

Digital platform workers: EU rules one step closer

Platform work is on the rise, with hundreds of digital platforms active in the EU and millions of workers earning some income by working for them. A proposed EU directive seeks to set criteria to determine whether platform workers are self-employed or employees, which is key for improving their working conditions and social rights. In addition, it would set the first EU rules on the use of artificial intelligence in the workplace. With their positions agreed, the European Parliament and the Council can now start interinstitutional negotiations.

New job opportunities

The digital revolution is redefining the world at unprecedented speed, [transforming](#) our personal and working lives. Digital technologies are changing the way businesses operate and interact with customers. Digitalisation is breaking new ground for innovative work arrangements, where people can provide services via online platforms. New business and organisational models such as the [platform economy](#) are disrupting existing industries and creating new digital labour markets. **Online platform work** (or crowd work) allows workers to carry out tasks (such as data entry, writing and editing, creative and multimedia work) on their electronic devices from any suitable location. **On-location platform work** involves workers carrying out tasks in a specific physical location (for instance delivery and transportation services and cleaning), although they are matched with their customers online. Uber, Takeway and Deliveroo are some well-known examples of on-location platforms. The sharp increase in the number of jobs offered through [online platforms](#) has drawn attention to platform workers' working conditions and rights.

A 2021 European Commission [analysis](#) found **more than 500 digital labour platforms** active in the EU, from international companies to small national or local start-ups. Accelerated by the pandemic, the switch to digital has made their revenue grow spectacularly, by around 500 % over the past 5 years. In the EU, digital platforms employ more than 28 million people, a figure expected to reach 43 million by 2025. While most platform workers are formally self-employed, about 5.5 million people, providing mostly on-location services, may be misclassified. The situation varies across the EU. More than [100 court judgments](#) in EU countries have already dealt with platform workers' employment status, mostly reclassifying independent contractors as workers and 'gig' platforms as employers, with ensuing legal responsibility for their workers.

New risks for workers' rights

As platform work is a non-standard form of employment, there are no rules on the working conditions and social rights of platform workers in standard EU labour law. Most workers performing platform work, particularly the higher skilled, are correctly classified as self-employed. However, some risk being classified as self-employed, despite working mostly or exclusively for one employer and being obliged to follow the same rules and restrictions as employed workers. Many platform workers face [precarious](#) working conditions and inadequate access to social protection (for instance with zero-hour contracts and unpaid waiting time). They often receive inadequate information about their working conditions. Social security systems do not necessarily [cover](#) them for sickness, accident, unemployment, protection at work and pension benefits. At the same time, businesses that save on social contribution costs by employing platform workers are competing unfairly, damaging the social safety net for everyone. Moreover, the digital control of workers exercised by platforms (and other employers) involves the use of [algorithms](#) – not only to assign tasks but also to monitor, supervise, evaluate, impose sanctions and terminate contracts. Often, employers control every aspect of the work, without giving employees the right to employment benefits such as paid sick leave, annual leave or retirement. Furthermore, workers can be disadvantaged if they cannot develop their skills through training. Ensuring that the competences they achieve are transferable and that the certificates are recognised is important for getting a new job or advancing in their career.



European Commission proposal

In 2021, the European Commission proposed a new [directive](#) to improve platform workers' [working conditions](#). The proposal sets rules to facilitate the correct determination of platform workers' [employment status](#) and improve transparency, fairness and accountability in algorithmic management. The Commission proposed five 'criteria of control': level of remuneration; rules for appearance and conduct; supervision by electronic means; limited choice of working hours or possibility to refuse tasks; and restricted possibility to work for a third party. If two of the five were fulfilled, the relationship between a platform and a worker would be presumed to be employment, and the worker would gain access to the applicable labour and social protection rights. This classification could be contested by either side on the basis of national criteria (under the principle of a 'rebuttable presumption'). However, legal and administrative proceedings initiated by the digital platforms to rebut the legal presumption would not have a suspensive effect on the application of the presumption. The proposal also introduces a requirement for human monitoring of algorithms, where the people performing the monitoring have the right to contest automated decisions.

European Parliament mandate

On [12 December 2022](#), Parliament's Committee on Employment and Social Affairs (EMPL) adopted a [report](#) by rapporteur Elisabetta Gualmini (Italy, S&D). The report specifies that a person doing platform work may be either a 'platform worker' or a genuinely 'self-employed person'. It seeks to facilitate application of the rebuttable legal presumption of the employment relationship and amends the proposal in several ways: it moves the criteria for triggering the presumption of employment outside the legal body of the text and instead introduces an indicative list of non-mandatory criteria based on national rules to determine that a person is a platform worker. It also introduces two criteria for determining that a person is genuinely self-employed. Applying the legal presumption in this way would not mean an automatic reclassification of all those performing platform work as platform workers. The non-suspensive effect of legal proceedings on the legal presumption of employment is maintained. Moreover, the report strengthens the provisions on data protection and human oversight of all decisions affecting working conditions, extends the rules protecting platform workers from abusive algorithmic management practices to all EU workers, and promotes collective bargaining. The EMPL committee decision to enter into interinstitutional negotiations based on the report was confirmed by Parliament's [plenary](#) on 2 February 2023.

Council position

The Council agreed its [position](#) on [12 June 2023](#). The text keeps the distinction between provisions relating to platform workers' working conditions and those relating to the protection of personal data of both workers and self-employed persons performing platform work. It maintains the principle of legal presumption of employment. Having expanded the Commission's five criteria into seven, the Council position considers that as soon as three of the criteria are fulfilled, an employment relationship is established, with burden of proof to the contrary being on the platform. However, if the platform merely complies with a legal obligation (including one stemming from a collective agreement), this does not count as fulfilling the criteria. While the presumption would apply in administrative and judicial proceedings, Member States would be free to decide if they wished to apply it in tax, criminal and social security proceedings. A non-regression clause stipulates that the directive should not weaken more ambitious national rules. At the same time, the non-suspensive effect of legal proceedings on the presumption of employment is weakened. The agreement also increases transparency in the use of algorithms for human resources management. These systems will have to be monitored by qualified staff, who should be protected from dismissal, disciplinary measures or adverse treatment for exercising their functions. Important decisions would automatically involve human supervision.

Way forward

In several aspects, [Parliament's mandate](#) is more ambitious than the Council's. In Council, [eight Member States](#) regretted that the rebuttable legal presumption of employment as agreed in the general approach was weaker than that initially proposed by the Commission. Several countries expressed further reservations, while the incoming Spanish Council Presidency deemed the agreed text insufficient. While securing a Council position has been greeted as a success for the Swedish Presidency, the forthcoming interinstitutional negotiations may still prove challenging.

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