

Improving the working conditions of platform workers

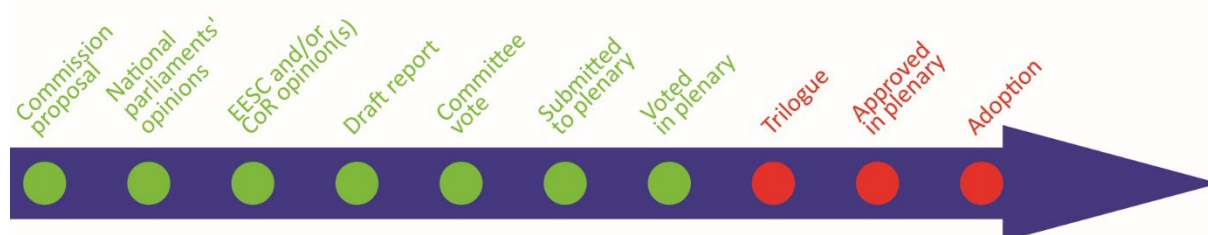
OVERVIEW

Although a provisional political agreement between the Council and Parliament was announced on 13 December 2023, 10 Member States could not endorse this agreement on 22 December 2023. The Belgian Presidency is seeking to revive informal discussions with the European Parliament so as to set a date for new negotiations.

Platform work is an umbrella concept covering a heterogeneous group of economic activities completed through a digital platform. Platform workers' rights are not enshrined in EU labour law and this is increasingly leading to problems relating to various aspects of their work and human development. To remedy this situation, the European Commission submitted a proposal for a directive aimed at improving the working conditions of platform workers, clarifying their employment status, and establishing the first EU rules for the use of artificial intelligence in the workplace.

The European Parliament had adopted its negotiating mandate on the file on 2 February 2023; while the Council agreed its general approach on 12 June 2023.

Proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work		
<i>Committee responsible:</i>	Employment and Social Affairs (EMPL)	COM(2021) 762 9.12.2021
<i>Rapporteur:</i>	Elisabetta Gualmini (S&D, Italy)	2021/0414(COD)
<i>Shadow rapporteurs:</i>	Dennis Radtke (EPP, Germany) Lucia Ďuriš Nicholsonová (Renew, Slovakia) Kim van Sparrentak (Greens/EFA, the Netherlands) Anna Zalewska (ECR, Poland) Elena Lizzi (ID, Italy) Leila Chaïbi (The Left, France)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Additional trilogue negotiations	



Introduction

Platform work can be defined as a type of work where an online platform serves as an intermediary between platform workers, who provide services, and paying clients. Constantly growing in size and importance, this working arrangement has received additional impetus thanks to the digital transformation driven by the coronavirus pandemic. Platform work is a rapidly increasing segment of the EU economy, employing more than 28 million people in 2021; this number is projected to reach 43 million by 2025.

Platform work is considered a non-standard form of employment; there are therefore no rules on the working conditions and social rights of platform workers in standard labour law. Most people performing platform work, especially the higher skilled ones, are correctly classified as self-employed. However, some platform workers risk being misclassified as self-employed, despite working mostly or exclusively for one employer, and many face poor working conditions and inadequate access to social protection.

Other issues concern the digital control exercised by platforms (use of algorithms to assign tasks, but also to monitor, supervise, evaluate, impose sanctions and terminate the contract). Platform workers are often offered vague and inadequate information about their working conditions. Yet again, their specific needs in relation to sickness, accident, unemployment, protection at work and pension benefits are not necessarily covered by social security systems. They can also be disadvantaged as regards skills development, relevant training and the transferability and certification of their competences; all this hinders their career development prospects. The digital transition, further accelerated by the pandemic, has led not only to an increase in the number of digital platforms but also to a spectacular growth in their revenues, by around 500 % over the past five years. The considerable increase in the number of jobs offered through digital platforms has made the improvement of the situation of platform workers, already highlighted by research and the EU institutions themselves for several years, a matter of urgency.

Context

The key feature of platform work is a triangular relationship between the platform, the platform worker(s) and the client(s), coupled with online intermediation. Technology plays an important role in work organisation, for instance through the use of algorithms to pair up clients and platform workers. Services are provided on demand, and work is usually carried out on a temporary or piecemeal basis.

According to the [executive summary](#) of the Commission impact assessment accompanying the proposal, around 28 million people in the EU are estimated to work on platforms; 22.5 million of them are believed to be correctly classified, either as workers or (most of them) as self-employed. The remaining 5.5 million, however, may be at risk of misclassification.

Platform work is very heterogeneous. It can be [classified](#) according to several parameters:

- **skills requirement for tasks:** higher- or lower-skilled workers;
- **selection process:** decision made by platform, platform worker, or client;
- **location of tasks:** work is performed online or on-location.

Online platform work (also called crowd work) refers to tasks that platform workers carry out from any suitable location on their electronic devices. In most cases, platform workers perform this type of work in their own workplace (e.g. home) using a computer. Tasks performed this way can be clerical and data-entry tasks, online professional services (such as accounting, writing and editing, creative and multimedia work), sales and marketing, software development and IT tasks. Interactive services (such as online lessons, assistance and consultations) also belong to this category.

On-location platform work must take place in a specific physical location. However, the matching still takes place online, as in the case of online platform work. Services in this category include

housekeeping, cleaning, beauty services, and on-location photography, but also transportation and delivery services, as well as short-term rental accommodation.

Because of the heterogeneous character of platform work, it is not imaginable to find a 'one-size-fits-all' solution for improving the working conditions and the social security coverage of platform workers.

Existing situation

At present, platform workers' rights are not enshrined in EU labour law; however, several pieces of EU legislation refer to their situation. The 1989 [Community Charter](#) of the Fundamental Social Rights of Workers stipulates that 'every worker of the European Community shall have a right to adequate social protection and shall, whatever his status and whatever the size of the undertaking in which he is employed, enjoy an adequate level of social security benefits'. These rights are reiterated in the [European Pillar of Social Rights](#), established in November 2017, which states in its point 5 that regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training. Efforts under the pillar have focused on addressing a number of policy challenges associated with new forms of employment, including platform work. For instance, as one of the pillar's roll-out initiatives, the European Parliament and the Council adopted in June 2019 a [directive](#) on transparent and predictable working conditions, which also mentions platform workers, who would fall within the scope of the proposed directive in the case where they are not self-employed.

In June 2016, the Commission adopted the [European agenda](#) for the collaborative economy, which includes the aim of clarifying the concept of collaborative platforms and platform work. It provides guidance on the employment status of platform workers.

There is no standard [definition](#) of the term 'worker' in EU law, which makes it difficult to delineate and classify the grey zone between traditional employment and self-employment, and leaves the question of the scope of the directives in the area of employment unresolved. According to [analysis](#), there are hitherto more than 100 court decisions and 15 administrative decisions in the EU dealing with the employment status of platform workers. In most of the resolved cases, independent contractors were reclassified as workers and platforms as employers.

The situation of platform workers differs considerably from one [Member State](#) to another, because of their unclear employment status. The traditional binary system in labour law (employees versus self-employed) is incompatible with the specific nature of platform work and the phenomenon of bogus self-employment. Some Member States treat platform workers as self-employed, while others treat them as employees. Still others, such as Ireland, determine their status based on a series of tests.

Another problem related to platform work is the lack of traceability of the platforms. National authorities often face difficulties in accessing data about platforms or the people working through these platforms. This task is even more difficult when platforms operate in more than one Member State, in which case it becomes unclear where platform work is performed and by whom. This also makes it difficult to provide platform workers with access to social protection.

Parliament's starting position

The European Parliament has attached high importance to legislation on digital platforms and platform workers. Accordingly, it has adopted several resolutions on digital platforms to address and tackle current shortcomings in the online environment. One such example is a [legislative resolution](#) (rapporteur: Alex Agius Saliba, S&D, Malta), which inter alia calls on the Commission to introduce minimum standards for contract terms and general conditions, in particular with regard to transparency, accessibility, fairness and non-discriminatory measures. Another is a [non-legislative resolution](#) (rapporteur: Kris Peeters, EPP, Belgium) calling on the Commission to update the current

EU legal framework on digital services in order to address the challenges of new technologies and to ensure legal clarity and respect for fundamental rights.

Parliament has also been active as regards the working conditions of platform workers. In September 2021, it adopted an [own-initiative resolution](#) on Fair working conditions, rights and social protection for platform workers – New forms of employment linked to digital development (rapporteur: Sylvie Brunet, Renew, France). The resolution pleads for improved working conditions and a minimum set of rights, including access to social protection, for platform workers regardless of their employment status. It proposes the creation of a European framework that safeguards decent working conditions for platform workers and tackles precarious forms of platform work. As regards the legal status of platform workers, the Parliament pleads for the rebuttable presumption of an employment relationship with the reversal of the burden of proof for the employer (with the exception of workers who are genuinely self-employed and who should keep this status). The resolution insists that platforms should provide essential and transparent information regarding working conditions and the calculation of fees, and demands the setting of minimum requirements for safety and health at work (inter alia on the right to disconnect, but also on adequate protective equipment and accident insurance). It also highlights the right of platform workers to adequate training provided by the platform, and the importance of the portability of skills and certificates. Platform workers should also have access to all data concerning their activities and benefit from non-discrimination and data protection. There should be human oversight of the algorithms used by platforms.

Council starting position

In November 2019, the Council adopted a [recommendation](#) on access to social protection for workers and the self-employed, in which it also referred to platform workers. The recommendation stresses that in some Member States, certain categories of workers, such as short part-time workers, seasonal workers, on-demand workers, platform workers and those on temporary agency contracts or traineeships, are excluded from social protection schemes.

Preparation of the proposal

In her [political guidelines](#) for the 2019-2024 European Commission, published in July 2019, Commission President Ursula von der Leyen pointed out that 'digital transformation brings fast change that affects our labour markets' and promised to 'look at ways of improving the labour conditions of platform workers, notably by focusing on skills and education'. In its [communication](#) on a new industrial strategy for Europe, published on 10 March 2020, the Commission mentioned that 'new forms of work must come with modern and improved forms of protection, including for those working on online platforms', and repeated its commitment to publish an initiative on improving working conditions for platform workers. This intention was reiterated in von der Leyen's [letter of intent](#) annexed to the State of the Union address of September 2020, in which improving the working conditions of people working in the platform economy was highlighted as one of the key new initiatives for 2021. The challenges related to the situation of platform workers were also mentioned in the European Pillar of Social Rights [action plan](#), published in March 2021, which also identified the consultation on platform workers as a key Commission initiative for 2021.

On 13 March 2020, the Commission published a [study](#) on the working conditions of platform workers. Drafted by independent experts, the study provides an overview of the challenges faced by platform workers in relation to: their employment status; information made available to them about their working conditions; dispute resolution; collective rights; and non-discrimination.

In October 2020, the [Commission work programme 2021](#) announced a legislative initiative for the end of 2021 on improving the working conditions in platform work, following a two-stage consultation of the social partners.

On 24 February 2021, the European Commission launched the [first stage](#) of a consultation among the social partners, which ended on 7 April 2021, and to which the Commission received replies from 14 social partners from across the EU. Based on the replies received, the Commission [concluded](#) that there was a need for further EU action in order to ensure basic labour standards and rights for platform workers. The [second stage](#) of the consultation took place between 15 June and 15 September 2021. In addition, the Commission held exchanges with relevant stakeholders, including platform companies, platform workers' associations, trade unions, and representatives of the Member States, academia, international organisations and civil society. The [evaluation](#) of the second phase of the consultation was accompanied by a [staff working document](#).

The changes the proposal would bring

This [proposal](#) for a directive addresses digital labour platforms, which can be [defined](#) as internet-based companies that organise the work provided by workers or self-employed people to third-party clients and serve as intermediaries between the workers and the clients. Its scope includes platforms that organise work performed by individuals (such as Deliveroo), but not online platforms that only promote offers or requests for services, or display available service providers in a given area. Providers of a service whose purpose is to exploit or share assets (such as short-term rental of accommodation, like AirBnB), are also outside the scope of the proposal.

The proposed directive would apply to digital labour platforms that organise platform work in the EU, irrespective of their place of establishment or the place where the service to the recipient is offered or provided. There are more than 500 digital labour platforms active in the EU; these include international companies as well as small national and local start-ups, and provide mostly 'on-location' services.

The proposal aims to ensure that people working through digital labour platforms can obtain the correct legal **employment status** that corresponds to their relationship with the platform. It provides a list of control criteria to determine whether the platform is an 'employer':

- the remuneration (or its upper limit) is determined by the platform;
- binding rules are in place with regards to appearance, conduct towards clients or performance of the work;
- electronic means are in place to supervise and assess performance;
- restrictions are in place on working time, freedom to turn the App off or to use a substitute; and
- exclusivity/non-competition is required.

Any platform meeting at least two of those criteria would be legally presumed to be an 'employer', and those working through it would therefore enjoy the status of 'worker' and gain access to the applicable labour and social protection rights; this means the right to a minimum wage (where it exists), collective bargaining, working time and health protection, the right to paid leave or improved access to protection against work accidents, unemployment and sickness benefits, as well as contributory old-age pensions. Both platforms and workers could contest this classification (principle of the **rebuttable presumption**). Legal and administrative proceedings initiated by the digital platforms in order to rebut the legal presumption should not have a suspensive effect on application of the legal presumption. As a result, it is [estimated](#) that between 1.7 million and 4.1 million people could be re-classified as workers, while others might become genuinely self-employed, as some platforms may adjust their business models.

The proposed directive would also increase the transparency in the **use of algorithms** by digital labour platforms, by introducing the requirement for human monitoring, in order to ensure fairness and accountability in algorithmic management and the respect of working conditions. Those performing human monitoring would also have the right to contest automated decisions. These new rights would be granted both to workers and to genuine self-employed people.

The Commission's proposal also intends to bring more **transparency around platforms** by clarifying platforms' existing obligations to declare work to national authorities, and asking platforms to make key information about their activities and the people who work through them available to the national authorities. This would also apply to platforms operating across borders. Clear criteria and a common set of EU rules would ensure the platforms increased legal certainty, reduced litigation costs as well as facilitating business planning.

Advisory committees

In its [opinion](#) of 23 March 2022, 'Working conditions package – platform work' (rapporteur: Cinzia Del Rio, Group II – Workers, Italy), the European Economic and Social Committee ([EESC](#)) supports the Commission's aim of setting a common approach to the legal classification of workers. However, for the EESC, the classification criteria proposed do not reflect the digital market's dynamic and rapid evolution. Instead, the presumption of employment should operate in favour of individual workers who provide their labour and/or services under the specific functions of direction, control and/or organisational power, carried out through algorithmic management exercised by the digital platform. Therefore, the criteria should be set according to these functions. Furthermore, the EESC notes that the rights relating to the algorithmic management should apply to all situations where algorithmic management is used in an employment context, and that further provisions should be added in order to exercise the right to review an automated decision. The EESC stresses that article 14 of the proposed directive should explicitly refer to trade unions, which have the right to carry out collective bargaining, and that the right to information, consultation and collective bargaining be extended to all platform workers. A rejected counter-opinion, which questions whether a directive would be the right instrument to address the challenges of digital platform work, is appended to the opinion.

In its [opinion](#) of 29 June 2022, 'Improving working conditions in platform work' (rapporteur: Yonnc Polet, PES, Belgium), the European Committee of the Regions ([CoR](#)) expresses its disappointment about the proposal not making explicit reference to local and regional authorities, even though they are often responsible for implementing labour legislation and determining the status of workers. The CoR welcomes the mechanism of rebuttable presumption. However, as for the criteria listed, it believes that fulfilling just one of them (not two, as proposed by the Commission) must be sufficient to trigger the presumption of there being an employer, and that the list of criteria is not exhaustive. Furthermore, the CoR calls on the Commission to propose a regulatory framework so as to extend the algorithmic management rights granted to platform workers, to all workers, including outside platform work.

National parliaments

The deadline for scrutiny by [national parliaments](#) was 8 March 2022.

In its [reasoned opinion](#) of 6 April 2022, the Swedish parliament (*Riksdag*) considers that the proposal fails to comply with the principle of subsidiarity and poses a direct threat to the Swedish labour market model. The *Riksdag* argues that the proposal, based on the employment presumption proposed in article 4, invalidates the Swedish concept of 'employee'. Moreover, it would have repercussions on both the tax and social insurance systems, which the *Riksdag* deems unacceptable.

Stakeholder views

During the second stage of the consultation process in preparation of the proposal, both trade unions and employers' organisations agreed with the overall challenges as identified in the [second-stage consultation document](#) already mentioned above, but differed on the need for concrete action at EU level. As summarised in the Commission [impact assessment](#), stakeholders expressed the following views:

Trade unions called for a directive providing for the rebuttable presumption of an employment relationship with reversed burden of proof and a set of criteria to determine the status. In their opinion, such an instrument should apply both to online and on-location platforms. They also supported the introduction of new rights related to the algorithmic management of employment, and were generally against introducing a third status (neither worker nor self-employed) for people working through platforms. They also stressed the need for social dialogue.

Employers' organisations agreed on the need to tackle issues such as problems with working conditions, misclassification of employment status or access to information. However, they believed that action should be taken at national level, on a case-by-case basis and within the framework of the different national social and industrial systems. Concerning algorithmic management, they pointed out that the focus should be on efficient implementation and enforcement of existing and upcoming legal instruments.

Legislative process

On 9 December 2021, the Commission published a package on platform workers, including:

- a [proposal](#) for a directive on improving working conditions in platform work (detailed above),
- a [communication](#), 'Better working conditions for a stronger social Europe: harnessing the full benefits of digitalisation for the future of work', in which the Commission calls on Member States, social partners and other relevant actors to put forward concrete measures to improve working conditions in platform work, by: providing advice and guidance to platform workers; setting up dedicated information channels; improving transparency for the digital labour platforms and facilitating the development of small and medium-sized digital labour platforms;
- draft guidelines clarifying the application of EU competition law to collective agreements of solo self-employed people (people working on their own and not employing others), seeking to improve their working conditions. These draft guidelines also include the self-employed working through digital labour platforms, and aim to bring legal certainty and make sure that EU competition law does not stand in the way of solo self-employed people's efforts to improve their working conditions collectively. After an eight-week public consultation, the Commission adopted the [final version](#) of the guidelines on 29 September 2022.

In parallel, the Commission published an [impact assessment](#) examining problems and policy options related to: a) the risk of misclassification of employment status; b) algorithmic management of data; and c) enforcement, traceability and transparency, including in cross-border situations.

In the European Parliament, the Committee on Employment and Social Affairs (EMPL) has taken the lead, with the Committee on Transport and Tourism (TRAN) contributing an opinion. The TRAN committee [opinion](#) of 5 October 2022 clarified the particular circumstances of those performing 'low-skilled, platform-determined on-location work' in the European transport and tourism sector.

EMPL rapporteur Elisabetta Gualmini (S&D, Italy) put forward her [draft report](#) on 3 May 2022. The EMPL committee adopted the [report](#) on [12 December 2022](#) and the [plenary](#) confirmed it as mandate for interinstitutional negotiations on 2 February 2023 (376 votes for, 212 against, 15 abstentions).

The report specifies that a person performing 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 while not touching the genuine self-employed, and amends the proposal as follows. 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.

In parallel, it introduces two criteria for determining that a person is genuinely self-employed. The application of the legal presumption in this way would not mean an automatic reclassification of all persons performing platform work as platform workers. The non-suspensive effect of legal proceedings on the legal presumption of employment would also be maintained. The amendment further strengthens the provisions on data protection and human oversight of all decisions affecting working conditions, extends the rules protecting people from abusive algorithmic management practices to all workers in the EU, and promotes collective bargaining.

In the Council, the working party on social questions has examined the proposal. After several attempts, the Council agreed its [position](#) on [12 June 2023](#), when 22 countries voted in favour. The text maintains the principle of legal presumption of employment. Having expanded the Commission's five criteria to seven, it considers that as soon as three of them are fulfilled, an employment relationship is established, with the burden of proof to the contrary falling to the platform. However, if the platform merely complies with a legal obligation (also one stemming from a collective agreement), this would not count as fulfilling the criteria. While the presumption would apply in administrative and judicial proceedings, Member States would be free to decide whether they wished to apply it in tax, criminal and social security proceedings.

Difficult interinstitutional negotiations concluded with a [provisional agreement](#) on 13 December 2023, greeted as 'revolutionary' by Parliament's rapporteur.

As regards presumption of salaried status, the negotiators agreed to go back to the Commission's initial proposal to meet two out of five criteria indicating the control of a worker by a platform, but the text now calls them 'indicators', a more flexible term. Member States may adopt additional indicators. The rebuttal of the presumption of salaried status would be for the platform, not the worker, and could be based on national definitions of workers (to avoid creating an EU definition of a 'worker') and European Court of Justice case law. The platform would have to prove that the worker was genuinely self-employed, otherwise the worker would automatically be reclassified as an employee.

The deal has brought the first-ever EU rules on algorithmic management in the workplace, which would have to be monitored by qualified staff, who would be protected against adverse treatment. Important decisions could not be taken without human oversight, which should guarantee that workers could not be dismissed by automated systems. The new rules would forbid platforms from processing some types of personal data and oblige them to transmit information on self-employed workers who work for them to the competent national authorities and workers' representatives. Platforms would not be allowed to use intermediaries to circumvent the rules on social protection by using workers having a contract with a third party.

The agreed text has not been made public. To enter into force, the agreement would need to be formally adopted by both Parliament and Council and then published in the Official Journal of the EU.

However, on [22 December 2023](#), the Spanish Presidency concluded that the necessary majority to endorse the provisional agreement could not be reached among Member States' representatives (Coreper). The Belgian Presidency intends to resume work on the file. Member States were asked to clarify the reasons why they were unable to support the provisional agreement and indicate their red lines, at the meeting of the Council working party on social questions on 16 January.

Parliament rapporteur, Elisabetta Gualmini, assured her EMPL committee colleagues at a [meeting](#) on 11 January 2024 that her team would continue to negotiate for the Parliament on the basis of the provisional agreement reached, but that it would not accept a text that worsened the status quo.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

Kiss M. and Rittelmeyer Y.-S., [Improving the working conditions of platform workers Pre-legislative synthesis of national, regional and local positions on the European Commission's initiative](#), EPRS, European Parliament, December 2021.

STOA, [Online platforms: Economic and societal effects](#) EPRS, European Parliament, March 2021.

OTHER SOURCES

[Study to gather evidence on the working conditions of platform workers](#), Centre for European Policy Studies (CEPS)/European Commission, 2020.

[Back to the future: Policy pointers from platform work scenarios](#), Eurofound, 2020.

[Platform Workers in Europe](#), Joint Research Centre, European Commission, 2018.

[Improving working conditions of persons working through digital labour platforms](#), Legislative Observatory (OEIL), European Parliament.

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