

New Kid in Town: Platform Workers of the EU and Human Oversight of Automated Systems in Platform Work

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Abstract

The era of digitalization created new forms of employment along with complicated employment statuses, where existing labour laws lag in solving legal problems. The most recent development in the European Union is the proposed Platform Work Directive (PWD) against the raising concerns about the operation of digital labour platforms and people working through these platforms. By defining people as platform workers, the PWD offers significant changes. The PWD, with a broad presumption of employment, introduces new restrictions and obligations for digital labour platforms. Among those changes, introduced as a first at the EU level, is the human oversight of automated systems' decisions. This paper analyses the term 'platform worker' in line with the PWD, mainly focusing on human oversight of automated systems in platform work.

Keywords: Platform Worker, Platform Work Directive, Employment Status, Human Oversight, Automated Decision-Making (ADM) Systems

A. Introduction

Have you ever thought how hard life would have been without food or market delivery during the Covid-19 pandemic lockdowns? Consider what you would do without transportation services provided by Uber-like platforms where no taxicab stops on a rainy day. The vast and fast rise of digitalization of services added a new form of employment called online or platform work. The platform worker is a ge-

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neral term for people working for online platforms. The added value of platform work to the economy is enormous. According to a recent study¹, it is expected to be valued at \$455 billion by the end of 2023 on a global scale. In Europe, there are 500 digital platforms and more than 28 million people working for them. This number is expected to reach 43 million by 2025.²

The main problem with people working for online platforms is their legal status. While recognized as workers in many European countries, they are generally accepted as independent contractors in the USA. Classifying people working for online platforms as independent contractors will result in them being unable to benefit from the labour and social rights employees enjoy. Moreover, the hiring and firing process run by automated decision-making (ADM) systems raises concerns about the objectivity of the outcomes of these systems. As the concerns rise, there are important attempts at the EU level. Even with several EU legislations covering the social protection of workers, until recently, the EU needed to provide greater legal protection for platform workers.

The most recent development in the working conditions and the rights of people working for online platforms in Europe is the proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work (PWD)³. The draft Directive is still subject to many debates throughout Europe. The other related piece of legislation is the Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the EU.⁴ Besides Directive 2019/1152 and the PWD, a couple of legal instruments set standards for workers in the EU. Among them are the Working Time Directive,⁵ the Directive on Temporary Agency Work,⁶ and the Directive establishing a general framework for informing and consulting employees.⁷ In addition, there are a number of judgments of the Court of Justice of the EU (CJEU) about the legal status of platform workers.

This paper consists of three parts. Part one of the paper reviews the legal status of workers of the digital labour platforms in line with EU legislation, especially in the scope of the PWD and related case law of the CJEU. The second part of the paper emphasizes the challenges of using ADM systems in online platforms and human

1 44 Eye-Opening Gig Economy Statistics For 2022, available at: <https://velocityglobal.com/blog/gig-economy-statistics/> (17/5/2023).

2 EU Rules on Platform Work, <https://www.consilium.europa.eu/en/policies/platform-work-eu/> (17/7/2023).

3 *European Commission*, Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work, Brussels, COM(2021) 762 final, 2021/0414 (COD), 9/12/2021, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52021PC0762> (7/8/2023).

4 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, Official Journal of the European Union, L 186/105, 11/7/2019.

5 Directive 2003/88/EC.

6 Directive 2008/104/EC.

7 Directive 2002/14/EC.

oversight of automated systems in the EU. Finally, part three aims to summarise the findings as concluding remarks.

B. Platform Workers of the EU

There is no standard term used for people working through online platforms. The gig economy was a starting point at the beginning of classification efforts. However, not all activities fall within the gig economy,⁸ and only a few fall within the scope of online platform work. Thus, this type of identification may cause misleading results. For instance, some types of employment, such as the “JustPark app in the UK”,⁹ provide additional income rather than regular income. As *Kerikmäe* and *Kajander* suggested, the focus must be “on task-based sectors of the ‘gig economy’ where there is an exchange of labour in order to explore the question of classification of labour.”¹⁰ That is why instead of gig worker, platform worker seems to be accepted as a general term throughout Europe today.

Why is it essential to define online platform work and the legal status of platform workers? The gig economy created a new form of employment called online or platform work, with the rise of the digitalization of services. Emerging with the 2008 economic crisis and becoming a general working way with the Covid-19 pandemic, this new type of employment is apparent and seems to expand globally. The problem with people working for online platforms is their legal status. While widely recognized as workers in European countries, they are accepted as independent contractors in many states of the USA.

Identifying these workers’ employment status as independent contractors will result in exclusion from labour and social rights. It is true that online platforms offer individuals or organizations access to people providing a service, instead of a permanent employment relationship. The main argument of online platforms is that people providing a service through their platforms are not company employees. According to these companies, they are not service providers rather online applications, and with these applications, the companies intermediate between the customer and the independent contractor. The European Observatory of Working Life (Euro-Work) states that accepting these people as independent contractors will result in “unstable working hours and income, lack of coverage of employment rights, uncertainty around social security and pensions, lack of access to career development

8 “Requiring a free-market system gig economy is the economic activity that involves the use of temporary or freelance workers to perform jobs typically in the service sector.” Merriam-Webster.com Dictionary, s.v. “gig economy,” available at: <https://www.merriam-webster.com/dictionary/gig%20economy> (7/11/2022).

9 “JustPark is a clever app that lets you book parking, rent out your space or find an EV charger.” See <https://www.justpark.com/about-us> (18/5/2023).

10 *Kerikmäe/Kajander*, *Revista CIDOB d’Afers Internacionals* 2022/131, p. 121.

and training”.¹¹ Consequently, Europe-wide efforts on the legal status of people working for online platforms are essential.

In this regard, judgments of the CJEU, especially two, are significant. An optimistic view might suggest that these rulings directed the content of the PWD Proposal. At the same time, it can be claimed that the mentioned rulings assisted the classification of platform workers and digital labour platforms as service providers, not just online applications. One such ruling is the judgment of the CJEU in *Asociación Profesional Élite Taxi v. Uber Systems Spain SL*.¹² Bringing an action before the Commercial Court in Barcelona, the Asociación Profesional Élite Taxi claimed that Uber Systems in Spain infringed the national law on taxi services in general. In contrast, the Respondent, Uber Systems Spain, argued that as a smartphone application, it does not provide transportation services but an intermediation service between the drivers and the passengers. The Commercial Court in Barcelona then asked for a preliminary ruling from the CJEU to clarify whether services provided by Uber are transportation services.

The judgment of the CJEU may look like a case concerning competition law, but it also clarifies a great deal about the working conditions of platform workers. Known as the *Uber case*, the CJEU determined in its judgment that Uber provides transportation services. The consequence of this is that the company will be subject to stricter rules and should comply with EU and Member States’ social security laws. Thus, in the explanatory memorandum of the PWD, the definition of the digital labour platform should be applied to online platforms which provide services such as transportation. The UK Supreme Court ruled in *Uber BV and Others v. Aslam and Others* in 2021 that the fact that Uber drivers must be recognized as workers, not independent contractors, is in line with the case law of the CJEU.¹³

The other significant judgment of the CJEU was rendered in *B v Yodel Delivery Network Ltd*.¹⁴ Therein, the Court stated that

[a]lthough the services agreement concluded between Yodel and the couriers classifies those couriers as ‘self-employed independent contractors’, B claims that his status is that of a ‘worker’ for the purposes of Directive 2003/88. He considers that, although he is self-employed for tax purposes and accounts for his own business expenses, he is an employee of Yodel.¹⁵

11 Gig economy, <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/gig-economy> (7/8/2023).

12 CJEU, case C-434/15, *Asociación Profesional Élite Taxi v Uber Systems Spain*, ECLI:EU:C: 2017:981, para. 39. The CJEU states in this judgment that “(...) Uber determines at least the maximum fare by means of the eponymous application, (...) the company receives that amount from the client before paying part of it to the non-professional driver of the vehicle, and (...) it exercises a certain control over the quality of the vehicles, the drivers, and their conduct, which can, in some circumstances, result in their exclusion”.

13 UK Supreme Court, 2019/0029, *Uber BV and Others v. Aslam and Others* [2021] UKSC 5, 19 Feb 2021, available at: <https://www.supremecourt.uk/press-summary/uksc-2019-0029.html> (7/8/2023).

14 CJEU, case C-692/19, *B v Yodel Delivery Network Ltd*, ECLI:EU:C:2020:288.

15 CJEU, case C-692/19, *B v Yodel Delivery Network Ltd*, ECLI:EU:C:2020:288, para. 14.

The Watford Employment Tribunal (of the UK) requested a preliminary ruling from the CJEU concerning the classification of B's professional status in his employment relationship with that undertaking. In this ruling, the CJEU emphasizes leaving the formalistic approach to classify employment status but could not provide valuable elements to update this approach. The Court seems to formulate alternatives for the classification of workers who work for online platforms. The CJEU's approach proves that the classification of workers needs to evolve as an urgent reply to a digitalized economy. As will be discussed below, if the Yodel ruling inspired the classification of platform workers in the PWD, there are many arguments against this formulation.

The European Pillar of Social Rights (EPSR) proclamation is the turning point of developments favouring platform workers. In 2017, the European Parliament, the Council and the Commission announced the EPSR at the Gothenburg Summit. Setting 20 fundamental principles, the EPSR aims to guide "a strong social Europe that is fair, inclusive and full of opportunity in the 21st century".¹⁶ The follow-up of the EPSR is Directive (EU) 2019/1152 on Transparent and Predictable Working Conditions.¹⁷ Repealing Directive 91/533/EEC with effect from 1 August 2022, Directive 2019/1152 aims to secure the rights of people working in new forms of employment. According to Recital 4 of its preamble,

[s]ince the adoption of Council Directive 91/533/EEC (4), labour markets have undergone far-reaching changes due to demographic developments and digitalization leading to the creation of new forms of employment, which have enhanced innovation, job creation, and labour market growth. Some new forms of employment vary significantly from traditional employment relationships with regard to predictability, creating uncertainty with regard to the applicable rights and the social protection of the workers concerned.¹⁸

Directive 2019/1152 covers essential aspects of working conditions. To name the most important ones regarding the scope of this paper, it guarantees workers with unpredictable working conditions (i.e., on-demand work) to be informed within a reasonable time before the work is completed. It also issues measures to prevent the abuse of on-demand workers whose contracts do not include precise working

16 European Pillar of Social Rights, available at: https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights_en#background (7/8/2023).

17 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 186/105, 11/7/2019.

18 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 186/105, 11/7/2019.

hours.¹⁹ Thus Directive 2019/1152 refers (at para. 8) to the judgments of the CJEU in *Isère*,²⁰ *FNV KIEM*,²¹ and *Ruhrland*,²² stating that

the interpretation of the Court of Justice of those criteria should be taken into account in the implementation of this Directive. Provided that they fulfil those criteria, domestic workers, on-demand workers, intermittent workers, voucher based-workers, platform workers, trainees and apprentices could fall within the scope of this Directive". It is also true that "the effective implementation of this Directive requires adequate judicial and administrative protection against any adverse treatment as a reaction to an attempt to exercise rights provided for under this Directive, any complaint to the employer or any legal or administrative proceedings aimed at enforcing compliance with this Directive."²³

Directive 2019/1152 therefore suggests that the EU is willing to take a step towards the changing nature of the working life and classification of workers.

Two years after Directive 2019/1152, the EU Commission proposed a Directive on improving working conditions in platform work in 2021.²⁴ This development justifies that Directive 2019/1152 has become insufficient at addressing the urgent needs of platform workers. Regarded as the outcome of EPSR, and dating back prior to the Covid-19 pandemic, Directive 2019/1152 seems far away from being responsive to the needs of today's conditions. During the Covid-19 pandemic, new forms of employment emerged. Hence, the PWD can be seen as the consequence of seeking solutions to the problems of new forms of employment through digital labour platforms.

The Porto Social Summit, held on 7 May 2021 after the release of the EPSR Action Plan, ended with the proclamation of the Porto Social Commitment. Unsurprisingly, the EU Commission's PWD Proposal has been the next step after the Porto Social Commitment. Thus, the EU Commission's proposal for the PWD was published on 9 December 2021. A year after publication, the EU Parliament's Committee on Employment and Social Affairs prepared a report including significant amendments to the EU Commission's proposed PWD on 12 December 2022.²⁵ In March 2023, the Swedish Presidency of the EU Council proposed to narrow down

19 See also *Aloisi*, European Labour Law Journal 2022/1, pp. 4–29.

20 CJEU, case C-428/09, *Union Syndicale Solidaires Isère v Premier ministre and Others*, ECLI:EU:C:2010:612.

21 CJEU, case C-413/13, *FNV Kunsten Informatie en Media v Staat der Nederlanden*, ECLI:EU:C:2014:2411.

22 CJEU, case C-216/15, *Betriebsrat der Ruhrlandklinik GmbH v Ruhrlandklinik GmbH*, ECLI:EU:C:2016:883.

23 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 186/105, 11/7/2019, para. 42.

24 *European Commission*, Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work, COM(2021) 762 final (Proposal).

25 After the release of the report of the Committee on the proposed Platform Work Directive, the Committee's decision to enter into interinstitutional negotiations was announced in the EU Parliament plenary, which confirmed it on 2 February 2023, see <https://oeil.sec>

the presumption of employment included within the PWD. On 12 June 2023, by adopting its position, the EU Council seems willing to accept rules to protect platform workers and agreed on negotiations.²⁶ These attempts show that the EU is a little bit closer to making the PWD a part of the EU law.

The main objective of the PWD is to improve the working conditions and legal protection of people working through digital labour platforms in Europe. Regarding the primary objective, the explanatory memorandum of the PWD addresses three specific goals:

- (1) to ensure the correct employment status and gain access to the applicable labour and social protection rights.
- (2) to ensure fairness, transparency, and accountability in algorithmic management in the platform work.
- (3) to enhance transparency, traceability and awareness of developments in platform work and improve enforcement of the applicable rules for all people working through platforms, including those operating across borders.²⁷

What is important here is how these objectives will be attained by the PWD. According to the explanatory memorandum, the PWD will establish a framework to address employment status in digital labour platforms with a legal presumption. The PWD will introduce new rights for platform workers including the right to transparency of the use and function of automated decision-making (ADM) systems in order to ensure fairness, transparency, and accountability. Further, to enhance transparency and traceability of platform work, the PWD requires the support of competent authorities in enforcing existing rights and obligations. These objectives especially appear in Articles 3, 6, 7 and 8 of the PWD. Member States of the EU will have two years to transpose the PWD into their national law systems if it enters into force.

The amendments made by the EU Parliament's Committee on Employment and Social Affairs deserve special attention. Firstly, besides the enjoyment of the benefits of labour and social rights, the Committee states in one of its amendments that

platform workers shall fully enjoy the status of the worker in accordance with national law, collective agreements or practice in force in the Member States, including the rights to join a trade union, to organize, and to bargain collectively.

Secondly, while emphasizing the role of digital labour platforms, the Committee tries to define crowd work and distinguishes taxi dispatch services from ride-hailing digital labour platforms. Lastly, and perhaps the most important amendment to the proposed PWD, is the supervision of automated decision-making (ADM) systems'

[ure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2021/0414\(COD\)](https://eur-lex.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2021/0414(COD)) (19/5/2023).

26 *Council of the EU*, Rights for Platform Workers: Council Agrees its Position, PRESS RELEASE 434/23, 12/6/2023, <https://www.consilium.europa.eu/en/press/> (21/7/2023).

27 *European Commission*, Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work, COM(2021) 762 final (Proposal), p. 3.

outputs by humans. Thus, the following part of this paper will focus on algorithmic management and human oversight of decisions taken by ADM systems.

Researchers criticized the PWD proposal, and the amendments made by the EU Parliament's Committee from different perspectives. On the one hand, the PWD with its limited scope only covers platform workers.²⁸ The argument for the limited scope of the PWD is if platform work is replaced by new technologies, its scope of application will be diminished.²⁹ On the other hand, the extension of the presumption of employment by the Committee to all platform workers, and removing all criteria, can be criticized because it might create legal uncertainty for the actors of digital labour platforms and national authorities. If the implementation of the extended presumption of employment creates legal uncertainty, it will not only breach the legal certainty principle of EU law, but also personal data protection by making digital labour platforms responsible to report personal data to the competent authorities.³⁰ Whilst extending the presumption of employment, *Cefaliello* argues that the PWD's weakness is not addressing

all relevant issues for example, it doesn't distinguish between psychosocial risks factors, work-related stress, and how to address them, and, in practice, there is a risk that only a limited number of workers will be able to benefit from these provisions.³¹

In his research, *Aloisi* suggests that the EU needs to strengthen social institutions and should leave space for Member States to design their measures in the social field.³² Thereto, *Boot* further emphasizes the importance of social protection by saying that

discussion leads me to the conclusion that a multilevel solution is needed. We must broaden the scope of the employment agreement and increase the level of protection for independent workers, both individually and collectively.³³

When analysing employment status in the proposed Platform Work Directive, *Rosin* assumes that if adopted, there will be little room for Member States' discretion. She also says that "national courts are expected to look behind formal contractual clauses and investigate whether de facto control is exercised by the platform, by using algorithms or otherwise".³⁴

What is desirable in regulating platform workers' legal status and protecting their rights? Even though it's a tricky question to answer, some features can be drawn from the above-mentioned analysis. Firstly, for proper legal protection, emerging

28 *Cefaliello et al.*, *European Labour Law Journal* 2023/2, p. 204.

29 *Gould IV/Biasi*, *Italian Labour Law e-Journal* 2022/1, p. 95.

30 Regulation (EU) 2016/679 of 27 April 2016 on the Protection of Natural Persons with regard to the Processing of Personal Data and on the Free Movement of such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation).

31 *Cefaliello*, *Journal of Work Health and Safety Regulation* 2023/1, p. 117.

32 *Aloisi*, *European Labour Law Journal* 2022/1, pp. 4–29.

33 *Boot*, *European Labour Law Journal* 2022/1, pp. 81–85.

34 *Rosin*, *Industrial Law Journal* 2022/2, pp. 478–493.

technologies like digital labour platforms should be regulated. As *Aloisi and de Stefano* state

technology is never neutral. It can and must be governed, to ensure that progress favours the many. Digital transformation can be an essential ally, from the warehouse to the office, but it must be tested in terms of social and political sustainability, not only through the lenses of economic convenience.³⁵

Secondly, the classification of workers on these platforms and the type of employment status should rely on more flexible criteria for judicial interpretation, contrary to the criteria in the PWD. Lastly and most importantly, the EU must ensure that provisions of the PWD are compatible with EU law and the case law of the CJEU.

C. A First at the EU Level: Human Oversight of Automated Systems in Platform Work

Introduced as a first at the EU level, human oversight of automated systems deserves special attention and review regarding recent developments in the EU. The biggest concern about algorithmic management is that platform workers need to be made aware of the functioning of the algorithms and the decisions they make. As platform workers are not typically aware of the system's functioning, they are consequently unable to recognise abuse. Workers dealing with algorithmic management must have a clear understanding of how the system works, and in case of a need, they shall enjoy the right to be informed. A recent study revealed that “the autonomy resulting from algorithmic control can lead to overwork, sleep deprivation, and exhaustion as a consequence of the weak structural power of workers vis-à-vis clients”.³⁶ Algorithmic management with input from human managers is one of the solutions. However, whilst human oversight of automated systems is a better solution, it is not perfect.

Algorithmic management is a general term used to define the replacement of functions performed by human managers in businesses by ADM systems powered by algorithms. Today, ADM systems based on algorithms make decisions impacting people's rights and interests.³⁷ These systems have advantages as they are cost-effective, fast, and better at processing large datasets than their human counterparts.³⁸ However, the widespread use of ADM systems also raises concerns, namely that they may implement discriminatory practices where humans may introduce bias into these systems. The proposed PWD addresses the use of algorithmic management in digital labour platforms where platform workers lack information on how this

35 *Aloisi/De Stefano*, Introduction – Your Boss Is an Algorithm. Artificial Intelligence, Platform Work and Labour, available at: <https://ssrn.com/abstract=4139319> (7/8/2023).

36 *Wood et al.*, Work, Employment and Society 2019/1, pp. 56–75.

37 *Orwat*, Risks of Discrimination through the Use of Algorithms. A study compiled with a grant from the Federal Anti-Discrimination Agency, 2019, available at: Risks of Discrimination through the Use of Algorithms (antidiskriminierungsstelle.de) (8/8/2023).

38 See e.g. *Ajunwa*, Harvard Journal of Law & Technology 2021, p. 632.

type of management works. Article 7 of the PWD regulates human monitoring of automated systems. The provision requires digital labour platforms to monitor and evaluate the decisions taken by ADM systems regularly. The following provision (Article 8) of the PWD establishes the right to an explanation³⁹ to platform workers where a decision is taken by the digital labour platform using ADM systems, especially those affecting working conditions.

The amendments made by the EU Parliament's Committee on Employment and Social Affairs expand the scope of how decisions are taken by ADM systems and how they are supervised. In its report, as mentioned above, the EU Parliament's Committee underlines the determination of the contractual status of platform workers in line with fair and just working conditions, promoting transparency, fairness, accountability, and non-discrimination in algorithmic management. Thus, the report states that algorithmic management, entailing ADM systems powered by algorithms, significantly affects platform workers without input from human managers and is unlawful under the EU law. Here the aspect of human oversight of automated systems comes to the fore. Amendments made by the Committee on Article 6, for instance, require that some important decisions⁴⁰ shall not be taken by ADM systems. The title of Article 7 has also been changed to human oversight of automated systems, away from human monitoring of automated systems. The amended text of this Article requires not only the review of decisions by ADM systems, but also requires correcting and/or changing these decisions. All these amendments look revolutionary at the EU level and come with many criticisms.

The Committee introduces new restrictions and obligations on processing workers' personal data and using ADM systems in management. Amendments to Article 7 of the PWD aim to ensure human oversight on all decisions significantly affecting working conditions. The PWD prohibits the processing of specific personal data (on the emotional or psychological state of the worker) that poses a high risk to the privacy of platform workers. This is welcome by scholars,⁴¹ similarly to the requirement of monitoring and evaluating the impact of algorithmic management systems generally. However, according to *Kelly-Lyth*,⁴² considering the requirement of monitoring and assessing the impact of algorithmic management systems, "the draft Directive does not particularise the format and publication of the results".

Prominent critics of ADM systems powered by algorithms point to their opacity. It is on this basis that the report of the Committee on the proposed PWD adds hu-

39 *European Parliament Legislative Observatory*, Improving working conditions of persons working through digital labor platforms, available at: <https://oeil.secure.europarl.europa.eu/oeil/popups/summary.do?id=1728756&t=e&l=en> (19/5/2023).

40 According to Article 6 (2) (a) of the Proposal for a Directive, "[d]ecisions having an impact on health and safety and on the contractual relationship or introducing changes to the agreed terms of the employment relationship, and decisions to apply disciplinary measures, or restricting, suspending or terminating the contractual relationship and the platform worker's account".

41 *Adams-Prassl et al.*, *European Labour Law Journal* 2023/2, p. 130.

42 *Kelly-Lyth*, *European Labour Law Journal* 2023/2, p. 170.

man oversight of automated systems. However, ADM systems discriminate only “because they were trained on data that reflect discrimination by humans”.⁴³ ADM systems are complex to the point that they may defy human understanding. Therefore, discrimination by ADM systems is challenging to detect.

It is vitally important to seek out and design ADM systems that prevent differential treatment that is unjustified and unlawful. It is difficult to determine whether humans are better at avoiding discrimination than ADM systems. With ADM systems, however, it is more challenging to predict where discrimination begins and ends under the terms of legal liability. Safeguards are necessary to protect individuals from the discriminatory outcomes of ADM systems. Besides new rules and human oversight, these safeguards must include enforcement of legal instruments and judicial review of decisions made by ADM systems.⁴⁴ Concerns and challenges regarding using ADM systems should be taken seriously, especially when they implicate fundamental rights and freedoms, as is the case in platform workers’ rights.

D. Final Remarks

There is no turning back from the era of digitalization. Does the EU need to regulate the legal status of platform workers? Instead of clear-cut rules and new regulations, is it possible to protect the rights of the platform workers with existing legal instruments and judicial intervention?

Platform workers of the EU continue to experience unaccountable algorithmic management and misclassification of their employment status. From a fundamental rights-based approach, especially in accordance with antidiscrimination, the answer will be in favour of the workers, especially in not tolerating the use of opaque technology without any supervision, as suggested in the PWD. The EU Member States were unable to reach an agreement on the text of the draft PWD. However, many non-governmental organizations, such as the Human Rights Watch, support the text of the European Parliament’s Committee amendments, “which would advance rights-respecting regulation of the digital platform work sector and urges EU member states to endorse a similar approach”.⁴⁵

43 *Zuiderveen Borgesius*, Discrimination, Artificial Intelligence, And Algorithmic Decision-Making, Directorate General of Democracy, Council of Europe, 2018, available at: <https://rm.coe.int/discrimination-artificial-intelligence-andalgorithmic-decision-making/1680925d73> (8/8/2023).

44 See also *European Commission*, Algorithmic discrimination in Europe: Challenges and opportunities for gender equality and non-discrimination law, 2020, available at: <https://o.p.europa.eu/de/publication-detail/-/publication/082f1dbc-821d-11eb-9ac9-01aa75ed71a1/language-en#> (8/8/2023).

45 Human Rights Watch, EU: Pass Directive to Protect Workers’ Rights, Reject Efforts to Weaken Safeguards Against Tech-Driven Exploitation, 2023, available at: <https://www.hrw.org/news/2023/01/09/eu-pass-directive-protect-workers-rights#:~:text=In%20December%202022%2C%20the%20European,abusive%20potential%20of%20workplace%20automation> (8/8/2023).

The legislative process is often slow, and the creation of new rules may lag behind rapidly developing technologies. Undoubtedly, the EU needs new legal rules, particularly to ensure that ADM systems do not infringe upon the rights and interests of workers. The draft Platform Work Directive might seem like a positive attempt at ensuring the rights of platform workers. However, adopting the proposed PWD is not at the top of the EU's agenda. There is no doubt that platform workers of the EU felt relief with the adoption of Directive 2019/1152 on Transparent and Predictable Working Conditions. Platform workers require effective enforcement of existing laws on workers' rights and courts' interpretation regarding technological developments. If the PWD is adopted, the EU may no longer be attractive to self-employed people and companies that would like to avoid strict rules and oversight. The digitalized future is unpredictable and challenging for everyone, not just the workers.

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