Prof Catherine Barnard

Plenary 1: Developments in EU case law

12 - 14 June 2025, London

Areas covered

- The Charter
- Working Time
- Equality law
- Fixed term work
- Adequate Minimum Wage
- platforms

I. THE ROLE OF THE CHARTER

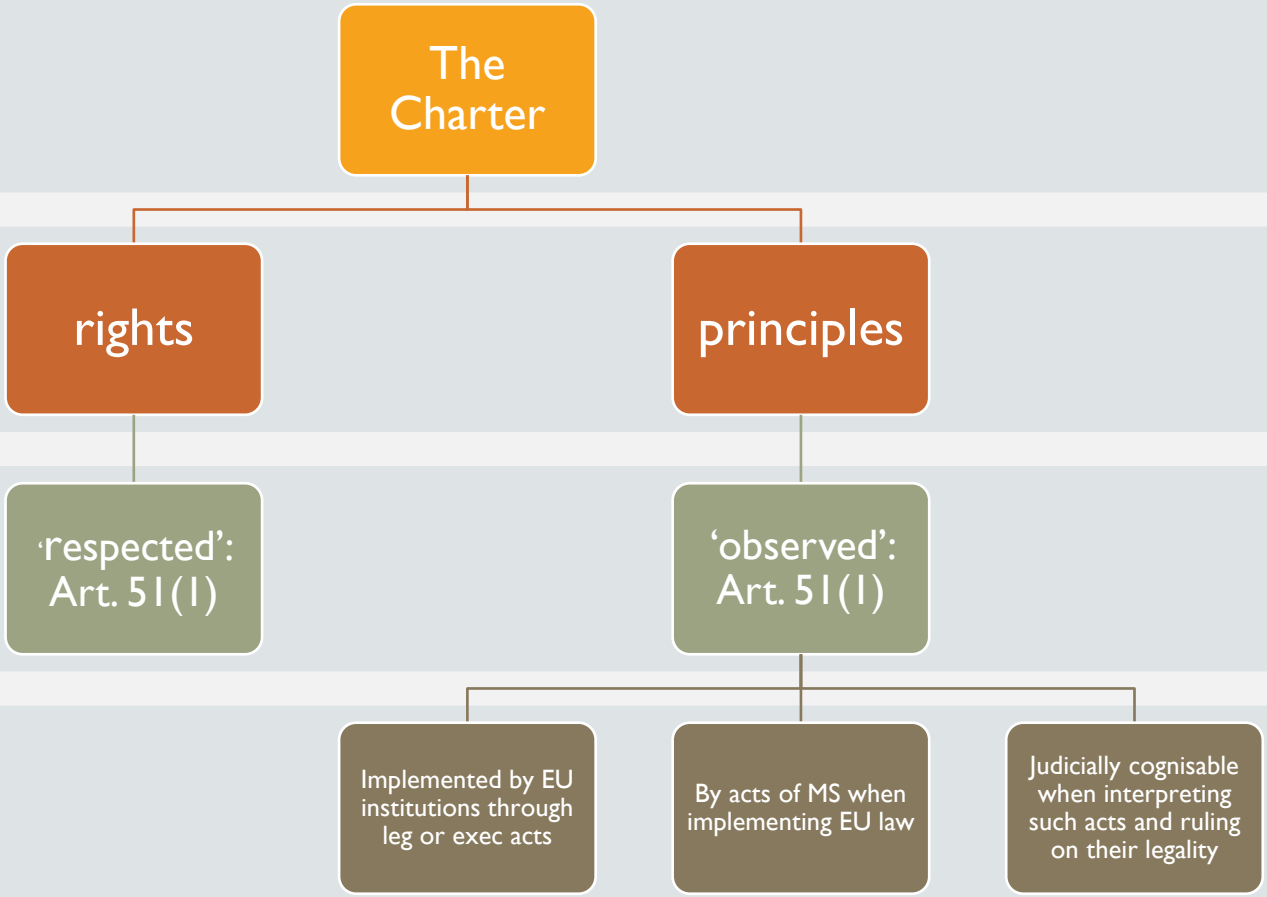
CONTENT OF THE CHARTER

- Civil/political rights on same footing as economic/social rights
- Civil/political rights
  - Classic fundamental rights eg prohibition of slavery and forced labour; freedom of assembly and association
  - essentially negative
- Economic/social rights
  - Equality title
  - Solidarity title eg right to info and consult, right to collective bargaining
  - Essentially positive; need state resources

RIGHTS AND PRINCIPLES IN THE CHARTER

- Art. 51(1) They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.
- Art. 52(2) The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.

THE RIGHTS/PRINCIPLES DICHOTOMY



Art. 52(2)

SOLIDARITY TITLE

Art. 28 Right of collective bargaining and action

Art, 29 Right of access to placement services

Art. 30 Protection in the event of unjustified dismissal

Art. 31 Fair and just working conditions

1. *Every worker has the right to working conditions which respect his or her health, safety and dignity.*
2. *Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.*

1. THE RIGHTS PRINCIPLES DICHOTOMY HAS BROKEN DOWN

JOINED CASES C-569/16 AND C570/16, BAUER

38 … according to the settled case-law of the Court, every worker's right to paid annual leave must be regarded as a particularly important principle of EU social law from which there may be no derogations and whose implementation by the competent national authorities must be confined within the limits expressly laid down by Directive 2003/88 (see, to that effect, judgment of 12 June 2014, *Bollacke*, C-118/13, EU:C:2014:1755, paragraph 15 and the case-law cited). Similarly, and in order to ensure respect for that fundamental right affirmed in EU law, Article 7 of Directive 2003/88 may not be interpreted restrictively at the expense of the rights that workers derive from it (see, to that effect, judgment of 12 June 2014, *Bollacke*, C-118/13, EU:C:2014:1755, paragraph 22 and the case-law cited).

- 39 It is settled case-law that the right to annual leave constitutes only one of two aspects of the right to paid annual leave as an essential principle of EU social law, that right also including the entitlement to payment. The expression 'paid annual leave', used, inter alia, by the EU legislature in Article 7 of Directive 2003/88, means that, for the duration of the annual leave within the meaning of that directive, the worker's remuneration must be maintained. In other words, workers must continue to receive their normal remuneration throughout that period of rest and relaxation (judgment of 12 June 2014, *Bollacke*, C-118/13, EU:C:2014:1755, paragraphs 20 and 21 and the case-law cited).

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2. THE (HORIZONTAL) DIRECT EFFECT OF SOCIAL RIGHTS IN THE CHARTER

PAID ANNUAL LEAVE: CASE C-569/16 *BAUER*

Article 31(2) of the Charter enshrined the 'right' of all workers to an 'annual period of paid leave'; the '*essential* principle' of EU social law

Article 31(2) which provides in 'mandatory terms' that "'every worker" has "the right" "to an annual period of paid leave'" without, unlike Article 27, referring to ' "the cases and … conditions provided for by Union law and national laws and practices'"

Article 31(2) is also unconditional ie 'not needing to be given concrete expression by the provisions of EU or national law'.

Article 31(2) of the Charter had horizontal application: it is for the national court to ensure, within its jurisdiction, the judicial protection for individuals flowing from that provision and to guarantee the full effectiveness thereof by disapplying if need be that national legislation'

CASE C-218/22 *BU V COMMUNE DE COPERTINO*

- Article 7 of Directive 2003/88/EC and Article 31(2) of the Charter … must be interpreted as precluding national legislation which, for reasons relating to the control of public expenditure and the organisational needs of the public employer, prohibits the payment to a worker of an allowance in lieu of the days of paid annual leave acquired, during both the last year of employment and previous years, which were not taken at the date on which the employment relationship ended, where that worker voluntarily terminates that employment relationship and has not shown that he or she had not taken his or her leave during that employment relationship for reasons beyond his or her control.

STRONG INTERPRETATIVE EFFECT OF THE CHARTER

CASE C-531/23
LOREDAS

- 27. it must be recalled that the right of every worker to a limitation of maximum working hours and to daily and weekly rest periods not only constitutes a rule of EU social law of particular importance, but is also expressly enshrined in Article 31(2) of the Charter, which Article 6(1) TEU recognises as having the same legal value as the Treaties
- 28 The provisions of Directive 2003/88, in particular Articles 3, 5 and 6, which give specific form to that fundamental right, must be interpreted in the light of that fundamental right and may not be interpreted restrictively at the expense of the rights that workers derive from it

CASE C-55/18 CCOO

Directive 2003/88, and more specifically Articles 3, 5 and 6 thereof, precludes national legislation, such as the Spanish legislation in force at the time of the facts at issue in the case that gave rise to that judgment, and its interpretation by the national courts, according to which employers are not required to establish a system enabling the duration of time worked each day by each worker to be measured.

- Royal Decree-Law 8/2019, amended the Workers' Statute by introducing, in Article 34(9), a general obligation on employers to establish a system for recording the actual time worked by each worker.
- C-531/23 *Loredas* : Are domestic workers covered by this amendment (domestic court said no, Spanish govt said yes)?

C-531/23 *LOREDAS*

- 36 In that regard, it must be recalled that the worker is regarded as the weaker party in the employment relationship and that it is therefore necessary to prevent the employer from being in a position to impose a restriction of his or her rights on him or her
- Para. 48 duty of consistent interpretation derived from Art. 4(3) TEU

LOREDAS

- the judicial interpretation of a provision of national law or an administrative practice based on such a provision, under which employers are exempt from establishing a system enabling the duration of the daily working time of each domestic worker to be measured, and which therefore deprive domestic workers of the possibility of determining objectively and reliably the number of hours worked and their distribution over time, clearly does not comply with the provisions of Directive 2003/88, and more specifically with the rights flowing from Article 3, 5 and 6 of that directive, read in the light of Article 31(2) of the Charter.

LOREDAS:

BUT

50. that the general obligation to record working time does not preclude national legislation from laying down specific features either because of the sector of activity concerned or because of the specific characteristics of certain employers, in particular their size, provided that such legislation provides employees with effective means of ensuring compliance with the rules relating, in particular, to the maximum weekly working time.

- 51 Thus, a system requiring employers to measure the daily working time of each domestic worker may, on account of the particular features of the domestic work sector, provide for derogations in respect of overtime and part-time work, provided that those derogations do not render the legislation in question devoid of substance, which it is, in the present case, for the referring court, which alone has jurisdiction to interpret and apply national law, to determine.

C-435/23, *GLAVNA DIREKTSIA GRANICHNA POLITSIA*

Order

Article 12(a) of Directive 2003/88/EC and Articles 20 and 31 of the Charter of Fundamental Rights of the European Union must be interpreted as precluding legislation which, as regards the normal length of night work, provides for a difference in treatment of a group of public sector workers entrusted with essential tasks related to maintaining public order and protecting the population, as compared with another group of public sector workers entrusted with the same tasks, or as compared with private sector workers, unless that difference in treatment is based on an objective and reasonable criterion, that is to say, it relates to a legally permitted aim pursued by the legislation and is proportionate to that aim

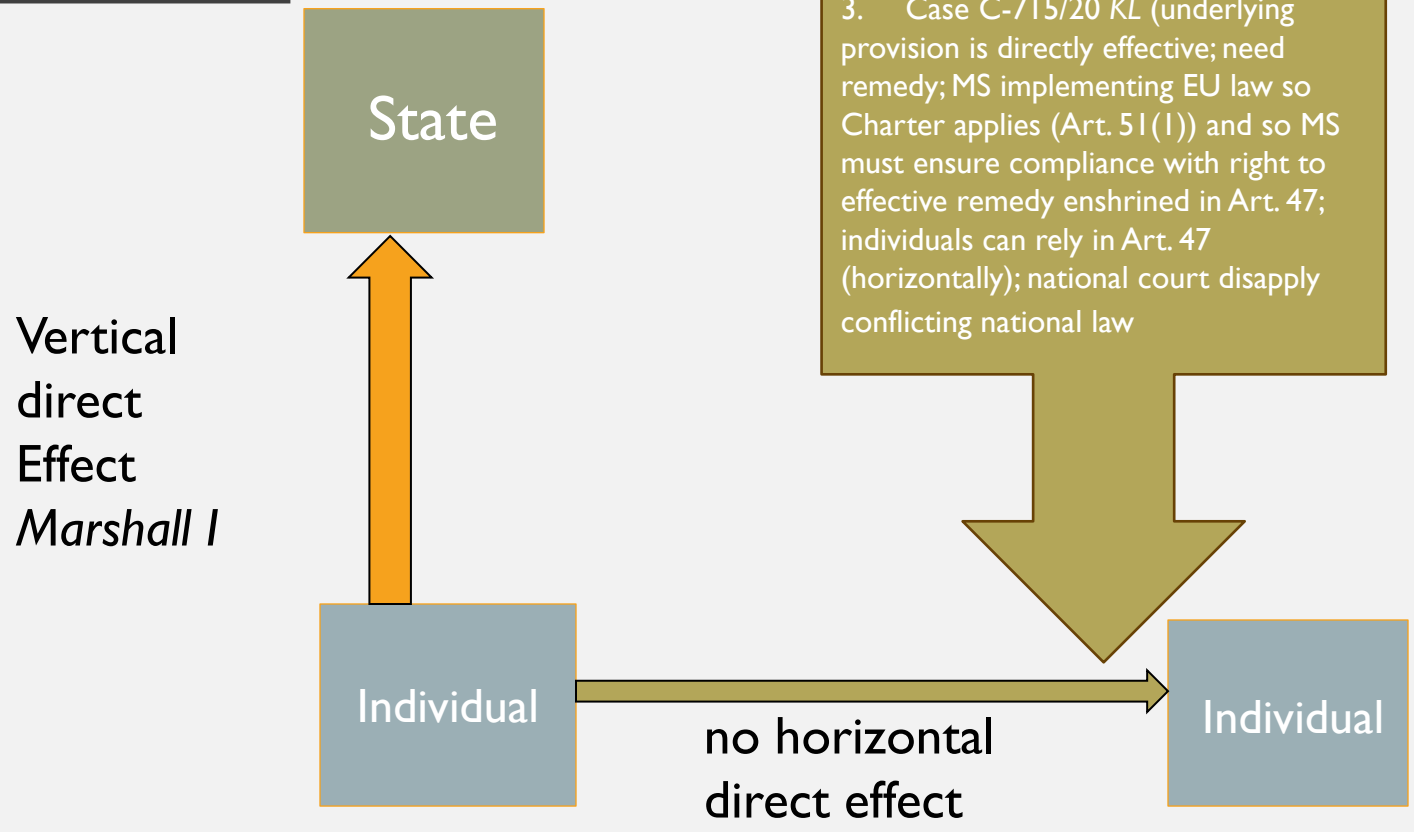
REMEDIES CASE C-367/23 *ARTEMIS SECURITY SAS*

- Directive 2003/88 does not contain any provision regarding the sanctions applicable where the minimum requirements laid down by it are infringed, or any specific rule regarding the reparation for the loss or damage which may have been suffered by workers as a result of such an infringement (para. 26)
- it is for the legal order of each Member State to lay down the detailed rules intended to safeguard the rights which individuals derive from that provision and, in particular, the conditions under which such a worker may obtain compensation for that infringement from the employer, subject to compliance with the principles of equivalence and effectiveness (para. 27)

ARTEMIS

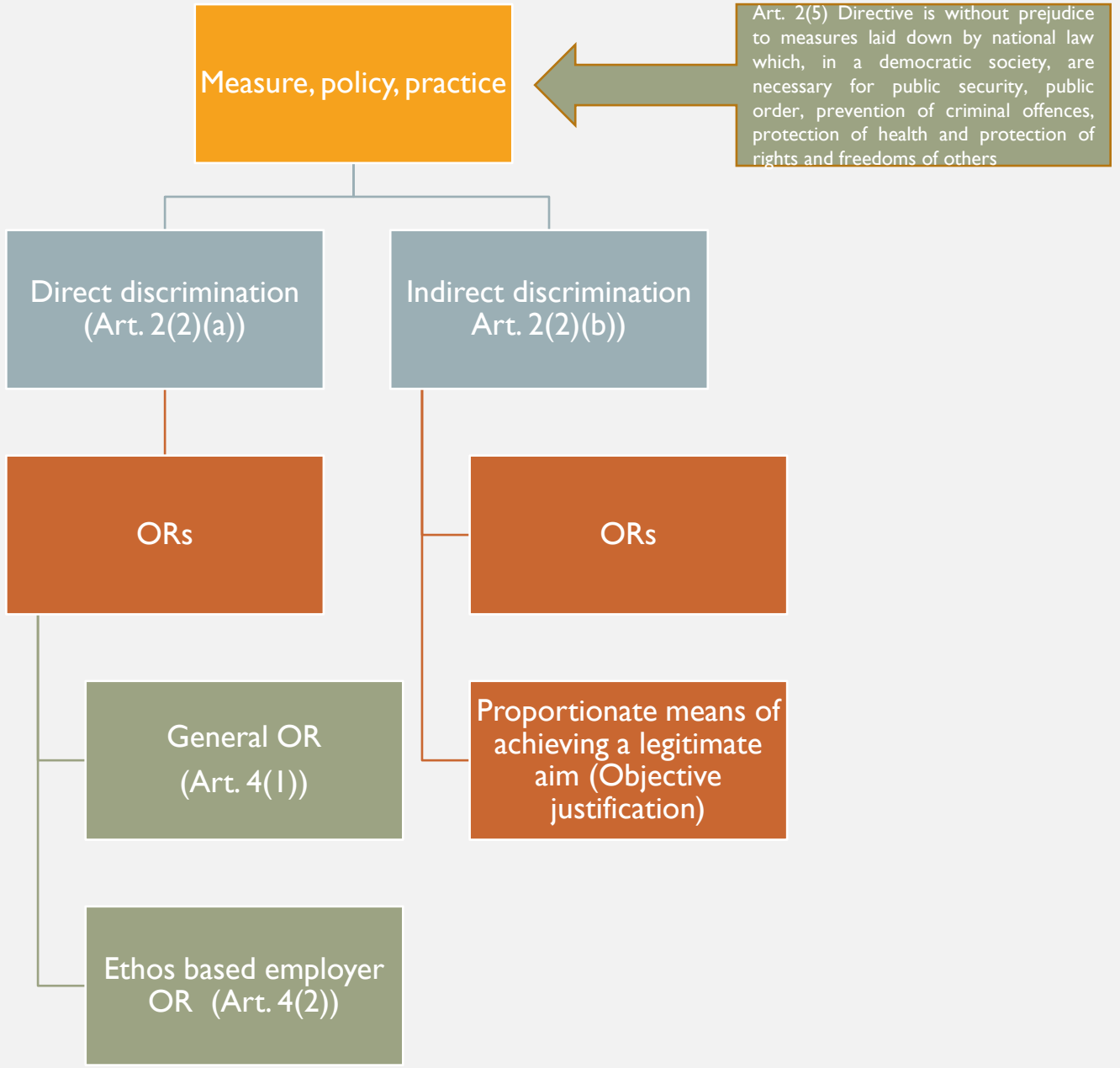
- Article 9(1)(a) of Directive 2003/88 must be interpreted as not precluding national legislation under which, in the event of an infringement by the employer of the national provisions implementing that provision of EU law and providing that night workers are entitled to a free health assessment before their assignment and thereafter at regular intervals, the right of the night worker concerned to compensation for that infringement is subject to the condition that that worker provides proof of the harm caused to him or her as a result of the infringement.

DIRECT EFFECT OF UNIMPLEMENTED OR INCORRECTLY IMPLEMENTED DIRECTIVES AFTER CASE C-715/20 *KL*

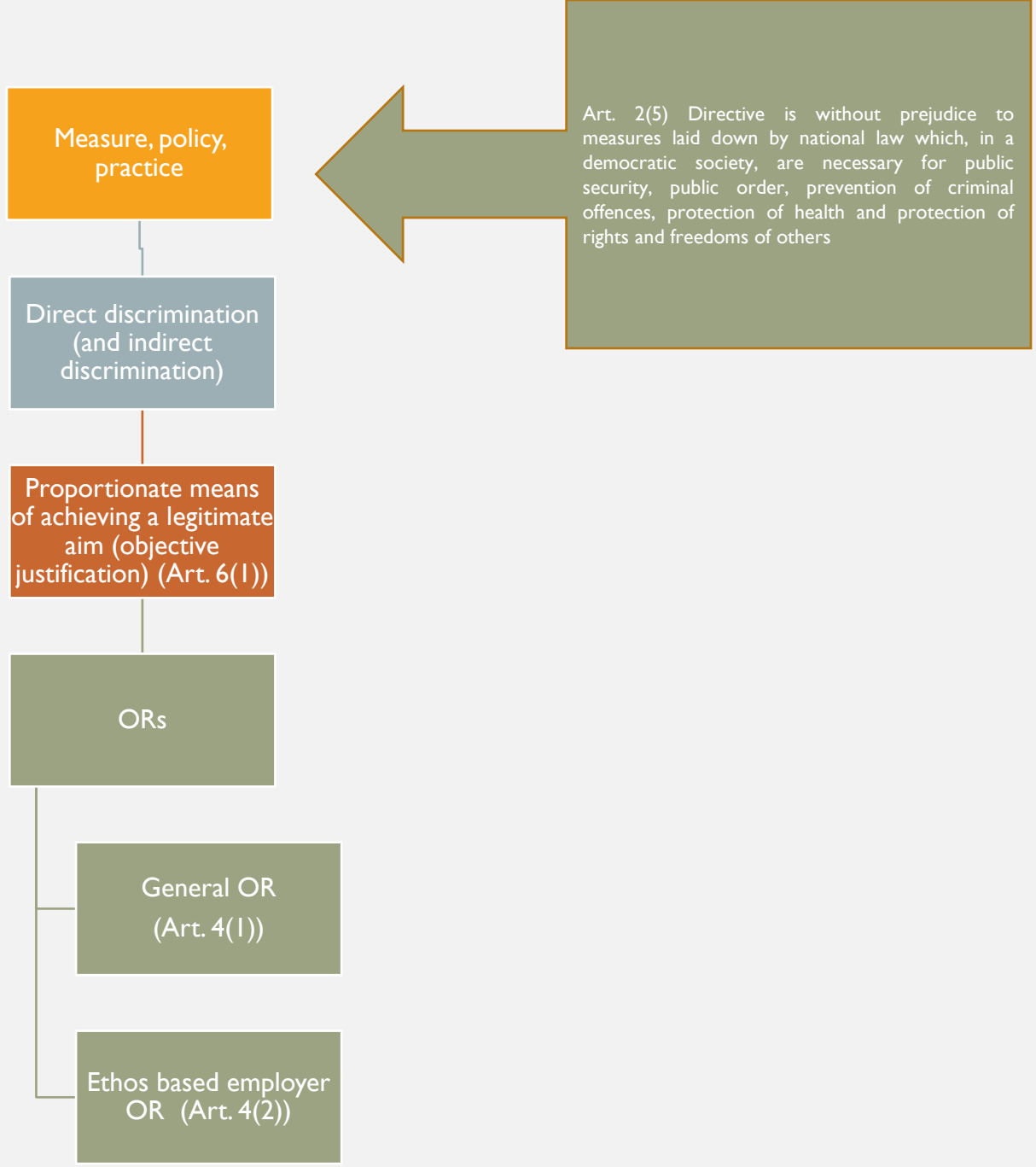


DISCRIMINATION

OVERVIEW: THE PRINCIPLE OF NON-DISCRIMINATION IN DIR 2000/78



OVERVIEW: THE PRINCIPLE OF NON-DISCRIMINATION IN DIR 2000/78 ON THE GROUNDS OF AGE



CASE C-349/23 *ZETSCHEK*

- No direct discrimination
  - 31. … Article 2(2)(a) of Directive 2000/78 must be interpreted as meaning that national legislation, under which federal judges cannot postpone their retirement, whereas federal civil servants and *Land* judges are allowed to do so, does not establish a difference in treatment directly based on age, within the meaning of that provision.
  - 29 based on the professional category to which the persons concerned belong at the federal level as well as the regional level, and not on age

CASE C-408/23 *RECHTS-ANWÄLTIN UND NOTARIN*

Facts: those who have reached the age of 60 years on the expiry of the deadline for applications for the notary position cannot be appointed for the first time to the role of lawyer commissioned as notary

- 21. As a preliminary point, it must be borne in mind, first, that the prohibition of discrimination based on, inter alia, age is enshrined in Article 21 of the Charter and that that prohibition was given specific expression by Directive 2000/78 in the field of employment and occupation

THREE JUSTIFICATIONS

- to ensure the continued exercise of the profession of notary for a sufficiently long period before retirement in order to have an efficient and independent judicial administration
  - ‘falls within the scope of Article 6(1)(c) of Directive 2000/78, which allows a maximum age to be fixed for recruitment which is based on the training required for the position concerned or the need for a reasonable period of employment before retirement’
- to ensure a high-quality notarial profession – within which lawyers do not have to familiarise themselves, during their final years of work, with a profession that they have never practised before
  - Already accepted in *Ministero della Giustizia (Notaries)*, C-914/19, EU:C:2021:430, paragraphs 34 and 40
- to ensure a balanced age structure to facilitate natural turnover [and the rejuvenation] in the profession of notary.
  - ‘the legitimacy of such an aim of public interest relating to employment policy cannot reasonably be called into question, since it features among the aims expressly laid down in the first subparagraph of Article 6(1) ‘
  - encouragement of recruitment and access to a profession undoubtedly constitutes a legitimate aim of Member States’ social or employment policy, in particular where the promotion of access of young people to that profession is involved
  - the aim of establishing an age structure that balances young and older notaries in order to encourage the appointment and promotion of young people, to improve the management of those appointments and thereby to prevent possible disputes concerning notaries’ fitness to work beyond a certain age, while at the same time seeking to provide a high-quality notarial service, can constitute a legitimate aim of employment and labour market policy

PROPOR-TIONALITY

- the impact of the age limit of 60 years on the careers of the persons concerned, taken as a whole, is significantly reduced. It should therefore be considered that, prima facie, that legislation does not go beyond what is necessary to achieve the aims of ensuring the continued exercise of the profession of notary for a sufficiently long period before retirement in order to safeguard the proper functioning of notarial privileges.

JOINED CASES C-184/22 AND C-185/22 *KFH KURATORIUM*

- Clause 4(1) and (2) of the Framework Agreement on Part time work must be interpreted as meaning that national legislation under which the payment of overtime supplements is provided, for part-time workers, only for hours worked in excess of the normal working hours laid down for full-time workers in a comparable situation, constitutes 'less favourable' treatment of part-time workers, within the meaning of Clause 4(1), which is not capable of being justified by the pursuit, first, of the objective of deterring the employer from requiring workers to work overtime in excess of the hours individually agreed in their employment contracts and, secondly, of the objective of preventing full-time workers from being treated less favourably than part-time workers

JOINED CASES C-184/22 AND C-185/22 *KFH KURATORIUM FÜR DIALYSE UND NIERENTRANSPLANTATION EV*

- that national legislation under which the payment of overtime supplements is provided, for part-time workers, only for hours worked in excess of the normal working hours laid down for full-time workers in a comparable situation, constitutes indirect discrimination on grounds of sex if it is established that that legislation disadvantages a significantly higher proportion of women than men without it also being necessary for the group of workers which is not placed at a disadvantage by that legislation, namely full-time workers, to be made up of a considerably higher number of men than women and, secondly, that such discrimination cannot be justified by the pursuit of the objective of deterring the employer from requiring workers to work overtime in excess of the hours individually agreed in their employment contracts and of the objective of preventing full-time workers from being treated less favourably than part-time workers.

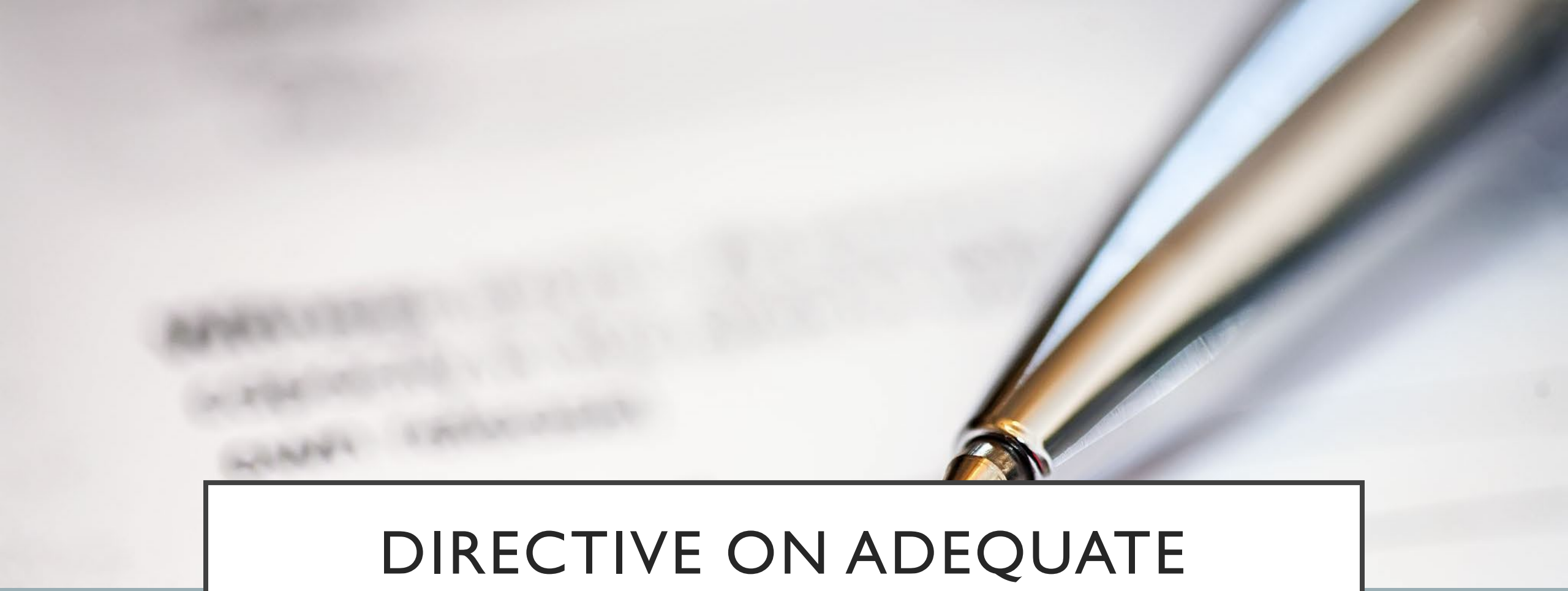
FIXED TERM WORK

JOINED CASES C-212/24, C-226/24 AND C-227/24, *L.T.*

Clause 4(1) of the framework agreement on fixed term work … must be interpreted as precluding national legislation, as interpreted by a supreme national court, under which social security contributions payable by employers who employ fixed-term agricultural workers in order to finance benefits under an occupational social security scheme are calculated on the basis of the remuneration paid to those workers for the daily working hours which they have actually completed, whereas the social security contributions payable by employers who employ permanent agricultural workers are calculated on the basis of remuneration established for a fixed daily working time, as established by national law, irrespective of the hours actually completed

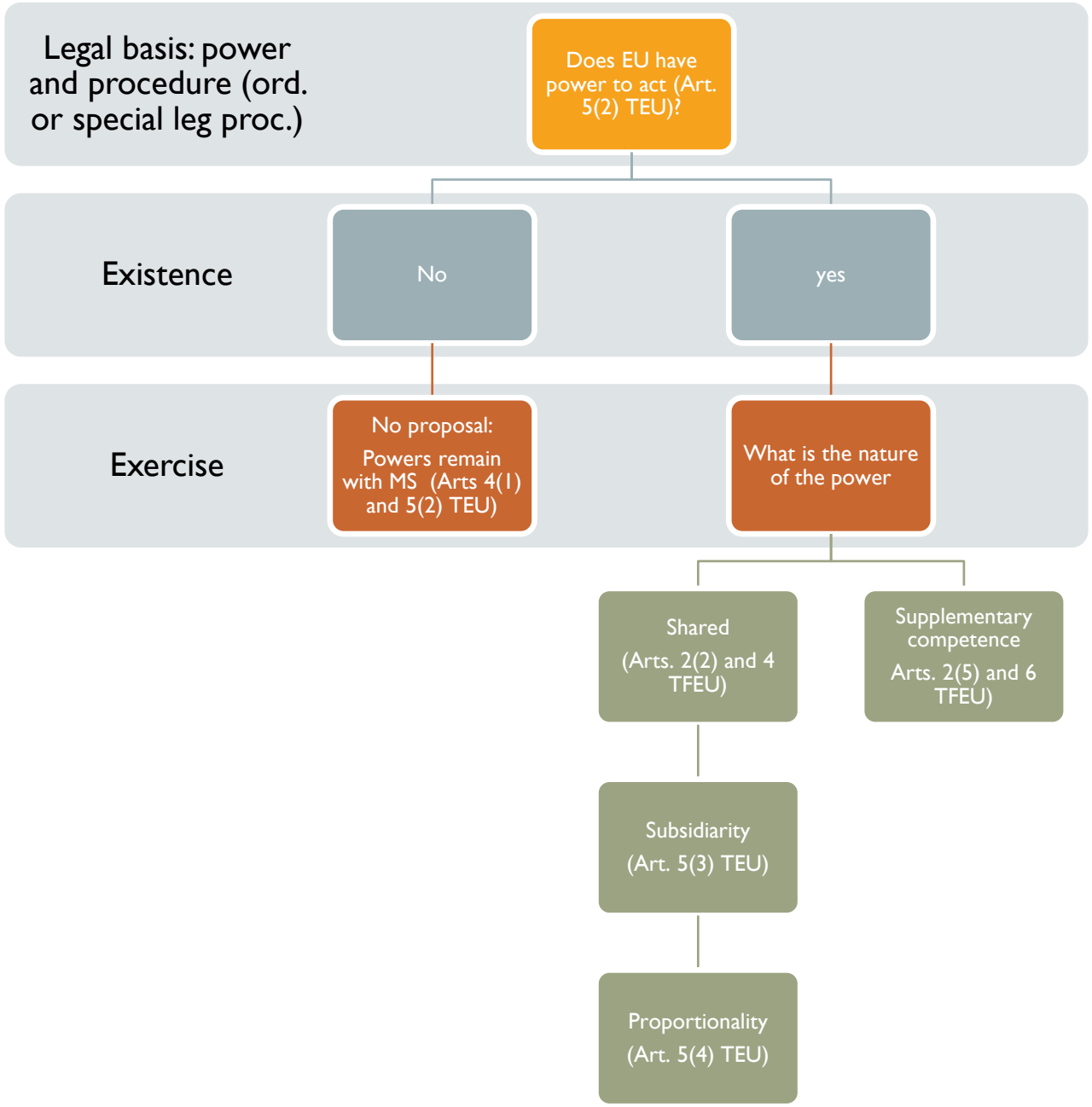
CASE
C-41/23 *PEIGLI*

. Clause 5(1) of the framework agreement on fixed-term work .. [precludes] national legislation under which the employment relationship of honorary members of the judiciary may be renewed successively without there being any provision, in order to limit abuse of such renewals, for effective and dissuasive penalties or for the conversion of the employment relationship of those members of the judiciary into an employment relationship of indefinite duration.



DIRECTIVE ON ADEQUATE MINIMUM WAGES

ART. 5 TEU: ADOPTING LEGISLATIVE ACTS



LEGAL BASIS: ART. 153(1) TFEU

(a) improvement in particular of the working environment to protect workers' health and safety;

(b) working conditions;

(c) social security and social protection of workers;

(d) protection of workers where their employment contract is terminated;

(e) the information and consultation of workers;

(f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;

(g) conditions of employment for third-country nationals legally residing in Union territory;

(h) the integration of persons excluded from the labour market, without prejudice to Article 166;

(i) equality between men and women with regard to labour market opportunities and treatment at work;

(j) the combating of social exclusion;

(k) the modernisation of social protection systems without prejudice to point (c).

ART. 153(5)

‘The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.’

The story of Monti II

DIRECTIVE (EU) 2022/2041 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 October 2022

on adequate minimum wages in the European Union

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153(2), point (b), in conjunction with Article 153(1), point (b), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Having regard to the opinion of the Committee of the Regions ([2]),

Acting in accordance with the ordinary legislative procedure ([3]),

Whereas:

(1) Pursuant to Article 3 of the Treaty on European Union (TEU), the aims of the Union are, inter alia, to promote the well-being of its peoples and to work for the sustainable development of Europe based on a highly competitive social market economy, aiming to ensure full employment and social progress, a high level of protection and improvement of the quality of the environment, while promoting social justice and equality between women and men. Pursuant to Article 9 of the Treaty on the Functioning of the European Union (TFEU), the Union is to take into account, inter alia, requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, and the fight against social exclusion.

(2) Article 151 TFEU provides that the Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter (ESC), have as their objectives, inter alia, the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being

CHAPTER II
STATUTORY MINIMUM WAGES

Article 5

Procedure for setting adequate statutory minimum wages

1. Member States with statutory minimum wages shall establish the necessary procedures for the setting and updating of statutory minimum wages. Such setting and updating shall be guided by criteria set to contribute to their adequacy, with the aim of achieving a decent standard of living, reducing in-work poverty, as well as promoting social cohesion and upward social convergence, and reducing the gender pay gap. Member States shall define those criteria in accordance with their national practices in relevant national law, in decisions of their competent bodies or in tripartite agreements. The criteria shall be defined in a clear way. Member States may decide on the relative weight of those criteria, including the elements referred to in paragraph 2, taking into account their national socioeconomic conditions.

2. The national criteria referred to in paragraph 1 shall include at least the following elements:

(a) the purchasing power of statutory minimum wages, taking into account the cost of living;

(b) the general level of wages and their distribution;

(c) the growth rate of wages;

(d) long-term national productivity levels and developments.

3. Without prejudice to the obligations set out in this Article, Member States may additionally use an automatic mechanism for indexation adjustments of statutory minimum wages, based on any appropriate criteria and in accordance with national laws and practices, provided that the application of that mechanism does not lead to a decrease of the statutory minimum wage.

4. Member States shall use indicative reference values to guide their assessment of adequacy of statutory minimum wages. To that end, they may use indicative reference values commonly used at international level such as 60 % of the gross median wage and 50 % of the gross average wage, and/or indicative reference values used at national level.

5. Member States shall ensure that regular and timely updates of statutory minimum wages take place at least every two years

Variations and deductions

1. Where Member States allow for different rates of statutory minimum wage for specific groups of workers or for deductions that reduce the remuneration paid to a level below that of the relevant statutory minimum wage, they shall ensure that those variations and deductions respect the principles of non-discrimination and proportionality, the latter including the pursuit of a legitimate aim.

2. Nothing in this Directive shall be construed as imposing an obligation on Member States to introduce variations of or deductions from statutory minimum wages.

Article 7

Involvement of the social partners in the setting and updating of statutory minimum wages

Member States shall take the necessary measures to involve the social partners in the setting and updating of statutory minimum wages in a timely and effective manner that provides for their voluntary participation in the discussions throughout the decision-making process, including through participation in the consultative bodies referred to in Article 5(6) and in particular as concerns:

(a) the selection and application of criteria for the determination of the level of the statutory minimum wage, and the establishment of an automatic indexation formula and its modification where such formula exists, referred to in Article 5(1), (2) and (3);

(b) the selection and application of indicative reference values referred to in Article 5(4) for the assessment of the adequacy of statutory minimum wages;

(c) the updates of statutory minimum wages referred to in Article 5(5);

(d) the establishment of variations and deductions in statutory minimum wages referred to in Article 6;

(e) the decisions both on the collection of data and the carrying out of studies and analyses to provide information to authorities and other relevant parties involved in statutory minimum wage-setting.

CASE C-19/23 *DENMARK V PARLIAMENT AND COUNCIL* AG'S OPINION

- ***The AMW Directive was adopted in breach of Article 153(5) TFEU and, thus, of the principle of conferral of powers***
  - ***meaning of pay***
    - measures that harmonise the *level of wages [*see eg AG Kokott in *Impact]*, not those which concern the procedure for setting wages (and only the first is excluded
    - I do not see any reason for inserting into Article 153(5) TFEU a limitation (namely, that the 'pay' exclusion actually covers only the level of pay) which is not included *expressis verbis* in that provision. In my view, the term 'pay' is intended to cover all aspects of the Member States' wage-setting systems (including the modalities or procedures for fixing the level of pay), and not merely the level of pay. (para. 54)
    - I recall that, while exclusions generally need to be interpreted strictly, they must not be interpreted so strictly as to be deprived of their effectiveness (para. 55)
    - the Court was merely seeking to ensure that that provision did not make the adoption of instruments which do not have as their object to regulate pay impossible merely because they had repercussions on pay.

CASE C-19/23 *DENMARK V PARLIAMENT AND COUNCIL* AG'S OPINION

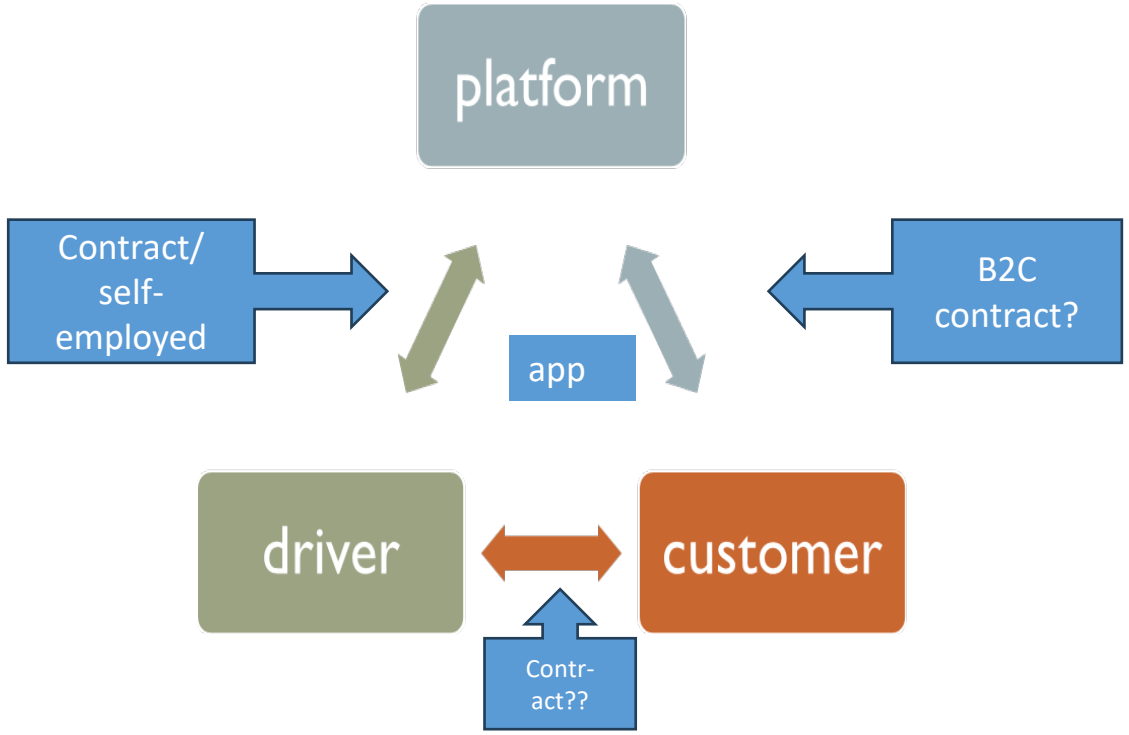
- ***The second fallacy: the EU legislature may set general and loosely worded requirements as regards the Member States' wage-setting frameworks***
- the test of direct interference was developed in a context where the Court was seeking to differentiate instruments whose object is to regulate/harmonise pay from those whose object is to regulate a matter other than pay (for example, non-discrimination as is the case of the directives at the heart of the judgments in Bruno and Others and in Specht and Others), while only indirectly interfering with pay (by having mere repercussions on the level of wages). (para. 60)
- an instrument directly interferes with pay and is, thus, incompatible with the 'pay' exclusion in Article 153(5) TFEU if its object is to regulate pay, no matter how strictly or flexibly.

CASE C-19/23 *DENMARK V PARLIAMENT AND COUNCIL* AG'S OPINION

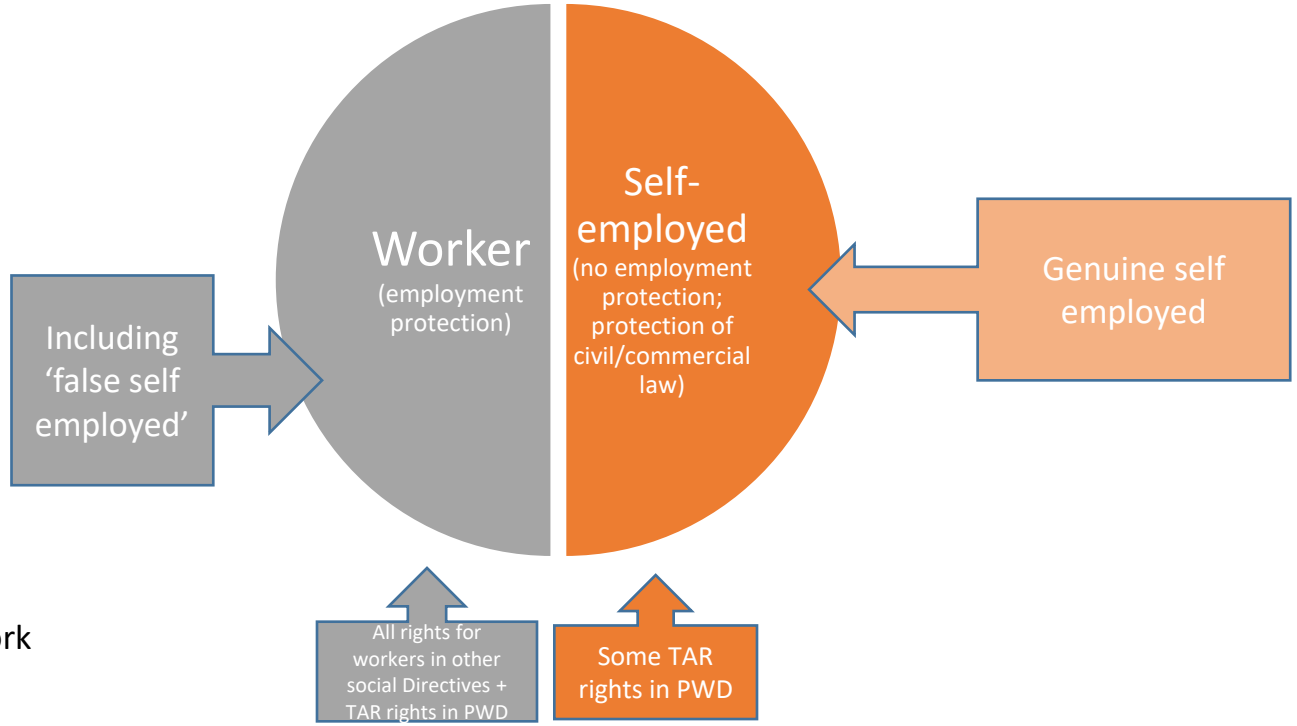
- ***The third fallacy: if a measure does not encroach upon the contractual autonomy of social partners, it complies with the 'pay' exclusion***
- an EU instrument or measure that is compatible with the 'pay' exclusion in Article 153(5) TFEU contributes to safeguarding the contractual autonomy of the social partners; but the fact that an EU instrument or measure does not encroach upon the contractual autonomy of social partners does not necessarily mean that it complies with that exclusion

PLATFORM WORK

Gig economy standard operating model



Binary divide: platforms Commission proposal

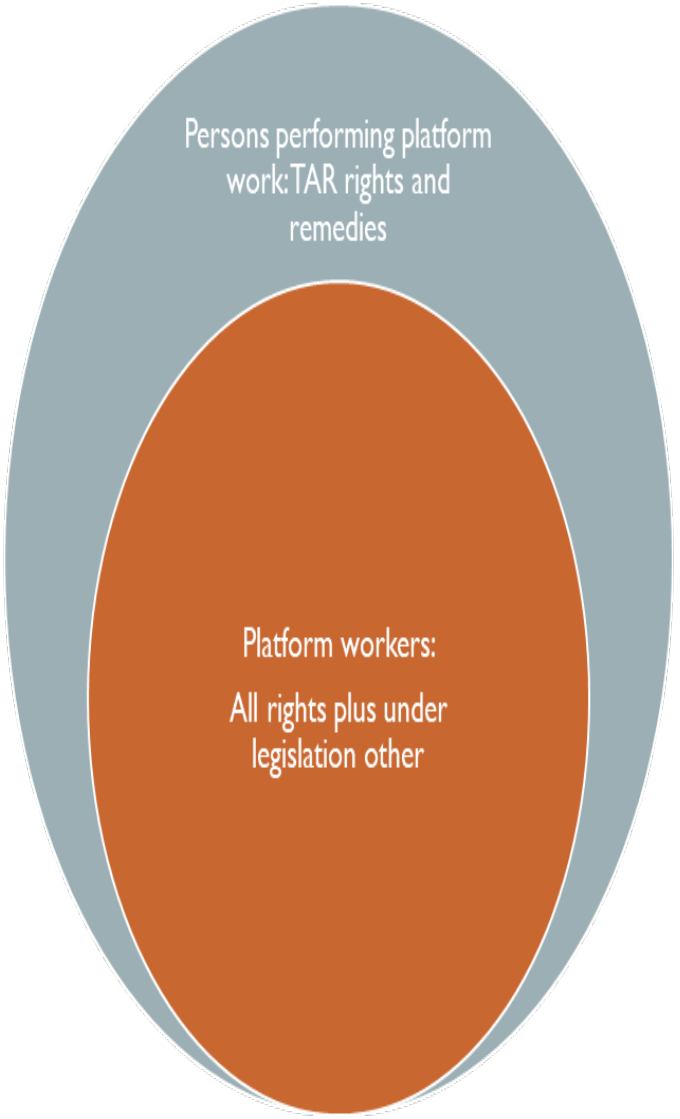


Effect of Platform Work Directive (PWD)

Content of the directive

Personal scope

- *'person performing platform work'* means an individual performing platform work, irrespective of the nature of the contractual relationship or the designation of that relationship by the parties involved;
- *platform worker'* means any person performing platform work who
  - has or is deemed to have an employment contract
  - or an employment relationship as defined by the law, collective agreements or practice in force in the Member States with consideration to the case-law of the Court of Justice;

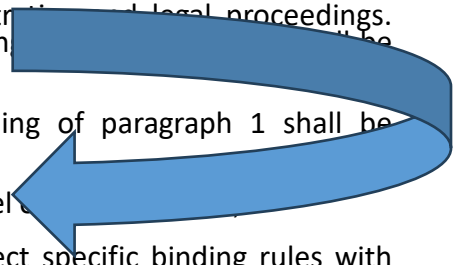


Presumption of worker status (Commission)

Emphasis on control

1.The contractual relationship between a digital labour platform that controls, within the meaning of paragraph 2, the performance of work and a person performing platform work through that platform shall be legally presumed to be an employment relationship. To that effect, Member States shall establish a framework of measures, in accordance with their national legal and judicial systems.

The legal presumption shall apply in all relevant administr[illegible] legal proceedings. Competent authorities verifying compliance with or enforcin[illegible] be able to rely on that presumption.



2.Controlling the performance of work within the meaning of paragraph 1 shall be understood as fulfilling at least **two** of the following:

(a)effectively determining, or setting upper limits for the level [illegible]

(b)requiring the person performing platform work to respect specific binding rules with regard to appearance, conduct towards the recipient of the service or performance of the work;

(c)supervising the performance of work or verifying the quality of the results of the work including by electronic means;

(d)effectively restricting the freedom, including through sanctions, to organise one's work, in particular the discretion to choose one's working hours or periods of absence, to accept or to refuse tasks or to use subcontractors or substitutes;

(e)effectively restricting the possibility to build a client base or to perform work for any third party.

Final version

Article 4 Correct determination of the employment status

1. Member States shall have appropriate and effective procedures in place to verify and ensure the correct determination of the employment status of persons performing platform work, with a view to ascertaining the existence of an employment relationship as defined by the law, collective agreements or practice in force in the Member States, with consideration to the case-law of the Court of Justice, including through the application of the presumption of an employment relationship in accordance with Article 5.

2. The determination of the existence of an employment relationship shall be guided primarily by the facts relating to the actual performance of work, including the use of automated monitoring or decision-making systems in the organisation of platform work, irrespective of how the relationship is classified in any contractual arrangement that may have been agreed between the parties involved.

3. Where the existence of an employment relationship is established, the party or parties assuming the obligations of the employer shall be clearly identified in accordance with national legal systems.

Final version

Article 5 Legal presumption

Pres-umption

- 1. The contractual relationship between a digital labour platform and a person performing platform work through that platform shall be legally presumed to be an employment relationship when facts indicating control and direction, according to national law, collective agreements or practice in force in the Member States and with consideration to the case-law of the Court of Justice, are found. Where the digital labour platform seeks to rebut the legal presumption, it shall be for the digital labour platform to prove that the contractual relationship in question is not an employment relationship as defined by the law, collective agreements or practice in force in the Member States, with consideration to the case-law of the Court of Justice.

rebuttal

- 2. To that effect, Member States shall establish an effective rebuttable legal presumption of employment that constitutes a procedural facilitation to the benefit of persons performing platform work, and Member States shall ensure that that legal presumption does not have the effect of increasing the burden of requirements on persons performing platform work, or their representatives, in proceedings ascertaining their employment status.

Recital 32

- 3. The legal presumption shall apply in all relevant administrative or judicial proceedings where the correct determination of the employment status of the person performing platform work is at stake. The legal presumption shall not apply to proceedings which concern tax, criminal and social security matters. However, Member States may apply the legal presumption in those proceedings as a matter of national law

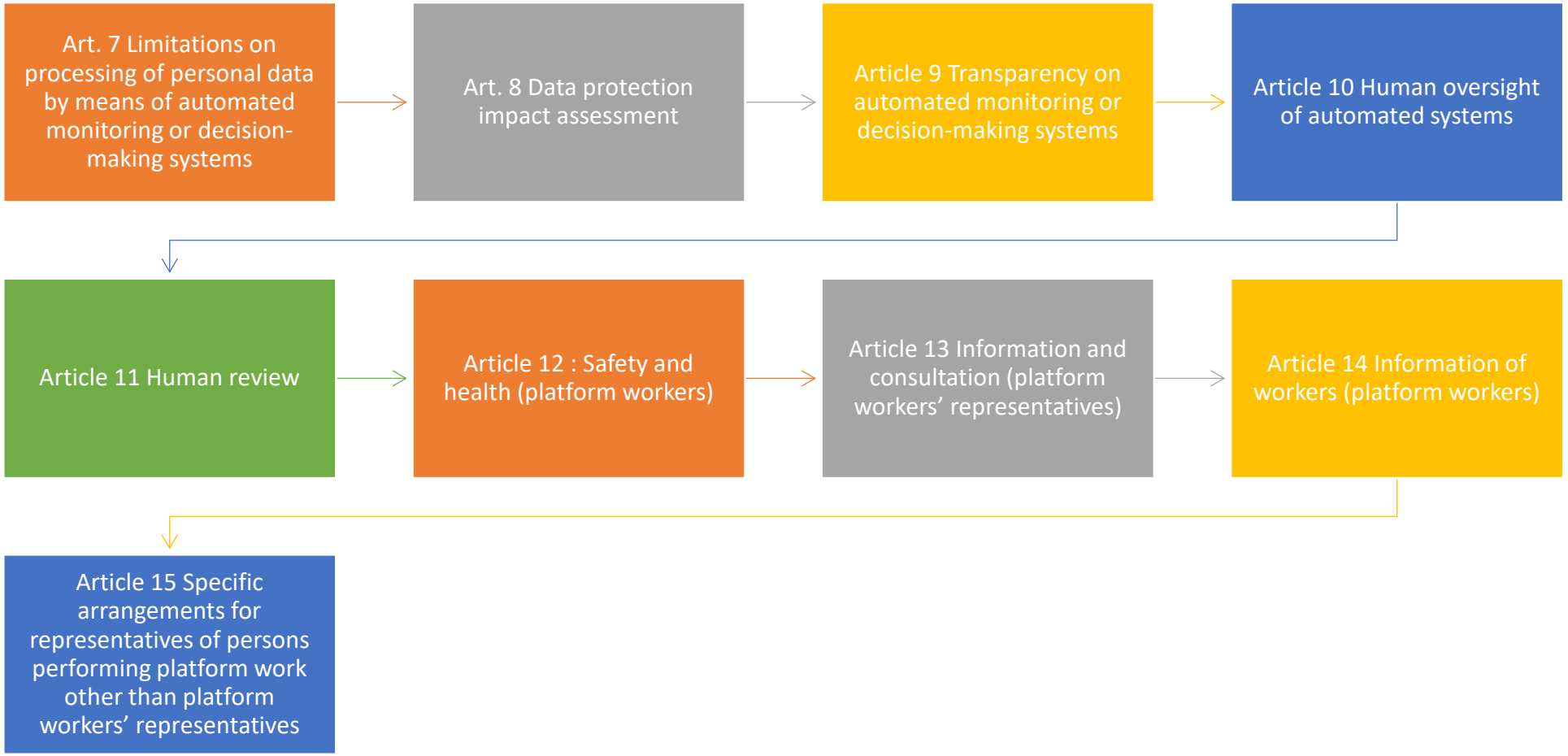
Final version: Article 5 cont’d

4. Persons performing platform work, and, in accordance with national law and practice, their representatives, shall have the right to initiate the proceedings referred to in paragraph 3 first subparagraph for ascertaining the correct employment status of the person performing platform work.

5. Where a competent national authority considers that a person performing platform work might be wrongly classified, it shall initiate appropriate actions or proceedings, in accordance with national law and practice, in order to ascertain the employment status of that person.

6. With regard to contractual relationships entered into before and still ongoing on the date set out in Article 29(1), the legal presumption referred to in this Article shall only apply to the period starting from that date

Algorithmic management



	Platform Workers	Persons Performing Platform Work	GDPR Inspiration
Chapter III Algorithmic management			Chapter II: Principles
Limitations on processing of personal data by means of automated decision making (Art. 7)	Yes	Yes	Art 6 (grounds) and Art 9 (special category data) – adds clear redlines
Data protection impact assessment (Art. 8)	Yes	Yes	Art 35: Impact Assessment
Transparency on automated monitoring or decision-making systems (Art. 9)	Yes	Yes	Art 12, Art 13: Transparency and Information
Human oversight of automated decision making (Art. 10)	Yes	Yes	Art 22: Ban on automated individual decision-making in particular contexts
Human review (Art. 11)	Yes	Yes	Art 16: Right to rectification
Safety and health (Art. 12)	Yes	No	
Information and consultation (Art. 13)	Yes	No	
Information of workers (Art. 14)	Yes	No	
Specific arrangements for representatives of PPPW other than PWs' representatives (Art. 15)	Yes	Yes	Art 35(9): controller's duty to 'seek views'

Chapter V remedies and enforcement	PW	PPPW	GDPR
Right to redress (Art. 18)	Yes	Yes	Ch VIII, esp Art 79 and Art 82
Procedures on behalf or in support of PPPWs (Art. 19)	Yes	Yes	Art 15 (individual access)
Communication channels for PPPWs (Art. 20)	Yes	Yes	
Protection from adverse treatment or consequences (Art. 22)	Yes	Yes	
Protection from dismissal	Yes	Yes	

Expanding scope of labour law?

Move away from focus on subordination and dependency?

Reality check: life behind Insta-glam image of 'influencers'

Online they feature in glossy posts as the epitome of cool. But that is often worlds apart from how they live their lives

Emily Lavinia is the first to admit her glossy online persona doesn't reflect reality Photograph: The Observer

Standing amid the reeds and staring pensively into the distance, Jordan Bunker looks every part the moody model, dressed head to toe in black – in a direct contrast with the setting. Another image from his portfolio shows him in industrial environs, sporting a minimalist brown trench coat as he looks directly at the camera.

However, the reality for the 24-year-old is far from the glamour associated with the fashion world. In his pyjamas in bed – he's fighting a cold – at the home he shares with his parents in Leicester, Bunker says his set-up is

Platform work Directive

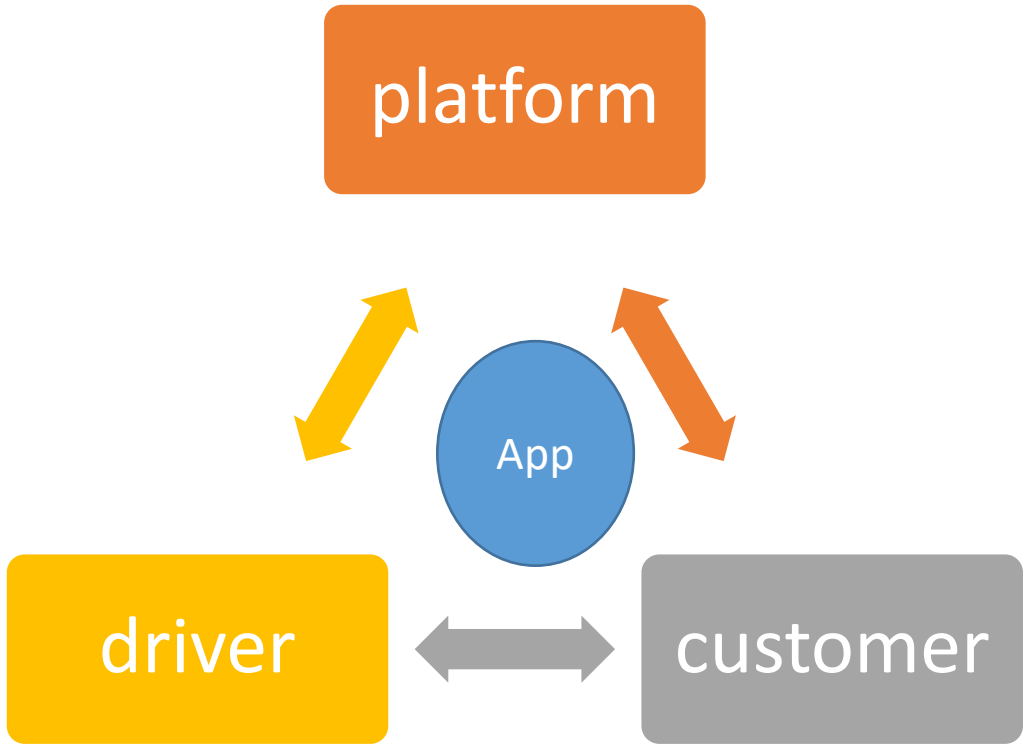
The Directive applies to a ‘Digital labour platform’ which, according to Article 2(1)(a), means ‘any natural or legal person providing a service which meets *all* of the following requirements:

(a) it is provided, at least in part, at a distance through electronic means, such as a website or a mobile application;

(b) it is provided at *the request of a recipient* of the service;

(c) it involves, as a *necessary and essential component,* the *organisation of work performed by individuals in return for payment*, irrespective of whether that work is performed online or in a certain location;

(d) it involves the use of automated monitoring or decision-making systems



Summary of obligations: DSA

single point of contact

Art. 11 for MS and Commission and Board

Art. 12 for recipients of services

Art. 13 legal reps

Art. 14 T&Cs on content moderation activities

Art. 15 Transparency reporting obligations on content moderation activities (not for SMEs)

Content moderation: transparency obligation

DSA Article 14(1):

Providers of intermediary services shall include information on any restrictions that they impose in relation to the use of their service in respect of information provided by the recipients of the service, in their terms and conditions. That information shall include *information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making and human review*, as well as the rules of procedure of their internal complaint handling system. It shall be set out in clear, plain, intelligible, user-friendly and unambiguous language, and shall be publicly available in an easily accessible and machine-readable format.

Statement of reasons (Art. 17)

- Reasons for the following restrictions
  - Restrictions on visibility
  - Suspension, termination or other restriction on monetary payments
  - Suspension, termination of the provision of the service in whole or in part
  - Suspension, termination of the recipient’s account

Internal complaint handling (Art. 20)

Complaint over eg removal of content, suspend or terminate provision of service to users

OPs must allow users to challenge decision through internal complaint handling system, electronic, free of charge and not relying solely on automated means (Art. 20(5))

Decisions must be reversed without undue delay where complainant offers ‘sufficient grounds’ (Art. 20(4))

Art. 21 extra judicial settlement body

Art. 23 if misused (suspension)

Individual remedy

- Art. 54 Recipients of the service shall have the right to seek, in accordance with Union and national law, compensation from providers of intermediary services, in respect of any damage or loss suffered due to an infringement by those providers of their obligations under this Regulation.