DECOMMODIFYING PLATFORM WORK THROUGH AN EU DEFINITION OF WORKER

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Abstract: this article aims to highlight the process of recommodification characterizing the new forms of work today, in particular gig economy jobs, and the possible solutions that can be suggested to guarantee adequate protection. After having explained the importance of labour law to decommodify the new forms of work, in particular platform work, this article explains the different ways to legally classify them at the national level and the relevant contribution an EU definition of worker could bring to address the problem of recommodification. In doing this, the article also mentions some relevant aspects of the EU proposal for a directive in the field.

Keywords: recommodification, gig economy, labour law, decommodification, EU.

INTRODUCTION: THE EROSION OF THE STANDARD EMPLOYMENT RELATIONSHIP

In most of the countries there is a Standard Employment Relationship (SER) model that receives the greatest labour and social security protection (Schoukens, Barrio 2017). This model dates back to Fordism, when it was established as a regulatory model (Freedland 2003) and a social norm (Castell 1997; Prieto 2014; Barbier 2013) which normatively prescribed what (male) workers could expect from a "normal" employment relationship

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(stability, predictable labour career, regular working time schedules, etc.). As a result, working under a non-standard form of employment was considered to be atypical and circumscribed to exceptional circumstances (Prieto 2002).

Regardless of how the standard employment relationship was institutionalised at national level (*contrato indefinido*, unfixed term contract, *unbefristeter Arbeitsvertrag*, etc.), it has been stressed that its key defining feature was its role in decommodifying labour (Supiot 2001). Decommodification was favoured through the employment rights and social protection provisions jointly granted by employers and the state; these provisions institutionalised a substantive protection and brake against pure market relationships where labour is treated as a commodity (Polany 1942). Those protections provided workers with labour stability, access to training, career development and collective voice rights. Also, they ensured workers had an adequate income level during work and non-work periods, thereby limiting pressure on workers to sell their labour under unfair or disadvantageous market conditions, (Rubery et al. 2018).

The SER model became increasingly contested in the mid-1970s, when governments and companies sought greater employment flexibility as a perceived solution to the increased competition as a result of global economic changes (Pollert 1991; Hyman 1991; Aglietta 1979; Boyer 1986). Although it still represents the most common form of work in Europe, research has shown that it has been challenged both internally and externally. Internally, some of its defining features have been weakened because of the flexibilization of the labour market (Schoukens, Barrio 2017) and developments in Information and Communication Technologies (ICT): working time has become less predictable and more irregular; and spatial and temporal boundaries between work and non-work have been blurred (Schoukens, Barrio 2017; Huws et al. 2018). Externally, it has been challenged because non-standard employment relationships (part-time, fixed term, etc.), which do not provide the same extent of protection as standard contracts, and are associated with low pay, poor training and career opportunities or limited social protection, have increased since the 1980s (Jaehrling, Kalina 2020; Smith, McBride 2021). However, it is worth

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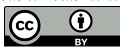

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noting that the forms and incidence of non-standard employment relationships vary across European countries. For instance, temporary employment ranges from around 1 per cent of total employment in Romania and Lithuania, Latvia and Estonia at the lower end of the scale, to more than 20 per cent in Portugal, Spain, Croatia and Poland, at the top end of the scale. At the same time, several scholars call for adopting a multi-dimensional approach for assessing employment quality, in order to take into account the different variables which can coexist: insecurity, low pay, irregular working time, etc. This means that, for instance, a permanent job could be assessed as a precarious job if it provides insufficient pay and/or is subjected to irregular and unpredictable working time (Jaehrling, Kalina 2020; Smith, McBride 2021).

The emergence of the platform economy of platform capitalism (Srnicek 2016), based on digital labour platforms, is becoming a central topic in the debates about precariousness and re-commodification of labour. For several scholars within sociology and labour law, platform labour is seen as the next stage in an ongoing process of precarization (Schor et al. 2020). These scholars highlight the tendency of digital labour platforms to misclassify workers as independent contractors rather than employees, shifting responsibilities and risks onto works who are forced to operate under marketized relationships lacking protection.

This article aims to contribute to the literature on digital labour platforms and precarity and, more specifically, on national and EU regulatory responses to improve labour rights and social protection for platform workers. Our argument is developed in three parts. The first part analyses and explains why although platform work is not a new category of worker and its evolution should be linked with the development of different forms of non-standard employment relationships (De Stefano 2016; Duggan et al. 2019; Countouris, De Stefano 2019), there is a need for a policy intervention due to high vulnerability of platform workers. The second part analyses and compares how the concept of worker is defined at national and EU level and shows that the EU concept of "worker", as defined through the CJEU's decisions, is more inclusive and broader and, accordingly, offers better foundations to guarantee labour rights

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and social protection for platform workers. The third part clarifies the concept of worker under EU case law as well as on some scholars' ideas addressing the problems behind classifying workers as employees. This part aims therefore to sketch the main features of the EU concept of worker, which could be applied at the EU level, with the purpose of improving labour rights and social protection for platform workers and other non-standard worker. Further, the European Commission's proposal for a directive is briefly mentioned at the end of this contribution as a possible way to support labour rights access for platform workers.

PLATFORM WORK: AN EXTREME RE-COMMODIFICATION OF WORK

The emergence of platform work, based on digital labour platforms which connect workers with consumers of work, is certainly one of the most discussed topics in recent labour debates. Although it still only accounts for a very small proportion of the labour force in most European countries (Urzi Brancati et al. 2020; Huws et al. 2016, 2019), scholars, policy makers and social partners are increasingly concerned about it, because it may entail worsening working and employment conditions, and lessening social protection for a growing number of people.

Analysis of platform work is conceptually complex because it is becoming increasingly heterogeneous, resulting in differences in employment and working conditions across the platform-working population (Eurofound 2018). One of the first distinctions of platform work was elaborated by De Stefano (2016), who distinguished crowdwork from "work on demand via apps"[1]. Crowdwork was defined as a work activity which entails the development of online or remote tasks through online digital platforms. With this definition, platforms connect a potentially indefinite number of workers and consumers on a global basis. In contrast, "work on demand via apps" is work provided by a labour platform or "app" which is executed locally and generally covers traditional labour activities (transport, cleaning, food delivery, etc.). In the case of "work

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on demand via apps", the matching occurs on a much more local basis, being also more affected by local regulation.

Research has shown that "work on demand via apps" and "crowdwork" are internally heterogenous (De Stefano 2016; Codagnone et al. 2016; Eurofound 2018; Huws et al. 2019). "Work on demand via apps" covers different activities carried out either in public spaces (transport, food-delivery) or private spaces (cleaning, clerical services) (Huws et al. 2019). Similarly, different forms of crowdwork have been conceptualised based on: the content of the tasks (micro-tasks vs larger projects) and the qualifications required; the selection and hiring process (bid, automatic matching or traditional worker application forms); the payment system (in some platforms such as Peopleperhour, Freelancer or Upwork, the workers can negotiate the payment method with the client: hourly basis or fixed price); and the form of matching work demand and supply through the platform (either on the basis of an offer to a specific worker, a contest or competition process. Under so-called contested based crowdwork, work is carried out simultaneously by group of individuals and, at the end, only one result is used and paid for it. In some cases, contest-based platforms, involve the client, the community, and sometimes even expert juries chosen by the client and/or the platform to evaluate a specific submission and select the winner(s) (Duggan et al. 2019). There is potentially higher competition in online contests, thereby increasing the unpredictability of earnings already inherent in these occupations (Eurofound 2018)) (Codagnone et al. 2016; Schmidt 2017; Eurofound 2018; Duggan et al. 2019; Howcroft, Bergvall-Kåreborn 2019).

Nevertheless, the different forms of platform work described above also share some common denominators which call for a unified analysis (De Stefano 2016; Howcroft, Bergvall-Kåreborn 2019). First, digital labour platforms use algorithmic control to direct, evaluate and exercise disciplinary power over platform workers (Kellogg et al. 2020). Those three dimensions of algorithmic control are observed in both crowdwork/online and on-location/offline labour platforms although the specific ICT used vary among the different platforms (for instance, GPS

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in food-delivery and ride-hailing platforms vs workers' monitoring software in micro-task crowdwork platforms).

Second, within platform work, there is a propensity to be misclassified as self-employed: most digital labour platforms in Europe classify workers as self-employed (De Groen et al 2021; Serfling 2018; Eurofound 2018; Krzywdzinski, Gerber 2020) although many platforms workers' share features of subordination due to the labour platforms capacity to exercise control over the work organisation through algorithmic management (Wood, Lehdonvirta 2021).

Third, platform workers have a high risk of precarious working conditions due to the combined effect of misclassification and algorithmic management. In this regard, research has showed that platform workers feature comparatively low-income levels (Apouey et al. 2020; Howson et al. 2021); are more exposed to the risk of overtime and tend to work under irregular and atypical working time schedules (Urzi Brancati et al. 2020); and have a higher exposure to psychosocial risks (social isolation, insecurity, work stress, work intensity or cyber-bullying) and certain physical risks (road accidents or harassment for food-delivery and transport workers; physical harms such as postural disorders or eye strain, for crowdworkers) (Eurofound 2018; Bérastégui 2021).

NATIONAL CATEGORIZATION: WORKERS (OR EMPLOYEES), WORKERS BELONGING TO THE THIRD CATEGORY AND SELF-EMPLOYED

National definitions of "worker"

In most legal systems, there is a binary division between employees and self-employed. Where the employment status is the basis for labour law[2] (including individual and collective labour rights, for example, working time, wage, right to freedom to association, right to strike, etc. and social security rights, namely, parental leave, sick leave, retirement benefits, unemployment benefits, etc.), self-employed workers are subject to commercial law. Accordingly, self-employed do not have access

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to labour rights and, depending on each specific Member State's system, they can only access a limited range of social security rights, which are often conditional on voluntary payments to the social security system. Those social security rights may include pension rights; maternal and parental leave, with different conditions than those applying to employees; and, rarely, unemployment benefits.

The distinction between employment and self-employment is built into different legal traditions through the fundamental concept of "subordination", which presumes an imbalanced contractual relationship between the employee and the employer (or third party), which must be rebalanced through individual and collective labour law (Kahn-Freund et al. 1983). The concept of autonomy can traditionally be considered the opposite of subordination. Therefore, if the labour provider is not characterised by a state of subordination to the employer (or a third party), then they may be considered residually self-employed. Within its technical-legal dimension, subordination is generally understood as referring to the fact that the employee works under the dependence and direction of the employer (or third party) against remuneration. However, the complex nature of those criteria (dependence and direction), has led national courts to develop different indicators, which normally have to be considered both in their overall and interconnected dimensions. In this sense, different interpretations of these concepts can be provided by each national legal system. There is a strong concern that an excessively extensive interpretation of these indicators – set out with the intention of strengthening the level of protection – would instead run the risk of emptying out the employment relationship concept (Weiss 2011; Perulli 2005), thereby threatening labour law with incorporation into commercial and civil law.

Moreover, in recent decades, a vivid debate has developed around the increasing complexity of classifying and interpreting employment relationships based on the concept of subordination. Scholars and policy makers are more and more concerned with the expansion of work located in the grey area between employment and self-employment (ILO 2017). The expansion of this grey area is rooted in the proliferation of practices of

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subcontracting or outsourcing coupled with technological developments, which blur the boundaries between self-employment and employment (ILO 2017). The emergence of platform work is certainly one of the most important recent phenomena challenging the classification of dependent employment relationships. Many platforms tend to classify workers as self-employed although, in practice, they exercise control over work organisation and the workers' working conditions through different mechanisms, particularly those relying on algorithmic management.

However, the status and extent of this grey area has been a point of contention for decades in the EU (Supiot 2001; European Commission 2006). In a context marked by the increasing complexity of understanding the borders of the employment status, some EU countries adopted so-called third category between employment and self-employment, granting persons belonging to this third category some access to selected labour law and social security law (Perulli 2011; UPTA 2014; Célérier 2020). The extent to which those regulatory solutions based on third categories are suitable for regulating platform work is, however, under discussion. Regulation through third categories was initially raised as a possible political solution for extending social protection and collective rights to platform workers (Donini et al. 2017). However, this is an option that has been losing ground in the light of current debates and recent developments regarding platform workers.

National level and the EU dimension

The EU concept of worker could play a pivotal role in providing adequate legal protection for platform workers, independently from their legal classification at national level as employees, self-employed or workers belonging to the third category. Hence, the EU concept of worker resulting from the CJEU's decisions is not only different, but also independent of national definitions, as acknowledged several times by the Court. Indeed, it is stated that 'the legal nature of a working relationship with regard to national law cannot have any

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consequence on a worker for the purposes of EU law.'[3] Thus, a person considered as self-employed under national law could be considered as a worker under EU law, and therefore be able to access specific rights set at EU level.

At EU level, there are different definitions of "worker", depending on the applicable field of EU law[4]. On the one hand, EU primary law (Treaties and the Charter) refers to an EU concept of worker framed by the freedom of movement. On the other hand, secondary law (e.g., directives) is characterized by heterogeneous concepts of worker. The coexistence of different "worker" definitions and concepts is particularly significant because a certain definition can broaden or narrow the personal scope of a directive, including or excluding certain workers from its scope and, therefore, from the rights it recognizes. Within the labour law field in particular, parts of the directives refer to an EU concept of "worker", and others to the national definitions of "worker".

However, when the directives refer to an EU concept of worker – such as for example the Posted Workers Directive, 96/71/EC –, this refers to the interpretation of the "worker" concept that has been developed along the years by the European Court of Justice (ECJ), now the Court of Justice of the EU (CJEU). Indeed, although a definition of "worker" does not exist in EU legislation, the Court has produced a certain number of decisions from which a concept of "worker" at EU level can be drawn out; which is key for national Courts when applying EU law[5].

When directives refer instead to a national concept of "worker" – as in the case of the three directives based on social partner agreements (Part-Time Work Directive, 97/81/EC; the Fixed-Term Work Directive, 1999/70/EC; the Parental Leave Directive, 2010/18/EU) –, the scope of such directives depends on the definition that each Member State (from now, "MS") adopts in its legal system, and is not linked to any EU specifications. However, two aspects should be taken into consideration when directives refer to national systems. First, the CJEU tends to expand the interpretation of the directives towards an EU concept of worker to ensure the practical effectiveness of EU law. For example, in the case Betriebsrat der Ruhrlandklinik[6],

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although the directive to be interpreted refers to the term "worker" as "any person who, in the Member State concerned, is protected as a worker under national employment law", according to the Court, the provisions of the directive "cannot be interpreted as a waiver on the part of the EU legislature of its power itself to determine the scope of that concept for the purposes, and accordingly the *scope rationae personae* of that directive"[7].

Second, the characteristics of the national definitions adopted by the MSs, although all different to each other, tend to converge regarding fundamental concepts, such as "(personal) subordination, control, or the performance of work under the direction of an employer" (Countouris, De Stefano 2019). The national definitions are also all characterised by the fact that "the bulk of labour law protection remains confined to employees working under the direction and control of an employer" (Countouris, De Stefano 2019).

An EU concept of "worker" is instead more inclusive, broad and extensive than the national definitions because it can include forms of employment not considered under national law. That is, there are no intermediate figures between subordination and autonomy at the EU level (Countouris 2015), and the CJEU has already interpreted non-standard forms of employment (intermittent work,[8] part-time[9], internship training activities[10], etc.) as falling under the concept of work when those forms of employment meet the criteria already identified in CJEU decisions[11].

An EU concept of worker could address the pending issue of guaranteeing decent working conditions to platform workers. As already mentioned, on the one hand it can be difficult to classify platform work because it is heterogeneous and it includes different forms of work; also, platforms tend to classify platform workers as self-employed, for evident costs saving reasons. These conditions can lead to a misclassification that exclude platform workers from traditional labour law protection, even in those cases they find themselves in weak contractual positions needed to be rebalanced. On the other hand, platform work is often characterized by precarious working conditions: through an EU

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concept of worker, they could access to minimum conditions to be ensured to all those falling into the EU worker category.

RE-DECOMMODIFICATION THROUGH AN EU DEFINITION OF WORKERS

An EU definition of worker: a proposal to improve labour rights and social protection for platform workers and non-standard workers

Persons occupied in non-standard and new forms of work, such as platform work, are particularly in need of adequate protection to ensure decent working conditions and a decent standard of living. They are not normally covered by the same labour and social security standards enjoyed by those employed in traditional forms of employment, under national definitions of "employee". Such workers have also been most affected by the pandemic, since they are often not eligible for public short-term work schemes which fund workers' incomes in case of market crisis. Eligibility for these state-funded schemes is usually linked to employment.

A debate on the possibilities for providing adequate protection for non-standard and new forms of work (including platform work) has started to be addressed among scholars, and within EU and national institutions. In order to guarantee that all EU workers have adequate labour protection, independent of them being in standard or non-standard forms of work, a definition of worker at EU level is still lacking and should be introduced. A definition of "worker" at EU level was recently suggested in the Proposal for a Directive on Transparent and Predictable Working Conditions in the EU; and potentially included new and non-standard forms of work, based on the criteria established by CJEU case law. However, this proposal was not adopted in the final version of the directive (Directive 2019/1152); that directive being motivated by the Pillar of Social Rights, which aimed to improve conditions for all workers, including those in new and non-standard forms of employment.

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The directive only refers to a concept of worker "with consideration to the case-law of the Court of Justice"[12].

The concept of worker under EU case law

Along the years, the Court of Justice has developed a fairly clear concept of worker though its decisions. In this way, it has established a constellation of features with two main interconnecting dimensions: *a*) remuneration for work (remuneration widely interpreted and work not including marginal or ancillary activity) and directional power, where directional power primarily refers to the instructions for carrying out the work, strategical decisions, control and disciplinary power; *b*) access to the market, in the sense of being able to fix the price of the product or service provided to clients. How the employer (or third party) organises its structure draws on both these two dimensions, thereby providing a framework through which it can be understood whether a certain service provider is an integral part of it, or not.

The legal starting point for identifying the characteristics of the EU concept of worker is the case Lawrie-Blum v Land Baden-Württemberg (1986)[13]. According to this case, a worker is one person, who performs services under the direction of and for another person; second, in return, this person receives remuneration. Such elements have been further specified by the Court of Justice through its following decisions (Menegatti 2019).

Within this framework, the worker's freedom to choose the time, place and content of their work is limited by the directional power of the other person (Risak, Dullinger 2018). However, the Court went progressively beyond a mere concept of direction. First, the employer's commercial risk was recognised as a feature of the employment relationship, basically focusing on who is the party having access to the final market. This feature was first based on an ECJ decision[14] about legal classification of those workers defined as share fishermen, i.e. getting their pay by sharing the profits or gross earnings from the fishing boat (The Queen v Ministry of Agriculture, Fisheries and

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Food, ex parte Agegate Ltd. – from now "The Queen")[15]. In particular, this case law can be useful for platform workers, since national Courts highlighted the platforms' power to access to the final market (Bazzani 2021).

Second, the employment relationship was defined by an ECJ decision[16] on the status of a group of dockers ("Becu"), focusing on the fact that the worker, for the duration of that relationship, becomes integrated into the employer's undertaking, thereby forming an economic unit with it (hetero-organisation). Also, this particular element has been taken into consideration by national Courts in understanding the nature of platform workers (Bazzani 2021). This element is further developed in the Allonby decision, where the Court emphasised "the employer's 'hetero-organisation', over and above the traditional criterion of 'direction', making relevant 'the extent of any limitation on [workers'] freedom to choose their timetable, and the place and content of their work"; and it excluded that any relevance could be accorded to "the fact that no obligation is imposed on [workers] to accept an assignment'" (Menegatti 2020: 31). It is instead crucial to understand whether the independency of the independent providers – so defined at national level – is limited and in what extend, whether they are in a relationship of subordination with the person who receives the services[17].

Therefore, independent of the national definition of the individual's status, under EU law, a worker is integrated into the employer's company and forms an economic unit with it (e.g., CJEU 4 December 2014, C-413/13, FNV Kunsten Informatie en Media). S/he is hetero-organised, although s/he could also not tightly be hetero-directed (i.e., subject under the employer's directive power). A further fundamental step in the definition of labour relationships was achieved by the judgement FNV Kunsten Informatie en Media. This case is particularly important because it introduced the concept of "false self-employed" and thereby suggested a solution to the possible conflicts between EU labour and competition law. In addition, this decision is significant when it comes to new and non-standard forms of work, and for this reason is particularly relevant to defining the worker at EU level. In doing this, the Court also maintained that "a 'self-employed person' under national law

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does not prevent that person being classified as an employee within the meaning of EU law if his independence is merely notional, thereby disguising an employment relationship"[18]. Thus,

> the status of "worker" within the meaning of EU law is not affected by the fact that a person has been hired as a self-employed person under national law, for tax, administrative or organisational reasons, as long as that person acts under the direction of his employer as regards, in particular, his freedom to choose the time, place and content of his work, does not share in the employer's commercial risks, and, for the duration of that relationship, forms an integral part of that employer's undertaking, so forming an economic unit with that undertaking[19].

It is therefore crucial to determine whether her own conduct on the market is "entirely dependent", or not, on her "principal"[20]. In this way, the FNV Kunsten case introduced the concept of "false self-employed" at EU level, independently from the national definitions. However, prior to the FNV Kunsten case, the Court of Justice had already highlighted that the concept of worker cannot be changed according to the different national definitions[21] or reinterpreted in a strict way by MSs[22]. Also, the CJEU has to base its decision-making on the interpretation of the worker concept under EU law, on the basis of an overall assessment of all the circumstances of the case, having regard both to the nature of the activities concerned and the relationship of the parties involved[23]. This means that the EU concept of worker goes behind the *nomen iuris* of the contract, i.e., what is formally set in a contract, but also the factual situation. This last principle cuts across multilevel legal systems, and is coherent with both the ILO Employment Relationship Recommendation (ILO Employment Relationship Recommendation, n. 198, 2006, Par. 9) and the MSs national legal systems (Sanz, Bazzani, Arasanz 2021).

The EU proposal for a directive

The proposal for a Directive in the field of platform work was presented by the European Commission at the end of

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2021[24]. This proposal aims at improving working conditions for platform workers, but also at improving legal certainty, reducing litigation costs and facilitating business planning. The proposal addresses several relevant pending issues concerning platform work. First of all, it sets a presumption of legal employment status. In doing this, the proposal provides a list of control criteria according to which it is possible to trigger such presumption: if the platform meets at least two of those criteria, it is considered to be an "employer"[25]. This presumption implies an inversion of the burden of proof: this means that the platform will have always the right to contest or "rebut" this classification providing relevant elements to prove its position. In the case the Directive will be adopted, it will improve the working conditions of several workers, who will finally access to labour rights typically ensured to employees.

Additionally, a section of the directive is devoted not only to those platform workers, who will access to the employment status and will be considered employees, but to all the workers working with platforms, independently from their legal classification as self-employed or employees. This section concerns the relationship between workers and platform, which is managed through algorithms. In particular, it guarantees workers with human monitoring about their working conditions and the right to contest automated decisions, ensuring therefore fairness, transparency and accountability in algorithmic management in the platform work context.

Last but not least, the proposal also aims to facilitate platforms to comply with their employers' legal obligations and it supports institutions in accessing to relevant platforms' information regarding such obligations. These rules, if included within a future EU directive, will enhance transparency, traceability and awareness of developments in platform work and, at the same time, they will improve enforcement of the applicable rules for all people working through platforms.

In parallel, the European Commission integrated its action by intervening on the commercial law domain, concerning self-employed platform workers. In particular, it launched a Draft Guidelines on the application of EU competition law, to make

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clear that also these workers can improve their working conditions through collective bargaining.

CONCLUSIONS

The world of work is rapidly changing, highlighting the need for a legal intervention able to guarantee workers' rights and fair competition within the EU internal market. Platform work brings opportunities and several challenges in both these fields. Among the challenges, misclassification, precarious conditions and need of labour in dignity increase the risk of commodification for platform work.

At the EU level, the CJEU developed a concept of worker applicable independently from the national classification as employee, self-employed or workers belonging to the third category. This could enable platform workers to access to minimum working conditions necessary to ensure a work in dignity, supporting a decommodification process of platform work through an increase of labour law protection. Such definition shall encompass different criteria already integrated in the EU jurisprudence, such as the hetero-organisation of work, along with further elements. Notably, reference to the use of algorithms or any digital tools that could be employed to exercise managerial control and supervision powers should be taken in consideration in a legal definition, to avoid national Courts misunderstanding their effects on labour when applying EU law.

The European Commission has recently proposed a directive able to provide platform workers with access to labour rights in the case specific conditions are complied with. Significantly, the proposal establishes a rebuttable presumption of employment for platform workers whose working conditions are directly or indirectly determined by algorithmic decisions, from workers' remuneration and performance management to their ability to build a client base outside the platform. In addition, the proposal aims to bring more transparency to the operation of algorithmic management, with a view to its regulation through social dialogue and collective bargaining. However, such proposal is still under negotiation and need to become

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directive to be transposed within the Member States and bring effective results.

At national level, additional efforts should be made to reinforce monitoring and compliance with labour standards, considering that platform business models challenge the effectiveness of traditional labour inspectorates' and social partners' instruments to enforce labour standards. National governments can also improve access to social protection for all self-employed workers, including genuine self-employed platform workers, which may find themselves in weak bargaining position similar to that of an employee. In addition, at industrial relations level, efforts should be aimed at giving platform workers collective voice and representation rights to enable social dialogue and collective bargaining on algorithmic work organisation.

The need of a timing solution within the EU is urgent, especially within a post pandemic context affected by the dramatic war conflict in Ukraine, generating massive migration, relevant inflation and market insecurity.

NOTES

[1] An "app" is an application, normally a small and specialise programme, which is downloaded into a mobile device.

[2] The report uses the term labour law both for individual and collective labour law. Therefore, in the sense it is used here, labour law includes what is sometimes understood as labour law and employment law.

[3] CJEU, February 21, 2018, C-518/15, Matzak, par. 29. In the same paragraph, the Court refers to "judgment of 20 September 2007, Kiiski, C-116/06, EU:C:2007:536, paragraph 26 and the case-law cited".

[4] For example, under the coordination of the social security systems regulation (Regulation EEC) No 1408/71, which applies to workers who move from one Member State to another to work, the worker is defined as the person who is insured for one of the risks listed in the regulation. The Consolidated version of the Regulation (1/5/2010) adapted such definition for both "employed person" and "self-employed person".

[5] The CJEU explicitly referred to "the term 'employee' for the purpose of EU law" in CJEU, C-413/13, FNV Kunsten Informatie en Media, para 34; CJEU, Case C-428/09, Union syndicale Solidaires Isère v Premier ministre and Others [2010] ECLI:EU:C:2010 :612,, para 28; CJEU, C-216/15 Betriebsrat der Ruhrlandklinik, para. 32.

[6] CJEU, C-216-15, Judgment of the Court (Fifth Chamber) of 17 November 2016, Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH.

[7] CJEU, C-216/15 Betriebsrat, paragraph 32. Also in CJEU, C-256/0, Allonby v Accrington & Rossendale College, EU:C:2004, in interpretating Article 141 EC, the

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Court recognised that the term "worker cannot be defined by reference to the legislation of the Member States but has a Community meaning. Moreover, it cannot be interpreted restrictively" (Allonby, Paragraph 66).

[8] CJEU 21 June 1988, C-197/86, Brown, parr. 21-22.

[9] CJEU 23 March 1982, C-53/81, Levin, par. 16; 3 June 1986, C-139/85, Kempf, par. 10.

[10] CJEU 17 March 2005, C-109/04, Kranemann, par. 13; 9 July 2015, C-229/14, Balkaya, par. 52.

[11] For the atypical characteristics of the employment relationship, see example of CJEU, Case C-316/13 Gérard Fenoll v Centre d'aide par le travail "La Jouvene" and Association de parents et d'amis de personnes handicapées mentales (APEI) d'Avignon, ECLI:EU:C:2015:200.

[12] Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L 186, 11.7.2019, p. 105-121).

[13] Lawrie-Blum v Land Baden-Württemberg, ECJ (Case 66/85).

[14] Judgment of the ECJ of 14 December 1987, The Queen v Ministry of Agriculture, Fisheries and Food, ex parte Agegate Ltd., C-3/87, EU:C:1989:650, paragraph 36.

[15] Judgment of the ECJ of 14 December 1987, The Queen v Ministry of Agriculture, Fisheries and Food, ex parte Agegate Ltd., C-3/87, EU:C:1989:650, paragraph 36.

[16] Judgment of the ECJ of 16 September 1999, Criminal proceedings against Jean Claude Becu, Annie Verweire, Smeg NV and Adia Interim NV, C-22/98, EU:C:1999:419, paragraph 26.

[17] See: CJEU, C-256/0, Allonby v Accrington & Rossendale College (2004), para 68 and 72.

[18] CJEU 4 December 2014, C-413/13, FNV Kunsten Informatie en Media, par. 36. See, to that effect, judgment in CJEU, C-256/0, Allonby v Accrington & Rossendale College, EU:C:2004:18, paragraph 71.

[19] *KNV Kunsten,* para 33.

[20] *KNV Kunsten,* para 33.

[21] Case C-75/63.

[22] Case C-53/63.

[23] CJEU, Case C-428/09, Union syndicale Solidaires Isère v Premier ministre and Others [2010] ECLI:EU:C:2010:612,, par. 29; but also CJEU 20 November 2018, Sindicatul Familia Constanta, par. 42.

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

[25] Also Prassl (2018) suggests to focus on the platform rather than on the platform worker in order to understand whether their relationship can be considered an employment relationship.

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