

BIG PROTECTION



MARCIN SANETRA , PARTNER IN PCS LITTLER, EXPLAINS HOW THE EU DIRECTIVE ON PLATFORM WORK WILL IMPACT EMPLOYERS AND EMPLOYEES.

The EU Directive on Platform Work aims to improve the working conditions and rights of platform workers in the European Union. It sets out rules to ensure fair treatment, transparency, and protection for workers who are digitally connected to customers through online platforms. This directive also establishes rights for workers, such as access to training, information about their working conditions, and the ability to collectively negotiate with platform operators. The directive seeks to address the challenges and opportunities that platform work presents in the modern economy.

IMPACT ON THE MARKET

Discussions on the EU level regarding the regulation of platform work pre-date the COVID-19 pandemic. The first mention of a directive comprehensively addressing this issue dates back to 2021. Formally, however, EU institutions began to discuss it in the summer of 2023. In March 2024, the European Parliament and the EU Council confirmed a long-awaited agreement on the Platform Directive. With formal approval of its content by the Parliament and Council still pending, member states are expected to then be allowed two years to implement its provisions in national law. There are nearly 30 million platform workers currently identified across the EU. Their

number is expected to grow to nearly 45 million by the end of 2025. A new law offering protection to them under employment rules is certainly going to change the market. Employers have to prepare for it.

PRESUMPTION OF EMPLOYMENT

The platform directive revolves around three core ideas. It identifies platform workers and defines their legal status; identifies platforms and ensures transparency in their operation; and sets regulations on the use of artificial intelligence at work. Importantly, the draft directive introduces the so-called presumption of employment for platform workers. For this to happen, an individual must meet at least two of the five statutory criteria determining this presumption:

- salary limits imposed by the platform;
- supervision (including electronic) of performance of duties;
- assignment of or control of tasks by the platform;
- control of work conditions, or restricting the freedom to freely determine work hours;
- restricting freedom to organize one's work, or imposing rules on the appearance or activities of workers.

DEFINING PLATFORMS

The definition of a platform is broad and open to interpretations. The draft directive dis-

cusses (i) a service provided, at least in part, at a distance by electronic means, such as a website or mobile application, (ii) at the request of the recipient of the service, (iii) which includes, as an essential element, the organization of work performed by individuals in exchange for remuneration (whether the work is performed online or at a specific location), (iv) and which includes the use of automated monitoring or decision-making systems. Central to the platform's definition is the element of control over the person performing the service, such as a cab driver or delivery worker. At its core, the regulation and the definition it uses target popular apps used to deliver food and groceries, and for transporting people. EU lawmakers decided to take on a form of self-employment that is questionable from the perspective of the letter of the law. It is estimated that currently at least 5.5 million people across the EU performing work through online platforms can be misclassified as self-employed persons, and wrongfully deprived of labor rights and social protection. Such individuals, engaged as service providers, are officially independent, free to engage or disengage from their tasks and enjoy limited or no supervision over them.

In practice, however, the relationships between those individuals and the platform often have distinct features of an employment relationship. As a result, many platform workers are not guaranteed basic labor rights, such as the right to paid vacation, limits on working hours, the right to rest, insurance, and others. The draft regulations look very favorable to them. Importantly, a large number of employers that currently do not identify themselves with platform work do not realize that they could be covered by the new regulation too.

EXECUTING CONTROL

The changes in the law are also expected to include provisions on the use of algorithmic systems in managing and supervising platform work. According to the wording of the new regulations, workers will have to be informed about the use of automated monitoring and decision-making systems. This is intended to bring greater transparency and accountability to algorithmic management—which, in turn, is expected to increase awareness and allow the workers to more easily challenge decisions that affect their working conditions. What is more, new regulations will also require human oversight of automated deci-

sion-making systems, and digital platforms' ability to process certain categories of personal data will be restricted.

DIVERSE IMPLEMENTATIONS

The practical impact of the directive, pronounced in particular for multinational companies, is the potential diversity in the scope and depth of national regulations created by EU member states in the directive's implementation process. The rules currently in

tion and rulemaking. For example, in Poland, where similar, criterion-based regulations are not yet in force, further deepening the presumption of an employment relationship may, on the one hand, be risky from the perspective of the principle of freedom of contract or freedom of economic activity, or, on the other hand, continue to fail to offer viable, practical solutions for the market. Regardless of the manner of implementation, however, it can be expected that basing the presumption

on the directive progresses, the onus is now on them to determine the status of their workers and re-evaluate their business models accordingly. An employee hired by a company comes at a much higher—financial and organizational—cost than an independent contractor. Any changes in the law are expected to have a huge impact on the price of platform services, and consumers will feel it as well. Many companies may fail, or withdraw from a particular area of business. Em-

in the future. The current draft of the directive is viewed as a big win for platform workers across the EU. For some companies that may be affected by it, it is a rather challenging news, and may mark a possible end to an era of prosperity for the industry. It is estimated that in the last five years, incomes from platform services have increased by about 500 percent.

The current draft of the directive is viewed as a big win for platform workers across the EU but for some companies that may be affected by it the proposed directive is rather a challenging news, and may mark a possible end to an era of prosperity for the industry.

place in each EU country as to the definition of work differ, differ quite significantly, and they will likely remain so despite the adoption of the 'presumed employment' criteria proposed by the directive. In this regard, however, local legislators will have to be very careful in their implementa-

of employment on a specific statutory list of criteria will affect the market more strongly and broadly than it might seem to an untrained eye.

IMPLIED THREATS

The effects for large, international corporations are quite clear. As the legislative work

players should prepare for the implementation of this directive by analyzing the status of their business, assessing whether they're covered by its scope, and honestly reviewing the model under which their workers and employees are engaged—so as not to encounter unpleasant surprises

