CROSS-BORDER PLATFORM WORK: RIDDLES FOR FREE MOVEMENT OF WORKERS AND SOCIAL SECURITY COORDINATION

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Platform work is atypical new form of work enabled by digital technology. It is characterized by a triangular relationship between digital platform, platform worker, and client. Since it takes diverse employment forms, it poses labour law, social security law and taxation concerns in the national context. Platform work with cross-border elements is even more complex and under-researched. Hence, the purpose of this paper is to provide legal analysis on the relevance, riddles and challenges in the application of EU acquis on free movement of workers and social security coordination to various scenarios of cross-border platform work. It tries to identify potentially problematic EU rules and provides some reflections on their possible improvements.

Key words: platform work; cross-border platform work; free movement of workers; social security coordination; supplementary (occupational) pensions

1. INTRODUCTION

Platform work is specific new atypical form of work laying at the heart of digital (collaborative, gig, on-demand) economy, as opposed to "typical" full-time employment of unlimited duration. Since 2015, atypical forms of work, and more specifically platform work, gained prominence among wide range of

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scholars[1] and collective actors (e.g. Eurofound[2], ILO[3], World Economic forum[4]). As many other non-standard forms of work[5], it can be argued that platform work has been, on the one hand, urged by the market pressure (e.g. global competition, financial and economic crisis started in 2008 and consequential uncertainty in demand resulting in the need to reduce production costs and increase efficiency and profits), and, on the other hand, was enabled by digital innovations of the 4th industrial revolution.[6] The impact of digitalisation on the world of work is tremendous and has been reflected on three levels:[7] 1) changes in the labour

1 E.g. see: Katz, F. L.; Krueger, A. B., *The Rise and Nature of Alternative Work Arrangements in the United States, 1995-2015*, 2016, available at: http://scholar.harvard.edu/files/lkatz/files/katz_krueger_cws_v3.pdf (accessed 28 July 2016); De Stefano, V., *The Rise of the "Just-in-Time Workforce": On-Demand Work, Crowdwork, and Labor Protection in the "Gig Economy"*, Comparative Labor Law & Policy Journal, *vol.* 37, no. 3, 2016, pp. 471 – 503, available at: https://ssrn.com/abstract=2682602; Schoukens, P.; Barrio, A., *The changing concept of work: when does typical work become atypical*, European Labour Law Journal, *vol.* 8, no. 4, 2017, pp. 306 – 332, available at: http://journals.sagepub.com/doi/pdf/10.1177/2031952517743871.

2 Eurofound, *New Forms of Employment*, Publishing Office of the European Union, Luxembourg, 2015, available at: http://www.eurofound.europa.eu/publications/report/2015/working-conditions-labour-market/new-forms-of-employment; Eurofound, *Overview of new forms of employment – 2018 update*, Publications Office of the European Union, Luxembourg, 2018, available at: https://www.eurofound.europa.eu/publications/customised-report/2018/overview-of-new-forms-of-employment-2018-update.

3 ILO, *Non-standard employment around the world: Understanding challenges, shaping prospects*, International Labour Office, Geneva, 2016, available at: http://www.ilo.org/global/publications/books/WCMS_534326/lang--en/index.htm.

4 World Economic Forum, *Eight Futures of Work: Scenarios and their Implications (White Paper)*, 2018, available at: http://www3.weforum.org/docs/WEF_FOW_Eight_Futures.pdf.

5 There are several non-standard forms of working arrangements. In addition to already known and regulated non-standard forms of work (e.g. fixed-term work, part-time work, temporary agency work, tele-work, traineeships and student work) there is a rising number of atypical forms of work urged by economic crisis and digitalisation (e.g. on-demand work, voucher work and platform work).

6 Vukorepa, I., *Rethinking Labour Law in the Context of 4th Industrial Revolution*, International conference "Novelties in Labour Law", Zagreb (Croatia), 23rd March 2018.

7 According to: Bjelinski Radić, I., *Izazovi radnog i socijalnog prava u svjetlu digitalizacije rada (Challenges to Labour and Social Security Law in the light of Digitalisation of Labour*), Zagrebačka pravna revija, *vol.* 7, no. 3, 2018, pp. 309 – 331. See also: EESC – European Economic and Social Committee, *Impact of digitalisation and the on-demand economy on labour markets and the consequences for employment and industrial relations,*

markets[8], 2) changes in employment relationships[9], and 3) challenges regarding financing and adequate levels of social security protection for those working in atypical forms of work.[10] This reality of change resulted in several EU initiatives towards fair and equal treatment regarding working conditions, access to social protection and training.[11]

Platform work has been addressed in some studies under the terms of "crowd employment", "crowdsourcing", or crowdworking[12], but recently more often is

Publications Office of the European Union, Luxembourg; European Economic and Social Committee, Brussels, 2017, available at: https://www.eesc.europa.eu/sites/default/files/resources/docs/qe-02-17-763-en-n.pdf.

8 E.g. in the form of loss of certain jobs and creation of new jobs with specific worker's skills, labour market polarisation, and creation of new on-demand related forms of work.

9 E.g. regarding new on-demand forms of employment often connected with precariousness, bogus self-employment and flexibilization of working time.

10 E.g. due to fully or partially undeclared work or personal coverage problems related to working time or income related thresholds which can all effect future social benefit levels. For more on that see e.g. Spasova, S. *et al.*, *Access to social protection for people working on non-standard contracts and as self-employed in Europe – A study of national policies*, EU Commission, Brussels, 2017, available at: https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=7993&furtherPubs=yes; Grgurev, I.; Vukorepa, I., *Flexible and New Forms of Employment in Croatia and their Pension Entitlement Aspects*, in: Sander, G.; Tomljenovic, V.; Bodiroga-Vukobrat, N. (eds.), *Transnational, European, and National Labour Relations*, Springer Verlag, 2018, pp. 241 – 262; Vukorepa, I.; Tomić, I.; Stubbs, P., *ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts (Croatia)*, European Union, 2017, available at: http://ec.europa.eu/social/BlobServlet?docId=17687&langId=en; Schoukens, P.; Barrio, A.; Montebovi, S., *The EU social pillar: An answer to the challenge of the social protection of platform workers?*, European Journal of Social Security, *vol*. 20, no. 3, 2018, pp. 219 – 241.

11 See: Principles 5 and 12 of the European Pillar of Social Rights, OJ C 428, 13.12.2017, pp. 10 – 15; Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, OJ L 186, 11.7.2019, pp. 105 – 121; Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed, 2019/C 387/0, OJ C 387, 15.11.2019, pp. 1 – 8.

12 For example see: Eurofound (2015), *op. cit.* (fn. 2), pp. 2, 7.; De Stefano, V., *op. cit.* (fn. 1); De Stefano, V., *Introduction: Crowdsourcing, the Gig-Economy and the Law*, Comparative Labor Law & Policy Journal, *vol.* 37, no. 3, 2016, pp. 1 – 10 (Bocconi Legal Studies Research Paper No. 2767383), available at: https://ssrn.com/abstract=2767383; Risak, M., *Crowdworking: Towards a New Form of Employment,* in: Blanpain, R.; Hendrickx, F. (eds.), *New Forms of Employment*, Kluwer, 2019, pp. 93 – 102.

used broader term of "platform work". It is characteristic type of flexible contractual relationship in usually highly competitive markets (e.g. transportation, delivery, accommodation, household services, specialised professional tasks etc.) involving three parties: online digital platform, client (service/work user) and worker (provider of a service/work). Service/work is usually broken into tasks and provided on an on-demand basis, thus usually associated with unstable (precarious) income. Platform work can take diverse employment forms (employment, self-employment or freelancers), hence posing various labour law, social security law and taxation concerns in the national context.[13] When coupled with cross-border elements, platform work becomes even more complex and, to our knowledge, has not been researched so far.

Therefore, the purpose of this paper is to provide legal analysis on the relevance, riddles and challenges in the application of EU *acquis* on free movement of workers (FMW) and coordination of social security systems (CSSS) to various scenarios of cross-border platform work. The scope of this analysis covers 8 relevant sources of EU *acquis* in the field of free movement and social security coordination, which are grouped into three chapters:

- EU *acquis* on free movement of workers and persons *stricto sensu* (covering Article 45 TFEU[14], and its correlated secondary legislation, i.e. Regulation (EU) 492/2011 on freedom of movement for workers[15], Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers[16], as well as the so-called Citizens Directive 2004/38/EC[17]);

[13] Eurofound (2018), *op. cit.* (fn. 2), pp. 15 – 16.

[14] Treaty on the Functioning of the European Union (Consolidated version 2016), OJ C 202, 7.6.2016, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2016:202:TOC. For the direct content of the provision of Art. 45 TFEU see: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12008E045.

[15] Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, OJ L 141, 27.5.2011, pp. 1 – 12, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011R0492.

[16] Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers, OJ L 128, 30.4.2014, pp. 8 – 14, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32014L0054&qid=1549119638632.

[17] Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC,

- EU *acquis* on free movement of workers related to supplementary pension rights (covering Directive 98/49/EC on safeguarding the supplementary pension rights[18] and its complementary Directive2014/50/EU on the acquisition and preservation of supplementary pension rights[19]);
- EU *acquis* on coordination of social security systems (covering Regulation (EC) No 883/2004 on the coordination of social security systems[20], its Implementing Regulation (EC) No 987/2009[21], as well as proposed amendments to these regulations[22]).

Regarding the applied methodology, each of the chapters is providing an overview and is scanning several elements of the above-mentioned *acquis*, i.e. their personal and material scope, in an attempt to highlight specific problems that may arise in the application of these rules in cross-border situations of platform work. Hence, legislation analysis of the mentioned EU *acquis* constitutes the basis of this reflection paper, which is complemented, where relevant, with

90/365/EEC and 93/96/EEC (shortly known as: Citizens Directive), OJ L 158, 30.4.2004, pp. 77 – 123, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32004L0038&qid=1549120069981.

18 Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community, OJ L 209, 25.7.1998, pp. 46 – 49, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31998L0049&qid=1549119019447.

19 Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights, OJ L 128, 30.4.2014, pp. 1 – 7, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32014L0050&qid=1549119081561.

20 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, 30.4.2004, pp. 1 – 123 (as last amended in 2019), https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32004R0883.

21 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, OJ L 284, 30.10.2009, pp. 1 – 42 (last consolidated version available from 1/1/2018), https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009R0987.

22 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004, 2016/0397(COD) from 25 March 2019, https://data.consilium.europa.eu/doc/document/ST-7698-2019-ADD-1-REV-1/en/pdf.

the findings from previous research studies and case-law of the Court of Justice of the European Union (CJEU).

The paper is structured in the following way. After this introductory part, second and third chapter provide definitions, main features, and differentiation of several types of platform work and cross-border platform work, which is the basis for further reflections and legal analyses in this paper. Fourth chapter, divided in several subchapters, examines applicability and potential challenges in the application of EU *acquis* on free movement of workers (persons), supplementary pension schemes and social security coordination rule to cross-border platform work. Finally, overall evaluation with remarks and suggestions for possible improvements has been summed up in the concluding chapter.

2. PLATFORM WORK (FEATURES, TYPOLOGY AND EMPLOYMENT MODALITIES)

Based on numerous studies of scholars and collective actors mentioned above, platform work in its broadest meaning can be defined as work (labour or service) provided on-demand in exchange of a payment through, on or intermediated by digital platforms. Platform work (service or labour) can take very varied forms (e.g. manual/digital, on-site/off-site, on-line/on-local service, large/small scale). It is characterized by a triangular flexible contractual relationship between digital platform, platform worker (person providing service /work) and the client (service/work user).[23] Essential part of platform work is not just online intermediation of digital technology and algorithms in organizing platform work, but also in surveillance and evaluation of platform workers.[24] Hence, platform worker can be defined as the person providing "platform work" according to the above definition.

Furthermore, based on desk research and for the purpose of this paper four most common types of platform work have been identified, which will be referred to in the further legal analysis of EU *acquis* where such differentiation is needed:

[23] See also: Eurofound, *Employment and working conditions of selected types of platform work*, Publications Office of the European Union, Luxembourg, 2018, available at: https://www.eurofound.europa.eu/publications/report/2018/employment-and-working-conditions-of-selected-types-of-platform-work; Florisson R.; Mandl, I., *Platform work: Types and implications for work and employment*, *Literature review*, Eurofound, 2018, https://www.eurofound.europa.eu/sites/default/files/wpef18004.pdf, pp. 48 – 67.

[24] *Ibid*. See also Spitko, E. G., *Reputation Systems Bias in the Platform Workplace*, BYU Law Review (Forthcoming 2019), available at: https://ssrn.com/abstract=3360633 (accessed 5 July 2019).

1) *Platform work offering local service in transportation and delivery* performed by a (taxi) driver carrying passengers[25] or couriers delivering goods[26], where the platform initiates the distribution of work to the platform workers, independent of whether the effective payment by the end user or customer is channelled directly to the platform worker or via the platform business; it is usually performed by low to medium skilled workers (hereinafter referred to as "Taxi Driver/Delivery Rider platform worker");
2) *Platform work performed on-location of the end user or customer* to perform services requiring low skills, e.g. domestic cleaning[27], babysitting, or dog walking, as well as work requiring more specialised training such as roofing, plumbing, electrical work, etc. (hereinafter referred to as "Household services platform worker");
3) *Platform work divided into very small units of work, performed remotely and delivered online,* consisting of low- or medium-skilled work such as data entry, clerical work, filling out surveys, tagging photographs, and other services, usually referred to as click-work, or crowd-work (hereinafter referred to as "Click-worker");
4) *Platform work consisting of high-skilled work performed remotely and delivered online,* such as graphic design, IT (software) development, or architecture, as well as counselling or advisory services (e.g. legal or medical), where the supply and demand of these services is facilitated or managed entirely by a platform business (hereinafter referred to as "IT specialist/graphic designer/counsellor platform worker").

In addition to these four most common types of platform work, it is essential to differentiate among several possible and different employment modalities of platform workers. Namely, depending on the sectors, platform's practices, as well as national labour law and taxation rules, platform workers could be employed in two different ways: (1) platform worker as an employee of the platform (which is very rare), or more often as an employee of a platform partner business which is not the platform itself (e.g. employment relationship with the platform partner), or (2) platform worker as a registered self-employed person or a freelancer.[28] Hence, enforcement of rights and entitlements will in practice depend on the classification of a platform worker as worker or self-employed

[25] E.g. Uber, Bolt platforms.

[26] E.g. Wolt and Glovo platforms.

[27] E.g. Beeping platform.

[28] For employment modalities and working conditions of platform workers see also e.g. Eurofound (2018), *op. cit.* (fn. 23), p. 19; Florisson, R.; Mandl, I., *op. cit.* (fn. 23), p. 94.

person in the Member State where the work is actually done. This is only under the condition that the platform work has been declared.

However, big problem in practice represents undeclared platform work. Income is often not declared and tax authorities find it hard to retrieve it because platform workers have limited incentive to declare income, large percentage of platform workers is not even aware that the income needs to be declared, and platforms are often not required to report the earnings of the workers. Platforms might even be inclined not to report their workers' earnings to avoid being considered employers or to discourage workers from being active on the platform.[29]

Furthermore, platform work offers possibility of aggregation of employments and income. Namely, it has been evidenced that persons engaged in platform work are in practice simultaneously employees based on their main activity and self-employed based on their platform work. Platform work in general is considered to be the side-activity, while main activity only for on-location types of platform work (i.e. platform work performed in transportation, delivery or households).[30] Estimations on platform work show that on average as much as 10% of the adult population would have ever used online platforms for the provision of some type of service involving some type of work, less than 6% would spend a significant amount of time on it (at least one fourth of the standard workweek of 40 hours) or earn a significant amount of income (at least 25% of the total) via this kind of work. Hence, as a main form of employment or main source of income, platform work remains low in most countries, affecting around 2% of the adult population on average.[31] Nevertheless, there are significant differences across countries: the UK has the highest incidence of platform work, while other countries with high relative values are DE, NL, ES, PT and IT. By contrast, FI, SE, FR, HU, SK show very low values compared to the rest.[32]

However, it is reasonable to expect that incidences of platform work will be rising in the future, especially among younger workers. Therefore, situations where a person combines several working arrangements is a likely scenario in practice and can be specifically challenging in the case of cross-border platform work.

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29 EESC – European Economic and Social Committee (2017), *op. cit.* (fn. 7), p. 54.

30 Eurofound (2018), *op. cit.* (fn. 23), pp. 1, 19; Florisson, R.; Mandl, I., *op. cit.* (fn. 23), p. 94.

31 Estimations taken over from: Pesole, A. *et al.*, *Platform Workers in Europe*, Publications Office of the European Union, Luxembourg, 2018, available at: https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157_pubsy_platform_workers_in_europe_science_for_policy.pdf, pp. 3, 19.

32 *Ibid*.

3. CROSS-BORDER PLATFORM WORK (DEFINITION AND TYPOLOGY OF CROSS-BORDER SITUATIONS)

To our knowledge, so far, there is neither research nor definition on cross-border platform work. Nevertheless, in order to identify cross-border challenges for various types of platform work (defined above), it is necessary to identify what "cross-border platform work" means.

In our opinion "cross-border platform work" can be defined broadly as platform work in which at least one of the parties to the triangular relationship of platform work (i.e. digital platform, platform worker, and client) is moving to or is situated in another Member State. Hence, three basic situations can be discerned:

1) *Platform worker performing work in home Member State for platform and/or end user situated in another Member State*: situation where a person performs work in one Member State for the platform or via a platform situated/established in some other Member State, hence without actual physical movement of a platform worker between Member States. This might be a likely scenario for all four types of platform work described above under chapter 2.

   Another possibility is the situation where the person performs work in one Member State for an end user located in the same Member State or an end user located in another Member State, again without any physical movement of the platform worker between Member States. The situation where the end user is located in a different Member State is a possible scenario for the last two types of platform worker (i.e. situations where online service is provided, hence in the case of click-workers and IT specialist/graphic designer/counsellor platform workers).

2) *Platform worker physically moves to another Member State:* situation where the person moves to another Member State to perform work for or through a platform (no matter where the platform is based), in which case we would have a real physical cross-border situation with a subsequent employment in different Member States. This might also be a likely scenario for all four types of platform work, but is especially likely in the case of Taxi Driver/Delivery Rider platform workers, as well as in the case of platform workers providing household services on-demand or on-location. However, theoretically, the end user could be located in a Member State different from the one where the platform worker is performing work. In those cases, the last two types could also apply (e.g. an online graphic designer performing a task for an end user located in another Member State).

3) *Platform worker simultaneously employed in different Member States*: situation where a person combines several working arrangements in different

> Member States simultaneously, one or more of which could be classified as platform work. A large variety of concrete examples could be thought of, including situations where a person performs platform work as a secondary professional activity next to a main employment as a worker or self-employed person, or platform work as small scale ancillary or marginal work activities, or simultaneous 'substantial' platform work activities in combination with different locations of end users and/or of platforms as long as there is a simultaneous employment in at least two different Member States.

Therefore, the analysis below will, where relevant and potentially problematic, point to these possible cross-border situations involving platform work (and platform workers) and their specific employment modalities.

4. OVERVIEW AND ANALYSES OF RELEVANT EU *ACQUIS*

4.1. Free movement rules

Freedom of movement for workers has been enshrined in the directly applicable Article 45 TFEU. It has been further developed by secondary legislation, especially complementary Regulation (EU) 492/2011, which prohibits discrimination in the fields of employment, remuneration and other working conditions and guarantees EU workers equal access to social and tax advantages etc. Directive 2014/54/EU is trying to close the gap between the law and its application in practice. Hence, it does not create any new substantive rights for workers and/or their family members in addition to those provided under Art. 45 TFEU and Regulation 492/2011. It only seeks to achieve more effective and uniform application and enforcement of existing rights.

Regarding the personal scope, all these sources of law refer to "worker", which raises the question whether these rules are including all types of platform workers regardless of their employment status. The answer will depend on the corresponding factual situation of each of the platform worker. Taking into account the very broad concept of "worker" developed by the CJEU for the purpose of FMW *acquis*, especially Art. 45 TFEU[33], it is reasonable to expect that some platform workers would be undoubtedly covered: i.e. workers employed by the

[33] For more see: O'Brien, Ch.; Spaventa, E.; De Coninck, J., *Comparative Report 2015: The concept of worker under Article 45 TFEU and certain non-standard forms of employment*, European Union, 2016, available at: https://ec.europa.eu/social/BlobServlet?docId=15476&langId=en, pp. 14 – 23; Vukorepa, I. *Migracije i pravo na rad u Europskoj*

platform partner as well as employees employed directly by the platform based on the employment contract. In its case law the CJEU however excluded from the EU definition of 'worker' activities that are performed on such a small scale that they are to be considered as purely marginal and ancillary, which might be the case for some types of platform work and platform workers (e.g. click-worker), even if the CJEU interpreted this limitation rather strictly identifying as workers also workers doing a limited number of hours per week[34], working students or au pairs[35] or students working a few days during the holiday period[36]. In countries where platform workers are classified as self-employed, many uncertainties occur. Firstly, reclassification may happen based on the broad EU definition of worker in the field of FMW *acquis*. Secondly, genuine self-employed platform workers are not part of the personal scope of the FMW *acquis*. Hence, various specificities of each platform work type and modalities allowed under national legislation as well as the factual situation of the individual platform worker and work intensity will always need to be considered when considering the employment status of a platform worker and his/her inclusion in the personal scope of the application of the FMW legislative instruments.

The Citizens Directive 2004/38/EC is the only free movement legal instrument which has a much broader personal scope. It covers Union citizens and their family members, and provides a set of rights and conditions regarding their right to exit and entry Member States, as well as to enjoy the right of temporary and permanent residence. From the wording of the provisions of the Citizens Directive, it is obvious that workers and self-employed have been given an additional level of protection compared to other Union citizens, e.g. in the following provisions:

- Art. 7, regulating right of residence for more than three months, equally applicable to workers and self-employed;
- Art. 7(3), regulating retention of the status of worker or self-employed person;
- Art. 14, regulating retention of the right of residence and specifically para. 4 that prevents application of expulsion measures against workers and self-employed;

uniji (Migrations and Right to Work in the European Union), Zbornik Pravnog fakulteta u Zagrebu, *vol.* 68, no. 1, 2018, pp. 97 – 98.

34 Judgment of the CJEU, C-14/09, Genc, ECLI:EU:C:2010:57, 04.02.2010.

35 Judgment of the CJEU, C-294/06, Payir and Others, ECLI:EU:C:2008:36, 24.01.2008.

36 Judgment of the CJEU, C-432/14, O, ECLI:EU:C:2015:643, 01.10.2015.

- Art. 17 (1), regulating right of permanent residence for workers or self-employed before completion of a continuous period of five years of residence.

Taking all these remarks into account, it is possible to preview several challenges in the application of FMW legislation regarding the personal and material scope depending on the type of the cross-border situation of platform work.

4.1.1. Platform worker performing work in home Member State for platform and/or end user situated in another Member State

Regarding free movement rules, currently no major problems can be previewed since platform worker is not performing work in another Member State, hence there is no classical physical cross-border situation that would involve the application of the free movement *acquis* (e.g. residence issues, right to take employment, remuneration rights etc). Therefore, it can be argued that FMW rules are not applicable to this situation.

However, since in this example the "platform" is based in another Member State and if the platform would be classified as the employer, the situation would be more complex since it involves a cross-border element involving considerations of applicable legislation to the employment contract of platform workers. In that case Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I Regulation) would be applicable.[37] According to Art. 8 of Rome I Regulation the governing principle to employment contracts is the freedom of choice, subject to two sets of limitations: 1) non-derogable provisions of law of the Member State that would be applicable in the absence of choice, and 2) overriding mandatory rules of public interest. In the absence of choice, subsidiary criteria are to be applied in the following hierarchical order: 1) habitual place of work, 2) place of hiring, and exceptionally 3) another law with a closer connection (the so called 'escape clause').[38] Hence, the parties' choice of law cannot lead to the platform worker being deprived of the protection that s/he would have had in the event of the absence of choice. Therefore, it is most likely that (relatively) mandatory provisions of the Member State where platform

[37] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, pp. 6 – 16, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex-%3A32008R0593.

[38] For more see: Lhernould, J.-Ph.; Strban, G.; Van der Mei, A. P.; Vukorepa, I., *Analytical Report 2017: The interrelation between social security coordination law and labour law*, European Union, 2017, pp. 35 – 40, available at: http://ec.europa.eu/social/BlobServlet?docId=19404&langId=en.

worker habitually performs work would be applicable at the very least, although law with a "closer connection" could in theory be applied.

Contrary to that, if the platform worker would be classified as self-employed s/he would not enjoy such protection. Hence, various classifications could lead to platform worker's different scope of rights.

Furthermore, as a consequence of the previous, both the platform and the platform worker may have conflicting interests when in such situations the applicable legislation will be determined in agreement between both sides. Platform workers who are performing on-line services (i.e. click-work and high-skilled work performed remotely and delivered on-line), might prefer or consider to move to a Member State where platform workers are classified as employees, or alternatively to a Member State which offers the highest protection to self-employed persons if platform worker is treated accordingly. Another possibility is that platform worker stays or moves to Member State that offers better social security conditions and tax treatment. Whereas these instances are purely hypothetical and unlikely to be contemplated by platform workers in practice, platforms may be inclined to choose the most favourable labour legislation (i.e. the one with the least protection for the worker or the one where a platform worker is classified as a self-employed) in line with the freedom-of-choice principle from the Regulation (EC) 593/2008 (Rome I Regulation).

4.1.2. Platform worker physically moving to another Member State or platform worker simultaneously employed in different Member States

The enforcement of rights and entitlements might depend on the classification of the platform worker in a Member State where the work is performed, as employee or self-employed, hence leading to potentially different scope of rights, especially regarding labour law related rights prescribed by Regulation 492/2011.

As already indicated above, it can be pointed out that taking into account the very broad concept of "worker" developed by the CJEU for the purpose of FMW *acquis*, it is expected that platform workers would be encompassed by the personal scope of the Art. 45 TFEU, and hence also by the application of the secondary *acquis* in the field of FMW and enjoy all those rights. This is especially the case for platform workers employed by the platform partner, as well as for platform workers employed as employees directly by the platform based on the employment contract.

Hence, the greatest uncertainty exists for platform workers registered as self-employed (micro-entrepreneurs), since in that case they would most probably be treated as persons outside the personal scope of FMW *acquis*, and thus

potentially deprived of the full range of FM rights (e.g. regarding the right to equal treatment in employment, remuneration and other working conditions established by Regulation 492/2011). However, when it comes to housing rights and social and tax advantages the legal situation is a bit different since based on some earlier case law it can be argued that also self-employed platform workers would have to enjoy same rights, because otherwise their right to establishment might be impaired.[39]

Nevertheless, it is at least certain that self-employed platform worker would be covered by the Citizens Directive 2004/38/EC, thus enjoying the same set of residence rights as provided for workers, for reasons of the fact that as indicated above, both categories have been given greater residence protection than other Union citizens (e.g. see Articles 7, 14 and 17 of the Citizens Directive 2004/38/EC which regulate the right of residence for periods longer than 3 months, the right to retain the residence and the status of worker/self-employed even during unemployment and the right to permanent residence).

Therefore, based on the above analysis it can be preliminary concluded that the personal scope of Regulation 492/2011 and Directive 2014/54/EU may not fully fit the needs of platform workers when they are employed as solo and dependent self-employed persons, thus discouraging their potential freedom of movement. Hence, one of the possible solutions to avoid any uncertainties would be to extend the personal scope of Regulation 492/2011 and Directive 2014/54/EU to solo and dependent self-employed persons.

4.2. Rules on supplementary pension rights

This part provides evaluation of the EU *acquis* developed for supplementary (occupational) pension schemes, aiming to prevent loss of supplementary pension rights as a consequence of mobility (i.e. Directive 98/49/EC and Directive 2014/50/EU).

Directive 98/49/EC on safeguarding supplementary pension rights represents an initial specific measure. It is applicable to voluntary and compulsory occupational schemes (excluding only occupational schemes covered by the Regulation on coordination of social security[40]), and regarding its personal scope it covers

[39] E.g. based on the judgement C-63/86, Commission/Italy, ECLI:EU:C:1988:9 (14.01.1998) in which Court of Justice adjudicated that even self-employed have right to reduced rate mortgage loans because any other interpretation would deprive them of the right to establishment.

[40] These are schemes which are covered by the term 'legislation' as defined by the first subparagraph of Art. 1(1) of Regulation (EC) No 883/2004 or in respect of which a Member State makes a declaration under that Article.

both workers and self-employed persons. It provides only limited protection in the form of equal treatment regarding the preservation of vested pension rights (Art. 4 imposes the obligation that persons in respect of whom contributions are no longer being made to the scheme be treated equally regardless whether they are moving to another Member State or remaining within the same Member State), and by insuring the receipt of pension payments net of any taxes and transaction costs (Art. 5 on cross border payment). Another important aspect of Directive 98/49/EC is the obligation to provide adequate information to scheme members when moving to another member State, regarding their supplementary pension rights and choices which are available to them (Art. 7). Regarding cross-border membership, it contains rules only for posted workers by imposing the obligation to enable payment of contributions by or on behalf of a posted worker during the period of posting to another member State, and by allowing them to remain in the scheme of origin during the time of posting even in the case of mandatory occupational schemes in the host country (Art. 6).

Hence, taking into account the broad personal scope of Directive 98/49/EC, encompassing both workers and self-employed, no specific problems in its application for all modalities of platform worker are envisaged.

However, the only practical issue concerning future pension adequacy might be if employers of platform worker are not inclined to provide supplementary pension schemes at all (e.g. platforms or platform partners hiring platform workers). Furthermore, given the importance of supplementary pension schemes in the overall old age protection for workers in Member States, the practical consequences of this particular matter for platform workers may not be underestimated in cases when they would be barred from participation as a consequence of them being classified as self-employed.

Directive 2014/50/EU represents a second step for enhancing worker mobility between Member States, on the one hand, by improving preservation of vested occupational pension rights and provision of information (already partially regulated by Directive 98/49/EC), and on the other hand by setting new standards regarding acquisition of pension rights.

Regarding its personal scope, Directive 2014/50/EU is narrower than Directive 98/49/EC since it formally targets only workers and not the self-employed[41],

[41] This conclusion is derived from the Directive's wording. Namely, Art. 3 (b) of Directive 98/49 defines "supplementary pension scheme" as "any occupational pension scheme established in conformity with national legislation and practice such as a group insurance contract or pay-as-you-go scheme agreed by one or more branches or sectors, funded scheme or pension promise backed by book reserves, or any collective or other comparable arrangement intended to provide a supplementa-

which might be perceived as its defect taking into account the fact that platform workers are often employed as bogus self-employed, or solo dependent self-employed. Hence, platform workers if classified as workers in all types of employment are protected by the material scope of Directive 98/49/EC. When they are classified as self-employed, they fall outside the scope of Directive 2014/50. Nevertheless, Member States are free to extend the protection provided by Directive 2014/50 also to self-employed persons. Taking into account that Directive 98/49/EC covers both employed and self-employed persons, and that many countries have transposed both Directives in the same or complementary pieces of legislation, one might expect that Member States would extend the application of Directive 2014/50/EU also to self-employed persons. However, the situation varies significantly among Member states. In significant number of Member States only workers are covered (AT, BE, BG, CY, DE, DK, EL, ES, FR, IE, LV, NL, SE), while other Member States have extended the protection also to the self-employed persons (CZ, FI, HU, IS, IT, LI, LT, LU, MT, PT, SK, UK).[42] Therefore, in order to avoid different standards of protection with certainty, it would be advisable to extend the personal scope of Directive 2014/50 also to the self-employed persons.

Regarding the material scope, pursuant to Articles 2 and 3, Directive 2014/50 covers "any occupational retirement pension scheme established in accordance with national law and practice and linked to an employment relationship, intended to provide a supplementary pension for employed persons", with the exception of schemes covered by Regulation (EC) No 883/2004. Directive 2014/50 tries to remove obstacles to worker mobility between Member States by improving the acquisition (Art. 4)[43] and preservation (Art. 5) of occupational pension rights linked to an employment relationship. It also contains provisions

ry pension for employed or self-employed persons". On the contrary, Art. 3 (b) of Directive 2014/50 narrows the definition, by defining "supplementary pension scheme" as any occupational retirement pension scheme established in accordance with national law and practice and linked to an employment relationship, intended to provide a supplementary pension for employed persons.

42 Based on the comparative legal research within the MoveS network of experts (VC/2017/0462): Vukorepa, I.; Wollenschläger, F., *Comparative Legal Report 2019: Report on the preliminary assessment of the national transposition measures of Directive 2014/50/EU*, European Union, 2019 (official publication forthcoming), p. 15.

43 It is provided that "waiting period" for starting acquiring rights and "vesting period" as minimum periods of scheme membership for the acquisition of rights should not exceed three years in total, or combination of both. Furthermore, it is prescribed that minimum age for vesting of pension rights should not exceed 21 years, while Directive does not deal with the age limits for becoming a scheme member, as it is

on information standards (Art. 6) for active scheme members prior to their termination of employment, as well as for deferred beneficiaries.

Concerning vested pension rights, the general rule is the preservation of dormant pension rights in the former employer's pension scheme (Art. 5). However, in order to reduce managing and administrative costs of low-value dormant pension rights (recital 23), Member States may prescribe an exception from the preservation rule, i.e. they may stipulate a withdrawal of the capital sum subject to established national ceilings and worker's informed consent (Art. 5(3)). It is reasonable to expect that cross-border platform worker (i.e. platform worker physically moving to another Member State or simultaneously employed in different Member States) earning lower wages and having more career interruptions would be more inclined to make use of the withdrawal possibility and thus use originally pension intended financial means to bridge some other more pressing financial problems. Hence, this rule can be perceived as frustrating their future pension adequacy.[44]

One possible improvement of this rule might be to oblige outgoing workers in the case of withdrawal to invest that capital sum in another occupational or individual pension scheme in another Member State where s/he moves.[45] However, this consideration applies to all mobile workers and is not as such specific to platform workers.

4.3. Rules on coordination of social security systems

Concerning social security rights, in general for platform workers several potential problems could be identified. Some are related to the precarious nature of the work and its lower market-related remunerations or certain working time-related and income-related thresholds, while others could be connected to the existing coordination rules.

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considered that minimum age requirements for scheme membership do not constitute obstacle to free movement (recital 17).

[44] We are of the opinion that this holds especially true for countries that have decided to apply withdrawal possibility (AT, CY, DE, DK, EL, FI, IS, LU, PT, SE) and even more for those that apply higher national ceilings (AT) or no withdrawal thresholds (IS and PT). For more on this issue in practice see: Vukorepa, I.; Wollenschläger, F., *op. cit.* (fn. 42), pp. 26 – 27.

[45] Whereas Recital 24 of the EU Directive is recommending Member States to improve the transferability of vested rights under supplementary pension schemes this is currently not regulated by EU law. Such a transferability of supplementary pension rights is essential in guaranteeing free movement of workers in a context where these supplementary pensions are becoming more important.

Regulation (EC) No 883/2004 and its Implementing Regulation (EC) No 987/2009 provide for a complete and uniform system of conflict rules that seeks to ensure that persons moving within the Union are subject to the social security system of only one Member State. They have very broad personal scope covering nationals of a Member State, stateless persons and refugees residing in a Member State who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and to their survivors irrespective of their nationality (Art. 2). Since CSSS rules cover both workers and self-employed persons, regarding platform worker there seems to be no gap.

However, some principles and rules might not fit the needs of non-standard workers and self-employed and thus could adversely affect their freedom of movement and their social security rights: e.g. rules on applicable legislation, aggregation of periods, rule on the periods of less than one year (hereinafter "less-than-one-year" rule) and provisions on the export of benefits.[46] Our opinion is that two of these aspects, i.e. "applicable legislation" and "less-than-one-year" rule are particularly relevant here since they are potentially most problematic for the platform workers, as a specific type of non-standard workers.

4.3.1. Applicable legislation

We are highlighting here only some of the possible cross-border issues that might arise in the application of social security coordination rules on the applicable legislation in relation to the above defined different "cross-border platform work" situations.

4.3.1.1. Platform worker performing work in home Member State for platform and/or end user situated in another Member State

Since in this case there is a pursuit of an activity only in one Member-State, the law applicable should be, pursuant to Art. 11 (3) of Regulation 883/2004, the legislation of the Member State where the activity is being performed (no matter if it is classified as employment or self-employment). Hence, this provision does not seem to pose any specific challenge to platform workers.

However, if that Member State applies certain thresholds for the access to social security schemes and treats that work as marginal or denies coverage to

[46] See: Strban, G.; Carrascosa Bermejo, D.; Schoukens, P.; Vukorepa, I., *Social security coordination and non-standard forms of employment and self-employment: Interrelation, challenges and prospects*, MoveS analytical report 2018 (official publication forthcoming).

self-employed persons, then it might be that the platform worker would not be covered by some of the social security branches of the Member State where the activity is being performed.[47] Nevertheless, this is general problem of atypical workers and not so much connected to the coordination rules as such.

4.3.1.2. Platform worker physically moving to another Member State

Since in this case activity is performed in one Member State, the law of the Member State of employment/self-employment would be applicable (Art. 11 (3) Reg 883/2014).

As well as in the previous example, the problem is when the personal coverage in a social security system of the receiving Member State depends on classification of persons performing platform work (as employee, or self-employed). In addition, it is important whether the system provides coverage if the work is considered marginal (due to some conditions, e.g. remunerations or certain working time-related thresholds, which can act as including or excluding).

In relation to access to some rights when we have such physical cross-mobility cases, the rules on equality of treatment might not be always helpful, e.g. if previous Member State of work treated platform workers as workers and encompassed them in their social security system, while the new receiving Member State treats them as self-employed and does not cover them. However, based on Art. 11. the rule is sufficiently clear, which leads to the conclusion that the Member State where platform work activity is being performed is competent.

However, the problem still stays if the platform worker resides in one Member Sate and does not work there, while works in another Member State which does not confer on that worker any entitlement due to its marginal activity (e.g. working only a few days per month etc.). Pursuant to the CJEU case law (*Franzen*), such a person would still be subject to the legislation of the Member State of employment both on the days in which s/he performs activity as well as during the in-active days.[48] Hence, competent is Member State of employment/self-employment of the platform worker and not Member State of residence. However, from the recent *van den Berg and Giessen* ruling it follows that the Member State of residence should, on the basis of a connecting criterion other than employment or insurance conditions, grant social security benefits to a person residing in its territory, if the possibility of granting such benefits

[47] This can be very relevant for platform workers who have very low-income levels or who perform platform work as a side activity.

[48] See C-382/13, Franzen et al., ECLI:EU:C:2015:261, 23.4.2015.

arises, in actual fact, from its legislation.[49] This ruling, although confirming the idea that a person who has exercised the right of free movement should not be treated, without objective justification, less favourably than the person who has completed the entire career in only one Member State, nevertheless can be criticized since its interpretation presents potential and unknown financial burden for "non-competent" Member States of residence.

4.3.1.3. Platform worker simultaneously employed in different Member States

This seems to be the most complex situation regarding the identification of the applicable legislation due to the simultaneous employment and/or self-employment in several Member States.

Pursuant to the provisions of Art. 13 of Regulation 883/2004 the result differs depending where the substantial part of the activity is performed[50], in a Member State of residence or not. If no substantial part of the activity is performed in a Member State of residence, then the Member State of the registered office or place of business of the employer becomes relevant, while if we have simultaneous employment and self-employment, the legislation of a Member State of the centre of interest of activities becomes applicable. Which Member State that is might be problematic to establish in the case of platform work (especially if such work is not performed on-location, but purely as an on-line service as is the case of click-worker or high-skilled platform worker: IT specialist/graphic designer/counsellor).

Article 14(5b) of the Regulation (EC) 987/2009 (Implementing Regulation) provides that marginal activities shall be disregarded for the purposes of de-

[49] See C-95/18, van den Berg and Giessen, ECLI:EU:C:2019:767, 19.9.2019., paragraphs 72-77.

[50] Pursuant to Art. 14(8) of the Regulation (EC) 987/2009, a 'substantial part of employed or self-employed activity' means a quantitatively substantial part of all the activities of the employed or self-employed person pursued there, without this necessarily being the major part of those activities. To determine whether a substantial part of the activities is pursued in a Member State, the following indicative criteria are to be taken into account: (a) in the case of an employed activity, the working time and/or the remuneration; and (b) in the case of a self-employed activity, the turnover, working time, number of services rendered and/or income. In the framework of an overall assessment, a share of less than 25 % in respect of the criteria mentioned above shall be an indicator that a substantial part of the activities is not being pursued in the relevant Member State. Hence, it is obvious that Implementing Regulation provides multiple criteria adaptable to the case-by-case analyses, thus leaving enough room for flexibility in interpretation.

termining the applicable legislation under these rules when a platform worker is working simultaneously in different Member State. As has been pointed out above (see chapter 2), platform work often concerns small scale activities and can hence be considered as marginal. In such instance platform work would not be considered when determining the applicable legislation and it could be the social security legislation of another state than the one where platform work is performed which will be applied to the platform work activities. This may open new questions already raised before, as in that other Member State the platform worker may be differently classified than in the country where the platform work is performed.

Further on, concerning the issue which social security legislation would be applicable depends on the classification of platform worker as a worker or a self-employed person. This could lead to different result, e.g. if a person performs platform work in state A, which considers platform work employment, while at the same time performs regular employment activity in state B, which treats platform work as self-employment; in that case, based on Art. 13(1) of Regulation 883/2004 state A could argue that it is competent for collection of social security contributions, while based on Art. 13(3) state B would claim its competence.

Therefore, the riddle is which Member State has the power to determine whether an activity is employment or self-employment for the purpose of social security coordination rules. Although from some case law it follows that each Member State remains competent to determine the legal qualification of the professional activity performed under its territory[51], nevertheless it might be challenging in the future in practice and raise new case-law.[52]

Furthermore, the question remains as to the extent to which the competent Member State will have to respect the legal qualification made by the other relevant Member State. It would be good if this problem would be resolved in the future amendments to the social security coordination regulations. In this respect it is to be seen if the proposed amendments in the form of Art. 76a to the Regulation 883/2004, which gives power to the Commission to adopt implementing acts ensuring uniform application of Art. 12 and 13 of Regulation 883/2004[53], would cover these situations as well.

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[51] Judgement of the CJEU, C-340/94, De Jaeck, ECLI:EU:C:1997:43, 30.01.1997.

[52] For more see: Lhernould, J.-Ph.; Strban, G.; Van der Mei, A. P.; Vukorepa, I., *op. cit.* (fn. 38), pp. 46 – 47.

[53] 2016/0397(COD), https://data.consilium.europa.eu/doc/document/ST-7698-2019-ADD-1-REV-1/en/pdf.

4.3.2. "Less-than-one-year" rule

In relation to cross-border platform work, especially when there is physical movement of the platform worker, potentially problematic might be the "less-than-one-year" rule, relevant in the case of calculation of pensions, prescribed in Art. 57 Regulation 883/2004. Its aim has been to simplify the administrative procedure and reduce costs related to the payment of very low pensions.[54] The rule prescribes that the Member State is not required to provide benefits in respect of periods completed under the legislation it applies which are taken into account when the risk materialises, under two cumulative conditions: 1) the duration of the said periods is less than one year, and 2) when taking only these periods into account no right to benefit is acquired under that legislation. These periods of less than one year are usually not totally lost, since Art. 57(2) stipulates that they are proportionally taken over by all the other Member States concerned, since they have to take them into account for the purposes of Art. 52(1)(b)(i), i.e. when calculating a theoretical benefit (i.e. a basis for the pro-rata benefit that will actually be paid).

In practice there can be two problematic issues in relation to application of this rule to highly mobile workers (i.e. also platform work if highly mobile).[55]

Firstly, taking into account the exact wording of Art. 57(2), that obliges the competent institutions of each of the other Member State to take these short periods into account only for the purpose of Art. 52(1)(b)(i), there could be a problem of 'loosing' these periods of insurance of less than one year in the event that these other Member States waived the pro rata calculation.[56]

Secondly, if the effect of Art. 57(1) of Regulation (EC) No 883/2004 were that all the institutions of the Member States concerned would be relieved of their obligations to provide benefits, then Art. 57(3) specifies that benefits shall

[54] For more details see Janda, C., *Alters und Hinterbliebenenrenten*, in: Fuchs, M. (ed.), *Europäisches Sozialrecht*, 7. Auflage, Nomos, 2018, pp. 452 – 456.

[55] The argumentation here represents a shorter version of argumentation put forward by the author in the previously undertaken research. E.g. Strban, G.; Carrascosa Bermejo, D.; Schoukens, P.; Vukorepa, I., *op. cit.* (fn. 46), pp. 56 – 58; Vukorepa, I.; Jorens, Y.; Strban, G., *Pensions in the Fluid EU Society: Challenges for (Migrant) Workers*, in: da Costa Cabral, N.; Cunha Rodrigues, N. (eds.), *The Future of Pension Plans in the EU Internal Market*, Financial and Monetary Policy Studies, *vol.* 48, Springer, pp. 337 – 338.

[56] Member States can waive the right to a pro rata calculation provided that the "independent benefit" invariably results in being equal to or higher than the pro rata benefit. Such situations are listed in Part 1 of Annex VIII and concern the following countries: DK, IR, CY, LT, LI, NL, AT, PL, PT, SK, SE, UK.

be provided exclusively under the legislation of the last of those Member States whose conditions are satisfied, as if all the periods of insurance and residence completed and taken into account in accordance with the aggregation rules had been completed under the legislation of that Member State. Hence, as a final solution to the problem of several 'mini-periods', the Regulation previews a transfer of full financial burden of pension payment to the Member State of last employment or self-employment, without the right to reimbursement of contributions. Consequently, introduction of the additional rule providing for proportionate reimbursement by the competent institutions to the institution of the "last" Member State, seems financially fair but would be administratively very complex and costly.

Therefore, the easiest possible solution could be the abolition of the "less-than-one-year" rule prescribed by Art. 57 of Regulation (EC) No 883/2004 in order to ensure three goals: 1) in the interest of a migrant worker, the payment of a pension to the full extent, based on all periods of insurance (activity) or affiliation accomplished without any periods being lost, 2) more legal clarity, and 3) a fair and equitable distribution of the financial burden between Member States. However, potentially negative side of this solution would be increased administration for very low benefits. Thus, alternatively, as a way to reduce administrative cost, it could be prescribed that a worker has a right to withdrawal of the capital sum of contributions paid. So far, proposed amendments to the social security coordination regulations (2016/0397(COD)) do not deal with this issue.

5. CONCLUSION

Platform work is specific on-demand work performed for payment in a form of flexible contractual relationship involving three parties: digital platform, client (service/work user) and platform worker (provider of a service/work). In practice there are four most common types of platform work: 1) platform work offering local service in transportation and delivery, 2) platform work performed on-location of the end-user or customer, 3) platform work divided into very small units of work, performed remotely and delivered online, and 4) platform work consisting of high-skilled work performed remotely and delivered online. Platform work offers also possibility of aggregation of employments and income. Hence, it can be performed in the employee and self-employed capacity. If coupled with cross-border elements, it becomes more complex and raises several challenges in the application of EU *acquis* on free movement of workers and social security coordination.

Therefore, in this paper we have researched the appropriateness of the relevant EU *acquis* to three possible cross-border situations: 1) Platform worker performing work in home Member State for platform and/or end user situated in another Member State, 2) Platform worker physically moving to another Member State, 3) Platform worker simultaneously employed in different Member States.

The conducted legal analysis applied to the researched platform work types and cross-border scenarios shows that complex EU legislation relevant for cross-border situations might be problematic when applying to platform workers. For example, despite the very broad understanding of the term "worker" developed by the jurisprudence of the CJEU, the Regulation 492/2011 and Directive 2014/54/EU may not fully fit the needs of platform workers when they are employed as solo and dependent self-employed persons. Hence, one of the possible solutions to avoid any uncertainties would be to extend the personal scope of Regulation 492/2011 and Directive 2014/54/EU to solo and dependent self-employed persons. Further on, the personal scope of Directive 2014/50/EU is narrower than Directive 98/49/EC since it formally targets only workers and not the self-employed, which might be perceived as its defect taking into account the fact that platform workers are often employed as bogus self-employed, or solo dependent self-employed. Therefore, in order to avoid different standards of protection, the personal scope of Directive 2014/50 should be also extended to the self-employed persons. Concerning highly mobile workers (including platform workers) there are concerns in the application of the "withdrawal right" regarding vested supplementary pension rights (Directive 2014/50/EU), and the "less-than-one-year" rule (Regulation (EC) 883/2004) which might be perceived as challenging for future pension adequacy of such workers. Finally, despite relatively clear conflict rules provided in Regulation 593/2008, Regulation 883/2004 and Regulation 987/2009, research revealed some riddles with problematic practical implications regarding the issue of determining applicable labour law and social security legislation in cross-border situations.

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Sažetak

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PREKOGRANIČNI PLATFORMSKI RAD: ZAGONETKE ZA SLOBODU KRETANJA RADNIKA I KOORDINACIJU SUSTAVA SOCIJALNE SIGURNOSTI

Platformski rad (rad preko digitalne platforme) novi je oblik rada koji je omogućila digitalna tehnologija 21. stoljeća. Karakterizira ga trostrani odnos između digitalne platforme, pružatelja usluge (osobe koja obavlja rad i/ili je primila narudžbu za određeni rad putem digitalne platforme, tzv. platformski radnik) i primatelja usluge (tzv. klijent). Platformski rad u praksi poprima različite oblike od kojih su najčešći: 1) rad koji nudi lokalnu uslugu prijevoza i isporuke, 2) rad koji se obavlja na mjestu krajnjeg korisnika ili kupca, 3) rad podijeljen u vrlo male radne zadatke koji se izvodi na daljinu i isporučuje putem interneta i 4) rad koji se sastoji od visokokvalificiranog rada koji se izvodi na daljinu i isporučuje putem interneta. Platformski rad može se obavljati na temelju različitih ugovora s prestacijom rada (radnik na temelju ugovora o radu ili kao samozaposlena osoba obavljajući rad npr. na temelju ugovora o djelu ili autorskom djelu), pa stoga predstavlja izazov u primjeni propisa radnog i poreznog zakonodavstva te sustava socijalne sigurnosti.

Osim izazova koje takav rad predstavlja u nacionalnom kontekstu, platformski rad s prekograničnim elementima još je specifičniji i složeniji. Stoga smo u ovom radu istražili prikladnost pravne stečevine EU-a u području slobode kretanja radnika i koordinacije sustava socijalne sigurnosti u tri moguće situacije s prekograničnim elementom: 1) platformski radnik koji obavlja posao u matičnoj državi članici za platformu i/ili krajnjeg korisnika smještenog u drugoj državi članici, 2) platformski radnik koji se fizički preseli u drugu državu članicu ili obavlja rad u drugoj državi članici; 3) platformski radnik koji istodobno radi u različitim državama članicama.

Provedena pravna analiza složenih propisa EU-a relevantnih za prekogranične situacije upućuje na moguće probleme u primjeni na platformski rad s prekograničnim elementima. Naime, unatoč vrlo širokom konceptu pojma "radnik" razvijenom u sudskoj praksi Suda EU-a, osobni djelokrug Uredbe 492/201, Direktive 2014/54/EU i Direktive 2014/50 u potpunosti ne odgovaraju potrebama platformskih radnika, posebno ako su zaposleni kao samozaposlene osobe (npr. prikriveno samozaposlene ili ovisne isključivo o jednom naručitelju). Konačno, unatoč relativno jasnim kolizijskim pravilima propisanim

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Uredbom 593/2008, Uredbom 883/2004 i Uredbom 987/2009, istraživanje je otkrilo neke zagonetke u primjeni s problematičnim praktičnim implikacijama u vezi s pitanjem utvrđivanja mjerodavnog prava.

Ključne riječi: platformski rad, prekogranični rad putem digitalne platforme, sloboda kretanja radnika, koordinacija sustava socijalne sigurnosti, strukovne mirovine