



BRIEFING
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IMPROVING WORKING CONDITIONS IN PLATFORM WORK

– A DIRECTIVE PROPOSAL

On 9 December 2021 the European Commission presented a proposed **directive on improving working conditions in platform work**. This was the latest step of a path started some years before and reflecting the political will of EU institutions to regulate a fast-growing platform economy. The pandemic has given great impetus to the sector, but has also exposed the unfair working conditions of platform workers, opening a window of opportunity for improving the situation.

While the Commission's proposal is in the hands of the European Parliament and the Council, SOLIDAR with this briefing paper will firstly recall the path that led to the presentation of the directive proposal, secondly, will delve into its main features and lastly, will present a non-exhaustive set of recommendations that we hope will guide the final outcome of this legislative process.





INTRODUCTION

Platform work is defined by the Eurofound as “an employment form in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services in exchange for payment”¹; in other words, in platform work the demand and the supply of labour are matched by the digital platform². Although food delivery platforms are probably the most well-known, platform work encompasses a wide variety of services that range from care to graphic services. Due to its relatively new appearance, platform work is still considered as a non-standard form of employment. However, the rapid process of digitalisation and the strong push given to the platform economy by the pandemic have given more visibility to the growing role that the sector is playing in the European economy. As a matter of fact, the number of people working in the platform economy is increasing steadily³; according to a recent PPMI study, **28 million people in the EU work through digital labour platforms and the number is expected to reach 43 million by 2025**⁴. This picture clearly shows the importance of understanding the functioning of the platform economy in order to regulate it in a way that ensures the protection of workers’ rights. The pandemic has exposed and exacerbated the unfair working conditions of platform workers, showing how the rapid expansion of the platform economy, if not properly regulated, can be even more detrimental for their social rights.

In particular, **the systematic misclassification of the employment relation** – for which platform workers carrying out subordinate work are classified as self-employed – is the root of the unfair working conditions of people working in the platform economy, as many national courts’ rulings have confirmed.

Therefore, regulating the sector is particularly urgent if we consider that digital technologies develop at an extremely high pace, which requires regulators to respond promptly to the changes of the labour market and to anticipate future trends; failing to do so will imply costs in terms of social rights, that will risk falling between the cracks of a system lacking regulatory guarantees. The flexible nature of platform work, which can bring positive developments in terms of work-life balance and accessibility of work, cannot come at the expense of social rights.

As is often the case, **precarious workers and workers in vulnerable situations have the most to lose from a poorly regulated platform economy**, which risks widening the existing inequalities. Several studies have shown that platform work is an additional source of income for precarious workers and that, albeit predominately young, platform workers in Europe do not correspond to a student workforce⁵. Migrants are an important pool of labour for the platform economy, where the precarious working conditions characterising the sector contribute to pushing them

1 Eurofound (2021), Platform work: <https://www.eurofound.europa.eu/topic/platform-work>

2 Eurofound (2019), Platform work: Maximising the potential while safeguarding standards?: <https://www.eurofound.europa.eu/publications/policy-brief/2019/platform-work-maximising-the-potential-while-safeguarding-standards>

3 Urzi Brancati, C., Pesole, A., & Fernandez Macias, E. (2020). New evidence on platform workers in Europe . In JRC Technical Reports. <https://doi.org/10.2760/459278>

4 PPMI (2021), Study to support the impact assessment of an EU initiative on improving working conditions in platform work: <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8428&furtherPubs=yes>

5 Piasna, A., Zwysen, W. & Drahoukoupil, J. (2022), The platform economy in Europe, Results from the second ETUI Internet and Platform Work Survey (IPWS): <https://www.etui.org/publications/platform-economy-europe>



to the fringes of our labour markets and societies.⁶ The specific situation of undocumented migrants in the platform economy is also a relevant aspect of the picture. In addition, although gender-based work segregation seems to be less prominent in platform economy than it is in the traditional labour market, the social role of women as carers seems to affect their visibility in the platform work context, as their care work is seen as the continuation of the unpaid labour they carry out.⁷ Furthermore, **the so-called phenomenon of “platformisation” is extending to the whole labour market**, leading to an extreme flexibilisation of work and the breaking up of jobs into tasks⁸, as well as the increasing use of digital management practices⁹. It is hence clear that any development in the field of platform work is not limited to this field and that the regularisation of platform economy plays a vital role in defining the future of work more generally.

In recent years EU institutions have tried to put forward a series of measures to better frame platform work. These efforts culminated in the presentation by the European Commission of a directive proposal on improving working conditions in platform work on 9 December 2021, as foreseen by the Action Plan of the European Pillar of Social Rights. In this briefing paper we will firstly recall the path that led to the presentation of the proposal

for a directive on improving working conditions in platform work, secondly, we will delve into the main features of the Commission’s proposal and lastly, we will present a non-exhaustive set of recommendations that we hope will guide the final outcome of this legislative process.

THE ROAD TO THE PROPOSED DIRECTIVE:

In recent years, platform work has been increasingly present on the agenda of EU legislators or at least it has been more and more integrated into policy frameworks on working and living conditions. The meaning of platform work and its context have been first defined in the [European Agenda for the Collaborative Economy](#)¹⁰ adopted in June 2016. Since then, platform work was referred to also in other legislative texts such as the [directive 2019/1152](#) on transparent and predictable working conditions¹¹ and the [Recommendation on access to social protection for workers and the self-employed](#)¹² adopted by the Council in November 2019.

The political will of EU institutions to improve working conditions of people working in the platform economy also grew over time. In fact, this objective was included in the European Commission’s Communication [“A Strong Social Europe for Just](#)

6 Altenried, M. (2021), *Mobile workers, contingent labour: Migration, the gig economy and the multiplication of labour*: <https://journals.sagepub.com/doi/full/10.1177/0308518X211054846>

7 EIGE (2022), *Artificial intelligence, platform work and gender equality*: <https://eige.europa.eu/publications/artificial-intelligence-platform-work-and-gender-equality-report>

8 ETUC (2021), *ETUC reply to the Second phase consultation of social partners under Article 154 TFEU on possible action addressing the challenges related to working conditions in platform work*: <https://www.etuc.org/en/document/etuc-reply-second-phase-consultation-social-partners-under-article-154-tfeu-possible>

9 Huws, U., Spencer, N.H., Coates, M., and Holts, K. (2019) *The platformisation of work in Europe*: <https://www.feeps-europe.eu/resources/publications/686-the-platformisation-of-work-in-europe.html>

10 European Commission (2016), *A European agenda for the collaborative economy*: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52016DC0356>

11 European Commission (2019) *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*: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1152>

12 Council of the European Union (2019), *Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed* 2019/C 387/01: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1152>



Transitions¹³ published in January 2020, which identified the improvement of working conditions of platform workers as a key objective to achieve a just digital transition. Platform work was also given a place in the **New Industrial Strategy for Europe**¹⁴ introduced by the Commission on 10 March 2020.

The turning point was reached by the presentation of the **Action Plan of the European Pillar of Social Rights** in May 2021 at the Porto Social Summit, which outlined a series of initiatives that the European Commission intended to undertake for a more consistent implementation of the Social Pillar in the Member States. Among these initiatives, a legislative proposal on improving the working conditions of platform workers was mentioned. This intention was actualised in a directive proposal for improving the working conditions of platform workers presented by the Commission on 9 December 2021¹⁵.

On the same day the Commission presented two other documents: a Communication defining the EU approach with regards to platform work and laying the foundation for high-quality working conditions of platform workers as well as the Draft Guidelines on the application of EU competition law, which aim at protecting solo self-employed¹⁶ workers from the possible negative implications that EU competition law could have on their efforts to improve their working conditions. Despite the relevance of all three documents, in this briefing paper we will focus exclusively on the proposed directive as, if approved, it will have a legally binding nature, therefore a more direct impact on Member States'

national legislation and therefore on workers' working and living conditions.

THE PROPOSED TEXT:

The directive aims at achieving the overarching objective of improving working conditions of people performing platform work through three specific objectives:

1. to ensure that people working through platforms have – or can obtain – the correct employment status in light of their actual relationship with the digital labour platform and gain access to the applicable labour and social protection rights;
2. to ensure fairness, transparency and accountability in algorithmic management in the platform work context;
3. to enhance transparency, traceability and awareness of developments in platform work and improve enforcement of the applicable rules for all people working through platforms, including those operating across borders.

The initiative illustrates how it intends to achieve each of the components of this goal. Firstly, it aims at tackling the misclassification of employment relations, notably bogus self-employment, through a legal presumption of employment relation. This presumption is rebuttable and the burden that there is no employment relationship will be on the digital labour platform. The second specific objective is ensured by requirements for labour platforms concerning the treatment of personal data of platform workers and the transparency concerning

¹³ European Commission (2020), *A Strong Social Europe for Just Transitions*: https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_20

¹⁴ European Commission (2020), *European Industrial Strategy*: https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/european-industrial-strategy_en

¹⁵ At the moment in which this paper is being written, the proposal presented by the Commission is in the hands of the European Parliament and the Council that are elaborating their own positions.

¹⁶ Those who are self-employed without employees.



the algorithmic management of the platform. This is particularly important to shield workers from discrimination on any grounds. On this point, the directive also intends to foster social dialogue and introduce collective rights regarding information and consultation for workers and their representatives about key changes in the functioning of the platform that may affect their work. The third strategic objective is achieved through the introduction of measures that aim at making it easier for national authorities to monitor and therefore regulate digital platforms and the way they operate.

In this section of the briefing paper, we will delve into the key articles of the directive, highlighting their strengths and shortcomings, which will lead to the formulation of policy recommendations.

Definitions

Article 2 of the directive is dedicated to the definition of “digital labour platform” and of “platform work”. Both concepts are defined in quite a broad sense, which in our view gives enough space for the heterogenous nature of platform work to be reflected in the directive. In fact, the first concept is defined as work which is performed partly at a distance by an individual through an electronic means, and which is required by the recipient of the service. Nevertheless, some concerns may arise regarding the cumulative nature of the definition, which requires that all the criteria listed above are fulfilled. This feature potentially exposes the directive to the attempts of the digital platforms to fall outside of the scope of its application. According to the definition in the directive, platform workers are all individuals who work through a digital labour platform following an employment agreement with the platform irrespective of the contractual designation of the

agreement itself. Differently, “person performing platform work” means any individual performing platform work, irrespective of the contractual designation”. This distinction is important for the provisions of the directive – notably those referring to the treatment of personal data and the right to information (Articles 6 and 7) – that also target self-employed and not just employed workers, which is a needed element in SOLIDAR’s perspective.

Employment relation

Articles 3, 4 and 5 are surely core articles of the proposed Directive. Indeed, they concern the employment relation between the worker and the labour platform, which is one of the most debated aspects of the proposed text. As anticipated, one of the most impactful elements that the directive would introduce is the legal presumption of employment relation between a digital labour platform and the platform worker. In the Commission’s proposal, in order for presumption to apply, two criteria out of five listed in Article 4 need to be fulfilled. The idea behind this requirement is that certain conditions need to exist in order to prove that the digital platform has control over the conditions in which the work is performed by the platform worker. If at least two criteria are fulfilled, the presumption applies, and the contractual relation is classified as an employment relation. At this point, it is the responsibility of the platform to demonstrate to the national authorities that the employment relation does not exist, in case it disagrees with the presumption. National authorities will verify if the classification of the employment relation is correct in relation to the national definition of employment. In case a worker wants to be classified as self-employed, he/she/they also have the right to rebut the presumption. Many workers’ rights



organisations and trade unions – like AK Europa¹⁷ and ETUC¹⁸ – highlighted how the need to respect at least two criteria is too restrictive and would risk tackling the problem of misclassification of the employment relation only partially. Therefore, they advocate either for the interpretation of the list of criteria as non-exhaustive, where just one criterion fulfilled would trigger the legal presumption, or for the application of a general presumption for any type of digital labour platform, that would not require any criterion.

Transparency & algorithmic management, remedies & enforcement

In Chapter III of the directive, the set of provisions concerning algorithmic management is delineated. More specifically, the EC's proposal outlines the requirements that labour platforms would need to respect in terms of transparency on workers' data collection and the use of such data, the requirements concerning the human oversight over the algorithmic decision-making system, as well as information and consultation mechanisms for workers' representatives. As mentioned above, the information requirements over treatment of workers' data and algorithmic management apply also to self-employed workers. The key measure introduced here is that workers have the right to be informed about the aspects of the functioning of the platform that influence their work, as well as about any relevant changes in this respect. Among the algorithm-based aspects that have an impact on working conditions the assessment of workers' performance, including the criteria on which the

evaluation is based and the influence that the rating has on the worker's access to work, are prominent examples. In fact, in the food delivery sector for instance, platform workers have access to orders/working hours based on their platform rating, elaborated by the algorithm¹⁹. It is therefore glaring how transparency and human control are necessary to ensure fair working conditions. On these lines, another important and welcome measure contained in Chapter III is the requirement for platforms to monitor and report to authorities on any automated decision taken, which must be subjected to human oversight and transparently communicated and justified upon request to workers, too.

Chapter IV of the directive focuses more on the transparency concerning relevant information about their workers and their employment conditions that digital labour platforms must provide to national authorities. This is reinforced by Article 16 (Chapter V), which establishes the obligation for digital labour platforms to disclose "any relevant evidence that lays in their control" in case national courts of competent authorities require so in order to assess the existence of an employment relation. This is crucial to ensure that the directive is adequately enforced at the national level. In Chapter V, the right to redress and protection from dismissal are also defined, which are indispensable elements to ensure fair working conditions to platform workers.

¹⁷ AK Europa (2022), *Improving working conditions in platform work*: <https://www.akeuropa.eu/en/improving-working-conditions-platform-work>

¹⁸ ETUC (2022), *ETUC resolution on the proposal of the European Commission of a Directive on improving working conditions in platform work and way forward ahead of the ordinary legislative procedure*: <https://www.etuc.org/en/document/etuc-resolution-proposal-european-commission-directive-improving-working-conditions>

¹⁹ Pulignano, V., Marà, C. (2021), *Working for nothing in the platform economy, Forms and institutional contexts of unpaid labour*: <https://www.solidar.org/en/publications/working-for-nothing-in-the-platform-economy-thematic-publication>



SOLIDAR'S STAND:

SOLIDAR considers the Commission's proposal – which is the result of several factors, including the collective mobilization of workers and civil society – an ambitious initiative whose objective of improving the working conditions of platform workers is clear in its substance and not only in its title and which is a crucial step towards enabling a sustainable platform economy. In particular, we welcome the introduction of the presumption of employment relation and the provision for which the burden of the proof to rebut the legal presumption lays on the digital platform, as these are essential elements to prevent the misclassification of the employment relation and therefore the violation of workers' rights. For this reason, we hope that these two elements will remain intact in the final text of the directive. More specifically, based on the analysis presented above, we call EU institutions, notably the European Parliament and the Council, which are currently assessing the proposed text, to take into consideration the following non-exhaustive list of recommendations:

- ▶ The definition of digital labour platforms must be carefully formulated to ensure that it **encompasses all platforms that *de facto* employ workers** and that it remains as pertinent as possible despite the technological developments that may concern platforms in the future.
- ▶ The rebuttal of the legal presumption of employment relation should apply more broadly to ensure that all labour platforms that *de facto* employ platform workers are targeted. This

translates into **removing the too-restrictive requirement that two of the criteria listed in Article 4 must be fulfilled** at the same time. No criteria should apply for the presumption to be activated.

- ▶ When it comes to recognising the employment relation between the digital platform and the platform worker, EU institutions and Member States must **consider the intrinsic nature of unpaid labour in the platform economy**²⁰ and particular attention should be paid to ensure that this phenomenon is efficiently tackled. In the draft there is no reference to the issue of unpaid work, we consider this essential for the text to truly improve the working conditions of platform workers.
- ▶ SOLIDAR has a positive view on the provisions about algorithmic management, in particular we welcome the **requirements of transparency concerning the automated monitoring and decision-making systems** and the human control over such systems and that these apply also to self-employed. Overcoming the supposed opacity of algorithmic management and holding platforms accountable are priorities that must be maintained, also taking into account the corresponding rules from the upcoming EU AI Act²¹ and the General Data Protection Regulation²² to ensure consistency through regulatory frameworks. To this end, competent national authorities must operate in the necessary conditions to effectively enforce these provisions.

²⁰ *Ibid.*

²¹ European Commission (2021): Proposal for a regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (artificial intelligence act) and amending certain Union legislative acts. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206>

²² European Commission (2016), Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), <https://eur-lex.europa.eu/eli/reg/2016/679/oj>



- ▶ The directive requires digital platforms to ensure that the necessary competence, training and authority of the people exerting human oversight are guaranteed. This is of course very important. However, more widespread **competence about software and algorithms** employed by digital platforms must be **built also outside of the digital platforms** themselves in a way that enables researchers and public authorities to understand, analyse and evaluate these systems, and base decisions on such data. **Workers** should also be put in the conditions to achieve **basic literacy on how these systems work**. Training and learning paths with this objective must be devised, alongside the provisions entailed in the Updated Skills Agenda²³ for the development of transversal digital skills by all.
- ▶ Consequently, we want to underline that the necessary conditions for **national authorities** in Member States to apply and enforce the directive are ensured. This means that they must have **access to the black box of algorithms as well as the right competence to decrypt them**.
- ▶ The directive protects social dialogue by encouraging the negotiations between “workers’ representatives” and the digital platforms and requesting the accessibility of key information to the first category. However, **the draft does not contain enough guarantees on the rights to collective bargaining for all workers** regardless of their employment status. This indispensable element must be better embedded in the directive.
- ▶ The specific situation of all categories of workers, including **(undocumented) migrants, refugees and asylum seekers, as well as women** must be taken into account in the application of the directive.

To conclude, SOLIDAR will keep advocating to avoid the positive aspects of the text being watered down during the legislative process and to overcome its shortcomings. The implementation of the European Pillar of Social Rights through its Action Plan requires this directive to be a bold sign that platform work, and the future of work more broadly, will be characterised by fair working conditions and the respect of social rights, which are non-negotiable elements of a Just digital transition.

²³ See <https://ec.europa.eu/social/main.jsp?catId=1223&langId=en>



FURTHER READINGS:

Pulignano, V., Marà, C. (2021), **Working for nothing in the platform economy, Forms and institutional contexts of unpaid labour:**

<https://www.solidar.org/en/publications/working-for-nothing-in-the-platform-economy-thematic-publication>

Piasna, A., Zwysen, W., and Drahokoupil, J. (2022), **The platform economy in Europe, Results from the second ETUI Internet and Platform Work Survey (IPWS):**

<https://www.etui.org/publications/platform-economy-europe>

Huws, U., Spencer, N.H., Coates, M., and Holts, K. (2019) **The platformisation of work in Europe:** <https://www.feps-europe.eu/resources/publications/686-the-platformisation-of-work-in-europe.html>

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