Part III:
Comparative Perspective

Social Protection of Platform Workers in a Comparative and European Perspective

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I. Introduction

1. At the time our Book Social Law 4.0[1] was being prepared for publication, namely the end of 2020, EU countries were just starting to address the challenges digitalisation was posing for the labour market and for social security systems. Since then, these challenges have become even more prominent. Triggered and driven by digitalisation, new forms of economic activity and the number of persons involved in those activities are growing. Yet, legal research has still mostly concentrated on the consequences of these developments for labour law,[2] although the last few years have also seen a rise in activities with a view on social security law, and several articles have dealt with the role of social security law in an era of digitalisation, both from a comparative[3] and from a national[4] perspective.

1 Becker, Ulrich/Chesalina, Olga (eds.), Social Law 4.0: New Approaches for Ensuring and Financing Social Security in the Digital Age, Baden-Baden: Nomos 2021.

2 See as most recent examples, and without any claim of being able to paint a comprehensive picture here: *Jarrett, Kylie*, Digital Labor, Oxford: Polity Press 2022; Gyulavári, Tamás (ed.), Decent Work in the Digital Age, Gordonsville: Hart Publishing 2022; *Kocher, Eva*, Digital Work Platforms at the Interface of Labour Law, London: Hart Publishing 2022; Carinci, Maria Teresa/Dorssemont, Filip (eds.), Platform Work in Europe, Cambridge: Intersentia 2021; *Aloisi, Antonio/De Stefano, Valerio*, Your Boss Is an Algorithm: Artificial Intelligence, Platform Work and Labour, London: Hart Publishing 2022; *Aloisi, Antonio*, Platform Work in Europe: Lessons Learned, Legal Developments and Challenges Ahead, ELLJ 13 (2022) 1, pp. 4-29, *Adams-Prassl, Jeremias/Abraha, Halefom/Kelly-Lyth, Aislinn/Silberman, Michael Six/Rakshita, Sangh*, Regulating Algorithmic Management: A Blueprint, ELLJ 14 (2023) 2, pp. 124-151.

3 *Daugareilh, Isabelle*, Introduction: Social protection for digital platform workers in Europe, ISSR 74 (2021), pp. 5-12; *Barrio, Alberto*, The Role of the EU in Adapting Social Law to the Digital Transformation of Work. Lessons learned from the proposed Directive on improving working conditions in platform work, Hungarian Labour Law E-Journal (2023) 1, pp. 20-45; *De Becker, Eleni/Seo, Hyojin/Pulignano, Valeria/Schoukens, Paul*, Mapping social protection coverage for platform workers: A comparative analysis of Belgium, Italy and the Netherlands, EJSS 26 (2024) 1, pp. 1-24; *Barrio, Alberto*, Unemployment insurance for platform workers: Challenges and approaches from a

Against this background, the observations that follow are intended to achieve a twofold aim: first, they systematically review the challenges of digitalisation for social protection and the reactions to these challenges; secondly, they compare and evaluate these reactions from a social law and social policy perspective. On the one hand, we want to see whether the innovations and proposals on access to social protection of persons in new forms of employment, and in particular platform workers, at national and European levels that were reported in our Book Social Law 4.0 were realised over the last four years. On the other, we want to analyse the present situation in the light of how access to social protection is actually achieved, and how this protection is, or can be, financed. Our observations start with recent developments as the title "Social 4.0: Update" suggests, but not without also going back to the information already published in 2021. Thus, the contributions that were prepared for the two rounds of our joint project form the basis for the following pages. But we also include other sources and information from European states that did not form part of the project.[5]

The focus of our research interest is still on access to social protection and the financing of this protection. The first topic concerns a very elementary aspect of social protection systems, as the legal conditions for access also conceptualise a legal responsibility of a political community for the

comparative perspective, EJSS 26 (2024) 2, pp. 1-15; *Mangold, Sonja*, Platform work and traditional employee protection: The need for alternative legal approaches, ELLJ (2024), pp. 1-14.

4 See contributions to the special issue: Social protection for digital platform workers in Europe, ISSR 74 (2021), vol. 3-4: *Wattecamps, Céline*, From precarity to the denial of social status in the Belgian legal order: The social security rights of platform workers in question, pp. 13-38; *Jacqueson, Catherine*, Platform work, social protection and flexicurity in Denmark, pp. 39-59; *Montebovi, Saskia*, Accommodating platform work as a new form of work in Dutch social security law: New work, same rules?, pp. 61-83; *Daugareilh, Isabelle*, Social protection and the platform economy: The anomalous approach of the French legislator, pp. 85-109; *Borelli, Silvia/Gualandi, Sofia*, Which social security regime for platform workers in Italy?, pp. 133-154; *Roşioru, Felicia*, The social protection of platform workers in Romania: Meeting the growing demand for affordable and adequate coverage?, pp. 155-175; *Pérez Guerrero, María Luisa/Royo, Miguel Rodríguez-Piñero*, Social security for Spain's platform workers: Self-employed or employee status?, pp. 177-194; *Ghorpade, Yashodhan/Rahman, Amanina Abdur/Jasmin, Alyssa*, Social insurance for gig workers: Insights from a discrete choice experiment in Malaysia, ISSR 77 (2024) 3, pp. 3-30.

5 All online sources cited in the footnotes of this chapter were last accessed on 14 March 2025.

welfare of the persons involved. Yet, we also point to the responsibility of private actors, i.e. undertakings or, in our context, platform companies, namely through the voluntary provision of social benefits on the basis of private law, more precisely labour law, especially based on collective agreements. The second topic mentioned above deserves attention because the realisation of social rights is costly, and every social benefits system needs to have a sound financial basis. However, this general observation is not the main point of interest here. In the context of the economic activities of platform workers, the much more specific question that arises is whether platform providers can, or even should, be asked to participate in the financing of social protection systems. This has implications for social law, and consequently legal responsibility.[6]

2. In a first step (II.), we give a brief overview of the factual background as well as the challenges for social protection. This deals with the growing number of platform workers, but positioned within a broader framework of the changes in the way these economic activities are performed. In this step, we also briefly sum up the institutional background to social protection, as both the necessity to adapt existing schemes as well as the options on how to realise these adaptations depend on the characteristics of the social protection systems in place. Action needs to be taken at national level as Member States of the European Union are responsible for the creation and the functioning of their own social protection schemes. Yet, there are also reactions at European level which serve, in the framework of the existing division of powers between the Union and its Member States, as social policy guidelines.

In a second step (III.), we systematise the reactions to the challenges from the perspective of the relevant actors. These reactions relate to the determination of the social protection (or employment) status of platform workers. They may come about in different ways: first by case law and the interpretation of the existing provisions on the concept of employed earners (or of self-employment), secondly by law and by changing the existing provisions. This differentiation is, at one and the same time, one between the role of the judiciary on the one hand, and of the legislator on the other, in other words between social law and social policy. Policy reactions

6 As has been discussed in the context of the German social insurance for artists, see *Becker, Ulrich/Chesalina, Olga*, Social Law 4.0: Challenges and Opportunities in Social Protection, in: Becker/Chesalina, Social Law 4.0 (fn. 1), p. 15, 20 et seq.

can take very different forms: from a reformulation of the legal definition of employed earners to procedural reactions, in particular presumption clauses, to the creation of new legal categories of economic activities, positioned somewhere between employment and self-employment. Thirdly, the reactions of the private actors involved should not be overlooked: the companies involved may determine the status of persons working for them within the framework of existing laws. But also in this context, the legislator may react first and create a specific statutory basis for contractual agreements. In any case, reactions are part of the process, and it is important to follow this process a bit further also, as reactions will often cause re-reactions. This holds particularly true in our context: generally speaking, private parties are allowed to use their autonomy to determine the circumstances of economic activities, and if they choose specific ways of performing those activities with a specific view to the existing laws on social protection, then they can be expected to react to changes in the application and, or, the formulation of those laws.

Our following steps aim to analyse the developments and their outcomes. In relation to access to social protection (IV.), we use some basic normative dimensions of access as a yardstick for an evaluation, as they also form part of the relevant EU Recommendation on access to social protection for workers and the self-employed of 8 November 2019[7]. In the following part (V.), we come back to reactions by private actors in a broader sense. This does not involve the already mentioned determination of a specific status for platform workers but the question of how far social protection is being guaranteed within industrial relations and by use of labour law. This also leads to the more general question (VI.), of how far and why platforms should be involved in the financing of the social security of platform workers. The answer depends on some general observations on the legal meaning of social responsibility, but also on the actual feasibility of the involvement of platforms and aspects of social policy.

Finally, we conclude with a short summary and proposals for the future of social protection of platform workers.

7 OJ C 387/1, 15 November 2019.

II. Factual and Systematic Background

1. Factual Background

a) Definition of Platform Work

Before turning to figures and factual developments, we need to start from a clear concept of platform work. This form of work forms part of online work, which is a more general and broader term, including work activities carried out online on the basis of "traditional" employment relationships (e.g. telework).[8] Today, platform work has become a widely acknowledged[9] and meaningful definition of a specific category of online work, namely of economic activities of persons for platforms.

With a view to the term "platform", Directive 2024/2831 on improving working conditions in platform work[10] provides a definition in the context of work. According to its Art. 2(1)(a), "digital labour platform" means "a natural or legal person providing a service which meets all of the following requirements: (i) it is provided, at least in part, at a distance by electronic means, such as by means of a website or a mobile application; (ii) it is provided at the request of a recipient of the service; (iii) it involves, as a necessary and essential component, the organisation of work performed by individuals in return for payment, irrespective of whether that work is performed online or in a certain location; (iv) it involves the use of automated monitoring systems or automated decision-making systems". This definition implies the involvement of at least three participants: the digital labour platform, the service recipient, and the individual performing platform work. The criterion of "organisation of work" means that digital platforms serving solely as marketplaces do not meet that definition; nevertheless, Member States must ensure that persons who have "a contractual relationship with an intermediary enjoy the same level of protection"[11] (Art. 3 Directive 2024/2831).

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8 *De Stefano, Valerio*, Chapter 55. Online Work, in: Davidov, Guy/Langille, Brian/Lester, Gillian (eds.) The Oxford Handbook of the Law of Work, Oxford: OUP 2024.

9 See for that development Eurofound, Platform work, https://www.eurofound.europa.eu/en/european-industrial-relations-dictionary/platform-work.

10 Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 (OJ L, 2024/2831, 11 November 2024).

11 See Art. 2(1)(e) of Directive 2024/2831.

In order to better capture the different phenotypes of platform work, it is useful to distinguish between two forms of digital labour platform in line with the definitions of the International Labour Organization (ILO): location-based platforms and online platforms. The former involves services performed at a specified physical location by individuals. It spans various sectors, such as passenger transport, food and parcel delivery, cleaning, household services, and more. In the case of online platforms, the services are performed online and remotely by workers and are allocated to a crowd (on microtask and competitive programming platforms) or to individuals (on freelance and contest-based platforms).[12] Work delivered by individuals through the first type of digital labour platform can be defined by the terms "on-location platform work" ("location-dependent" / "location-based") and "work on demand".[13] Work provided by individuals on the second type of digital labour platform is named "location-independent" platform work, "crowdwork", web-based work,[14] online work or remote platform work".[15]

In terms of the persons providing services for platforms, Directive 2024/2831 distinguishes between platform workers and persons performing platform work. While "platform worker" means "any person performing platform work who has or is deemed to have an employment contract or an employment relationship as defined by the law, collective agreements or practice" (Art. 2(1)(d)), a "person performing platform work" means any individual performing platform work, irrespective of the nature of the contractual relationship or its designation by the parties involved (Art. 2(1)(c)). We do not follow this concept here, but make use of a broader term in which platform workers includes both employees and the self-employed.

12 ILO, Realizing decent work in the platform economy. International Labour Conference 113th Session, 2025. ILC.113/Report V (1), Geneva: ILO, 2024, https://www.ilo.org/resource/conference-paper/ilc/113/realizing-decent-work-platform-economy, p. 15; Eurofound, Work on demand: Recurrence, effects and challenges, Luxembourg: Publications Office of the European Union, 2018, doi:10.2806/463459, https://www.eurofound.europa.eu/publications/report/2018/work-on-demand-recurrence-effects-and-challenges.

13 Ibid.

14 *Pesole, Annarosa/Urzí Brancati, Maria Cesira/Fernández-Macías, Enrique/Biagi, Federico/González Vázquez, Ignacio*, Platform Workers in Europe, EUR 29275 EN, Publications Office of the European Union, Luxembourg, 2018, ISBN 978-92-79-87996-8, doi:10.2760/742789, JRC112157, p. 14, https://publications.jrc.ec.europa.eu/repository/handle/JRC112157.

15 *Piasna, Agnieszka*, Counting Gigs. How can we measure the scale of online platform work? Working Paper 2020.06, ETUI, Brussels: ETUI 2020, p. 11, https://www.etui.org/sites/default/files/2020-09/Counting%20gigs_2020_web.pdf.

First, this follows a common understanding of the term workers, which includes all individuals who perform work through digital labour platforms. Second, and more importantly, we need to start with a general term that does not depend on the type of employment status of the persons involved as this status is exactly what is at issue in our analysis.

b) Figures

There is still a lack of reliable data on the size and development of platform work in the European Union and in the Member States.[16] No official data is available at EU level with the exception of the results from a 2022 experimental statistical product.[17] Few studies have been published since 2021[18] when the European Commission predicted that the number of platform workers would increase from 28.3 million in 2022 to 43 million in 2025.[19] Numerous publications and statements have circulated these figures.[20] However, the European Commission's scenario remains questionable. The figure projected by the European Commission for 2024 is significantly higher than the total number of self-employed workers in the European Union in 2023 (approximately 27.97 million).[21] In addition, the European Commission's projection does not take into account the highly adaptable and flexible nature of platform work. In 2021 it was not possible to predict

16 European Commission, Study to support the impact assessment of an EU initiative to improve the working conditions in platform work, Final Report, Luxembourg: Publications Office of the European Union 2021, p. 38, https://op.europa.eu/en/publication-detail/-/publication/454966ce-6dd6-11ec-9136-01aa75ed71a1/language-en; *Chesalina, Olga*, Platform Work: Critical Assessment of Empirical Findings and its Implications for Social Security, in: Becker/Chesalina, Social Law 4.0 (fn. 1), p. 39, 49 et seq.

17 Eurostat, Experimental statistics on digital platform employment, https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20240718-1.

18 Spotlight on digital platform workers in the EU, https://www.consilium.europa.eu/en/infographics/digital-platform-workers.

19 Explanatory Memorandum to the Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, p. 1, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52021PC0762.

20 *Beckmann, Fabian/Glanz, Sabrina/Hoose, Fabian/Topal, Serkan*, Investigating social protection amongst platform workers in Germany: forced individualisation, hybrid income generation and undesired regulation, Journal of Social Policy 2024, pp. 1-19.

21 Statista, Number of self-employed people in the European Union from 2002 to 2023, https://www.statista.com/statistics/946989/self-employed-persons-in-eu/.

whether some of the platform providers would withdraw their business from certain Member States, due to legal disputes on the employment status of platform workers. During the COVID-19 pandemic, on-location platform work reached a peak in 2022 in certain sectors; its growth has slowed considerably since then.[22]

Notwithstanding these uncertainties, studies indicate that engagement in platform work has increased steadily across Europe in recent years.[23] Unfortunately, these studies are based on different parameters which make it difficult to compare them. According to a pilot survey on Digital Platform Employment in 2022, 3% of all people aged 15 to 64 were involved (to various degrees) in digital platform employment.[24] The number of platforms connecting businesses and clients to workers has grown significantly, rising from 193 in 2010 to 1,070 in 2023.[25] Among these, the largest concentration of on-location platforms was found in the delivery sector (334), followed by individual passenger transport (119) and care work (121).[26]

It is, important to note, in particular in the context of social protection, that there is a significant variation in the prevalence of platform work across EU countries. One study has shown that platform work accounts for as much as 6.5% of the workforce in Ireland, compared to just 2.2% in Romania.[27] There is also variation in trends. While platform work is developing at a slower pace in some countries – particularly in Central and Eastern Europe[28], but also in some Western European countries like

22 IAB-Forum, Gig-work in the German delivery-services sector: Employment has increased significantly in recent years, 9 July 2024, https://www.iab-forum.de/en/gig-work-in-the-german-delivery-services-sector-employment-has-increased-significantly-in-recent-years/.

23 Eurofound, Self-employment in the EU: Job quality and developments in social protection, Publications Office of the European Union, Luxembourg 2024, p. 59, https://www.eurofound.europa.eu/en/publications/2024/self-employment-eu-job-quality-and-developments-social-protection.

24 Eurostat, Employment statistics - digital platform workers, June 2023, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Employment_statistics_-_digital_platform_workers#Main_concept_and_data_collection.

25 ILO, Realizing decent work in the platform economy (fn. 12), p. 15.

26 Ibid.

27 *Piasna, Agnieszka/Zwysen, Wouter/Drahokoupil, Jan*, The platform economy in Europe, ETUI, The European Trade Union Institute 2022, p. 16, https://www.etui.org/publications/platform-economy-europe.

28 European Commission, Study to support the impact assessment (fn. 16), p. 39.

Belgium[29] – it has experienced rapid growth in other Western European nations, such as the UK, France[30] and Germany[31] in recent years, even if the absolute number of platform workers might still be relatively low. To put this in a broader framework: nowhere in Europe is the percentage of platform workers as high as in some Asian countries. In China, the number of platform workers is increasing, and its proportion in total employment reached 9.7% in 2018.[32] According to the China Sharing Economy Development Report of 2020, about 78 million workers were relying on internet platforms for employment.[33]

A critical issue in evaluating the development of platform work is the lack of standardised measurement methods. An experimental statistic on "Digital Platform Employment"[34] has been developed by a Eurostat's task force on Digital Platform Employment dedicated to this topic. The methodology applied followed the principles of the OECD-ILO-Eurostat Handbook on Measuring Digital Platform Employment and Work[35]. The statistics cover in particular digital platform employment where the platform or the phone app controls and/or organises essential aspects of the activities.[36] Considering that such control is an indicator of an employment relationship, it is questionable whether self-employed platform work is encompassed by the experimental statistic. In this context, it is important to include information on the economic activities of the self-employed.

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29 *De Becker, Eleni/Bruynseraede, Charlotte*, Unemployment protection for self-employed and platform workers in Belgium, EJSS 26 (2024) 2, p. 123, 125 et seq.

30 See *Larkin, Philip*, in: Social Law 4.0: Update, p. 32 and *Kessler, Francis*, in: Social Law 4.0: Update, p. 61.

31 IAB-Forum, Gig-work in the German delivery-services sector (fn. 22).

32 ILO, Digital Labour Platforms and Labour Protection in China, https://webapps.ilo.org/static/english/intserv/working-papers/wp011/index.html.

33 Sharing Economy Research Center of State Information Center: Report on the Development of China's Sharing Economy (2020), p. 8. Cited by *Xiaohui, Ban/Beck, Tobias/Bormann, René/Däubler, Wolfgang/Kungang, Li/Fayang, Wang/Qian, Wang/Yang, Yang*, Platform Economy in China and Germany. Labour Law Policy Recommendations for Decent Work, FES 2023, https://library.fes.de/pdf-files/bueros/china/20528.pdf.

34 Eurostat, Experimental statistics on digital platform employment, https://ec.europa.eu/eurostat/de/web/products-eurostat-news/w/ddn-20240718-1#:~:text=In%202022%2C%203.0%25%20of%20people,countries%20and%201%20EFTA%20country.

35 European Commission, Eurostat, Methodological Note, p. 2, https://ec.europa.eu/eurostat/documents/7894008/19514151/methodological-note.pdf/28785edd-6b75-c7c8-f99c-66bafee98e42?t=1720022363891.

36 Ibid.

According to a 2024 Eurofound study[37], the proportion of the self-employed among platform workers has fallen from 15.4% in 2010 to 13.7% in 2022. However, these numbers are based on the official EU Labour Force Survey, which tends to focus on the main occupation. Therefore, accurate data on self-employment in a secondary occupation is lacking.[38] Similar problems exist at national level. In Germany,[39] national statistics are based on microcensus data which only consider the main activity, excluding hybrid forms of employment,[40] and do not adequately capture individuals in liberal professions.[41] These matters here as, for most persons involved, platform work serves as a secondary activity – which brings us to different types of activity from the perspective of platform workers.

c) Types of Activity

Two aspects of work activities are important as they can also serve as indicators for the need for social protection, namely time and earnings. In terms of the first, there seems to be a consistent trend: for most persons involved, platform work serves as a secondary activity, supplementing their primary employment or main source of income.[42] There are exceptions though, in particular among certain on-location platform workers in transport and delivery services.[43] In terms of earnings, platform work encompasses a range of activities with varying levels of remuneration, from low to high.

If we distinguish two categories within both aspects, namely the main activities as against additional ones in the case of time, and low-paid as against medium- or high-paid work in the case of earnings, this leads to the following combinations:

37 Eurofound, Self-employment in the EU (fn. 23), p. 1.
38 Ibid., p. 11.
39 Selbstständige im Inland nach Wirtschaftssektoren, https://www.destatis.de/DE/Themen/Wirtschaft/Konjunkturindikatoren/Lange-Reihen/Arbeitsmarkt/lrerw15a.html.
40 *Langer, Cosima/Mauch, Katrin*, Datenlücke Solo-Selbstständigkeit Anforderungen zur Verbesserung der Datenlage, 2023, p. 10, 31, https://hausderselbststaendigen.info/wp-content/uploads/2023/09/230914-HDS-Datenluecke_Solo-Selbststaendigkeit-Digital.pdf.
41 IfM, Selbstständige/Freie Berufe, https://www.ifm-bonn.org/statistiken/selbststaendigefreie-berufe/selbststaendige.
42 European Commission, Study to support the impact assessment (fn. 16), p. 43; ILO, Realizing decent work in the platform economy (fn. 12), p. 21.
43 *De Becker et. al.,* EJSS 26 (2024) 1, (fn. 3), p. 8.

– Highly skilled workers may use platform work as their main occupation or as a supplement to their income. In the case of the first alternative, they will have sufficient resources at their disposal to finance insurance covering social risks; in the case of the second and the existence of a stable work relationship outside the platform economy, they will regularly be protected against social risks via their main activity.
– Low-skilled platform workers without a main occupation beyond the platform economy are likely to become economically dependent on platform work, and they are covered the least by social protection.[44] They share the same challenges in access to social protection as other workers in precarious non-standard employment (short-term contracts, zero-hours contracts, marginal and unstable employment).

This rough categorisation helps to make a potential need for social protection visible. However, before we turn to the institutional aspects, some practical ones need to be emphasised. First, it is often difficult to assess the status of platform workers, which is the reason why the Council of the EU has adopted the argument that the main barriers to accessing social security systems for platform workers are their atypical self-employment status (both false self-employment status and genuine self-employment status) and the non-standard employment arrangements[45] (see below, III.1. and IV.1.). Second, one can assume that given the specific nature of platform work which is often characterised by an uncertain employment status, by low pay, short-term or part-time engagements, a high proportion of unpaid work, and irregular working hours,[46] access to social protection is particularly challenging. Third, platform companies leverage their monopsony positions to benefit from informational asymmetries, withholding critical information (e.g. ratings mechanisms, pricing mechanisms). This practice restricts the range of potential buyers for the services provided by platform workers.[47] Additional obstacles include algorithmic management systems

44 *Zachary, Kilhoffer/Pieter De Groen, Willem/Lenaerts, Karolien/Smits, Ine/Hauben, Harald/Waeyaert, Willem/Giacumacatos, Elisa/Lhernould, Jean-Philippe/Robin-Olivier, Sophie,* Study to gather evidence on the working conditions of platform workers, VT/2018/032, Final Report, 13 March 2020, European Commission, 2020, p. 72.

45 See European Commission, Study to support the impact assessment (fn. 16), p. 60 and also fn. 7.

46 *Schoukens, Paul/Bruynseraede, Charlotte*, in: Social Law 4.0: Update, p. 78 et seq.

47 *Barrio, Alberto*, The further extension of social security to non-wage earners, in: Pennings, Frans/Vonk, Gijsbert (eds.), Research Handbook on European Social Security Law, 2nd ed., Cheltenham: Edward Elgar Publishing 2023, p. 130, 136.

designed to minimise compensable working hours and the prevalence of piece-rate or task-based payment methods (see below, IV.3.).

2. Needs and Options for Legal Responses

a) Types of Benefit Systems

aa) Systematisation

Whether and how social policy should react to the growing phenomenon of platform work depends not only on the numbers of persons involved in such activities, but also on the institutional structure of the existing social protection schemes. Again, this structure varies from one state to the other. Nevertheless, and from a comparative perspective, there are certain fundamental characteristics of social protection schemes that have been shaped over time by the common functions of those schemes[48] and the need to set up effective administrative bodies to organise the distribution of social benefits. Therefore, we can observe a typology of social protection schemes, even if there is still some variety with regard to the way in which they are set up in practice, and also with regard to the combination of schemes being used in each state.

The most relevant criteria for the identification of specific social protection schemes are their financing, in other words the differentiation between contributions on the one hand and taxes on the other as financial sources. Of course, there are some mixtures between these two basic forms of financial sources, as many social insurance schemes receive a certain amount of state subsidies or certain basic infrastructure is paid for from the general budget. Sometimes, even the distinction between contributions and taxes is blurred, as can be learned from the most prominent example of the *Contribution social généralisée* in France.[49] However, that does not call into

48 See for the role of historical developments in a comparative perspective *Zacher, Hans*, Vorfragen zu den Methoden der Sozialrechtsvergleichung, in: Zacher H. F., Abhandlungen zum Sozialrecht, edited by von Maydell, Bernd/Eichenhofer, Eberhard, Heidelberg: C.F. Müller Juristischer Verlag 1993, pp. 337, 368 et seq.

49 See for the CSG and the Contribution au remboursement de la dette sociale (CRDS) information of the French Treasury, https://www.economie.gouv.fr/particuliers/contribution-sociale-generalisee-csg and https://www.vie-publique.fr/fiches/21973-quest-ce-que-la-csg-contribution-sociale-generalisee.

question the importance of this distinction.[50] Contributions always have a specific legal relationship with the benefits they are paid in for: not in the strict sense of equivalence as far as social insurance is concerned, as there has to be some financial redistribution between the contributors (and the insured) in order to establish solidarity; but in the sense that there is a subjective right to benefits, that these benefits may not be made conditional on individual means tests, and that the amount of benefits may vary according to the amount of contributions. This can justify the use of social benefits as an instrument to secure different individual levels of living. With a view to the last aspect, the level of social protection plays a crucial role. If the aim of this protection is to cover a major part of the population, low contributions and low benefits will be the preferred choice. This allows for universalism, but it also reduces the role of social insurance to a basic protection, leaving more room for individual responsibility (including occupational protection). That explains the differences often characterised as the so-called *Bismarckian* and *Beveridgean* systems, which are also often wrongly confused with the fundamental differentiation between different sources of financing.

If we add to this institutional-based categorisation a functional one that takes different social policy aims into account, we arrive at four different types of social protection schemes:

	Social Insurance	Social Support	Social Assistance	Social Compensation
Aim	Precaution against social risks	Support in situations of specific social need = positive situation	Alleviation of poverty = negative situation	Compensation for damages in cases of community responsibility
Financing	Contributions	Tax	Tax	Tax
Means test	No	Partially	Yes	No

Whereas tax-financed benefits for social support and social assistance are open to anyone falling under the respective jurisdiction, contribution-financed social insurance benefits are rather selective. They will only be granted to persons who belong to the group of the insured, and they will often require a certain period of insurance. Traditionally, social insurance

50 See *Becker, Ulrich*, Das Sozialrecht: Systematisierung, Verortung und Institutionalisierung, in: Ruland, Franz/Becker, Ulrich/Axer, Peter (eds.), Sozialrechtshandbuch (SRH), Baden-Baden: Nomos 2022, § 1, par. 15.

is aimed at risk provisioning, covering social risks, namely those addressed by ILO Convention No. 102 on minimum standards of social security[51] and the European Code of Social Security[52] (EOSS), as revised in 1990.[53] The respective benefits constitute social security in a narrow sense; they include family benefits although these are often granted in the form of social support.

bb) Possible Gaps

It follows from this functional and institutional background that platform workers are at risk of falling short of appropriate prevention against social risks in those countries in which social security is organised in the traditional way. In general, the protection gaps arise in particular with regard to those cash benefits which aim to replace earnings, i.e.:

- in case of sickness (sickness benefits),
- in case of maternity,
- in case of accidents at work (industrial injuries) and occupational diseases,
- in case of unemployment,
- in case of invalidity,
- in old-age (old-age pensions), and
- possibly also in relation to long-term care benefits.

The same holds true with regard to benefits in kind which are designed to enable persons to get back to work in cases of accident and illness (rehabilitation measures).

51 https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312247.

52 ETS No. 139 of 6.11.1990, text available at: https://www.coe.int/de/web/conventions/full-list?module=treaty-detail&treatynum=139.

53 ETS No. 48 of 16.4.1964, text available at: https://www.coe.int/de/web/conventions/full-list?module=treaty-detail&treatynum=048.

b) Options for Responses

aa) Role of Status

Whether the above-mentioned protection gaps actually exist, how far-reaching they are, and how they might be filled, depends on the coverage of the existing schemes. Following historical pathways, social insurance started for employed earners, and those persons still form the core category of the insured. After the Second World War, social protection for the self-employed became widespread, partly by integrating the self-employed into the traditional social security schemes, partly by setting up new schemes, which could also include the integration of existing traditional forms of insurance.[54]

Where universal schemes cover both employed earners and the self-employed, the status of economically active persons will not matter that much. Nevertheless, it will remain of some importance, as universal schemes, as a rule, also include some differentiated rules, in particular with a view to contributions. Where there are specific schemes for the self-employed, one can assume that their aim is to provide social protection that differs from that for employed earners: be it with regard to the social risk covered, be it with regard to the level of protection. And, here again, there will be specific rules for financing, including the possibility of state subsidies.

There is only one possible solution which would overcome the necessity of determining the economic status in order to answer the question whether, and to what extent, a person enjoys social protection: to make this protection independent from economic activities. Such a solution has been discussed for a long time, mostly under the term Universal Basic Income (UBI), although both terms and exact shape of possible transfer systems vary. Respective discussions flare up time and again.[55] It is interesting to note that the most recent discussions reflect two very different approaches to liberalism: one that reduces self-responsibility as an socio-economic counterpart to individual freedoms, in the sense of a societal expectation that everybody who is able to work should do so in order to maintain

54 See for an overview *Becker, Ulrich*, Die soziale Sicherung Selbständiger in Europa, Zeitschrift für europäisches Sozial- und Arbeitsrecht (ZESAR) 17 (2018) 8, pp. 307, 313 et seq.

55 Recently *Torry, Malcolm*, Unconditional, Towards Unconditionality in Social Policy, Cheltenham: Edward Elgar 2024; for other publications from the same author see: https://torry.org.uk/basic-income.

themselves; a second that reduces the responsibility of undertakings for the well-being of persons performing work for them, in the sense of reducing labour costs, in particular contributions owned by employers, following the neo-liberal ideal of free markets. There are good reasons to remain sceptical about both the underlying philosophy and the actual feasibility of UBI. That need not be discussed further as, at least up to now, UBI has not left the world of ideas and become available in practice – at least for filling in the gaps considered here (see above, II. 2.a)bb)).

bb) Consequences

As a consequence, to determine the status of platform workers remains essential.

- If a platform worker meets the conditions for being an employed earner, he or she will be covered by social insurance. In some countries, there might be specific provisions for specific social risks, i.e. differences between schemes.[56] Yet, and generally speaking, it is the definition of employed earner where labour law and social security law meet.
- If a platform worker is assessed as being self-employed, three options are possible, depending on which national security schemes are in place:
  - social security may have the same content as for employed earners but has to be financed without employer contributions;
  - specific schemes for the self-employed may cover social risks, either comprehensively or partly;
  - there is no social protection.

This simple overview explains why the interpretation of the national provisions used to define employee status has once again become the centre of attention. Administrative authorities and courts have to apply these provisions case by case, and they may use the opportunity to further develop their line of interpretation (or their doctrinal approach).[57] And legislators may step in, trying to enhance legal certainty by reformulating the text of

56 Which might come close to a specific status as discussed below. In Germany, for example, see § 2 Social Code Book VI, which lists specific self-employed groups subject to mandatory pension insurance, such as teachers, caregivers, artists, craftsmen, and solo self-employed individuals primarily working for one client.

57 *Becker/Chesalina*, in: Becker/Chesalina, Social Law 4.0 (fn. 6), p. 15, 17 et. seq; *Becker*, ZESAR 17 (2018) 8 (fn. 54), p. 307, 315 et seq.

the respective provisions, or by defining a new category of persons who should enjoy social security.

cc) Strategies for the Extension of Social Protection

The "doctrinal strategy" is not limited to countries with a binary divide model. Especially in countries with a third category (e.g. dependent self-employed like TRADE in Spain[58] or "coordinated and continuous collaborators" in Italy[59]), the boundaries of this category may be widened to cover persons in new forms of employment as these forms often tend to be in-between salaried employment and self-employment. Nevertheless, this strategy remains necessarily limited, namely within the methodological framework for the interpretation of legal provisions.

Legislators, in contrast, have more room for manoeuvre, and they may pursue different strategies in order to extend coverage:

- First, they can include some of the groups of persons previously excluded from social insurance in the existing schemes. This option may be used either to guarantee particular labour rights[60] and the coverage of specific social risks, such as old age pensions or unemployment insurance, or for the full set of social insurance schemes. The choice must be justified in terms of social policy goals, and also, at least in some jurisdictions, in relation to constitutional law, as mandatory social protection comes with a restriction on individual freedoms. In other words, there has to be a "need" for social protection, even if this is a broad term which leaves much room for legislative discretion.
- Second, the legislator may decide to create new social insurance schemes for new forms of economic activities. This solution comes with pros and

58 European Commission, Case study – gaps in access to social protection for economically dependent self-employed in Spain, Luxembourg: Publications Office of the European Union, 2018, p. 8 et seq.

59 *Ales, Edoardo*, Is the Classification of the Work Relationships Still a Relevant Issue for Social Security? An Italian Point of View in the Era of Platform Work, in: Becker/Chesalina, Social Law 4.0 (fn. 1), p. 97, 104.

60 E.g. Austria, Germany, Ireland, Slovenia, Sweden, Ireland and the UK have extended special labour law statutes to economically dependent workers. See *Schubert, Claudia*, Social Protection for Economically-Dependent Workers through Labour Law, in: Schubert, Claudia (ed.), Economically-Dependent Workers as Part of a Decent Economy. International, European and Comparative Perspective. A Handbook, Beck, Hart, Nomos 2022, p. 188, 200 et seq.

cons.[61] On the one hand, special schemes can be tailored to the characteristics of a specific group of workers, taking into account a certain heterogeneity of the workforce in general. As a rule, this will lead to labour law and social law drifting apart, because the persons covered will enjoy protection under social law, but not under labour law. This may also be a reaction to the results of studies which show that the majority of platform workers (even in low-paid and precarious activities) do not want to become employees.[62] On the other hand, however, the introduction of specific schemes and a new category of workers also poses the risk of fragmentation and can hamper the switches between different social security schemes. Therefore, the introduction of specific schemes only seems to be justifiable if the advantages of tailor-made schemes clearly outweigh the disadvantages. Such advantages can lie above all in a flexibilisation of financing, because special schemes at least facilitate the reduction in contribution burdens for the insured and the use of further sources of financing, namely contributions from third parties or state subsidies.

c) The Role of the EU

Before we start the overview in the next section, it is necessary to add some remarks on the level at which reactions need to take place, namely on the role of the EU in this context. On the one hand, platforms often operate across borders, and their activities call for a legal framework that goes beyond national borders. On the other, the EU is based inter alia on "solidarity" (Art. 2 sent. 2 of the Treaty on European Union – TEU), it should establish an internal "social market" with "social progress" (Art. 3(3) of the TEU) and in all its actions also take into account "the guarantee of adequate social protection" (Art. 9 of the Treaty on the Functioning of

61 See also *Behrendt, Christina/Nguyen, Quynh Anh*, Innovative approaches for ensuring universal social protection for the future of work, International Labour Office – Geneva: ILO 2018, p. 17, https://researchrepository.ilo.org/esploro/outputs/encyclopediaEntry/Innovative-approaches-for-ensuring-universal-social/995219078602676.

62 *Greiner, Stefan/Baumann, Patrik*, Der Beschäftigungsstatus von Plattformbeschäftigten und die Richtlinie zur Verbesserung der Arbeitsbedingungen in der Plattformarbeit, ZESAR 22 (2023) 10, p. 409, 410; *Gräf, Stephan*, Der Richtlinienentwurf zur Plattformarbeit – Analyse, Umsetzungsperspektiven und Alternativen, ZFA 2023, 2, p. 209; *Beckmann et. al.*, Journal of Social Policy 2024 (fn. 20), p. 1, 16.

the European Union – TFEU), yet without having the powers to establish social protection schemes on its own (see Art. 151 et seq. of the TFEU). Over the past years, the European Union has started to put more emphasis on its social policy agenda. The most obvious expression of this approach is the so-called European Pillar of Social Rights.[63] The ambition of realising minimum social standards within the whole Union has gained particular attention with experiences drawn from the recent crises, in particular the financial crisis and the pandemic. As far as social protection is concerned, one measure aimed at implementing the European Pillar of Social Rights is of particular interest, namely the Council Recommendation on access to social protection for workers and the self-employed.[64] It is of a non-binding nature, taking into account the restricted powers of the European Union in this policy field, but such Recommendations are intended to provide guidance for national policies.

A legally binding measure is the already mentioned Directive 2024/2831 on improving working conditions in platform work of 23 October 2024.[65] The proposal of 2021 on which the Directive is based[66] included a legal presumption, that read as follows: "The contractual relationship between a digital labour platform that controls, within the meaning of paragraph 2, the performance of work and a person performing platform work through that platform shall be legally presumed to be an employment relationship."[67] However, after years of discussion, the Commission's original attempt to harmonise the definition of facts that shall indicate the existence of an employment relationship in the platform economy failed. In the final text, Art. 5(1) only sets out the requirement that a "contractual relationship between a digital labour platform and a person performing platform work" shall be "legally presumed to be an employment relationship when facts indicating control and direction, according to national law, collective agreements or practice in force in the Member States and with consideration to the case-law of the Court of Justice, are found." This leaves it up to the national legislators to regulate what kind of "facts" indicate "control and

63 Available at: https://commission.europa.eu/system/files/2017-11/social-summit-european-pillar-social-rights-booklet_en.pdf.
64 See fn. 7.
65 See fn. 10. The Directive is based on Art. 153(2)(b) in conjunction with Art. 153(1)(b) and 16(2) TFEU.
66 COM(2021) 762 final.
67 Art. 4(1) of the proposal.

direction" and thus "trigger" the presumption.[68] Even more important is the fact that the legal presumption "shall not apply to proceedings which concern tax, criminal or social security matters", although Member States may apply it in such proceedings "as a matter of national law", an addition which seems rather self-evident.

III. Determination of the Status of Platform Workers

1. Reactions

a) Interpretation: The Role of Courts

Several studies have highlighted that one of the most significant factors limiting access of platform workers to social protection is their classification as self-employed workers.[69] In the case of platform work managed chiefly by algorithmic management[70], it remains challenging to determine whether platform workers are employees or self-employed persons.

The national courts' first decisions regarding the classification of platform workers for labour and social law purposes were controversial. Over the past four years case law in many EU countries, particularly that of courts of higher instance (courts of second instance and supreme courts), has shown a tendency to reclassify self-employed platform workers, such as couriers and riders, as employees.[71] For example, the Labour Tribunal of Brussels decided in 2021 that Deliveroo couriers should be considered

68 See *Brameshuber, Elisabeth/Höllwarth, Julia*, Die EU-Arbeitsplattformrichtlinie: Ein Game-Changer für das Arbeitsrecht?, Arbeits- und SozialrechtsKartei (ASoK) 28 (2024) 5, pp. 170, 175 et seq.

69 *Zachary et. al.,* Study to Gather Evidence on the Working Conditions of Platform Workers (fn. 44), p. 71.

70 The elements of algorithmic management are starting to be used in traditional employment relationships, while algorithmic management remains a characteristic feature of platform work. Compare Rec. 8 of Directive 2024/2831: "Digital labour platforms, in particular, use such algorithmic systems as a standard way of organising and managing platform work through their infrastructure."

71 Germany (Micro-tasking Platform Roamler): Federal Labour Court, Decision of 1 December 2020, 9 AZR 102/20, Neue Zeitschrift für Arbeitsrecht (NZA) 2021, 552; the Netherlands (Deliveroo drivers): Supreme Court of the Netherlands, 24 March 2023 - 21/02090, ECLI:NL:HR:2023:443; France (Uber drivers): Cour de Cassation, Chambre sociale, 3 March 2020–19-13.316, arrêt no. 374, ECLI: FR:CCAS:2020:SO00374.

as self-employed; in December 2023, the Labour Appeals Court of Brussels reclassified Deliveroo couriers as employees.[72] Researchers have underlined the shift in court proceedings on the classification of platform workers from subordination criteria towards criteria of integration in the organisation.[73] Interestingly, in Member States where a third (intermediate) category already exists (like hetero-organised in Italy[74], TRADE in Spain[75]), platform workers have rarely been classified by the courts or administrative authorities as belonging to this third category but rather as employees.[76] In contrast, the results of court proceedings involving cleaners and micro-taskers have been more mixed, with no clear trend towards reclassifying self-employed workers as employees.[77] Simultaneously, there is a very small share of litigation concerning the employment status of other categories of platform workers. In other words, the case law primarily addresses a very narrow group of platform workers.

Claims concerning the employment status of platform workers are still predominantly addressed on a case-by-case basis.[78] On the one hand, this approach can provide at least minimum labour and social rights to individuals who have been reclassified as employees or dependent self-employed through the process of litigation. For example, the reclassification of certain categories of platform workers as workers in the UK has the potential to change the character of their work (and in particular their working time) from casual to more regular. As a result, the number of platform workers may be reduced. This opens up the possibility for the remaining platform workers to enhance their working time since many of them worked previously only a limited number of hours per week/day on the basis of zero-

72 See *Jorens, Yves*, in: Social Law 4.0: Update, p. 13 et. seq.; see for a parallel case in Spain (Glovo riders): Tribunal Supremo, 25 September 2020, 805/2020, etc.

73 *Hießl, Christina*, Case Law on the Classification of Platform Workers: Cross-European Comparative Analysis and Tentative Conclusions (March 12, 2024). Forthcoming, Comparative Labour Law & Policy Journal, p. 82, available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3839603.

74 *Ales*, in: Becker/Chesalina, Social Law 4.0 (fn. 59), p. 97, 106-107.

75 See fn. 58.

76 Cf. Spain (Glovo riders): Tribunal Supremo, 25 September 2020, 805/2020; Germany (Micro-tasking Platform Roamler): Federal Labour Court, 1 December 2020, 9 AZR 102/20.

77 Eurofound, Self-employment in the EU (fn. 23), p. 64.

78 Platform workers and social security: Recent developments in Europe, https://www.issa.int/analysis/platform-workers-and-social-security-recent-developments-europe.

hours-contracts.[79] On the other hand, the case-by-case approach can lead to uncertainty of outcomes in all (potential) instances and to conflicting conclusions concerning one and the same platform both within and across courts.[80] Ongoing changes in the business model of platform work make the situation even more unpredictable.

b) Creation: The Role of the Legislator

aa) New Categories

The issues surrounding the classification of platform workers, their working conditions and social protection have been extensively debated in national social policy discussions in the last four years. The legislative procedure on the Directive on improving working conditions in platform work spanned the period from December 2021 to April 2024 and triggered such discussions. Numerous scientific and political assessments of the drafts of the Directive and their compliance with European and national law were published.[81]

In the majority of the Member States, these extensive discussions did not lead to concrete legislative measures. Eurofound stresses that "for the time being, none of the EU Member States has clear regulations specifying

79 See *Larkin, Philip*, in: Social Law 4.0: Update, p. 35.

80 Ibid.

81 https://data.consilium.europa.eu/doc/document/ST-9227-2022-REV-1/en/pdf; EU: Swedish presidency of the EU Council makes new attempt at platform workers directive and proposes narrowing down the derogation for the presumption of employment, https://www.business-humanrights.org/en/latest-news/eu-swedish-presidency-of-the-eu-council-makes-new-attempt-at-platform-workers-directive-and-proposes-narrowing-down-the-derogation-for-the-presumption-of-employment/; ETUC resolution on the proposal of the European Commission of a Directive on improving working conditions in platform work and way forward ahead of the ordinary legislative procedure, https://www.etuc.org/en/etuc-resolution-proposal-european-commission-directive-improving-working-conditions-platform-work#:~:text=The%20proposal%20for%20a%20Directive,completed%20with%20a%20reversal%20of; *De Stefano, Valerio*, The EU Commission's proposal for a Directive on Platform Work: an overview, Italian Labour Law e-Journal 15 (2022) 1, https://illej.unibo.it/article/view/15233; *Krause, Rüdiger*, Auf dem Weg zur unionsrechtlichen Regelung von Plattformtätigkeiten, NZA, 2022, 521; *Eichenhofer, Eberhard*, Kommissionsvorschlag zur Regelung der Plattformarbeit, ZESAR 21 (2022) 11, p. 11-12, pp. 459-465; *Barrio,* EJSS 26 (2024) 2 (fn. 3).

the employment status of platform workers".[82] Recent years have seen proposals made by legislators in some countries, and also by academics, to introduce a third or intermediate category for platform workers.[83] However, these proposals have not been successful. The experience of some countries with an intermediary category has shown that its introduction contributes to the circumvention of the existing "employee" category and becomes an obstacle for workers to achieve appropriate social law protection.[84] An exception to this trend is Italy where a new category of employment, so called "hetero-organisation" was introduced by Act No. 128 of 2019.[85]

Some Member States (e.g. Belgium, France, Italy, Spain) have followed a more targeted line and adopted regulations that explicitly address specific categories of on-location platform workers as their labour and social protection needs have been the most visible and most articulated in research and practice.[86] However, only a few of these provisions relate to social security. France was a pioneer in regulating social and labour rights of platform workers with the amendments of the Labour Code adopted in 2016.[87] According to Art. L. 7341-1 the requirements of the newly introduced chapter apply to self-employed persons who access one or more platforms by means of electronic networking in order to carry out their professional activity. Italy decided not to regulate all forms of platform work but to introduce special regulations protecting autonomous workers who carry out goods delivery activities on behalf of others in urban areas by bicycle or motor vehicle (Art 47-bis of Act No. 128 of 2019[88]). These regulations demonstrate that the legislator has considered the atypical character of the self-employment activity of these categories of platform workers and

82 Eurofound, Platform Work: Employment status, employment rights and social protection, https://www.eurofound.europa.eu/en/platform-work-employment-status-employment-rights-and-social-protection.

83 See *Kessler, Francis*, in: Social Law 4.0: Update, p. 71.

84 *Cherry, A. Miriam/Aloisi, Antonio*, "Dependent Contractors" in the Gig Economy: A Comparative Approach, American University Law Review 66 (2017) 3, p. 663, 665 et seq.

85 *Ales*, in: Becker/Chesalina, Social Law 4.0 (fn. 59), p. 97, 104 et seq.

86 Report from the Commission to the Council on the Implementation of the Council Recommendation on Access to Social Protection for Workers and the Self-Employed, Brussels, COM (2023), 43 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023DC0043&qid=1676473347749.

87 https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006072050/LEGISCTA000033013014/#LEGISCTA000033013014.

88 *Ales*, in: Becker/Chesalina, Social Law 4.0 (fn. 59), p. 97, 110 et seq.

provided some labour and social rights that are usually associated with the employment status of employees. In other Member States, proposals along the same lines have not succeeded, as in the Netherlands in the proposal to extent the notion "fictitious employment relationship" to other categories of solo self-employed and non-standard workers.[89]

bb) Weaknesses

Where platform work has been regulated at the national level, it is often fragmented[90] – addressing only a limited number of labour law and social security issues and covering only a small group of platform workers (e.g. in Italy only autonomous riders, in Spain delivery platform workers)[91]. The status and rights of all other categories of platform workers remain uncertain. In cases where a legislator has attempted to reconcile the conflicting interests of participating counterparts, such regulation has often resulted in conflicts between labour law and social security principles and regulations (e.g. the regulation of the application of collective agreements of employees to autonomous platform workers in Italy[92] or regulation of the protection of self-employed platform workers against accidents at work in France[93]).

Furthermore, no few of the special provisions introduced over the last few years are controversial because the legislator not only sought to take the need for social protection of platform workers into account but also to reconcile conflicting interests of participating counterparts or to promote the platform economy. For example, in Italy, despite the absence of complete subordination and integration within the organisation, the guaranteed level of labour and social protection of hetero-organised persons can be equivalent to that of employees.[94] In France only marginal, fragmented social protection for platform workers is provided for in the Labour Code

89 *Vonk, Gijsbert*, Extending Social Insurance Schemes to "Non-Employees": The Dutch Example, in: Becker/Chesalina, Social Law 4.0 (fn. 1), p. 147, 163.
90 See Eurofound, Self-employment in the EU (fn. 23), p. 62.
91 *Ales,* in: Becker/Chesalina, Social Law 4.0 (fn. 59), p. 97 et seq.; European Agency for Safety and Health at Work, Spain: The "Riders' Law", New Regulation on Digital Platform Work, https://osha.europa.eu/sites/default/files/2022-01/Spain_Riders_Law_new_regulation_digital_platform_work.pdf.
92 See *Ales, Edoardo/D'Avino, Emilia,* in: Social Law 4.0: Update, p. 24 et seq.
93 See *Kessler, Francis*, in: Social Law 4.0: Update, p. 64 et seq.
94 See *Ales, Edoardo/D'Avino, Emilia*, in: Social Law 4.0: Update, p. 21 et seq.

despite the fact that there is a similar situation of subordination and need for social protection as employees.[95]

cc) Background: Labour Market Policy

The last point in the previous sections hints at the broader background of national responses to platform work, namely employment patterns and labour market policies. Several countries initially promoted new forms of work, such as platform work (e.g. Belgium, France, the UK) and/or flexwork, self-employment (e.g. the Netherlands[96]). In recent years some of these countries have recognised that tax and social security incentives, like exemptions from social contributions and taxes, contribute to the growth of part-time and marginal platform work and incentivise self-employment over dependent employment. For example, in Belgium, specific regulations on taxation of and the payment of social contributions by platform workers were abandoned just a few years after their implementation.[97] Furthermore, some countries (e.g. the Netherlands) have decided to reduce the use of non-standard forms of employment either to ensure equal treatment of different forms of employment or to create a level playing field, including employers who use short-term contracts. These measures can help to decrease the use of non-standard contracts and therefore facilitate access to social protection.

However, some countries view platform work as a suitable job option or a means to reduce crime rates or a way to avoid poverty.[98] Platform work, as well as zero-hours work, are considered suitable jobs for recipients of Universal Credit (UC) in the UK.[99] In this context, it should be taken into account that individuals who are incentivised to accept casual work often face challenges in establishing a stable relationship with the labour market and finding better positions within it. This may lead to a danger of platform work becoming a second-class solution to unemployment.

95 See *Kessler, Francis*, in: Social Law 4.0: Update, p. 67.
96 *Vonk,* in: Becker/Chesalina, Social Law 4.0 (fn. 89), p. 147 et seq.
97 See *Jorens, Yves*, in: Social Law 4.0: Update, p. 11 et seq.
98 See for France *Abdelnour, Sarah/Julliard, Émilien/Méda, Dominique*, Promoting employed worker status on digital platforms: how Frances's labour inspection and social security agencies address 'uberisation', Transfer 29 (2023) 3, p. 339, 343.
99 See *Larkin, Philip*, in: Social Law 4.0: Update, p. 32.

dd) Procedures: Presumption Rules

As already mentioned above (see II.2.c)), the centrepiece measure in Directive 2024/2831 for facilitating the correct determination of platform workers is a rebuttable presumption of an employment relationship. In 2021, before the proposal for a Directive, some Member States had already provided for a legal presumption for the existence of an employment relationship for the purposes of labour law.[100] Discussions on the proposal for the Directive motivated other Member States to introduce a presumption rule targeting a specific group of persons – platform workers: in Spain, the so-called "Riders' Law", which was adopted on 11 May 2021, provides for a legal presumption of a dependent employment relationship for digital platform workers in the delivery sector (Additional Provision 23 of the Workers' Statute).[101] In Portugal the Labour Code was amended by the Decent Work Agenda (*Agenda de Trabalho Digno*), Law No. 13/2023 of 3 April 2023, and now also includes a presumption rule on an employment relationship between platform operators and self-employed workers.[102] In Belgium as well, the amendments of 15 February 2023 to Chapter 4 of the Labour Relations Act defined criteria for a "rebuttable presumption of an employment contract" for platform workers.[103] In addition, the Dutch government tabled a bill of 6 October 2023 with the aim of adapting the concept of a rebuttable presumption for platform workers and for all workers earning below a certain hourly rate.[104] Evidence from Spain indicates that the introduction of the legal presumption rule has already had an impact in terms of empow-

100 *Aloisi, Antonio/Rainone, Silvia/Countouris, Nicola*, An unfinished task? Matching the Platform Work Directive with the EU and international "social acquis", ILO Working paper 101, Geneva: International Labour Office 2023, p. 11; *Kullman, Miriam*, 'Platformisation' of work: an EU perspective on Introducing a Legal Presumption, ELLJ 13 (2021) 1, pp. 66-80.

101 See European Agency for Safety and Health at Work, Spain: The "Riders' Law", New Regulation on Digital Platform Work, https://osha.europa.eu/sites/default/files/2022-01/Spain_Riders_Law_new_regulation_digital_platform_work.pdf.

102 Eurofound, Portugal Enters New Legal Framework for Decent Work Agenda into Labour Code (Initiative), Record number 4270, Platform economy database, Dublin, 2023, https://apps.eurofound.europa.eu/platformeconomydb/portugal-enters-new-legal-framework-for-decent-work-agenda-into-labour-code-110033.

103 Eurofound, Amendments to the Labour Relations Act to Recognise the Platform Economy (Initiative), Record number 4257, Platform economy database, Dublin, 2023, https://apps.eurofound.europa.eu/platformeconomydb/amendments-to-the-labour-relations-act-to-recognise-the-platform-economy-110020.

104 See *Montebovi, Saskia/Vonk, Gijsbert*, in: Social Law 4.0: Update, p. 56.

ering labour inspectorates with the authority to challenge the self-employed status of workers in the ride-hailing sector.[105]

Directive 2024/2831 gives national legislators a wide margin of discretion in determining the scope of application of the presumption rule. Looking at those EU Member States that have already introduced a presumption rule on the existence of an employment relationship in their national law, a differentiated picture emerges. These presumptions are either general (covering all types of working relationships: Belgium, Estonia, Netherlands, Portugal, Spain) or are (also) specific to certain groups of workers (Belgium, Portugal and Spain). The number of criteria for the presumption varies from country to country. Some Member States have provided for a (direct or indirect) presumption of self-employment (e.g. in France).

If a legal presumption of an employment relationship is provided for and applied in labour law or in labour case law (e.g. in Estonia), this has a direct impact on access to social security schemes as the person becomes entitled to benefits from the national social insurance system for employees. Presumption rules in social law remain an insufficiently investigated issue in comparative social law. They are not very common, and their practical impact seems to be limited. For instance, in Germany, a legal presumption of an employment relationship in the context of social security law was stipulated from 1999 to 2002 under Art. 7 of the Social Code Book IV with the aim of combating false self-employment.[106] However, as this did not materially alter the applicable criteria, the competent social security authorities nevertheless had to continue investigating all the facts that supported or ran contrary to salaried employment, and the presumption turned out not to be effective and was removed.

Future outcomes of the implementation of legal presumptions in national legislation may depend on various factors (e.g. enforcement challenges, changes in the business model of platform work, as well as the development of the platform economy in each country, and the framework of the presumption rule). Furthermore, the exclusion, in particular, of social law from the application of the presumption rule may lead to a situation where in some Member States one and the same activity is defined differently under

105 Eurofound, Self-employment in the EU (fn. 23), p. 64.

106 *Bieback, Karl-Jürgen*, Neue Selbständigkeit und soziale Sicherheit – Notwendigkeit einer Neuorientierung, Sozialer Fortschritt 48 (1999) 7, pp. 166-174.

labour law and under social law.[107] This could be the case in Scandinavian countries, where the definition of "employee" varies between labour law, social law and tax law.[108] In this context, it should be noted that these countries (especially Sweden) were opposed to the extension and application of the legal presumption to tax and social security law.[109] Consequently, the application of the (eventually modified) term in labour law will probably not be extended to social law and tax law in these countries and vice versa. For example, in Denmark, the Danish Tax Agency (SKAT) decided in 2022 that the food delivery company Wolt is an employer and platform workers are employees for the purposes of tax law. In 2023, the Labour Market Insurance Organisation (AES) decided that Wolt is liable as an employer for injuries. Despite these developments, the question of whether platform workers should be considered employees under Danish labour law remains unresolved.[110] Possible scenarios for the implementation of the legal presumption (Art. 5 of Directive 2024/2831) therefore include synchronised or divergent approaches in labour law, social law and tax law. However, it can be assumed that in countries with a tradition of uniform criteria for the concept of "employee" and "employed earner" in labour law and social law, the adjustment of the criteria will continue in a harmonised manner, irrespective of the non-introduction of the legal presumption in social law.

c) Contractual Determination: The Role of Private Parties

In Social Law 4.0, we presented some innovations in the possibility of the parties to an employment contract or collective agreement to *determine* the employment status of platform workers. The first example was from

107 *Pärli, Kurt*, Neue Richtlinie zu Arbeitsbedingungen bei Plattformarbeit in der EU, Jusletter 24, June 2024, p. 1, 16.

108 *Hießl, Christina*, The legal status of platform workers: regulatory approaches and prospects of a European solution, Italian Labour Law e-Journal 15 (2022) 1, https://illej.unibo.it/article/view/15210, p. 13, 16.

109 The Platform worker: Employee or Entrepreneur?, 8 Oktober 2024, https://www.lusem.lu.se/internal/article/platform-worker-employee-or-entrepreneur; see also *Westregård, Annamaria*, in: Social Law 4.0: Update, p. 47; *Glavind, Kristoffer Lind/Oosterwijk, Gerard Rinse*, Employment Terms of Platform Workers, Policy Study January 2024, p. 11; see also fn. 78.

110 *Froberg, Tom*, Platform economy businesses dealt a blow by the Danish tax authorities, https://www.magnussonlaw.com/news/platform-economy-businesses-dealt-a-blow-by-the-danish-tax-authorities/.

Denmark, where in 2018 the first collective agreement concerning cleaners was concluded between the Hilfr platform and the 3F trade union (a trade union for unskilled workers). This collective agreement stipulated that cleaners would automatically be given employee status after 100 hours of work via the Hilfr platform. Furthermore, the agreement allowed the cleaners to opt to obtain the status of employee even earlier by giving respective notice to the platform.[111] However, the Danish Competition and Consumer Authority (DCCA) raised questions about this agreement for the following reasons: (1) the regulated minimum hourly rate for the freelance cleaners created a "price floor", which could limit competition between freelance cleaners, and (2) the cleaners with employment status (in accordance with the collective agreement) were not actually employees of Hilfr from a competition law point of view. The DCCA did not void the collective agreement, but settled the case by making binding on Hilfr the following undertakings that Hilfr had given as part of the proceedings (commitment decision of 26 August 2020): the freelance cleaners will be free to set their own prices, i.e. Hilfr would ensure that there was legal subordination between Hilfr and the cleaners employed (in accordance with the collective agreement) and that Hilfr would bear the financial risk for the cleaning work of the employed cleaners.[112]

In France, the draft of the "Law on Mobilities" passed in 2019 proposed that platforms be able voluntarily to adopt a "charter" granting additional social rights to riders (such as delivery drivers, couriers, and drivers associated with companies like Uber, Deliveroo, etc.) In exchange for adopting the charter, the platforms would retain the right to continue classifying their riders as independent contractors.[113] However, the French Constitutional Court in its decision No. 2019-794 of 20 December 2019[114] on the "Law on Mobilities" deemed it partly unconstitutional as it allowed the

111 *Munkholm, Natalie,* Collective Agreements and Social Security Protection for Non-Standard Workers and Particularly for Platform Workers: The Danish Experience, in: Becker/Chesalina, Social Law 4.0 (fn. 1), p. 171, 192.

112 Press release of the Danish Competition and Consumer Authority of 26 August 2020 concerning the Commitment decision on the use of a minimum hourly fee, https://en.kfst.dk/nyheder/kfst/english/decisions/20200826-commitment-decision-on-the-use-of-a-minimum-hourly-fee-hilfr.

113 *Kessler, Francis*, Social Security in the Platform Economy: The French Example – New Actors, New Regulations, Old Problems, in: Becker/Chesalina, Social Law 4.0 (fn. 1), p. 257, 271 et seq.

114 Decision of the French Constitutional Court No. 2019-794 of 20 December 2019, https://www.conseil-constitutionnel.fr/decision/2019/2019794DC.htm.

platform operators to lay down elements of their relationship with the workers that could not be used by the courts to establish the existence of a legal relationship of subordination and, consequently, the existence of a contract of employment. The Constitutional Court held that only the legislature itself had the right to lay down binding rules for the courts in the form of legislation. Delegating this competence to platform providers was deemed unconstitutional.[115]

The decisions by the Danish Competition and Consumer Authority and the French Constitutional Court highlight the complexity of determining employment status for social security purposes through individual and collective agreements. Additionally, legal-political considerations argue against such an approach: social security law is a branch of public law that serves a dual purpose – it not only provides social benefits but also safeguards the interests of all contributors to social security funds, ensuring the sustainability and feasibility of social security financing. These interests should not be put at the disposal of the parties to an individual or collective agreement.

From a broader perspective, taking not only questions of social protection into account but generally from the point of view of protection of workers' rights, it could be added that allowing labour law agreements to determine employment status could undermine the protective aims of labour laws, which are designed to address the power imbalances and prevent exploitation. The principle of non-waivability is crucial to safeguard workers' rights, as it ensures that certain fundamental protections cannot be contractually waived, thus maintaining fair and consistent standards across the labour market.[116]

While employers are often motivated by the desire to minimise the financial obligations associated with the application of social security schemes to employees, such as contribution requirements, self-employed individuals often wish to have access to the social protection scheme for employees (a problem commonly referred to as false dependent employment). For instance, depending on the structure of the national social security system, the strategy of using umbrella companies can pose issues of "false employee" or "false temporary agency work".[117] However, the decision in favour

115 Ibid., sec. 28.

116 *Davidov, Guy*, Nonwaivability in Labour Law, Oxford Journal of Legal Studies 40 (2020) 3, pp. 482-507.

117 *Pärli, Kurt*, Arbeits- und sozialversicherungsrechtliche Fragen der Sharing Economy, Zürich/Basel/Genf: Schulthess Juristische Medien AG 2019, p. 68.

of a protection scheme for employees can also have other reasons, such as the reduction of administrative burdens. In Sweden, where the level of social contributions is almost identical for employees and self-employed individuals,[118] the expansion of the phenomenon of umbrella companies has been explained by the aim to reduce the substantial administrative burden connected with social security schemes for the self-employed. Harmonizing social security contributions for employees and for self-employed (particularly in income replacement schemes) and extending social security coverage to specific categories of atypical self-employed persons, together with simplifying the administrative requirements and improving their transparency, could significantly reduce the desire to change the employment status.

2. Re-Reaction: Avoidance Strategy of Platform Providers

Alongside the further development of case law and legislation on the classification of platform workers, platforms use different avoidance strategies to overcome case law or legislation that aims to treat platform workers as employees. They tend to restrict the employment status to those individuals who have won court proceedings rather than to grant it to the entire group or type of platform workers (e.g. all couriers).[119] For instance, despite the French Supreme Court's decision of 4 March 2020 that an Uber driver must be classified as an employee, Uber drivers generally continue to have self-employed status. A decision by the Lyon Court of Appeal of 15 January 2021 confirmed this trend.[120]

In many cases, court decisions in favour of the employee status of platform workers or in favour of an intermediate status have led to platforms altering their initial strategy and amending their terms and conditions in order to find new ways to avoid the application of employee status to

118 *Westregård, Annamaria*, Looking for the (Fictitious) Employer – Umbrella Companies: The Swedish Example, in: Becker/Chesalina, Social Law 4.0 (fn. 1), pp. 203-227.

119 ILO, ISSA and OECD, Providing adequate and sustainable social protection for workers in the gig and platform economy. Technical paper prepared for the 1st meeting of the Employment Working Group under the Indian presidency, January 2023, p. 6, https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@ddg_p/documents/publication/wcms_867535.pdf; European Commission, Study to support the impact assessment (fn. 16), p. 137.

120 European Commission, Study to support the impact assessment (fn. 16), p. 137.

platform workers and the labour and social law requirements connected with this status[121] or with the status of worker/dependent self-employed. For example, after Uber drivers were classified as workers in the UK, Deliveroo introduced a new clause allowing the appointment of a substitute.[122] As a result, the UK Supreme Court concluded that Deliveroo riders were not in an employment relationship.[123] To provide another example: in Italy, after courts recognised that riders have the status of hetero-organised collaborators, several platforms restructured their management system in order to eliminate or limit the elements of hetero-organisation.[124] In the Netherlands, after a first-instance judgement, Deliveroo abolished shift schedules and other elements penalizing certain behaviours.[125] Hence, the business model of labour platforms is highly adaptable. Some elements previously considered essential features of this business model, such as workers' autonomy and flexible working arrangements, have proven to be changeable and not inherent to the business model after the reclassification of platform workers as employees or workers.[126] This context is also challenging the platforms' promise of flexible working conditions. It appears that the main motivation for offering flexible working conditions is the cost-effectiveness of this model.[127] Where platform workers have been reclassified as employees, the promise of flexibility has been replaced by fixed working hours.[128] Similarly, the "voluntary" provision of social benefits can serve as an avoidance strategy determined by cost-effectiveness or necessity – if it is advantageous to provide some social benefits in order to avoid

121 *Zachary et. al.*, Study to Gather Evidence on the Working Conditions of Platform Workers (fn. 44), p. 122.

122 The UK example is somewhat of an exception to European case law on food delivery drivers where this "substitute clause" was considered by the courts as a decisive criterion against the classification as employee. See: *Hießl*, Case Law on the Classification of Platform Workers (fn. 73), p. 77.

123 Decision of 21 November 2023. For more information: *Kountouris, Nicola*, Not Delivering: the UK 'worker' concept before the UK Supreme Court in *Deliveroo – IWGB v CAC and another* [2023] UKSC 43, EJLL 15 (2024) 4, https://journals.sagepub.com/doi/10.1177/20319525241242796.

124 *Borelli, Silvia*, Fitting the panoply in a binary perspective. The Italian platform workers in the European Context, Comparative Labor Law & Policy Journal 41 (2020) 1, p. 365, 393.

125 *Hießl*, Case Law on the Classification of Platform Workers (fn. 73), p. 82.

126 *Hießl*, Italian Labour Law e-Journal 15 (2022) 1 (fn. 108), pp. 13-28.

127 *Adams, Zoe*, The Legal Concept of Work, Oxford: OUP 2022.

128 *Hießl,* Italian Labour Law e-Journal 15 (2022) 1 (fn. 108).

reclassifying self-employed platform workers as employees and having to meet employers' obligations in the field of social protection (see below, V.1.).

Finally, legislative measures can lead not only to platforms altering their strategy but even ceasing their operations in a country. The Spanish example of the Riders' Law shows that, on the one hand, the number of employment contracts with platform workers doubled, while on the other hand, some platforms ceased their operations or resorted to subcontracting.[129] The implementation of Directive 2024/2831 may also lead to platform providers exploiting an expected regulatory diversity between the Member States to their advantage. This could perpetuate the issue of the playing field not being level. However, an exit strategy is not an option for all platforms, as a transfer of the business to another country is rather unlikely in cases of on-location platform work (e.g. ride, delivery or tradesmen's services).

IV. Extension of Access to Social Protection

As already mentioned, the Council of the EU in 2019 adopted a Recommendation on access to social protection for workers and the self-employed.[130] It addresses the problem that up to half those in non-standard work and self-employment across the EU are at risk of not having sufficient access to social protection and employment services. This has been assessed as a growing impediment to the sustainability of social protection systems and to the welfare of an increasing proportion of the workforce.[131] The main objective of the Recommendation is to provide access to adequate social protection to all workers and the self-employed, and to establish minimum standards in the field of social protection of workers and the self-employed.[132] It addresses four dimension of access. Although it is not

129 *Martin-Caballero, Angel*, New regulations in platform work: Fragmented responses to issues of work fragmentation, Capital and Class 2024, p. 3.

130 Based on Art. 292 in conjunction with Art. 153 and 352 TFEU, see fn. 7.

131 European Commission, Commission Staff Working Document, 'Analytical Document' accompanying the Consultation Document 'Second phase consultation of social partners under Article 154 TFEU on a possible action addressing the challenges of access to social protection for people in all forms of employment in the framework of the European Pillar of Social Rights', Brussels, 20 November 2017, p. 25.

132 See point 1 of the Recommendation, fn. 7.

legally binding, this differentiation provides a normative yardstick for the assessment of access to social protection.[133]

1. Formal Access

Persons involved in low-paid and low-qualified platform work do not enjoy (full) autonomy and freedom to organise their work as would be inherent in traditional self-employment.[134] In practice, they are nevertheless mostly classified as self-employed. Numerous studies have highlighted that the most significant factor limiting the access of platform workers to social protection is their de facto classification as self-employed workers.[135] According to a report of 31 January 2023 from the Commission to the Council on the implementation of the Council Recommendation on access to social protection for workers and the self-employed, there were in 2022 formal gaps in the social protection of the self-employed in 19 Member States with regard to at least one of the branches of social protection. These mostly concerned unemployment benefits (13 Member States), followed by benefits for accidents at work and occupational diseases (9), paternity benefits (5) and sickness benefits (3).[136] To this situation contributes the fact that access for the self-employed (and also for some categories of non-standard workers) is voluntary, often through "opt-in systems" in particularly for unemployment, old-age, invalidity, sickness and maternity benefits.[137] It is argued that the Recommendation provides a wrong incentive by promoting access to social protection for the self-employed "at least" on a voluntary basis.[138] This can erode the principle of solidarity, simultaneously jeopardising the financial sustainability of social security schemes as the self-employed with high incomes may opt out, while the economically dependent may be compelled not to opt in, resulting in a lack of protection.[139] This

133 See also *Schoukens, Paul/Bruynseraede, Charlotte,* in: Social Law 4.0: Update , p. 77 et seq.
134 Eurofound, Self-employment in the EU (fn. 23), p. 29.
135 *Zachary et. al.*, Study to Gather Evidence on the Working Conditions of Platform Workers (fn. 44), p. 71.
136 Report from the Commission (fn. 86), p. 11.
137 Ibid.
138 *Schoukens, Paul*, Building Up and Implementing the European Standards for Platform Workers, in: Becker/Chesalina, Social Law 4.0 (fn. 1), p. 309, 320.
139 *Van Limberghen, Guido*, Setting European Social Security Standards for the Self-Employed: The Interaction Between the European Code of Social Security and the

leads to a difference in treatment between employed earners (who cannot opt out) and the self-employed. It is questionable whether such a difference in treatment (mandatory versus voluntary participation) is still justified even if a legislator assumes that the voluntarily insured have a lower need for protection.[140]

We have shown above (see III.1.a)) that some categories of on-location platform workers have received the same level of protection as employed earners due to broad interpretation by the courts. Furthermore, since 2019, the extension of existing schemes to new categories of self-employed had been observed in five of 27 Member States and reforms for non-standard workers were only foreseen in three Member States.[141] Italy introduced an extension of the unemployment scheme for self-employed by Law 213/2023.[142] The example of the Netherlands illustrates that it is easy to abolish a social insurance scheme for the self-employed[143] but very difficult to reinstate such a scheme: numerous proposals have been made to improve the protection of the self-employed, including the creation of insurance against disability for the self-employed, but these have not yet been adopted.[144]

As individuals in non-standard forms of employment and self-employed workers often face challenges in accessing social schemes (or cannot fulfil the conditions to receive benefits or receive lower benefits), harmonisation and the approximation of social security schemes for employees and the self-employed[145] can help meet the challenges of the changing world of work. This strategy is currently being more commonly used in healthcare and family benefits than in income replacement schemes.[146] An exception to this trend is social insurance against accidents at work. Not only in the

EU Recommendation on Access to Social Protection, in: Jorens, Yves (ed.), The Lighthouse Function of Social Law, Springer 2023, p. 281, 286.

140 *Hahn, Erik*, Stabile Finanzierung der Sozialversicherungssysteme durch horizontale und vertikale Ausweitung des Kreises beitragspflichtiger Einnahmen, VSSAR 2024, 2, p. 65, 68.

141 Report from the Commission (fn. 86), p. 12.

142 *Ales, Edoardo/D'Avino, Emilia*, in: Social Law 4.0: Update, p. 20.

143 *Vonk*, in: Becker/Chesalina, Social Law 4.0 (fn. 89), pp. 147-169.

144 See *Montebovi, Saskia/Vonk, Gijsbert*, in: Social Law 4.0: Update, p. 54-55.

145 The future of social protection and of the welfare state in the EU, Luxembourg: Publications Office of the European Union 2023, p. 84, https://op.europa.eu/en/publication-detail/-/publication/842d8006-c3b3-11ed-a05c-01aa75ed71a1.

146 See for the reasons above, II.2.a). See also *De Becker/Bruynseraede*, EJSS 26 (2024) 2 (fn. 29), p. 123, 124.

Scandinavian countries, but also in some other European countries (e.g. in Austria, Italy, Luxembourg, Spain) benefit systems covering accidents at work and occupational diseases have been extended to the self-employed[147] or the dependent self-employed ("para-subordinate workers" in Italy). In numerous countries, the self-employed may voluntarily join the insurance against accidents at work (e.g. Denmark, France). In most cases, the self-employed are insured within the general scheme alongside employees. Insurance exclusively within a special scheme for self-employed workers is rather the exception (e.g. in Spain). For many self-employed freelancers the scheme for accidents at work and occupational diseases is often organised around an appropriate professional group, irrespective of the employment status.[148] Some Member States have already extended social insurance against accidents at work to all or certain categories of platform workers (e.g. riders) irrespective of their employment status (e.g. France, Italy).[149] Belgium by the Law of 13 June 2024 further expanded its law on accident insurance and compensation for the self-employed platform workers.[150] Such regulation confirms the rationale of extending social protection based on affiliation with the same professional group.[151]

2. Effective Access

Factors limiting platform workers' access to effective social protection in particular are low payment and the marginal or sometimes irregular char-

147 MISSOC: Gegenseitiges Informationssystem für soziale Sicherheit. Sozialschutz von Selbstständigen, https://www.missoc.org/?lang=de.

148 *Schoukens, Paul*, The Social Security Systems for Self-Employed People in the Applicant EU Countries of Central and Eastern Europe, Antwerp Oxford New York: Intersentia 2002, p. 236.

149 *Kessler*, in: Becker/Chesalina, Social Law 4.0 (fn. 113), p. 257, 268; *Ales, Edoardo/D'Avino, Emilia*, in: Social Law 4.0: Update, p. 25.

150 Eurofound, Amendments to the Labour Relations Act to Recognise the Platform Economy (Initiative), Record number 4257, Platform economy database, Dublin, 2023, https://apps.eurofound.europa.eu/platformeconomydb/amendments-to-the-labour-relations-act-to-recognise-the-platform-economy-110020; *Bérastégui, Pierre*, Belgium: platform workers now compensated following work accidents, ETUI, 10 June 2024, https://www.etui.org/news/belgium-platform-workers-now-compensated-following-work-accidents.

151 Ibid.

acter of their work.[152] These challenges are similar to those faced by individuals in non-standard forms of employment (e.g. zero-hours-contracts, casual workers). In this context it may be difficult to meet the minimum qualifying conditions (insurance periods) for social benefits. A particular problem of platform work is that it involves unpaid and uncalculated periods. Unpaid working time also exists in other occupations. It often happens that employees carry out their work (answering emails and phone calls, preparing for negotiations, meetings or presentations, etc.) outside working hours (including during holidays or weekends). In platform work, however, unpaid working time is a structural feature of the business model.[153] It involves "working time compression" due to the task-based remuneration: e.g. time spent waiting for orders or travelling time to clients is not taken into account. This phenomenon has its origins in casual work (in particular, zero-hours contracts). This phenomenon reaches its quintessence in platform work. This has an impact on effective access to social protection, as it makes it more difficult to meet certain thresholds. It also has an impact on formal access to social insurance against accidents and, possibly, sickness benefits. The issue of unpaid working time or, in other words, not insured working time (in terms of social law), also needs to be addressed in social legislation. According to the rules in private insurance contracts or in the general terms and conditions of platforms, accidents occurring during the waiting time between two errands or while traveling to pick up a passenger or time required to return to the hub or engage in equipment maintenance often do not form part of the insured risks.[154]

Merely reclassifying atypical workers as employees would not address the challenges they face regarding adequate access to social protection effectively.[155] In order to facilitate effective access, more flexibility would be

152 *Schoukens, Paul/Barrio, Alberto/Montebovi, Saskia*, The EU social pillar: An Answer to the challenge of the social protection of platform workers?, EJSS 20 (2018) 3, pp. 219-241.

153 *Mangan, David/Muszynski, Karol/Pulignano, Valeria*, The platform discount: Addressing unpaid work as a structural feature of labour platforms, ELLJ 14 (2023) 4, pp. 541-569.

154 See *Kessler, Francis*, in: Social Law 4.0: Update, p. 66 and *Mangan/Muszynski/Pulignano*, ELLJ 14 (2023) 4 (fn. 153).

155 The ILO, ISSA and OECD Technical paper "Providing adequate and sustainable social protection for workers in the gig and platform economy" stresses: "Our focus needs to go beyond mere reclassification of platform workers to employees, and should guarantee adequate access to social protection, as stated in the Council

necessary concerning interrupted periods of work.[156] It may be necessary, in particular, to redefine the calculation of qualifying periods, to extend some qualifying (reference) periods concerning working time or concerning the time during which income has to be earned,[157] and to shorten minimum waiting periods (especially for unemployment, sickness or maternity benefits). The introduction of longer reference periods would help better reflect the contribution capacity of atypical workers, including platform workers. The Recommendation does not provide for a maximum duration of qualifying periods and waiting periods nor for a minimum payment period of benefits as it respects the competence of the Member States to organise their social protection systems.[158]

Our Update confirms, in line with the outcomes of other studies,[159] that only a few national measures have addressed the issue of effective access to social protection. Numerous barriers still persist for atypical workers, including platform workers, in this regard. While Sweden in 2022 broadened (formal) access to sickness benefits, extending this support to workers on demand, including those employed by umbrella companies, challenges remain in calculating sickness benefits for part-time workers.[160] Several measures implemented during the COVID-19 pandemic that improved effective access to social protection were temporary and short-lived. For example, the suspension of the Minimum Income Floor for the self-employed in the UK during the COVID-19 pandemic notably improved their social protection.[161] Even in countries where reforms aimed at equal treatment of different forms of employment have been launched, social security benefits/schemes still favour employees in standard employment relationships (e.g. the calculation of the Universal Credit in the UK, access for atypical workers to the sickness benefit in Denmark, access to unemployment insurance in Denmark and Sweden[162]).

Recommendation, in order to build more inclusive social protection across Europe" (fn. 119), p. 23.

156 *Behrendt/Nguyen,* Innovative approaches for ensuring universal social protection (fn. 61), p. 19.

157 *Schoukens,* in: Becker/Chesalina, Social Law 4.0 (fn. 138), p. 309, 322.

158 *Van Limberghen,* Setting European Social Security Standards for the Self-Employed (fn. 139), p. 281, 289.

159 Report from the Commission (fn. 86), p. 17.

160 *Westregård, Annamaria*, in: Social Law 4.0: Update, p. 44 et seq.

161 *Larkin, Philip,* in: Social Law 4.0: Update, p. 28.

162 See for the UK: *Larkin, Philip*, Relationship between Employment Status and Scope of Social Security Protection: The United Kingdom Example, in: Becker/Chesalina,

Moreover, social security systems predominantly base their structure on the assumption of a single employment relationship, neglecting new working patterns characterised by multiple jobs and multiple employers throughout an individual's career.[163] This poses a challenge to the transferability of social rights and entitlements. The reform of social security schemes to accommodate new working patterns and multiple jobholding is still in its nascent stages. Denmark stands out as having made a significant shift in 2018 with the reform of unemployment insurance, moving from assessing an individual's employment status to evaluating the activities they engage in. As a result, income from all activities is now cumulated to determine eligibility for unemployment benefits. In Sweden, a proposal in 2023 suggested cumulating income from dependent employment and self-employment for the calculation of sickness benefits. It remains to be seen whether or how soon this structural reform will be realised. Nevertheless, this example illustrates that innovative structural approaches can be transferred from one jurisdiction to another.

3. Transparent Access

According to the Council Recommendation, transparent access means that the conditions and rules for all social protection schemes are transparent and that individuals have access to updated, comprehensive, accessible, user-friendly and clearly understandable information about their individual entitlements and obligations free of charge.[164] The Report from the Commission on its implementation showed that shortcomings in the information provided by public or private providers involved in the various social protection branches had been explicitly identified as an issue in 17 Member States. In several Member States, it is possible to observe information gaps and shortcomings affecting (sub-groups of) non-standard workers and the self-employed specifically.[165]

Social Law 4.0 (fn. 1), p. 134 et seq.; for Denmark: *Munkholm,* in: Becker/Chesalina, Social Law 4.0 (fn. 111), p. 174 et seq. and p. 181 et seq.; for Sweden: *Westregård, Annamaria*, in: Social Law 4.0: Update, p. 45.

163 The future of social protection and of the welfare state in the EU (fn. 145), p. 46; *De Becker et. al*., EJSS 26 (2024) 1, (fn. 3), p. 22.

164 Point 15 of the Recommendation, fn. 7.

165 Report from the Commission (fn. 86), p. 23.

The issue of transparency in all its dimensions is particularly relevant for platform work.[166] Specific challenges are: (1) The lack of clarity on parties participating in relationship(s); (2) algorithmic management of the organisation of work, including ratings and surveillance mechanisms; (3) the vague, unclear character of working activity and of the form of employment without written contracts and formal obligations; and (4) often the informal character of platform work. Legal and factual developments may help to meet these challenges:

– Directive 2024/2831 introduced obligations for digital labour platforms to provide information on automated monitoring, in particular, to persons performing platform work and competent national authorities (Art. 9). According to Art. 16 the Member States must require digital labour platforms to declare work performed by platform workers to the competent authorities of the Member State in which the work is performed. Unfortunately, this obligation extends only to platform workers with employee status. In contrast to draft versions of the Directive, the final text does not specify which authorities should be informed. Previously social security authorities were mentioned explicitly. At the same time, the Directive empowers competent national authorities to request relevant information on platform work and contains the obligation of digital labour platforms to provide this information (Art. 17).
– The pervasive adoption of digital technologies and the concomitant expansion of online and digital services will facilitate the assimilation of information and the streamlining of the administrative processes. The European Union's objective is "to ensure that social security and protection online will be fully accessible for everyone by 2030. This involves transformation of all communications between the social security institutions, beneficiaries, and contributors, and third parties where relevant".[167]

For the time being, we can already observe two processes where there has been improvement, one in data transparency, the other in simplification of the implementation of social protection schemes:

166 *Barrio*, EJSS 26 (2024) 2 (fn. 3), p. 7, 10.

167 United Nations University, Case studies on digital transformation of social security administration and services, ILO 2022, p. 186, https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40asia/%40ro-bangkok/%40ilo-beijing/documents/publication/wcms_864806.pdf.

– Despite the fact that platform workers may have economic incentives to waive the assertion of their labour and social rights,[168] they also often do not consider their activity as "work" connected with the respective obligations to pay contributions and taxes. For this reason also, some Member States have enacted or are in the process of implementing legislation requiring platform operators to inform their users about their tax and social obligations. France was a pioneer in that regard, introducing this obligation through the Anti-Fraud Act of 23 October 2018.[169] Additionally, public bodies, such as the French ARPE, *Autorité des relations sociales des plateformes d'emploi* (Employment Platforms Social Relations Authority), a public administrative body created in 2022, can facilitate the dissemination of information on rights and obligations. Furthermore, some Member States (Denmark, Estonia, France) have introduced systems enabling them to receive data on individuals' earnings directly from platform companies.[170] At the European level, a first step in combating undeclared work was taken with the adoption of DAC7[171], which introduced the obligation to report income earned through digital platforms and to facilitate the exchange of such information among Member States.[172]
– Simplification of the administrative requirements of social protection schemes can relate to the formalities of protection, administrative structure or the application and receipt process for benefits.[173] In this connection, our previous observations indicate that the primary goal of certain innovations and their success was the desire for the simplification of the administration of social security schemes for the self-employed. The significant growth of umbrella companies in Sweden has been attributed to the need to reduce the considerable administrative burden connected with social security schemes for the self-employed. Through the conclusion of the Hilfr collective agreement in Denmark (see also V.2.), the platform was expected to attract more platform workers because they often struggled to report their earnings to SKAT, as they are not report-

168 *Jorens, Yves*, in: Social Law 4.0: Update, p. 13.
169 *Kessler,* in: Becker/Chesalina, Social Law 4.0 (fn. 113), p. 257, 277.
170 *Lehdonvirta, Vili/Ogembo, Daisy*, A Digital Single Window for income data from platform work, Oxford 2019.
171 Council Directive (EU) 2021/514 of 22 March 2021 Amending Directive 2011/16/EU on administrative cooperation in the field of taxation, OJ L 104/1, 25 March 2021.
172 *Pantazatou, Katerina*, in: Social Law 4.0: Update, pp. 105-114.
173 Report from the Commission (fn. 86), p. 24.

ed automatically for freelancers.[174] The objective of the entrepreneur account in Estonia was to simplify tax and social security obligations, while also guaranteeing social security protection in some branches in a more simplified manner.[175] The expansion from 1,702 active entrepreneur accounts in 2020[176] to 6,908 in 2022[177] confirms that this innovative model has demonstrated efficacy in reducing the administrative burden for the self-employed, although it has not yet been shown to enhance formal and effective access to social protection.

V. Social Protection through Private Parties

1. Individual Solutions

Even though platform companies still often consider themselves as a mere marketplace, some digital labour platforms do at least (either themselves or via private insurance companies) voluntarily provide on-location platform workers with some kind of social benefits in the event of certain social risks (sickness benefit, child allowance, sick leave, parental leave, etc.). So far, this protection has targeted social risks that are inherent to working life. Platforms do not, or only rarely, provide social benefits for deferred social risks like "old age", "invalidity", or "long-term care". Furthermore, there is also a lack of social protection in the case of unemployment. In contrast to social protection provided for by statutory social legislation, this form of provision of social benefits is fragmentary and cannot be seen as the development of a separate private system or scheme. The existing schemes are rare, limited to certain platforms and often to certain forms of social services.[178]

174 *Ilsøe, Anna/Larsen, Trine Pernille*, Why do labour platforms negotiate? Platform strategies in tax-based welfare states, Economic and Industrial Democracy 44 (2023) 1, p. 6, 13.

175 *Tavits, Gaabriel*, New Forms of Employment and Innovative Ways for the Collection of Social Security Contributions: The Example of Estonia, in: Becker/Chesalina, Social Law 4.0 (fn. 1), pp. 299-304.

176 Ibid.

177 *Vallistu, Johanna*, Digital social security accounts for platform workers: The case of Estonia's entrepreneur account, International Social Security Review 76 (2023) 3, pp. 3-24.

178 E.g. the Amazon Care "telemedicine" system, see *Lehdonvirta, Vili*, Cloud Empires, MA, USA: The MIT Press 2022, p. 202. Amazon India launched a comprehensive

In line with their business model, platforms avoid the use of the terms "employee", "employment relationship", "employment", "work" etc. in their terms and conditions. In relation to social protection, they avoid terms like "social benefits", "waiting period", "accident at work insurance". Instead, they use words like "payment", "earnings support for illness"[179], "rider accident insurance", "on-trip/off-trip benefits"[180].

The most widespread form of voluntary social protection by platform companies is insurance against accidents at work. Some platforms have their own insurance, while many platforms conclude contracts with different private insurance companies. As mentioned, these companies provide only fragmented social protection. Their schemes often cover only low-wage earners, and the insured risks are less redistributive and equitable than in public schemes based on large risk pooling.[181] Some platforms require the costs of the insurance to be carried by the platform workers (e.g. drivers) themselves (e.g. partly Deliveroo, Uber), while other platforms provide injury insurance at no cost to the courier (e.g. Glovo). Location-based platforms like Deliveroo, Glovo, Ola, Swiggy and Uber offer riders and drivers different schemes against accidents. The level of protection can vary.[182] Deliveroo offers a food delivery insurance through Zego which covers riders against injuries while they are online and for one hour after they have gone offline; it provides riders with payments when they are injured and unable to work.[183] Uber offers its drivers optional injury pro-

health program for truck drivers and their families, including teleconsultation, see https://www.aboutamazon.in/news/operations/amazon-new-health-program-for-truck-drivers.

179 For example, Deliveroo offers a "rider accident insurance" that covers all riders injured while they are working and a lump sum payment for many injury types as well as "earnings support for illness". Eligible riders can claim around £ 35 per day if they are medically unable to work due to sickness, see https://riders.deliveroo.co.uk/en/support/insurance/what-is-covered-by-deliveroo-insurance.

180 For example, Uber's Partner Protection program in Europe provides drivers and couriers with insurance benefits for "on-trip" accidents as well as certain "off-trip" life events, see https://help.uber.com/driving-and-delivering/article/partner-protection?nodeId=ee7b6bc6-920c-4749-b716-a843af90e1c8.

181 ILO, ISSA and OECD, Providing adequate and sustainable social protection for workers in the gig and platform economy (fn. 119), p. 17.

182 Ibid., p. 16.

183 https://www.zego.com/promotions/get-on-the-road-with-deliveroo/.

tection through Affinity Insurance Services Inc. Furthermore, Uber has a partnership with the insurer AXA.[184]

In addition, many location-based platforms (such as Deliveroo, Uber, Swiggy) provide some protection in the case of illness or childbirth or free childcare.[185] The COVID-19 pandemic imposed immense risks to the health and life of workers on demand (riders, drivers etc.) At the beginning of the pandemic, platforms refused to provide any social benefits to platform workers due to their self-employed status.[186] Strong pressure from regulators, drivers' advocates and the media forced platforms to respond to the health risks caused by COVID-19. Empirical studies indicate that during the COVID-19 pandemic about half the platforms examined in 23 countries provided some payment for ill platform workers.[187] For example, on 7 March 2020, Uber launched a global financial assistance policy for drivers diagnosed with COVID-19; on 15 March 2020 and on 17 April 2020, the scope of the coverage was extended to drivers required to self-isolate.[188] In fact, the eligibility conditions for an individual payment were similar to the conditions for payment on the part of an employer to an employee to continue remuneration in case of temporary incapacity to work: a waiting period; at least one trip in the 30 days before the application for assistance; calculation of payment on the basis of the average weekly earnings over the three months before the application; a maximum amount of the payment and maximum duration of the payment (up to 14 days). However, Uber stopped applying the COVID-19 financial assistance policy in early autumn 2021. At that time the pandemic was still at a high level. This practice shows that platforms that voluntarily provide some form of social protection reserve the right to change and cut these benefits at their discretion.

In general, there is still a lack of a clear policy for providing platform workers with comprehensive and adequate social protection through plat-

184 Uber and AXA join forces to set a new standard for protection of independent drivers and couriers, 23 May 2018, https://www.axa.com/en/press/press-releases/uber-and-axa-join-forces-to-set-a-new-standard-for-protection-of-independent-drivers-and-couriers.

185 *Lancefield, Neil*, Uber offers drivers free childcare, Independent, 13 March 2023, https://www.independent.co.uk/news/uk/uber-london-coram-b2299320.html.

186 Fairwork, The Gig Economy and Covid-19: Looking Ahead, Oxford 2020, p. 13.

187 Ibid., p. 3.

188 *Katta, Srujana/Badger, Adam/Graham, Mark/Howson, Kelli/Ustek-Spilda, Funda/Bertolini, Alessio*, (Dis)embeddedness and (de)commodification: COVID-19, Uber, and the unravelling logics of the gig economy, Dialogues in Human Geography 10 (2010) 2, p. 203, 205.

form providers.[189] The examples above illustrate that platforms only provide a few social benefits via private insurance companies. This holds true for occupational arrangements in every form, including private insurance products which are not within the scope of the Recommendation of the EU.[190] A key reason is that, as underlined by the ILO, private insurance schemes risks are less redistributive, equitable and effective than public schemes based on large risk pooling. In addition, the creation of separate social protection schemes for specific categories of workers can lead to a fragmentation of schemes.[191]

The literature has only begun to address the issue of social benefit provision through platforms.[192] Different reasons can influence a decision by platform companies to provide social benefits:

– Often the voluntary provision of social benefits is (in the logic of the whole business model) linked to the desire of platforms to avoid the reclassification of self-employed platform workers as employees and prevent future possible litigation as to their employment status (see also above, III.2.). Therefore, the platforms are more willing to provide some social benefits to those persons who, in the case of litigation, most likely might be reclassified as employees. The strategy used by the digital labour platforms creates an additional incentive for other (potential) employers to outsource work to the self-employed[193] and to attract them with a small number of social benefits. By adopting private regulations (including concerning provision of social benefits), platforms are seeking to prevent state regulation in this field. The platforms are trying to fill legislative gaps or to substitute for state regulation as well as social partners' regulations with their own regulations.[194] In contrast to known

189 ILO, ISSA and OECD, Providing adequate and sustainable social protection for workers in the gig and platform economy (fn. 119), p. 16.

190 See fn. 7.

191 ILO, ISSA and OECD, Providing adequate and sustainable social protection for workers in the gig and platform economy (fn. 119), p. 17.

192 *Rolfs, Steven/O'Reilly, Jacqueline/Meryon, Marc*, Towards privatized social and employment protections in the platform economy? Evidence from the UK courier sector, Research Policy (2022) 51, pp. 1-13.

193 *Nullmeier, Frank*, The Structural Adaptability of Bismarckian Social Insurance Systems in the Digital Age, in: Busemeyer M. et.al. (eds.), Digitalization and the Welfare State, Oxford: OUP 2022, p. 297.

194 *Cohen, Julie E.*, Review of Zuboff 's The Age of Surveillance Capitalism, Surveillance and Society 17 (2019) 1/2, pp. 240-245.

forms of employers' norm-setting, platforms do not want to supplement legislative regulations but to replace the legislator.[195]

– Another motivation for the platforms is to paint a positive picture of their business or to improve their public image. This became particularly visible during the COVID-19 pandemic. But even before then, the public image of some platforms had suffered, especially after a rider had died from exhaustion after long working hours. The measures taken to counter critics of working conditions in the platform industry have also been called "crowdwashing", consisting of two elements, namely platforms' non-compliance with minimum labour standards and covering that up by telling a story that improves the reputation of the company.[196]
– By providing social benefits, platforms may also be trying to gain a competitive advantage over other platforms.[197] However, this will only play a role for on-location platforms, since online platforms can attract workers from all over the world.[198] A similar motive for offering social benefits is seen in retention and reproduction of workforce.[199] From this point of view social benefits and entitlements are an instrument to make this form of employment more attractive.
– But it is also assumed that offering social benefits can be designed to enhance control over the platform workers and make them more dependent.[200] Labour and social entitlements depend on ratings, number of rides or fully worked days. Labour and social benefits may be offered in a way that platform workers who work full time profit more from them than those who work only part-time. At the same time, (low-skilled) platform workers for whom this work is the main source of income are to a higher degree dependent on the platform and the social benefits it provides than other groups of platform workers. Simultaneously, in relation to other groups of platform workers, platforms use the strategy

195 Some argue that if platforms were allowed to stipulate such private law regulations, there might be a problem with equal treatment with other companies, see *Pärli,* Arbeits- und sozialversicherungsrechtliche Fragen der Sharing Economy (fn. 117), p. 61; but as long as a legislator wants to leave room for private autonomy, this argument is less convincing than the one of a need for stable public protection.

196 *Cherry, Miriam*, Corporate Social Responsibility and Crowdwashing in the Gig Economy, Saint Louis University Law Journal 63 (2018) 1, p. 1, 8.

197 *Lehdonvirta,* Cloud Empires (fn. 178), p. 203.

198 Ibid., p. 202.

199 *Rolfs/O'Reilly/Meryon*, Research Policy 2022, 51 (fn. 192).

200 Ibid., p. 10.

of free riders in their social protection, because these workers may earn enough for private social protection or have another main job covered by statutory social protection.[201]

Regardless of the platforms' motive for providing social benefits and entitlements, their active role in granting social protection indicates that they acknowledge a certain responsibility for some social risks. In this sense, the provision of additional social benefits may be seen as an example of corporate social responsibility, inasmuch as "corporate social responsibility entails the voluntary engagement of corporations for social and environmental ends above legally defined minimum standards"[202]. However, at least as long as it is used as a strategy to avoid status reclassification, the level of private social protection will remain below the level of social security schemes for employees.

2. Collective Agreements

The role of social partners in the improvement of social protection depends strongly on the national architecture for organising social protection and the configuration of the national system of industrial relations. In Eastern and in Central Europe, the role of social partners and social dialogue in this field is relatively limited, whereas in Scandinavian countries trade unions are actively involved in establishing social protection. These countries are known for the important role of collective agreements in regulating working conditions and providing additional social protection, such as sickness benefits, occupational injury benefits or supplementary social benefits and payments for parental leave; in these cases, collective agreements usually include the obligation on employers to take part in social insurance schemes, such as occupational pension schemes, etc. At the same time, access to occupational social protection depends on the existence of collective agreements. In this context too, and in line with what was said above about direct provision of social benefits, employers may have different reasons for participating in collective agreements that are similar to the

201 *Hoose, Fabian/Beckmann, Fabian/Topal, Serkan/Glanz, Sabina*, Zwischen institutioneller Verwilderung und Restrukturierung: Soziale Sicherung und industrielle Beziehungen in der Plattformökonomie. IAQ Report 2022, p. 8.

202 *Kinderman, Daniel*, 'Free us up so we can be responsible!' The co-evolution of Corporate Social Responsibility and neo-liberalism in the UK, 1977–2010, Socio-Economic Review 10 (2012) 1, p. 29, 30.

direct provision of social benefits through platforms companies: to paint a positive picture of their business (as a socially responsible employer) and to ensure a competitive advantage.[203] The main difference is that platforms are rather seeking, through contractual regulation, to comply with the rules of existing social protection systems. This is the reason why, at one and the same time, some platforms are not prepared from the outset to participate in collective agreements, namely those platforms which in principle reject such agreements, a determining role for trade unions and collective labour rights.

In Scandinavia, we can observe some examples of social protection through collective agreements. In Denmark, the 3F trade union plays an active role in the improvement of working conditions for platform workers.[204] In 2018 the world's first collective agreement for platform workers was concluded between 3F and the platform for cleaning services Hilfr (as a pilot project). The agreement specifically introduced a pension plan and a healthcare plan. The parties renegotiated a Hilfr2 collective agreement in May 2024 for 2024-2025.[205] Furthermore, in 2023 delivery drivers and the delivery firm Nemlig concluded a collective agreement that, among other issues, regulates additional pensions (with the employer paying an amount equivalent to 8% of the wage).[206] In Sweden, no collective agreements for umbrella company workers or for platform workers were concluded in the early stages of the platform economy. The first collective agreements were concluded in 2021, one for umbrella company workers and one for platform workers (Bike Delivery Agreement between Foodora and the Swedish Transport Worker's Union). It is worth noting that collective agreements in

203 *Ilsøe/Larsen,* Economic and Industrial Democracy 44 (2023) 1 (fn. 174), pp. 6-24.

204 Eurofound, The Danish Trade Union 3F (Initiative), Record Number 3098, Platform economy database, Dublin, 2021, https://apps.eurofound.europa.eu/platformeconomydb/the-danish-trade-union-3f-signs-collective-agreements-with-platform-companies-103030.

205 https://www.google.de/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.3f.dk/-/media/files/artikler/overenskomst/privat-service/overenskomster/overenskomst-hilfr-2024.pdf&ved=2ahUKEwjkkeCS0PWKAxXcHhAIHUVuJjMQFnoECBcQAQ&usg=AOvVaw3tNPtRLlh6IsoyhRI_7oh1.

206 Nemlig.com, Agreement Proves E-Commerce Companies Can Strengthen Workers' Rights, 8 February 2023, https://www.itfglobal.org/en/news/nemligcom-agreement-proves-e-commerce-companies-can-strengthen-workers-rights; Eurofound, The Danish Trade Union 3F (Initiative), Record number 3098 (fn. 204).

Sweden provide substantial supplementary compensation over and above state social insurance and pensions.[207]

Nevertheless, there are two reasons why the role of collective agreements remains rather weak. First, in both Denmark and Sweden, collective agreements cover only a small group of on-location platform workers with employee status, mainly in the transportation and delivery sectors where poor working conditions are a pressing problem.[208] No collective agreements have yet been concluded at sectoral level. Second, all the collective agreements mentioned here cover platform workers who have an employment contract with the platform. Moreover, trade unions in Sweden are reluctant to enter into agreements for workers employed on the basis of short fixed-term contracts.[209] In other words, trade unions, even in Scandinavian countries, follow the traditional industrial relations approach. This approach is not well suited for improving the working conditions and social security of self-employed platform workers. In the case of the innovative Hilfr collective agreement that initially (in 2018) allowed platform workers to choose their employment status, the Danish Competition and Consumer Authority imposed on the parties the obligation to ensure that there is legal subordination between Hilfr and the cleaners employed (in accordance with the collective agreement).

The situation is even more difficult in other Western European countries. Although collective agreements for platform workers have also been established there, they are an even more marginal phenomenon. One exception is a collective agreement for bicycle couriers (with employee status) concluded in Austria and valid from 1 January 2023.[210] The agreement contains a provision on the payment of wages in the event of absence from work due to illness or accident. However, the agreement only cross-refers to the provisions of the Continued Payment of Remuneration Act (*Entgeltfortzahlungsgesetz*) and lacks its own substantive regulations. Otherwise, collective agreements concluded in Western Europe concentrate on the

207 *Westregård*, in: Becker/Chesalina, Social Law 4.0 (fn. 118), p. 224.

208 *Bonvin, Jean-Michel/Cianferoni, Nicola/Mexi, Maria, Conclusion*, The rise and growth of the gig economy. Challenges and opportunities for social dialogue and decent work, in: Jean-Michel Bonvin, Nicola Cianferoni and Maria Mexi (eds.), Social Dialogue in the Gig Economy, Cheltenham/Northampton: Edward Elgar 2023, p. 146.

209 *Westregård, Annamaria*, in: Social Law 4.0: Update, p. 42.

210 Kollektivvertrag Fahrradboten, Arbeiter/innen, gültig ab 1. Januar 2023, https://www.wko.at/kollektivvertrag/kollektivvertrag-fahrradboten-2023#heading_ii.

improvement of working conditions, information rights and transparency with regard to algorithmic management (e.g. provision of rides, deactivation of accounts, possibility of choosing between different riders).[211] In France, the Employment Platforms Social Relations Authority has been set up at the initiative of the French government to enhance social dialogue between platforms and workers; even though, social dialogue and negotiations for supplementary complementary social protection benefits are legally regulated and encouraged, the collective agreements signed in May 2024 in the VTCs (Vehicle for Hire) and goods delivery sectors did not contain provisions providing additional social benefits.[212]

Last but not least, it is an open question as to how to include the self-employed in a legal framework of collective agreements and concomitantly organised occupational social protection. Directive 2024/2831 considers the conclusion of collective agreements for self-employed platform workers as a means to enhance working conditions and social protection,[213] and the European Commission's Communication of 30 September 2022 provides non-binding guidelines on the application of Union competition law to collective agreements on the working conditions for solo self-employed persons.[214] While we share the view that collective agreements between the self-employed persons and digital labour platforms on working conditions are not subject to Art. 101 TFEU,[215] it is hard to see how the self-employed could reach a sufficient level of joint organisation to be able to negotiate collectively.[216]

211 See Eurofound Platform economy database, https://apps.eurofound.europa.eu/platformeconomydb/.

212 *Kessler, Francis*, in: Social Law 4.0: Update, p. 69.

213 Fn. 10.

214 OJ C 374/02, 30 September 2022.

215 See ECJ 17 February 1993, C 159/91 and C 160/91, Poucet and Pistre v. AGF and Cancava; ECJ 21 September 1999, C-67/96, Albany International BV v. Stichting Bedrijfspensioenfonds Textielindustrie, EU:C:1999:430; ECJ 4 December 2014, C-413/13, FNV Kunsten Informatie en Media/Staat der Nederlanden, EU:C:2014:2411.

216 See also for practical problems *Stylogiannis, Charalampos*, The effective application of the right to collective bargaining for self-employed (platform) workers: "Not Such an Easy Task", ELLJ 14 (2023) 4, p. 494, 506; *Mangan/Muszynski/Pulignano*, ELLJ 14 (2023) 4 (fn. 153), p. 541, 564.

VI. Financing

1. Involving Platforms in the Financing of Social Security for Platform Workers

To the extent to which platform workers can be assessed as being employed earners, platforms will have to pay social security contributions in accordance with national provisions and their application – and in line with international law, as contributions paid by employers are (still) seen first and fundamentally as a financial source of social security in international law.[217] With regard to other persons who work for platforms, namely the self-employed, the question is whether platforms are actually also obliged, and whether they could be, obliged to pay contributions. Such an obligation would go beyond voluntary participation in private social protection (see above, V.), and it would facilitate the implementation of social security schemes, be it general schemes for the self-employed, be it specific schemes for platform workers, as financing of those schemes is a major challenge in practice.

Looking at the actual situation today, we can observe that some countries have imposed legal obligations on platforms to provide some kind of social protection to platform workers: in France, the term and the concept of social responsibility were introduced into the Labour Code in 2016. However, this term has not yet been defined.[218] In 2022 a proposal was made in Sweden to introduce a concept of a responsible principal (responsible for the work environment) which could be either the platform or the service consumer. Unfortunately, this proposal did not result in any legislative changes, thus underlining the challenges of the political process in implementing innovative strategies to extend social responsibility to third parties beyond the traditional employment relationship.[219] Even in these countries, such social responsibility has not led to comprehensive social

217 See Art. 71 of ILO Convention No. 102 on Social Security (Minimum Standards), fn. 51 and Art. 70 of the European Code of Social Security, ETS No. 48, https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=048.

218 This is part of a broader issue concerning the introduction of new categories/terms without their definition and theoretical justification. For example, in Italy, the meaning of the categories hetero-organised and autonomous platform workers has not so far been explained. See *Ales, Edoardo/D'Avino, Emilia*, in: Social Law 4.0: Update, p. 20 et seq.

219 *Westregård, Annamaria*, in: Social Law 4.0: Update, p. 43.

protection. In France, while fragmentary and limited protection for atypical self-employed platform workers has been provided for in the Labour Code, this cannot be legally enforced by the platform workers.[220] In addition, the absence of a legal obligation allows platform providers to further limit the scope of their already limited social responsibility in terms of the number of insured risks by recourse to private insurance companies and setting low-priced clauses in collective insurance contracts.[221]

The question is whether states should go beyond this and introduce an obligation on platforms to contribute even to the social protection of their self-employed workers. From a legal point of view, such an obligation needs to be justified as it forms a restriction of the right of platforms to conduct a business.[222] As already discussed in Social 4.0, Germany's social insurance for the creative and media industries[223] could serve as a model in this context.[224] Introduced in 1981 and entering into force in 1983,[225] it is a compulsory social insurance for the self-employed in the creative and media industries to which contributions have to be paid by those who make use of the work of the self-employed in these industries, irrespective of whether in a given individual case the recipient of the remuneration is insured under the Artists' Social Insurance Act or not. This obligation was challenged before Germany's Federal Constitutional Court, and its decision[226] is remarkable and deserves to be repeated here, as the Court stated that it would be inappropriate "to deny that artists and publicists are in need of social protection and that marketers have a social responsibility simply because there is no formal employer-employee relationship"; it argued that this relationship might be the most important case of "social responsibility" as a justification for the obligation to contribute to a social insurance scheme which protects third persons, but that this is not exclusive; and it follows

220 *Daugareilh*, ISSR 74 (2021) 3-4 (fn. 4), p. 85, 90 et seq.
221 *Kessler, Francis*, in: Social Law 4.0: Update, p. 67.
222 As protected by national constitutional law; see also Art. 15 and 16 of the Charta of fundamental rights of the European Union (CFR EU); for an overview Ruffert, Matthias, § 6.1., in: Ehler, Dirk/Germelmann, Claas Friedrich (eds.), Europäische Grundrechte und Grundfreiheiten, Berlin: de Gruyter, 5th ed. 2023, p. 612, 615 et seq.
223 The German wording reads "*Künster und Publizisten*" but refers to a publishing activity as defined in § 1 of the Act of 27 July 1981 (BGBl. I, 705).
224 See *Becker/Chesalina*, in: Becker/Chesalina, Social Law 4.0 (fn. 6), p. 15, 20 et seq.
225 Act of 27 July 1981 (fn. 223).
226 Decision of 8 April 1987, 2 BvR 909, 934, 935, 936, 938, 941, 942, 947/82, 64/83 and 142/84, BVerfGE 75, 108.

that laws have to take social facts into account, that they should react to these facts and establish institutions fitting the particularities of a given economic activity "instead of making it a condition in advance that this form of existence be dissolved and transferred to a formal employment relationship".[227]

Following this line of argument, it can be argued that the position of platform providers is comparable to that of using the works of artists and publicists.[228] As in the case of someone marketing the work of an artist, a platform offers a space through which the work of others can be sold to clients and as in the case of artists the platform has a major influence on the circumstances and conditions under which business is concluded between the person actually performing the work and the client. This is because the platforms are much more than intermediaries. They intervene with algorithms and advertising, and they also provide other settings for the work.[229] These settings include in particular the General Terms and Conditions of the platforms in accordance with which platform workers provide their services (which is akin to the situation of artists who sell their work in accordance with the rules set up by whoever markets or makes use of their work).[230] Finally, many platform workers are in need of social protection in a similar way to artists. Available empirical data on platform workers shows that they are disproportionately affected by poverty in old age,[231] even if, at the same time, there are numerous solo self-employed people working via platforms in areas that require a high level of qualifications (e.g. IT staff, tax and business consultants, translators,[232] etc.)

227 BVerfGE 75, 108, 158 et seq.

228 *Knorr, Petra*, Soziale Sicherung der selbständigen Künstler und Publizisten, in: Soziale Sicherung Selbständiger. Bundestagung des Deutschen Sozialrechtsverbandes e. V. 5/6. Oktober 2023 in Düsseldorf, Erich Schmidt Verlag, Berlin 2024, p. 67, 87.

229 Ibid, p. 82 et seq.

230 Ibid., p. 88.

231 *Schneider-Dörr, Andreja*, Erwerbsarbeit in der Plattformökonomie: Eine kritische Einordnung von Umfang, Schutzbedürftigkeit und arbeitsrechtlichen Herausforderungen, Working Paper Forschungsförderung, No. 116, Hans-Böckler-Stiftung. Düsseldorf 2019, p. 34, https://nbn-resolving.de/urn:nbn:de:101:1-20190521133808511102502.

232 Depending on the type of translation activity (literary or artistic or translation of business texts or advertising texts), a translation activity may also be directly covered by the Artists' Social Insurance Act, see *Knop, Markus*, Arbeitsrechtliche Fragen der Plattformarbeit, Berlin: Duncker & Humblot 2024, p. 298.

With regard to the heterogeneity of the platform industry, consideration should be given to differentiation. A particular social responsibility is more obvious for those atypical self-employed platform workers who do not have a high level of negotiating power and cannot influence the level of remuneration and conditions of provision of services themselves. This is particularly the case in areas where employees do not necessarily have to be highly qualified, such as delivery, rider, cleaning and care services, but also in the context of micro-tasking by location-independent platform work, etc. It was stressed previously that the most vulnerable are platform workers without a main occupation beyond the platform economy. And it is specifically obvious for those workers for whom platform work forms a main occupation.

Whether such a differentiation is actually possible also depends on the configuration of social protection schemes, in particular on the scope of personal coverage. And any obligation to contribute would also have to be discussed in the light of the social policy implications and possible implementation. In terms of the method of calculation, platforms could be required to pay a form of flat-rate contribution, as is the case with social insurance for artists in Germany, e.g. a contribution on the total volume of the annual turnover the platform provider generates. Furthermore, it would have to be taken into account that platform companies often use intermediaries or partners. These actors should also share the social responsibilities; otherwise, the involvement of intermediaries or partners could be used as a strategy by the platform companies to evade responsibility. The territorial-bound powers of national social security administration could also pose a challenge as a particular difficulty arises with location-independent platform work, as this work can be carried out from any place, which presupposes a cross-border situation.

This leads to the conclusion that any obligation to contribute to the financing of social protection would, at least for location-independent work, but also for other work dependent on the organisational structure and the home state of platforms, require specific coordination regulations at EU level. Therefore, a more suitable pathway could be to introduce a payment along the lines of the French *Contribution social généralisée* (see II.2.a)aa), i.e. specific tax-like contribution in order to subsidise social security schemes but tailored to platforms and the social protection of the

self-employed. This would lead to discussions on digital services taxes[233] and also on the question of how to implement such taxes and whether there is the willingness, or also the necessity, to introduce a respective competence of the EU. This discussion cannot be taken up here. Yet, it is clear that every form of obligation of platforms to contribute to social protection systems would need the exchange of information and adequate digital tools.

2. Income Reporting Systems and Collection of Social Contributions

Income reporting systems are one of these tools. They serve a dual purpose: on the one hand, they improve transparency; on the other, they help combat undeclared work as well as evasion of taxes and social security contributions. Some Member States (Denmark, Estonia, France) introduced systems to receive data on individuals' income directly from platform companies in 2017 and 2018, years before this obligation was introduced at European level.[234] Estonia introduced a voluntary semi-automatic income reporting system in 2017, which was open for all platforms but primarily targeted the rider sector.[235] In Denmark, the obligation to provide users' income data to the Danish tax authority was imposed in 2018 on letting platforms (offering accommodation rental and car rental) registered in Denmark, whereas digital labour platforms were not included due to the complexity of the social security system and, in particular, the rules for the collection of social contributions.[236] In France the initial idea behind the income reporting obligation was twofold: to eliminate tax and social contribution evasion and to abolish outdated tax rules.[237] Since October 2018, the French *Anti-Fraud Act* of 23 October 2018 has obliged platforms to share detailed information on workers' income with the social security authorities.[238]

233 See *Borders, Kane/Balladares, Sofia/Barake, Mona/Baselgia, Enea*, Digital Services Taxes, June 2023 (available at: https://www.taxobservatory.eu/publications/), and for the respective position of the EU information available at: https://www.consilium.europa.eu/en/policies/digital-taxation/.

234 *Lehdonvirta, Vili/Ogembo, Daisy*, A Digital Single Window for income data from platform work (fn. 170).

235 Ibid., p. 21 et seq.

236 Ibid., p. 15 et seq.

237 Ibid., p. 26.

238 *Kessler, Francis*, in: Social Law 4.0: Update, p. 63.

At European level, the Commission's high-level expert report on Digital Transformation in 2019 recommended the creation of a "Single Digital Window" in Europe for the reporting of contributions and taxes, as well as for the optional deduction of contributions on behalf of the participating national institutions in 2019. The main target groups would be the self-employed working on online platforms for multiple and rapidly changing employers.[239] For implementation, the high-level experts proposed the creation of a central agency which would receive income data from all platforms with users in the Member States and forward the information to national tax and social security authorities in order not only to share data with Member States, but also to facilitate obtaining data from international web-based platforms based outside the EU. [240] They also identified obstacles to the realisation of this proposal, such as data protection, but in particular a lack of harmonisation of national income tax and social security systems[241]; and they hinted at different approaches in the Member States concerning the goals of reporting systems (reduction of compliance costs for taxpayers or reduction of tax evasion).[242] Given the existing division of competences between the EU and its Member States, it is clear that the creation of a central agency is not a suitable solution, at least as long as the EU is not allowed to collect its own taxes on trans-border economic activities – which should be the case in a longer run, based on a fundamental rethinking of the role of the EU as a regional political community in the future. In the meantime, the exchange of information remains the focal point, as information on the economic activities and the actors involved also form the basis for the calculation and collection of social security contributions. The main problem here is to ensure the availability of reliable and sufficiently detailed data, including on cash flows between platforms and platform workers (in a broad sense).

239 Report of the High-Level Expert Group on the Impact of the Digital Transformation on EU Labour Markets. Luxembourg: Publications Office of the European Union 2019, https://digital-strategy.ec.europa.eu/en/news/final-report-high-level-expert-group-impact-digital-transformation-eu-labour-markets.

240 *Lehdonvirta, Vili/Ogembo, Daisy*, Taxing Earnings from the Platform Economy: An EU Digital Single Window for Income Data?, British Tax Review (2020) 1, pp. 82-101.

241 *Hießl*, Case Law on the Classification of Platform Workers (fn. 73), p. 30.

242 A Digital Single Window for income data from platform work, https://www.oii.ox.ac.uk/research/projects/a-digital-single-window-for-income-data-from-platform-work/.

In March 2021, the Council of the EU adopted new amendments (DAC7)[243] to Directive 2011/16/EU on administrative cooperation in the field of taxation. The aim of these amendments was to improve administrative cooperation between the Member States in the field of taxation; to prevent tax fraud, tax evasion and tax avoidance; to reduce the administrative burden on digital platforms; and to ensure a level playing field by covering both cross-border and non-cross-border activities. To achieve these objectives, DAC7 introduced at EU level the obligation to report income earned through digital platforms and the exchange of such information between Member States. These rules have applied since 1 January 2023 and cover platforms based inside and outside the EU[244], including digital labour platforms. It is important to stress that DAC7 did not introduce a (new) pan-European agency but rather promotes the direct exchange of data between Member States.

Although DAC7 does not address social security, its provisions may also have an impact at the transnational level on the protection of social security revenues and the fight against social security fraud and the evasion of social contributions through the exchange of data between the social security authorities of the Member States. Regulation (EU) 2016/679[245] in Art. 6(e) allows data processing if it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. The fight against social security fraud, against the evasion of social security contributions and to protect social security revenues serves a general public interest. Furthermore, Recital 5 of Regulation 2016/679 underlines the objective of administrative cooperation: "national authorities in the Member States are being called upon by Union law to cooperate and exchange personal data so as to be able to perform their duties or carry out tasks on behalf of an authority in another Member State".

Art. 17 of Directive 2024/2831 empowers competent (national) authorities to request from platforms relevant information on platform work (e.g. employment status, the general terms and conditions and the average income from platform work) and includes an obligation for digital labour

243 See fn. 171.

244 *Pantazatou, Katerina*, in: Social Law 4.0: Update, p. 106 et seq.

245 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119/1, 4 May 2016.

platforms to provide this information. For this reason, closer cooperation between labour, social security and tax authorities is necessary and desirable. Data exchange between the authorities should be organised on an ongoing basis. Therefore, the technical possibilities for the automatic exchange of information between the authorities need to be explored and barriers to the interoperability of data across national borders should be removed. At the same time, the implementation of Directive 2024/2831 should not have as an outcome that platforms have to report data (including on income) to numerous different institutions (tax, social security, labour inspectorates),[246] but should rather contribute to reducing tax and social security compliance costs.

As already mentioned above (IV.3.), the main driver for the different innovative solutions has been the reduction in the administrative burden and simplification of reporting and other obligations. Platform operators are better equipped than platform workers to collect and verify the necessary information on platform workers operating on a digital platform and also to provide digital payment of taxes and social contributions for them. The assumption of these responsibilities by platforms can also contribute to the growth of the platform economy and reduce the (additional) administrative burden, improving compliance with tax and social security legislation. A uniform reporting form could be developed that includes information relevant for tax, labour and social security authorities.

Recital 37 of Directive 2024/2831 encourages cooperation between the competent authorities of the Member States, including through the exchange of information, in order to ensure the determination of the correct employment status of persons performing platform work. The European Labour Authority is required to facilitate and enhance such cooperation and the information exchange between Member States as well.[247] The 2025 Work Plan of the European Platform tackling undeclared work (within the European Labour Authority) foresees the organisation of a plenary meeting addressing misclassification of platform workers' employment. In our opinion, cooperation and data exchange between Member States should not be shrunk to the issue of misclassification of employment but should simultaneously pursue other objectives (relevant for different authorities),

246 Report of the High-Level Expert Group on the Impact of the Digital Transformation on EU Labour Markets (fn. 239), p. 43.

247 In our opinion, Directive 2014/2831 should be added to the scope of activities of the ELA (to Art. 1 Point 4 of Regulation 2019/1149).

including the protection of social security revenues. It would be desirable if the activities of this Platform were to include the creation and evaluation of specific tools to tackle undeclared work in the platform economy, as the use of traditional tools like labour ID-cards[248] or written contracts, is not common in this sector. Finally, the spread of e-services can help combat undeclared work. A study by the Platform shows that the use of e-services for receiving social benefits can encourage users to purchase services from the formal economy.[249]

The income reporting obligation in DAC7 does not include the obligation to clarify the nature of the activity (in particular, whether it is salaried employment or whether it is dependent employment). In addition, taxes, unlike social contributions, may be paid in more than one Member State.[250] For these reasons, income reporting data collected in accordance with DAC7 may be used rather for the identification of the potential payers of social contributions[251] (e.g. those not identified through the declaration of platform work by digital labour platforms in accordance with Art. 16 of Directive 2024/2831) than for the direct collection of social contributions.

This collection could turn out to be difficult for several reasons. One is the peculiarity of the platform economy, with its task-based and short-term assignments, the use of algorithmic management, the cross-border dimension of the services offered through the use of platform operators, the involvement of at least three parties in the relationship, constantly changing clients, difficulties in determining the identity of the platform worker and where (geographically) the work was carried out. Second, there are problems with the legal foundations, such as the lack of a uniform definition of the terms "employee" and "self-employed" for the purposes of social law in the Member States, the complexity of social security systems and the rules on the payment of social contributions in the case of a second job, with

248 See for example: Platform Tackling Undeclared Work. Platform subgroup on evaluating social/labour ID cards as a tool for tackling undeclared work, including in subcontracting chains. Output Paper, July 2023, European Labour Authority 2023, https://www.ela.europa.eu/sites/default/files/2023-12/output-paper-evaluating-social-labour-ID-cards-2023.pdf.

249 European Platform tackling undeclared work. E-services to facilitate declared work, May 2023, European Labour Authority 2023, https://www.ela.europa.eu/sites/default/files/2023-12/UDW-learning-paper_e-services-digital-solutions-facilitate-declared-work.pdf.

250 See *Pantazatou, Katerina*, in: Social Law 4.0: Update, p. 109 et seq.

251 The main goal of DAC7 was the identification of potential taxpayers and their taxable income. See *Pantazatou, Katerina*, in: Social Law 4.0: Update, p. 110.

numerous exceptions and thresholds, and last but not least, difficulties in determining the Member State responsible for deducting contributions in a cross-border situation due to gaps in the coordination rules[252] in relation to the platform economy.[253] Third, to introduce cross-border automatic deduction of social contributions, it would be necessary for each Member State to develop (its own) interoperable data API able to collect the different data that would need to be regularly collected for the calculation of social contributions.

Overcoming these difficulties would create great advantages. Withholding social contributions at the source helps tackle the challenge of undeclared work and reduce compliance costs. It can also facilitate effective access to social protection, as every task performed and every hour worked can be easily tracked and taken into account in the calculation of social contributions thanks to the digital infrastructure. At national level, we can observe some examples (Estonia and France) that show how sharing income reporting data with social security authorities can facilitate the automatic collection of social contributions – at least if platform workers use unified or simplified tax systems and are likely to have a single identification number or code, as this helps to ensure compliance with both tax and social security contributions.[254] In addition, the infrastructure created for income reporting, and in particular for the collection of user data can be adapted for the collection of social contributions. France is also pioneer in the automatic deduction of social contributions: it is planned that by 2027 the social contributions of micro-entrepreneurs (using simplified tax schemes) will be directly deducted by platforms, regardless of the employment status.[255]

252 Regulation (EC) 883/2004 of the European Parliament and of the Council on the coordination of social security systems, OJ L 166, 30 April 2004 (amended), and Regulation (EC) 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, OJ L 284, 30 October 2009 (amended).

253 See *Strban, Grega*, in: Social Law 4.0: Update, p. 100.

254 Platform workers and social security (fn. 78).

255 See *Kessler, Francis*, in: Social Law 4.0: Update, p. 72.

VII. Conclusion

1. Platform work is a growing sector of the labour market, even though its share differs between European and other states, as well as within the European Union (see above, II.1.b)). Also growing is the case law concerning the classification of on-location platform workers. This is still controversial, except for couriers and riders. In some cases, there has been a tendency of the courts to decide in favour of employee status.[256] But generally speaking, it seems clear that there will continue to be different forms of platform work, and self-employment will be one of them.

2. Generally speaking, the case-by-case approach will remain necessary as no attempt to redefine the legal criteria that mark the threshold between employment and self-employment can circumvent the fact that these criteria have to be interpreted and applied to individual cases. This comes with two disadvantages. First, proceedings can take years, and by the time the final judgement is issued, the platform may have adjusted its business model, may have gone bankrupt or moved out of the country. Second, this approach can lead to uncertain outcomes even for workers on one and the same platform but using different work equipment – car, moped or bicycle, (as the Swedish update shows[257]), not to mention between different platforms and jurisdictions.

   Administrative procedures aiming to determine employment status also have their limitations for different reasons (e.g. incorrectly selected indicators in the status determination procedure or shortage of administrative personal). In the Netherlands, for example, the results of using an online questionnaire to clarify the (future) employment relationship were not promising enough as in more than 25% of the cases the qualification of the relationship was not clear.[258]

3. In our previous volume on Social Law 4.0, we presented some specific and innovative solutions for persons in non-standard forms of employment, including platform workers, e.g. the umbrella company model

256 See above III.1.a).
257 Ibid.
258 See *Montebovi, Saskia/Vonk, Gijsbert*, in: Social Law 4.0: Update, p. 50.

in Sweden[259]; the entrepreneurial account in Estonia[260]; the concept of social responsibility in France[261]; hetero-organised workers in Italy[262]; a collective agreement for self-employed platform workers in Denmark[263]; a special tax and social security regime for platform workers in Belgium[264], etc.).

As our Update shows, it seems as if most Member States do not intend to introduce new substantial regulations or special tax and social security regimes for platform workers. Moreover, some special regulations have been abandoned in favour of the application of already existing general social law provisions. As the Belgium update shows, the special tax and social security regime for platform workers was abolished and there are no longer any special rules applying to this economic sector.[265] In Italy and in France, special regulations for platform workers remain in effect, however. Unfortunately, these solutions lack a systematic approach, and they are fragmented and controversial, which in some aspects results in conflicts between labour law and social law. The legislator has so far not defined the new notion of "social responsibility" (introduced in France) and the new employment category "hetero-organisation" (in Italy), conceptual thought on these phenomena are still missing.[266] Neither the legislator nor private actors have created special social insurance schemes for platform workers.

4. The Update indicates that, notwithstanding some innovations and reforms, the core of social protection still lies (to varying degrees) in standard employment relationships. Neither digitalisation (as a plurality of opportunities and challenges) nor the COVID-19 pandemic[267] have

259 *Westregård*, in: Becker/Chesalina, Social Law 4.0 (fn. 118), pp. 203-227.
260 *Tavits,* in: Becker/Chesalina, Social Law 4.0 (fn. 175), p. 281, 299 et seq.
261 *Kessler,* in: Becker/Chesalina, Social Law 4.0 (fn. 113), p. 257, 268 et seq.
262 *Ales,* in: Becker/Chesalina, Social Law 4.0 (fn. 59), p. 97, 104 et seq.
263 *Munkholm,* in: Becker/Chesalina, Social Law 4.0 (fn. 111), p. 171, 191 et seq.
264 *Jorens, Yves*, The Sharing Economy in Belgium: Status due to Taxation or Non-Status?, in: Becker/Chesalina, Social Law 4.0 (fn. 1), pp. 75-96.
265 *Jorens, Yves*, in: Social Law 4.0: Update, p. 11 et seq.
266 *Ales, Edoardo/D'Avino*, *Emilia*, in: Social Law 4.0: Update, p. 22 et seq.; *Kessler, Francis*, in: Social Law 4.0: Update, p. 65.
267 See *Seemann, Anika*, Conclusions – On Risk and Solidarity in Times of Global Crises, in: Becker, Ulrich/Seemann, Anika (eds.), Protecting Livelihoods: A Global Comparison of Social Law Responses to the COVID-19 Crises, Baden-Baden: Nomos 2022, p. 521, 536.

called this into question. Most crisis-related measures that had the effect of improving access to social protection during the pandemic were temporary and short-lived. Ultimately, there is a high degree of adherence to traditional patterns (such as the binary divide and employer responsibility) and established social security systems. By addressing the issue of the determination of the employment status of platform workers with the presumption rule in Directive 2024/2831 as well as in the national legislation (Belgium, Portugal and Spain), Member States have made this clear.

At the same time, it would be wrong to claim that the challenges of new employment patterns in general (associated with irregular work and income, transition between different forms of employment, multiple employment) have not been recognised in the Member States and in the United Kingdom. There have been various proposals from political parties, legislators and academics aimed at harmonising social security schemes for employees and the self-employed, such as the introduction of more contract-neutral insurance or the provision of some new social security benefits for the self-employed. For example, in Sweden, in 2023 a proposal was made to cumulate income from dependent employment and self-employment for the calculation of sickness benefits (a proposal that goes in the same direction as the unemployment reform in Denmark in 2018). This example confirms that innovative structural approaches do exist, and also that they can be transferred from one country to another. However, their realisation presupposes that there is sufficient political will to deviate from path-dependency.

5. As a consequence, and as our Update confirms (see IV.), there are still considerable gaps in formal access to social protection, and even more so in effective access to social protection for self-employed and non-standard workers. Ensuring access to social protection for low-paid platform workers and other categories of atypical worker remains a significant challenge for social security at national and European levels.

6. Privately organised social protection, including along the lines of collective agreements, can address the newest challenges of the platform economy like algorithmic control. Some platforms provide a relatively small number of social benefits voluntarily (sickness benefit, child allowance, sick leave, parental leave, etc.), especially to on-location platform workers. Their provision can pursue different objectives (see V.). However,

private provision is, all in all, not suited to closing protection gaps in public social security systems. Moreover, up to now, the respective benefits do not cover a large proportion of platform workers and their importance does not seem to be increasing, which is due to the fact that only some platforms take part actively in their provision it also remains unclear how to include the self-employed in collective agreements.

Therefore, this form of social protection can be used primarily as a complementary tier of social protection. This function, in turn, may play an important role particularly for the self-employed as the level of their statutory social protection is often not sufficient.

7. Measures to improve social protection for individuals in non-standard forms of employment who earn below a certain threshold, particularly those who are considered as the "working poor", mostly come with additional costs which require additional sources of financing. The same holds true for the improvement of social protection for those self-employed who are not in a position to purchase private social security. Their level of protection under statutory systems often remains rather low due to the fact that they have to rely on their own contributions.

   One solution for attracting additional sources of financing could be to involve digital labour platforms in the financing of the social security of platform workers. While this appears to be legally permissible, a number of questions remain (see VI.1.): whether this form of social responsibility should be restricted to specific groups of workers, and even more importantly, how it could be implemented. The arguments to take into account include the fact that the structure of platform work is heterogeneous, as some platform workers are low-paid workers in non-standard forms of employment, while others are highly qualified and highly paid. There are also good reasons to assume that new forms of contributions need to be introduced, and that organising this requires a close relationship with tax administrations.

8. In conclusion, and with a view to the observations just made, the following proposals may be helpful in order to improve social protection for platform workers:
   – Even if the standard employment relationship remains the prevalent employment pattern, other employment patterns should not be regarded as an (uncommon) exception but rather be regulated as new options. Nevertheless, through provisions in labour law (presumption

rules, limitation of fixed-term or zero-hours contracts, introduction of a minimum working time for casual work, etc.), the legislator should favour the model of the standard employment relationship as the most robust model for protecting labour and social rights. However, social protection needs to be as universal as possible. In addition, it is important to abolish tax and social security incentives, such as exemptions from social security contributions and taxes, which contribute to the growth of casual work and incentivise atypical self-employment.

- The EU Council Recommendation on access to social protection for workers and the self-employed aims to facilitate access to adequate social protection for all workers and self-employed persons in the Member States, irrespective of their employment status. In this context, the adjustment and adaptation of existing schemes seems to be a better solution than the creation of new special schemes for special groups of persons. At the same time, rules governing social insurance schemes should reflect the (working and professional) situation of the employed person (e.g. by adjusting rules governing contributions and benefits) as well as individual preferences for more flexible work patterns. Providing access for the atypical self-employed requires an understanding of the sometimes-non-linear character of their activities and income development, and of their wish for simplification of registration with the scheme and calculation and reporting of social contributions and taxes.
- The private regulation by platform providers and private insurers needs to be monitored. In particular, the same rules should apply for the purposes of private insurance against accidents at work as in social security legislation as regards the definition of work (as an insured activity, including paid breaks and interruptions in work) and the definition of the time spent travelling to and from work, in order to avoid misuse of working time regulations for platform workers. This will help address the problem of unpaid and uncalculated time inherent in platform work.
- Regarding the social responsibility of platform providers, digital labour platforms should be involved in the financing of social protection. This can be accomplished through social security contributions, if appropriate social security systems are in place at national level, but it can also be achieved indirectly via tax-like contributions or taxes.
- The development of digital technologies can contribute to enhancing access to social protection as well as to financing social security. Such

possibilities should be used more extensively. For instance, access to social security can be facilitated by further development of e-services as well as by using digital tools to account for each working unit. Automatic income reporting coordinated between different authorities can decrease the volume of reporting obligations and simplify the administrative requirements within the respective social security schemes. Although there are numerous obstacles to the automatic collection of social contributions via platform providers at the European level, collecting contributions in this way could ensure compliance of both tax and social security contributions, prevent undeclared work and social fraud, and protect social revenue at national level.

– More intensive cooperation between labour, tax and social security authorities at national and European levels is necessary. Such cooperation and data sharing between Member States (including sharing of income data) would facilitate identification of the potential payers of social contributions, fight social fraud and evasion of social contributions as well as protect social security revenues. Therefore, technical possibilities for the automatic exchange of information between the authorities should be explored and barriers to the interoperability of data across national borders should be removed.