–89). Springer.
- Boelli, M. (2023). *Between legality and illegality: How misclassification and partial enforcement transformed the Italian labour market* (Doctoral dissertation, University of Duisburg-Essen).

Cambridge User. (2023). Platform work and access to social protection across major European countries.

Carlson, R. R. (2018). Why the gig economy is still susceptible to misclassification. *Berkeley Journal of Employment and Labor Law*, 39(2), 233–256.

Case 66/85, Lawrie-Blum v Land Baden-Württemberg [1986] ECR 2121.

Case C-206/91, König v Poirrez [1992].

Case C-256/01, Allonby v Accrington & Rossendale College [2004] ECR I-873.

Case C-390/18, Airbnb Ireland UC v AHTOP (2019).

Cerami, A. (2006). Social policy in Central and Eastern Europe: The emergence of a new European welfare regime. LIT Verlag.

Cetrangolo, O., Gómez Sabaini, J. C., & Morán, D. (2014). Monotax regimes and formalisation strategies in Latin America. Economic Commission for Latin America and the Caribbean (ECLAC).

Cherry, M. A. (2019). Beyond misclassification: The digital transformation of work. *Comparative Labor Law & Policy Journal*, 41(3), 577–602.

Committee of Permanent Representatives. (2023, June 7). Proposal for a directive on improving working conditions in platform work (2021/0414(COD)).

Committee on Economic, Social and Cultural Rights. (2003, May 23). Concluding observations: Luxembourg (E/C.12/1/Add.86).

Committee on Economic, Social and Cultural Rights. (2007). General comment No. 19: The right to social security (Art. 9) (E/C.12/GC/19). United Nations.

Committee on Economic, Social and Cultural Rights. (2007). General comment No. 19: The right to social security (Art. 9) (E/C.12/GC/19). United Nations.

Committee on Economic, Social and Cultural Rights. (2007). General comment No. 19: The right to social security (Art. 9).

Costiug, L. M. (2015). Flexicurity and employment relationships in Romania. *Law Annals of Titu Maiorescu University*, 14(1), 35–42.

Council Directive 2001/23/EC.

Council Directive 2008/94/EC.

Council Directive 80/987/EEC.

Council of the European Union & European Parliament. (2024). Directive (EU) 2024/2831 on improving working conditions in platform work. *Official Journal of the European Union*.

Council of the European Union. (2019). Council Recommendation on access to social protection for workers and the self-employed (2019/C 387/01). *Official Journal of the European Union*, C 387, 1–8.

Council of the European Union. (2021). Proposal for a directive on improving working conditions in platform work: General approach.

Council of the European Union. (2024). Analysis of the final compromise text with a view to agreement. Brussels.

Council of the European Union. (2024, March 8). Proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work: Analysis of the final compromise text with a view to agreement (ST 7212/24 ADD 1).

Council of the European Union. (n.d.). Council conclusions on social protection for the self-employed.

Countouris, N. (2007). *The changing law of the employment relationship: Comparative analyses in the European context*. Ashgate.

Countouris, N., & Adams-Prassl, J. (2024, May 21). Beyond bogus self-employment: The EU Platform Work Directive's presumption of employment, and its implications for the future of employment rights in the gig economy. *Oxford Human Rights Hub*.

Countouris, N., & De Stefano, V. (2019). *New trade union strategies in the platform economy*. European Trade Union Institute (ETUI).

- Countouris, N., & De Stefano, V. (2023). New trade union strategies and platform work regulation. *European Labour Law Journal*, 14(2), 123–140.
- Court of Justice of the European Union. (1986). Case 66/85, *Lawrie-Blum v Land Baden-Württemberg* [1986] ECR 2121.
- Court of Justice of the European Union. (2004). Case C-256/01, *Allonby v Accrington & Rossendale College* [2004] ECR I-873.
- Court of Justice of the European Union. (2010). Case C-232/09, *Danosa v LKB Līzings SIA*.
- Court of Justice of the European Union. (2014, November 5). Case C-311/13, *Tümer*.
- Creutz, H. (1968). The I.L.O. and social security for foreign and migrant workers. *International Labour Review*.
- Curia of Hungary. (2023). Decision No. Mfv.VIII.10.091/2023/7.
- Czarczasty, J., & Mrozowicki, A. (2023). The nail in the coffin? Pandemic and social dialogue in Poland. *Employee Relations*, 45(6), 1353–1369.
- Daugareilh, I. (2019). The platform economy and social law: Key issues in comparative perspective (ETUI Working Paper 2019.10). European Trade Union Institute.
- Davidov, G. (2016). *A purposive approach to labour law*. Oxford University Press.
- Davidov, G. (2017). The status of Uber drivers: A purposive approach. *Spanish Labour Law and Employment Relations Journal*, 6(1–2), 6–15.
- Davies, A. C. L. (2012). *Perspectives on labour law* (2nd ed.). Cambridge University Press.
- De Becker, E., Schoukens, P., & Daenen, K. (2025). Tackling informality in the platform economy: A social security driven approach (ETUI Working Paper No. WP 2025.07). European Trade Union Institute.
- De Becker, S., Schoukens, P., & Pulignano, V. (2024). *Extending social protection to non-standard workers: A comparative perspective*. Springer.
- De Groen, W. P., Kilhoffer, Z., Lenaerts, K., & Mandl, I. (2018). *Employment and working conditions of selected types of platform work*. Publications Office of the European Union.

- De Schutter, O. (2010). *International human rights law*. Cambridge University Press.
- De Schutter, O. (2010). The two lives of the European Social Charter. In O. De Schutter (Ed.), *The European Social Charter: A social constitution for Europe* (pp. 11–39). Bruylant.
- De Schutter, O. (2018, November 14). *The European Pillar of Social Rights and the role of the European Social Charter in the EU legal order* [Working paper]. Council of Europe.
- De Schutter, O. (2019). *International human rights law: Cases, materials, commentary* (3rd ed.). Cambridge University Press.
- De Stefano, V. (2016). The rise of the “just-in-time workforce”: On-demand work, crowdwork and labor protection in the “gig economy”. *Comparative Labor Law & Policy Journal*, 37(3), 471–504.
- De Stefano, V. (2016). The rise of the “just-in-time workforce”: On-demand work, crowdwork and labour protection in the “gig-economy”. *Comparative Labor Law & Policy Journal*, 37(3), 471–504.
- De Stefano, V. (2022). The EU Commission’s proposal for a directive on platform work: An overview. *Italian Labour Law e-Journal*, 15(1).
- De Stefano, V., & Aloisi, A. (2018). European legal framework for crowdwork: Current status and future perspectives. *Industrial Law Journal*, 47(2), 143–173.
- De Stefano, V., & Aloisi, A. (2019). *European legal framework for digital labour platforms*. European Commission.
- De Wispelaere, F. (2019). 60 years of coordination of social security systems: Still room for improvement. *Belgisch Tijdschrift voor Sociale Zekerheid*, 2019(1), 159–185. Federal Public Service Social Security.
- Deakin, S. (2013). Addressing labour market segmentation. *International Labour Review*, 152(3–4), 469–486.
- Deakin, S., & Morris, G. (2012). *Labour law* (6th ed.). Hart Publishing.
- Defossez, D. (2021). The Uberisation of aircrew through the use of bogus self-employment contracts. *Air and Space Law*, 46(6), 583–602.

Degryse, C. (2016). Digitalisation of the economy and its impact on labour markets. European Trade Union Institute.

Di Cataldo, L. (2022). Improving working conditions in platform work: A comment about the agreement reached on the European directive. Italian Labour Law e-Journal.

Dijkhoff, T. (2019). The ILO Social Protection Floors Recommendation and its relevance in the European context. *European Journal of Social Security*, 21(2), 141–161.

Directive (EU) 2024/2831 on improving working conditions in platform work.

Directive 2001/23/EC.

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004.

Disposición adicional 23 of Real Decreto-ley 9/2021.

du Toit, D. (2019). Platform work and social justice. *Industrial Law Journal*, 48(3), 325–344.

Dynamex Operations West, Inc. v. Superior Court, 4 Cal. 5th 903 (Cal. 2018).

Eichenhofer, E. (2012). *Soziale Menschenrechte im Völker-, europäischen und deutschen Recht*. Mohr Siebeck.

Eichenhofer, E. (2015). Social security as a human right: A European perspective. In F. Pennings & G. Vonk (Eds.), *Research handbook on European social security law* (pp. 33–52). Edward Elgar Publishing.

Eichenhofer, E. (2015). Social security as a human right: A European perspective. In F. Pennings & G. Vonk (Eds.), *Research handbook on European social security law* (pp. 33–52). Edward Elgar Publishing.

Eichhorst, W., Braga, M., & Famira-Mühlberger, U. (2013). Social protection rights of economically dependent self-employed workers. Publications Office of the European Union.

Engström, V. (2019). Unpacking the debate on social protection floors. *Goettingen Journal of International Law*, 9(1), 1–24.

Eriksen, A. (2021, May 12). Groundbreaking agreement: Danes can now order takeaways with a clean conscience. *Fagbladet* 3F.

- Esping-Andersen, G. (1990). *The three worlds of welfare capitalism*. Princeton University Press.
- Esping-Andersen, G. (1999). *Social foundations of postindustrial economies*. Oxford University Press.
- Esping-Andersen, G. (1999). *Social foundations of postindustrial economies*. Oxford University Press.
- Eurofound. (2018). *Employment and working conditions of selected types of platform work*. Publications Office of the European Union.
- Eurofound. (2018). *Employment and working conditions of selected types of platform work*. Publications Office of the European Union.
- Eurofound. (2019). *Access to social protection for workers in non-standard forms of employment*. Publications Office of the European Union.
- Eurofound. (2020). *Living, working and COVID-19*. Publications Office of the European Union.
- Eurofound. (2021). *Collective bargaining in the platform economy*. Publications Office of the European Union.
- Eurofound. (2021). *Working conditions in platform work*. Publications Office of the European Union.
- Eurofound. (2025). *Platform work: Algorithmic management*. Publications Office of the European Union.
- Eurofound. (n.d.). Platform work. <https://www.eurofound.europa.eu/topic/platform-work>
- Eurofound. (n.d.). Platform work. <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/platform-work>
- Eurofound. (n.d.). *Trade union study on the informal economy – Romania*.
- European Commission. (2013). *Your social security rights in Europe*. Publications Office of the European Union.

European Commission. (2017). Study on access to social protection for people working on non-standard contracts and as self-employed in Europe. Publications Office of the European Union.

European Commission. (2018). Council recommendation on access to social protection for workers and the self-employed. Publications Office of the European Union.

European Commission. (2018). Impact assessment accompanying the council recommendation on access to social protection for workers and the self-employed. Publications Office of the European Union.

European Commission. (2019). European Pillar of Social Rights. Publications Office of the European Union.

European Commission. (2019). Impact assessment accompanying the recommendation on access to social protection. Publications Office of the European Union.

European Commission. (2020). Access to social protection for all: Improving coverage in the EU. Publications Office of the European Union.

European Commission. (2020). Access to social protection for all: Improving coverage in the EU. Publications Office of the European Union.

European Commission. (2021). Digital labour platforms in the EU: Mapping and business models. Publications Office of the European Union.

European Commission. (2021). Employment and social developments in Europe. Publications Office of the European Union.

European Commission. (2021). European Pillar of Social Rights action plan. Publications Office of the European Union.

European Commission. (2021). Impact assessment accompanying the proposal for a directive on improving working conditions in platform work (SWD(2021) 397 final). Publications Office of the European Union.

European Commission. (2021). Impact assessment accompanying the proposal for a directive on improving working conditions in platform work (SWD(2021) 396 final). Publications Office of the European Union.

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

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

European Commission. (2021). Study to gather evidence on the working conditions of platform workers. Publications Office of the European Union.

European Commission. (2021). The 2021 ageing report: Economic and budgetary projections for the EU Member States. Publications Office of the European Union.

European Commission. (2021, December 9). Proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work. Brussels.

European Commission. (2021, June 15). Second-phase consultation of social partners under Article 154 TFEU on possible action addressing the challenges related to working conditions in platform work (C(2021) 4230 final). Brussels.

European Commission. (2022). Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons. Publications Office of the European Union.

European Commission. (2023). Industrial relations in Europe 2022. Publications Office of the European Union.

European Commission. (2023). Report on implementation of the 2019 recommendation on access to social protection for workers and the self-employed. Publications Office of the European Union.

European Commission. (n.d.). Infographic on digital platform workers.

European Labour Authority. (2021). Annual report. Publications Office of the European Union.

European Labour Authority. (2022). Ensuring compliance with labour mobility rules in the EU. Publications Office of the European Union.

European Labour Authority. (2023). Social security coordination and protection rights in mobile and cross-border work. European Labour Authority.

European Labour Authority. (2025). Addressing platform workers' employment misclassification: Legal frameworks, enforcement strategies and the new platform work directive (ELA Study).

European Labour Authority. (2025, April). Addressing platform workers' employment misclassification: Legal frameworks, enforcement strategies and the new platform work directive.

European Parliament and Council of the European Union. (2024). Directive (EU) 2024/2831 on improving working conditions in platform work. Official Journal of the European Union.

European Parliament and Council. (1989). Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work.

European Parliament. (2017). The social protection of workers in the platform economy (Policy Department A, Forde et al.). Publications Office of the European Union.

European Parliament. (2017). The social protection of workers in the platform economy (Policy Department A, Forde et al.). Publications Office of the European Union.

European Parliament. (2021). Texts adopted – Fair working conditions, rights and social protection for platform workers.

European Parliament. (2024). Platform work directive: Legislative train schedule.

European Parliament. (n.d.). Study on the impact of new forms of labour on industrial relations and the evolution of labour law in the European Union.

European Parliamentary Research Service. (2018). Social protection in the EU: State of play, challenges and options. European Parliament.

European Parliamentary Research Service. (2022). Improving the working conditions of platform workers. European Parliament.

European Parliamentary Research Service. (2022). Improving working conditions in platform work. European Parliament.

European Parliamentary Research Service. (2022). Improving working conditions in platform work (Initial appraisal). European Parliament.

European Parliamentary Research Service. (2024). EU directive on platform work. European Parliament.

European Social Charter. (1961). Articles 24–25 (ETS No. 035).

European Social Charter. (1961). European Social Charter (ETS No. 035).

European Social Insurance Platform. (2021, December 3). Study on coverage of (solo) self-employed platform work under unemployment and sickness benefits schemes. European Social Insurance Platform.

European Trade Union Institute. (2019). Non-standard workers and access to social protection (ETUI Policy Brief).

European Trade Union Institute. (2024). The EU platform work directive: What's new, what's missing, what's next? ETUI Policy Brief.

European Union. (2000). Charter of Fundamental Rights of the European Union.

European Union. (2016). Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2016/C 202/01). Official Journal of the European Union.

Fabre, C. (2000). Social rights under the constitution: Government and the decent life. Oxford University Press.

Falsone, M. (2022). What impact will the proposed EU directive on platform work have on the Italian system? Italian Labour Law e-Journal, 15(1).

Ferrera, M. (2005). The boundaries of welfare: European integration and the new spatial politics of social protection. Oxford University Press.

Finnish Society for Social Rights v. Finland, Complaint No. 88/2013, decision on the merits of 9 September 2014.

Forde, C., Stuart, M., Joyce, S., Oliver, L., Valizade, D., & Alberti, G. (2017). The social protection of workers in the platform economy. University of Leeds / European Parliament.

- Fredman, S. (2008). *Human rights transformed: Positive rights and positive duties*. Oxford University Press.
- Freedland, M., & Kountouris, N. (2011). *The legal construction of personal work relations*. Oxford University Press.
- Freedland, M., & Kountouris, N. (2011). *The legal construction of personal work relations*. Oxford University Press.
- Funke, C., & Picot, G. (2021). Platform work in a coordinated market economy. *Industrial Relations*, 60(2), 251–276.
- Gig workers in Europe: The new platform of rights. (n.d.). Social Europe.
- Gould, W. B., & Biasi, M. (2022). The rebuttable presumption of employment subordination in the US ABC test and in the EU Platform Work Directive proposal: A comparative overview. *Italian Labour Law e-Journal*, 15(1).
- Grabbe, C. (2023). Free movement and access to social security in the EU: The challenge of exporting unemployment benefits. *European Journal of Social Security*, 25(1), 57–75.
- Graham, M. (2020). Regulate, replicate, and resist: The conjunctural geographies of platform urbanism. *Urban Geography*, 41(4), 453–457.
- Graham, M., Hjorth, I., & Lehdonvirta, V. (2017). Digital labour and development: Impacts of global digital labour platforms and the gig economy on worker livelihoods. *Transfer: European Review of Labour and Research*, 23(2), 135–162.
- Guibboni, S. (2019). Being a worker in EU law. *European Labour Law Journal*, 10(2), 113–129.
- Gyulavári, T. (2014). Trap of the past: Why economically dependent work is not regulated in the member states of Eastern Europe. *European Labour Law Journal*, 5(3–4), 269–272.
- Gyulavári, T. (2019). Dependent self-employment in the European Union. *European Labour Law Journal*, 10(1), 26–42.
- Gyulavári, T. (2024). The first platform work judgment in Central and Eastern Europe. *European Labour Law Journal*, 15(1), 3–8.

Gyulavári, T., & Lukács Gellérné, É. (2025). Social rights of EU mobile workers: Limitations through the concepts of ‘worker’ and ‘insured person’. *Transfer: European Review of Labour and Research*, 31(1), 77–92.

Gyulavári, T., & Menegatti, E. (Eds.). (2019). *The sources of labour law*. Kluwer Law International.

Hadwiger, F. (2022). Realizing the opportunities of the platform economy through freedom of association and collective bargaining (ILO Working Paper No. 80). International Labour Organization.

Harris, D., & Darcy, J. (2001). *The European Social Charter*. Transnational Publishers.

Harris, S. D., & Krueger, A. B. (2015). A proposal for modernizing labour laws for twenty-first-century work: The “independent worker” (Hamilton Project Discussion Paper 2015-10). Brookings Institution.

Hendrickx, F. (2018). Regulating new ways of working: From the new “wow” to the new “how”. *European Labour Law Journal*, 9(2), 145–152.

Hepple, B. (2005). *Labour laws and global trade*. Hart Publishing.

Hills, J. (2015). Labour markets, social security and the welfare state. In J. Hills, *Good times, bad times: The welfare myth of them and us*. Policy Press.

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<https://doi.org/10.1093/clp/cuu012>

<https://doi.org/10.1093/indlaw/dwp002>

<https://doi.org/10.1093/indlaw/dwy007>

<https://doi.org/10.1093/indlaw/dwz011>

<https://doi.org/10.1108/ER-08-2017-0195>

<https://doi.org/10.1111/irel.12278>

<https://doi.org/10.1111/issr.12212>

<https://doi.org/10.1111/issr.12267>

<https://doi.org/10.1111/j.1564-913X.2013.00192.x>

<https://doi.org/10.1177/0032329209357888>

<https://doi.org/10.1177/1024258916687250>

<https://doi.org/10.1177/1388262719847786>

<https://doi.org/10.1177/13882627221142736>

<https://doi.org/10.1177/2031952518773409>

<https://doi.org/10.1177/2031952519826015>

<https://doi.org/10.1177/20319525221130696>

<https://ohrh.law.ox.ac.uk/>

<https://www.consilium.europa.eu/en/infographics/digital-platform-workers/#0>

<https://www.eurofound.europa.eu/data/tackling-undeclared-work-in-europe/database/trade-union-study-on-the-informal-economy-romania>

<https://www.socialeurope.eu/gig-workers-in-europe-the-new-platform-of-rights>

Ilsøe, A. (2020). The Hilfr agreement: Negotiating the platform economy in Denmark (FAOS Research Paper No. 176). FAOS, University of Copenhagen.

International Covenant on Economic, Social and Cultural Rights (1966).

International Labour Organization. (1952). Convention No. 102 concerning minimum standards of social security.

International Labour Organization. (1984). Report on ILO social security major programme 110. Joint Inspection Unit.

International Labour Organization. (2006). Employment relationship recommendation (No. 198).

International Labour Organization. (2012). Recommendation No. 202 concerning national floors of social protection.

International Labour Organization. (2016). Non-standard employment around the world: Understanding challenges, shaping prospects. International Labour Office.

International Labour Organization. (2017). World social protection report 2017–19: Universal social protection to achieve the Sustainable Development Goals. International Labour Office.

International Labour Organization. (2018). Innovative approaches for ensuring universal social protection for the future of work (Issue Brief No. 12). International Labour Office.

International Labour Organization. (2021). World employment and social outlook 2021: The role of digital labour platforms in transforming the world of work. International Labour Office.

International Labour Organization. (2021). World employment and social outlook 2021: The role of digital labour platforms in transforming the world of work. International Labour Organization.

International Labour Organization. (n.d.). Coordination of social security systems in the European Union: An explanatory report on EC Regulation No. 883/2004 and its implementing Regulation No. 987/2009.

International Social Security Association. (2023). Platform workers and social protection: International developments. International Social Security Association.

International Social Security Review. (2021). Special issue: Social protection for digital platform workers in Europe. *International Social Security Review*, 74(3–4).

Jakab, N. (2015). Munkavégzők a munkavégzési viszonyok rendszerében. *Jogtudományi Közlöny*, 2015(9).

Jakab, N. (2018). Non-standard employment and social protection challenges. University of Miskolc, Faculty of Law.

Jakab, N. (2019). Non-standard employment and social security challenges in Hungary. In K. Koldinská, G. Strban, A. Kun, & M. Wujczyk (Eds.), *Labour law and social protection in Central and Eastern Europe* (pp. 127–144). Springer.

Johnston, H., & Land-Kazlauskas, C. (2018). Organizing on-demand: Representation, voice, and collective bargaining in the gig economy. International Labour Organization.

Kellerbauer, M., Klamert, M., & Tomkin, J. (Eds.). (2019). *The EU treaties and the Charter of Fundamental Rights: A commentary*. Oxford University Press.

Kilpatrick, C. (2018). *The European Social Charter and the role of the European Committee of Social Rights*. Oxford University Press.

Koldinská, K., Strban, G., Kun, A., & Wujczyk, M. (2026). *Labour law and social security law in Central and Eastern Europe*. Springer.

Komendová, J., & Horecký, J. (2017). The notion of “worker” for the purpose of EU social policy and its interpretation by the Court of Justice of the European Union. *Białostockie Studia Prawnicze*, 22(2), 165–178.

Kordas, M., & Pennings, F. (2008). The legal character of international social security law. In F. Pennings & G. Vonk (Eds.), *Research handbook on European social security law*. Edward Elgar Publishing.

Kountouris, N. (2018). The concept of ‘worker’ in European labour law: Fragmentation, autonomy and scope. *Industrial Law Journal*, 47(2), 192–225.

Kountouris, N. (2018). The concept of worker in European labour law: Fragmentation, autonomy and scope. *Industrial Law Journal*.

Kramer, D. (2022). EU law and the public regulation of the platform economy: The case of the short-term rental market. *Common Market Law Review*, 59(5), 1465–1494.

Kuddo, A., Robalino, D. A., & Weber, M. (2015). *Balancing regulations to promote jobs: From employment contracts to unemployment benefits*. World Bank.

Kulke, U., Cichon, M., & Pal, K. (2007). Changing tides: A revival of a rights-based approach to social security. In J. van Langendonck (Ed.), *The right to social security*. Intersentia.

Kullmann, M. (2015). *Enforcement of labour law in cross-border situations: A legal study of the EU’s influence on the Dutch, German, and Swedish enforcement systems*. Kluwer Law International.

Kullmann, M. (2021). ‘Platformisation’ of work: An EU perspective on introducing a legal presumption. *European Labour Law Journal*, 12(1), 66–80.

Langford, M. (Ed.). (2008). *Social rights jurisprudence: Emerging trends in international and comparative law*. Cambridge University Press.

Law No. 227/2015 on the Fiscal Code (Romania).

Law No. 319/2006 on Occupational Health and Safety (Romania).

Law No. 53/2003 on the Labour Code (Romania).

Lee, E. (1994). The Declaration of Philadelphia: Retrospect and prospect. *International Labour Review*.

Leibfried, S., & Pierson, P. (2000). Social policy: Left to courts and markets? In H. Wallace & W. Wallace (Eds.), *Policy-making in the European Union* (pp. 267–292). Oxford University Press.

Lukas, K. (2021). *The revised European Social Charter: An article-by-article commentary*. Edward Elgar Publishing.

Lund, F., Moussié, R., & Lifers, L. (2017). Approaches to social protection for informal workers: Aligning productivist and human rights-based approaches. *International Social Security Review*, 70(1), 45–65.

Maciejewska, J. (2005). European Social Charter practice: Legalism or common sense. *Polish Quarterly of International Affairs*, 14(4), 77–92.

Marshall, T. H. (1992). *Citizenship and social class*. Pluto Press.

McCrudden, C. (2006). Legal research and the social sciences. *Law Quarterly Review*, 122, 632–650. Mikkola, M. (2010). *Social human rights of Europe*. Legisactio Ltd.

McNeilly, F. (2013). Sham self-employment contracts: Taking a liberty? *Manchester Review of Law, Crime & Ethics*, 15, 1–20.

Mélypataki, G. (2023). Az Ipar 4.0 és a jog kapcsolata – Problémafelvetések a foglalkoztatás és szociális biztonság témaköre kapcsán. *Jogelméleti Szemle*, 2023(2), 45–58.

Mélypataki, G. (2024, April). Tipikus polgári jogi szerződés vagy munkaviszony? – A platformmunka új szabályainak értékelése az élő jog tükrében. *Miskolci Jogi Szemle*, 18(3).

- Messenger, J. (2018). Working time and the future of work (ILO Future of Work Research Paper Series No. 6). International Labour Organization.
- Mirowski, T. Platform work as a manifestation of a new form of employment in the era of the fourth industrial revolution.
- Morsa, M. (2023). The International Labour Organisation and social security: Towards universal social protection? Federal Public Service Social Security.
- Moskalenko, O. V. (2013). European standards of compulsory social insurance.
- Nádas, G., & Zaccaria, M. L. (2024). Munkaviszony-e a platformmunkavégzés? Jogi Közlöny, 79(3), 137–145.
- Nagel, S. G. (1997). Developments in social security systems: Reflections on the work of the Council of Europe in this field. *International Review of Administrative Sciences*, 63(2), 227–241.
- Niebler, V., Kirchner, S., Schüßler, E., & Schröder, C. (2023). Towards “bogus employment”? The contradictory outcomes of ride-hailing regulation in Berlin, Lisbon, and Paris. Working paper.
- Nyombi, C. (2015). A response to the challenges posed by the binary divide between employee and self-employed. *International Journal of Law and Management*, 57(3), 249–263.
- Ocampo, J. A., & Gómez-Arteaga, N. (2017). Social protection and the future of work: The role of simplified contribution regimes. International Labour Organization.
- Office of the United Nations High Commissioner for Human Rights. (2025). The right to social security (Fact Sheet No. 39). United Nations.
- Organisation for Economic Co-operation and Development. (2018). Non-standard work and the future of social protection. OECD Publishing.
- Organisation for Economic Co-operation and Development. (2018). Non-standard work and the future of social protection. OECD Publishing.
- Organisation for Economic Co-operation and Development. (2019). The future of social protection: What works for non-standard workers? OECD Publishing.

- Organisation for Economic Co-operation and Development. (2023). Employment outlook 2023: Artificial intelligence and the labour market. OECD Publishing.
- Otting, A. (1996, March). History, development and impact of the European Code of Social Security. Paper presented at the Seminario sobre Normatividad Internacional de la Seguridad Social, Mexico.
- Pacolet, J., & De Wispelaere, F. (2016). Bridging the gap between welfare and mobility: The interaction between intra-EU mobility and access to social protection (ESPN Research Paper No. 36). European Social Policy Network.
- Palier, B. (2010). A long goodbye to Bismarck? The politics of welfare reform in continental Europe. Amsterdam University Press.
- Palier, B., & Thelen, K. (2010). Institutionalizing dualism: Complementarities and change in France and Germany. *Politics & Society*, 38(1), 119–148.
- Peers, S., Hervey, T., Kenner, J., & Ward, A. (Eds.). (2021). The EU Charter of Fundamental Rights: A commentary (2nd ed.). Hart Publishing.
- Pennings, F., & Vonk, G. (Eds.). (2015). Research handbook on European social security law. Edward Elgar Publishing.
- Perulli, A. (2018). The Declaration of Philadelphia. In E. Ales, M. Bell, O. Deinert, & S. Robin-Olivier (Eds.), *International and European labour law commentary*. Nomos.
- Perulli, A., & Treu, T. (Eds.). (2020). The future of work: Labour law and labour market regulation in the digital era. Kluwer Law International.
- Pesole, A., Urzì Brancati, M. C., Fernández-Macías, E., Biagi, F., & González Vázquez, I. (2018). Platform workers in Europe (JRC Science for Policy Report). Publications Office of the European Union.
- Petrovics, Z. (2024). The first judgment on platform work in Hungary. *Revue de droit comparé du travail et de la sécurité sociale*, 2, 156–161.

Polajžar, A. (2025). Analysis of the criteria for establishing the existence of an employment relationship of platform workers under the Platform Work Directive: High expectations and limited outcome? *Revista Jurídica Portucalense*, 37, 45–68.

Ponce del Castillo, A., & Naranjo, D. (2022). Regulating algorithmic management: An assessment of the EC’s draft directive on platform work (ETUI Policy Brief No. 2022.05). European Trade Union Institute.

Popescu, A., & Savu, T. G. (2002). The notion of “worker” in Community law. *Legislative Information Bulletin*, 11.

Popescu, R. R. (2012). Controversial aspects regarding the salary system in Romania. *Law Annals of Titu Maiorescu University*, 11(1), 95–102.

Prassl, J. (2018). *Humans as a service: The promise and perils of work in the gig economy*. Oxford University Press.

Prassl, J., & Risak, M. (2016). Uber, TaskRabbit, and Co.: Platforms as employers? Rethinking the legal analysis of crowdwork. *Comparative Labor Law & Policy Journal*, 37(3), 619–651.

Pulignano, V., Piasna, A., & Keune, M. (2024). Flexibility, precarity and social protection: Adapting social security to the gig economy. *Industrial Relations Journal*, 55(2), 119–136.

Rácz-Antal, I. (2022). A digitalizáció hatása a munkajog egyes alapintézményeire. *Jog és Állam*, 34, 141–150.

Rainone, S., & Aloisi, A. (2024). The EU platform work directive: What’s new, what’s missing, what’s next? (ETUI Policy Brief No. 2024.06). European Trade Union Institute. <https://doi.org/10.2139/ssrn.4957467>

Raitio, J. (2016). Legal certainty. In M. Sellers & S. Kirste (Eds.), *Encyclopedia of the philosophy of law and social philosophy*. Springer.

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

- Riczu, Z., et al. (2023). Concepts of work: From traditional social-labour ideas to modern effects of digital transformation. *Journal of Digital Technologies and Law*, 1(1), 25–44.
- Risak, M. (2021). Fair working conditions for platform workers: Possible regulatory approaches at the EU level. European Trade Union Institute (ETUI).
- Risak, M., & Dullinger, T. (2018). The concept of ‘worker’ in EU law: Status quo and potential for change. European Trade Union Institute (ETUI).
- Risak, M., & Dullinger, T. (2018). The concept of ‘worker’ in EU law: Status quo and potential for change. European Trade Union Institute (ETUI).
- Risak, M., & Dullinger, T. (2022). The EU platform work directive: Towards labour law regulation of platform work? *European Labour Law Journal*, 13(1), 3–19.
- Rodriguez Tapia, F., & Datta, K. (2023). Platform work, informality, and social protection: Challenges and policy responses. *Journal of European Social Policy*, 33(2), 213–228.
- Roman, D. (2012). *La justiciabilité des droits sociaux: Vecteurs et résistances*. Éditions Pedone.
- Rosin, A. (2020). Platform work and fixed-term employment regulation. *European Labour Law Journal*, 11(2), 157–177.
- Rosin, A. (2022). The right of a platform worker to decide whether and when to work: An obstacle to their employee status? *European Labour Law Journal*, 13(4), 519–535.
- Roşioru, F. (2013). The changing concept of subordination. In G. Kiss (Ed.), *Recent developments in labour law* (pp. 103–118). Akadémiai Kiadó.
- Roşioru, F. (2013). The changing concept of subordination. In G. Kiss (Ed.), *Recent developments in labour law* (pp. 103–118). Akadémiai Kiadó.
- Roşioru, F. (2016). Definition of the employee in the collective dismissal procedure. *Revista Română de Dreptul Muncii*.
- Roşioru, F. (2017). Legal challenges of non-standard forms of employment in Romania. *Romanian Journal of Labour Law*, 1, 67–78.

- Roşioru, F. (2019). Legal acknowledgement of the category of economically dependent workers. *European Labour Law Journal*, 10(3), 227–245.
- Roşioru, F. (2020). Precarious work and social security vulnerability in Romania. *Romanian Journal of Labour Law*.
- Roşioru, F. (2020). The status of platform work in Romania. *Comparative Labor Law & Policy Journal*, 41(2), 335–354
- Roşioru, F. (2020). The status of platform workers in Romania. *Comparative Labor Law & Policy Journal*, 41(2), 355–378.
- Roşioru, F. (2021). As is the work, so is the reward: The substance of the individual employment agreement. *Romanian Review of Private Law*.
- Roşioru, F. (2021). The social protection of platform workers in Romania: Meeting the growing demand for affordable and adequate coverage? *International Social Security Review*, 74(3–4), 83–102.
- Roşioru, F. (2021). The social protection of platform workers in Romania: Meeting the growing demand for affordable and adequate coverage? *International Social Security Review*, 74(3–4), 85–106.
- Sagan, A. (2019). The classification as worker under EU law. *European Labour Law Journal*, 10(3), 232–248.
- Sagan, A. (2019). The classification as worker under EU law. *European Labour Law Journal*, 10(3), 232–248.
- Samuel, L. (1997). *Droits sociaux fondamentaux: Jurisprudence de la Charte sociale européenne*. Éditions du Conseil de l'Europe.
- Saul, B., Kinley, D., & Mowbray, J. (2014). *The International Covenant on Economic, Social and Cultural Rights: Commentary, cases, and materials* (1st ed.). Oxford University Press.
- Schoukens, P. (2020). Digitalisation and social security in the EU: The case of platform work—from work protection to income protection? *European Journal of Social Security*, 22(4), 434–451.

- Schoukens, P. (2020a). Social security for atypical workers: European trends and national responses. In P. Schoukens & K. Daenen (Eds.), *Non-standard employment and social protection* (pp. 446–459). Edward Elgar Publishing.
- Schoukens, P., & Barrio, A. (2017). The changing concept of work: When does typical work become atypical? *European Journal of Social Security*, 19(2), 175–189.
- Schoukens, P., & Bruynseraede, C. (2021). Access to social protection for self-employed and non-standard workers: An analysis based upon the EU recommendation on access to social protection. *Acco*.
- Schoukens, P., & Degryse, C. (2021). *Flexicurity and social protection in Europe: Policy pathways for platform workers*. Routledge.
- Schoukens, P., Degryse, C., & Pochet, P. (2020). The European Pillar of Social Rights: Filling the gaps in social protection. In C. Barnard & T. Prosser (Eds.), *The foundations of EU social law* (pp. 312–335). Hart Publishing.
- Schwab, K. (2016). *The fourth industrial revolution*. World Economic Forum.
- Šencur Peček, D. (2018). Social protection of workers in non-standard forms of employment in Slovenia. *Zbornik Pravnog Fakulteta Sveučilišta u Rijeci*, 39(1), 371–394.
- Servais, J.-M. (2014). *International standards on social security: Lessons from the past for a better implementation*. International Labour Organization.
- Shany, Y. (2007). Stuck in a moment in time: The international justiciability of economic, social and cultural rights. In D. Barak-Erez & A. M. Gross (Eds.), *Exploring social rights: Between theory and practice* (pp. 77–100). Hart Publishing.
- Sieker, F. (2022). Platform work and access to social protection across major European countries. *Journal of International and Comparative Social Policy*, 38(3), 227–246.
- Sieker, F. (2022). Platform work and access to social protection across major European countries. *Journal of International and Comparative Social Policy*, 38(3), 215–233.
- Sieker, F. (2022). *Social protection and the missing middle in platform economies*. Cambridge University Press.

Sieker, F. (2022). *Social protection and the missing middle in platform economies*. Cambridge University Press.

Silveira, A., Araújo Coelho, L., Costa, M. I., & Cabral, T. S. (Eds.). (2024). *The Charter of Fundamental Rights of the European Union: A commentary*.

Solymosi-Szekeres, B., & Prugberger, T. (2024). The growing vulnerability of workers: Reflections at the first Hungarian platform case. *Studia Juridica et Politica Jaurinensia*, 11(1), 3–18. <https://doi.org/10.71100/STUDIA.2024.1.2>

Spagnolo, A. (2022). They are not enforceable, but states must respect them: An attempt to explain the legal value of decisions of the European Committee of Social Rights. *European Papers*, 7(2), 1123–1145.

Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). *Access to social protection for people working on non-standard contracts and as self-employed in Europe*. European Commission.

Sprague, R. (2015). Using the ABC test to classify workers: End of the platform-based business model or status quo ante? *William & Mary Business Law Review*, 7(3), 733–758.

Srnicek, N. (2017). *Platform capitalism*. Polity Press.

Strban, G. (2015). Social security protection of economically dependent self-employed persons. *International Social Security Review*, 68(2), 57–75.

Strban, G. (2021). Social law 4.0 and the future of social security coordination. In U. Becker & O. Chesalina (Eds.), *Social law 4.0: New approaches for ensuring and financing social security in the digital age* (pp. 273–292). Springer.

Subramanya, T. R. (2024). The role of the International Labour Organisation in ensuring social security: An assessment. *NUJS Journal of Regulatory Studies*, 1(1).

Supiot, A. (2001). *Beyond employment: Changes in work and the future of labour law in Europe*. Oxford University Press.

Supiot, A. (2012). *The spirit of Philadelphia*. Verso.

Szelewa, D. (2017). From implicit to explicit familialism: Post-1989 family policy reforms in Poland. In *Gender and family in European economic policy*. Palgrave Macmillan.

The European Social Charter and international labour standards. (1961). *International Labour Review*, 84(1), 1–15.

The same 2021 ILO report appeared 3 times

Thouvenin, A., & Trebilcock, A. (Eds.). (2013). *Droit international social* (Vol. 2). Bruylant.

Țiclea, A. (2020). *Tratat de dreptul muncii*. Universul Juridic.

Tilburg University. (2020). *Transparency and inclusion in social security for platform workers*.

Tilcsik, A., & Marquis, C. (2013). Punctuated generosity: How mega-events and natural disasters affect corporate philanthropy in U.S. communities. *Administrative Science Quarterly*, 58(1), 111–148.

Tinca, O. (2015). The notion of employee in the labour code in relation to the notion of worker in EU law. *Revista Română de Dreptul Muncii*, 3, 37–45.

Trif, A. (2004). Overview of industrial relations in Romania. *Journal for Labour and Social Affairs in Eastern Europe*, 7(2), 231–250.

Trif, A., & Szabó, I. G. (2022). Where to find power resources under a hostile government? The prospects for trade union revitalisation after the loss of institutional resources in Hungary and Romania. *European Journal of Industrial Relations*, 28(4), 347–363.

Urzì Brancati, C., Pesole, A., & Fernández-Macías, E. (2020). *The platform economy in Europe: Social protection and labour rights challenges* (JRC Science for Policy Report). Publications Office of the European Union.

Utrecht Law Review. (2025). Balancing competition and worker protection: The EU's Platform Work Directive. *Utrecht Law Review*, 21(1).

Vallasek, M. (2019). Collective bargaining and social dialogue in Romania. *Acta Universitatis Sapientiae, Legal Studies*, 8(1), 87–104.

Vallasek, M. (2020). A kollektív munkaszerződés szabályozásának problémái Romániában. *Scientia in Erdélyi Jogélet*, 11(1), 77–90.

- Vallasek, M. M., & Mélypataki, G. (2020). Rules on home office work and telework in Romania and in Hungary. *Central European Journal of Comparative Law*.
- Vallasek, M. M., & Mélypataki, G. (2020). Rules on home office work and telework in Romania and in Hungary. *Central European Journal of Comparative Law*, 1(2), 145–160.
- Vallistu, E. (2023). The entrepreneur account in Estonia: Simplifying taxation and social security contributions. Ministry of Social Affairs (Estonia).
- van der Mei, A.-P., Melin, P., Vankova, Z., & Verschueren, H. (2018). The external dimension of EU social security coordination. *European Journal of Social Security*, 20(3), 211–234.
- van Langendonck, J. (2007). The meaning of the right to social security. In J. van Langendonck (Ed.), *The right to social security*. Intersentia.
- van Langendonck, J. (Ed.). (1997). *Verfassung, Theorie und Praxis des Sozialstaats: Festschrift für Hans F. Zacher*. Duncker & Humblot.
- Vandaele, K. (2018). Will trade unions survive in the platform economy? Emerging patterns of platform workers' collective voice and representation in Europe (ETUI Research Paper No. 2018.05). European Trade Union Institute.
- Vandamme, F. (1994). The revision of the European Social Charter. *International Labour Review*, 133(5–6), 635–656.
- Vandenbroucke, F. (2017). The idea of a European social union: A normative introduction (European Commission Discussion Paper). European Commission.
- Villars, C. C. (1979). Social security standards in the Council of Europe: The ILO influence. *International Labour Review*, 118(2), 173–188.
- Visser, J. (2016). What happened to collective bargaining during the great recession? *IZA Journal of Labor Policy*, 5(9).
- Wang, Q. (2024). Risky business: How food-delivery platform riders understand and manage safety at work. *International Journal of Environmental Research and Public Health*, 21(1), Article 123.

- Webb, J., Tihanyi, L., Ireland, R. D., & Sirmon, D. G. (2020). You say illegal, I say legitimate: Entrepreneurship in the informal economy. *Academy of Management Review*, 45(4), 838–858.
- Weber, T., & Schoukens, P. (2024). Social security and platform work: Rethinking contribution liability in non-standard employment. In P. Schoukens & H. Verschueren (Eds.), *The future of social security in Europe* (pp. 187–210). Edward Elgar Publishing.
- Widner, J. (2019). Gig economy un-gigged: Collective bargaining agreement for bike couriers. *Global Policy Journal (GPP)*.
- Williams, C. C., & Horodnic, I. A. (2017). Tackling bogus self-employment: Some lessons from Romania. *Journal of Developmental Entrepreneurship*, 22(1), 1750004.
- Williams, C. C., et al. (2020). Tackling undeclared work in the collaborative economy and bogus self-employment. *European Platform Tackling Undeclared Work*.
- Zamani, S. G., & Azadd Evin, A. (2016). The right to social security under international law. *Mediterranean Journal of Social Sciences*, 7(4), 207–212.
- Zweigert, K., & Kötz, H. (1998). *An introduction to comparative law* (3rd ed.). Oxford University Press.

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Statement

In accordance with the provisions of the Regulation on the Use of Artificial Intelligence of University of Miskolc and the Guidelines for the Use of Artificial Intelligence of the Deák Ferenc Doctoral School of Law, I, undersigned Csaba Szabó, declare that I have used / have not used artificial intelligence in my doctoral dissertation and thesis booklets.

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