

The Potential Implementation of proposed Directive and Guidelines in Spain

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Agenda

1. The Riders' Law
2. The potential transposition of the Directive
3. The potential implementation of the Guidelines
4. Conclusions

1. The Riders' Law

Riders Law (*Ley Rider – Ley 12/2021*)

It contains two main clauses:

1. Twenty-third additional provision of Workers' Statute (*Estatuto de los Trabajadores*):

“By application of the provisions of Article 8.1, the **activity of persons** who provide paid services consisting of the delivery or distribution of any consumer product or merchandise, by employers who exercise business powers of organisation, management and control directly, indirectly or implicitly, by means of algorithmic management of the service or working conditions, through a digital platform, is presumed to be included within the scope of this law”.

This presumption does not affect the provisions of Article 1.3 of this regulation”.

2. Article 64 (4) (d) of Workers' Statute (*Estatuto de los Trabajadores*) that states that employees' representatives have the right, among others, “to be informed, by the company, of the parameters, rules and instructions on which the algorithms of artificial intelligence systems are based, that affect decision-making that may involve working conditions, access and maintenance of employment, including profiling”.

2. The potential transposition of the Directive

The hypothetical transposition of the Directive may find the following points of friction:

1. **Subjective scope:** whereas Riders' Law is applicable to workers, the proposed directive is applicable to “persons performing platform work”.
2. **Objective scope:** whereas Riders' Law is applicable to delivery sector, the proposed directive is applicable to all kind of activities developed by digital labour platforms.
3. **Approaching presumptions:** whereas Riders' Law is more general and focused on persons, the proposed directive is more precise and pay attention to the platform.
4. **Collective Rights:** whereas Riders' Law only includes the right to be informed, the proposed directive is more precise and pay attention to the platform.

3. The potential implementation of the Guidelines

The hypothetical transposition of the Guidelines provides new possibilities in a field partially explored, the agreements of professional interest (acuerdos de interés profesional –ACP-):

- 1. Subjective scope:** for economic dependent self-employed persons (TRADES), that is, those who depend on a client who provides, at least, the 75% of his income.
 - Additionally, the TRADE must fulfil the following requirements: NOT having employees; doing particular activities with his own tools and own criteria; receiving a price under his own commercial risk.
- 2. Objective scope:** ACPs obligate only those affiliated to trade unions and associations.
- 3. Bargaining subjects:** unions or associations representing TRADEs.

4. Conclusions

Directive Transposition

1. Despite the Spanish Law was a reference, **the transposition will require important legal changes.**
2. **Negotiation with social partners is unavoidable.**
3. **Key role of collective bargaining** in the implementation of legal rules **BUT legal or technical assistance is required.**
4. There must be a **parallelism between collective and subjective rights** concerning information and transparency.
5. **Legal consequences in case of infringement are also necessary** in order to make this rules more effective.

4. Conclusions

Guidelines implementation

1. The **Spanish experience of ACPs makes the implementation of the Guidelines easier.**
2. Nevertheless, the **Commission's plans set a subjective scope broader** than the one set by the Spanish legislation.
3. **This will require minor changes in LETA.**
4. **From a practical perspective, the use of ACPs has been very reduced: 8 ACPs in then years (Nieto, 2018).**

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Thanks
Gracias

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