

Wioletta Witoszko

University of Białystok, Poland

witoszko@uwb.edu.pl

ORCID ID: 0000-0002-4077-5703

Krystyna Ziółkowska

Warmia and Mazury University, Olsztyn, Poland

krystyna.ziolkowska@uwm.edu.pl

ORCID ID: 0000-0003-4825-0597

The Employment Status of a Person Performing Work through a Digital Platform

Abstract: Performing work through a digital platform is most often done on the basis of self-employment or a civil law contract. Doubts arise when there are elements characteristic of an employment relationship in work through a digital platform. Directive (EU) 2024/2831 introduces a mechanism for presuming an employment relationship on the basis of facts related to the actual performance of work, including how the work is performed and the degree of control and management exercised by the digital platform. The classification of the legal relationship does not depend on the name of the contract concluded between the parties but on the actual performance of the work. The platform has the right to challenge the legal presumption and show that the work is not related to an employment relationship.

Keywords: digital platforms, legal presumption, employment relationships

Introduction

The aim of Directive (EU) 2024/2831 on Improving Working Conditions in Platform Work is to improve the employment conditions of people performing work through digital platforms, increase the transparency of algorithmic management, and address the issue of the classification of platform employment. Platform work is a form of employment in which organizations or individuals use an online platform

to reach out to other organizations or individuals to solve specific problems or perform specific services in exchange for a fee. Currently, the majority of people working through online platforms in the EU have self-employed status, although some of them perform work in a manner similar to that of employees (Tomaszewska, 2025). Directive (EU) 2024/2831 introduced a legal institution aimed at countering such abuses, namely the presumption of an employment relationship if there are factual circumstances – according to national law, EU case law, and collective bargaining agreements – indicating that employees are subject to management and control by the employer. The burden of proof is on the digital platform, which means that it has to prove that the employment relationship does not exist.

The performance of platform work as part of self-employment under conditions similar to an employment relationship is a violation of the constitutional principle of labour protection (Article 24 of the Polish Constitution), which is also a manifestation of the protection of human rights. On the other hand, the introduction into Polish law of the institution of the presumption of an employment relationship, i.e. the classification of platform employment as an employment relationship, may cause negative consequences for entrepreneurs. These relate to an increase in employment costs and a restriction of market competition, and as a result, a restriction of freedom of economic activity (Article 20 of the Constitution). Thus in platform work, the interests of both parties, the employer and the employed, clash. The institution of legal presumption regulated by Directive (EU) 2024/2831 requires Member States to define the criteria for its determination. The Polish legislature is therefore bound to meet this requirement, as national regulations should be in place by 2 December 2026. The purpose of this paper is to clarify the criteria for the legal presumption of an employment relationship regulated generally in the Directive that should be taken into account by the Polish legislation in the new legal regulation. The final section presents an assessment of the impact of the institution of the legal presumption of an employment relationship on the protection of workers and the situation of employers. Some European countries have national laws that protect those employed via digital platforms; this paper will therefore present the Italian legal solutions.

1. Characteristics of platform employment

Article 2 of Directive (EU) 2024/2831 defines terms related to working through online platforms, such as a digital labour platform, platform work, a person performing platform work, and a platform worker. A ‘digital labour platform’ is an individual or legal person providing a service that meets all of the following requirements: 1) it is made available, at least in part, at a distance by electronic means, such as a website or mobile application; 2) it is provided at the request of the customer; 3) it includes, as a necessary and essential element, organizing the work performed by individuals

for remuneration, regardless of whether the work is performed online or at a specific location; 4) it involves the use of automated monitoring systems or automated decision-making systems. 'Platform work' means work organized through a digital labour platform and performed in the EU by an individual on the basis of a contractual relationship between the platform or an intermediary and the individual, regardless of whether there is a contractual relationship between them. A 'person performing platform work' is an individual performing work through a platform, regardless of the nature of the contractual relationship or the definition of this relationship by the parties involved. The type of basis of employment is not apparent from the definitions presented, but another definition stipulates that a 'platform worker' is a person performing work through a platform who is bound by an employment contract or is in an employment relationship as defined by law, collective agreements, or practice in force in Member States, taking into account the case law of the Court of Justice, or who is considered to be bound by such a contract or be in such an employment relationship. The definition of a platform worker is general, as it refers to the terms 'worker' and 'employment relationship' as defined in national law, taking into account the case law of the Court of Justice. On the other hand, the definition of a digital labour platform does not describe the employing entity or employer. However, the element that could prove an employment relationship is the requirement that the work is organized by the digital platform for remuneration. Against this backdrop, the issue of the determination of the correct employment status of a person performing work through a digital platform is problematic.

The unique characteristics of platform work mean that the existing legal constructs relating to employment do not meet its needs. On the one hand, platforms offer flexible earning opportunities, but on the other hand, their operating model poses a risk of abuse to the persons performing the work, mainly due to their unregulated legal status and, as a result, the weak legal protection (Tomaszewska, 2011, p. 269). For example, the algorithms used by platforms can give preference to certain groups of workers based on their location, availability, productivity, or low absenteeism. This is because online platforms use automated management systems that determine task assignments, performance evaluations, and worker remuneration. As a result, workers do not know on what basis decisions are made regarding their work, task assignments, and orders, which prevents them from effectively pursuing claims. Platforms define their relationships with those performing the services as a collaboration with independent contractors in the form of self-employment. In this way, platform workers lose access to labour law protections, such as minimum wage guarantees, paid vacations, guaranteed rest, and working-time limitations. Case law shows that these workers often meet the criteria that allow them to be considered an employee, such as control and supervision by the platforms and the obligation to follow certain rules, not only for using the application but also for performing tasks for customers. Also,

usually, platform workers have no real ability to negotiate the working conditions (Tomaszewska, 2025, pp. 187–198).

Directive (EU) 2024/2831 provides guidance that helps establish the existence of an employment relationship. According to its Article 4, the determination of an employment relationship is based primarily on the factual circumstances surrounding the actual performance of work, including the use of automated monitoring or decision-making systems in the organization of platform work, regardless of what the relationship is called in the contracts that may have been agreed upon between the parties involved. If the existence of an employment relationship is established, the party or parties responsible for fulfilling the employer's obligations is clearly identified in accordance with national legal systems. In other words, an employment relationship can be established, regardless of the name of the contract, if supported by the factual circumstances of the work and the use of automated monitoring or decision-making systems in the organization of the work (i.e. the use of algorithms).

2. The concept of legal presumption of an employment relationship in Directive (EU) 2024/2831

The legal remedy to counter incorrect classification of the employment of persons performing platform work is the mechanism of the legal presumption of an employment relationship adopted by Directive (EU) 2024/2831. According to its Article 5, the legal presumption is that a contractual relationship between a digital labour platform and a person performing platform work is an employment relationship if facts indicating management and control are established, in accordance with national law, collective agreements, or practice in the Member States, and taking into account the case law of the Court of Justice. However, the digital labour platform can challenge this legal presumption, and the burden is on the platform to prove that the contractual relationship in question is not an employment relationship as defined by law, collective agreements, or practice, and taking into account the case law of the Court of Justice.

This leads to the conclusion that it is the characteristics of management and control established in the factual circumstances surrounding platform work, understood in accordance with national law and the case law of the Court of Justice, that determine the existence of an employment relationship. In other words, in the opinion of the EU legislature, if both these characteristics are identified as present in platform work, the person performing the work is considered an employee. Directive (EU) 2024/2831, in its current wording, does not define the criteria of 'management' and 'control', although one of its earlier drafts provided such guidance. In assessing the presumption of an employment relationship, the following criteria indicating control by the digital labour platform of the work performed had to be taken into account: 1) deciding on the remuneration and work schedules; 2) setting procedures for

the performance of services; and 3) limiting the possibility of accepting orders from other entities (for more details, see Duraj, 2024, pp. 295–317; Cauffman, C. (2022), pp. 3–8). In addition, it should be noted that as early as 2006, Recommendation no. 198 of the International Labour Organization on employment relationships provided for the construction of a presumption of an employment relationship. In accordance with paragraph 11(b) of the Recommendation, in order to facilitate the determination of the existence of an employment relationship, Member States should, as part of the national policy referred to in the Recommendation, consider the possibility of introducing into their legal orders a legal presumption that an employment relationship exists when one or more of the indicators set forth in section 13 of that document are present.

3. Management and control of work by the digital platform as a criterion for the establishment of an employment relationship

3.1. The feature of worker subordination in national law

According to the definition of an employment relationship provided in Article 22 of the Polish Labour Code, the essential criterion of this relationship is the performance of work for and under the management of another person in exchange for remuneration, so its distinguishing features are hierarchical control and subordination. Other characteristics of an employment relationship include voluntariness and the mutuality of obligations, remuneration for work, continuity of the performance of work, the personal nature of the work performed, the obligation of diligent work, the risk placed on the employing entity, and the subordination of the employee to the employer in the course of the performance of work. However, the most important characteristic of work performed under an employment relationship is its subordination. An employee's obligation to perform subordinated work implies his or her submission to the employer's management. The limits of this management (subordination) are set by the type of work specified in the contract. This subordination is referred to as organizational subordination. The essence of the employer's management is the right to issue instructions to the employee. It is assumed that the employer's management is expressed in three basic spheres: the employer may specify the type of work and, within its framework, make decisions concerning the employee regarding the place, time, and manner of work performance (Judgment of the Supreme Court, 2014). The criterion of employee subordination distinguishes an employment relationship from other forms of employment, especially civil law forms (Duraj, 2011, pp. 35–61).

In addition to having the right to issue instructions, the employer also has the power to control the performance of the tasks assigned to employees. The purpose of such control should be related to the performance of the employment relationship and may involve the verification of the diligence and care of the employee in the

performance of the work and the verification of the course of the work process, including compliance with occupational health and safety regulations, the protection of property, the protection of information constituting the employer's secrets, and the protection of the personal data processed by the employer.

Digital labour platforms can exercise control over the tasks performed and the time and manner of work performance in a similar way to customers (Sundararajan, 2016); customer evaluations are the primary form of control. This is a characteristic feature of work performed through online platforms. The platform, on the other hand, exercises the same elements of control as any employer, such as dictating the time, place, and manner of work. Regardless of the employment status, in the case of platforms for deliveries, for example, the platform tracks the progress of the deliveries and the location of suppliers via their smartphones and, based on this, generates data on employee performance in an automated manner, such as the average speed and number of deliveries per hour. The digitized organization of the work is data-driven. In turn, the data underpinning the digitization technologies and created by them can be used to optimize the organization of the work. At the same time, it can also be used to monitor and control the workers.

Under Polish labour law, there may be difficulties with the legal interpretation of the control that could establish the existence of an employment relationship for a person performing platform work. It is generally accepted that mere control (general supervision) of the work performance process, if it contains no elements of authority, is not sufficient to establish the existence of an employment relationship, since it is also a typical immanent feature of civil law forms of employment, including self-employment (Duraj, 2024, pp. 253–273).

3.2. Classification of an employment relationship in the case law of the Court of Justice: The concepts of management and control

In its rulings, the Court of Justice of the EU points to such characteristics of an employment relationship as the performance of work of economic value for and under the management of another person, for remuneration and for a specified period of time, as in Case 75/63, *Mrs. M. K. H. Hoekstra* (Judgment of the Court of Justice, 1964). This ruling drew particular attention to the term 'wage-earner or assimilated worker', as used in EEC Council Regulation no. 3 on social security for migrant workers, which, like the term 'employees' in Articles 48 to 51 of the EEC Treaty, has a Community meaning referring to all persons who, as such and under whatever title, are covered by the various national social security systems. In contrast, in Case 66/85, *Deborah Lawrie-Blum v. Land Baden-Württemberg* (Judgment of the Court of Justice, 1986), the Court of Justice stated that it follows from the autonomous definition of a worker in EU law that an employee is a person who provides work of economic value under the direction of an employer. The basic characteristic of an employment rela-

tionship is that for a certain period of time, a person provides services for and under the management of another person, in exchange for the remuneration received.

It is worth noting a landmark judgment by the UK Supreme Court, which settled a case to determine the existence of an employment relationship between a digital labour platform and a person performing platform work (a service). In its judgment of 19 February 2021, in the case *Uber BV and Others (Appellants) v. Aslam and Others (Respondents)* brought by former Uber BV drivers, the UK Supreme Court ruled that Uber drivers provided their services under the terms of their employment as employees and were entitled to rights related to the minimum wage, working hours, and the right to paid annual leave as defined by regulations. The Court emphasized that the conditions regarding the organization of the provision of the service to passengers are unilaterally imposed by Uber (Uber imposes standards for the provision of a service that is allegedly not an Uber service). Another premise that the UK Supreme Court analysed was control. The level of Uber's control over the service consisted, on the one hand, in the fact that although it was the driver who provided the transportation service, it was on the basis of Uber's information advantage (e.g. the driver was not informed of the passenger's destination), and on the other hand, the fact that Uber monitored the driver's rate of acceptance (and cancellation) of ride orders. It was also pointed out that at the time of logging into the app, a driver's decision-making power on whether to accept ride orders was limited by Uber, which sets the thresholds for fulfilling orders. Uber retains complete freedom to accept or reject any request for a ride from a passenger (that is, it influences the number of customers). An example of this control is reliance on ratings, that is, making decisions about drivers based on feedback (ratings) from passengers. According to the UK Supreme Court, this is the classic form of subordination that is characteristic of an employment relationship.

The use of technological tools (the application) in the process of work performance does not invalidate the achievements of labour law in identifying the characteristics of an employment relationship. However, these characteristics should be updated, taking into account new technological solutions, such as the use of algorithms (Gospodarek, 2021, p. 17).

4. The impact of the legal presumption of an employment relationship on worker protection

Non-standard forms of work involve instability and uncertainty about future employment, as well as a remuneration system set most often on a commission basis, with the resulting lack of constancy in the payment of wages. A platform work system may limit the application of the basic guarantees provided for in labour law, which in Polish law are formulated, among other pieces of legislation, in the Constitution, such as the requirement to set a minimum wage (Article 65(4)), the provision of safe

and healthy working conditions (Article 66(1)), and the right to rest (Article 66(2)) (Nerka, 2025, pp. 131–146; Todolí-Signes, 2021, pp. 65–83).

According to Article 24 of the Polish Constitution, any work is subject to protection, in terms of both the form in which it is performed (employment contract, civil law contract, running a business, volunteering) and the type of work (including work on a farm or mobile work), as well as the entities performing it, which are primarily employees performing home-based work but also self-employed persons and even employers (Tuleja, 2023, pp. 101–102). This principle allows the possibility of differentiating the level of protection according to the basis of employment, which is especially true for work provided on the basis of an employment relationship and work performed under civil law contracts (Ludera-Ruszel, 2017, p. 50). As a result, a person providing services through a digital labour platform may also be protected under Article 24 of the Constitution. A consequence of the principle of labour protection is the state's obligation to supervise the conditions of work, as set forth in Article 24, sentence 2, of the Polish Constitution, as well as further obligations of the state set forth in Chapter II, Articles 65–67, which focus on economic and social freedoms and rights (Ludera-Ruszel, 2017, p. 49). Platform workers should be entitled to basic workers' rights, with dignity as a starting point for the adoption of relevant legislation (Mitrus, 2014, pp. 133–147).

5. Classifying platform work as an employment relationship and the implications for businesses

The main consequence for businesses in relation to platform work is the risk of establishing an employment relationship. This may result in an obligation to pay social and health insurance contributions and wages, and provide employee benefits (e.g. social benefits, paid leave). Businesses would also have an information obligation as to the terms and conditions of employment, and digital labour platforms would also be required to make available to the competent authorities and representatives of persons performing platform work information regarding the operation of the platforms, the scale and nature of the employment, and the working conditions (Unterschuetz, 2025, p. 248; see more de Groen, W. P., & Kilhoffer, Z. (2019).

Attention should be paid to the aspect of the competitive advantage for businesses hiring for platform work. Platform companies can compete to an unlimited extent with employers offering better working conditions. They are not required to comply with basic workers' rights and they offer more flexibility in the performance of services; particularly notable in this regard are services provided in the food industry, for example by the Pyszne.pl and Glovo digital labour platforms. An extraordinary (aggressive) pressure is created in the market for food delivery or passenger transportation. It can be claimed that businesses compete with each other using hu-

man resources. Such a situation leads to the lowering of labour standards by better employers and sets a precedent for the deterioration of conditions in other industries. Business organizations view labour platforms as unfair competition only in the industries in which they operate or could operate. Such platforms are growing rapidly, enabling businesses to significantly reduce the cost of doing business. Allegations of unfair competition are raised against digital labour platforms not only because of, for example, the drastic reduction in the wages of private drivers providing transportation services on behalf of platforms such as Uber, but also because of the lack of taxation of the activities of private drivers who are employed part-time and who also are increasingly treating Uber work as a major source of income (Świątkowski, 2019, p. 18–24). Businesses are concerned about the loss of the balance favourable to their own economic interests caused by the public interest in being able to benefit from employment in non-standard forms. Work provided through platforms is incomparably cheaper than the same work performed by employees hired under an employment contract (Skład, 2015, pp. 17–21; Świątkowski, 2022, p. 33–41).

6. The employment status of persons performing platform work: The example of Italy

In Italy, the topic of platform work became the subject of legislation as early as 2019 with the entry into force of the Decree with the Power of a Statute no. 101 – art. 2, decreto legislativo n. 81/2015 (transformed into Act no. 128 of 2 November 2019), which introduced a new type of ‘work organized through a digital platform’ and provided workers with certain rights such as a written contract and an obligation to provide information about working conditions; it also set out the platform’s responsibility for health and safety protection, criteria for setting wages according to an hourly rate (and the prohibition of piecework systems), the obligation to have insurance against accidents at work and occupational diseases, the prohibition of discrimination, and the right of passengers to refuse platform delivery offers (Carinci, 2021). Such rights would be questionable under the general provisions of Italy’s self-employment law (Act no. 81/2017; see Gramano & Del Conte, 2018).

Another decree, no. 104/2022 (implementing EU Directive no. 2019/1152), contains a separate chapter on information obligations when an employer uses automated decision-making or monitoring systems to provide relevant information for recruitment, management, and termination of an employment relationship. On the other hand, a digital labour platform is considered to be an employer if at least two of the following criteria are met: setting the level of remuneration, supervising the performance of work electronically, imposing restrictions on the freedom to set working hours or accept or reject orders, setting binding rules on how to deal with customers and perform work, and restricting the ability to build a customer base or perform

work for third parties. As a result, when at least two of these criteria are met, work provided through digital platforms and with the use of algorithms is considered an employment relationship.

Initially, Italian courts were hesitant to classify couriers performing platform work as employees, given their likely freedom to decide about their working hours (e.g. by not logging into the app), which traditionally has indicated self-employment (Gangemi & Turco, 2020). In the case involving the Foodora food delivery platform, the court of first instance in Turin (case no. 778 of 7 May 2018) ruled that couriers were self-employed. In making this classification, the Court took into account that food couriers are free to accept an 'invitation' to deliver food, which is incompatible with the status of an employee since the employing party cannot demand performance or exercise its managerial and control powers. Another argument to rule out employee status was ownership of the means of production (a bicycle and a telephone) by the courier, which is one of the traditional indicators used by judges to determine subordination. In contrast, in 2019, the Court of Appeal in Turin (case no. 26 of 4 February 2019) adopted a different interpretation, citing Article 2 of the Italian Employment Law (Decree no. 81/2015). According to that, workers whose work is continuously and systematically organized by the customer in terms of time and place enjoy the same protection as full-time employees. Such persons are an intermediate category between employees and self-employed persons. In its Judgment no. 1163/2020 of 24 January 2020, the Italian Supreme Court confirmed this interpretation, according to which Foodora's couriers, although formally employed as collaborators (self-employed), were entitled to the full range of workers' rights due to the 'hetero-organization' of their platform work. The court found that the platform imposed the time and place of work through task assignment procedures and availability requirements during certain time slots, thus creating a legal 'grey area' between self-employment and traditional employment (Piera, 2023, p. 134). This court ruling established an intermediate category in employment in Italy, providing the minimum wage, insurance, and protection from discrimination comparable to that of regular employees (Aloisi, 2022; for more information, see Degoli, 2021). Subsequently, the aforementioned guarantees for platform workers were reflected in Decree no. 101/2019, transformed into Act no. 128/2019 (known as the Amending Decree), which introduced Italy's first statutory protections for platform workers. It also establishes three main guarantees to protect platform workers 'outside employment': 1) assimilation, which occurs when self-employed persons are treated as employees or presumed to be employees; 2) the granting of rights to persons who are not employees, either by separating subcategories in the area of self-employment or by introducing an intermediate category between employment and self-employment; and 3) the creation and/or promotion of collective bargaining mechanisms for persons who are not employees (Piera, 2023, p. 134).

The issue of riders' legal and employment classification has been addressed in subsequent rulings by Italian labour courts. The Milan Labour Court (2023) confirmed that the activity of a digital platform can indeed meet the characteristics of subordinate work and cannot be considered autonomous work. Platforms operate by organizing riders' work through an app and by ranking and assigning tasks, while working hours are determined from the moment riders log in to the app to the moment they log out. Therefore the regulations on dependent work and the related contributions and insurance obligations for the periods during which the rider performs work should be applied.

On 31 October 2025 the Italian Supreme Court (*Corte di cassazione*) upheld a 2022 ruling by the Turin Court of Appeal with a new ruling, no. 28772/2025, establishing that food delivery riders must be classified as *collaboratori etero-organizzati* (externally organized collaborators). This classification subjects them to the protections and rules of subordinate employment, despite their formal contractual autonomy. The dispute centred on whether platforms' organizational control over tasks and performance justified reclassifying riders as employees. The court rejected the companies' argument that owning personal tools (e.g. bikes) alone justified independent contractor status.

Conclusions

The provisions of Directive (EU) 2024/2831 on the presumption of an employment relationship, the transparency of algorithmic management, and protection of personal data are aimed at ensuring better working conditions for persons performing work through digital platforms, including the elimination of the incorrect classification of employment. This will contribute to providing greater guarantees of workers' rights, particularly as a result of the legal presumption of an employment relationship and the requirement to identify the entity responsible for fulfilling the employer's obligations. On the other hand, the employing entity, which may be the digital platform, has the right to challenge this legal presumption, and therefore the burden is on the platform to prove that the contractual relationship in question is not an employment relationship as defined by law, collective agreements, or practice in the Member States, and taking into account the case law of the Court of Justice (on the classification of platform workers, see Mendez & Kurzynoga, 2023, p. 210).

The implementation of these provisions at the national level remains one of the greatest challenges. The different legal systems in Member States, the differences in social protection, and the lack of uniform standards for monitoring the operations of digital labour platforms may hinder the full implementation of the Directive. Under the Directive, it is up to Member States to define the conditions for such a presumption in national law. Consequently, the Polish legislature may introduce various

scenarios for implementing the institution of the legal presumption of an employment relationship; therefore the question is whether it will choose to include this institution in the Labour Code or in a separate statute on platform work, which seems more reasonable. Due to its specific characteristics, platform work requires redefining the characteristics of the employment relationship. In particular, national legislatures will have to clarify the EU concepts of 'management' and 'control', which are the criteria for establishing an employment relationship and are a manifestation of subordination.

The identification of subordination to a digital platform that operates using algorithms must be based on those mechanisms of operation that cause the actual limitation of the worker's independence. The use of monitoring or decision-making systems in the organization of platform work should also be evaluated. As for *de lege ferenda* recommendations, the platform-work relationship in the European Union may be based on the concept of algorithmic subordination.

The implementation of Directive (EU) no. 2024/2831 into Polish law is expected to improve the working conditions of those performing work via digital platforms. Currently, most platform workers in the EU are formally self-employed, but at the same time, many must abide by the same rules and restrictions as full-time employees. The Directive is thus intended to guarantee easier access to their workers' and social rights (Bujalski, 2024). One can venture to say that platform work is not a separate category of employment; it is only a tool with which the performance of certain activities is assigned, and the nature of the legal relationship between the parties should be defined by the factual features that are present (or not), such as organizational subordination, economic dependence, performance of duties at a designated place and/or time, and the manner of their performance (Zakrzewska, 2022). In the event of a legal presumption of an employment relationship for a person performing platform work, a legal protection identical to that enjoyed by employees must apply. However, the characteristics of an employment relationship will not be present in every case, so only an individual analysis of the circumstances of platform work will make it possible to determine whether this is subordinate work within the meaning of the provisions of labour law. Therefore the factual circumstances will determine whether an employment relationship can be established.

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