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## **Implementation of Platform Directive 2024/2831 into the Polish legal order – areas relevant to the entire labour law**

### **Summary**

The subject of this article is the problem of implementation of Directive of the European Parliament and of the Council (EU) 2024/2831 of 23 October 2024 on improving working conditions in platform work<sup>1</sup> (hereinafter: Platform Directive 2024/2831) into the Polish legal order in the context of the adoption of two regulatory areas that will be relevant not only to the platform sector, but also to the labour law as such and to all employment relations that are the subject of its regulation. The former is the introduction of measures to facilitate the determination of the correct employment status of those performing platform work (presumption of employment relationship), the latter being the promotion of transparency, fairness, human oversight, safety and accountability in algorithmic management with regard to platform work. The relevance and universal nature of the two objectives adopted in Platform Directive 2024/2831 determines that the Polish legislator, when implementing these provisions into the national legal order, will have to consider regulating them with respect to all employment relations operating in our labour market. In the beginning, the author summarises the 6th national scientific conference in the series “Atypical Employment Relations”, organised on 7 December 2023 by the Centre for Atypical Employment Relations at the Faculty of Law and Administration of the University of Lodz ([cnsz@wpia.uni.lodz.pl](mailto:cnsz@wpia.uni.lodz.pl)) on the subject of *The development of modern technologies on labour and social security law – challenges for the future*, which is the culmination of this volume of the journal “Z Problematyki Prawa Pracy i Polityki Socjalnej”.

**Keywords:** platform work, presumption of an employment relationship, algorithmic management, atypical employment relationships, modern technology

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<sup>1</sup> EU OJ L of 2024, item 2831.

## 1. Introduction

This volume of “Z Problematyki Prawa Pracy i Polityki Socjalnej” is the culmination of the 6th national scientific conference in the series “Atypical Employment Relations”, organised on 7 December 2023 at the Faculty of Law and Administration of the University of Lodz by the Centre for Atypical Employment Relations ([cnsz@wpia.uni.lodz.pl](mailto:cnsz@wpia.uni.lodz.pl)), run by me, as well as the Student Forum for Atypical Employment Relations and the District Labour Inspectorate in Lodz. The theme of the conference was the impact of modern technology on labour and social security law in the context of future challenges. The automation and development of modern technologies are having a significant impact on the transformation of the labour market both globally and in Poland. On the one hand, it leads to a reduction in employment in industries such as manufacturing and crafts, while on the other hand, it results in the rapid growth of new jobs in technology and business-related sectors. This phenomenon also has a significant impact on the development of new atypical forms of employment. Thanks to modern technology, remote work can be used on a large scale, as well as work through online platforms, where algorithms and artificial intelligence are used. Unfortunately, the law has not kept up with the development of modern technology. The subject of the conference was the most important challenges facing the Polish legislature, especially in the context of the risks for those working in an environment where modern technologies are used. Conference participants discussed how to guarantee labour contractors the right to be offline, and how to protect them from ubiquitous monitoring or the negative consequences of using automated monitoring and decision-making systems. The dynamic development of artificial intelligence presents a huge challenge for the Polish legislature. Artificial intelligence is used not only in the process of recruiting and firing employees, but also for monitoring, supervising and evaluating work, as well as for making decisions that have a significant impact on their working conditions. This is particularly evident in employment through online platforms, which is the focus of this article. The subject of the conference was also the role of trade unions in the process of algorithmic management in the work environment, as well as the challenges that the development of modern technologies brings to social security law and the law governing the protection of personal data.

The issues addressed during the conference are extremely interesting from the scientific and research perspective, giving rise to a number of problems and controversies both among legal scholars and practitioners. The multidimensionality, multifacetedness and complexity of the issues addressed deserve a separate article. This can be seen in the articles included in Volume 6 of the journal, which touch upon challenges for the future of Polish labour law that are important in the context of the development of modern technologies, such as the right to be offline, platform work against the problem of the presumption of an employment relationship of digital workers, and remote work. The articles also analyse issues concerning the impact of artificial intelligence on human labour and the risks involved, as well as the issue of using modern technology in employment in the context of data protection. The publication also contains a very interesting article on the limits of an employee's right to criticise his/her employer on the Internet.

The subject of this article is the problem of implementation of Directive of the European Parliament and of the Council (EU) 2024/2831 of 23 October 2024 on improving working conditions in platform work<sup>2</sup> (hereinafter: Platform Directive 2024/2831) into the Polish legal order in the context of the adoption of two regulatory areas that will be relevant not only to the platform sector, but also to the labour law as such and to all employment relations that are the subject of its regulation. The first one is the introduction of measures to facilitate the determination of the correct employment status of those performing platform work (presumption of employment relationship), the other one being the promotion of transparency, fairness, human oversight, safety and accountability in algorithmic management with regard to platform work. The relevance and universal nature of the two objectives adopted in Platform Directive 2024/2831 determines that the Polish legislator, when implementing these provisions into the national legal order, will have to consider regulating them with respect to all employment relations operating in our labour market.

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<sup>2</sup> EU OJ L of 2024, item 2831.

## 2. Rationale behind the enactment of Platform Directive 2024/2831

Modern technology advances, digitisation, computerisation, as well as globalisation have contributed to the emergence of a new form of earning, which is the performance of work through digital platforms and applications<sup>3</sup>. Due to the far-reaching possibility of reducing the operating costs, the flexibility of shaping the organisation of work (including the organisation of working hours), as well as the opportunity to earn additional income and attract new customers and orders, work through online platforms, especially those with a global reach (such as Bolt, Glovo, Uber, Wolt) is becoming more and more common and has become a permanent part of the labour market landscape, both globally and in Poland<sup>4</sup>. According to EU estimates, in 2021 as many as 11% of its citizens provided work through online platforms, and for three million people this type of employment was a permanent source of earning. Revenues in the EU's online platform economy have increased by about 500% over the past few years<sup>5</sup>. The number of platform contractors is expected to reach 43 million in 2025.

Due to the operation of various business models of online platforms, the specifics of this type of employment are so complex and heterogeneous that it is difficult to unequivocally classify this mechanism into one of the currently used forms of gainful activity<sup>6</sup>. The EU

<sup>3</sup> See, e.g.: I. Mandl, M. Curtarelli, S. Riso, O. Vargas, E. Gerogiannis: *New Forms of Employment*. Eurofound, Luxembourg 2015, pp. 1 et seq.; V. De Stefano: *The Rise of the "Just-in-Time Workforce": On-Demand Work, Crowdswork and Labour Protection in the "Gig Economy"*. Conditions of Work and Employment Series, ILO 2016, no. 71; B. Bednarczyk: "Uberyzacja zatrudnienia" — praca w gospodarce współdzielenia w świetle prawa UE. "Monitor Prawa Pracy" 2018, no. 2, pp. 13 et seq.; A. M. Świątkowski: *Elektroniczne platformy zatrudnienia*. "Monitor Prawa Pracy" 2019, no. 7, pp. 18 et seq.; T. Bakalarz: *Zatrudnienie za pośrednictwem platformy internetowej jako przejaw „uberyzacji” pracy*. "Przegląd Prawa i Administracji" 2019, no. 3944, pp. 9 et seq.

<sup>4</sup> K. Piwowarska: *Czy nowe technologie zrewolucjonizują rynek pracy?* "Studia Prawnicze. Rozprawy i Materiały" 2018, no. 2 (23), pp. 135 et seq.

<sup>5</sup> European Commission: Directorate-General for Employment, Social Affairs and Inclusion and CEPS: *Digital Labour Platforms in the EU – Mapping and Business Models – Final Report*. Publications Office 2021, <https://data.europa.eu/doi/10.2767/224624>. (Accessed: 15 February 2025).

<sup>6</sup> See: A. M. Świątkowski: *Elektroniczne technologie zatrudnienia ery postindustrialnej*. Wydawnictwo Naukowe Akademii Ignatianum, Kraków 2019, pp. 95 et seq.; G. Gospodarek: *Status „niezależnego” usługodawcy a trójpodmiotowy model świadczenia usług w gig economy* – cz. 1. "Praca i Zabezpieczenie Społeczne" 2019, no. 2, pp. 9 et seq.

authorities, noting the dynamic development of platform work and the high variability of its organisation, which is difficult to cover with the existing labour protection systems, noted that this has the effect of depriving those providing services through online platforms of elementary rights and adequate social protection, despite employment conditions similar to the employment relationship (manifestations of management, continuous monitoring, evaluation and discipline). According to experts, platform contractors very often provide services at low rates, they lack job safety, protection in terms of safe and healthy working conditions<sup>7</sup> or basic employee rights, such as paid annual leave, special leave, training and career advancement opportunities, collective rights<sup>8</sup>. Detailed analyses of this form of employment confirmed the frequent lack of support from the entity organising their work, the failure to provide adequate working tools (possible payment for their provision), and the unpredictability of income and working hours. In many cases, this results in a low level of satisfaction among those providing services through online platforms and precarisation of this form of employment.

The EU legislator, seeing the risks indicated above, which are associated with the dynamic development of platform employment, as well as considering the lack of detailed solutions regulating the functioning within the EU of online platforms, which very often have the status of international business entities operating in several Member States or in a cross-border manner, enacted Platform Directive 2024/2831 on 23 October 2024. Poland and the other Member States are required to implement the provisions of the Directive into their national legal orders until 2 December 2026.

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<sup>7</sup> See: M. Dobrzyńska: *Praca platformowa. Wyzwania dla bezpieczeństwa i higieny pracy w Polsce*. "Praca i Zabezpieczenie Społeczne" 2020, no. 6, pp. 16 et seq.

<sup>8</sup> For more details, see: J. Unterschütz: *Praca w ramach platform i aplikacji cyfrowych – wyzwania dla zbiorowego prawa pracy*, cz. 1. "Monitor Prawa Pracy" 2017, no. 8, pp. 398 et seq.; J. Unterschütz: *Praca w ramach platform i aplikacji cyfrowych – wyzwania dla zbiorowego prawa pracy*, cz. 2. "Monitor Prawa Pracy" 2017, no. 9, pp. 461 et seq.

### 3. Presumption of an employment relationship – implications for Polish labour law

As per the main recitals of Platform Directive 2024/2831, the basic premise of this act is to improve the working conditions of people performing online platform work by ensuring that their employment status is correctly determined through a mechanism of presumption of an employment relationship. The Directive is the EU's response to the increasingly common practice in Member States whereby platforms, whether at the national level or in cross-border situations, in order to reduce costs and gain a competitive advantage, use contractors on a non-contractual basis or use fictitious self-employment, where a person is registered as self-employed, despite the fact that the work they perform meets the conditions characteristic of an employment relationship<sup>9</sup>. The European Commission estimates that as a result of such unlawful activities, up to 5.5 million people working through digital labour platforms may be at risk of having their employment status misclassified. In its view, such individuals are particularly vulnerable to poor working conditions and inadequate access to social protection.

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<sup>9</sup> As a result of the unlawful practices of online platforms described here, courts in such countries as Spain, Italy, France and the United Kingdom have started to rule on the determination of the existence of an employment relationship between the contractor and the platform, recognising it as an employer under national law. See, e.g.: Spanish Supreme Court judgment of 25 September 2020, No. 805/2020; Palermo Court judgment of 20 November 2020, No. 3570/2020; UK Supreme Court judgment of 19 February 2021, No. 2019/0029; Paris Court of Appeals judgment of 10 January 2019, No. 18/08357; French Court of Cassation (Cour de Cassation) judgment of 28 November 2018, No. 1737; judgment of the Italian Court of Cassation (Corte di Cassazione) of 24 January 2020, No. 1663/2020; judgment of the Supreme Court of Spain (Tribunal Supremo) of 25 September 2020, No. 805/2020, judgment of the CJEU of 20 December 2017, *Asociación Profesional Elite Taxi v Uber Systems Spain*, C-434/15, ECLI:EU:C:2017:98. For more details, see: G. Gospodarek: *Status „niezależnego” usługodawcy a trójpodmiotowy model świadczenia usług w gig economy* – cz. 2. “Praca i Zabezpieczenie Społeczne” 2019, no. 4, pp. 21 et seq.; G. Gospodarek: *Wyrok brytyjskiego Sądu Najwyższego w sprawie Uber BV przeciwko Aslam i inni*. “Praca i Zabezpieczenie Społeczne” 2021, no. 7, pp. 12 et seq.; K. Naumowicz: *Some Remarks to the Legal Status of Platform Workers in the Light of the Latest European Jurisprudence*. “Studia z Zakresu Prawa Pracy i Polityki Społecznej” 2021, vol. 28, no. 3, pp. 177 et seq. See: C. Hießl: *The Classification of Platform Workers in Case Law: A Cross-European Comparative Analysis*. “Comparative Labour Law & Policy Journal” 2022, vol. 42, no. 2, pp. 59 et seq., [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3982738](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3982738). (Accessed: 12 February 2025).

As a result of the misclassification, they cannot enjoy the rights and protections to which they would otherwise be entitled as employees.

Taking the above into account, and with a view to improving the working conditions of those performing online platform work, Platform Directive 2024/2831 introduced a presumption of an employment relationship. According to the estimates of European Commission, at the EU level, between 1.72 million and 4.1 million people would gain employee status as a result of the mechanism, allowing them to enjoy a full spectrum of statutory safeguards guaranteed under the employment relationship. In its Article 4(1), the Directive requires Member States to put in place appropriate and effective procedures to verify and ensure the determination of the correct employment status of persons performing platform work, with a view to ascertaining the existence of an employment relationship as defined by the law, collective agreements or practice in force in the Member States, with consideration to the case-law of the Court of Justice, including through the application of the legal presumption of an employment relationship. The ascertainment of the existence of an employment relationship invokes the principle of primacy of facts related to the actual performance of work, including the use of automated monitoring or decision-making systems in the organisation of platform work, irrespective of how the relationship is designated in any contractual arrangement that may have been agreed between the parties involved (Article 4(2) of Platform Directive 2024/2831). Pursuant to Article 5(1) of the Directive, the contractual relationship between a digital labour platform and a person performing platform work through that platform is legally presumed to be an employment relationship where facts indicating direction and control, in accordance with 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. The Directive also provides for the possibility of challenging the legal presumption of an employment relationship before a court. Member States should ensure such a solution by proving, based on this definition, that the relationship in question is not an employment relationship.

When analysing the implementation of the legal presumption of an employment relationship into the Polish legal system, particularly in terms of its potential impact on the entire labour market – both the

online platform sector and other forms of gainful employment, as well as the future of labour law – it is important to note at the outset that much will depend on the approach taken by the legislator, who has considerable discretion in deciding how to introduce and apply this legal mechanism. *De lege lata* under Polish labour law, this mechanism is not applicable at all. This position is widely accepted both in the literature of labour law and in the jurisprudence<sup>10</sup>. In a judgment dated 27 May 2010<sup>11</sup>, the Supreme Court (hereinafter: the Supreme Court) clearly held that Article 22 § 1<sup>1</sup> of the Labour Code<sup>12</sup> (hereinafter: the Labour Code), pursuant to which employment under the conditions characteristic of an employment relationship specified in Article 22 § 1 of the Labour Code is employment on the basis of an employment relationship, regardless of the name of the contract between the parties, does not create a legal presumption of the execution of an employment contract<sup>13</sup>. This means that the implementation of Platform Directive 2024/2831 in the area of the presumption of an employment relationship will be considered somewhat revolutionary in Polish labour law. There have been attempts to introduce this mechanism into our legal order in the past, but they ultimately failed altogether<sup>14</sup>.

In my view, the implementation of the provisions of Platform Directive 2024/2831 providing for the presumption of an employment relationship into Polish law will be very difficult and problematic. This issue has a much broader context than merely the online platform sector and applies to the entire labour market. When it comes to the

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<sup>10</sup> For further details, see T. Duraj: *Granice pomiędzy stosunkiem pracy a stosunkiem cywilnoprawnym – głos w dyskusji*. “Gdańsko-Łódzkie Roczniki Prawa Pracy i Prawa Socjalnego” 2017, no. 7, pp. 61 et seq.

<sup>11</sup> II PK 354/09, LEX no. 598002.

<sup>12</sup> Act of 26 June 1974 – Labour Code, consolidated text: Journal of Laws of 2025, item 227, as amended.

<sup>13</sup> The absence of a legal presumption of the execution of an employment contract is also indicated in, among others: the Supreme Court judgment of 29 June 2010, I PK 44/10, OSNP 2011, no. 23–24, item 294; the Supreme Court judgment of 7 July 2000, I PKN 727/99, Lex no. 1223707; the Supreme Court judgment of 23 September 1998, II UKN 229/98, OSNP 1999, no. 19, item 627.

<sup>14</sup> I am referring to the draft individual Labour Code prepared by the Codification Commission in 2018 (<https://www.gov.pl/web/rodzina/bip-teksty-projektu-kodeksu-pracy-i-projektu-kodeksu-zbiorowego-prawa-pracy-opracowane-przez-komisje-kodyfikacyjna-prawa-pracy>), which expressly introduced the presumption of an employment relationship (Article 47 § 1 and Article 50).



former perspective, the introduction of a presumption of an employment relationship into Polish labour law would lead to excessive interference with one of the fundamental principles of freedom of contract (Article 353<sup>15</sup> of the Civil Code – hereinafter: the Civil Code<sup>15</sup>) and freedom to choose the basis of employment, and would violate the constitutional principle of freedom of doing business (Article 22 of the Polish Constitution<sup>16</sup>). Besides, the mechanism adopted in Platform Directive 2024/2831 will not be effective and, in my opinion, will not significantly improve working conditions through online platforms, and the effect may be exactly the opposite. This will only be slightly improved by the obligation for Member States to establish a framework of measures to support the effective implementation of the legal presumption of an employment relationship set out in Article 6 of the Directive.

First, problems should be noted already at the stage of triggering the presumption of an employment relationship. Most often, the initiators of proceedings in this case will be platform contractors, who are generally not satisfied with their status due to the lack of minimum protective guarantees. This will result in labour courts being flooded with often unsubstantiated claims to have their employment status converted into employee status, and consequently lead to judicial paralysis<sup>17</sup>. Also, I am not convinced by the power of labour inspectors to initiate proceedings regarding the presumption of an employment relationship with respect to online platforms. Such a solution does not eliminate the risk of discretionary decisions in this regard, especially since the Directive makes the presumption of an employment relationship contingent on whether facts indicating control and direction are established in the contractual relationship between the digital labour platform and the contractor, in accordance with national law, collective agreements or practice in the Member States and taking into account

<sup>15</sup> Act of 23 April 1964 – Labour Code, consolidated text: Journal of Laws of 2024, item 1061, as amended.

<sup>16</sup> Constitution of the Republic of Poland of 2 April 1997, Journal of Laws no. 78, item 483, as amended.

<sup>17</sup> Already, cases before Polish labour courts in two-instance proceedings have been pending for as long as three to five years (see W. Gujski: *Niesprawiedliwość w sądach pracy – odpowiedź na pozew po dwóch latach*. In: Prawo.pl dated 14 February 2023, <https://www.prawo.pl/kadry/przewleklosc-prowadzenia-spraw-w-sadach-pracy,519737.html> (Accessed: 27 March 2025), which, in the case of platform employment, which as a rule is short-term and occasional, undermines the sense of initiating such a procedure.

CJEU case-law. The problem is that general control is not enough to recognise a platform as an employer within the meaning of Article 3 of the Labour Code, and the criterion of management under Polish labour law is construed very differently in the literature, jurisprudence and practice<sup>18</sup>, and it requires statutory clarification<sup>19</sup>. In this regard, the criteria triggering the presumption included by the Court of Justice of the EU in *B v. Yodel Delivery Network Ltd.* dated 22 April 2020 may prove helpful<sup>20</sup>. In the above-mentioned judgment concerning the classification of couriers employed under a contract for services, the Court accepted that a person cannot be classified as a “worker” where that person is afforded: (a) the right to fix his own hours of “work” within certain parameters and to tailor his time to suit his personal convenience rather than solely the interests of the putative employer; (b) the absolute right to accept or not accept the various tasks offered by his putative employer and the right to unilaterally set the maximum number of those tasks; (c) the right to use subcontractors or substitutes to perform the service which he has undertaken to provide; (d) the right to provide his services to any third party, including direct competitors of the putative employer. The discretionary nature of the State Labour Inspectorate’s (hereinafter: PIP) decisions in triggering the presumption of an employment relationship will result in a violation of the constitutional principle of protecting citizens’ trust in the state, which gives rise to the requirement of certainty of the law in force (Article 2 of the Polish Constitution).

Second, imposing on the PIP, by way of statutory instruments, additional duties to control the legality of employment in the online platform sector and to initiate proceedings on the presumption of an

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<sup>18</sup> The literature on the subject, as well as court decisions, presents different definitional approaches to the employer’s management, from very narrow to overly broad, which is associated with autonomous subordination or economic dependence on the employing entity. For details see T. Duraj: *Podporządkowanie pracowników zajmujących stanowiska kierownicze w organizacjach*. Difin, Warszawa 2013, pp. 45 et seq.

<sup>19</sup> For years the author has suggested that the term “employer’s management” be clarified in Article 22 § 1 of the Labour Code by indicating that it refers to management that empowers the employer to make – through binding orders – employees’ duties more specific. These are duties concerning both the object of work (the type of tasks and how they are performed) and the place and time of its performance (the core of managerial authority).

<sup>20</sup> C-692/19, ECLI:EU:C:2020:288.

employment relationship will exacerbate the inefficiency of the Polish labour inspectorate. The EU legislator is optimistic to assume that in order for the inspection authorities to perform the tasks of enforcing the provisions of Platform Directive 2024/2831, Member States must ensure that their inspection staff are prepared in substantive aspects. This requires adequate human resources with the necessary skills and access to relevant training in the relevant national authorities, and ensuring the availability of technical expertise in the field of algorithmic management (recital 38 of the Directive). Meanwhile, the Polish labour inspectorate already has too many duties, the scope of which is being all the time extended by the legislature, which is permanently underfunded, and the current staffing level of 1,500 labour inspectors (country-wide) is grossly unsatisfactory and does not guarantee effective fulfilment of statutory tasks at this point.

Third, although the EU legislator has provided for the presumption of an employment relationship to be rebuttable, this may not be feasible in practice. A digital labour platform will have a serious problem proving that the contractual relationship that it has with a contractor is not an employment relationship under Polish law. This is primarily due to the lack of clear statutory criteria to effectively distinguish this relationship from civil-law contracts. In particular, this applies to the premise of management, which under Polish labour law is construed very differently in the literature, jurisprudence and practice.

Fourth, it is expected that the introduction of the presumption of an employment relationship in the platform sector into the Polish legal order will cause them to run away from this mechanism. Platforms with an international reach will change their existing operating models, using increasingly complex organisational structures and tools for control and evaluation of work to avoid being assigned employer status over those employed through them. The escape of platforms from the Polish labour market is also possible. Spain presents a good example of this kind of behaviour. In 2021, Spain enacted a special law called *Ley Rider*<sup>21</sup>, under which a presumption of an employment relationship was introduced against delivery service industry platforms (including Glovo, Uber Eats, Stuart, Deliveroo). This has forced these entities to change their operating model to avoid the presumption, and

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<sup>21</sup> Royal decree with the force of law 9/2021.

some entities have withdrawn from the Spanish market altogether, deeming their business unprofitable<sup>22</sup>.

Turning to the broader perspective of the implementation of the provisions of Platform Directive 2024/2831 regulating the presumption of an employment relationship, leading to implications for labour law as a whole, the question is whether this mechanism should not be extended to other employment relationships, including those that operate outside of the work provided through the application. In my view, sooner or later the Polish legislator will have to extend the presumption of an employment relationship to the entire labour market. The mechanism would then need to be regulated in the provisions of the Labour Code. Limiting this mechanism only to the online platform sector will be incompatible with the constitutional principles of equality before the law, protection of competition and freedom of doing business. This is because entrepreneurs providing a certain type of services using online platforms will be in an incomparably worse legal and economic situation than entrepreneurs providing the same type of services in the traditional formula (e.g., transportation services or food delivery). In my view, the legal presumption of an employment relationship provided for in Platform Directive 2024/2831 will have to be extended to all sectors of the economy in the long term. Otherwise, there will be unequal treatment of entrepreneurs engaged in similar (identical) activities depending on whether or not they are recognised as a digital labour platform under national law. Representatives of the labour law literature take a similar view. According to L. Mitrus, (...)“the regulation of platform labour will have broader implications for the evolution of the legal framework of gainful employment. If a presumption of the existence of an employment relationship is established in relation to platform work, it will be difficult in the long term to justify the absence of such a mechanism in relation to other legal relationships, which in Polish realities translates especially into the question of the qualification of long-term civil-law contracts for the provision of services”<sup>23</sup>. In my opinion, however, such a solution requires an

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<sup>22</sup> A. Todoli-Signes: *Spanish Riders Law and the Right to Be Informed About the Algorithm*. “European Labour Law Journal” 2021, vol. 12, no. 3, pp. 399 et seq.

<sup>23</sup> L. Mitrus: *Polska regulacja pracy platformowej de lege ferenda z perspektywy prawa Unii Europejskiej*. In: *Znaczenie prawa międzynarodowego i europejskiego w regulacji stosunków świadczenia pracy*. Eds. Z. Hajn, M. Kurzynoga. Folia Iuridica 2024, no. 107, pp. 147–157.

in-depth discussion within the framework of the social partners' dialogue, due to the fact that it will constitute a revolution for the entire Polish labour law, being of fundamental importance for all relations of gainful employment in Poland. The point is that extending the mechanism of presumption of employment relationship to all forms of employment will not lead to a sharp halt in the development of all atypical forms of gainful employment in our country and the flight of entrepreneurs to the so-called shadow economy.

#### **4. Promoting transparency, fairness, human oversight, safety and accountability in algorithmic management – implications for Polish labour law**

The second regulatory area of Platform Directive 2024/2831, whose implementation into the Polish legal system is important not only for the platform sector, but also for labour law as a whole and for all employment relations, is the promotion of transparency, fairness, human oversight, safety and accountability in algorithmic management with regard to platform work. Digital labour platforms make extensive use of automated monitoring and decision-making systems to manage people performing platform work. Monitoring through electronic means can be intrusive, and decisions made or supported by these systems, such as decisions related to bidding or assignment, salary, safety and health, working hours, access to training, promotion or status within the organisation, and contractual status, directly affect individuals performing platform work, while they may not have direct contact with a manager or supervisor. Such a situation generates a number of risks for these contractors, which may involve, in particular, violations of their dignity and privacy, discrimination and unequal treatment, or negative consequences for their health or general well-being<sup>24</sup>. To prevent this, Platform Directive 2024/2831 imposes a number of specific obligations on platforms.

The first one is the obligation to inform persons performing platform work, platform workers' representatives and, upon request, national

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<sup>24</sup> See E. Pachala-Szymczyk: *Nowe technologie a ryzyko w stosunkach zatrudnienia. Przypadek nietypowych form pracy*. In: *Prawo pracy wobec nowych technologii*. Eds. M. Gersdorf, E. Maniewska. Wolters Kluwer, Warszawa 2025, pp. 117 et seq.

competent authorities, of the use of automated monitoring systems or automated decision-making systems (Article 9 of Platform Directive 2024/2831). The national legislator must specify the type and form of information on such automated systems to be provided to those performing platform work, and when it must be presented. Platform contractors (their representatives) should receive this information in a concise, simple and intelligible form, to the extent that these systems and their functions directly affect them and, where applicable, their working conditions – so that they are effectively informed<sup>25</sup>. They should also have the right to request comprehensive and detailed information on all systems used by the platform. The Polish legislator, implementing Article 9 of Platform Directive 2024/2831 into our legal order should seek to limit the scope of the information provided on the automated monitoring or decision-making systems used by the digital labour platform and their features only to those that have a significant impact on those performing platform work, including their working conditions, access to tasks and the organisation of tasks, their earnings, safety and health, working time, the issuance of instructions, the evaluation of work performed, the provision of incentives or the imposition of sanctions, access to training, promotion or its equivalent, and contractual status, including the limitation, suspension or deletion of their account. Only such an approach will guarantee full transparency and clear perception of the information provided, without derailing the main purpose of Platform Directive 2024/2831. Requiring online platforms to provide overly elaborate information will be counterproductive, preventing it from being properly received by those performing platform work and their representatives.

The second obligation that Member States must impose on digital labour platforms is to ensure human oversight and regular evaluation of the impact of individual decisions taken or supported by automated monitoring or decision-making systems on those performing platform work, including, where applicable, on their working conditions and equal treatment at work. Employee representatives should also be involved in the evaluation process. Pursuant to Article 10 of Platform

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<sup>25</sup> See A. Ziętek-Capiga: *Prawo pracowników i ich przedstawicieli do informacji o algorytmicznym zarządzaniu pracą*. In: *Prawo pracy wobec nowych technologii*. Eds. M. Gersdorf, E. Maniewska. Wolters Kluwer, Warszawa 2025, pp. 165 et seq.

Directive 2024/2831, the Polish legislator, when implementing this instrument into our legal order, must ensure that digital labour platforms oversee and, with the involvement of workers' representatives, regularly and in any event every two years, carry out an evaluation of the impact of individual decisions taken or supported by automated monitoring and decision-making systems on persons performing platform work. Given the multiplicity of such decisions (millions of outcomes), periodic evaluations should focus on evaluating individual systems rather than specific decisions made by these systems.

Third, the Polish legislator, when implementing Platform Directive 2024/2831 into our legal order, must guarantee the possibility of control and verification of decisions taken or supported by automated decision-making systems. It should be ensured that persons performing platform work have the right to obtain an oral or written explanation from the digital labour platform for such decisions without undue delay. The explanation shall be provided in a transparent and intelligible manner, using clear and plain language. Member States must ensure that digital labour platforms provide the persons performing platform work with access to a contact person designated by the digital labour platform to discuss and to clarify the facts, circumstances and reasons having led to the decision. If a person disagrees with a particular decision, they may challenge the same in accordance with the procedure and rules set forth in Article 11 of Platform Directive 2024/2831.

Fourth, given the negative impact of automated monitoring and decision-making systems on the safety and physical and mental health of platform contractors<sup>26</sup>, the EU legislature imposes certain obligations on digital labour platforms to assess these risks (in particular, in terms of possible risks of occupational accidents and psychosocial and ergonomic risk factors), verify that the systems' safeguards are adequate to counter them, and take appropriate preventive and protective measures. In addition, in the area indicated here, digital labour platforms will be required to ensure that platform workers and their representatives are effectively informed, and consulted accordingly.

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<sup>26</sup> Algorithmic management, constant evaluation and discipline, limited on-the-job learning and limited task influence resulting from the use of opaque algorithms, work intensification and insecurity resulting from the use of automated monitoring or decision-making systems can increase stress and anxiety among platform-based workers, leading to many illnesses and health risks.

Platforms may not use automated monitoring or decision-making systems in a way that puts undue pressure on platform workers or otherwise endangers their safety and physical and mental health. In order to ensure the safety and health of platform workers, including protecting them from violence and harassment, Member States must ensure that digital labour platforms put in place preventive measures, including providing for effective reporting channels (Article 12 of Platform Directive 2024/2831). Interestingly, the EU legislature limits the protection indicated here only to platform contractors employed on the basis of an employment relationship. However, the Polish legislator, when implementing the regulations analysed here into our legal order, will have to seriously consider whether limiting this protection only to platform workers is consistent with the requirements of the Polish Constitution and the provisions of the Labour Code. It is important to remember that health and safety is a key aspect of any work performed by a human being, regardless of the legal basis and the system under which it is performed. Automated monitoring and decision-making systems used by online platforms can have a negative impact on the safety and physical and mental health of everyone working through the apps, not only platform workers but also those employed outside of an employment relationship. Therefore, in my view, this protection should extend to all platform contractors in Poland<sup>27</sup>.

In the context of promoting transparency, fairness, human oversight, safety and accountability in algorithmic management for platform work, Platform Directive 2024/2831 places particular emphasis on dialogue with social partners and the active participation of representatives representing the interests of platform work contractors. The EU legislature grants certain powers in the area of information and consultation to entities representing the interests of platform contractors. When it comes to the competence of platform worker representatives in the area of information and consultation, Platform Directive 2024/2831 guarantees them the following: (1) the right to be informed about the use of automated monitoring or decision-making systems by digital labour platforms (Article 9); (2) the right to a periodic evaluation of the impact of individual

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<sup>27</sup> See, e.g. T. Wyka: *Stosowanie przepisów bhp w niepracowniczym zatrudnieniu*. In: *System prawa pracy*, vol. VII: *Zatrudnienie niepracownicze*. Ed. K. W. Baran. Wolters Kluwer, Warszawa 2015, pp. 650 et seq.



decisions taken or supported by automated monitoring and decision-making systems on persons performing platform work, including their working conditions and equal treatment at work (Article 10(1)); (3) the right to be informed and consulted on the assessment of risks associated with automated monitoring and decision-making systems to the safety and health of platform workers (Article 12).

I believe that the regulations of Platform Directive 2024/2831 outlined above in terms of promoting transparency, fairness, human oversight, safety and accountability in algorithmic management are universal in nature and are so important that they should be extended to all employment relationships, not limited to the online platform sector. In the era of increasing digitisation, computerisation and rapid development of modern technologies, many entrepreneurs operating in the Polish labour market who do not use Internet applications are already using automated monitoring and decision-making systems in employment, both at the stage of recruitment and dismissal, as well as to shape the essential conditions of employment and the legal situation of those performing work (in particular, remuneration, place and time of work, organisation of work, safety and health, issuance of orders or instructions, access to training and promotions, application of sanctions). Therefore, in order to effectively protect the life and health of all performers of gainful employment, their dignity and privacy, and to counteract any manifestation of discrimination and unequal treatment in employment, the Polish legislator, when implementing these provisions of Platform Directive 2024/2831 into the national legal order, will have to consider regulating them for all employment relationships operating in our labour market. This is the only right approach in the context of shaping the future of Polish labour law.

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### **Implementacja do polskiego porządku prawnego Dyrektywy platformowej 2024/2831 – obszary istotne dla całego prawa pracy**

#### **Streszczenie**

Przedmiotem niniejszego opracowania jest problem implementacji do polskiego porządku prawnego Dyrektywy Parlamentu Europejskiego i Rady (UE) 2024/2831 z dnia 23 października 2024 r. w sprawie poprawy warunków pracy za pośrednictwem platform internetowych<sup>28</sup> (dalej: Dyrektywa platformowa 2024/2831) w kontekście przyjęcia dwóch obszarów regulacyjnych, które będą istotne nie tylko dla sektora platformowego, ale także dla całego prawa pracy i dla wszystkich stosunków zatrudnienia stanowiących przedmiot jego regulacji. Pierwszym z nich jest wprowadzenie środków ułatwiających określanie prawidłowego statusu zatrudnienia osób wykonujących pracę za pośrednictwem platform (domniemanie stosunku pracy), drugim zaś promowanie przejrzystości, sprawiedliwości, nadzoru ludzkiego, bezpieczeństwa i rozliczalności w zarządzaniu algorytmicznym w odniesieniu do pracy za pośrednictwem platform. Doniosłość oraz uniwersalny charakter obu celów przyjętych w Dyrektywie platformowej 2024/2831 przesądza o tym, że polski ustawodawca, implementując te przepisy do krajowego porządku prawnego, będzie musiał zastanowić się nad ich unormowaniem w odniesieniu do wszystkich stosunków zatrudnienia funkcjonujących na naszym rynku pracy. Na wstępie autor podsumowuje VI ogólnopolską konferencję naukową z cyklu „Nietypowe stosunki zatrudnienia”, zorganizowaną w dniu 7 grudnia 2023 r. przez Centrum Nietypowych Stosunków Zatrudnienia WPiA UŁ (cnsz@wpia.uni.lodz.pl) nt. *Rozwój nowoczesnych technologii a prawo pracy i prawo ubezpieczeń społecznych – wyzwania na przyszłość*, której niniejszy tom czasopisma „Z Problematyki Prawa Pracy i Polityki Socjalnej” stanowi zwieńczenie.

**Słowa kluczowe:** praca platformowa, domniemanie stosunku pracy, zarządzanie algorytmiczne, nietypowe stosunki zatrudnienia, nowoczesne technologie

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<sup>28</sup> EU OJ L of 2024, item 2831.